Transcripts from the International Criminal Tribunal for the Former Yugoslavia: A Linguistic Interpretation of Sociological Patterns found in Court Data

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Declaration

I, Kristen Perrin, confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.

For Tom.

Abstract

This thesis examines transcripts from the International Criminal Tribunal for the former Yugoslavia (ICTY), asking, what can the application of cognitive linguistic methods to ICTY transcripts reveal about social processes within the courtroom? Aiming to broaden the application of these methods, this thesis uses a type of cognitive linguistics called Discourse Space Theory (DST) to highlight significant patterns of interaction within ICTY testimonies, and a combination of social psychology and discourse analysis to explain them further. The multi-layered methods employed here allow for the transcripts to be at their most revealing, and provide essential connections to the existing body of work on transitional justice. This project examines two types of testimonies – that of victims, and that of accused. Results of this analysis demonstrate that underlying the exchanges at the ICTY are power relationships functioning in ways that change relative to identifiable sets of circumstances, such as the ways in which agents of the court address witnesses. Patterns revealed through the analysis of victim testimony demonstrate two important contested subjects at stake - memory and emotion. Analysis of accused testimony has shown a stronger focus on personal power, both within the courtroom and within narratives on the past, and demonstrates that this changes according to status and rank. The overall results of this study have shown that language in the courtroom not only contains within it evidence of underlying social processes, but that these processes reveal issues of power significant to the changing nature of how the functions of tribunals such as the ICTY are understood generally.

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It was my supervisor, Dr Eric Gordy, whose guidance, unparalleled expertise, and creativity of thought allowed this research to reach its full potential. Eric had the ability to understand what I was trying to do even before I could fully articulate it, and it was his faith in the importance of the project that drove the project forward whenever I felt uncertain. Eric widened the audience of this work in allowing me the opportunity to participate in the REKOM forum in Sarajevo in 2013, an experience that gave me much needed experience in the region. His guidance throughout the project has undoubtedly made me a much better researcher; he has managed to strike the rare balance between pushing me to better my work while giving me room to do things a little differently, which was the best support I could have hoped for.

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Chapter One - Introduction

1 Introduction

Processes of international criminal justice, often referred to by scholars (to some degree of contestation) as 'transitional justice' (Bevernage 2010; Brants 2013; Campbell 2012; Leebaw 2008; Roht-Arriaza 2006) have been the subject of various waves of attention in the past twenty years. The legal issues surrounding post-conflict tribunals such as the International Criminal Tribunal for the former Yugoslavia (ICTY) continue to be discussed, and there is consistent focus on the social and political ramifications on the ICTY's various decisions and practices in terms of how these might impact post conflict reconstruction. Absent from the discussion, however, is attention paid to the social processes occurring *within* the courtroom, and how these processes both shape and are shaped by relations of power found in this highly specialised space. This project asks, what sociological patterns exist within the ICTY transcripts, and what do these patterns mean? Or, more specifically, what can the application of cognitive linguistic methods to ICTY transcripts reveal about social processes within the courtroom?

The main objective of this research is to widen the scope of research on transitional justice, calling for an inclusion of studies on courtroom interactions as evidence to the ways speech can change the nature of the justice process. More specifically, this project aims to highlight the fact that through the mechanism of tribunals, new information is available about how people interact when recounting violent pasts, explaining actions, making sense of histories, and understanding their own memories. An added layer of insight is possible when looking at how the court as an evaluative body governs and responds to this information as it is recounted. This

shows that there is not only an intersection between the ways individuals interact with their own experiences and those of others, but an additional intersection between the ways individuals interact with their experiences and how this is managed by the court. Additionally, this project hopes to bring emphasis to the merits of using cognitive linguistic methods to analyse court data, and to call for a broadening of how court data is defined, approached and understood.

The importance of doing this lies in the need to discover more about the social aspects of transitional justice, which at present is being regarded as something one can only learn about through research in the affected communities. While this is certainly true (and no less important), I argue that the social aspect of the courtroom itself is being overlooked, and that the best way to truly understand more about this is through the language used there. The exchanges that occur within courtrooms therefore offer a unique opportunity for the researcher. The court space is a privileged one – it contains hierarchies, upholds legal traditions that reflect (often competing) histories of political thought, and it exists on an evaluative platform based on a collection of agreements on what constitutes accepted behaviour. Because of this, asking sociological questions about courtroom interactions allows for research into the subtle exchanges between people that are so often side-lined by competing attention to legal procedure. When language is the unit of analysis, understandings of how individuals recount and explain conflict experiences can be added to challenge common understandings of why research into courtroom behaviours is important, if not essential.

International Criminal Tribunals, through the overwhelming importance of the issues they deal with alongside the fact that they are relatively new institutions, bring additional potential to the research of courtroom interactions. They deal with

crimes of a wider reach, on a much greater scale. The international nature of the courts themselves means that larger ideas sit alongside common courtroom practices, allowing for a mixture of politics, human relationships, and international legal procedure. As such, the International Criminal Tribunal for the former Yugoslavia (ICTY) is a body that brings together unique competing versions of history, interpretations of law, questions of language and identity, and groups of people (victims, experts, accused, judges, and prosecutors, among others) whose voices are heard nowhere else in this context.

The digital archive of transcripts from the ICTY contains within it over one million pages of court records, which have been added to continuously since the creation of the Tribunal in 1993. Transcripts from all sessions open to the public are available in English through the Tribunals website (www.icty.org), with a selection being translated into Bosnian/Croatian/Serbian (B/C/S), Albanian, and Macedonian. The issues of using these transcripts as a data set will be discussed in Chapter 2, but it is important to highlight here that transcripts from the ICTY can be perceived in a variety of ways. They can be viewed as an archive of legal data, as has been the primary category assigned to them since the Tribunal's inception, allowing them to function as evidence of procedure and precedence that has irrevocably impacted international criminal and human rights law. They can also be viewed as a set of stories, existing as a place where victims, accused, and experts contributed to a lasting discussion of the events occurring during the ten year period from 1991 to 2001, allowing the transcripts to function as a tool to bring issues of suffering, conflict, politics and marginalisation to light. Finally, transcripts can be viewed in a fundamentally different way – as a unique record of exchanges occurring within the courtroom which, while they may also include the former legal and descriptive

categories, have the potential to contain evidence of socially significant processes. These interactions occurring within the courtroom demonstrate that issues of power, memory, emotion, and politics can function in previously unidentified ways.

It is this perception of the transcripts as representations of social processes that has informed this project, ultimately allowing for a broad question to be posed in an effort to undertake a new avenue of research. Namely, what can the ICTY transcripts reveal when perceived as a record of interactions, occurring within a highly specific space? Using a twofold application of cognitive linguistic (CL) theory and broader insights from social psychology and discourse analysis, this project examines testimonies from two types of individuals at the ICTY – victim and accused - to determine what patterns occur within exchanges of language and how these patterns shape the nature of the sociological aspects of the trials.

2 Background

This project arose from the intersection of two common complaints made by scholars when seeking to understand the broader aims of the ICTY. The first complaint is that there is a gap between expectation and practice. Several aims of the Tribunal were seen to be far from the reality of its workings, such as the assumptions about what it would do for the prosecution of war crimes globally, its role in shaping the future perceptions of these types of atrocities during conflict, and the contribution made to the post-conflict healing of those affected by the crimes committed during the break-up of the former Yugoslavia.[1] This generated a basic question for my particular approach – what evidence might exist *within* the

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[1] There is a wide variety of sources that describe the breakup of the former Yugoslavia, many of which bear publication dates from the early and mid-nineties (Bennett 1995; Thomas 2003), which, while useful, can give only part of the picture. For a more recent set of discussions, see Bieber et al. (Bieber 2014).

courtroom that could give insight into what happens when war crimes are discussed in a legal environment? As was mentioned at the beginning of this chapter, there are studies looking to understand these issues from the perspectives of communities and from legal viewpoints, but analyses of courtroom interactions are noticeably absent. This absence matters a great deal – to ignore this line of enquiry is to assume that the court space is one exclusive to issues of law, and that outside it is the only place that social processes might occur. At best, it assumes that the social aspects of courtroom communications are not there (which this research disproves), and at worst it implies that even if these aspects are present, that they do not really matter. The latter is to suggest that the people taking part in the processes of transitional justice – both victims and accused – have functions that relate only to the court space, rather than individual lives intricately connected to communities recovering from the traumas of conflict. This project, in highlighting and contributing new information to the way data from the ICTY is understood, seeks to change this.

The second, less common but nonetheless significant complaint, is that there is an erroneous perception of the Tribunal as dealing with processes that, once recorded in transcript, remain static. The legal assessment of courtroom interaction tends to be one that assigns a linear aspect to proceedings, and as such many trials, once finished, are considered exactly this - finished. While decisions may be revisited, appeals discussed and decided, there is, ultimately, an end to proceedings. The primary disciplines concerned by this are fields applying sociology, anthropology, and linguistics to legal studies. This body of work, discussed in greater detail in chapter 3, can incorporate the work undertaken by scholars of sociolinguistics as well as forensic linguistics, and from these platforms has grown the assumption that

records of past trials are records of social processes, and therefore have a dynamic aspect to them.

Because of the way these studies perceive courtroom interactions, there are strong benefits to pairing them with analysis of transcripts from the ICTY – they have shaped the discussion and made new understandings of court data possible, but have not yet taken on what this study has done. The pairing of these studies however, focuses the initial question, asking what ICTY transcripts can reveal about social process within the courtroom. A theory then emerges: these processes are reflections of the larger environment in which these crimes took place, and have now come to interact with the institutions that are trying to address them. While this refines the approach used in this study, it also introduces a larger problem. With such a volume of unexplored data, insights from the sociology of law, in addition to broader sociological and social psychological approaches, gave explanations of what certain evidence within the ICTY transcripts might mean, but did not help to find this evidence in the first place. Essentially, in asking about social process as evidence in transcripts, I was asking about language, and its functions in the legal environment. It became necessary to employ linguistic methods in the first instance (discussed in greater detail in section 3 below, as well as chapter 3), to locate patterns in the data, which could then be explained using insights from social psychology and discourse analysis, respectively.

2.1 Scope and relevance

While the context of this project is explained briefly in section 4 of this chapter (which discusses literature), there are two broader topics that relate to the background of this study that bear mentioning. The first is scope - the time period

examined, volume of data, regions, and limitations are all dealt with in depth in chapter 2 - but what drove the choice of the scope of this project is relevant here. The first thing to be refined was the amount of data examined. To examine all transcripts from the ICTY was neither a feasible nor desirable endeavour. The choice was made at the beginning to limit the transcripts analysed to those that concerned Bosnia and Herzegovina only, as this area provided the most diverse set of data. This region contained the greatest mixture of ethnic groups, the frequencies and types of conflicts varied, and as such the types of testimonies given surrounding the crimes committed in this region would allow for the largest variation of findings.

The second topic is relevance. There is always a caveat with research that applies a new approach to new data: the fact that a particular approach has not been undertaken before does not offer a justification for its application. What assurance exists, therefore, that the patterns sought in this project would be in the first instance present, and in the second, significant? Once located and determined to be of significance, why would they be relevant? The first question is answered through the acceptance of several assumptions made by discourse analysis and cognitive linguistics. Primarily, if one defines ICTY transcripts as discourse, as this project does (taking Conley and O'Barr's (Conley 2005) dual definition of discourse described in Chapter 3 of this thesis), then the ICTY transcripts contain within them the same evidence of struggles for dominance over ideas, relationships and histories that are present in interaction and speech generally. That is, to accept that discourse itself is worthy of study is to accept that the ICTY environment would give rise to interactions that, when analysed, reveal not only patterns of dominance, marginalisation, story, and memory, but that these patterns can provide new

perspectives in understanding the functions of international legal atmospheres and processes.

3 Methods

The demands of this data set required a two-fold approach. In the first instance, a method was needed that was dedicated to the analysis of language to ensure an investigation that could delve into the more specific aspects of language creation as a reflection of mental process. Cognitive linguistic (CL) methods, specifically the Discourse Space Theory (DST) of Paul Chilton (Chilton 2004, 2005) discussed in greater detail in chapter 3, provided the tools with which to do this. To use this method is to make several assumptions about language, the primary assumption being that when you examine language, you examine something that had its origins within the mind, or cognitive space. A secondary assumption made is that because of this, it is, in fact, possible to use language as evidence of the processes occurring within this cognitive space. While the more detailed reasons for the choice of this method are discussed in several subsequent chapters (namely chapters 2 and 3), the broader appeal for using these methods is that they deal with transcript data in a way that places primary importance on the individual – his or her mental processes as expressed in language, and how they place themselves relative to things outside this space, such as other people, histories, events, and sets of ideas. These issues are the broader points that sociology grapples with, and when looking at courtroom interactions concerning crimes of war, the way an individual articulates these issues indicates how they might be prioritised, understood, or contested. When these insights are placed into the context of research on the communities affected by this conflict, it is possible to see that patterns of interaction outside the courtroom may

be reflected, intentionally argued, or might even originate within the courtroom itself.

The DST alone provides an excellent space in which to determine what patterns might be occurring in courtroom speech, and to analyse what this speech could mean for the individual uttering it. However, the nature of the legal environment differs from other speech events in that it is not only constantly interactive, but its functions depend on these interactions. The basic format of trials at the ICTY takes an adversarial model (though this is a matter of some debate in terms of actual practice (Danner 2005; Robinson 2000), with procedures allowing for interjection, cross-examination, and additional questions posed to witnesses by judges as well as lawyers. In this way, individuals encounter other individuals as well as institutional representatives, and these encounters then form the social processes highlighted by this research. As such, a second level of analysis was required to properly connect the insights from the DST analysis to the wider issues of the study of legal transcripts.

Two disciplines in particular become relevant to placing the patterns highlighted by the DST approach into wider perspective: social psychology and discourse analysis. It is helpful to briefly explain the evolution of this project in greater detail, to reassert the claim that this project does not apply multiple methods on an impulsive basis, but employs a selected number of approaches with clear purpose. The initial organisation of this research paired only two methods – DST and social psychology. It took the same format as articulated above, namely that the DST methods would be deployed to locate significant patterns within the transcripts and explain them within the CL perspective. Social psychological applications would

add a layer of analysis that placed these findings within the broader scope of knowledge on ethnic conflict.

I found that this approach worked well for analysis of victim testimony, but became less helpful when looking at testimonies of accused. This points to a significant conclusion on its own – if testimonies of victims paired more naturally with existing theories of groups and violence, and testimonies of accused did not easily relate to this body of work, then differences must exist between the two types of testimony that go beyond simple subject matter. When examining testimonies of accused, relationships between the individual and the court more plainly involved three subjects not commonly focused on by victims – power, politics, and the self. As such, the broader examination lent itself more readily to discourse analysis, where these types of relationships could be more thoroughly deconstructed.

While the choice of these two schools of thought and the ways in which they are used will be discussed more fully in chapters 2 and 3, a basic description is helpful here in order to fully communicate the wider approach of the project. Social psychology is an effective bridge between the DST analysis and conflict studies generally, as many studies of ethnic conflict lean heavily on ideas such as group theory, placing emphasis on things like decision making patterns, identities, conflicting histories, and the mental states common to conflict. The use of social psychology in this research has therefore made it possible to take, for example, the DST analysis of expressions of self/other and the environments these expressions are described in, and explain them relative to theories of group violence. What this has meant, is that current social psychological understandings of certain aspects of ethnic conflict have been extended by this project, and some of their conclusions tested and refined.

Examining the DST results from a discourse perspective allows for interactions governed by power to be better analysed, and for larger ideas (such as how a speaker frames subjects of politics or war) interacting within the linguistic space to be examined alongside the effectiveness of explanations of behaviour when aimed at a court (or wider, political) audience. Subjects of self, while still relevant to discourse theory, make way for the trial of larger histories, with the individual as spokesperson rather than participant. Discourse theory allows for conceiving this type of language as more than just description, but as attempts to transmit power in the face of international evaluation, ultimately making statements on the way information is received, accepted, or rejected, and on whose terms this enterprise is undertaken. The use of phrases in this thesis such as 'courtroom interaction' and 'social process' does not set limitations on the language used – that is to say, this is not speech that is simply between one individual and another, or even between multiple groups. The discussion occurs on this level in the first instance, but ultimately reaches larger legal and political structures, allowing for it to impact international political space well beyond the times and places of utterance.

4 Literature review

The ICTY was created as an *ad hoc* tribunal in 1993 by the United Nations Security Council as a response to wartime atrocities that were still ongoing in the region of the former Yugoslavia. It held a unique position in international politics as the first tribunal for crimes of war since the Nuremburg and Tokyo trials, and as such was subject to many issues in its infancy that its predecessors had not had to face. Among these problems were administrative and logistical problems in apprehending indictees across borders and effectively bringing them before the Tribunal, issues relating to what the scope and expectations for international justice

truly meant, and a constant re-defining of the crimes themselves and the evidence necessary for a guilty verdict (Akhavan 1998; Kerr 2004; Meernik 2003; Ramet 2012; Robinson 2000; Scharf 1997; Williams 2002).

The dialogue on issues the ICTY has faced and continues to face is ongoing and important (and relevant elements of it will be discussed in greater detail throughout this thesis), but this research aims to place itself in a new position relative to this discussion. While engaging with the existing literature, this project takes the view that there are additional insights in disciplines that have been previously left outside the scope of the study of legal transcripts. This, however, is not simply a call for interdisciplinarity. Care has been taken to ensure that the ideas brought together for this project are not only relevant to the study of these transcripts, but work with complementary sets of assumptions on the importance of language in the study of social process. The use of the literature for this project was in essence about finding and maintaining an effective balance in approach in order to allow information to frame and guide analysis, while still managing to engage with the platform from which it came. But more than this, this research has pointed out the necessity of creative thought to the more uncharted aspects of analysis.

This has meant that the review of the literature has been undertaken in a way that best suits the intricacies of the analysis. Rather than as a stand-alone chapter, relevant literature is discussed in an integrated fashion, as the patterns each chapter highlights benefit most from being situated alongside important conclusions in related fields. Social psychological and discourse literature are discussed in chapters 2 and 3, but in-depth discussions of some of the more detailed concepts dealt with under these headings are found within the empirical chapters themselves. Chapter 4 explores expressions of remembering and forgetting, and therefore

engages with literature on memory studies, under the broader umbrella of social psychology. Chapter 5, which examines expressions of emotion within victim testimony, places this analysis among literature on emotion and courtroom testimony, discussing definitions of emotion and making space for the ever-growing discussion on the role emotion plays in courtroom storytelling. The literature examined in these chapters sits primarily under the heading of social psychology, as it situates the analysis drawn from this field within previous discussion and research. Chapter 6, which compares statements made in court by Slobodan Milošević and Vojislav Šešelj, includes a review of literature on self-representation before the ICTY, due to the fact that these two individuals chose to represent themselves. Biographical literature on the two accused is also discussed, but much of the focus is on discussion of discourse literature that defines audience, political speech, subjects of 'self,' and narrative power. Chapter 7, which compares the testimonies of three low ranking accused with three high ranking accused, discusses literature on language and accountability in courtroom discourse to better situate findings within the parameters of the goals of transitional justice.

5 Outline

The structure of this project is carefully designed to allow for the methods to be as revealing as possible without overwhelming the study. A certain amount of freedom is tempting, for example, to fully explore everything that might be present in the speech of the individuals in court, but this is limited for this project to fit a structure that is logical. The most straightforward way to structure testimony analysis as it applies to this project is therefore by acknowledging the adversarial nature of the court itself and assuming a similar format of giving equal space to two opposing parties. Before this is undertaken, a chapter defining the data itself forms the

beginning of the study. Key to examining these transcripts is a thorough understanding of what the data is and what it is not, how processes like translation and procedure influenced its creation, and how things like conceiving the court as a speech community change how data is perceived after its creation. Following this is the chapter on methods, which gives a more in-depth account of how analysis was conducted, and why it was done in this way. The first section of data analysis is undertaken in chapters 4 and 5, and examines testimonies of victims brought before the court by prosecution to testify to their experiences during the conflict. The second section, chapters 6 and 7, examine the speech of accused, both those representing themselves and those taking the stand as witnesses in their own defence.

5.1 Victim testimony

The chapters concerning victim testimony analyse two phenomena found to be recurring when victims spoke in court. First, references to remembering and forgetting occurred frequently during interactions between these individuals and the court, which ultimately demonstrated that there are challenges occurring at the ICTY surrounding who has propriety over memories. In this chapter, testimony from four individuals is examined – two protected witnesses, named Witness B and Witness 87, and two witnesses appearing without protective measures, Emir Beganović and Edin Mrkalj. Witness B and Emir Beganović both experience different versions of forgetting being recommended to them, and placed in symbolic and collective language, suggesting that a witness' own memories were seen by agents of the court as barriers for reconciliation. Related to this are the experiences of Witness 87 and Edin Mrkalj, whose testimonies are both marked by struggle of control over memory. These findings point to gaps in the study of

memory within the courtroom, demonstrating that control over remembering and forgetting is a contested concept when one is defined as 'witness'.

Chapter 5 also examines testimony from Edin Mrkalj, but compares the testimony of Amir Delić and Sifeta Susić, as well as protected witnesses, Witness D and Witness P. This chapter highlights expressions of emotion related during victim testimony as markers of struggles for power over narrative. Expressions of frustration, fear and difficulty are examined alongside us/them groupings, revealing that emotions like fear embedded within a memory often coincided with strong needs to express categories like time as well as ethnic boundaries. Ultimately, expressions of frustration and confusion surrounding interactions with agents of the court were found to be common, demonstrating that there are competing goals for witnesses and interrogators within the courtroom that act as evidence to the failure of expectations on the part of both. Again, problems with the definition of 'witness' are found to underlie several exchanges.

5.2 Accused testimony

One large factor made the testimonies of accused stand out from the beginning of this research. The amount of power, either politically or militarily, changed the nature of testimony greatly. It would therefore be difficult, for example, to look at the testimony of someone who was a guard at a detention camp alongside the testimony of someone like Slobodan Milošević. As well as differing in personal power within the courtroom, the subjects of testimony would be vastly different. This is not to say, however, that a comparison between testimonies from individuals of high and low rank would be fruitless, and indeed this comparison yielded several significant insights. Statements made by Milošević are also important to analyse,

especially as these statements indicate that Milošević is not an outlier in the ways he approached the Tribunal – others have followed his lead.

In Chapter 6 statements made in court by Slobodan Milošević are compared with those of Vojislav Šešelj, another accused who was also in a position of political influence, and who was also connected to crimes in the region in an indirect manner. Both also chose to represent themselves. Comparing these statements has demonstrated that two types of power were commonly expressed by these individuals – power over historical narrative, and power over court process. There are, however, significant differences in the ways in which these two express these types of power, and these differences ultimately demonstrate how the symbolic strength of the ICTY has changed in the eight years between the trials of these two men.

Chapter 7 compares the statements of three accused of low rank with three accused of higher rank, looking at how explanations of one's role in a conflict situation can vary when different amounts of power over others was held during the event in question. The concept of accountability is discussed, as it is often cited by the Tribunal as one of its aims, but is difficult to fully define. As yet, no studies of the in-court speech of accused have been presented to better understand how the concept of accountability functions in this setting, and this chapter aims to provide a starting point to this conversation. Comparisons show that low-ranking accused made categorisations regularly, but each did so differently, allowing insights into how these accused understood their own actions when held accountable. The speech of high-ranking accused had several interesting commonalities. Each was framed in a political or historical space, as compared to the self/other framing found among speech of low-ranking accused. The three high-ranking accused examined

also all use the same argument (that rank was their primary constraint in the decision-making process) but in slightly different ways that conformed to their respective roles. These findings are important in that they demonstrate that differences exist in how accountability is understood among accused, and that these differences tend to be found alongside differences in individual power, both past and (in the case of the high ranking accused) present.

5.3 Implications

There are undoubtedly more significant patterns of interaction to be found in the transcripts analysed for this project, as there are certainly other transcripts left outside the scope of analysis that contain additional information that could add to understandings of courtroom interactions at the ICTY. Placing importance on these patterns is not to claim that other potential findings not covered here could be less significant, nor is it to insist that these analyses would transfer to other transcripts seamlessly. One key point to keep in mind when addressing the limitations of this type of research is that while similarities may exist across speech events, these similarities are in a broad sense only – they are useful for drawing comparisons across testimonies categorically, but testimonies are ultimately as unique as the individual giving them. This research does not claim that throughanalysis of utterance the experience of an individual is elucidated – this type of claim is assigned to research outside the reaching of this project, in the realm of interview. What is ultimately examined here is contained within the courtroom, and as such many might see this as a limitation for its usefulness. The court space, however, reflects such competing ideas of history, morality, and judgement that limiting studies to this environment and this environment only, allows for an emphasis to be

placed on the processes within that simply do not occur anywhere else, a fact that makes them all the more important to explore.

6 Conclusion

The importance of this type of study lies not only in expanding approaches to how we conceive courtroom speech, but also in the priority placed on the sociology of the court space. Transcripts from the ICTY can reveal a wealth of information about individuals and communities, giving the researcher a unique look at how things like memory, emotion, power, and concepts of 'self' function in the face of international judicial procedure. While trials themselves ultimately do have an end, emphasising the role archives can play in understanding the relationships and histories of those present during these trials will bring necessary attention to the fact that through recorded language, the processes of interaction within the courtroom are, in fact, ongoing.

Chapter Two - ICTY transcripts as data: Parameters, definitions, and issues

1 Introduction

The application of cognitive linguistic theories to transcripts from the ICTY, understood through theories of social psychology and discourse analysis, places high emphasis on the transcripts as data. As was explained earlier, examining in-court communications in this way has highlighted significant patterns of interaction and explanation associated with the trials; most notably power relationships between the court, the accused, and the victims. It also demonstrates how people involved in situations of ethnic violence defined their boundaries and perceived threat, and how they make sense of their actions post-conflict. These are, of course, ideas that have been examined before that are frequently discussed in literature on ethnic violence relating to the former Yugoslavia, as well as on the ICTY in particular, which will be discussed in greater detail below. This research differs in that it applies methods in a new way to a new set of evidence, to re-examine concepts that other literature has defined and discussed previously.

There are two reasons for an in-depth discussion on the data itself, rather than simply describing it while discussing methods. First, at the present time the ICTY transcripts have not yet been analysed in this way, and to undertake something so new on survey of unexplored data in a responsible fashion requires, in the first instance, detailed efforts to understand it – from the circumstances of its creation, to the politics of its existence and its place among other types of transcripts. While this is quite possibly a thesis on its own, my endeavour here is merely for clarity of approach and will therefore only focus on how these issues relate to the type of analysis I am undertaking. Therefore, the first half of this chapter will focus on the

ICTY transcripts as a data set, focusing on how the data is defined for this project (examining what it is, and what it is not), how cases were selected for this research, and examining the legal influences on the origins of the data.

The second reason for a separate detailed discussion of the data is that there are discursive elements to these transcripts that need to be explored. Essentially, to examine in-court language and how it relates to people, histories, and the political court space is to examine its role in constructing post-conflict knowledge. This research, however, is only concerned with this construction of knowledge as it relates to the courtroom, asking how processes of in-court interaction contribute to the construction of post-conflict knowledge at the ICTY. This knowledge is not inert (as knowledge in a discourse sense never truly is), but is an active element in the way justice is not only fashioned, but perceived. Therefore, the second half of this chapter will focus on examining the data as discourse, looking at the court as a speech community, the narrative aspects of the data, the impact of power and the court space on testimonies, and what processes of translation at the ICTY mean for ICTY transcript analysis.

It may seem that there is a large part of the discussion missing from these efforts to understand the data - namely, a description of the conflict that led to the creation of the tribunals, and thus the creation of the archives. This description is not missing, but has been undertaken in a way that is more complementary to the analyses offered by this research. As this project is not using the transcripts to determine regional histories, explore truth and falsehood relating to events, or to construct a general overview of the ICTY's record of the breakup of the former Yugoslavia, an

intensive recounting of the conflict itself (and subsequent review of the literature relating to it) would distract from the purposes of this research.[2]

2 The ICTY and court literature: Bridging gaps

Analyses of courtroom communications are both frequent and varied, particularly when it comes to psychological understandings of the way victims of trauma are treated in courtrooms (Barry 1991; Cotterill 2002, 2003; Edkins 2003; Ehrlich 2001; Galatolo 2006; Wodak 1981; Woodbury 1984). There has been interesting work done to determine whether or not victim testimony is reliable in circumstances of trauma (Bollingmo 2008; Fujii 2010; Kaufman 2003), and expansive work done on the connection between trauma, individual memory, and collective memory (Bollingmo 2008; Caruth 1995, 1996; Christianson 1996; Halbwachs 1992; Kaufman 2003; Savelsberg 2007). There are also several interesting studies of power and language in court discourse (Barry 1991; Bennett 1981; Cotterill 2003; Danet 1980; Gumpertz 1982; Wodak 1981). This body of literature reveals several significant things that concern this project. First, it signifies that there are quite a few studies of legal transcripts looking to understand one or two specific concepts (for example, trauma and memory), and second, that the platform developed by previous research is ready to be expanded upon by opening up the study of legal transcripts and adding to it the study of international criminal tribunal transcripts.

The majority of ICTY literature examines the court's political, functional, legal and symbolic nature, as well as past military and diplomatic strategy. There are several

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[2] For different understandings of the events leading up to and during the conflict in the former Yugoslavia, see Oberschall, Silber and Little, Thomas, Williams (Oberschall 2000; Silber 1996; Thomas 2003; Williams 2004).

useful studies that take a surveying look at the evolution of the ICTY and its contribution to new understandings of justice, such as Rachel Kerr's book on the ICTY (Kerr 2004), and David Hirsh's book that takes a more comparative look at international criminal tribunals and their relationship to what he terms a more 'cosmopolitan' justice (Hirsh 2003). There is also a large body of literature that successfully navigates problems the ICTY has had during its lifetime, such as issues with completing trials in a timely fashion (many trials have lasted several years), issues allowing accused to represent themselves, problems of corruption and how these were dealt with, and the challenges faced by an ambitious completion strategy (Barasin 2011; Boas 2011; Gibson 2008; Gordy 2012; Gow 2014; Olusanya 2005; Peskin 2006; Raab 2005; Ramet 2012; Tournaye 2003). This literature demonstrates that studies of the ICTY have moved on from the more simplistic debates on concepts like victor's justice and 'show trials', and have advanced a more intricate set of discussions as to what processes of international criminal justice are realistically capable of, and how they should be aiming to change.

More than this, there is an important list of works that tackle the complicated relationship the court has with the fragmented societies struggling to place themselves within conflicted histories, rhetoric, and political spaces that are still under dispute (Campbell 2012; Gordy 2003, 2013) as well as significant research on the intersection between the ICTY and politics (Akhavan 1998; Bass 2000; Ivković 2006; Steflja 2010). Missing from this literature, however, are studies that look at testimonies at the ICTY, as well as studies that look at ICTY archives as a source of data for understanding a great deal more about the processes of justice

there. As mentioned before, this project seeks to draw attention to these gaps, while adding to this literature.

3 Defining the data

The ICTY transcripts are a digital public record of proceedings, witness testimony, and exhibits relating to cases of individuals tried before the court for crimes relating to violations of the laws and customs of war, crimes against humanity, grave breaches of the Geneva Convention, and genocide. The court was established in 1993 by a resolution passed by the UN Security Council (Resolution 827, UN Security Council, 1993), the legality of which was tested repeatedly through appeals brought before the ICTY (Akhavan 2008; Hirsh 2003; Kerr 2004), and ultimately upheld.

The Tribunal has sought from the beginning to place emphasis on the public nature of these trials, while still undertaking protective measures for witnesses when necessary and therefore closing the court to the public at times it deems appropriate. This emphasis on public record has been the driving factor behind the accessible nature of the documents related to the tribunals, which is an important element in the definition of this data. The court's contribution to historical narrative becomes much more solid when the open elements of the data are reflected upon. The transcripts are accessible through the internet, and through the website members of the public can browse not only summaries of court proceedings and transcripts, but video of the tribunals, copies of photos and maps submitted to evidence, and summaries of histories of the atrocities region by region in an interactive map, all in English, French, B/C/S (Bosnian, Croatian, Serbian), Albanian, and Macedonian. Members of the public can and often do attend court proceedings in The Hague, and

their presence is actively encouraged. The data at the ICTY is not a passive archive, but has evolved to fit itself into social media (such as Twitter and Facebook) to continue to emphasise its public role, with live updates provided constantly. This changes the resonance of the narrative, as the approach of the ICTY seems to be one where atrocities are not simply addressed, decided, and closed, but an on-going discussion, regardless of case status.

This nature of the data has changed several things that are relevant to the study of court discourse. The concept of audience has become less definable, as the ICTY data can now speak to an internet audience directly, making the traditional communication through press and other media a parallel but different mouthpiece. The spectator is not limited to the courtroom, and not limited to those connected to the cases at hand, but stretches to include those in the public who are simply interested. In some ways, this behaviour incorporates the philosophies behind international humanitarian law into the daily workings of the ICTY – it operates on a global responsibility to be interested in the human element of conflict, assigning the upkeep of justice to everyone, and communicates its power through this outreach to the wider global community. The ICTY has not articulated the aims of its internet presence in this way specifically, so one might conclude that the benefits and drawbacks of this type of communication simply parallel the ways international institutions are evolving in the digital age. The fact remains that the 'audience' (a concept to be more fully explored in chapter 6) of the ICTY has not remained static since its creation in 1993.

3.1 Case selection

This project will not examine every case before the ICTY. I am seeking out patterns, and looking for new understandings to add to the study of ethnic violence, and this can be done without examining every document produced by the court. As I am not proposing that my findings are the *only* relevant patterns in these transcripts, merely facets of human interaction that I believe require further study in this context, it is not presumptuous to state that a sampling of a variety of cases is enough to demonstrate whether or not my findings have anything new to add to this discussion. Therefore, this project focuses on cases relating to Bosnia, and will only venture into data related to other regions when the actions of the individual being tried have been linked to multiple regions. Although other regions in the former Yugoslavia might benefit from further study along these lines, it would be too large a data set to deal with responsibly. The choice to focus on transcripts relating to Bosnia and Herzegovina was made due to the fact that violence there involved a mixture of ethnic groups, the types of violence differed, and the periods in which it occurred varied. In short, the types of violence that occurred in other parts of the former Yugoslavia during the wars also happened in Bosnia and Herzegovina, whereas there were other areas in which it did not vary to this degree.

One significant factor in looking exclusively at court data for this type of study is that the corpus of text being analysed exists as the result of a specific legal process. The cases brought before the ICTY are not tried simply because incidences occurred, nor are all incidences of violence brought or recorded before the ICTY. Whether or not a case comes to trial depends on a variety of circumstances, including strategic and evidentiary availabilities, as well as precedent, to simply

name a few. [3] The study of these transcripts is not assuming that all events in these conflicts have been addressed by the court, or that the court's record is the exclusive reality of all incidences of crimes against humanity, violations of the laws and customs of war, and genocide in the region. This study accepts that the court's record of events contributes to the transitional justice narrative, rather than creates it.

This is not a problem that should impact findings in any large way. Though one might argue that cases brought before the ICTY for strategic or procedural reasons might all have specific similarities (and indeed, some of these similarities may also be in the type of data that they lack), the focus here is on sociological and linguistic issues that previous research has proven exist in all speech regardless of how or why it came into existence (Chilton 2005; Croft 2004; Evans 2006; Zlatev 2007). [4]

The mechanics of case selection for this project were relatively straightforward, with many of the cases chosen at random (the exceptions being the comparison of Slobodan Milošević and Vojislav Šešelj - the list of those representing themselves is relatively small - at the time of writing the cases of many other self-representers, like Radovan Karadžić, were still ongoing). I took the simple idea of comparing testimonies of victims and accused, and before expanding it to the more detailed structure the thesis now contains, I chose a test case. The case chosen was that of Kvočka *et al*, which was chosen at random from a list of completed cases in which the accused was included as one of the witnesses. I conducted a manual reading of testimonies, again selected at random (though admittedly the selection was made slightly less random due to the fact that I was using a list of only public testimonies,

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[3] For a discussion of charging strategy at the ICTY, see Coté, Danner (Côté 2005; Danner 2005).

[4] This is not to say that materiality is not important, however. Issues related to these ideas are discussed in section 5.1 of this chapter.

an issue more fully addressed in section 5.3 in this chapter).[5] Other parameters that narrowed the list of available cases were: 1) case status (I chose only completed cases), 2) the variety of available witness testimonies (I attempted to choose cases in which larger groups of victims testified, rather than one or two individuals, as there would be a larger sample of varied text in these cases. For chapter 7 in particular, I needed a list of cases that included testimony of the accused on his or her behalf, and compiled a list of both high and low ranking individuals to choose from according to the definitions of rank that I set out in chapter 7.

The questions I brought to the data were the broad research questions articulated in the introductory chapter of this thesis, namely – what do applications of cognitive linguistic methods reveal about testimonies at the ICTY? The findings from the test case are discussed in chapter 3, but relevant to describing the data is the fact that the my reading these testimonies began to reveal a set of patterns that focused future analysis. Through *Kvočka*, the four main chapters of this thesis arose (on the subjects of memory and emotional expressions of victims, and power relationships as apparent in accused testimony), narrowing the approach and allowing the project to take on a more reasonable format. The resulting chapters all expand upon a different idea and its related patterns, but are all still part of the same story, and thus inter-relate.

It is important to make clear that not all transcripts from selected cases were examined. Some, like status conferences and procedural hearings, were left out due to the lack of information relating to the crimes themselves. There would be little to no sociological or linguistic information gleaned from hearings consisting entirely

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[5] Examined at this stage were the testimonies of one victim, one individual also working at the camp where the accused worked, the testimony of the wife of the accused Miroslav Kvočka, and the testimony of Kvočka himself.

of legal discussions on issues such as hearing dates or procedural arrangements. For example, the case of Duško Tadić (analysed in chapters 4 and 7), was the first case brought before the ICTY and dealt at length with several questions relating to the jurisdiction of the court itself (and ultimately whether or not the court had the right to make decisions determining its own jurisdiction) (Kerr 2004). While this has important implications for the future of international law, a large portion of the transcripts are dedicated to discussion of legal issues unrelated to the specific actions of Mr. Tadić, and as such, only those pertinent to this project were examined. For similar reasons, I have also decided not to look at cases relating to Srebrenica for this project.

It will be necessary to explain for the reader the incidences relating to the cases studied. Each case involves the actions of an individual (or multiple individuals, tried together) that are rooted in time and place, and the situations surrounding these actions are always relevant. They are also, however, very specific, and best described within the chapters on the cases to which they relate. The best way to truly understand the patterns in the transcripts is to compare transcripts from communities where there are obvious differences in circumstances and relationships, and the choice of cases was broadly guided with this intention. The overview of cases examined, the type of testimonies analysed, and the region(s) the cases related to can be seen in the table below.

Table 1 – Case overview

Chapter	Case	Type of testimony	Region concerned
3	Kvočka *et al*	Victim and prosecution witnesses	Prijedor (Omarska camp)
4	Kvočka *et al*	Victim	Prijedor (Omarska camp)
4	Tadić	Victim	Prijedor
4	Kunarac *et al*	Victim	Foča
5	Kvočka *et al*	Victim	Prijedor (Omarska camp)
5	Stakić	Victim	Prijedor
5	Krajišnik	Victim	Bosnia and Herzegovina
6	Milošević	Accused	Bosnia and Herzegovina, Kosovo, Croatia
6	Šešelj	Accused	Bosnia and Herzegovina, Croatia, Vojvodina
7	Kvočka *et al*	Accused	Prijedor (Omarska camp)
7	Tadić	Accused	Prijedor
7	Landžo	Accused	Konjić (Čelebići camp)
7	Blaškić	Accused	Lašva Valley
7	Krajišnik	Accused	Bosnia and Herzegovina
7	Krnojelac	Accused	Foča

4 Examining court discourse

It is impossible to examine this set of data and ignore the fact that the ways in which it was created were constantly changing, difficult, and unique. Certain cases

were heavily political (like the Milosevic trial), some were momentous in terms of establishing precedent in the field of international law and the authority of the court itself (like the Tadić case), and much of the courtroom discussions reflect these elements. The ICTY itself has evolved over time, and much of what was acceptable in court at its inception is no longer tolerated, and the seriousness and attention paid to the overall workings of the court on a day to day basis has been refined (Akhavan 1998; Bass 2000; Hagan 2003; Hirsh 2003; Kerr 2004; O'Connell 1999). In addition, as part of these processes, the words being spoken and recorded in the courtroom reflected additional relationships that shaped (and can continue to shape) the ways in which information is recounted and explained, and knowledge created.

4.1 The court as a speech community

Examining ICTY data linguistically is in many ways accepting that the court itself is essentially a speech community. As a speech community, the existence of the court is evaluative in nature, and there are therefore certain overt linguistic uniformities that are built-in (such as certain common uses of legal jargon, and methods of explanation that are fashioned through an atmosphere heavy with legal process). According to sociolinguist William Labov, 'members [of a speech community] share social evaluation by ranking performances relative to each other' (Labov 1972). This allows for an atmosphere that produces performances (discussed in greater detail in chapter 6), as well as hierarchies.

The speech acts of those on the stand therefore do not exist independently, but as part of this larger evaluative structure. There is evidence that courtroom speech is commonly co-constructed – that is, although there is the feeling that individuals on the stand are giving an unbroken account of events, these events are in fact created

not only by the witness or accused, but through the interjections of the judges and lawyers as well, however routine these interjections may seem (Woodbury 1984).

Looking at the court as a speech community has interesting implications on the study of legal transcripts, most notably because of what this implies about power relationships within the court. There are several studies on how power relationships play out between legal professionals and those on trial or present as witnesses (Barry 1991; Bennett 1981; Galatolo 2006; Walker 1987; Wodak 1981), which is all the more relevant when looking at the challenges witnesses who have been through trauma face when taking the stand (Ehrlich 2001). Critical discourse analysis (CDA) is often used to describe the process through which the court constructs and/or defines facts and events (Atkinson 1979; Bennett 1981), and although CDA is not at the forefront of methods used for this project, it is important to keep it in mind as an alternative similar way of attempting to contextualise the recurring evidence of power struggles in court.

4.2 Turn-by-turn interactions and question types

Inherent in court processes is a phenomenon that Atkinson and Drew refer to as 'turn-type pre-allocation', which means that because the freedom to speak is controlled by pre-existing roles, the potential for what can be said by each individual is constrained (Atkinson 1979). It is not uncommon for elements of event construction to be included in the questions asked (Gibbons 2003), and while measures are taken by the court to curtail this type of practice, it is by no means universally controlled (objections to 'leading' questions control some pre-construction of events, but only where it is legally significant. There are linguistic elements in some questions that are contributing to the construction of an event that

are not relevant to legal process and therefore left to contribute to court discourse). This is not to say that the answers to these questions do not have any ability to inform court narrative. Indeed, it is frequently the case that answers given can in fact 're-calibrate' the question (Matoesian 2005).

Also relevant to this discussion are studies of how court strategies influence individual responses. Oxburgh et al refer to this as 'the question of question types', and this can play a role in the way responses are constructed (Gnisci 2004; Oxburgh 2010). There is extensive literature examining how power relationships are expressed within the courtroom through questioning tactics, and there is evidence that questioning tactics can influence witness responses (Bülow-møller 1991; Ehrlich 2001; Erikson 1978; Loftus 1981; Matoesian 1993; O'Barr 2001; Penman 1987; Svongoro 2012; Woodbury 1984). The important issue here is that not only can questions influence the answers given (even when not considered 'leading' by the judge), but there are additional implications on narrative. Most pertinent to this research is the idea that the interrogator can, through questioning and various other verbal forms of courtroom control (such as a judge's limitations on the length and subject of testimony, and legal decisions on what can and cannot be included), be a strong contributor to narrative, or even the primary author of an event (Conley 1990; Ewick 1995; Philips 1998). This is not, however, something that makes the data for this project suspect, but is an additional aspect of its creation that needs to be kept in mind. The discursive ramifications of these issues are discussed in greater detail in the chapters in which evidence of these practices arise. However, it can be stated at this point that the choice of the methods used – DST analysis alongside theories of social psychology and discourse analysis – enables these

issues to be seen and understood in ways that give greater insight into how the linguistic relationships between witness and interrogator function.

4.3 Using legal data for non-legal research

The symbolic purposes behind the gathering of the ICTY data cannot be ignored, especially as evidence was heard against accused that were yet to be apprehended. These were not trials in absentia, but were forums conducted to allow available information to be added to official records and give a platform for witnesses to tell their stories (Kerr 2004). This is apparent at the outset, and the legal records existing for wider purposes is spoken to in the opening statement by Justice Goldstone, who states that that they exist as,

> (…) permanent judicial record ... of the horrendous crimes that have been committed in the former Yugoslavia ... attributing guilt to individuals [and] avoiding the attribution of collective guilt to any nation or ethnic group (Opening Statement by Justice Goldstone, Prosecutor v. Nikolić , IT-94-2, 9 October 1995) (Kerr 2004: 101).

Because of this, the legal edge to the directions of questioning is not always a dominating presence, which may prove to be both positive and negative when analysing the transcripts to locate patterns not being directly sought out. The important thing to note, however, is that the legal drive behind questioning in the courtroom does not mean that responses are necessarily coloured by law. The way an individual interprets a question and chooses to respond is often significant in itself. As will be explained and demonstrated in chapter 4, the reaction an individual has to a line of questioning, however unexpected, can be a statement

about the individual's experience and opinion of the legal process they are a part of (or feel marginalised by). For the sake of this research, the motivations and legal agendas present in what is essentially being treated as a sociological data set are an integral part in a well-rounded analysis of it.

That being said, what are the implications of using legal data for non-legal research? There are serious gaps in the literature here, as most scholars have addressed either technical questions of sociolinguistics and applied them to legal data (Gumperz 1982) without addressing the issue of legal agendas behind the existence of the data, or they have addressed the legal agendas with aims for political interpretation, but have gone no further (Danet 1980; Hirsh 2003; Kerr 2004; O'Connell 1999). Although there are certainly symbolic and political purposes behind the creation of the ICTY, there is also a functioning legal system at the heart of this data.

The reason I highlight this issue is that there are factors at work here that might be seen to impact conclusions, but are in fact ever-present elements of exchanges in language. Gumperz's work cited above touches on the issue of instantaneous interpretations in courtroom settings, but it is Trinch (2010) whose comments on interpretive ideologies shed light on the issue of how court dialogue can change based on what people think they are saying, and what those questioning them understand their motives to be. She deals with the idea that the listener hears things from the narrative that relate to cultural context. She refers to this gap in the literature, and explains,

> Norms of interpretation are the criteria that are intimately and incriminatingly connected to beliefs people have about power. However,

much of the sociolinguistic analysis of narrative has focused on the narrator's purpose for telling and has largely ignored what listeners perceive as the narrator's purpose (Trinch 2010: 183).

'What listeners perceive as the narrator's purpose' is likely, in the case of the ICTY, what is helping the legal teams form their questions when interrogating witnesses and experts. This in turn impacts the information shared. Since I am placing importance on communicative processes in this research (which is taken as a given when using linguistic methods), it would be a failing to ignore the fact that communicative processes were functioning within the courtroom, impacting the way information was presented, what was shared, and what was not. It would be overly ambitious to assert that my methodological design could decode all intentions in the courtroom, but this is not the purpose or focus of my research. However, as this has been expressed by sociolinguists as a factor impacting information, I highlight it here as something of which I have aimed to be aware.

As such, the more in-depth interpretation is that this relates to linguistic 'semiotic chains', which are chains of communication that focus on cultural perspectives and symbols (Agha 2007). Agha states that, 'semiotic regularities that appear as Durkheimean social facts in one locale have a sociohistorical existence mediated by patterns of communicative behaviour that connect many locales to each other (Agha 2007: 205).' This is essentially a description of elements in metalinguistics, 'the study of the relationship between languages and the other cultural systems they refer to (Agha 2007: 205)'. This technical side is important because it draws upon a more collective idea of communication, namely that culture has a function in

linguistic expression. This idea has been applied to the former Yugoslavia more broadly by scholars looking to explain shifts in narrative (Guzina 2003; Ingrao 2009). In the context of my research, this means that it is possible for individuals, when describing actions, to be referring back to these types of patterns without being aware.

An important distinction should be made here, to avoid connection with certain perspectives of study. When talking about ethnic conflict in a broader sense, there are common theories that are widely discussed that this research, while acknowledging a contribution, will not rely upon for a variety of reasons. Because my research accepts the notion that behaviours are complex and changing, the primordialist angle suggested by Kaplan is rejected (Kaplan 1993), as it assumes that cultural identities are static and ignores the impact of perception on shifting norms. Instrumentalist viewpoints are also not to be leant upon heavily, due to the fact that they assume individuals will have a clear-cut idea of their own ethnic loyalties (Oberschall 2000). To state that my research accepts a connection between culture and language does not assert that these connections are fixed, predetermined, or unchanging.

Anthony Oberschall paints in interesting picture of the interaction between fear and what he calls crisis discourse (Oberschall 2000). He cites interesting examples of communication theory to draw attention to the way the situation in the former Yugoslavia was escalated among people who often had no previous grievances. In particular, he describes how the two-step flow of communication (Wright 1959) breaks down in situations of increased fear. Under normal circumstances, people subject media reports to their own forms of verification, because they have access to a variety of forms of information. Linguists refer to this as a 'chain of

authentication' (Agha 2007), and Oberschall describes its breakdown in the Yugoslav context through his discussions with several people involved. He states,

> According to several informants, when politics became contentious, it strained friendships across nationality. Either one avoided discussing politics and public affairs with a friend in order to remain friends, or one stopped being friends, and turned for discussion of such matters to a fellow ethnic, with whom agreement was likely. In either case, exchange of political views across ethnic boundaries is impoverished. Each group becomes encapsulated; dialogue and understanding cease (Oberschall 2000: 993).

I draw attention to this work here because the ICTY is in many ways attempting to re-establish these chains of authentication, and attach culpability to those who acted violently as a result of previous 'encapsulation'. This becomes very relevant when looking at the testimonies and statements of high profile individuals like Slobodan Milošević and Vojislav Šešelj. Those who were instrumental in solidifying ethnic boundaries are often prone to use 'us/them' delineations in court, demonstrating not only their entrenchment in ethnic divides, but also ardent attempts to redefine terms like 'victim'.

This, however, is not the only aspect of power in the courtroom that is worthy of study, and the ICTY transcripts demonstrate other important issues of power within the courtroom on which discussions are far less frequent. Notably, the power the court *environment* exerts in its physical sense, and the impact this could be having on language is something touched on briefly but is rarely a focal point. It seems to be something of an immeasurable set of details to scholars, and comes up primarily

in conjunction with discussions of audience, and the experiences of victims (White 2008), and as such details of this idea tend to be found more frequently in the more anecdotal works of noted novelists, such as Slavenka Drakulić (*They Would Never Hurt a Fly*) and Antjie Krog (*Country of my Skull*) (Drakulić 2004; Krog 1998). This issue is something that does come up in the language studied for this project, and examples are given in chapter 5, on emotion and the victim-witness. Additionally, there are examples of types of power that judges impress upon the courtroom and the witness, and the way this is evident in language is discussed in chapters 4 and 5, building on work about the victim-witness done by Dembour and Haslam (Dembour 2004).

4.4 The psychological impact of legal testimony

How does the psychological impact of testifying about traumatic events influence the reliability of the data? There is a lot of interesting work on this subject from psychologists, but little of this has to do with international criminal tribunals (most work on this has been done in cases of domestic violence, and on the testimony of children in the courtroom). One exception is Antjie Krog, who deals with the subject in her book on the Truth and Reconciliation Commission in South Africa (Krog 1998). On the subject of memory, she quotes psychologist Ria Kotze, who was treating famed torturer Jeffrey Benzien. Krog recalls several issues with Benzien's testimony, primarily relating to his inability to recall the specifics of certain events. While the question remains open regarding whether this inability is just simple denial, Kotze brings up the issue of memory when testifying. There is memory loss due to one's own will to forget, involuntary memory loss due to trauma, and memory loss that is specific to the courtroom. Krog states,

But there is also a third kind of memory loss and that occurs when you testify in public. Kotze says Benzien's stress levels were so compounded by having to testify and his anxiety about how this might affect the last bits of life he has with his wife and children that it is quite possible he remembered even less than usual. (Krog 1998: 99).

How will these types of revelations impact research here? As stated earlier, it is not the goal of my research to verify evidence discussed in the court, but to look at the significance of how things are discussed. Though the court has in effect already done all it can to verify information, there is the added complication that lawyers involved are strategic and selective about what information is presented. But ultimately, the court space still plays a role of authentication not through truth-finding, but through the building of institutionally situated social memory. As David Hirsh states with regard to the cosmopolitan nature of these trials,

Courts receive particular and contradictory testimony; they act upon this according to their own rules, and produce a single narrative. Cosmopolitan courts receive nationally particularistic narratives as testimony that they transform into an authoritative cosmopolitan social memory. (Hirsh 2003: 142).

