Project:

ICTY ORAL History - Documented by SENSE

An Interview with

Sir Geoffrey Nice

SENSE Transitional Justice Center

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Interviewee: Sir Geoffrey Nice, (GN)

Interviewer: Mirko Klarin (MK)

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MK: Let's start with your personal feelings when you heard the news. You were in England, I suppose.

GN: When I learnt the news of his death I happened to be in England. And, of course, one's emotions are very mixed. It would be untrue not to say there wasn't a measure of relief because a trial that might have limped on indefinitely for all sorts of reasons, and never come to a conclusion for other reasons, was now over. A huge task that we faced, a very difficult task in bringing this to a conclusion within the time that we and the judges would appear both liked to have been the remaining time of the trial, was one we now didn't have to perform. But against that, the many advantages of having a concluded judgment, being able to argue about the case, not argue but to present our case, and see how that was reflected in the judgment, all lost.

MK: Did you feel defeated somehow or frustrated or cheated?

GN: No. It would be silly to feel that because it was so obvious a man aged 60 or 61 embarking on what was to be four years of hard work with a bad heart condition was always likely to either to die or to..., not likely, there was a real possibility he might either die or become medically incapable of continuing his trial. And therefore some of what I did was aimed at allowing for this very possibility. It was important to keep the record of the

trial clean, not to leave anything behind that was unsatisfactory from the prosecution's point of view. Therefore we tried to cross-examine defense witnesses fully so that if the case ended prematurely there wouldn't be defense evidence that hadn't been tested, as it might have been if you thought, "oh well, I needn't bother with that witness, I can deal with it with a later witness". And we always tried to finish things off. We also laid plans, I don't know whether they'll come to anything, to leave a very respectable archive electronically, a computer archive, that will be accessible to people, setting out how the evidence fits into this category or that category, how it satisfies this part of that indictment or whatever. And largely that has been done. I hope it will be completed although it's going to be out of my hands whether it's completed or not. So we laid plans for premature conclusion.

MK: Can you tell me more about these plans. You have been doing for the Chamber and for the other side those tables. We never saw that.

GN: We started off with something called a fill-box document which was a particularly unattractive name but it's the only one I could think of. And that's where using the ordinary word processing system we had boxes for each paragraph of the indictment. The boxes started empty and then as the evidence came in we filled in, we summarized the evidence filling in each of the allegations.

MK: I would like to see that.

GN: I'm not sure that it's a public document. You can check with Diana maybe, but I don't know that it was ever published as a public document. In any case, when I started that out as a very primitive system the intention was that we should serve it on the court and on the amici and on the accused periodically, because we have nothing to fear from helping the

other parties. I'll come back to that in a second. But also that at the end of the exercise this could be part of the closing brief because there'd be no reason to put all the detail of all the analysis of all the crimes in a closing document because the judges simply wouldn't read it. Their clerks might read it or they might turn to some bits of it but if you put it in a huge document nobody's going to read it. And what was necessary was for there to be a chest, a reservoir if you like, that contains an analysis of all the evidence. So that's how we started off - these things called fill-box documents. And then after perhaps a year or so the Office became committed to a computerized system for analysis of evidence which happens to go by the brand name Case Map. Doesn't matter. I expect there are lots of subsystems and I am only too happy to use what we were provided. And then we, well it was decided for us, but I was perfectly happy with the decision that we should try and convert the work we've done on the fill-box documents into something called Case Map which deals with material slightly differently but nevertheless should provide the facility to be able to list all the evidence beside paragraph numbers and say, "well for this paragraph number there are these bits of evidence or there were these bits of evidence, not just prosecution evidence, also defense evidence, or beside this town - take the most obvious example Račak, a village or town, whatever you like - here's all the evidence for Račak. Beside this particular individual Stevanović, the general, here's all the evidence about him". So that this would have made for the judges and for us and the assigned counsel for the accused an electronically accessible marshalling or ordering of the evidence. And it seemed to me and it still seems to me that it would be very desirable for this exercise to be completed and made available to researchers, journalists, the public even, because without it you simply can't access this material, it's too complicated, there's too much of it. And if you compare

the position with, say, an ordinary three week murder trial, whatever you like, and then on the penultimate day of the trial the accused dies. So, just like here, the case comes to an end. Journalists dealing with two or three weeks of evidence could easily get it all down, marshall it, write articles about it and the articles could be fair. Researchers could do the same thing. That simply isn't possible here. And you journalists will need a way of getting into this material. Therefore my plan is that this should be the means to do it. I think there is some support for it in the Office but whether it's going to be seen through or not I don't know. The reason it's terribly important is this: if you can conceive of a trial like this having happened in Roman times and the record being accessible, would people still be reading it? Yes, they would. We read Suetonius's Lives of the Twelve Caesars, maybe because we like Robert Graves' translation, but we read it as a very interesting contemporaneous record of political life. And if you had a contemporaneous record of a trial of this kind of a head of state, of course people will be reading it for thousands of years.

