NEW ENGLAND SCHOOL OF LAW
INTERNATIONAL WAR CRIMES PROJECT
RWANDA GENOCIDE PROSECUTION

MEMORANDUM FOR
OFFICE OF THE PROSECUTOR

PROBLEMS AND SOLUTIONS WHILE PROSECUTING MULTIPLE DEFENDANTS UNDER THE PRESENT RULES OF PROCEDURE AND EVIDENCE FOR JOINT TRIALS

Prepared by John F. Carey
UCWR
December 1999

TABLE OF CONTENTS

INDEX TO SUPPLEMENTAL DOCUMENTS. ii

I. **Introduction and Summary of Conclusions.** 1

A. Issue 1

B. Scope of the Issue. 1

C. Summary and Conclusion. 3

II. **Analysis of Compatible Jurisdictions** 6

III. **Legal Discussion** 8

A. Legal Basis for Prosecuting Multiple Defendants. 8

1. The ICTR Statute 9

2. Sources of Law 10

B. Establishing Joinder for Multiple Defendants. 11

C. Problems and Remedies for Prosecuting Multiple Defendants in a Joint Trial 14

1. Right of Confrontation 14

2. Reliability of the Evidence. 19

3. Right to a Speedy Trial. 21

4. Inconsistent Verdicts. 23

D. Conclusion. 26

E. Appendix. 28

INDEX

VOLUME I

STATUTES

1. Statute of the International Tribunal for Rwanda, annexed to S.C. Res. 955, U.N. SCOR, 49th Sess., 3453rd mtg., U.N. Doc. S/RES/955 (1994)

2. International Criminal Tribunal for Rwanda: Rules of Procedure and Evidence, U.N. Doc. ICTR/3.Rev. 2 (1996).

UNITED NATIONS DOCUMENTS

1. United Nations Judgment Report, Decision on Application for Leave to Appeal, Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic, and Esad Landzo. Released by the International Criminal Tribunal for Yugoslavia.

2. United Nations Judgment Report, Decision on Application for Leave to Appeal, Prosecutor v. Dusko Tadic. Released by the International Criminal Tribunal for Yugoslavia.

AUSTRALIAN CASES

1. Regina v. Michael Pastalis, and Regina v. Spathis (1999) 3 N.S.W.S. Ct. Cas. 615.

CANADIAN CASES

1. Regina v. Leon-Uzarraga [1998] 123 C.C.C. 3d 291.

2. Regina v. D.A.H and R.A.W. [1997] 120 C.C.C. 3d 533.

3. Regina v. Spanevello; Regina v. Seddon [1998] 125 C.C.C. 3d 97.

4. Regina v. Massick [1985] 21 C.C.C. 3d 128.

IRELAND CASES

1. The People v. Eamonn Noel Kelly [1980] 2 Frewen 201.

NEW ZEALAND CASES

1. R v. Tuhoro [1998] 3 NZLR 568.
2. R v. Joyce [1997] DCR 40.
3. R v. D and S [1996] 2 NZLR 513.
4. R v. Lewis and Another [1975] 2 NZLR 490.
5. Sweetman v. Industries and Commerce Departments [1970] NZLR 139.
6. The Queen v. Jorgenson and Gillies [1964] NZLR 520.

NORTHERN IRELAND CASES

1. R v. Hare and Halliday, Crim. App. (Transcipt) (1995)
2. R v. McFadden and Others, Belfast Crown Court (1991)
3. R v. Steenson and Others, 17 Crim. App. 36 (1986)
4. R v. Donnelly and Others, Crim. App. (Transcript) (1986)
5. R v. Graham and Others, 18 NIJB (Transcript) (1984)
6. Lynch v. Director of Public Prosecutions, N. Ir. 35 (1975)
7. R v. Doherty and Others, N. Ir. 279 (1993)
8. R v. Brennan and Others, Crim. App. (Transcript) (1996)
9. R v. Murphy and Others, N. Ir. 306 (1990)

VOLUME II

UNITED KINGDOM CASES

1. Regina v. Ali (A); Regina v. Ali (b), INDEP. (1998)

2. Regina v. Tahir and Simpkins, Crim App. 837 (1997)

3. R v. Vye; R v Wise; R v. Stephenson, 97 Crim. App. Rep. 134 (1993)

UNITED STATES CASES

1. Bruton v. U.S., 391 U.S. 123 (1968)

2. Nelson v. O'Neil, 402 U.S. 622 (1970)

3. Franqui v. State, 699 So. 2d 1312 (Fla. S. Ct. 1997)

4. Cockrell v. Oberhauser, 413 F.2d 256 (9th Cir. 1969)

5. Idaho v. Wright, 497 U.S. 805 (1990)

LAW REVIEW AND JOURNALS

1. M. Cherif Bassiouni, *Accountability for International Crime and Serious Violations of Fundamental Human Rights: Searching for Peace and Achieving Justice: the Need for Accountability*, 59 LAW & CONTEMP. PROBS. 9 (1996).

2. Summary of the U.S. District Court Southern District of New York Criminal Procedure; *Distinct Membership in Two Conspiracies Renders Joinder of Claims Improper*; New York Law Journal (January 15, 1999).

3. Gary Spencer, *Count Severed in Upstate Capital Case; Potential Prejudice Seen in Sentencing Phase*, New York Law Journal (September 15, 1997).

4. Robert Schmidt, *Severance Payoff; Bomb Defendants Want Separate Trials*, American Lawyer Newspapers Group Inc., Legal Times (Sept. 30, 1996).

5. Judge Joel L. Lefkowitz, *Trials are Severed for Defendant, Given Cross-Examination Problems*; *People v. Offen*, New York Law Journal (November 17, 1997).

6. Carol Daugherty Rasnic, *Northern Ireland's Criminal Trials without Jury: Diplock Experiment,* 5 ANN. SURV. INT'L & COMP. L 239 (1999).

7. Symposium, *International Criminal Law: the United Nations System: A place for Criminal Courts?*, 5 TRANSNAT'L L. & CONTEMP. PROBS. 237 (1995).

8. Siobhan M. Keegan, *The Criminal Cases Review Commission's Effectiveness in Handling Cases from Northern Ireland*, 22 FORDHAM INT'L L.J. 1776 (1999).

9. Book Review by Carol Daugherty Rasnic: *Judge Without Jury: Diplock Trials in the Adversary System, by John Jackson and Sean Doran*, 7 CARDOZO INT'L & COMP. L 1 (1999).

10. Oren Gross, *"Once More unto the Breach": The Systematic Failure of Applying the European Convention on Human Rights to Entrenched Emergencies*, 23 YALE J. INT'L L. 437 (1998).

11. Keith Vaughn, *Cross-examining an inadmissible confession*, 86 Law Society's Gazette 40 at 23 (1989).

12. Peter Hutchesson, *The Practitioner, R v Vye and Others*, 143 NEW LAW J. 6592 at 400 (1993).

13. Keith Vaughn, *Cross-examining an inadmissible confession*, 86 Law Society's Gazette 40 at 23 (1989).

14. Timothy L.H. McCormack and Gerry J Simpson, *The law of War Crimes: National and International Approaches,* KLUWER LAW INT'L (1997).

BOOKS

1. 1 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998).

2. 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998).

3. M. Cherif Bassiouni, THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (1996).

4. Andrew L.-T. Choo, HEARSAY AND CONFRONTATION IN CRIMINAL TRIALS (1996).

5. Warren Freedman, THE CONSTITUTIONAL RIGHT TO A SPEEDY AND FAIR CRIMINAL TRIAL (1997).

6. Robert M. Krivoshey, INSTRUCTIONS VERDICTS, AND JUDICIAL BEHAVIOR 1994).

7. Wayne R. LaFave & Austin W. Scott, Jr., CRIMINAL LAW (1986).

8. Myron Moskovitz, CASES & PROBLEMS IN CRIMINAL PROCEDURE: THE COURTROOM (1998).

9. Joshua Dressler & George C. Thomas III, CRIMINAL PROCEDURE: PRINCIPLES, POLICIES AND PERSPECTIVES (1999).

10. Matthew Bender & Company, CRIMINAL LAW DESKBOOK §13.04, The Order of Trial (1999).

11. Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).

12. 1 Virginia Morris & Michael P. Scharf, AN INSIDER'S GUIDE TO THE INTERNATIONAL CRIMINAL TRIBUNAL FRO THE FORMER YUGOSLAVIA (1995).

jurisdictions that utilize the procedure of joinder, specifically as a means of judging multiple defendants who are involved in the same transaction.[4]

Under common law, it was common practice to take into account whether the procedure of joinder might cause prejudice.[5] In the Canadian case Regina v. Massick, the court decided that in spite of limitations imposed by common law, the proper practice is to permit joinder.[6] The reasoning for this is based on the courts view that the risk of prejudice today is minimal.[7] A case from the New Zealand jurisdiction echoes this view stating that "the issues relating to the principle offender and secondary party tend to coalesce."[8] Unlike Canada, the New Zealand court went on to say that if one "hypothesized that [the defendant] had been found guilty of murder, the intent ascribed to him at his trial would be irrelevant at the appellants."[9]

The most common solution among various jurisdictions to avoiding any problems arising from the prosecution of multiple defendants is the severance of the trials. In the jurisdiction of Northern Ireland the courts stated that "the general principle is very clear, that only in very exceptional cases is it wise to order separate trials when two or more are jointly charged with the participation in one criminal offense."[10]

---

4 *See* United Nations Judgment Report, Decision on Application for Leave to Appeal, Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic, and Esad Landzo. Released by the International Criminal Tribunal for Yugoslavia. See appendix.

