

1 Thursday, 23 January 2025

2 [Open session]

3 [The accused entered the courtroom]

4 [The Accused Thaci not present]

5 --- Upon commencing at 9.09 a.m.

6 PRESIDING JUDGE SMITH: Ms. Tavakoli, do you wish to have the  
7 floor concerning -- I'm sorry, call the case, please.

8 THE COURT OFFICER: Good morning, Your Honours. This is the  
9 file number KSC-BC-2020-06, The Specialist Prosecutor versus  
10 Hashim Thaci, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi. Thank  
11 you, Your Honours.

12 PRESIDING JUDGE SMITH: Do you wish the floor concerning your  
13 client's inability to be here today?

14 MS. TAVAKOLI: Yes, please. If we can go into closed session.

15 PRESIDING JUDGE SMITH: Into closed session, please. I'm sorry,  
16 into private session, not closed.

17 [Private session]

18 [Private session text removed]

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24

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1 [Private session text removed]

11 [Open session]

12 THE COURT OFFICER: Your Honours, we're in public session.  
13 Thank you.

14 PRESIDING JUDGE SMITH: All right.

15 Please bring the witness in.

16 MS. ROWAN: Your Honour, while that's being done, perhaps I  
17 could assist with timing for the rest of the day.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 MS. ROWAN: Your Honour had raised the issue of timing at the  
20 end of yesterday, and I was hoping to assist in relation to that.

21 My learned friend, Ms. Tavakoli, for Mr. Thaci, had initially  
22 requested or anticipated 45 minutes for cross-examination. She has  
23 ceded that 45 minutes to us. My learned friend for Mr. Selimi  
24 initially had 30 minutes. They likewise had ceded that 30 minutes to  
25 us. Mr. Krasniqi's team initially had 1 hour, 15 minutes, informing

1 the Panel yesterday that that would be reduced to 30 minutes, with a  
2 view of ceding 45 minutes to us. Therefore, the Veseli Defence team  
3 has been ceded two hours by the co-defendants, ensuring that the  
4 Defence time estimates will not go beyond what they were as a  
5 collective.

6 And, secondly, and I appreciate the Panel's primary concern is  
7 dealing with the witness that's due to come subsequently.

8 [The witness takes the stand]

9 MS. ROWAN: Does Your Honour wish for me to continue?

10 PRESIDING JUDGE SMITH: Pardon me?

11 MS. ROWAN: Does Your Honour wish me to continue in the presence  
12 of Mr. Clark?

13 PRESIDING JUDGE SMITH: Yes, certainly.

14 MS. ROWAN: Thank you. I know Your Honours' concern primarily  
15 relates to the next witness that we're due to hear. Your Honour will  
16 recall that witness was initially a 153 witness. In light of that,  
17 cross-examination is, of course, significantly limited. Only one  
18 Defence team at present intends to cross-examine, and their estimate  
19 is 30 minutes, and so we will comfortably finish with those estimates  
20 today.

21 MR. PACE: Your Honour, if I may be heard very briefly on this,  
22 and I will be brief.

23 Just to point out the obvious here. There is absolutely no  
24 right for one Defence team to cede or be ceded or inherit the time  
25 estimated by other Defence teams. As you will appreciate, the

1 criteria should be relevance of questioning.

2 The cross-examination by the Veseli Defence has been highly  
3 repetitive. And in particular, it's included multiple unnecessary  
4 questions. By way of example, the expert yesterday was asked if an  
5 abrasion might be caused when someone falls off their bicycle and  
6 whether he was asked to conduct a second autopsy on the victims  
7 addressed in this report.

8 Those questions are among the many which do not need to be  
9 asked. It's not as though the SPO will be arguing that he was, in  
10 fact, asked to conduct a second autopsy. So there is certainly a lot  
11 that can be done in terms of streamlining and efficiency.

12 And in relation to the next witness, that is quite a distinct  
13 matter. The fact that a 153 witness was objected to and now is being  
14 called and essentially there is little questioning for them is a  
15 another matter entirely. But the focus as to the length of time that  
16 the Veseli Defence team should go on in their cross-examination  
17 should be judged solely on the merits and the way it has been  
18 conducted thus far. Thank you.

19 [Trial Panel confers]

20 PRESIDING JUDGE SMITH: We will allow you some latitude today.  
21 I'm not going to cut it off. You do not need two and a half hours  
22 with this witness.

23 MS. ROWAN: No, I don't.

24 PRESIDING JUDGE SMITH: You just do not. Well, I'm just telling  
25 you. We will give you a little bit of rope. You'll be on your own.

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Cross-examination by Ms. Rowan (Continued)

1 Please make it relevant, non-repetitious, something -- half of what  
2 you've asked him we could read in his report. He didn't do  
3 anything -- we didn't do anything other than discuss what was already  
4 in the report. So please make it relevant and non-repetitive, and do  
5 not repeat the exact material that's in his report.

6 You may proceed.

7 WITNESS: JOHN CLARK [Resumed]

8 Cross-examination by Ms. Rowan: [Continued]

9 Q. Good morning, Mr. Clark.

10 A. Good morning.

11 Q. Apologies. Perhaps if we could pick up where we left off  
12 yesterday.

13 MS. ROWAN: Mr. Clerk, could we please have Mr. Clark's report  
14 which is MFI 1991, and if we could have that at page 7. And  
15 alongside that, on the left, could we please have Mr. Clark's diagram  
16 of the deceased that we were looking at, and that is ERN 124715 to  
17 124723. And I'd like from that page ending 718.

18 Q. Mr. Clark, as that's being brought up, you'll recall yesterday  
19 we left off just having begun looking at this report for this  
20 deceased individual, and we had just begun looking at the diagram  
21 that you had created tracking the gunshot wounds. Do you recall  
22 that's where we left off?

23 A. Yes.

24 Q. I'm grateful. And as a starting point, Mr. Clark, you had noted  
25 that, as a general proposition, it is unusual as a starting point to

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1 observe an entry and an exit wound on the same surface of the body;  
2 is that right?

