

Project:

ICTY ORAL History - Documented by SENSE

An Interview with

Mark Harmon

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Interviewee: Mark Harmon (MH)

Interviewer: Mirko Klarin (MK)

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MK: What was your motivation to change your very successful federal career in the US for something which was just a beginning with not very certain future at that time?

MH: A number of motivations actually. One of them was that when I grew up historically, I was very interested in holocaust. I had neighbors who were survivors. I thought they were wonderful people, I couldn't understand what had happened to them, I was too young. They would walk by my house, and they were very, very nice people and latter when I grew older, I was 8, 9, 10, and I got more information about the holocaust. And then I was a history major, I studied it. It was a single most moving historical event that touched my life and of course I was interested in the prosecution of the people responsible for the holocaust. And I never imagined at all there would ever be another repeat of trial similar to the Nurnberg trials prosecuting war criminals for the types of crimes they did. And then the Yugoslav Tribunal came on the scene. I was at the Department of Justice as a federal prosecutor at the time. I did not know much about the Yugoslav Tribunal. I run into an old friend of mine Alan Tieger. I had prosecuted a large federal case, Alan Tieger had prosecuted a large federal case and after you prosecute a case, a large case, your life changes a little bit. So, I had run into Alan, and I said to Alan who was at the Department of Justice as well, 'what you gonna be doing?' and Alan told me he was gonna be going to The

Hague to participate in the Tribunal and I thought I'd like to do that. And Alan told me that there had been a federal solicitation in the Department of Justice asking for prosecutors who would be interested in participating and they would gonna select five to come to The Hague.

I never in my litigating section, either I was on travel some place, but I never seen the solicitation, so I said to Alan I'd like to that myself, he said it was too late. So, I was temporarily discouraged, but not completely. So, I thought to myself there was another way to do this. So, I called The Hague and I contacted Graham Blewitt who was then acting prosecutor at ICTY. I asked him if they are still accepting resumes and applicants for prosecutor positions. He said yes, they were, they would be available, open for another couple of days, so my wife and I sat up that night and I typed my resume and I sent it to Graham and he was kind enough to offer me a position. And that is how I came. I came as a direct hire to the UN, as opposed to Alan and five other lawyers who came as secondees from the USA. 00:03:30

MK: At that moment, did you believe this would be a 17-year long experience in The Hague?

MH: No, I didn't. I had no idea it would last that long. In fact, it was always a, ... I never thought it would fail, because I'm unfailing optimist myself, but I knew it was gonna be difficult. My bigger concern was not... It wouldn't fail because of the lack of effort of people who were here at the beginning because people who were here at the beginning were highly motivated professional people who wanted to achieve: one - to develop of the international criminal law, but more importantly wanted to develop justice for the people

who had been suffering in the former Yugoslavia. There is no question in my mind that the motivation of the people who first came here was enormous. What concerned me more was the politics because I thought those are matters over which we had absolutely no control - if the international community was tired of us, or there are political interventions that could derail us, that was more of a concern. We were all about our business – focused, attentive at all times, directed toward developing cases and fortunately for us we had a structure where judge Goldstone was the prosecutor. And judge Goldstone was very, very competent one, particularly in the matters of politics. He was, I'd say this with great certainty, he was responsible in large measure for our political survival. He was a very astute man who understood the international community. He left us to do our work. And we did our work. So that's what concerned me. I didn't think it will last 17 years, but I certainly was hoping that it would last sufficient amount of time that we can do some, we can accomplish some good.

MK: Back in August 1994 you didn't find much when you came to the Tribunal?

MH: No there were not much at all. As a matter of fact, as my friend Alan Tieger tells a story... He, Alan, arrived month or two before I did, and Alan turned... He was in Graham Blewitt's office, and he recounts the story when Graham turned around and opened up the bookcase behind him and there were two volumes of probably Commission experts' reports for all I know, but that was the evidence that we had. No, there wasn't much at all when we started here. This was starting from a base of zero.

MK: Can we step back? You said that you have been particularly interested in the holocaust. Does it mean that the images you have seen on let's say American TV before

coming to The Hague reminded you somehow to the holocaust images?

MH: You mean the images in the former Yugoslavia? Well, I think the images in the Holocaust are unique I have to say. They are, I mean I can recall what struck me and has never left my mind was these neighbors of mine, who were wonderful people, and then when I was young man and I first saw the images of the holocaust, pale, emaciated bodies stacked like cordwood, it just shut me, i mean I was speechless. Now, I never saw any images like that in the former Yugoslavia. What I did see was terrible images of people who were fleeing their homes, people who were persecuted, who were forced to leave areas where they had lived for a long time in a terrible state, you know. There were some images of particularly of Sarajevo that were quite graphic and quite moving. But the imagery was different, but the responsibility for the suffering was the same. It was the same types of boys if you will who were asserting an agenda that was indifferent to the suffering of the victims and for my point of view and my colleagues' point of view, we were interested in bringing those people to justice.

MK: So, you started here. What was your first task... at the OTP?

MK: Well, first of all of course we had to get oriented. There was a big space with not much in it. Once obviously I got a desk, I was in the big space with lots of investigators and lawyers, then we started to look at cases and I started to work on an investigation. And it was, you know, an investigation that ultimately did not result in a prosecution. It was a difficult investigation, I can say more if you'd like, but there are other investigations that I worked on that obviously went much further than that.

MK: This first investigation was based, I suppose, was based on the report of the

Commission of experts, Bassiouni Commission?

MH: I do not know if it was based on Commission of experts report, but it was based on reports that were coming out of the theater... It involved a case in Pakrac Poljane in Croatia, with victims who were Croatian Serbs and we endeavored to investigate that case. The first effort was to investigate that case, was led by a colleague of mine who was seconded from USA Terry Bowers. Terry Bowers was a very, very skilled investigative lawyer and a prosecutor. And I got the case and both of us came to the same conclusion. We obviously have to prosecute cases based on evidence, available evidence. It's not based on what we think, it's not based on suspicion, it's not based on what third parties tell us, it's based on evidence that's admissible in a court. Our fundamental problem in that case was that the victims and a lot of the evidence and people who knew about this had fled into either the RSK, they had fled to Republika Srpska or to Serbia and they were inaccessible to us. And Serbia wasn't cooperating with us, Republika Srpska wasn't cooperating with us, we didn't have access to sufficient evidence to make a case. We had people we thought were responsible for this, but you know, trying to make the connections in the milieu where there is no cooperation, we just, we failed in terms of making that particular case.

MK: Do you feel any satisfaction with a fact that now there is a case in Croatia about crimes committed in Pakračka poljana?

MH: I do feel, I feel greatly satisfied. I mean the wheels of justice moves slowly and the politics have changed obviously, the interest of parties have changed. Yes, I think those were the terrible crimes that were committed there, we couldn't prove them, but the state is pursuing them. That is the terrific news.