MK: So you're trying to save what can be saved from this five-year work. How do you see these five years? Was that an exercise in futility since we never came to the judgment, we never came to the decision, so the question stays open.

GN: I don't think it would be an exercise in futility. But I think it's probably too soon for us, certainly for those of us involved in it, to assess its likely value as later generations or whatever will decide. And I'm sure you've given a lot of thought to what the potential benefits are and what the potential burdens are. But the benefits include laying down an oral record, a huge amount of evidence that would not have been heard otherwise, and that's available for all those who have an interest in it; providing a lot of documents which

is also extremely important which might not otherwise have seen the light of day; going through the quite difficult process of putting a head of state on trial for what he did over a long period of time - something that I don't think has been attempted before and from which lessons may be learned for other trials, but also the lesson is learned that you can do it, it's difficult; establishing quite a lot even without full final argument, probably from witnesses and from cross-examination of what the motivation and development of this man was, obviously not capable of final argument but at least it's capable of consideration. So there's quite a lot of benefit there. The downside of it or one downside of it might be that people might say that as long as the trial was going on he was capable of arresting development in Serbia, slowing it down. And if he did slow development down, and you'd know this better than me because I only work here and I don't pretend to have knowledge of the realities in Belgrade or elsewhere, but if he did slow it down in a way that wouldn't have been slowed down if he'd never been tried, then obviously an incomplete trial is a bit of a sadness.

MK: We'll come back later on to the development in Serbia and how he influenced the development there. This trial was not finished but we will have to try some Serbian political, military, police leaders on practically all the counts of Milošević indictment. We'll have Kosovo, we'll have Šešelj, Stanišić, Simatović. So, do you think that the work you have done in Milošević case will be reevaluated in other cases? Do you think so?

GN: It will certainly be. Of course it will be used and it will be evaluated in those other cases, but there will always be a difference in that hierarchy of things. Those cases are more local and his is more remote. They are more hands-on, an awful phrase but

nevertheless, hands-on with what's happening and to that degree probably more straightforward to try. He, as the overarching politician influencing, supporting, maybe directing, whatever you like, others in three different conflicts, remains a different and more difficult story. But the answers that might have been provided by the judges in relation to him could, of course, have had a much greater bearing on other politicians who in whatever different areas of the world or types of activity control the destiny of men through overarching activity rather than through being a local politician. And one of the greatest sadnesses of the case is that where there was a possibility for us presenting an argument with the judges making findings about the responsibility of that type of politician that might have been helpful to other similar politicians, it's not going to happen.

MK: You have already mentioned that you always allowed for the possibility that this trial never come to the end. But I remember that you had very strong doubts even at the beginning of the case after the first series of his heart problems. What were the reasons for that doubt? You stated many times in your motions and tried to warn the judges that his intention was to never see the end of the trial or to prolong it has as long as possible. How do you see this part of his trial strategy?

GN: Until we get Judge Parker's report on the circumstances of the death, so far as they're ever going to be resolved at this stage, it's a little hard to answer, because my answers would still be as much a matter of conjecture, supposition and possibility as were our various motions. But it seemed obvious that he had no desire to finish the trial quickly. And it would seem to be logical to say that a person who believes that he's going to be sentenced for something or other, as he plainly did believe, has no real benefits, he can see

no benefit in bringing a trial to an end unless he calculates that life in prison is going to be more entertaining for him than life turning up three days a week to bathe in the publicity such as it was at the trial. So it seemed to me just logical and obvious that he would try to do everything he could to stop the trial coming to a conclusion. Now whether he did that through any intervention in a proper medical regime, or not, is now a matter for others to determine. Whether he succeeded in doing it by working too hard and knowing that his hard work would in itself imperil his medical condition, hard work that he could have avoided by using a proper counsel, it's hard to say. Whether he had any other plans up his sleeve, apart from the plan to go to Russia to achieve a postponement of the trial, I can't know. I haven't got any reason, I can't point to any in particular. But I would have thought that as a matter of reasonable common sense he probably would have had other tricks up his sleeve, other things obviously. First of all, he must have been going to apply at some stage for an extension of time. He could have appealed that, I would have assumed. Whether the judges would have allowed him to appeal or not I don't know. And so on. So all that would have been extension. And I don't know whether he had any other plans. I don't know.