5 Regina v. Massick [1985] 21 C.C.C. 3d 128.

6 Regina v. Massick [1985] 21 C.C.C. 3d 128.

7 Regina v. Massick [1985] 21 C.C.C. 3d 128.

8 R v. Tuhoro [1998] 3 NZLR 568.

9 R v. Tuhoro [1998] 3 NZLR 568.

10 R v. McFadden and Others, Belfast Crown Court (1991)

Finally, the Northern Ireland jurisdiction had addressed what it felt were the pros and cons on joining multiple defendants. Here, the court stated that "it is in favor of joint trial that the case of one defendant is not postponed to that of another, that one tribunal assesses the witness by the same yardstick in relation to a broadly connected group of persons and that inconsistencies and discrepancies in that witness's evidence will enure for the benefit of all the accused. Against joint trial is the fact that the length and complexity of the trial is increased because of the number of separate cases heard together and the multiplication of cross-examinations on the same issue: this, of course, depends on the degree of separate representation and does not require a very large number of co-defendants. Moreover, the joinder of charges and accused on a large scale introduces much inadmissible and potentially prejudicial evidenced and the traditional hazards to the defense of any joint trial are increased to an extent which would probably be very dangerous if the case were tried with a jury."[11]

C. SUMMARY AND CONCLUSION

Although the several jurisdictions researched address many of the problems arising out of the prosecution of multiple defendants. In the end most courts agree that if the defendant or defendants are prejudiced by a joint trial, it should ultimately be severed.[12] This is in accordance with most written procedures and common law. [13] For

---

[11] R v. Donnelly and Others, Crim. App. (Transcript) (1986)

[12] Wayne R. LaFave & Austin W. Scott, Jr., CRIMINAL LAW (1986). P. 529

[13] *See* Myron Moskovitz, CASES & PROBLEMS IN CRIMINAL PROCEDURE: THE COURTROOM (1998). P. 397

instance, the United States Federal Rules of Criminal Procedure state that if the defendant is prejudiced by a joinder the court may grant severance.[14]

Although an analysis was done on only some of the problems researched the use of severance pursuant to both the rules of criminal procedure and the common law was frequently utilized.[15] Similarly the Tribunal will decide which trials will be granted severance pursuant to rule 82 of the Rules of Procedure and Evidence.[16] Rule 82 states:

> Joint and Separate Trials:
>
> (A) In joint trials, each accused shall be accorded the same rights as if he were being tried separately.[17]
>
> (B) The Trial Chamber may order that persons accused jointly under Rule 48 be tried separately if it considers it

---

[14] *See* also The Federal Rules of Criminal Procedure; See appendix.
Rule 14. Relief from Prejudicial Joinder;
If it appears that a defendant or the government is prejudiced by a joinder of offences or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection in camera any statements or confessions made by the defendants which the government intends to introduce in evidence at trial.

[15] Note: Since there are only several issues concerning this topic addressed herein, it is recommended that the United Nations International Criminal Tribunal for Rwanda, Office of the Prosecutor, request additional research on this topic if it is their opinion that it is warranted. This is based on Legal Research Topic No. two, Facsimile dated 20 August 1999. The Focus of this paper is derived from the facsimile, which in part asked "[w]hat are potential problems and their solutions in relation to trials of multiple defendants under the present Rules of Procedure and Evidence?" Therefor, the scope of this paper centers on the most common of these issues that arise over an array of jurisdictions. Specifically, the right of confrontation, the right to a speedy trial, the reliability of evidence and, inconsistent verdicts. Some of the other problems noted in this research but not centered on are prejudicial joinder, denial of defendants right to present exculpatory evidence, antagonistic defenses, the problem of cross-examination, the use of character evidence, witness anonymity order in lieu of confrontation, delay of trial in the absence of joint accused.

[16] *See* 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998). See also International Criminal Tribunal for Rwanda: Rules of Procedure and Evidence, U.N. Doc. ICTR/3.Rev. 2 (1996). P. 481 See appendix.

[17] *See* ICTR: Rules of Procedure and Evidence, U.N. Doc. ICTR/3.Rev. 2 (1996).

> necessary in order to avoid a conflict of interests that might cause serious prejudice to an accused, or protect the interest of justice.[18]

As stated by the court in the United States case People v. Offen,[19] "[i]t would appear that the best course is to sever the trials now rather than risk a possible mistrial at or near the end of what obviously will be a lengthy trial."[20]

The other common alternative to severing a trial is for the court to put itself in the position of weighing the defendant's right to confrontation and his or her right to a fair trial by excluding nonprobative prejudicial evidence.[21]

Here, there is no jury. The ICTR find facts, pronounce judgement, and impose sentence[22]. An analogy to domestic precedent suggests that a joint trial concerns are minimized, if not eliminated by the absence of a jury. As stated in the United States case Cockrell v. Oberhauser, "[t]he Bruton rule does not apply to the [defendant] because she was tried by the court and not by a jury. Nothing in Bruton suggests that a judge is incapable of applying the law of limited admissibility that he has himself announced."[23]

---

18 *See* ICTR: Rules of Procedure and Evidence, U.N. Doc. ICTR/3.Rev. 2 (1996).

19 Judge Joel L. Lefkowitz, *Trials are Severed for Defendant, Given Cross-Examination Problems; People v. Offen*, New York Law Journal (November 17, 1997).

20 Judge Joel L. Lefkowitz, *Trials are Severed for Defendant, Given Cross-Examination Problems; People v. Offen*, New York Law Journal (November 17, 1997). In People v. Offen, the court states that it must anticipate problems that are likely to arise at trial. Id. at 2. See appendix.

21 Judge Joel L. Lefkowitz, *Trials are Severed for Defendant, Given Cross-Examination Problems; People v. Offen*, New York Law Journal (November 17, 1997).

22 *See* 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998), p. 10 See also Statute of the International Tribunal for Rwanda, annexed to S.C. Res. 955, U.N. SCOR, 49th Sess., 3453rd mtg., U.N. Doc. S/RES/955 (1994). See appendix.

23 See Myron Moskovitz, CASES & PROBLEMS IN CRIMINAL PROCEDURE: THE COURTROOM (1998). Cite; Cockrell v. Oberhauser, 413 F.2d 256 (9th Cir. 1969).

II. ANALYSIS OF COMPATIBLE JURISDICTIONS

On 08 November 1994, the Security Council adopted Resolution 955. This resolution provided for the establishment of the Rwanda Tribunal and the adoption if its statute. This resolution was annexed by a vote of 13 in favor, and 1 opposed (Rwanda), and 1 abstention (China).[24] Here the Rwanda Tribunal is comprised of judges with no juries, therefore many of the problems that arise under joinder of multiple defendants may not be applicable. A jurisdiction that has used joinder of multiple defendants over recent years is Northern Ireland. These are referred to as Diplock Courts, these Diplock Courts try defendants for offenses without juries.[25] Here, judges determine both fact and law in these cases while operating under relaxed rules of evidence.[26]

---

[24] *See* 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998).

[25] Siobhan M. Keegan, *The Criminal Cases Review Commission's Effectiveness in Handling Cases from Northern Ireland*, 22 FORDHAM INT'L L.J. 1776 (1999).
See also Carol Daugherty Rasnic, *Northern Ireland's Criminal Trials without Jury: Diplock Experiment,* 5 ANN. SURV. INT'L & COMP. L 239 (1999). See appendix.

> Two examples of how basic rights may be altered can be given. The United Kingdom was faced with a serious threat to public order in Northern Ireland as a result of paramilitary and terrorist actions in the Province. The government, which was anxious to portray these activities as criminal, faced the problem of obtaining convictions because of the difficulty in collecting evidence in the disturbed situation in Northern Ireland and because of the intimidation of witnesses and jurors. The government asked Lord Diplock to devise a system of criminal procedure which would address these problems but which simultaneously would be compatible with the U.K.'s obligations to secure a fair criminal trial under Article 6 of the European Convention on Human Rights. Lord Diplock suggested a series of reforms which included the abolition of jury trial for certain offences and changes in the laws of evidence, particularly with respect to confessions. "Diplock Courts" operating under his scheme have sat in Northern Ireland since 1975. They have achieved the government's purpose of convicting those accused of paramilitary and terrorist offences, whilst at the same time withstanding allegations that trials before the Diplock Courts were unfair. Id.

[26] Siobhan M. Keegan, *The Criminal Cases Review Commission's Effectiveness in Handling Cases from Northern Ireland*, 22 FORDHAM INT'L L.J. 1776 (1999).

The Diplock Courts have faced much criticism, one of which the judges are accused of becoming too case hardened.[27] The Diplock statute requires judges to include a substantiating legal basis for a conviction.[28] The courts in Northern Ireland have stated that "where two or more people were jointly charged with participation in an offence or related offences, separate trials would only be ordered exceptionally, in cases where there was a risk of inconsistent verdicts occurring, it would be most unlikely that separate trials would be ordered."[29]

Joinder in Northern Ireland is dealt with by Rule 21 of the Crown Court Rules.[30] The general principle remains, only in very exceptional cases will separate trials be ordered when two or more are jointly charged in one criminal offense.[31]

---

27 *See* Siobhan M. Keegan, *The Criminal Cases Review Commission's Effectiveness in Handling Cases from Northern Ireland*, 22 FORDHAM INT'L L.J. 1776 (1999).