MK: And then, soon after, I suppose, after you started to work on the case of Bosnian Croat's crimes committed in Ahmići and other villages of Lašva Valley

MH: I did, indeed.

MK: Can you explain the kind of work you have done. When did you start that, because those were among the first indictments of the ICTY?

MH: I started the... There has been an ongoing investigation parallel to Pakrac poljane. While I was at the Tribunal there were multiple investigations that were going along on at the same time. Eventually I was assigned to the Blaškić case, or the central central-Bosnian cases at the time because it was more than just general Blaškić. And then there were indictments that were issued eventually for a number of people from the crimes that occurred in central Bosnia. The indictment on general Blaškić was assigned to me and we then prosecuted the case.

MK: We'll come later to the case of General Blaškić. It was one of the first examples that you had to organize multiple trials for the people indicted with the one indictment. So, in the case of Lašva Valley you had at least three trials for one indictment.

MH: Yes, that was Aleksovski, Kordić and Čerkez was one case, Blaškić was another case and then there was related cases to Kupreškić cases. They were related to that in a series of lesser accused persons. They were at least four trials.

MK: Did you had that in mind when you... somewhere you wrote about your experience in the Tribunal, and you said: "Prosecuting massive crimes with primitive tools".

MH: Oh ... I could, I could... you know... There's a...

MK: Just explain one of the reasons why you used this phrase

MH: Yes, I came from a well-developed legal system, with well-developed tools, prosecutorial tools, that included in part coercive tools. In other words, I can compel the production of the evidence, I can compel the presence of witnesses to come to for example a Grand jury or to a trial. The Tribunal was different. The Tribunal was a mix if you will. It had all the trappings of a court, but what it lacked from an investigative point of view and from prosecutors' office point of view is that we didn't have the instruments at our disposal to secure all of the evidence that we needed at time. So, for example, the Tribunal depended on the good will, if you will, of states, the cooperation of states. Now, that is fine in theory, but in practice when some of the states are complicit in the commission of the crimes it breaks down right away, immediately. And so it's difficult for example, take the Blaškić case, It's difficult to, for us... One of the things that we had to prove in the Blaškić case was that there was an international armed conflict. In other words that Croatia was involved in the war in the conflict in Bosnia. Now, when I would ask Croatia for assistance providing me with the documents of the military units from Croatia and the names of the people who were from the army who were participating in the conflict in Bosnia, I would get the answers from Croatia that 'well, we are still looking', or we're having...you know I was getting slow rolled in other words I wasn't getting the cooperation. And that was quite in contrast to US federal system, or even the state system where a prosecutor can say to an entity provide me with the following. I issue a subpoena duces tecum to an entity which is an instrument that compels the production of documents or evidence under pain of penalty. It can either be - in the US - a penalty of either fine or imprisonment. And the entity has to give that, those documents to me or they have to face consequences if they willfully not

complying with it. So, I found myself, and we all found ourselves in a position where we knew the evidence existed, but we couldn't get it because the state wasn't interested in giving it to us. So, those were some and there's a lot more difficulties in the Blaškić case. But that's one of the... When I referred to in an article about the primitive instruments, primitive tools. We had primitive tools, we couldn't compel the production of relevant evidence that we knew existed.

MK: Did it changed over the years? Do you have an impression it changed in these 17 years?

MH: I would say this. The answer is probably yes but not for the reasons that there was respect for the instrument, it was more because of the politics, it struck me. When I say the politics, these countries, as you know Mirko, these countries eventually post war wanted to engage and become part of EU, and the European community and integrate into it and the international community kept a lot of pressure on the states to cooperate with us and we would file reports with the SC, informing the SC whether the states were cooperating with us or not. And of course, a lack of cooperation was a block for admissibility into integrated Europe. So, it wasn't as a result of the states necessarily respecting the Tribunal, frankly a lot of the states told wish we'd go away. It was because there were other interests, other political interests that made it more interesting for them and more necessary for them to cooperate with us. So do I think it's changed, yes. Now, 17 years later when we issue a... First of all, I have to back track. We were, in litigation that we had with Croatia the Tribunal held that we could not compel with a subpoena duces tecum a state to produce documents and we couldn't impose penalties. What resulted was a

system were by if the state wasn't cooperating with us, the prosecutors office and providing us instruments, documents, a report could be filed with a president of the tribunal who in turn could file a report with SC saying the state isn't cooperating. Then it was incumbent on the states to bring the sufficient pressure to resolve the problem and make the recalcitrant state cooperate with us. Now, you see, that's a nice theory and that's an elegant solution but from the trial lawyer's point of view, from the prosecutor's point of view, from my point of view, by the time the UN political process concludes, my trial has been over for years. So, in truth and in fact what developed was we had eventually the court that can issue orders to states, binding orders to states and we did and eventually with the change of political climate we were getting much more cooperation frankly.

MK: But this is not a problem only at the Tribunal All the international courts, including ICC are dependent on good will, the compliance of the states. They all lack enforcement instruments; they all lack their own force to arrest the accused and so it happens the other day that the accused Bashir was at the same celebration with the UN Secretary General Ban Ki Moon. So, does it show that there is a kind of double standards how, in the world the people are treating domestic crimes and international crimes. Because if somebody commits crime, kills somebody in Holland or anywhere else, there is no thing the police would not do to arrest that person and if somebody kills a hundred thousand or millions in Sudan or Rwanda or in Bosnia, well this is another matter

MH: Well there's certainly stark differences between international justice and the mechanisms available to secure arrest and evidence. They are underdeveloped, they simply... Sovereignty is an impediment to creating a justice system that mirrors a domestic

legal system. Frankly, it's a limitation, it's the Achilles heel if you will of international justice. One has to be persistent as we were in the Yugoslav Tribunal. We never gave up, we continued to seek documents, we continue to file requests for binding orders. You have to try to find other ways to secure the evidence through a variety of means. We used in the Tribunal the search warrants in Bosnia. Obviously, we relied on other states to give us cooperation which they, some states were aligned with the Tribunal's interest would give us information that was helpful. But there was a certain amount of weakness in the international, in the structures of the international legal system is what I'm trying to say that I'm not sure, you know, that we can solve that issue. At least in the near future.

MK: Speaking about, going back to Blaškić and the problem with the cooperation with Croatia. There were some reports in Croatian press or in the statements of some lawyers that Croatia gave you some forged documents which put the blame on Blaškić just to save some other people from the responsibility for the same crime.

MH: Well, I'm not sure about it. I mean, that may be reporting. The Croatian press is wildly unreliable from what I can see when I was following the press. I never saw forged documents. I have no doubt that the interest of Croatia was to keep us away as far away from the highest political structures from President Tuđman and Šušak, Gojko Šušak and others. It was keen to keep us away from that direction, but I don't, I didn't see, I personally didn't see forged documents.

