24. Lindsay Zarwell, Leora Kahn & Bert Rein: PROOF

0:00:02 Kendall Lott (S1): The proof is in the pudding. Seeing is believing. Proof seems like an art. The ability to convince your audience that X is so. Through testimony, photographs, statistics, facts and films. Proof may be an art, but structuring activities to make your proof, well, that's project management.

0:00:21 Lindsay Zarwell (S2): The history of the Nazis in Vienna is a complicated one and there are several different theories.

0:00:32 Leora Kahn (S3): The stories of real people and their photos are really powerful. It's actually really a very fancy springboard for discussion.

0:00:40 Bert Rein (S4): I certainly have engaged in a number of projects which you would call litigation projects where a team of people attempts to achieve a specific result.

0:00:49 S1: In this podcast, we will listen to three practitioners in the art of proof. The first, proof past, is a film archivist at the Holocaust Memorial Museum in Washington, DC, who was tasked with gathering and annotating ephemeral films shot in Austria during the 1930s and 1940s. The second, proof present, creates traveling exhibits that include photos and testimonies of moral courage and human rights abuses. For proof future, we talk to a lawyer who has successfully argued landmark cases in front of the Supreme Court.

0:01:22 Speaker 5: From the Washington, DC Chapter of the project management institute. This is PM point of view, the podcast that looks at project management from all the angles. Here's your host, Kendall Lott.

0:01:33 S1: Milestone one: Proof Past. Lindsay Zarwell is a film archivist at the US Holocaust Memorial Museum with the Steven Spielberg film and video archive. In 2011, she started work on the Ephemeral Films Project which has shed new light on the circumstances in Austria during the Nazi era. Challenging aspects of this project included stakeholders of multiple institutions on both sides of the Atlantic, a government shutdown, and that was on our side here in the States, and key staff changes. The cool part was the technology they developed and used to bring new life to the old films. Phase two of the project was nearing completion this past November when I met with Lindsay at the offices of the Holocaust Memorial Museum.

0:02:16 S2: This particular project is related to films from a short period of time in a particular location.

0:02:25 S1: The name of the project is?

0:02:26 S2: The Ephemeral Films Project, National Socialism in Austria.

[music]

0:02:34 S2: Ephemeral films are films that were created by amateurs or individuals for the sole purpose of documenting an event for themselves. There are categories of ephemeral films that relate specifically to family documentation sort of home movies at the park, on a vacation, having a birthday party. And there are also films by amateurs, hobbyists that is, people that go out and enjoy using a camera to record their experience. They go out and they want to see what daily life is like on the streets. They want to check out sunrise, sunset. They're pretty much very interested in the genre of film and using that to record their own personal experience.

0:03:22 S1: So, give us the time setting that you were actually looking at very specifically.

0:03:26 S2: The ephemeral films in this project range from the early 1930s until 1945. We're talking just before the Holocaust, the outbreak of World War II and the period of the Holocaust up until liberation. The majority of the films take place in Vienna or represent the experience of Jews in Austria.

0:03:58 S1: Do you know anything about the genesis of the project?

0:04:00 S2: Yes. It started in 2011, mostly with the grand idea related to a couple of films that were discovered in the vaults of the Austrian Film Museum. Yes, these are great films. What technology can we develop in order to bring these films into the present day and be able to record all of the information that we've learned about them as we found them?

0:04:23 S1: That's really interesting. Here's technology and here's some content. We need a project to put it together.

0:04:27 S2: And we had done a ton of research on these collections as well and we were looking for a way to make that available. So, yes, it was a great opportunity, we couldn't turn it down and it had been funded by the Austrian government partially. It's called the Austrian Future Fund.

0:04:47 S2: This is a international collaboration with the Austrian Film Museum and the Boltzmann Institute and the United States Holocaust Memorial Museum but the Austrian Film Museum and the Boltzmann Institute are located in Vienna and have a very nice sized collection of amateur films and so with scanners being able to capture a frame by frame representation, we are actually replicating, literally replicating original film frame by frame in the digital environment, so we can annotate or describe those films based on the actual frame level. So, for a 10-minute film we are talking thousands of frames per film and we have chosen to focus on 50 films. This is hundreds of thousands of frames that we are describing on a frame level basis.

0:05:41 S1: And you're describing each of those frames?

0:05:43 S2: We are describing shots.

0:05:45 S1: Shots, so a series of frames.

0:05:47 S2: So, a series of frames and what the new website is that we're showing people is a film player that as the movie plays within your window on the website, the annotations or our descriptions dynamically change as the movie plays along. We talk about the action that's taking place, we talk about the location. If we know an individual, we identify them. The other connection

that we're able to do with our new technology is we also introduce contemporary photograph of that particular location. In Vienna, let's say we are on the Ring.

0:06:27 S1: The Ring means the Ring Strasse which is the beltway around Vienna.

0:06:33 S2: And there's the Hitler marching, we actually take a photograph of the Ring today and show it actually as the video is playing along.

0:06:40 S1: So, you see both these here, in the still on the right hand side?

0:06:42 S2: Mm-hmm. And the third thing we introduce is we've actually plotted those individual shots on a map. We are able to interact with the films in the digital world in a way that makes them very lively and very local, very personal almost. One of the really neat things that we can do is we can introduce various access points so rather than coming in to the history through a single film, you can come into the history through just a map display, and each red pinpoint on this map display shows you a shot in the films across this collection.

0:07:25 S1: Oh, very nice.

0:07:26 S2: For example, if you're a tourist in the city of Vienna today and you have your mobile phone, you can walk around the city, stop at a particular location and actually watch a historical film that took place in that location while you're standing there.

0:07:41 S1: So this makes it very real?

0:07:42 S2: Correct.

