

Did Milosevic or his Accusers ‘Cheat Justice’? The Show Trial That Went Wrong

By [Alexander Cockburn](#)

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“It’s hard not to feel that by dying in his cell, Slobodan Milosevic finally succeeded in his determined effort to cheat justice.”

Thus the opening sentence of a New York Times editorial, Tuesday March 14. The editorial cited without comment Carla Del Ponte, the chief prosecutor of the United Nations tribunal, who told an Italian interviewer that “the death of Milosevic represents for me a total defeat.”

The editorial ended with words of praise for the high purpose of the International Criminal Tribunal for the Former Yugoslavia (ICTY) established by the U.N. Security Council in 1994.

In fact Milosevic’s death in his cell from a heart attack spared Del Ponte and the Court (itself a drumhead tribunal set up by the United States with no proper foundation under international law or treaty) the ongoing embarrassment of a proceeding where Milosevic had made a very strong showing against the phalanx of prosecutors, hearsay witnesses and prejudiced judges marshaled against him. Until his death, “total defeat” had been the prospect facing Del Ponte, not Milosevic, though she presumably felt justifiably confident –based on their record of prejudiced rulings against Milosevic — that the judges would never let her down.

There are now charges and countercharges about poisons and self-medications. Milosevic’s son says his father was murdered. The embarrassed Court claims Milosevic somehow did himself in by tampering with his medicines. But no one contests the fact that Milosevic asked for treatment in Moscow–the Russians promised to return him to the Hague– and the Court refused permission. As the tag from the poet A.H.Clough goes, “Thou shalt not kill; but need’st not strive Officially to keep alive”.

The trial had been going badly from the point of view of the prosecution (which included the judges) for most of its incredible duration. Here is what Neil Clark, a Balkans specialist, wrote in the Guardian newspaper of London, in 2003,

It is two years today that the trial of Slobodan Milosevic opened at The Hague. The chief prosecutor, Carla del Ponte, was triumphant as she announced the 66 counts of war crimes and crimes against humanity and genocide that the former Yugoslavian president was charged with. CNN was among those who called it ‘the most important trial since Nuremburg’ as the prosecution outlined the ‘crimes of medieval savagery’ allegedly committed by the ‘butcher of Belgrade.’

But since those heady days, things have gone horribly wrong for Ms. Del Ponte. The charges

relating to the war in Kosovo were expected to be the strongest part of her case. But not only has the prosecution signally failed to prove Milosevic's personal responsibility for atrocities committed on the ground, the nature and extent of the atrocities themselves has also been called into question...

"When it came to the indictments involving the wars in Bosnia and Croatia, the prosecution fared little better. In the case of the worst massacre with which Milosevic has been accused of complicity—of between 2,000 and 4,000 men and boys in Srebrenica in 1995—Del Ponte's team have produced nothing to challenge the verdict of the five-year inquiry commissioned by the Dutch government—that there was 'no proof that orders for the slaughter came from Serb political leaders in Belgrade.'

Coverage of the trial in the US was virtually non-existent, though there was a brief spotlight on what was actually going on when it was reported here that Wesley Clark's testimony in court was subject to US censorship. Writing in the British Spectator last November John Laughland painted a trenchant portrait of the kangaroo proceedings, then four years old:

Even though the former Yugoslav head of state has always pleaded his innocence, producing scores of witnesses to prove it, the trial is still not due to end until 2010. With the budget of The Hague tribunal running at nearly \$300 million a year, this is doubtless a comfortable sinecure for the lawyers involved, most of whom had pretty unsuccessful careers at home. But such a long trial is by definition a travesty of justice: the Nuremberg trials lasted just over ten months, from 20 November 1945 to 30 September 1946.

...The trial has heard more than 100 prosecution witnesses, and not a single one has testified that Milosevic ordered war crimes. On the contrary: only last Tuesday, a Muslim captain in the Yugoslav army testified that no one in his unit had ever committed systematic harassment of Albanian civilians in Kosovo, and that he had never heard of any other unit doing so either. On 9 November the former head of security in the Yugoslav army, General Geza Farkas, an ethnic Hungarian, testified that all Yugoslav soldiers in Kosovo were handed a document explaining international humanitarian law, and that they were ordered to disobey any orders which violated it. What a contrast with US army practice!

Instead, what has emerged from the trial to the general indifference of the world's media is that the Serbs were subject to horrendous provocations. ...

In any proper court of law, the Milosevic trial would have collapsed long ago; for instance, when the previous presiding judge, Sir Richard May, unexpectedly died in July 2004. Since there are only three judges, this is equivalent to the sudden disappearance of four jurors, which would cause a criminal trial in this country to be abandoned or restarted. So determined, however, are the judges to obtain a conviction of their prize defendant that they have even ruled that he can be tried in absentia if he is too ill to defend himself in court. The judges themselves admitted that their ruling had no precedent in law, but legality has never bothered them much: ever complicit with the prosecutor, they allowed the addition of new indictments after Milosevic's transferral to The Hague in 2001, even though this violates the key tenet of extradition law that a defendant may not be tried for charges other than those for which he was originally extradited.

Transparency is not of much interest to the judges either: when I asked to see the medical evidence which, they claimed, showed that Milosevic was too sick to defend himself but not so sick that the trial should be abandoned, I was told it was confidential. And when on

Tuesday Milosevic pleaded that he was too sick to continue, presiding judge Patrick Robinson simply barked, 'Are you deaf? I told you to call the next witness.'

Memory of NATO's onslaught on the former Yugoslavia has faded. But perhaps next weekend, when rallies across the world signal the third anniversary of the US onslaught on Iraq, some speakers will take the occasion of Milosevic's court-assisted demise to remind their audiences that the legal, military and journalistic banditry that have accompanied the Iraq enterprise from the start were all field-tested in the late 1990s in the Balkans, as weekly stories in CounterPunch laid out in detail. Later Jeffrey St Clair and I put together a chronicle of those stories. This week, as Milosevic and the onslaught on the former Yugoslavia return to the front pages among predictable obfuscation, we run some relevant extracts here from Imperial Crusades. These days we have the Neo-Cons' war. Back then we had the Liberals' War. There's continuity. The lying didn't start with Judy Miller nor the saber-rattling with Bill Kristol.

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