MK: Do you see any significance in the fact that his health problem reappears somewhere in October or November last year when the judges first have refused his request for 380 hours more time and so on. During the defense case he didn't have many health problems, a day or two here and there.

GN: It's very obvious, it's very obvious. Possibly not coincidence. But we can only deal with the evidence available to us at the time and, as you possibly picked up, we didn't always have all the medical evidence. There's a material that's emerged since one way and

another that might have affected the expression of views we made at the time. We can only work on what we've got.

MK: At one session in November he accused you to be the main reason for his health problem and that what you were doing to him was almost tantamount to torture. That's what he said.

GN: And?

MK: Do you feel responsible?

GN: Not at all. It's silly, isn't it? He is a chap on trial. He's legally and legitimately on trial. Trials normally work five days a week from, say, half past nine or ten in the morning in an English or American system to four, 4:30 in the afternoon, with an hour for lunch. So you get rather more hours per day than we ever got in our court and you get five days a week. People on trial are expected to turn up for that sort of timetable because the prosecuting body in a national court has a legitimate expectation as to its taxpayers and citizens that the trial should be brought to a timely conclusion. This man chose and then insisted on a choice of representing himself. Chose to represent himself and then insisted on it, against all forensic advice. It was very unwise of him to do that forensically, I would thought, and against health advice. As I think the Appeals Chamber said, "What should we do in these circumstances? Go down to one day a week?" Of course not. This is the real world. He chose to take on a burden that was too big for him, and the judges, I think, made a very generous, balanced decision in allowing him to work only three days a week. And is he tortured by anyone? Of course not. Save to the extent that he chooses to make himself a victim by overdoing it, if that's what happened. Once you're in a system, and he was in the system,

you have to obey its rules. And the rules here implied "stand your trial and act reasonably". He didn't.

MK: Many times in your pleadings and motions you described his behavious as irrational and unreasonable. Can you elaborate this "irrational and unreasonable"?

GN: Procedurally, he was irrational and unreasonable in insisting on doing all the work himself and not using counsel. And he was irrational and unreasonable in insisting on getting all the evidence given orally as opposed to getting it given in writing. Because, of course, if you get it given in writing it's a great deal less stressful, you get a great deal more in the limited time that's available to you, and so on and so forth. So he was irrational and unreasonable in that. He was also often irrational and unreasonable in that he would use his time for peripheral or totally irrelevant matters. And it's actually very much more difficult for judges to control that than others might think, because you can't be permanently interrupting somebody who goes on and on. And he was absolutely determined to spend time on issues that either had no relevance or only had peripheral relevance. Why did he do that? We could see why he did it. He did it to take as much time as possible. Because there was a clear pattern in his behavior. He was allowed, I don't know, three sessions. He go through the first two and a half sessions with what was barely relevant or not relevant. Then in the last session you see he knew perfectly well what he should have been doing. He'd come on to the relevant stuff and then say to the judges, "But you've now got to give me some more time. Look at me, poor chap that I am". So, is that irrational? It would have been irrational if the judges always cut him off. As the judges very often were generous and gave him more time it might be thought that it was simply

cunning. But in many ways he was irrational and unreasonable and the judges were unwise, it may be thought, to have treated him as rational. They should have born in mind at all times just how determined he was to take the advantage of being the immovable object.MK: But it may turn tout that everybody, not only you and the judges, including dr Van Dijkman, his cardiologist, underestimated his health condition, because according to the autopsy they found that he had two serious heart conditions. You accused him many times of manipulating with his health. What was the basis for this?