[music]

0:07:48 S1: Your purpose was to make it accessible so we'll back up to the larger purpose which is making it where people feel connected to the events, understanding it better, is that the premise?

0:07:57 S2: Part of it is to be able to accurately identify the locations and the places and the people within these films.

0:08:07 S1: And you're focused there on the accurately represent. Is there a problem that hasn't been accurately represented?

0:08:12 S2: The history of the Nazis in Vienna is a complicated one and there are several different theories about the actions that actually took place in Austria.

0:08:26 S1: And now we're getting to the proof part.

0:08:29 S2: These ephemeral films are showing us a different angle and actually contradict what was once accepted as the explanation for the annexation of Austria by the Nazis.

0:08:42 S1: Very interesting 'cause it is pre-World War II, is going back before the annexation.

0:08:46 S2: Right. Austrians often believe that they were the first victims of Hitler. And really, as you can tell by the films, it wasn't necessarily of an occupation. There are a lot of jubilant crowds welcoming Hitler in the streets, immediately within hours.

[foreign language]

0:09:11 S1: How does the project look from a project perspective?

0:09:14 S2: The project manager is actually affiliated with the Austrian Film Museum and lives in Vienna. I am the American counterpart.

0:09:22 S1: The American counterpart. Okay.

0:09:22 S2: I would be the United States Holocaust Memorial Museum's project person.

0:09:29 S1: What is the arc of the larger project? Are there some phases?

0:09:32 S2: Yes, there are phases related to the identification of the films, the actual scanning of those films, building the back-end editor that will enable multiple people to document and annotate the films.

0:09:50 S1: Oh. Are you doing this globally online?

0:09:52 S2: Correct.

0:09:52 S1: Do you have multiple people from different places doing the annotations?

0:09:55 S2: Online.

0:09:56 S1: Oh. And you had to build the tool to be able to do that?

0:09:58 S2: Correct.

0:09:58 S1: So, you're envisioning a new idea and building a tool?

0:10:00 S2: Yep. And building the website for making it publicly accessible.

0:10:05 S1: Which is the accessibility side.

0:10:06 S2: Correct.

0:10:06 S1: Okay.

0:10:07 S2: The project itself was initially funded as a two-year term and ended in November of 2013 with a public launch of the website in the city of Vienna at the Austrian Film Museum, and releasing 25 films.

0:10:27 S1: When you built the editor to allow the online collaboration of annotation, you must

have some sort of who gets to annotate and how do they get that accurately 'cause you mentioned accuracy was important. Do you have a number of researchers who are validating things and is that's what's happening?

0:10:41 S2: Yes. The editor itself is populated by researchers who mainly work at the Boltzmann Institute which is in Vienna, and also researchers here at the museum and researchers related to the Austrian Film Museum. So, there are people who are experts in identifying people or places and actually go in and key this data into the editor. There are specialists that are sort of the back-end developers that are ensuring that the films are at the proper rate that they're supposed to be playing at, that when your cursor stops on a particular frame to annotate that it's actually the right frame.

0:11:24 S1: Right. [chuckle]

0:11:25 S2: The Project Manager reviews a lot of the data to ensure that at least it's in the right place and to set it to be live, to release them to the website.

0:11:39 S1: In this project, there were some serious bumps in the road, and as often happens, they popped up just as key milestones were approaching.

0:11:47 S2: Through the initial phases of the project, it was unclear who would be responsible for hosting all of the stuff that lives in the digital world. And so, the Holocaust Museum came to the table and said, "We can do this." We came to the table pretty late in the game. This was in the summer of 2013, just a few months before our launch. And also in the summer of 2013, the main developer on the project went on to another project. So, there was very little documentation about the works that he had done.

0:12:24 S1: Classic project management stuff. So, we're down into the ugliness of project management right now. And by the way, this happens on a lot of projects. [laughter] We had our stakeholders, we had our money, we had a phased approach. We had three different organizations working. Then we had a classic routine change.

0:12:39 S2: First challenge was developer leaving over the summer. Second challenge, the government shut down right in the period from October 1st until, what... I think it was 17 days until towards the end of October. And our event was something like November 3rd.

0:12:58 S1: Some, but not all of the Holocaust Memorial Museum staff are government employees. So, a government shut down drives a serious slow down on projects.

0:13:06 S2: Of course, at the Holocaust Museum, we have more than 400 employees. More than half of us weren't working and so, if there was a problem with the Amazon server, nobody could fix it because that person couldn't come to work. We had a very successful actually public launch, but there was not much sleep near the end I would say. And it was very tough. In 2013, we received an additional two-year funding to add 25 additional films and build out some additional features on the website and to effectively rebuild the editor. Actually, as we rebuilt the editor, the tool that is, our goal was really to make it open source so that developers at various universities or institutions across this country can build onto this tool and make it better.

0:14:14 S1: Who are your stakeholders? Who do you need to please in the sense of, they care about

this outcome and can have influence over the outcome?

0:14:24 S2: I would say the main stakeholders are the director of the office of collections at the Holocaust Museum, the director of the Holocaust Museum in Washington, DC, the director of the Austrian Film Museum, and the director of the Boltzmann Institute.

0:14:41 S1: So, their interests are going to be a sense in the impact?

0:14:44 S2: Yes, I would say that even though this project does fall heavily into tools and technology, that is really not the primary focus. The primary focus here is changing our understanding of the visual record.

0:15:01 S1: What constitutes quality for you guys here?

0:15:03 S2: I would say we probably each have different definitions of what is quality and what is a successful project. But the small team that is working on this project has high standards and those have been met most of the time. I would say that, one really key thing is that if the buttons work and you're actually able to watch a movie and have the annotations dynamically change before you, if things function, then we've made it. I will say that this project is limited in the sense that there is a small team of people and we all have a lot of other projects going on. So, even though we've built a site that shows you an advanced search tool for example, parts of that tool might not be 100% functional.