The reason the psychological impacts of testifying described by Krog are relevant to my research is that they are in fact a contributor to this single narrative of which Hirsh speaks. With particular reference to the mechanics of my research, this can impact how sociolinguistic methods play out. It is important to remember that the

single narrative produced is not instantaneous, nor is it internally consistent.[6] The examination of evidence, testimony, cross-examination, and questioning are processes of verification that do not reveal themselves clearly or quickly. To effectively comment on linguistic patterns drawn from expressions of those speaking to the ICTY, these memory gaps may initially block sociolinguistic indicators of patterns in certain places, only to be more effectively revealed later (either through corrections, other testimony, or the presentation of physical evidence etc.). This is one reason that I have decided against using software to examine transcripts, as it is likely impossible to instruct technology to look for things when it is unknown exactly how they will be expressed until they are encountered.

5 Translation

To state that translation played an essential role in the construction of these transcripts may seem an overly basic way of referring to a process that allowed proceedings to take place at all, but there is a balance between appreciating the importance this process had to the data itself while avoiding an overstatement of its place within this research. There are two significant questions to ask regarding translation that are important here. First, how might translation impact findings? And second, how might processes of simultaneous translation in the courtroom lead to knowledge creation?

Transcripts are available in English, French and B/C/S (Bosnian, Croatian, Serbian), with a growing number also bring translated into Albanian. The court, however, was conducted in English, with participants wearing headphones through

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[6] This research takes the viewpoint that court narrative of this kind is rarely internally consistent, as contradictory verdicts and reversals through appeal can and do occur.

which translations were provided. While many of the linguistic indicators I sought out were simple words that are difficult to mistranslate (we, them, could, etc.), context and accuracy are still important. To test whether or not translation was an issue for my study, I compared sections of transcripts in both languages to determine if the patterns found do in fact transcend language barriers. This was, unfortunately, only possible for the excerpts used from *Krajišnik*. The results of this comparison can be found in Appendix 1, which demonstrated that while discrepancies do occur, these do not change the findings of this project. Transcript translation at the ICTY is an ongoing project, and the ICTY faces a large issue with this data. Transcripts were created in English, recording the translations made within the courtroom rather than the first responses made in B/C/S or Albanian. Therefore, the B/C/S versions available through the ICTY were created much later, many as part of a translation project undertaken by the court in 2011-12. That being said, the majority of transcripts still exist only in English.

A thorough linguistic investigation was done by Mišković-Luković and Dedaić (Mišković-Luković 2012) into the uses of *odnosno* during ICTY testimonies, and the problems that arose in its translation. This work looks at issues of the choices translators at the ICTY have in the meanings they ascribe to words, and their findings point to purposeful neutrality used in translation that denotes measurable attempts away from direct translation. Not only are there issues of discrepancies that arise during the process of translation at the ICTY, there are marked choices in which translations can be used when multiples may be available. This is not, however, a major setback to this research. Indeed, the transcripts remain as the primary record of processes going on in the court, as the simultaneous translations informed court discourse due to their immediacy – that is, a B/C/S response was

translated to English, which then often informed the interrogator's construction of his or her next response. This was done repeatedly and constantly. The courtroom environment, therefore, was informed through translation over and over again, and the perspective of this project is that the simultaneous translations found therein were not impediments to creating transcripts, simply an additional part of them. Section 5.2 below will examine this idea further, in light of ideas initiated by the work of Foucault on translation and the materiality of discourse.

On the subject of translation, there are a few more points to be made. First, it is important to note that simultaneous translation taking place in the courtroom can at certain times signal patterns where there are none, due to dialogue surrounding technical issues with misunderstandings. This is one reason that I have chosen to analyse these transcripts without using software. Words expressing confusion may be highlighted by software, and rather than point to past thought processes among individuals describing events, they may refer only to gaps in in-court communications (for example, when looking for expressions of fear, and searching for uses of 'afraid', the most common usages are in sentences like, 'I'm afraid your microphone isn't working.'). This is one area where the technology cannot be refined to avoid such occurrences.

To make sure that the decision to exclude the use of linguistic analysis software was the right one for this study, I tested the use of one type of software, WMatrix (developed for use at Lancaster Universty), on transcripts chosen for my test case, *Kvocka et al.* I discovered that while the software is effective at highlighting repeated word usages in most circumstances, what this tends to do in witness transcripts is simply give line by line highlights in what is essentially consecutive

lines of text, as seen below when searching for uses of *knew* as an indicator for the role of information in decision-making processes:

Figure 1: WMatrix software sample text

	23 occurrences.		Extend context
I could n't assess that , but as I	knew	Dragoljub from before , I 23 knew he	1 More | Full
I knew Dragoljub from before , I 23	knew	he was a good and fine and honest ma	2 More | Full
musician . He played , yes . People	knew	him that 4 way . 5 Q. And after you	3 More | Full
21 A. Yes . 22 Q. You said that you	knew	him since your childhood days . Did	4 More | Full
a ? Page 10416 1 A. Yes , I did . I	knew	him from town . 2 Q. Do you know whe	5 More | Full
about a 23 beating and he suddenly	knew	what happened to him . 24 MR . DERET	6 More | Full
dy called Drago Tokmadzic ? 20 A. I	knew	him by sight . 21 Q. Do you know wha	7 More | Full
? 10 A. I met him in town , but we	knew	each other from before the war , and	8 More | Full
. You contacted a person who you 10	knew	in a third country and through this	9 More | Full
es , I do . 20 Q. You indicated you	knew	a person named Dusko Knezevic and th	10 More | Full
amed Dusko Knezevic and that you 21	knew	the a person --the accused Zoran Zig	11 More | Full
I did n't hear him say 7 whether he	knew	about this order , conclusion , or w	12 More | Full
just as if he were asked whether he	knew	that 9 it --whether it would snow in	13 More | Full
wanted to be exonerated , because I	knew	that that 20 indictment was frozen .	14 More | Full
t that 20 indictment was frozen . I	knew	that . 21 Q. Well , if you wanted to	15 More | Full
neration , you were asked if you 22	knew	anything about somebody named Drago	16 More | Full
Zoran Zigic , but you indicated you	knew	he had 21 bandages on for some two t	17 More | Full
a drink together . So that 's how I	knew	. 4 I knew more or less at least as	18 More | Full
ether . So that 's how I knew . 4 I	knew	more or less at least as far as his	19 More | Full
were asked about whether or not you	knew	that on a 11 certain night there wer	20 More | Full
then you were asked whether 13 you	knew	whether or not Zigic was there , and	21 More | Full
Mr. Deretic --you were asked if you	knew	19 Mr. Emsud Bahonjic , and I believ	22 More | Full
ng of July , and he claimed that he	knew	that at 24 that time , Zigic was in	23 More | Full

While this brings together uses of the word in a comparative setting, it fragments the narratives at work within the testimony itself, as well as makes the tracking of statements made by witness and interrogator harder to do. In addition, this research project leans heavily on the idea that there are important elements within testimonies that are currently unknown and in need of discovery, and therefore attempting to tell the software to seek out certain things that are better found through general reading would fall to close to guesswork and potentially harm findings.

A positive note on the subject of translations is that there is evidence in linguistic research that patterns transcend language barriers. George Lakoff states in reference to effects shown among categorizations of types of causation, 'these effects are

relatively uniform across languages.' (Lakoff 1987: 54). This statement relates Eleanor Rosch's work on clustering and causation (Rosch 1973, 1975), a type of linguistic study that looks to identify levels of causation through language, but is applicable to this research as well.

5.1 Translation and the materialities of discourse

The complicated relationship between the individuals speaking in court and the nature of translation at the ICTY creates an interesting discussion on how this might shape the materiality of this discourse. The term 'materiality' as discussed by Foucault (Foucault 1972), refers to the myriad conditions which make the existence of discourse possible. This is to ask, what had to occur in order for a statement to be heard, read, recorded or repeated? Behind this question lie several large discussions which Foucault vigorously undertakes in much of his work, but it is his dealing with it in *The Archaeology of Knowledge* that is of particular importance here. This is primarily because Foucault deals with the subject of simultaneous translation directly in his chapter entitled, 'The Enunciative Function', and the conclusions drawn there are embraced by this thesis.

First, there is importance in discussing the philosophical underpinnings of the materialities of ICTY transcripts as a data set because of the unique properties involved in their creation discussed above. Foucault takes up these issues, stating:

> Yet the materiality plays a much more important role in the statement: it is not simply a principle of variation, a modification of the criteria of recognition, or a determination of linguistic sub-groups. It is constitutive of the statement itself: a statement must have a substance, a support, a place,

and a date. And when these requisites change, it too changes identity (Foucault 1972: 101).

From a Foucauldian perspective, the relevant question to ask here is, how does the act of translation in this particular courtroom leave the identity of the transcripts open to modification? Essentially, what changes are being made in the act of creating these records that might make the data itself something different? And if translation is in fact doing this, what merit would there be in studying the responses made in court as responses, rather than as translations?

Foucault argues that the question of original statements and their simultaneous translations can be taken as a single statement if there is agreement between the content of the information and the uses it is put to. Again, Foucault explains this best,

> The rule of materiality that statements necessarily obey is therefore of the order of the institution rather than of the spatio-temporal localisation; it defines *possibilities of reinscription and transcription* (but also thresholds and limits), rather than limited perishable individualities (Foucault 1972: 103).

The translation employed within the courtroom, while it may be contested or highlighted by those taking part in proceedings, is ultimately consistent with the institution's uses of it, particularly because in this case it makes the institution in question (the ICTY) possible.

5.2 Meta-data

The role of meta-data is also worth mentioning here, especially as this has been looked at in terms of its role in determining the truth in witness accounts of genocide. Lee Ann Fujii states,

> Meta-data are informants' spoken and unspoken thoughts and feelings which they do not always articulate in their stories or interview responses, but which emerge in other ways (Fujii 2010: 231).

These 'meta-data' can emerge in a variety of ways, ranging from facial expressions and gestures, to inflections and other elements of spoken language not recorded in transcripts (such as intakes of breath, nervous clicking of the tongue, etc.) Fujii speaks to the role of meta-data in witness accounts of atrocities in Rwanda, and gives examples where things outside the text like evasions and silences can help the interviewer determine the validity of statements. In terms of my research, these meta-data exist outside of transcripts, and therefore potentially outside of my notice. This, however, is not a major issue for this project, merely something to pay close attention to as meta-data may influence some of the questions or responses in the transcripts.

This is another benefit of using ICTY data: questioning and cross-examining of witnesses and the additional questioning of witnesses by judges allows for several individuals in the courtroom to bear witness to responses that exist outside language. Statements submitted to the court are validated by multiple signed and witnessed affidavits. Also, prosecution, defence and judges pay close attention to a variety of types of responses, and will at times adjust their questioning when they

sense evasive responses through gesture and facial expression, or see indicators of psychological trauma. This does place quite a lot of faith in the court, but it is also important to state that for the purposes of my research the focus is placed on data that is measurable. To linger too long over silences and evasions would distract from the primary type of evidence begging examination.

5.3 Practical issues

One practical issue that bears discussion is the fact that many transcripts oscillate between being closed and open, making events rather difficult to follow. Some witness statements give patches of information in between redactions, while other witness statements are complete. For example, in the test case explored in chapter 3, the witness statements of Mrs Kvočka are complete while statements from protected witnesses are predominantly closed. The potential issue is, when comparing linguistic patterns across transcripts, how accurate can comparisons be between full records and partial ones? In the case of the two contrasting witness statements in the Kvočka case, preliminary readings of the transcripts have shown that although Mrs Kvočka's statements are complete and Witness DC4's (to give one example) are not, the information remaining is of the same type. That is, the information deemed acceptable for open court is a standard held across all sessions, and therefore what remains in the open transcripts is subject to the same patterns, whether complete or not. The cognitive linguistic approach reveals underlying indicators of categorisations where they are not expressly being sought out, and as such, if these types of indicators do in fact exist, in theory they should be visible in responses made to all types of questions.

6 Conclusion

This chapter has undertaken the task of describing the ICTY transcripts as a dataset. In doing so, understandings of what the transcripts are and what they are not were put forward, focusing how the transcripts were approached for the purposes of this research. Focus was paid to how cases were selected, how the courtroom is perceived (the nature of it as a speech community, and how the court space can impact the creation of the transcripts), and what implications might be present when using legal data for non-legal research. Important issues such as the materiality of the transcripts, their translation, and how additional factors that lie outside the realm of the transcripts (such as metadata like facial expressions and inflections) were also discussed in terms of how they will impact this project.

It is difficult to discuss the data while leaving the methods of its analysis wholly out of the picture, especially because the nature of this project leans heavily on the ability of the linguistic methods to find significant patterns. The following chapter will delve more deeply into the mechanics of locating patterns, but that discussion would not be as successful if the foundations of what the data consists of were not established first. The purpose of this project is to explore the question, 'What sociological patterns exist within the ICTY transcripts, and what do these patterns mean?' The following section will not only demonstrate the methods of finding these patterns, but also how they are explained. The examination of in-court speech in the arena of war crimes tribunals will hopefully bring several unstudied elements of these trials to light, giving a clearer picture of an environment that is all too often only examined for its legal contributions.

Chapter Three - Methods

1 Introduction

This section will explain the methods of my research in detail, and demonstrate their applicability. There are potential challenges to keep in mind, and I will use this section to discuss what issues are present that may impact my research, and explain why other potential problems may not be relevant. To fully illustrate how methods function for this project, the test case *Kvočka et al* will be examined at this stage. Results from this test case indicate that there is a strong tendency for witnesses to express their perceptions of ethnic boundaries in significant ways, which will be demonstrated below. As mentioned earlier, this case was chosen at random from the list of cases involving the Prijedor region, and the Omarska camps in particular.

First, the platform of current studies involving legal transcripts will be discussed briefly, alongside how developments from it have impacted this project. The merits of cognitive linguistic applications will then be discussed, with emphasis placed on understanding mental spaces, the benefits of cognitive models, and the use of Discourse Space Theory (DST) (Chilton 2005), which is a recent linguistic framing technique that draws from conceptual metaphor theory and mental space theory (Fauconnier 1994; Lakoff 1987, 1989). The technical nature of the methods I employ will be fully explained in this section, which puts the interdisciplinary elements of this research into action. The benefits of using a variety of methods, rather than simply one or the other, will also be discussed. The relevant ideas from social psychology and theories of discourse analysis (including the defining of terms important to this research) will be discussed, and how these theories help

situate DST results from this project will be made clear. Finally, results from the test case *Kvočka et al* will be discussed in detail, demonstrating how these methods come together and function well.

2 Current studies: Language, legal transcripts and transitional justice

There are many studies looking at communications in court that intend to expand transcript analysis beyond the normal legal applications. These studies tend to fall within the disciplines of psychology, sociology, anthropology, and linguistics, but this leaves gaps in transcript research (and transcript analysis of international criminal tribunals specifically) when it comes to applying linguistics as a method of seeking out social patterns. The existing literature, however, provides a platform for new methods, and demonstrates the direction that linguistic studies of international criminal tribunal proceedings have evolved.

2.1 The beginnings of interdisciplinary transcript analysis: Sociolinguistics and forensic linguistics

The methods employed by this project take linguistics as their starting point, and consider the further intersections linguistics has had with additional disciplines. A helpful beginning is therefore to determine which definition of linguistics is both broad enough to incorporate the extended discussions warranted by this research, and refined enough to set a clear path for the undertaking of a well-directed analysis. Charles Fillmore's definition provides both of these things:

> The science of linguistics concerns itself with discovering, describing, and (where relevant) explaining (1) the units of linguistic form or content, (2) the structures or patterns in which these units are defined and situated, (3)

the roles or functions that these units serve in these structures, and (4) the dependencies or interpretive links that obtain between different units in the same text (Fillmore 1985: 10).

This definition effectively describes what this project is seeking to uncover from within ICTY transcripts, and is compatible with the specific approaches of cognitive linguistics described in the next section, as well as the second layer of analyses employed by this thesis using social psychology and discourse analysis.

The early eighties to mid-nineties saw the emergence of scholarly attention to the linking of studies of language with studies of the legal process (Bülow-møller 1991; Conley 1990; Danet 1980; Gumperz 1982). The disciplines of sociolinguistics and forensic linguistics began to gain traction in interdisciplinary circles, and many different works are cited as having broken ground for this, from Atkinson and Drew's work on the importance of understanding language construction within court spaces (Atkinson 1979), to Matoesian's studies of how power can be enacted through legal language and the phenomenon of re-victimisation through questioning (Matoesian 1993). The concept of power as it relates to language and the legal environment has been elaborated upon in productive ways that have opened up fruitful debates into how sociology and anthropology can best conceptualise this idea, alongside other emerging questions (Byrne 2013; Ehrlich 2001; Galatolo 2006; Gibbons 2003; Mertz 1994; Philips 1998; Trinch 2010; Walker 1987). The intricacies of this body of work will be discussed later in this chapter and in the subsequent chapters, but it is helpful to mention at the outset that this is the platform of research that this project engages with in the first instance.

3 Methods: The benefits of cognitive linguistics

When looking at this particular corpus of texts, linguistic methods allow them to be at their most revealing, because significant social patterns embedded within transcripts become easier to identify with slightly more technical methods than traditional critical discourse analysis methodologies. Additionally, applications of political psychology and legal analysis alone would not show the underlying patterns in the speech processes of individuals on the stand. One reason for employing cognitive linguistic methods is that these methods are an effective tool in revealing decision making patterns within individual expression. This is because certain types of cognitive linguistics (such as conceptual metaphor theory) provide evidence to the terms in which people understand ideas (Lakoff 1989). For this research, this can mean that it is possible to look at decision making patterns functioning within the individualised mental space, which is constructed with language. This can then be projected onto larger social psychological patterns, to analyse shifts.

Another benefit in the application of cognitive models is that there is a particular focus on modelling links between perception and categorisation. It is in the exploration of categorisation that we find specific linguistic indicators of identity. This will be explained in greater depth when demonstrating how this is put into practice with the data analysis, but it is important to note at this point that within cognitive linguistics, models for previously identified social psychological patterns already exist. This is especially evident when noting that cognitive linguistics accepts that all elements of conceptual structure can be construed, which impacts the way experience can be communicated (Croft 2004).

3.1 Cognitive linguistic applications

It is important to state here that this research is seeking to apply linguistic tools to reveal larger social patterns. One of the major benefits of using a model like the discourse space theory model is that the complex linguistic building blocks making up the model have already been in existence and functioning well elsewhere, such as within conceptual metaphor theory and mental space theory (Fauconnier 1994, 1997; Lakoff 1989). The application of these methods to legal transcripts, however, has not previously been attempted. That being said, this research is not an attempt to contribute new ideas on how linguistic tools should function, but an attempt to contribute a new set of applications of these existing tools.

As was stated above, cognitive linguistics (CL) can be a very useful tool in illuminating the ways in which individuals understand their own actions, which is one key concept that this project highlights. Cognitive linguistics functions on the same principle of subjective reality that this research assumes, and findings for this project align naturally to this platform for measuring human understanding. Meaning is thus determined through individual perceptions (also referred to as cognitive frames, or mental spaces). The layout of ideas in this manner has much in common with work done on causality in sociology and linguistics. Max Weber and his focus on the interpretation of social action through causal explanation (Ringer 1997) coincides with the cognitive linguistic explanations of the constructs of the mental space.

The findings from the test case explained below reveal linguistic emphasis on categorisation and group identification. Philosophies of judgement are linked to cognitive comparisons, deriving from several conclusions in the western

philosophical tradition (most notably thinkers like Kant and Husserl) (Croft 2004; Kant 1787). The bridge between judgement and linguistic categorisation is therefore a strong one, making the goals of this research consistent with the philosophies underlying the constructs of the tools being used. Taking this a step further, there are benefits of applying these methods not only to court data, but to genocide in particular. Group theory and the study of genocide highlights the importance of the individual assessment of threat perception and categorisation (Baum 2008; Chirot 2006; Staub 1985; Staub 1989, 2000; Valentino 2004). As Croft and Cruise have stated,

> Categorisation involves schematisation as well as judgement: in comparing the new experience to prior ones and categorising it in one way over another, we attend to some characteristics and ignore others (Croft 2004).

This statement gains even more significance when held up against other similar ideas about the way the mind deals with information. Some elements of linguistic philosophy highlight the idea that understanding is an achievement - it requires effort on the part of the individual and is not something that simply happens (Coulter 1979). This allows the interpretation of information to be given a cultural or social edge by the individual processing it, and the schematisation that Croft and Cruise speak of above comes about with these elements embedded in it.

Similarly, the recounting of memory is relevant in light of these ideas. One question that this research needs to keep to the forefront when examining the data is, how does the retrieval of memory shift when the atmosphere for judgements changes? The court is, after all, a very specific type of environment. As Kvale states,

How an event is remembered depends upon the context in which it is perceived, retained, and retrieved. (Kvale 1974).

I draw the reader again back to the previous chapter, to the section on the psychological impact of giving legal testimony, and related issues involving memory. Some of the basic issues linguistic theory deals with involving speech events are the issues of motivation and intended interpretation (Gumperz 1982; Trinch 2010). How someone explains or recounts something is always influenced in part by how they intend to come across to the listener. The way someone communicates is therefore influenced by how they perceive their situation and their audience. As Jenny Edkins has stated, 'the production of memory is a performative practice, and inevitably social'. (Edkins 2003: 54).

This is not a hindrance to the research, but a way in which to learn even more about the relationship between information, communication, and the court.[7] It is here that the benefits of using cognitive linguistic methods are apparent. CL theory, especially DST (explained in greater detail below), has a strong focus on what is called the deictic centre, and is set up to examine speech events with specific attention paid to what has been termed 'situatedness' (also explained in the next section). DST uses the speech of the individual to effectively map their mental space. This is especially useful because it allows analysis to extend beyond initial readings of texts to examine why an individual is recounting an event in a particular way. Therefore, in using this technique, we can examine the information recounted but also draw out individual motivations in recounting information in the way they present it.

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[7] Other avenues of inquiry can also be opened up through this exercise that could be reserved for future research. For example, the way in which events are communicated and treated by the court could be examined in terms of symbolic or verbal violence.

For example, common phrases used by those on the stand at the ICTY relate to a specific need to attach difficulty to time. The social psychological interpretation of this effort points to a need for individuals to communicate perceptions of past threats. Taking this analysis further, the cognitive linguistic interpretation reveals an attempt to separate *that* time from *this* time. One witness in the Kvočka *et al.* trial stated,

> I didn't have anything to do with that. And the times were very difficult, and only later on when certain units were established and where people went to war did the situation change, but those times were very difficult and a word could cost you your life. (p 7339, 5 February, 2001, *Prosecutor v Miroslav Kvočka et al,* IT-98-30-I).

In this statement Pero Rendić, a cook in the quartermaster's detachment near Omarska, is describing his assessment of threats made on the accused, Miroslav Kvočka, during Kvočka's employment as a guard at the Omarska camp. His choice to convey his memory of the facts in this way, adding this statement at the end, is evidence that he sees his own memory in the context of time and situation. It is also worth noting that his effort to separate these concepts indicates that the way a memory is recounted can change in the time between initial perception and final retrieval, when cognitive (as well as social, cultural, and factual) circumstances surrounding the retention of the memory change.

This analysis of the recounting of this memory is an example of how potent communication can be in those circumstances. With Rendić, we see not only the underlying linguistic and social psychological indicators of his assessment of a threatening situation, but a direct expression of his opinion on individual

communications. The implication is that he felt that communication could change how intense threat was. Specifically, 'a word could cost you your life.'

3.2 Mental spaces

Space is an essential concept in cognitive linguistics, and is the starting point for many of the models that analyse categorisation (Zlatev 2007). Space as linked to meaning and perception comes from Kant (Kant 1787) and has been elaborated upon in several ways that are significant to this research. Spatial semantics is a technical way of breaking down expressions of space and the role it plays in communication (prepositions like 'over' and 'above' can take physical properties and attach values to them, which can indicate attitudes and categories. A phrase like, 'He is over his break-up' invokes ideas of recovery, but in spatial terms could also imply positive and negative sides to a situation) (Lakoff 1989; Zlatev 2007). These linguistic elements of how space is communicated are the ingredients in larger theories. Mental space theory is a way of understanding how a variety of elements come into play during speech events. As Gilles Fauconnier explains,

> Mental spaces are very partial assemblies constructed as we think and talk for purposes of local understanding and action. (Fauconnier 1994: 351).

Mental spaces can be shifted to examine fact and counterfact, existing within working memory but also making use of long-term memory. According to Fauconnier, 'Frames are entrenched mental spaces that we can activate all at once.' (Fauconnier 1994: 352). This is useful in understanding the ICTY data because it opens up an approach to understanding not only memory and speech, but also thought processes, both past and present. Because those on the stand are providing

their record of events, the researcher is in a unique position to examine the meaning of these events as deconstructed from the speaker's choice of expression.

Attempting to reconstruct the mental space using language may in some ways seem like an attempt at taking apart ideas and finding within them opinions to assign to the speaker. Indeed the initial criticism of these approaches in the 1970s was aimed at the abstract foundations of the approach, and the academic community had interesting arguments on the applications of something that had little to say in the way of physical evidence (Agha 2007; Fauconnier 1994, 1997). In the decades since, a solid platform of cognitive linguistics has been developed and these foundations have become central to understanding the nature of the links between though and expression. The added benefit of using these approaches in tandem with discourse analysis approaches is that patterns found and mapped using cognitive linguistic tools can be verified by separate insights in group theory.

Mental space theory also introduces what Chilton has termed the 'possibility space', where words like 'maybe' set up spaces relative to the discourse that allow for the inclusion of other meanings or facts (Chilton 2004; Fauconnier 1994). The possibility space is one section of the DST model that is especially fascinating when looking at ICTY data. Expressions of the conditional, such as 'could have' or 'would' highlight ways in which an individual sees his or her choices (or past possible decisions, depending on the tense). For example, if a prosecutor asks a witness, 'why did you run?' and a witness answers with something like, 'If I stayed I could have been caught,' or 'Because I thought I might be caught', these are indicators of elements of the decision making patterns the individual undertook when making the decision to run. Sentences using 'if' are also indicators that the

individual was operating within a mental space that included other specific scenarios.

Another reason the possible space is an important element in understanding violence is that this type of expression also highlights threat assessments. Because the assessment of threat has been identified as an important precursor to many violent situations in ethnic conflict (Chirot 2006; Staub 1989), the identifying of individual expressions of how these threats were internalised and understood is key to examining behaviours during ethnic conflict. It is not just the initial assessment of threat, but also the communication of threat that is important to this research. The mapping of these relative to other important elements in the mental space according to discourse space theory will be explained more fully with diagrams in section 3.4.

One element of cognitive linguistics that this research will focus on heavily is the notion of situatedness. Situatedness relates to the expression of the speaker's projected self and the speaker's understanding of his or her own place in the world (Croft 2004). Closely linked to this is the concept of deixis, which is the way the speaker's situatedness defines the scene. Chilton's model places this at the centre of the cognitive space, allowing this space to be constructed in a way that best illuminates construal (Chilton 2011) (see Figure 1). It is these expressions of situatedness that often reveal internal categorisations. For this research, it is *person deixis* that helps reveal where groupings are being expressed. Expressions of person deixis are pronouns like *we, us, them, it* – elements of speech that hold meaning relative to who is speaking (Evans 2006). Chilton's model also allows for expressions of projected selves, most notably what he calls the political 'we' (Chilton 2011). When looking to understand groupings as embedded in discourse, it

is essential that perspectives are mapped in a way that places emphasis on how the speaker refers to him or herself, and which categories are related as 'other'.

3.3 Cognitive models and the geometric space

Discourse Space Theory is a cognitive linguistic approach developed by Paul Chilton that adds to previous theoretical approaches, such as conceptual metaphor theory and discourse representation theory (Chilton 2005). It allows for a more integrated look at how certain linguistic indicators are functioning simultaneously by projecting them onto an abstract three-dimensional geometric space. One benefit of using DST for this research is that this method of analysis allows for an integration of several linguistic elements in such a way as to examine them relative to one another. This allows the tracking of shifts, which is important to this set of data in particular for the examination of situatedness alongside the modality of the speaker (Chilton 2011).

The projecting of linguistic theories onto linear algorithms and other mathematical models is not new, and there are specific benefits to using three dimensional geometric space. First, this layout provides a way of explaining information that is congruent to working theories on how the mental space is constructed more generally. Cognitive science has used this format to explain the workings of the mind, and these linguistic applications are simply taking things a step further (Chilton 2005; Gardenfors 2000). Second, many of the older criticisms of other, more basic models of linguistics stem from a failure to add anything new to the way information is perceived. Many scholars have referred to these models as merely 'item collections', while others fall into the trap of glorified list-making (Stoddard 1991; Yabuuchi 2004). The three-dimensional geometric model allows for not only

a variety of speech elements to be placed together in a way that mirrors the mind, but also allows for shifts and internal 'worlds' to be plotted within the space as well.

3.4 The DST Model

For the purposes of this research, a simplified version of the DST model will be used. The aim here is to provide new understandings of expressions that point to larger socio-political patterns - because of this there are highly specialised linguistic elements of the diagram that, while important, will not be focused on. The appeal of this approach for my research is that it provides a way to highlight elements of the text and explain their significance visually, while drawing upon previous theories that can explain the patterns that are revealed. As such, I will initially be focusing on the four main axes in the model, and the ways that separating elements of the text onto these axes have shown patterns that are well worth examining.

The interdisciplinary approach of this project has allowed for the application of the DST model to a lesser level of detail than the more intricate uses demonstrated by Chilton's research in his book *Analysing Political Discourse: Theory and Practice* (Chilton 2004). There are several reasons for not employing a purely DST analysis, the foremost being that this project places importance on social relationships and the functions of power in the courtroom, and discourse theories are best suited for more specific understandings of these relationships as a way of situating DST findings. This is not to say, however, that this research applies different methods on an as-and-when basis. The cognitive linguistic theoretical understandings and DST

analysis underpin the transcript analysis, functioning as the tools through which patterns in the text are located.

It is the broader explaining of these patterns for which I have chosen to use discourse insights. This has been done for two reasons – one, because these ideas fit will with the DST analyses due to the fact that the foundations of linguistic studies and discourse analysis are often interrelated, and two, the findings of the project are enhanced and better explained with this added element of understanding. As mentioned before, many of the gaps in the literature exist because of a focus inward – the aim here is to bring in additional insights that might bridge these gaps, but with careful focus to maintain a balanced approach that does not attempt to bring in too many ideas for one study. Therefore, DST graphs will only be shown when the complexities of the patterns found are best demonstrated visually. There are equally times when the text is best explained more basically, and the added graph would be redundant.

Though briefly explained earlier, the intricacies of the DST model are best expressed visually, and with examples from the text. In figure 1, we see the basic DST diagram as set out by Chilton.

Figure 2: Chilton's basic DST model (Chilton 2011)

Diagram labels:

d
discourse referents
distance from S = metaphorically 'closer' to S
geopolitically and axiologically 'distant' from S

m
modality
degree of commitment of S;
possible worlds (might/might not;
should/shouldn't);
counter-realities (haven't happened, etc)

t
deictic chronology;
historical event frames

s
deictic centre;
speaker/self/subject;
political entity, nation

There are four primary axes, at the centre of which is the deictic centre, or self. At the top of this axis are discourse referents (d), and the distance between these and the deictic centre (s) represents the degree of estrangement, visually expressing concepts of 'other' in relation to the speaker. The t axis is the deictic chronology, which allows for framing in the context of time. The m axis represents modality, including expressions of the possible, and the speaker's degree of commitment. Within this space are possible counter-realities, which can be expressed by re-creating a smaller version of the entire diagram along the m axis, using words expressed in the conditional, or the speaker's expression of what 'might' have happened.

The first step in applying DST to my data was to pull from the text expressions of self/other. This helped illuminate the speaker's perceptions of his or her group, and opinions of those determined to be outside. This was applied to excerpts on a speaker-by-speaker basis, because it was not productive to map all transcripts

relating to one case, as speaker responses were from a variety of perspectives. Each witness transcript was therefore done individually, so that the proper context could then be provided.

For example, with the Pero Rendić witness statements, Rendić uses 'we' and 'us' to frequently refer to the group he identifies with relative to the memory he is expressing. Since he is being asked about his time at Omarska, his 'we' refers to the kitchen staff in the quartermasters detachment. His expressions of 'other' include camp guards as well as prisoners, which is not altogether unexpected given the fact that he is being questioned in a court on war crimes. His need to express detachment from the whole situation (using phrases like 'I don't know anything about that' and 'I didn't have anything to do with that') are common phrases in the court. As a witness, Rendić wants to give what information he has, but is also acutely aware of the seriousness of being incorporated into the events about which he is being questioned. Therefore, he defines 'other' as any person connected to the crimes (whether as perpetrator or as victim) the court is in session for.

The analysis of self/other can be an indicator of ethnic identity or group identification, and the way things are phrased and the additional words used expressing these ideas can reveal negative or positive opinions attached to these groupings. An individual who uses 'we' in the place of 'I' shows a strong attachment to this group perspective. The evidence of this attachment becomes even stronger in cases where the question being asked did not originally refer to any collective.

The next step in the DST analysis is to look at expressions of the possible space, and map them in the diagram alongside the other information uncovered.

Expressions of time can also be pulled from the text and inserted at this point, as this helps provide a larger picture for how the individual sees his or her environment. This gives a space for marking the frequency of these time-specific phrases like the ones above (attaching difficulty to time, or more importantly, attaching 'otherness' to time, as in 'that was a different time' – also a potential indicator of perception of threat or distancing), which can be interpreted as expressions of cognitive dissonance as well as a need to express a separate frame in which these choices took place.

Another potential concept to pull from the text, though not part of the DST diagram, is the expression of what information was or was not available to individuals. Expressions like 'know' or expressions of confusion are interesting markers in terms of how information was passing from person to person. The use of phrases like, 'we knew that…' followed by details of fact helps fill out the cognitive frame of the speaker. Places where these phrases are attached to expressions of decision (for example, 'we knew X, so we did Y' or 'we thought X, and because of X we did Y'), are markers of how elements of information impact choices.

4 Situating DST results within additional theories

The linguistic analysis is only part of the picture for this project. Using social psychology and discourse theory in my methods has added an additional layer to the linguistic analyses, and most importantly gives weight to findings by providing analysis that expands on ideas already highlighted. As was mentioned in the introductory chapter, there are very specific reasons for choosing to use these two

disciplines in tandem with DST applications, and careful consideration was made for the necessity of using additional methodological insights in the first place. The two-fold analysis this research project takes does not assume that the DST falls short in the scope of its analysis. Quite the opposite, it is the strength of the theory as an analytical tool that was a strong indicator that its use on a project such as this one would be both innovative and productive.

The courtroom atmosphere, however, is particular in its complexities and while it would have been both possible and beneficial to use DST alone to analyse the language contained within, the aim of this project is to incorporate findings within the larger sphere of transitional justice studies. This goal is necessary in order to demonstrate that findings using linguistics can provide insights productive to wider audiences. Essentially, this project took the first step in answering the question (what might a cognitive linguistic analysis of ICTY transcripts reveal about social processes occurring within the courtroom?) by applying DST to transcripts, and then took a further step of placing the findings within related disciplines to determine what those disciplines might say for the meaning of the findings.

The reason for using insights from both social psychology and discourse analysis for this was again related to the data itself. Early in the process of analysing testimonies it became clear that whether the individual giving testimony was a victim or an accused changed the nature of it significantly. More specifically, the testimonies of victims dealt more frequently with events, subjects and issues that social psychology could more easily make sense of. This also proved to be the case for the speech of several low ranking accused analysed in chapter 7. Certain accused, however, spoke to larger and more abstract ideas that resonated differently within the courtroom, and their approach to the ICTY itself was of a unique, more

political nature. Both of these reasons meant that speech of accused was understood more clearly through examining the DST results as discourse. Essentially, the amount of power an individual held - both during the conflict and in court - changed the nature of testimony and therefore invited two approaches of second-level analysis. Both approaches required a strong basis for how their insights related to the data itself, and therefore literature was examined and relevant terms defined according to the assumptions of the project.

5 Social psychological insights

Social psychology's relationship to studies of the ICTY begins first with the subject the tribunal is tackling, which in this instance is ethnic conflict. Although it is not the aim of this project to take on how and why violence occurred within the former Yugoslavia at the time that it did, those who have examined these reasons have developed theoretical underpinnings that can make greater sense of the language used by those who were involved in or victims of this violence.

5.1 Social psychology and the study of ethnic conflict

The study of ethnic conflict is interdisciplinary, benefitting from methods brought to it from international relations, law, sociology, anthropology and social psychology, among others. While each discipline brings to the inquiry something significant, the insights in much of the literature resonate particularly well with social psychology. There is an ambitious predictive aim in research on ethnic conflict that often drives this literature. In seeking to understand genocide and ethnic violence, it is hoped that societies at high risk for such violence can be more easily identified (Chirot 2006; Mann 2005; Stanton 1996; Staub 1989). Within these efforts to understand and explain are elements of study most directly related

to social psychology: individuals acting violently against others, and the groups with which they interact and identify (Tajfel 1982; Taylor 1994). In examining the phases present in what he refers to as the "steps along a continuum of destruction", Ervin Staub uses psychological tools to illuminate mechanisms behind violent behaviours (Staub 1989). He stresses the importance of these applications by placing emphasis on processes, and this emphasis is in line with the early claims made by this thesis about legal transcripts – that once completed, they remain dynamic:

> (…) In both individuals and groups the organization of characteristics and psychological processes is not static but dynamic (…) Influences acting on persons and groups can change their thoughts, feelings, motivations and actions (Staub 1989: 28).

Examined in this light, the exclusion of social psychological applications would produce a failure to highlight these influences in ways that reveal their changing functions. As such, the aims behind the study of ethnic conflict, with their ambitious predictive intentions, would lack several important indicators that have arisen from social psychological input.

The details of the transformation of ordinary people to agents of mass murder is something that most major works on ethnic conflict grapple with, and is an angle that is an important bridge between the political and the psychological (Browning 1992; Chirot 2006; Valentino 2004; Waller 2002). Examining this process is effectively looking for the ways in which previously non-violent individuals change their perception of a political situation, with violent results. Though this may seem to be an oversimplification, it serves to underline the larger need for an application

of social psychology to political violence. Additionally, while these theories are insightful and do examine different sets of historical data to support them (particularly the work done by Browning), keeping them in mind when looking at the descriptions of violent conflict within the courtroom allows an even wider reach for these ideas.

There are certainly critics of these applications, though they tend to criticise psychological methods that are clinical rather than social and will not be used in this research (such as research relating to psychoanalysis). The use of social psychological methods does not lend credence to any legal arguments seeking to link sanity with culpability, nor do they look at the issue of sanity as a whole. As this research highlights social processes, the access to logic is implied. The social psychological angle does not remove the individual from his or her choices in favour of the group, but examines a shift in perspective. Again, this highlights the relevance of the dynamic nature of processes as explained above by Staub, and the potential for social psychological methods to most effectively reveal them.

5.2 Identity, communication, and categorisation

Identity is often treated as the lifeblood of intergroup relations (Taylor 1994) and a wide array of theories reflect this (Hogg 2006; Howard 2000; Monroe 2009; Pynchon 1999; Reicher 2004; Sherif 1961; Sidanius 2004). Social identity theory has been given a lot of attention, and the early 1990s found Tajfel's work from the late 1970s elaborated upon significantly (Tajfel 1978, 1981; Tajfel 1982; Taylor 1994). Early definitions of the theory speak to the desire to join groups with strong identities, and lean heavily on the in-group/out-group bias established by Sumner

and further articulated by Levine and Campbell (Levine 1972; Sumner 1906). Research in this direction is significant to this thesis because it has taken the tendency to categorise others (and examines how the self is perceived relative to this) as its starting point and from there established several significant conclusions. This is not to say it will be relied upon heavily (nor is it without its critics) but its contributions cannot be ignored.

Turner et al (Turner 1987) place emphasis on the relationship between self-perception and action. This touches on questions of accountability that are discussed in chapter 7, as it assumes a disconnection with the internal workings of the self in favour of group narratives. This is not unlike work done on genocide theory examining the role of bureaucracies in creating distance between action and direct responsibility (Arendt 1994; Bauman 1993; Hirsh 2003), but the important distinction to maintain here is that I am seeking to understand the way courtroom communications reflect social process, and to examine the bureaucratic element in this process with exclusivity would lean too far away from my primary unit if analysis (the speech of the individual).

Extensive research has been conducted in an attempt to understand how individuals undertake processes of categorisation (Pettigrew 1958; Sherif 1966; Tajfel 1963), and it is this process which can shed light on some of the phenomena found within testimonies at the ICTY. The early research and experiments into categorisation established several basic principles. The most notable of these are: that people tend toward categorisation as a way to make sense of their environment, that their categorisation choices are influenced by the norms with which they have been in contact, and finally, that identification with a group is then followed by a tendency to want to distinguish the group that one is a part of (Taylor 1994).

What are the driving forces behind categorisation? At the centre of this project are questions of ethnicity, and therefore several things must be understood about differences in groupings, and how this might impact court speech. There is most certainly a difference between the tendency to identify with groups, and the tendency to separate into groups. The former implies a type of categorisation that is not necessarily exclusive or detrimental, as people can (and do) identify with multiple groups. The latter, however, implies a social push toward exclusivity, which brings about the in-group/out-group bias that blocks free-flowing communication (Levine 1972). It may be that identification begets separation, but that separation only happens when certain issues are present. With ethnic violence, the common factor cited to solidify ethnic groups is the perception of threat (Chirot 2006; Staub 1989). Though there is a significant amount of research examining the tendency for group distinction through violence (Crosby 1979; Gurney 1982; Stouffer 1949), there is a failure to address the influence of communication, and a failure to address the influence of communication on categorisation choices, especially with specific emphasis on the role of communication in shifting basic identification to efforts for distinction through violence. Looking at how this might be occurring within the court setting offers valuable explanation for related phenomena found within speech.

5.3 Social interchange analysis, appraisal theory and universal moral grammar

Understanding the social psychological perception of communication in general is central to applying social psychology to patterns found within courtroom speech. There is extensive literature in the social psychological and linguistic spheres on communication theory, much of which relates to understandings of violence and genocide. As this study highlights communication *patterns*, it is essential to have a clearly articulated understanding of what has been called 'social interchange analysis' (Cairns 1994). Social interchange analysis describes how individuals interacting will tailor their actions to 'fit into the organised stream of the other', which functions as a way of providing constraints. This often produces a phenomenon of 'serving two masters simultaneously', one being one's own internal understandings and the other being the constraints coming from those with whom one interacts (Cairns 1994). This gives pivotal insight into understanding the role the court might be playing in its influence on the way testimonies are carried out.

Additionally, this can be applied when questions arise regarding why individuals make choices that go against previously developed internal moral codes. The role of this process is interesting when explained in conjunction with work on cognitive dissonance theory, an element of communication theory that seeks to explain situations where there is a gap between behaviour and belief (Festinger 1957). It seeks to explain the tendency for individuals to examine actions, and when finding these actions incongruous to previously held beliefs, to shift beliefs to match more closely with the original actions as a method of justification (Stone 2001). Again, this is something that relates to the court environment quite well, and has come in use in chapter 7, when looking at the speech of several accused of lower rank.

One benefit of using social interchange analysis and cognitive dissonance theory to understand explanations of violence is that it illuminates the possibility for subtle

communication to shift beliefs in a way that changes individual perspectives enough to bring about the first instances of violent behaviours in situations where they were previously seen as illogical or immoral. The dissonance then created will push for a solidification of belief structures through post-action justification. Violence is therefore never outside the realm of possibility when communications can have such a dynamic function in shifting views. The usefulness of cognitive dissonance theory in understanding ethnic violence has been repeatedly highlighted by genocide scholars, because it can be an effective tool in figuring out how and why people act as they do, but it can be taken further – it can give us greater insight into how people explain actions, and how thought patterns highlighted by DST might be a precursor to things like cognitive dissonance.

When looking at how subtle communication can shift beliefs, it is helpful to examine appraisal theory and recent linguistic insights into the concept of universal moral grammar (DuPoux 2007; Mikhail 2007; Monroe 2009). These theories attempt to illuminate connections between emotion, language, and decision making patterns. Monroe argues that the field of moral psychology is shifting away from paradigms of reason and toward this more physical idea of emotive influence on asserting moralities already mapped in the human brain. Appraisal theory attempts to connect emotion and decision making in a way that explains decisions that seem instantaneous but may in fact be a result of internal appraisal mechanisms that happen very quickly (Monroe 2009). Monroe's research reinforces ideas previously stated about categorisation, and the malleability of perspectives in terms of how violence is viewed. She states that, 'it is the cognitive process of categorising others - friends or foe, innocent or guilty - that creates (or fails to create) a feeling that another's suffering is relevant for the observer (Monroe 2009: 431).' One benefit of

my research is a greater understanding of which conditions increase moral salience, pointing to the importance in understanding such theories on decision making. Just as access to logic is implied in this study, it is also implied that to fully understand the functions of logic within one's own interpretations of action, it must be assumed that the mechanics of decisions are potentially extremely subtle. This again speaks to the strength in pairing DST analysis with social psychology, as DST can help illuminate this process.

5.4 Cross-cutting ties and fraternal interest group theory

Another perspective that is important to this project is work done on the theory of cross-cutting ties. This theory maintains that the greater the flow of information (creating ties between a variety of groups within a society), the less likely it is for violence to occur (Hibbs 1973; Levine 1972; Ross 1986). Multiple ties decrease suspicion, and promote dispute settlements. Placing this in context is important, to avoid contradiction. As was stated earlier, detrimental cohesion exists when there are multiple insular cohesive groups forced to coexist closely within a single environment. When the flow of information between these groups is minimal, violence becomes more likely. Ties between groups can manage levels of cohesion so that extreme insularity is less likely. One of the reasons for choosing Bosnia as a focus is because in this case there were environments where group ties were varied and often shifted under strain. Section 6 of this chapter, the analysis of data from the test case *Kvočka et al*, will demonstrate how DST analysis held up against this theory indicates the fluidity of boundaries in some scenarios.

Authors like Ross (Ross 1986) discuss this theory from a more anthropological/ethnographical perspective, citing things like movements of people

and marriages in the data sets as evidence. Ross also refers to fraternal interest group theory, which proposes that the presence of cohesive fraternal groups in a society aligned under specific interests/aims will raise the potential for violence and that this allows for "rapid mobilization into fighting groups", which has been mentioned in ethnic conflict literature by other scholars, most notably Mueller (Mueller 2000). It is important to note that it seems that these theories are commonly applied to ethnographic data with the intent of predicting violence within societies and relate to the run-up to violent outbreaks, which places its use more firmly among scholars seeking to contribute research within the predictive aims of other studies of ethnic conflict.

Also relevant to this discussion is the principle of 'group polarization.' This idea is firmly established in social psychological viewpoints on group analysis and seeks to explain the shifting of opinions along steps that become gradually more extreme due to circumstances hinging on two mechanisms: exposure to opinions not heard before, and comparison/competition among individual members that leads people to take opinions aligning with the norm to new extremes in order to set themselves apart (Pynchon 1999). Though this is commonly applied to violent scenarios directly, it can be extended to examine such functions within the courtroom as a speech community.

6 Discourse analysis insights

Some of the discourse insights as they apply to this project have already been discussed in chapter 2, most notably in section 4 on examining the data as discourse, and section 5 on translation and its role in knowledge creation. This section will therefore be a brief extension of important ideas not covered there,

most notably the way terms commonly discussed by discourse theorists are defined for this project, the way Foucault in particular interacted with ideas concerning the law, and how issues of intertextuality relate to this project.

6.1 Defining terms

This project takes its definition of discourse from Conley and O'Barr (Conley 2005), who accept that two definitions of discourse are common, with both being important for different (but connected) reasons. The first type of discourse they identify is linguistic. They define this simply as, 'connected segments of speech or writing, in fact any chunk of speech or writing larger than a single utterance (Conley 2005: 6).' This linguistic definition of discourse therefore allows that its analysis should be on how such speech or writing is used in communication, as well as on more detailed interpretations of its structure. They use this definition as the one forming terms like 'courtroom discourse', versus a reference to 'the discourse of human rights', which belongs in their second category of discourse. This second category is discourse in the more Foucauldian, social sense. They define this second category (in line with Foucault) as 'the broad range of discussion that takes place within a society about an issue or a set of issues (Conley 2005: 7).' This emphasises the oft-discussed relationship of discourse to power, and it is worth noting here that this research takes Foucault's emphasis on the complexities of this relationship as central to categorising the findings made by this thesis (Foucault 1972, 1977).

It is well known that Foucault did not engage directly with the wider discipline of legal studies, but much of his work deals with concepts that interconnect with it, and thus there are a few things to say on his relationship with the subject, primarily in terms of how power is conceived in terms of the court space (Conley 2005; Hunt

1994). Power itself will not be defined for the purposes of this research, merely the relevant discussions surrounding it elucidated for reasons of clearer understanding in terms of its functions and impact. For this, I turn to discussions of links between law and discourse. Within the legal space, there are several types of power that are identifiably at work, the most prominent being the power of the State, or in the case of the ICTY, the power of the UN Security Council specifically, and the international community more generally. Conley and O'Barr argue that also present are issues of *dispersed* power - that is, power exercised in places and ways that are more removed from political hubs (Conley 2005). While these are both types of power to consider when discussing power as it is visible within the ICTY courtroom, it is what power *does* to discourse that is most important to keep in mind for the purposes of this thesis. Again, taking Foucault's understanding of the relationship between discourse and power, it 'produces domains of objects and rituals of truth (Foucault 1977: 194).' In this way, power has, as its core function, the ability to create reality. This is not to say that all relationships studied within this thesis will revolve back to the same discussions of power, but that there will be a focus on how relationships in court are functioning as a result of it.

Several terms are used frequently in this thesis that can be defined in a variety of ways, specifically the terms 'narrative' and 'frame'. Narrative analysis has a long and complex tradition, with the most notable contributions to it being from scholars such as Paul Ricoeur (Ricoeur 1984, 1985, 1988) and Hayden White (White 1987). While a well-organised description of the various contributions to it over the years has been done by Gülich and Quasthoff (Gülich 1985), this project looks to Ewick and Silbey's more streamlined approach, which examines the concept of narrative within sociology primarily, making a claim for its use in sociolegal studies (Ewick

1995). They maintain that for something to qualify as narrative, it must have three things: past events and characters selectively brought together for its purpose, its events must be temporally ordered (that is, taking a form that most commonly has a beginning, middle, and end), and the events and characters must be connected to each other within some kind of unifying structure (Ewick 1995: 200). Incorporating Ricoeur's assertion that narrative statements are connected through an ordering that is both temporal and moral, they explain:

> [Narrative is] language organized temporally to report a moral reflects and sustains institutional and cultural arrangements at the same time as it accomplishes social action. In other words, stories people tell about themselves and their lives both constitute and interpret those lives; the stories describe the world as it is lived and understood by the storyteller (Ewick 1995: 198).

This has important bearing on testimonies at the ICTY, and all of the testimonies analysed for this project have been determined, according to these guidelines, to be narrative, regardless of (and at times, incorporating) interruptions by the court.

Another benefit of using discourse methods when examining these transcripts is that there are many instances where the narrative is layered (through the interconnectedness of multiple narratives playing out in the same space), and it is easy to forget that the individual speaking is giving an account of events situated in his or her own cognitive space. The events recounted in court feed into a larger set of events, and are evaluated alongside other narratives that are not always directly visible to the researcher when conducting the micro-level analysis inherent in the application of cognitive linguistics. Essentially, employing discourse analysis

techniques from time to time can help where the linguistic methods are too focused on the cognitive space, and draw attention to the larger picture created by the struggle for narrative dominance in the courtroom. In the case of the accused, for example, the concern of this research is not whether or not the individual is giving a true account of events, but of the reasons for which he gives the account the way he does.

Finally, the term 'frame' is used quite often in this thesis, and this is partially due to the role frames have in cognitive linguistic analysis, and also due to the wider acceptance of frames as valuable ways of conceptualising how people make sense of the myriad factors involved in social life. A simple definition can be taken from Erving Goffman's *Frame Analysis*. He states that frames are, 'the principles of organisation which govern social events and the actor's subjective involvement in them (Goffman 1974: 10).' Chilton describes frames in a manner more specific to cognitive linguistic analysis, which sees frames as 'theoretical constructs, having some cognitive, ultimately, neural reality.' Additionally, he states that, 'In terms of their content, frames can be thought of as structures related to the conceptualisation of situation types and their expression in language (Chilton 2004: 51).' Both definitions are compatible, and both additionally stress that properties of frames also incorporate relationships - both between people, as well as between people and concepts invoked through utterance.

6.2 Questions of intertextuality

Because this project analyses multiple texts that are particular to a single environment, it follows that this research could be categorised as 'intertextual', in the sense that these texts do have the propensity to be interconnected. Intertextuality, a term developed by Julia Kristeva (see the essay, 'Word, Dialogue and Novel', 1966 (Kristeva 1986)), which can be seen as a continuation of discussion on literary dialogue from Bakhtin (Alfaro 1996). Kristeva argues that intertextuality occurs when texts intersect in ways that create a dialogue, and do not lean on any 'point', or fixed meaning. It can be argued that transcripts from the ICTY do not exist as what might be termed a 'self-sufficient whole' (or a system of texts that is self-contained), however while texts at the ICTY relate to one another, intertextuality is not the central research focus of this project, and as such will not be discussed at length

7 Sample case: Applying DST methods to Kvočka *et al*

The statement below is an example of how complex the categories and boundaries are in ICTY testimonies. In the statement, the witness is speaking of his brother's time as a detainee at the Omarska camp. Witness DC4 had been in contact with the accused, Mlađo Radić, and had asked him to deliver a package to his brother while he was detained:

Example 1: Witness DC4[8]

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[8] Accents on names and places tend not to be present in ICTY transcripts, and therefore this example, and all examples hereafter, are included verbatim.