GN: The basis of that was the material we had at the time which, as I say, was incomplete. I mean, there was a regular coincidence of bad health, or alleged bad health, following bad evidence. Naumann was one, Ashdown was another, and indeed one of the ones last year actually followed bad evidence as well, if my memory is correct. And it was on the basis of that that this inference was probably to be drawn. I have no problem with that. And if he was more seriously unwell than was revealed to us, and especially if he knew it, more fool him for not doing the sensible and rational thing of reducing the strain on himself and using a lawyer. After all, his approach was not only not to use a lawyer, his approach was never to have his associates in court even. So he made life as difficult for himself so that he could, presumably, so he could be seen at all times as the sole martyr facing the weight of the prosecution. He really made life as hard for himself as he could. I'm not sure that he needs any sympathy for that.

MK: In January this year you filed a motion asking the judges to take the steps or measures or kind of trial in absentia. That was in the name of the motion. And it was rejected as hypothetical and premature. You stated in that motion that the accused realized

that the trial is coming to conclusion and that he will do whatever is in his power to frustrate it.

GN: That was the motion, if I'm right, where we also said he should be treated as a man of good sense who has effectively made a decision to call no evidence in the parts of the case he will not reach and that there should be no conceivable extension of his timetable and indeed that the time had come for every sick day to count against him because he should make arrangements for Stephen Kay, the assigned counsel, to deal with evidence in his absence if on any particular occasion he wasn't able to attend. Do I think that was an unreasonable proposal? Not at all. I think that's an absolutely reasonable proposal. The judges were more generous towards him probably than I was, and of course they have the advantage of seeing things from the central not a partisan position. But there comes a time when you've got to say as a court, "We are to be respected. One way or another you're messing about with us by relying on your health - whether you manipulate your health or not doesn't matter - by relying on your ill health to slow the proceedings down". The public that pays for this - and it's always important to remember that courts don't come out of the thin air, they're hugely expensive places, this one paid for by the international community, funded by Japan on the other side of the world - they and all of them are entitled to have the advantages of the court bringing trials to conclusions. Doesn't matter which way the conclusion goes, but they're entitled to have conclusions. And courts are there not to say, "Oh, well, we've got any amount of time in the world we like". They have a proper mandate to bring trials to a timely conclusion. And it seemed to me at that time that the moment had been reached when a clearer, stricter regime should be imposed on him. He would have understood it.

MK: That was in January, less than two months before he died, and the judges said it was premature and it's hypothetical. And they also said that they are well prepared, aware to deal if those problems arise. So do you feel somehow vindicated that you warned them and they didn't want to listen?

GN: I don't know vindicated or not. I think, actually, reading all the decisions of the judges, not their reaction to that one which upset them quite a lot, but their reaction to the following one which I think was on time. That one you're dealing with I think was on severance.MK: No, this one was in January. Severance was before, in November. The severance motion is 28 November.

GN: In which case the one in November upset them where I also raised the issue of time and how the trial should be dealt with.

MK: And mortality.

GN: And mortality I dealt with, specifically. And I dealt with the only circumstances in which they should give him more time. Do I feel vindicated about putting out the position? Yes, I do a bit. And I think it is the purpose of counsel in trials like this not just to be reactive to problems as they develop but to try and assist the judges in their thinking around the problem. Whether they were pleased to receive my thoughts I don't know, you'll have to ask them that. But yeah, I feel a bit vindicated.

MK: You said that the judges were being too generous to Milošević.

GN: More generous than I might have been.

MK: Do you think that you are more generous to the judges than they really deserve?

GN: No. I think in the course of the trial some of my motions have been fairly firm with the judges. But I do think that the late Judge May hit the nail on the head and got it right when he said the council always blame the judges and judges always blame council. The truth is always in between. It's so much easier to do anybody else's job than to do your own. And the reality is probably that everybody else's job is much more difficult than it looks, and that your criticisms of any of them should be diluted significantly before the criticism is likely to be absolutely right. And so the judges' job was enormously difficult because they did have to balance ensuring he really had a fair trial, ensuring that it was seen to be a fair trial, dealing with a huge trial which we had put together and we had kept as a joint trial over their approach, which would have been obviously to have had a single trial. So it's a pretty tricky job for them, I think, and easy for us to criticize and to say we could have done it differently and better.

MK: But you warned them many times that the accused is taking control over the proceedings. What were the signs that he is in control of the situation in the courtroom?