3 A. Yes.

4 Q. And that is something we will observe now at page ending 718  
5 that was noted as occurring with this body; is that right?

6 A. Yes.

7 Q. And you had noted in your report that, in your view, the  
8 tracking noted was extremely doubtful. Could you please, with the  
9 assistance of this diagram, explain to us why, in your view, while  
10 alternative possibilities might exist, that your opinion is this  
11 tracking is extremely doubtful, please.

12 A. Well, it is, as I've already stated, very unusual to have an  
13 entrance and an exit on the same surface unless the bullet is  
14 entering at a very shallow angle, almost parallel to the skin. I  
15 mean, that is conceivable. It may have happened here. And if you  
16 look at the scene photograph of this man, he's actually lying on his  
17 right side, and it's conceivable that, having been shot in the chest  
18 and fallen to the ground onto his right side, that he was then shot  
19 on the ground in that position. In which case, bullets could - could  
20 - go in at a very shallow angle. That's my only potential  
21 explanation for that.

22 Having said that, I mean, a bullet, if it goes into the skin at  
23 a very shallow angle, tends to cause not just a sort of round hole  
24 but a gutter, if you like, a sort of long, elongated wound because  
25 it's going into the skin, which is not really described here. So

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1     that's my only explanation that he -- if these are genuine wounds, it  
2     must have been when he was probably on the ground lying on his right  
3     side and shot at a very shallow angle to the body.

4     Q.    Yes, but you doubt the genuineness?

5     A.    Well, I've got it -- I've got to raise questions --

6     Q.    Yes.

7     A.    -- about it certainly.

8     Q.    Is it, therefore, possible that the reason -- is it, therefore,  
9     possible that an error was made in the tracking of these wounds? Is  
10    that a possible explanation for the tracking?

11    A.    It is possible. At the same time, it's difficult to believe  
12    that any wounds on -- other wounds were missed on the front of the  
13    body. I mean, there's still one wound on the front of the body and  
14    five on the back, and it's difficult to conceive that another  
15    entrance wound on the front was missed. So I really don't know, as  
16    they -- it's unusual. It's unusual.

17    Q.    And it's not something you can resolve on the material that  
18    you've been provided?

19    A.    No.

20           MS. ROWAN: Could we then please remove that tracking image,  
21    thank you very much, and return to your report.

22    Q.    You were asked -- and it's page 7 of your report and over on to  
23    page 8. You were asked in relation to this deceased person questions  
24    about bruising. Do you recall being asked these questions?

25    A.    Yes.

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Cross-examination by Ms. Rowan (Continued)

1 Q. And is it right that we should, as we discussed yesterday, for  
2 this deceased, like with the last, read into your responses in  
3 relation to bruising those caveats in relation to the global bruising  
4 findings?

5 MR. PACE: Objection, Your Honour. Asked and answered. In  
6 fact, counsel yesterday asked whether those caveats should be read  
7 into each of the five victims which we are currently addressing.  
8 There is absolutely no reason to ask that question again.

9 PRESIDING JUDGE SMITH: Sustained.

10 MS. ROWAN: In question 3 -- could we go to page 8.

11 Q. Mr. Clark, you'll see at question 3 you deal with the  
12 question -- oh, pardon me. Yes, it's the second paragraph of page 3  
13 [sic] in your response, where you deal with the question of mechanism  
14 of the bruising. And you say at the bottom of question 3:

15 "As regards the bruising on the back, arms and legs, if this was  
16 genuine it then constitutes blunt force trauma, likely to have been  
17 inflicted by kicking or blows from a heavy object."

18 Do you see your response there?

19 A. Yes.

20 Q. Is it right that while you provide possible explanations for the  
21 blunt force trauma, these certainly aren't definitive conclusions as  
22 to the mechanism of these purported injuries?

23 A. No, there could be other mechanisms. I raise these as  
24 possibilities.

25 Q. Yes. Again with those caveats in mind?



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Cross-examination by Ms. Rowan (Continued)

1 A. Yes.

2 Q. Could I deal briefly then again with this body on the question  
3 of absence of bullets. Absence of bullets for this body is something  
4 that you observe in this answer as well, and it is here that you  
5 observe the absence of bullets as being astonishing.

6 Given the number of gunshot wounds that this body suffered, is  
7 it right to say that your concern over that absence remains?

8 A. Yes. I suppose my comments apply more to the totality of the  
9 cases, the five cases. That out of all five, no bullets or bullet  
10 fragments were found in any of the bodies as we discussed yesterday.

11 Q. Yes. Standing back and looking at, and I appreciate we've done  
12 a very quick run-through of the highlights of your responses for this  
13 deceased, but standing back and looking at the report for this  
14 deceased person, would it be, again, a fair summary to say that your  
15 report highlights concerns around the genuineness of the purported  
16 bruising, the accuracy of the projectile trajectories, the  
17 unreliability of the GSR findings, and the absence of bullets? Would  
18 that be a fair summary of this deceased report?

19 A. Yes, these are all the points I've raised issues with. Yes.

20 Q. So, again, like with the report that we looked at yesterday, in  
21 those circumstances would it be fair to say that you're not in a  
22 position today to adopt the findings of this report as your own  
23 either?

24 A. That's correct, yes.

25 Q. And that is because, are we right to understand, that without

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1 more information, you are not in a position at present to confirm the  
2 accuracy or reliability of those underlying findings?

3 A. Yes.

4 MS. ROWAN: Could we please then turn to the next report, and  
5 that will be on page 9, please.

6 Q. And we can take this relatively quickly, Mr. Clark, as many of  
7 those global concerns that we have already discussed, as you've  
8 indicated, would inevitably apply equally to this deceased person.

9 A. Well -- sorry.

10 Q. Please continue.

11 A. I was going to say, well, not so much. This -- in this case,  
12 the gunshot wounds are very straightforward.

13 Q. Yes, the tracking concerned does not arise with this victim?

14 A. No.

15 Q. No. But in terms of the concerns in relation to bruising,  
16 absence of bullets, they do apply. Would that be correct?