MK: What about the documents in which the Appeals Chamber has changed the judgment in Blaškić case. The documents based on the... Well, it was, as far as I remember, it was a document from the Croatian secret service but the part of it was written or dictated

by the Blaškić lawyer.

MH: Yes... That's certainly the case...

MK: Can you give me the follow up story about the case

MH: Well, the appeal is, you know after the Blaškić case I went right on to the Krstić case, and the appellant lawyers dealt with the new evidence although I consulted with them. I can't give you in the great detail, the details about the new documents. What I can say about is a background to the Blaškić appeal. Beside not cooperating with us, in terms of responding to our request for assistance, the state of Croatia embarked on an active program to conceal evidence from the prosecutor. In other words, they took documents that were from the HVO in Bosnia and the archives, and they secreted them in Zagreb. They moved them. Even though we were trying to secure them. So, they did that. When I asked the Croatian authorities for the location of those archives, they didn't know anything. Of course, they were hidden. As I recall they were in the ministry of defense or ministry of the interior. Second of all, Croatia infiltrated the Tribunal in an attempt to compromise our efforts. They had an operation called "OH Hag" where they had their agents inside of our institution and I can tell you, although I can't prove it, I can tell you that my colleague Greg Kehoe had a document that was very important document for us. It was the situation report of the Cheshire regiment which was UN British regiment that was located in central Bosnia, in Vitez and this was their situation reports. My colleague Greg Kehoe had annotated that thick document it was about this thick. He spent a year studying this document, and one night it disappeared from his desk. It was stolen, in The Hague, in our office and I reported that to the security, but shortly after it was stolen, the defense seemed to have a great deal

of knowledge about the contents of the Cheshire regiment documents. Before they had received them. I can't... I go into speculation beyond that, but I have no doubt that Croatia in "OH Hague" was engaged in trying to find out who our witnesses were. I believe they stole the document from Greg Kehoe's desk, one of their agents... Those were... Part of the problems we had to face as prosecutors in terms of prosecuting the cases in central Bosnia we had an active state, I mean state actively trying to subvert us.

MK: Do you still feel bitter about Blaškić case.

MH: I think that general Blaškić was responsible, I think he was properly convicted. I think that the documents were not compelling to me, were not convincing to me that I saw for under article 115, which is a new evidence that suddenly became available. I think that the evidence didn't convince me, personally, and there was, and I'm unclear on this Mirko, there was a report by Anto Nobile, and I would have to go back and look at my documents, report by Anto Nobile, that was relied on by the Appeals Chamber to reverse the conviction. Now, that struck me as quite strange that the defense lawyer goes to as I recall to the police department or ministry of interior and made certain assertions and the court relied on it. But I don't have that document in front of me and I would have to go...

MK: But it wasn't said in the document that it was Anto Nobile.

MH: I think it was clear that it was though. As I recall, I was. I recall from the face of the document he was, mister Nobile made assertions that... and then..

MK: But there had been two version of the document. There was a full document, and there was a kind of summary in which there was not... without the sources of the

information. The Appeals Chamber had only this summary of the document without the sources and the source was of course Anto Nobile.

MH: You see, I don't want to go into this area because I'm not comfortable, I don't know the facts, I could easily reacquaint myself with the facts. It was my impression that the document that I saw, it was clear that Anto Nobile was the source of the document and the Appeals Chamber relied on it but I would have to go back and look at the documents. I don't want to be 100 percent ascertaining that position, but I have to revisit the archives.

MK: In the course of investigation preparation the trial or during the trial, did you visit Lašva Valey. What were your impressions about what you saw there and your impression of your contact with the people there, with the victims, survivors?

MH: Before the trial, before any trial I think it's very important that the lawyer goes and sees the crime scene. So, yes, I did, before the trial, Greg Kehoe and I, and an investigator, military analyst. The three of us went in a land rover and we went, essentially, we snuck in to Ahmići, because we didn't have an escort. This was just before the Blaškić case and it was probably pretty dangerous to do, frankly, but I wanted to see the scene and so Greg and I and this other person drove into Ahmići and we drove, pass the destroyed mosque. Up in there was a fork in the road and we drove up one fork and looked at all the destruction and went up the other fork and looked at all the destruction. Then we, as I recall, we saw some people and we didn't care to be caught out in that situation. We had a white UN vehicle, so we stood out like a sore thumb, we didn't want to attract attention. So, we came out of Ahmići and then we went out to Vitez and looked around Vitez itself; and then we went down to Kiseljak. So, we toured the whole area but in a low-profile mode if I

can described it that way. Now, I subsequently returned to Ahmići post Blaškić and it was after Ljubičić had been indicted, and Ljubičić was gonna go to trial, I was desperate to get Ljubičić into trial because Ljubičić was a man who had a key to general Blaškić. He received the orders to kill from general Blaškić and I was anxious to get him, to convict him, frankly, in the Tribunal.

I wanted, I also wanted him to testify under oath because if he testified and tell the truth, he would tell the truth that Blaškić had given him the orders. What also interested me was the timing because that would be from the prosecutor's point of view newly discovered evidence that would available for us to us to ask the Appeals Chamber to consider. But unfortunately, two things happened. One Ljubičić was sent to Bosnia as a case but that was only after, I kept trying to get him to be tried. I was trying Krajišnik at the time and there were gaps in our period when we were out of session with Krajišnik, and I thought that I could try the Ljubičić case in 100 hours. I had a list, I had a witness list that was, would've made this very efficient trial but coming back to my point. I took the two lawyers with whom I was going to prosecute Ljubičić, back to Ahmići and I went into Ahmići again, and I had a very interesting reunion with one of the witnesses from the Blaškić case, the woman named Fatima Ahmić. I don't know if you recall Fatima Ahmić's evidence, but Fatima Ahmić was a wonderful person who lived on the outskirts of Ahmići and she was typical you know bosniak woman, a villager. She lost her son who was murdered next door to her house, her house was burned, then the next day she was, her husband who was on kidney dialyses was murdered by the Jokers or the HVO. I knew where she lived because in the course of the Blaškić case we had used areal images and Fatima Ahmić was my witness. I led her evidence in the course of the trial and I remember, I think I've told you this before Mirko,

but you know one of the problems with prosecuting war crimes cases there are large numbers associated with these crimes. So, numbers are numbing, they desensitize you to what really happened. So, one of the things that we did in the Blaškić case was we wanted to remind the Trial chamber that what we were talking about were not numbers but people. So, I had to ask that the witnesses, victim witnesses who were going to come, the survivors who were going to come, who would have lost sons and fathers or like, bring with them a photograph of the person who was killed. Now we were very, very sensitive about that, because dealing with the victims, because what we wanted to do when they told their testimony we wanted to put a face to the story. But we were extremely sensitive to the pain that looking at the image like that might cause to the victim. And I remember particularly with Fatima Ahmić, I said...and we did this uniformly with all of them, with all of our victim witnesses who we were going to show a picture to, I said to Fatima, Fatima what I like to do... She brought the picture, she brought two pictures, three pictures, I'd like to show you the picture of your son and I'd like to show you a picture of your husband, after you describe their deaths. But can you deal with this in the court if I show this to you? If you can't, I'm not going to show it to you, I do not want to cause suffering, so we won't do it. She assured me yes, she could deal with that. So, at the given moment I asked that the picture of, as I recall was her son, be marked for identification and shown to her and asked her if she could identify the person in the picture. And Fatima Ahmić broke down, she was inconsolable. Now this is after she had told me she could deal with this.