28 Carol Daugherty Rasnic, *Northern Ireland's Criminal Trials without Jury: Diplock Experiment,* 5 ANN. SURV. INT'L & COMP. L 239 (1999). See appendix.

> As a rule, judges in Northern Ireland follow the same rule for acquittals, This rule provides a counterpart to the judge's charge and summary to a jury at the conclusion of a trial and prior to deliberation.

29 *See* Symposium, *International Criminal Law: the United Nations System: A place for Criminal Courts?* 5 TRANSNAT'L L. & CONTEMP. PROBS. 237 (1995). See appendix.

> Where there was a risk that a joint trial would prejudice one of the co-accused, the court would generally explore an alternative means of counteracting that prejudice before ordering separate trials. Moreover, prejudice was less likely to occur in a non-jury trial because a judge was well-equipped to apply legal rules scrupulously.

30 R v. Hare and Halliday, Crim. App. (Transcipt) (1995) See Rule 21 of the Crown Court Rules (Northern Ireland) 1979, which provides as follows: See appendix.

> Charges for any offences may be joined in the same indictment if those charges are founded on the same facts or form or are a part of a series of offences of the same or a similar character.

31 R v. McFadden and Others, Belfast Crown Court (1991).

III. LEGAL DISCUSSION

A. LEGAL BASIS FOR PROSECUTING MULTIPLE DEFENDANTS

"Rules 48 and 49 of the ICTR Rules of Procedure and Evidence permit joinder of defendants and of offenses charged."[32] The basis for joinder is the commission of acts or crimes that are part of the "same transaction."[33] Under Rule 2, a "transaction" is defined as a "number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan."[34] This Rule is broad enough to permit the joinder of co-conspirators and, under the revised definition of transaction, the joinder of defendants who are engaged in acts that constitute part of a common scheme, strategy or plan within the framework of the Rule.[35]

In the International Criminal Tribunal for Yugoslavia case Prosecution v. Delalic, the defendant argued that the Trial Chamber erred in having found evidence of a "transaction" which is a condition for joining of the accused and their crimes according to Rules 48 and 49. Delalic argues that no proof was tendered as to the establishment of a "transaction" which is defined as under Rule Two of the ICTY Rules of Procedure.[36]

---

[32] M. Cherif Bassiouni, THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (1996). Page 901.

[33] M. Cherif Bassiouni, THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (1996). Page 902.

[34] M. Cherif Bassiouni, THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (1996). Page 902

[35] M. Cherif Bassiouni, THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (1996).

[36] United Nations Judgment Report, Decision on Application for Leave to Appeal, Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic, and Esad Landzo. Released by the International Criminal Tribunal for Yugoslavia.

Rule 2 of the ICTY Rules of Procedure:

The Prosecutor rebutted this argument stating that "it would only be so in a challenge to the indictment and not with respect to a motion for separate trial. Beyond this, the Prosecutor asserts that a "transaction" did obtain, as all the charges stem from activities which took place at a single detention camp."[37]

1. The ICTR Statute

Articles 2, 14 and 20 of the ICTR are relevant to an analysis of the problems and solutions of prosecuting multiple defendants.[38] Article 2 defines the crime of genocide and section 3(b) specifies conspiracy to commit genocide. It is the offense of conspiracy that most often links the defendants together to allow the prosecution the option of joint trials.[39] Article 14 establishes the Rules of procedure and evidence, while giving the

---

> a number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan.

37 United Nations Judgment Report, Decision on Application for Leave to Appeal, Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic, and Esad Landzo. Released by the International Criminal Tribunal for Yugoslavia. See appendix.

38 *See* 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998). Page 3.

39 *See* 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998). Page 7, See appendix.

> Article 2: Genocide
> 3. The following acts shall be punishable:
> (b) Conspiracy to commit genocide;

Tribunal the authority to make amendments, as it deems necessary.[40] Finally, Article 20 outlines the rights of the accused.[41]

Article 20 of the ICTR provides an accused his/her rights. This provision is similar to the corresponding provision of the Yugoslavia Tribunal Statute, which is largely based on Article 14 of the International Covenant on Civil and Political Rights.[42] The ICTR statute provides a foundation to analyze some of the problems of prosecuting joint trials under the current procedures and evidence for the ICTR.

2. Sources of Law

"There exists an impediment to the national enforcement of genocide, crimes against humanity, and, in some respects war crimes; the limited recognition and application of the theory of universal jurisdiction to such crimes."[43] Here, the Rwanda Tribunal is given the power to prosecute the people or persons responsible for the violations of international humanitarian law.[44] Since the international law regarding procedures

---

40 *See* 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998).

41 *See* 1 Virginia Morris & Michael P. Scharf THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998).

42 *See* 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998). Page 481

43 M. Cherif Bassiouni, *Accountability for International Crime and Serious Violations of Fundamental Human Rights: Searching for Peace and Achieving Justice: the Need for Accountability*, Law and Contemporary Problems Volume 59, Problem 9 (Fall 1996).

44 *See* Statute of the International Tribunal for Rwanda, annexed to S.C. Res. 955, U.N. SCOR, 49th Sess., 3453rd mtg., U.N. Doc. S/RES/955 (1994).

and evidence is not fully developed in this area for the purposes of this issue, the following analysis is based on common law of several countries.[45]

B. ESTABLISHING JOINDER FOR MULTIPLE DEFENDANTS AND CONSPIRACY

The Rule for Joinder, Rule 48 under the International Criminal Tribunal for Rwanda Rules of Procedure and Evidence,[46] states that:

> Persons accused of the same or different crimes committed in the course of the same transaction
> may be jointly charged and tried.[47]

Further, Rule 49 under the International Criminal Tribunal for Rwanda Rules of Procedure and Evidence,[48] states that:

> Two or more crimes may be joined in one indictment
> if the series of acts committed together form the
> same transaction, and the said crimes were committed
> by the same accused.[49]

These rules permit the joinder of defendants and/or offenses charged. The basis of this rule is in the commission of the crime, in that they are part of the "same transaction."[50] This rule is broad enough to encompass co-conspirators.[51]

---

[45] Note: these common law countries are as follows: (1) Australia; (2) Canada; (3) Ireland; (4) New Zealand; (5) Northern Ireland; (6) The United Kingdom and ; (7) The United States.

[46] *See* ICTR: Rules of Procedure and Evidence, U.N. Doc. ICTR/3.Rev. 2 (1996).

[47] *See* 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998). See also International Criminal Tribunal for Rwanda: Rules of Procedure and Evidence, U.N. Doc. ICTR/3.Rev. 2 (1996). See appendix.

[48] *See* ICTR: Rules of Procedure and Evidence, U.N. Doc. ICTR/3.Rev. 2 (1996).

[49] *See* 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998). See also International Criminal Tribunal for Rwanda: Rules of Procedure and Evidence, U.N. Doc. ICTR/3.Rev. 2 (1996).

[50] *See* M. Cherif Bassiouni, THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (1996). See appendix.

Under Rule 2, a 'Transaction' is defined as a 'number of

In the United States, conspiracy is a crime that frequently allows for a joinder under the Federal Rules. In U.S. v. Joseph Gallo, "the defendants moved to severe the trials of defendants Gallo, Guidice, and Arteca from the trial of the Gatto defendants pursuant to Federal Rule of Criminal Procedure 8(b)."[52] Here, the defendants argued that the indictment charged two separate conspiracies that were not sufficiently related on its face to permit a joint trial of all the defendants.[53] Note, the crime of conspiracy serves two important but different functions: "(1) as with solicitation and attempt, it is a means for preventative intervention against persons who manifest a disposition to criminality; and (2) it is also a means of striking against the special danger incident to group activity."[54] In a case like this, where multiple defendants are charged in the same Indictment, Rule 8(b) governs the Motion for severance.[55] The court reasoned that

---

> acts or omissions whether occurring as one event or a number
> of events, at the same or different locations and being part
> of a common scheme or plan. Id. at 902.

[51] *See* M. Cherif Bassiouni, The Law of the International Criminal Tribunal for the Former Yugoslavia (1996).

[52] *See* Summary of the U.S. District Court Southern District of New York Criminal Procedure; *Distinct Membership in Two Conspiracies Renders Joinder of Claims Improper;* New York Law Journal (January 15, 1999). See appendix.

[53] Summary of the U.S. District Court Southern District of New York Criminal Procedure; *Distinct Membership in Two Conspiracies Renders Joinder of Claims Improper;* New York Law Journal (January 15, 1999). See appendix.

[54] *See* Wayne R. LaFave & Austin W. Scott, Jr., CRIMINAL LAW (1986). See footnote No.64; Model Penal Code §5.03, Comment at 387 (1985). See also Dennis. The Rational of Criminal Conspiracy, 93 L.Q.Rev.39 (1977); Developments in the Law-Criminal Conspiracy, 72 Harv.L.Rev. 920, 923-25 (1959), where these two functions are respectively referred to as the "specific object" and "general danger" rationales.