1 Judge Riad: I hope you can help me understand a few things to the best of your 2

knowledge. You said that your brother was not involved in politics, was not a   3

member of SDA. To your knowledge, why were people like him arrested?

4 A. Because they were Muslims.

5 Judge Riad: Only men or women too?

6 A. Women, too.

7 Judge Riad: Women too. And then concerning your intervention to send him food

8 and the medicine, you think Mr. -- was it thanks to an acquaintance between you

9 and Mrs Radić or was it because your brother knew Mr. Radić? Because he can't

10 do it for everyone.

11 A. Of course he couldn't, of the other Serbs, no. He did this because **we knew** 12

each other from the 1970s. **We were acquaintances** and he said that **he would** 13

do as much as he could, to the best of his ability, but of course **he was afraid of**

his other people.

14 Judge Riad: Whether you say 'we,' it means you or your brother? Who was a 15

friend of Radić? Were you a friend of the family or that you --

16 A. **Me. I was friendly with their family, with them.** - Kvočka et al Trial

Transcript (Testimony of Witness DC4) 8 March 2001: 8867. Emphasis added.

This statement has interesting implications when compared to excerpts from

statements made by the wife of one of the accused, Miroslav Kvočka. On the

relationship between the camp and the surrounding village, Mrs Kvočka states:

Example 2: Mrs Jasminka Kvočka

1 Q. Do you know whether or not your husband received any religious

2 memorabilia, books, from anyone in Omarska camp?

3 A. Yes.

4 Q. What was that, if you know, if you remember?

5 A. It was a Koran, but it's not the only one my husband brought. I have 50 or 70 6 Korans in my parents' house. It's a holy book. You can't throw it away, you can't 7 burn it, so they gave it to me to look after the book, holy book, for them.

8 Q. Who's 'they'? Who gave it?

9 A. These people, my neighbours who didn't dare keep the book at home.

10 Q. Were they in the camp or were these neighbours that stayed in Prijedor or

11 neighbours who left Prijedor? Who were these people?

12 A. A man gave a copy to my husband in the camp, whereas at home, in my case,

13 my neighbours would come to my house and give it to me because as they were

14 leaving Prijedor, they were afraid to carry it with them.

15 Q. Did your husband tell you of any request by the donor, by the person who 16 gave that Koran to him, about what to do with it?

17 A. When he brought it, he said, 'A man gave this to me to give to you to look 18 after it for him because he feared to have it on him up there.'

19 Q. Up there in Omarska camp; is that right?

20 A. Yes. Yes. - Kvočka et al Trial Transcript (Testimony of Jasminka Kvočka) 12 February 2001: 7969-7970. Emphasis added.

These two excerpts, one from Witness DC4 and one from Jasminka Kvočka, demonstrate the different ways in which people were communicating, and how ties between the community and the camp impacted groups. With the first statement, we see the witness explaining his assessment of Radić's motives for taking his package to an inmate. The witness speaks of his past acquaintance with Radić, but also recalls Radić's reply to him, a linguistically significant expression of Radić's 'possible space' ('he would do as much as he could').

Radić's violent behaviour in the camp was severe, he was sentenced to 20 years imprisonment for a variety of crimes that included personal involvement in rape, murder and torture. It was noted by the court that Radić used his authority to prevent some crimes selectively, and ignore others. This witness statement is one indicator that according to DC4, Radić's mental space could have been constructed around boundaries that included Muslim detainees he had known in the past, and those he did not. The use of the word 'afraid' is used by the witness to state that he understood that Radić would deliver the package if he could, but one thing that might stop him was fear of 'his other people'.

This is an interesting distinction. The witness is admitting that there were issues of fear that could prevent Radić from having this type of contact with a detainee, while at the same time highlighting the fact that asking Radić to do this type of favour was bringing him away from his group, from 'his other people.' The fact that the

witness makes this statement in this way indicates that he sees Radić as not only tied to a group, but that this tie makes his actions contingent on the others in that group. While Radić's willingness to try to deliver the package might come across as indicating that cohesive forces in his case might be lower, the fact that his actions are contingent on 'his other people' indicates that the forces binding him to this group are in fact quite strong.

With the second statement, we see evidence of the opposite. Mrs Kvočka describes expressions of fear that are coming from the detainee, spoken to the accused, Miroslav Kvočka (lines 12-14). From this perspective, motives of the accused seem to be in reaction to the fears of the detainee, not in reaction to fears of his own ethnic group. The detainee was afraid to have the Koran in the camp, and Kvočka's willingness to take it to his wife for safekeeping shows Kvočka's connection to the detainee as (in that example) overriding his connection to his ethnic group. This is in no way an indication of non-violent behaviour, however there are differences in Kvočka's behaviour and role in the camp and Radić's. Kvočka was sentenced to seven years imprisonment for failure to use his influence to stop acts of violence within the camp, and for his aiding, abetting and acquiescence of the treatment of prisoners.

Preliminary results from a selection of transcripts in the test case reveal some interesting challenges applying the DST model for this type of analysis. These challenges, when addressed, do not derail its usefulness but are important to bring up to demonstrate the depth of the analysis. The first issue that needs addressing is that while the model easily highlights speech indicating various levels of cohesion (distance from the deictic centre along the central line where expressions of 'self' and 'other' can be plotted) and clearly constructs degrees of commitment to

counter-realities (revealing decision making patterns as the individual understands them), interpreting these phrases within the diagram needs careful consideration as it can appear that there are multiple ways of doing this.

For consistency, I have mapped the same excerpt from the testimony of witness DC4 using DST theory below to demonstrate.

Figure 3: DST Model for Witness DC4
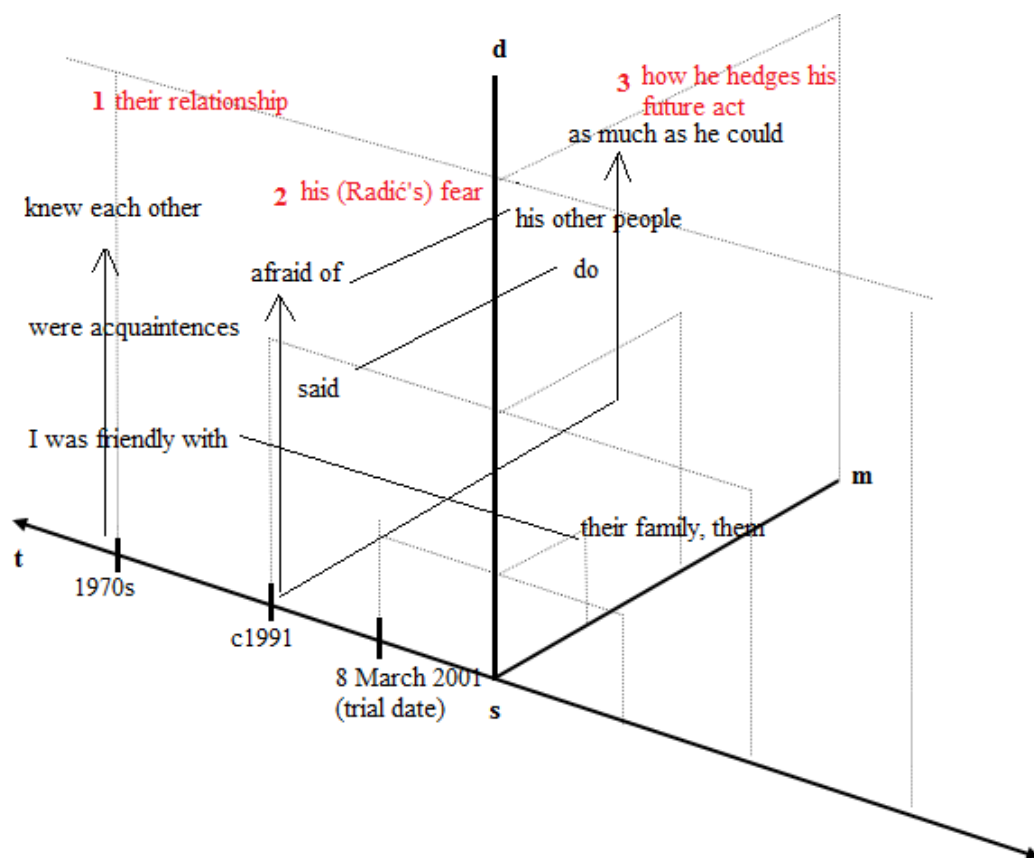
On the left, under number 1, we see DC4's explanation of his relationship with Radić, and way that the effect of questioning reframes the degree of social distance (as the arrow travels upward from 'I was friendly with' to 'knew each other'). The analysis is helped in looking at the progression of the words under each number –

these (1: their relationship, 2: his (Radić's) fear, and 3: how he (Radić) hedges his future act) are tied together through implication.

We can see DC4's understanding of Radić's degree of commitment to the prospect of helping the Omarska inmate, DC4's brother ('he would do as much as he could') illustrated in the diagram alongside DC4's understanding of why Radić had this connection ('we were acquaintances', 'I was friendly with them'). DC4's initial expression of cohesion is strong - he says of Radić and himself, 'we knew each other from the 1970s'. The expression only grows more distant with the interference of Judge Riad, who is looking for clarification of who is included in 'we'. At this point, DC4 splits 'we' into 'I' plus 'them'. This is something to be aware of, as interjections that change the way things are expressed are common in court transcripts. The significant indicator in this exchange however, is DC4's initial impulse to use 'we', and the fact that he does so twice before Judge Riad interjects. Therefore, from the diagram we can see that in the construction of DC4's cognitive space he places himself and Radić in a relatively cohesive space. The fact that he expresses Radić's choices within the 'possible space' (using 'would' and 'could') rather than focusing on counter-realities (for example, things Radić should or could have done but didn't) as well as his initial impulse to use 'we' allows the frame to be constructed proximal to the deictic centre, or self.

Radić's relationship with DC4 shows us something unique: it demonstrates that the theory of cross-cutting ties (Ross 1986; Sidanius 2004) does not decrease violent behaviours toward a group in general, it merely shows a tendency for violence to be avoided in certain cases where familiarity exists, and refocused in others where there is greater estrangement. The fact remains that DC4 and his brother are

members of the same ethnic group as the countless others Radić subjected to unspeakable humiliation and violence.

The phrase 'he was afraid of his other people' analysed alongside his statements regarding his relationship in the 1970s with Radić (and their families) demonstrates how his statements on the witness stand are tied together through implication. As we see from figure 2, ultimately he defines his future action through assessment of two things: relationships (Radić's to his family, and Radić's to his 'other people', and fear. DC4's explanation that 'he would do as much as he could' indicates that DC4 attached Radić's fear to his expression of what it was possible for him to do.

These results also reinforce the need for a two-fold analysis of transcripts. The up-close analysis that the DST theory provides has given significant results in showing clear indicators of cohesion. This, when taken into the context of the larger comparison across transcripts, shows the full complexity of how these behaviours are functioning within certain cohesive circumstances. Also noteworthy is the fact that there are elements in this exchange that are only revealed through the manual reading of the larger excerpt. This reinforces the issue that linguistic software limits the scope of understanding, and though it may be useful elsewhere, demonstrates why it can't be relied on for this particular type of research. For example, expressions of 'them' or 'they' in this transcript, the statement made by DC4 'because they were Muslims' comes up in a software frequency search. This would initially indicate that DC4 is expressing distance between himself and Muslims, which would move the construction of his reality further out on the DST diagram, indicating that he is fairly cohesive with Radić, but less cohesive with Muslims. This is not the case with DC4, who (it is explained in the transcripts) has asked for anonymity as a witness to protect himself, his brother, and his family, who are

Muslims. Here, again, the language DC4 uses in Example 3 is due to the phrasing of Judge Riad:

Example 3: Witness DC4 and Judge Riad

> 1 Judge Riad: (...) why were **people like him** arrested?
>
> 2 Witness DC4: Because **they** were Muslims. - Kvočka et al Trial Transcript (Testimony of Witness DC4) 8 March 2001: 8867. Emphasis added.

The phrasing Judge Riad uses here ('people like him') makes it nearly impossible for DC4 to answer the question without using 'they'. Software cannot be programmed to account for these types of situations, it is only through the applications of DST that the leading phrasing of questions can be identified. The best way forward is through manual reading, so that it is possible to identify where this is occurring and separate it from the more original phrasing (as was done above) with explanations of how these outliers occurred embedded in the model where necessary.

Also important is clarification of what is being measured. The strength of DST lies in the fact that the mental space is something that underlies all expression. The example above demonstrates that although expressions can be influenced by interjections or the way questions are phrased, the underlying patterns remain constant. Methods based on cognitive linguistic framing and mapping techniques have come about as a response to the discovery that language is evidence of larger mental patterns. The example has revealed patterns relating specifically to categorisation, and although at times the chosen expressions of categorisation can be marginally influenced, the categories themselves remain solid. With the right

linguistic and social psychological tools, it is possible to see where the true boundaries lie.

7.1 Other Patterns Found in Kvočka *et al*

The example from the test case has shown that group boundaries can be effectively revealed through cognitive linguistic means, and that doing so has given us insight into the behaviours of individuals and their respective groups. Expressions of self vs. other reveal some beliefs by making boundaries more visible, while expressions of fear show how threat is treated differently depending on where these boundaries lie. Assessments of environment, however, can be seen in a variety of ways. Most prominently, this becomes more visible through the highlighting of expressions of what is known, believed, or understood. Expressions like 'knew/know' or 'think/thought' can show what information individuals were coming into contact with, and more importantly how this helped form their opinions.

The frequency of these expressions is not to be taken as a point in itself, because some of the occurrences are results of the way in which the court goes about establishing facts and chains of events. However, this does not mean that these expressions are insignificant - it relates directly to the idea that perception impacts action. As was stated previously, this link is at the heart of understanding large-scale ethnic violence, as it has been commonly stated that decisions to act violently are determinant of how environments are assessed. The natural question is then, 'perception of what?' In the case of ethnic conflict, it is often claimed that the primary drive toward violence lies in the perception of threat (Chirot 2006; Staub 1989; Valentino 2004). Though Christopher Browning's work on Police Battalion 101 (Browning 1992) may seem like a counterargument to the role threat plays in

ethnic violence (Browning found several instances where threat was not a major factor in the violent behaviours of the battalion), this can be looked at as an example of the idea of 'threat' needing further explanation and definition. Browning found that a variety of factors influenced the decisions of the men involved, but none so much as the desire to maintain group loyalties (Browning 1992). It can be understood, then, that in cases such as this one the willingness to act violently could be related to threats to the group that are internal, such as the threat of group fragmentation resulting from what Browning referred to as 'refusing one's share of an unpleasant collective obligation' (Browning 1992). Taking this into account, threat can function in ways that are indirect or more subtle. Threats can be perceived as coming from outward actors, and can also be felt by individuals in terms of roles within the community or group.

For this logic to function, the link between perception and action must be a valid one. For this validity, we need only look back to the literature on group theory. Theories on decision making, from appraisal theory to theories linking impressionability to information access, all accept the link between perception and action to be central to understanding behaviours (Converse 1962; Orbell 1970; Newcomb 1952). These theories would not have come about if the two ideas were unrelated, or only connected in an arbitrary or minor way. Authors committed to the merit of principles behind the theory of cross-cutting ties (Hibbs 1973; Levine 1972; Ross 1986), or others following the constructivist viewpoint that a shared liberal identity decreases the perception of threat in terms of larger global actors (Rousseau 2005; Wendt 1999) are also forming their arguments on the basis that perception and action are inextricably linked. Even in instances where decisions are determined to be made primarily on an emotional basis, perception and action are

still the two most prominent variables in the equation, and the causal relationship between them is often so ingrained that it is taken as given (Monroe 2009).

8 Conclusion

This section has introduced the methods with which this data set is to be explored, and has explained the reasons and merits of the choice of these methods. The interdisciplinary approach joining methodologies from cognitive linguistics and discourse theories will allow for the data to be examined from a broader perspective, while also contributing analysis that will give specific insights and highlight the implications of discoveries made. The use of the innovative DST model provides a productive way to separate out linguistic indicators into the categories underlying them, a method which has philosophical underpinnings with discourse approaches that highlight the more subtle aspects of relationships enacted through speech.

Initial readings of the data from the test case have shown that legal transcripts do in fact reveal quite a lot about communities, and examinations of the excerpts above from *Kvočka* provide a small example of how analysis of this data will work. Preliminary findings show that significant patterns have been revealed, with the specific examples given here highlighting group identification in the speech of witnesses. The DST analysis has shown that it maps perspectives well, but is also capable of highlighting unexpected results in the response patterns. These findings were placed within the larger literature on ethnic conflict and group violence, and the insights found concerning threat assessment also reinforce the findings on expressions of fear demonstrated in the examples, and the DST findings effectively support these theories.

These preliminary findings will bear further significance when held up against analysis of the rest of the chosen transcripts. Further patterns found and discussed at length in this thesis in the subsequent chapters (chapters on in-court instructions on memory, the uses of in-court expressions of emotion, comparing the speech of Slobodan Milošević and Vojislav Šešelj, and differences in high and low rank expressions of the accused) are testament to the fact that linguistics paired with social psychology and discourse analysis can provide an innovative look at war crimes tribunal transcripts, and can make a contribution to the wider understanding of ethnic violence.

Chapter Four - In-Court References to Memory: What to Remember and What to Forget

'Thank you very much, madam. I have no further questions. I would like you to forget this as soon as possible and that we can all go back to normal. Thank you.' (K. Simić speaking to Witness B, Kvočka et al T-98-30-I, pg 2407/8 (eng), 23/08/11).

1 Introduction

This chapter compares transcripts from individuals referred to as victim-witnesses in an effort to differentiate them from other types of witnesses used during tribunals. Looking at testimony from Kvočka *et al* (IT-98-30/1), Tadić (IT-94-1-T) and Kunarac *et al* (IT-96-23-T and IT-96-23/1), analysis has revealed that discussions surrounding remembering and forgetting are very frequently found alongside in-court struggles between the witness and agents of the court for power over narrative. This demonstrates that whether or not it is intended, the court impresses a concept of memory upon the victim-witness that is at odds with their personal understandings, which then has implications on victim expectations of the transitional justice process and broader understandings of its role in victim-witness interactions, potentially putting strain on the relationship between victims and the tribunal.

2 Memory and transitional justice: Current studies

Though the subject of memory has been thoroughly explored within literature on war crimes tribunals, there has been little work done regarding the significance of in-court statements surrounding the retrieval of these memories. The extensive and

important work done on collective memory (Beim 2007; Brants 2013; Halbwachs 1992; Osiel 1997; Savelsberg 2007) examines key concepts, many of which are elaborations of the establishment of Durkheimian social facts, demonstrating for the scholar the importance of the links between legal power, social and historical constructions, and community identity post-trauma. Additional related avenues of research that are commonly explored under this umbrella are the concept of legacy in relation to the ICTY (Barasin 2011; Campbell 2008; Gow 2014; Ramet 2012), trauma and memory (Caruth 1995; Edkins 2003; Douglass 2003; Maček 2014; Zehfuss 2006), and issues of remembering and forgetting in post-conflict settings (Buckley-Zistel 2006; Christianson 1996; Krondorfer 2008). Attempting to add to the discussion on memory within the transitional justice sphere implies a tackling of these issues, and while this chapter will deal with some of the specifics they have contributed, it will do so with a more narrow focus than is commonly applied. Specifically, I would like to deal with in-court utterances as discourse, looking at direct statements of remembering and forgetting. I ask, in essence, how instructions on what to remember and what to forget impact power relationships in court, and how they might influence the ways victims experience narrative control.

The act of remembering is inherent in court processes, so much so that the words used to encourage witnesses to recount events often treat memories as part of the legal process rather than something connected with specific individuals. Instructions on what to remember are therefore repetitive and automatic, and witnesses are often treated according to how the court views their function, even when there is a clear effort toward sensitivity on the part of the court. We are then left with several questions: Are the ways in which memories are treated in court an unavoidable aspect of court process, and if so, how might these treatments impact

perceptions of justice? To what extent do requests on what to remember and what to forget change from procedural requests to symbolic requests, and what does this say about the court's power over memories after tribunals have finished? The questions posited in this chapter thus far hold within them concepts that can be examined alongside the literature for a more helpful understanding of the issues at stake. Briefly, these are: memory in the legal setting, trauma and memory, the specifics of remembering and forgetting, the court's relationship with collective memory, and the concept of narrative control.

2.1 Beyond legal memory

Memory is conceptualised within the field of transitional justice in a variety of ways. Pivotal to the discipline is the understanding of the making of legal memory – that is, the acceptance or rejection of events that comes from legal decisions functioning to set both legal precedent and to put the authority of the international community behind this version of events, whether intentional or not. This is primarily seen on the macro level, for example through struggles over court authority or issues relating to the accepting and rejection of the categorisation of Joint Criminal Enterprise (JCE) as a vehicle for expanding the concept of culpability (Danner 2005; Gibson 2008; Kerr 2004). While one might argue that these issues do not relate directly to legal memory (more to legal precedent), I would contend that these concepts are related under the heading of the establishment of authority on the part of the ICTY. The ways in which international criminal law prioritises events and creates an archival record of its own dealings forms particular conflict histories that fit with the international legal narrative. The importance of this when looking at memory on the individual level is that the wielding of authority on the part of the ICTY as manifest in landmark decisions is

the crux of the power that in turn finds its way into the memory discourse I am dealing with.

Work done by Baharona de Brito (Barahona de Brito 2010) takes a broadly theoretical approach that has benefited the discussion by bringing it beyond the basic issues of how voicing memory impacts the healing process. She calls for interdisciplinary approaches to the study of memory and transitional justice, and approaches memory within transitional justice along a similar line of enquiry as the one I am suggesting here, albeit along a more philosophical avenue rather than the more empirical approach that I offer. Her work focuses on the pairing of memory studies with transitional justice studies, but she applies Wilber's (Wilber 2001) 'domains of knowledge' to the field and categorises disciplinary approaches in a way that engages more actively with debates on human rights theory (universalist/rationalist traditions) and neither employs suggested methods practically nor suggests direct ways in which analysis might be undertaken. This research, however, is encouraging and speaks to the potential for a new and innovative approach to databases left by war crimes tribunals that many may erroneously view as being behind us.

2.2 Memory, trauma, and the concept of the unspeakable

The link between memory and trauma is well-researched, and the concept is frequently dealt with in terms of its role in post-conflict reconstruction as well as the role it has in constructing historical discourse. Tribunals certainly come into this, however they do so primarily as vehicles of (or impediments to) the voicing of memory as part of the healing process. Adding critical depth to the discussion is Jenny Edkins' excellent book *Trauma and the Memory of Politics* (Edkins 2003),

which has become a platform upon which many important studies have built, linking memory and trauma with key elements in international relations such as security and foreign policymaking within the critical discourse setting (Bell 2006; Maček 2014; Resende 2014). In this work, Edkins tackles the difficult concept of how trauma becomes separated from language. Going beyond the issue of the victim's 'voice' being appropriated and used by others as a part of court process, she brings the Lacanian perspective to what is happening in court. On the experience of speaking about trauma, she writes,

> There the traumatic experience is seen as something that takes place outside language. In that sense it is not experience at all, in that it cannot be made sense of or recounted in language. In Lacanian terms, it is an encounter with the real. The Lacanian real is that which is outside the linguistic realm, outside the symbolic or social order. (Edkins 2003: 213).

She adds to this the interpretation of Giorgio Agamben (from *Homo Sacer: Sovereign Power and Bare Life*), and his analysis that speaking about trauma is an attempt to bring this pure reality back into pre-existing linguistic barriers which in essence functions to destroy its truth (Edkins 2003).

Why then analyse court statements with such emphasis on linguistic categorisations? This chapter makes the important distinction of not analysing court statements as artefacts of experience, but as evidence of social process. While this doesn't expressly reject the Lacanian understanding of the memory of trauma - whether it exists in truth outside language or within language outside truth, it is still possible and indeed necessary to then extend our understandings of how these linguistic barriers function and to what extent the court setting changes them. These

ideas will be expanded upon in a moment, but first it is helpful to turn to another perspective in the discussion.

There are arguments within critical theory on the 'unspeakable' and the role of this concept within the act of recounting traumatic memory that bear discussing at this point. Thomas Trezise (Trezise 2001) gives a thorough exploration of the uses, meanings, limitations (and through limitations, functions) of that which is 'unspeakable', using the Holocaust as the domain for discussion. He is comprehensive in how the word is conceived, giving three possible meanings for 'unspeakable.' The first is that something is, in actuality, 'verbally unrepresentable'. The second use for 'unspeakable' is to convey that something is 'indescribably bad,' and the third use encompasses the idea that something *may* not or *cannot* be spoken of, because of the social implications resulting from its utterance. These three categories are not entirely disconnected, and on the first category he states that to claim the Holocaust is unspeakable:

> (…) is also to recognize that the Holocaust does not lie entirely "outside" or "inside" of language, since, on the one hand, to ascribe to it an ineffable exteriority is already to represent it, to interpret what supposedly surpasses interpretation, while on the other, to contend that it is now strictly a matter of representation and interpretation is to ignore or deny the extent to which their linguistic medium has been disrupted and altered by the Holocaust *as event*. The Holocaust only "exceeds" speech because its effects are *internal* to speech itself (Trezise 2001: 41).

It may seem that we are presented with contradicting viewpoints of the same act – the act of speaking about trauma. On the one hand, we have Edkins' Lacanian view

that traumatic experience occurs outside language, and therefore the act of speaking about it in a court setting is to pull it into a realm that will in effect, strip an essential essence (truth) from it. On the other, we have Trezise claiming that trauma, as connected to *event*, is something that cannot be claimed to be either inside or outside language, as there are two things happening simultaneously that can point to it being both. In short, it being 'unspeakable' is a representation, but more than simply assigning representation through the inability to represent, we have its *disruption of the linguistic medium*. These two views, however they may seem to contradict each other, are actually speaking about two different aspects of the same thing, and when made to interact within the same discussion can add depth to how we perceive the act of speaking about trauma.

Edkins' emphasis is on the *attempt* to speak about something that is 'outside' language, and the way that these attempts can change the nature of the traumatic memory. This chapter seeks to understand the way that the power of the court influences memory, and while 'truth' in a traditional sense is not something sought by this research, it cannot be discounted that the experience of trying to bring what may be a 'pure reality' back into parameters of language may create within the witness an additional sense of loss.

Trezise's discussion gives a more practical approach to how the idea of the 'unspeakable' is understood in that he looks at how it might be impacting the ideas with which it is interacting (or with which it is failing to interact). Most notably, the implied moral points of reference within the second understanding of 'unspeakable'

(something is unspeakable because its negative aspects cannot be described), and the fact that the normative frameworks which situate it are limited:

> It is to acknowledge as well that this inadequacy does not characterize the framework in relation to an object lying completely "outside" of it, but instead reflects the internal disruption of the framework by a "fact" that exceeds its limits. Indeed, one could even say that this excess is precisely what imparts to the judgment itself its peculiar force (…) (Trezise 2001: 42).

Therefore, not only is rendering something 'unspeakable' to assign to the event the power to disrupt the common standards of evaluation in place within normal language, but this may be the reason the term carries with it additional emotional sensations implied through its inability to be bound. This is important, as the attempt to speak about trauma and the frustrations that accompany these attempts (as demonstrated in greater detail in chapter 5 on emotional expression within witness testimony) can be located within testimonies and deconstructed, and these understandings of what can and cannot be spoken of must be considered. Hence Edkins' understanding of the complexities involved in the explanation of a traumatic memory is important to considering the fraught linguistic relationship between the victim-witness and interrogator, because there may be things occurring under the surface of the words spoken that make evident the process of making something conform to a format it inherently rejects. The 'force' that Trezise ascribes to the use of 'unspeakable' may be a reclaiming of the power behind the true understanding of the traumatic memory on the part of the witness, and the use

of a term that breaks the limits of linguistic frameworks is the means through which this can be done.

2.3 Remembering and forgetting within personal narrative

While this chapter deals directly with utterances of remembering and forgetting, these concepts resonate in a variety of disciplines under larger, more theoretical headings. The anthropological, historical and philosophical literature on the concepts of remembering and forgetting is extensive to the point that some have deemed the subject exhausted (Berliner 2005), while others have broadened it to include elements relevant to post-conflict reconstruction such as wilful forgetting as a (potentially dangerous) tool of reconciliation (Buckley-Zistel 2006; Krondorfer 2008) or as a natural process of nation construction (Anderson 1983; Misztal 2003; Renan (1882) 1990). While literature on the philosophy of remembering and forgetting (often cycling back to Nietzsche's argument on forgetting as a necessary way to avoid being ruled by the past) paints an important picture of the traps societies might fall into when navigating their own understandings of histories, the arguments for remembering and forgetting often reduce down to questions of morality. As Maja Zehfuss explains,

> …the supposed 'knowledge' about the past is presented as an ethico-political question about the present: we know what is right because we remember (Zehfuss 2006), p 228.

How then, do we properly conceptualise these types of efforts in the court setting? Adding the dimension of testimony to the conversation on remembering and forgetting brings with it the implication of the court's moral decisiveness as a final statement on how conflict memories should be treated. This makes the occurrence of in-court discussions on forgetting all the more worthy of study, especially as this

topic is not without controversy (Brants 2013). For the ICTY in particular, there is a tension between the need to encourage victim testimony and the problems of fact and verification that are inherent in the processes of transitional justice (Dembour 2004). As we see in the testimonies included here, a clear dichotomy emerges along emotional lines: remembering is categorised alongside justice, while forgetting appears in the context of apology and remorse, at times functioning as a tool for questioning credibility.

2.4 Symbolic and collective memory and the ICTY archive

In order to properly discuss memory at the ICTY, the concept of collective memory needs to be touched upon briefly, as this is a subject that has previously been a central focus of scholars when talking about memory and international criminal tribunals (Brants 2013; Crane 1997; Denich 1994; Osiel 1997; Savelsberg 2007). While there is extensive research on collective memory, I will highlight some of the important claims from this literature in the context of the ICTY archive in particular, in an effort to examine past studies in a manner that better suits the aims of this study. Collective memory is relevant to ICTY archival analysis in terms of the broader community function (and indeed, international functions) of the court. As Kirsten Campbell states,

> …this archive does not passively record memories, but instead actively constructs memory as an object in the present through its juridical, international, and transitional structure (Campbell 2012).

Understanding the archive as an element of memory construction in itself places it in an interesting position when defining collective memory with ICTY

characteristics. This implies that the oft-discussed concepts of collective memory introduced by Halbwachs (Halbwachs (1950) 1997) and elaborated upon by so many others (Beim 2007; Crane 1997; Gedi 1996; Misztal 2003; Osiel 1997; Ricoeur 2004) are only part of the ICTY archive's memory dimensions. The dual cognitive linguistic and discourse analysis of the transcripts makes it clear that there are layers of memory functioning in this atmosphere. This is not an entirely new idea – indeed much of the literature on transitional justice and memory makes separate space for understanding legal memory, collective memory, and individual victim memories (Minow 1998; Osiel 1997), but understanding what memory truly means in the ICTY context requires more than the categorisation of types of memory. The archive's construction of 'memory as an object in the present' speaks to an active connection between these types of memory, leading the scholar to question what the relationships between them might mean. Essentially, memory construction in the court setting is not a singular, containable process but something that occurs as a result of the intersection of several different structures, each with potentially different aims. Because of this, the ways memories are expressed, referred to, questioned, and understood can change in accordance to the way they each shape the discourse. For example, the way a memory is expressed impacts how it is referred to later in proceedings, but the way the court deal with these references (whether they are questioned, validated, etc.) can change the defining of the memory itself and how it is understood.

Abstract as this may sound, it is precisely what the results of this study have highlighted. Focusing specifically on in-court utterances surrounding remembering and forgetting, we can pinpoint the interactions between legal memory, as it was loosely defined in section 2.1, and individual memory. The archive's preservation

of these interactions brings the tensions discovered into the present, and this fragile relationship between the individual and the court becomes an object of the discourse itself, which will be demonstrated through the analyses of testimonies below.

2.5 The concept of narrative control and the victim as witness

The idea of individual responses in court being influenced by perception (both through situation and audience) and intention was spoken about in chapter 3, but is beneficial to discuss further under the heading of the victim-witness specifically. The philosophical discussions surrounding the discourse of the witness give a multi-layered analysis of this practice, ultimately placing the witness and his or her testimony head-to-head with the search for truth (Douglass 2003; Misztal 2003). Indeed, much of the literature on the philosophy of memory and witnessing concerns itself with the experiences of the witness within the envelope of truth and its location in discourse, and while this is certainly a noble enterprise, this study will set aside the navigation of truth in witness discourse in favour of broader understandings of what courtroom interactions can reveal to the social scientist.

However, there are elements of this body of research that can give interesting perspective on the little-researched concept of narrative control. The notion that one has control over one's own statements is a tenuous one in the ICTY, an issue that very likely stems from the nature of the regulatory and hierarchical format of court proceedings in general. This has been highlighted by scholars both in terms of the victims as well as perpetrators (Ivković 2006; Pena 2013; Schomburg 2011). Questions then arise regarding whether or not testimony is proprietary and, if so, how this 'ownership' of accounts influences interactions in court. Karyn Ball's

exploration of the denial of gas chambers (claims made by Robert Faurisson in *Mémoire en défense: contre ceux qui m'accusent de falsifier l'histoire,* 1980) demonstrates the ways in which the philosophy of Jean-François Lyotard categorises what she deems 'the rhetorical parameters of knowledge production'. This gives rise to the notion that the 'property' of truth cannot be shifted (even in the event of linguistic resituating) as it 'belongs to' the object of discourse rather than to any transferrable meaning (Ball 2003: 255). This understanding is important to note because the results of this chapter indicate that the perceptions of the speakers function on the notion that the 'property' of truth can in fact be shifted. Placing this within the courtroom, we can see that it underlies tensions that arise between witness and interrogator, and in the context of one specific phenomenon discussed later in this chapter – namely, the direct suggestion by the interrogator that the witness forget an experience after it has been recounted – the proprietary aspect of an account is then in effect being taken away from the individual by an institution (by way of a representative of the court).

The concept of the victim-witness is referred to frequently enough in academic literature that it has become commonplace, and invokes larger concepts. Discussions of storytelling as a tool for personal healing, the construction of collective memory, and critiques of the effectiveness of 'justice' for the victims abound, and have all contributed to the weight that now sits behind the term (Brants 2013; Haslam 2004; Horn 2009; Mendeloff 2009; Minow 1998; Osiel 1997; Pena 2013). While it initially seems the prudent term to use in order to distinguish between the other types of witnesses who give testimony before international criminal tribunals, the pairing of 'victim' with 'witness' adds a categorical reference that automatically implies a difficult personal history, and then sets this

implication alongside the individual's function in the court. While this is not uncommon (expert witnesses being another example), the uniqueness of this position lies in the bridge between personal experience of trauma and function for the victim-witness.

The problems that arise from this category go beyond the commonly addressed 'needs of the witness vs needs of the court' to include attitudes so entrenched in the institution of the ICTY that they are frequently unnoticed. This is addressed by Dembour and Haslam, who give one of the few analyses of in-court responses to witnesses, examining transcripts from *Prosecutor v Radislav Krstic* (Dembour 2004). They bring up crucial questions about the relationship between the witness and the court in the context of the ICTY's adversarial and inquisitorial models, and give direct examples of court responses to witnesses that are similar to those analysed in this chapter. However, while Dembour and Haslam have noticed similar patterns in the dialogue between court agent and witness, I maintain that these need to be not simply acknowledged, but deconstructed. Therefore, building on this small pocket of transcript research, cognitive linguistics offers an avenue for deeper inquiry.

3 Examples

The witness statements analysed in this section are from three cases all relating to offences within Bosnia and Herzegovina (BiH), Prosecutor vs Kvočka et al (Case Number IT-98-30/1), Prosecutor vs Kunarac *et al* (IT-96-23-T and IT-96-23/1) and Prosecutor vs Duško Tadić (Case Number IT-94-1-T). The case concerning Miroslav Kvočka *et al* deals with lower ranking individuals at the Omarška internment camp in the Prijedor region - Miroslav Kvočka, Dragoljub Prcać,

Milojica Kos, Mlađo Radić and Zoran Žigić. Kvočka, Prcać, and Radić were professional police officers before the conflict who took on a variety of roles in the camp, with Radić the most senior of the group (Radić was a shift leader). Kos was a guard, while Žigić was a civilian taxi driver-turned-guard who acted as a reserve policeman. Victims of this camp testified to the harsh conditions, physical and psychological violence and torture carried out by guards in the camp, as well as instances where murder was witnessed or known individuals disappeared never to be seen again. Kunarac *et al* addresses crimes in Foča committed by Dragoljub Kunarac, Radomir Kovač, and Zoran Vuković, who were members of varying status in the Bosnian Serb Army (VRS) sentenced for egregious acts of rape, torture, enslavement and outrages upon personal dignity against Bosnian Muslim women and girls as young as fifteen.

The Tadić case was a landmark case in several respects, however this is not the reason I have chosen to look at selected transcripts. Again dealing with violence in the Prijedor region, this case specifically relates to the actions of Duško Tadić, who was the president of the Serb Democratic Party (SDS) in Kozarac. The Tadić case tested the limits of the ICTY's jurisdiction and powers at the very beginning of its working life (Kerr 2004). Tadić was guilty of personally killing and abusing Muslims during the attack on Konarac, and aiding in the detainment and forcible transfer of civilians. As Tadić was one of the first to be tried before the ICTY, witness transcripts from this case give an interesting look at what types of exchanges were happening in court between victim-witnesses and court representatives, while Kvočka *et al* reveals what behaviours continued and solidified, and in certain cases became even more exaggerated.

3.1 Forgetting as a symbolic request: Witness B and Emir Beganović

The quote used at the start of this article is from the end of a lengthy testimony given by a protected witness (known as Witness B) in the case known as *Kvočka et al.* For clarity of analysis, I include the quote again, as Example 1.

Example 4: Witness B

> 1 'Thank you very much, madam. I have no further questions. I would like you to
>
> 2 forget this as soon as possible and that we can all go back to normal. Thank you.'
> - K. Simić speaking to Witness B, Kvočka et al Trial Transcript (Testimony of Witness B) 19 May 2000: 2407-2408.

While the direct request to forget is very significant (as is the way in which identities arise embedded in the language used – '**I** would like **you** to forget this (…) and that **we can all** go back to normal'), which will be discussed in a moment, this comes after definitions of Witness B's role is defined to her by defence counsel. K. Simić states:

Example 5: Witness B

> 1 Q. Yes, the arrivals. You explained that. You said where you were standing, what
> 2 that looked like, so let's not return to that. But were you ever present, as a witness
> 3 -- **don't be so surprised. You're a witness, so I have to ask you whether you** 4
> **saw. Witnesses see, if you see what I mean.** - K. Simić speaking to Witness B,
> Kvočka et al Trial Transcript (Testimony of Witness B) 19 May 2000: 2403.
> Emphasis added.

Defining the witness by her role places her among the court processes as a piece of the larger legal environment, giving the clear message that the individual is seen by the court as synonymous with her function. Even though the act of being a witness at a tribunal implies this, the instruction given here by the defence not only defines for her what it is to be a witness, but what the act of *witnessing* is. The comment is evidence to her presence as a witness being defined not as she sees herself, but through how she is seen by the court. For the witness, these are issues of seeing and being seen, but the defence attorney's role is more about hearing and being heard. The witness is an essential element in his point being heard, rather than the witness being heard directly.

Regarding the embedding of identities within the statement referred to earlier - '**I** would like **you** to forget this (…) and that **we can all** go back to normal', there are several things at stake here. First, there is the power of the interrogator to direct the witness on how he would like her to treat her memories. This is significant whether or not he is referring to her memories of testifying, or the memories of her experience during the conflict that she was recounting to the court. The second part of the statement, referring to 'us all' implies that he might mean the latter, which

does bear strong implications on how this interrogator sees his own power to speak for a group that depends on her ability to forget.

The issue of normalcy is also of great significance. The idea of 'normal', and the witness' memories as a barrier holding back the group from reaching some previously occurring state of 'normal' implies that her memories are not only a barrier to some form of reconciliation, but also that the interrogator (and through him, an element of the court) are the authorities of what this previous state of normal was and should be, and how 'we all' might best get back there. The intention of this statement was very likely not to demonstrate this, and may very well have arisen out of an attempt at a polite closing on the part of the defence. Regardless, the social-psychological interpretations of the impact this type of statement can have on the wider court environment indicate that these ideas – creating barriers between victims and a 'reconciled' or 'normal' group or groups (barriers formed of the victim's own memories) - may underlie not only court discourse, but social and community discourse as well.

These parting sentiments are not uncommon at the ICTY, and while they may seem benign, the idea of forgetting is often invoked. Attempting to address someone who has just spent hours testifying to terrible abuses must be understandably difficult, and the issues that must be navigated by the interrogator or judges involved when trying to properly thank someone for spending time in such an emotionally exhaustive state must not be discounted by the scholar. However, this does not mean that linguistic trends present among these statements should be ignored, particularly when they so often reinforce the strata of power relationships inherent in court hierarchies.

At the end of testimony from witness Emir Beganović (a Bosnian Muslim detained at the Omarška internment camp) during the Tadić case, Judge Rodrigues states:

Example 6: Emir Beganović

1 JUDGE RODRIGUES: Witness, thank you very much for coming here. **We wish**

2 **you** to be able to resume the friendships that you had, **to be able to forget**

3 **hatred**, and to **be a good witness** of peace and good relations with other people,

4 those who have other political options, other religious, even, beliefs and ethnic

5 beliefs. So thank you very much. You may go now. - Tadić Trial Transcript (Testimony of Emir Beganović) 19 July 1996: 1562. Emphasis added.

The text in bold highlights the section of Judge Rodrigues' statement that is similar to the earlier example from K. Simić. Though the concept of normalcy is not touched upon, similarities are found in the expression of a collective ('we') directing the individual ('you') toward the act of forgetting. The next phrase is interesting as well, as it invokes the role of the witness directly, but in an open and symbolic way. The literal court witness is transformed into a 'witness of peace', contrasting with the previous concept of hatred mentioned. The addition of a value judgement ('good') further adds to the weight of the witness' responsibility in the wider symbolic sense, with implications of future community interactions underlying the statement.

A closer breakdown of the statement demonstrates the way in which the court instructs the witness in dealings with the wider community:

We (wish) ➡ **You (to be a good witness to)** ➡ **Those (other)**

Continuing with the testimony of Emir Beganović from the Tadić case (he also testified later during Kvočka *et al*), there is an interesting treatment of memory by the witness at an earlier point in his testimony, when he is asked about what he noticed during an incident at Omarška:

Example 7: Emir Beganović

1 Q. Did any of the others have a similar colour belt?

2 A. **I cannot remember at this time**, nor did I try very hard to observe that. I was

3 -- **I did not believe** that I would come out of the camp and especially that a day

4 would come that I could testify to being there. *If I had been aware* of that, *I*

5 *would have remembered* and observed more.

6 Q. I understand that, and do not take any of these questions as being a criticism of

7 you. I am *asking them as part of my job*, you understand? – Tadić Trial Transcript (Testimony of Emir Beganović) 19 July 1996: 3814-3815. Emphasis added.

Here there is an interesting effort on the part of the witness to move the memory through the entire cognitive space, as show below:

Figure 4: DST model for Emir Beganović
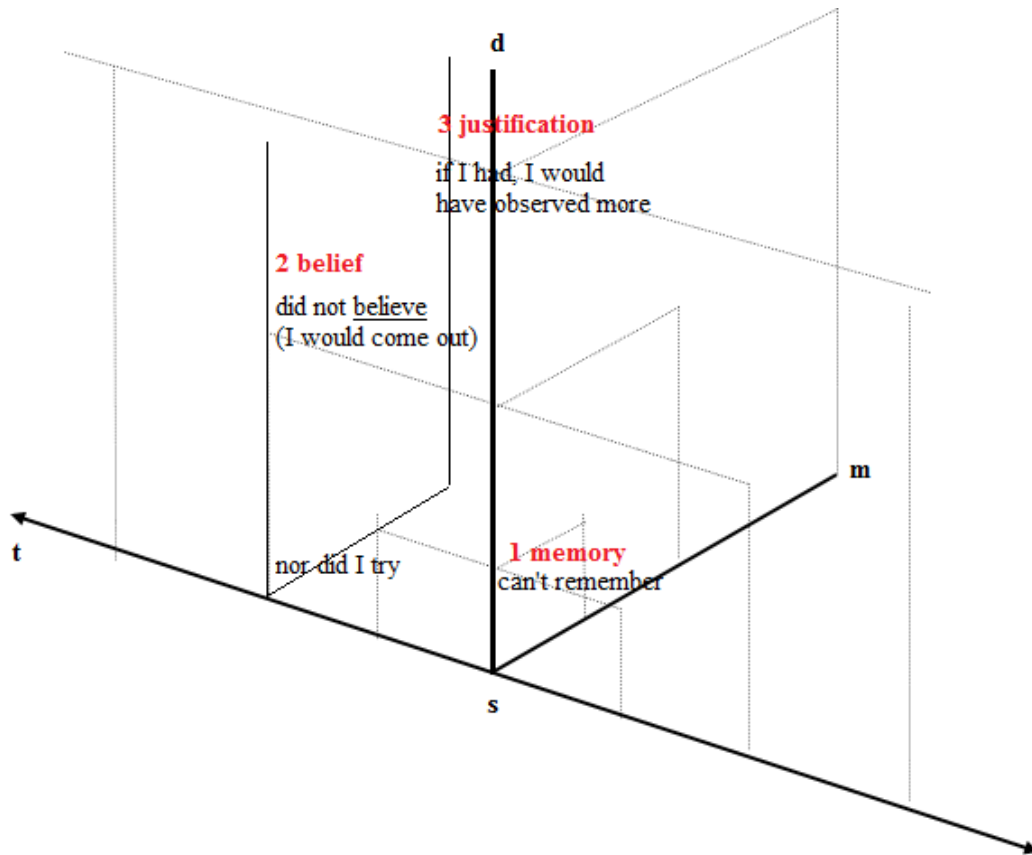
This bears significance in terms of individual perceptions of the responsibility to remember, linked closely with survivor's guilt (Minow 1998). Seeing evidence of this in memory retrieval is interesting not only because it demonstrates the witness' own understanding of his responsibility and (perceived) failure to remember, but the reaction of the interrogator in reinforcing his role in this responsibility. The response in italics above (lines 4-5), while part of an attempt by the interrogator to make the witness feel less of a burden regarding his own forgetting, then includes the express explanation of the interrogator's job in order to depersonalise his role in

this exchange. This depersonalisation denotes a desire on the part of the speaker to use his role (or 'part of my job' as he states) as the true generator of the unpleasantness of the exchange, shifting responsibility to a more powerful platform (from himself as an individual to himself as a lawyer).

This is an interesting divergence from the more common phrases used to make witnesses feel that there is some sympathy in the room, which usually begin with apology (very common in ICTY transcripts is the prefacing of questions - especially concerning rape and sexual violence – with, 'I'm sorry to have to ask this, but…').[9] The witness expression of his perceived failure to remember followed immediately by the interrogator's shifting responsibility toward professional role is subtle but significant evidence to the ways in which court professionals further embed existing hierarchies upon memory retrieval itself.

3.2 Control over memories: The examples of Edin Mrkalj and Witness 87

A different example of the role of memory during ICTY witness testimony can be found in the testimony of Edin Mrkalj, who testified in Kvočka *et al* and also detailed his time interned at Omarška. During his testimony, conflicts between his answers and the intentions of the defence lead to emotional exhaustion on the part of the witness, as he struggles with expressing his experience on the court's terms. This leads him to abandon control over his own narrative, saying things throughout his testimony such as *'What do you want me to answer now?'* (Case No IT-98-30/1

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[9] For example, during the testimony of Witness 87, a rape victim from Foča – 'Q: I'm sorry to have to ask you this again, but could you tell the Court specifically what he did?' - Kunarac et al Trial Transcript (Testimony of Witness 87) 4 April 2000: 1683.

Prosecutor v Miroslav Kvočka *et al*, 23 August 2011, English transcript pg 2914) and *'This is a catastrophe.'* (Case No IT-98-30/1 Prosecutor v Miroslav Kvočka *et al*, 23 August 2011, English transcript pg 2913).

During this time, there is a struggle between the witness and the interrogator, and then the interrogator and the judge. This leads the judge to instruct the witness directly on the role of forgetting in court:

Example 8: Edin Mrkalj

1 JUDGE RODRIGUES: [Interpretation] Witness, you have to answer questions   2 put to you. If you can remember, you say so. You tell us what you remember. If 3 you can't remember, you simply say, "I can't remember." That is an answer to the 4 question. - Kvočka et al Trial Transcript (Testimony of Edin Mrkalj) 23 August 2011: 2933.

This instruction leads the witness to more obviously abandon control over his own narrative, using the act of forgetting as a way out of his struggle with the court. He replies:

Example 9: Edin Mrkalj

1 A. I can't remember. You're quite right. To avoid this further torture, I can't

2 remember those things, and I don't want to go into them. It was the worst situation

3 for me. - Kvočka et al Trial Transcript (Testimony of Edin Mrkalj) 23 August 2011: 2933.

This instruction is an interesting contrast with the previous example, although it is again referring to forgetting, this time it is not a soft request (as we see with the

other example), but a reminder to him that forgetting is an option. Interestingly, in all the instructions to remember, the witness is then treated as if he is unaware that forgetting is a valid option.

Interestingly, his frustration seems to stem from the fact that he *can* remember, but being compelled to recount these experiences is outside the way he sees his role as a witness, especially given his previous descriptions of the same experiences to the court. He takes the option of forgetting as a reaction to the court – 'To avoid this further torture'. The fact that he also includes the phrase 'you're quite right' is an interesting indicator as to his views on the judge's statement. Here, we see him accept not only that forgetting is an option, as the judge is reminding him, but that forgetting is a tool that he can use in the face of his ordeal in court.

Edin Mrkalj's struggle with his narrative indicates that his memories could stand symbolically as properties of the court – something once given, one should not have to give again as the court is already in possession. Earlier he states:

Example 10: Edin Mrkalj

1 A. It's rather hard for me to go back to those events, because for years I have been
2 trying to forget them and to simply wipe them away from my memory. And I

3 have answered these same questions so many times. I see no need for me to make
4 the effort to look back. - Kvočka et al Trial Transcript (Testimony of Edin
Mrkalj) 23 August 2011: 2932.

As with Witness B, there remains this issue of the witness as a mouthpiece for the lawyer's point to be heard, which brings us back to the question posed at the beginning – Is this type of treatment of memories a necessary part of court

processes, and if so, how does this impact perceptions of justice, and in turn, reconciliation? The desire to remember or forget is something unique to individuals, and cannot be seen as something that is fixed once decided upon. Though both witnesses in these examples are standing before the court in a voluntary capacity, the pressure of legal process taking precedence over the witness' own personal narrative power can produce additional pressure to forget, as we see with Edin Mrkalj. Conflictingly, in instances where forgetting has not been an issue, as with the Witness B example, forgetting is still brought up as a suggestion to the witness, implying that once the act of bearing witness has taken place, forgetting is something that *should* take place.

The impact this has on perceptions of justice and reconciliation is difficult to discern, but can be seen in terms of the messages these exchanges could be sending – messages that form court environments, and messages that are reflections of or instructions on community behaviours. This research, as research into these messages, also exists as only one line of enquiry in a field previously dominated by emphasis on legal successes and failures.

Below, Witness 87, a rape victim from Foča testifying in Kunarac *et al* (IT-96-23-T and IT-96-23/1), is asked during cross-examination about why there are differences in her responses to the same questions when comparing her testimony to past interviews. The example demonstrates an interesting depersonalisation that occurs when discussing the difference between 'no' and 'I don't remember'.

Example 11: Witness 87

1 A. I can't really say. Perhaps at that time it slipped my memory. Perhaps simply it

2 just came. I don't know.

3 Q. Today when the Prosecutor asked you about Kovac's mother, you said that she

4 never came nor did she ever bring food. Is that correct?

5 A. It is, yes.

6 Q. Also on the 5th of April this year, in the cross-examination on page 1805,

7 when I asked you, "Did Kovac's mother ever come and bring food to you?" your 8

answer was that you could not remember.

9 A. Yes. Yes. I don't remember his mother -- I don't remember Klanfa's [*sic*]

10 mother ever coming to us.

11 Q. So what is correct, what you're telling me or what you told the Prosecutor, "I

12 don't remember," or, "She did not come"? Which is correct?

13 A. She did not come.

14 Q. Then on the 5th of April, why did you tell me that you did not remember if

15 she came?

16 A. Well, perhaps it was my fault, perhaps the way I pronounced those words, but

17 both times it meant that that woman really did not -- I mean, Klanfa's [*sic*]

18 mother did not come to the flat.

19 Q. **Let me refresh your memory. It was not your fault**. During the cross-

20 examination with me on the 5th of April, you answered, "I don't remember," 49

21 times to my questions, and today you answered all those questions specifically.