0:16:05 S1: What has been the impact upon release? Are you getting any feedback?

0:16:08 S2: When we did present the project in Vienna to a pretty packed theater, there were a couple of young people who commented about how important it is for people who live in Vienna to see what it was like during Nazi times and to actually physically have the knowledge of what living on a particular street and being in a physical place, what it had appeared like, and potentially what it maybe even felt like. Some of the films here show antisemitic attacks, things that are sort of striking and uncomfortable and because of this general myth in Austria that they are the first victims, it is not commonly spoken about that the story is actually a little different.

0:17:01 S1: It's like it's not part of their history yet.

0:17:03 S2: Even though people have written about it for years, there's something about the genre of film that makes people get it.

0:17:12 S1: The purpose of this project was to bring regular citizens lives into our present to see their record of history as relevant and that it's different than often represented. We're at the end of phase two. Is there a phase three?

0:17:28 S2: Now that we've successfully worked with three organizations on 50 films and built this really neat tool, we hope to look into working with more organizations on the subject of films documenting the liberation of the camps. And the reason why it's important to do this with films of liberation is that in many newsreel materials or trial films, there are shots spliced together to represent the liberation of camps which actually probably take place in different locations or are at different times. Really, it's a pursuit of ordering and figuring out how all of that material was then

used at the trial or used to inform the public of the experience.

0:18:20 S1: We're back to proof here. And this is the idea of being more accurate in our understanding of what was used as evidence.

[music]

0:18:31 S1: What lessons did you learn? What would you say are things to look out for?

0:18:36 S2: I think it's really important to actually have a phase of planning and thinking really broadly about the potential needs of the project and the potential staff or resources needs, time needs. That phase wasn't given a lot of attention in this particular project and I think if we had known and thought a little bit more specifically about IT infrastructure, what does that mean in terms of network. I think if we stepped back, we may not have been in such a predicament during the shutdown or when the developer left. I think it's really important to build a committed team with individual responsibilities. For us, it wasn't necessarily laid out. We were a very small team, what it really boils down to is there are less than five people that are actually working on this project and the roles as a result are overlapping and we never have enough people to do the work. Personally, it's been a very interesting project to work on, a very fun project to work on. And I am a practical person, so I'm very excited that there have been phases with end times. And that very soon, we will be done and we can say, "This has been a great project."

[music]

0:20:04 S1: To interact with the Ephemeral Films Project and to watch the movies, go to efilms.ushmm.org.

[music]

0:20:22 S1: Milestone 2: Proof Present. Leora Kahn is the founder and the Executive Director of PROOF: Media for Social Justice. A photo editor by trade, she and a group of internationally known photojournalists decided to combine their skills and experience to make an impact in the world. The organization PROOF creates exhibitions, publications and onsite activities in nations with some of the world's most troubled histories. Each exhibition presents a unique set of difficulties, but certain themes seem to dominate. Tight budgets, language and culture gaps, and talk about risk. By telling their stories, her witnesses often risk death or imprisonment. Essentially, each PROOF has two projects, First the design, and the other part to produce the exhibition. I went up to the PROOF offices in New York City to talk with Leora about what's involved in putting an exhibition together and how her work has brought about meaningful change in the lives of people around the world.

0:21:20 S3: We use visual story telling for social change. And we use the voices through photography and testimonies of people that have had issues in human rights. We mostly work in countries that have been post conflict. And we do it through exhibitions, through education, through conferences, and through workshops. As we also do academic research on moral courage and using Voices for Change.

0:21:54 S1: How long have you been doing this with this organization?

0:21:56 S3: This organization I founded in 2007. The first project that we did was with a bunch of photographers on Darfur. And that's really how it started.

0:22:08 S1: The organization is named as PROOF, you described to me it's the idea of proof, as in film.

0:22:13 S3: Proof is actually a great word. It's like a proof sheet or here's proof that it happened.

0:22:23 S1: Let's talk about how you do this. You described this as visual story telling.

0:22:27 S3: The first thing you do is a concept note. That's our organizational tool. With it, on the concept note, you look at the background, you look at the issue that you're gonna be working on 'cause these are all human rights issues that we're working on. Then you look at the audience you want to affect. And that's really important 'cause that's gonna drive the output.

0:22:52 S1: What type of audiences do you have there?

0:22:54 S3: We have civil society, government officials, and police, we have policy makers, we have a lot of youth. That's really where we feel we can affect change the most. We have academics as well.

0:23:14 S1: And you decide which one of those for a given topic?

0:23:17 S3: The target audience can be all of those. So, we have a project called Legacy of Rape. Let's go though that one.

0:23:27 S1: Yeah. Oh. Perfect.

[music]

0:23:31 S3: We identify the issue. And actually, we identified it with our partners so within that concept note, you have to identify partners that you can work with 'cause we're a very small organization. We can't do it by ourselves, so our way of working is working with partners. The partner will either gonna come to us or we'll go with a partner and identify the local partner that we're working with. Our partner in the Legacy of Rape project was TRIAL. They're a Swiss NGO that works against impunity.

[music]

0:24:05 S3: We identified four regions that we wanted to focus in on. Bosnia's Europe, DRC's Africa...

0:24:14 S1: DRC, that's the Democratic Republic of the Congo.

0:24:17 S3: Colombia is South America and Nepal is Asia. So, we wanted to show that the problem of rape, as a result of conflict, is varied, it's not just in one place.

0:24:30 S1: And that's the issue, and you've decided the audience in this case.

0:24:33 S3: The audience in Colombia is civil society, policy makers, and then the public. In addition to TRIAL, which was our bigger international partner, we worked with several local partners. We also found a partner here that connected us with the women in Colombia. So, it's a very complicated project management model.

