



PROSECUTOR V. MLADIĆ: THE (IN)JUSTICE OF A CRIME-DRIVEN HISTORY IN THE FORMER YUGOSLAVIA

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“Mladic is the epitome of evil, and the prosecution of Mladic is the epitome of what international justice is all about.”¹

Introducing the Butcher of Bosnia

Some say Ratko Mladić is “one of us,”² a hero “forged by poverty.”³ He “was a good worker” who often returned to visit his village.⁴ According to one family member, “[h]e never complains about anything, but he is happy to speak to us, to hear how we feel and what we do.”⁵ After Mladić’s daughter committed suicide—by way of his own favorite pistol—there was no longer any “brightness in his eyes, only sadness.”⁶ To his defenders, Mladić is a victim and a martyr, an icon for the Serb people.⁷

But some call Mladić by another name: the Butcher of Bosnia.⁸ To them, he is different sort of icon, one representing the mass murder and forced expulsion in Bosnia and Herzegovina (“BiH”) during the Bosnian War of 1992–1995.⁹

Mladić is most notorious for “masterminding” the siege of Sarajevo and the Srebrenica massacre.¹⁰ In the siege of Sarajevo, Mladić led the Army of Republika Srpska in blockading and shelling the city for nearly four years.¹¹ Sarajevo saw two to three hundred impacts on a “quiet day,” with targets including hospitals; radio and TV stations; political, cultural, and religious structures; and civilian areas.¹² The Srebrenica massacre, by contrast, lasted only five days.¹³ Although Srebrenica had been declared a safe area that “should be free from any armed attack or any hostile act,” in 1995 Mladić’s armed forces launched an attack on the enclave.¹⁴ “The enemy’s life has to be made unbearable,” an official report instructed, “so that they leave the enclave en masse as soon as possible, realizing that they cannot survive there.”¹⁵ Mladić’s forces expelled the people of Srebrenica and executed over seven thousand Bosnian Muslim men and boys.¹⁶ Nearly six thousand have been exhumed from mass graves.¹⁷

As a result, Mladić was indicted by the United Nations International Criminal Tribunal for the Former Yugoslavia (“ICTY”) in 1995, but he evaded arrest until 2011.¹⁸ Six years later, in 2017, the ICTY convicted Mladić for genocide, war crimes, and crimes against humanity in its final case, *Prosecutor v. Mladić*.¹⁹ This summer, the ICTY’s successor body (“Appeals Chamber”) issued its decision on his appeal.²⁰ The Appeals Chamber affirmed the Trial Chamber’s conviction of Mladić for his part in four “joint criminal enterprises,”²¹ as well as his sentence of life imprisonment.²²

The crime-driven lens of international criminal tribunals

International criminal tribunals produce knowledge about the conflicts they preside over as a sort of “epistemic engine.”²³ They write history through a “crime-driven lens.”²⁴ By nature, a crime-driven lens is limited in scope:²⁵ an international tribunal sees only those crimes within its temporal, territorial, and jurisdictional bounds, leaving gaps in the historical narrative.²⁶ The

office of the prosecutor plays an important role in tracing these boundaries,²⁷ as the office may choose to fix its purpose on only proving the guilt of the particular defendant or, on the other side of the spectrum, on building a historical record of the conflict.²⁸ Prosecutors focused on proving the particular defendant's guilt will lead a more efficient trial, while prosecutors who plan to build a historical record will better capture the full scope and extent of the crimes committed.²⁹

The prosecution (and by extension the tribunal) achieves its purpose by forming an indictment according to one of three approaches: focused, comprehensive, or representative.³⁰ In a focused approach, the prosecution brings a narrow set of charges, omitting other criminal conduct.³¹ In a comprehensive approach, the prosecution brings a broad set of charges, incorporating other criminal conduct.³² And in a representative approach, the prosecution brings charges "reasonably representative" of the criminal conduct, presenting a sample of the most serious crimes.³³

This spectrum of approaches played out in Mladić's appeal.³⁴ At trial, the prosecution's indictment originally included 196 scheduled incidents, an example of the comprehensive approach.³⁵ The Trial Chamber, however, took a representative approach, asking the prosecution to set a fixed number of incidents "reasonably representative of the crimes charged" (based on the types and scale of the crimes, the places the crimes were alleged to have occurred, and the victims of the crimes).³⁶ In response, the prosecution amended the indictment to include 106 scheduled incidents.³⁷ The Trial Chamber reminded the prosecution that notice to the defendant would be required if it intended to present evidence on any other incidents.³⁸

On ground one of his appeal, Mladić argued that the prosecution failed to identify all of the material facts it would use to prove its case;³⁹ that, as a result, Mladić was unable to prepare a

full defense;⁴⁰ and thus that the Trial Chamber erred in holding him responsible for those facts, which he called “unnamed unscheduled incidents.”⁴¹ Unsurprisingly, this argument aligns with a focused approach.

