

THE AD HOC TRIBUNALS ORAL HISTORY PROJECT

An Interview with

Gregory Townsend

International Center for Ethics, Justice and Public Life

Brandeis University

2017

Interviewee: Gregory Townsend (GT)

Location: The Hague

Interviewer: Leigh Swigart (LS)

Date: 1 June 2017

LS: Thanks for agreeing to be part of this project. I think it will be really, really interesting also for the Brandeis students studying in The Hague to see that you have an interview in our collection that's transcribed and available. And looking at your CV, it's kind of amazing; I guess you haven't worked for the ICC, but almost everything else, right?

GT: Yeah, I'm actually the Secretary of the ICC Bar Association, Victims' Committee; I just spent half a day there yesterday. So, I'm not a staff member, but I'm on the list of counsel, and particularly interested in victims' issues. And so I participate that way.

LS: Have you ever done any defense work?

GT: I started my career as a Deputy Public Defender in downtown Los Angeles, so I was, I like to say, representing Los Angeles's finest falsely accused citizens for a year and a half, in the downtown overworked courts. And that's where, I guess, I cut my teeth; learned how to represent clients and did a lot of trial work, and standing up all day, and did thousands of initial appearances and arraignments, and hundreds of felony preliminary hearings, and honing cross-examination skills was fantastic. It's the oldest public defenders' office in the country, the biggest, great training program, so I was really lucky to get that training.

LS: I've seen a trend that people who were public defenders in the United States end up joining Offices of the Prosecutor in international criminal jurisdictions as opposed to defense teams.

GT: I think that's fair to say. There is a certain amount of crossover, and I think that's kind of exceptional in the American standard, but I think that in the international standard it's more accepted. Obviously the British counsel who are coming here are just taking briefs either for the prosecution or defense, depending on the day. That seems to suit the international community; perhaps the defense lawyers coming into the prosecution offices become staff members, and so it offers a bit more security and breadth of opportunity whereas defense are independent contractors in the international scene, and so it's quite a different relationship and different status. So, maybe we want to stay with the institution and may cross over to the prosecution, or they want to see something different, and obviously having this broader horizon warrants somebody international and they're willing to try something different.

I mean, if there was a defense office I think I might have been perfectly happy there. In my present capacity [in the ICTY Registry] I'm actually overseeing legal aid. So we're trying to support defense lawyers to make sure that they have everything they need, and that there are enough resources made available to the defense. So I've come back to the full circle of fair trials requiring a full and adequate defense. And so I think I have a better perspective having been on both sides before. So maybe it's a trend, but I think maybe it's still the majority of prosecutors who were former prosecutors.

LS: Yeah, I wondered if it had something to do with people who — they see themselves as protecting the underdog, and the underdog in the international scene is the victim of heinous crimes.

GT: Yeah, I guess there are two underdogs, and it depends on which one may be higher and maybe a more likely scenario.

LS: [Laughs] I can see that. So, why don't you tell me how it is you moved from Los Angeles and got into the international scene?

GT: I got a lucky break is the short answer. I had studied international law and international criminal law, which was kind of rare at that point. And, I was doing criminal trials, I had a great trial advocacy professor, and I had a great professor at The Fletcher School who made me really interested in international litigation. At that point, there were really mostly public international law opportunities, but so few. So I found myself in downtown L.A. practicing in 1998 when the very first genocide judgment came down from the ICTR, the *Akayesu* case. And as happenstance would have it, the spokesperson for the Rwanda Tribunal was a Fletcher School classmate.

LS: Who was that?

GT: A guy named Kingsley Moghalu, a Nigerian lawyer; he's still around. He received my CV, put it on the right desk, and a few months later a British lawyer resigned on short notice, and a common law lawyer at the right grade left, and my CV ended up on the right desk on the right day. And in 1998, I got this old thermal paper fax that came through, a single sheet, and I had no idea what "Associate Legal Officer" meant. So I asked, and I got a job description that said, "Come work for a judge," effectively – what we call a law clerk. So I quit my job, moved halfway around the planet, was met by security at the airport. It was really amazing.

LG: Had you ever been to Africa?

GT: I'd only really been to Morocco at that point, so not really been to Sub-Saharan Africa or Africa really in any depth. So it was an amazing opportunity and I showed up saying, "Where's the judge?" and they said, "Oh, actually, we're assigning you to the Registrar." So it was this kind of bait and switch thing, but it was really an amazing opportunity because I ended up learning the registry side of things for the first six months. Then three new judges came, they opened a third trial chamber, and then at that point I got an opportunity to do that law clerk job; I did it for a year and a half.

LS: And who were you working with?

GT: I worked for who was the second registrar, at first, Dr. Agwu Okali, a U.S.-trained lawyer as well, and that was a really interesting opportunity, working actually on *Akayesu* in terms of

the appeal [on this issue] of choice of counsel being litigated then, and looking at other public defender models that made sense for international courts. It was a really interesting time. We made appearances on detention issues. And then I transitioned to help write the sentence on the very second judgment. It was the *Kayishema/Ruzindana* case, so a two-defendant genocide trial, and the trial team was bogged down writing the trial judgment. But they had a hard date to deliver a judgment and didn't have time to turn to the actual sentencing chapter, so I was dragged up to write that, and wrote it in English and French in just a couple of weeks with the help of another French lawyer. And that was a great project.