I was, and everybody in the courtroom was stunned. It was a clear reflection of the pain that these crimes caused to the people and the community and something that when you only deal with the numbers, you forget. And I remember Fatima Ahmić cried for, it

seemed forever, and judge Jorda said to her is there something Ms Ahmić... can we take a break, and she said no, she wanted to regain her composure. And then she cried again, as I recall as this was over ten years ago, but she cried again and then she eventually did regain her composure, and she did identify her son, and she did identify the picture of her husband and we introduced those into the evidence. And that was the way of showing to the judges, to remind the judges, and more importantly to remind the international community that the war crimes were about the people, not numbers, not these impersonal statistics, they were real people and what happened to them. That was a very disconcerting event in the courtroom to listen to Mrs Ahmić, to Fatima Ahmić... I mean, it broke your heart. As I recall the next witness, one of the next witnesses was a woman who Andrew Cayley lead and Andrew asked the witness the same scenario. He said I'd like to show you, and I do not remember the name of the woman, she may have the pseudonym... I'd like to show you a picture, can you identify this. Of course, it was her son who had been murdered. And judge Jorda intervened as I recall, because judge Jorda had been shocked by the experience of Fatima Ahmić, and he said 'No no, Mr. Cayley I do not think that's necessary. And she said very clearly, she said no, I want the world to see what they took from me, she said, my son was well liked in the community, he thought other children martial arts, I want the world to see what was taken from me. So, that reinforced what we thought was important that the world see, and this was the victim speaking, the world see what had been taken from these people and it gave the different dimension, the important human dimension to the trials. Now then I came back, to answer your question in a long way Mirko, I then went back in a Ljubičić case and I took two lawyers with me to Ahmići and I remember from the areal images this big arial images where we had located every victim's

house, I remember where Fatima Ahmić lived, so I stopped with Fergal Gaynor and Magda Karagiannakis who were two lawyers with me, and I stopped at Fatima Ahmić house announced. I wanted to say hello, I want to pay my respects. And as I recall her house, it was the same house, it hadn't been repaired, she was living in an outbuilding as I recall, and I opened... I knocked on her door and she opened the door, and it was grand to see her, she was joyful. I was very happy to see her, we embraced, she invited us into her quite humble accommodations, and she went to her pantry, and she pulled out nice piece of Bosnian pie and offered it to us and she somehow got her son to come from Vitez to see us, I mean it was the wonderful reunion and it was the connection I would never forget. And frankly one that always motivated me, because I always thought that you know, decent people like Fatima Ahmić and other people in Ahmići deserved to have the prosecutor, prosecuting the people who destroyed their lives and took their loved ones. And so to me it was a wonderful experience.

MK: You had much more experience dealing with witnesses in Krstić, general Krstić trial. So, do you have any particular moment which you remember. I suppose there have been a lot of moments of that kind during Krstić trial.

MH: Of course, we had considerable contacts with, first of all the handful of survivors. In the Krstić case we introduced the testimonies of most of the survivors. And then there were victims on a far greater scale than the survivors, they were all the people who were forcibly transferred. So yes, we had contact with all of them. I mean all of them are memorable. Ćamila Osmanović was a woman who I related to, because of her courage and she was on the morning of the 12th, 13th or 14th, now my mind is playing tricks on me,

either 12th or the 13th, was the morning of the 12th of July she was one of the three Bosnian representatives who went to the hotel Fontana to, essentially, be confronted by general Mladić and general Krstić and others and she was somebody who showed... It's filmed, she's on film, and she showed a great deal of courage. I know she was terrified, she told me that afterwards, and I know she was so terrified that she attempted to take her life after that. Fortunately, she was saved. But she was somebody who meant a lot in the course of that trial to me. She testified about her experience, again she was a very compassionate woman who could show the human face, if you will, and she was very articulate and she could express what had happened to that community. I mean, the Krstić case was astonishing in this sense. I think the people who testified in the Krstic case, the victim community who testified in Krstic case, their testimony was superb. It was often times poetic. I think it was almost the poetry of pain, if you will. They were exceptionally articulate people. I do not think their testimony has been as compelling as in other cases, 'cause they've had to come back. Ahmo Hasić for example testified about the killing of his two sons and how he felt like an old tree, all dried out, that was that image. There was the image of the young man who survived I think it was the Kravica warehouse who testified that the people who were his, who were the killers, had been misled. That is such a heroic testimony. So, there were the people who testified in the way that I've never seen it and I don't think it's been repeated. I think that was in terms of their ability to articulate what happened to them and to express it, was unsurpassed.

MK: Can you tell us what you think what the effects of the testimonies was on the victims themselves, on the witnesses themselves. How did they feel. What is the meaning for them to be there to tell their story to the judges to the world?

MH: I think it was important to the victims they would be heard, they could have a form where they could express what happened to them personally, what happened to their loved ones, the magnitude of the crimes. There was an inherent sense of justice in their hearts and they wanted to be a part of the system that would bring justice. You know what it meant to them I would have to defer to victims, I do not want to be presumptuous. I think if I am to speculate, I think it meant a great deal to them to have Tribunal in existence where they could be part of a system that would hold accountable the people who had done the crimes. I think it made a big difference to them. And I think that was very important to them. What differences it made into their personal lives I think it was very stressful to them. When I think back of the victims both in... in all of these cases that I participated in, particularly Ahmići and Srebrenica, the victims were enormously courageous. I mean the people who had committed the crimes were still living in their communities. They had to go back into those communities. And the ability of the OTP and the Tribunal to protect them in those communities was virtually not existent. Now obviously we told them if there are issues, they should immediately contact us and we should try to intervene through the state authorities. But you know that's a set of words. Having to go back and live every night in your house, when at the same community is the person who killed your son, or your brother, or your father, every night. Every day going to the market and seeing this people, is something that I admire in the victims, that they stepped up and they accepted their responsibility. You know one of the things that irritates me very frankly is, are the people who... I think people have the moral responsibility to bear a witness to what happened. And my frustration in, for example Srebrenica case, or in the Blaškić case, is in the Blaškić case the Bosnian Croats, by and large for political pressure or otherwise, did not want to

