

**Between Allies and ‘Hostile’ Witnesses**  
**Testimony from High-Level Insiders in the *Milosevic* case**

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## Abstract

This thesis deals with testimonies from insiders in high-profile war crimes trials, with the particular focus on the Slobodan Milosevic trial before the International Criminal Tribunal from the former Yugoslavia. The first international tribunal after the International Military Tribunal in Nuremberg achieved its peak with the *Milosevic* case. Due to importance of the case and grand expectations of it the prosecution built huge and hardly-manageable case. Therefore, over two years, from February 2002 to February 2004, 296 witnesses called by the prosecution appeared in the courtroom of the ICTY.

In order to offer a comprehensive analyses of the high-profile war crimes trials' experience with testimonies from high-ranking insider, I examined witness deployment in the prosecution's case in the Milosevic trial. The main purpose of such an analysis is to establish to what extent the case depended on testimonies from insiders. Subsequently, the study deals with the testimonies of five high-level insiders, dividing them into two groups, in order to show how these individuals performed that role in the ICTY courtroom. In the light of the further cases against high-ranking officials, heads of states and activities of International Criminal court the lesson that the *Milosevic* trial provides regarding testimony from insiders could be very valuable for further attempts to prosecute high ranking political leaders.

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## Introduction

On July 3, 2001, Slobodan Milosevic, former president of Serbia and FR Yugoslavia appeared in the dock in the International Criminal Tribunal for the Former Yugoslavia. Milosevic became the first head of state put on trial before an international court. He was charged with 66 charges related to the three conflicts, in Croatia, Bosnia and Kosovo in the range of almost a decade. The beginning of the *Milosevic* trial was followed with great euphoria and ambitious expectations. This extraordinary situation of trying a former head of state encouraged extraordinary expectations, challenges and scope of the trial. Until March 14, 2006, when the case was officially concluded, three days after Milosevic's death, the Trial Chamber heard 350 of live witnesses in total. The prosecution invited 296 among whom 12% were insiders, including five high-ranking military and political leaders, former Milosevic's close allies and collaborators. Their appearance in the ICTY courtroom and testimony against their former boss will be the focus of this study.

The idea of prosecuting war crimes as well as prosecuting high-ranking political and military leaders for committing crimes during a war was not new. The rise of judicial accountability for high-ranking political and military officials for war crimes began after the end of the Second World War. The four victorious Allies after the war established the International Military Tribunal in Nuremberg in order to try high-ranking political and military leaders of Nazi Germany. The jurisdiction of the court that was in session over ten months encompassed the crimes of war crimes, crimes against peace and crimes against humanity. At the end the Tribunal acquitted three defendants and convicted to death twelve of them. It immediately influenced

other trials. In Germany, the Americans continued trying former Nazis in twelve separate trials.<sup>1</sup> In Tokyo, the International Military Tribunal for the Far East (IMTFE) was established to try high-ranking Japanese officials involved with perpetrating war crimes during the Second World War.<sup>2</sup>

The new wave of war crimes trials began in the early 1960s when the State of Israel held their own case against a mid-ranking Nazi official, Adolf Eichmann. This mid-ranking Nazi official, was kidnapped in Argentina and put on trial in Jerusalem due to his contribution to the implementation of the Final Solution. The strategy that the prosecution applied, opened the era of witness-driven trials.<sup>3</sup>

The euphoria of a reunified Europe after the end of the Cold War quickly disappeared with the beginning of a bloody war in the former Yugoslavia. The conflict created a new sort of euphoria linked with the idea of trying war criminals on the international level. Several months after reports on the horrible detention camps in Bosnia reached the world, the international community established the first international criminal tribunal after the International Military Tribunal in Nuremberg. Adopting Resolution 827 in May 1993, the Security Council of the United Nations established the International Criminal Tribunal for the former Yugoslavia (ICTY) in order to bring to justice those responsible for serious violations of international humanitarian law in the former Yugoslavia since 1991.<sup>4</sup> During the last more than twenty years the ICTY indicted 161, individuals including heads of state, prime ministers, army chiefs-of-staff, interior

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<sup>1</sup> “The Thirteen Nuremberg Trials,” Nuremberg Trials Project. A Digital Collection, [http://nuremberg.law.harvard.edu/php/docs\\_swi.php?DI=1&text=nur\\_13tr](http://nuremberg.law.harvard.edu/php/docs_swi.php?DI=1&text=nur_13tr), (accessed on June 6, 2016).

<sup>2</sup> The Tokyo War Crimes Trial: Digital Collection, <http://imtfe.law.virginia.edu/trial-media>, (accessed May, 25 2016).

<sup>3</sup> See: Stephan Landsman, “The Eichmann case and the invention of the witness-driven atrocity trial,” *Columbia Journal of Transnational Law* (2012): pp. 70-119.

<sup>4</sup> ‘Security Council Resolution 827 (1993),’ UN Doc. S/RES/827 (25 May 1993).

ministers and many other high- and mid-level political, military and police leaders from various parties to the Yugoslav conflicts.<sup>5</sup>

The concept of prosecuting high-level individual for war crimes differs from ordinary criminal trials. Usually these cases have additional, extralegal functions, such as the strengthening role of law in post-conflict countries, establishing historical records or giving voice to victims. Scholars' attitudes on this question are divided. Although some authoritative scholars argue that the "purpose of the trial is to render justice and nothing else,"<sup>6</sup> recent practices show that high-profile war crimes trials are not focused just on establishing accountability of the accused. In this light a professor of law, Mark Osiel, argues that "criminal trials must be conducted with this pedagogical purpose in mind."<sup>7</sup> The ICTY obviously assumed some additional, extralegal functions. In the form of achievements they are listed on the official Tribunal's webpage as follows: "(1) Holding leaders accountable, (2) Bringing justice to victims, (3) Giving victims a voice, (4) Establishing the facts, (5) Developing international law and (6) Strengthening the rule of law."<sup>8</sup> Such understanding of the purpose of war crimes trials influenced the scope of the trials.

Besides the concept of war crimes trials, this thesis also touches upon the concept of witnessing and testimony that became fundamentally important during the second half of the 20<sup>th</sup> century. From the beginning of the 1960s and the *Eichmann* trial, witnessing and testimony became the usual way to address mass atrocities and grave human rights violations. The body of

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<sup>5</sup> ICTY, "About the ICTY," accessed on June 6, 2016, [http://www.chicagomanualofstyle.org/tools\\_citationguide.html](http://www.chicagomanualofstyle.org/tools_citationguide.html).

<sup>6</sup> Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil*. (London: Faber and Faber, 1963), p. 233.

<sup>7</sup> Mark J. Osiel, Mark, "In Defense of Liberal Show Trials – Nuremberg and Beyond." In *Perspectives on the Nuremberg Trial*, edited by Guénaél, Mettraux, (Oxford [UK]; New York: Oxford University Press, 2008), p. 704.

<sup>8</sup> ICTY, "Achievements," <http://www.icty.org/sid/324>, accessed on June 6, 2016.



literature on this topic that increased dramatically from the beginning of 1980s, “canonized testimony as the subversive idiom of oppressed and subaltern groups and as the primary medium of moral sensibility toward victims of atrocity.”<sup>9</sup> Bearing witness is more than just telling a story, or as a prominent scholar, Shoshana Felman, formulated “more than simply to report a fact or an event.”<sup>10</sup> Analyzing Claude Lanzmann’s *Shoah*, she noted how the similar event could be differently perceived among three categories of witnesses – victims, perpetrators and bystanders. The crucial difference, according to her, is not in what they see or what they did not see, but how they fail to witness.<sup>11</sup> Regarding Nazi perpetrators, she notes that the idea of the “unseen” or “invisible” reshapes the way they perceived the events. Besides the different perspectives among groups of witnesses, the moral, political subject, guilt and responsibility are strongly connected with the testimony.

The high-profile war crime trials, especially those that were broadcasted, could be perceived as a sort of media that expands the capacity for witnessing. In this sense, the dramatic increase of witnesses in *Eichmann*, contrary to the *Nuremberg* can be comprehended. The ICTY from the beginning of its work applied this strategy of witness-driven trial.<sup>12</sup> In this sense, ICTY judge, Patricia Wald, complained in 2001 that some of the Tribunal’s cases were intolerably long since some of them featured over 200 witnesses and seven of the ten trials completed thus far had over 100 live witnesses.<sup>13</sup> Reaching 296 witnesses, the prosecution’s case in *Milosevic* overcame

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<sup>9</sup> Michael Giovani, “Witnessing/Testimony,” *Mafté’akh Lexical Review of political Thought*, p. 147, <http://mafteakh.tau.ac.il/en/>, accessed on June 6, 2016.

<sup>10</sup> Shoshana Felman, “In an Era of Testimony: Claude Lanzmann’s *Shoah*,” *Yale French Studies*, no. 79 (1991): p. 39.

<sup>11</sup> *Ibid*, p. 42.

<sup>12</sup> Stephan Landsman, “The Eichmann case and the invention of the witness-driven atrocity trial,” pp. 70-119; Patricia M. Wald, “Dealing with Witnesses in War Crime Trials: Lessons from the Yugoslav Tribunal,” *Yale Human Rights & Development Law Journal* 5 (2002): 217-240.

<sup>13</sup> Patricia M. Wald, “To Establish Incredible Events by Credible Evidence: The Use of Affidavit Testimony in Yugoslavia War Crimes Tribunal Proceedings,” *Harvard International Law Journal* 42.2 (2001): p. 535.

the *Eichmann* by almost three times. This increase became one of the factors that made the *Milosevic* case so slow, long and complicated.

Individuals that once were a part of the criminalized system make a particular group of witnesses that appeared in all the above-mentioned cases. The witness testimonies from so-called ‘insiders’ became crucial from the 1970s in cases against criminal organizations, such as La Cosa Nostra. In this sort of cases, against wide criminal conspiracy that poses significant threat to the whole society, there was “little likelihood of convincing the leadership” without someone from the organization who would be willing to testify.<sup>14</sup> The two sorts of fears that such testimonies convey – fear of violence and retaliation from fellow conspirators and fear of punishment – were recognized from the beginning.<sup>15</sup> Therefore a difficulty of providing such witnesses was strong. In order to overcome this, the legal system in the United States developed two mechanisms – the Federal Witness Protection Program and Cooperation Plea Agreement.<sup>16</sup>

In war crimes cases, particularly high-profile ones, testimony from insiders could be crucial for providing an insight into the chain of command. These individuals from the military, police and political structure could explain to a court how decisions were made within the system and they can have “more credibility than any amount of seized material.”<sup>17</sup> However, it is also hard to provide their testimony. In this sense, David Chuter notes that “unless a regime has been completely destroyed, giving evidence against its leadership can be very dangerous.”<sup>18</sup>

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<sup>14</sup>Robert E. Courtney, “Insiders as Cooperating Witnesses: Overcoming Fear and Offering Hope,”(paper presented at the Forth regional Seminar on Good Governance for Southeast Asian Countries, Manila, Philippines, December 7-9, 2010), p. 36.

<sup>15</sup> *Ibid* p. 37.

<sup>16</sup> *Ibid*.

<sup>17</sup> David Chuter, *War Crimes: Confronting Atrocity in the Modern World*, (IISS Studies in International Security. Boulder, Colo: Lynne Rienner Publishers, 2003), p. 172.

<sup>18</sup> *Ibid*.

Combining common and continental law criminal practice,<sup>19</sup> the ICTY applied the witness protection program. The Victim and Witness Section of the ICTY is a special unit dedicated to supporting and protecting all witnesses, whether they are called by the prosecution, defense or chamber.<sup>20</sup> However, initially judges of the ICTY argued that plea bargaining would be “incompatible with the unique purpose of the International war crimes tribunal.”<sup>21</sup> The Tribunal later changed this policy under the pressure to expedite cases.<sup>22</sup> Although the tribunal relied significantly on testimony from insiders, the notion of “cooperative witness” was not introduced.

In traditional historiography the testimonies of insiders in war crime trials of high-ranking political and military leaders were a subject incorporated into a broader story about the trials. Michael Marrus and Lawrence Douglas touch upon this subject from a more narrative perspective. Mentioning several examples of testimonies from insiders, Douglas shows how “they supplied the court with many of the details what were to become central to popular understanding of the Holocaust.”<sup>23</sup> More precisely, Marrus examines the testimonies from insiders in the context of the defense strategy and the question of responsibility for Nazi war crimes.<sup>24</sup> On the other hand, Richard Overy offers a more analytical and comprehensive approach to the subject of broken elite, to those who were in the dock and those who had an unpleasant role

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<sup>19</sup> Megan Fairlie, “The Marriage of Common and Continental Law at the ICTY and its Progeny, Due Process Deficit.” *International Criminal Law Review* Vol. 4 Issue 3 (2004), pp. 243-319.

<sup>20</sup> ICTY, “Witnesses Protection Measures,” <http://www.icty.org/en/about/registry/witnesses>, accessed on May 1, 2016.

<sup>21</sup> Michael P. Scharf, “Trading Justice for Efficiency. Plea-Bargaining and International Tribunals.” *Journal of International Criminal Justice* 2.4 (2004): p. 1073.

<sup>22</sup> Jenia Turner Iontcheva, and Thomas Weigend, “Negotiated Justice,” In *International Criminal Procedure: towards a coherent body of law*, edited by Goran Sluiter et al., (London: Cameron May International Law & Policy, 2009), p. 1378.

<sup>23</sup> Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust*, (New Haven : Yale University Press, 2001), p. 70.

<sup>24</sup> Michael Marrus, *The Nuremberg War Crimes Trial, 1945-46: A Documentary History*, (Boston: Bedford Books, 1997), p. 164-169.

to testify against them.<sup>25</sup> The issue of testimony from insiders in the Eichmann case is in a sort of shadow of testimony from survivors. While Deborah Lipstadt and Hanna Yablonka are focused on testimonies from survivors Hannah Arendt and Stephan Landsman provide insight into the challenges and limitations regarding insiders.<sup>26</sup>

The body of literature dealing with the ICTY and particularly with the *Milosevic* case is huge. Scholars from different fields – legal studies, history, journalism, political science, international relations and human rights – have been trying during the last decade to explain what went wrong and why, in this trial of the century. A huge cross-disciplinary collection of essays edited by Timothy William Waters in 2014 that includes the contributions of three groups of authors – those who participated in the trial being a member of the prosecution, defense or Chamber, leading legal scholars and scholars from the region of former Yugoslavia - could be the best example of varied approaches.<sup>27</sup> Even a superficial glance at the unusual scope of the *Milosevic* trial highlights a number of significant themes that are worthy of consideration in a more specialized study.

Regarding the general problem of building the prosecution case in *Milosevic*, Gideon Boas, member of the prosecution team offers a strong legal approach.<sup>28</sup> His analysis of the prosecution approach to the issue of number of witnesses and their deployment, as well as the consequences of such strategy, provides important insight into the overall question of what went wrong. On the other hand, Judith Armatta, who as a journalist followed *Milosevic* case, offered a

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<sup>25</sup> Richard J. Overy, R. J. *Interrogations: The Nazi Elite in Allied Hands, 1945*. (London: Penguin Books, 2001).

<sup>26</sup> See: Deborah E. Lipstadt, *The Eichmann Trial*. New York: Nextbook Schocken, 2010; Hanna Yablonka, *The State of Israel vs. Adolf Eichmann*. New York: Schocken Books, 2004; Stephan Landsman, *Crimes of the Holocaust: The Law Confronts Hard Cases*. Pennsylvania Studies in Human Rights. Philadelphia: University of Pennsylvania Press, 2005; Arendt, *Eichmann in Jerusalem*.

<sup>27</sup> Timothy William Waters, ed., *The Milošević Trial: The Milošević Trial: An Autopsy*, (Oxford: Oxford University Press, 2013).

<sup>28</sup> Gideon Boas, *The Milošević Trial: Lessons for the Conduct of Complex International Criminal Proceedings* (Cambridge, UK: Cambridge University Press, 2007).

more descriptive approach to the case, but informative in the sense of the case flow.<sup>29</sup> While Boas is oriented on case preparation, on mistakes of the prosecution and challenges that it faced, Armatta is more focused on the outcome of the process and on events in the courtroom. She bases her book on her experience of case observer and reporter and on transcripts of court sessions. Boas applies more analytical and comparative approach, putting it into context with some other ICTY cases and comparing and contrasting it with cases before other war crimes tribunals. He approaches the issue of insiders briefly from the general perspective of commenting on witness deployment strategy, while Armatta summarizes their appearance in the courtroom.

Therefore this study aims to be a sort of bridge between the approaches that Boas and Armatta applied regarding the issue of insiders in the *Milosevic* case. In order to offer a comprehensive analyses of the high-profile war crimes trials' experience with testimonies from high-ranking insider, I examined witness deployment in the prosecution's case in order to establish to what extent it depended on testimonies from insiders. Subsequently, the study deals with the testimonies of five high-level insiders, dividing them into two groups, in order to show how these individuals performed that role in the ICTY courtroom.

The Milosevic trial was perfect candidate for this case study due to a few reasons. It was the first case of prosecuting former head of the state, but very soon it was followed by several other cases.<sup>30</sup> Therefore, this, what seems to become global phenomenon, needed a deeper analysis and a kind of lecture from its outset. Secondly, unusual scope of the trial with extremely high number of witnesses, that was hardly manageable, needs a deeper analysis of witness

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<sup>29</sup> Juduth Armatta. *Twilight of Impunity. The War Crimes Trial of Slobodan Milosevic* (Durham and London: Duke University Press, 2010).

<sup>30</sup> In the last two decades "sixty-seven heads of states or government from around the globe have been, at a minimum, criminally charged for their misconduct while in the office." For more about this topic see: Ellen L. Lutz, Preface to *Prosecuting Head of State*. Edited by Ellen L. Lutz and Caitlin Reiger, (New York City: Cambridge University Press, 2009), p. 2.

deployment. Thirdly, the fact that the case was finished without the final verdict leaves a lot of space for historians to evaluate and estimate it and to address the question of relevance and credibility of testimony from high-ranking insiders. Finally, the Milosevic case was built and broadcasted with a strong intention to fulfill many extra-legal functions such as re-educating and transforming Serbian society. As such, the case, as a whole, and testimonies of high-ranking insiders in particular, are a sort of *lieux de memoir* that deserves more attention and fresh knowledge.

This thesis aims to offer the insight into the issue of high-level insiders in war crimes trials with particular focus on the Milosevic case and to throw light on several questions. What does it mean being a witness ‘insider’ in a high-profile war crime case? From the position of the prosecution what kind of challenges do the testimony from insiders impose? Concerning insiders, how can we understand their motives and reasons for accepting this unpleasant role? How do defendants, particularly those who represent themselves in the courtroom, behave and act, once facing their former allied and corroborator? And finally, what is the value of testimony from insiders when it is well-known that usually their statements are rendered under strong pressure?

In the first chapter I will offer a historical introduction on the issue of testimony from insiders in high-profile war crimes trials. Here I will briefly analyze witness deployment in the *Nuremberg* and *Eichmann* case in order to show to what extent these cases relied on the insiders’ contributions. Further on, the chapter will discuss the experience of these two cases regarding the insider appearance in the courtroom. This part of the study is based both on primary sources – the transcripts of trial sessions, diaries and memoirs – and secondary literature. The transcripts of the trial session in *Nuremberg* I found on the website of The Avalon Project. *Documents in Law*,

*History and Diplomacy*. The webpage of The Nizkor Project provided me insights into the transcripts of trial sessions in *Eichmann*.

The deployment of witnesses in the prosecution case in *Milosevic* will be the focus of the second chapter. Starting from basic analysis that Boas provide I go further to upgrade it. My main source here is a list that contains the names of 296 witnesses called by the prosecution with the dates of their appearance in the courtroom. Starting from this list and going through the transcripts of the trial sessions I succeeded in classifying all of these witnesses into several categories. The list of witnesses, as well as transcripts of trial sessions, I found on the official web page of the ICTY. Therefore, the chapter will show to what extent the prosecution in *Milosevic* relied on testimonies from insiders.

The third and fourth chapters are focused on testimonies from five high-level insiders. Both chapters explore the layered relations between the former head of state and his close cooperators and accomplices. The third one examines two opposite cases of testimony from insiders, while the fourth examines the space in between these two extremes.