17 A. Yes.

18 Q. Yes. But as you've noted in your report, and as the diagram  
19 that you've created would indicate, you do not raise any concerns on  
20 the gunshot wound tracking here?

21 A. No.

22 Q. In terms of one additional question that you were asked, you,  
23 again, were asked about mechanism for the bruising, and I just want  
24 to deal with that very briefly.

25 And you were asked in relation to mechanism, and that's question

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1 3 on page 10. And, again, would it be right to understand you have  
2 given us possibilities for mechanism of bruising but that is, of  
3 course, not a conclusive list of possibilities; is that right?

4 A. Yes, that's right.

5 Q. Again, with the caveats we understand apply?

6 A. Yes.

7 Q. Now, question 4 on that same page, we can see --

8 MS. ROWAN: Oh, pardon me. We're not following correctly on  
9 screen. Could we please have page 10 on screen. Thank you.

10 Q. Just briefly, you were asked by the SPO to comment on the  
11 question here, as you were elsewhere, in relation to distance of the  
12 shooter. And what was said in the underlying report was that the  
13 pathologist was of the view that a shot was fired from a distance.  
14 That's correct, yes? That was what was in the underlying report.

15 A. Yes.

16 Q. Now, "fired from a distance" is not an expression that holds any  
17 particular meaning or weight in your field; is that right?

18 A. No, if you -- when we talk about gunshot injuries, we tend to  
19 classify them in terms of distance as, perhaps, contact, in other  
20 words, the gun is up against the skin; close contact, which is, you  
21 know, a short time away; and above about a metre, metre and a half,  
22 we would classify as distant. Now, that's perhaps different from  
23 general terminology if we talked about distant. But in sort of  
24 pathology terms, a gunshot wound above, say, a metre and a half we  
25 would classify as distant.

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1 But it would be the same appearance of the wound from a metre  
2 and a half as from 20 metres away.

3 Q. Yes.

4 A. So "distant" in that terms covers a large area.

5 Q. Yes. So while -- but we're not in a position, would you agree,  
6 to interpret what may have been meant by "from a distance"?

7 A. Yes, that's right.

8 Q. Yes.

9 A. We can't, yes.

10 Q. We can perhaps assume that the pathologist may have meant a  
11 distance over 1 metre but cannot know that conclusively?

12 A. Yes.

13 Q. Now, again with this report and with this autopsy, could we  
14 summarise it in this way: That you have less concerns about this  
15 report than you do about the others, but you still do have concerns  
16 about the findings in relation to bruising primarily, and the global  
17 concerns in relation to absence of bullets would also equally apply  
18 here; is that right?

19 A. Yes.

20 Q. And, again, in those circumstances, would it be correct to say  
21 that today you are not in a position to adopt the findings and  
22 conclusions of this report as your own?

23 A. Yes.

24 Q. And, again, is that because you are not in a position, absent  
25 additional information being provided to you, to confirm the accuracy

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1 or the reliability of the findings contained within this report?

2 A. Yes.

3 MS. ROWAN: Could we please turn to the bottom part of page 10.

4 If we could scroll down, please. We can see the next report we're

5 going to deal with at the bottom of page 10.

6 Q. And this is, Mr. Clark, one of those bodies where you had raised

7 some significant -- more significant concerns in relation to

8 trajectory; is that correct?

9 A. Yes, this -- really, two concerns.

10 Q. Could I stop you there, Mr. Clark. Perhaps if we bring up your

11 diagram, it would assist in our explanation, please.

12 MS. ROWAN: Could we have on the left-hand side of the screen --

13 the ERN range is 124715 to 124723, and if I could please have page

14 720. Thank you. And if we could please have it so that we can have

15 Mr. Clark's comments at the bottom on screen. If you could scroll

16 down. We do need the head, though, of this, so as much as we can --

17 thank you. Thank you very much.

18 Q. Mr. Clark, is that sufficiently in view?

19 A. That's fine for me, yes.

20 Q. Thank you. Perhaps with the assistance of this diagram, could

21 you please explain to us the trajectory concerns that arose for this

22 deceased.

23 A. This man has at least six gunshot injuries, possibly more. My

24 only concerns are that in one of them, this is the only gunshot

25 injury in the whole lot which was on the head, here we have an

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1 entrance wound on the right side of the forehead, relatively near the  
2 midline, as it's described, and coming out not far away on the --  
3 again on the same surface, which is unusual. And there's also a  
4 wound below the -- near the left ear, which is noted but not  
5 otherwise described in the whole narrative.

6 Again, it is possible you can get very shallow, tangential  
7 shots, but it's not developed. It's not explained or highlighted,  
8 shall we say.

9 Q. Yes, so just pausing there. Dealing with the forehead injury,  
10 were a gunshot wound to have entered and exited as described through  
11 the forehead, that would be highly unusual to observe?

12 A. Generally. It's not impossible --

13 Q. No.

14 A. -- but it's unusual.

15 Q. Yes. And were such a finding to be made, you would expect that  
16 that would be detailed and explained in more detail in the autopsy  
17 report given the unusual nature of that finding?

18 A. Yes, I would.

19 Q. Yes.

20 A. The only other concern is most of the gunshot injuries are  
21 fairly straightforward, coming in the front of the body and out of  
22 the back. We have multiple injuries' entrance on the front of the  
23 body. I would question, perhaps, some of the exit wounds. It's not  
24 really important, I don't think, but personally I would question  
25 whether that was an exit wound from that one or that one --

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1 Q. Yes.

2 A. -- et cetera. I don't think it's important, actually.

3 Q. When you say you don't think it's important --

4 A. No.

5 Q. -- is that because, regardless of the tracks of these entrance  
6 and exit wounds, it doesn't alter the determination in relation to  
7 the cause of death?

8 A. That's correct, yes.

9 Q. But in terms of the extent to which you are satisfied that the  
10 findings are correct and that the entrance and exit wounds have been  
11 correctly identified, of that you are not satisfied?

12 A. No. I mean, this is a difficult case because there's multiple  
13 entrance wounds --

14 Q. Yes.

15 A. -- on the -- in the body, and it is always difficult sometimes  
16 to match up which is that. The pathologist here has chosen -- he's  
17 made his decision. I might make another observation.