step up and say what happened. The VRS people who participated in the killings, who participated in the forcible transfers, they didn't have courage to step up and bear witness. We interviewed a large number of them in the course of our investigation. I've sat in front of... I would say a hundred or so witnesses from the Bosnian Serb army who looked at me square in the eye and just simply lied. They didn't see anything, they didn't know anything, they misled me. So, I know there's a lot of pressures on them and I know politically it was difficult, but one has a moral responsibility in the face of crime like that to do something. I will tell you Mirko that in the course of investigations in the Srebrenica case, I won't name names, but in investigation I recall there was one Serb who stepped forward and he stepped forward to tell us the location of certain grave sites. And he gave us specific figures and coordinates where we could find this. That was the only person who was a Serb or Bosnian Serb who came forward in the course of the investigation and we know that the Srebrenica crimes were hugely, were done public. The Pilica Cultural Dom, for example where 500 people were killed in village of Pilica it happened on the main street in the cultural center. Nobody stepped forward. Nobody stepped forward from the Branjevo military farm, nobody stepped forward from any of those crimes who were participants or witnesses to come forward and tell us what they saw except one person who told us about secondary grave and Erdemovic who has a unique story of his own. That's it.

MK: You mentioned Erdemović, but before going to that story I would just want to ask you one question. How did you write the first sentence in your opening statement in the Krstić trial?

MH: You mean the triumph of the evil? I just thought about it, I gave it a lot of

thought about, you know, what had happened and how, it struck me, how evil had essentially triumphed in the course of the commission of those vast crimes. What struck me was society was wrong; society was out of, what I want to say, I want to say that... Society was out of sync if you will. Here was a vast enterprise that has resulted in a vast crime and in part nobody came forward, as I said, and the bad guys won, if you will. They had triumphed in the course of whatever the societal dynamics were. Evil had triumphed in that period of time. So that's... I set home, thinking about it, I had worked on the case with my colleagues Peter McCloskey, Jean Rene Ruez and others and to us, it was a set of circumstances that were incomprehensible to us. So that's I mean as I go back and think about it, I was just thinking about, you know the consequences.

MK: Yesterday there were some celebrations of liberation of Srebrenica, so the evil is still winning.

MH: Oh, of course, of course. Look. I remember, I think it was in 2002 when the draft report from Republika Srpska was, either publish or it came out. I have a copy of it, it's one of the most memorable documents I have ever seen. It's a ... Where the conclusion was that maybe 100 people were killed in the course of the Srebrenica... I mean the purpose of the report was to find quote "truth" about Srebrenica. The conclusion was about 100 people had been killed in part because of revenge, or in part because people didn't understand their obligations under international law. Now, that a state would sponsor that piece of guano is astonishing to me. And I know there was a furor after that and it was either retracted and the president then later you know, put forward the better report. But the fact that that report could, first of all, could even be typed and then circulated to me shows that

the society and the people who were responsible for those crimes were still in the position of power and it was very discouraging. 0:56:11

MK: Also, you have this second report which was alright, but now they say that this was not the report of the Republika Srpska government or any commission but the report written by the international community, by the Office of the High Representative. So, they are going back to denial.

MH: Well, it's certainly not progress, it's certainly discouraging. Of course, we still have holocaust deniers, you know after 1945 so... You still read about them today. There will always be a segment of men and women who do not want to accept historical truths, they are incapable of doing it for whatever other agendas that are going on.

MK: But you cannot say a segment for let's say a good part of the population of the whole country. This is not a segment.

MH: No, no, but I think... It's not a small segment, I don't know the statistics and I don't know the numbers, but it starts with leadership. You know, you have to provide, you know, proper leadership that has to take responsibility for historical, you know, truths in the background, instead of propagandizing in perpetuating falsehoods. That suggests to me that the leadership clearly in the Republika Srpska is immature, it isn't capable at this point in its societal development to have that... They are not responsible essentially at this point, that's irresponsible.

MK: Let's go back to Erdemović and to guilty pleas. Generally, and the plea agreements.

MH: OK.

MK: Erdemović was a very specific case. They are using now the term plea agreement but there was no agreement then. I mean the agreement was made two years he pleaded guilty. Can you tell us a little bit about that specific case? You communicated with him when he arrived here?

MH: Yes.

MK: Can you describe this communication?

MH: Mr. Erdemovic when he arrived, the case was assigned to me, and I had contact with him. He was a very young man, grievously injured from being shot, ill at the time, frightened, I think that... And quite willing to tell the truth. I mean, he was somebody who, from the beginning was honest with us. I say that, even many years after looking back at his statements to us where we would corroborate it and we have corroborated everything he's had to say. Mr. Erdemovic is somebody who was remorseful, I say of the many accused I've dealt with, I think he was genuinely remorseful, that's my impression, others may disagree, but he was in part motivated by his remorse to cooperate with us and he did and he wanted to enter the guilty plea. Then we come to the issue of the guilty plea because that's...

MK: Let' talk more about Erdemović. I remember his initial appearance. He couldn't wait to say I'm guilty. He said it five time before judge Jorda tried stopping him and said wait we didn't ask you.

MH: Yeah, yeah, that's...

MK: How do you explain that?

MH: Well, I think one, human beings are capable of recognizing they'd made great mistakes and committed crimes and he wanted to accept his responsibility for what had happened, there was no question that Mr. Erdemovic wanted to... He was remorseful and he wanted to plea guilty. Now, there was no such thing as guilty pleas, ok. When I say he was remorseful, one has to make a distinction between genuine remorse and that's always a challenge for us as prosecutors and what I call situational remorse, 'Gee, I got arrested, I'm in jail, if I speak the magic words, I get some credits. So, we have to make those distinctions. Often times difficult. Erdemović, no question, he was remorseful and now he wanted to end his case. He didn't want to have a case that lasted three years, he wanted to say I'm guilty. He was... I had talked to him, he wanted to cooperate fully with us, he did, he gave us statements about all his knowledge about what had happened in Srebrenica. And it was quite helpful to us, as you know, some of the, one of the pieces of information he gave us was information that we'd probably would never have found and that was, that after the... He had participated in Branjevo military farm massacres, his superior officer came to him and said we need some more volunteers to go into the village of Pilica and kill some more people. He had said, enough, I've killed enough but some of his mates where more than happy to accept that gruesome task and they went into Pilica and Erdemovic went into town with them and set in the café across the street from the Pilica cultural dome and they killed 500 people. There were, as far as I know, there were no survivors from that massacre. And we didn't know it had happened. Despite whatever the efforts we had done in the investigations, Pilica cultural dome was of our radar. So, what happened was we wanted to corroborated Mr. Erdemović. Jean Rene Ruez and some of the investigators went to Pilica and they gained access to the cultural dome which had been locked. There was a chain on