And then it turned into clerking for a Slovenian Supreme Court Justice, a guy named Pavel Dolenc [at the ICTR from 1999-2003]. And I worked for him for a year and a half, and wrote a lot of what became interesting case law. And so it was fascinating to be writing cases in the first impression at the international level; and to some extent improvising and to some extent looking back at Nuremberg precedent, and looking at domestic models, and having a really robust common law versus civil law discussion with my judge, and I'm really proud of that work. And then the right case came along and I got a promotion and moved to the prosecution office, and did that for five years.

LS: And who was the prosecutor at that time? Louise Arbour?

GT: Arbour ended shortly after I came in, so it was Del Ponte, and that was an interesting period to have a prosecutor based up in The Hague, and we had the day-to-day operations for the

Rwanda Tribunal in Arusha, Tanzania. And I was put on a six-defendant case that wasn't really ready for trial, but they had a start date fixed by the judges. So I had an intern then by the name of James Stewart, who is now a professor in Vancouver, a Kiwi [New Zealand] lawyer, super bright, and I said, "Well, maybe it would be more prestigious for your CV to work on this military trial across the hallway." He said, "No, I think you really need the help, and I'll stay." And I'm indebted that he did, because we did, he was right. We went on mission, approved witnesses, narrowed down a witness list, got a pretrial brief together, and we had six witnesses lined up, one against each of the six defendants for the first trial session. Then we thought that we'd got enough evidence in there to let the judges feel a little bit more comfortable about the fact that it had taken five years to get to trial for some of these defendants in custody.

LS: What was it like to go on an investigatory mission, and how did you handle the language issues and all that?

GT: It was really fascinating. Effectively, logistically there was a UN charter aircraft that would fly from Arusha, Tanzania, to Kigali, Rwanda. We'd be met. We'd go to the office, check in, and get a slight security briefing. Usually we'd have the investigative team based in Kigali, and so we would go out to the field with either a witness management staff, which is effectively someone who is dealing with the witnesses for the Office of the Prosecutor, as opposed to the witness protection side; that's on the registry. We would have sent beforehand a list of potential witnesses and departments we'd like to have met – they probably would have come the week before to set up some appointments – we would have driven a few hours to the south in Butare,

for example, checked into the hotel, and then just started having appointments, quite often in a hotel room. And, those that have had a certain level of education had gone through French language, then the interpreters got a break, and they were quite pleased that I could do the interviews in French. But the majority of the witnesses hadn't, and so I'd be working with a Kinyarwanda interpreter doing a consecutive interpretation, so it would obviously take a lot of time.

LS: But then a summary was produced on the spot?

GT: Usually at that point they'd already given witness statements, and so what I was doing was effectively proofing them, and confirming the evidence that they'd given, testing if this was someone who would stand up at trial, be worthy to come — for every three witnesses I met I'd say maybe one would actually be brought over. And so the quality of the statements varied greatly. There were very detailed ones, question/answer format, and you could actually understand the context and scope of questioning. The rest were [mostly] in a narrative format, and it was really hard to tell why certain information wasn't there because the questions weren't asked. And so pulling that apart, and then also witnesses quite often weren't given an opportunity to tell their full, complete story, without interruption. Investigators in the early days tended to be evaluated on their work performance based on the quantity of interviews as opposed of quality of interviews.

LS: Evaluated by —?



GT: Their supervisors in the investigation division. And so the investigator would go to the field and say, "Boss, I got ten statements this week." The supervisors would say, "Fantastic, that's top notch." And someone would come back and say, "I got three," and they'd say, "Oh, that's not so good." Now, those three could've been better than all of the ten put together, and so we'd tend to get lots of very short, superficial ones that were focused on a single target. And now I'm doing a six-defendant case. So none of the witnesses would have been comprehensively asked about all of the accused, or all perpetrators, or all high level perpetrators, and so it made it very difficult. And witnesses were often getting impeached because of the lack of consistency in their statements, and the lack of depth, and, "Why didn't you say that if it's so important?" And the answer was always, "Because the investigators never asked me." But because the statements weren't in a question-and-answer format, the narrative would make it seem like their whole genocide experience of a hundred days was boiled down to a page and a half, and obviously that's just fiction.

So that's one of the challenges we had. And witnesses, being Rwandan, had grown up always with an oral history tradition, and so telling things in a narrative way. In an oral history way, it doesn't often distinguish between what was perceived visually and orally, and what was told [to them] by somebody else. It's all blended together. And so, we got statements, for example, where someone said: "There were severed heads outside the *bourgmestre's*, the mayor's, office." And then when I asked the witness – obviously the *bourgmestre* was one of our defendants – and this would be incredibly damning evidence – she said, "Oh, I never saw that, but someone told

me that." So the fact that there were heads there was in the statement, but the fact that the witness had not actually seen them herself didn't make the statement. So that obviously is the kind of witness that I wasn't able to call. So that was the oral history, distinguishing the witnesses' own perceptions from what they had been told, and de-tangling back was also very complicated.

And then also, you know, we were these foreigners who were there taking [statements] — we were really invested in finding what happened in the genocide and they felt obliged to give us information. So one of the things I always started with, when I was working with the interpreter, was a question that would just throw them off a little bit. I'd say, "Can you tell me my mother's name?" And I'd avoid eye contact, and you'd hear the interpreter and the witness going back and forth in Kinyarwanda, often for a couple of minutes. And then finally the answer would come back. "I don't know." And I would say, "That's exactly why, if you don't know the answer to my question, it's okay to tell me you don't know, and it's okay to say you don't remember, because this is many years ago, and these are traumatic incidents and times. But my job is to find out what happened, and test your memory and find the fringes of your memory. So I'm going to get to a point where your answer is going to be 'I don't know' and 'I don't remember,' but I want you to be comfortable with that answer."