[55] Summary of the U.S. District Court Southern District of New York Criminal Procedure; *Distinct Membership in Two Conspiracies Renders Joinder of Claims Improper;* New York Law Journal (January 15, 1999). See United States v. Turoff, 853 F.2d 1037 (2d Cir. 1988) See appendix.
Federal Rule of Criminal Procedure 8(b) provides:

> (b) Joinder of Defendants. Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

"multiple defendants may be charged with and tried for multiple offenses only if the offenses are related pursuant to the test set forth in Rule 8(b), that is, only if the charged acts are part of a series of acts or transactions constituting . . . the offenses."[56] But note that in U.S. v. Flores-Rivera, the Court stated that "joint trials of all conspirators are strongly favored; in general, all evidence admissible against any one conspirator is admissible against all, therefore, denial of severance motion proper." [57] However, "Several conspiracies may not be joined in a single trial when the only nexus among them lies in the fact that one man participates in all." [58]

In the International Criminal Tribunal for Yugoslavia case Prosecution v. Delalic, the defendant argued that the Trial Chamber erred in having found evidence of a "transaction" which is a condition for joining of the accused and their crimes according to Rules 48 and 49. Delalic argues that no proof was tendered as to the establishment of a "transaction" which is defined as under Rule Two of the ICTY Rules of Procedure.[59]

---

[56] United States v. Attansio, 870 F2d. 809, 815 (2d Cir. 1989); see also United States v. Reinhold, 994 F.Supp. 194 (S.D.N.Y. 1998); United States v. Lech, 161 F.R.D. 225, 256 (S.D.N.Y.). However Two separate transactions do not constitute a "series" within the meaning of rule 8(b) "merely because they are of a similar character or involve one or more common participants." Lech, 161 F.R.D. at 256.

[57] Matthew Bender & Company, Criminal Law Advocacy §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999). See also U.S. v. Flores-Rivera, 56 F.3d 319 (1st Cir. 1995).

[58] Wayne R. LaFave & Austin W. Scott, Jr., CRIMINAL LAW (1986). See Kotteakos v. U.S., 328 U.S. 750 (1946). Page 529.

[59] United Nations Judgment Report, Decision on Application for Leave to Appeal, Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic, and Esad Landzo. Released by the International Criminal Tribunal for Yugoslavia. See appendix.

Rule 2 of the ICTY Rules of Procedure:

> a number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan.

The Prosecutor rebutted this argument stating that "it would only be so in a challenge to the indictment and not with respect to a motion for separate trial. Beyond his, the Prosecutor asserts that a "transaction" did obtain, as all the charges stem from activities which took place at a single detention camp."[60]

C. PROBLEMS AND SOLUTIONS WHILE PROSECUTING MULTIPLE DEFENDANTS IN A JOINT TRIAL

"Only by prosecuting all the members together and by culling the sum total of their knowledge is it possible to obtain a detailed mosaic of the whole undertaking."[61] Although joint trials can present disadvantages for the several defendants, there may also be many problems that arise as a result of prosecuting a joint trial.[62] For the purposes of this memorandum, the analysis will be limited to problems involving: (1) the right of confrontation; (2) the reliability of the evidence; (3) the right to a speedy trial and; (4) inconsistent verdicts.[63]

---

[60] United Nations Judgment Report, Decision on Application for Leave to Appeal, Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic, and Esad Landzo. Released by the International Criminal Tribunal for Yugoslavia. See appendix.

[61] Wayne R. LaFave & Austin W. Scott, Jr., CRIMINAL LAW (1986). See footnote No. 56: Note, 45 Yale L.J. 1447, 1450 (1939)..

[62] Wayne R. LaFave & Austin W. Scott, Jr., CRIMINAL LAW (1986). Page 530.

[63] Note: Since there are only several issues concerning this topic addressed herein, it is recommended that the United Nations International Criminal Tribunal for Rwanda, Office of the Prosecutor, request additional research on this topic if it is their opinion that it is warranted. This is based on Legal Research Topic No. two, Facsimile dated 20 August 1999. The Focus of this paper is derived from the facsimile, which in part asked "[w]hat are potential problems and their solutions in relation to trials of multiple defendants under the present Rules of Procedure and Evidence?" Therefor, the scope of this paper centers on the most common of these issues that arise over an array of jurisdictions.

Right of Confrontation

"The idea of having a Right to confront one's accusers in person holds great emotional appeal."[64] This right is not formally recognized in English Law, but it is formally recognized in both the United States Constitution and in the European Convention on Human Rights and the International Covenant on Civil and Political Rights.[65] Here, the Statute of the International Tribunal for Rwanda provides that "[t]he accused has the right to examine or have examined the witnesses against him or her."[66]

For the purposes of this analysis the right of confrontation will first be analyzed from a constitutional dimension of the United States.[67] Specifically, the seminal case of Bruton v. U.S. in which the court discovered a prejudice as a result of a confession offered into evidence against only one defendant in a joint trial.[68]

---

[64] See Andrew L.-T. Choo, HEARSAY AND CONFRONTATION IN CRIMINAL TRIALS (1996). Foot note No. 89: E.A. Scallen, Constitutional Dimensions of Hearsay Reform; Toward a Three-Dimensional Confrontation Clause (1992) 76 Minnesota Law Review 623, 641-2. See appendix.

[65] Andrew L.-T. Choo, HEARSAY AND CONFRONTATION IN CRIMINAL TRIALS (1996). Page 181.

[66] *See* 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998). Page 9, See appendix.

Article 20:

Right of the accused

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

[67] Joshua Dressler & George C. Thomas III, Criminal Procedure: Principles, Policies and Perspectives (1999). Page 900

[68] Joshua Dressler & George C. Thomas III, Criminal Procedure: Principles, Policies and Perspectives (1999). Page 894, See appendix.

Normally, when evidence is offered against one defendant but not another, the judge instructs the jury not to consider that evidence against the other defendant. But the court found that the special considerations governed the confessions issue, noting that it is very difficult to ignore testimony in which one co-defendant essentially says: 'the other guy sitting here in the courtroom? He did it.'" Id. at 900.

One frequent problem arising under a confrontation clause or statute, while used in conjunction with joint trials, is the cross-examination of witnesses. For example, "the admission of a confession or an incriminating statement by a defendant that implicates another defendant would result in unfair prejudice to the latter if the former does not intend to take the stand and cannot be cross-examined because of the privilege of self-incrimination."[69]

In Bruton v. United States, the Supreme Court examined the issue of severance in the context of the accused's confrontation rights. These rights are guaranteed by the Sixth Amendment.[70] In Bruton, the confrontation problem arose when the codefendant exercised his right not to take the stand, depriving Bruton of his opportunity to cross-examine him about his confession.[71] The trial court attempted to remedy the problem with a jury instruction, but the Supreme Court held that "[t]he unreliability of such evidence is intolerably compounded when the alleged accomplice, as here, does not testify and cannot be tested by cross-examination."[72] The Court noted, "it is impossible to say whether the jury did in fact disregard the codefendant's confession,"[73] therefore a

---

69 1 Virginia Morris & Michael P. Scharf, AN INSIDER'S GUIDE TO THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (1994).

70 Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).

71 Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).

72 Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999). See also Bruton v. U.S., 391 U.S. 123 (1968).

73 Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999). See also Bruton v. U.S., 391 U.S. 123 (1968).

severance was necessitated because Bruton's Sixth Amendment right to cross-examine was violated.[74]

Article 22 of the Statute of the International Tribunal for Rwanda States in part that the "Trial Chambers shall pronounce judgments and impose sentences and penalties on persons convicted of serious violations of international humanitarian law."[75] The absence of a jury may ameliorate this type of problem, in the United States case Cockrell v. Oberhauser, the court held that "[t]he Bruton rule does not apply to the [defendant] because she was tried by the court and not by a jury. Nothing in Bruton suggests that a judge is incapable of applying the law of limited admissibility that he has himself announced."[76] Under the U.S. Federal Rules of Criminal Procedure using severance as a remedy is only applicable when "it appears that the defendant or the government is prejudiced by a joinder of offenses."[77] Similarly here, the judges of the Tribunal are able to understand the admissibility of evidence.

As in the United States the Criminal Tribunal for Rwanda, Rules of Procedure and Evidence Rule 82 Joint and Separate Trials states in part that "[t]he Trial Chamber may

---

[74] Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).See also Bruton v. U.S., 391 U.S. 123 (1968).

[75] *See* 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998).Article 22;Judgement.

[76] *See* Myron Moskovitz, CASES & PROBLEMS IN CRIMINAL PROCEDURE: THE COURTROOM (1998). See also;_Cockrell v. Oberhauser, 413 F.2d 256 (9th Cir. 1969). See appendix.

[77] *See* Myron Moskovitz, CASES & PROBLEMS IN CRIMINAL PROCEDURE: THE COURTROOM (1998). See also The Federal Rules of Criminal Procedure; page 397. See appendix.
Rule 14. Relief from Prejudicial Joinder;
If it appears that a defendant or the government is prejudiced by a joinder of offences or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection in camera any statements or confessions made by the defendants which the government intends to introduce in evidence at trial.

order persons. . .tried separately if it considers necessary in order to avoid. . . serious prejudice to an accused, or protect the interest of Justice."[78]

In a different common law jurisdiction, Hong Kong as part of the U.K., one co-defendant in a joint trial can cross-examine another on that defendant's confession.[79] In this case, Lui Mei Lin v. R, the court recognizes the common law right to confrontation when one defendant is giving evidence which implicates a co-defendant.[80]

A possible solution to such an issue is suggested in the United States case People v. Offen.[81] Here, the court would restrict the scope of any such questioning pursuant to People v. Williams.[82] This is difficult for the court because they would be placed in the position of weighing the defendants right to confrontation and his right to a fair trial by the exclusion of non-probative evidence.[83]

As stated in the United States case Idaho v. Wright, "the bottom line [of the court] is that the interlocking nature of the confessions cannot provide a basis upon which to

---

78 ICTR: Rules of Procedure and Evidence, U.N. Doc. ICTR/3.Rev. 2 (1996).

79 Keith Vaughn, *Cross-examining an inadmissible confession*, 86 Law Society's Gazette 40 at 23 (1989).

80 Keith Vaughn, *Cross-examining an inadmissible confession*, 86Law Society's Gazette 40 at 23 (1989).

81 Judge Joel L. Lefkowitz, *Trials are Severed for Defendant, Given Cross-Examination Problems; People v. Offen*, New York Law Journal (November 17, 1997).