the side door and as I recall they gained the access. I think they clipped the lock. They went inside and of course; it was a scene of you know clearly a massacre. The bodies have been removed. I've been in that Pilica dome not long after that we made entry in there. There was still blood on the walls, there was hair on the walls. Underneath the stage, there was a stage in that area, I went underneath that there was, it was like stalactites of blood that came down. It was a gruesome scene, there were still cartridges, spent cartridges on the ground. The point is that Mr. Erdemović, had he not told us that, the people of Pilica never stepped forward to tell us that, despite the fact that it had taken place on the main street through the town, we would I think honestly never had known about Pilica cultural dome or if we did, it would have been many, many, many years later. But that's the kind of valuable information that Erdemović was giving us and was more than willing to give us. Now, he wanted to resolve this case so now we come to this issue that there was no such thing as plea agreement or a guilty plea because we have a system in the Tribunal which wasn't common law, wasn't civil law, it was a hybrid. In the common law system, we have guilty pleas that resolve probably 95 percent of the criminal cases in the US. It's considered and it's recognized by the US Supreme court that plea agreements are valuable instrument in achieving justice. Civil law system, in particularly in the Tribunal itself, I remember reading something from judge Cassese saying that plea agreements would never be part of the Tribunal. Well, that obviously was a statement that history didn't bare out because as you know trials take a long time in the institution and with a plea agreement you can cut short the length of the trials and conserve resources and so we went forward with an agreement but not a written plea agreement, not with an instrument of plea agreement but just an agreement between the prosecutors office, his counsel Jovan Babić and Mr.

Erdemović where he pled guilty to one of two counts that was on in indictment. Now, ultimately that agreement, his guilty plea was vacated by Appeals Chamber, and it was sent back for a new procedure. Erdemović still wanted to plead guilty and at that point of time, Peter McCloskey who was working on the case, decided to put together an actual plea agreement. We are used to that in the US and Pete used modified plea agreement, standard plea agreement and modified it to the facts of Mr Erdemović and then he entered another guilty plea. So, that was the beginning of plea agreements. I think there had been about 20 plea agreements since then and the court saw value in plea agreements.

MK: You participated in some of them and well, let's say Erdemović, ok, real remorse. I think that Rajić has shown, at least what I saw, you know, that Rajić also said... He answered 'No, your honor, nobody pressured me, I pleaded guilty because I feel like that, and I am guilty.' That's what he said. You have been there.

MH: No, I wasn't involved in that case. That was Ken Scott. Ken hed the Rajić case.

MK: Then Deronjić.

MH: I had Mr. Deronjić, Mrs. Plavšić, Mr. Češić

MK: Bralo

MH: and Mr. Bralo. As guilty pleas.

MK: I'm particularly interested in one, of course, Mrs. Plavšić. Did you contact with her or you negotiated with her lawyers?

MH: I had contact with Ms Plavšić I had contact with her lawyers and Alan Tiger who

was my co-counsel did as well.

MK: So what are your memories about contacts with madam Plavšić?

MH: I had contact with Ms Plavšić in Belgrade.

MK: She was on provisional release?

MH: She was on provisional release. Alan Tieger and I went to her apartment with her counsel and met with her and we were in the process of negotiating a plea agreement with her. I think she was extremely distrustful of the prosecutors. It was an arrangement with Pavić who was her lawyer. We would meet with Plavšić so she could essentially take a measure of us, and we could take a measure of her. We wanted to understand her, and she wanted to get less fearful of us. Anyway, we had, I had a contact with her under those circumstances and I think Alan subsequently had another contact with her in her apartment. Again, it was a delicate negotiation, and she was, she was you know very reluctant in the beginning. She worked with her counsel who was very able Pavić and Eugene O'Sullivan, and both of them... We eventually, all the parties, I mean the lawyers and Mrs. Plavšić came to an agreement. Now we, in the course of that plea agreement, we saw the prison sentence between 15 and 25 years. Mrs. Plavšić, I forget how old she was at the time, but she was 68 maybe, I don't remember her exact age, but we wanted the court to consider a range between 15 and 25 years. The court didn't accept our recommendation, as you know and went below that. Mrs. Plavšić in terms of my commenting on the plea agreement, she had a set of unique mitigating factors that no other accused would have. I mean her contribution to the Dayton, implementation of the Dayton agreement as credited to her by Madeline Albright was something that was important as a mitigating

circumstance and I think that's, in part, why the court went bellow our, the prosecution's recommended sentence. She also expressed remorse on the other hand. And when I talk about situational remorse, that's what I'm referring to, in part. Because, she had a statement of remorse that was read publically and that was broadcast throughout the world and in the region. I think it, although I can't quantify the effect, I think it had, you know, an important effect but she subsequently recanted that, as I'm told, when she was in Sweden. So, you know, in part you feel like a chump, you know. I mean, we worked in good faith, we believed Mrs. Plavšić at the time and it's one of those circumstances where you look back and you say maybe we got it wrong in terms of remorse. So, you know, there's no... The justice system is a human system, it's not infallible. So, when I think about and I compare Mr. Erdemovic who I believe was genuinely remorseful and Mrs. Plavšić who was manipulative, then, you know, I can only say, you know that the prosecution operating on the evidence it had at the time, and you know, under the circumstances did best it could do.

MK: Did you or any from the OTP participated in writing her statement?

MH: No, I did not.

MK: Or approve her statement.

MH: No, that's up to the defense. Not my job.

MK: Yes, but I mean it is a part of the agreement...

MH: Maybe, I honestly... Mirko, I can't tell you, 'Cos I don't have a clear recollection, I might have seen it before, but I certainly didn't write it and we didn't participate in the drafting, I didn't and I don't think Alan did either. I'm confident that that's the case, that was

her statement, we might have seen it but we certainly didn't...

MK: Well, I'm saying this because she had a problem reading it. She made many mistakes...

MH: Well, obviously not her statement, [laugh] you know. I mean in retrospect...

MK: Okay, we have come to the sentence, and I like very much yours and Gaynor's article about inexplicably lenient sentences at the ICTY. Well, first of all you are one of the prosecutors with most requested life sentences.

MH: Probably the fewest ever received [laugh].

MK: But what I'll remember always is your closing argument in Krstić case when you asked for eight consecutive life sentences.

MH: Yes, yes... Well, let me put that into perspective because when I was trying to, when I was contemplating what kind of a sentence I would ask for general Krstić... If I did just the measurement of the scale of the crime, the intentional homicides, 'cos each of those was a premeditated murder; when I did the arithmetic on the number of people who were murdered and the reality of a, quote, a life sentence in Europe which is vastly different than a life sentence in US, for example. It was my understanding at the time that life sentence in Europe was 20 years and if you got, if you essentially earned good time credits or work time credits, in other words you behaved yourself in prison, you were entitled to third off in the UK for example you are entitled, you are eligible for release after half time.