LS: Oh, that's interesting.

GT: And so they felt that if I asked a question, that they wanted to try to help me, and helping me sometimes meant giving me information that they had heard from others. So I wanted to

make sure that they started their answers, "I saw," or, "I heard," "these are my own experiences," and so to hammer that point home. Sometimes I'd memorialize these [proofing] notes and they were later disclosed to the defense, proofing notes or confirmation notes, so that was a really fascinating time. And you got to hear very harrowing stories, and you do get emotionally desensitized if you're hearing this 24/7 for several years. But it's stuff that eventually touches you and you have these secondary trauma kinds of feelings at times. I worked with a lot – I think I examined probably more rape victims than any at the Rwanda Tribunal, as of a certain period of time.

LS: As an anthropologist, I'm always really interested in the kind of cultural issues that come up with this kind of interchange with people from a very different background. So if you have any other examples, like this idea that people want to give you what they –

GT: What they think you want. It's quite common. You have to ask the open-ended question; the leading question in directions, for example, is a fatal flaw of the tourist. It's absolutely true, and it's true in so much as you're working with witnesses as well. So it's also important to build a rapport with them, and to explain the role, to explain that your job is to help them tell their story in a cohesive, coherent way. Meeting the witnesses, what we call proofing in advance of trial, was to sort of build a rapport with the witness, develop a level of trust, let them know that we would take them as they are, with their foibles, with the imperfect memory, with the evidence they had and understanding their experience, and allow them the space to sort of go to those dark moments, and be there, and be sympathetic enough to understand how hard those were.

LS: And what was it like then with rape victims? How does the gender disparity impact the level of comfort and so on?

GT: For me, having interviewed, and called and examined in court lots of female rape victims, it was really just about building up that trust; it wasn't about the gender part. And they were — in that context [of being proofed by a prosecuting trial attorney, close to trial], they had already come forward and spoken to investigators previously.

LS: And had some of those investigators been women? I know that there was—

GT: A mixed bag, probably most of them not. There would have been some, but I don't think we had gender parity in the investigation staff, unfortunately. And more emphasis was given to that as time went on. This is, again, one of the early cases and early investigations, so I think the witnesses cared less about the gender of their examining attorney than the trustworthiness of that person. Is this someone that they had built rapport with, who was going to take the time to explain the process, to explain what the courtroom experience was gonna be like, to explain how the protective measures might work, the fact that they'd be testifying with a pseudonym, and that their name wouldn't be known necessarily to the public, but that it would be known to the accused, that the accused would be present there?

And I was the first one to call a witness that actually pointed at the accused, Arsène Shalom Ntahobali, and said, "Yes, that was the accused who raped me." Lots had said that they had been raped, some said by soldiers who were under the command structure of the defendant, but this was first hand by the accused. So, building up that trust and explaining the process, and giving them the time to reconstruct their memories in such a way and tell their story coherently, was part of it. And then we actually role-played the cross examination sometimes, if they wanted to do that. I was, I think, able to effectively get to know those witnesses to a certain level so that they were able to really give me, and give the court, the best evidence they could.

LS: And were you actually in the courtroom with them, were you —?

GT: I was the examining attorney.

LS: You were the examining attorney, I see.

GT: Yeah, I wasn't prepping them for someone else. By the time I was meeting them, it was to decide if they were going to court — I was spending the time, as I would be the one examining them in court. So I had probably the most famous rape victim that ever testified in the Rwanda Tribunal, this famous witness, T.A., who was raped more than forty times, her whole family was butchered, with her, they were all thrown into a pit latrine, and she was under a pile of bodies and somehow survived. The only one who survived and came out, and was raped, successively gang raped at several locations, and then found herself at the governor, the *préfet's* office. She

was in a terrible state for a long time, and people were being killed there systematically on a nightly basis. That's when the Minister, the female Minister, [Pauline] Nyiramasuhuko and her son came, and raped her and raped her friends around her. So, it was very powerful, powerful evidence, and when they read the summary of effectively a ten-year trial they only referred to one witness, put in by name, or by pseudonym, and that was witness, T.A. What became so well known about that witness was the very ineffective defense counsel for the rapist accused, Shalom Ntahobali, who was asking such poor questions that he consistently was eliciting more incriminating evidence against his client. And the judges, whom I think were very inclined to make sure that his trial rights were preserved, were aghast at the job that the defense lawyer was doing. It got to the point where they laughed at the question because it could only have elicited more criminal — more incriminating evidence, and one journalist in the public gallery reported the laughing wasn't at the lawyer, but the laughing was rather at the witness.

LS: Yeah, I'm remembering this now. It was a scandal —

GT: It was a scandal, and basically all factually incorrect. But it showed to me how one incorrect press story could create a whole firestorm. And literally hundreds of other articles were generated, all attributing the facts only to this one press clipping. So tremendous damage was done, including to the witness, I think. It led to the so-called "laughing judge" not being reelected, a year and a half adjournment in the case, more prolongation of the process; so it was a real disaster, and I really don't think the journalists were ever gonna be held to account for really the negative impact that they had on those people for misreporting.

LS: What year was this again?