GN: I don't think you're going to suggest that I'm wrong in that perception being given, because I suspect from a journalist's point of view you accept that that is the perception that was being given. It seems to me that they allowed that perception to develop substantially because of the way he got away with his insistence on conducting all aspects of the case himself and calling the evidence in the way he did. Now, I can actually understand the philosophy that lay behind that, which I think Judge Robinson always very well articulated, "Having made the decision, it's up to him. Largely, if he spends or wastes his time is a matter for him, and we'll simply cut him off at the end of the allotted time and

that'll be that". So, that philosophy is perfectly understandable and if it's completely consistent and were it to have been supported by the Appeals Chamber in due course, if he'd been convicted of anything, then it could be absolutely the right philosophy. But it did leave open the possibility that the world, or viewers of the trial, would see him as getting away with what he wanted. If you have as the alternative a different sort of judicial approach where the judge says, "As far as I'm concerned, any fact witness will last 20 minutes. You can put in a written statement from the witness in order to be efficient in your use of time or you can ask him 20 questions which is all you'll get through live, but it's 20 minutes". That would have been another approach, which would have made it quite clear that the judges were controlling the manner of his giving evidence, if he'd yielded to it. They obviously didn't favor that approach for many reasons, and they may have known more than I did and they may have been right. They may have also found it difficult when they're sitting in a group of three to agree to that sort of quite firm line of control. It's much easier if you're a judge sitting on your own simply to say to an accused who represents himself, or to a witness, "Do this or the other thing is going to happen". And the accused or the witness concerned has ten seconds to think about it and it's all done very rapidly between that person and the judge. When you've got judges sitting in threes it's much more difficult, I suspect, to impose and to maintain disciplinary systems of the kind that would operate with a single judge.

MK: Sometimes there was the impression that he played the judges the same way he played during the 1990s the diplomats, the mediators with whom he negotiated. Do have the impression that he was somehow successful in playing the judges?

GN: I don't think I should record a view on whether he played the judges in that way. And I don't know that I have a concluded view. I think, if you look at the history of the trial over time, it would appear that the sympathetic approach coming to him from some quarters of the bench diminished. And if you're right that he was attempting to play them, it may be that their understanding of what was going on developed over time. It may also be that because they're rational, reasonable, educated men from democratic countries they treated him on the basis that he was the same. And he could see the advantage of that because he was none of those things and his method of dealing with people was much more brutal and in the short run it was capable of being quite successful.

MK: Let's talk about him. You had five years of very intensive contact with Mr Milošević, you almost lived with him for five years. So how did your understanding of that man develop over the period? How much do you know him now?

GN: No, I don't know him. He had a mask on when he was in court all the time, didn't he? He came in determined to maintain a particular profile. He maintained it. I don't know whether it was true or false. We know as a matter of evidence that it was different from the charming, urbane, humorous profile he could display to politicians and probably the affectionate family man he could display in family circumstances. So, all that you can know about him is what the evidence says about him, coupled with such unprompted and natural revelations about his own personality that he did give. No, I didn't get to know him.

MK: But it was your job to tear down that mask and show who he really is.

GN: It's a different issue. On the evidence we might have been able to raise compelling arguments, we would be able to raise compelling arguments about who he was.

But if your question is, I thought it was, "did I get to know him in court in any material way just through being there for 400 and something days", I don't think so. I think he was very well guarded. Things he gave himself away on tended to be his brutality with vulnerable witnesses and his respect for people in authority. He could reveal his lack of sympathy with ordinary witnesses very easily and he couldn't quite bring himself to afford them the dignity they were entitled to, or the compassion they were entitled to, when they were speaking of really terrible incidents. On the other hand, with authority figures he was surprisingly respectful sometimes, even when they were giving evidence against him. Not always but sometimes. That says quite a lot about him. But he managed to survive for four, or whatever it is, years barely cracking a joke, barely smiling, barely thinking of saying something funny. I suspect that's not really like he is. I suspect privately he's quite pleased to be amusing.

MK: That's what some of the witnesses said.

GN: So he was playing a part, as indeed lawyers do. Lawyers who know their craft properly reveal nothing about themselves in court. You're not there to be a human being, you are there to be a selection of words and arguments.

MK: During the trial he was playing obviously for TV cameras. And that's the question you mentioned before, something about his influence in Serbia, trying to stop Serbia on its

way to the future, to Europe. And there is this difference - he was playing for cameras and you were playing for judges. And he was much easier for the public to understand than you. Not to mention the problem with translation, how what you say in

your beautiful English comes out in BCS. Sometimes is really terrible. So there is this difference. Maybe that's the reason why in some circles, in Serbia especially, they think that he was very successful in his defense.