22 You did give answers to all those questions. So --

23 A. And what do you mean by that?

24 Q**. I'm merely telling you how you're answering the questions, and what I**

25 **think about that I shall say in my closing argument.** **It has nothing do with**

26 **you.**

27 A. *If I say, "I don't remember," it means I do not remember. And if I say*

28 *"No," then that means no.*

29 Q. Yes, but on the 5th of April, you told me, "I don't remember," and to the

30 Prosecutor today, you answered, "No."

31 A. Quite.

32 Q. So will you please explain why? Why did you say, "I don't remember," then

33 and now you said "No"?

34 A. This difference -- I don't know. *I don't really know what to say.* - Kunarac

etal Trial Transcript (Testimony of Witness 87) 23 October, 2000: 6120-6123.

Emphasis added.

Though seemingly benign, the phrase 'Let me refresh your memory' is used by the interrogator as a precursor to restating the witness' past responses. While this is a colloquial and common turn of phrase in several languages, its use in the court setting does have significance on the memories in question. First, it implies that testimony (and in effect, memories), once given, becomes the property of the court as the witness' own knowledge of it can be declared suspect. This echoes the issues discussed earlier surrounding narrative control, and the example above gives clear evidence to this shift in ownership by immediately following this exchange with linguistic separations – 'it was not your fault' and 'it has nothing to do with you' alongside the reference to the interrogator's personal use of the witness' answers ('what I think about that I shall say in my closing argument'). All the witness is left to do is define her answers through repetition ('if I say no, then that means no') and articulate her confusion ('I don't know what to say').

Strategically, the interrogator appears to be questioning the credibility of the witness through the demonstration of the unreliability of her own memories. This is not uncommon in cross-examination tactics, but deeper analysis of it can give us insight as to why the interrogator might push for the depersonalisation discussed above. As Paul Ricoeur states,

> The specificity of testimony consists in the fact that the assertion of reality is inseparable from its being paired with the self-designation of the testifying subject. The typical formulation of testimony proceeds from this pairing: I was there (Ricoeur 2004: 163).

For Ricoeur, the witness label begins with this admission (I was there), and is only a label one can attach to oneself. If the 'assertion of reality' is tied to this concept,

then the reality of the witness is also self-designated. The personal power over one's own testimony, narrative and memories stems from this ownership of the witness designation. The shift to the court's designation and use of the witness and her testimony, the statements that it is being used 'for' something (closing argument) that belongs in the realm of the court only ('it has nothing to do with you') demonstrates that this exchange contains more than strategic attempts to discredit memories. Clear lines emerge where the court's functions do not simply outweigh witness testimonies, but simultaneously claim to be the true originators of the witness role and the vehicle through which this role is ignored.

4 Conclusion

This chapter has demonstrated that references to remembering and forgetting during witness testimonies are significant utterances that can change the nature of several important elements of the court environment. Testimony analysis has shown that expressions of forgetting made by the interrogator can introduce the idea of forgetting as a symbolic request. This places a priority on forgetting as a tool for reconciliation (implying that the witness' memories are the barrier for the collective return to 'normalcy', as was shown with Witness B) but also introduces a power relationship where the interrogator has the final say in how a witness should treat her memories. Additionally, there are issues of control over memories that arise between witness and interrogator, with forgetting used as a tool for avoiding traumatic testimony, but only after the option is given to him by the judge (as shown with the testimony of Edin Mrkalj). Testimony analysis here has also demonstrated that there is a struggle over the proprietary aspects of testimony, and the idea that once given, testimony is used for purposes within the courtroom that might be unrelated to the witness' role (as shown with Witness 87).

Addressing the wide array of literature on memory and applying certain ideas found there to the cognitive linguistic analysis I have undertaken has demonstrated that this broad field, while spanning several disciplines, has unique ideas that add new angles to the way this type of discourse analysis is both undertaken and understood. Although the concepts of remembering and forgetting form popular discussions in academia, there are gaps that if left unaddressed, could have serious implications for the definitions of what it means to remember or forget on one's own terms versus the terms of the court. While it may seem an oversimplification to claim that these issues come down to power in the court environment, it is plain that given the analyses here, there are blatant interactions where personal power over witness memories is undermined in favour of a variety of court powers.

Chapter Five - Expressions of Emotion in Witness Testimony: Power Relationships and Narrative Control

1 Introduction

Examining expressions of emotion as relayed on the stand by victims of ethnic violence in Bosnia and Herzegovina may at first seem like something of a redundant enterprise. Emotion is something easily linked with trauma, and it therefore might be expected that highlighting these expressions will simply give us a marker for a traumatic memory. While this may seem an obvious by-product of war crimes tribunals in general, these expressions are by no means insignificant.

Through the application of cognitive linguistic and sociolinguistic methods, examining expressions of emotion alongside expressions of situatedness and deixis (the projection of one's place in the world and expressions relating to self or identity, respectively) reveals several significant things. In the case of the accused, it demonstrates how realities were constructed, and how emotions informed choices that were made in times of perceived threat (this will be explored further in chapter 7, comparing high ranking and low ranking accused). In the case of the victims, it demonstrates how the strength of these expressions in the courtroom solidifies the narrative of the victims, breaking with previously demonstrated patterns of power relationships commonly displayed in courtroom settings.

This chapter is an examination of victim testimony, theorising that in-court expressions of emotion from victims are markers of struggles for power between the individual and the court, which ultimately make a statement about the

importance of emotion in the personalisation of recounted trauma. This then produces a paradox within the court – the symbolic power of the court allows for the seriousness of the crimes brought before it to resonate with the communities that have been affected, while its processes to reveal truths are often at odds with the ways in which individuals are able to express these memories. The most basic conclusion to be drawn from this is that in-court expressions of emotion are significant. They give a more complete picture of a previously under-analysed element of post-conflict transitional justice – the relationship between victim and tribunal as an autonomous process that constantly bridges past, present and future understandings of this conflict.

1.1 Cases

To understand how these expressions come about and how their influence functions within the courtroom, three cases are compared from different regions of Bosnia and Herzegovina. While a search across all cases before the ICTY might yield interesting results, an up-close examination of testimony from these three cases allows for several significant research strengths. First, in examining only these cases in-depth, it allows for a comparison of witnesses brought before the court by both the prosecution and the defence who are speaking to similar circumstances and recounting similar events, but from different perspectives. This allows for a more comparative study of expressions of emotion while in court, asking - are these expressions of emotion unique to victims who are testifying for the prosecution about personal traumas, and who struggle for power over their testimony when cross-examined by the defence? Or do they arise in a more uniform manner, whenever a witness feels his or her testimony is being marginalised by the court? Second, I have chosen to compare some cases in which the type of violence was

similar, and another in which it differed significantly. The cases chosen are the case of Momčilo Krajišnik (IT-00-39), Milomir Stakić (IT-97-24) and Miroslav Kvočka *et al* (IT-98-30/1).

Momčilo Krajišnik was responsible for the forcible deportation of several thousands of Muslim and Croat civilians between April-December 1992, in various places in Bosnia and Herzegovina. His position was one of leadership, which took a variety of forms during the war – he was a prominent member of the SDS (Serbian Democratic Party in BiH) and was President of the Bosnian Serb Assembly.

Milomir Stakić held several positions of authority in the Prijedor region, and was the president of the Serbian Crisis Staff in this region in 1992 and the Head of the Prijedor Municipal Council for National Defence. He was instrumental in the establishment of the internment camps in this region (Omarska, Keraterm, and Trnopolje), and in the deportation of approximately 20,000 non-Serb residents of Prijedor. Additionally, he was responsible for several mass-executions of non-Serbs in 1992.

The case concerning Miroslav Kvočka *et al* deals with lower ranking individuals at the Omarska internment camp - Miroslav Kvočka, Dragoljub Prcać, Milojica Kos, Mlađo Radić and Zoran Žigić. Kvočka, Prcać, and Radić were professional police officers before the conflict who took on a variety of roles in the camp, with Radić the most senior of the group (Radić was a shift leader). Kos was a guard, while Žigić was a civilian taxi driver-turned-guard who acted as a reserve policeman.

While Kvočka *et al* and Stakić operated in the same region, these cases concern events in this region from different angles, with questions in the Kvočka case focusing on specific abuses of prisoners and overall conditions in the camp, and

questions in the Stakić case dealing primarily with the Crisis Staff and the overall atmosphere created in Prijedor as a result of their actions under Stakić. The Krajišnik case focuses heavily on the timelines, experiences and effects of those forcibly transferred, and the examples used here are from the Bijeljina region. These three cases give us a variety of data to examine – testimony relating to campaigns of fear and arrests (Crisis Staff, Stakić), testimony relating to abuse in camps (Omarska, Kvočka), and testimony relating to forcible transfer (Bijeljina, Krajišnik), which allows for more varied events to inform the study. This chapter will analyse expressions of emotion in ICTY transcripts categorically, first by identifying and explaining the two categories of expressions examined relevant to the type of discourse being studied, and then by tackling each category in turn, integrating examples from the transcripts.

2 Explaining expressions of emotion

Attempting to define expressions of emotion is a difficult undertaking. Linguistic markers for expressions of emotion are not defined in any solid way, and in looking to see what significant patterns exist surrounding something this difficult to define demands some creativity in approach. While other chapters in this thesis begin with searching for basic linguistic markers such as uses of us/them distinctions for the analysis of high and low rank accused (chapter 7), or references to the past in the comparison of testimonies of Milošević and Šešelj(chapter 6), an exchange between witness and interrogator in which emotion is expressed cannot be reduced to a standard set of words or phrases. This is where categorisation is important – determining different categories of emotion expressed has allowed for consistency of analysis as DST methods are utilised within these categories, rather than comparisons made from category to category, which would confuse the data.

Psychological studies on emotion are extensive but varied, with scholars breaking down elements of the cognitive process into both measurable and abstract components. Defining emotion has been something scholars have sought to do since 1884, when psychologist William James, together with Carl Lange, defined emotion as the interaction between the mind and body in the face of stimulus (James 1884). Although basic, this definition fuelled psychological debate on the subject over the following years, creating the platform for many new definitions (Averill 1980; Edwards 1999; Izard 1992; Russel 1991; Scherer 1982, 2005). These definitions range from regarding emotion as a process consisting of multiple components (Scherer 1982) to emotion being whatever individuals claim them to be (Averill 1980). With such divided psychological definitions of emotion, it is unrealistic to expect linguistic identifiers to be easy to explain, and unwavering in their functions.

The main categorical distinctions I have defined are 1) emotions expressed relating to real-time in-court events (frustration and confusion with court processes and questioning, for example), and 2) emotions expressed with reference to a past event (such as an individual explaining his fears of what would happen if he refused to comply with orders). The latter includes emotions relating to the recounting of past events, such as reluctance to recount something, or insistence on the difficulties faced when recounting events. It is important to note that these types of expressions can frequently overlap, one giving rise to the other. This in itself is also significant, as expressions of frustration and confusion relating to how past fears are being dealt with in court demonstrate a strong link between the role of power over personal narrative regarding recounting past events and the control the court exercises over the context and interpretation of these events.

Within each of these categories of emotional expression, the DST analysis can tell a more specific and accurate story, and demonstrates the consistency of emotional expressions as linked to struggles for narrative power. It is also important to keep several questions in mind alongside the DST results. For example, who are these expressions referring to or directed at, and what might this mean? Essentially, this is to ask how categories are revealed within emotional expression.

When looking at testimony of both victims and accused, it is important to remember that there are always inherent differences, as there are differences between the responses of witnesses from either standpoint when being questioned by different sides of the legal divide. This research has determined that there is a greater frequency of expressions of frustration, confusion and anger coming from prosecution witnesses being questioned by defence than when they are being questioned by prosecution, and tension levels in general appear to rise during cross-examinations, regardless of who is doing this cross-examining.[10] When the adversarial nature of cross-examination is considered alongside this frequency, the hypothesis that struggles for power over narrative are occurring as marked by expressions of emotion also appears to be confirmed.

Also important is determining what is meant when referring to 'the court' or 'the Tribunal' when deconstructing roles and speech patterns. It is easy to personify and reduce 'the court' to one homogenous body with singular outcomes, and indeed phrases like 'the Tribunal heard' and 'the Tribunal will decide' are common in research, media, and general discussion. What is usually implied here are the

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[10] There could be several factors involved in this, two of the main issues being the time it takes to get the witness to cross-examination, and the repetitive and often confusing nature of cross-examination tactics. The prepping of witnesses beforehand could also account for reduced tension levels due to their encounters with familiar questions, a topic discussed in chapter 7.

actions and decisions of judges after interaction with the various other components that make up the Tribunal. In an effort to steer away from this type of reduction, this chapter will focus on the particular element of the court impacting the testimonies being analysed, be this judge, prosecution or defence. However, these three may frequently fall under one heading, which I will refer to as 'the interrogator'. This is primarily for ease of distinction between roles (the questioner and the one being questioned), and because interrogators often switch while the one being questioned does not.

3 Current studies: Emotion in the courtroom, emotion in linguistics

There are a wealth of studies on emotion in the courtroom, primarily tackling issues of truth and credibility. Ellen Wessel explains what is called the 'emotional witness effect', building on work done earlier by Kaufman *et al* and Myers *et al* on how emotions can influence judgements in jury trials (Dahl 2007; Kaufman 2003; Myers 2002; Tsoudis 1998; Wessel 2012). Though conclusions in these studies (primarily that emotions expressed from victims increase a juror's opinion of their credibility) seem unrelated to non-jury trials such as those held at the ICTY, the important point to take away from these conclusions is that emotion and credibility have been proven to be linked in the mind of the observer. Whether or not an awareness of this link is always present in the speaker is difficult to determine and for the purposes of this chapter will not be explored, as the patterns examined with DST do not rest on this issue.

Studies on truth and credibility as connected to emotion may dominate the discipline of court psychology and linguistics due to the fact that truth is at the foundation of courts and their functions. Additional studies focusing on truth and

emotion in court, such as those done by Laney and Loftus (Laney 2008, 2010) and Lee Ann Fujii (Fujii 2010) also explore the opposite elements of this equation, namely that there is a place for false memories within emotional expression. Literature on expressions of fear more generally in interviews primarily focuses on police interviews, and seeks to explain situations in which individuals feel unsafe and develop anxieties regarding the likelihood that they will be victims of crime, or understandings of victimhood in general in the face of interrogation (Garafolo 1979; Holmberg 2004; Skogan 1987).

The work on truth, emotion and credibility is relevant to the first category of emotional expression I have outlined above, while this last body of work is relevant to the second category of emotional expression – emotion expressed within a past memory. These types of expressions, when examined alongside the interrogation literature, confirm what the DST theory also demonstrates: that expressions of emotions like fear relate directly to projected victimhood, whether this is forward projection (the expectation of victimhood) or backward projection (memory of victimhood). The gap in the literature that this chapter hopes to address is the relationship between emotional expression and power with control over narrative. As was mentioned above, analysis of patterns highlighted by DST demonstrate that emotional expressions can be markers of struggles of power between the individual and the court.

This chapter aims to build upon the small amount of literature examining the uses of emotion in court, with a particular focus on emotional description and language, asking, 'what is the relationship between memory, emotion, and victimhood in court?' Not much work has been done with respect to emotional expression in court, and the majority of what exists does not address international criminal

tribunals (aside from work done by Sedgwick on military tribunals after the Second World War, and Elander on expressivism at the Extraordinary Chambers in the courts of Cambodia) (Elander 2013; Sedgwick 2011). The larger platform of literature this chapter draws upon is primarily work done examining the witness experience before international criminal tribunals, such as the study on the Krstić trial done by Dembour and Haslam on the tension created between the aims of the tribunal and the needs of the witness (Dembour 2004), as well as several studies on the overall victim-witness experience (Brants 2013; Horn 2009; Moffett 2012), most notably Eric Stover's book, *The Witnesses: War Crimes and the Promise of Justice in the Hague* (Stover 2005).

The trauma of testifying is something that should not be discounted as an initiator of emotional expression, and could be seen as the more basic explanation for its prevalence in the transcripts studied in this chapter. However, linguistic analysis has demonstrated that these expressions, while they exist within a scenario that may be difficult and even traumatic for the victim/witness, are more than simply a reaction to a difficult situation. If we take James' original definition of emotion as the paired mental and physical response to stimuli, we have to accept the role of stimuli as being both external and internal. Although James meant this to mean that emotions like fear can arise from assessment of things like physical peril, we can extend this to include external linguistic prompts that trigger internal cognitive (leading to linguistic) processes.

4 Emotions relating to in-court events: The tribunal's role and expressions of frustration and confusion

The most obvious examples of emotional expressions as markers of power struggles are found when looking at expressions of frustration and confusion in response to happenings in court. In the testimony of prosecution witness Edin Mrkalj, a witness in Kvočka *et al,* there are several exchanges demonstrating this that benefit from further analysis. Edin Mrkalj was a Muslim from the village of Biscani, near the town of Prijedor, where he worked as a policeman. At the end of April 1992, he was detained at Omarska after attending a meeting held by the Serbian Crisis Staff where he refused to sign a document declaring his loyalty to the Serb Republic (testimony on 7 June 2000, p 2801-2803). Mrkalj gives three distinct and important types of expressions: confusion leading to a relinquishing of control over his testimony, expression of difficulty leading to role reversal in an attempt to convey the extent of his trauma, and a lack of freedom in his testimony embedded within expressions of difficulty.

4.1 Relinquishing control: Frustration

The following examples demonstrate struggles for control over narrative on the part of Mrkalj, with Mrkalj relinquishing control over his own testimony:

Example 12: Edin Mrkalj

---

1 Q. So after the 6th you are saying that buses with prisoners came to Omarska?2

A. I didn't say buses. Could you please put your question in concrete terms? **I**

3 **don't know what you want me to say.**

4 Q. I want you to tell us the truth.5 A. I am telling the truth. - Kvočka et al Trial

Transcript (Testimony of Edin Mrklaj) 9 June 2000: 2902. Emphasis added.

And again :

Example 13: Edin Mrkalj

---

1 Q. Would you read sentence 1 of paragraph 7. Mr. Mrkalj, **I see you've read it**.

2 A. Well, you see, I haven't read it. **You can't see well. I see that you don't see** 3

very well because I haven't read it. The word "u koju" is written separately, two 4

words. But, yes, I have completed reading now.

5 Q. Is this an order to the mine's management of Ljubija to organise meals in

6 conformity with the members of the military quartermaster service?

7 A. That's only what it says on paper.

8 Q. Please go on to read the second sentence of paragraph 7 so that we can wind 9

this up.

10 A. **This is a catastrophe.**

---

11 Q. **I expect an answer, Witness, not a comment**. Is it an order that the Mines'

12 Management should organise a regular cleaning of the compound and everything

13 else?

14 A. Yes, that is what it states.

15 Q. I should now like to ask you to read paragraph 11 on that same page.

16 A. It says here –

17 Q. Very well. You've read it, then.

18 A. I haven't read it, because I can't see the number. I can't see what time it says.

19 Q. It says 1200 hours.

20 A. In my text it says "unit," and then there's nothing else, so I can't find my way.

21 Q. Is this an order that the Security Services coordinators are duty-bound every

22 day, at a particular hour, to send in a report to the chief of the Prijedor Public 23

Security Station?

24 A. That is what it says here.

25 Q. Who are the coordinators? And if you haven't remembered, we can go back
26 to paragraph 3 on page 1 to remind you.

27 A. **What do you want me to answer now?** - Kvočka et al Trial Transcript
(Testimony of Edin Mrkalj) June 9 2000: 2912-1914. Emphasis added.

His expression of frustration (shown in red) appears between two expressions
indicating a relinquishing of control, namely, 'I don't know what **you want** me to
say' and 'what do **you want** me to answer now?' shown in blue. These expressions
contain within them a concession in favour of the desires of the other, which in the
case is the interrogator. The tension between the witness and interrogator is implied
in the additional lines in the example, through contradiction and disagreement.
Mrkalj's struggle with the interrogator is akin to retaliation in this exchange, and in
bold in Example 13 he makes an interesting criticism of the interrogator and his use
of 'I see you've read it [the document]'. Mrkalj responds with, 'I see you don't see
very well,' rejecting the interrogator's ability to assess what he, the witness, knows.
Mrkalj's question, 'what do you want me to answer now?' could also be seen as a
criticism of the interrogator, saying subtly that he is asking leading questions.

This demonstrates not only that Mrkalj's expressions of frustration mark power
struggles, but that victim-witnesses can and do make commentary on the court's
processes during testimony. Until now, these have largely been passed over as
extraneous responses, or ignored as the reactions of a difficult witness, but they
bear importance as recorded and therefore lasting elements of the re-victimisation

of the victim-witness, this time placing the witness as a subject of marginalisation by agents of the court.

4.2 Expression of difficulty and role reversal

As was mentioned earlier, statements of difficulty occur frequently in victim testimony, often standing out as attempts to relate the present audience (the court) with past situations. Applying DST to the example below (in blue) we can clearly see this link between current mental state and past trauma – though we don't need DST to reveal this, the witness expresses this plainly enough ('It was brought on as a consequence of what happened…'). A struggle then ensues, with both witness and interrogator arguing over which end of their exchange has failed, question (interrogator) or answer (witness). Mrkalj responds to the interrogator, K. Simić, and the court by placing them firmly as witnesses to his own recurring trauma (shown in red/blue – 'you witnessed', 'everybody was present'). Simić's response treats this simply as courtroom data, as evidenced by his statement, 'we already completed that question' shown in bold.

Example 14: Edin Mrkalj

1 Q. Could you tell us what kind of -- what the manifestations of your illness or the
2 consequences of what you have suffered are?

3 A. My psychological state **is very difficult**, and it was brought on as a

4 consequence of what happened in the camp.

5 Q. Yes, but could you tell us how this is manifested? Will you wait for me to

6 finish? The Judges have been drawing my attention to ask concrete questions, so

7 I'm asking you about the manifestations.

8 A. Nobody has yet warned me.

9 Q. Well, we were warned earlier on and you were asked to answer my questions.

10 A. So you were cautioned, not me.

11 Q. I think both of us were cautioned.

12 A. Well, I have every respect for the work you do, and the consequences of the

13 camp and what happened in the camp are as follows: The day before yesterday

14 **you witnessed** a very -- quite an unusual event which took place here, and I see

15 that **everybody was present** during the identification of accused, of a witness.

16 When I turned around and had to point out the real name, **I had a terrible scene**

17 conjured up in my mind, come to mind.

18 Q. I'm not asking you that. **We completed that question**. I'm just asking you the

19 manifestations of your health condition. - Kvočka et al Trial Transcript

(Testimony of Edin Mrkalj) June 9 2000: 2918-2919. Emphasis added.

This struggle is interesting and unique: it demonstrates that the question of how the witness' psychological trauma has manifested is expected to be answered in data ('concrete') terms according to the interrogator, but cannot be expressed this way by the witness. The preceding exchange over who is at fault for the lack of mutual understanding additionally undermines what the witness is trying to express, potentially giving room for him to answer in a way that more directly links the physical space of the court to his experiences ('you saw what happened to me in court'). The response of the interrogator further reinforces a lack of connection between the witness and himself. It is these failed understandings/connections that could point to the origins of issues on how the effectiveness of the Tribunal is perceived from parties outside the court, which again links this research with other research such as Stover's interviews with ICTY witnesses, and highlights a need for a continuation of studies on this subject (Hodžić 2010; Stover 2005).

4.3 Discussions of 'normalcy' and the loss of narrative freedom

The example below demonstrates the witness' expression of how the court confined his testimony and his attempt to regain previously lost control over this testimony by expressing the seriousness of conditions in the camp:

Example 15: Edin Mrkalj

1 Judge Rodriguez: You mentioned, and you used -- regarding a visit and

2 improvements in the camp, you mentioned that that visit was masked. Could you

3 explain what you meant by the word "masked"? What was masked in that visit?

4 A. I can explain, yes. I can tell you what happened. That was the **first time** that I

5 saw a quarter of a loaf of bread; that was the **first time** I got a full plate of food.

6 You see, I was hungry. It was the **first time** that I saw something like that. This 7

was done for somebody to see that things were fine for us. That was the cosmetic 8

improvements that I was referring to. But that was not **the real state of affairs**

9 that **I have had to read out to you today, without having the ability to**

10 **comment on what I read.** I will tell you the truth. The paper that I read, the

11 piece of paper, it is equal to pieces of paper from the Second World War that 12

were written in camps such as Auschwitz. They can be compared to those.

13 JUDGE RODRIGUES: [Interpretation] Witness, has that paper got anything to

14 do with the cosmetic improvements that I was asking you about?

15 A. Yes. What I was reading today simply has **nothing to do with reality**, not a

16 single paragraph; it is **just dead letter on paper**. And they are trying with these

17 cosmetics to *persuade this Court that we were fine, and we were not fine, ever.*

- Kvočka et al Trial Transcript (Testimony of Edin Mrkalj) June 9 2000: 2959-

2960. Emphasis added.

He does this by giving the contrasting views of normalcy demonstrated for the court. His repeated use of 'first time' (bold) demonstrates that the situation he describes is not normal, and his reference to his loss of narrative freedom (shown in red) leads him to draw comparison with past events proven to be traumatic (Auschwitz) in order to emphasize the seriousness of the situation he is describing. In blue are his expressions attempting to assert that his narrative is more powerful than the paper he read, as it is his narrative that is rooted in reality (blue: 'just a dead letter on paper') [11] and comes from human experience. Using this phrase to describe the paper he read shows his need to convince the court that there is an important difference between live, human testimony and that of a passive exhibit. This need is another indicator of feelings of marginalisation on the part of the witness. His struggle for power over his narrative continues (bold italics) as he tries to reiterate for the court that 'fine' was never a condition in the camp.

5 Recounting past events: Reluctance, expressions of difficulty and expressions of fear

Tension for an individual often increases as a result of recounting past fears, and is echoed in testimony. As such, it is important to look at expressions of fear on their own through the lens of DST – Are these expressions primarily collectivised or individualised? Do they explore alternate scenarios using conditional language? If so, how does the individual's experience of fear impact the choices he or she felt were available (or not available, as the case may be)? These questions are posed

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[11] The expression in B/C/S can translate as 'mrtvo slovo na papiru', and is a relatively common expression used to describe something written that has no power behind it, akin to 'empty promises' in English.

here because they break down more fully the situating of an expression of fear within a memory. Different answers to each would prioritise elements within the speech differently. For example, if expressions of fear more commonly referred to collectives, the indicator would be that the boundaries discussed were broader, demonstrating a higher tendency for expressions of fear to occur within statements concerning larger groups, such as ethnic groups or political parties. The goal of exploring these questions is to look at expressions of fear both individually and comparatively, to attempt to understand more fully what these expressions signify.

In this excerpt from witness Amir Delić, a Muslim resident of Bosanki Novi who fled in 1992, we see an expression of fear as part of recounting a past memory leading to a power struggle between the witness and interrogator:

Example 16: Amir Delić

> 1 Q. You have described a number of people effectively agreeing to be incarcerated
>
> 2 in the stadium because presumably they had no other option, or it was their best 3
>
> option. Did I understand your evidence correctly in that regard?
>
> 4 A. (Delić) **Look, people were afraid of staying in houses, I said that several** 5
>
> **times,** because during the night, this infamous red van would pull up and a man 6
>
> who was in the house would be taken away. That was why we felt safer when we 7

were together with other people, and that's why I believed I was safer to be there 8

with others rather than stay at home. At least this way there would be people who 9

would know that I had been taken away.

10 Q. Why, then, do you agree to be released? Did you have no option? Did you 11

have to leave the stadium at the point of release?

12 A. What else could I have done?

13 Q. Well, what I'm trying to explore with you is this: Some people, some men, 14

came to the stadium voluntarily and agreed to be locked up there because it was 15

the worst -- I beg your pardon, it was the best of a number of bad options.

16 A. Well, you see, **if someone takes me to the stadium at gunpoint and then,**

17 **after a while, tells me that I ought to go home, what am I to say to this**

18 **person? No, I'm going to stay here?** I don't know what you mean by that. -

Krajišnik Trial Transcripts (Testimony of Amir Delić) 27 June 2006: 26397.

Emphasis added.

In bold is an expression of fear leading the witness to express frustration in the way

this event is being co-constructed, while the red indicates evidence of pre-existing

event construction from the interrogator. The blue shows an expression best

explained through the use of the possible space – here conditional past is coupled

with a projected scenario involving himself demonstrates the victim's reality and

his assessment of possible choices. There is then a struggle between the interrogator

and the witness due to the interrogator's assumption that *feeling safer was*

synonymous to being safer in the eyes of the witness. The witness then uses the

example of being brought at gunpoint to help explain to the interrogator the lack of

choice implied, a response that also indicates that there was an assumption from the interrogator that the witness had choices that he himself did not believe existed.

5.1 Expressions of fear as solidifiers for us/them groupings

The example below is from witness Sifeta Susić, who was an administrative worker at a police station in Prijedor before her detention at Omarska. Here, she describes her reaction to the mounting tensions in her office, and her eventual departure:

Example 17: Sifeta Susić

1 A. I followed my superior into the office. I put the mail on his table for him to

2 sign; I waited. He was pale in the face and I was shaking. I was almost crying.

3 Q. What, if anything, did you say to your boss, Ranko Mijic?

4 A. I didn't say anything.

5 Q. What, if anything, did you decide to do after that?

6 A. That was close to the end of the working hours. I packed my table, cleared

7 things away, and, like all the other employees, I went home. I couldn't sleep all

8 night; I cried because this really did **hurt me very deeply**, because I finally

9 realised that **I was undesirable among this circle of people** who were my

10 friends and colleagues until the day – until yesterday. In the morning I took the

11 keys, reported to my boss, left the keys on his table and said I was sick. I went to

12 see a doctor and went on sick-leave, and I never again entered SUP, except on

> 13 the day when I was taken into custody. - Kvočka et al Trial Transcript
> (Testimony of Sifeta Susić) 9 June 2000: 2988-2989. Emphasis added.

Here we see us/them distinctions form as she articulates how her 'in-group' shifts, but important in this is her reluctance, her hurt (bold), at no longer being a part of this group.

Regarding her arrival at Omarska, she states:

Example 18: Sifeta Susić

> 1 Q. And what, if anything, did you notice about the condition of these persons?
>
> 2 A. **Those persons were standing there afraid and lost, just as I felt**. My
> 3 colleagues from work were passing by me, **turning their head away from me**, 4
> whereas I looked them all straight in the eye, because **I had nothing to fear**. But 5
> this was **terribly painful**, having been so close, such good friends with so many 6
> people for so many years and **they refused to look at you.** - Kvočka et al Trial
> Transcript (Testimony of Sifeta Susić) 9 June 2000: 2994. Emphasis added.

Example 19: Sifeta Susić

> 1 A. Yes. I remember Jadranka Cigelj, whom I knew personally, who approached 2
> me immediately because I was crying terribly. **I was terrified.** She consoled me. 3
> She whispered, "You'll manage. **Look at the rest of us**. We're still alive. So you 4

must bear out, **as we have**. You have to." Kvočka et al Trial Transcript (Testimony of Sifeta Susić) 9 June 2000: 3000. Emphasis added.

In the above examples, the expressions of fear by the witness lead not to a struggle over narrative control, but to clearer us/them group distinctions. Interestingly, her expressions of fear in the first example serve to further unite her with the prisoners, and separate her from the staff. Her statement in blue in the first example identifies her with the group of prisoners through their mutual emotion, whereas in red she explains the opposing evasive behaviours of the staff. In bold, we see her rejection of fear in the face of the newly defined 'other'.

In the second example, the witness' expression of fear stands again as a marker of group ties. In blue, she explains how she felt at the moment, and the response from the group is to unite her with their motivation to survive. These examples give us one answer to the question posed at the start of this chapter – how are categories revealed through emotional expression? Here, fear is equated with 'us', but also rejected in the face of 'them' ('I looked them all straight in the eye, because I had nothing to fear'). In this way, it is a defining factor of the group, but also something to overcome.[12]

With protected witnesses, it is important to this analysis to discern whether or not the witness is a victim, due to the fact that some of the protected witnesses are also accused in other cases and protected for reasons of safety as they testify against former colleagues or fellow soldiers. Others, like Witness D, are victims whose identities are protected to ensure their safety and the safety of their families, as

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[12] For additional analysis of expressions of fear in the Kvočka case, I refer the reader back to the methodology chapter, to the comparative analysis of testimonies of Witness DC4 and Mrs Kvočka.

many still live in the communities about which they are speaking, among individuals who may disagree with their decisions to testify or their versions of events.

While the details of the pre-conflict occupation and life of Witness D were discussed in closed session, it is clear to the court that he is male, of Bosnian Muslim ethnicity, and was a detainee at Omarška. He was a member of the SDA (Stranka Demokratske Akcije, or Party of Democratic Action), the Bosnian political party representing Bosnian and Slavic Muslims in Bosnia and Herzegovina, and states that this was a reason he was initially warned not to report for work one day at the end of April 1992 (2 May, 2002, 2479-2480). Witness D gives testimony describing his experience going into hiding in Prijedor, and gives his interpretations of the environment in which he found himself while trying to avoid being captured and detained.

There are several interesting examples of emotion expressed within past memory by Witness D, and he also expresses fear within a past memory, but does so differently to Sukić and Delić. Several times he equates the Serbian Crisis Staff with fear:

Example 20: Witness D

1 Q. What did you learn about the Bosnian Serb Crisis Staff in Prijedor?

2 A. What I was able to learn, or guess at, was based on my rare occasions when I 3 listened to the radio, because I had to save on the batteries so as to be informed as 4 to what was going on. **For me, the Crisis Staff meant fear**. I had the impression 5 that everything that was being done in Prijedor, absolutely everything, that

6 **behind it stood** the Crisis Staff. - Stakić et al Trial Transcript (Testimony of

Witness D) 2 May 2002: 2486. Emphasis added.

And again,

Example 21: Witness D

1 Q. Were there references to the Crisis Staff on the radio?

2 A. Yes, very frequently. Whenever anything important for the town happened, no

3 name was mentioned, but simply "the Crisis Staff." It was a "proclamation of the

4 Crisis Staff." In my impression, it was the highest level body, but **for me it**

5 **simply meant fear**. - Stakić et al Trial Transcript (Testimony of Witness D) 2

May 2002: 2487. Emphasis added.

In the first example, we see in red the expression of fear linked with a group (the

Crisis Staff), but this is prefaced by a personalisation of this interpretation, with 'for

me' shown in blue. In bold we see an expression of symbolic placement, with his

use of the preposition 'behind' linked to the negative events Witness D has been

describing in Prijedor.

The personalisation expressed in blue delineates group boundaries, but in a more

subtle way than in the previous testimonies analysed. The repeated use of 'for me'

demonstrates that in the eyes of the witness there was a group or groups for whom

the Crisis Staff did not equal fear. In this statement, the 'other' is therefore implied

with the repeated personalisation of these feelings of fear. But what does this tell

us, aside from something that already seems inherent, given Witness D's history of

suffering at the hands of this group? The fact that tensions were mounting between

163

Serbian groups and the Muslim citizens of Prijedor seems relatively clear at this point, so us/them distinctions should be natural in the descriptions of these events.

But with Witness D gives more imformation – he continues on with descriptions of this fear, explaining where it comes from. The explanation he gives centres around the concept of uncertainty (marked in bold):

Example 22: Witness D

---

1 MR. BERGSMO: We go back to the document Minutes of the Meeting of the

2 National Defence Council on the 5th of May 1992. If we can move to conclusion

3 seven on page two, there is a reference at the end of that paragraph to "the most 4

rigorous sanctions." In light of your professional and other experiences in

5 Prijedor, how do you understand these words?

6 A. **For me**, to say the least, this conclusion **sounds threatening because** the

7 application of the most rigorous sanctions, **one can only imagine what that can**

8 **mean**. **To me**, that is like a death threat or threaten -- threat of arrest. It is a

9 **threatening provision** in any case and **it is hard to imagine what lies behind**

10 **the threat**, exactly. - Stakić et al Trial Transcript (Testimony of Witness D) 2

May 2002: 2529. Emphasis added.

There are consistencies in this statement with his previous statements (personalisation in blue, prepositional in red), in addition to the explanations of threat and where the threat comes from (uncertainty), both marked in bold.

The significance of this is best seen through the social psychological lens, most notably through the uses of uncertainty as a catalyst of threat perception and/or as an intimidation tactic during conflict (Lake 1998; Oberschall 2000). What this example adds to these studies is its subsequent mark on memory. The presence of uncertainty as a facilitator of fear within court testimony confirms three things for the research: first, that expressions of fear are markers of solidifying ethnic boundaries, second, that uncertainty acts as a tactic to spread fear (both points well-known in the study of ethnic conflict) and finally, that the linking of these concepts in post-conflict testimony by a victim stands as evidence of the effectiveness of these tactics. The personalisation of fear moves from expressed within a past memory, as in the earlier excerpt, to a present analysis, and finally into a more collectivised hypothetical ('one can only imagine…'). The movement from memory to present is certainly partially linked to the way the questions were constructed for the witness, and indeed this is a common caveat to be aware of in this type of analysis – individuals almost always answer questions in a structure similar to the way these questions were posed. However, the personalisation contrasted by the move to a hypothetical collectivisation demonstrates a widening of the fear, and thus an effort to include others in the present situation (such as the court audience) in the imagining of these threats.

6 Outliers: Implied emotion and expressions of guilt

Being forced to harm fellow inmates was unfortunately common at Omarska, and during the conflict in general. The recounting of this understandably puts the witness in a difficult situation emotionally. Victims placed in this position are still

victims, but the court environment is one in which actions are analysed in binary terms (right/wrong, legal/illegal, innocent/guilty, victim/perpetrator). This seems to drive the witness towards expression commonly found in the speech of perpetrators, such as expressions of distancing and/or de-humanising, discussed in greater detail in chapter 7.

Example 23: Edin Mrkalj

1 Q. What happened after that?

2 A. After that, when I fell down and when I regained consciousness, I was ordered

3 -- he ordered me to hit the person lying down. When we came in, the person was

4 already on the ground. **I had no choice**.

5 Q. What was the condition of this person that you were forced to hit?

6 A. He was in a catastrophic state. It's **very difficult to explain.** A dreadful state.

7 Q. What part of his body did you hit him on?

8 A. The head.

9 Q. What was the condition of his head when you hit him?

10 A. I couldn't recognise him, **whether it was a man or what it was. It was all**

11 **smashed up.**

12 Q. When you hit him, what did it feel like?

13 A. There was a groan, a cry. The man was still giving out signs of life. It is very

14 difficult to describe the sounds that came from him, and the whole thing. **But I**

15 **had to do it.**

16 Q. What happened –

17 A. **I was forced to do it.** - Kvočka et al Trial Transcript (Testimony of Edin

Mrkalj) 7 June, 2000: 2825-2826. Emphasis added.

The example above shows two types of expression on the part of the victim, it demonstrates a lack of choice as justification (blue) and distancing in the form of de-humanising (red), where the speaker changes from using 'him' to using 'it' to describe the individual he was forced to hit. This parallel between victim and perpetrator speech raises several important issues. First, it demonstrates that this type of speech, previously associated with perpetrators, is not unique to them. Second, given this fact, we need to question whether the victim is still feeling that the court perceives him as such. This refers not to a shift in the perception of the court, but the court's role in shifting the victim's self-perception. But is it the incident itself that can shift the victim's own perceptions of his actions, or the court's role in his recollection of it? The psychological literature would steer us toward concluding the former, as this type of torture is particular in its aims – by

making the victim commit an act of violence against another victim, a layer of cruelty is added in the form of both a strain on the morality of the victim forced to commit the act of violence, and a symbolic act against his or her own ethnic group.

This is vaguely addressed in international law under the prohibition of various forms of torture (both physical and mental), but international law does not address the specific damages that this particular type of torture can produce, and how these damages are specific to ethnic conflict.[13] The evidence brought out by this thesis highlights not only the specific and unique cruelties that this form of torture aims to bring about, but also the fact that, given the psycholinguistic evidence in the speech of the witness, the effects of this type of torture are specific and lingering. In light of this evidence, avenues of further research are highlighted, and more investigation into these tactics, their uses, and effects is needed, especially as this type of act is most commonly associated with ethnic conflict.

The testimony of Witness P is an interesting example of testimony that is careful and controlled, with emotional expression implied by the events themselves rather than the witness' own interpretation of them. Before the conflict, Witness P was a driver with his own company in the Prijedor municipality. During his testimony, he details how he and his wife and children were forced out of Kozarac and explains how he was told this was due to the area needing to be 'cleansed' (3330-3331, 22 May, 2002, Prosecutor vs Milomir Stakić, IT-97-24). Witness P was detained first in the Trnopolje camp, and then at Omarska.

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[13] See International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287.

Common among witnesses is event description that verges on tautological, giving the impression that the witnesses feel a need to repeat for the court that a horrible event was in fact horrible. This demonstrates that there may be a doubt in the mind of the speaker that his or her descriptions are truly being heard and interpreted correctly, regardless of the nature of the event being described. This can be interpreted as a failure of language to convey what the witness is hoping to get across, which is something of an impossible task – how to get a group of strangers to feel and truly understand things like this individual's particular loss, horror, humiliation or fear.[14] We see this especially with witnesses who have a difficult time on the stand (such as the earlier examples from the testimony of Edin Mrkalj) and this is not something that the DST theory picks up as significant, but a pattern recurring across multiple testimonies identified through general reading.

Witness P not only refrains from this tendency, but at one point gives an implied explanation for his straightforward approach. He does this by outlining his view of the Tribunal's interests, highlighting a difference between 'speaking about' and 'mentioning'. He states:

Example 24: Witness P

1 Witness P: As for the disappearance of people from the camp, let me put it that

2 way, I do know about many such cases**, although the Tribunal is not really**

3 **very interested in me speaking about these incidents except to mention the**

4 **names of the persons who were taken away** from some rooms and never -- to 5

the white house and never came back. And indeed, have never been seen since.

---

[14] This follows from the discussion in section 2.2 on the concept of the 'unspeakable'.

6 JUDGE SCHOMBURG: May I briefly interrupt. Of course, this Tribunal is

7 interested, and please feel free to say whatever you want also spontaneously. -
Stakić et al Trial Transcript (Testimony of Witness P) 22 May 2002: 3363.
Emphasis added.

Judge Schomburg's interjection to reassure Witness P that the Tribunal's interests do in fact include whatever he would like to say do not convince him of his freedom to speak as he wishes. He uses this time to give the Tribunal what he feels matches its interests, and provides a list of those he knows were killed:

Example 25 Witness P

1 Witness P: (…) as for the other killings, **I can mention** the killing of Jasmin

2 Hrnic, Eno Alic, and Emir Karabasic, who was also an active police officer from

3 Kozarac. They were killed in front of our rooms in a large hall. All the rooms on

4 the first floor could hear -- everybody in those rooms could hear these people

5 being tortured and the way that they were killed. And later on, they disappeared 6
on that day from those rooms in the camp. That is as regards those three people. 7
And **I can also mention** some other people who were also taken away in the
8 same way and never came back. I don't know where they were taken to. - Stakić
et al Trial Transcript (Testimony of Witness P) 22 May 2002: 3363. Emphasis
added.

In this excerpt, it is the withholding of emotion that is interesting, and the fact that
this distinct lack of emotion comes about after the witness specifically articulates
his understanding of the Tribunal's interests is no small coincidence. This
demonstrates that the patterns found elsewhere can be present in reverse: where
previously we've seen emotion give rise to power struggles, here we see the
immediate assumption of the Tribunal's power lead to explanations of horrific
events without the emotional markers common to other testimonies. Even after the
insistence of the Judge that the witness has complete freedom in his testimony, he
continues on with no change, 'mentioning' rather than 'speaking about'.

But are there actual differences between these two ideas? One could certainly argue
that differences between 'mentioning' and 'speaking about' could be interpretive
only, and speculative at best. The important issue here is that there is a difference
expressed from the perspective of the witness, and this difference is stated in terms
of the witness' acceptance of what the Tribunal wants. Additionally, the Judge
declaring what the tribunal is interested in also demonstrates that 'what the tribunal
wants' is not always clear (something that is also apparent on a larger, more
political scale). Questions can be raised as to individual narrative preference – what

if this individual simply desires to relate these events while leaving out emotional expression? Is the link between 'speaking about' and emotional expression a jump?

Here, we need to look further into the concept of implication. The difference the witness has presented implies there is a way of recounting these events that differs from what he is doing. But is this difference necessarily emotional expression? There is unfortunately no way that this can be proven, and to claim that the witness would have included expressions of emotion in 'speaking about' rather than 'mentioning' would be presumptuous without the ability to ask the witness directly. That being said, it is enough in this instance that the statement of the Tribunal's intentions by the witness (and through this, its perceived authority) is followed by testimony that stands apart from other, similar testimonies in that it lacks expressions consistent to those examples.

There is an expression of emotion in Witness P's testimony, but it is an outlier in comparison to other testimonies of this sort. Witness P gives a brief expression of guilt in the form of a need to apologise, and then proceeds to continue his mentioning of those he knew, their jobs, and what happened to them:

Example 26: Witness P

> 1 **I would really like these people to be alive here, and it would be easier for me**
>
> 2 **if I could say sorry.** There was Vasif Kahrimanovic who had a sawmill, Enver 3
>
> Ekrem Melkic. **I will mention** some drivers such as Mehmed Hodzic, nicknamed 4
>
> Medo, a driver that worked in the mine -- Ljubija mine. Hare Dautovic, he used to 5
>
> be the manager's driver, chauffeur. Then a cafe owner, Sivac Sefik. He was

6 beaten up and killed. I saw his dead body lying next to a hedge near the red

7 house. This is what I saw as we went -- or rather, ran to the kitchen where we had

8 to line up. - Stakić et al Trial Transcript (Testimony of Witness P) 22 May 2002:

3365. Emphasis added.

The need for apology is interesting, and while it could be identified as 'survivor's guilt', any claim on what this could represent would again be speculation, as it contains no clear indicators (neither prefacing the statement nor following it) as to why it came about, especially within such a purposeful list of names. The phrase needs to be noted, however, as the analysis of this excerpt would be misleading if the statement was simply ignored as unimportant. Whether guilt or loss, this statement is an expression of emotion, and is therefore important. This doesn't change the above analysis of this testimony – this expression of emotion stands apart from other types expressed by other victims. It is neither fear, nor frustration or confusion, but a more reflective statement on the list of names the witness is remembering. As we can see from the rest of the excerpt, the witness continues his testimony in the same way, 'mentioning' additional people he has knowledge of.

7 Conclusion

The decision to analyse in-court expressions of emotion within ICTY transcripts arose from the general observation that these expressions are frequent in ICTY testimonies. The question that easily followed was, why? Although the obvious answer here would be that this is because testimonies in ICTY cases relate to difficult and traumatic events (and emotion must therefore be an obvious element in

the descriptions of events), the excerpts of the transcripts studied in this chapter have proven that expressions of emotion not only come from other issues, but tell us more than the fact that an event was difficult or traumatic.

Expressions of frustration and confusion expressed in relation to in-court processes have demonstrated struggles of control over narrative, and importantly give us legitimate grounds for scrutiny of how these arise and are dealt with. This in turn allows a closer look at why the witness experience is important in these tribunals, demonstrating that it is possible to do more than simply make a witness comfortable and feel that they are protected – there are unanswered questions regarding how to treat narrative power in court.

Expressions of fear often function as marking the shifting or solidifying of ethnic boundaries, and in analysing them in court transcripts we can look at the effects of these shifts, as seen with Sifeta Susić and Witness D, and what they might mean in terms of the lasting effects of fear. Expressions of difficulty and distancing have also demonstrated the lasting effects of events described, as the testimony of Edin Mrkalj demonstrates, and power struggles during this testimony show that issues of the depersonalisation of witnesses at the hands of the court are often present. We see issues with how events are being interpreted by the court with the testimony of Amir Delić, and the expression of fear there (and the subsequent struggle over narrative control) demonstrates that among witnesses there is not just an issue with being heard, but one of being understood.

Analysing emotional expressions using cognitive linguistic methods, framed in social psychology allows for us to see how important emotion is, as emotional speech is speech based on the most human and instinctive sets of responses. Its uses

are therefore always significant, but this analysis adds to it a layer of importance, refusing to accept that emotional expression in court is simple and should be taken at face value. Through exploration of expressions such as the ones examined here, the analysis is of relationships as much as of speech itself. The relationship between the witness and the court is most notably a confusing and often fractured one, and through greater attention to it, we might be able to understand the beginnings of why this might be so.

Chapter Six - Slobodan Milošević and Vojislav Šešelj: Redefining Court Performance through Personal Power at the ICTY

'I'm not so sure, Mr. Antonetti, that you had already known all that I said so far. And as for the Prosecution, they are probably speechless by now, so they won't have rebuttal. What could they possibly rebut from all I said? Nothing.' – Vojislav Šešelj to Judge Antonetti, Closing statement, p17466, 20 March 2012, Prosecutor v Vojislav Šešelj IT-03-67-T.

1 Introduction

In the process of examining transcripts of victim testimonies for this project, it has become clear that there are presences in the courtroom that can function without physicality. Milošević in particular often looms behind the statements of victims, expert witnesses, and even the words of judges and prosecution. Whether this happens symbolically or in actual reference, this can change the nature of how things are recounted. It then becomes important to look at the statements of Milošević in order to better understand his relationship with the ICTY, to determine how this relationship might be impacting narratives in court. Specifically, if his speech in court is conceived as political speech, then his power in court functions differently than other accused before the ICTY, with greater potential to inform the speech of others.

If we are to properly examine how Milošević's power in court has influenced the narrative of others, additional data is needed. The natural comparison is with the statements of former Serbian Radical Party president Vojislav Šešelj, who not only chose to represent himself (as Milošević did), but who had interactions with

Milošević in court when he was called as a defence witness during Milošević's trial. Two primary questions then emerge. First, what might similarities in court performance tell us about the emerging norms of former political leaders testifying before the ICTY? Second, how does the relationship between power and narrative change when political leadership is at stake in court?

By comparing the statements of Slobodan Milošević and Vojislav Šešelj, we can see that there were two main types of power at work during their court performances: power over historical narrative (the individual's understanding of his own ability to inform or reveal dominant narratives), and power over process (the individual's attempts to undermine structural aspects of the ICTY). Examination of transcripts has demonstrated that these two forms of power are linked in the minds of these individuals, and when the individual senses a struggle with his power over one element, he will attempt to exert power over the other. This analysis gives further insight into the actions of former political leaders on trial for various crimes before the ICTY, and helps us better understand why the relationship between the court and the high-profile defendant is such a notoriously complicated one. The application of some of the DST methods to what is essentially political speech, fits well with this data in particular, as Chilton's models have been designed to analyse political speech in the first instance (Chilton 2004). Additional sections of testimony will be analysed with a combination of discourse and linguistic methods, in particular the conceptual metaphor theory of George Lakoff (Lakoff 1989), as well as perspectives from Norman Fairclough (Fairclough 1989, 2001) and Michel Foucault (Foucault 1977), to place these testimonies in the context of larger ICTY discourse as well as allow them to fit with the wider scope of this project.

Because there is a gap between these two trials of eight years, it is also possible to examine the evolution of the court in dealing with these particular behaviours. Linking the drive to self-represent with an individual's perceptions of his own power in court (as linguistically revealed through his own speech patterns) can deepen our understandings of those tried before the international criminal courts, and the ways in which these courts address and respond to challenges. Section 2 deals specifically with issues more closely related to the accused's placement of 'self', while section 3 examines the treatment of history more directly, as well as the linguistic placement of the ICTY's authority within the speech of the accused, as well as the ways existing media frames impact the speech of the accused.

One of the most important aspects of these findings is that they provide a new way of looking at something that has only been previously discussed in terms of its impact - both on the court and on regional and international politics - which is the political projects of the accused and their use of the court space as a platform. Impact is surely important, but this research has revealed that more questions need to be asked of this, such as how these projects are being conveyed in court, what the court's response may be to them, and how this complicated relationship might shape court discourse. In this way, political projects of the accused cannot ever truly be treated as past, but must be conceived as ongoing, as they are part of what has shaped the ICTY environment and have the potential to inform the speech and behaviours of future accused.

1.1 What makes court speech political?

Without delving too deeply into discussions on what makes anything political (of which there are many, from Plato's *Republic* and Aristotle's *Politics* to Carl

Schmitt's *The Concept of the Political* and on through the resulting discussions on what makes an action or speech political), the helpful starting point is with the relationship between politics and speech. Chilton deals with this early on in his book *Analysing Political Discourse: Theory and Practice*, highlighting the Aristotelean view that,

> 'It is *shared* perceptions of values that defines political associations. And the human endowment for language has the function of 'indicating' – i.e. signifying, communicating – what is deemed, according to such shared perceptions, to be advantageous or not, by implication to the group, and what is deemed right and wrong within that group.' (Chilton 2004: 5).

The controversies generated by the speech of both Milošević and Šešelj have most frequently been written about in the context of what impact this speech has on the strength of the ICTY and the ICC as international bodies with the power to effectively try former leaders for war crimes (because if we cannot effectively do this, then the prospect for international criminal law as an active deterrent for things like war crimes, genocide, and crimes against humanity will be a slim one). The actions of Milošević and Šešelj in relation to the ICTY, beginning with the challenges and insistence that they represent themselves, attack the relationship the ICTY has with its own effectiveness by both intervening in its processes and allowing their behaviour to subsequently stand as an additional (and often overpowering) focus of attention in the wider media sense. This essentially makes a statement on what the international community can and cannot do regarding other people's past conflicts. But the issue here goes beyond this – they both make statements on shared values (namely the international community's perceptions of

justice) - but it is the understanding and *application* of these values (as action is both implied and important here) that Milošević and Šešelj have chosen to attack.