GT: This would have been October/November of 2001. But she was incredibly tough, and she knew they weren't laughing at her. But when you see lots of press clippings saying that they were, and you were hearing things through an interpretation, it probably sent a mixed signal to her. So, the tendency in Arusha, if I can say it, was to let the defense win the battles, because in the end the war would go towards the prosecution, and that alleviated lots of issues on appeal. So the prosecution was always taken to task during trial, but then eventually that led to quite a few convictions, and then there were quite a few issues that ended up being left on appeal, but that — that had not — moving the cross examinational law and a little bit more efficiently and in some cases made it really rather difficult for the defense. So it was prolonged and drawn out. But I knew that the judges wouldn't cut it short, and so it was very tough for me because I could object to almost half the line of questioning. When your objections are being overruled you only end up prolonging it, you have to make a judgment call. "Do I make an objection that will only prolong this?" I had no fear that the witness would be answering anything in a prejudicial way to the prosecution case, it was incredibly damning evidence — more was just worse for the defense. And so I just did a cost-benefit analysis; I objected at certain points and I didn't in others because it was just a strategic call, I just wanted her to be done with it as soon as possible, and we asked that it would be limited but it went on for weeks. So it was really tough getting cross-examined by six lawyers. So,[for the witness, it was a] tough experience.

LS: Some of the defense lawyers — were some of them inexperienced with an adversarial trial procedure, was that some of the problem?

GT: Correct. Yeah, I think I can safely say that there was a good, maybe not a majority, but a large percentage of lawyers that really had never done cross-examination, and really didn't do their clients any benefit.

LS: Did they take any training from the Tribunal?

GT: No, absolutely none, I mean there was a defense association that could have offered that, and I think eventually that sort of training came through, but effectively if you were appointed, you were— you had certain years, ten years of experience at the bar, it was presumed that you would have had sufficient training. But ten years in civil law trials, where there were judge-led processes, are quite different than standing up and doing cross-examination. So there were fantastic defense counsel, and there were rather ineffective ones as well. It was a mixed bag, and some was luck of the draw and some clients — some defendants, I think, purposely chose lawyers so that they could get what we'd call "fee-splitting kickbacks." They saw their cases as doomed, but if they could provide for their wife and kids in some refugee camp somewhere, then that was the price they were willing to pay. So, it was really difficult, you know. There were some conflicts of interest that came out, like the minister I mentioned, the female minister, Nyiramasuhuko. She had hired as so-called investigators for her defense team, who were legally



aid funded, her sons-in-laws. Effectively she was providing for her two daughters and their families by employing these two gentlemen.

LS: And they were lawyers or they were not?

GT: No, they were not lawyers, but they didn't need to be to be investigators. They were Rwandans, and of course they would have known other Rwandans and spoke the language and may have had some skill set that would have been applicable to an investigator's duties. But the fact was that hiring family members violated a code of ethics, and there was a clear conflict of interest. Is there loyalty to their client or to the court? Obviously it would be to their mother-in-law. When that was raised, the judge at the time said, "Well, yes there's a conflict of interest, but we're so close to trial, and they have been working on it for so many years that it would be really depriving the defense of the resources." And so they got a free paycheck for ten years, or maybe fifteen, if you can imagine; all feeding at the UN trough. So those things are rather frustrating, and when you're sitting here listening to victims' stories and know that the accused are bilking the system, that's what's really very frustrating.

LS: What were some of the common law/civil law interactions that you experienced?

GT: My favorite, I think, anecdote I've been handed down is that the very first trial was the *Akayesu* trial. And so who was the presiding judge? A Senegalese civil law judge who had gone through the magistrate ranks, called Judge Laity Kama. The second judge is a Swede, and a third

one is from a common law country. So there's a civil law majority. And who's standing up in court, Pierre Prosper, who's just from the central district of California, an L.A. [Los Angeles] federal prosecutor. He, like any prosecutor of a common law tradition, if there's an objectionable question he would stand up, make a legal objection, put it on the record. Why? Because it needed to be preserved on appeal, or you would be waiving that ground on appeal if you didn't object in a timely fashion at trial. And so this was obviously an annoyance to the civil law judge who instructed Mr. Prosper not to make objections because he is a judge and he would obviously object himself or instruct counsel to reformulate the question if it was objectionable. He didn't need the prosecutor to remind him how to do his job. The prosecutor is then facing this dilemma; he's under a direct order, "Do not make objections," but if he doesn't make objections he knows that a separate set of judges who might be a common law majority will say, "Well, counselor, you failed to make a timely objection at the time of that evidence, and so how can you come to us on appeal?" When faced with that dilemma, I think he articulated that, and so what tended to happen was that Mr. Prosper would stand up, the presiding judge would say, "Mr. Prosper I see you are on your feet," and nothing else was said. That little sentence in the record, the prosecution was able to say that amounted to — standing up was tantamount to an objection. And so there was something in the record, a hook that could be used later on appeal. The presiding judge was happy because he didn't have to listen to the yapping American prosecutor interrupting the solemnity of his civil law proceedings.

LS: But later, probably even civil law judges became more aware of this procedural —

GT: Of course, and I think there was certainly a blending as well, and by the time of the *Milošević* trial here in The Hague, there had been very strong civil law influences, and the goal at that point was to try to expedite the *Milošević* trial, and try and avoid being obliged to hear every witness live, viva voce. The whole series of amendments to the Rules of Procedure and Evidence, Rule 92bis, I think is now — all of those were amendments, with the Latin terms and all because they were inserted in after the others and to not change the number sequence. The idea is that they could receive written witness statements as evidence without having to call the witness, and so they would save a tremendous amount of time. And so if the witness wasn't giving evidence of the acts and conduct, not testifying about the accused, but rather, testifying about a crime scene. That is, building a "crime base" that would be attributed to a general that would be answering to the president, and for occasions when the accused were never at the crime scene. That would be the type of evidence that would be suitable for the written statement to come in [as evidence].