18 Q. Yes.

19 A. I don't know.

20 Q. Thank you very much.

21 MS. ROWAN: If we could take that off screen. Your Honour, I'm  
22 minded, there is three of these diagrams that have now been shown.  
23 If I could have an MFI for them at this point, please.

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 MS. ROWAN: Yes.

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1           PRESIDING JUDGE SMITH: [Microphone not activated].

2           MS. ROWAN: Yes.

3           PRESIDING JUDGE SMITH: [Microphone not activated].

4           MS. ROWAN: Is the --

5           PRESIDING JUDGE SMITH: Go ahead and give the ERNs.

6           MS. ROWAN: This is page 124720, also 124718, and 124717. They  
7 are the three pages that have been shown.

8           PRESIDING JUDGE SMITH: Any objection to those three diagrams?

9           MR. PACE: No.

10          PRESIDING JUDGE SMITH: 124720, 124718, and 124717 are  
11 admitted -- not admitted, are given an MFI.

12          THE COURT OFFICER: Thank you, Your Honours. Those three pages  
13 will be MFI'd with 2D00041, classified as confidential. Thank you,  
14 Your Honours.

15          MS. ROWAN: Thank you. We can remove the diagram from the  
16 left-hand side.

17 Q. Mr. Clark, it's right that in relation to this deceased, you  
18 were, again, asked questions in relation to the topic of bruising and  
19 in relation to the topic of gunshot residue findings; is that right?

20 A. Yes.

21 Q. And we would be correct to understand your concerns and  
22 observations would remain the same for this report?

23 A. Yes.

24 Q. Likewise, the global concern in relation to absence of bullet  
25 and projectile findings?



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1 A. Yes.

2 Q. Again, therefore, standing back and examining this report as a  
3 whole, would the following be a fair summary of your view: That  
4 there is reason to doubt the findings in relation to the existence of  
5 the bruising, caution should be exercised in relation to the gunshot  
6 residue, doubt must be raised in relation to the gunshot  
7 trajectories, and questions arise in relation to the absence of the  
8 bullets. Is that a fair summary?

9 A. Yes.

10 Q. And, like with the other reports, again, therefore are you today  
11 not in a position to adopt the findings and conclusions of this  
12 report as your own?

13 A. Yes.

14 Q. And that is because, absent further information available to you  
15 or being made available to you, you are not in a position to confirm  
16 the accuracy or the reliability of these underlying findings?

17 A. That's correct, yes.

18 Q. Thank you.

19 MS. ROWAN: Now, if we could please just turn to the last of  
20 this batch of reports, please, and we'll find that last report on  
21 page 12.

22 Q. And perhaps, Mr. Clark, and please do say, because I'm anxious  
23 that we're taking this a little bit quicker this morning, and if you  
24 would like time to read through the answers you've given in relation  
25 to this deceased you must say.

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1 But would it be fair, in relation to this body, to say that your  
2 concerns and doubts in relation to bruising equally apply?

3 A. Yes.

4 Q. And the questions that you raise in relation to the gunshot  
5 residue testing and the absence of bullets also equally apply?

6 A. Yes.

7 Q. There is a lack of clarity in relation to the shooter's distance  
8 in relation to this body also? For your reference --

9 A. Yeah.

10 Q. -- that's page 13, question 5.

11 A. Yes.

12 Q. Thank you. And as such, with those in mind, you're not in a  
13 position to adopt the findings or conclusions in this underlying  
14 report?

15 A. Yes. But just before that --

16 Q. Yes.

17 A. -- I've no real doubts about the trajectories here.

18 Q. No.

19 A. So -- yeah. But, yes, to answer your question --

20 Q. No, and I hope I didn't misspeak. I don't believe that that was  
21 a concern that I had listed. The concerns here are in relation to  
22 bruising, gunshot residue, absence of bullets as the --

23 A. Yes.

24 Q. -- global findings. You're correct, this, like one of the other  
25 bodies we've looked at, no gunshot residue tracking concerns arise

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1 for this deceased?

2 A. No.

3 Q. Yes.

4 PRESIDING JUDGE SMITH: Slow down, please.

5 MS. ROWAN:

6 Q. So perhaps just to confirm that last question, Mr. Clark, so the  
7 record is clear: You're not in a position today to adopt the  
8 totality of these findings or conclusions?

9 A. No.

10 Q. And that is because you cannot confirm that they are accurate or  
11 reliable in the absence of additional information?

12 A. Yes, that's correct.

13 Q. Thank you. And just one brief question before we move on to the  
14 next autopsy in relation to methodology.

15 Considering that you were not present yourself when these  
16 autopsies were being conducted and played no supervisory role, would  
17 it be fair to say that you are not in a position today to confirm  
18 that the methodology used would meet standards that you would believe  
19 to be sufficient or that you would expect to be implemented?

20 A. Yes, I don't know how the autopsies were conducted, what  
21 conditions, what assistance was given, so I can't really comment  
22 further than that.

23 Q. Yes. And we know that at this stage there was no international  
24 intervention for UNMIK or the like, so we cannot impute reliably any  
25 international standards on to these autopsies. Would that be right?

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Cross-examination by Ms. Rowan (Continued)

1 A. No.

2 Q. No. Thank you.

3 MS. ROWAN: Can we please then go to page 16.

4 Q. Mr. Clark, we're finally moving off that collection of five  
5 bodies on to a different report.

6 MS. ROWAN: And if we can have page 16, please.

7 Q. And, Mr. Clark, you can see at the top of this page the deceased  
8 who we'll be discussing.

9 It's right, Mr. Clark, that this deceased, when subjected to  
10 autopsy, there was only skeletal remains that were available; is that  
11 right?

12 A. Yes.

13 Q. And we discussed yesterday the limitations that skeletal remains  
14 can have on the conduct of an autopsy?

15 A. Yes.

16 Q. As part of the package of material that you were provided for  
17 this deceased, it's right that you received an expert report from a  
18 team of four experts; is that correct?