It is not enough to say that because Milošević and Šešelj insisted on self-representation, that all speech thereafter was automatically political in nature. The helpful way to conceptualise the political nature of speech at the ICTY is within the concepts of audience and referents. Therefore, for the purposes of this research, speech is political if 1) the intended audience of the speaker goes beyond the courtroom to include groups to be convinced or persuaded of new political associations and understandings of events, and 2) the referents of the speech are given new political contexts (events, concepts, and/or individuals situated within specifically constructed political frames). There are many questions that can arise from this, most notably, how can we know who the intended audience of the speaker is? This chapter will attempt to address this, as well as other significant questions, by examining the data itself in an effort to reveal new understandings of the speech of high-profile self-representers.

2 Subjects of self: The discursive constructs of Milošević and Šešelj

Taking as a starting point the decisions to represent oneself at the ICTY, the subject of 'self' is therefore an essential component to deconstruct. A large portion of the literature examining the court behaviour of Slobodan Milošević focuses on the challenge of self-representation before international criminal tribunals, seeing the precedent Milošević set as a significant challenge to the concept of fair proceedings before the international criminal courts (Anoya 2013; Boas 2007; Dickson 2006; Gow 2004; Jorgensen 2004; Scharf 2006). There are major difficulties in allowing for self-representation while avoiding the pitfalls of politically charged rhetoric

from individuals of dominant and calculating personalities. Once underway, the defence strategies of these individuals have a tendency to compromise the workings of the court, and thus the fairness of their own trials. The question is one of rights: the accused has both the right to self-represent, and the right to a fair trial. When one undermines the other, the result can have serious implications for the ability of the court, as well as wider perceptions of justice post-conflict.

It is the strategic understandings of these perceptions within the minds of the individuals on trial that this chapter is concerned with. Behind the drive to self-represent before an international criminal tribunal lie serious implications for power. While Milošević's actions at the ICTY have faded in and out of scholarly interest, it is a mistake to assume that the subject of his behaviour at the ICTY has been exhausted. If we are to better understand the choices of the high-profile self-representer, there is an abundance of unexplored data that can shed light on these behaviours.

The existing literature on the personality and behaviour of Milošević in particular is expansive (Armatta 2010; Cohen 2002; Jakoljevic 2008; LeBor 2002; Post 2005; Ramet 2004; Sell 2002; Thomas 1999; Waters 2013) and sits alongside a growing number of works concerning Šešelj (Claverie 2009; Dojčinović 2014; Sluiter 2007; Zahar 2008).[15] This chapter is not an attempt to add to the discussions surrounding the political decisions made by these men in the years leading up to detention and trial, nor will it be a deconstruction of the legal challenges they put forth to the ICTY and the controversies they have introduced that still resonate today, as these

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[15] A small section of Predrag Dojčinović's chapter 'The Shifting of *Grand Narratives* in War Crimes Trials and International Law: History and Politics in the Courtroom' features an emphasis on the words of Šešelj as speech acts which contain 'mental fingerprints'. He speaks to the cognitive fingerprinting of specific minds by Šešelj as a generator of words linked to larger concepts embedding themselves in discourse, but does not go further into how this process works, or what it entails. (Dojčinović 2014: 73).

topics are well-discussed in much of the literature on Milošević in particular, as well as on the ICTY more generally (Armatta 2013; De Graff 2006; Gow 2004; Laughland 2007; Rubin 2006; Scharf 2006). While these issues certainly add context to a deeper understanding of the world of Milošević and Šešelj, the focus here will remain on the analysis of court statements only, and their linguistic and discursive deconstructions.

The differences in statements made by high ranking and low ranking accused are dealt with in greater detail in chapter 6, and the choice to exclude Milošević and Šešelj from that analysis was made for several reasons. First, there is the already mentioned issue of self-representation, a choice made by only a few individuals tried before the ICTY,[16] which was not a common denominator among the higher ranking individuals compared in chapter 6. Second, there are stark differences from the beginning that set Milošević and Šešelj apart from their fellow accused, and it is these differences that have set out the organisation for this section.

Data evidence of power over narrative and power over process will therefore be discussed under the following headings for section 2, specifically dealing with subjects more closely related to the 'self': the links between the 'self' and power over historical narrative; clear references within statements that define 'audience'; deliberate attempts to foster an environment of mistrust in court; and indicators of the functions of self-perception for each individual. I will use data from the opening statement of Milošević and the closing statement of Šešelj, as well as a small sample of the exchanges the two men had while Šešelj testified as a witness for Milošević's defence.

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[16] Radovan Karadžić also chose to represent himself, but his defence took a more legal approach than Milošević's or Šešelj's.

2.1 The self and power over narrative

As discussed elsewhere in this thesis, the speech of defence and prosecution are commonly categorised as performative, and the term 'court performance' is not uncommon in discussions of the ICTY as well as courts in general (Byrne 2013; Mertz 1994; White 2008). Adding to this is the performative nature of political speech, especially the speech of those who have held or currently hold positions of power (Jakoljevic 2008). While it may seem like an easy observation, the aspects of performance undertaken by Milošević and Šešelj are important to understanding how they perceive themselves, their audience, and ultimately their own power in court. Mihela Mihai takes this one step further in her understandings of the ways in which democratic ideals can be socialised through language during international criminal tribunals (Mihai 2011). She uses Mark Osiel in particular to examine the nature of the courtroom as a 'theatre of ideas'[17],

> While the prosecution will choose the style of an accusatory moral drama and the defence that of a tragedy, he [Osiel] thinks judges should encourage the format of a theatre of ideas whereby alternative narratives compete to persuade the audience. It is his view that the superiority of the morality of equal respect will become apparent when contrasted with the alternatives. (Mihai 2011: 125).

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[17] The courtroom as a 'theatre of ideas' does not originate with Mihai, but with Derrida, who proposes that the court is specifically a 'theatre of forgiveness' (Derrida 2004; Jakoljevic 2008). Derrida's concern is with the odd nomenclature 'crime against humanity', and the position this puts humanity in, as it calls for the indictment of 'itself as if it were another' (Derrida 2004). Derrida's discussion of this occurs as attention to the ICTY and ICTR, alongside the Truth and Reconciliation Commission for South Africa, were at the forefront of both academic and journalistic discussion. Forgiveness, however, is not a condition of transitional justice, but a social element of the process that remained uninvoked when both Milošević and Šešelj had the floor.

This has interesting implications when the defence are also the accused, as well as individuals accustomed to political performance, as we see with Milošević and Šešelj. The style of tragedy is seen plainly in the words chosen by both men, with Milošević's opening statement firmly setting the tone for those to come after him. The excerpt below gives an example of how this is expressed. On the destruction of Yugoslavia, he states:

Example 27: Slobodan Milošević

1 Milošević: Whose merit was this that this *sovereign state* was **destroyed**?

2 According to the *Nuremberg principles*, this constitutes the **gravest**

3 *international crime*, a *crime* against *peace*. Whose merit was it that a *war*

4 happened in which tens of thousands of civilians were **killed**, hundreds of

5 thousands of people **wounded** and **maimed**? Thousands of people **lost** their

6 homes and **fled** from their homes, mostly Serbs, and also there are millions of

7 **damage** in terms of property. The -- this is -- not speak of the ecological **disaster**

8 involved. The international community will have to **<u>face up</u>** to all of this. It is not

9 only that a *state* was **destroyed**. *The United Nations system was destroyed. Also*

10 *the <u>corpus of principles</u> upon which the world civilisation was based has been*

11 *destroyed.* Milošević Trial Transcript (Opening statement of Slobodan Milošević) 31 August 2004: 32159. Emphasis added.

This is very early in his opening statement, and here we see Milošević's repetitive and well-paced use of words under his primary category – destruction (seen in bold). Interestingly, it is international political concepts that are under attack as well as the state of Yugoslavia (bold italics), and Milošević claims that concepts of

sovereignty alongside the United Nations system were victims of this destruction as well as the human victims of the war itself. His adversary in this is the international community (red text), whom he seems to separate from his previous references to international institutions such as the UN, giving us dual understandings of what international institutions and concepts are. In the centre of this, he places his ethnic category – Serbs (seen in blue) – embedding this ethnicity within the frame of victimhood (among terms like fled, wounded, maimed, disaster, damage, loss, etc).

Milošević also uses two metaphors that beg further deconstruction (underlined). The first, 'to face up to' is consistent with the duplicity of the international community (the United States in particular) that he is speaking of throughout his opening statement (some examples of this are discussed in section 2.4 under Example 31). We can immediately identify this as an orientational[18] metaphor and analyse it as such, but this brings up the issues of procedures of intervention and co-creation of discourse that accompany translation that have been discussed in chapter 2.

Milošević's statement remains as a direct attempt to not only reassign guilt, but to redefine who needs punishment while in the midst of his own trial and the prospective consequences that might accompany it. Milošević and his shifting of victimhood is reinforced by his use of 'corpus of principles' (or more likely, 'body of principles' as a more direct translation), giving us another victim through the production of a 'body', going beyond the original meaning of a set or grouping of principles to include the literal 'embodiment' of these principles paralleled with

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[18] The metaphor itself seems an exception to Lakoff's assessment of orientational metaphors, as Lakoff claims that 'up' tends to correspond with positive, while 'down' implies negative (Lakoff 1989) p 15. This, however, simply needs a more careful classification. The phrase 'to face up to' can be categorised under the more physical metaphors for 'up' relating to consciousness, such as 'get up' and 'wake up'. While Lakoff doesn't include the 'consciousness as truth' link in his discussion, the association is a natural one.

their destruction. It is important to remember here that we are concerned not merely with Milošević's intentions in his speech, but the effect his words have on the forming of the larger discourse once uttered. While he may not have intended to invoke the image of the human victim with 'corpus', it resonates within the speech nonetheless.

In contrast, Šešelj does not attempt to follow Milošević's frames of destruction discussed above. We see this in his closing statement:

Example 28: Vojislav Šešelj

> 1 Šešelj: Srebrenica and Zepa and Gorazde, had they been liberated immediately, 2 *we wouldn't have had all these ordeals with the international community* and
>
> 3 there wouldn't be any need to declare them safe haven. And all **those who failed**
>
> 4 **to listen to me**, it turns out that they were in the wrong. I can only **regret that I**
>
> 5 **didn't hold such a position of power** in which I **could have forced them to**
>
> 6 **listen** to me. This is my sole regret. And **if they had been forced** to heed my
>
> 7 warnings, *many things* would have been avoided (…) Šešelj Trial Transcript (Closing statement of Vojislav Šešelj) 14 March 2012: 17361. Emphasis added.

Šešelj places the international community as existing on one side of an outcome that he sees as avoidable had he had more power (seen in bold), demonstrating that his hypothetical hinges not on the actions of the international community as outside of his influence, as we see with Milošević above, but as tied directly with him. It is interesting that he uses 'force' when discussing his power, because it refers directly to his hypothetical influence, making a statement on his intentions and shifting guilt from himself to his constrained sphere of opportunity. The absence of the language

of tragedy that Milošević uses in favour of less obvious language demonstrates that the story Šešelj is trying to tell differs greatly from that of Milošević. While Milošević invokes frames of destruction at the hands of the international community, Šešelj avoids specifics. The events in Srebrenica, Žepa and Goražde were 'ordeals' and 'many things' (bold italics) rather than Milošević's specifics ('wounded, maimed, killed, fled', as in Example 27 above).

While these two men may have several things in common, strategically they are placing their own narrative in very different locations. Milošević's narrative is one that seeks a re-telling of events that includes histories and individuals that may have previously been considered by the court audience as extraneous. Šešelj, however, is primarily concerned with his own side-lined position in the face of international events. Reduced to court stereotypes one might argue that this is a case of 'This isn't how it happened' vs. 'I didn't do it,' however, the focus should remain on different uses of personal power within the courtroom to properly identify what is at stake here. Milošević attempts consistent power over narrative, while Šešelj is fixed within the possible space. Given the exchanges the two men had in court during the time that Šešelj acted as a defence witness for Milošević, we can see a shift in Šešelj's narrative intent. During the seven year gap that occurred between Šešelj's testimony for Milošević's trial, we can see a shift from his tendencies to express things much in the way Milošević did, to the language of his closing statement that places international bodies and events not in a frame of destruction, but in a frame of 'what if'.

2.2 The impact of audience

The concept of audience has been discussed in previous chapters (briefly in chapters 1 and 2), but it takes on a more weighty dimension when looking at Šešelj and Milošević. Although international attention to both trials has tended to rise when something sensational occurs and quickly fall when nothing of newsworthy interest seems to be going on in the courtroom, the audience in court as well as among the communities affected by the actions of these two individuals has remained relatively constant (Bieber 2013; Ivković 2006; Steflja 2010). While Milošević certainly left a political legacy at the ICTY, it is the worrying popularity of Šešelj among Serb nationalists that adds a more dangerous edge to his behaviour in court. His party's website (http://www.srpskaradikalnastranka.org.rs/) regularly reports on his trial as well as other issues relating to his freedom. At the time of writing, the most-read article on the site is currently *Руска Дума захтева слободу за Војислава Шешеља – Russian Duma Demands Freedom for Vojislav Šešelj*. [19] As this site is his party's, his face and statements are a constant backdrop, and from the message boards it is at times difficult to determine how many people take the site seriously. However, although leadership of the party has been passed along and subscribers to Šešelj's party line have shifted their loyalties, Šešelj's influence is still seen through the ICTY and as such he still has a strong media presence.

This is not to claim that Šešelj's audience is solely the Srpska Radikalna Stranka and those favourable to it, as he does at times attempt to define his audience in a broader, more historical sense (see example 29 below). At this point, however, Šešelj's audience must be clarified, as there are two potential interpretations of it –

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[19] http://www.srpskaradikalnastranka.org.rs/srbija/3822, accessed 31 August 2013.

the first interpretation is that his audience consists of the people who are paying attention to him, and the second is that his audience is the people to whom he is rhetorically addressing himself. The first category of audience can incorporate people both inside and outside the courtroom, and reflects more fully the potential reality of his audience. The second relates to Šešelj's own perceptions. While both are important, the first category of audience is not something within the immediate scope of this research. Therefore, Šešelj's audience is understood for the purposes of this project to be of the second category. This is also consistent with DST and cognitive linguistic methods more generally, as the analysis can pinpoint audience within the mental frame of the speaker, thus implying a more self-contained understanding of the concept. In short, as it is the speaker's perceptions of audience that are informing the words uttered, this is the definition of audience that matters more from this research perspective.

Adding to the factors that shape the perception of audience is, to put it crudely, a 'nothing-to-lose' variable. Very often those who choose to represent themselves in these cases have already accepted a verdict that they see as inevitable. This changes the purpose of their court performance, and re-defines their audience. The example of Milošević is mentioned most often. As Judith Armatta explains,

> Of course Milošević was not really trying to defend himself against the charges. He assumed that he would be convicted and receive the maximum sentence of life in prison. His goals for the trial included establishing as historically correct his view of events and his role in the Balkans during the 1990s (…) (Armatta 2010: 33).

It is important to note that in this example, 'his goals for the trial', as Armatta refers to them, were not of the legal framework, but of the historical one. This is a pivotal distinction when looking to apply linguistics to court behaviours. If Milošević defined the court as a historical platform while accepting the legal outcome as given, then he was in effect both conceding that the historical narrative contributed by the court was a valid one (accepting the court's power to solidify narratives), while assuming that the legal decisions made by the court were a secondary, predetermined consequence over which he had no control (rejecting the court's ability to follow classical legal process). Essentially, if he rejected the court's power to solidify narratives, his behaviour in his defence would have likely been very different. If the court had no power in this sense, then his record of events would have been ignored or predetermined in the same way he categorised the legal outcomes in his case. Although one might argue at this point that the media presence created a separate platform for Milošević that simply happened to use the ICTY as its stage, this would still mean Milošević had to understand the power of the ICTY stage, which itself depends on the simple concept that the tribunals being held by the ICTY mattered to people who were not just Milošević. In accepting that he had no influence over the final decisions of the court, while insisting that he be allowed to represent himself, Milošević was operating in a sphere separate to the others present.

In contrast, Šešelj's goals for his trial were made plain time and time again in his dealings with the court, namely the destruction of the tribunal (Milanović 2009; Sluiter 2007; Zahar 2008). During the course of his defence, his adversaries shift with his subject matter, and he attacks a variety of organisations in turn, with a

primary focus on the West, and Western intelligence. During his closing statement, Šešelj very clearly defines his audience:

Example 29: Vojislav Šešelj

1 Šešelj: What will remain here behind me here are the transcripts from the trial.

2 These are not going to be your personal perceptions of the proceedings. This will

3 not be your judgement. Someday people will probably laugh at your judgement

4 and they will laugh even more at the indictment and the closing argument of the

5 Prosecutor. What remains is the transcript of the proceedings, this wonder of all 6

wonders that has been taking place in this courtroom, and because of that, it was 7

worth living. Šešelj Trial Transcript (Closing statement of Vojislav Šešelj) 14

March 2012: 17330. Emphasis added.

While the drama of this statement might make it read with an element of sarcasm ('wonder of all wonders' in particular is difficult to take seriously), Šešelj's response to the power of the ICTY is consistent. While he discounts much of what his adversaries in the courtroom are saying, his perception of the archives as a powerful tool to preserve his words implies that his acceptance of the institution keeping and creating these archives is a solid one. It is significant that while he has seen conspiracies in so many aspects of his detainment, and in the politics of those surrounding him, he did not see the archives themselves as susceptible or corruptible, but as a worthy audience. He refers to this audience as a game-changer for his future reputation in his repeated use of 'what will remain' and 'someday', putting faith in not only the firm nature of the archives, but their endurance and

potential to interact with those outside the courtroom well after the words themselves have been said.

2.3 Maintaining the leadership role: Self-representation and the invitation for power over process

The ICTY, ICTR (International Criminal Tribunal for Rwanda), SCSL (Special Court for Sierra Leone) and ICC (International Criminal Court) all have similar Articles granting accused the right to represent themselves, and these Articles are echoes of earlier traditions in human rights law (as found in the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights) (Jorgensen 2004; Schomburg 2011). Whether the ICTY firmly follows the adversarial model of common law systems or the inquisitorial model of civil law is a subject of much discussion among legal scholars, but when focus falls upon issues of self-representation the commentary leans heavily toward the former, as it is a more common practice in these systems (a primary example being the frequency of self-representation in American courts) (Danner 2005; Jorgensen 2004, 2006; Robinson 2000; Schomburg 2011).

Therefore, the opportunity for intervention by the accused is non-existent, with nothing to keep the accused from becoming, as Schomburg aptly puts it, 'an object of his own proceedings.' (Schomburg 2011: 191). Legal problems aside, there are several important symbolic issues that are quite plain when an accused chooses to self-represent. Most notable is the clear attempt to maintain a leadership role that has supposedly been stripped from the accused, and the obvious attempts to exert control over the progress within the courtroom that comes with this. In the case of both individuals, a variety of antics were employed to undercut the power exerted

by the ICTY, and the resulting media reports and academic discussions widely debated how this impacted the stability of the tribunal (Dickson 2006; Graubart 2010; Zahar 2008).

By the time Šešelj gave his closing statement (March of 2012), his behaviour in court was notorious. He had gone on a hunger strike, refused to attend court on crucial days (such as when he was due to give his opening statement), and had taken multiple opportunities to distract, delay, and otherwise interfere with the progress of his trial (Claverie 2009; Sluiter 2007). This type of behaviour was not new to the ICTY, and those writing on Šešelj have drawn easy comparisons with Milošević during his trial (Djordjevic 2009; White 2008). Milošević's actions before the ICTY have been described as uncooperative and wilful at the best of times, and arrogant and insulting at the worst (Armatta 2010; Scharf 2006).

But where Seselj's speech leans heavily toward paranoia (as examples below will indicate), Milošević oscillated between personalities that suited him, reportedly playing a version of his political self alongside the hot-tempered detainee who was hard-done-by, and it is difficult to discount the anecdotal evidence regarding his personality when reading transcripts (Armatta 2010). While the same ingredients for paranoid ramblings were present in the speech of Milošević, there are important differences in the way in which he dealt with the court that may be attributed to his personality and leadership style. Much has been written about Milošević over the years, both biographically (LeBor 2002; Cohen 2002; Sell 2002) and relating to his trial (Armatta 2010; Bass 2003; De Graff 2006; Dickson 2006; Gow 2004; Laughland 2007; Post 2005; Rubin 2006; Waters 2013). Indeed, Milošević had become such a darkly intriguing figure by the mid-2000s that frequent anecdotal

accounts appeared detailing how his personality and demeanour impacted not only the politics of the region but the politics of the ICTY.

His leadership style contrasts to that of Šešelj particularly because Milošević's role as head of state brought forward (or was achieved because of, depending on the account) personality traits commonly associated with this role, such as easy charisma, a dominating presence and an uncanny ability to wilfully ignore or pass over attempts to steer conversation in undesired directions (Surroi 2013). Šešelj, on the other hand, has made attempts at Milošević-style dealings with the court, but has undercut himself at almost every turn due to his propensity toward paranoia alongside blatantly insulting digs at individuals involved with the ICTY (Gordy 2013; Zahar 2008). Šešelj spent much of his closing statement levelling accusations of assassination plots within the UN facility where he was being held,[20] and seeing spies at every turn (organisations such as Medicins Sans Frontieres being one of several examples).[21] The point of deconstructing statements from someone as volatile as Šešelj may be difficult to see. However, Šešelj has reacted to the ICTY in two inconsistent ways that show that the court's authority has had an impact on him. At times his reactions follow Milošević's example of disregard for the court's authority, and at others he reacts to the court as a body with a significant amount of power. These competing reactions on the part of Šešelj demonstrate that the ICTY's authority is fluid in his mind, where Milošević was firm in his rejection of it altogether.

When discussing the issue of authority in court discourse and struggles of power between the ICTY and the defendant, there is much of the discourse literature that

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[20] See p 17340-17342 of English transcripts of Prosecutor v Vojislav Šešelj, IT-03-67-T, 14 March 2012.
[21] See p 17339 of English transcripts of Prosecutor v Vojislav Šešelj, IT-03-67-T, 14 March 2012.

seems not to apply, or to be an imprecise articulation of the exchanges taking place. It is difficult, for example, to claim that 'power in discourse' and 'power behind discourse' as described by Fairclough encompass in these instances the social struggles he sees moving one way or the other (Fairclough 1989, 2001). With Milošević, Šešelj, and the ICTY there are issues of circularity that make some aspects of the gaining and losing of power in the courtroom far more complex.

For example, there is the trading of 'victimhood' in these statements that has since been echoed in other trials. The concept of 'victim' oscillates between the accused and the ICTY, and in the context of the high-profile self-representer, being a victim equates with innocence, and this innocence was continuously spun by Milošević to turn the traditional notion of power in leadership on its head. If the core principles of the UN system were violated at the expense of the Serbs, as Milošević claimed, then the platform he spoke from became symbolic of subjugation and persecution, meaning that guilt was necessarily located elsewhere.

Milošević repeats his storytelling narrative, the story of the destruction of Yugoslavia and the duplicity of the international community, telling the court again and again of disaster, damage, and loss. He does not, however, identify with this role – he leaves references to himself either out of his speech entirely, or distances himself through the use of lengthy quotes from books that can tell his story for him.[22] Through this, he creates a different type of victimhood that allows him to escape the constraints the court environment holds so strongly over others. The court hierarchy, therefore, remains contested through his behaviour, at times

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[22] For example, he quotes General Wesley Clark's book 'Waging Modern War' (Clark 2001) extensively during his opening statement, p 32249-32251, followed by an interview with the Canadian Daily National Post given by General Lewis Mackenzie, all the while embedding his opinions on the trials legality (on p 32252 Milošević states, 'MacKenzie continues, contrary to what this illegal Prosecution insists on in their unfounded indictment…'for example).

pushing the ICTY into the role of an international legal body at the mercy of Milošević. Echoed again and again in the media was his initial response when asked how he pled – rather than 'not guilty' he stated, 'That's your problem.'[23] And, as Dickson and Jokić have said, 'The ICTY's problem it became.' (Dickson 2006: 358). The surrounding media discourse then put forward the image of the ICTY at the mercy of Milošević, framing the trial in terms of the ICTY's failings (Bachmann 2013). Šešelj too has inspired this discourse outside of the court. So loud is his personality that even as an object of ridicule the same framing occurs – that of the ICTY as *subjected* to Šešelj.[24]

Milošević uses both power over narrative and power over process to create an environment of mistrust within the courtroom, furthering the cleavages that exist between the ICTY as an international legal body and himself as an accused. In addition to his framing the destruction of Yugoslavia within the duplicity of leading international political powers, he argues with the court on points of process in ways that indicate that he sees this same duplicity taking place at the ICTY. Methods of attack, both verbally and physically, are well-documented ways that individuals seek to maintain a status of dominance, and the addition of an audience alters the dynamic of these tendencies (Djordjevic 2009; Tedeschi 2001). In Šešelj's case in particular, the use of verbal violence is pervasive to the point of normalcy, and may have been a contributing factor for the court's oft-discussed leniency with his behaviour (Sluiter 2007; Zahar 2008). Like Milošević, his tirades were the ways in

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[23] This response was in fact in relation to Judge May asking him if he would like the Indictment read out to him, but when asked if he would enter a plea he seemed to refer again to this statement by saying, 'I have given you my answer.' (IT-99-37-I, the Prosecutor versus Slobodan Milošević, 3 July 2001, p 2 and p 4).
[24] See Eric Gordy's analysis of the satirical article about Šešelj on Njuz.net, 'The Hague Tribunal Sentences Itself to Šešelj', (Gordy 2013) Chapter 8, p 159.

which he attempted to communicate to the court, which effectively shifted the standards for behaviour that officials could impose.

Sik Hung Ng has described five types of links between language and power, the fifth, 'to make an existing dominance relationship routine so it seems natural,' being of particular relevance here (Ng 2001: 191). Both Milošević and Šešelj demonstrate this in repetitive and often not-so-subtle ways - Šešelj refused to address Judge Antonetti using 'your honor,' using instead 'Mr Antonetti', (though at times he did use 'Mr President,' but these references were primarily when Šešelj was attempting to relate to Antonetti in particular), and Milošević repeatedly did the same with Judge Robinson. This was frequently overlooked by the judges in question, as was the repeated use of hypotheticals. It was Prosecutor Geoffrey Nice who most often took issue with the allowance of these behaviours, but even when cautioned, Milošević took opportunities to work in additional disrespect:

Example 30: Slobodan Milošević

1 Milošević: I'm going to read some paragraphs out to you, 94 and 95, that is, of

2 this **so-called** Croatian indictment.

3 Mr. Nice: [Previous translation continues] ... policy of not allowing the phrase

4 "so-called indictment." I know it's a small point but it's a matter of respect for the

5 Court. It's an indictment and it's nothing else.

6 Judge Robinson: Yes, Mr. Milosevic. An inappropriate comment.

7 Milošević: [Interpretation] **Mr. Robinson,** as for the nonsense that –

8 Judge Robinson: I don't wish to debate it. Just move on with the -- with your

9 questions. - Milošević Trial Transcript (Testimony of Vojislav Šešelj) 24 August

2004: 43096. Emphasis added.

While these examples may seem ordinary, they are not only pervasive within the transcripts of the trials of both men, but have been discussed repeatedly in both the literature and media reports on the Milošević trial in particular. They have therefore become an integral part of both the in-court discourse as well as the surrounding frames (Armatta 2013; Bachmann 2013). Bauchmann argues that many of the problematic narratives that became media frames for the Milošević trial were pre-existing (such as issues with lengthy trials and problems with defining JCEs, for example), and while this may be so, it is important to look at the beginnings of these frames and ask why their creation was also being consistently brought forward with Milošević, enough to make them commonplace.

Milošević's refusal to treat the ICTY as a 'real' entity was not grounded in politics, but in his own understandings of his personal power within the courtroom. Michael Scharf addresses this logically, stating that as Milošević signed the Dayton Accords in 1995 (of which one of the requirements was recognition and cooperation with the ICTY), and then aided in the transfer of indictee Drazen Erdemović, his issues with its legitimacy came only after he found himself in the dock (Scharf 2006). But Milošević's relentlessness in belittling the ICTY constantly invoked not only previous issues of legitimacy brought up during Tadić et al, but similar discussions that had originated during the Nuremburg trials (Laughland 2007).

This is something that has been cited as part of Milošević's political style, which certainly finds its way into his courtroom personality. In the discussion of his attempts to exert power over process in the courtroom, his own duplicity in failing to treat the court as a real entity is more than political backtracking. It places Milošević's needs central, cloaked in the guise of a problem of international law. As Jakoljevic explains,

> All his actions are juridico-political. If the law is posited as an end, then the idea of legitimacy has to rest on ethics. While Milošević scrupulously insisted on legitimacy, he systematically excluded ethics from his idea of legality. From the very outset of his political career, he used legitimacy to erode legal processes and institutions from within, turning them against themselves and transforming them into tools used in the service of his political ambitions. (Jakoljevic 2008: 56).

This is not an abstract observation, but one we see again and again in Milošević's court tactics:

Example 31: Slobodan Milošević

1 Milošević: Let us go back to Carrington's document, which was the first **blow**

2 **against** the sovereignty of Yugoslavia. **This is an evident deception.** This is

3 something that transformed further negotiations into a farce. After this, the

4 secessionist republics were recognised under strong pressure from Germany and

5 the Vatican, against the elementary principles of international law, the practice of

6 the United Nations, and the practice of a leading power, the USA. Very well. On

7 the basis of Smithson's declaration from the 7th of January 1932, the United

8 Nations -- United States promised not to recognise countries arising from violent
9 changes. This principle first became the regional rule of the USA and then entered
10 the universal rules of international law. **This time America trampled on its** 11
own law. - Milošević Trial Transcript (Opening statement of Slobodan Milošević)
31 August 2004: 32169-32170. Emphasis added.

This relates intimately with his insistence on self-defence and his cavalier attitude toward the Amici Curiae assigned by the court to assist him and attempt to preserve some of the integrity of his defence. Self-representation invites the accused to exert power over process at every turn, and while this may have offered both Milošević and Šešelj an escape from being 'an object of their own proceedings', there could never have been an expectation that they would each approach their own power in court from the position of simply 'the accused'.

3 The treatment of history, the discourse of authority, and the power of the ICTY

The defence provided by both Milošević and Šešelj refers heavily to versions of history interpreted by these defendants in ways that provide justifications for their actions, past and present. Under basic analysis, this is nothing new in terms of the political speech from both men, and echoes what each of them has said before in different contexts. However, the treatment of history before the audience of the ICTY differs between Milošević's opening statement and Šešelj's closing statement, and if basic DST theory is applied to excerpts from these statements, important patterns emerge. These types of statements are never far from linguistic attempts to exert power over process, which is carried out most frequently by

Milošević through the use of hypotheticals when referring to the court, and through verbal violence on the part of Šešelj. The examples and graphs below demonstrate how this is done, and discuss the significance of these statements. It is in this section that I will also examine the co-creation of narrative occurring when Milošević called Šešelj as a defence witness, and the two spent eight days in court together discussing the same sets of events.

3.1 Milošević

Milošević expresses power over narrative through attempts to bring the desired past closer to 'now', and he articulates this past closer to the deictic centre, as we see in Figure 5 and in Example 32. He does this alongside repeated references to the court that are distanced and placed firmly and constantly in the hypothetical, demonstrating attempts to exert power over process (seen in Figure 5, with hypotheticals highlighted in bold among statements along the m axis, with upward arrows to indicate the efforts to further distance the court).

Figure 5: DST model for Slobodan Milošević

In this exchange, Milošević not only uses his words to create a bridge between two pasts ('the Ustasha genocide over[25] the Serbs' and the events in Yugoslavia in 1991 - The arrows placed along the t-axis are there simply to emphasise this attempt at bridging the two pasts), but constructs a version of the court that is both distanced from him ('this court of yours'), and hypothetical in its existence (his use of 'so-called'). The implication he makes is that the court both belongs to and exists solely in the minds of parties that do not include him. It demonstrates efforts to weaken perceptions of the court's power by painting it as something that only exists based on perspective. This is a defence tactic only seen in international criminal tribunals

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[25] This use of what Lakoff {Lakoff, 1989 #158} would term an orientational metaphor is worth highlighting, as it places the Serbs firmly in the defeated category, as opposed to other word choices that could follow 'genocide' – for example, 'against'.

(especially as a reaction to their *ad hoc* status), and the first time it is seen is in Milošević's opening statement.

Example 32: Slobodan Milošević

1 Milošević: (…)there were several possible solutions that were proposed, and

2 concessions were proposed that could be relied on. Instead of all this, **Lord**

3 **Carrington**, at a meeting on the **18th of October 1991**, set out an ultimatum, and

4 there was no alternative to the disappearance of Yugoslavia. This was the model

5 **applied by Hitler in 1941**. Nazi values won the day. (IT-99-37-I, the Prosecutor

versus Slobodan Milošević, 31 August 2004, p 32169)

6 After this, recognition followed by other members of the **European Community**

7 in **January 1992**. In the case of Bosnia and Herzegovina, this happened on the   8

6th of April of the same year. **On the very date of Hitler's attack on**

9 **Yugoslavia in 1941**; the 6th of April. - Milošević Trial Transcript (Opening

statement of Slobodan Milošević) 31 August 2004: 32171. Emphasis added.

Here, Milošević created an abstract historical bridge between events in the 1990s and events from World War II. His mentioning of Hitler directly, rather than simply Nazis in general, serves to not only connect the supposed motives of these events, but summon the image of arguably the most hated criminal of the 20th century and place his image alongside that of Lord Carrington and the European Community. Milošević's historical bridge then becomes reinforced; we not only have events connected through time, but individuals – neither of whom are Milošević.

Milošević does this repeatedly throughout his opening statement, which creates a repetitive and therefore normalising effect. Whether or not the court takes these connections seriously, they have an edge of propaganda to them. Without delving into the extensive discussions on the sociology of propaganda, [26] it can be argued that the impact of Milošević's statements on his political reputation in Serbia has demonstrated his effective separation of himself from the histories he is attempting to re-articulate (Gordy 2013).

3.2 Šešelj

Šešelj's power over narrative is attempted through a focus on his court experiences, in contrast to Milošević's attempts to drag the past into the present. Šešelj's desired past is articulated without attempts to connect it with 'now', and he makes many attempts to move the audience frame closer to his own, most often using the word 'imagine'. As we see in Figure 6, Šešelj's treatment of history functions in the opposite way to Milošević. Along the m axis are his attempts to bring a projected history that relates to Judge Antonetti closer to the historical perspective of Šešelj himself. This is in immediate contrast to Milošević, as not only is the 'self' more central to Šešelj, but he sees attempts at relating to the judge as advantageous.

His attempts to exert power over process are apparent in his references to the court, some of which echo Milošević's hypotheticals. Šešelj gives a different tone however, in that his language in reference to the court is often rooted in verbal violence. He sees the court as an opposing force to be 'battled' (as we see in Figure

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[26] We might claim the discussion on propaganda begins with Timasheff (Timasheff 1943) and his discussion of attempts at the beginning of the Second World War to codify criteria for a phenomenon that they saw as quickly becoming problematic in greater world politics. However a more updated discussion can be found with Walton (Walton 1997), and relevant to this discussion is his definition of propaganda characteristic number ten, Eristic aspects, which encompasses *orchestration*, allowing for manipulation of outlets like media over time.

6), which implies that for Šešelj the ICTY is more than the 'false tribunal' of Milošević. While he attempts to exert power over process, his references to his audience, as described above in section 2.2, reiterate the fact that the tribunal is, for Šešelj, an entity worth doing battle with.

Figure 6: DST model for Vojislav Šešelj
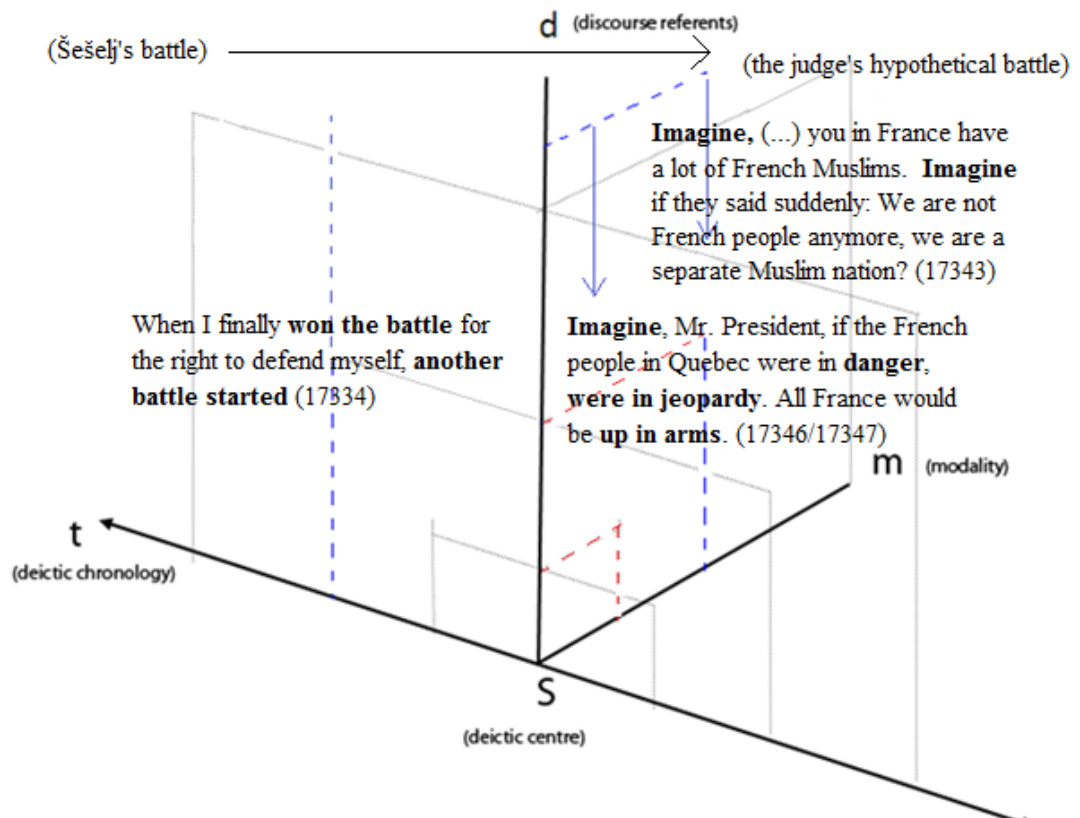
All excerpts above from IT-03-67-T, the Prosecutor versus Vojislav Seselj, 14 March, 2012.

3.3 Interactions with authority influencing court discourse

There is an interesting set of arguments laid out by Nigel Eltringham in his work on the ICTR that seemingly contradicts this thesis' emphasis on the importance of linguistic analysis but can in fact add depth to the arguments of this chapter (Eltringham 2012). Leaning heavily on the work of Henri Lefebvre (Lefebvre

1974), Eltringham asserts that the construction of the courtroom as a physical privileged space is not merely created by silent spectators, but is also only possible because of them. While he asserts that what Lefevbre calls the 'fetishism of the spoken word' has lent research into international criminal tribunals an overemphasis on only what is said (leaving out all the additional metadata such as gestures, facial expressions, and the impact of the courtroom physicality itself on its human components), his arguments regarding this idea of the purity of the court space are in essence what Milošević and Šešelj repeatedly attack.

The bullying of witnesses undertaken by both defendants (Zahar 2008; Surroi 2013), and the exposing of protected witness information by Šešelj[27] was an immediate challenge to the safety of the ICTY environment. Eltringham's emphasis on the concept of 'ritual' as connected to the courtroom environment is an interesting one, especially when linked to the concepts of performance and theatricality discussed above. The storytelling narrative of Milošević became a ritualised aspect of his power in the courtroom. Though it was routinely cut short to conform with the court's own ritual aspects,[28] it nonetheless became accepted to an extent, as part of the man. As such, with Milošević's self-representation seemed to come a form of consent by the ICTY to aspects of his personality as integrated into his defence. And this, in the archives, news articles, and impressions he left behind, brings us back to Milošević as an object of his own proceedings.

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[27] For which he was sentenced to 18 months incarceration under Rule 77(A)(ii): http://www.icty.org/x/cases/contempt_seselj2/tjug/en/111031.pdf

[28] Procedures related to punishment as containing ritualistic aspects is a well-established discussion within the sociology of law, often cited to have originated with Durkheim and his connection between the ritual of punishment as the vehicle through which society continuously refines shared values. For an interesting sociolegal discussion on how this interacts with modern legal procedures, see Mark Cammack, *Evidence Rules and the Ritual Functions of Trials: 'Saying Something of Something.'* (Cammack 1992; Durkheim 2001).

This process was repeated with Šešelj, and we not only see this embedded within the discourse of his presence before the ICTY during his own trial, it is highly visible during his testimony as a defence witness for Milošević. During his trial, Milošević called Šešelj as a witness and questioned him for eight days before cross-examination began (he testified between 19 August 2005 and 6 September 2005). During this time, the two men had exchanges that were lengthy enough to be repeatedly cautioned by the judges. Their behaviour, however, was only dealt with in terms of what the court had time for, and what was immediately relevant. This caused repeated frustration from the prosecution, as seen in this exchange regarding Milošević's leading questions to Šešelj:

Example 33: Prosecution and Judge

1 Mr Nice: Your Honours, on that topic I decided to let the leading question from

2 the accused about this being a mercenary force go because I simply can't deal

3 with all the leading questions, and indeed Your Honour indicated earlier you

4 didn't really want them all to be dealt with as challenges. But when we see the

5 very careful way that the witness and the accused, in question and answer, were 6

6 able to give evidence of the kind that was given, it emphasises the need that on

7 every topic questions should not be asked in a leading form. Because but for His

8 Honour Judge Bonomy's analysis of the answer of the witness, it might have

9 appeared that he was volunteering at some stage that this was a paid force without

10 ever having that knowledge himself.

11 Judge Robinson: On that occasion I think you should have objected, should have

12 brought that to my attention, because that is a matter in dispute. What I said was

13 that I'm inclined to be lenient where the issues are not in dispute between the 14

parties.

15 Mr Nice: It's very difficult to get it right when we're dealing with this particular

16 manner of questioning.

17 Judge Bonomy: **He's also a difficult witness to lead, I would imagine, Mr. 18**

Nice, and for that reason also there might be a little more indulgence than 19

would otherwise be the case.

20 Mr Nice: I think, Your Honour, will find that the topics being dealt with have all

21 been –

22 Šešelj: [Interpretation] Most difficult, Mr. Bonomy.

23 Mr Nice: I think you'll find that all these topics have been carefully prepared in

24 the proofing sessions and that both the questioner and the witness knows exactly

25 where they're going. - Milošević Trial Transcript (Testimony of Vojislav Šešelj)

24 August 2005: 43179-43180. Emphasis added.

Again we see a small reminder of the parody Šešelj had already become, and the

toll this could be taking on the court. Judge Bonomy's comment on Šešelj being a

difficult witness to lead is a telling statement on Šešelj's ability to drive the

exchanges he is involved in, and his agreement with the judge on his difficult nature

shows that Šešelj is pleased with where this exchange is going. Through his lengthy

diatribes, his loud speaking voice, and his insults directed at the prosecution (he repeatedly took opportunities to insult prosecutor Geoffrey Nice in particular), not to mention the jokes he shared with Milošević in court regarding his own inability to keep his answers brief, Šešelj almost seems like a caricature. The statement made by Judge Bonomy demonstrates that not only has the court accepted this caricature, but that this fact is something that the judges have determined to be within their scope of indulgence.

Milošević was routinely cautioned for his leading questions, but when the prosecution objected a particular one, he was given an interesting explanation by the judge.

Example 34: Prosecution and Judge

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1 Mr Nice: There's a lot of commentary and effective leading in these questions. It's

2 now for the Court where it wants to discipline the accused, but if you look at the

3 last three questions, re: "Can it be said that..." That's leading in tendency or

4 nature. "Basically on the basis of the political options of the parties they voted

5 for," and so on. We're not getting responsive questions and answer, but of course,

6 it's very difficult at this volume actually to work out what's being said in time to

7 raise the objections.

8 Judge Robinson: These are points at issue, points in dispute, Mr. Nice?

9 Mr Nice: I can't say whether they're in dispute or not at the moment. I'm not going

10 to deal with --

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11 The Interpreter: Microphone, please.

12 Mr Nice: I can't say whether they're in dispute or not and I doubt if I'm going to deal with them in detail.

13 Judge Robinson: Because generally I tend to overlook leading questions where 14 they are not matters of controversy for the Prosecution.

15 Mr Nice: As Your Honour pleases.

16 Judge Robinson: But, Mr. Milosevic, we have been through this several times. 17 When you begin a question, "Isn't it true that...", "Isn't it clear that ..." it will 18 almost inevitably be a leading question, which is not permissible. Milošević Trial Transcript (Testimony of Vojislav Šešelj) 24 August 2005: 43100-43101.

From a legal standpoint it may seem logical that leading questions are dealt with only when certain issues are at stake, but from a sociolinguistic perspective this is very controversial. Any repetition of leading questions gone unchecked creates habits of exchange within the courtroom that in turn influence future responses, change or reinforce power relations, and allow opportunities for information to be presented in ways that may be contrary to the judiciary ethos. Janet Cotterill's research on questions in the courtroom helps make this point, as this may seem an argument that sits between linguistics and legal procedure, but in this instance validates linguistic viewpoints (Cotterill 2004). Her work shows that through questions in court, interrogators can become the principle narrators of an event.

Building on work by others discussed earlier in chapter 2, such as Loftus (Loftus 1981), she reinforces data that demonstrates that witness responses can measurably change depending on the wording of the question.

There is more to the issue when looking at speech made by Milošević and Šešelj, because it gives the illusion to both the speaker and the spectators that the delinquent behaviour of the speaker is in the first instance (at the time of utterance), *unseen*, and in the second instance (when objected and discarded), *unchecked.* It is difficult to ignore the physical and symbolic parallels between the ICTY and Foucault's discussion of Bentham's panopticon, and while the hierarchies created and maintained for the purposes of discipline through the physicality of the ICTY have been well-discussed,[29] there is less discussion surrounding the linguistic construction created in this light (Foucault 1977). If we take Foucault's assertion that the panoptic institution creates on the one hand an institutional blockade of discipline in its purest physical form, while on the other a streamlined mechanism for its implementation and eventual evolution, we can immediately see within the exchange above some exceptional flaws. The choice by the judge to attend to some leading questions and ignore others shapes not only the discursive balance of the courtroom and transcripts, but through this creates recorded fields of documentation that make a statement on how information at the ICTY is categorised: not according to its compliance or failure to the courts codified norms, but according to its *impactable* delinquency.

3.4 Media frames

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[29] Several authors begin their discussions of the ICTY with analysis of the meaning of the space itself, for a brief overview see Graham White's discussion of the 'Architecture of Audience' in his article 'Narrative Indeterminacy and Public Audience' (White 2008), and David Hirsh's description of the ICTY atmosphere in his book *Law Against Genocide: Cosmopolitan Trials* (Hirsh 2003).

Eltringham's emphasis on 'silent spectators' creating the court space is very relevant to both Milošević and Šešelj's repeated attempts to draw cultural lines between the Western[30] imposition they see as the ICTY, and their own concepts of justice. Šešelj discussed Adem Jashari[31] on several occasions during his testimony for Milošević, and was thorough in making use of words he knew would link his enemy with an enemy of Western states.

Here he discusses Adem Jashari while mentioning al-Qaeda in relation to the media directly:

Example 35: Vojislav Šešelj

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1 <u>Šešelj:</u> There was no other choice for our police in dealing with them but to

2 destroy the house. This was later used in the **propaganda war** against the Federal

3 Republic of Yugoslavia. They claimed that we had used excessive force. That was

4 a very disingenuous misrepresentation. Adem Jashari wanted to **sacrifice himself**

5 in the same way that **al-Qaeda terrorists** do nowadays. He wanted to **sacrifice** 6

his life in order to cause an international scandal that would be **used by the**

7 **Western media.** (IT-99-37-I, the Prosecutor versus Slobodan Milošević, 42911-42912, 19 August, 2005)

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[30] While I would normally avoid using contested geographical demarcations to describe the linguistic boundaries of Milošević and Šešelj, the term 'western' is used repeatedly by both, and is significant in its choice and repetitive use. I use the term not to be drawn into invoking the same geopolitical frames as they do, but to approach the lines they are attempting to draw on their own terms.

[31] Adem Jashari was one of the founding members of the Kosovo Liberation Army (KLA), and was one of 58 people killed in a three-day attack on his fortified home in Prekaz by Serb Forces. He has been memorialised in Kosovo in a number of ways, and his life and death are often cited as part of Kosovo's post-conflict identity (Di Lellio 2006).

It is significant that Šešelj does not attempt to make any sort of argument against the claim of excessive force, and indeed, his use of 'sacrifice himself' brings forward the image of Adam Jashari as solely responsible for his own death. He lists attributes assigned to Adem Jashari that resonate easily with the discourse of other wars, namely the US' 'war on terror'. His use of 'propaganda war', 'sacrifice' and 'al-Qaeda terrorists' speaks directly to the media outlets that he claims were the audience of Jashari. His description of Adem Jashari's motives as linked with al-Qaeda motives does not follow on from the accusation that the Serbs used excessive force in the strikes against the Jashari compound. While Šešelj's story seemed confused (his arguments are circular in that he invokes images of terrorists sacrificing their lives alongside the idea that this would be attractive propaganda for Western Media to use against the FRY), his attempt to draw upon a larger audience is plain. The idea of self-sacrifice alongside the mentioning of al-Qaeda raises questions, even if they are entrenched in accusations of a conspiracy involving the Western media.

4 Conclusion

The politics of international criminal tribunals never seems a more compelling topic than when former political leaders test the boundaries of fledgling tenets of international law. Milošević and Šešelj's insistence on self-representation may have been the loudest and first of these tests, but alongside the difficulties they presented is also the pressing need for an unpacking of their own explanations of past political endeavours. As Gerry Simpson explains,

> …a war crimes trial can be viewed as the 'trial' of politics in the sense of a
> series of tribulations or tests to be undergone before a new society can

emerge untainted by the old. Frequently, however, particular types of politics are on trial. Most obviously, the trial is an indictment of the political project of the accused. (Simpson 2004), p 46.

More than this, we see with Milošević and Šešelj that the trial can be viewed as an extension of the political project of the accused, even as these same projects are being held up to international scrutiny. They are frequently treated as past, when we might better conceive them as ongoing.

The undertaking of linguistic and discursive analyses of the speech of these accused gives us two distinct ways to identify the personal power of the accused within the courtroom as tools of these ongoing political projects. Through the identification and analysis of power over process and power over narrative, we can clarify not only the motives of the speech in question, but how the words of these individuals before the ICTY (as well as within court records) may be demonstrating sociolinguistic relationships that have been overlooked in favour of judicial efficiency. The difficulties these individuals caused the court, alongside the length of these trials produced a necessary shifting of priorities within the courtroom, and through linguistic analysis, the priorities emphasised become more visible. This allows not only for a highlighting of the additional sociolinguistic dimensions of these trials, but of the intersection between sociolinguistics in the courtroom and the court's agendas.

When the question was posed at the beginning of this chapter, 'how does the relationship between power and narrative change when political leadership is at stake in court?', it was with the intention of opening up for discussion the idea that political leadership, once obtained, can have an impact on international political

processes even after the formalities of it have been stripped away. By framing the discussion of this chapter within the concepts of the self and historical and cultural lines, it becomes clear that the stakes of political leadership before the ICTY may well be closer to the ICTY's own struggle with its authority than previously anticipated.

Chapter Seven - Testimonies of high and low rank accused: Comparing mental frames to conceptualise accountability

1 Introduction

The benefits of comparing the statements of high and low ranking accused are best understood, in the first instance, through the lens of the wider functions of transitional justice. At the heart of the ICTY's aims is the drive to impress accountability for wartime actions onto both those who have acted during past conflicts and those who have yet to act, in the hopes that codified international systems of law will change the nature of the way people conceptualise their own actions during times of conflict. The ICTY publicises these aims in very clear terms:

> The key objective of the ICTY is to try those individuals most responsible for appalling acts such as murder, torture, rape, enslavement, destruction of property and other crimes listed in the Tribunal's Statute. By bringing perpetrators to trial, the ICTY aims to deter future crimes and render justice to thousands of victims and their families, thus contributing to a lasting peace in the former Yugoslavia. (www.icty.org, 'About the ICTY', accessed 11 October 2014).

Here we see the emphasis on individual responsibility as the primary way of categorising a perpetrator, which is a large part of the ICTY Statute.[32] Avoiding at

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[32] See Article 7, sections 1- 4 of the ICTY Statute, 'Individual Criminal Responsibility', in Appendix 2.

the moment the complex discussion on what it might mean to 'render justice', the links established between an individual, his crime and trial, and the collective attainment of lasting peace in the region demonstrate a perpetual linear conceptualising of the processes of transitional justice that underlies the trials of the accused. What quickly becomes clear is that this linear conceptualising on the part of the ICTY (which I do not argue is incorrect or unsustainable, simply present and in need of acknowledgement) echoes traditions of criminal law in many systems (Roht-Arriaza 2006; Schabas 2001) and makes the links between the accused and the ways in which they frame their actions within the conflict discourse more apparent.