One of the three judges, Judge Nyambe, agreed with Mladić’s argument.⁴² She explained that unnamed unscheduled incidents differ from *scheduled* incidents, which are listed in the indictment, and also from *unscheduled* incidents, which may be listed in, for example, the prosecution’s witness list.⁴³ *Unnamed* unscheduled incidents refers to facts that are introduced when a witness is testifying about other incidents; up until that point, the defendant is unaware he could be held responsible for these facts.⁴⁴ Without prior notice, in Judge Nyambe’s view, the incidents could not be used to support a conviction.⁴⁵

The majority disagreed, adopting the same representative approach as the Trial Chamber.⁴⁶ The Appeals Chamber argued that the prosecution’s case could present other incidents “within the scope” of the indictment.⁴⁷ An indictment need not specify all of the evidence the prosecution would use.⁴⁸ The degree of specificity required depends on the crimes charged, and for cases with a wide scope of criminal conduct, the prosecution can satisfy the notice requirement by specifying “representative” incidents prior to trial.⁴⁹ In this case, the prosecution’s 106 scheduled incidents were clearly “illustrative.”⁵⁰

Through the crime-driven lens: history in the former Yugoslavia

Survivors in BiH expected certain kinds of justice from the ICTY.⁵¹ Most obviously, the ICTY would “do justice” by holding individuals responsible for their crimes.⁵² The ICTY would express justice as well, vindicating the international community’s outrage and horror as it reminded the world that mass atrocities could not be committed with impunity.⁵³ In the process,

the ICTY would give survivors a chance to find recognition of their experience by bearing witness.⁵⁴ These expectations looked to remedy the past.

Survivors also looked to the future with expectations of truth, reconciliation, and deterrence from the ICTY. The ICTY would show who committed crimes and how the crimes were committed.⁵⁵ Finding these facts would call each ethnic group to acknowledge the atrocities of its members.⁵⁶ The ICTY would do away with the denial of mass atrocities and open the door to feelings of remorse.⁵⁷ Each ethnic group could hold on to a shared truth and reconcile with the past.⁵⁸ All the while, the ICTY would remove dangerous criminals from their communities and deter future crime.⁵⁹

It is no wonder survivors hoped for “some kind of justice.”⁶⁰ The former Yugoslavia has faced a host of problems coming out of the wars: obfuscation,⁶¹ denial,⁶² revisionism,⁶³ even the glorification of war criminals.⁶⁴ Mladić himself hid from the ICTY for sixteen years with help from the Serbian military and state authorities.⁶⁵ Recently, an international representative introduced amendments to BiH’s criminal code that would impose prison sentences for genocide denial and the glorification of war criminals.⁶⁶ The situation is “getting out of hand,” he warned.⁶⁷

The ICTY has nonetheless achieved “some kind of justice,” if imperfect.⁶⁸ Following the war, survivors from the municipality of Prijedor, for example, were most concerned about securing their basic needs and returning to their homes.⁶⁹ The ICTY reduced organized violence against those who returned by removing from power the figures most responsible for ethnic cleansing campaigns.⁷⁰ The ICTY also encouraged survivors to return by sending the message that crimes would not go unpunished.⁷¹

But in writing history, the ICTY has not met survivors' expectations. In Prijedor, hope faded when the ICTY withdrew indictments against lower-level perpetrators, released defendants early, and imposed what the community felt were inadequate sentences.⁷² The people of Prijedor saw short sentences as a "betrayal" that did not acknowledge the true extent of their suffering,⁷³ and guilty pleas did not do enough to acknowledge the defendants' culpability.⁷⁴ Acquittals fail to tell the whole story as well, establishing "official narratives" that appear to exonerate defendants' involvement in mass atrocities.⁷⁵ In this view, the tribunal cannot deliver on its promises of transitional justice.⁷⁶