19 A. Yes, this was a -- I presume you're referring to the  
20 consolidated report --

21 Q. I am.

22 A. -- by Dr. Dunjic.

23 Q. Yes, we have Dr. Dunjic; we have Professor Aleksandric; an  
24 assistant lecturer, Jecmenica; and an anthropologist, Srejic. Does  
25 that sound familiar?

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1 A. Yes.

2 Q. Albeit pronounced incorrectly?

3 A. Well -- but the consolidated report was only written by  
4 Dr. Dunjic, as I understand it.

5 Q. Yes. And you were also given, as part of your package of  
6 material -- well, there was a consolidated report from him, but you  
7 also received a report from the four experts together. There were  
8 two documents that you received as part of your package?

9 A. Yes, that's correct.

10 Q. Yes. So that we're clear, one drafted by Dunjic himself, Dunjic  
11 being the pathologist?

12 A. Yes.

13 Q. And then one where there was a consolidated report by him, other  
14 pathologists, and anthropologists; is that correct?

15 A. Yes, the combined report was written at the time of the autopsy.  
16 The consolidated report was written about nine years later --

17 Q. Yes.

18 A. -- as I can recall.

19 Q. Yes. And just looking at your summary of that report, because  
20 we'll use the document we have in front of us as it's an easier  
21 reference point. It's right, just to start at the beginning, they  
22 took in short a view that in the absence of the soft tissue, in their  
23 opinion a cause of death could not be ascertained. That was their  
24 finding; is that right?

25 A. Yes. Their wording was that because the body was decomposed, a

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Cross-examination by Ms. Rowan (Continued)

1      cause of death could not be established.

2      Q.     Yes.

3      A.     And that was voiced before talking about any injuries. It was  
4      almost an admission that any decomposed body you cannot establish the  
5      cause of death. It was a curious way of doing it.

6      Q.     Yes. Now, in your report, when discussing this finding, and  
7      it's page 17 of your report, and paragraph 4, for your reference.

8           MS. ROWAN: Could we have it on screen, please.

9           MR. PACE: And while that's being called up, if I may interrupt.  
10     At page 21, line 14, could perhaps counsel just clarify whether the  
11     witness said "voiced for talking about any injuries" or was it  
12     "before," with the witness. Perhaps the record is not correct.

13           MS. ROWAN: Sorry, I don't understand the issue.

14           MR. PACE: At page 21, line 14, the witness is recorded as  
15     having said:

16           "And that was voiced for talking about any injuries ..."

17           Could you clarify if the "for" is correct, or perhaps it might  
18     be more appropriate for the recorder to clarify.

19           THE WITNESS: If I could --

20           MS. ROWAN:

21     Q.     Mr. Clark, was your answer:

22           "And that it was voiced before talking about any injuries ..."

23     A.     Yes.

24     Q.     Should it be recorded as "before"?

25     A.     Before, yes.

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Cross-examination by Ms. Rowan (Continued)

1 Q. Thank you. Turning back to your report, and we're looking at  
2 the fourth paragraph down on page 17, you note that:

3 "... the pathologists felt uncomfortable in concluding that the  
4 bullet track passing through the skull (and thus the brain) would  
5 necessarily have been fatal, because there were no soft tissues  
6 present to show bruising or bleeding etc. as proof of an injury in  
7 life, and no brain to demonstrate a track through it. They thus  
8 could not entirely exclude the possibility that the gunshot injury  
9 had been inflicted after death, given that physical damage to bone  
10 looks the same if inflicted in the days after death as if inflicted  
11 just before death."

12 Does that remain an accurate description?

13 A. Yes.

14 Q. You go on to say that that approach that -- perhaps if we just  
15 focus on Dunjic as the pathologist. That that approach that he took,  
16 in your view, is a conclusion that would reflect an approach that a  
17 number of pathologists would take. You say that in your report; is  
18 that right?

19 A. Yes.

20 Q. You don't find it a particularly helpful approach yourself, but  
21 it is one that a number of pathologists would take; is that right?

22 A. Yes, I can't say what proportion of pathologists would take it.  
23 I think it's a relatively small proportion. Yes, I understand their  
24 reluctance in giving a cause of death, but it would have been helpful  
25 to explain that, their approach, why they're reluctant. And nowhere,

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Cross-examination by Ms. Rowan (Continued)

1 either in this individual report or in the consolidated report, is  
2 there any attempt to address that issue.

3 Q. Yes. They don't explain to the reader why it is that they have  
4 come to the conclusion that the cause of death is unascertainable in  
5 the circumstances that they find it?

6 A. Yes.

7 Q. But you do say in your report, quite clearly, that they are  
8 entitled to that opinion.

9 A. Yes.

10 Q. Yes. So are we right to understand that, in your view, looking  
11 at the evidence as you've seen it, that there does appear to be a  
12 sound basis for that conclusion? This is not a conclusion that you  
13 would say is illogical?

14 A. No, it's not illogical. It's understandable. I don't think  
15 it's very helpful, though.

16 Q. No. But while being unhelpful, you wouldn't go so far as to say  
17 it is inaccurate or wrong or without a scientific basis, for example?

18 A. No.

19 Q. No.

20 A. But I think it's incumbent on a pathologist to offer  
21 alternative -- to offer an explanation or to offer alternative views  
22 about it.

23 Q. Yes. And that was not done in this case?

24 A. No.

25 Q. And in terms of your position on the findings in this report as



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Cross-examination by Ms. Rowan (Continued)

1     you see them, you would take a different approach; is that right?

2     A.    I would, yes.

3     Q.    Yes. And unlike this team who examined the remains initially,  
4     you would feel comfortable giving a cause of death in these  
5     circumstances; is that right?

6     A.    I would, having explained why I would do that. Yes.

7     Q.    Yes. And in your view, you could determine a cause of death to  
8     a reasonable degree of certainty?

9     A.    Yes.

10    Q.    Yes. So is what we have here essentially two separate schools  
11    of thought as to how to approach skeletal remains in these  
12    circumstances?