82 Judge Joel L. Lefkowitz, *Trials are Severed for Defendant, Given Cross-Examination Problems; People v. Offen*, New York Law Journal (November 17, 1997).

83 Judge Joel L. Lefkowitz, *Trials are Severed for Defendant, Given Cross-Examination Problems; People v. Offen*, New York Law Journal (November 17, 1997). See appendix.
The Court states "that it would appear that the best course is to severe the trials now rather than risk a possible mistrial. . ."Id. at 2.

determine whether there are sufficient indicia of reliability to introduce the codefendants hearsay confession as a substantive evidence of the defendant's guilt."[84]

Reliability of the Evidence

The reliability of evidence for the purposes of this analysis is confined mostly to the common law, the codified law in this area was limited. In one Northern Ireland case, R v. Donnelly, an indictment contained 184 counts against 38 accused.[85] The Donnelly court asked how far, in a joint trial, would the credibility of a witness's evidence be judged against one or more of the accused, or the reference to the evidence be used against a different defendant.[86]

The court decided that "the credibility of a witness whose evidence requires corroboration is judged not on his evidence alone but on all the evidence in the case."[87] In R v Steenson, the court reviews matters that it believes would interfere in matters of credibility.[88]

---

84 Myron Moskovitz, CASES & PROBLEMS IN CRIMINAL PROCEDURE: THE COURTROOM (1998). See Idaho v. Wright, 497 U.S. 805 (1990).

85 R v. Donnelly and Others, Crim. App. (Transcript) (1986)

86 R v. Donnelly and Others, Crim. App. (Transcript) (1986)

87 R v. Donnelly and Others, Crim. App. (Transcript) (1986) See appendix.

> [I]n some cases that which adds credence to the evidence of the witness also serves to corroborate his evidence. In other cases evidence capable of providing corroboration is more clearly distinguishable from evidence which goes only to credibility. Id. at 17.

88 R v. Steenson and Others, 17 NIJB 36 (1986). See appendix.

> the court stated that it would interfere in matters of credibility in only three instances: first if the jury has been misdirected as to how to access the evidence; secondly if there has been no direction at all when there should have been one; and thirdly if on the whole of the evidence the jury must have taken a perverse view of the witness, but this is rare.

In United States v. Moreton, "the defense showed the need for severance simply because the amount and complexity of evidence would preclude any jury from dealing with each defendant separately."[89] In Australia, the courts decided that the test for presenting evidence in a joint trial is whether or not it is relevant.[90] In this case, Regina v. Michael Pastalis, and Regina v. Spathis, the court said that "the evidence of disposition must bear some reasonable similarity to the type of crime for which the appellant and his co-accused were charged."[91]

The New Zealand Courts states that in joint trials evidence may be required to be admitted that will be prejudicial to one defendant, though not admissible against him.[92] The court goes on to say that it not uncommon to meet with this position at trial, but that "in certain circumstances some risk of prejudice has to be accepted."[93]

The courts in the jurisdiction of Northern Ireland held that material to challenge the credibility or reliability of the crown witnesses in a joint trial was relevant to the defenses

---

[89] Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999). See also U.S. v. Morton, 25 F.R.D. 1027 (1960). See appendix.

[90] Regina v. Michael Pastalis, and Regina v. Spathis (1999) 3 N.S.W.S. Ct. Cas. 615.

[91] Regina v. Michael Pastalis, and Regina v. Spathis (1999) 3 N.S.W.S. Ct. Cas. 615. See appendix.

> In the case at bar, the evidence sought to be adduced to show that Lopez was more likely the stabber would have to establish, through admissible evidence, that on another occasion Lopez had engaged in violent assaultive behavior with a weapon. See: R. v. Kendall and McKay, at 126 (27)

[92] The Queen v. Jorgenson and Gillies [1964] NZLR 520.

[93] The Queen v. Jorgenson and Gillies [1964] NZLR 520. See appendix.

> [J]oint trials frequently take place under circumstances where one accused has made a statement which at first sight may be thought to implicate another. The presiding Judge then warns the jury in the strongest terms that the evidence must not be used to strengthen the case against or lead to the conviction of the prisoner against whom it is not admissible.

of the accused.[94] In a ICTY case the tribunal found that in evaluating the "the probative value of hearsay evidence, the Trial Chamber is compelled to pay special attention to indicia of its reliability, including whether it is voluntary, truthful, and trust-worthy, as appropriate".[95] The Tribunal went on to say that it may be guided, but not bound to the hearsay exceptions of other legal systems. [96] The Tribunal went on to state that "[i]n bench trials before the International Tribunal, this is the most efficient and fair method to determine the admissibility of out-of-court statements." [97]

Right to a Speedy Trial

The intent of this section is to analyze the length and complexity of a trial with multiple defendants. Article 20 of the ICTR Statute Rule 4(c) provides the defendant the right; "to be tried without undue delay."[98] This is similar to the Sixth Amendment of the

[94] R v. Graham and Others, 18 NIJB (Transcript) (1984) See appendix.

> If these statements afforded material for serious challenge to the credibility or reliability of these witnesses on matters vital to the case for the prosecution it follows that by cross-examination – or by proof of the statements if the witnesses denied making them – the defence might have destroyed the whole case against both the accused or at any rate shown that the evidence of these witnesses could not be relied upon as sufficient to displace the evidence in support of the alibis. Their credibility cannot be treated as divisible and accepted against one and rejected against the other. Their honesty having been shown to be open to question, it cannot be right to accept their verdict against one and re-open it in the case of the other. Their Lordships are accordingly of opinion that a new trial should have been ordered in both cases.

[95] *See* United Nations Judgment Report, Decision on Application for Leave to Appeal, Prosecutor v. Dusko Tadic. Released by the International Criminal Tribunal for Yugoslavia.

[96] *See* United Nations Judgment Report, Decision on Application for Leave to Appeal, Prosecutor v. Dusko Tadic. Released by the International Criminal Tribunal for Yugoslavia.

[97] *See* United Nations Judgment Report, Decision on Application for Leave to Appeal, Prosecutor v. Dusko Tadic. Released by the International Criminal Tribunal for Yugoslavia.

[98] Statute of the International Tribunal for Rwanda, annexed to S.C. Res. 955, U.N. SCOR, 49th Sess., 3453rd mtg., U.N. Doc. S/RES/955 (1994).

United States which contains a series of rights that primarily deal with producing and evaluating evidence to expedite a trial.[99]

In the Northern Ireland case R v Donnelly, the length and the complexity of the trial it was argued, caused confusion and injustice.[100] In this case the court found that "[I]t is in favor of joint trial that the case of one defendant is not postponed to that of another, that one tribunal assesses the witness by the same yard stick in relation to a broadly connected group of persons and that inconsistencies and discrepancies in that witnesses evidence will enure for the benefit of the accused. Against joint trial is the fact that the length and complexity of the trial is increased because of the number of separate cases heard together and the multiplication of cross examinations on the same issue."[101]

Here, the court was concerned about the admission of prejudicial evidence in a case so long and complicated, especially if it were to be tried before a jury. [102] The court was of the opinion that a jury trial would be dangerous because of the potentially prejudicial evidence that might get in against the defendants."[103] In the New Zealand case, R v. D and S, there was an argument by the defense that prejudice would result from a joint

---

[99] Joshua Dressler & George C. Thomas III, CRIMINAL PROCEDURE: PRINCIPLES, POLICIES AND PERCPECTIVES (1999).

[100] R v. Donnelly and Others, Crim. App. (Transcript) (1986). See appendix.
See also Archibald 42nd ed 1-71;

> Questions of joinder, whether of offences or of offenders, are matters of practice in which the court has, unless restrained by statute inherent power both to formulate its own rules and to vary them in light of current experience and the needs of justice. There has never been a clear, settled and general practice, based on principles with regard to the occasions when joinder of offences is in practice correct.

[101] R v. Donnelly and Others, Crim. App. (Transcript) (1986)

[102] R v. Donnelly and Others, Crim. App. (Transcript) (1986)

[103] R v. Donnelly and Others, Crim. App. (Transcript) (1986)

trial.[104] Here, the S trial was predicted to last only three days, but in a joint trial it was expected to last two to three weeks.[105] This resulted in the broad interpretation of the joinder procedure utilized, in that it was said that "it would seem appropriate to apply a fair and liberal construction to this application."[106]

Inconsistent Verdicts

An experiment was conducted at the University of Toledo in the United States to determine the prejudicial effect of joining two criminal offenses in a single trial as compared to trying the defendants separately.[107] The results of this research indicated that when two cases are joined at trial the defendants are more likely to be convicted than if they were severed and tried separately.[108] An evaluation of this several similar studies concluded that defendants are more likely to be convicted in a joint trial than in a severed case.[109] This evaluation suggested that the prejudicial effect of joinder was greatest when

---

104 R v. D and S [1996] 2 NZLR 513.

105 R v. D and S [1996] 2 NZLR 513.

106 R v. D and S [1996] 2 NZLR 513. See appendix.
On one interpretation, this provision could be said to exclude cases such as the present because the applicants are not jointly charged in the strict sense, but it would seem appropriate to apply a fair and liberal construction which would meet the obvious legislative intent.