0:25:00 S1: So, let's talk about that.

[chuckle]

0:25:02 S3: I do a concept note, and from the concept note comes the design brief. The concept note is for our partners and our funders, and it also gives us the structure.

0:25:12 S1: Yeah. This would be, in project management terms, called a charter and it's very, very similar to something we define what is it we're trying to tackle? Who's gonna actually care about it? Who are the key players for this? Will there be money and when do it have to be done?

0:25:25 S3: And the strategy.

0:25:26 S1: And the strategy.

0:25:27 S3: You have to figure out if the strategy's gonna go travel, or is it gonna stay stagnant like in a museum.

0:25:34 S1: Who's the audience for the concept note?

0:25:36 S3: Funders and partners.

[music]

0:25:44 S1: Who's the audience in the design brief?

0:25:46 S3: Us.

0:25:47 S1: So, that's your strategy for approaching it now?

0:25:49 S3: Yeah. So, we break it down and the designer needs all this information. Let's get in design as an exhibition and the materials surrounding the exhibition. My creative director, Willie Wahlin, and I, are academics as well as social activists. We look at how design affects the audience. We have to be very careful because we're working in very, very sensitive areas. There's political things to worry about, there's issues of privacy, some of these people are in danger. When you do things in design, you have to be aware of everything that you do in that design.

0:26:34 S1: And you have a professional, social justice designer in this context?

0:26:37 S3: We do. When you have quotes, you have to be careful about what you say. You have to be sensitive to the country. We also do a lot of background reading before we go into a project.

[music]

0:26:58 S1: Let's talk about how you then enter that as a project, and what do you have to work to accommodate?

0:27:03 S3: We have two production schedules. One is just for the designing of the exhibition which means the designer, the production, the printing, the sending it to the places. That's one thing. The other part of it, and this always comes with this, is the activities surrounding the exhibition. 'Cause the exhibition is an educational exhibition. It's actually really a very fancy springboard for discussion. There's the design aspect, then there's activities. The activities, to me, are almost more important, and that's we work with our local partners and we also work with the UN or somebody that makes and helps drive the conference, the workshop, and the educational tools behind it.

[music]

0:27:58 S1: How do you document that? Is this formalized?

0:28:01 S3: Yes. It's usually in the design brief as well.

0:28:04 S1: Design brief, how big is that? Is that a six-page document or a 60-page document?

0:28:07 S3: No, gosh no. It's probably six pages. It's almost like an executive summary, and then it's filled in. It could be anywhere from the first page to 10 pages, but any more than that, for us, it's not a useful tool.

[music]

0:28:27 S3: The stories of real people and their photos are really powerful.

0:28:33 S1: How do you determine who to talk to?

0:28:35 S3: Again, Colombia's a good example. UNHCR and UNFPA, they have a tool to find out where rape is happening, and then they use this tool to try to make a change with it. And they wanted to introduce the tool that they had developed within the exhibit. So, it was a perfect time for us because it's not just the testimonies and the pictures but it's also informational panels about what happens in each conflict and what happens with the issue. They also had information about how you can get help and what the tool is.

0:29:09 S1: And they wanted you to come forward with what aspect of this specifically?

0:29:12 S3: We designed it in to the exhibit.

[music]

0:29:19 S3: Now, Colombia is a good example because we had to do two different kinds of exhibits. One is that we headed in Bogota and Santa Marta and Madelin. Those could be easily put up in big centers. Because of the topography of Colombia, it's hard to transport. So, we had posters made so that they could bring those in a backpack, or in a car, and put those up in community

centers.

0:29:49 S1: So, you continue to operate the exhibition as it goes on for some time?

0:29:52 S3: No. We give it to our partner.

0:29:54 S1: What is your product? Your product is funding the visual documentation or?

0:29:58 S3: Our product is the exhibition that we've made with our partners.

0:30:01 S1: Okay. You have legal rights to it, it's still part of yours, but that's when your project ends.

0:30:06 S3: Exactly.

0:30:07 S1: Here it is, it's got the narrative, it has what we should say, it has the quotes, it has the pictures, it has testimonies. It's been packaged the way you need it for audience.

0:30:15 S3: Yes.

0:30:19 S1: How long does it take you to go from concept brief to, "I have things?"

0:30:23 S3: It could be two years. It's about funding and getting the partners. In Colombia, it was extremely hard to get the partners.

0:30:30 S1: And that was a two-year project?

0:30:31 S3: Two and it's still going on because Bosnia just took it and we had to re-create it for them. And we had to do some changes for that and that just opened in June, so three years. Nepal was supposed to happen, but the Friday that we got paid, actually, the earthquake happened the next day.

0:30:56 S1: I assume you start with budget before you get to engage at all?

0:30:58 S3: We do. Yeah.

0:31:00 S1: Pretty much.

0:31:00 S3: Yeah, we start with budget.

0:31:00 S1: Concept note first, generates budget.

0:31:02 S3: Yeah.

0:31:03 S1: We hope to have it shown so many times, so much penetration to different audiences.

0:31:08 S3: In our strategic plan, we do have the places that we would like it to go. When you can check those off if it gets there or not. Giving voice to the women, actually was part of the strategic

plan. Nobody was listening to them. Nobody. Their doctor, they would go in after they had been raped, by 11 people, and it was, "Oh." They didn't believe them. This was the first time, really, that people listened to them.

[music]

0:31:42 S1: Issue of sensitivities. Sounds like you've had cases where people have stood up, and by documenting it, you're showing them they're kinda standing up again, they're being seen again.

0:31:52 S3: That's exactly.

0:31:53 S1: And that seems sensitive and in our world would be called risk management.