At the heart of this thesis is the question of the high-level insider deployment and the way they acted and testified once they appeared in the ICTY courtroom against a former head of the state. The study puts the issue of testimony from insiders into historical context in order to show that the problem with insiders in the Milosevic trial was not just an isolated case. However, unlike previous examples that are examined here, high-ranking insiders in the Milosevic case faced the former boss who represented himself, rather than the attorney of defense. Conducting aggressive and manipulative cross-examination based on the same political agenda, Milosevic challenged his former allies very successfully.

In the light of the further cases against high-ranking officials, and heads of states and activities of International Criminal court the issue is quite important. Due to the lack of documentary evidence the prosecution is forced to rely more on testimony from insiders. In the case against the former president of Liberia, Charles Taylor, almost one third of the total number of witnesses were insiders.<sup>31</sup> In the case against the Kenyan Deputy President, William Samoei Ruto, before the International Criminal Court, eight out of forty-six witnesses, previously interviewed and called by the prosecution, expressed unwillingness to appear in the courtroom.<sup>32</sup> All of them were insiders. Problems in other on-going high-profile war crimes cases as well as in the expected trial of Sudan's president, Omar al-Bashir, indicate that deployment of insiders's testimony will remain crucial in bringing criminal leaders to justice. Therefore, a lesson that the Milosevic trial provides regarding testimony from insiders could be very valuable for further attempts to prosecute high ranking political leaders.

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<sup>31</sup> "Taylor Trial Timeline," Special Court for Sierra Leone, <http://www.rscsl.org/Taylor.html>, accessed June 3, 2016.

<sup>32</sup> Tom Maliti, "Who are the Eight Witnesses Unwilling to Testify in the Trial of Ruto and Sang? – Part 1," *International Justice Monitor*, May 8, 2014, <http://www.ijmonitor.org/2014/05/who-are-the-eight-witnesses-unwilling-to-testify-in-the-trial-of-ruto-and-sang-part-1/>, accessed on June 8, 2016.



## Chapter I: Witnessing in high-profile war crimes trials: the Nuremberg and the Eichmann case

In late 1945, on the ruins of Europe, the four Allies addressed the war crimes of the Nazi regime for the first time before the International war crimes Tribunal. In the dock were twenty-four high-ranking Nazi leaders who were previously imprisoned by the Allies. Sixteen years later, in 1961, the State of Israel according to Israeli laws and before the court in Jerusalem, addressed atrocities over Jews during the Second World War. In the dock was a mid-ranking Nazi officer, previously kidnapped by the Israeli intelligence agency in Argentina and taken to Israel. At the basis of both trials were profound moral idea about responsibility as well as vision of broad didactic trials which would tell the story and prevent further atrocities.<sup>33</sup> However, the prosecution in the two cases applied paradigmatically different strategies in achieving these goals.

The aim of this chapter is to briefly address the strategies of prosecution in *Nuremberg* and *Eichmann* from the perspective of witness selection and witness deployment. Particularly, it will be focused on the testimony of insiders in these cases. The overall argument that is presented is that in these two high-profile war crimes trials, with strong dedication on future goals, insiders testimony differently contributed to the goal promoted by the prosecution. For the reconstruction of this issue, I will mostly rely on both primary and secondary sources. Since in *Nuremberg* one third of the total number of witnesses were insiders, mostly high-level Nazis, I conduct deeper analysis and submit it in the form of a table [See: Appendix 1]. In contrast, in the *Eichmann* only six out of 112 witnesses called by the prosecution were insiders [See: Appendix 2]. None of them appeared in the courtroom but rather they provided the affidavits.

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<sup>33</sup> Landsman, “The Eichmann case and the invention of the witness-driven atrocity trial,” p. 77.

## 1.1. Robert Jackson and the *Nuremberg* case building

During the Second World War a widespread sense was born among the Allies that the Nazis committed unprecedented crimes and therefore the war should not end like other wars. Rather, bearers of this opinion proposed the investigation of Nazi crimes and the international tribunal that would address Nazi offenses. However, initially the Allied leaders were not in agreement about what to do with senior Nazi leaders.<sup>34</sup> Nevertheless, the preparations for the trial were accelerated during the final phases of the War. In advocating judicial methods for dealing with the Nazi leaders and their crimes, the United States had a prominent role. They argued for a huge trial that should not just be an individual act, but rather it should tell the story on the “ongoing conspiracy that stretched from 1933 to the fall of the Third Reich in 1945.”<sup>35</sup> Agreement on the Charter of the International Military Tribunal came after the London conference, held in July 1945, for the preparation of the trial, that gathered American, British, French and Soviet jurists.

The trial that should establish the record of the evil of the Nazi regime was mostly the idea expressed by an American jurist, Robert Jackson. He believed that the “case must be factually authentic and constitute a well-documented history of what we are convinced was a grand, concerted pattern to incite and commit the aggressions and barbarities which have shocked the world.”<sup>36</sup> With the help of General William J. Donovan, head of the Office for Strategic

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<sup>34</sup> Initially the British argued against a trial pointing out unsuccessful attempt of war crimes trials after the First World War. On the other hand, Soviets saw German defeat as the opportunity for a “show trial.” See more about this issue: Stephan Landsman, *Crimes of the Holocaust: The Law Confronts Hard Cases*, (Pennsylvania Studies in Human Rights. Philadelphia: University of Pennsylvania Press, 2005), p. 2-4; Richard J. Overy, R. J. *Interrogations: The Nazi Elite in Allied Hands, 1945*. (London: Penguin Books, 2001). P. 6-10.

<sup>35</sup> Stephan Landsman, *Crimes of the Holocaust: The Law Confronts Hard Cases*. Pennsylvania Studies in Human Rights. Philadelphia: University of Pennsylvania Press, 2005, p. 6.

<sup>36</sup> Letter from Robert H. Jackson to Harry S. Truman, June 6, 1945. Rosenman Papers, War Crimes File. Harry S. Truman Presidential Museum & Library.

Service, Jackson practically became the architect of the *Nuremberg* trial. He became the chief prosecutor for the United States in *Nuremberg*.

These ideas on conspiracy, aggressive war and broad trial that would not deal just with individual guilt and crimes found their place in the indictment that was issued on August 24, 1945. It named twenty-four Nazi leaders and organizations they belonged to, such as the Reich Cabinet, the Leadership Corps of the Nazi Party, SS, SD, SA Gestapo and General Staff and High Command of the Armed Forces. The document stated that all the defendants “during the period of years preceding 8 May 1945, participated as leaders, organizers, instigators or accomplices in the formulation or execution of a common plan or conspiracy to commit, or which involved the commission of Crimes against Peace, War Crimes and Crimes against Humanity.”<sup>37</sup>

**“We must establish incredible events by credible evidence”**

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<sup>37</sup> See the whole text of the indictment in: Michael Marrus, *The Nuremberg War Crimes Trial, 1945-46: A Documentary History*, (Boston: Bedford Books, 1997), pp. 57-71.



**Figure 1:** US Army staffers organize stacks of German documents collected by war crimes investigators as evidence for the International Military Tribunal. Nuremberg, Germany, between November 20, 1945, and October 1, 1946. — US Holocaust Memorial Museum, courtesy of National Archives and Records Administration

Jackson's strategy was to build the case mostly on Nazi documents as the main source. In the letter to President Truman Jackson

explained that "the groundwork of our case must be factually authentic and

constitute a well-documented history."<sup>38</sup> The enormous number of German orders and documents of all sorts had been discovered hidden away in salt mines, behind brick walls and in other places and the task of selection from among these documents naturally took the prosecution many months and continued long after the case begun.<sup>39</sup> Based on these documents Jackson wanted to "establish incredible events by credible evidence."<sup>40</sup> Therefore, initially the prosecution, as Jackson's junior colleagues, Telford Taylor, noted in his memoirs "had not planned any witnesses unless the Tribunal rejected their affidavits."<sup>41</sup>

However, other members of the American prosecution team had a different opinion regarding the credibility and necessity of witness testimony in the trial. As Taylor notes, contrary to Jackson, Donovan "thought that the idea of briefs in which the documents would "prove" the case without supporting arguments was absurd," and that they should not back away from

<sup>38</sup> Letter from Robert H. Jackson to Harry S. Truman, June 7, 1945. Truman Papers, Official File. War Atrocities/War Criminals, Harry S. Truman Presidential Museum & Library.

<sup>39</sup> Geoffrey Lawrence, "The Nuremberg Trial," in: *Perspectives on the Nuremberg Trial*. edited by Guénaél, Mettraux, (Oxford [UK] ; New York : Oxford University Press, 2008). p. 291.

<sup>40</sup> Letter from Robert H. Jackson to Harry S. Truman, June 7, 1945. Truman Papers, Official File. War Atrocities/War Criminals, Harry S. Truman Presidential Museum & Library.

<sup>41</sup> Telford Taylor, *The Anatomy of the Nuremberg Trials : A Personal Memoir*, (Boston : Back Bay Books, 1993, c1992), p. 243.

witnesses.<sup>42</sup> He argued that such an approach would give the trial an affirmative human aspect and better enable it to serve its broadly pedagogical function.<sup>43</sup> In other words, Donovan suggested Jackson to call some of high-level Nazi officials who were in American custody. It seems that he was convinced that those individuals would support the prosecution case.

Conflicting opinions inside the American prosecution team, in the first place between Jackson and Donovan, could also be grasped from their written correspondence. In the letter of November 14, 1945, one week before the beginning of the trial, Donovan argued that they should give the opportunity to Hjalmar Schacht, a German economist, banker and Minister of Economy, Hitler's close cooperator, to "fight his way out by actual testimony dealing with the facts."<sup>44</sup> He believed that Schacht could "strengthen our case considerably and without promises he could be given a chance, in the direct case, to state his position."<sup>45</sup> Taylor also explained that the reason for such conflicting opinions of the two foremost figures in the American prosecution team was that Donovan did not think highly of reliance on captured documents, while Jackson was unsettled with the question of what witnesses the prosecution might use.<sup>46</sup> At the beginning of December 1945, when the trial was already in progress, Donovan left the prosecution team and the Jackson-Donovan dispute had its epilogue.

Finally, the International Military Tribunal in Nuremberg began on November 21 1945, before. The trial extended through more than 403 open sessions of court, covering ten months, until October 1, 1946. During this period four Allies tried twenty-two of the twenty-four high-ranking Nazi political and military leaders accused, including Martin Bormann, *in absentia* for

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<sup>42</sup> Taylor, *The Anatomy of the Nuremberg Trials.*, p. 147.

<sup>43</sup> Douglas, *The Memory of Judgment.* p. 17.

<sup>44</sup> Letter from William Donovan to Robert Jackson, November 14, 1945, Confidential File, Truman Papers, Harry S. Truman Presidential Museum & Library.

<sup>45</sup> *Ibid.*

<sup>46</sup> Taylor, *The Anatomy of the Nuremberg Trials.*, p. 149.

crimes against peace, war crimes and crimes against humanity. The prosecutors for the four nations concluded their case in four and a half months.

The four-nations prosecution team called thirty-three witnesses in total and put in evidence over 4000 documents, on more than “17,000 pages depicting horrors never before recorded in a court.”<sup>47</sup> On the other hand, the defense invited 61 witnesses, 143 more gave evidence for them by written answers to interrogations, and they offered a large number of defense documents.”<sup>48</sup>

### **Testimony from insiders in *Nuremberg***

The prosecution in *Nuremberg* was able to provide a significant number of testimonies from insiders. My analysis of witnesses called by the prosecution shows that the Anglo-American team, as well as French and Soviets, each called eleven witnesses, in total thirty-three. Anglo-American witnesses were mostly Germans, except the Czech citizen, Franz Blaha.<sup>49</sup> All of them, except Blaha and the German civilian construction expert, Herman Grabe, were insiders. On the other hand, most of the witnesses called by the French prosecution team were ordinary, French citizens. Besides French, there was also a Norwegian lawyer and businessman, a Luxembourg lawyer, a Dutch politician and a Belgian historian. French witnesses told the story on atrocities in Mauthausen, Buchenwald, Auschwitz and Ravensbruck and other camps. The Soviet prosecution

<sup>47</sup> Herbert Wechsler “The Issue of the Nuremberg Trial,” In *Perspectives on the Nuremberg Trial*. edited by Guénaël, Mettraux, (Oxford [UK] ; New York : Oxford University Press, 2008). p. 310.

<sup>48</sup> See: Michael Marrus, Preface to *The Nuremberg War Crimes Trial, 1945-46: A Documentary History*, (Boston: Bedford Books, 1997), p. v; Robert H. Jackson, “Nuremberg in Retrospect: Legal Answer in International Lawlessness” in: *Perspectives on the Nuremberg Trial*. edited by Guénaël, Mettraux, (Oxford [UK] ; New York : Oxford University Press, 2008). p.355.

<sup>49</sup> Dr. Franz Blaha was the Anglo-American witness who was not member of Nazi political and military organizations. He testified about his experience in Dachau from April 1941 until the liberation of the camp in April 1945. See Blaha’s testimony: Nuremberg Trial Proceedings Volume 5, Thirty-Second Day, Friday, 11 January 1946, “The Avalon Project,” <http://avalon.law.yale.edu/imt/01-11-46.asp#blaha> accessed on May 18, 2016; Another one witness was German construction expert, Herman Grabe, who testified about mass killings of Ukrainian Jews. See Grabe’s affidavit: Nuremberg Trial Proceedings Volume 4, Twenty-Fifth Day, Wednesday, 2 January, 1946, <http://avalon.law.yale.edu/imt/01-02-46.asp>, accessed on May 18, 2016.

team called two high-ranking Nazi military leaders, two Romanian high-positioned officials and seven Soviet citizens. In all, one third of the total number of witnesses called by the prosecution were insiders.

Insiders called by the Anglo-American team, as well as the Soviets were highly cooperative and pliant witnesses. The first witness called by the prosecution was General Erwin Lahousen, a high-ranking member of the Abwehr during the war. Recalling his testimony about the role of Goering, Keitel and Jodl in planning the bombardment of Warsaw and the extermination of Polish intelligentsia, nobility clergy and Jews, the prison psychologist, Gustave Mark Gilbert, noted in his memoirs that “his presence and testimony were apparently a shock to all the defendants, who learned for the first time of the resistance movement in the Abwehr, and heard one of their own generals denounce Hitler’s aggressive war.”<sup>50</sup> During the break after that session, Goering called Lahousen a “traitor,” concluding that “no wonder we lost the war – our Intelligence Service was sold out to the enemy.”<sup>51</sup>

The testimony of another high-ranking Nazi official, Otto Ohlendorff, who had commanded Einsatzgruppe D, the unit tasked with carrying out the mass murders, also followed a different reaction of the dock. Ohlendorff’s testimony that “provided to be in an evidentiary sense a real blockbuster,”<sup>52</sup> threw some defendants into depression. On the other hand, Goering tried to dismiss the testimony, expressing abhorrence toward Ohlendorff as “another one selling his soul to the enemy.”<sup>53</sup> The dock reacted especially strongly on the testimony provided by Erich von dem Bach-Zelewski, a former SS member. Gilbert recalled how Goering stormed and raged,

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<sup>50</sup> Gustave M. Gilbert, *Nuremberg Diary*, (Signet Books. New York: New American Library, 1961), pp. 50, 51.

<sup>51</sup> *Ibid*, p.50.

<sup>52</sup> Taylor, *The Anatomy of the Nuremberg Trials.*, p. 246.

<sup>53</sup> Gilbert, *Nuremberg Diary*. p. 101.

calling Bach-Zelewski treacherous swine.<sup>54</sup> Other defendants told their attorneys to cross-examine Bach-Zelewski with a question that showed what a bloody swine he was himself.<sup>55</sup>

The unpleasant role of insiders can be depicted by the appearance of General Friedrich von Paulus. Commander of the German Sixth Army in the Battle of Stalingrad, Von Paulus was captured by Soviet troops. In *Nuremberg* he was called by the Soviet prosecution team to testify about the preparations for Plan Barbarossa, the plan of attack on the Soviet Union. On a prosecution's question regarding the responsibility for the German attack on the Soviet Union, Paulus incriminated top military advisers to Hitler, including three accused in the dock, Chief of the Supreme Command of the Armed Forces, Keitel, Chief of the Operations Branch, Jodl, and Goering.<sup>56</sup> His testimony made a bedlam in the dock. Defendants attacked Von Paulus's honor and called him a "dirty pig" and a traitor, someone "who should sit among them."<sup>57</sup> For Jodl it was clear that von Paulus tried to save his own neck.<sup>58</sup>

The utterance from insiders could be usually influenced by different sorts of fears. In this sense the testimony from von Paulus illustrates a problem of inner dilemma that insiders faced – how to testify against former corroborators but not to harm their own position.

**Witness Paulus:** If I judge correctly, then I believe that I am supposed to be here as a witness for the events with which the defendants are charged. I ask the Tribunal, therefore, to relieve me of the responsibility of answering these questions which are directed against myself.

**Prosecutor Dr. Nelte:** Field Marshal Paulus, you do not seem to know that you also belong to the circle of the defendants, because you belonged to the organization of the High Command which is indicted here as criminal.<sup>59</sup>

<sup>54</sup> Gilbert, *Nuremberg Diary*. p. 114.

<sup>55</sup> *Ibid*, p. 114.

<sup>56</sup> "Nuremberg Trial Proceedings Volume 7, Fifty-Six Day, Monday, 11 February 1946," The Avalon Project, <http://avalon.law.yale.edu/imt/02-11-46.asp#paulus>, accessed on May 30, 2016.

<sup>57</sup> Gilbert, *Nuremberg Diary*. pp. 147-148.

<sup>58</sup> *Ibid*, p. 149.

<sup>59</sup> "Nuremberg Trial Proceedings Volume 7, Fifty-Seventh Day, Tuesday, 12 February 1946," The Avalon Project, <http://avalon.law.yale.edu/imt/02-12-46.asp>, accessed on May 30, 2016.



We can only guess how this sort of fear reshaped the General's utterance.

These examples show how *Nuremberg* made a gap among the Nazi elite. Now a group of high-ranking Nazis was denouncing another group of high-ranking Nazis for aggressive war, mass killing and other crimes. Certainly the prosecution heard what they wanted to hear. However, the motives behind testimonies from insiders as such and the degree of their repentance were a blur and can only be guessed at. They went from sincere remorse, disillusion with Hitler and the regime, to a pure attempt to avoid responsibility.

The complexity of *Nuremberg* and reliance mainly on documents left a dull impression. Therefore, the British journalist, Rebecca West, who covered the trial for the *New Yorker* described the courtroom as a "citadel of boredom... boredom on a huge historic scale"<sup>60</sup> This strategy will be changed sixteen years later in the *Eichmann* case.

## 1.2. Witness-dependent trials: the *Eichmann* case

The second paradigmatic case with which I am going to deal here is the *Eichmann* case. *Nuremberg* provided a roadmap for the trial of Nazi criminals, a template for dealing with mass atrocities.<sup>61</sup> However, while the didactic paradigm of *Nuremberg* was the documentary, in the *Eichmann* trial the representational paradigm was testimonial.<sup>62</sup> This was a new and significantly different approach in dealing with mass atrocities in a courtroom. Concerning the role and representation of insiders, the *Eichmann* case also offered a new experience, significantly different from *Nuremberg*. Therefore, I am going to examine here the general idea behind the prosecution case and the witness deployment in it in order to detect the place and importance of

<sup>60</sup> Rebecca West, *A Train of Powder*, (London: Macmillan, 1955), p. 3.

<sup>61</sup> Landsman, "The Eichmann case and the invention of the witness-driven atrocity trial," p. 77.

<sup>62</sup> Douglas, *The Memory of Judgment*, p. 104.

insiders' testimony in the overall case. I will show how significantly different circumstances and a new approach of the prosecution influenced the insiders' issue.