Twenty years later, the ICTY has had little effect on denial and revisionism in the former Yugoslavia.⁷⁷ Surveys show that only one-fifth of Bosnian Serbs believe any crime occurred in Srebrenica, and only two-fifths have heard of such crimes.⁷⁸ One survey from 2017 found that only twelve percent of respondents believed the killings in Srebrenica occurred "as established in ICTY judgments."⁷⁹ Most survey respondents claimed to distrust the ICTY due to its bias against their ethnic group.⁸⁰ The ICTY was only seen as trustworthy when it validated an ethnic group's internal narrative,⁸¹ and the more the tribunal challenged nationalist narratives, the more likely it was to raise suspicion.⁸² In this way, the part of the tribunal's legacy that promised to be the "most meaningful for ordinary people"—a recognized factual record of the crimes committed—fell short of expectations.⁸³

A crime-driven history: "what international justice is all about"?⁸⁴

International criminal tribunals are only capable of so much.⁸⁵ They are not meant to prosecute all criminals;⁸⁶ they are meant to prosecute criminals only when a country is unwilling or unable to do so itself.⁸⁷ Without the ICTY, it is unlikely that domestic courts in the former Yugoslavia would have successfully convicted high-ranking leaders⁸⁸ or prosecuted lower-level

perpetrators at scale, if at all.⁸⁹ At the same time, as “distant” institutions, international tribunals are removed from the everyday realities of the communities most affected.⁹⁰ They sometimes become more accountable to their own authority or to the international community.⁹¹ In short, it is difficult to say whether the ICTY exacerbated problems on the ground or prevented an even worse outcome.⁹²

As for the tribunal’s role in writing history, the comprehensive and representative approaches to indictments (seen in *Prosecutor v. Mladić*) have worrying implications for survivors’ forward-looking expectations. It is dangerous to set expectations of reaching truth, reconciliation, and deterrence when the promise of a historical record depends on what evidence is admissible and whether the evidence tells a story “beyond a reasonable doubt.”⁹³ Survivors do not see the truth of their experience realized and cannot reconcile with the past when the prosecution decides against pursuing or prioritizing a case,⁹⁴ when defendants evade capture,⁹⁵ or when defendants are acquitted at trial.⁹⁶ They lose trust in an international criminal tribunal when it begins to look more like a stage than a forum for the adjudication of individual defendants, as Hannah Arendt described the Nuremberg trials in *Eichmann in Jerusalem*.⁹⁷

In *Prosecutor v. Mladić*, the prosecution claimed its main focus was not “[t]he crime,” but the “individual criminal responsibility of Ratko Mladic.”⁹⁸ But the prosecution also asked the ICTY to establish “the truth about what Ratko Mladic did to Bosnia’s people.”⁹⁹ In turn, the ICTY found that Mladić “used” armies and state institutions as “tools” to commit his crimes.¹⁰⁰ The tribunal held him responsible for his “leading and grave role” in joint criminal enterprises.¹⁰¹ This tells a certain kind of story—one in which only someone like the “Butcher of Bosnia” could be capable of perpetrating crimes.¹⁰² The question remains whether this sort of history can achieve truth, reconciliation, and deterrence for survivors of conflicts like the Bosnian War.



¹ U.N.'s Zeid Says Mladic "Epitome of Evil," No Escape from Justice, REUTERS (Nov. 22, 2017, 6:37 AM), <https://www.reuters.com/article/idUSKBN1DM1B5> [<https://perma.cc/KTR2-W6JL>].

² Eldar Emric, *Before Final Verdict, Mladic's Blood Legacy Divides Bosnia*, ASSOCIATED PRESS (June 5, 2021), <https://apnews.com/article/europe-government-and-politics-4e27e95da8f1bb62bb3c37dc1b32c8cf> [<https://perma.cc/PC65-S623>].

³ Dan Bilefsky, *Bosnia Fugitive Is Hero to Some, Butcher to Others*, N.Y. TIMES (Aug. 5, 2008), <https://www.nytimes.com/2008/08/05/world/europe/05mladic.html> [<https://perma.cc/J26E-RZ7X>].

⁴ Dado Ruvic, *Mladic Still a Hero in Dying Home Village in Bosnia*, REUTERS (Nov. 17, 2017, 5:04 AM), <https://www.reuters.com/article/us-warcrimes-mladic-village/mladic-still-a-hero-in-dying-home-village-in-bosnia-idUSKBN1DH14U> [<https://perma.cc/C8QZ-R877>].

⁵ Dzana Brkanic & Admir Muslimovic, *In Ratko Mladic's Village, He's an Innocent Man*, BALKAN TRANSITIONAL JUST. (Nov. 15, 2017, 9:06 AM), <https://balkaninsight.com/2017/11/15/in-ratko-mladic-s-village-he-s-an-innocent-man-11-14-2017/> [<https://perma.cc/CU4Z-WT88>].