0:31:58 S3: This is perfect. Those people like the women, are at risk, because they're considered traitors to their group. Bosnia, the same thing. So, it was actually as you said, very dangerous. So, what is the risk management?

0:32:13 S1: How much responsibility do you have to that, I guess, that you're concerned about?

0:32:17 S3: I am very concerned about it. And it's an ethical question, I guess.

0:32:22 S1: How do you handle it? When you begin to look at this project, do you identify those risks specifically? Or do you just have a sense of them?

0:32:28 S3: The Legacy of Rape, that one, for the women in Colombia and for most of the women, we cover their faces. The women's faces were not shown, except for Bosnia because they were human rights defenders already, so their faces were known and it was outspoken. The other three countries that we did, all of their faces were concealed and the names of perpetrators, places, times, stuff like that was taken out of the testimony. It's hard, 'cause I don't speak the language, you have to trust that you've talked to the interpreter, and you've gone over the risks and you make sure that the subject knows what they're getting into. If someone says, "Please don't take it to my region, my town." We won't take it to their town.

0:33:20 S3: For us, one of the hardest things is working internationally with different cultures and different languages, and a lot of misunderstandings. And for PROOF, since we're so small, our budgets are tiny. As one of our funders said truthfully, what was lacking in the funding that we gave you, if I'd had four visits instead of two visits, the project management of this would have been completely different.

0:33:49 S1: In what way?

0:33:50 S3: Because we weren't understanding each other. I wasn't understanding his thoughts, he wasn't understanding my thoughts. So, when you sit down with a face-to-face, you get so much more done. Some of the process of project management is the translation of there's the whole text part. And that is that we have to translate things into English then back into the language and we usually have at least one or two languages in our exhibit, if not three.

0:34:20 S1: We speak in project management that actually as a project manager, beyond the tools,

most of the effort is around the act of communication.

0:34:27 S3: Exactly. And doing it on Skype, it just doesn't work, in every place that we work is somebody that's not speaking English. And they have different cultures, a different way of doing things, these places that we work in are post-conflict, so you expect this. And it takes so much more time, instead of saying, "Okay, just send me the things, send me the translated testimonies." Or, "Did the photographer take those pictures, yet? Can you send them to me?" It'll take weeks, here it would have taken a day. And then you get there, and you realize it's just miscommunication. They're doing exactly what they should be doing so it gets done eventually.

0:35:13 S1: The product is done but now, how is the use of the product and how do you know its value?

0:35:18 S3: Well, one is the sign that it opens, without people coming in and shooting everybody at the conference, 'cause that could happen in Santa Marta. The perpetrators still live there with the women. Two is how many people come, and how many people see it, viewership. How many activities are surrounding it? If there's a conference and then there's other things surrounding it, which could be like bringing high school students, college students, talks, what happens after that? How many places it goes to? 'Cause then you're reaching, it's the reach.

0:35:54 S1: Reach, right.

0:35:56 S3: And then, in Colombia, what happened to the women that participated. And that actually was huge, what happened to their lives afterwards.

[music]

0:36:12 S3: We started with 11 women, and we interviewed them for three days, and they didn't want their faces shown, and we had to strike out names. And they came to Bogota, and their husbands and their kids hadn't known, most of them, that they had had this experience. The measure of success was that they brought their families and they brought other women. And from those 11 that we interviewed three years ago basically, there's 80 that have given testimonies. And the mayor of Santa Marta has said that they will be publishing a book of all the testimonies that they've collected. To me, empowering those women, above anything, that is the measure of success.

[music]

0:37:02 S1: To learn more about their exhibits and to view some of the photos and testimonials, you can go to proof.org.

[music]

0:37:19 S1: Milestone 3: Proof Future. Using proof to set precedents for years to come. United States law is defined not only by the laws written in the Constitution, but also by the interpretation of those laws based on past cases, precedents. Each case, tried in a court of law, sets a precedent which becomes part of the public record and can be referenced in future cases. The past, in some sense, directs the future. Bert Rein is a founding partner of the Washington, DC based law firm, Wiley Rein. He is widely recognized as a leading anti-trust and commercial litigator, and

international law expert. He has successfully argued two well-known cases before the Supreme Court. In 2012, he represented partitioner Abigail Fisher in Fisher v. University of Texas, a constitutional challenge to the university's race-based admissions policies. The following year, he represented Shelby County, Alabama, in his challenge to the constitutionality of two key provisions of the Voting Rights Act.

0:38:19 S1: In the Wiley Rein offices on K Street, we talked about what it takes to shepherd a case all the way through the court system to the Supreme Court. It's a tricky process with countless variables over which the project team has essentially zero control. The schedule, the audience, and any publicity that might arise, especially in high-profile cases. And of course, there are the facts and interpretations that might surface from the opposing team. Proof is an interesting concept when each side is trying to prove the opposite of the other. Think of it as dueling project managers. How is proof relevant in a Supreme Court advocacy case?

0:38:53 S4: The Supreme Court is in the business of adjudicating issues of law. You're not talking about issues of evidence and you don't "prove" things in front of the Supreme Court because to prove, you would need documents, you would need witnesses, you would need to confront the other side's version of the world and the events therein. But, in order to get your case there, you've also gone through other stages of the case. Therefore, at the earlier stages of the case, you're trying to establish the framework for the legal discussion by proving the elements of your case. What is it in the real world of fact that would present the legal question that you want answered cleanly? Because to get a case to the Supreme Court, if there's a lot of confusion about what the events are, the legal questions won't crystallize, the Court would not be disposed to take it. So, the proof comes at an earlier stage, but it's part of one case.