The *Eichmann* trial was organized by the state of Israel and according to Israeli laws. From May 15, 1960, when Israeli Prime Minister David Ben-Gurion announced that “the Nazi arch-criminal Adolf Eichmann, who was responsible together with the Nazi leaders for what they called the final solution of the Jewish problem” was currently “under arrest in Israel and will stand trial soon,” the interest in the case was enormous. Eichmann was charged with crimes against Jewish people and crimes against humanity and war crimes under the Nazis and Nazi Collaborators (Punishment) Law. According to the indictment, Eichmann “together with others, caused the deaths of millions of Jews as persons who were responsible for the implementation of the plan of the Nazis for the physical extermination of the Jews, a plan known by the title “The Final Solution of the Jewish Question.””<sup>63</sup> As a head of the Gestapo's section for Jewish affairs, Eichmann was charged with coordinating and implementing the Final Solution, a plan to expel Jews. The trial began on April 11, 1961 before the Jerusalem District Court, and finished eight months later, on December 15, 1961. The court found Eichmann guilty on all 15 counts and sentenced him to death.

### **Witness-based strategy**

The main architect of the trial against Eichmann was the Israeli jurist, Gideon Hausner. Although he was an accomplished commercial lawyer and had no experience in criminal law or courtroom procedure, Hausner became attorney general shortly before the beginning of the trial.<sup>64</sup> The Israeli prosecution team with Hausner at its head did not want a narrow, document-focused

<sup>63</sup> See indictment: “Session No.1,” The Nizkor Project, <http://www.nizkor.org/hweb/people/e/eichmann-adolf/transcripts/Sessions/Session-001-01.html>, accessed on May 3 2016.

<sup>64</sup> Deborah E. Lipstadt, *The Eichmann Trial*. (New York: Nextbook Schocken, 2010), p. 37

proceeding limited to what could be proven against Eichmann as an individual.<sup>65</sup> Rather the prosecution “assembled a sprawling case designed not simply to convict the defendant but to tell the vast story of the entirety on the Holocaust whether it involved Eichmann or not.”<sup>66</sup> Unlike Robert Jackson and his team in the *Nuremberg* who built its case mostly on documents, Hausner applied a witness based strategy.

Therefore, during the ten months investigation phase the main emphasis was put on witness selection. In this sense the police unit, called Bureau 06, took a prominent role. Composed mainly of Holocaust survivors the unit conducted the interrogation with enormous passion and persistence. It seems that Bureau 06 “not only performed the routine police work of gathering evidence and conducting an investigation, but also functioned as a committee on war criminals and as a team conducting historical research.”<sup>67</sup> They shared the view of this investigation as a “national mission.”<sup>68</sup> The members of Bureau 06 were strongly influenced by the Holocaust survivors’ associations, organizations and individuals – experts in the field. At the beginning of January 1961, Bureau 06 submitted a list of fifty recommended witnesses to Hausner.<sup>69</sup> That was less than a half of the witnesses that the prosecutor called.

At the same time, the prosecution also worked on providing witnesses for the trial. Hausner closely cooperated with Rachel Auerbach, the director of the Yad Vashem department assigned to collect testimonies of Holocaust survivors. Surviving the war in the Warsaw Ghetto, Auerbach devoted her life and career to collecting Holocaust survivors’ testimonies and documenting the Jewish history of the Holocaust. She was convinced, and Hausner shared her

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<sup>65</sup> Landsman, “The Eichmann case and the invention of the witness-driven atrocity trial,” p. 79.

<sup>66</sup> *Ibid.* p. 69.

<sup>67</sup> Hanna Yablonka, *The State of Israel vs. Adolf Eichmann*. New York: Schocken Books, 2004. p. 65.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*, p. 99.

opinion, that the *Eichmann* trial should be a large historical trial and that it should demonstrate the full extent and unique nature of the destruction of the Jews of Europe.<sup>70</sup> In this conviction Auerbach helped Hausner to find witnesses. Both of them believed that witness testimonies “did not have to directly relate to what he [Eichmann] did but should help paint the broad picture of the entire destruction process.”<sup>71</sup>

Already in the opening statement, read during April 17 and 18, 1961, the chief prosecutor indicated that he was going to speak in the name of the Holocaust victims, in the name of those who “cannot rise to their feet and point an accusing finger toward him [Eichmann]”.<sup>72</sup> He addressed the sufferings of Jews in concentration camps – Auschwitz, Treblinka, Belzec Majdanek, Chelmno – the horrors of life in the Warsaw, Krakow, Vilnius, Riga and Lvov ghetto, and heroic attempts of resistance, the deportations of Jews from numerous European countries – Holland, Belgium, France, Slovakia, Czech Protectorate Yugoslavia, Greece, Rumania, and the Soviet Union.<sup>73</sup> It was clear that the prosecution was going to reconstruct these issues by giving the voice to victims – eye-witnesses who survived the horrors of concentration camps and those who were bearers of the Jewish resistance – to tell their stories. In this sense, Hausner wanted to represent Eichmann as the “only one in charge” who put the program of extermination into the practical phase. In other words, Hausner depicted Eichmann “as the Final Solution’s chief operating officer... responsible for every aspect of it, including shooting in the East, European deportations, ghettos, and death camps.”<sup>74</sup>

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<sup>70</sup> Lipstadt, *The Eichmann Trial*. p. 52.

<sup>71</sup> *Ibid*, p. 53.

<sup>72</sup> “The Attorney General’s Opening Speech,” The Nizkor Project, <http://www.nizkor.org/ftp.cgi/people/e/eichmann.adolf/transcripts/ftp.cgi?people/e/eichmann.adolf/transcripts/Sessions/Session-006-007-008-01>, accessed on June 6, 2016.

<sup>73</sup> *Ibid*.

<sup>74</sup> Lipstadt, *The Eichmann Trial*. p. 64

The consequence of such approach was witness-driven trial. Although there were more than enough documents left to tell the story of the Final Solution, most of them known from the *Nuremberg* Trials and the successors trials, the prosecution in the *Eichmann* case decided to rely more on witness testimony.<sup>75</sup> Therefore, from the beginning of the trial over the course of 56 days, the prosecutor called 112 witnesses.<sup>76</sup> A high percentage of them were Israeli citizens.

### **Testimony from Insiders in *Eichmann***

Concerning the insiders, the *Eichmann* trial sheds light on a problem of ensuring live testimony of insiders. Unlike the prosecution in *Nuremberg* that could easily provide testimonies of high ranking Nazis who were in Allied custody, Israel was far from such possibility. Eichmann's attorney, Robert Servatius, put before the court a request on May 2, 1961, to call four former officials of the Nazi regime to testify on behalf of the Gestapo colonel.<sup>77</sup> Among these four Nazi officials were Eberhard von Thadden, Max Merten, Hermann Krumei and Franz Six.<sup>78</sup> However, Hausner replied promptly that the ex-Nazis would be granted Israel visas but would be detained as criminals under Israeli law for the punishment of Nazis as soon as they arrived in

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<sup>75</sup> Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil*. (London: Faber and Faber, 1963), p. 200.

<sup>76</sup> Landsman, "The Eichmann case and the invention of the witness-driven atrocity trial," p. 83.

<sup>77</sup> Eichmann's Lawyer Summons Nazis As Witnesses: Israel Refuses Immunity, *Jewish Telegraphic Agency*, May 3, 1961, <http://www.jta.org/1961/05/03/archive/eichmanns-lawyer-summons-nazis-as-witnesses-israel-refuses-immunity>, accessed on May 30, 2016.

<sup>78</sup> Nazi Witness for Eichmann in Germany Says He has 'nothing to Hide,' *Jewish Telegraphic Agency*, May 5, 1961, <http://www.jta.org/1961/05/05/archive/nazi-witness-for-eichmann-in-germany-says-he-has-nothing-to-hide>, accessed on May 30, 2016.

Israel.<sup>79</sup> All of these four witnesses provided their written testimonies before the West German courts with the presence of Israeli representatives.<sup>80</sup>

Even with the immunity, it seems that former Nazis did not feel safe enough to come and testify before the Jerusalem court. Neither of the two former Nazi officials who were granted immunity appeared before the court. One of them was former SS member, Wilhelm Hoettl, who excused for professional reasons.<sup>81</sup> In his affidavit, used by the American prosecution in the *Nuremberg* trial, he informed the court about his conversation with Eichmann during which Eichmann “expressed his conviction that Germany had lost the war and that he personally had no further chance. He knew that he would be considered one of the main war criminals by the United Nations, since he had millions of Jewish lives on his conscience.”<sup>82</sup> Sixteen years later, concerning the *Eichmann* case, Hoettl “expressed the belief that his testimony would not be useful either to the defense or to the prosecution in the *Eichmann* trial.”<sup>83</sup> Although called by the defense, Hoettl provided an affidavit that was then used by the prosecution.<sup>84</sup>

The consequence of Israeli unwillingness to provide guarantees for those former Nazis who were invited to testify and therefore, their reluctance to come Jerusalem, was the absence of live testimony of insiders in the *Eichmann* trial. Thus, sixteen written statements of insider were

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<sup>79</sup> Eichmann’s Lawyer Summons Nazis As Witnesses: Israel Refuses Immunity, *Jewish Telegraphic Agency*, May 3, 1961, <http://www.jta.org/1961/05/03/archive/eichmanns-lawyer-summons-nazis-as-witnesses-israel-refuses-immunity>, accessed on May 30, 2016.

<sup>80</sup> Nazi Witness for Eichmann in Germany Says He has ‘nothing to Hide,’ *Jewish Telegraphic Agency*, May 5, 1961, <http://www.jta.org/1961/05/05/archive/nazi-witness-for-eichmann-in-germany-says-he-has-nothing-to-hide>, accessed on May 30, 2016,

<sup>81</sup> Israel Grants Immunity to Two Ex-nazis to testify at Eichmann trial, *Jewish Telegraphic Agency*, May 9, 1961, <http://www.jta.org/1961/05/09/archive/israel-grants-immunity-to-two-ex-nazis-to-testify-at-eichmann-trial>, accessed May 30, 2016.

<sup>82</sup> “Nuremberg Trial Proceedings Volume 3, Twentieth Day, Friday, 14 December 1945,” The Avalon Project, <http://avalon.law.yale.edu/imt/12-14-45.asp>, accessed on May 30, 2016.

<sup>83</sup> Israel Grants Immunity to Two Ex-Nazis to testify at Eichmann trial, *Jewish Telegraphic Agency*, May 9, 1961, <http://www.jta.org/1961/05/09/archive/israel-grants-immunity-to-two-ex-nazis-to-testify-at-eichmann-trial>, accessed on May 30, 2016.

<sup>84</sup> Arendt, *Eichmann in Jerusalem*, p. 166.

read before the court in Jerusalem.<sup>85</sup> Six of these affidavits were used by the prosecution and ten by the defense. They provided the statements at home, before the local courts in the presence of Israeli representatives.

Some of the witnesses that provided affidavits in the *Eichmann* case previously testified in other war crimes trials or even were put on trial and found guilty of committing war crimes. In new circumstances, a few of them modified their previous statements. Theodor Horst Grell, the head of the Foreign Office's Jewish Affairs Section in Hungary, in his new statement explained that his previous statement of 31 May, 1948 was "formulated by the defense, for the purpose of the defense, and is not in the formal terms a solemn statement as defined in the Penal Code," and therefore explained that the statement was "understandably somewhat tendentious."<sup>86</sup> Obviously, Grell was reluctant to testify against his former corroborators either in 1948 or in 1961. Further on, he supplemented his previous statement in several points trying not to incriminate Eichmann:

"In the late autumn of 1944, Eichmann once said to me during a conversation that the enemy powers considered him to be war criminal number one, and that he had some six million people on his conscience. In this context, he was speaking not of Jews, but of enemies of the state. I understood this comment by Eichmann along the lines of "viel Feind, viel Ehr" (many enemies, much honor), and it was not until the American prosecution put it to me that I remembered it. As far as I was concerned, this statement was part of Eichmann's efforts to emphasize the importance of his position or of his own person. To the best of my memory, this conversation took place in late autumn of 1944, after Eichmann had returned from service at the front, on the Hungarian-Romanian border. During his service there, Eichmann had won the Iron Cross, Second Class. During this conversation, Eichmann was neither drunk nor tipsy."<sup>87</sup>

<sup>85</sup>"Testimony taken Abroad," The Nizkor Project, <http://www.nizkor.org/hweb/people/e/eichmann-adolf/transcripts/Testimony-Abroad/>, accessed on May 30, 2016.

<sup>86</sup>"The testimony of Theodor Horst Grell," The Nizkor Project, [http://www.nizkor.org/hweb/people/e/eichmann-adolf/transcripts/Testimony-Abroad/Theodor\\_Horst\\_Grell-02.html](http://www.nizkor.org/hweb/people/e/eichmann-adolf/transcripts/Testimony-Abroad/Theodor_Horst_Grell-02.html), accessed on May 30, 2016.

<sup>87</sup> *Ibid.*

While Grell testified in favor of one of his corroborators, Max Merten<sup>88</sup> testified in his own favor in 1958, when he explained that Eichmann had a prominent role in a campaign against the Jews of Salonika and claimed that he “told us that Hitler had decided that, with immediate effect, the Jews had to wear the Yellow Patch, be concentrated in special camps, and also be subject to other restrictions; their economic power was to be broken.”<sup>89</sup> In the new statement, for the purpose of the *Eichmann* case, Merten indicated that in substance “what I am saying today does not entirely coincide in every detail with what I said in my defense speech before the Greek court.”<sup>90</sup> Merten revealed that he was advised by his defense counsel to say “as little as possible about any personal contact with the Accused [Eichmann].”<sup>91</sup> Obviously, now he intended not to further incriminate Eichmann, but rather to diminish his role in the Greece episode. Whether he lied in the previous statement or in the new one, the court in Jerusalem did not have the opportunity to establish by cross-examining the witness.

This brief analysis of witness selection and deployment in the *Eichmann* case illustrates the fact that the prosecution offered a significantly different response to the challenge of doing justice to unprecedented crimes than in the *Nuremberg* case. Concerning the role and representation of insiders, the case shows how it was difficult to provide their live testimony and their cooperation with the prosecution.

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<sup>88</sup> Max Merten was an attorney who worked in the Ministry of Justice until 1942 when he was called up for military service. He was put on trial and found guilty by the Greek Court in Athens for killing of Jews, killing Greeks (non-Jews), expropriation of Jewish property, expulsion of Jews to Poland, looting specific shops and homes.<sup>88</sup> Although the court found Merten guilty and sentenced with 25 years in prison, he was set free in 1959 when the Greece Government granted amnesty to all war criminals. More about this trial see: “The trial of Max Merten,” Charging Mirrors of Time and Place, <https://sites.google.com/site/geokerk/thetrialofmaxmerteninthechangingmirrorsoftimeandplace>, accessed on May 6 2016.

<sup>89</sup> “The testimony of Max Merten,” The Nizkor Project, [http://www.nizkor.org/hweb/people/e/eichmann-adolf/transcripts/Testimony-Abroad/Max\\_Merten-01.html](http://www.nizkor.org/hweb/people/e/eichmann-adolf/transcripts/Testimony-Abroad/Max_Merten-01.html), accessed on May 30, 216.

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*



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This brief analysis on *Nuremberg* and *Eichmann* witness deployment traces the different experiences of these cases in the sense of using insiders as witnesses. While in *Nuremberg*, due to the specific circumstances insiders found themselves after the war, they were willing to cooperate with the prosecution, in *Eichmann* their absence from the Jerusalem courtroom and their sometimes ambiguous statements offer an insight into the sort of problem that this group of witnesses could convey.

## Chapter II: Madame Prosecutor vs. Slobodan Milosevic: a parade of witnesses

The previous chapter examines the cases building strategy in Nuremberg and Eichmann case, with the particular focus on the testimonies from insiders. There, I show the sorts of challenges and mitigating circumstances that influenced the insider statements. The experience of these two cases regarding witness deployment and insiders provides a historical introduction in to the main subject of this study. The main aim of this chapter is to examine the witness deployment in the *Milosevic* case in order to comprehend its level of reliance on testimonies from insiders. The list that contains names of witnesses called by the prosecution and the date of their appearance in the ICTY courtroom was my main source in addition to transcripts of trial sessions. The list of witnesses and transcripts of the trial sessions are available on the official website of the Tribunal.

### 2.1. The ICTY and the Legacy of Nuremberg and Eichmann

From the very beginning of the Tribunal's work it was obvious that it relied on both the *Nuremberg* and the *Eichmann* legacy. The "Nuremberg principle" was reaffirmed in the speech of US Ambassador, Madeleine Albright, in February 1993, when she spoke on behalf of the UN Security Council resolution to create *ad hoc* war crimes tribunal for the former Yugoslavia.<sup>92</sup> Therefore, the ICTY inherited a lot of the Nuremberg's procedural and evidentiary rules. On the other hand, the legacy of the Eichmann case manifests in the fact that the prosecutions at the ICTY have embraced Eichmann strategy, "fashioning sprawling narratives based on the

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<sup>92</sup> Stephan Landsman, *Crimes of the Holocaust: The Law Confronts Hard Cases* (Pennsylvania Studies in Human Rights. Philadelphia: University of Pennsylvania Press, 2005), p. 247.

testimony of a large number of witnesses.”<sup>93</sup> Such an approach was visible already in the first Tribunal’s case against Dusko Tadic. Although Tadic was a minor functionary, the lowest ranking officer in the chain of command of Bosnian Serbs, the prosecution built a huge case calling 86 witnesses.<sup>94</sup> Over six months the court produced 7000 pages of transcripts and received 367 exhibits.<sup>95</sup> The same practice was also applied in the cases that followed the *Tadic case*.

The strong reliance on witnesses was to a certain extent the consequence of the lack of documentary evidence. In this sense Patricia Wald, a judge with the ICTY from 1999 to 2001, notes as the ICTY rapidly escalated from 1997 onward, the prosecutors soon learned that they could not depend nearly as heavily on “paper trial” to prove war crimes as their *Nuremberg* counterparts had.<sup>96</sup> In the same light Eric Stover notes that the prosecutions in the ICTY needed a substantial number of eye-witnesses to make their case, because the Balkan offenders did not keep meticulous records of their bloody deeds.<sup>97</sup> Unlike *Nuremberg* the ICTY is almost two thousand kilometers distant from the scene of the crime and without any mechanism to secure evidence and defendants. In other words, the prosecutors in ICTY realized that they would have to negotiate or even struggle with the governments of Yugoslav successors in order to provide defendants, witnesses and documents. To a large extent this difference in comparison with *Nuremberg* would mark the work of the ICTY.

Witness testimony played a pivotal role at the ICTY. However, troubles with securing the witnesses appeared from the very beginning of the Tribunal’s work. Potential witnesses refused

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<sup>93</sup> Landsman, “The Eichmann case and the invention of the witness-driven atrocity trial,” *Columbia Journal of Transnational Law* (2012): p. 108.

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

<sup>96</sup> Patricia M. Wald, “Dealing with Witnesses in War Crimes Trials: The Lesson from the Yugoslav Tribunal,” *Yale Human Rights & Development Law Journal* 5 (2002): p. 219.

<sup>97</sup> Eric Stover, *The Witnesses: War Crimes and the Promise of Justice in The Hague* (Philadelphia: University of Pennsylvania Press, 2005) p. 41.

to testify after re-suffering physical assaults influenced by recalling the painful past or being worried for life security and security of their families. The Tribunal developed a detailed program and the special unit – the Victims and Witnesses Section (VWS) – dedicated to supporting and protecting all witnesses, whether they are called by the prosecution, defense or chambers.<sup>98</sup>

The result of this strong accent on witness testimony is the fact that in almost twenty years, from the Tribunal's first trial in 1996 until mid-2015, more than 4650 witnesses testified before the ICTY.<sup>99</sup> According to the Tribunal's statistics 63% of them were invited by the prosecution, 35% by the defense and 2% were called by the chambers.<sup>100</sup> The same statistic also shows the deployment of witnesses by country of origin. Witnesses originating from Bosnia are the great majority making up 44.9%, while those from Serbia make 13.3% and from Croatia 10%.<sup>101</sup> Therefore, it seems that the Tribunal was particularly focused on the Bosnian conflict and concentrated on the sufferings and experiences of witnesses from that country.

## 2.2. Building the *Milosevic* case

The Milosevic case was a peak in the Tribunal's work and its most prominent trial. The initial indictment against Milosevic was signed on May 22, 1999, while he still was in office, two and a half weeks before the end of NATO's campaign against Serbia. The prosecution, with Louis Arbour at its head, charged Milosevic with crimes against humanity and violations of law and customs of war in Kosovo.<sup>102</sup> The indictment alleged that with four other high-ranking

<sup>98</sup> More about the Victims and Witnesses Section see on: ICTY, "About the ICTY", <http://www.icty.org/en/about/registry/witnesses>, accessed on May 1, 2016.