⁶ Bilefsky, *supra* note 3.

⁷ Emric, *supra* note 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* For a documentary series on the Yugoslav Wars, see YUGOSLAVIA: DEATH OF A NATION (BBC 1995–1996), and for a documentary on Mladic's trial, see THE TRIAL OF RATKO MLADIĆ (Frontline 2019).

¹¹ See Priyanka Boghani, *Timeline: Ratko Mladic and His Role in War Crimes During the Bosnian War*, FRONTLINE (Mar. 19, 2019), <https://www.pbs.org/wgbh/frontline/article/timeline-ratko-mladic-and-his-role-in-war-crimes-during-the-bosnian-war/> [<https://perma.cc/F7QQ-RSEW>].

¹² *Id.*

¹³ Prosecutor v. Mladic, Case No. MICT-13-56-A, Transcript of Prosecution's Opening Statement, 474 (Int'l Crim. Trib. for the Former Yugoslavia May 17, 2012), <https://www.icty.org/x/cases/mladic/trans/en/120517IT.htm> [<https://perma.cc/6Z35-9MXW>].

¹⁴ Boghani, *supra* note 11.

¹⁵ See Transcript of Prosecution's Opening Statement, *supra* note 13, at 483.

¹⁶ See *id.* at 474–75.

¹⁷ *Id.* at 474.

¹⁸ See *Case Information Sheet: (IT-09-92) Ratko Mladic*, INT'L CRIM. TRIBUNAL FOR FORMER YUGOSLAVIA, https://www.icty.org/x/cases/mladic/cis/en/cis_mladic_en.pdf [<https://perma.cc/H895-KUMR>].

¹⁹ Steven Arrigg Koh, *The Mladic Appeal Judgment and the Enduring Legacy of the Hague Tribunals*, JUST SEC. (June 28, 2021), <https://www.justsecurity.org/77197/the-mladic-appeal-judgment-and-the-enduring-legacy-of-the-hague-tribunals/> [<https://perma.cc/3V62-LHW7>].

²⁰ *Id.*

²¹ The "[o]verarching" joint criminal enterprise, for example, had the common purpose of "permanently removing Bosnian Muslims and Bosnian Croats from the Bosnian Serb-claimed territory in [BiH]." Prosecutor v. Mladic, Case No. MICT-13-56-A, Appeals Judgment, ¶ 120 (Int'l Residual Mechanism for Crim. Tribunals June 8, 2021).

²² Arrigg Koh, *supra* note 19.

²³ Aldo Zammit Borda, *History in International Criminal Trials: The "Crime-driven Lens" and Its Blind Spots*, 18 J. INT'L CRIM. JUST. 543, 544 (2020) (emphasis removed).

²⁴ *Id.* at 545.

²⁵ *Id.* at 553.

²⁶ *Id.*

²⁷ *See id.* at 553–54.

²⁸ *Id.* at 557.

²⁹ *Id.* at 558–60 (discussing advantages and disadvantages of prosecutorial approaches).

³⁰ *See id.* at 558.

³¹ *Id.*

³² *Id.* at 559.

³³ *Id.* at 560–61.

³⁴ *See* Prosecutor v. Mladić, Case No. MICT-13-56-A, Mladić Appeal Brief, Section II (Int’l Residual Mechanism for Crim. Tribunals Sep. 11, 2018).

³⁵ *See* Prosecutor v. Mladić, Case No. MICT-13-56-A, Decision Pursuant to Rule 73 *bis* (D), ¶ 4 (Int’l Residual Mechanism for Crim. Tribunals Dec. 2, 2011).

³⁶ *See id.* ¶¶ 1, 9.

³⁷ *Id.* ¶ 4.

³⁸ *Id.* ¶ 15.

³⁹ Mladić Appeal Brief, *supra* note 34, ¶ 49.

⁴⁰ *Id.* ¶ 50.

⁴¹ *Id.* ¶ 41.

⁴² *See* Prosecutor v. Mladić, Case No. MICT-13-56-A, Partially Dissenting Opinion of Judge Nyambe, ¶ 596 (Int’l Residual Mechanism for Crim. Tribunals June 8, 2021).

⁴³ *Id.* ¶¶ 594, 595.

⁴⁴ *Id.* ¶ 595.