GN: Well, maybe he was on his terms. Maybe the concepts I presented in cross-examination or evidence-in-chief were less dramatic or perhaps less successful than they should have been, without reference to whether they were dramatic or not. But I had a very clear view that the case had to be presented to the judges in a workmanlike, non-emotional, low-key way, so that the case could be built up logically and intellectually by them. And it wouldn't have profited me or them at all if we'd simply presented evidence in an overdramatic or overstated way because, of course, once any party to litigation overstates his or her case, even once, the Tribunal has started the process of losing faith in him or her. And so we absolutely had to maintain we hope integrity of our case in order to maintain the trust of the judges. And that's a standard approach of a party in litigation, but particularly a prosecuting party. He had no such constraints on him because he wasn't playing for them, as you say, so he could be dramatic or exaggerated, unfair in a way that would impress the ordinary viewer. And we had to hope that although it might impress the ordinary viewer it would have no effect on the judges.

MK: And you've been in Serbia many times during the trial. What's your impression about the influence the trial had there in Serbia?

GN: I really don't know. Although I've been to Serbia several times, unfortunately circumstances are that I have to be limited in the places I can go to, in the way in which I can meet people. So although I met lots of people who were enormously valuable to talk to,

indeed talking to those people in the course of the defense trial was one of the greatest contributions to my understanding of the case, but nevertheless I don't think that that puts me in a position of being able to say how this trial affected the ordinary, not the ordinary, the non-involved television viewer, the man or woman who will be the present and the next generation of voters who are going to determine Serbia's future. I don't think I'm in any position to do that. I think you must be in a better position than me.

MK: But you said that he was trying to stop Serbia.

GN: The fact that it seemed obvious to me that he was doing his best to detach Serbia from the advantages of the West doesn't mean that he succeeded. Again, that's for others to judge. I mustn't try and step outside of my own limited sphere of expertise and knowledge. It would be quite wrong to do so. Also, as I said at the beginning, assessing the value of this trial is going to be difficult to do as soon as this. And it's going to be especially difficult for those of us who are intimately involved in it. That really is to be for others, later.

MK: How do you assess the defense case? How to explain the fact that he concentrated so much on Kosovo? Because he's directly linked, the question of command is clear cut in Kosovo, not that clearly in Croatia and Bosnia. Was that the reason, what do you think?

GN: I can only assume that was the reason that he concentrated on it because he saw its strengths. On one basis it was a much more easily defined and stronger case. And I think the judges obviously thought that because of their choice of... it was the case they would have tried first and so on and so forth. And I can't say they saw it in that way but they may have seen it in that way. It seemed to me there was always some difficulties in the Kosovo

case in putting together what happened before and what happened after NATO bombing and making rational sense out of the whole 98/99 history, although we were well on the way to doing it and would have, I'm sure, had persuasive arguments on all parts of the indictment. But he was a funny chap and forensically inept, because he frequently concentrated on things that he knew were bad for him and we'd insufficiently appreciated how bad they were for him. So within Kosovo recurringly he would focus on events more than we would have expected and then suddenly when he started exploring his evidence or reconsidering our own evidence we realized, "Yes, well, he's quite right. The case on this point is actually pretty deadly against him and that's why he's concentrating on it". So he gave the game away, if you follow me. He revealed to us his understanding of the strength of the case more than perhaps we'd understood. Now, if you extrapolate from what happened within the Kosovo case, his focus on Kosovo, vis-a-vis Croatia and Bosnia you might say that the same process is happening. He realized that although we might think Bosnia with Srebrenica and so on is of course the gravest allegation, nevertheless he understood that where he was most at risk was for what he did in Kosovo. That might be the reason for it.

MK: Sometimes one watching the trial can get the impression that on some points the prosecution was more successful with the defense witnesses than with its own witnesses.

GN: Often. Often.

MK: Often?