[music]

0:39:54 S4: In the Fisher case, the legal question presented was whether preferences given to minorities who had not been previously properly represented would have adversely affected Ms. Fisher's chances to be admitted to the University of Texas. Well, to present the question, you wanna to say to the court, "Well, here's a woman with a wonderful record, and under a fair competition in which there were no preferences, she would be have been admitted." But that becomes a question. How do you go about proving that your concern is valid and they're addressing a real problem, not a hypothetical problem, for somebody who couldn't have been admitted under any circumstances.

0:40:32 S1: That's the underlying part you had to prove.

0:40:35 S4: So we started the case in District Court. We knew we would have to prove that. Well, of course, you're trying to penetrate a process that's not entirely objective, a so-called holistic, so there are several factors in the review. We had to first figure out what their scoring system was. How did they decide who to admit when they're processing a large number of applicants for a smaller number of places? And that means you have to investigate both their written guidelines for admission, and then you have to depose or talk to the people who actually do the process and extract the details of the process. But that alone is not enough, because you have to then ask, how did the process apply at the time that this person sought admission? To do that, you have to get the records in which they recorded the scoring that they were doing for this purpose and try to analyze those and establish what might have happened had the preferences not been given.

0:41:35 S4: We were able to extract those records. We looked at the comparative records. We deposed the people. We tried to ensure that we could go to the Court and say, "Now you face the problem. Here is somebody who claims that they were discriminated against, but for the preferences, she would have been a student at the University of Texas. She's unable to be admitted, and she's had to go elsewhere and this is an injury to her." All those became issues that were sorted out by patiently going through records, by talking to the people in the system to get a thorough understanding. So, when you read the decision of the Supreme Court, it starts with the discussion of, "How's it done?" It wasn't created in front of the court. It came up from the record below. By the time you get to the Supreme Court, you've had two courts look at it, a trial court and appellate court. At that point, it's pretty much fixed as to what the circumstances are.

0:42:31 S1: The proof, in a sense, had happened. Now, it was a question of whether that was fair or proper?

0:42:38 S4: Was that sufficient to constitute a violation of law?

[music]

0:42:45 S1: Let's take it back to the process then as litigation is a project in a sense. Did you engage with the understanding that you were likely to try to get to the Supreme Court on this?

0:42:55 S4: Yes.

0:42:55 S1: Okay.

0:42:56 S4: Both of them were directed at raising very fundamental issues of law. And so you have to say how to clear the underbrush, how to get the question presented as cleanly as possible.

0:43:07 S1: What does that look like to plan to take on something like this, thinking there's this end result that happens like 18 months later, 24 months later?

0:43:14 S4: Longer than that.

0:43:15 S1: 36 months later?

0:43:17 S4: You say we need to get it to the highest level because we want a nationwide definitive ruling. Now, working backwards, you say, "Okay, where would we have to be stage by stage to ensure that nothing gets in the way of at least asking the court quite cleanly, 'what do you think about the fundamental legal issue?'"

0:43:38 S1: Did you have to plan for how long that might take?

0:43:41 S4: It's very hard to plan because you don't know how long the courts will hold on to a decision. For example, we started in 2008 in the Fisher case, and we knew that we'd have to go through the process of the District Court. We didn't know how long it would take him to resolve the issue. You can't really plan that because there's no guarantee that there's nothing that would hold a judge to deciding the issue. You can use various tools, you can ask for a preliminary injunction in order to expedite the process, I need a emergency relief that forces a decision. That's not a final

decision. To start moving it along, you know you have to reach finality. Then you have a Court of Appeals process. There's a timetable so you have a minimum, you know this is when you file a brief, when does the opposition, when is the brief to reply to the opposition due. You can map that, it's not a lot of time. It's three months or so. But once it goes to the court, you have to first ask when are they going to schedule it for argument, and that's an unknown. And then when are they gonna decide it. That's a further unknown, right?

0:44:53 S1: Right, right.

0:44:53 S4: Okay. And then if you are not successful and you want to show the court that you've done, Supreme Court, everything possible to have this resolved, you ask for what's called "Rehearing en banc", which is a tight timetable for the filing, but an indeterminate period for the resolution. [chuckle] That took a long time in this case. Then the timetable for the Supreme Court grinds in. But even there, you know you have to file a brief in 40 days, you know there will be a response. But that happened in the summer. So then you don't know when it will be scheduled. And then, it could be scheduled early, as it was here. But they didn't decide it until June.

0:45:31 S1: So it's into the next year.

0:45:33 S4: It takes a long time and you have to anticipate that in the plan because that's outside your control.

0:45:39 S1: So it's a lot of planning for hurry up and wait.

[music]

0:45:46 S1: It seems like you went into both of these knowing what the scope was. You knew what you were trying to accomplish and what would be included and not included. I'm intrigued by how do you plan for the money for this? Whenever I see a project that has an indeterminate schedule, there's usually a resource cost that's hard to project then, correct?

0:46:05 S4: There are a couple of things. Sometimes you have a deep pocket who says, "I'm interested in the cause. As long as you do it efficiently, I'm going to supply the necessary... "

0:46:13 S1: Stay the course.

0:46:14 S4: Stay the course and supply the resources. Sometimes you're having somebody who's not in business and therefore they have an interest but they're gonna try to raise funds. You try to estimate what it might cost, you try to look at prior history and give them a target for fund raising. And sometimes you agree to a fee. In the Fisher case, the other side, the University of Texas wanted to hire counsel and they put it out to a bid, a public bid because they're required to do so. And therefore, we know what the bid was and what was paid for at least at the Supreme Court stage of their activity. In that one, the law firm took on some risk because they bid and they bid against other firms and they were held to the fixed price.

[music]

0:47:07 S1: It sounds like the Supreme Court aspect of this is very much different than the other

parts.

0:47:10 S4: Right.

0:47:11 S1: It sounds like a very, what we call different milestone.