<sup>99</sup> For more details on this statistic see: ICTY, "About the ICTY," <http://www.icty.org/en/about/registry/witnesses/statistics>, accessed on May 1, 2016.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

<sup>102</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Indictment for case No. IT-99-37, May 22, 1999 (Kosovo), [http://www.icty.org/x/cases/slobodan\\_milosevic/ind/en/mil-ii990524e.htm](http://www.icty.org/x/cases/slobodan_milosevic/ind/en/mil-ii990524e.htm), accessed May 13, 2016; See also: Clint

political and military associates Milosevic “planned, instigated, ordered, committed or otherwise aided and abetted”<sup>103</sup> crimes in Kosovo from January 1999. The purpose of this so-called Joint Criminal Enterprise, according to the indictment, was “removing a substantial portion of the Kosovo Albanian population from Kosovo in an effort to ensure continued Serbian control over the province.”<sup>104</sup>

Arrested by the Serbian authorities two years later, Milosevic appeared in the courtroom of the Hague tribunal on July 3, 2001 for the first time. Global media interest in the case was enormous. Due to the lack of places in the press gallery of the courtroom, the majority of journalists and television teams had to watch the proceeding on a huge screen, more or less as they could have done at home using the Tribunal’s webcast.<sup>105</sup> In the ten minute long first session Milosevic pleaded that he considered the tribunal a “false tribunal and the indictment a false indictment,” so he rejected to appoint his counsel to an “illegal organ.”<sup>106</sup>

The architects of the Milosevic case were a Swiss attorney and the Tribunal’s chief prosecutor, Carla del Ponte and Geoffrey Nice, a prominent British barrister and deputy prosecutor in the Milosevic case. In her opening statement Del Ponte announced that “the proceeding upon which the Chamber embarks today is clearly the most important trial to be conducted in the Tribunal to date. Indeed, it may prove to be the most significant trial that this institution will ever undertake.” Going further in explaining the character of the trial and the strategy that the prosecution will use in order to prove the allegations in the indictment, she said

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Williamson, “Real Justice, in Time: The Initial Indictment of Milosevic” In *The Milosevic trial: an autopsy*, edited by Timothy William Waters (Oxford: Oxford University Press, 2013), p. 77-91.

<sup>103</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Indictment for case No. IT-99-37, May 22, 1999 (Kosovo), [http://www.icty.org/x/cases/slobodan\\_milosevic/ind/en/mil-ii990524e.htm](http://www.icty.org/x/cases/slobodan_milosevic/ind/en/mil-ii990524e.htm), accessed May 13, 2016.

<sup>104</sup> *Ibid.*

<sup>105</sup> Klaus Bachmann, “Framing the Trial of the Century: Influences of, and on, International Media,” In *The Milosevic trial: an autopsy*, edited by Timothy William Waters (Oxford: Oxford University Press, 2013), p. 261.

<sup>106</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Initial Appearance, July 8, 2001, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/010703IA.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/010703IA.htm), accessed May 1, 2016.

that the Chamber would receive testimony from high-ranking military figures, diplomats, government representatives, and other persons of rank and function.<sup>107</sup> Announcing the unusual and enormous complexity of the case she recognized that such persons do not commonly appear in criminal courts, and that receiving their evidence challenges equally the witnesses and the Court.<sup>108</sup>

The prosecution created a huge and complex case. The initial indictment for crimes committed in Kosovo was amended immediately upon Milošević arrived in the Tribunal, on June 29, 2001. In September another indictment against Milošević was published for crimes committed in Croatia, and in October the indictment for crimes committed in Bosnia was raised. Finally, the prosecution submitted the motion for the merger of the three indictments.

This extraordinary situation of trying a former head of state encouraged extraordinary expectations, challenges and scope of the trial. The urge to merge the three indictments in a single case is a perfect illustration of it. The joinder application of the three indictments was not approved by the Trial Chamber. The Chamber approved the joinder of Croatia and Bosnia indictment, but not Kosovo, explaining that “the Croatia and Bosnia indictments exhibit a close proximity in time, type of conflict and responsibility of the accused” and that “in contradistinction to the conflict in Kosovo, the conflicts in Croatia and Bosnia and Herzegovina did not take place in the FRY, but in neighboring States.”<sup>109</sup> However, the prosecution won on appeal. The three indictments were merged in a single case, charging Milošević with a total of 66 charges related to the three conflicts, in Croatia, Bosnia and Kosovo in the range of almost a

<sup>107</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Prosecution Opening Statement, February 12, 2002, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/020212IT.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/020212IT.htm), accessed on May 1, 2016.

<sup>108</sup> *Ibid.*

<sup>109</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Decision on Prosecution’s Motion for Joinder, December 13, 2001, [http://www.icty.org/x/cases/slobodan\\_milosevic/tdec/en/11213JD516912.htm](http://www.icty.org/x/cases/slobodan_milosevic/tdec/en/11213JD516912.htm), accessed on May 1, 2016.

decade. Milosevic was accused of genocide, crimes against humanity, grave breaches of the Geneva Conventions and violations of the law and customs of war.

Therefore, the case that the prosecution brought against Milosevic “placed him at the very center of a web of criminality.”<sup>110</sup> The novelty of this case was in the “interconnection of these many, many crimes” which were merged by the single “theory that implied a claim about the war as a whole.”<sup>111</sup> The crimes in Bosnia and Croatia were already addressed and researched in previous, separate indictments and trials before the ICTY. Now the prosecution faced a challenge to “build the case for the *de facto* lines of authority from the RS and RSK to Milosevic.”<sup>112</sup> However, the charges for crimes in Kosovo were for the first time addressed in the indictment against Milosevic.

The decision of joinder in the Milosevic indictment, and the chain of events that followed from it, led to the criminal trial of unsurpassed duration and complexity.<sup>113</sup> The enormous scope of the prosecution case was already visible before the joinder of the indictment. In the pre-trial phases, the Del Ponte said that the prosecution would call in total 228 for Kosovo, a part of whom, 174, would be asked to testify to the facts, whereas the others were experts.<sup>114</sup> She also added that the prosecution was going to produce 500 documents and expressed the expectation that the prosecution would conclude the Kosovo part of the case in about 170 trial days.<sup>115</sup> In respect of the Croatian indictment Del Ponte announced that the prosecution intend to call in total

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<sup>110</sup> Timothy William Waters, Preface to *The Milošević Trial: An Autopsy*, edited by Timothy William Waters (Oxford: Oxford University Press, 2013), xvii.

<sup>111</sup> *Ibid.*

<sup>112</sup> Timothy William Waters, “Vital Signs: The Milosevic Trial and its Context – A Foundational Primer” In *The Milosevic trial: an autopsy*, edited by Timothy William Waters (Oxford: Oxford University Press, 2013), p. 61.

<sup>113</sup> Gideon Boas, “Slow Poison: Joinder and the Death of Milosevic,” In *The Milosevic trial: an autopsy*, edited by Timothy William Waters (Oxford: Oxford University Press, 2013), p. 106.

<sup>114</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Status Conference, October 30, 2001, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/011030SC.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/011030SC.htm), accessed on May 1, 2016.

<sup>115</sup> *Ibid.*

255 witnesses of whom almost 200 would testify about the facts and 55 about the connection between Milosevic and the crimes committed.<sup>116</sup> She expected that the Prosecution case would last 170 days. For Bosnia part of the indictment the estimation of duration was about 13 months and 300 crime based witnesses.<sup>117</sup> This was the reduction from early indications by the prosecution that it would lead over 1000 witnesses in respect of the Croatia and Bosnia part of the case.<sup>118</sup> Almost a year later, in July 2002, deputy prosecutor announced that the prosecution intended to call in total 560 witnesses for the Bosnia and Croatia part of the indictment and spend 110 days for the Croatia indictment and 120 days for the Bosnia part.<sup>119</sup>

This was the announcement an extremely huge case. Although the Trial Chamber on several occasions, from the pre-trial phase of the case, intervened and ordered the Prosecution to limit its case to the reasonable scope,<sup>120</sup> the prosecution subsequently asked for extension of time and approval for calling more witnesses. At the pre-trial conference concerning Croatia and Bosnia case on July 25, 2002, the Chamber ordered an extension of that time to May 16, 2003. Finally, the Trial Chamber closed the prosecution case on February 25, 2004.<sup>121</sup> In the range of two years the prosecution called 296 witnesses, with another 50 in written form.

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<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*

<sup>118</sup> Boas, *The Milosevic Trial*. p. 136.

<sup>119</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, July 25, 2002,

[http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/020725ME.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/020725ME.htm), accessed May 1, 2016.

<sup>120</sup> See: ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Pre-Trial Conference, January 9, 2002,

[http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/020109IT.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/020109IT.htm), accessed on May 1, 2016; ICTY,

*Prosecutor v. Slobodan Milosevic*, IT-02-54, April 10, 2002,

[http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/020410IT.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/020410IT.htm), accessed on May 1, 2016; ICTY,

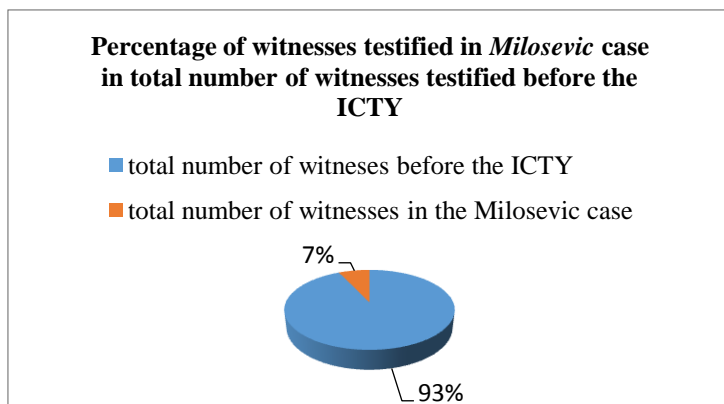
*Prosecutor v. Slobodan Milosevic*, IT-02-54, July 25, 2002,

[http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/020725ME.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/020725ME.htm), accessed on May 1, 2016.

<sup>121</sup> *Prosecutor v. Slobodan Milosevic*, IT-02-54, Decision on Notification of the Completion of Prosecution Case and Motion for the Admission of Evidence in Written Form, February, 25, 2004,

[http://www.icty.org/x/cases/slobodan\\_milosevic/tdec/en/040225.htm](http://www.icty.org/x/cases/slobodan_milosevic/tdec/en/040225.htm), accessed on May 1, 2016.





**Figure 2:** Percentage of witnesses testified in the *Milosevic* case in the total number of witnesses testified before the ICTY

Regarding the number of witnesses that testified in this case it is certainly among the cases with the highest number of witnesses. Over four years, from February 12, 2002 to

March 14, 2006, the Trial chamber heard in total the testimonies of 352

witnesses, called by the prosecution, defense and the Trial chamber. That makes 7% of the total number of witnesses who testified before the ICTY [Figure 2].<sup>122</sup> Considering the fact that *Milosevic* was only one of 161 individuals accused by the ICTY, it further highlights the impression of the unusual scope of the case.

Regarding the material produced until the end of the case, there were 49,191 pages of transcripts. The prosecution had introduced 930 exhibits amounting to 85,526 pages as well as 117 videos.<sup>123</sup> *Milosevic* tendered 328 exhibits at 9,000 pages and introduced 50 video tapes.<sup>124</sup> Consequently, the *Milosevic* case was many times larger than all other cases before the ICTY.<sup>125</sup> This grand project of the international criminal justice, and the first case of prosecuting a head of state finished without the final verdict. The case was a precedent and in many ways didactic for complex international criminal trials. Since the defense case remained unfinished, I will deal here only with witnesses called by the prosecution.

<sup>122</sup> For the list with all witnesses see: The list of witnesses for the Kosovo part of the indictment see: ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, [http://www.icty.org/x/cases/slobodan\\_milosevic/pros/en/Kosovophase020212.htm](http://www.icty.org/x/cases/slobodan_milosevic/pros/en/Kosovophase020212.htm), accessed on May 1, 2016; The list of witnesses for Bosnia and Croatia phases of the indictment see: *Prosecutor v. Slobodan Milosevic*, IT-02-54, [http://www.icty.org/x/cases/slobodan\\_milosevic/pros/en/CroatiaBosniaphase020926.htm](http://www.icty.org/x/cases/slobodan_milosevic/pros/en/CroatiaBosniaphase020926.htm), accessed on May 1, 2016.

<sup>123</sup> Boas, *The Milosevic Trial*. p. 151.

<sup>124</sup> *Ibid*, p. 155.

<sup>125</sup> *Ibid*, p. 149.

According to my analysis in the Milosevic case, 83 witnesses, or 22% of the total number of witnesses called by the prosecution, appeared under pseudonyms, uncovering their identity to public. Eleven of them testified about Kosovo part of the indictment. The rest of the 72 witnesses testified about Bosnia and Croatia. Judith Armatta notes that in the Croatia phase of the case more than half the witnesses testified under full or partial protective measures. This reflects the danger of intimidation and fear in a region sometimes compared to gangland Chicago in the 1930s.<sup>126</sup> This brief look on this new category, unknown to ICTY predecessors in Nuremberg and Jerusalem, further confirms limitation, weaknesses and vulnerability of witness-driven big atrocity cases. Onward, my focus will be exclusively on those witnesses who testified without the protection of identity.

### 2.3. Witness deployment in the Milosevic case

According the classification offered by Eric Stover the Chamber in the ICTY may hear testimony from four types of witnesses: the so-called *fact-witnesses*, usually UN peace-keepers or monitors; *expert witnesses* usually forensic scientists, who present or comment on physical evidence of alleged crimes; *policy witnesses*, which include high-level government insiders and internationals who have met with the accused; and *general witnesses*, those who witnessed or suffered an alleged war crime.<sup>127</sup>

The prosecution began its case by presenting the crime based evidences regarding Kosovo and then continued with evidence against Milosevic. During this of part of the prosecution case,

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<sup>126</sup>Judith Armatta. *Twilight of Impunity. The War Crimes Trial of Slobodan Milosevic* (Durham and London: Duke University Press, 2010), p. 171.

<sup>127</sup>Stover, *Witness*, p.47.

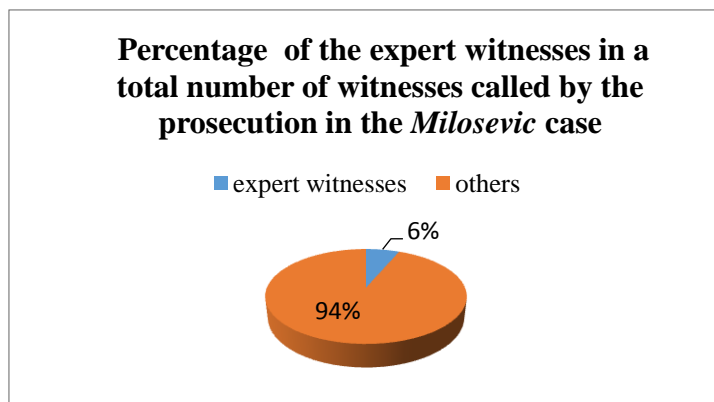
which lasted for six months, the court heard testimonies from 124 witnesses.<sup>128</sup> My analysis of the list of witnesses in the Milosevic case shows that twelve of them, or in total 10%, testified using pseudonym. Twenty-three, or in total 18% of them originated from beyond the Balkans. They were the representatives of the international community, diplomats and foreign journalists. The majority of the others were Kosovar Albanians, eye-witnesses and survivors.

The prosecution continued its case by presenting crimes in Croatia and finally crimes in Bosnia. The rest of the 174 witnesses invited by the prosecution testified about offenses in Croatia and Bosnia in the range of a year and a half.<sup>129</sup> My analysis shows that among them 39% or 71 witnesses, testified under a pseudonym. Among others, 20% or 35 witnesses were representatives of the international community, diplomats or foreign journalists.

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<sup>128</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, [http://www.icty.org/x/cases/slobodan\\_milosevic/pros/en/Kosovophase020212.htm](http://www.icty.org/x/cases/slobodan_milosevic/pros/en/Kosovophase020212.htm), accessed on May 1, 2016.

<sup>129</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, [http://www.icty.org/x/cases/slobodan\\_milosevic/pros/en/CroatiaBosniaphase020926.htm](http://www.icty.org/x/cases/slobodan_milosevic/pros/en/CroatiaBosniaphase020926.htm), accessed on May 1, 2016.



**Figure 3:** Percentage of the experts witnesses in the total number of witnesses called by the prosecution in the *Milosevic* case

In the *Milosevic* case, the prosecution called nineteen expert witnesses or 6% in the total number of witnesses called by the prosecution [Figure 3]. They testified based on 19

expert reports they prepared for the purpose of this trial. Among these

witnesses there were six military, police and ballistic experts. Also there were three experts for mass grave exhumations and forensic medicine experts, and three experts in demography. Two of them were historians and one was an expert on genocide studies. The prosecution also needed professional help of one financial expert, one expert on media and communication, one expert on cultural heritage, and one legal expert. Among these experts, three of them, were also investigators in the Office of the prosecution.<sup>130</sup> It must also be noted that only three of all these experts invited by the prosecution were from Yugoslav successors while others were mostly from Western European countries and the USA.

The most visible group of witnesses in the *Milosevic* case were survivors and victims of the three conflicts. Their testimonies were essential for establishing the nature of underlying crimes although they did little to establish Milosevic's relationship to crimes.<sup>131</sup> Regarding the 'Kosovo' part of the indictment the court heard testimonies from 82 Kosovar Albanians, almost all survivors. That makes 66% of the witnesses in this part of the indictment or 22% of the total number of witnesses called by the prosecution. Although the Chamber limited the prosecution to

<sup>130</sup> These are so-called 'in-house' witnesses (meaning investigators and others who can present documented investigation on the particular aspect of the indictment). See: Boas, *The Milosevic Trial*, p. 137, or Waters, "Vital Signs" p. 64

<sup>131</sup> Waters, "Vital Signs" p. 61.

four witnesses for each municipality, this was not fully respected. For the Orahovac municipality the prosecution called eleven witnesses, for Srbica seven, for Suva Reka eight, for Djakovica eleven.<sup>132</sup>

While the prosecution in the ‘Kosovo’ part of the indictment significantly relied on testimony of survivors and victims, the ‘Croatia’ part of the indictment was opened with testimony from several insiders, two journalists and high-level international and domestic politicians. The testimonies of survivors and victims came in the later phase. Among the first of them were at least two of Dubrovnik’s defenders, Dubrovnik’s art historian, and the director of Vukovar hospital in 1991. Then several months later the prosecution called witnesses who provided testimonies on several regions of Croatia and who testified about arming, replacements, and murders of Croats in late 1991. Bosnia part of the indictment was opened by testimony of a survivor, a President of the Association of Detainees. Of those witnesses under full name, without protection, at least two Bosnjaks testified about situation in Bratunac, three about Brcko, two about Foca.

A group of peace-keepers and observers makes a significant part of the witnesses called by the prosecution. This group of so-called *fact-witnesses* contains seventeen individuals, members of international organizations such as the European Community Monitoring Mission (ECMM), the United Nations Protection Force (UNPROFOR), the Kosovo Diplomatic Observer Mission (KDOM) and the Organization for Security and Cooperation in Europe (OSCE). For the ‘Kosovo’ part of the indictment the prosecution called seven observers, mostly military officers from the UK and the USA. The observers provided the information regarding the Kosovo conflict from June 1998, when KDOM was formed until the eve of NATO’s campaign against Serbia,

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<sup>132</sup> Boas, *The Milosevic Trial*. p. 144.

when on March 20, 1999 the members of the mission left Kosovo. Others testified about so called “safe areas” and areas under UN protection in Croatia and Bosnia, about their reports of ethnic cleansing and concentration camps.