GN: Well, not more successful than with our own witnesses. We were able to make points and to develop points better than we were able at the time of the prosecution

evidence. First of all, that's not surprising and it's a commonplace feature of many adversarial trials, not all but many, that the defense case only makes the defendant's position worse, sometimes much worse. It was always more likely to be the case here and is generally more likely to happen in these trials because although people would like to say, "You can prepare a trial completely before you start", you can't. It's just too difficult. It's too much material to get at. And these trials tend to be somewhat organic, if that's the right word. As witnesses one, two and three for the prosecution give evidence they identify in the process of giving evidence more lines of inquiry and more witnesses then become available who weren't willing to talk to you before. The thing develops and expands. And in the defense case the same process goes on to some degree or sometimes to a very significant degree. A defense witness comes in intending to address this particular little bit of evidence that's been led by the prosecution, comes in with some documents, and the documents produced by the defense when explored reveal more of the story, much more of the story, point to more people you can go and talk to. If you've got time you go and talk to the people and you begin to see much more your own case or aspects of your own case that you didn't know about. So then you can put those to the witness and sometimes you score. We were able to score some quite significant successes. The Dubrava prison, which is one example, but also the whole kerfuffle problem over the Jašović statements which were brought in as a defense issue probably, and I don't know because I don't know what the judges thought about it at all, but probably would have backfired because by exploring that as an issue we were able to see probably a bit more what Račak was really about and what was going on at that time in the local police stations. So yeah, defense case is always the most interesting part of it for prosecutors.

MK: And also during the defense case you have received some more material, more documents from Belgrade.

GN: Yes.

MK: Which opens also...

GN: Of course. And that again is always the case in these trials. The previous trial I did, Dario Kordić, the best documents and indeed some of the best witnesses came in right at the end. And it didn't matter how often the judges might say, "You should have had all this stuff in at the beginning", it wasn't going to happen, it wasn't possible. And therefore these trials, like it or not, are always going to be to an extent works in progress as they are proceeding.

MK: As one of the documents you presented during the defense case was this Scorpion tape and it was rejected by the judges. What's your opinion about this decision? Was it important for the prosecutor's case or it was, as Key said, just sensationalism?

GN: It's silly to say it's sensational. If you've got a prosecution that is about the willful killing by execution of thousands of people and you produce a film showing as it happens - six of those many thousands being executed - I don't see that to be sensational. I see that to be simply the core of the case. Surprising that you have the evidence but not sensational. The decision was unfortunate, it seems to me, a) because the evidence of those particular killings of people identified as coming from Srebrenica slightly expanded or maybe significantly expanded people's understanding of the breadth of the plan to execute because this was 120, 140 kilometers away some days later. So it shows a very wide plan.

But for this particular piece of evidence - which came in by chance, literally by chance, near to the 10th anniversary of Srebrenica killings, and which produced in a very limited form in the trial led to the full showing of the tape in Belgrade - this evidence actually played a very significant part, as I understand it, in the developing approach within Serbia both to the trial and to Milošević and Srebrenica. And it seems perhaps unfortunate that such a piece of evidence, which is clearly relevant to the trial and also had such an effect, shouldn't have been a formal part of it.

MK: At the beginning of the trial you were surrounded by a team of prosecutors and by the end it was you, Miss Diklić, Hildegard and Nena. What happened to the team? At the beginning you were presented as a coordinator, a leading member of the team, but at the end you were almost alone.

GN: I think the whole history of the establishment and development of the team of the case is outside the scope of this interview. But from the beginning it was clear that there would have to be a single team. As far as I was concerned there was no way of working on this case without a single team. In the prosecution case where there were three separate teams in place and where people were reducing evidence in chief it was possible to justify using a lot of different counsel. I think there were frankly far too many used because it looked like a football team of people and the one man in the dock. By the time we got to the end of the prosecution's case and for other reasons all the senior attorneys in Kosovo had left ages before or significantly before, and so the only person who had particular knowledge of the Kosovo case was me at the appropriate level to be dealing with court work. Croatia was of course shared with Hildegard and if we got on to Bosnia other lawyers

or at least one other lawyer would have appeared in court. But in fact I think to have too many lawyers in court is deeply unsatisfactory for various reasons. If you're presenting a case you actually have to have command of the case as a whole, you can't do it in little bits, particularly the case against a man like this. The judges are entitled to have a single and coherent position staked out for them, which is more easily done if you have a limited number of lawyers presenting it in court, even though there may be backup junior lawyers elsewhere. So in the event I think it was actually - although certainly difficult to work with such limited resources and at some time there was a period here, I don't know if you know about it, where there was a hiring freeze, there were limitations on resources which was another problem we faced because of budgetary restraints from New York - I think actually it's better to have a limited focus and I think you work more efficiently as well.

MK: Were you all the time in this commanding position, the one who was making decisions? Or have there been attempts, let's say, that somebody else from the Office tried to decide which course to take in the courtroom?