Because of this, the concept of accountability becomes simultaneously more complex and more worthy of study. It is not something plainly seen in the statements of those putting forward a defence, but the aims of the ICTY and its ethos resonating within the courtroom have set the tone for a variety of interpretations of what the court might deem as 'less' accountable, and how this type of language might be aspired to by the accused.

The speech of the accused facing international criminal tribunals is a perspective that has been critically under-researched. As seen in the research surrounding the reception of ICTY tribunals and judgements mentioned in the introduction to this thesis, literature on its achievements and pitfalls are plentiful, but accused on trial are commonly only discussed in terms of the legal challenges their cases bring to the ICTY (Akhavan 1998; Côté 2005), and in terms of their rights (Sjöcrona 1995; Sloan 1996; Zappala 2010). Little, if any, attention has been given to understanding the social psychology or sociology behind their statements in court. What this research does therefore, is call for an increase in emphasis on understanding issues

like accountability and responsibility, and offer that one way of doing this is through the examination of these concepts as part of the in-court speech of accused. In looking at speech of accused, it is possible to learn more about how the process of explaining past actions is understood by those at the centre of proceedings. This chapter therefore compares excerpts of testimony from six individuals who stood trial at the ICTY in an effort to better understand what linguistic phenomena are most commonly found within testimonies of the accused, and what this language might mean (in particular, the ways accused create categories in speech and how blame can be shifted – when this is done, how and who does this, and how often) in a wider sociolinguistic and sociolegal sense. This not only gives further insight into the perceived power of the ICTY from the perspective of those standing before it, but has demonstrated norms of communication that are emerging from the accused when it comes to speaking about events, places, people, and time.

While it may initially seem that this type of analysis would simply be one of comparative legal strategy, the linguistic and discursive theoretical platforms this thesis utilises have shown that the speech of the accused cannot and should not be viewed as simply contained within the strategies of various defence teams. While the individual on the stand might have been 'prepped' beforehand, and may indeed alter responses in reaction to the line of questioning being put to him or her, these responses still exist as evidence of processes – both social and symbolic in terms of the effectiveness of transitional justice – occurring within the courtroom that demonstrate more deeply how those on trial perceive their own actions in the face of a larger, more structured morality.

There are commonalities within testimonies of the accused analysed in this chapter, with two primary phenomena being demonstrated that are relevant to discussing

accountability. First, there are discussions of rank as a constraint in the decision-making process, used by both high and low ranking individuals in ways that attempt to shift blame. Second, there are separate cognitive linguistic frames that the speech of high and low rank accused occupy, and these have remained consistently distinct through the excerpts I have analysed. High ranking accused occupy spaces that exist well beyond the self,[33] identifying with larger political spaces or 'selves', or by carefully attempting to remove any aspect of 'self' from the situation. They compare and categorise only slightly inward, by comparing history with military tactics for example, or comparing international politics to regional politics. Low ranking accused consistently occupy spaces that categorise the 'self' relative to other people close to them, such as neighbours or fellow military personnel.

The analysis of speech of low ranking accused alone has shown significant ways in which perpetrators categorise and understand themselves, ethnicity in general and broader concepts of time and space relative to their own actions, revealing more about defence strategies alongside broader ways in which actions and situations are spoken of in court. The three low ranking accused analysed show how speech is used to shift blame (shown through the speech of Duško Tadić), diminish violent actions (shown through the speech of Esad Lanždo), and do a combination of both (shown through the speech of Miroslav Kvočka). Adding the comparison of high ranking accused has allowed for significant similarities to appear in places – namely the type of logic used to dismiss or diminish an action by re-naming it – and has demonstrated that high ranking individuals are capable of a type of storytelling absent of their own agency. All three high ranking accused make use of narrative

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[33] This is also interesting in terms of precedent set by the ICTY in favour of individuals being seen as culpable for their own actions – controversy surrounding this centres on the idea that this overlooks the criminal behaviour of states.

framed within larger political or military ideas, and this is used to shift blame by Tihomir Blaškić, Momčilo Krajišnik, and Milorad Krnojelac, but each do so in a slightly different way.

2 The accused on the stand

I have defined a high ranking individual as someone who had authority over others, and was known outside of their own community, even by people who had never met them. In my analysis of high ranking individuals, I chose three individuals who had different types of power – one military colonel, one camp authority, one politician. I have defined a low ranking individual as someone who had little or no authority over others, and was known only to their own community. These people often had direct contact with the groups being abused, participated in crimes themselves, or were present during these types of abuses and demonstrated no objections to them. The low ranking individuals I chose to analyse were all involved in camp guard positions of some form, two of them Serbs working in a camp detaining primarily Muslim men, and one Muslim guard at a camp whose inmates were primarily Serbs.

The individuals of low rank I have chosen to compare are Duško Tadić, Esad Landžo, and Miroslav Kvočka. Duško Tadić was the first individual brought before the ICTY, and as such, his case has been studied and discussed more frequently than the cases of Kvočka and Landžo (Kerr 2004; Scharf 2006). Although Tadić's position as president of his local branch of the Serb Democratic Party (SDS) may imply he was a higher ranking individual, he did not in fact carry much weight politically or militarily (Scharf 1997, 2006) . A former café owner, his actions

during the attacks on Kozarac included murder, aiding in forcible transfer of Muslim civilians, and beating and intimidating the Muslim civilians in the area.

Esad Landžo was a guard at the Čelebići camp, a detention centre in the Konjic municipality which held Serb prisoners, and was run by both Muslim and Croat men. Landžo was convicted of wilfully killing, torturing and causing serious injury to the detainees of Čelebići camp, and his actions there were of the more disturbing crimes committed within detention camps in Bosnia and Herzegovina

Miroslav Kvočka was a police officer who was recruited to work as a guard at the Omarska camp, a detention centre that held non-Serb prisoners in the Priejedor region in north-western Bosnia and Herzegovina. While he had authority over several of the guards there, his command was limited to a small group of people and he reported to several other higher-ranked officers regularly. Kvočka was present for, or aware of, many of the crimes committed in the camp, and was found to have instigated or aided and abetted the crimes committed by those under and around him.

The individuals of high rank I have chosen to compare are Tihomir Blaškić, Momčilo Krajišnik, and Milorad Krnojelac. Tihomir Blaškić was a Colonel in the Croatian Defence Council (HVO), who later became General and commander of the HVO for the central Bosnian region. He was responsible for the use of Bosnian Muslim civilians as human shields for the HVO, the inhumane conditions and treatments of prisoners in detention facilities in the Kiseljak, Vitez, and Busovača areas, and attacks on populations in the Ahmići area.

Momčilo Krajišnik was a Bosnian Serb political leader who held a number of political positions during the war, among them President of the Bosnian Serb

Assembly and member of the board of the SDS. He was a key individual in the forcible transfer and deportation of thousands of Bosnian Muslim and Croat civilians in areas throughout Bosnia and Herzegovina.

Milorad Krnojelac was the commander of the KP Dom detention camp in Foča. He was aware of torture and inhumane treatment occurring within the camp and failed to prevent it, and he allowed persecutions, forcible transfers and cruel treatment to take place throughout his command.

I have chosen these particular individuals for several reasons. First, not all accused took the stand in their own defence, limiting the options for analysis. This is not a compulsory action at the ICTY, and it is clear that in several instances the defence counsel for the accused may have advised against it, as testimony could quickly work against the accused during cross-examination. Additionally, the accused who pleaded guilty simply made statements of guilt, remorse and apology, which served as their only direct communication with the court.[34] While this was more common for low ranking individuals, high ranking individuals did this as well.[35]

I chose statements from individuals whose crimes were committed in a variety of locations, although this is more clear-cut with low ranking individuals than high ranking ones, as individuals of higher rank frequently exercised influence over multiple regions (Krajišnik being a main example of this). I made a point to avoid choosing low or high ranking individuals whose actions were concentrated exclusively in the same areas, because overlap could indicate that patterns found in testimonies were common only among accused with shared conflict experiences.

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[34]Dražen Erdemovic (IT-96-22) was the first example of this. Erdemović was one of the executors of Muslim civilians at Srebrenica, and his guilty plea and statement have been referenced and made example of repeatedly (Meernik 2003; Weigend 2012).
[35] See Biljana Plavisić (IT-00-39 & 40/1), for example.

2.1 Why compare high and low ranked accused?

As mentioned above, Article 7 of the ICTY statute does not link rank and action in ways that impact accountability. An individual is considered responsible for his actions regardless of having been under orders (to an extent, the court gives room for mitigating circumstances in terms of being ordered to carry out violence, as in the case of Erdemović cited above, and mentioned in Section 4 of Article 7, but this is not a guarantee), and those of high rank are not exempt from responsibility because of their position and are considered responsible for the actions of those committed with their knowledge by those under their command (Sections 2 and 3 of Article 7) (McGoldrick 2004; *Updated Statute for the International Criminal Tribunal for the former Yugoslavia* 2009). In light of this, what use is categorising the statements of these individuals according to their rank?

First, the testimonies of the accused bear similarities that are contained within their respective ranks. This not only indicates that there are similarities between legal strategies that are rank-specific (showing that precedent is helping defence strategy evolve in favour of what 'has worked' in terms of defence), but that patterns of individual expression are similar within these categories as well. Second, the assumption that conflict experiences might be of greater similarity not within ethnic categories, but within military categories, has proven a valid one in the instances examined here. The accused chosen for this study are from a variety of ethnic backgrounds, but descriptions of conflict experiences, expressions of choice making patterns, and situations of 'self' with respect to communities and 'others' display similarities across these groups.

3 Understanding accountability

Literature on accountability as it relates to the ICTY and ICC perspective is, to a large extent, rather general and often brief. Much of it is from the perspective of the potential pitfalls of completion strategies, or the complicated nature of prosecution cases and limitations of who can be charged (Barasin 2011; Raab 2005; Schwendiman 2009; Zoglin 2005). This is not to confuse types of accountability – accountability changes depending on the perspective, as there are two levels of accountability at stake when we look at the speech of accused. There is accountability for speech and behaviour in court (thus allowing the term to take on a regulatory dimension), and accountability for past actions that relate to the charges brought upon the individual.

Large concepts such as accountability or responsibility are not properly defined or deconstructed in much of the literature. Williams and Scharf (Williams 2002), equate accountability with justice in their book *Peace With Justice: War Crimes and Accountability in the former Yugoslavia*, demonstrating the structural direction that literature on accountability has taken. When accountability and justice are used interchangeably, there is a problematic perspective that emerges. Accountability is a concept associated not with those who are accused of crimes, but with those who are convicted. When accountability is (as it is for Williams and Scharf) reflected only in the systematic processes the courts undertake in dealing with accused, any social elements that the concept might encompass are overlooked. This might, in many ways, point to a gap in the literature that needs to be filled with interdisciplinary perspectives, and the intersection between the legal, philosophical,

and social psychological literature gives a more applicable understanding of accountability.

Social psychology has been grappling with questions of groups and accountability for quite some time. V. Lee Hamilton's 1978 article on the subject (Hamilton 1978) was at the beginning of a call to bring the social aspects of accountability more firmly into understandings of its definition and function. This work challenged perspectives on responsibility that were merely, as Hamilton states, 'a decision about liability based on a rule,' (p 316) and called for 'a role-based' view of accountability that leant heavily on popular notions of the time (mostly due to Milgram's (Milgram 1963) study on obedience to authority). Though Milgram's conclusions are now disputed for several reasons, ethical concerns among them[36], this view of accountability nonetheless finds its ways into low ranking defence strategy and testimony at the ICTY. More than simply claiming to have acted violently because they were ordered to, some accused analysed in this chapter defend their actions as being a result of *who they were* (particularly Esad Landžo, analysed in section 5.2, but the opposite is shown with Duško Tadić, in section 5.1). This corresponds with Hamilton's thoughts on the origins of responsibility. He states, '(…) it's not what you did, but what you did given who you are, that determines which sanctioning rules apply.' (Hamilton 1978: 321). The legal standpoint of the ICTY and more current studies on group violence and issues of command responsibility (such as work done investigating abuses at Abu Ghraib by Mestrovic and Romero (Mestrovic 2012), and Snow (Snow 2009), who each apply

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[36] Milgram's experiments are now largely considered to have violated ethical standards of how psychological experiments should be carried out, which may have impacted findings – similar experiments are now undertaken digitally (Slater 2013), but it could be argued that Zimbardo's work (Zimbardo 2009), while inheriting some of the ethical problems of Milgram, still maintains that people can be 'led' to act in certain ways.

more traditional philosophies to the analysis of group dynamics there, using Durkheim and ethics, respectively) have not taken this view. As stated earlier, precedent at the ICTY has gone in favour of individual responsibility[37], and the social psychological perspectives cited above focus on the lack of prosecution for military individuals violating human rights.

Much like Browning's 'ordinary men' (Browning 1992), soldiers in Abu Ghraib were not threatened with violence or consequences that made them feel they didn't have a choice in terms of their violent actions, and interestingly some of the research into their testimonies during court-martials demonstrate findings that are similar to those in this chapter. Again, it is Esad Landžo whose testimony seems to echo patterns also present in other testimonies, and his tendency to use language to lessen his violent actions (using 'slap' instead of 'hit', for example) is similar to testimony of Sabrina Harmann, a soldier court-martialled for her actions in Abu Ghraib.[38] The important social psychological phenomenon to come out of this is the discussion of what is referred to as a 'magnitude gap' by Snow (Snow 2009), a concept that originates with Baumeister and Campbell (Baumeister 1999), that findings in this chapter indicate is present among narrative of ICTY accused as well. The magnitude gap is the difference in the perception of the seriousness of a crime that occurs between victim and accused. The use of language in the courtroom that not only expresses a magnitude gap but displays its use as intended for defence (as in, not simply explaining how the crime was viewed by the

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[37] Though, as mentioned before, there are aspects within Article 7, Section 4 of the Statute that address mitigation, as applied to the case of Dražen Erdemović (IT-96-22).

[38] 'I knew he wouldn't be electrocuted ... So it really didn't bother me. I mean, it was just words. There was really no action in it. It would have been meaner if there really was electricity coming out, and he really could be electrocuted. No physical harm was ever done to him (Gourevitch 2008: 177).'

perpetrator but an active attempt at convincing the court that this perception is the correct one) is therefore something that can offer insight into accountability. It relates back to understanding the accused's mental space as constructed through language, showing how perceptions not only impact actions, but impact feelings of responsibility.

The implications of the literature addressed above are that accountability as a concept is something that is socially situated. However, the term implies that the ways in which the actions of a criminal are dealt with systematically have to then meet some measurement of adequacy. This leads to an inherent need for the intersection of sociological understandings and the mechanisms of legal process. The legal side of the equation deals with questions of responsibility in an institutional, outcome-centred way. This means that the process of *being held to account* is being carried out, but that further discussions of what it means to truly *be* accountable are not addressed. And indeed, this is not the job of the court. However, this is not to say that further understandings of this cannot be achieved through other avenues. This chapter looks at how responsibility might be further defined through discussions that exist under the surface of the transcripts, and the analysis offered here demonstrates how new understandings can be achieved.

What is being examined here are explanations of past actions, categorised and understood through the lens of cognitive linguistics, which are then held up against the question: what might these conclusions say about how accountability is being defined, tested, and understood through the experiences of the accused? As these are individuals who are mounting a defence against the charges laid upon them, the

ways in which they explain their choices in past conflicts is developed with a specific purpose (defence). It tells us not why they actually acted the way that they did, but how they chose to explain their actions in the face of the ICTY, which gives a closer understanding of what they may feel.

3.1 Separating individual expression from legal strategy

Examining statements made by accused brings with it immediate implications that these statements may not truly be those of the accused, but strategically rehearsed statements authored primarily by defence counsel. The ICTY system is one in which all witnesses are allowed to be 'prepped' by the side for which they are appearing, which has been seen as controversial at times, but ultimately a necessary practice (Karemaker 2008). There are, however, several reasons why this issue is not a major impediment to examining statements of accused. First, this practice is relatively uniform, and not exclusive to certain witnesses over others. Victims and accused alike are allowed to have rehearsed the questions they will be asked with the team who will be asking them in the first instance, and this is done to alleviate psychological stress and trauma on the part of victims, and aid in more timely testimonies from both sides (Karemaker 2008).[39]

Second, and perhaps more of a technical point, is the fact that while there may be linguistic tools to help discern which statements of accused might be rehearsed and which might be spontaneous, the perspective of this speech as contributing to court

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[39] This is covered in very general terms in the Rules of Procedure and Evidence of the Tribunal, in rule 65*ter* (Eii and Gi, referring to the advance requirements of prosecution and defence when calling witnesses, and rule 92*ter*, which gives conditions for presenting written testimony), found in Appendix 3, but the clearest articulation of this practice is found in the Trial Decisions of several cases that challenges these procedures, such as the *Limaj et al* Trial Decision, specifically the decision of 10 December 2004, found at http://icty.org/x/cases/limaj/tdec/en/041210.pdf.

discourse is not shaken. That is to say, what matters more than which statements might have been authored by whom is the fact that these statements have been said in the first place. Rehearsed speech is an integral part of court environments; judges and lawyers, for example, rehearse and write opening and closing statements before they are said in court, and what is said is often carefully calculated with specific audiences in mind (Conley 1990, 2005; Matoesian 1993; Philips 1998). For these reasons I have chosen not to endeavour to separate rehearsed speech from spontaneous speech, as both contribute to court discourse in equal measure.

4 Low ranking accused: Three different stories of categorisation

While Tadić, Landžo, and Kvočka each explain the choices they made through storytelling of a different kind, all three of them go to considerable effort to situate these actions in a way that ultimately reflects categorisation. Tadić's categorisation splits his understanding of his situation three ways: Tadić relative to his neighbours, Tadić relative to the town of Kozarac, and Kozarac itself. Tadić consistently fails to connect his neighbours to Kozarac, demonstrating estrangement even in the midst of his overt efforts to be inclusive in his memories. Landžo and Kvočka categorise with positive/negative duality. Landžo categorises his actual actions relative to his potential actions (he explains how he was doing something good by way of also doing something bad), and Kvočka categorises his actual actions relative to the actions of others (doing something good in the face of others doing something bad). Each accused does this alongside other more subtle indicators of how they see themselves within their memories that give us a more detailed understanding of how low ranking accused explain their actions.

4.1 Duško Tadić: Categorisation, time, and conceiving Kozarac

As mentioned above, the case of Duško Tadić was highly publicised. It was the first major test of the ICTY's ability to try someone accused of crimes that were still being felt within the region, which widened the audience of those speaking in court. The testimony of the witnesses for the prosecution brought to light some of the most harrowing experiences that the ICTY would hear, and many of the instances of torture described by witnesses in *Tadić* alongside the photo exhibits brought forward became the images of the conflict itself in the international press (Hayden 1996)[40].

The primary focus of Tadić's testimony is the events before, during and after the attacks on Kozarac. He tells of his relationships with the people in the town, his café, and his attempts to avoid military service at several junctures. Tadić's narrative attempts to place him in a passive role regarding political and military events in Kozarac, and this attempt at passivity is common among testimonies of accused and fits with a logical legal strategy. However, when looking at his speech more closely, there are boundaries created indicating that his logic for behaviour went beyond the separation of us/them or self/other, to include a separation between the people of Kozarac and Kozarac itself.

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[40] I cite Robert Hayden and later, James Gow in this thesis, but it is important to note that these authors did not take a passive role in *Tadić*. Both were expert witnesses in this case; Hayden testified as a witness for the defence, while Gow was a prosecution witness. While this may not have impacted the statements of Tadić himself, I nonetheless acknowledge that using the work of these experts extensively to analyse this case could potentially angle the analysis in the same ways it was split during the case itself. As such, I have only cited where I deemed it absolutely necessary.

As illustrated below, Tadić's description of events can be categorised in three ways: himself relative to his neighbours, himself relative to his town, and his town as a separate entity. Rarely do we see Tadić connecting his (non-Serb) neighbours to his town (and these exceptions happen primarily during cross-examination – see Appendix 4). This demonstrates that the conceptualisation of spaces alongside ethnic lines is strong. This is not simply language referencing a sense of belonging in a territorial, symbolic or ethnic sense, but a separation implied between an ethnic group and a physical space. This is a way of expressing 'otherness' through omission, or failed connections, which is not something that has previously been discussed in other research.

Tadić's categorisation of himself, his neighbours, and his town can be understood better when the statements are pulled from the text and examined side-by-side. A sampling of these statements is demonstrated in the chart below, but full excerpts including the questions posed to Tadić that elicit these responses can be found in Appendix 4. Many of these categorisations occur within the same responses, demonstrating that Tadić's story of Kozarac has three firm points of reference:

Table 2: Statements of Duško Tadić

Tadić and his neighbours	Tadić (and his ethnic group) and Kozarac	Kozarac
'they sided us somehow with them' (28 Oct, p 7836-7837)	'us who were living in the **centre of Kozarac**' (28 Oct, p 7836-7837)	'Kozarac was in a pitiful shape. It was not so much destroyed, but there was a stench in the air' (28 Oct, 7863-7864)
'knew each other from before' (28 Oct, p 7852)	'what kind of perspective **my native town** had' (28 Oct p 7909-7910)	'you could feel something in the air' (28 Oct, 7863-7864)
'There was silence, apprehension, and a very strange feeling' (28 Oct, p 7852)	'they were my neighbours or my brothers, the people from the **centre of Kozarac**, who were considered to be the **natives**' (28 Oct, p 7832)	'the town itself was ghostly' (28 Oct, p 7864)
'some **neighbours of mine** of Muslim nationality' (Oct 28, p 7909-7910)		
'We used to play football there… **me and my neighbours**' (29 Oct, p 7949)	'They just organised some groups themselves and they were doing everything they pleased. So that **created an image of Kozarac**.' (28 Oct, p 7838-7839)	

Interestingly, the topic of physical spaces and their uses was focused on by both prosecution and defence, and the example that was discussed most frequently by Tadić during his testimony was the use of the Serb Orthodox church as a meeting place to hold a plebiscite (named repeatedly by Tadić as the only 'communal

object' appropriate for the meeting). Tadić's response to questions regarding this during his cross-examination reveals much about his conception of communal spaces:

Example 36: Duško Tadić

1 Q. You indicated in your testimony that the plebiscite itself was conducted in the

2 churchyard of the Serbian Orthodox church because, you said, you did not want

3 the plebiscite conducted in a private home and "there were no other communal   4

objects". In fact, there were a variety of communal objects and buildings in

5 Kozarac, but the Orthodox church was the only exclusively Serbian communal   6

object, isn't that right?

7 A. No, **the Orthodox church in Kozarac is over 120 years old**, and all people 8

visited, not only the church but also the churchyard, Muslims, Croats and others. *I* 9

remember. I grew up there. We used to play football there. **We spent a lot of**

10 **time there in the churchyard, not only of the Orthodox church, but of the**

11 **mosque as well -- me and my neighbours**.

12 Q. So the mosque was a communal object or building, the Mjesna Zajednica was

13 a communal building, the post office was a communal building?

14 A. Yes.

15 Q. But the Serbian Orthodox church was the only Serbian communal building?

16 A. Yes. - Tadić Trial Transcript (Testimony of Duško Tadić) 29 October 1996:

7949. Emphasis added.

The fact that Tadić responds to the first question with the age of the church is significant. While he tries, in the remainder of his response, to indicate that the churchyard was visited by other ethnicities and that other ethnic 'communal objects' were visited as well, the remark about the age of the church asserts a dominating history. Tadić may be assuming that the fact that the church is old aligns it with a history that relates back to communist Yugoslavia, when religious affiliations were not overtly expressed, but this does not truly match the phrase, 'over 120 years old'. The fact that Tadić responds to the statement, '[it] was the only exclusively Serbian communal object' with, 'no, it is old', points to an inevitability underlying the fact that other ethnicities would have visited the church over time. Additionally, the image of an old church implies landmark status – something preserved and powerful that stood as a backdrop for life in Kozarac. Tadić's responses, 'I remember. I grew up there,' reiterate this.

Also important is the use of 'before', when Tadić talks of seeing an old school friend of his brother's in Banja Luka. In court, he takes the time to describe his connection to this acquaintance, and says, 'the families knew each other from before'. The reference to 'before' as meaning 'before the war' is a recurring expression that has become common when referring to pre-conflict Yugoslavia both in and out of the courtroom, but it is by no means insignificant. Rather than stating, 'the families have known each other for years', or 'the families have known each

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other since we were children', etc., it is 'before' that marks the important sections of time. Statements of time that have been explored in previous chapters can give this greater context. Through the course of this research, this type of expression has now been echoed in two distinct ways, by individuals with different roles in court: accused and interrogator.

The accused (Tadić) tries to speak to a connection between families that pre-dates the conflict they found themselves in the middle of at the time he is referring to, and 'before' becomes the category that indicates that his history is one of inclusion. The interrogator demonstrates this barrier in time as one that disrupts 'normalcy', or implied peace. As in the quote used at the opening of chapter 3 on memory, 'so that we can all go back to normal' is the aim of forgetting, solidifying the 'before' as something better and necessary that the court itself is directing memory toward.

This demonstrates that the concept of time as defined by the war is something common across roles at the ICTY, but that each person who refers to time relative to the war does so in a way that anchors the aims of their speech. Bringing the discussion back to Tadić, and in light of the above analyses of his testimony, the question remains: what does this reveal about the relationship between the accused, the ICTY, and perceptions of accountability? Tadić's testimony is in a large sense, 'outward-facing' - that is, he speaks of himself and his actions only within the larger story of his town, his neighbours, and the timeframes guiding his story, indicating that he and his defence are attempting to shift accountability from a personal sense to a contextual one. However, if we look at some of his speech closely, his separations of us/them demonstrate an attempt to shift blame to other

Serbs, and he assumes the role of victim briefly when describing how he was thought to have 'sided' with these other Serbs. The text examples[41] and DST analysis below explain this in greater detail:

Example 37: Duško Tadić

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1 I did not know about **the real goals** of this forum. I was afraid that all people

2 would be manipulated by any which party. It was risky to get involved because

3 you did not know what was behind it. - Tadić Trial Transcript (Testimony of

Duško Tadić) 28 October 1996: 7831. Emphasis added.

Example 38: Duško Tadić

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1 So there was a kind of agreement but, as I say, **our group was not allowed to do**

2 **anything**. We could just listen to the proposal and propose something, but **we**

3 **were not in charge**. We could not say, "OK, it is going to be implemented"

4 because there was a very strict group of people in Kozarac, people with criminal

5 records, such as Suljo Kusuran who had a group of people under weapons. That 6

was this Cirkin person, I do not know his name, but he was in Kozarusa, who also 7

had a criminal record. They just organised some groups themselves and they were 8

doing everything they pleased. **So that created an image of Kozarac.** Well,

 9 whether the official authorities of Kozarac could prevent such kind of organising

10 of people, that was a question. - Tadić Trial Transcript (Testimony of Duško

Tadić) 28 October 1996: 7838-7839. Emphasis added.

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[41] Extended versions of these examples can be also found in Appendix 4.

Example 39: Duško Tadić

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1 Q. At this stage, it was obviously well-known that it had been a Serb takeover of

2 power in Prijedor, and you referred to your difficulties in being able to attend that

3 meeting. Was that because lines were being drawn now between Serbs and the

4 Muslims far clearer than they had been in the previous time?

5 A. Well, the takeover in the municipality of Prijedor did create a certain

6 animosity towards **us who were living in the centre of Kozarac**, a certain

7 mistrust, because it all took place quite unexpectedly in Prijedor. It was a shock 8

for everybody, because the local government was in the hands of the SDA, a

9 Muslim party in Prijedor, and something like a coup had happened. Of course, 10

people no longer believed anyone. They would simply turn their heads away   11

because it was difficult to believe, to trust, someone, they identified the power 12

with someone who had done something terrible. **They sided us somehow with** 13

them, identified us with them. So what I was trying to do, I was just trying to 14

help, as far as it was possible for me, **because I was from the centre of**

15 **Kozarac because my parents had been living there and I thought that I**

16 **could do something, and it was my duty to do something.** But, as I say, there

17 were many groups of people who were spreading lies. I don't know if it was all

18 on purpose, but simple people were disappointed. Power had been taken away

19 and, on the other hand, everybody was acquiring weapons in Kozarac. - Tadić

Trial Transcript (Testimony of Duško Tadić) 28 October 1996: 7836-7837. Emphasis added.

Figure 7: DST model for Tadić
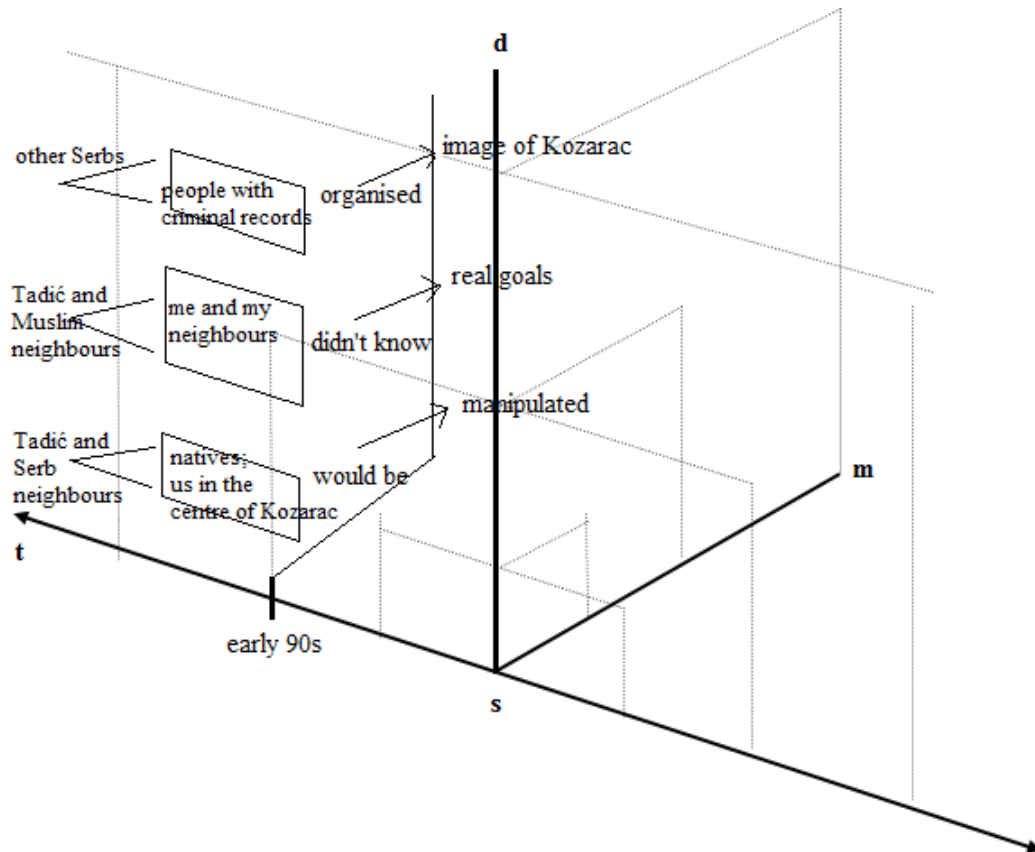
Here we see how Tadić attempts to distance himself from other, more guilty Serbs, whose motives were the creation of the counter-reality of Kozarac expressed along the M axis – an 'image' of Kozarac, unknown 'real goals', and possible manipulation. The bringing up of 'other' Serbs with criminal pasts was something commonly used in defence cases, in attempts to bring ideas of power being in the hands of thugs and gangsters running riot, and not from someone with an interest in his hometown, as Kozarac maintains. It is interesting that his distancing includes

subtle victimhood – the injustice of having been 'sided with them' ('**They** [his Muslim neighbours] somehow sided **us** [Tadić and his Serb neighbours] with **them** [other Serbs]', p 7837) when really he 'was trying to help.' His use of Kozarac as a weighty symbol of implied innocence allows him to connect his identity ('my parents had been living there') and his 'duty to do something', demonstrating that his will to help (implied innocence) is not simply tied to what he did or didn't do, but *who he was.* This is an interesting contradiction to the social psychological argument between linking identity to violent action discussed above in section 3, and also contrasts to the strategy of Esad Landžo, discussed below in section 5.2. This gives two different ways of dealing with accountability – Tadić's attempts to remove himself from it, and as shown below, Landžo's addressing of the issue alongside attempts to diminish actions.

4.2 Esad Landžo: The diminishing of violent actions through examples of restraint

The testimony of Esad Landžo contrasts greatly with that of Duško Tadić, as Landžo and his defence presented a case focusing on his lack of self-confidence and personal problems that allegedly made him prone to obeying any order given to him. Landžo's testimony includes within it repetitive explanations about his restricted choices, many of which demonstrate ways he felt constrained by rank, which is something not uncommon in accused testimonies. He says over and over again, 'I just followed orders' or 'I did as I was told.'[42] Landžo and a string of defence witnesses spoke of his frailty both physically (he reportedly suffers from

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[42] For one out of many examples of this, see p 15253, July 29 1998, lines 21-25.

chronic health problems such as asthma) and mentally (he was said to have been withdrawn as a child, was prone to things like self-harm, and suffers from anti-social personality disorder)[43], and Landžo's responses echo this line of argument.[44]

In contrast to Tadić's outward-facing testimony, Landžo's testimony focuses on his actions almost exclusively, and he (and his defence) situates these actions within the context of Esad Landžo, rather than in any social or historical sense. He gives the court an inward facing narrative, and storytelling as we see with Tadić (and later Kvočka) is rare, as the overall defence for Landžo is psychological. But more than this, Landžo's speech is focused on diminishing his violent actions. He does this in a literal linguistic sense (using qualifiers), he does this through the placing of his actions alongside those of others in the same situation, and he tries to demonstrate positive choice-making within negative scenarios by describing choices he could have made that would have been worse.

His first attempts at diminishing his actions are seen though his use of qualifying statements – he uses 'sort of', 'just', or 'slightly' in an attempt to lessen the seriousness of the act itself, and we see this alongside denial. He states: 'I didn't really hit him', 'I didn't say he was tied up', and gives alternatives: 'It was a slap' or 'I helped him up', and 'I just said there was a cord on his hand'. Landžo tries to allow accountability into his testimony by conceding some acts of violence, but

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[43] See p 14911, 24 July 1998, which is the testimony of Gogic Damir, who grew up with the accused. Another example can be found in the testimony of Dr Edward Gripon, July 28 1998, beginning on p 15129.
[44] For example: 'Q. (…) tell me when did you allow others to give you orders?
A. Until some two years ago, perhaps. Yes, to tell me what to do. Until I have sufficiently stabilised my personality to be able to assume the responsibility for myself, instead of others doing this on my behalf.' (p15254-15255, 29 July 1998.)

only where they were attached to an order to do so. At times, Landžo takes the approach of admitting to an action but trying to assert that it was the action itself that was misunderstood. He adds the actions of others into the frame, as shown underlined in example 41, to demonstrate that his actions were the least dangerous within the groups in which he found himself.

Example 40: Esad Landžo

1 Q. (…) you said that Draganic was tied up and beaten up, he couldn't get up and

2 the guard told you to lift him up and that he couldn't get up himself. Furthermore,

3 you said that you hit him without having received an order to do so; is that true?

4 A. I didn't say that he was tied up. I just know that he had a cord on his left hand.

5 I didn't see him tied up, I just saw a cord, a rope on his left hand. I got to him,

6 **slightly kicked him** with my foot to make him get up. I did it three times. Then 7

he couldn't get up, so I **sort of pushed** him up, but **I didn't really hit him. I just** 8

helped him to get up. - Mucić et al Trial Transcript (Testimony of Esad Landžo)

29 July 1998: 15260. Emphasis added.

Example 41: Esad Landžo

1 A. Tunnel No. 9, I hit him twice, <u>but other guards hit him more often.</u> I was not 2

standing in a position from which I could really hit him hard, but there were other 3

guards standing next to me. I did hit him twice, that's true.

4 Q. In the direct you did not mention that you were ordered to beat him; is that

5 true?

6 A. **If I got the order to hit him, I would have hit him more often. It was**

7 **actually just pushing**, **it wasn't really hitting him.** Because when the <u>others</u>

8 <u>started hitting him</u>, I was told to take him to the hangar and not to hit him. So I   9

was supposed to take him there. **If I had been given the order to hit him, then it**

10 **would have been a different story.** I was just doing what I was told to do. -

Mucić et al Trial Transcript (Testimony of Esad Landžo) 29 July 1998: 15257-

15258. Emphasis added.

Example 42: Esad Landžo

1 Q. (…) you said you hit him at least once because he took the food away from the

2 rest of the detainees. In the course of the examination-in-chief, you never said that

3 you were ordered to hit him.

4 A. I slapped him, maybe I was not precise. **It was a slap on the face and not a** 5

hit. Because how can you explain to an old man in front of you, crying, who a

6 night before was hit in his head and the person who took away food from him

7 standing next to him, how can you explain to him that the guy who took away the

8 food from the older man was right. So I slapped Mr. Miljevic to show older

9 detainee that the same law applies to old. **But I didn't hit him**, **I just slapped**

him.

10 Q. Do you think that slapping is not beating up?

11 A. One slap on the face? I wouldn't say that. I mean, it was done simply to

12 comply with the old man's insistence on **justice be done. Imagine what would**

13 **have happened if I reported Miljevic, if this happened, then I guess Miljevic**

14 **would never have been able to come here and testify.** It all finished and ended

15 with a single slap. And, in a way, I wanted to satisfy the old man's desire to

16 **bring peace** to the hangar because it would have been, perhaps, easier to me to

17 go to the headquarters and report Miljevic taking food away. **Had I done this,**

18 **Miljevic, would never be able, I guess, to come here and testify.** - Mucić et al

Trial Transcript (Testimony of Esad Landžo) 29 July 1998: 15258-15259.

Emphasis added.

While certainly interesting, this is not the most significant aspect of Landžo's speech. The two basic attempts at lessening his actions – the denials in black bold and the comparisons to the actions of others, underlined, are not an unexpected response to accusation. It is the fact that these responses occur together alongside strong hypotheticals that imply that in doing something bad, Landžo did something good. These statements are in red bold, with the one in example 39 being the lesser important of the two examples made. In example 39, Landžo is attempting to reinforce his ties to following orders, demonstrating that his need to follow orders was so strong that even when he isn't asked about whether he would act violently if ordered, he volunteers this information. He states, 'If I got the order to hit him, I would have hit him more often.' On the surface it gives the impression that he

could have been worse, so to speak, if ordered. This seems to counteract his earlier statements diminishing his actions, but it also reinforces his attempts to assert that his choices were made solely on the basis of orders from others.

In example 40, Landžo's true detachment from accountability is made plain. In red we see him offer a hypothetical scenario in an attempt to assert that in doing something bad, he did something good. In addition, this explanation is framed in very broad symbolic terms that reference concepts upheld by the international criminal court specifically. Within his story about the stolen food are positive concepts highlighted in blue, situating Landžo as the satisfier of someone else's desire for peace and justice. The larger implication is that his choice to settle the dispute with 'a slap' could have, perhaps, saved a life. Twice he states that had he not done this, 'Miljević wouldn't have been able to come here and testify.' The assumption here is that Miljević would have been punished so severely by others that it would have resulted in his death, or at the very least, some form of incapacitation. Landžo then completes his explanation by framing this choice in terms of its use to the court – the issue isn't that Miljević wouldn't have been around, the issue is that he wouldn't have been able to 'come *here* and *testify.'*

This is a method of explanation that has been used by other accused of relatively low rank. Goran Jelisić, who had a moderate level of authority at the Luka camp, was reported to have given similar examples during interrogation. Expert witness Bernard Patrick O'Donnell, testifying regarding interviews with the accused, stated:

'[Mr. Jelisić] He claimed that he stayed in Brčko because he was told to, and again he feared that if he disobeyed orders, he would have been killed. He claimed that he only killed people that he was told to and that he never killed anyone of his own free will. In fact, he said **that where he had the opportunity of not killing someone, then he didn't kill them, and he saw that as a personal triumph.**' - Jelisić Trial Transcript (Testimony of Bernard Patrick O'Donnell) 1 Sept 1999: 2085-2086. Emphasis added.

There are several reasons that these methods of explaining actions are important. In the most basic sense, it demonstrates a commonality in the ways in which some accused are situating their past choices in their own minds, giving us a better understanding of how individuals perpetrating ethnic violence might have conceptualised their own personal power. This, however, should not be taken as evidence of the ways in which they actually *made* choices, but as evidence to how they *explain* choices already made. This is pivotal in looking to understand issues surrounding accountability.

As section 3 above has already discussed, accountability is too abstract to measure, and is not demonstrated plainly enough (even when statements of apology and guilt are made) to be verified or authenticated. Yet, its presence as a cornerstone of transitional justice implies that expectations regarding accountability assume this sort of verification, while those taking part in tribunals are wrestling with a more complicated reality. Refusing the opportunity to act more violently, while still displaying widespread violent behaviour, demonstrates that the basic concepts of human rights are not misunderstood by these individuals, but blatantly disregarded.

4.3 Miroslav Kvočka: The constraints of rank, and the symbolic nature of positive action

Miroslav Kvočka testified to the constraints of his rank when it came to doing his job at Omarska, and he explained at length during his testimony what he thought it meant to be a police officer and how the structure at Omarska made it impossible for him to live up to his self-imposed standards. When asked about how he might have stopped abuses in the camp, he responded:

Example 43: Miroslav Kvočka

1 Kvočka: '…I have to provide them with the information, with the things I know
2 in cases of, I don't know, murder or beatings. And here the situation was absurd 3 because I was supposed to inform that inspector on the beatings   that he himself
4 was involved with and that he himself committed.' - Kvočka et al Trial Transcript (Testimony of Miroslav Kvočka) 13 February 2001: 8108.

This is an interesting variation on what we have seen with Landžo, and his stating that he only followed orders. Kvočka's defence focuses on not only the flaws in the structure, but the flawed morality of those of higher rank. With discussions of rank as a constraint in the decision-making process, there are consistent and opposite arguments from high and low rank accused. Low rank accused, such as Kvočka demonstrates above, give bottom-up responses. Essentially, he couldn't report the abuse of prisoners because the person in the chain of command above him was the

person responsible for the abuse. So in Kvočka's understanding of his choices, the chain of command was the constraint, and the fault was above. With the higher ranking individuals, such as the examples given in section 6.1 on Tihomir Blaškić, we see the opposite. Blaškić gives explanations that are top-down. As will be discussed in greater detail in that section, he gives the same basic reasons for his unaccountability – the chain of command was the constraint – but he places the fault below, stating that he had little or no power over people.

During his testimony, Kvočka's defence often adopts strategic storytelling that uses powerful symbols to explain his choices. His closeness to his Muslim neighbours is not repeatedly mentioned in ways similar to Tadić, but featured as an ever-present moral compass for how Kvočka assessed his choices. The picture painted by the defence is one of a man who kept a begrudging presence at Omarska, and who helped inmates whenever he could. Kvočka's wife testified about inmates giving her husband copies of the Qu'ran for safekeeping, and she explains that they kept forty or fifty of them, waiting to return them to the inmates who had given them.[45] At one point, he explains an encounter with the wife of an inmate, and the choices he made as a result of it:

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[45] See p 7969, testimony of Jasminka Kvočka, 12 February 2001.

Example 44: Miroslav Kvočka

1 Kvočka: She gave me a bag full of things. She gave me a loaf of bread. I

2 remember that because the guards complained about that. They said that a pistol

3 or a knife could be hidden in that loaf of bread, and they told me that I should

4 break it in two.

5 Q. Did you break the items in two to the guards' satisfaction?

6 Kvočka: No, I did not. - Kvočka et al Trial Transcript (Testimony of Miroslav
Kvočka) 13 February 2001: 8050.

The story Kvočka tells here is ultimately about a symbolic act of trust, and the fact that this act went against the wishes of his peers or subordinates. His refusal to break the loaf of bread to check for weapons is a highly symbolic act, and it sits effectively alongside the other stories about Kvočka attempting to help inmates. The importance of this example in terms of understanding testimonies of lower-ranked accused goes beyond the fact that this makes for a more compelling defence strategy. It is yet another example of attempts to demonstrate positive choices within negative scenarios, but this time the decisions are not encapsulated within the possible space, as with Landžo's explanations that he could have been worse, but he wasn't. Kvočka's defence takes an almost tallying approach, bringing to light lists of relatively good things he did to try to outweigh the bad things presented by the prosecution.

4.4 Low ranking accused: Conclusions

Although the persuasiveness of the speech of these particular accused is difficult to measure, the interesting conclusion to be drawn is that explanations of actions by low ranking accused take several significant forms – the bottom-up explanation of rank as a constraint, attempts to demonstrate positive choice-making within negative scenarios, failed attempts at concealing categorical frames, and attempts at diminishing violent actions. The ways that Tadić expressed his sense of self relative to others, his town, and described his town alone was significant in his failure to connect others to his town, demonstrating a way of categorising 'other' through omission that has not commonly been seen in previous transcript research. Tadić shifts blame, however, through his description of 'other' Serbs, and brings forward the idea that he was victim of being thought to be aligned with them. The testimony of Esad Landžo has traits within it that share similarities with the testimony of higher ranking accused, shown below, and additionally displays features that social psychologists have identified in other testimonies (such as those during court-martials on Abu Ghraib prisoner mistreatments). But Landžo's testimony contrasts with Kvočka's – rather than speak of his bad behaviour in terms of what it could have been, Kvočka spoke of his good behaviour as what it was, to offer contrast to a bad environment. The comparison of these testimonies gives us a more complete picture of the social psychological side of accused testimony and how this interacts with explanations of violent behaviours, demonstrating the strength of the methods

applied and the potential of the findings. These examples are even more revealing, however, when examined alongside testimonies of higher ranking individuals.

5 High rank examples: Outward-facing testimony and political/historical cognitive frames

The testimonies of high ranking accused tell a very different story from those of lower rank analysed above. Because of the nature of their crimes, accused of higher rank were questioned regarding a different type of event – larger-scale military events, as we see with Tihomir Blaškić, larger political events, as the examples of Momčilo Krajišnik below demonstrate, and a combination of the two as we see in the testimony of Milorad Krnojelac. What is revealed through comparison are three examples of situating political or military issues in ways that are very outward-facing (the self is only articulated relative to larger, more abstract concepts, rather than relative to distinctive definable nouns, as seen with low ranking accused), and in some cases pointedly exclude agency.

5.1 Tihomir Blaškić: Military framing

Tihomir Blaškić works diligently during his testimony to remove his military persona from politics, repeatedly arguing that military decisions can in fact occur separate from the political choices they may be embedded in. Central to his argument are claims that his own power meant little to the soldiers he commanded. Below, he discusses what it means to be a soldier, with an interesting treatment of both history and reason:

Example 45: Tihomir Blaškić

1 Q: Now first, General, you have made comments before in your documents about

2 historic interests and historic responsibility. What is this essence of historic

3 interest or historic responsibility of the Croatian people? What does that mean to

4 you?

5 A. As a soldier, within the framework of preparations to raise the combat morale

6 of our soldiers, I would stress that in the sense that *you must be up to* your

7 historical responsibilities, thinking that the **history would re-examine the role of**

8 **each and every soldier and each and every commander** in relation to every

9 order they received and the method and quality of the performance of their tasks.

10 That is how I understood these historical responsibilities in the sense of raising

11 morale. - Blaškić Trial Transcript (Testimony of Tihomir Blaškić) 4 May 1999:

20869. Emphasis added.

Blaškić personifies history, putting faith in it as a force to judge action. More than this, his use of 'each and every soldier' demonstrates his emphasis on individual action over collective action, which is consistent with his arguments that he had little actual control over the decisions of his soldiers, implying that they were the

ones directing their own actions. [46] The fact that he twice refers to this concept of history as a tool for raising morale is an interesting one. This is an attempt to bring the actions of those he commanded into a much larger relevance, with history acting as its own courtroom, with the power to 're-examine', as Blaškić puts it. History, however, remains politically ambiguous in this context, and the subtext here for scholars of transitional justice is that Blaškić interacts (albeit likely unintentionally) subtly with issues of victor's justice[47]. The situational metaphor ('you must be up to', in italics), is an additional indicator that Blaškić places history in a high moral position, as an overseer of action.

His separation of military decisions from political objectives assumes a moral perspective, in an effort to exonerate himself from crimes such as ethnic cleansing. He states:

Example 46: Tihomir Blaškić

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1 Q: (…) So if the political directorate were, for example, to set a task of ethnic

2 cleansing, that depoliticised army would, nevertheless, implement that political

3 objective. Do you recognise that situation?

4 A: (…) I never was in a position to accept such a task of ethnic cleansing because

5 I would not have accepted it because **an obedient soldier must also be a**

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6 **reasonable soldier to be a good one.** - Blaškić Trial Transcript (Testimony of Tihomir Blaškić) 4 May 1999: 20876-20877. Emphasis added.

This differs greatly from the testimony of the lower ranking individuals analysed above, particularly Landžo, whose explanations of his actions demonstrate opposite explanations for similar outcomes. These two explanations of action, 'I just followed orders' and the construction of Blaškić's defence centring around, 'I could not expect my commanding to be effective' typify many of the accused defence strategies, though neither line of defence has proven consistently successful. What is unique in Blaškić's explanation above is his understanding that obedience in a soldier requires reason, which then makes for a 'good' soldier. Based on the comparison of the high rank and low rank individuals I have examined, it becomes clear that the tendency for high ranking accused to link and define broader moral concepts is much more frequent than it is for the lower ranked accused. However, this can also be interpreted as strategic defence on Blaškić's part, and that his emphasis on his identity as a professional soldier was a way of simultaneously implying that he was not a politician (Gordy 2012). This is reinforced by the fact that his statements on military decisions as separate from the sphere of politics can be found throughout his testimony.

5.2 Momčilo Krajišnik: Problematising Sarajevo

This contrasts slightly with the words of Momčilo Krajišnik, whose testimony gave detailed accounts of his relationship with the city of Sarajevo (much like we see with Tadić and Kozarac), but also with the politics of dealing with the separations

of ethnic groups there. In example 47 below, Krajišnik gives a lengthy explanation

of how he saw 'the complexities affecting Sarajevo', as the interrogator phrases it:

Example 47: Momčilo Krajišnik

1 Q. Was it contemplated at that time that that was a separate decision which would

2 follow quite soon, or was it that the complexities affecting Sarajevo would

3 probably require a very considerable time to sort out?

4 A. **Sarajevo**, from the very outbreak of the crisis, **was a separate problem**. And

5 to the end of the war it was always on the agenda, so to speak. I can say that in   6

most proposals there was the proposal to *transform* Sarajevo into two wholes, *not* 7

to divide it as some people have imputed, but two parts where there would be

8 municipalities with a Serb majority and a territory with a Muslim majority. Two-

9 thirds would belong to the Muslim majority municipalities and one-third to the

10 Serb majority municipalities. And that is why it was stated here that the

11 **question of Sarajevo** *would be resolved* in due course because that was the

12 most painful issue of all. Every agreement envisaged that later. (…)I'm talking

13 about all plans where it had been envisaged to have *a solution* **for Sarajevo** that

14 two-thirds of **this Sarajevo** without Pale should belong to the Muslim/Croat   15

entity, the Muslim/Croat side, so to speak, and one-third would belong to the   16

Serb side. And you have that in every agreement that was reached. Until that is 17

reached -- now, why was I saying all of this? The UN, the United Nations,

18 administration was supposed to be there until a solution is solved because *it was*

19 *impossible to resolve* **the issue of Sarajevo** *together with all of Bosnia-*

20 *Herzegovina.* - Krajišnik Trial Transcript (Testimony of Momčilo Krajišnik) 27
April 2006: 23191-23193. Emphasis added.

In bold, the problematising of Sarajevo becomes immediately clear as a focus. Sarajevo is in turn a problem, a question, and an issue, requiring proposals, agreements, and plans (seen highlighted in red) for transformation, resolution, and solution (seen in italics). Krajišnik's speech on the subject of Sarajevo is one that is clearly equating solutions with separations, but he tries to avoid the terminology by arguing that transformation into two wholes is not the same as dividing. Here he uses similar logic to that of the low ranking Esad Landžo, who used phrases like, 'it was a slap and not a hit' to diminish his actions, but Krajišnik's use of this logic fits with the attempts to speak to grander concepts more common to high ranked accused. Krajišnik attempts to elevate 'division' to 'transformation', a process linked to resolution that would have given us 'this Sarajevo' and 'that Sarajevo'.