13    A.    Yes. And it's interesting that in the consolidated report  
14    written nine years later, Dr. Dunjic does -- in quite a lot of cases  
15    he's describing, does almost accept this other view.

16    Q.    Yes. But not with this deceased?

17    A.    Well, not with this particular --

18    Q.    Yes.

19    A.    -- one. No.

20    Q.    Yes. So we have two, essentially, would it be fair to say,  
21    parallel competing professional views on how to approach this but  
22    both being valid in your opinion?

23    A.    Yes.

24    Q.    Yes.

25    A.    Yes.

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Cross-examination by Ms. Rowan (Continued)

1 Q. Then if we could just briefly deal with the question of  
2 fractures. Fractures were noticed on this body also; is that right?

3 A. Yes, that's right. In addition to the gunshot injury.

4 Q. Yes. And we can see your answer that deals with that on page 18  
5 of your report. It's right, before we begin, that a number of bones  
6 were missing from this skeleton; is that correct?

7 A. Yes. And parts of the bones which were fractured were also  
8 missing.

9 Q. Yes. So the bones from which the fractures were observed were  
10 not full bones; is that right?

11 A. Yes.

12 Q. Now, the pathologist who had dealt with this at the time had  
13 concluded in the negative. He was of the view that the fractures  
14 were not gunshot injuries nor were they the result of a fall; is that  
15 right? He excluded potential mechanisms as opposed to including  
16 potential mechanisms.

17 A. Exactly, yes. Yes.

18 Q. Yes. Now, again, you would take a slightly different approach  
19 in relation to this and make a more inclusive finding when looking at  
20 this. Is that a correct way of looking at it?

21 A. Yes.

22 Q. Yes. So, again, we have two professionals looking at the same  
23 collection of bones but taking a slightly different approach to what  
24 can be concluded from them; is that right?

25 A. Yes. I think -- my view --

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Cross-examination by Ms. Rowan (Continued)

1 Q. Yes.

2 A. -- if parts of bones are missing, you cannot exclude certain  
3 things. You can't exclude a bullet injury.

4 Q. Yes.

5 A. If a part of a bone is missing, you don't know if there is a  
6 bullet injury in that part that's missing.

7 Q. Yes. So you would not feel as comfortable as Dunjic appears to  
8 have been excluding the presence of bone --

9 A. Yeah.

10 Q. -- because you don't know what you can't see, so you wouldn't  
11 feel comfortable making that finding in a conclusive fashion?

12 A. Exactly, yes.

13 Q. Yes. So you wouldn't exclude that as a possibility?

14 A. I wouldn't, no.

15 Q. And unlike Dunjic, you also did feel comfortable to include a  
16 potential mechanism for the cause of the fractures, and that was  
17 blunt force trauma.

18 A. I think he is certainly implying this is blunt force trauma.

19 Q. Yes.

20 A. I don't know it specifically. I think the implication that it  
21 is -- well --

22 Q. If you exclude everything else, that's what's left?

23 A. It has to be that, yeah.

24 Q. But you go so far as to state that and say that that is a  
25 potential, albeit not conclusive, mechanism for these injuries?

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Cross-examination by Ms. Rowan (Continued)

1 A. Yes.

2 Q. Yes.

3 A. But the other thing that's not discussed is the possibility of  
4 post-mortem fractures.

5 Q. Yes.

6 A. And it's noticeable that all the cases -- well, the majority of  
7 cases which were looked at, and it's included in his report, there  
8 were fractures of a lot of bones. And I don't think it's discussed  
9 anywhere that the possibility that these were caused after death,  
10 potentially in moving bodies, and I think that's a real possibility.

11 Q. Could we just deal with that in a little bit more detail. It is  
12 difficult when dealing with skeletons to determine whether or not a  
13 fracture was caused just before death or just after death; is that  
14 right?

15 A. Yes.

16 Q. Or sometime after death? A little bit easier in those  
17 circumstances.

18 A. A longer time after death --

19 Q. Yes.

20 A. -- it's generally easier to see this is a post-mortem fracture,  
21 yes.

22 Q. Yes. And this body was found with a number of others. As  
23 you've mentioned, they're discussed in the reports that you've seen?

24 A. Yes.

25 Q. Fracturing was a common finding?

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Cross-examination by Ms. Rowan (Continued)

1 A. And major fractures.

2 Q. Yes.

3 A. Major fractures of femur and other long bones as well.

4 Q. When you say "major fractures," you observe in your report  
5 they're the type of fractures that you thought the impact of a  
6 vehicle could create; is that right?

7 A. I mean, to fracture the femur takes a lot of force.

8 Q. Yes.

9 A. You're not going to fracture somebody's femur by kicking them.

10 Q. Yes.

11 A. Or even by hitting them with a heavy object. This requires a  
12 really forceful thing, like a vehicle, you know, or a major fall from  
13 a height. Forces like that.

14 Q. Would it be fair to describe it as a significant degree of force  
15 likely beyond that which a person could create?

16 A. That would be my view, yes.

17 Q. Yes. You are of the view that in order to create the level of  
18 force required to create that injury, one would need the assistance  
19 of something such as a vehicle or, as you've described, a fall from a  
20 great height?

21 A. Yes.

22 Q. Yes.

23 A. Yes.

24 Q. And so therefore you query, would it be fair to say, for this  
25 body individually, whether or not these fractures were caused pre or

Witness: John Clark (Resumed) (Open Session)

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Cross-examination by Ms. Rowan (Continued)

1 post-mortem?

2 A. I would, yes.

3 Q. And in your view it's possible that these fractures were caused  
4 post-mortem?

5 A. I think it's entirely possible, yes.

6 Q. Yes.

7 THE INTERPRETER: Interpreter's note: Could the speakers kindly  
8 make a pause between question and answer. Thank you.

9 MS. ROWAN: Thank you.

10 Could we please have page 19 of your report. And if we could  
11 have it just zoomed out a little bit.

12 Q. Mr. Clark, you'll see the deceased who we'll now discuss listed  
13 at the top of the page. We'll see on the top line that this was an  
14 autopsy that was conducted in 2004 by a Dr. Morcillo; is that  
15 correct?