LS: Did you agree that that was a good modification?

GT: Oh, absolutely, it makes a lot of sense. I did twenty-four trials in eighteen months in Kosovo, which is a civil law jurisdiction, and I found a lot of advantages to working in the civil law. Prosecutors have an albatross around their neck: disclosure. And under U.S. law, *Brady* [the U.S. Supreme Court case law holding that criminal convictions can be overturned if prosecutors fail to disclose relevant evidence to the defense] violations can cause a trial to have to be redone, and so the prosecutor collects the evidence and then has to figure out what to

disclose, and if you don't do that right, the whole trial can be thrown out. When you're talking about millions and millions of pages of evidence, it's quite an awesome responsibility, and a huge undertaking to go through it with a fine-tooth comb for each case, and what's relevant and what's exculpatory, and what's mitigating, and what could be relevant to the preparation of the case. All of those categories, and there are specific rules that require disclosure; and disclosure violations and untimely disclosure are the subject of a tremendous amount of litigation before the ICTR and ICTY. In the civil law system there's just a dossier, everything goes into the judge's file, and the parties have access to it, and there's nothing for the prosecutor to do in that regard. As a prosecutor you dream about that, that you could actually just get on with your preparation, you didn't have to worry about pushing evidence across and through an electronic disclosure system.

LS: Did Kosovo also have investigating judges?

GT: Absolutely. Absolutely.

LS: When were you in Kosovo again?

GT: I was in Kosovo in 2003-2005. Remember when I told you about the laughing judge, and that he wasn't reelected? For that whole period of time when the case was completely idle, I accepted a promotion to go to Kosovo.

LS: Were you there at the same time as Agnieszka [Klonowiecka-Milart]?

GT: I worked very closely with Judge Agnieszka, and she confirmed many a warrant for me when I was investigating what we'd like to call a terror cell going on there, a really fascinating case.

LS: I just saw her two weeks ago in New York at the UN Dispute Tribunal.

GT: Okay, absolutely. I saw her fourteen months ago in Cambodia. And she was a great judge [in Kosovo], and very hands-on, and was a good civil law judge, and she was able to bring both. So, civil law, I think influenced it. One of my favorite hearings in Kosovo was what we call a "confrontation," something we don't have in the common law. Of course, where you have a witness that said, "X took place," and you have another witness that said, "X did not take place," judges would be forced to sort of figure out who's more credible, who had better observation, and then reconcile these two contradictory pieces of evidence. Whereas in the civil law you just put the two witnesses in the same room at the same time, and you'd say, "You say X happened, and you say X didn't happen. Which one of you is telling the truth?" And you kind of see how they squirm and squabble between themselves. The time when we did it, we were able to reconcile it quite easily. Now was that what really happened, or was that some power relationship between the witnesses? You have to weigh that as well, but I'm a big fan of what we call a "confrontation," and if I were ever to be a judge in a common law jurisdiction with the ability to take that practice from the civil law, I'd do it in a heartbeat because I think it's really

quite telling when you have two witnesses saying contradictory things and judges wondering, "How are we to make sense of this contradictory evidence? Help us."

LS: Did you also appreciate the active role that judges have in the international system?

GT: [Sighs] When it comes to court management, I think I could always use even more, and keeping the trial on the rails is really rather important. And to be honest, when I went to court I knew the witness better than anyone else, so I had really minimal, I would say, judicial interruptions if I can put it that way. It would — although being in a civil law jurisdiction, it really — it didn't cramp my style if I can put it that way.

LS: So, you had a lot of experiences here, and I don't want to run out of time and not be able to ask you a question that I'm really interested in. When I look at your CV I see that you, unlike many of our compatriots, have a lot of language skills. And I have been struck in my work with judges by how monolingual the people in the Anglo-American tradition tend to be. I was wondering, the fact that you speak French so well, and Spanish and other languages, did that afford you a different perspective on the work you did, or a different understanding of the whole justice process, just being able to read jurisprudence in other languages, and even the kind of flexibility I think that speaking multiple languages can give somebody?

GT: I think it's a tremendous skill. It's really helped me along the way. If you're building a rapport with a witness going through another Rwandan interpreter in the room, it's just another

layer of hindrance and perhaps another reason why a witness isn't sure, for example, about who's this interpreter? So you can work without an interpreter you can break down those walls and build rapport much more quickly. So that was tremendously important. In terms of case preparation, it has always helped me to be able to hear the other side's submissions in the native language, to communicate with the witnesses, to understand where there's a faulty interpretation and where that leads to just a whole lot of wasted court time trying to remedy these things. Spotting those more quickly was always really a benefit. Practically speaking, having gotten a certificate as an interpreter, I also really understood what was happening in the booth. And English is always a more compact language, and so if you're speaking in English and realizing that there's an interpretation into, in this case, either French or Kinyarwanda, or a double interpretation relayed, or, working with a consecutive interpretation as we were for years, we would ask the question, you know, "What's your name?" "Comment vous appelez-vous?" "Josef." "Joe." You know, just every question going back and forth. When we made the jump to the simultaneous interpretation, you really needed to be conscious of your pace, and most speakers are oblivious to that. And so the interpreters, I have built a rapport with them, and I also just gave them my questions because I knew that would also help.

LS: You gave them your questions beforehand?