107 Robert M. Krivoshey, INSTRUCTIONS, VERDICTS, AND JUDICIAL BEHAVIOR (1994).

108 Robert M. Krivoshey, INSTRUCTIONS, VERDICTS, AND JUDICIAL BEHAVIOR (1994).

109 *See* Joshua Dressler & George C. Thomas III, CRIMINAL PROCEDURE: PRINCIPLES, POLICIES AND PERCPECTIVES (1999). See also Rethinking Criminal joinder: An Analysis of the Empirical Research and its implication for Justice, 52 Law & Contemp. Probs. 325, 330-31 (1989). See appendix.

the individual cases are weak.[110] The conclusion was that Rule 8(a) of the Federal Rules of Evidence should be revised to protect defendants against such prejudices.[111]

The Canadian Courts developed strong policy reasons for persons charged from the same transactions to be tried jointly.[112] It further stated that "the policy reasons apply with equal or greater force when each accused blames the other or others, a situation which is graphically labeled a 'cut-throat defense'."[113] To have separate trials in these circumstances would create a risk of inconsistent verdicts.[114]

In New Zealand, the courts found that where there is a joint trial and there is an acquittal of the named principal and the aider of the crime perpetrated is convicted, this conviction cannot stand.[115] The court stated that "in neither case does there appear to

---

110 Joshua Dressler & George C. Thomas III, CRIMINAL PROCEDURE: PRINCIPLES, POLICIES AND PERCPECTIVES (1999).

111 *See* Joshua Dressler & George C. Thomas III, CRIMINAL PROCEDURE: PRINCIPLES, POLICIES AND PERCPECTIVES (1999). See also Rethinking Criminal joinder: An Analysis of the Empirical Research and its implication for Justice, 52 Law & Contemp. Probs. 325, 330-31 (1989). See appendix.

112 *See* Regina v. Spanevello; Regina v. Seddon [1998] 125 C.C.C. 3d 97.

113 *See* Regina v. Spanevello; Regina v. Seddon [1998] 125 C.C.C. 3d 97.

114 *See* Regina v. Spanevello; Regina v. Seddon [1998] 125 C.C.C. 3d 97. See appendix.

> The policy against separate trials is summarized by Elliott, supra, at p.17 as follows: There is a dilemma here which could only be avoided by separate trials. But separate trials will not be countenanced because, quite apart from the extra cost and delay involved, it is undeniable that the full truth about an incident is more likely to emerge if every alleged participant gives his account on one occasion. If each alleged participant is tried separately, there are obvious and severe difficulties in arranging for this to happen without granting one of them immunity. In view of this, in all but exceptional cases, joint trial will be resorted to, despite the double bind inevitably involved. Although the trial has a discretion to order separate trials, that discretion must be exercised on the (*41) basis of principles of law which include the instruction that severance is not to be ordered unless it is established that a joint trial will work an injustice to the accused.

115 R v. Lewis and Another [1975] 2 NZLR 490.

have been any difference in the admissibility of the evidence as against the two persons jointly charged."[116]

In another New Zealand case R v Tuhoro, the court said that it would be good to keep in mind the theory of separate trials to avoid the problem posed by conflicting verdicts.[117] The defendant argued on appeal that the inconsistent verdicts returned against all parties.[118] Here the court states that the other defendants were fortunate with their outcome, but based on the evidence and putting the inconsistency aside "we have no doubt that the evidence of guilty of murder against the appellant." [119]

In Ireland, the courts said that it would be "manifestly unjust if one person were to be convicted upon a joint trial solely because his co-defendant was correctly convicted upon the same matter."[120] Therefore, it is in the interest of justice that "the court of trial should treat the case of each party independently of the other, and should ensure that evidence which is pertinent to one should not be used in relation to the other unless it is directly and correctly related to the trial of the other party."[121]

---

116 R v. Lewis and Another [1975] 2 NZLR 490.

117 R v. Tuhoro [1998] 3 NZLR 568.

118 *See* R v. Tuhoro [1998] 3 NZLR 568. See appendix.
In November of 1997 the defendant was found guilty on counts of murder aggravated robbery, unlawful taking of a motor vehicle, and receiving stolen property. This is an appeal against a conviction for murder. Id. at 1.

119 R v. Tuhoro [1998] 3 NZLR 568.

120 The People v. Eamonn Noel Kelly [1980] 2 Frewen 201. See appendix.
Here, the court stated:
It would be manifestly unjust if one person were to be convicted upon a joint trial solely because his co-defendant was correctly convicted upon the same matter. Likewise it would be contrary to justice that one of two persons jointly tried should be acquitted simply and solely because the other of them, on the evidence relating to him, has been acquitted on the same matter.

121 The People v. Eamonn Noel Kelly [1980] 2 Frewen 201.

In the United States, the United States Supreme Court and United States Court of Appeals prefer that defendants charged with the same crime be tried together.[122] The Courts believe that joinder is more efficient means of prosecuting defendants and prevents the problem of inconsistent verdicts.[123]

D. CONCLUSION

Although defendants indicted together should be tried together, the various courts have the power to try these cases separately when a joint trial is prejudicial.[124] "The decision to grant relief rests with the judges sound discretion."[125] Note that in all of the jurisdictions examined the burden of proof of a substantial prejudice is on the defendant.[126] The relief from a prejudicial joinder "should begin with a pretrial motion to continue throughout the trial." [127]

The greatest danger or problem arising out of prosecuting multiple defendants is the probability that his or her association through joinder of other defendants enhances a

---

[122] Robert Schmidt, *Severance Payoff; Bomb Defendants Want Separate Trials*, American Lawyer Newspapers Group Inc., Legal Times (Sept. 30, 1996). See appendix.

[123] Robert Schmidt, *Severance Payoff; Bomb Defendants Want Separate Trials*, American Lawyer Newspapers Group Inc., Legal Times (Sept. 30, 1996). See appendix.

> Experts agree that under the relevant case law, district courts grant severance only when there is a "serious risk" that a joint trial will compromise the rights of one of the defendants or will prevent the jury from making a reliable decision about guilt or innocence.
>
> But a number or criminal procedure experts say that the facts in the bombing case may satisfy the criteria set forth for severance, and that a joint trial for McVeigh and Nichols would be rife with constitutional pitfalls.

[124] Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).

[125] Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).

[126] Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).

[127] Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).

defendant's probability of being convicted. [128] Since every accused has a right to the minimum guarantees of due process and a fair trial, defendants or the accused can only be tried jointly to the extent that their rights are not violated.[129] The two most common reasons for the Trial Chamber to sever trials is "(1) to avoid the possibility of serious or unfair prejudice resulting from conflicting interests of the accused if tried jointly; or (2) to promote the interests of justice in ensuring fair and expeditious proceedings." [130]

Although severance seems to be the most common solution to problems with joinder, it should not be required solely because of hostilities between parties, different trial strategies or different defenses.[131] This United States Court went on to say that "it is in the position of having to decide these issues prospectively. It must anticipate problems that are likely to arise at trial. Of all the issues that the defendant has raised on this motion, the Court believes that the only issue that has merit is the likely cross-examination of him by his codefendant. This cross-examination would not be subject to any Sandoval ruling by the Court."[132]

---

128 Wayne R. LaFave & Austin W. Scott, Jr., CRIMINAL LAW (1986).

129 1 Virginia Morris & Michael P. Scharf, AN INSIDER'S GUIDE TO THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (1995). See appendix.

130 Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).

131 Judge Joel L. Lefkowitz, *Trials are Severed for Defendant, Given Cross-Examination Problems*; *People v. Offen*, New York Law Journal (November 17, 1997).

132 Judge Joel L. Lefkowitz, *Trials are Severed for Defendant, Given Cross-Examination Problems*; *People v. Offen*, New York Law Journal (November 17, 1997). See appendix.

> The Court could (1) restrict the scope of any such questioning pursuant to People v. Williams; (2) weigh the codefendant's right to confrontation and the defendant's right to a fair trial by the exclusion of nonprobative prejudicial evidence.