Very closed to this group of witnesses is a group of war correspondents. The prosecutions in the ICTY applied a new practice of inviting war correspondence as witnesses. From the very beginning of the tribunal’s work they were invited by the prosecution to testify in cases against the lowest-ranking officer, so called “smallest fish,” like it was the case against Dusko Tadic case, as well as in the largest, the *Milosevic* case. The prosecutions in the ICTY invited a total of nineteen war correspondents. Some of them testified in several cases, so the court heard thirty-six war correspondent testimonies.<sup>133</sup>

In the *Milosevic* case the prosecution continued this practice. It called a total of seven war correspondents for all of the three parts of the indictment. Regarding Kosovo, only a former BBC journalist, Jacky Rowland, testified. Dejan Anastasijevic, the correspondent of several foreign media including also Belgrade’s Radio B92, Jovan Dulovic of Belgrade’s *Politika Ekspres*, Nenad Zafirovic, of Radio B92 in Belgrade and Michel Riviere correspondent for ARTE testified about both Bosnia and Croatia, Paul Davies, ITN reporter testified about Croatia and Sead Omeragic, a reporter for *Slobodna Bosna*, testified about Bosnia.

The first correspondents that the prosecution called was Jacky Rowland, who testified about her two visits to the Dubrava prison in Kosovo on May 21 and 24, 1999. Although she was not the first correspondent-witness that testified in the ICTY courtroom, her appearance raised

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<sup>133</sup> Douwe Leander Walhain, “Witness to Witness. War correspondents and the International Criminal Tribunal for the former Yugoslavia” (MA thesis University of Amsterdam), p. 9.

dust within the journalistic community.<sup>134</sup> The essence of the critique was that the appearance of the correspondent as a witness before the international war crime tribunals is a risk for journalists' credibility, damages hard-won reputations and may even put correspondents' lives in danger.<sup>135</sup>

This critique, in the sense of danger for correspondents' lives, expressed its validity with the appearance of Belgrade journalists, firstly Dejan Anastasijevic and later Jovan Dulovic, in the courtroom as witnesses. Both of them initially decided to appear by using pseudonyms, but at the end appeared in the courtroom without the protection.<sup>136</sup> However, due to anonymous threats that his family received, on the second day of Dulovic's testimony, the Trial Chamber "ruled to hear the remaining parts of the witness's testimony in closed session."<sup>137</sup> The transcript of his testimony became publicly available several months later.<sup>138</sup>

The war correspondents could be at the same time 'crime based' witnesses, providing information from below, regarding a crime scene, but also insiders, supplying the court with the knowledge from the interior of the state system. Jovan Dulovic is exactly this case. During the 1990s he worked for the state-controlled *Politika Ekspres* newspaper and therefore had access to the war scene and police and military structures. At the time of his appearance in the ICTY he worked for *Vreme*, an independent newsweekly which "attracted the best Serbian's journalists

<sup>134</sup> See: Marlise Simons, "Reporter Testifies in Milosevic Case, Fueling Debate on Witnesses," *New York Times*, August 29, 2002, <http://www.nytimes.com/2002/08/29/world/reporter-testifies-in-milosevic-case-fueling-debate-on-witnesses.html>, accessed on May 5, 2016; Julia Day, "BBC journalists 'compromised' by appearing as witnesses," *Guardian*, September 17, 2002, <http://www.theguardian.com/media/2002/sep/17/broadcasting.bbc>, accessed on May 5, 2016.

<sup>135</sup> Julia Day, "BBC journalists 'compromised' by appearing as witnesses," *Guardian*, September 17, 2002, <http://www.theguardian.com/media/2002/sep/17/broadcasting.bbc>, accessed on May 5, 2016.

<sup>136</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, [http://www.icty.org/x/cases/slobodan\\_milosevic/pros/en/CroatiaBosniaphase020926.htm](http://www.icty.org/x/cases/slobodan_milosevic/pros/en/CroatiaBosniaphase020926.htm), accessed on May 1, 2016.

<sup>137</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Order Concerning the release of Closed Session Testimony of the Witness Jovan Dulovic, [http://www.icty.org/x/cases/slobodan\\_milosevic/tord/en/030227.htm](http://www.icty.org/x/cases/slobodan_milosevic/tord/en/030227.htm), accessed on May 1, 2016.

<sup>138</sup> *Ibid.*

who were unwilling to work for the stat-run media.”<sup>139</sup> In the ICTY, Dulovic testified about his presence in Vukovar, soon after the capture of the town by the JNA on November 20, 1991. He provided the court with insight into what he witnessed during that day, when patients of the local hospital, wounded men, were taken from the hospital, and whose bodies later were found in the mass grave. Working as a reporter of the pro-state newspaper, and having a close connection with units in the city, Dulovic had certain ‘insider’ knowledge and was able to provide respective information about military and paramilitary units that were present in the city, their leaders and their mutual relations.

The prosecution in the Milosevic case significantly relied on testimonies of foreign diplomats, generals, politicians, who met with Milosevic during the 1990s.<sup>140</sup> This group of witnesses contains names such as Peter Galbraith, former US ambassador in Croatia, Herbert Okun, deputy to the UN secretary general’s envoy to Yugoslavia, the British General Rupert Smith, a commander of the UNPROFOR from the beginning of 1995 and a deputy supreme commander of NATO from 1998 to 2002, US General Wesley Clark, a commander of NATO in the period 1997-2000, German General Klaus Naumann, a chairman of the NATO military committee from 1996 to 1999, Wolfgang Petritsch, Austrian Ambassador in Belgrade from 1997 to July 1999 and the EU special envoy to Kosovo from October 1998 to June 1999, Knut Vollebaek, Norwegian Minister of Foreign Affairs 1997-2000 and chairman of the OSCE 1999.<sup>141</sup>

<sup>139</sup> Armatta, *Twilight of Impunity*, p. 191.

<sup>140</sup> Waters, “Vital Signs,” p. 64.

<sup>141</sup> ICTY, “High-level Witnesses from the Milosevic Trial,” <http://www.icty.org/en/content/high-level-witnesses-milo%C5%A1evi%C4%87-trial>, accessed May 13, 2016.



Their testimonies provided the court with insight into Milosevic's "real level of control and power", as well as his awareness about the violence and crimes.<sup>142</sup> Interestingly, the prosecution almost exclusively relied on the testimonies of those individual who originated from some of the countries that "had so recently warred against Serbia, played directly into Milosevic's preferred framing of the trial as a continuation of Western and NATO aggression against victim Serbs."<sup>143</sup> In this sense the testimony of US General Wesley Clark and the British General Rupert Smith could serve as prominent examples. Due to their contact with Milosevic during the summer of 1995, both generals in their statements indicated Milosevic's awareness of the situation in Srebrenica in July 1995.<sup>144</sup> However, Clark and Smith were high-ranking NATO officers at the time of NATO's 1999 campaign against Serbia and their appearance in the ICTY courtroom could be perceived as the extension of their struggle against Milosevic.<sup>145</sup>

Besides international policy-makers, this group also includes "domestic" high-level political figures such as the leader of Kosovo Albanians Ibrahim Rugova, the President of Croatia Stjepan Mesic, the President of Slovenia, Milan Kucan, the last Yugoslav Prime Minister, Ante Markovic, the Croatian Prime Minister, Hrvoje Sarinic. These individuals were invited by the prosecution in order to testify about their meetings with the accused during the 1990s, about Milosevic's plans for "Great Serbia," or over his role in the breakup of Yugoslavia. All of them were eager to publicly confront Milosevic in order to explain to their constituency the ways Milosevic tried to abuse, manipulate or marginalized them. In this sense, Frances Trix notes how

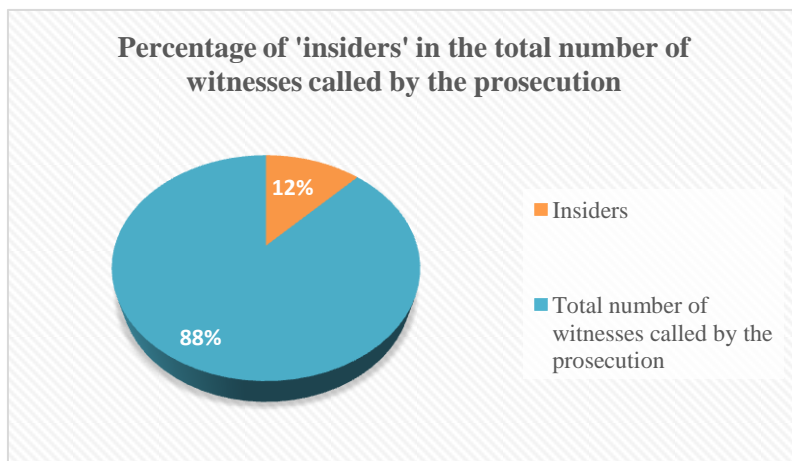
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<sup>142</sup> Waters, "Vital Signs," p. 64.

<sup>143</sup> *Ibid.*

<sup>144</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Rupert Smith, October 9 2003, p.27320, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/031009IT.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/031009IT.htm), accessed May 1, 2016; ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Wesley Clark, p. 30373, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/031215ED.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/031215ED.htm), accessed May 1, 2016; See also Waters, "Vital Signs," p. 64.

<sup>145</sup> Waters, "Vital Signs" p. 64.



**Figure 4:** Percentage of 'insiders' in total number of witnesses called by the prosecution

Rugova “framed his testimony as a contribution to the national project of Kosovo’s independence.”<sup>146</sup> In other words, these high-level political figures used the appearance in the Hague courtroom to justify and legitimize their own political

positions. The ICTY’s courtroom became a stage for sending powerful political messages to audiences at home and beyond, used not just by Milosevic, but also by his opponents, foreign and domestic high-ranking political figures. In a symbolic sense, for most of them this was a final battle with Milosevic.

In order to establish connection between Milosevic and crimes on the ground, the prosecution had to rely on either on documents or on testimonies from insiders. My analysis of witnesses called by the prosecution shows that 40 individuals from political, military or police structures of the Milosevic’s regime [See: Appendix 3]. While for the Kosovo part of the indictment the prosecution called only six insiders, for Croatia and Bosnia part it invited six times more insiders in order to prove the allegations from the indictment. Among these 40 insiders, 25 or in total 38%, testified by using pseudonym. However, initially at least nine of them intended to use pseudonym. The group of insiders contains five high-level political, military and police officers, who were close associates of the accused during the 1990s. Analysis of their testimony will be discussed in next two chapters.

<sup>146</sup> Frances Trix, “Underwhelmed. Kosovo Albanians’ Reaction to the Milosevic Trial,” In *The Milosevic trial: an autopsy*, edited by Timothy William Waters (Oxford: Oxford University Press, 2013), p. 238.



### Chapter III: From full denial to full recognition

The gap that Nuremberg created among the Nazi elite, those who were in the dock and those of their former corroborators and allies who testified against them, illustrates a sort of burden that insider's testimony in high-profile war crimes trials conveys. Not so visible, but still remarkable, the insider written testimonies in *Eichmann* confirms weight of this role and reluctance and unwillingness of individuals to accept it. The problem of providing insiders can be comprehended very well in a comparison between *Nuremberg* and *Eichmann*. Previous chapter shows that at least 40 witnesses, or 12% of the total number of witnesses called by the prosecution in the *Milosevic* case, were insiders and that some parts of the indictment were more dependent on the testimony from insiders than others. Five of them were high-level military and political officials, Milosevic's close allies during the 1990s. Therefore, this and the next chapter will deal with their testimonies. In this part I will provide two, quite opposite, examples of testimonies from insiders. In the scale from full denial to full recognition, from blind loyalty to repentance, from complete avoidance of responsibility to its acceptance and suicide these two examples are endpoints.

In *Milosevic* the prosecution had the difficult task to provide high-profile insiders. Therefore, the prosecution delayed submission of the final list of witnesses. In this light, deputy prosecutor, Geoffrey Nice, asked the Trial Chamber not to make "any decision on the number of insiders available to be called for several reasons, but principally, I think these two: First, it's never very easy to know in advance whether an insider is actually going to be available to us in due course. Second, if in the event particular insiders do become available, they may save an

enormous amount of other evidence, and so in the balancing exercise, one insider may turn out to be worth several other witnesses, and there's great economy in being allowed to call them.”<sup>147</sup>

Unlike Germany that was completely defeated after the Second World War and its elite held in Allied prison, Milosevic's elite after his fall in October 2000 was in Serbia, far away from the Hague. Some of them still were in office, until the end of the year. The ICTY had to negotiate in many cases in order to obtain testimonies from insiders. “One crucial high-level witness,” as Del Ponte labeled Zoran Lilic, appeared in the courtroom only when the government in Belgrade granted him waiver.<sup>148</sup> Some of them voluntarily contacted the office of the prosecution once they realized they were mentioned in one of the indictments against Milosevic as members of the joint criminal enterprise. Among them was General Aleksandar Vasiljevic. In the ICTY courtroom they got the opportunity to tell what happened under Milosevic's rule. However, some of the insiders although they appeared in the courtroom, showed that reluctance to cooperate fully with the prosecution.

While insiders usually were discouraged at home to go to the *Hague* and testify against Milosevic, in the courtroom they could also expect unpleasant welcome from Milosevic. Del Ponte noted how talented Milosevic was in attacking victim-witnesses.<sup>149</sup> However, concerning insiders he was relentless in his attempts to discredit witnesses using all his personal power and tools to “bring his former loyalist back into the fold.”<sup>150</sup> His cross-examinations of insiders usually resembled a personal hearing during which it was readily apparent how distant or close each of these individuals was to Milosevic. Milosevic's cruel and aggressive cross-examination achieved its peak when the former *Montenegrin* Minister of Foreign Affairs during 1991 and

<sup>147</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Pre-Trial Conference, July 25, 2002, p. 8620.

<sup>148</sup> Del Ponte, *Madame Prosecutor*, p. 149, 172, 173.

<sup>149</sup> Del Ponte, “Difficulties for the participants. Indictment Correct, Trial Impossible,” p. 145.

<sup>150</sup> Armatta, *Twilight of Impunity*, p. 105.

1992, Nikola Samardzic, testified. During one and a half days of cross-examination Milosevic tried to discredit this witness. At the end, when the main judge reminded Milosevic that he had time for only one question, the court heard a strongly unpleasant comment by the accused:

**Judge May:** Mr. Milosevic, you have one final question, because your time is up.

**Accused Milosevic:** [Interpretation] Well, I wanted to ask him about these few documents that he interpreted in a freakish way, but unfortunately, you won't let me.

Mr. Samardzic, do you know the Serbian saying that people who lie have short legs?

**Judge May:** You needn't bother to answer that.<sup>151</sup>

For the witness who was diabetic and whose legs were amputated, this must have been a horrible experience.

### 3.1. Denial as a weapon of defense

The first among the high-level insiders was Radomir Markovic, the head of state security from 1998 to 2000, a period that mostly overlapped with the Kosovo part of the indictment. Like the accused Milosevic, Markovic was the 'victim' of the new democratic government in Belgrade. Six months after Milosevic's fall on October 5, 2000, Markovic was arrested and charged with committing the criminal act of abuse of official position by organizing the assassination attempt of an opposition leader in 1999.

The ICTY prosecution called Markovic to testify regarding the statement that he gave to interrogators of the State Security Department Center in the premises of the Central Prison in Belgrade on June 2, 2001.<sup>152</sup> In the statement he testified "regarding the latest events and headlines in the press about the refrigerated lorry containing the bodies of Albanian civilians and the open suspicion that during the war in Kosovo and Metohija there were systematic and in

<sup>151</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Nikola Samardzic, October 10, 2002, p. 11401, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/021010ED.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/021010ED.htm), accessed on May 30, 2016.

<sup>152</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Prosecution Exhibit P283a.

principle very well organized attempts to conceal the extent of the crimes and remove traces of it.”<sup>153</sup> Markovic described in detail the working meeting held in spring 1999 “in the library on the ground floor of the *Beli Dvor* [White Palace]” with Milosevic and the minister of interior and one other high-level police officer.<sup>154</sup> According to Markovic, the meeting was “devoted to the issues in Kosovo” and “at its very end” about “the problem of removing Albanian bodies.”<sup>155</sup> Further on he explained who was appointed to “implement this task” and involved in this “morbid tale of later disinterment and removal of the bodies.”<sup>156</sup> In other words, Markovic in his statement provided a link between crimes in Kosovo and the removal of their traces with Milosevic, his minister of interior and other senior police staff.

In the ICTY’s courtroom Markovic spoke about “this task” significantly differently. Asked by the deputy prosecutor, Nice, to comment on this statement he rejected to accept the truthfulness of this statement.

**Deputy prosecutor Nice:** Mr. Markovic, this is a statement, I think, that you made in respect of this meeting; is that correct?

**Witness Markovic:** Yes. I already spoke about this statement to the investigators of The Hague Tribunal, and I said that this statement does not fully correspond to what I had said. Rather, this is a free interpretation by the officer of the state security sector who conducted an interview with me as we were trying, together, to come to certain facts as to what had happened.<sup>157</sup>

Further on, the witness explained that he already told the ICTY investigator that this was a “liberal interpretation of the employee, of the officer who made this report.”<sup>158</sup> According to Markovic, that officer “emphasized some things that I did not speak about.”<sup>159</sup> Interestingly the

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<sup>153</sup> *Ibid.*

<sup>154</sup> *Ibid.*

<sup>155</sup> *Ibid.*

<sup>156</sup> *Ibid.*

<sup>157</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Radomir Markovic, July 26, 2002, p. 8721. [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/020726IT.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/020726IT.htm), accessed on May 30, 2016.

<sup>158</sup> *Ibid.*, p. 8725.

<sup>159</sup> *Ibid.*

prosecution obviously was aware of Markovic's position regarding the statement but it still called him to testify.

Milosevic started his cross-examination of the witness as if it was a pleasure, in a kindly and friendly tone. He addressed Markovic using his first name and using the direct form. His first question began with a description of the witness as "the most informed man in Serbia." What followed was a series of questions, some of them more or less suggestive. The witness answered in a respectful manner, in no way opposing Milosevic.

Markovic did not distance himself from Milosevic personally or Milosevic's policy as such. The comprehension between two of them was total. Using a 'we' form, the accused sent a powerful suggestion to the witness that both of them were participants and still were on the same side.

**Accused Milosevic:** To the best of your knowledge, although you, Radomir, were not involved in politics ever in your life, but to the best of your knowledge, in view of the position that you held, do you know that we did everything to find an agreement, to reach an agreement, so that the dispute in Kosovo would be resolved by peaceful means and that all of you were instructed to take particular care of the security and safety of Ibrahim Rugova and others because there were showdowns between them too and even their lives could have been in danger? Is that correct?

**Witness Markovic:** Yes. The representatives of the government of Serbia I think went at least 14 times to negotiate with the Albanians in Kosovo, and they did not come there, and I know that President Milutinovic went at least twice with regard to that particular matter, to Kosovo... And the members of our service even took care of them in Kosovo. I heard that he denied that, but this is correct.<sup>160</sup>

Complete denying or refusal to accept any sort of crimes that were committed by police forces in Kosovo during the NATO campaign was Markovic's way of supporting Milosevic. As well as the accused, the witness denied any order, plan, decision or suggestion that Albanians

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<sup>160</sup>*Ibid*, p. 8735.



from Kosovo have to be expelled. In the same manner he negated that he had ever heard for the order or plan for killing ethnic Albanians in Kosovo.

**Accused Milosevic:** Since heads of state security services of every country are usually the best-informed people in that country, and especially in view of all those reports, did you ever get any kind of report or have you ever heard of an order to forcibly expel Albanians from Kosovo?

**Witness Markovic:** I never got such a report, nor I... No, I never heard of such an order, nor have I seen such an order, nor was it contained in the reports I received. Nobody, therefore, ever ordered for Albanians from Kosovo to be expelled.

**Accused Milosevic:** And did you hear anyone else, either from the police or the army, ordering, inciting, planning, or suggesting in any way that civilians, ethnic Albanians in Kosovo Metohija, should be killed, discriminated against, persecuted, or anything like that?

**Witness Markovic:** No, I've never heard anything of the sort. I said a moment ago already that our task was to preserve lives and the security of civilians in Kosovo, both Albanian and Serbian.<sup>161</sup>

In the same manner the accused continued the examination of this witness regarding many other issues like the existence and relations between paramilitary units and state structures, or alleged organized financial machinations with the purpose of buying military equipment and weapons for the war in Kosovo. The witness continued answering in the same way completely supporting Milosevic's case. Markovic left the impression of blind loyalty to Milosevic during the cross-examination. The reasons for this could be various. Fear of being indicted by the ICTY could be one of them. Most probably his testimony should be understood in the triangle among new democratic government in Serbia, the Tribunal and Milosevic.