0:47:13 S4: The kind of arguments you would make are much broader because now you're talking about something that will bind the whole country and have intense interest. So you tend to look at it differently. You coordinate with your allies because you can have other people file in support in the Supreme Court.

0:47:32 S1: So those are stakeholders to us. Other people who are interested in what you're doing or have some ability to sway something. So you would refer to them...

0:47:38 S4: Or to supply information...

0:47:40 S1: Supply information?

0:47:41 S4: That the court would not have from the parties that are in the...

0:47:43 S1: And that's the amici?

0:47:44 S4: Yeah, that's the word for it, friends of the court.

0:47:46 S1: Friends of the court.

0:47:47 S4: And they comment in on both sides because a controversial issue will have stakeholders on both sides.

0:47:52 S1: Is that something that you also plan for? Your team has someone whose job is to corral those?

0:47:56 S4: Yes. We have certain parties that are sympathetic and would support the cause so that if they feel the case is attractive and it's going some place, they'll come in and support. Now, there are two stages in the Supreme Court. First you have to ask them, "Will you hear this case?" And so you want as many supporters as possible at that stage to emphasize the importance of the case, the uniqueness of the case. And the other side's gonna have supports too that say, "No, it's really unimportant. Besides, it was correctly decided, but we'll leave it alone." There are gonna be spontaneous interests that you didn't anticipate because people read about it, they see it, and they say, "I really care about that. I wanna be heard on that."

0:48:35 S1: Do you interact with them or they direct to the court?

0:48:38 S4: No, when you say you're not allowed to write their briefs, obviously. They have to do it independently, but yes, you do interact because first of all, they have to ask for permission to be heard. So, they have to come to the parties in the case and say, "Can I?" So you know about them. But in terms of planning, you know first of all, who you can count on. You know their perspectives and you try to coordinate them in the sense of directing them at specific elements of the case that

would be important so that you don't have to just an endless repetition of the same thing over and over.

[music]

0:49:17 S1: How big is the team that you have to assemble in your firm to do this from 2008 to 2012?

0:49:25 S4: I think we did those cases with basically four lawyers.

0:49:28 S1: Four people.

0:49:29 S4: Well, because again, you're...

0:49:32 S1: That's made of paralegals in the whole...

0:49:33 S4: Oh, well, if you count paralegals...

0:49:35 S1: Yeah, how many people are on this project?

0:49:37 S4: Oh, okay. That's much bigger. That's probably 10 or 12, but I think if you're talking about the core team, it's about four people.

0:49:44 S1: And do they handle completely separate parts of the process?

0:49:47 S4: Yes and no. If it's a good team, it will think collectively. It will handle different aspects after you collectively decide what needs to be done. One person they say, "We're gonna prove these facts. You need to take these depositions, you need to get us this evidence." Another one might be doing the documentation. But on the briefing and the like, you might write different elements of the brief. You write this section, I write that section, but at the end, you need to work together.

0:50:21 S1: As the lead for this, how much are you the subject-matter expert versus the project manager?

0:50:26 S4: Lawyers, you tend to be more hands on, so many of those kind. So, yes, the senior person would be the coordinator of the strategy and it's just not looking at schedules and project management, you're trying to look at the actual substance. But, usually there's one person who's coordinating the day-to-day accumulation of proof at the lower level. Once it gets to a higher level, you're working together. Somebody might be better at proof and somebody might be better at strategy. I've had other cases in which you start in a garden variety case. A unique question comes up in the course of the case, so you've got one set of people who are very accustomed to the issue to the, let's say a federal agency's involved. But when it goes up higher, you wanna bring in somebody who has more experience with the appellate court.

[music]

0:51:16 S1: How do you know, besides the final decision, what constitutes quality here?

0:51:21 S4: You're constantly, with briefing for example, sending out draft briefs. And you'll share them with people who are on your side because they can have good advice.

0:51:29 S1: So, work product they shared early?

0:51:30 S4: Yes, and you know from the feedback, are you way off? Are people saying, "Ooch. That's not a really good argument." And you're doing it internally as well. You're getting a lot of feedback. You can tell by the way the other side responds to you. Have you made arguments that really force them to confront the fundamental issues? But you can tell by the way they are responding, "Okay, have you said something meaningful that they feel that they have to meet your points?"

[music]

0:52:01 S1: Defining scope and possibly limiting it is key in planning the court room battle. This dilemma of scope and needing to constrain it is one that all project managers are familiar with. How much is really doable or attainable? There's danger in overreaching but convincing your clients and stakeholders can present its own challenges. In the case of Shelby County, Ryan's team decided to dial back on its demands.

0:52:24 S4: How ambitious do you wanna be? Do you want... Because you may have somebody who says, "If I don't get it all, if I don't get a very important principled ruling that I alone have sought, I'm not gonna be happy." You may then be in the project manager situation saying, "You can't do that. If you reach for that, you'll have a gallant defeat." For example, in the Shelby case, there were two principle attacks on the law. One was that under no circumstances existing today was Congress justified in invoking in this so called "pre-clearance procedure." It was outmoded, it was a response to specific conditions that had gone away. And the second argument was even if there were some reason to continue it, the selection of those jurisdiction states and localities that were subject to it was irrational because it wasn't consistent with the realities of the day.

0:53:28 S4: Now, the second was the easier of the two arguments because it was blatantly out of line. There were people who wanted to win both. And so, the question is which do you emphasize? You know that you have a better chance. It's easier for the court to simply say, "The formula which specifies those who will be subject to pre-clearance is outmoded. The law is invalid because it depends on the formula." Then to say, "We've now reached the question whether in this country today there's any warrant for this peculiar kind of remedy." So we had to figure out where to put the emphasis, and where we thought we could win. And we were saying we weren't sure the court was ready to say this tool can never be employed. But we think, given the political situation, it would be highly unlikely to create a new formula, 'cause then you'd have to pick out the sheep and the goats in Congress, which they hate. So we said going for the formula, without the ignoring the other, but certainly making it clear, that's enough for us, would be a true victory, even if it wasn't the ultimate theoretical victory.