APPENDIX

1 United Nations International Criminal Tribunal for Rwanda, Office of the Prosecutor, Legal Research Topics No. two, Facsimile dated 20 August 1999. The Focus of this paper is derived from the facsimile, which in part asked "[w]hat are potential problems and their solutions in relation to trials of multiple defendants under the present Rules of Procedure and Evidence?" Therefor, the scope of this paper centers on the most common of these issues that arise over an array of jurisdictions.
TAB – Statute & Articles

2 1 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998).
TAB – Book 1

3 United Nations International Criminal Tribunal for Rwanda, Office of the Prosecutor, Legal Research Topics No. two, Facsimile dated 20 August 1999. The Focus of this paper is derived from the facsimile, which in part asked "[w]hat are potential problems and their solutions in relation to trials of multiple defendants under the present Rules of Procedure and Evidence?" Therefor, the scope of this paper centers on the most common of these issues that arise over an array of jurisdictions.
TAB – Pros Memo

4 United Nations Judgment Report, Decision on Application for Leave to Appeal, Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic, and Esad Landzo. Released by the International Criminal Tribunal for Yugoslavia. **TAB** – ICTY 1

5 Regina v. Massick [1985] 21 C.C.C. 3d 128.
TAB – CAN CASES 4

6 Regina v. Massick [1985] 21 C.C.C. 3d 128.
TAB – CAN CASES 4

7 Regina v. Massick [1985] 21 C.C.C. 3d 128.
TAB - CAN CASES 4

8 R v. Tuhoro [1998] 3 NZLR 568.
TAB – N.Z. CASES 1

9 R v. Tuhoro [1998] 3 NZLR 568.
TAB – N.Z. CASES 1

10 R v. McFadden and Others, Belfast Crown Court (1991)
TAB – N.I. CASES 2

11 R v. Donnelly and Others, Crim. App. (Transcript) (1986)
TAB – N.I. CASES 4

12 Wayne R. LaFave & Austin W. Scott, Jr., CRIMINAL LAW (1986).
TAB – BOOK 7

13 Myron Moskovitz, CASES & PROBLEMS IN CRIMINAL PROCEDURE: THE COURTROOM (1998).
TAB – BOOK 8

14 The Federal Rules of Criminal Procedure;

15 Note: Since there are only several issues concerning this topic addressed herein, it is recommended that the United Nations International Criminal Tribunal for Rwanda, Office of the Prosecutor, request additional research on this topic if it is their opinion that it is warranted. This is based on Legal Research Topic No. two, Facsimile dated 20 August 1999. The Focus of this paper is derived from the facsimile, which in part asked "[w]hat are potential problems and their solutions in relation to trials of multiple defendants under the present Rules of Procedure and Evidence?" Therefor, the scope of this paper centers on the most common of these issues that arise over an array of jurisdictions. Specifically, the right of confrontation, the right to a speedy trial, the reliability of evidence and, inconsistent verdicts. Some of the other problems noted in this research but not centered on are prejudicial joinder, denial of defendants right to present exculpatory evidence, antagonistic defenses, the problem of cross-examination, the use of character evidence, witness anonymity order in lieu of confrontation, delay of trial in the absence of joint accused.

16 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998).
TAB – BOOK 2

18 ICTR: Rules of Procedure and Evidence, U.N. Doc. ICTR/3.Rev. 2 (1996).
TAB – RULES OF PROCEDURE

19 Judge Joel L. Lefkowitz, *Trials are Severed for Defendant, Given Cross-Examination Problems; People v. Offen*, New York Law Journal (November 17, 1997).
TAB – LAW REVIEW 5

20 Judge Joel L. Lefkowitz, *Trials are Severed for Defendant, Given Cross-Examination Problems; People v. Offen*, New York Law Journal (November 17, 1997).
TAB – LAW REVIEW 5

22. Judge Joel L. Lefkowitz, *Trials are Severed for Defendant, Given Cross-Examination Problems;* People v. Offen, New York Law Journal (November 17, 1997).
TAB – LAW REVIEW 5

21 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998).Statute of the International Tribunal for Rwanda, annexed to S.C. Res. 955, U.N. SCOR, 49th Sess., 3453rd mtg., U.N. Doc. S/RES/955 (1994).
TAB – BOOK 2

22 Myron Moskovitz, CASES & PROBLEMS IN CRIMINAL PROCEDURE: THE COURTROOM (1998).
TAB – BOOK 8

25 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998).
TAB – BOOK 2

26 Siobhan M. Keegan, *The Criminal Cases Review Commission's Effectiveness in Handling Cases from Northern Ireland*, 22 FORDHAM INT'L L.J. 1776 (1999).
TAB – LAW REVIEW 8

27 Carol Daugherty Rasnic, *Northern Ireland's Criminal Trials without Jury: Diplock Experiment,* 5 ANN. SURV. INT'L & COMP. L 239 (1999).
TAB – LAW REVIEW 6

28 Siobhan M. Keegan, *The Criminal Cases Review Commission's Effectiveness in Handling Cases from Northern Ireland*, 22 FORDHAM INT'L L.J. 1776 (1999).
TAB – LAW REVIEW 8

29 Siobhan M. Keegan, *The Criminal Cases Review Commission's Effectiveness in Handling Cases from Northern Ireland*, 22 FORDHAM INT'L L.J. 1776 (1999).
TAB – LAW REVIEW 8

30 Carol Daugherty Rasnic, *Northern Ireland's Criminal Trials without Jury: Diplock Experiment,* 5 ANN. SURV. INT'L & COMP. L 239 (1999).
TAB – LAW REVIEW 6

31 Symposium, *International Criminal Law: the United Nations System: A place for Criminal Courts?* 5 TRANSNAT'L L. & CONTEMP. PROBS. 237 (1995).
TAB – LAW REVIEW 7

32 R v. Hare and Halliday, Crim. App. (Transcipt) (1995)
TAB – N.I. CASES 1

33 R v. McFadden and Others, Belfast Crown Court (1991).
TAB – N.I. CASES 2

34 M. Cherif Bassiouni, THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (1996).
TAB – BOOK 3

35 M. Cherif Bassiouni, THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (1996).
TAB – BOOK 3

36 M. Cherif Bassiouni, THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (1996).
TAB – BOOK 3

37 M. Cherif Bassiouni, THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (1996).
TAB – BOOK 3

38 United Nations Judgment Report, Decision on Application for Leave to Appeal, Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic, and Esad Landzo. Released by the International Criminal Tribunal for Yugoslavia.
TAB – ICTY CASES 1

39 United Nations Judgment Report, Decision on Application for Leave to Appeal, Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic, and Esad Landzo. Released by the International Criminal Tribunal for Yugoslavia.
TAB – ICTY CASES 1

40 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998).1
TAB – BOOK 2

42 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998).
TAB – BOOK 2

43 1 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998).
TAB – BOOK 1

44 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998).
TAB – BOOK 2

45 M. Cherif Bassiouni, *Accountability for International Crime and Serious Violations of Fundamental Human Rights: Searching for Peace and Achieving Justice: the Need for Accountability,* Law and Contemporary Problems Volume 59, Problem 9 (Fall 1996).
TAB – LAW REVIEW 1

46 Statute of the International Tribunal for Rwanda, annexed to S.C. Res. 955, U.N. SCOR, 49th Sess., 3453rd mtg., U.N. Doc. S/RES/955 (1994).
TAB – STATUTE

47 Note: these common law countries are as follows: (1) Australia; (2) Canada; (3) Ireland; (4) New Zealand; (5) Northern Ireland; (6) The United Kingdom and ; (7) The United States.

48 ICTR: Rules of Procedure and Evidence, U.N. Doc. ICTR/3.Rev. 2 (1996).
TAB – RULES OF PROCEDURE

49 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998). **TAB – BOOK 2**

50 ICTR: Rules of Procedure and Evidence, U.N. Doc. ICTR/3.Rev. 2 (1996).
TAB – RULES OF PROCEDURE

51 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998).
TAB – BOOK 2

52 M. Cherif Bassiouni, THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (1996).
TAB – BOOK 3

53 M. Cherif Bassiouni, THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (1996).
TAB – BOOK 3

54 Summary of the U.S. District Court Southern District of New York Criminal Procedure*; Distinct Membership in Two Conspiracies Renders Joinder of Claims Improper;* New York Law Journal (January 15, 1999).
TAB – LAW REVIEW 2

55 Summary of the U.S. District Court Southern District of New York Criminal Procedure; *Distinct Membership in Two Conspiracies Renders Joinder of Claims Improper;* New York Law Journal (January 15, 1999).
TAB – LAW REVIEW 2

56 Wayne R. LaFave & Austin W. Scott, Jr., CRIMINAL LAW (1986).
TAB – BOOK 7

57 Summary of the U.S. District Court Southern District of New York Criminal Procedure; *Distinct Membership in Two Conspiracies Renders Joinder of Claims Improper;* New York Law Journal (January 15, 1999).
TAB – LAW REVIEW 2

58 United States v. Attansio, 870 F2d. 809, 815 (2d Cir. 1989); see also United States v. Reinhold, 994 F.Supp. 194 (S.D.N.Y. 1998); United States v. Lech, 161 F.R.D. 225, 256 (S.D.N.Y.). However Two separate transactions do not constitute a "series" within the meaning of rule 8(b) "merely because they are of a similar character or involve one or more common participants." Lech, 161 F.R.D. at 256.

59 Matthew Bender & Company, Criminal Law Advocacy §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999). See also U.S. v. Flores-Rivera, 56 F.3d 319 (1st Cir. 1995).
TAB – BOOK 11

60 Wayne R. LaFave & Austin W. Scott, Jr., CRIMINAL LAW (1986).
TAB – BOOK 7

61 United Nations Judgment Report, Decision on Application for Leave to Appeal, Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic, and Esad Landzo. Released by the International Criminal Tribunal for Yugoslavia.
TAB – ICTY CASES 1

61 Wayne R. LaFave & Austin W. Scott, Jr., CRIMINAL LAW (1986).
TAB – BOOK 7

63 Wayne R. LaFave & Austin W. Scott, Jr., CRIMINAL LAW (1986).
TAB – BOOK 7

64 Note: Since there are only several issues concerning this topic addressed herein, it is recommended that the United Nations International Criminal Tribunal for Rwanda, Office of the Prosecutor, request additional research on this topic if it is their opinion that it is warranted. This is based on Legal Research Topic No. two, Facsimile dated 20 August 1999. The Focus of this paper is derived from the facsimile, which in part asked "[w]hat are potential problems and their solutions in relation to trials of multiple defendants under the present Rules of Procedure and Evidence?" Therefor, the scope of this paper centers on the most common of these issues that arise over an array of jurisdictions.