At first glance this Markovic was one of those "hostile" witnesses that Del Ponte mentioned. However, about a month and the half later the prosecution invited the official of the State Security Department Center, Zoran Stijovic, who interviewed Markovic on June 2, 2001 and the recording clerk, Olivera Antonic-Simic. Both of them provided details regarding the

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<sup>161</sup> *Ibid.*

interview with Markovic and the procedure of recording his statement. Stijovic explained that “Markovic never complained about the course” of Stijovic’s interview, that it was conducted in a “highly proper... professional manner” and that they “discussed the topics that he [Markovic] wanted to discuss.”<sup>162</sup> Further on, the prosecutor asked him about his alleged “liberal interpretation” of Markovic’s statement.

**Deputy prosecutor Nice:** Any question of your putting words into his mouth or providing text for him to sign which he did so when it hadn't come from him?

**Witness Stojovic:** No. No. That would be -- that wouldn't at all be serious. A man with so much experience and years of work in the crime service. I've only been working there two years. He's devoted his entire life to the service. He is a serious, professional man. So it is quite out of the question that I could have done anything like that and supplanted something that he didn't want.<sup>163</sup>

A few days later Antonic-Simic accepted and agreed with Stijovic’s explanation regarding Markovic’s interview. Replying to a question of the deputy prosecutor Nice whether Markovic was in “any way tricked into signing statements or that statements were presented to him in a complete form for signature,” Antonic Simic said that this was not done in her presence.<sup>164</sup>

In this case the prosecution made a tactic that seems to be fruitful. Although aware that Markovic was going to negate the statement previously given in Belgrade, the prosecution called him and made a use of it. This extreme situation of ‘hostile’ witness, fully loyal to his former boss, was utilized for achieving important proof.

<sup>162</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Zoran Stijovic, September 5, 2002, p. 9679, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/020905ED.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/020905ED.htm), accessed on May 30, 2016.

<sup>163</sup> *Ibid.*

<sup>164</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Olivera Antonic-Simic, September 9, 2002, pp. 9932, 9933, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/020909IT.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/020909IT.htm), accessed on May 30, 2016.

### 3.2. Witness penitent vs. former head of state

Another, in many ways unique case, completely opposite to Markovic's, was the testimony of Milan Babic. During the first half of the 1990s Babic was the leader of Serbs of Croatia. He held a number of high-level political positions in the Croatian Serb entity, the so-called Republic of Serbian Krajina (Republika Srpska Krajina), including the presidency. After the Croatian military's Operation Storm that brought an end to the Croatian Serb entity and many Serbs fled from Croatia, Babic found shelter in Serbia. In September 2001, when the prosecution of the ICTY published the initial indictment 'Croatia,' Milan Babic was mentioned in it as one of the members of a joint criminal enterprise who, along with Milosevic and others, "organized and administered the actions of the joint criminal enterprise in the SAO Krajina."<sup>165</sup> On November 18, 2002, Babic appeared in the ICTY courtroom as a protected witness, under the *pseudonym C-061*. Babic, as a witness of the prosecution, testified for ten days.

Babic was a key insider. He provided testimony that confirmed the allegations from the indictment regarding Milosevic's role in provoking the conflict in Croatia. Moreover, he corroborated allegations that Croatian Serbs were financed by Belgrade from 1991 to 1995.<sup>166</sup> His explanation regarding Greater Serbia as Milosevic's concept, the idea was that all Serbs "had a right to live in the same state."<sup>167</sup> Babic depicted Milosevic as someone who was "at the top of the command structures of both the JNA and the parallel structures in Krajina."<sup>168</sup>

<sup>165</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Indictment for case No. IT-01-50-I, September 27, 2001(Croatia), [http://www.icty.org/x/cases/slobodan\\_milosevic/ind/en/ind\\_cro010927.pdf](http://www.icty.org/x/cases/slobodan_milosevic/ind/en/ind_cro010927.pdf), accessed on May 26, 2016.

<sup>166</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Milan Babic, November 19, 2002, p. 12970, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/021119ED.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/021119ED.htm), accessed on May 26, 2016.

<sup>167</sup> *Ibid*, p. 13013, 13014.

<sup>168</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Milan Babic, November 20, 2002, p. 13130, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/021120ED.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/021120ED.htm), accessed on May 26, 2016.

Throughout his interrogation, as well as, during examination and cross-examination, Babic insisted that he was misused by Milosevic. Concerning his own political role and attitudes in the relevant period and connections with Milosevic, Babic tried to distance himself as much as possible from Milosevic's political program. In this light, he was not willing to accept that in the early 1990s he argued for separation of Croatian Serbs from Croatia. Rather he explained that he and the government of Krajina "proclaimed ourselves independent, and we stopped being a part of Yugoslavia." Moreover, Babic tried to represent himself as a victim of Milosevic's dictatorship.<sup>169</sup> He persisted with his claim that Milosevic provoked Croatian Serbs into the wrong direction.

**Witness Babic:** ... I believe that I did get support of the public opinion and the voters in Krajina for my positions, and I do not think that these were extremist positions. But from -- in retrospect, I think it was ethnoegoistic and that is why I look upon the period differently today, and with my present-day wisdom and from this distance, I would certainly not advocate the policy that you drew us into and that is a policy of national divisions, separatism, rifts, and interethnic conflicts.

**Accused Milosevic:** Yes. I drew you all into that during my holidays in Kupari, when all this was going on; is that right?

**Judge May:** I don't think we're going to get much further with an exchange of that sort. No need to reply. Yes, Mr. Milosevic. Your next question.<sup>170</sup>

Milosevic's cross-examination of Babic was more than cruel and aggressive. From the beginning it seemed that he had well prepared tactic. He started his cross-examination of Babic with several audio excerpts of the interviews that the witness had with the prosecution during the investigation phases. With quite an enthusiastic manner, Milosevic played excerpt one after another. After the last excerpt ended, Milosevic, started his cross-examination, referring to this part of the tape:

<sup>169</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Milan Babic, December 2, 2002, p. 13624, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/021202ED.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/021202ED.htm), accessed on May 26, 2016.

<sup>170</sup> *Ibid*, p. 13671.

**Prosecutor Uertz-Retzlaff:** Mr. Babic, when I read this letter, there is rhetoric in that which is extremely radical, especially in relation to the Croats that are mentioned here as the 'Croatian neo-Nazi aggressors.' And you also speak here of the Vance Plan being realised as the plan, actually allowing the plan of genocide of the Serbs, that you contest that the Krajina is part of Croatia, that you do not want to be disarmed. It sounds from this letter that you are much more radical than Mr. Milosevic himself.

**Witness Babic:** Well, but these were neither my feelings nor my thoughts.

**Prosecutor Uertz-Retzlaff:** But you signed it?

**Witness Babic:** I was thinking about concrete matters, about the security aspects. Well, the tension and the pressure, a moment of lack of attention. I wasn't more radical. I wasn't more radical than Milosevic...<sup>171</sup>

The purpose of his questions regarding the tape was to show that even the prosecution challenged the witness during the interview that he was saying was in complete contrast with what he had done.<sup>172</sup> Addressing the witness, with a sort of disdain, by using "Gospodine Kroacija 61" (Mr Croatia 61), Milosevic wanted to show that even the prosecutor considered Babic's testimony as fake.

Milosevic depicted Babic as a liar, someone who was shifty and deceitful. He attacked his conscience arguing that incriminating him, Babic incriminated and testified against the whole leadership of Croatian Serbs. And all that just in order to avoid accountability.

**Accused Milosevic:** I should like to remind you, in view of the fact that quite obviously you presented yourself falsely and hid behind my name during all those years that, as opposed to you, I don't claim that now. I claim what I claimed then. ...

**Witness Babic:** ... as far as my responsibility and accountability is concerned, I am ready to be subjected to sanctions for my responsibilities. It is not true that I have come here to cast the blame off myself.

**Accused Milosevic:** All right. But through your statements, you consciously have accused all Serb leaders in the Republic of Srpska Krajina, to all intents and purposes, and to put the blame on them and rid yourself of the responsibility?

**Witness Babic:** I did not accuse anybody. I have just told the truth, the whole truth as far as I know it. I did not wish to shift the blame. I merely presented the facts that I know about. It is not up to me to accuse or to make a judgement.

<sup>171</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Milan Babic November 25, 2002, p. 13442, 13443, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/021125ED.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/021125ED.htm), accessed on May 26, 2016.

<sup>172</sup> *Ibid*, p. 13453.

**Accused Milosevic:** Does it not seem to you to be a little grotesque, Mr. Croatia 61 that a man who was in the post of the president of republic and the Prime Minister of the government should describe the events as being -- as an observer, watching through the looking-glass, and not as a participant, as somebody who issued orders and the principal political leader in the territory for a series of years, especially in the critical period that we're talking about?<sup>173</sup>

Besides the tactic with the tape, Milosevic applied another strategy to provoke the witness and change his way of testifying. He faced Babic with letters that he got before the session allegedly from Babic's friends, colleagues and associates. Milosevic read parts of these letters although Judge May reminded him that such documents had no relevance. But Milosevic continued reading, and tried to show Babic how his former friends perceived his new role. In the letter, that Milosevic read, Babic's "close comrades" asked him "is it not an insult to the Serbian people of the Krajina, our former friend, for you to consider them to be immature politically, to have been manipulated by someone, as if there had been no collective memory of the fascist and genocidal Ustasha state."<sup>174</sup> The episode was obviously prepared well in advance in order to suggest to the witness what he could expect once when he went back home.

Milosevic's cross-examination was full of such well-designed and in advance prepared attempts of attacking, especially those like Babic, who dared to seriously testify against him. Since he failed to provoke the witness attacking his responsibility, loyalty and sincerity, Milosevic went on to psycho-physical features and condition of the witness. Talking about the role of a professor and psychiatrist, Jovan Raskovic, in political events during the early 1990s, Milosevic used the opportunity to pose one more irrelevant but unpleasant and strongly provocative question:

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<sup>173</sup> *Ibid*, pp. 13476, 13477.

<sup>174</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Milan Babic December 6, 2002, p. 14004 [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/021206IT.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/021206IT.htm), accessed on May 26, 2016.

**Accused Milosevic:** Precisely. And is it true that on several occasions he emphasized having noticed in you a schizophrenic, narcissistic tendency? Is that correct or not?

**Judge May:** This is not a proper question, any way, shape, or form. It's merely a comment, and sounds like a pretty cheap one at that. Yes. Next question.<sup>175</sup>

In the same sense, Milosevic continued attacking Babic's alleged lack of political responsibility towards the people he represented. He intended to describe witness as someone who avoided attending important peace negotiations just because he "was not treated with enough respect."<sup>176</sup> Over five day of cross-examination Milosevic tried to break the witness and to bring him back into the fold.

Due to the protective measures, some parts of the sessions during Babic's testimony were initially closed to the public. Therefore, Milosevic obviously chose to save some of the most provocative questions for public sessions. As someone who was strongly dedicated to creating an appropriate message for audience at home, Milosevic tried to use every opportunity as effectively as possible.

**Accused Milosevic:** You say that you feel repentance and shame for your part in all these events. You are saying things diametrically opposite to the things that you were telling us when we were discussing issues of peace and war?

**Witness Babic:** I repent for having become an ethnoegoistic [sic], for accepting your thesis that people of the former Yugoslavia should separate. That kept me convinced for a long time that all that Serbs were doing for self-determination was right. But you yourself soiled even your own thesis. I repent forever accepting that policy, for embracing it, for having liked it. That's true. I am sorry that I was an egotist at the time. I'm sorry because I am now fully convinced that it was the primary cause for all the things that eventually happened, and especially the way in which you did it. It was horrible.

**Accused Milosevic:** All right. I think this particular question could be asked in public session as well. I'll ask it and leave it to your judgement.<sup>177</sup>

<sup>175</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Milan Babic, December 2, 2002, p. 13641, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/021202ED.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/021202ED.htm), accessed on May 26, 2016.

<sup>176</sup> *Ibid* p. 13642.

<sup>177</sup> *Ibid*, pp. 13670, 13671.

Although Babic claimed to be a victim of Milosevic's policy, he accepted a part of responsibility for his political misdeeds conducted during the first half of the 1990s. His rejection of Milosevic's political idea was unquestionable, as well as his repentance, shame and readiness to persist in his testimony against Milosevic. Babic's confirmation and willingness to cooperate with the prosecution did not release him from punishment. He was indicted a year later. Under a plea bargain he was sentenced to 13 years imprisonment and transferred, in September 2005, to the UK to serve the remainder of his sentences.<sup>178</sup> Six months later, Babic committed suicide. Del Ponte notes in her memoirs that during Babic's temporary stay in a detention unit at Scheveningen "he began complaining that other inmates in a detention unit were threatening him," and that his family was in danger and his sons and wife could not return to Belgrade after his testimony against Milosevic.<sup>179</sup> The whole episode is a perfect illustration of the unpleasantness and risk that a role of insider in the case against former head of state carries.

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The experience of testimonies from the two insiders mentioned here, depicts a few things. Milosevic had well developed and in advance prepared strategy for dealing with his former allies. Markovic obviously provided his statement in Belgrade before Milosevic was arrested and put on trial in the ICTY. What did motivated him to answer the call of the prosecution and to come to testify and under which circumstances he was convinced to do that, stayed uncertain. Babic's motivation, on the other side, seems much clear. Disappointment, repentance and need to justify and apologize looks like the important driving factor for opposing head of state. The extreme cases of testimonies from insiders examined in this chapter will be followed in the next part by

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<sup>178</sup> ICTY, *The Prosecutor v. Milan Babic*, IT-03-72, Case Information Sheet, [http://www.icty.org/x/cases/babic/cis/en/cis\\_babic\\_en.pdf](http://www.icty.org/x/cases/babic/cis/en/cis_babic_en.pdf), accessed on May 26, 2016.

<sup>179</sup> Del Ponte, *Madame Prosecutor*, p. 331.



the more usual cases of insiders, who are partially cooperative and whose testimonies are more nuanced.

## Chapter IV: From Allies to ‘Hostile’ Witnesses

Apart from those high-level political and military officers who fully accepted or fully denied knowledge and a role in criminal offences, there is much more numerous group of those who did this to a certain extent. The level of departure from criminal policy and the accused as its representative could quite dissimilar. Their motives for the acceptance of the prosecution’s call can be also different and at first glance uncertain. In this sense, Del Ponte explained almost ten years after the end of the Milosevic case, that the prosecution needed this sort of witnesses, so-called insiders, in order to paint a picture of control from Belgrade.<sup>180</sup> Moreover, she acknowledged that the prosecution “did not fully recognize the risks accompanying inside witnesses.” She added that in *Milosevic* there were many “hostile witnesses,” complaining that “insiders often change their stories when they took the stand and face their old political taskmasters.”<sup>181</sup>

This chapter will offer the insight in to challenges that the prosecution faced during the testimony of three high-ranking political and military leaders who were close Milosevic allies in a certain parts of his regime. Here I will show how the selection of insiders made by the prosecution was problematic for its case and the outcome of their testimonies uncertain. In the chapter, I will argue that the fallen Milosevic elite, although ill-treated by him and unsatisfied with his regime in certain period, showed dedication to his program and respect for former head of the state in the ICTY courtroom.

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<sup>180</sup> Del Ponte, “Difficulties for the participants. Indictment Correct, Trial Impossible,” p. 144.

<sup>181</sup> *Ibid.*

#### 4.1. The Great Turnover in the Courtroom: The Testimony of Aleksandar Vasiljevic

Aleksandar Vasiljevic was chief of military intelligence during the early 1990s. He was prematurely retired in May 1992, than arrested, but subsequently acquitted. At the end of April 1999 he became deputy head of the security service of the army of Yugoslavia. When the prosecution of the ICTY published the initial indictment ‘Croatia,’ Vasiljevic was mentioned in it as one of the members of a joint criminal enterprise who “participated in activities designed to stir up hate, fear and violence, which significantly helped attain the overall objectives of the joint criminal enterprise.”<sup>182</sup> At the beginning of his seven-day long testimony before the ICTY Vasiljevic confirmed that when he realized that his name was mentioned in the indictment as a member of the joint criminal enterprise he went to the field office of the prosecution being prepared to be interviewed.<sup>183</sup>

Vasiljevic was old-fashioned soldier who spent more than thirty years in the army. As a chief of the counter-intelligence service (KOS), he had to be among the best informed individuals in the country. In the ICTY courtroom he looked calm, severe and courageous. Despite Milosevic’s provoking comments and questions, Vasiljevic’s answers were calm and steady. He left the impression of someone who was utterly loyal to the army, but not to Milosevic.

Vasiljevic’s testimony provided important confirmations for the prosecution case. During the examination of the deputy prosecutor, Vasiljevic testified about the events in Croatia from autumn 1990 to 1992 and in Bosnia during the first half of 1992. The witness confirmed the

<sup>182</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Indictment for case No. IT-01-50-I, September 27, 2001(Croatia), [http://www.icty.org/x/cases/slobodan\\_milosevic/ind/en/ind\\_cro010927.pdf](http://www.icty.org/x/cases/slobodan_milosevic/ind/en/ind_cro010927.pdf), accessed on May 26, 2016.

<sup>183</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Aleksandar Vasiljevic, February 5, 2003, p.15761, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/030205ED.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/030205ED.htm), accessed on May 26, 2016.

allegations in the prosecution that behind the obtaining volunteers, their trainings and arming of Serbs in Croatia from the beginning 1991 was the Ministry of Interior of Serbia and the State Security Service of Serbia.<sup>184</sup> He provided information about the particular paramilitary units, their leaders, locations and employees from the Serbian Ministry of the Interior who were behind them.<sup>185</sup> Moreover, he claimed that the State Security, that was behind these paramilitary units and arming of Serbs in Croatia, was directly subordinated to the President of Serbia, Slobodan Milosevic.<sup>186</sup> Soon after Milosevic became the President of FRY, the State Security Service of Serbia, Vasiljevic argued, was subordinated to the president of Yugoslavia.<sup>187</sup> This was important confirmation for the prosecution case that linked Milosevic with paramilitary units on the ground.

Another important point for the prosecution was Vasiljevic's explanation on the accused role over the army. The witness argued that after Ministry of Defense, General Veljko Kadijevic retired, Milosevic increased his influence over the Yugoslav People's Army during January 1992 and started cleaning up General Staff. In May 1992, thirty-eight generals, among whom was also Vasiljevic, were retired.<sup>188</sup> The witness explained that this kind of replacement "within the General Staff without the key role played by the head of the General Staff and the head of personnel was unprecedented up until then."<sup>189</sup> In other words, Vasiljevic explained that the accused extended his influence over the army in the first half of 1992, cleaning form its General Staff all of those who disagreed with him.

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<sup>184</sup> *Ibid*, p. 15772, 15789, 15790.

<sup>185</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Aleksandar Vasiljevic, February 6, 2003, pp. 15789-15791, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/030206ED.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/030206ED.htm), accessed on May 26, 2016.

<sup>186</sup> *Ibid*, p. 15815.

<sup>187</sup> *Ibid*, p. 15815.

<sup>188</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Aleksandar Vasiljevic, February 12, 2003, p. 15911, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/030212ED.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/030212ED.htm), accessed on May 26, 2016.

<sup>189</sup> *Ibid*. pp. 15911, 15912.

On February 13<sup>th</sup> 2003, Milosevic aggressively began his cross-examination. After several attempts to provoke the witness, labeling him as a betrayer or someone who reached agreement with the prosecution on how to testify, Vasiljevic reacted: “Please don't keep linking me to the Prosecution as if we were in cahoots. I have come here to testify, neither against you nor in your favor. I have come here to tell the truth to the extent I know it.”<sup>190</sup> Moreover, Milosevic's interruptions and attempts of cutting off witness's answers provoked the reaction of the main Judge many times.

**Accused Milosevic:** We'll come to that. That was not my MUP, it is the MUP of the Republic of Serbia. And there too you made a number of professional errors which are not deigned [sic] of a general who was head of the security department.