16 A. Yes.

17 Q. And we see a summary of those findings at the top of your  
18 report. Now, it's right that Dr. Morcillo was of the view that this  
19 was also a deceased for whom the cause of death remained  
20 unascertained; is that right?

21 A. Yes, and I agree with these findings. Yes.

22 Q. Yes, you agree with those findings?

23 PRESIDING JUDGE SMITH: Ms. Rowan, count to 4 after he answers  
24 the question, please. And could your colleague please help keep  
25 track of this. I hate to interrupt you all the time.

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Cross-examination by Ms. Rowan (Continued)

1 MS. ROWAN: Yes.

2 PRESIDING JUDGE SMITH: [Microphone not activated].

3 MS. ROWAN: She can interrupt me instead.

4 Q. Mr. Clark, you had said that you don't contradict the finding  
5 that cause of death remains unascertained for this deceased; is that  
6 right?

7 A. Yes.

8 Q. That's where we were. Now, what was found present in the  
9 skeletal remains that we have was some fracturing; is that right?

10 A. Yes.

11 Q. And it was clear that one of those fractures observed was to the  
12 eye socket that the pathologist was confident was caused post-mortem;  
13 is that correct?

14 A. Yes.

15 Q. But the other three fractures --

16 PRESIDING JUDGE SMITH: Ms. Rowan -- Ms. Rowan, I just stopped  
17 you. I asked you to count to 4 after he answers the question. You  
18 just keep on going. There's no break.

19 MS. ROWAN:

20 Q. There were three other fractures that were identified in this  
21 body; is that correct?

22 A. Yes.

23 Q. Yes. The pathologists were not in a position -- or the  
24 pathologist was not in a position to confirm whether or not these  
25 fractures were caused before or after death; is that correct?

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Cross-examination by Ms. Rowan (Continued)

1 A. I think their view was these were probably genuine fractures in  
2 life.

3 Q. Yes. But that we could not confirm that conclusively one way or  
4 the other; is that right?

5 A. No, it's impossible to always --

6 Q. Yes.

7 A. -- to always do that.

8 Q. Now, were those fractures to have been caused in life, they  
9 would not have been fatal; is that right?

10 A. I don't think they would have been --

11 Q. No.

12 A. -- no. No.

13 Q. And you were not of the view that had they been caused in life,  
14 that they would have contributed to death, as being a contributory  
15 cause of a death?

16 A. Not in themselves.

17 Q. No. Now --

18 PRESIDING JUDGE SMITH: Ms. Rowan, you don't have to answer him.  
19 You don't have to say "yes" or "no" after he gives the answer, but  
20 you do have to pause. I've asked you repeatedly. It's for the  
21 benefit, not for us, but for the translators. Think of them and go  
22 ahead.

23 MS. ROWAN:

24 Q. Can we deal briefly with the rib fractures. This body had  
25 fractures to the sternum; is that correct?



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Cross-examination by Ms. Rowan (Continued)

1 A. Yes.

2 Q. The sternum is the breastbone?

3 A. Yes, or the middle of the chest.

4 Q. Also found was a fracture to a rib at the centre of the chest?

5 A. The rib -- third rib, almost -- just at the attachment to the  
6 breastbone, yes. So they're both in the same sort of area.

7 Q. Very close to the fracture of the sternum?

8 A. Yes.

9 Q. Now, you say in your report that it is possible that those  
10 fractures could have been caused during resuscitation attempts; is  
11 that correct?

12 A. It's a possibility I cannot exclude. In routine practice, when  
13 people have been resuscitated, we regularly see fractures of the  
14 sternum and the ribs, so I certainly can't exclude that.  
15 Alternatively, it could just be a firm blow to the chest by an object  
16 or even a kick. That's a possibility as well.

17 Q. Just dealing with CPR. It is common when performing CPR  
18 properly on a person, often ribs will be broken; is that right?

19 A. Oh, yes, yes.

20 Q. Yes.

21 A. And usually more than one.

22 Q. Yes.

23 A. Usually several ribs.

24 Q. And that is because if CPR is performed properly, it necessarily  
25 involves a significant degree of force to get the heart pumping

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Cross-examination by Ms. Rowan (Continued)

1 again?

2 A. Yes. And in modern times, they use a machine that kind of -- I  
3 forget the name of it, but it imparts quite a considerable force.

4 Q. And these fractures would be consistent with such an application  
5 of force in such a circumstance?

6 A. It's one possibility. I raise it just so -- you know, I can't  
7 exclude it. There are other multiple potential explanations for it.

8 Q. On page 20 of your report at question 4, you also deal with  
9 other potential causes of death. You state in your report that a  
10 variety of causes of death could include gunshot wounds, brain  
11 damage, natural disease, asphyxia, drowning, smoke inhalation,  
12 intoxication, none of which would leave a trace on the skeleton; is  
13 that right?

14 A. Yes.

15 Q. So there is any possible variety of instances or illnesses that  
16 could have led to the death of this individual; is that right?

17 A. That's correct, yes.

18 Q. You were asked by the Prosecution about the question of  
19 methodology and whether or not you were of the view that the  
20 methodology adopted by the pathologist in this autopsy was of an  
21 acceptable standard to you, and you confirmed that it was; is that  
22 right?

23 A. I know the individuals involved, and I know how autopsies were  
24 conducted at that period. I would have no problems in accepting  
25 their findings.

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Cross-examination by Ms. Rowan (Continued)

1 Q. Dr. Morcillo is a pathologist that you have worked with in the  
2 past?

3 A. I've worked beside her, yes.

4 Q. Yes.

5 A. Yes, that's right.

6 PRESIDING JUDGE SMITH: Ms. Rowan, we have to give him a  
7 ten-minute break if this is a convenient time.

8 MS. ROWAN: One question.

9 PRESIDING JUDGE SMITH: Go ahead.

10 MS. ROWAN:

11 Q. And is it therefore based on your experience not only working  
12 alongside Dr. Morcillo, but also your knowledge of the methodology  
13 that was deployed by those internationals in the Balkans at the time,  
14 that you are confident that the methodology deployed by her would  
15 have met a standard that you find to be acceptable?