65 Andrew L.-T. Choo, HEARSAY AND CONFRONTATION IN CRIMINAL TRIALS (1996).
TAB – BOOK 4

66 Andrew L.-T. Choo, HEARSAY AND CONFRONTATION IN CRIMINAL TRIALS (1996).
TAB – BOOK 4

67 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998).
TAB – BOOK 2

68 Joshua Dressler & George C. Thomas III, Criminal Procedure: Principles, Policies and Perspectives (1999).
TAB – BOOK 9

69 Joshua Dressler & George C. Thomas III, Criminal Procedure: Principles, Policies and Perspectives (1999).
TAB – BOOK 10

70 1 Virginia Morris & Michael P. Scharf, AN INSIDER'S GUIDE TO THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (1994).
TAB – BOOK 1

71 Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).
TAB – BOOK 11

72 Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).
TAB – BOOK 11

73 Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).
TAB – BOOK 11

74 Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).
TAB – BOOK 11

75 Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).
TAB – BOOK 11

76 2 Virginia Morris & Michael P. Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (1998).
TAB – BOOK 2

78 Myron Moskovitz, CASES & PROBLEMS IN CRIMINAL PROCEDURE: THE COURTROOM (1998).
TAB – BOOK 8

79 Myron Moskovitz, CASES & PROBLEMS IN CRIMINAL PROCEDURE: THE COURTROOM (1998).
TAB – BOOK 8

80 ICTR: Rules of Procedure and Evidence, U.N. Doc. ICTR/3.Rev. 2 (1996).
TAB – RULES OF PROCEDURE

80 Keith Vaughn, *Cross-examining an inadmissible confession*, 86 Law Society's Gazette 40 at 23 (1989).
TAB – LAW REVIEW 11

81 Keith Vaughn, *Cross-examining an inadmissible confession*, 86Law Society's Gazette 40 at 23 (1989).
TAB – LAW REVIEW 11

82 Judge Joel L. Lefkowitz, *Trials are Severed for Defendant, Given Cross-Examination Problems; People v. Offen*, New York Law Journal (November 17, 1997).
TAB – LAW REVIEW 5

83 Judge Joel L. Lefkowitz, *Trials are Severed for Defendant, Given Cross-Examination Problems; People v. Offen*, New York Law Journal (November 17, 1997).
TAB – LAW REVIEW 5

84 Judge Joel L. Lefkowitz, *Trials are Severed for Defendant, Given Cross-Examination Problems; People v. Offen,* New York Law Journal (November 17, 1997).
TAB – LAW REVIEW 5

81 Myron Moskovitz, CASES & PROBLEMS IN CRIMINAL PROCEDURE: THE COURTROOM (1998).
TAB – BOOK 8

85 R v. Donnelly and Others, Crim. App. (Transcript) (1986)
TAB – N.I. CASES 4

86 R v. Donnelly and Others, Crim. App. (Transcript) (1986)
TAB – N.I. CASES 4

88 R v. Donnelly and Others, Crim. App. (Transcript) (1986)
TAB – N.I. CASES 4

89 R v. Steenson and Others, 17 NIJB 36 (1986).
TAB – N.I. CASES 3

90 Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).
TAB – BOOK 11

92 Regina v. Michael Pastalis, and Regina v. Spathis (1999) 3 N.S.W.S. Ct. Cas.
615. **TAB – AUS CASES 1**

93 Regina v. Michael Pastalis, and Regina v. Spathis (1999) 3 N.S.W.S. Ct. Cas.
615. **TAB – AUS CASES 1**

94 The Queen v. Jorgenson and Gillies [1964] NZLR 520.
TAB – N.Z. CASES 6

95 The Queen v. Jorgenson and Gillies [1964] NZLR 520.
TAB – N.Z. CASES 6

96 R v. Graham and Others, 18 NIJB (Transcript) (1984)
TAB – N.I. CASES 5

97 United Nations Judgment Report, Decision on Application for Leave to A ppeal, Prosecutor v. Dusko Tadic. Released by the International Criminal Tribunal for Yugoslavia.
TAB – ICTY CASES 2

98 United Nations Judgment Report, Decision on Application for Leave to Appeal, Prosecutor v. Dusko Tadic. Released by the International Criminal Tribunal for Yugoslavia.
TAB – ICTY CASES 2

99 United Nations Judgment Report, Decision on Application for Leave to Appeal, Prosecutor v. Dusko Tadic. Released by the International Criminal Tribunal for Yugoslavia.
TAB – ICTY CASES 2

100 Statute of the International Tribunal for Rwanda, annexed to S.C. Res. 955, U.N. SCOR, 49th Sess., 3453rd mtg., U.N. Doc. S/RES/955 (1994).
TAB – STATUTE

101 Joshua Dressler & George C. Thomas III, CRIMINAL PROCEDURE: PRINCIPLES, POLICIES AND PERCPECTIVES (1999).
TAB – BOOK 9

102 R v. Donnelly and Others, Crim. App. (Transcript) (1986)
TAB – N.I. CASES 4

103 R v. Donnelly and Others, Crim. App. (Transcript) (1986)
TAB – N.I. CASES 4

104 R v. Donnelly and Others, Crim. App. (Transcript) (1986)
TAB – N.I. CASES 4

105 R v. Donnelly and Others, Crim. App. (Transcript) (1986)
TAB – N.I. CASES 4

106 R v. D and S [1996] 2 NZLR 513.
TAB – N.Z. CASES 3

107 R v. D and S [1996] 2 NZLR 513.
TAB – N.Z. CASES 3

108 R v. D and S [1996] 2 NZLR 513.
TAB – N.Z. CASES 3

109 Robert M. Krivoshey, INSTRUCTIONS, VERDICTS, AND JUDICIAL BEHAVIOR (1994).
TAB – BOOK 6

110 Robert M. Krivoshey, INSTRUCTIONS, VERDICTS, AND JUDICIAL BEHAVIOR (1994).
TAB – BOOK 6

111 Joshua Dressler & George C. Thomas III, CRIMINAL PROCEDURE: PRINCIPLES, POLICIES AND PERCPECTIVES (1999).
TAB – BOOK 9

112 Joshua Dressler & George C. Thomas III, CRIMINAL PROCEDURE: PRINCIPLES, POLICIES AND PERCPECTIVES (1999).
TAB – BOOK 9

113 Joshua Dressler & George C. Thomas III, CRIMINAL PROCEDURE: PRINCIPLES, POLICIES AND PERCPECTIVES (1999).
TAB – BOOK 9

114 Regina v. Spanevello; Regina v. Seddon [1998] 125 C.C.C. 3d 97.
TAB – CAN CASES 3

115 Regina v. Spanevello; Regina v. Seddon [1998] 125 C.C.C. 3d 97.
TAB –CAN CASES 3

116 Regina v. Spanevello; Regina v. Seddon [1998] 125 C.C.C. 3d 97.
TAB – CAN CASES 3

117 R v. Lewis and Another [1975] 2 NZLR 490.
TAB – N.Z. CASES 4

118 R v. Lewis and Another [1975] 2 NZLR 490.
TAB – N.Z. CASES 4

119 R v. Tuhoro [1998] 3 NZLR 568.
TAB – N.Z. CASES 1

120 R v. Tuhoro [1998] 3 NZLR 568.
TAB – N.Z. CASES 1

121 R v. Tuhoro [1998] 3 NZLR 568.
TAB – N.Z. CASES 1

122 The People v. Eamonn Noel Kelly [1980] 2 Frewen 201.
TAB – IRE CASES 1

123 The People v. Eamonn Noel Kelly [1980] 2 Frewen 201.
TAB – IRE CASES 1

124 Robert Schmidt, *Severance Payoff; Bomb Defendants Want Separate Trials*, American Lawyer Newspapers Group Inc., Legal Times (Sept. 30, 1996).
TAB – LAW REVIEW 4

125 Robert Schmidt, *Severance Payoff; Bomb Defendants Want Separate Trials*, American Lawyer Newspapers Group Inc., Legal Times (Sept. 30, 1996).
TAB – LAW REVIEW 4

126 Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).
TAB – BOOK 11

127 Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).
TAB – BOOK 11

128 Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).
TAB – BOOK 11

129 Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).
TAB – BOOK 11

130 Wayne R. LaFave & Austin W. Scott, Jr., CRIMINAL LAW (1986).
TAB – BOOK 7

131 1 Virginia Morris & Michael P. Scharf, AN INSIDER'S GUIDE TO THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (1995).
TAB – BOOK 1

132 Matthew Bender & Company, CRIMINAL LAW ADVOCACY §10.04, Volume 1 Trial Preparation; Ch. 10 Misjoinder and Prejudicial Joinder (1999).
TAB – BOOK 11

133 Judge Joel L. Lefkowitz, *Trials are Severed for Defendant, Given Cross-Examination Problems*; *People v. Offen*, New York Law Journal (November 17, 1997).
TAB – LAW REVIEW 5

135 Judge Joel L. Lefkowitz, *Trials are Severed for Defendant, Given Cross-Examination Problems*; *People v. Offen*, New York Law Journal (November 17, 1997).
TAB – LAW REVIEW 5