GT: Yeah, and most lawyers wouldn't do that. And, why? Because they just presumed the interpreters would be able to do their work seamlessly without it. And I knew that if the interpretation was that much better, I would get that much better evidence, and that it would be

much more — I'd avoid issues and misunderstandings. And so, realizing that the judges are quite often also listening to the interpretation, the French-speaking judges, and so it was really important just to be conscious of the pace, prep, and make sure that the names and the places—of course which were all very complicated and difficult to spell let alone pronounce—were all out there in helping them, the court reporters, to build up their dictionaries. So that was really, really helpful to be just a bit more aware of that, and just obviously the efficiencies of being able to work in those languages helped a lot.

LS: And not waiting for translations into English, or things from defense. I know that translation makes for a lot of delay.

GT: Yes, if you're waiting for the translation of a document before you can file your response, then you're not really hitting the metal when it's hot. And so what we liked to do is there'd be a defense filing in French, and we would respond the same day, and so that really tried to move it along. I think the judges just really saw we were prosecuting it diligently, when we wouldn't sit back and say, "Okay, well technically under the rules we're allowed seven days, seven working days from the receipt of the translation." No, we just said, "We'll respond today." So it really helped and I think that made it more effective in court. It's hard to imagine these things moving any slower, but we tried to move them — at least I was very keen to move things along, and you know, it's not rocket science, it's a criminal trial, so the issues are not too complex, though they couldn't be untangled in a day.



LS: I'm curious what your experience has been in the registry — and not only at the ICTR, but now you're in the ICTY registry — and how that's informed or helped you to do other kinds of work, in prosecution for example, better, or —?

GT: I think it's — I was really lucky. I came into the registry first, and then I worked in chambers, and then in prosecution at ICTR, and then ICTY. I think I was the first person to have worked for all three organs at the ICTR. Obviously people will understand that if you're a litigator in court, and you're a lawyer, and you've worked for the judges, you are understanding what the judges are looking for, what's going to be decisive, how are they going to structure their decision, what are the key issues? You could know your audience, then you can tailor your message, and so that's a real obvious advantage to having worked in chambers. And then, also having been in prosecution I also knew where certain decision-making was happening within the registry, whether it was detention-related matters, or witness protection-related matters. So just either knowing the "who," or the "where," or the processes involved helped me be more effective as well. And now I'm on the registry side, so I'm overseeing witness protection, and so—

LS: At the ICTY?

GT: At the ICTY, and for the MICT [Mechanism for International Criminal Tribunals] now as well, and so I appreciate what the needs of the parties are. We are effectively a service provider, making sure that we provide the services to the court and to the parties, and to make sure that they have everything they need to present their cases. And so I'm trying to push through

bureaucracy and also make sure that the systems are in place, that we can provide the services timely, because I know how much they need them. And I also appreciate, for example, that we don't have a clear list from the prosecution on the witnesses that they're going to have come in the next few weeks, but I know that's because there isn't a decision from the bench. And so I can't take the prosecutor to task for that because I know that he's dependent on other dominos that had to follow. I have to explain to the staff, and say, "It will all come in due course. Do your best," and just open up those informal lines of communication so that when we'd have to wait for something formal to come through the pipes that we can have an idea of what is happening maybe a day ahead and that gives us enough time to really make things move a little bit more seamlessly.

LS: What was your experience like at the Special Tribunal for Lebanon compared to the Ad Hocs?

GT: Really kind of fascinating. So at the Ad Hocs we're talking about criminal conduct that had happened years ago, and a more historical, almost forensic kind of exercise. And to contrast it with Kosovo, you know with Judge Agnieszka Klonowiecka-Milart, we worked putting in warrants and phone taps, and so we were preventing future crime, if I can put it that way. So that was a really stark contrast. The other stark contrast was that there are a million people on the ground in Rwanda, and so few were actually ever exhumed, whereas in Kosovo I was constantly signing orders on behalf of the ICTY to carry out local exhumations in Kosovo. Millions and millions are spent and we all think, "Yes, finding the remains of your loved ones is very

important” for closure, and the DNA testing is all very expensive, and all of that process is really very tedious, but viewed as essential, whereas that will never happen in Rwanda. I always find that a contradiction. The smallest crime scene I had in Rwanda was two thousand deaths, and the biggest crime scene I had in Kosovo was two hundred deaths. The scale of things was so completely different. And to jump to the Lebanon Tribunal, which is your real question, it was, let's say, more of a CSI case, and incredibly fascinating in terms of the mobile telephone evidence.

LS: I know that's been coming down, and there's a lot in the news now about it.

GT: Yeah, and that's part of the case that's just being presented now, and so being sort of the presenter for visitors, and walking through the prosecution case, it was really very fascinating. Effectively to explain to people that, sure, everyone realizes they all have a mobile phone in their pocket, but they're not realizing that that phone was pinging off of cells, and communicating so that their location might be known, and that the perpetrators knew that in the Hariri case in 2005. But what they didn't realize is, if they had a work phone in the other pocket that was still prepaid unregistered, and it was used for a certain limited purposes in criminal conduct, only in the closed network. They only called each other, and that they used it for a limited time and then threw away the phones. The facts were that those two phones in someone's pocket had moved simultaneously through space and time. Effectively, by looking at big data and crunching the numbers. What are the cells? What are the numbers that are active in the same cell or the adjoining cell within a certain timeframe in space and time? Then, taking that data set and

comparing it to the next occurrence of the clean phone and the work phone and all of the data there, that would associate them on a different time and place and realize that, okay, there's only now two phones that are continuously in the same place at the same time. And then, through that co-location technique, identifying the perpetrators. That co-location technological investigative tool is very effective, but now all the bad guys know about it. And so I don't think it will be a really useful tool in the future for other crimes. People will realize they just need to take the battery out of their cell phone when they're doing criminal conduct, or turn off their mobile phones.