⁴⁵ *Id.*

⁴⁶ Appeals Judgment, *supra* note 21, ¶ 38.

⁴⁷ *Id.* ¶ 31.

⁴⁸ *Id.* ¶ 36.

⁴⁹ *Id.*

⁵⁰ *Id.* ¶ 33.

⁵¹ DIANE ORENTLICHER, *SOME KIND OF JUSTICE: THE ICTY’S IMPACT IN BOSNIA AND SERBIA* 92 (2018).

⁵² *Id.* at 95.

⁵³ *See id.* at 97–98.

⁵⁴ *Id.* at 107.

⁵⁵ *Id.* at 100.

⁵⁶ *Id.* at 102.

⁵⁷ *Id.* at 105.

⁵⁸ *Id.* at 106.

⁵⁹ *Id.* at 109–10.

⁶⁰ Orentlicher, *supra* note 51, at 92.

⁶¹ *See, e.g.,* Marija Ristic, *Serbian Ministries Block Public Access to War Files*, BALKAN TRANSITIONAL JUST. (Apr. 8, 2016, 6:57 AM), <https://balkaninsight.com/2016/04/08/serbian-ministries-block-public-access-to-war-files-04-07-2016/> [https://perma.cc/LA69-3BAS] (reporting that Serbian institutions were “systematically obstructing public information” that might expose official involvement in criminal conduct); Filip Rudic & Marija Ristic, *Serbia Declares Mladic Aides’ Indictment a State Secret*, BALKAN TRANSITIONAL JUST. (Nov. 13, 2017, 9:03 AM), <https://balkaninsight.com/2017/11/13/serbia-declares-indictment-against-mladic-aids-state-secret-11-10-2017/> [https://perma.cc/2U2S-UWK4] (reporting that indictments against those alleged to have helped Mladić hide from ICTY “had been classified as confidential”).

⁶² *See, e.g.,* Milica Kostić, *Public Opinion Survey in Serbia Sheds Light on ICTY Legacy*, EJIL:TALK! (Jan. 22, 2018), <https://www.ejiltalk.org/public-opinion-survey-in-serbia-sheds-light-on-icty-legacy/> [https://perma.cc/JT9E-QQ5A] (discussing findings from 2017 survey in which 71% of respondents were unaware of what happened in siege of Sarajevo).

⁶³ *Id.*

⁶⁴ *Id.* (listing war criminals’ return to public life, including a “state-organized welcome ceremony” for one commander after serving his sentence imposed by ICTY).

⁶⁵ Filip Rudic & Marija Ristic, *Ratko Mladic’s Fugitive Years Cloaked in Secrets and Lies*, BALKAN TRANSITIONAL JUST. (Nov. 16, 2017, 8:54 AM), <https://balkaninsight.com/2017/11/16/ratko-mladic-s-fugitive-years-cloaked-in->

secrets-and-lies-11-15-2017/ [https://perma.cc/8EVK-6PLT]; see also Bilefsky, *supra* note 3 (describing Mladic’s protection by “a network of 50 intelligence and army officials” as well as alleged receipt of a “housekeeper, groceries and phone cards, and [an offer of] plastic surgery and a false passport”).

⁶⁶ *Top International Official in Bosnia Bans Denial of Genocide*, ASSOCIATED PRESS (Jul. 23, 2021), <https://apnews.com/article/europe-government-and-politics-genocides-6821e5d3a71bf86db830fda1e81a6123> [https://perma.cc/LR2D-8FP4].

⁶⁷ *Id.*

⁶⁸ See Orentlicher, *supra* note 51, at 92.

⁶⁹ Refik Hodžić, *Living the Legacy of Mass Atrocities: Victims’ Perspectives on War Crimes Trials*, 8 J. INT’L CRIM. JUST. 113, 119 (2010).

⁷⁰ *Id.*

⁷¹ See *id.* at 119–20 (“I returned to Prijedor in summer of 1999. It was unthinkable at the time, but I did it because I believed things were going to improve rapidly, that justice was coming, people were returning to the city despite the horrible things happened.”).

⁷² *Id.* at 121 (based on interviews with twenty-three victims).

⁷³ *Id.* at 134. For example, one defendant was sentenced to eleven years’ imprisonment after pleading guilty to crimes against humanity committed in over thirty BiH municipalities. *Id.* at 132 n.73. A relatively high sentence, by contrast, would be fifteen to twenty years for the murder of six civilians. See *id.* at 122–23 n.32.

⁷⁴ *Id.* at 129.