GN: Well, I'm not sure... the degree to which that's an appropriate line of inquiry at the moment. But I was brought in to decide everything that would happen in court and to lead everything that happened in court. I did that. And had there been ultimately any irreconcilable differences about approach I would have left. I was still there. So, I made the decisions, the decisions that needed to be made. And with one or two exceptions there's nothing that stepped through by way of a decision or evidence that was called that was contrary to my wishes.

MK: Now everybody talks about the lessons of Milošević trial. I just found that now

in Baghdad they are also trying to learn something from Milošević trial. There is this Michael Sharp's statement that one of the lessons of Milošević trial is that war crimes trials need to be streamlined and efficient. "'Justice delayed is justice denied' proved to be accurate in the case of Milošević". Would you agree with that?

GN: Yes. From the beginning I've been pressing, from the beginning in this case and in previous cases I've done here I've pressed for streamlining of trials by whatever means is sensibly available. And I believe that in a modern literate age a great deal more evidence should be taken in writing and consumed by judges in advance to narrow down the amount of evidence that has to be given live. And I see absolutely no reason to change my views on that.

MK: But with the knowledge of what happened and how it was during those five years, what, if anything, would you do differently now if you have to start again?

GN: It's actually too big a question because although you can say, "All right, I might have done this differently, I might have done that differently", the truth is that if you would start again, although you'd have the benefit of hindsight and you would do things differently, as the new story unfolded you'd make correct decisions and mistakes which would take you in all sorts of different directions, and I suspect it's difficult to say, "I would have done x, y and z differently". I think if we could have satisfied the judges at the beginning of the case to have taken the evidence of the crimes themselves in writing, in principle, subject to cross-examination, if we could have persuaded them of the need to be much firmer about what should be cross-examined and how long it should be cross-examined, that would have streamlined the case great deal. And I think also if we've

been able to persuade the judges, and for some reason we weren't able to persuade them, of the need to issue orders for the production of documents very, very swiftly and very, very firmly, so that we could have got the documents that were most important to us earlier, that might have made quite a difference, I think. But, as you will appreciate, the timetable that was involved for various reasons, not just judicial, but also things that were done by way of negotiation, a timetable for getting documents like the SDC records, various military files and things of that sort was extremely extended and, as you know, the SDC documents still haven't been looked at at the time that the accused died because of the time it was taken to get them.

MK: You mean the Supreme Defence Council?

GN: Records, yeah. What did I say?... SDC, Supreme Defense Council. And so I think doing those two things would have given them a chance to speed things up. Of course the simplest answer would be to say, "Well, we should have gone in and got the witnesses at the top first, we should have got all the big insider witnesses first, like Babić, but all the others, and then we wouldn't have needed to bother with anything else". Of course that overlooks the reality that those witnesses who do come along and help in revealing the picture at the top are witnesses who are very slow to come forward. They only themselves come forward as the trial develops and as they probably assess the sense or safety of doing so. So that the simple answer, "we should have gone in at the top and just taken the crimes for granted" is probably unrealistic. These trials do have lives of their own and the fact that, as you've seen in your years here, there's a recurring pattern of slow development and best evidence coming late. You've seen that, and that's I think a reflection of the reality of this kind of

process.

MK: Do you have any regrets? Something you should have done but you didn't during the trial?

GN: If I do I can't think of it now. I'm sure I do but I'm not going to identify some single point now for your program.

MK: Do you think that one of the lessons may be that in such a trial you cannot allow the accused to represent himself? Was that the primary mistake?

GN: I think the question is more maybe how, if and when an accused is allowed to represent himself, you regulate that. But again, to be fair to the judges, any difference or increasing control that later trials of self-representing accused might demonstrate would be built on the experience that's been gained in this trial. And before this trial there was no experience. Judges were having to work their way carefully through the minefield of his rights, if it is a minefield to have rights, but minefield where he got his rights and their duties to bring it to a timely conclusion. Very tricky.

MK: And the last question. Do you still think that it was wise to have such wide indictments with 66 counts?

GN: I certainly think it was correct to join the three indictments together. This is not a case for trying to make a single decision against a man like this. If you want to make a single decision against him for a single crime don't try it here, try it locally. If you want to have a war crimes trial, you want to see how war crimes occur, how they've developed, then you need to look at a man's overall criminality. And that's what we sought to do.