But that was really interesting, and what was also the challenge for me at the STL was the large volume of disclosure. At the ICTR and ICTY, we were disclosing witness statements and some reports, a very limited evidentiary set. It seemed like a lot at the time in the Rwanda and Yugoslav context. In the Yugoslav context, it's maybe tenfold the amount of the physical evidence, or paper evidence I should say. Whereas there were forty-two billion records in the Lebanon Tribunal. So, when you get to that size and numbers, you actually have to use electronic tools to do disclosure and to query, and so it became sort of an IT exercise as well, and where the law meets technology. That was a really interesting challenge. Sure, I can just push billions of files across to the defense and say that I had met my disclosure obligations. But I have to enable the defense to query it the same way that the prosecution has in order for the defense to be able to have a fair trial and prepare. But you're a lawyer, and so I have to encourage you to hire an IT team, and to give you the IT tools and database tools and then we're on the same playing field. So that was a whole different kind of paradigm; that was different.

LS: So something similar doesn't exist at the Ad Hoc's?

GT: No, because there's big data at STL.

LS: Yeah, that's pretty fascinating. So you were there until 2014?

GT: Yeah, I was at STL three and a half years, right at the time when they were formulating the indictment, and so that was a really interesting period. And then also making what was the connected case submission, looking at three other cases that I can only tell you, because what is public is that these cases are "connected" – and I can't say more than that – to the Hariri case.

LS: What attracted you to come to the ICTY?

GT: Oh, well, there was the natural transition at that point; the pre-trial disclosure at STL had been completed, and it was moving on to trial, and the post was actually abolished. So, it was time for me to go. I went back to California, and twiddled my thumbs for a few weeks, and thought, "Okay, what's next?" I applied for a judicial appointment, that's still pending, and luckily I got an offer to come back to the ICTY in my present post. And it's a fantastic portfolio; it's not just witness protection, it's court operations, judicial records, certification of case records, legal aid, and then we're doing fascinating things with digitizing our videos of hearings, and then putting those in a file-based format and putting them online. It's not just enough now to say that

we've got transcripts somewhere collecting dust. We make the transcripts and the videos of the public hearings available and present them in a way so that you can intelligently find what you're looking for.

LS: Do you mean all the video? Or do you mean the video summaries that were done?

GT: No, we're talking about *all* of the public hearings, of all cases.

LS: All the public hearings. Wow!

GT: The very first case that we launched publicly is *Karadžić*. So the day that the trial judgment came out, 24 March, 2016, you could log on — you could go to the Tribunal website, and there was an interactive spreadsheet effectively that gave you each witness, how many sessions; so there could be three video tapes per day sometimes. It would give you a brief description of the witness, the dates, and then you could click on it and stream it or download it as you wished. And so if you're reading the judgment for very first time, you could read it and you look at a footnote. So if you ask, “What's the evidence cited for this finding of fact?,” you could see a transcript. And you could pull up the transcript, there's also a hyperlink there, and then you could actually see the reference to the date of the hearing, and you could click, and you could watch the evidence, and you could actually find it. And so we want to be able to say, if our hearings are public, don't just take the judges' word for it. If the finding is a fact, there's a

reasoned judgment, and there's authority in certain evidence cited for that historical finding. You can actually now access it from anyplace in the world where you've got a computer.

LS: So is it the original language that anyone is speaking, or is there any kind of interpretation that is—?

GT: Well, it's a video, with four audio channels. And so you can select the audio channel.

LS: Oh, that's amazing!

GT: So you could listen to just the English channel, you could listen to just the BCS, the Bosnian/Croatian/Serbian interpretation or channel, you can listen to the French, or you can listen to the floor which is whatever language the person was speaking. And so, the ability to actually select what audio you want, and the video is always the same, and so — and to stream that or download it is a really — you have to get just the right player, just the right sync. And so that was kind of a fun IT project that I oversaw. So we've done it for one case, and it was probably our highest profile judgment, for the head of the Republika Srpska. We're hoping to do that now for the trial that's just about to start, for the MICT side and then revert to the ICTY for the *Mladić* case. So if there's evidence that you want to dig more deeply into, or there is a point in the judgment that you're more interested in, it should all be available. And then over time we'll have a huge backlog of material and try to make that accessible. That's what's really interesting

now, is that there's a platform on the Internet, and everything can be file-based. It's just trying to take the "relevant-to-you-needle" and make it findable in our haystack. Does that make sense?

LS: Yeah. So I'm just thinking that maybe this is why you were in touch with Batya Freidman from the University of Washington (director of the "Voices from the Rwanda Tribunal" video project), about having a technology that is sustainable or will be relevant in the future.

GT: Yeah, so we're both looking at that same kind of issue. I'd like to think that we're the first in making a public case file accessible online for the very first time. The idea is that on judgment day, all public materials should be accessible online. And also consider, what are the judges on appeal looking at? They're looking at transcripts, and now they can have video as well. So you can have both evidentiary forms from the witness, and then the whole file, all of the exhibits that are admitted, and all of the public exhibits are also now available to the public on the online database. So, you can find, for example, "Prosecution Exhibit 111." or "Defense Exhibit 112", all of those things would be accessible to you. And if you're a historian or want to reconstruct, or if you're a lawyer making your appeal, it's actually really interesting. For example, the American lead defense counsel for Radovan Karadžić on appeal, Peter Robinson, is now making use of that. So instead of just putting a footnote citing a transcript reference to the finding of the judgment or the evidence, he's actually putting a hyperlink to the video, so you can actually, as a person reading his brief, click and the video opens up.