But once Krajišnik tries to bring this problem into the context of Bosnia and Herzegovina, his speech shows similarities to that of Milorad Krnojelac, analysed below. He places the UN – specifically the UN's absence – as the deciding factor for the failure to 'resolve the issue of Sarajevo', and the collective of Bosnia and Herzegovina as the secondary, but more immediate reason for the solution's impossibility. His final sentence in the excerpt, 'it was impossible to resolve the issue of Sarajevo together with all of Bosnia-Herzegovina', may seem the most confused, but it is also the most telling. The subtext is that it was impossible to divide Sarajevo because the greater decision-making force of Bosnia and

Herzegovina was itself divided. While this may read as a microcosm of the situation in the former Yugoslavia in general, it is also evidence to the fact that Krajišnik's solution of dividing sat within a greater divided space that he could also problematise. Ultimately, however, the question of whose problem Sarajevo was is also answered by Krajišnik within this sentence. The United Nations, Krajišnik states, 'was supposed to be there', which again leaves any expressions of Kraijšnik's own agency in the situation firmly out of view. This is significant in that he is shifting responsibility for his actions away from himself and onto larger, less-definable entities. This is similar to Tadić shifting of guilt away from himself and onto 'other' Serbs, and we see here how the comparison between the two demonstrates similar tactics but different frames (one large, institutional frame devoid of agency used by Krajišnik, and one more localised frame, with the 'self' at the centre, used by Tadić).

5.3 Milorad Krnojelac: 'Using' Geneva Conventions

In contrast, the testimony of Milorad Krnojelac is more informal, and he attempts to place himself in the same mental space as those of lower rank when it comes to command responsibility, but with little consistency. Much of his defence focused on his lack of knowledge, both in terms of what was going in the KP Dom Camp that he commanded, the surrounding area of Foča, and in terms of the broader conduct of his subordinates.[48] His defence, like Krajišnik, introduced the idea of international influence contributing to Krnojelac's faulty logic when running his camp. He addresses the gap in his knowledge regarding the Geneva Conventions as

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48 For one of many examples, he states in his testimony on p 7888, 28 June 2001:
'Q. You also know that Muslim flats were being searched at this time, right?
A: Believe me, I learned that afterwards. I didn't know it at that time.'

something that just simply wasn't taught, and we can see by the way his defence phrases the question that this is the clear intention:

Example 48: Milorad Krnojelac

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1 Q: During that time, that is to say, these four and a half months in Bileca, and

2 then later for a few months every year, was a doctrine seriously studied by such

3 officers? Did you study the Geneva Conventions, et cetera? Tell me, what was

4 done at these courses?

5 Krnojelac: (…) We studied these military rules, the code of conduct. Then we

6 were trained as to how to handle weapons. As for **these Geneva Conventions**, 7 *believe me*, **I cannot remember that they were ever mentioned while I was in** 8 **the army in Bileca**. However, forgive me, please, <u>perhaps I should tell you why</u> 9 <u>it was not necessary</u>, even later, for someone to do that. All these military

10 exercises that I took part in had **the character of all national defence.** The

11 officers would only be told, "The possible attack by the blue ones could take 12 place in that area," and how should defence be organised. So it was **all national** 13 **defence**, how to defend **all of *one's own people***. Not to attack somebody else's 14 territory and go somewhere else. **That is how I understood it** from day one. 15 *Believe me*, I never thought that it would **be used** in any other way. In this case, 16 **how it was used** in **this unfortunate Bosnia-Herzegovina of ours**, and we see 17 what is going on nowadays throughout the Balkans, and what happened in

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18 Yugoslavia too, and we see what came out of all of this. So as for the **Geneva**

19 **Conventions**, I think that for a long, long period of time, even in the active

20 military where education and training go on for five or six years, they **were not**

21 **used** for a long time; that they were not specifically studied as a subject. -
Krnojelac Trial Transcript (Testimony of Milorad Krnojelac) 25 June 2001: 7578-
7579.

This excerpt is particularly complex to analyse, as Krnojelac is speaking in two distinct cognitive frames – the past, in the frame of international relations (IR), and the possible space, in a domestic territorial space (one of implied unity). Looking at pieces of the excerpt within the DST graph allows for greater comparison and understanding:

Figure 8: DST Model for Milorad Krnojelac

The words in the past space on the left fall within the frame of the Geneva Conventions, demonstrating the Krnojelac's discussion of their 'use' brings the 'unfortunate' Bosnia-Herzegovina nearer to his own identity, which he names as 'ours'. On the right are words relating to his explanation to the court as to why he thought the knowledge of the Geneva Conventions wasn't necessary to military training. This fills a territorial frame, but the references to territory are less specific than those on the left. Whereas on the left, we see an international frame being brought into a similar territorial frame, and he names Bosnia and Herzegovina specifically under the discussion of the Geneva Conventions. On the right he uses the word 'nation', and rather than use 'ours', as he does on the left, he says 'one's own'. Embedded within both examples (in italics in example 46) are the same

attempts to bring himself back into the conversation, with 'believe me'. While it may be an informal and common turn of phrase, a gap-filler at the very least, Krnojelac's use of it shouldn't be ignored. Throughout his testimony he implores the listener to 'believe me', which in discursive terms and in the legal space is an indicator that it is not simply truth that is sought, but verification through belief.

Krnojelac's speech, therefore, demonstrates two separate realities – one where national defence was prioritised for military teaching, and one where international rules impacted a nation in an unfortunate way. The causal link between these two realities is his explanation: 'I should tell you why it was not necessary', underlined in the excerpt, and illustrated in the model at the top. A key point in this comparison of frames is that Krnojelac is *more present* in one than the other. That is, his use of greater specifics and the word 'ours'

Krnojelac's explanation also implies the same detachment from responsibility that we see with the lower ranking individuals, but opposite to Blaškić – the chain of command was to blame, the fault was above - with the rules set by forces outside, out of reach, and meddling, in turn. However, his argument as to why this knowledge was unimportant indicates that he understood the Geneva Conventions not in terms of his own actions, but in the broader military sense. In bold blue are references to how he conceptualises the Geneva Conventions as something to be used, rather than upheld. This is an interesting distinction, and coupled with the assessment of national defence being something related to territory rather than ethnicity (highlighted in red bold, with the exception of the more vague 'one's own people' in red italics), demonstrates an inconsistency with his framing of its 'use' in 'this unfortunate Bosnia-Herzegovina of ours'.

Shortly after this response, he gives an answer that allows a more detailed look at his concepts of conceiving events:

Example 49: Milorad Krnojelac

1 Q. Did you ever expect a war to break out in the territory of Yugoslavia, that

2 Yugoslavia would be at war with anyone, let alone that there would be a war

3 within Yugoslavia itself?

4 Krnojelac: I **cannot understand until the present day**. As I said, *I have been*

5 *here for 1.108 days, and I still cannot understand that that happened*. And that a

6 person can be so deluded to think that something like that could ever happen**, I**

7 **see that only now**. Because I **could not in any conceivable way think of this** 8 **kind of thing happening**, like what actually happened in Bosnia-Herzegovina. **It** 9 **did happen**. *Believe me*, on the 18th of April, 1992, I said -- well, you're not

10 asking about it now so I don't want to talk about it, but I did say *even then that it*

11 *is unbelievable* that it actually happened, and I said who I actually blamed for

12 that. - Krnojelac Trial Transcript (Testimony of Milorad Krnojelac) 25 June 2001: 7579. Emphasis added.

This is not the only time that Krnojelac lists how many days he has been incarcerated,[49] and he mentions this alongside the fact that he 'still cannot understand that that happened', the implication being that his presence at the Hague for such a duration should have led to greater understanding of the situation. There

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[49] He does so again on p 7865 of his testimony from June 27th 2001 (1111 days).

is an interesting distinction here – Krnojelac does not indicate that he doesn't understand *what* happened, but that *that* (war) happened at all. This moves his knowledge, or in this case lack of understanding, out of the singular events that he might have had involvement in, and into the act of not being able to conceive a war in Yugoslavia in general. These are expressions of disbelief embedded within a frame of war itself, which again demonstrates the consistent pattern of conceptualisation illustrated below:

Table 3: Frames of accused

Accused	Frame
Tadić (low ranking)	Self/others
Landžo (low ranking)	Self/others
Kvočka (low ranking)	Self/others
Blaškić (high ranking)	History/military
Krajišnik (high ranking)	International relations/politics
Krnojelac (high ranking)	International relations/politics

5.4 High ranking accused: Conclusions

The analysis of the testimonies of high ranking accused demonstrates that attempts to shift responsibility for actions are equally as common here as they are among low ranking accused, but are carried out differently. All three high ranking accused distance themselves from the situations on which they are speaking, but do this through exclusion of references to the 'self' in terms of these events, rather than by

voicing the nature of their relationships, as the low ranking accused have done. Their speech also echoes the arguments made by low ranking accused – that the chain of command was to blame, the fault was either above (as in Krajišnik and Krnojelac's defence, using the UN and Geneva Conventions, respectively) or below (as in Blaškić's defence), with the behaviour of soldiers under his command being disconnected from his authority, and his insistence of his own disconnection from politics through his constant references to being merely a professional soldier. Through the analysis of testimonies of high-ranking accused, we can get a more complete picture of how defence strategies embed themselves in the speech of accused, but also ultimately how connected the accused are to the actions in question, which is the closest identifiable indicator of how accountability is functioning within the courtroom space.

6 Conclusion

With the three low ranking individuals examined in this chapter (Tadić, Landžo, and Kvočka), three distinct narratives emerged. Tadić tells the story of himself and the town of Kozarac, with references to his neighbours absent in connection to the town itself, and he attempts to separate himself from a group he determines to be the real perpetrators of violence in Kozarac. His outward-facing testimony (attempts to shift accountability from a personal sense to a contextual one) bears some similarity to testimonies of higher-ranked accused but remains rooted in the 'self'. Landžo repeatedly attempts to 're-frame' his actions, changing the words used to describe acts of violence to diminish their seriousness. His re-framing extends to the idea that he had done something good through doing something bad,

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a method of explanation common also to testimony of high ranked accused such as Jelisić (discussed in the section on Landžo) and is undertaken to opposite ends by Kvočka, who tries to demonstrate positive choice-making within negative scenarios. Kvočka also speaks to rank as a constraint to his decision-making processes, citing bottom-up (the fault lay with command) problems. All three individuals spoke from self/other cognitive frames, defining their choices and past environments firmly within those spaces.

The political and moral space of the conflict itself became much more prominent among accused of high rank, and Blaškić, Krajišnik, and Krnojelac all speak from the larger, more abstract frames of history and international politics, something that is easy to see when we place the DST graph of Krnojelac alongside a DST graph of Blaškić:

Figure 9: DST Model of Blažkić and Krnojelac
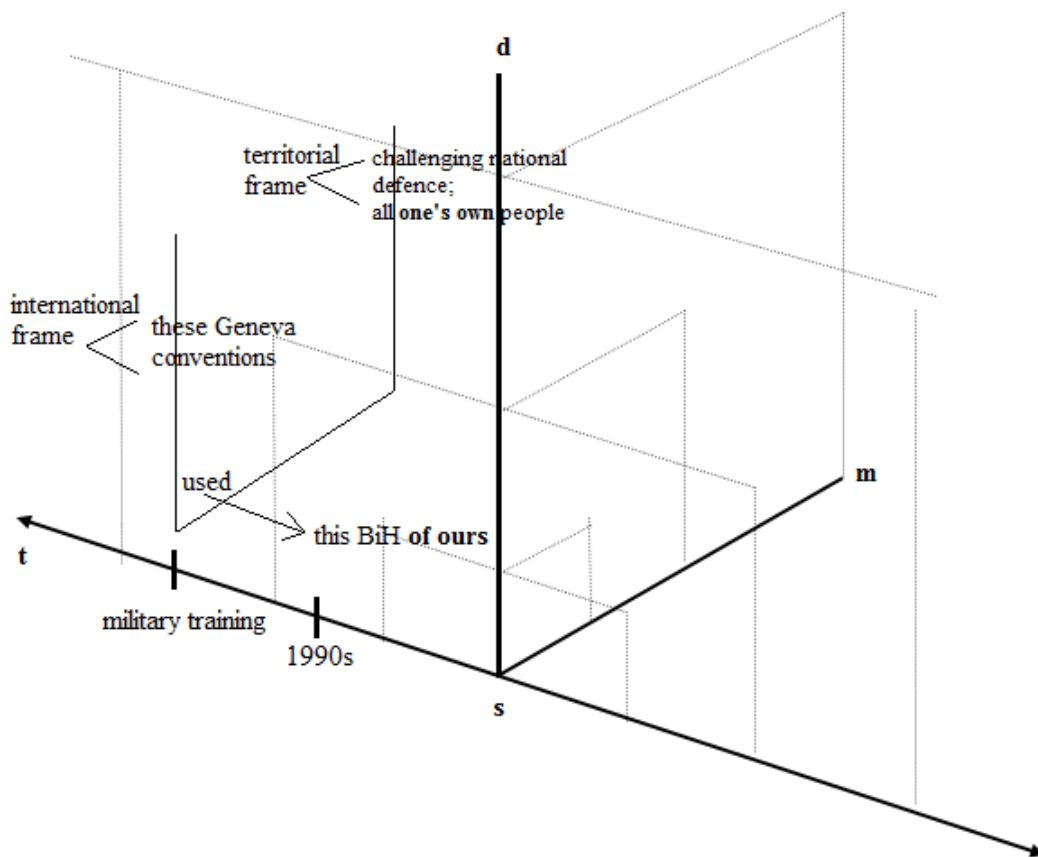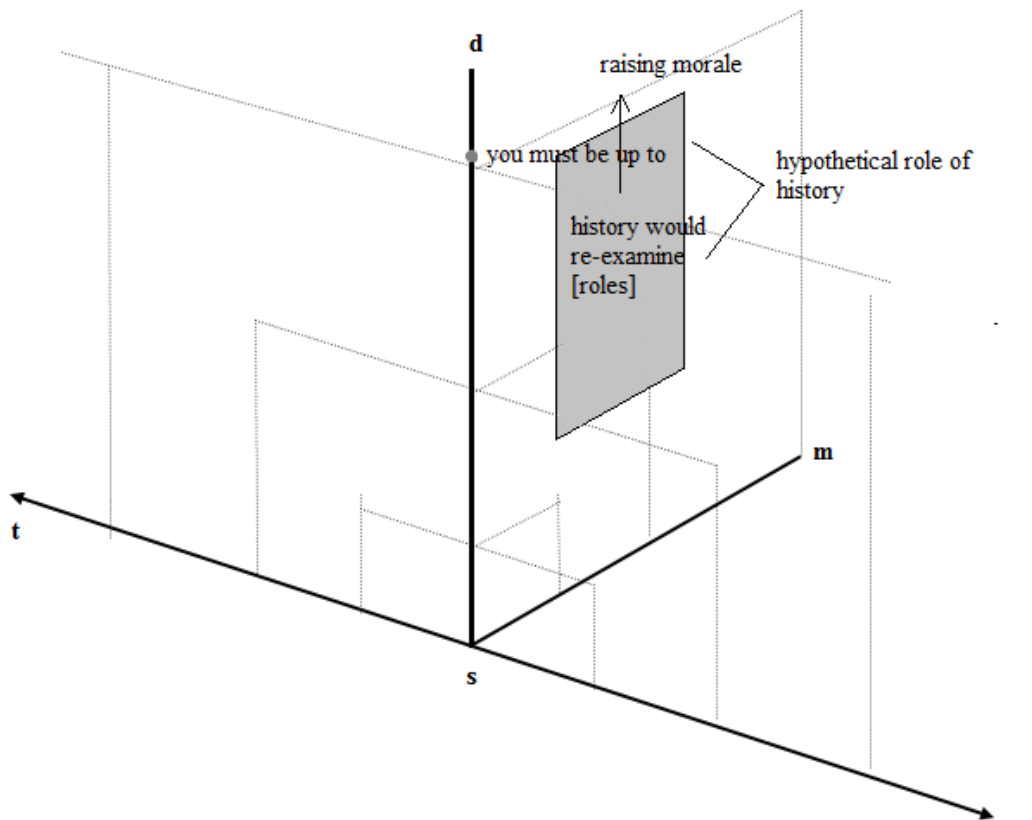
All three also use the arguments of rank as a constraint in the decision-making process, but far more subtly. Blaškić is the most direct in this, arguing that his command wasn't effective and that the actions of the soldiers under him therefore did not originate with his orders. Krajišnik and Krnojelac both bring international institutions – the UN and Geneva conventions, respectively – as higher ranking and faulty overseers.

In the case of those of low rank, this analysis demonstrates how categories of the self are functioning within explanations of the accused, and in a subtle way potentially demonstrating that low ranking accused are attempting to answer to their own crimes, while the higher-ranking accused speak to their perceptions of the crimes of others. In the larger relevance of the aims of the ICTY, this shows that accountability for crimes may not only differ with the role one played during conflict, but how one attempts to define, justify or explain this role relative to others. With deeper understandings of the constructs of the mental spaces of the accused, it follows that the greater problem of defining accountability with the accused in mind needs to be undertaken by scholars, while not overlooking the fact that courtroom interactions may be key to understanding this in greater detail.

This chapter has shown that a productive first step in doing this is examining existing intersections between the social psychological literature and the limited literature on courtroom accountability, and applying CL and DST methods to bring more emphasis on the sociological aspects of accused courtroom testimony. The current state of research into the actions of those acting violently during conflict

looks at actions rather than explanations, and if accountability as a concept is to be understood more fully, it is explanations that we must focus on.

Chapter Eight - Conclusion

1 Introduction

It is important to remember that at the centre of this project are discussions of violence. Ultimately, the court and its records exist as an international legal response to conflict, and it therefore creates a space where the accounts of experiences of individuals intersect with the objectives of legal process. The aim of this project was to change perceptions of the transcripts of individuals in court, seeing them as a body of data offering unique insights into the courtroom environment. This project has analysed transcripts from the ICTY, asking, what do applications of cognitive linguistics reveal about social processes within the courtroom? Applying Discourse Space Theory (DST) to transcripts has not only demonstrated that unstudied social processes are apparent, but that they are also significant. They provide evidence suggesting struggles for power over memory and narrative during victim testimony, and give greater insight into how accused categorise themselves, others (victims and the court), history, and politics. The situating of these results within social psychology and discourse analysis has given greater insight into the victim-witness experience, and shown how power as expressed through language can vary within the courtroom space, exploring the beginnings of why this might be so.

1.1 Situating the project: Its place in existing literature

This research addresses multiple gaps in the literature of several disciplines in particular. In terms of work done analysing the ICTY, it exists as the first analysis of transcripts from a cognitive linguistic perspective, and sits among a small

selection of literature examining courtroom interaction sociologically, much of which focuses on aspects of the courtroom that while marginally related to the work done here, have different priorities. As mentioned in chapter 3, most analyses of ICTY tribunals from a sociological perspective do not place emphasis on the uniqueness of the court space linguistically, and therefore bring together interviews, media reports, and more general courtroom analyses, leaving conclusions made to be of a different type. Examples of this can be found in the work done by John Hagan and Ron Levi, Eric Stover, and Dembour and Haslam (Dembour 2004; Hagan 2003, 2005; Stover 2005).

There are several strong platforms of research into courtroom interactions that this project leans heavily upon, adding a practical dimension to the larger theories put forward. In particular the work done by Conley and O'Barr, Gumpertz, Cotterill, and Matoesian (Conley 1990, 2005; Cotterill 2002; Gumpertz 1982; Matoesian 1993) has informed this research, and the aim of this project's contribution to analyses of courtroom interactions is to see how a specific set of transcripts can build upon ideas that have been functioning well theoretically in slightly different disciplines. Much of this work, however, also encompasses the discursive aspects of court transcripts and environments. The writings of Conley and O'Barr and the work of Cotterill have been influential to how the legal environment has been understood for this thesis. Literature on discourse analysis is extensive, and as noted in chapter 3, definitions and methods are therefore drawn primarily from work that looks at the interaction between language and courts, such as selected work done by Ruth Wodak (Wodak 1981). This is alongside work done by scholars such as Jenny Edkins on trauma and memory (Edkins 2003), and this thesis seeks to

bring together ideas about court discourse with the subjects of this discourse (such as trauma, memory, emotion, and political and military power).

The primary work influencing the approach of this thesis was the work on political discourse by Paul Chilton, in particular his book *Analysing Political Discourse: Theory and Practice* (Chilton 2004) and work presented by him at Oxford in 2011 (Chilton 2011) along with his paper *Discourse Space Theory: Geometry, Brain and Shifting Viewpoints* (Chilton 2005). Again, the aim of my research was to add to the potential applications for Chilton's theories, adapting the degree of analysis to make way for a second-level interdisciplinary set of interpretations to expand the initial results. As such, my research sits between Chilton and his contemporaries' cognitive linguistic approaches and those of broader discourse theorists and social psychologists.

The social psychological literature this project draws upon is the body of work on ethnic conflict, and work done by Browning, Chirot, and Valentino helped shape the beginnings of this thesis into its present form (Browning 1992; Chirot 2006; Valentino 2004). Literature on group theory in particular allowed for a productive intersection between cognitive linguistics and studies of ethnic conflict, as it brought together elements from both (Pynchon 1999; Ross 1986; Tajfel 1982; Tedeschi 2001; Taylor 1994).

2   Main findings

The findings of this project demonstrate that tribunal transcripts from the ICTY contain within them evidence of social processes occurring within the courtroom. This evidence has not only been previously overlooked, but is important in deepening understandings of how power relationships impact victim testimonies,

and how the accused explain their actions in the face of international accountability. Ultimately, this project calls for changes in the way interactions are perceived at the ICTY. Therefore, the results of this research are relevant to cognitive linguists and scholars of the sociology of law, as well as those interested in transitional justice more generally. This work expands methodological applications to create a practical approach to a specific data set, demonstrating the versatility of cognitive linguistic methods when situated within larger insights of social psychology and discourse analysis.

2.1 Chapter Four - In-court references to memory: Issues of control over narrative

Utterances at the ICTY on what to remember and what to forget are often made in passing, and are therefore easy to overlook. The concept of memory, however, has a large place in studies of transitional justice, and brings together work from philosophy as well as psychology and linguistics to form the growing discipline of memory studies. This chapter aimed to stand apart, while still building on previous work, asking, 'what does in-court speech on memory tell us about the relationship between witness and interrogator at the ICTY?'

The results of this chapter indicate that speech on what to remember and what to forget are frequently found alongside struggles between the witness and interrogator over control of these memories. The witness statements analysed were from Witness B (*Kvočka et al*), Emir Beganović (*Tadić*), Edin Mrkalj (*Kvočka et al*), and Witness 87 (*Kunarac et al*). The testimony of Witness B contains within it requests from the interrogator that the witness forget, alongside references to a collective sense of 'normalcy' – 'I would like you to forget this, and that we can all

go back to normal.' This particular statement demonstrates that there is an assumed power for the interrogator to be able to tell the witness how her memories should be treated, with the reference to the collective implying that her memories are serving as a barrier between the larger group and their ideal destination – normalcy. This is echoed again with Emir Beganović, who testified in a different case and was spoken to about forgetting by the presiding judge. Significant also is the fact that the label of 'witness' was invoked for both, following the statements on forgetting, demonstrating that hierarchies were points of reference in court, and the interrogators in these instances felt the need to impose their definition on the act of witnessing on the witnesses themselves.

The issue of 'I cannot remember' is also recurring, signifying a struggle for control over memories in a slightly different way than discussed above. Edin Mrkalj is instructed by the presiding judge on the role of forgetting in court, which leads Mrkalj to use the option of forgetting as a way to conclude his testimony. Through Mrkalj's statements, it is apparent that his perspective of the proprietary role memories play in the courtroom is one that is shifting – that narrative, once given, becomes the property of the court and should not have to be given again. This is reinforced from the point of the view of the court with the example of testimony from Witness 87, where the use of phrases like 'let me refresh your memory' alongside questions of discrepancies in past interviews imply that the interrogator sees the witness' knowledge as suspect, and the role of forgetting as a more genuine state of mind than producing an answer after the fact. While this is not uncommon in cross-examination, this is important as an additional demonstration of the fact that the role of the court in obtaining, possessing and discarding memories is

placing the narrative control of witnesses under strain, and questioning the way the witness-interrogator relationship is defined at the ICTY.

2.2 Chapter Five - Expressions of emotion in witness testimony: Reinforcing the victim struggle

When looking at testimony concerning violence, emotion is something that is often described but is rarely studied. This chapter sought to ask what expressions of emotion on the stand might mean for the way experiences are recounted, and how emotion might impact the way these experiences are received by the court. Testimonies examined were from Edin Mrkalj (*Kvočka et al*), Amir Delić (*Krajišnik*), Sifeta Susić (*Kvočka et al*), Witness D (*Stakić et al*), and Witness P (*Stakić et al*). Results indicate the expressions of emotion, much like the references to memory discussed previously, are markers for struggles of power over narrative. What makes the results of this chapter slightly different from those of the chapter on memory is that these expressions are found within the language of the witness, while expressions on memory were more frequently found within the language of the interrogator. These two chapters together form the section analysing witness testimony, and demonstrate consistent results of linguistic indicators as evidence of struggles for power within the courtroom.

Two types of in-court emotional expression were identified in this chapter – emotion relating to events occurring within the courtroom, and emotions expressed with reference to a past event. The most common among expressions of the first type found were expressions of frustration and confusion, and the testimony of Edin Mrkalj again contains within it issues of relinquishing control as a result of his frustration with the interrogator. He also defines the court as 'witness' to his

traumas experienced in testifying, displaying an interesting role reversal and evidence of potential re-victimisation through testimony.

The testimony of Amir Delić contains expressions of fear related to the recounting of a past memory, leading to a struggle between himself and the interrogator as to the nature of his choices while being detained. This exchange, together with the testimony of Sifeta Susić, shows that fear could be a factor that bound people together while simultaneously existing for these witnesses as something to be overcome. The testimony of Witness D also contains expressions of fear, which he associates with groups (in particular, the Crisis Staff), but links this fear with the unknown ('I can only imagine…'). The testimony of Witness D as expressed within the DST graph shows a movement of expressions of fear into multiple spaces of his memory, personalising then collectivising it within a hypothetical unknown. While the testimony of Sifeta Susić and Witness D are not outward examples of the same types of struggles over narrative control as demonstrated with Edin Mrkalj and Amir Delić, they are nonetheless important. They offer key insights into the way fear as an emotion functions within the courtroom, and reinforce the conclusions of the analysis that expressions of emotion may frequently be found alongside struggles for power over narrative, but are not present in every occurrence.

Additional testimony from Witness P is analysed in the final sections of this chapter, and although the excerpts included seem to imply conclusions contradictory to earlier examples in the chapter, they offer further evidence to the fact that witnesses are determining for themselves what they think the court wants to hear (and are not always in agreement with this), and struggles can occur where agents of the court (in the case of witness P, this is the judge) try to impress upon the witness a more positive view of their agendas.

2.3 Chapter Six - Comparing Milošević and Šešelj: Power over narrative, power over court process

The aim of comparing the opening statement of Slobodan Milošević with the closing statement of Vojislav Šešelj was to examine the specifics of court performance as it related to former political leaders who chose to defend themselves in court. Results of this comparison indicate that the speech of these individuals centres around two types of power: power over historical narrative, and power over court process. Each, however, attempts to exert this type of power in a different way, ultimately demonstrating that the evolution of the ICTY in the eight years between these two cases has had an impact. Additionally, these results give us two very distinct ways in which we might identify the personal power of the accused as tools of their ongoing political projects. Concepts of audience, the performative nature of the in-court speech of these individuals, and the placement of 'self' for the self-representer all interlink to reinforce these conclusions.

DST analysis of statements reveals the shifts each accused attempted when discussing the past, demonstrating that each attempted power over historical narratives. But while Milošević did this with direct reference to historical narrative (relating cognitive framing in which he related the events in the former Yugoslavia to the second World War), Šešelj's narrative was the story of his arrival at the ICTY, and the metaphoric battles hefought there. The differences in the ways each accused sees his platform are plain: Milošević leaves himself firmly out of the frame where possible, opting for his political 'self' to be embedded within the plight of the former Yugoslavia. Šešelj on the other hand, attempts to bring others within the courtroom (primarily the presiding judge), as close to his narrative as possible, using hypothetical scenarios to do so.

The differences between the ways the two accused attempt to exert power over court processes demonstrate plainly the shifting of the power behind the ICTY in the mind of the self-representing accused. Milošević was unrelenting in his attempts to undermine the reality of the Tribunal, using phrases like 'the so-called prosecution' and 'this illegal Tribunal' throughout his speech. Šešelj, however, speaks of the court in ways that bring about verbal violence, most notably about 'battles to be won.' Both men bring about a discourse of circular 'victimhood' - they situate themselves as victims of the ICTY, but their behaviour in interrupting the processes of the court reaches outside the walls of the ICTY, and the ICTY's difficulties in dealing with this leads it to become victims of the behaviours of Milošević and Šešelj.

2.4 Chapter Seven - Comparing high and low ranking accused

This chapter sought to understand how concepts of accountability might be embedded in (or absent from) the speech of accused. Very little analysis has been done on how accused perceive their actions post-conflict, and my aim was to use their language in court as a primary source for examining this. The testimonies of six accused were compared, with three accused of low rank examined alongside three accused of high rank. The low ranking accused analysed were Duško Tadić, Esad Landžo, and Miroslav Kvočka. High ranking accused compared were Tihomir Blaškić, Momčilo Krajišnik, and Milorad Krnojelac. Results from this chapter demonstrate that the explanations of actions of accused occur in frames relative to the amount of influence each individual had during the events in question. Specifically, accused of low rank explain their actions in terms of themselves relative to others, while accused of high rank explain their actions within the frames of larger political ideas, very rarely referring to the self. The significance of these

comparisons demonstrate that the language of the accused is essential data in further understanding their cognitive frames, shedding light on a very overlooked aspect of the tribunals.

The low-ranking accused - Tadić, Landžo, and Kvočka – all have categorisation embedded within their explanations of action, but each individual expresses these categories in different ways. Tadić's speech uses three categories: himself relative to his Muslim neighbours, himself relative to his town, and his town as a separate entity. This demonstrates that conceiving spaces alongside ethnic lines is something that occurred within the minds of the accused, and gives new insight into understandings of separation explained alongside action. Landžo's testimony focuses heavily on the diminishing of violent actions, and his categorisations are of types of violence, and he places value judgements on the lesser of these. His speech demonstrates a high detachment from the concept of accountability. Kvočka explains his actions through the lens of rank as a constraint, and speaks to the symbolic nature of positive action, framing his decisions as counteracting negative scenarios where possible. His categorisations, like Landžo's, centre around action, but take a reversed approach (positive actions within negative scenarios, rather than negative actions that were not as bad as other negative actions).

The high-ranking accused – Blaškić, Krajišnik, and Krnojelac – all frame speech within larger ideas, politically and militarily. Blaškić, like Kvočka, uses rank as a constraint to his choices, but focuses his military role as one that was ultimately separated from politics. His explanations therefore focus on what defines a soldier, and his personal choices are explained only through the lens of his profession. Krajišnik and Krnojelac both speak to international political events as constraints

for their actions, in effect creating a larger, less-definable force more powerful than them to shift accountability toward.

2.5 Linking key ideas

There are several key ideas that link these chapters together, allowing the research to sit as a unified project that tackles aspects of these ideas in more detailed ways. The first of these concerns power – within testimonies of victims and accused alike, there is evidence that issues of power underlie the patterns being analysed. In examining references to memories in chapter 4, these issues were found within the struggle between victim and interrogator over who could determine what should be remembered. In chapter 5, expressions of emotion were found to be markers of struggles over narrative power. Chapter 6 revealed that statements made by Slobodan Milošević and Vojislav Šešelj followed attempts to exert power over historical narrative and power over court process, to varying degrees of success. Finally, a more concrete definition of power was explored in chapter 7, in comparing how previous amounts of power held changed the nature of explanations of violent behaviours in court, with a final focus on accountability.

Although one might argue that the methods applied to these transcripts made the project predisposed to conclude that issues of power were at the forefront of interactions in the courtroom – and indeed, the theories based on discourse, linguistics, and social psychology do prioritise their focus in terms of power relationships – this does not undermine findings in any way. Rather, it means that the methods employed to examine this data were the best fit for the approach, and least likely to force conclusions in directions that were less natural.

3 Limitations of the thesis

As was stated earlier, the volume of transcripts that exist for possible analysis is the primary limitation of this thesis. Research had to be focused and logical, and taking on too large a volume of data would have compromised this greatly. As with all projects that offer analysis of selected portions of larger volumes of data, there are certainly findings that exist within this dataset that are yet to be fully explored. This, however, is more of an indication that there are gaps remaining for further study, and can be viewed as a call for more work to be done on this subject (as will be discussed below).

There are, however, some theoretical limitations that need to be addressed, namely, how the project might have changed if methodology employed was of only one discipline. While it may seem to more traditional researchers that the combination of approaches used for this thesis might detract from findings, I argue that much of the analysis presented here would not have been possible using only a single approach. The DST analysis, in the first instance, is an excellent method designed to analyse political speech. I chose to stretch the boundaries of this method, as the potential for its use outside of singular speech events was high in terms of understanding not only the politics of in-court communications but the sociology of the speech of individuals of multiple roles in a specific (often political) environment. To properly place the results of this, however, and ensure engagement with the broader issues present in discussions on transitional justice, insights from social psychology and discourse analysis were not only necessary, but provided an opportunity for innovation in the way this type of research is undertaken.

3.1 Implications for research practice

One aspect that the findings from this project demonstrate that was not touched upon during the previous chapters is the fact that undertaking transcript analysis of this type, while complex, is entirely feasible when approached responsibly. That being said, there were volumes of transcripts read for this project which were ultimately determined not to contain interactions significant to analysis of relationships between individuals and the court, and other excerpts highlighted initially as potentially significant that did not, in the end, prove relevant to the overall aims of the project.

This is to be expected when working with large volumes of court transcripts, and to claim that every part of every trial contained exchanges of the types highlighted by this thesis would not be realistic. This, however, is part of what makes the research necessary, as the patterns themselves are not readily apparent upon general reading, and require specific approaches to properly locate and understand them. The practical implications stemming from this are therefore not unexpected – that these transcripts ultimately require innovative approaches and creativity of thought if new information within them is not to be overlooked.

4 Avenues of further research

The impending closure of the ICTY should not mark in any way a trend away from analysing what the tribunals have produced sociologically, and what this could mean for communities. Many of the cases that are yielding significant results, despite having finished several years ago, are still important in terms of what they can show us about the human processes of transitional justice, and will remain so as long as we remain committed to this type of attention. There is a large volume of

data related to the ICTY that has yet to be explored (at the time of writing, transcripts number over one million pages), and this research has demonstrated that doing so is not merely a fruitful direction of inquiry, but one that is important if we are to know more about courtroom interaction in the international legal arena.

One chapter of this thesis was eliminated during the early stages because it was too large to undertake, and this was looking at in-court expressions of female witnesses in particular, to apply DST and discourse analysis to interactions to determine how the construction of the ICTY environment might be dealing with questions of gender. Though many studies exist exploring the treatment of rape as a weapon of war, this would be a project that looked at engendered language in the courtroom, and its impact on things already explored by this thesis, such as defining 'witness', power struggles over narrative, and issues of re-victimisation as embedded in language.

This thesis refers frequently to court hierarchies, and there is strong potential for explorations into how these hierarchies are defined in language more directly. While this project focused more on how the subtle and symbolic aspects of hierarchies were made stronger through language, a study on the convergence between the legal and linguistic issues of hierarchies in court could build on conclusions made here.

In addition to widening the transcripts analysed, there is potential for a comparative aspect to this type of approach. Transcripts from other international criminal tribunals, most notably the International Criminal Tribunal for Rwanda (ICTR), could benefit from similar analysis as a stand-alone project, but would ultimately give much needed insight when compared with research done for this project. Many

questions stem from this, the very beginnings of which are questions on whether the patterns highlighted in this thesis are present among other tribunal transcripts, how they might differ, why similarities or differences might exist, and what these might mean. Both tribunals are *ad hoc* tribunals, created to address a pressing need for action taken against perpetrators of ethnic violence. While the conflicts themselves were very different, and these differences are reflected within the tribunals, it is worth asking how these court environments compare under new analysis. Results from a comparative study could indicate whether the types of patterns identified and analysed here are indicative of international legal environments in general, rather than the ICTY specifically.

5 Conclusion

This research has, in many ways, pioneered a new approach to understanding court transcripts in general, and international criminal tribunal transcripts in particular. The approaches to analysing the transcripts already existed, and bringing together these methods was a natural and logical choice for what I hoped to achieve – namely, a greater understanding of how language functioned in the ICTY courtroom as evidence of social process. The most innovative aspect of this project is the combination of the way transcripts are perceived, the way they are analysed, and the conclusions themselves. While there is a basic platform of research that places importance on courtroom communications (most prominently in the discipline of forensic linguistics, discussed briefly in chapter 3), no research yet exists examining ICTY transcripts using the approaches here, and as yet very little has been done looking at transcript data sociolinguistically.

The main ideas this research brings to existing understandings of the ICTY environment lie in the emphasis on data that was previously considered to be less important. The ICTY has met with several big challenges in its lifetime, many of which have allowed serious questions into the nature of how transitional justice may or may not be working. Issues of self-representation, timely trials, jurisdiction, and controversial sentencing have plagued the Tribunal since its inception and have thus taken precedence over academic inquiries that may have been seen by many as less urgent. This is not to belittle the important and necessary research into the processes of international criminal justice, nor is it to claim that there must necessarily be competition into what avenues of focus should take precedence. It is, however, highlighting the fact that unexplored elements of the courtroom environment are part of the ways in which these trials function, and as such this is a point of focus that is quite relevant. Ultimately, the gap that exists is broader than this research has been able to tackle, making the first contributions to it all the more important.

Bibliography

Agha, Asif. 2007. *Language and Social Relations*. Cambridge: Cambridge

　　University Press.

Akhavan, Payam. 1998. Justice in the Hague, Peace in the Former Yugoslavia? A

　　Commentary on the United Nations War Crimes Tribunal. *Human Rights*

　　Quarterly 20 (4):737-816.

Akhavan, Payam. 2008. Reconciling Crimes Against Humanity with the Laws of

　　War: Human Rights, Armed Conflict, and the Limits of Progressive

　　Jurisprudence. *Journal of International Criminal Justice* 6:21-37.

Alfaro, Maria Jesus Martinez. 1996. Intertextuality: Origins and Development of

　　the Concept. *Atlantis* 18 (1/2):268-285.

Anderson, Benedict. 1983. Imagined Communities: Reflections on the Origins and

　　Spread of Nationalism. London: Verso.

Anoya, Evelyn. 2013. In the Shadow of Nonrecognition: Milošević and the Self-

　　Represented Accused's Right to Justice. In *The Milošević Trial: An Autopsy*,

　　edited by T. W. Waters. Oxford: Oxford University Press.

Arendt, Hannah. 1994. *Eichmann in Jereusalem: A Report on the Banality of Evil*.

　　Harmondsworth: Penguin.

Armatta, Judith. 2010. *Twilight of Impunity: The War Crimes Trial of Slobodan*

　　Milošević. Durham and London: Duke University Press.

Armatta, Judith. 2013. The Court and Public Opinion: Negotiating Tensions

　　between Trial Process and Public Interest in Milošević. In *The Milošević*

　　Trial: An Autopsy, edited by T. W. Waters. Oxford: Oxford University

　　Press.

Atkinson, J.M. and P. Drew. 1979. *Order in Court: The Organisation of Verbal Interaction in Judicial Settings*. London: Macmillan.

Averill, J.R., ed. 1980. *A Constructivist View of Emotion*. Edited by R. Plutchnik, H. Kellerman, *Emotion: Vol 1. Theory, Research, and Experience*. New York: Academic Press.

Bachmann, Klaus. 2013. Framing the Trial of the Century: Influences of, and on, International Media. In *The Milošević Trial*, edited by T. W. Waters. Oxford: Oxford University Press.

Ball, Karyn. 2003. Ex/propriating Survivor Experience, or Auschwitz "after" Lyotard. In *Witness and Memory: The Discourse of Trauma*, edited by A. Douglass, Thomas A. Vogler. New York: Routledge.

Barahona de Brito, Alexandra. 2010. Transitional Justice and Memory: Exploring Perspectives. *South European Society and Politics* 15 (3):359-376.

Barasin, Milorad. 2011. Long-term Accountability. In *Assessing the Legacy of the ICTY*, edited by R. H. Steinberg. Leiden/Boston: Martinus Nijhoff Publishing.

Barry, A. 1991. Narrative Style and Witness Testimony. *Journal of Narrative Life and History* 1:281-293.

Bass, Gary J. 2000. *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*. Princeton, NJ: Princeton University Press.

Bass, Gary J. 2003. Milošević in the Hague. *Foreign Affairs* May/June:82-96.

Baum, Steven K. 2008. *The Psychology of Genocide: Perpetrators, Bystanders and Rescuers*. Cambridge: Cambridge University Press.

Bauman, Zygmunt. 1993. *Modernity and the Holocaust*. Cambridge: Polity.

Baumeister, Roy F., W. Keith Campbell. 1999. The Intrinsic Appeal of Evil: Sadism, Sensational Thrills, and Threatened Egotism. *Personality and Social Psychology Review* 3 (3):210-221.

Beim, Aaron. 2007. The Cognitive Aspects of Collective Memory. *Symbolic Interaction* 30 (1):7-26.

Bell, Duncan, ed. 2006. *Memory, Trauma and World Politics: Reflections on the Relationship between Past and Present*. Basingstoke: Palgrave Macmillan.

Bennett, Christopher. 1995. *Yugoslavia's Bloody Collapse*. London: Hurst and Company.

Bennett, W. Lance and Martha S. Feldman. 1981. *Reconstructing Reality in the Courtroom: Justice and Judgement in American Culture*. New Brunswick: Rutgers University Press.

Berliner, David C. 2005. The Abuses of Memory: Reflections on the Memory Boom in Anthropology. *Anthopologial Quarterly* 78 (1):197-211.

Bevernage, Berber. 2010. Writing the Past Out of the Present: History and the Politics of Time in Transitional Justice. *History Workshop Journal* (69).

Bieber, Florian. 2013. The Show and the Trial: The Political Death of Milošević. In *The Milošević Trial: An Autopsy*, edited by T. W. Waters. Oxford: Oxford University Press.

Bieber, Florian, Armina Galijaš, Rory Archer, ed. 2014. *Debating the End of Yugoslavia*. Farnham: Ashgate.

Blaškić Trial Transcript (Testimony of Tihomir Blaškić) 4 May 1999: 20869.

Blaškić Trial Transcript (Testimony of Tihomir Blaškić) 4 May 1999: 20876-20877.

Boas, Gideon. 2007. *The Milošević Trial: Lessons for the Conduct of Complex International Criminal Proceedings*. Cambridge: Cambridge University Press.

Boas, Gideon. 2011. Self-Representation before the ICTY: A Case for Reform. *Journal of International Criminal Justice* 9 (1):53-83.

Bollingmo, Guri, Ellen Wessel, Dag Erik Eilertsen, Svein Magnussen. 2008. The Credibility of the Emotional Witness: A Study of Ratings by Police Investigators. *Psychology, Crime and Law* 1:61-71.

Brants, Crisje and Katrien Klep. 2013. Transitional Justice: History-Telling, Collective Memory, and the Victim-Witness. *International Journal of Conflict and Violence* 7 (1):36-49.

Browning, Christopher 1992. *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* New York: HarperCollins.

Buckley-Zistel, Susanne. 2006. Remembering to Forget: Chosen Amnesia as a Strategy for Local Coexistence in Post-Genocide Rwanda. *Africa* 76 (2):131-150.

Bülow-møller, Anne Marie. 1991. Trial Evidence: Overt and Covert Communication in Court. *International Journal of Applied Linguistics* 1 (1):38-59.

Byrne, Rosemary. 2013. Drawing the Missing Map: What Socio-legal Research Can Offer to International Criminal Trial Practice. *Leiden Journal of International Law* 26 (4):991-1007.

Cairns, Rober B., Carlos Santoyo V., Keith A. Holly. 1994. Aggressive Escalation: Toward a Developmental Analysis. In *The Dynamics of Aggression:*

Biological and Social Perspectives in Dyads and Groups, edited by M.
Potegal, John F. Knutson. Hillsdale, NJ: Lawrence Erlbaum Associates Inc.

Cammack, Mark. 1992. Evidence Rules and the Ritual Functions of Trials: Saying
Something of Something. *Loyola of Los Angeles Law Review* 25:783-796.

Campbell, Kirsten. 2012. The Laws of Memory: The ICTY, the Archive, and
Transitional Justice. *Social and Legal Studies* 22 (2):247-269.

Campbell, Kirsten, Sari Wastell. 2008. Consultation Report: Legacies of the
International Criminal Tribunal for the former Yugoslavia. London:
Goldsmiths College, University of London.

Caruth, Cathy. 1996. *Unclaimed Experience: Trauma, Narrative and History*.
Baltimore: Johns Hopkins University Press.

Caruth, Cathy, ed. 1995. *Trauma: Explorations in Memory*. Baltimore: Johns
Hopkins University Press.

Chilton, Paul. 2004. *Analysing Political Discourse: Theory and Practice*. London:
Routledge.

Chilton, Paul. 2005. Discourse Space Theory: Geometry, Brain and Shifting
Viewpoints. *Annual Review of Cognitive Linguistics* 3:78-116.

Chilton, Paul. 2011. Language, Concepts and Eastern-Europe: Some Analytical
Tools from Cognitive Linguistics. Paper read at Cognitive Linguistic
Methods and Translation Strategies in Cultural and Media Analysis, June
30, 2011, at Wolfson College, Oxford University.

Chirot, Daniel and Clark McCauley. 2006. *Why Not Kill Them All? The Logic and
Prevention of Mass Murder*. Princeton, NJ: Princeton University Press.

Christianson, S.A. and T. Engelberg. 1996. Remembering and Forgetting Traumatic Experiences: A Matter of Survival. In *Recovered Memories and False Memories*, edited by M. A. Conway. Oxford: Oxford University Press.

Clark, Wesley K. 2001. *Waging Modern War: Bosnia, Kosova, and the Future of Combat*. New York: PublicAffairs/Perseus.

Claverie, Elisabeth. 2009. Ménager la Victime? Ménager le Coupable? Jugement, Révision et Histoire devant le Tribunal Pénal pour L'ex-Yugoslavie. *Droit et Cultures* 58:141-159.

Cohen, Lenard J. 2002. *Serpent in the Bosom: The Rise and Fall of Slobodan Milošević*. Boulder, CO: Westview Press.

Conley, John M., William O'Barr. 1990. *Rules vs Relationships: The Ethnography of Legal Discourse*. Chicago/London: University of Chicago Press.

Conley, John M., William O'Barr. 2005. *Just Words: Law, Language and Power*. Chicago/London: University of Chicago Press.

Converse, Philip E. 1962. Information Flow and the Stability of Partisan Attitudes. *Public Opinion Quarterly* 26 (4):578-599.

Côté, Luc. 2005. Reflections on the Exercise of Prosecutorial Discretion in International Criminal Law. *Journal of International Criminal Justice* 3:162-186.

Cotterill, Janet. 2003. *Language and Power in the Court: A Linguistic Analysis of the O.J. Simpson Trial*. Basingstoke: Palgrave Macmillan.

Cotterill, Janet. 2004. Collocation, Connotation, and Courtroom Semantics: Lawyers' Control of Witness Testimony through Lexical Negotiation. *Applied Linguistics* 25 (4):513-537.

Cotterill, Janet, ed. 2002. *Language in the Legal Process*. Basingstoke: Palgrave
Macmillan.

Coulter, Jeff. 1979. *The Social Construction of Mind: Studies in Ethnomethodology
and Linguistic Philosophy*. Basingstoke: Palgrave MacMillan.

Crane, Susan A. 1997. Writing the Individual Back into Collective Memory. *The
American Historical Review* 102 (5):1372-1385.

Croft, William, D. Alan Cruise. 2004. *Cognitive Linguistics*. Cambridge:
Cambridge University Press.

Crosby, Faye. 1979. Relative Deprivation Revisited: A Response to Miller, Bolce
and Halligan. *The American Political Science Review* 73 (1):103-112.

Dahl, J and I Enemo, GCB Drevland, E Wessel, DE Eilertsen, S Magnussen. 2007.
Displayed Emotions and Witness Credibility: A Comparison of Judgements
by Individuals and Mock Juries. *Applied Cognitive Psychology* 21 (9):1145-
1155.

Danet, Brenda. 1980. Language in the Legal Process. *Law & Society Review* 14
(3):445-564.

Danner, Alison and Jenny S. Martinez. 2005. Guilty Associations: Joint Criminal
Enterprise, Command Responsibility, and the Development of International
Criminal Law. *California Law Review* 93 (1):75-169.

De Graff, Bob. 2006. The Difference between Legal Proof and Historical Evidence:
The Trial of Slobodan Milošević and the Case of Srebrenica. *European
Review* 14 (4):499-512.

Dembour, Marie-Benedicte, Emily Haslam. 2004. Silencing Hearings? Victim-
Witnesses at War Crimes Trials. *European Journal of International Law* 15
(1):151-177.

Denich, Bette 1994. Dismembering Yugoslavia: Nationalist Ideologies and the Symbolic Revival of Genocide. *American Ethnologist* 21 (2):367-390.

Derrida, Jacques. 2004. The Global Theater of Forgiveness. In *The Future of Values: 21st Century Talks* edited by J. Bindé. New York/Paris: Berghan Books/UNESCO Publishing.

Di Lellio, Anna, Stephanie Schwandner-Sievers. 2006. The Legendary Commander: The Construction of an Albanian Masternarrative in Post-war Kosovo. *Nations and Nationalism* 12 (3):513-529.

Dickson, Tiphaine, Aleksandar Jokic. 2006. Hear No Evil, See No Evil, Speak No Evil: The Unsightly Milošević Case. *International Journal for the Semiotics of Law* 19:355-387.

Djordjevic, Ksenija. 2009. La Violence Verbale Après la Violence de Masse: Le Procès de Slobodan Milošević devant le Tribunal Pénal International. *Mots: Les Langages du Politique* 91:115-122.

Dojčinović, Predrag. 2014. The Shifting of *Grand Narratives* in War Crimes Trials and International Law: History and Politics in the Courtroom. In *Narratives of Justice In and Out of the Courtroom*, edited by D. Zarkov, Marleis Glasius. London: Springer.

Douglass, Ana and Thomas A. Vogler, ed. 2003. *Witness and Memory: The Discourse of Trauma*. New York: Routledge.

Drakulić, Slavenka. 2004. *They Would Never Hurt a Fly: War Criminals on Trial in The Hague*. London: Abacus.

DuPoux, Emmanuel, Pierre Jacob. 2007. Universal Moral Grammar: A Critical Appraisal. *Trends in Cognitive Sciences* 11 (9):373-378.

Durkheim, Emile. 2001. *The Elementary Forms of Religious Life*. Translated by C. Cosman. Oxford: Oxford University Press.

Edkins, Jenny. 2003. *Trauma and the Memory of Politics*. Cambridge: Cambridge University Press.

Edwards, Derek. 1999. Emotion Discourse. *Culture and Psychology* 5 (3):271-291.

Ehrlich, Susan. 2001. *Representing Rape: Language and Sexual Consent*. London: Routledge.

Elander, Maria. 2013. The Victim's Address: Expressivism and the Victim at the Extraordinary Chambers in the Courts of Cambodia. *International Journal of Transnational Justice* 7:95-115.

Eltringham, Nigel. 2012. Spectators to the Spectacle of Law: The Formation of a 'Validating Public' at the International Criminal Tribunal for Rwanda. *Ethnos: Journal of Anthropology* 77 (3):425-445.

Erikson, Bonnie, E. Alan Lind, Bruce C. Johnson, William M. O'Barr. 1978. Speech Style and Impression Formation in a Court Setting: The Effects of "Powerful" and "Powerless" Speech. *Journal of Experimental Social Psychology* 14:266-279.

Evans, Vyvyan, Melanie Green. 2006. *Cognitive Linguistics: An Introduction*. Edinburgh: Edinburgh University Press.

Ewick, Patricia, Susan S. Silbey. 1995. Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative. *Law and Society Review* 29 (2):197-226.

Fairclough, Norman. 1989, 2001. *Language and Power*. New York: Routledge.

Fauconnier, Giles. 1994. *Mental Spaces: Aspects of Meaning Construction in Natural Language*. Cambridge: Cambridge University Press.

Fauconnier, Giles. 1997. *Mappings in Thought and Language*. Cambridge: Cambridge University Press.

Festinger, Leon. 1957. *A Theory of Cognitive Dissonance*. Stanford, CA: Stanford University Press.

Fillmore, Charles. 1985. Linguistics as a Tool for Discourse Analysis. In *Handbook of Discourse Analysis, Volume One: Disciplines of Discourse*, edited by T. A. Van Dijk. London: Academic Press.

Foucault, Michel. 1972. *The Archaeology of Knowledge*. Translated by A. M. S. Smith. London: Tavistock Publications.

Foucault, Michel. 1977. *Discipline and Punish: The Birth of the Prison*. London: Allen Lane.

Fujii, Lee Ann. 2010. Shades of Truth and Lies: Interpreting Testimonies of War and Violence. *Journal of Peace Research* 47 (2):231-241.

Galatolo, R. and P. Drew. 2006. Narrative Expansions as Defensive Practices in Courtroom Testimony. *Text and Talk* 26:661-698.

Garafolo, James. 1979. Victimization and the Fear of Crime. *Journal of Research in Crime and Delinquency* 16:80-97.

Gardenfors, Peter. 2000. *Conceptual Spaces*. Cambridge, MA: MIT Press.

Gedi, Noa and Yigal Elam. 1996. Collective Memory - What Is It? *History and Memory* 8 (1):30-50.