**Judge May:** Don't bother to answer that. That sort of comment, which is a slighting and unnecessary one, must be supported. Don't make a general comment of that sort unless you can support it. Now, what you should be doing is asking questions and not making comments of that sort.

**Accused Milosevic:** I am putting questions, Mr. May, with the greatest of pleasure, as this is a very useful witness. Unfortunately, not for the other side, as they believe, because we will bring the truth out to the fore.<sup>191</sup>

Despite Milosevic's persistence and aggressive examination, the witness did not defer. Milosevic obviously aware of the weight of evidences that Vasiljevic provided and was quite unsatisfied with the disobedience of his former subordinate, attacked his professional skills. Nevertheless, the witness persisted blaming Milosevic for expanding his authority beyond the law, increasing his influence over the Yugoslav People's Army, control of MUP and the State Security Service.

Somewhere in the middle of the second day of cross-examination Milosevic changed tactic. He went beyond the time framework that the prosecution previously covered with the witness during its examination and posed a series of questions regarding the beginning of arming,

<sup>190</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Aleksandar Vasiljevic, February 13, 2003, p. 16032, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/030213ED.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/030213ED.htm), accessed on May 26, 2016.

<sup>191</sup> *Ibid*, pp. 16029, 16030.

training and other preparation of units. The overturn in the courtroom was total. The witness and the accused agreed on almost every question.

**Accused Milosevic:** All right. And is it true that from June 1990, Croatia, to all intents and purposes, intensively worked to establish its own army, to form its own army, and that there was intensive training of these formations and the aim was on marksmanship?

**Witness Vasiljevic:** They started their training with marksmanship, as far as I know, and they represented this as being as the members were the police [sic]. But as I know, the police -- and guardsmen. But the police, first of all, learns about rules and regulations and then how -- and then learns how to use weapons. With them, it was the reverse.

**Accused Milosevic:** And is it true, General, that in August 1990, Vladimir Seks, Ivan Vekic, Branimir Glavas -- do you know those names? I assume you do.

**Witness Vasiljevic:** Yes I do.

**Accused Milosevic:** Were they all top functionaries of the HDZ? That's right, isn't it?

**Witness Vasiljevic:** Yes, they were.<sup>192</sup>

Concerning causes of the conflicts in the former Yugoslavia and their provokers, Milosevic and Vasiljevic shared the same attitude. Therefore, Milosevic significantly changed the way he addressed and examined the witness. He allowed Vasiljevic to talk freely without interruption and suggestions regarding the time limitation and the focus only on important things. Their dialogue became more pleasant, when they agreed that the conflict was started by Croats in the mid-1990 and all other incidents were consequence of it.

**Accused Milosevic:** And is it true that at the beginning of October 1990, activities were started to intensively, illegally arm Croatia from abroad, specifically from Hungary, Austria, in collaboration with Slovenia, from Bulgaria, from the Brgas and Varna ports, with ships, Lipa and Karolina, with planes, and it was established at the time that from Czechoslovakia twice electronic equipment was imported and a large number of pistols, only from Czechoslovakia.

**Witness Vasiljevic:** Yes, there were. Only the preparations for these activities occurred earlier than October. In August already those preparations were under way. And the first -- the large contingent of weapons was discovered on the 10<sup>th</sup> -- between the 10<sup>th</sup> and 11<sup>th</sup> of October, 1991. And the data given are correct about the Lipa and the Karolina ships, only this was in January 1991.

<sup>192</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Aleksandar Vasiljevic, February 14, 2003, p. 16123, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/030214ED.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/030214ED.htm), accessed on May 26, 2016.

**Accused Milosevic:** Is it also correct that from Czechoslovakia alone several thousand pistols were imported, Zbrojovka? Then there was a transport from Uganda. You know the name of Kikas, don't you?

**Witness Vasiljevic:** Five thousand pistols were imported in two deliveries via Zagreb airport, and Kikas's plane arrived sometime in July or August 1990. No, I'm sorry, 1991.

**Accused Milosevic:** And what did that plane contain?

**Witness Vasiljevic:** It contained, as far as I can remember, 620 automatic rifles, Sar, a large quantity of explosives, and equipment.<sup>193</sup>

Vasiljevic was treated well throughout the rest of the cross-examination. The witness and the accused agreed on Croats' role in provoking the conflict. Vasiljevic explained that there were nine channels of weapon supply one "coming from the Kintex firm in Bulgaria towards the Albanians in Kosovo."<sup>194</sup> Further on, the witness explained that "after importing weapons from Hungary, he [Spege] offered a certain quantity of weaponry in order to arm the Muslims over there. And also, he was in contact with Rugova with respect to Kosovo."<sup>195</sup> On the Milosevic question whether it is true that Serbs made an effort to procure weapons for themselves only when Croats started arming, Vasiljevic replied: "It is quite difficult for me to give a definite answer now, but what I do know definitely is that the first major organized supply of automatic weapons came in for the Croats and was distributed among the Croats from the supply that came from Hungary."<sup>196</sup> In other words, it seems that Vasiljevic and Milosevic shared the opinion regarding the causes of the conflict, its provokers and the way that it was done.

When the deputy prosecutor Nice tried to object and interrupt this, what seems to be pleasant conversation, rather than the cross-examination of the prosecution's witness, Judge May disagreed. He thought that it might be relevant to see what happened in Croatia prior to these

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<sup>193</sup> *Ibid*, pp. 16132, 16133.

<sup>194</sup> *Ibid*, p. 16134.

<sup>195</sup> *Ibid*, p. 16149.

<sup>196</sup> *Ibid*, p. 16142.

events that they dealt with.<sup>197</sup> Therefore, it would be hard to estimate whether and to what extent Milosevic's tactic during the cross-examination of Vasiljevic and Vasiljevic's willingness to cooperate with the accused, made damage to the prosecution case.

The episode showed that in the essence of the disagreement between the witness and the accused was the way that Milosevic conducted his war policy. Both of them shared the opinion regarding the necessity of war, but Vasiljevic thought that Milosevic failed to strongly support JNA in autumn 1991. Instead of that he preferred using volunteers. The witness complained that "a large number of wartime JNA units could not be established, and some who were established, although with a lot of problems, soon disintegrated."<sup>198</sup> According to him this was the consequence of the claim in the media "that Serbia was not at war," and Milosevic's claim "we would not force anyone to go to war."<sup>199</sup> As Vasiljevic argued, such an approach "opened up room for various volunteer groups which often had the characteristic of a particular political party."<sup>200</sup> Although he was aware of the existence of paramilitary units from Serbia on the territory of Croatia and the high-level employers of the Ministry of Interiors of Republic of Serbia and State Security Service trainings, arming and organizing paramilitaries, Vasiljevic could agree with the Milosevic that Serbia was not at the war.

In Vasiljevic's testimony it would be hard to find the moment of taking responsibility for misdeeds. Apart from condemnation of Milosevic's war tactics and strategy it would be difficult

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<sup>197</sup> *Ibid*, p. 16138.

<sup>198</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Aleksandar of Vasiljevic, February 6, 2003, p. 15796.

<sup>199</sup> *Ibid*, p. 15796; See also: *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Aleksandar Vasiljevic, February 13, 2003, p. 16037.

<sup>200</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Aleksandar of Vasiljevic, February 6, 2003, p. 15796.



to identify a criminal policy of his regime. On the ideological level there was no collision between the witness and the accused.

## 4.2. Important documents and a little bit more: The Testimony of Zoran Lilic

Zoran Lilic was a member of the Socialist Party of Serbia from 1990 holding various positions in the party. In 1993 he was a President of the National Assembly of Serbia and served as a President of the Federal Republic of Yugoslavia from 1993 to 1997. Acting in Milosevic's political shadow during that time, Lilic explained a few years later that his withdrawal of candidature in the second round for the post of president of the Republic of Serbia in 1997 was a result of the reluctance of his party and Milosevic to support his candidacy.<sup>201</sup> Although marginalized after 1997, Lilic still was deputy prime minister until August 1999. In August 2000 he left the Socialist Party of Serbia. Unlike many others high-ranking insiders, Lilic was not accused before the ICTY or mentioned in the ICTY's indictment as a member of the joint criminal enterprise.

Concerning the evidence material, Lilic was an important witness for the prosecution. Before his appearance in the ICTY's courtroom, Lilic had several meetings and interviews with the prosecution. In spring 2002 Del Ponte was convinced that Lilic was discouraged by the new government in Belgrade from talking with prosecution staff.<sup>202</sup> During that period, he specifically identified a range of documents that it was considered "might be of assistance to the Tribunal in the resolution of its task" and using his "personal contacts" he supported the efforts of the

<sup>201</sup> Nenad Lj. Stefanovic, *Svedok najvece greske Milosevica*, Vreme, no. 577, January 24, 2002, <http://www.vreme.com/cms/view.php?id=306214>, accessed May 31, 2016; See also: ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Zoran Lilic, June 17, 2003, p. 22560, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/030617IT.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/030617IT.htm), (accessed on May 26, 2016).

<sup>202</sup> Del Ponte, *Madame Prosecutor*, p. 149.

prosecution to get these documents.<sup>203</sup> Through this witness, the prosecution was able to file a series of very important documents, labeled as a state or military secret, including records of the Supreme Defense Council. Lilic gave evidence before the ICTY with the permission of the Serbian government freed him from keeping state secrets.<sup>204</sup> The two representative of the Embassy of Serbia-Montenegro in The Hague and the legal counsel of the witness were presented in the courtroom during Lilic's four-day testimony.<sup>205</sup> All this confirms the weight of documents that were provided by Lilic and exhibited by the prosecution during his testimony.

During most of his testimony Lilic stayed loyal to the accused and the army. The examination of deputy prosecutor, Nice, resembled more at the examination of a defense witness, rather than a witness called by the prosecution. Lilic was unwilling to support the allegation of the prosecution that the accused had *de facto* control over the army and some of its senior officers in 1995.<sup>206</sup> He explained that the "control is a strong word" and that Milosevic just had "those generals who were closer" to him.<sup>207</sup> Similarly, facing the question on the accused's "*de facto* ability to appoint or dismiss high-ranking officers," Lilic rejected it, arguing that Milosevic rather "played a very important role," but "such decisions were taken in the Supreme Defense Council upon the proposal of the chief of staff."<sup>208</sup>

Concerning the Bosnia conflict, Lilic missed to distance himself from Milosevic's policy. In the ICTY's courtroom both of them usually referred to these issues from a "we" perspective. During Milosevic's cross-examinations Lilic agreed with the accused on almost all questions. The witness Lilic was a cooperative witness for Milosevic regarding the issue of the accused's

<sup>203</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Zoran Lilic, June 17, 2003, p. 22550, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/030617IT.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/030617IT.htm), accessed on May 26, 2016.

<sup>204</sup> *Ibid*, pp. 22550, 22551.

<sup>205</sup> *Ibid*, p. 22546.

<sup>206</sup> *Ibid*, p. 22607.

<sup>207</sup> *Ibid*.

<sup>208</sup> *Ibid*, p. 22608.

awareness of crime committed in July 1995 in Bosnia. To the deputy prosecutor's question regarding crimes in Srebrenica, Lilic explained them those crimes were the results of "individual responsibility," and assumed the court that "that kind of order did not come from any political or military person from Belgrade."<sup>209</sup>

Lilic's confirmation that FRY provided financial support to the armies of Republika Srpska and the Republic of Serbian Krajina seems to be an important contribution for the prosecution case. The deputy prosecutor showed the witness a part of a record of one of the sessions of the Supreme Defense Council that dealt with financial support and salaries.<sup>210</sup> The witness accepted it and elaborated the way it was implemented. Lilic justified such practice arguing that it primarily was established to resolve the existential status of individuals who remained within the Yugoslav People's Army, but were not citizens of the Federal Republic of Yugoslavia.<sup>211</sup> According to the witness, it was established in order to "take care of their own needs, to take care of their families primarily, because most of them were refugees in the territory of the Federal Republic of Yugoslavia."<sup>212</sup>

While Lilic's testimony was fully supportive of Milosevic's case regarding the conflict in Bosnia, this was not the case concerning Kosovo. He shared Milosevic's opinion regarding the conflict's causes and its beginning. However, the subject of their disagreement was the issue of how to face the Kosovo crisis. Lilic was convinced by high-ranking army officers, during his missions in Kosovo in April 1998, that it would be necessary to introduce a state of emergency on part of Kosovo territory, so that "the Army of Yugoslavia should settle accounts with the

<sup>209</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Zoran Lilic, June 19, 2003, p. 22668.

<sup>210</sup> See: ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Prosecution Exhibit P469.14a.

<sup>211</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Zoran Lilic, June 17, 2003, p. 22591.

<sup>212</sup> *Ibid*, p. 22592.

terrorists in Kosovo and Metohija and the only possibility at the time was for units of the police to be subordinated to the Army of Yugoslavia.”<sup>213</sup>

Finally during the last day of the cross examination, faced with a series of the accused’s questions regarding the unadvanced status that Serbs had after the Kosovo conflict, Lilic explained: “Yes, none of that is in dispute. Only I think we differ on one point. I think you and I could have done all that before the international community arrived. We could have made a census of the population. You know that I even asked you and spoke to His Holiness, the Patriarch of Serbia, Mr. Pavle, to see what is the church property in Kosovo and Metohija. I think we would have been much more effective. What you are saying is quite correct, but I think the Serbs have nothing... gain nothing from that.”<sup>214</sup> Lilic continued arguing that Milosevic missed a chance in 1998 to solve the conflict in Kosovo and to avoid the war and NATO’s campaign or at least to stop it earlier.

Despite these disputes, Milosevic addressed Lilic officially, with a certain extent of respect, using “Mr. Lilic.” Milosevic did not treat him as a hostile witness. In the case of Lilic’s testimony, Milosevic rather attacked the government in Belgrade that granted the prosecution access to documents from the archives of the Yugoslav government and the army of Yugoslavia, but the same access was denied to his associates.<sup>215</sup> The way he led a significant part of his cross-examination of this witness was relaxed and looked like a pleasant conversation. Still it was far from that friendly chat that Milosevic had in the ICTY’s courtroom with the witnesses like

<sup>213</sup> *Ibid*, pp. 22639, 22640, 22644.

<sup>214</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Zoran Lilic, July 9, 2003, p. 23976, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/030709IT.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/030709IT.htm), accessed on May 26, 2016.

<sup>215</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Zoran Lilic, June 19, 2003, p.22809; [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/030619ED.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/030619ED.htm), accessed on May 26, 2016.

Borisav Jovic or Radimor Markovic, but also far from the aggressive cross-examination of Aleksandar Vasiljevic.

Zoran Lilic was a difficult witness for the prosecution and Nice confirmed that during the last day of his testimony. Asking the Chamber to provide more time for the re-examination and opportunity to exhibit new evidence, Nice complained that “the witness was not inclined to deal with even the meetings at which he had been a participant without having a full record before him.”<sup>216</sup> It seems that Lilic limited himself to comment only on those documents that the government in Belgrade was willing to provide to the prosecution and not much beyond that. Del Ponte notes in her memoirs that although Lilic “chummed around with Milosevic during cross-examination... Lilic’s amounted to a quantum leap the realm of crucial evidence.”<sup>217</sup>

Therefore the prosecution tried to introduce as many documents as possible during Lilic’s testimony. It seems that the prosecution had a problem with significant amount of material that was provided by the government in Belgrade recently before Lilic began his appearance in the ICTY’s courtroom and there was not enough time for translating it. Thus, when during the re-examination the deputy prosecutor tried to introduce new exhibits, the judge refused to allow it.<sup>218</sup> The prosecution stayed captured in the mid-space among its own ambitions, ICTY roles, non-strongly-cooperative witness and reluctance of the government in Belgrade to provide documents earlier.

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<sup>216</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Zoran Lilic, July 9, 2003, p. 23943.

<sup>217</sup> Del Ponte, *Madame Prosecutor*, pp. 201, 202.

<sup>218</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Zoran Lilic, July 9, 2003, p. 24003.

### 4.3. Useful as usual: The Testimony of Borisav Jovic

Borisav Jovic was a close Milosevic ally during the late 1980s and the first half of the 1990s. As a chairman of the Presidency of Yugoslavia from May 1990 to May 1991 and later the member of rump presidency, until May 1992, when it officially ceased to exist. During that period he took his personal notes regarding the activities of the presidency and its members. In new Yugoslavia, from May 1992, Jovic was vice-president of the Socialist Party of Serbia, while Milosevic was its president. Soon after he published a book, called *The Last Days of the SFRY, A Diary*, in 1995, Jovic was dismissed from the party. Moreover, after he was asked, Jovic immediately resigned from his position in the Federal Assembly in order to “avoid any unnecessary complications.”<sup>219</sup> This was the end of Jovic’s political career. When the prosecution of the ICTY published the initial indictments ‘Croatia’ and ‘Bosnia,’ Jovic was mentioned in it as one of the members of a joint criminal enterprise.<sup>220</sup>

Considering the file of exhibits, it seems that Jovic’s testimony was significant for the prosecution. Before his appearance in the ICTY courtroom he had three contacts and interviews with the prosecution during 2002 and 2003.<sup>221</sup> The result of these interviews was Jovic’s statement on about forty pages.<sup>222</sup> Additionally, the prosecution exhibited two of the Jovic’s books *The Last Days of the SFRY, A Diary* and *Book on Milosevic* published in 2001. As Jovic explained, the first book was based on notes which had not been edited or redacted, but rather

<sup>219</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Borisav Jovic, November 18, 2003, p. 29129, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/031118ED.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/031118ED.htm), accessed on May 26, 2016.

<sup>220</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Indictment for case No. IT-01-50-I, September 27, 2001(Croatia), [http://www.icty.org/x/cases/slobodan\\_milosevic/ind/en/ind\\_cro010927.pdf](http://www.icty.org/x/cases/slobodan_milosevic/ind/en/ind_cro010927.pdf), accessed May 26, 2016; *Prosecutor v. Slobodan Milosevic*, IT-02-54, Indictment for case No. IT-01-50-I, November 22, 2001(Bosnia), [http://www.icty.org/x/cases/slobodan\\_milosevic/ind/en/mil-ii011122e.htm](http://www.icty.org/x/cases/slobodan_milosevic/ind/en/mil-ii011122e.htm), accessed May 26, 2016.

<sup>221</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Borisav Jovic, November 18, 2003, p. 29127.

<sup>222</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Prosecution Exhibit P596.1a.

printed as they were taken down in note form.<sup>223</sup> Besides his books, Jovic was an important witness for exhibiting and commenting on documents such as minutes and notes of the Presidency's sessions held during first three months of 1992.

In the ICTY courtroom it seems that Jovic was not a crucial witness for the prosecution's case. However, his testimony was important for several points. To a certain extent he was willing to confirm the allegation in the indictment that Milosevic used him as his primary agent in the Presidency and through them, he directed the actions of the "Serbian block." He explained how Milosevic suggested him not to make mistakes as earlier federal officials from Serbia, "spitting at Serbia from the federation for the sake of some spurious Yugoslavia and unity."<sup>224</sup> In this sense, Jovic reproached Milosevic for his authoritarian manner of ruling. He described Milosevic as the main political figure in Serbia, who held absolute authority within the people and within the party.<sup>225</sup> The personality of the accused was interesting in everything sense, as Jovic explained, since he had a monopoly on decision-making and did not allowed decisions be made without his taking part.<sup>226</sup>

Moreover, Jovic was important for confirming charges in the indictment regarding media control. Concretely the prosecution argued that Milosevic "controlled, manipulated or otherwise utilized Serbian state-run media to spread exaggerated and false messages of ethnically based attacks by Bosnian Muslims and Croats against Serb people intended to create an atmosphere of fear and hatred among Serbs living in Serbia, Croatia and Bosnia and Herzegovina."<sup>227</sup> In the

<sup>223</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Borisav Jovic, November 18, 2003, p. 29128.

<sup>224</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Prosecution Exhibit P596.1a.

<sup>225</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Borisav Jovic, November 18, 2003, p. 29131.

<sup>226</sup> *Ibid*, p. 29184.