LS: Oh, how interesting.



GT: "Why would I force you to read a transcript, Your Honor? Just watch the video."

LS: We're getting to the end of our time, so let me just ask you a question. You've been in international criminal justice from the early years until now.

GT: Since 1998.

LS: And now, what you were just talking about is a real evolution in technology since that time. When you look at this whole arc over the last couple of decades, what's your overall impression of how well the international criminal justice "project" has achieved its goals?

GT: Oh, a broad sweeping question. [LS: Laughs] I'd probably say we're still in the infancy period. It's really quite remarkable. It's still, I think, largely individual driven, you know. There are very effective individuals, and less effective ones, and cases are made or broken that way. I would love to see the system mature, and that we have professional judges in all posts. That it's a merit-based kind of system. Right now we have sort of a horse-trading system for judges. And I'd like to see more judges who are "gavel bangers." I used to think — when I got to Arusha in 1998, and saw the backlog of cases there — if I could just pull a couple of municipal court judges who really move calendars, do so many cases in a single day, then they could really clear things. I think for me it's not important, the nationality there. But we just need judges that have *really* come from high volume criminal jurisdictions. And that should be the CV that makes

someone a good judge. Judges often go from, let's say, State Court to a Federal Court, and it's a different body of law. Nearly all judges learn quickly a new body of law. It's not the fact that international law is so different or new that's making the judges' work complex. Judges are lawyers, constantly learning a new set of rules to apply if they move from one jurisdiction to another or one subject matter to another. The Tribunals' international rules are just a different set of rules and the judges have all had to learn them. It's the experience working in high volume criminal jurisdictions that is, for me, *essential* to help this "project" ripen into a true and credible international criminal justice system.

LS: And there were a lot of judges in the early days who — ?

GT: Even today. The election of judges should be based on merit. Howard Morrison [Judge of the International Criminal Court, formerly of the ICTY, and also a subject of the Ad Hoc Tribunals Oral History Project] is a positive example. He has really deep and rich criminal trial experience, and that's essential. Now he's already moved on to appeals, and so that's the other thing I should mention as well. Appeals work is a different job description. And so for me, we don't have trial judges getting appointed as Supreme Court justices in USA. So it's the same thing; we should have appeals judges with experience in appeals. That's me being critical on the chamber side, but I think the same goes on the prosecution side. Now there's the cadre of international lawyers who are really — and there wasn't before — versed in international criminal law and procedure. Before, prosecutors just came directly from national jurisdictions, as it was quite a novel area of law until recently. And to see people who have grown up in the

system now, and people who were former interns from the 1990's now are really quite seasoned lawyers who have come through, and are in senior posts. So I'm really quite pleased to see that, and it's improved in many ways. The defense bar is still a mixed bag; I'd like to see a little bit higher standards. And, registry service, you know, mostly through technology I think it is improving to some extent, but it is again — at this point it's nice to see people who have experience in posts, but it's like anyplace, there's always room for improvement in certain places. It's been a really interesting ride, but I have no idea how much longer I'll manage.

LS: Are you gonna be with MICT?

GT: I'm hoping to, but it's unsettled. The MICT as of now is really doing one trial, and then in a couple of years that will all probably go away. So it will become a much smaller and leaner institution when most judicial activity is completed. Except for, let's say, early release and post-conviction kinds of matters, which are still now sizeable. But the MICT caseload will reduce over time, and so the market place for international criminal law has actually been contracting significantly, and I just had to see a lot of people downsized. We went from twelve hundred staff to a few hundred here now, and it's been a hard adjustment for a lot of people going back in the domestic settings, and a lot of people are desperate to come back. They really crave that international environment, and then the diversity of the work here is fascinating and really interesting, and the gravity of the cases obviously is really very high.

But I see the International Court of Justice, which applies public international law, and there are maybe a hundred lawyer jobs there, and the number of those staff that can be available for a certain nationality is quite limited. And so, sure, the ICC will be, we hope, carrying on in the future, and it will have maybe twelve hundred jobs, and again a very limited number, but bigger slightly than the public international law sector. Eventually I think we'll settle down to just that. Much depends on the political context and whether there's political will to create more courts outside the ICC. That, I'm not so sure of. Or whether there's sufficient political will even to cooperate with *that* court is another broader question.

LS: It will be interesting to see.

GT: Yeah, so I came in, I got lucky. I've had this lucky run. While the ICL trajectory expanded, I've been just right on the cusp and been incredibly blessed. I'm not sure how long my lucky streak will carry on, but I'd love to stay in the field, and for me, I'd say, a lot of my identity is wrapped up in international criminal law. But beyond the ICC, it's hard to figure out what's down the road. And maybe our gravy days, our glory days are behind us, [LS: Laughs] and maybe this is just a blip on the radar of the bigger picture in the political context. But I'd like to think that maybe in the post-Assad, post-Trump, post-Putin world, things come back to where we were, with international justice progressing, as a priority, and with the rule of law effectively expanding. Maybe where international criminal justice is fleeting now, I'd like to think at least, the rule of law on a national level is waxing. That's maybe the most interesting development, new room for development, in perhaps the next twenty years or so.

LS: Well, Gregory, thanks so much for giving me your time today. This has been fantastic.

GT: Really my pleasure, thanks so much for coming. Cheers. **[END]**

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