0:54:35 S1: Ultimately, that was a bit evidentiary, or data-driven, right? The formula in its application is pretty clear, you have facts around that.

0:54:42 S4: Absolutely.

0:54:44 S1: We're back to the proof side on that.

0:54:45 S4: And they were taken from a Congressional record, because there's enormous record on this, and you had all kinds of statistics that had been accumulated. You had to sort those, filter those, put them in front of a court. But they were there.

0:55:02 S1: Speak to risk.

0:55:03 S4: In law, it's always a risk, because you risk losing, you risk getting an adverse principle enshrined in the law, and you're looking at who's going to decide, what's the track record of that body, and you have ask the risk of what's the worst that could happen. Now, if you're after, let's say in Shelby, you're after a statute. The worst thing that could happen is you lose and it continues. But that was the status quo anyway. So the risk of the downside was not very great.

0:55:29 S1: What's the risk to you as a firm to have that happen? Just part of the win/loss record?

0:55:33 S4: There's more risk to doing a bad job than there is...

0:55:34 S1: Okay. [chuckle] Well, that job is that quality question again.

0:55:38 S4: Right. And I'll you why. Because, from the lawyer's point of view, really two things are going on. One is a contest over the result, where the judges are independent. Tha's to say, how they think may have very little to do with the quality of the arguments. If you are looking at it and say, "Which set of the lawyers did the better job?" You come to one result, that would not make the judges decide your way. They are not simply saying, "Okay, who did the best job? That's the winner."

0:56:05 S1: So it's a little bit like an organization producing a great product, it just doesn't happen to sell.

0:56:09 S4: And here these are your consumers, and you can't change them. So you take your case down, it gets it's case number, the wheel goes around, and a judge is picked. Now this is an element that you cannot manage. It's outside your control. And the same is true of the panels on the courts of appeals. They're not all going to be the same. But you have no control. If you knew who they were before you wrote your brief, you'd know their history and their biases. You'd write toward them. But, in many circuits, you don't know who you're writing to. You have an unknown audience.

0:56:44 S1: What else do you face in risk?

0:56:45 S4: Well, if the case has a lot of public visibility, there's always the question, "Well, who doesn't like this project, and are they gonna get mad at you?" And you could think that people who might want to deal with you in the future have a bias, and they say either, "I love what you did," or, "I hate what you did."

0:57:09 S1: This would be a portfolio management question in our world. Of the things that we are attempting to pursue, this is one that is consistent with what we should pursue or not. Do you have that kind of decision making?

0:57:17 S4: A little bit. Not much. A lawyer should be separated from the causes.

0:57:22 S1: Right.

0:57:22 S4: We're advocating the cause, we are not the cause. It's a little bit different from where you get to set the agenda.

0:57:34 S1: How do you release your team? How do you wrap it all up? What's shut down here look like? [chuckle]

0:57:41 S4: Okay, well, there's a period in which you're waiting for the decision.

0:57:44 S1: Meanwhile doing other things.

0:57:45 S4: The active part of it, your ability to influence it, has ended. But the people obviously put a lot into it, they're still concerned about it. Let's say the decision comes in, as it did in Shelby, and it's definitive, you know what the result is. So, you all read the decision, you talk about it, you think, "Okay, how did we do? What are the lessons learned?"

0:58:08 S1: You do a lessons learned?

0:58:09 S4: Oh yeah. Oh yes.

0:58:11 S1: And that's documented? Is that fed back in as a feedback loop to future teams being assembled?

0:58:16 S4: Yeah, but it's more wisdom, oral. We don't have a formal process for saying, "Okay, here's what we learned in this case." But of course you want a team that's structured over time, that is, people one age and another, 'cause you're trying to hold that wisdom within your law firm.

0:58:37 S1: Well, thank you for spending time with me to explain the process, and also use some project management lingo for us.

0:58:41 S4: Right. I think if you took a project manager who was not a lawyer, and said, "Do the project," they might not make that substantive contribution 'cause they might not make the law, but they'd understand the process. They'd understand how to assemble resources, they just ask more questions.

0:59:00 S1: Project management is certainly an excellent vehicle to realize all manner of plans, schemes, and dreams. I think this was shown or, indeed, proven in this podcast. Special thanks to today's guests Lindsay Zarwell, Leora Kahn, and Bert Rein. And my personal gratitude, once again, to Audrey Smith, who was instrumental in connecting us to our episode's guests at the Holocaust Memorial Museum, and PROOF. Additionally, I would like to thank my friend at Wiley Rein, Roger Miksad, for his support in connecting us to Burt Ryan.

0:59:36 S5: Our theme music was composed by Molly Flannery, used with permission. Additional original music by Gary Fieldman and Rich Greenblatt. Post production performed at Empowered Strategies, and technical and web support provided by Potomac Management Resources.

0:59:52 S1: PMPs who have listened through this complete podcast may submit a PDU claim, one PDU, in the Talent Triangle Strategic and Business Management with the Project Management Institute's CCR System. Go to CCRS, select Education and then online or digital medium and enter provider code C046, that's the Washington DC Chapter, and the title PMPOV 0024. Proof. Make sure to select 1PDU under the Strategic category at the bottom. We would like to invite any listener who has comments about this episode, earlier episodes, or potential future guests and topics to please contact us at pmiwdc.org/contact and leave your comments there. I'm your host, Kendall Lott and until next time, keep it in scope and get it done.

[music]

1:00:45 S5: This podcast is a Final Milestone production, distributed by PMIWDC.