So, you could either loose a third time of your 20 years sentence or if you went to UK possibly be released after half time. When I did those figures, it came up to something like I

think 1.8 days for each premeditated murder or 1.2 days if you got time off. That was not acceptable to me. So, we have in the US and it's acceptable in the Tribunal as well to have consecutive sentences. I concluded that the only way to have the sentence meet the crime was to have consecutive sentences which means that he would serve on crime one, he would serve a life sentence and say after 15 years off he would conclude that sentence. Then he would start a life sentence on count two and he would serve another 15 years. And that way I thought that you would have a sentence that would more realistically matched the crime for which general Krstić was responsible.

MK: So, is this another example of the different standards in domestic and international crimes. Because in many jurisdictions you have a life sentence, or you... I mean life imprisonment or life sentence for one murder and now we are talking about people killing hundreds or even thousands.

MH: I think it certainly is a stark contrast between a domestic judicial system and particularly in the US and the ICTY. But I don't think it's a stark difference internationally because if you look at the sentences in Rwanda there are significant number of life sentences meted out in Rwanda. I think that sentences are much, they are, much higher in the Rwanda Tribunal than they are in the ICTY. I think that the ICTY is kind of an anomaly.

MK: And how do you explain that? Why?

MH: Well, I wish I knew the answer. I tried to... I don't know the answer to that question. I think that in part it may well be that... I'm speculating, it may well be that in the early sentences, where the cases were smaller, Tribunal was reserving for Mladić or for Karadžić or for people of that high level high sentences. I can't say that that was the case, I

don't know that to be the case. It's my speculation. But assuming that is correct then I think it was the wrong approach. Because I think each of the crimes that we deal with and each of the convictions by and large, there are some, one or two, I won't go into details, but by and large, each of these people who were convicted had committed crimes of such a huge magnitude a life sentence is the starting point, not the final point where you might arrive. I think it's a starting point. When you kill hundreds of people or you forcibly transfer tens of thousands of people, you destroy communities, you destroy religious and historical sites those are inconsequential crimes. I think you started life and if a person, in my own view, and this has been my philosophy that you then work down from that. One of the problems with the sentencing in the Tribunal is that there has never been quantification on the mitigating factors. In other words, for remorse that would be... you could quantify, the judges when they issue sentencing judgment, they say that they acknowledge remorse, but they don't say how much credit they give to that in a sentence. And so, it's a little bit all over the place. Now, why in the Tribunal why in the ICTY the sentences are lower than you know, in Rwanda, or elsewhere. Obviously in Rwanda, the scale of the crimes was enormous, I mean, those were all enormous crimes. But you know, how many people do you have to kill to merit a life sentence. The fact that our crimes may have involved only 100 deaths, 100 murders, as opposed to Rwanda that may have involved 1500, or 2000 or 5000. When we are talking about these numbers, we are talking, in my view of a life sentence. So, I think that I just think that it's possibly explained by wanting to reserve life sentences for the bigger fish.

MK: But my question was how do you explain the fact that they cannot agree on the guidelines, institutional guidelines?

MH: It's interesting because you know it really... If you will, it depends on the Chamber you draw. First of all, there are no guidelines, formal guidelines like they are in the US, where there are federal sentencing guidelines. There are no guidelines in the Tribunal. It's interesting when you, if you go from judge to judge you can make assessments on who the judges are, who will meet out the tougher sentences and who the ones are who will meet the lesser sentence. So, it is a function in part which chamber you are in front of. We know that. We think we know who the tougher judges are, we think we know who the judges are who were less inclined to give heavy sentences. And so, it also depends on whether you are from, what your legal culture is. You know, it's all if you will, finding the right equilibrium in an international judicial system.

MK: You have been working with all four prosecutors. Can you describe them? I mean, my theory is that the Tribunal was unbelievably lucky with the type of the prosecutors it had in the key moments of its history. First it was politician, as you said, Goldstone. Not only that he was a good politician, but he had Nelson Mandela behind him, in the moment when Nelson Mandela was the world leader number one. So, with other prosecutors I don't think the Tribunal would survive in its first two years.

MH: Yeah, I share your view...

MK: Ok, but you will give me answers on the basis of what you have seen there, working with them, not this generalized view. I just wanted to tell you, second was Louise Arbour, who induce self confidence into you guys as you started to behave like an NGO – 'Nobody likes us, everybody is against us, nobody wants to cooperate with us...' and so she explained how powerful institution you were. Then you had a hunter, which is her (Carla

del Ponte) definition – ‘The Hunt’- that’s the title of her book. And now you have a diplomat, you know, in this closing stage. But tell me about your experience with the different prosecutors. What do you remember, what were the common point with them, what similarities and what differences were among them? I just want a short portret of each of them.

MH: First of all, I agree with your assessment, I think it’s a fair characterization. Judge Goldstone was incredibly astute when it came to dealing with the international community He understood where the tensions were, and he understood how to let our embryonic institution succeed and he did that through his contacts you know as you mentioned with Nelson Mandela behind him, he was a force to be reckoned with. Louise Arbour. Of course, she had a ... She had a group of lawyers who were extremely confident, I might add, and frustrated because we were not succeeding in terms of getting what we thought we needed to make these cases. So, a very brief comment. When I got frustrated with the request for assistance process, which was in Croatia’s case a complete failure, whenever it dealt, dealing with evidence that Croatia had that could implicate them I drafted a subpoena duces tacum. Now, I knew that it would create a firestorm of controversy. And not wanting to ambush my boss, I took that to Louise, and showed it to Louise and we had a very good discussion about that. Louise was fearless, she said we are entitled to get to secure the evidence and she said fine. She didn’t care about the political fall out or the consequences. So, she was a prosecutor who gave us, one - what we needed. She was fearless, she was exceptionally smart, and she was very engaging. So, in terms of developing our entitlements she was there at the moment at the right time. She was also very good, I should say, in terms of getting some of these weak need UN institutions and

agencies to cooperate with us. Greg Kehoe tells a story about Louise going down to UNESCO, when UNESCO was reticent to let gentlemen by the name of Colin Kaiser - who worked with us on Blaškić case in looking at the destruction of historical monuments and alike. When they were reluctant to get Colin Kaiser the green light, Louise went to Paris with Greg to meet the head of UNESCO and I'm told by Greg that it was a tour de force. Louise was spectacular and very convincing and obviously we had Doctor Kaiser testify for us in the Blaškić case. Thereafter I think he testified in another case. So, she was very good at, essentially, bringing the UN community on side, saying, we are part of UN, you have to help us succeed. So that was, I think Louise was spectacular as a prosecutor and she came right at the time we needed to have cooperation, we needed to flex our muscles if you will with our entitlements. The hunter you say Carla, you are referring to Carla del Ponte. Carla was relentless when it came to pursuing the people, I think the people who were indictees, who were hiding out in the various parts of the world, but principally in the region. She was not coward by anybody and so I think I don't have the statistics Mirko and how many fugitives we had when she assumed her position as prosecutor, but I know we had very few when she left. And Serge Brammertz is a diplomat.