Gibbons, John. 2003. *Forensic Linguistics: An Introduction to Language in the Justice System*. Oxford: Blackwell.

Gibson, Catherine H. 2008. Testing the Legitimacy of the Joint Criminal Enterprise Doctrine in the ICTY: A Comparison of Individual Liability for Group

Conduct in International and Domestic Law. *Duke Journal of Comparative and International Law* 18 (2):521-548.

Gnisci, Augusto, Clotilde Pontecorvo. 2004. The Organization of Questions and Answers in the Thematic Phases of Hostile Examination: Turn-by-Turn Manipulation of Meaning. *Journal of Pragmatics* 36:965–995.

Goffman, Erving. 1974. *Frame Analysis*. New York: Harper and Row.

Gordy, Eric. 2003. Accounting for a Violent Past by Other than Legal Means. *Southeast European and Black Sea Studies* 3 (1):1-24.

Gordy, Eric. 2012. The Blaškić Trial: Politics, the Control of Information and Command Responsibility. *Southeastern Europe* 36 (1):60-86.

Gordy, Eric. 2013. *Guilt, Responsibility, and Denial: The Past at Stake in Post-Milošević Serbia*. Philadelphia: University of Pennsylvania Press.

Gourevitch, Philip, E. Morris. 2008. *Standard Operating Procedure*. New York: Penguin.

Gow, James, Ivan Zveržhanovski. 2004. The Milošević Trial: Purpose and Performance. *Nationalities Papers: The Journal of Nationalism and Ethnicity* 32 (4):897-919.

Gow, James, Rachel Kerr, Zoran Pajić, ed. 2014. *Prosecuting War Crimes: Lessons and Legacies of the International Criminal Tribunal for the former Yugoslavia*. Oxon: Routledge.

Graubart, Jonathan. 2010. Rendering Global Criminal Law an Instrument of Power: Pragmatic Legalism and Global Tribunals. *Journal of Human Rights* 9:409-26.

Gülich, Elisabeth, Uta M. Quasthoff. 1985. Narrative Analysis. In *Handbook of Discourse Analysis, Volume Two: Dimensions of Discourse*, edited by T. A. Van Dijk. London: Academic Press.

Gumperz, John J. 1982. Fact and Inference in Courtroom Testimony. In*Language and Social Identity*. Cambridge: Cambridge University Press.

Gurney, Joan Neff, Kathleen J. Tierney. 1982. Relative Deprivation and Social Movements: A Critical Look at Twenty Years of Theory and Research. *The Sociological Quarterly* 23 (1):33-47.

Guzina, Dejan 2003. Socialist Serbia's Narratives: From Yugoslavia to a Greater Serbia. *International Journal of Politics, Culture, and Society* 17 (1):91-111.

Hagan, John. 2003. *Justice in the Balkans: Prosecuting War Crimes in The Hague Tribunal*. Chicago: University of Chicago Press.

Hagan, John, Ron Levi. 2005. Crimes of War and the Force of Law. *Social Forces* 83 (4):1499-1534.

Halbwachs, Maurice. 1992. The Social Framework of Memory. In *On Collective Memory*, edited by L. A. Coser. Chicago: University of Chicago Press.

Halbwachs, Maurice. (1950) 1997. *La Mémoire Collective*. Paris: Albin Michel.

Hamilton, V. Lee. 1978. Who is Responsible? Towards a Social Psychology of Responsibility Attribution. *Social Psychology* 41 (4):316-328.

Haslam, Emily. 2004. Victim Participation at the International Criminal Court: A Triumph of Hope Over Experience? In *The Permanent International Criminal Court: Legal and Policy Issues*, edited by D. MacGoldrick, Peter Rowe, Eric Donnelly. Oxford: Hart.

Hayden, Robert M. 1996. Imagined Communities and Real Victims: Self-Determination and Ethnic Cleansing in Yugoslavia. *American Ethnologist* 23 (4):783-801.

Hibbs, D. 1973. *Mass Political Violence: Cross-National Causal Analysis*. New York: Wiley.

Hirsh, David 2003. *Law Against Genocide: Cosmopolitan Trials*. London: Glasshouse Press.

Hodžić, Refik. 2010. Living the Legacy of Mass Atrocities: Victims' Perspectives on War Crimes Trials. *Journal of International Criminal Justice* 8 (1):113-136.

Hogg, Michael A. 2006. Social Identity Theory. In *Contemporary Social Psychological Theories*, edited by P. J. Burke. Stanford: Stanford University Press.

Holmberg, Ulf. 2004. Crime Victims' Experiences of Police Interviews and their Inclination to Provide or Omit Information. *International Journal of Police Science & Management* 6 (3):155-170.

Horn, Rebecca and Simon Charters, Saleem Vahidy. 2009. The Victim-Witness Experience in the Special Court for Sierra Leone. *International Review of Victimology* 15:277-298.

Howard, Judith. 2000. Social Psychology of Identities. *Annual Review of Sociology* 26:367-393.

Hunt, Alan, Gary Wickham. 1994. *Foucault and Law: Towards a Sociology of Law as Governance*. Boulder: Pluto Press.

Ingrao, Charles. 2009. Confronting the Yugoslav Controversies: The Scholars' Initiative. *American Historical Review* 114 (4):947-962.

International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287.

Ivković, Sanja Kutnjak, John Hagan. 2006. The Politics of Punishment and the Siege of Sarajevo: Toward a Conflict Theory of Perceived International (In)Justice. *Law and Society Review* 40 (2):369-410.

Izard, C.E. 1992. Basic Emotions, Relations Among Emotions, and Emotion-Cognition Relations. *Psychological Review* 99:561-565.

Jakoljevic, Branislav. 2008. From Mastermind to Body Artist: Political Performances of Slobodan Milošević. *The Dramatic Review* 52 (1):51-74.

James, W. 1884. What is an Emotion? *Mind* 9:188-205.

Jelisić Trial Transcript (Testimony of Bernard Patrick O'Donnell) 1 Sept 1999: 2085-2086. Emphasis added.

Jorgensen, Nina H.B. 2004. The Right of the Accused to Self-Representation before International Criminal Tribunals. *The American Journal of International Law* 98 (4):711-726.

Jorgensen, Nina H.B. 2006. The Problem of Self-Representation at International Criminal Trials. *Journal of International Criminal Justice* 4 (1):64-77.

Kant, Immanuel. 1787. The Critique of Pure Reason. London: MacMillan.

Kaplan, Robert. 1993. *Balkan Ghosts: A Journey through History* New York: St. Martin's Press.

Karemaker, Ruben, B. Don Taylor, Thomas Wayde Pittman. 2008. Witness Proofing in International Criminal Tribunals: A Critical Analysis of Widening Procedural Divergence. *Leiden Journal of International Law* 21 (3):683-698.

Kaufman, G., Guri Drevland, Ellen Wessel, Geir Overskeid and Svein Magnussen. 2003. The Importance of Being Earnest: Displayed Emotion and Witness Credibility. *Applied Cognitive Psychology* 17 (1):21-34.

Kerr, Rachel 2004. *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics and Diplomacy*. Oxford: Oxford University Press.

Krajišnik Trial Transcript (Testimony of Momčilo Krajišnik) 27 April 2006: 23191-23193.

Krajišnik Trial Transcripts (Testimony of Amir Delić) 27 June 2006: 26397.

Kristeva, Julia. 1986. Word, Dialogue and Novel. In *The Kristeva Reader*, edited by T. Moi. Oxford: Blackwell.

Krog, Antjie. 1998. *Country of my Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa*. New York: Three Rivers Press.

Krondorfer, Bjorn. 2008. Is Forgetting Reprehensible? Holocaust Remembrance and the Task of Oblivion. *Journal of Religious Ethics* 36 (2):233-267.

Krnojelac Trial Transcript (Testimony of Milorad Krnojelac) 25 June 2001: 7578-7579.

Krnojelac Trial Transcript (Testimony of Milorad Krnojelac) 25 June 2001: 7579.

Kunarac et al Trial Transcript (Testimony of Witness 87) 4 April 2000: 1683.

Kunarac et al Trial Transcript (Testimony of Witness 87) 23 October, 2000: 6120-6123.

Kvale, Steinar. 1974. The Temporality of Memory. *Journal of Phenomenological Psychology* 5 (1).

Kvočka et al Trial Transcript (Testimony of Witness B) 19 May 2000: 2403.

Kvočka et al Trial Transcript (Testimony of Witness B) 19 May 2000: 2407-2408.

Kvočka et al Trial Transcript (Testimony of Edin Mrklaj) 9 June 2000: 2902.

Kvočka et al Trial Transcript (Testimony of Edin Mrkalj) June 9 2000: 2912-1914.

Kvočka et al Trial Transcript (Testimony of Edin Mrkalj) June 9 2000: 2918-2919.

Kvočka et al Trial Transcript (Testimony of Edin Mrkalj) 23 August 2011: 2933.

Kvočka et al Trial Transcript (Testimony of Edin Mrkalj) June 9 2000: 2959-2960.

Kvočka et al Trial Transcript (Testimony of Sifeta Susić) 9 June 2000: 2988-2989.

Kvočka et al Trial Transcript (Testimony of Sifeta Susić) 9 June 2000: 2994.

Kvočka et al Trial Transcript (Testimony of Sifeta Susić) 9 June 2000: 3000.

Kvočka et al Trial Transcript (Testimony of Jasminka Kvočka) 12 February 2001: 7969-7970.

Kvočka et al Trial Transcript (Testimony of Miroslav Kvočka) 13 February 2001: 8050.

Kvočka et al Trial Transcript (Testimony of Miroslav Kvočka) 13 February 2001: 8108.

Kvočka et al Trial Transcript (Testimony of Witness DC4) 8 March 2001: 8867

Labov, William. 1972. *Sociolinguistic Patterns*. Philadelphia: University of Pennsylvania Press.

Lake, David and Donald Rothchild, ed. 1998. *The International Spread of Ethnic Conflict: Fear, Diffusion and Escalation*. Princeton: Princeton University Press.

Lakoff, George. 1987. *Women, Fire and Dangerous Things: What Categories Reveal about the Mind*. Chicago: University of Chicago Press.

Lakoff, George, Mark Johnson. 1989. *Metaphors We Live By*. Chicago: University of Chicago Press.

Laney, C. and E.F. Loftus. 2008. Emotional Content of True and False Memories. *Memory* 16 (5):500-516.

Laney, C. and E.F. Loftus. 2010. Truth in Emotional Memories. *Nebraska Symposium on Motivation* 56:1457-183.

Laughland, John. 2007. *Travesty: The Trial of Slobodan Milošević and the Corruption of International Justice*. London: Pluto.

LeBor, Adan. 2002. *Milošević: A Biography*. London: Bloomsbury.

Leebaw, Bronwyn Anne. 2008. The Irreconcilable Goals of Transitional Justice. *Human Rights Quarterly* 30 (1):95-118.

Lefebvre, Henri. 1974. *The Production of Space*. Oxford: Blackwell.

Levine, Robert A., Donald T. Campbell. 1972. *Ethnocentrism: Theories of Conflict, Ethnic Attitudes and Group Behavior*. New York: John Wiley and Sons, Inc

Loftus, Elizabeth. 1981. Eyewitness Testimony: Psychological Research and Legal Thought. *Crime and Justice* 3:105-151.

Maček, Ivana, ed. 2014. *Engaging Violence: Trauma, Memory and Representation*. London: Routledge.

Mann, Michael. 2005. *The Dark Side of Democracy: Explaining Ethnic Cleansing*. Cambridge: Cambridge University Press.

Matoesian, G. 1993. *Reproducing Rape: Dominion Through Talk in the Courtroom*. Chicago: University of Chicago Press.

Matoesian, G. 2005. Review of Language and Power in Court by Janet Cotterill. *Journal of Sociolinguistics* 9:619-22.

McGoldrick, Dominic, Peter Rowe, Eric Donnelly, ed. 2004. *The Permanent International Criminal Court: Legal and Policy Issues*. Oxford: Hart Publishing.

Meernik, James. 2003. Victor's Justice or the Law? Judging and Punishing at the International Criminal Tribunal for the Former Yugoslavia. *The Journal of Conflict Resolution* 47 (2):140-162.

Meernik, James, Kimi King. 2003. The Sentencing Determinants of the International Criminal Tribunal for the former Yugoslavia: An Empirical and Doctrinal Analysis. *Leiden Journal of International Law* 16 (4):717-750.

Mendeloff, David. 2009. Trauma and Vengeance: Assessing the Psychological and Emotional Effects of Post-Conflict Justice. *Human Rights Quarterly* 31 (3):592-623.

Mertz, Elizabeth. 1994. Legal Language: Pragmatics, Poetics, and Social Power. *Annual Review of Anthropology* 23:435-455.

Mestrovic, Stjepan, Rachel Romero. 2012. Poisoned Social Climate, Collective Responsibility, and the Abuse at Abu Ghraib - Or, the Establishment of "Rule that is Lack of Rule". *International Journal of Law and Psychiatry* 35:62-69.

Mihai, Mihaela. 2011. Socializing Negative Emotions: Transitional Criminal Trials in the Service of Democracy. *Oxford Journal of Legal Studies* 31 (1):111-131.

Mikhail, John. 2007. Universal Moral Grammar: Theory, Evidence and the Future. *Trends in Cognitive Sciences* 11 (4):143-152.

Milanović, Marko. 2009. The Arrest and Impending Trial of Radovan Karadžić. *International and Comparative Law Quarterly* 58 (1):212-219.

Milgram, Stanley. 1963. Behavioral Study of Obedience. *Journal of Abnormal and Social Psychology* 67:371-378.

Milošević Trial Transcript (Opening statement of Slobodan Milošević) 31 August 2004: 32169-32170.

Milošević Trial Transcript (Opening statement of Slobodan Milošević) 31 August 2004: 32159.

Milošević Trial Transcript (Opening statement of Slobodan Milošević) 31 August 2004: 32171.

Milošević Trial Transcript (Testimony of Vojislav Šešelj) 24 August 2004: 43096.

Milošević Trial Transcript (Testimony of Vojislav Šešelj) 24 August 2005: 43179-43180.

Milošević Trial Transcript (Testimony of Vojislav Šešelj) 24 August 2005: 43100-43101.

Minow, Martha. 1998. *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Boston MA: Beacon Press.

Mišković-Luković, Mirjana and Mirjana Dedaić 2012. The Discourse Marker *Odnosno* at the ICTY: A Case of Disputed Translation in War Crime Trials. *Journal of Pragmatics* 44:1355-1377.

Misztal, Barbara. 2003. *Theories of Social Remembering*. Maidenhead: Open University Press.

Moffett, L. 2012. The Role of Victims in the International Criminal Tribunals of the Second World War. *International Criminal Law Review* 12 (2):245-270.

Monroe, Kristen Renwick. 2009. The Ethical Perspective: An Identity Theory of the Psychological Influences on Moral Choice. *Political Psychology* 30 (3):419-444.

Mueller, John. 2000. The Banality of "Ethnic War". *International Security* 25 (1):42-70.

Mucić et al Trial Transcript (Testimony of Esad Landžo) 29 July 1998: 15257-15258.

Mucić et al Trial Transcript (Testimony of Esad Landžo) 29 July 1998: 15258-15259.

Mucić et al Trial Transcript (Testimony of Esad Landžo) 29 July 1998: 15260.

Myers, B, S.J. Lynn, and J. Arbuthnot. 2002. Victim Impact Testimony and Juror Judgements: The Effects of Harm Information and Witness Demeanor. *Journal of Applied Social Psychology* 32 (11):2393-2412.

Newcomb, Theodore M, Ralph H. Turner and Philip E. Converse. 1952. Social Psychology: The Study of Human Interaction. London: Tavistock Publications.

Ng, Sik Hung. 2001. Influencing through the Power of Language. In *Social Influence: Direct and Indirect Processes*, edited by J. P. Forgas, Kipling D. Williams. Philadelphia: Taylor and Francis.

O'Barr, William M. 2001. Language, Law and Power. In *The New Handbook of Language and Social Psychology*, edited by W. P. Robinson, Howard Giles. Chichester: John Wiley and Sons.

O'Connell, Mary Ellen. 1999. New International Legal Process. *The American Journal of International Law* 93 (2):334-351.

Oberschall, Anthony 2000. The Manipulation of Ethnicity: From Ethnic Cooperation to Violence and War in Yugoslavia. *Ethnic and Racial Studies* 23 (6):982-1000.

Olusanya, Olaoluwa. 2005. *Sentencing War Crimes and Crimes Against Humanity under the International Criminal Tribunal for the former Yugoslavia*. Amsterdam: Europa Law Publishing.

Orbell, John M. 1970. An Information Flow Theory of Community Influence. *The Journal of Politics* 32 (2):322-338.

Osiel, Mark. 1997. *Mass Atrocity, Collective Memory and the Law*. New Brunswick, NJ: Transaction Publishers.

Oxburgh, Gavin E., Trond Myklebust and Tim Grant 2010. The Question of Question Types in Police Interviews: A Review of the Literature from a Psychological and Linguistic Perspective. *The International Journal of Speech, Language and the Law* 17 (1):45-66.

Pena, Mariana and Gayelle Carayon. 2013. Is the ICC Making the Most of Victim Participation? *International Journal of Transnational Justice* 7:518-535.

Penman, Robyn. 1987. Discourse in Courts: Cooperation, Coersion, and Coherence. *Discourse Processes* 10:201-218.

Peskin, Victor 2006. Beyond Victor's Justice? The Challenge of Prosecuting the Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda. *Journal of Human Rights* 4 (2):213-231.

Pettigrew, Thomas F, Allport, Gordon W, Barnett, Eric O. 1958. Binocular Resolution and Perception of Race in South Africa. *British Journal of Psychology* 49 (4):265-278.

Philips, Susan U. 1998. *Ideology and the Language of Judges: How Judges Practice Law, Politics and Courtroom Control*. New York: Oxford University Press.

Post, Jerrold M., Laura K. Panis. 2005. Tyranny on Trial: Personality and Courtroom Conduct of Defendant Slobodan Milošević and Saddam Hussein. *Cornell International Law Journal* 38:823-836.

Pynchon, Marisa Reddy and Randy Borum. 1999. Assessing Threats of Targeted Group Violence: Contributions from Social Psychology. *Behavioral Sciences and the Law* 17:339-355.

Raab, Dominic. 2005. Evaluating the ICTY and its Completion Strategy - Efforts to Achieve Accountability for War Crimes and their Tribunals. *Journal of International Criminal Justice* 3 (1):82-105.

Ramet, S.P. 2004. Martyr in His Own Mind: The Trial and Tribulations of Slobodan Milošević. *Totalitarian Movements and Political Religions* 5 (1):112-138.

Ramet, S.P. 2012. The ICTY: Controversies, Successes, Failures, Lessons. *Southeastern Europe* 36 (1):1-9.

Reicher, Stephen. 2004. The Context of Social Identity: Domination, Resistance and Change. *Political Psychology* 25 (6):921-945.

Renan, Ernst. (1882) 1990. What is a Nation? In *Nation and Narration*, edited by H. K. Bhabha. London: Routhledge.

Resende, Erica and Dovil Budryte, ed. 2014. *Memory and Trauma in International Relations: Theories, Cases and Debates*. London: Routledge.

Ricoeur, Paul. 1984, 1985, 1988. *Time and Narrative*. Vol. 1-3. Chicago: University of Chicago Press.

Ricoeur, Paul. 2004. *Memory, History, Forgetting*. Chicago: University of Chicago Press.

Ringer, Fritz. 1997. *Max Weber's Methodology: The Unification of the Cultural and Social Sciences*. Boston: Harvard University Press.

Robinson, Patrick L. 2000. Ensuring Fair and Expeditious Trials at the International Criminal Tribunal for the former Yugoslavia. *European Journal of International Law* 11 (3):569-589.

Roht-Arriaza, Naomi and Javier Mariezcurrena, ed. 2006. *Transnational Justice in the Twenty-First Century: Beyond Truth versus Justice*. Cambridge Cambridge University Press.

Rosch, Eleanor. 1973. Natural Categories. *Cognitive Psychology* 4 (3):328-350.

Rosch, Eleanor. 1975. Cognitive Reference Points. *Cognitive Psychology* 7 (4):532-547.

Ross, Marc Howard. 1986. A Cross-Cultural Theory of Political Conflict and Violence. *Political Psychology* 7 (3):427-469.

Rousseau, David, A. Maurits Van der Veen. 2005. The Emergence of a Shared Identity: An Agent-Based Computer Simulation of Idea Diffusion. *Journal of Conflict Resolution* 49 (5):686-712.

Rubin, Alfred P. 2006. Milošević on Trial. *International Journal for the Semiotics of Law* 19:347-354.

Russel, J.A. 1991. Culture and the Categorization of Emotions. *Psychological Bulletin* 110:426-50.

Savelsberg, Joachim J. and Ryan D. King. 2007. Law and Collective Memory. *Annual Review of Law and Social Science* 3:189–211.

Schabas, William A. 2001. *An Introduction to the International Criminal Court*. Cambridge: Cambridge University Press.

Scharf, Michael P. 1997. *Balkan Justice: The Story Behind the First International War Crimes Trial Since Nuremburg*. Durham, NC: Carolina Academic Press.

Scharf, Michael P. 2006. Self-Representation versus Assignment of Defense Counsel before International Criminal Tribunals. *Journal of International Criminal Justice* 4 (1):31-46.

Scherer, K. R. 1982. Emotion as a Process, Function, Origin and Regulation. *Social Science Information* 21:555-570.

Scherer, K. R. 2005. What are Emotions? And How Can They be Measured? *Social Science Information* 44 (4):695-729.

Schomburg, Wolfgang. 2011. Some Reflections on the Right to Self-Representation Before International Tribunals. *ERA Forum* 12:189-195.

Schwendiman, David. 2009. Primacy and the Accountability Gap: A View from
    Bosnia and Herzegovina. *Proceedings of the Annual Meeting (American
    Society of International Law)* 103:207-210.

Sedgwick, James. 2011. A People's Court: Emotion, Participant Experiences, and
    the Shaping of Postwar Justice at the International Military Tribunal for the
    Far East,1946–1948. *Diplomacy and Statecraft* 22 (3):480-499.

Sell, Louis. 2002. *Slobodan Milošević and the Destruction of Yugoslavia*. Durham
    and London: Duke University Press.

Šešelj Trial Transcript (Closing statement of Vojislav Šešelj) 14 March 2012:
17330.

Šešelj Trial Transcript (Closing statement of Vojislav Šešelj) 14 March 2012:
17361.

Sherif, Muzafer. 1966. *Group Conflict and Co-operation: Their Social Psychology*.
    London: Routledge.

Sherif, Muzafer and Carolyn Sherif. 1961. Psychological Harmony and Conflict in
    Minority Group Ties. *The American Catholic Sociological Review* 22
    (3):207-222.

Sidanius, Jim and Felicia Pratto, Colette van Laar, Shana Levin. 2004. Social
    Dominance Theory: Its Agenda and Method. *Political Psychology* 25
    (6):845-880.

Silber, Laura, Alan Little. 1996. *The Death of Yugoslavia*. London: Penguin.

Simpson, Gerry. 2004. Politics, Sovereignty, Remembrance. In *The Permanent
    International Criminal Court: Legal and Policy Issues*, edited by D.
    McGoldrick, Peter Rowe, Eric Donnelly. Oxford: Hart Publishing.

Sjöcrona, Jan M. 1995. The International Criminal Tribunal for the former
    Yugoslavia: Some Intoductory Remarks from a Defence Point of View.
    Leiden Journal of International Law 8 (2):463-474.

Skogan, Wesley. 1987. The Impact of Victimisation on Fear. *Crime and
    Delinquincy* 33:135-154.

Slater, Mel, Aitor Rovira, Richard Southern, David Swapp, Jian J. Zhang, Claire
    Campbell, Mark Levine. 2013. Bystander Responses to a Violent Incident in
    an Immersive Virtual Environment. *PLOS ONE* 8 (1):1-13.

Sloan, James. 1996. The International Criminal Tribunal for the former Yugoslavia
    and Fair Trial Rights: A Closer Look. *Leiden Journal of International Law*
    9 (2):479-501.

Sluiter, Goran. 2007. Compromising the Authority of International Criminal
    Justice: How Vojislav Šešelj Runs his Trial. *Journal of International
    Criminal Justice* 5:529-536.

Snow, Nancy E. 2009. How Ethical Theory Can Improve Practice: Lessons from
    Abu Ghraib. *Ethical Theory and Moral Practice* 12 (5):555-568.

Stakić et al Trial Transcript (Testimony of Witness D) 2 May 2002: 2486.

Stakić et al Trial Transcript (Testimony of Witness D) 2 May 2002: 2487.

Stakić et al Trial Transcript (Testimony of Witness D) 2 May 2002: 2529.

Stakić et al Trial Transcript (Testimony of Witness P) 22 May 2002: 3363.

Stakić et al Trial Transcript (Testimony of Witness P) 22 May 2002: 3365.

Stanton, Gregory. 1996. The 8 Stages of Genocide. Washington, DC, USA.

Staub, Ervin. 1985. The Psychology of Perpetrators and Bystanders. *Political Psychology* 6 (1):61-85.

Staub, Ervin 1989. *The Roots of Evil: The Origins of Genocide and Other Group Violence*. Cambridge Cambridge University Press.

Staub, Ervin 2000. Genocide and Mass Killing: Origins, Prevention, Healing and Reconciliation. *Political Psychology* 21 (2):367-382.

Steflja, Izabela. 2010. Identity Crisis in Post-conflict Societies: The ICTY's Role in Defensive Nationalism among the Serbs. *Global Change, Peace and Security* 22 (2):231-248.

Stoddard, S. 1991. *Text and Texture: Patterns of Cohesion*. Norwood, NJ: Ablex.

Stone, Jeff, Joel Cooper. 2001. A Self-Standards Model of Cognitive Dissonance. *Journal of Experimental Social Psychology* 37:228-243.

Stouffer, S.A., E.A. Suchman, L.C. DeVinney, S.A. Star, & R.M. Williams. 1949. *The American Soldier: Adjustment During Army Life (Vol. 1)*. Princeton: Princeton University Press.

Stover, Eric. 2005. *The Witnesses: War Crimes and the Promise of Justice in the Hague*. Philadelphia: University of Pennsylvania Press.

Sumner, William. 1906. *Folkways*. Boston: Ginn.

Surroi, Veton. 2013. Conversations with Milošević: Two Meetings, Bloody Hands. In *The Milošević Trial: An Autopsy*, edited by T. W. Waters. Oxford: Oxford University Press.

Svongoro, Paul, Josephat Mutangadura, Lameck Gonzo, George Mavunga. 2012. Language and the Legal Process: A Linguistic Analysis of Courtroom Discourse Involving Selected Cases of Alleged Rape in Mutare, Zimbabwe. *South African Journal of African Languages* 32 (2):117-128.

Tadić Trial Transcript (Testimony of Emir Beganović) 19 July 1996: 1562.

Tadić Trial Transcript (Testimony of Emir Beganović) 19 July 1996: 3814-3815.

Tadić Trial Transcript (Testimony of Duško Tadić) 28 October 1996: 7831.

Tadić Trial Transcript (Testimony of Duško Tadić) 28 October 1996: 7836-7837.

Tadić Trial Transcript (Testimony of Duško Tadić) 28 October 1996: 7838-7839.

Tadić Trial Transcript (Testimony of Duško Tadić) 29 October 1996: 7949.

Tajfel, Henri. 1978. *Differentiation between Social Groups*. London: Academic Press.

Tajfel, Henri. 1981. *Human Groups and Social Categories*. Cambridge: Cambridge University Press.

Tajfel, Henri 1982. Social Psychology of Intergroup Relations. *The Annual Review of Psychology* 33:1-39.

Tajfel, Henri, Wilkes, A.L. 1963. Classification and Quantitative Judgement. *British Journal of Psychology* 54:101-113.

Taylor, Donald M., Fathali M. Moghddam. 1994. *Theories of Intergroup Relations: International Social Psychological Perspectives*. 2nd ed. Westport, CT: Praeger Publishers.

Tedeschi, James T. 2001. Social Power, Influence and Aggression. In *Social Influences: Direct and Indirect Processes*, edited by J. P. Forgas, Kipling D. Williams. Philadelphia: Taylor and Francis.

Thomas, Raju G.C. 2003. *Yugoslavia Unravelled*. Lanham, MD: Lexington Books.

Thomas, Robert. 1999. *Serbia Under Milošević: Politics in the 1990s*. London: Hurst and Company.

Timasheff, N.S. 1943. On Propaganda. *The American Catholic Sociological Review* 4 (1):10-15.

Tournaye, Cecile 2003. Genocidal Intent Before the ICTY. *The International and Comparative Law Quarterly* 52 (2):447-462.

Trezise, Thomas. 2001. Unspeakable. *Yale Journal of Criticism* 14 (1):39-66.

Trinch, Shonna 2010. Risky Subjects: Narrative, Literary Testimonio, and Legal Testimony. *Dialect Anthropol* 34:179-204.

Tsoudis, Olga and Lynn Smith-Lovin. 1998. How Bad Was It? The Effects of Victim and Perpetraoror Emotion on Responses to Criminal Court Vignettes. *Social Forces* 77 (2):695-722.

Turner, J.C. 1987. *Rediscovering the Social Group: A Self-Categorization Theory*. Oxford: Blackwell.

Updated Statute for the International Criminal Tribunal for the former Yugoslavia. 25 May, 1993.

Valentino, Benjamin A. 2004. *Final Solutions: Mass Killing and Genocide in the 20th Century*. Ithaca: Cornell University Press.

Walker, A.G. 1987. Linguistic Manipulation, Power and the Legal Setting. In *Power Through Discourse*, edited by L. Kedar. Norwood, NJ: Ablex.

Waller, James. 2002. *Becoming Evil: How Ordinary People Commit Genocide and Mass Killing*. New York: Oxford University Press.

Walton, Douglas. 1997. What is Propaganda and What Exactly is Wrong With It? *Public Affairs Quarterly* 11 (4):383-413.

Waters, Timothy William, ed. 2013. *The Milošević Trial: An Autopsy*. Oxford: Oxford University Press.

Weigend, Thomas. 2012. Kill or Be Killed. *Journal of International Criminal Justice* 10 (5):1219-1237.

Wendt, Alexander. 1999. *Social Theory of International Politics*. Cambridge: Cambridge University Press.

Wessel, Ellen, Guri C. Bollingmo, Carina Sønsteby, Linda M. Nielsen , Dag E. Eliersten and Svein Magnussen. 2012. The Emotional Witness Effect: Story Content, Emotional Valence and Credibility of a Male Suspect. *Psychology, Crime and Law* 18 (5):417-430.

White, Graham. 2008. Witnessing Proceedings: The Hague War Crimes Tribunal, Narrative Indeterminacy, and the Public Audience. *TDR: The Dramatic Review* 52 (1):75-87.

White, Hayden. 1987. *The Content of the Form*. Baltimore: Johns Hopkins University Press.

Wilber, K. 2001. *Sex, Ecology and Spirituality*. Boston: Shambala.

Williams, Kristen P. 2004. Internationalization of Ethnic Conflict in the Balkans: The Breakup of Yugoslavia. In *Ethnic Conflict and International Politics: Explaining Diffusion and Escalation*, edited by P. M. Steven E. Lobell. New York: Palgrave MacMillan.

Williams, Paul R. and Michael P. Scharf. 2002. *Peace with Justice? War Crimes and Accountability in the Former Yugoslavia*. Oxford: Rowman and Littlefield.

Wodak, Ruth. 1981. Discourse Analysis in Courtroom Interaction. *Discourse Processes* 3:369-80.

Woodbury, Hanni. 1984. The Strategic use of Questions in Court. *Semiotica* 48:197-228.

Wright, W. 1959. *Mass Communication*. New York: Random House.

Yabuuchi, Akio. 2004. *Discource Structures: Some Suggestions for Vizualization and Quantification*. Tokyo: Liber Press.

Zahar, Alexander. 2008. Legal Aid, Self-Representation, and the Crisis at the Hague Tribunal. *Criminal Law Forum* 19:241-263.

Zappala, Salvatore. 2010. The Rights of the Victim v. the Rights of the Accused. *Journal of International Criminal Justice* 8 (1):137-164.

Zehfuss, Maja. 2006. Remembering to Forget/Forgetting to Remember. In *Memory, Trauma and World Politics: Reflections on the Relationship between Past and Present*, edited by D. Bell. Basingstoke: Palgrave Macmillan.

Zimbardo, Philip. 2009. *The Lucifer Effect: How Good People Turn Evil*. London: Rider.

Zlatev, Jordan. 2007. Spatial Semantics. In *Oxford Handbook of Cognitive Linguistics*, edited by D. Geeraerts, Hubert Cuyckens. Oxford: Oxford University Press.

Zoglin, Katie. 2005. The Future of War Crimes Prosecutions in the Former Yugoslavia: Accountability or Junk Justice? *Human Rights Quarterly* 27 (1):41-77.

Appendix 1: Translations

Momčilo Krajišnik B/C/S excerpt:

P: Da li se, u to vreme, razmatrala mogućnost da to bude zasebna odluka, koja će uskoro biti doneta, ili je pak kompleksnost pitanja Sarajeva iziskivalo, verovatno, puno vremena kako bi se to pitanje rešilo?

O: Sarajevo je od početka krize bio poseban problem. I do kraja rata je stalno bio na dnevnom redu. Ja mogu reći da u najvećem broju predloga je bio predlog da se transformiše Sarajevo u dva, da kažem, u dve cjeline - ne da se podijeli kako neko s… imputira - u kome bi bile opštine sa srpskom većinom i opštine sa muslimanskom većinom. Dve trećine bi pripale muslimansko-hrvatskom dijelu a jedna trećina srpskom dijelu, užeg dijela Sarajeva. I ovo je bilo, zato je navedeno da će se naknadno riješiti… naknadno riješiti pitanje Sarajeva, koje je bilo najbolnije. Svaki sporazum je to predvinao kasnije. (…) Ovo sve govorim o svim planovima gdje je bilo predvineno rješenje za Sarajevo, da dvije trećine toga - bez Pala - Sarajeva pripadne entitetu muslimanko… a… muslimansko-hrvatskoj, da kažem, strani. A jedna trećina će biti… pripašće srpskoj strani. I to imate, naročito, u svakom dogovoru koji je postignut. Dok se to ne postigne – zašto sam ovo govorio? – predvinena je bila UN, znači Ujedinjenih nacija administracija, dok se ne nane nekakvo rešenje. Jer je n…nemoguće bilo riješiti tada Sarajevo zajedno sa cijelom Bosnom i Hercegovinom. (p 23191-23193, 27 April 2006, *Prosecutor vs Momčilo Krajišnik*, IT-00-39)

Momčilo Krajišnik English excerpt:

Q. Was it contemplated at that time that that was a separate decision which would follow quite soon, or was it that the complexities affecting Sarajevo would probably require a very considerable time to sort out?

A. Sarajevo, from the very outbreak of the crisis, was a separate problem. And to the end of the war it was always on the agenda, so to speak. I can say that in most proposals there was the proposal to transform Sarajevo into two wholes, not to divide it as some people have imputed, but two parts where there would be municipalities with a Serb majority and a territory with a Muslim majority. Two-thirds would belong to the Muslim majority municipalities and one-third to the Serb majority municipalities. And that is why it was stated here that the question of Sarajevo would be resolved in due course because that was the most painful issue of all. Every agreement envisaged that later. (…)I'm talking about all plans where it had been envisaged to have a solution for Sarajevo that two-thirds of this Sarajevo without Pale should belong to the Muslim/Croat entity, the Muslim/Croat side, so to speak, and one-third would belong to the Serb side. And you have that in every agreement that was reached. Until that is reached -- now, why was I saying all of this? The UN, the United Nations, administration was supposed to be there until a solution is solved because it was impossible to resolve the issue of Sarajevo together with all of Bosnia-Herzegovina. (p 23191-23193, 27 April 2006, Prosecutor vs Momčilo Krajišnik, IT-00-39.)

Amir Delić B/C/S excerpt:

P: Opisali ste da je odreneni broj ljudi, zapravo, kad to tako gledamo, pristao na to

da bude zatvoren na tom ili zatočen na tom stadiomu... stadionu, zato jer zapravo

nisu imali drugu mogućnosti ili je to bilo najsigurnije što im... što su mogli uraditi.

Da li sam Vas dobro razumio? Da li ste to rekli?

O: Gledajte, ljudi su se bojali biti u kući, to sam niz puta rekao, jel jednostavno u

toku noći taj famozni crveni kombi done i odvedu čovjeka.[50] Ako si u grupi, uvijek

si računao da si nekako sigurniji, da nisi sam.[51] I vjerovao sam da je bolje biti tu

nego da budem negdje sam i da me nanu i odvedu. Ovako će barem neko znati da

sam odveden.

P: Zbog čega ste onda pristali da Vas puste? Zar niste imali drugu mogućnost? Da li

ste morali otići sa stadiona kada su Vas pustili?

O: Pa šta da napravim?

P: Ono što bih zapravo htio saznati od Vas je sljedeće: neki su ljudi na stadion došli

dobrovoljno, prihvatili da tamo budu zatvoreni. To je bilo

najbolje od svega što... što su imali kao mogućnosti na raspolaganju.

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[50] There is a slight discrepancy in the translation here. What is translated as 'this infamous red van would pull up and a man who was in the house would be taken away' can actually read as 'the famous red van would come and take the person away'. This, however, does not affect findings.
[51] The discrepancy here is more noticeable. What is translated as 'that was why we felt safer when we were together with other people' can actually read as 'if you are in a group, you always figure you are somehow safer, you are not alone'. This discrepancy is potentially problematic for this project, as it puts what was initially said in conditional, referring not to 'we' but to 'you', into past tense and firmly referring to 'we'. This would place it differently on the DST graph, and indicate that this could have happened elsewhere in translations. However, the discussion in section 5 of Chapter 2 addresses discrepancies from a discourse perspective, arguing that the simultaneous nature of translation in the courtroom makes these discrepancies *part* of the discourse itself, and are carried forward through the uses the institution (in this case, the ICTY) makes of them.

O: Pa mislim, čudno je. Gledajte, ako mene neko odvede sa puškom uperenom u lena na stadion i nakon odrenenog vremena kaže da idem kući, šta da ja kažem - ne, ja ću ostati tu, je l'? Mislim, ne znam šta želite s tim reći. (p 26397, 27 June 2006, *Prosecutor vs Momčilo Krajišnik,* IT-00-39)

Amir Delić English excerpt:

Q. You have described a number of people effectively agreeing to be incarcerated in the stadium because presumably they had no other option, or it was their best option. Did I understand your evidence correctly in that regard?

A. (Delić) Look, people were afraid of staying in houses, I said that several times, because during the night, this infamous red van would pull up and a man who was in the house would be taken away. That was why we felt safer when we were together with other people, and that's why I believed I was safer to be there with others rather than stay at home. At least this way there would be people who would know that I had been taken away.

Q. Why, then, do you agree to be released? Did you have no option? Did you have to leave the stadium at the point of release?

A. What else could I have done?

Q. Well, what I'm trying to explore with you is this: Some people, some men, came to the stadium voluntarily and agreed to be locked up there because it was the worst -- I beg your pardon, it was the best of a number of bad options.

A. Well, you see, if someone takes me to the stadium at gunpoint and then, after a while, tells me that I ought to go home, what am I to say to this person? No, I'm going to stay here? I don't know what you mean by that. (p 26397, 27 June 2006, Prosecutor vs Momčilo Krajišnik, IT-00-39)

Appendix 2: Article 7 of the Updated Statute of the International Criminal Tribunal for the former Yugoslavia

Article 7

Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

Appendix 3: Selections from Rules of Procedure and Evidence concerning witness testimony

Rule 65 *ter*

Pre-Trial Judge

(Adopted 10 July 1998, amended 17 Nov 1999)

(E)   Once any existing preliminary motions filed within the time-limit provided by Rule 72 are disposed of, the pre-trial Judge shall order the Prosecutor, upon the report of the Senior Legal Officer, and within a time-limit set by the pre-trial Judge and not less than six weeks before the Pre-Trial Conference required by Rule 73 *bis*, to file the following:

   (i)   the final version of the Prosecutor's pre-trial brief including, for each count, a summary of the evidence which the Prosecutor intends to bring regarding the commission of the alleged crime and the form of responsibility incurred by the accused; this brief shall include any admissions by the parties and a statement of matters which are not in dispute; as well as a statement of contested matters of fact and law;

   (Amended 12 Apr 2001)

   (ii)   the list of witnesses the Prosecutor intends to call with :

      (a)   the name or pseudonym of each witness;

(b)   a summary of the facts on which each witness will
testify;

(c)   the points in the indictment as to which each witness
will testify, including specific references to counts
and relevant paragraphs in the indictment;

(Amended 12 Apr 2001)

(d)   the total number of witnesses and the number of
witnesses who will testify against each accused and
on each count;

(Amended 12 Apr 2001)

(e)   an indication of whether the witness will testify in
person or pursuant to Rule 92 *bis* or Rule 92 *quater*
by way of written statement or use of a transcript of
testimony from other proceedings before the
Tribunal; and

(Amended 12 Apr 2001, amended 13 Sept 2006)

(f)   the estimated length of time required for each witness
and the total time estimated for presentation of the
Prosecutor's case.

(Amended 12 Apr 2001)

(iii)   the list of exhibits the Prosecutor intends to offer stating
where possible whether the defence has any objection as to
authenticity. The Prosecutor shall serve on the defence copies
of the exhibits so listed.

(Amended 12 Apr 2001, amended 13 Dec 2001)

(Amended 17 Nov 1999, amended 12 Apr 2001, amended 12 July 2001)

(G)   After the close of the Prosecutor's case and before the commencement of the defence case, the pre-trial Judge shall order the defence to file the following:

    (i)   a list of witnesses the defence intends to call with:

        (a)   the name or pseudonym of each witness;

        (b)   a summary of the facts on which each witness will testify;

        (c)   the points in the indictment as to which each witness will testify;
        (Amended 12 Apr 2001)

        (d)   the total number of witnesses and the number of witnesses who will testify for each accused and on each count;
        (Amended 12 Apr 2001)

        (e)   an indication of whether the witness will testify in person or pursuant to Rule 92 *bis* or Rule 92 *quater* by way of written statement or use of a transcript of testimony from other proceedings before the Tribunal; and
        (Amended 12 Apr 2001, amended 13 Sept 2006)

        (f)   the estimated length of time required for each witness and the total time estimated for presentation of the defence case; and

Rule 92 *ter*

Other Admission of Written Statements and Transcripts

(Adopted 13 Sept 2006)

(A)   A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement or transcript of evidence given by a witness in proceedings before the Tribunal, under the following conditions:

(i)   the witness is present in court;

(ii)   the witness is available for cross-examination and any questioning by

         the Judges; and

(iii)   the witness attests that the written statement or transcript accurately reflects that witness' declaration and what the witness would say if examined.

(B)   Evidence admitted under paragraph (A) may include evidence that goes to proof of the acts and conduct of the accused as charged in the indictment.

Appendix 4 - Tadić excerpts

28 Oct 1996

<u>P 7831</u>

Q. Do you know why it was that the citizens forum approached you to join them and take a part in their discussions?

A. The reason was a simple one. They said, Kemal Susic explained, I had contact and we talked and, first of all, they knew who my father was, that he was a well-known person in the municipality and they thought that I could help as his son. Also they said that they would also invite Bosko Dragicevic. His son was the first President of the Kozara municipality earlier, and so they were talking about the possibility of creating a mutual trust. They said that they would also **invite several other people who were non-Muslims in Kozarac**. I agreed with that but, frankly speaking, at first I was not sure. I did not know about **the real goals** of this forum. I was afraid that all people would be manipulated by any which party. It was risky to get involved because you did not know what was behind it. We did not know what was going on at the very top. We did not know about the previous negotiations. We just knew that there were ultimatums, that there was something going on in that respect. So we went to Prijedor with quite a bit of – with many unknowns. We knew one thing. **We wanted to quiet down the situation**, to improve relationships with Prijedor and Banja Luka and we thought of no other things.

Q. In both of these meetings that took place, did you play any active role?

A. Yes, I did. I took Kemal Susic's invitation very seriously. Then when I saw who the other members were, I really started believing the good intentions. Those were people who were not involved in the war. They were interested in business or sports, the communal living, so these were the people with whom we lived. **They were my neighbours or my brothers, the people from the centre of Kozarac, who were considered to be the natives.**

Q. At this stage, it was obviously well-known that it had been a Serb takeover of power in Prijedor, and you referred to your difficulties in being able to attend that meeting. Was that because lines were being drawn now between Serbs and the Muslims far clearer than they had been in the previous time?

A. Well, the takeover in the municipality of Prijedor did create a certain animosity towards **us who were living in the centre of Kozarac**, a certain mistrust, because it all took place quite unexpectedly in Prijedor. It was a shock for everybody, because the local government was in the hands of the SDA, a Muslim party in Prijedor, and something like a coup had happened. Of course, people no longer believed anyone. They would simply turn their heads away because it was difficult to believe, to trust, someone, they identified the power with someone who had done

something terrible. **They sided us somehow with them, identified us with them**. So what I was trying to do, I was just trying to help, as far as it was possible for me, **because I was from the centre of Kozarac because my parents had been living there and I thought that I could do something, and it was my duty to do something.** But, as I say, there were many groups of people who were spreading lies. I don't know if it was all on purpose, but simple people were disappointed. Power had been taken away and, on the other hand, everybody was acquiring weapons in Kozarac. The weapons were being openly sold and you no longer knew whom to trust. There was a general feeling of insecurity, and those who were not organised in some units, paramilitary units, or police units, they simply turned away to their own families and they just cared about that.

P 7838-7839

Q. The second meeting that took place in Prijedor, can you tell us what was discussed at that meeting and what the atmosphere was like on the 20th May?

A. Well, that meeting did bring some hope that things would be solved at the level of the Kozarac Local Commune, because Drljaca said, although he had already said that ultimata that had been issued came from Banja Luka, from the centre of security services, but he denounced that because he said at the second meeting, "OK, well, you do not have to change insignia but you have to sign loyalty". So there was some kind of progress and we said, "Well,OK, when it comes to insignia, then the police in Kozarac don't have to wear hats either". So you had a possibility of putting the insignia on other parts of the uniform. But, anyhow, we managed to obtain for those insignia not to be changed. But there was a compromise because

hats were no longer worn. That was some kind of progress. But the municipal staff, there was always someone -- there was a representative of the military who mentioned the **problem of paramilitary units in Kozarac**, because in the area of Kozarac there had been several incidents, mostly on the Prijedor/Banja Luka road. People would stop columns of soldiers that were coming back from the front in Croatia, and sometimes a Serbian reserve soldier would be arrested by a group of, I do not know, Suljo Kosuran or someone else, and they would be detained. So it was very unsafe to walk around Kozarac for everyone, everybody who belonged to either the JNA or the Krajina army. So, as I say, some steps had been made, but the **problem was the signing of loyalty**. Drljaca did say that if the chief of the Banja Luka police allows, then loyalty would not have to be signed. So those were the discussions that we had, and we wanted to go to Banja Luka around 20th, 21st May, in order to reach any kind of agreement. So, aside from that ultimatum, there was an agreement also that people who were not allowed to carry weapons and who were walking around with weapons had to store their weapons at home. So there was a kind of agreement but, as I say, **our group was not allowed to do anything**. We could just listen to the proposal and propose something, but **we were not in charge**. We could not say, "OK, it is going to be implemented" because there was a very strict group of people in Kozarac, people with criminal records, such as Suljo Kusuran who had a group of people under weapons. That was this Cirkin person, I do not know his name, but he was in Kozarusa, who also had a criminal record. They just organised some groups themselves and they were doing everything they pleased. **So that created an image of Kozarac.** Well, whether the official authorities of Kozarac could prevent such kind of organising of people, that was a question.

Q. Did you remain in Kozarac?

A. Yes, I did, but that evening I said to myself, "I should leave, I should flee this town", because I realised that evening in case there is a conflict, I would stand no chance. I would have no chance to flee. So that evening I stayed in a cafe of my neighbour until midnight, with my neighbour Jakupovic, and then I went back home and that evening I slept in my cafe on a chair. I actually slept on the floor and I fell asleep. I do not remember whether I was really sleeping or not. Anyhow, that is how. Morning came and I did not know what had happened, but I heard that **everything had been taken care of**, and weapons that had caused the incident had been returned. But you never know, you never know whether something similar could happen once again. **It was in the air.** It was difficult to understand that such an incident over two rifles could bring about a war. But, anyhow, that evening I realised that it was possible.

Q. When you arrived in Banja Luka where did you go?

A. I only remember that at the exit I greeted Esad Tadzic who is a school friend of my brother. He used to be the President of the municipality in Prijedor. So he was with his wife. We greeted each other. We knew each other well. **The families knew each other from before.** We just shook hands. We said nothing that is interesting. **There was silence, some apprehension and a very strange feeling**. He grew up in

Kozarac and lived in Prijedor, and I was born and grew up in Kozarac and we both ended up in Banja Luka. I assumed also that he had fled.

P 7863-7864

Q. At what time did you get to the Tadic family house?

A. Well, it could have been about 3.00 o'clock, 3.00 p.m. I know that we had been, that we were travelling for about one hour, hour and a half. We just drove through Kozarac, the three of us. We went to -- I remember we went in the direction of the fire station. Then we went back when we saw what was happening there, what had happened there, that **a lot of it had been destroyed.** So we went back to the factory, Jela factory, and that is where I saw an acquaintance of mine. It all lasted very short because when we went back **Kozarac was in a pitiful shape.** It was not so much destroyed, but **there was a stench in the air.** There was no electricity at that time. So later on in my house I saw in my freezer that all the food that I had had been spoiled, there was some cattle around. **It was difficult to explain such a feeling, but you could feel something in the air, you could feel that something was unhealthy in the air**. We did not see many soldiers. I saw several people, that was all. All along the road I just saw that unofficial control near Lamovita and later I did not see anyone when we were going there or when we were coming back.

Q. For how long did you stay in the area of Kozarac on this visit?

A. Well, one hour, an hour and a half. We wanted to do something useful. My brother wanted to do something about his business premises. **He wanted to protect**

something. I tried to shut down the area because everything was laying open and things were scattered around. So I first established the situation. So during that first visit to our family house we realised that the house had not been really destroyed but the front part of the house where there were business premises of my brother, there was a huge opening, a huge hole of maybe a shell. The part of the house where I had been sleeping for several months, that is the part of the house that belongs to my brother Mladen, there was a hole in the roof which had been made by a shell, and a shell had fallen in front of the house and damaged the terrace. So it was quite a pitiful shape. My cafe was damaged. Everything was more or less damaged. It was a rather sophisticated kind of interior in the cafe. So when windows were smashed and doors were smashed, everything was just laying open. **The town itself was ghostly.**

P 7909-7910

Q. When did you start to become involved then with the return to Kozarac and the revival of the town of Kozarac?

A. First, activities in relation to the return to Kozarac were launched by a certain number of residents of Kozarac who at that time were living in Prijedor as refugees, displaced persons.

Q. Who were those people?

A. Well, what happened at the beginning, at first, **we did not know what kind of perspective my native town had, the town where I wanted to return very soon**,

but at the beginning of August 1992 an information was made public that the municipal Crisis Staff has reached a decision that Kozarac would not be resettled and that no one would return there. So, in view of those circumstances, **I met with many people from Kozarac there**. I first met with Bosko Dragicevic and then I also met with Ivo Rajkovic and many others who were living in Kozarac. **I also met some neighbours of mine of Muslim nationality.** I used to run into them throughout that summer, and I talked to them, we exchanged opinions, we consulted with each other, and I also talked to Meho Beslagic about that.

29 Oct 1996

P 7949

Q. You indicated in your testimony that the plebiscite itself was conducted in the churchyard of the Serbian Orthodox church because, you said, you did not want the plebiscite conducted in a private home and "there were no other communal objects". In fact, there were a variety of communal objects and buildings in Kozarac, but the Orthodox church was the only exclusively Serbian communal object, isn't that right?

A. No, **the Orthodox church in Kozarac is over 120 years old**, and all people visited, not only the church but also the churchyard, Muslims, Croats and others. I remember. I grew up there. We used to play football there. **We spent a lot of time there in the churchyard, not only of the Orthodox church, but of the mosque as well -- me and my neighbours**.

Q. So the mosque was a communal object or building, the Mjesna Zajednica was a communal building, the post office was a communal building?

A. Yes.

Q. But the Serbian Orthodox church was the only Serbian communal building?

A. Yes.

P 7953-7954

Q. Did you not denounce Serbs for failing to vote in the Plebiscite as being disloyal to the Serbian cause?

A. No, I did not denounce them, but until the end of 1993 some things were such that you could realise that those who did not know, who had not known, whether to take part in public gatherings or not, that those were people whom you could not trust for anything. They could **not be trusted** when it comes to the plebiscite in Bosnia and Herzegovina or other things. Those people probably took part in all kinds of plebiscites and referendums that took place in Bosnia and Herzegovina. It was strange because it was difficult to understand, because someone who would vote for a plebiscite for Yugoslavia could later vote for Bosnia and Herzegovina. I think that **one should know what he really wants, whether you want a sovereign Bosnia and Herzegovina, a Yugoslavia, whether you want to live in Bosnia, in**

Herzegovina or not. At least, **such were the circumstances in which we were at that time.**