⁷⁵ Zammit Borda, *supra* note 23, at 563.

⁷⁶ Hodžić, *supra* note 69, at 133.

⁷⁷ Marko Milanović, *The Impact of the ICTY on the Former Yugoslavia: An Anticipatory Postmortem*, 110 AM. J. INT’L L. 233, 235 (2016).

⁷⁸ *Id.*

⁷⁹ Kostić, *supra* note 62.

⁸⁰ Milanović, *supra* note 77, at 242.

⁸¹ *Id.* at 254.

⁸² *Id.* at 259.

⁸³ See *id.* at 234.

⁸⁴ See U.N.’s Zeid Says Mladic “Epitome of Evil,” *supra* note 1.

⁸⁵ See Zammit Borda, *supra* note 23, at 553.

⁸⁶ *Id.*

⁸⁷ Arrigg Koh, *supra* note 19.

⁸⁸ Milanović, *supra* note 77, at 233.

⁸⁹ *Id.* at 234.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² See *id.* at 256–57.

⁹³ See Zammit Borda, *supra* note 23, at 562.

⁹⁴ See Office of the Prosecutor, *Policy Paper on Case Selection and Prioritisation*, INT’L CRIM. CT. (Sep. 15, 2016), https://www.icc-cpi.int/itemsdocuments/20160915_otp-policy_case-selection_eng.pdf [https://perma.cc/L532-9GBG] (laying out International Criminal Court prosecution’s goal of pursuing “the most serious crimes ... of concern to the international community as a whole”); David Bosco, *How the ICC Selects Its Cases*, LAWFARE (Mar. 14, 2016, 3:30 PM), <https://www.lawfareblog.com/how-icc-selects-its-cases> [https://perma.cc/BAW2-VV4A] (questioning the “gravity threshold” a situation must pass for prosecution to open investigation); Aldo Zammit Borda, *The Situation in Afghanistan, US Sanctions and the Historical Narratives Emerging from the ICC*, EJIL:TALK! (June 24, 2020), <https://www.ejiltalk.org/the-situation-in-afghanistan-us-sanctions-and-the-historical-narratives-emerging-from-the-icc/> [https://perma.cc/FR9U-KC8S] (arguing that ICTY prosecutor’s decision to not investigate North Atlantic Treaty Organization [NATO] conduct undermined her ability to “search for truth accurately and sincerely,” with “implications for the historical narratives emerging from the ICTY”).

⁹⁵ Diane F. Orentlicher, *Shrinking the Space for Denial: The Impact of the ICTY in Serbia*, OPEN SOC’Y INST. 26 (May 2008), https://www.justiceinitiative.org/uploads/a0be82c5-aa8a-4bcd-9d23-bcef4d94f93c/serbia_20080501.pdf [https://perma.cc/PX9C-MWNZ] (summarizing view that, because Mladić and Radovan Karadžić evaded capture for so long, Bosnians “[could]n’t see the good things that ICTY has done”).

⁹⁶ Zammit Borda, *supra* note 23, at 563.

⁹⁷ See HANNAH ARENDT, *EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL* 9 (Penguin Books 2006) (1963) (“A show trial needs even more urgently than an ordinary trial a limited and well-defined outline of what was done and how it was done. In the center of a trial can only be the one who did ... and if he suffers, he must suffer for what he has done, not for what he has caused others to suffer.”). *But see id.* at 109 (“The judges might, and did, quarrel with the prosecutor about the wisdom and even the appropriateness of using the occasion for ‘painting general pictures,’ but once a witness had taken the stand, it was difficult to interrupt him ... ‘because of the matters about which he speaks.’”).

⁹⁸ Transcript of Prosecution’s Opening Statement, *supra* note 13, at 475.

⁹⁹ *Id.* at 523.

¹⁰⁰ Appeals Judgment, *supra* note 21, ¶ 120.

¹⁰¹ *Id.* ¶ 4.

¹⁰² See generally Hannah Arendt, *supra* note 97, at 276 (“The trouble with Eichmann was precisely that so many were like him. ... [T]his normality was much more terrifying than all the atrocities put together.”); CHRISTOPHER R. BROWNING, *ORDINARY MEN: RESERVE POLICE BATTALION 101 AND THE FINAL SOLUTION IN POLAND* 164, 167 (Harper Perennial rev. ed. 2017) (1992) (demonstrating, through example of one battalion of men “least likely to be considered apt material out of which to mold future killers” in World War II, that evil “arises out of ordinary thinking and is committed by ordinary people”).