MK: Just about Carla. She is credited also that she changed the work of the OTP giving you, the senior trial attorneys much more power over the investigation process.

MH: We were involved in the investigations from the beginning. We started under judge Goldstone. The prosecutors, the lawyers were involved in the investigations, early on. You know we had a structure in the Tribunal where the investigators led the investigations, I mean the police led the investigation if you will, not the lawyers. Carla did change that

when she became the prosecutor and let the lawyers led the investigations. Now if there is... I think in retrospect, that should've happened in the beginning, in other words, the prosecutors needed to run these investigations because they knew what kind of evidence they needed for court and what was admissible and what was not admissible. The police had, the investigators and I say, the police, while they consulted with us and we were fairly on sides on this, sometimes they were, they pursued leads that were less important from our point of view. We worked together I should say, so it wasn't as though there was this great chasm between the two. But you are right. Carla did than change the dynamic when she became the prosecutor, and the prosecutors were in charge of the investigations at that point of time and led them.

MK: And the last one?

MH: And Serge Brammertz is a consummate diplomat. He is, you know, he is obviously stylistically much different than Carla, he stays more under the radar, works behind the scenes. I have to say, he is ...I've seen him in action, with regional prosecutors, recently at the conference, he has a very good relationship with regional prosecutors from all of the... from Bosnia, Croatia, RS, Serbia. I think, I say, I think that one of the things that, by and large, has made this institution a success is that they I think they hired very good prosecutors, and they let the prosecutors do their work. In other words, there was a division of labor and I always... There maybe an exception or two and I know there is but, by and large, the division of labor was that the prosecutors obviously had to oversee the cases and ultimately were responsible and made the decisions but, by and large, the prosecutors who were assigned to these cases, managed these cases, took them into

directions that you know, resulted in the successful prosecutions. The prosecutor principally left us alone in large measure and run political interference for us, they had managed the political side of the OTP. I didn't want to be bothered while I was a prosecutor with Colombians delegation's concern about this or the Russian delegation about this, or US delegation concerned about this case or that. That was up to the prosecutors. We were left to do our work, we were respected with the work, you know, that we did and it was a very healthy relationship and very healthy dynamic.

MK: But there was always a suspicion that you were politicized. You know, when they say this Tribunal is political, they first point the finger to the OTP. Did you feel any kind of political pressure during those 17 years from any side except what you said the role of the politics in the non-cooperation or cooperation of the countries?

MH: As a prosecutor I never felt any political pressure. No political pressure was brought to bear on me or on my cases. In the cases that I dealt with I reject that absolutely. Had there been political pressure on me, I wouldn't have tolerated it frankly.

MK: But how do you explain the fact that in spite of everything the tribunal has done in proving those crimes and in spite of 20 guilty pleas and so on we have that denial is still very very strong you know, all over the former Yugoslavia. We saw in Croatia the reaction on the judgement to the generals, in Serbia after Mladić was arrested or other occasions. We are seeing this in Republika Srpska these days regarding Srebrenica and 16th anniversary.

MH: Well, you know, I can't explain that Mirko. But what I can say is from a ... One of the accusations that I've heard repeatedly in the 17 years is that we are anti-Serb. I've heard

that. And I have to say that when, and I want to put it in the context. There are fewer indictments against Croats, and Bosniaks. There is no question about that. First of all, I want to say there is no equivalency either in terms of the magnitude of the crimes that were committed by the respective parties. But quite importantly and this need to be recognized, when we started in 1994 there was three attitudes of the parties towards Tribunal. Bosniaks were cooperative with us. The Croats spoke out of both sides of their mouths. They, quote, supported international criminal law and the development of the Tribunal but then you had to put parenthetically, as long as it wasn't against a Croat. Because when it was against the Croat, they were disingenuous, and they were not cooperative with us. The Serbs I think were the most honest of all in the sense that they said we don't recognize you, we don't acknowledge you, we are not going to cooperate with you. Well that had real effects on our ability to make cases as I mentioned at the beginning of this interview, in the case of Pakrac Poljana. Because when you didn't have cooperation, when your evidence was all in the hands of a party that said we are not going to cooperate with you... It made our life exceptionally difficult and made our ability to bring cases where there were Serb victims exceptionally difficult. So, as I said in the Pakrac Poljane case at the beginning of this interview, we had to decline prosecution in that case 'cos we simply couldn't get the evidence.

MK: There is one more reason for what you are now trying to explain. Serbia has been leading three wars, Croatia only one or two, let's say and Bosnia only one. So, there is some difference, because Serbia was engaged in Kosovo, in Bosnia and in Croatia.

MH: Yes.

MK: Croatia was engaged in Croatia itself and in the part of Bosnia and Bosnia was just there. So it's also one of possible explanations of this discrepancy if there was any, you know.

MH: People, people always... I've heard people attack the Tribunal, particularly in the early days when they would say, you know, there is only three indictments against Muslims for example, you know. There are... They would always do the numbers game but that's too simple, that's a real simplistic approach. I've explained to you the problems we had at the beginning in terms of our investigations. So, numbers is not an easy... is the wrong approach.

MK: You know what the famous definition by Disraeli I think, of the gradation of lie. There is a simple lie, a hell of a lie and statistics...

MH: Yeah.

MK: Then, tell me. We have been talking about repentance. Have you ever repent for coming here 17 years ago?

MH: Never. It has been the best professional experience of my life and for my family it has been a wonderful experience.

MK: And the future plans?

MH: I have just now left the Tribunal, it's been since the 30th of June, so I it's been a couple of weeks. I'm going to take some time off, I'm going to go up to the high mountains in Montana, I'm going to fish and I'm going to think about relaxing and decompressing a little bit from 17 years of work at the Tribunal and then I'll be thinking about what I'm going to

do. But I intend to stay active.

MK: But you might come back at the Tribunal either as a defense lawyer or as a judge because there is no age limitations for those.

MH: Yeah... No, coming back as a judge I think you have to be nominated by your country and I think the US has far abler judges than me. Then, second of all, I think that I would certainly like to continue prosecuting war crime cases but that's not my decision, that's UN decision because of age limitations. I like the courtroom, and I'd like to be involved in the courtroom some more but there also a time to kind of open a new chapter and look ahead and see what other opportunities there are out there.

MK: Thank you very much. That's all.