<sup>227</sup> *Prosecutor v. Slobodan Milosevic*, IT-02-54, Indictment for case No. IT-01-50-I, November 22, 2001(Bosnia), [http://www.icty.org/x/cases/slobodan\\_milosevic/ind/en/mil-ii011122e.htm](http://www.icty.org/x/cases/slobodan_milosevic/ind/en/mil-ii011122e.htm), accessed May 26, 2016; see also: ICTY,

courtroom Jovic explained that Milosevic had a major and decisive influence over state television, state radio and the *Politica* daily.<sup>228</sup> In order to illustrate this, Jovic quoted the phrase that the accused use “what is not published does not happen at all,” and explained the meaning of it in the way that if “citizens were informed about something, then they knew that it happened, and if they were not informed, then simply they did not deal with such issue.”<sup>229</sup> Consequently, Jovic provided important corroboration for the prosecution’s case that the accused succeeded in “influencing to a great degree the orientation of the media.”<sup>230</sup>

Considering the information about the particular crimes, such as in Dubrovnik, the witness denied awareness of them at the time they were committed. It was pretty unreliable when Jovic testified regarding the shelling of Dubrovnik. Faced with a couple of videos and documents regarding the shelling of Dubrovnik, Jovic did not accept that the city was shelled by the JNA.<sup>231</sup> Furthermore, he provided a sort of naive explanation that they received detailed information from the military leaders that the army had “strict order that the old part of Dubrovnik should not be shelled and that they should not enter it... and that there were only two shells that came to the old town by accident, but measures were taken against persons who had fired those shells.”<sup>232</sup> The denial on all levels was summarized in the way that “it's not that anybody ordered that, it's not that the Yugoslav People's Army did that, and the General Staff had never been informed of any such thing.”<sup>233</sup>

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*Prosecutor v. Slobodan Milosevic*, IT-02-54, Indictment for case No. IT-01-50-I, September 27, 2001(Croatia), [http://www.icty.org/x/cases/slobodan\\_milosevic/ind/en/ind\\_cro010927.pdf](http://www.icty.org/x/cases/slobodan_milosevic/ind/en/ind_cro010927.pdf), accessed May 26, 2016.

<sup>228</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Borisav Jovic, November 18, 2003, p. 29180.

<sup>229</sup> *Ibid*, p. 29181, 29182.

<sup>230</sup> *Ibid*, p. 29182.

<sup>231</sup> *Ibid*, pp. 29151, 29152; See also ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Prosecution Exhibit P596.15.

<sup>232</sup> *Ibid*, pp. 29151, 29152.

<sup>233</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Borisav Jovic, November 18, 2003, p. 29152.



During the whole testimony before the ICTY, but especially in the cross-examination, Jovic expressed to a significant extent loyalty to his former boss. Jovic missed distancing himself from the accused almost all the time. He referred often from a “we” position, that marked him and the accused. Similarly Milosevic used the same “we” form in his questions in order to tie the witness to himself. Like in the Markovic case, Milosevic addressed Jovic by his nickname “Boro” using the direct, friendly, form.

Considering the political program that the accused created and represented during the 1990s, Jovic hardly made any departure from it. He did not consider Milosevic to be a nationalist and what is more, since he “never agreed with anything being done against someone because he's not a Serb or that he should not be equal because of that, that's for sure.”<sup>234</sup> Jovic and Milosevic still shared the same attitudes regarding the beginning of the Yugoslav crisis and the plan of *Greater Serbia*,<sup>235</sup> allegations of Serbia's aggression on Bosnia and Croatia and the character of the conflicts.<sup>236</sup> They expressed a high level of understanding regarding numerous question that Milosevic raised.

The issue of the “personality cult” was the only issue in which respect Jovic opposed Milosevic. Obviously for Jovic this issue was painful and the only blemish, the only dispute moment in his relationship with Milosevic. However, for both the issue had an important weight and both wanted to use the opportunity to address it.

**Accused Milosevic:** ...This happened in certain regimes that footage was remounted and certain images deleted and edited and wiped out. Do you really say that somebody wiped your image of a tape, off some footage?

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<sup>234</sup> *Ibid*, p. 29178.

<sup>235</sup> *Ibid*, pp. 29302, 29314.

<sup>236</sup> *Ibid*, p. 29303.

**Witness Jovic:** From 1995 onwards, since I was replaced, for the 28th of March celebrations, in all the previous years --

**Accused Milosevic:** You've already explained that to us. So don't repeat what you've already explained.

**Witness Jovic:** But you've asked me and you don't want to hear the answer.

**Accused Milosevic:** Answer me yes or no: Did somebody wipe your image and face off some tape, off some footage?

**Witness Jovic:** If you're not going to let me answer you're not going to let me answer; I'm going to answer but not the way you want to hear.<sup>237</sup>

The cross examination looked like the examination of an allied witness rather than a witness of the opposite side. After more than half a day of cross examination the deputy prosecutor reacted in order to interrupt a pleasant dialogue between the accused and the witness. Arguing against the intention of the main judge to grant Milosevic one more day for the cross-examination, Nice “This is clearly a witness who, from the beginning, was likely to be a witness the accused could want for himself... we've provided a great deal of material arguably favourable to the accused, and there must come a time when eating into our allotted time is something that's -- I'm not going to say unfair but unfortunate.”<sup>238</sup> For the prosecution case it seems that Jovic's testimony was harmful. Regarding the exhibit material that was filed through this witness it would be harder to estimate without putting it into the whole context. The denial and the rejection to take responsibility strongly marked Jovic's testimony.

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These three cases of the insider testimony that I examined in this chapter provide an insight into the soft of difficulty, uncertainty and risk that such testimonies convey. It would be hard to estimate their contribution to the prosecution case, but it seems that some parts of their

<sup>237</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Borisav Jovic, November 20, 2003, p. 29407, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/031120IT.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/031120IT.htm), accessed May 26, 2016.

<sup>238</sup> ICTY, *Prosecutor v. Slobodan Milosevic*, IT-02-54, Testimony of Borisav Jovic, November 19, 2003, p. 29323, [http://www.icty.org/x/cases/slobodan\\_milosevic/trans/en/031119ED.htm](http://www.icty.org/x/cases/slobodan_milosevic/trans/en/031119ED.htm), accessed May 26, 2016.

testimonies were very harmful. Quite certainly these three witnesses appeared before the ICTY with the intention to explain their personal disputes with the accused and tell little as possible about the criminal allegations in the indictment. The examples also shows that some of these witnesses continued to be more and others less loyal to Milosevic, but all of them were still dedicated to the essence of his political program.

## Conclusion

When on March 11, 2006, Slobodan Milosevic died in a detention unit at Scheveningen, the first trial of a former head of state finished without the final verdict. The disappointment with such an end of the “trial of the century,” that was created not just in order to establish accountability of Milosevic but also to fulfill several extra-legal functions, such as re-education and transformation on Serbian society, was huge. Therefore, this extremely large and hardly manageable trial has been a subject of many studies over the last fifteen years. This study has focused on high-level insiders who testified in the *Milosevic* case in order to examine the prosecution’s reliance on insiders and the court’s experience with testimonies from insiders. My main intention here was to provide a comprehensive analysis of the subject that compares the Milosevic case with its predecessors – the *Nuremberg* and the *Eichmann* case.

My analysis of the number of witnesses shows that in comparison with the Nuremberg tribunal, the prosecution in the *Milosevic* case called almost nine times more witnesses, while in comparison with the *Eichmann case* it is more than two and a half times. The enormous complexity also could be perceived in a comparison of the longevity of the three cases. The two-year long prosecution case in the *Milosevic* trial to the four and a half months long prosecutor’s case in *Nuremberg*, or a bit more than three months that the prosecutor needed to finish its case in *Eichmann*, indicates the significant shift in the management of high-profile war crimes trials.

Although in the *Milosevic* case the court heard several times more witnesses than both *Nuremberg* and *Eichmann*, regarding testimonies from insiders, it was somewhere between these two predecessors. With 12% of insiders, the prosecution in the *Milosevic* trial was significantly behind *Nuremberg* where more than 30% of witnesses called by the prosecution were insiders.

When Justice Jackson had the idea to establish the accountability of German leadership based on their own documents, and consequently based on testimonies from their associates and accomplices, he was fully able to implement such a plan due to the fact that the Allies had in their hands an enormous amount of German documents and numerous high-level officials. In contrast to this, the prosecution in the ICTY was far away from the crime scene. For access to documents it had to negotiate with the new regime in Belgrade where Milosevic still had his supporters. Providing insiders and particularly fruitful testimonies from insiders was even harder.

My examination of testimonies from five high-ranking insiders in the Milosevic case shows that although insiders, due to their various motives, accepted to testify against the former head of state, their testimonies were not always in a strictly hostile tone toward Milosevic. Two factors strongly influenced such an outcome. The personal characteristics, conscience, feeling of guilt and responsibility, probably in combination with a personal need to justify their own deeds encouraged some of them, such as Milan Babic, to oppose their former boss. Babic was only one who fully rejected Milosevic's political program and expressed regret for participating in its implementation.

On the other hand, the other four high-level insiders show that Milosevic's former accomplices and associates were reluctant to fully cooperate with the prosecution. Moreover, all of them expressed, to a certain extent, a predisposition to Milosevic's political ideas and assurance in the correctness of the political goals. However, while some were still blindly loyal, others expressed defiance and tried to use the opportunity to get revenge for Milosevic's abuses of them in the past. Nevertheless, none of them was willing to accept responsibility for crimes or even awareness of them. It seems that Milosevic knew pretty well who to choose as his associates. In this sense, the experience in the Milosevic trial regarding testimonies from four

high-ranking insiders mentioned in this study (Markovic, Vasiljevic, Lilic and Jovic) resembles more the experience in the *Eichmann* case than in *Nuremberg*.

The unwillingness of the new government in Belgrade to strongly cooperate with the ICTY was an encouraging element for insiders. Lilic probably could serve as a good example. He was ready to accept the unpleasant role only when the government granted him approval. This lasted for more than a year. Once when Lilic appeared in the ICTY courtroom, his cooperation with the prosecution was proportional with the scope of Belgrade government cooperation. In other words, the witness obviously tried not to go beyond the documents that the government previously provided to the prosecution. The case once again highlighted very strongly the difference between *Nuremberg* and *Hague* and the difference between completely defeated Germany and transition in Serbia. It emphasized the challenges of the court that had no free access to documents or to potential witnesses.

In the light of the further cases against high-ranking officials, and heads of states and activities of International Criminal court I hope that analysis of the experience in the Milosevic with testimonies from high-level insiders could serve as a lesson.

## Appendix

### Appendix 1: Prosecution witnesses in *Nuremberg*

Witness	viva voce or affidavit	Prosecution team	Testified about
Erwin Lahousen	viva voce	Anglo-American	Insider; high-ranking member of Abwehr, member of German resistance 1943-45.
Franz Blaha	viva voce	Anglo-American	Czech prisoner in Dachau
Wilhelm Hoettl	affidavit	Anglo-American	Insider, member of SS; Hoettl described a conversation he held with Adolf Eichmann
Herman Grabe	affidavit	Anglo-American	German civilian construction expert who witnessed atrocities in Ukraine
Otto Ohlendorf	viva voce	Anglo-American	Insider; SS; commanding officer of Einsatzgruppe D
Dieter Wisliceny	viva voce	Anglo-American	Insider; SS; deputy to Adolf Eichmann, his testimony was used in the Eichmann trial.
Walter Schellenberg	viva voce	Anglo-American	Insider; member SS;
Alois Hollriegel	viva voce	Anglo-American	Insider; member SS;
Erich von dem Bach-Zelewski	viva voce	Anglo-American	Insider; member SS;
Karl Heinz Moehle	viva voce	Anglo-American	Insider; U-boat commander;
Peter Josef Heisig	viva voce	Anglo-American	Insider, Navy
Maurice Lampe	viva voce	French	Imprisoned in Mauthausen
Marie Claude Villant-Couturier	viva voce	French	Held in Auschwitz and Ravensbrück
Jean Frederic Veith	viva voce	French	At Mauthausen from 22 April 1943 until 22 April 1945
Victor Dupont	viva voce	French	Imprisoned in Buchenwald

Francois Boix	viva voce	French	Imprisoned in Mauthausen
Hans Cappelen	viva voce	French	Norwegian; Testified about being tortured in Oslo
Paul Roser	viva voce	French	Prisoner of war; initially he was in a small camp which the Germans called Strafkommando, in Linzburg in Hanover.
Alfred Balachowsky	viva voce	French	Held in Buchenwald and Dora camps
Emil Reuter	viva voce	French	Lawyer of the Luxembourg Bar; President of the Chamber of Deputies of the Grand Duchy of Luxembourg; about invasion on Luxembourg
Jackobus Vorrink	viva voce	French	Dutch politician; about German invasion on the Netherlands
Leon van der Essen	viva voce	French	Belgian historian, professor at the Catholic University of Leuven, testified about German war crimes in Belgium
Friedrich Paulus	viva voce	Soviet	army, commander of the Sixth Army in Battle of Stalingrad
Constantin Pantazi	affidavit	Soviet	Romania's Minister of War
Mihai Antonescu	affidavit	Soviet	Romania's Vice Minister
Erich Buschenhagen	viva voce	Soviet	Commander of German forces in Norway; describe circumstances leading to Finland's collaboration with Nazi Germany in attacking the Soviet forces
Joseph Abgarovitch Orbeli	viva voce	Soviet	A member of the Academy of Science of the USSR, an active member of the Academy of Architecture of the USSR
Jackob Grigoriev	viva voce	Soviet	Peasant from the village of Pavlov district near Leningrad
Kivelisha, Eugene Alexandrovich	viva voce	Soviet	Soviet Army 305th Regiment of the 44th Rifle Division
Abram Gerzevitch Suzkever	viva voce	Soviet	Soviet citizen; In the town of Vilna; witnessed the persecution of the Jews in that city



Severina Shmaglevskaya.	viva voce	Soviet	internee of Oswieczim Camp, Polish survivor of Auschwitz
Rajzman, Samuel.	viva voce	Soviet	internee of Treblinka Number 2
Very Reverend Nikolai Ivanovich Lomakin	viva voce	Soviet	Archdean of the churches of Leningrad, testified about siege of the city

## Appendix 2: Former Nazis in *Eichmann*

Witness	Called by...	Viva Voce of affidavit	Position
Wilhelm Hoettl	Prosecution	affidavit	Austrian Nazi Party member, and SS
Alfred Six	Prosecution	affidavit	Chief of a unit of Group Einsatzgruppen B
Theodor Horst Grell	Prosecution (Arendt says that he testified for the defense, p.42)	affidavit	SS member; head of the legal section of the German legation in Budapest
Kurt Becher	Prosecution	affidavit	SS member; Chief of the Economic Department of the SS Command in Hungary during the German occupation in 1944
Hans_Juettner	Prosecution	affidavit	SS member; Leadership Main Office
Eberhard Von Thadden	Prosecution	affidavit	Adviser on Jewish affairs to the Foreign Ministry
Max Merten	Defense	affidavit	Recruitment and Discharge Office for Military Administration Personnel
Otto Winkelmann	Defense	affidavit	SS member; the Police Leader in Hungary
Richard Baer	Defense	affidavit	SS member; commandant of the Auschwitz I concentration camp from May 1944 to February 1945

Herbert Kappler	Defense	affidavit	Chief of SD in Rome
Hermann Krumei	Defense	affidavit	head of a branch office of the Central Office for Migration (Umwandererzentralstelle Litzmannstadt) in Lodz
Edmund Veessenmayer	Defense	affidavit	In 1941, he was a member of the German diplomatic staff in Zagreb; In Mar 1944, he was assigned to the German embassy in Budapest
Erich Von Dem Bach Zelewski	Defense	affidavit	SS member; command of all anti-partisan actions in Belgium, Belarus, France, the General Government, the Netherlands, Norway, Ukraine, Yugoslavia
Franz Novak	Defense	affidavit	member of SS; part of the Eichmann-Kommando in Budapest which, from 15 March to 9 July 1944, led 476,000 Hungarian Jews to Auschwitz.
Franz Slawik	Defense	affidavit	Eichmann's orderly and driver in Budapest in 1944
Walter Huppenkothen	Defense	affidavit	SS member; head of counterintelligence division Einsatzgruppen IV

### Appendix 3: Insiders in the Milosevic case

Witness	Position	Date of testimony
Nike Peraj (formerly known as K-4)	captain in the VJ; an officer in the anti-aircraft defense unit;	09.05.02; 13.05.02
Ratomir Tanic (formerly K3)	politician	14.05.02; 15.05.02; 16.05.02; 20.05.02.
K-5	police informer	24.05.02; 27.05.02.
K-6	the state security part of the MUP in Kosovo	10.06.02.
K-25	member of police special unit	09.07.02; 10.07.02.
Mr. Radomir Markovic formally protected witness K-34	Head of the State Security form 1998 to 2000	24.07.02; 25.07.02; 26.07.02.
C-037	politician	27/09/02; 30/09/02; 3/10/2002; 4/10/2002
Nikola Samardzic	politician; member of Montenegrin Parliament	08.10.02; 09.10.02; 10.10.02
C-1220	member of SDS and TO; survivor/insider	15.10.02; 16.10.02
C-060	TO Podravska Slatina	21.10.02; 22.10.02
C-020	member of TO (territorial defense) and later paramilitary unit	22.10.02; 23.10.02
Slobodan Lazarevic, formerly protected witness C-001	member of TO Borovo Selo	29.10.02; 30.10.02; 31.10.02
Mustafa Candic, formerly protected witness C-034	member of KOG up until 1992 when he whitdraw JNA	31.10.02; 11.11.02
Milan Babic, formerly protected witness C-061 and C-036	politician	18.11.02; 19.11.02; 20.11.02; 21.11.02; 22.11.02; 25.11.02; 26.11.02; 02.12.02; 03.12.02; 04.12.02; 06.12.02; 09.12.02

C-025	member of TO; in October 1991 joined State Security Service in Beli Manastir	09.12.02; 10.12.02
K-2	member paramilitary unit, Arkan's tigers	9.1.2003
C-013	member of TO Borovo Selo	29.01.03; 30.01.03; 31.01.03
Aleksandar Vasiljevic, formerly protected witness C-039	deputy head of the security service of the army of Yugoslavia	05.02.03; 06.02.03; 12.02.03; 13.02.03; 14.02.03; 17.02.03; 18.02.03
Dragan Vasiljkovic, Formerly protected witness B-073	founder and the leader of paramilitary unit	19.02.03; 20.02.03; 21.02.03
B-1738	member of paramilitary unit, Arkan's tigers	17.03.03
videolink B-1003	policeman; about Bjeljina	07.04.03
videolink B-104	member of VJ Aviation Brigade in Nis	08.04.03; 09.04.03
videolink B-1493	member of JNA	09.04.03; 10.04.03
B-050	member of VRSK	14.04.03; 15.04.03
B-129	member of paramilitary unit, Arkan's tigers	16.04.03; 17.04.03
C-048	member of the state security Novi Sad	28.04.03; 29.04.03
Zoran Lilic	politician	17.06.03; 18.06.03; 19.06.03
B-1244	member of Crisis Staff of one Bosnian municipality	30.06.03; 01.07.03
C-006	member of TO Vukovar	02.07.03

B-127	JNA officer, later VRS	16.07.03
B-083	official in Ministry of Defense	22.07.03
Drazen Erdemovic	member of VRS	25.08.03
C-1175	member of TO	27.08.03; 28.08.03
C-007	member of TO	11.09.03
B-179	Association of Serbs and Emigrants of Serbia	15.09.03
Milan Milanovic	Since 1991 employed as a civilian in VJ; Deputy defense minister of Serbian Autonomous Region of SB and Western Srem	08.10.03; 14.10.03; 15.10.03
Dobrica Gajic-Glasic, formally protected witness C-028)	She was chief of ministry of defense, Tomislav Simovic, office	21.10.03; 22.10.03
Borisav Jovic	politician	18.11.03; 19.11.03; 20.11.03
Miroslav Deronjic (accused)	politician/accused; mayor of Bratunac	26.11.03; 27.11.03
B-1804	officer in JNA later VRS in eastern Bosnia	11.02.04; 11.02.04

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### International Criminal Tribunal for the former Yugoslavia

*The Prosecutor v. Slobodan Milosevic*

*The Prosecution v. Milan Babic*

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