16 A. Yes, I think that's --

17 Q. Thank you.

18 A. -- fair.

19 PRESIDING JUDGE SMITH: We'll give you a ten-minute break,  
20 Witness.

21 THE WITNESS: Thank you.

22 [The witness stands down]

23 PRESIDING JUDGE SMITH: We're adjourned for ten minutes.

24 --- Break taken at 10.02 a.m.

25 --- On resuming at 10.12 p.m.

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Cross-examination by Ms. Rowan (Continued)

1           PRESIDING JUDGE SMITH: Please bring the witness in.

2                               [The witness takes the stand]

3           PRESIDING JUDGE SMITH: All right. Ms. Rowan.

4           MS. ROWAN:

5           Q. Mr. Clark, as we can see on this page that we're looking at,  
6 this report was also looked at by a Dr. Pablo --

7           A. Jose Pablo Baraybar.

8           Q. Is it pronounced Baraybar, yes? Is this a person that you've  
9 also worked with in the past?

10          A. Very much so, yes.

11          Q. Yes. And Mr. Baraybar is a well-known forensic anthropologist.

12          A. Yes, he's an anthropologist, not a medical doctor.

13          Q. He is a doctor in forensic anthropology?

14          A. Yes.

15          Q. Forensic anthropology is the study of human remains or, as  
16 you've described it in your report, examination of skeletons; is that  
17 right?

18          A. Yes. They have a particular expertise in the examination of  
19 bones, ageing, sex, injuries, et cetera. That's the specialty.

20          Q. Forensic anthropology is a subset of physical anthropology?

21          A. Yes.

22          Q. In that forensic anthropologists would look at bones with a view  
23 to solving criminal cases?

24          A. Yes. And particularly interpretation of injuries, they  
25 specialise in that.

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Cross-examination by Ms. Rowan (Continued)

1 Q. That is the work that Mr. Baraybar does?

2 A. Yes.

3 Q. Would you agree that forensic anthropology is a distinct field  
4 of scientific expertise?

5 A. Yes.

6 Q. And as you mentioned, forensic anthropologists, unlike  
7 pathologists, are not medical doctors.

8 A. No -- well, sorry, yes. Well, yes.

9 Q. They are not medical doctors?

10 A. They're not medical doctors.

11 Q. It's common for pathologists and anthropologists to work  
12 together in situations such as post-conflict zones?

13 A. Very much so. And we worked in -- in the work in Bosnia,  
14 Croatia, this was crucial, this cooperation between the medical  
15 doctors and the anthropologists and it -- well, it's absolutely  
16 essential in work like this.

17 Q. You inform each other's work and assist each other in your work?

18 A. Yes.

19 Q. Your work is, nonetheless, distinct from each other at its core;  
20 is that right?

21 A. I think you could put it they help with the findings, and they  
22 guide us as to -- particularly with body injuries, they can help  
23 reconstruct bones, identify this. Our main role is the  
24 interpretation, what does that mean, afterwards. You know, that a  
25 bullet injury in a particular bone, I know what the consequences of

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Cross-examination by Ms. Rowan (Continued)

1       that would be because I know what organs and tissues are roundabout.

2       So that's where we -- our kind of particular role is.

3       Q.     But you would agree that they hold a unique and particular  
4       expertise in what they do?

5       A.     Yes.

6       Q.     And if we wanted to discuss with a forensic anthropologist their  
7       findings or the contents of a report that they had drafted, the  
8       person placed best to answer those questions is the forensic  
9       anthropologist themselves?

10      A.     Yes.

11      Q.     And you appreciate that there is expertise that anthropologists  
12      have that pathologists do not have?

13      A.     Yes, I think that's correct. Yes. Some pathologists would  
14      doubt that because they -- because forensic anthropologists are not  
15      available all around the world. So in some countries, it's quite  
16      common for the pathologist to do the work of an anthropologist, and  
17      this is the case in Bosnia, for instance, at the moment. It's mainly  
18      the pathologists who do all the anthropology interpret -- the bone  
19      interpretation, and are very good at it.

20      Q.     In your opinion, it is a distinct field of expertise and that is  
21      how you understand it?

22      A.     Yes.

23             MS. ROWAN: Could we please turn to page 21.

24      Q.     This is the report, Dr. Clark, that there was some confusion  
25      over numbers of remains, identification of the correct reports. Do

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Cross-examination by Ms. Rowan (Continued)

1     you recall?

2     A.    Yes.  And I think -- I think we've resolved that --

3     Q.    Yes.

4     A.    -- the answers to that.

5     Q.    And you are satisfied now that you have clarity as to what  
6     reports relate to what body?

7     A.    Yes.

8     Q.    Yes.  Looking at those reports and your observations, briefly,  
9     these were partially skeletonised remains for this individual; is  
10    that right?

11    A.    Yes.

12    Q.    There were no photographs available from this autopsy; is that  
13    correct?

14    A.    Not to me.  Almost certainly photographs were probably taken.  I  
15    have not seen them.

16    Q.    There was no indication in the papers, as you saw them, that the  
17    brain remained preserved at the point of autopsy; is that right?

18    A.    No, it wasn't present.

19    Q.    The cause of death for this individual was given in the  
20    underlying report as being a blunt force trauma; is that right?

21    A.    Yes.

22    Q.    Now, if we look at the top of your report, we can see that this  
23    is a autopsy that was conducted in Kosovo in the summer of 1998.

24    A.    No, the autopsy was --

25    Q.    Oh, pardon me.  It was in May 2005.

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Cross-examination by Ms. Rowan (Continued)

1 A. Yes.

2 Q. Pardon me, I'm reading one line ahead. Is that right?

3 A. Yes.

4 Q. There were injuries identified as fractures found in the skull  
5 of this individual; is that correct?

6 A. Fractures -- essentially, fractures of the left side of the  
7 lower jawbone, the mandible, and very close by a fracture running  
8 across the base of the skull. And this was felt to be probably the  
9 same impact, impact to the side of the jaw and the force transmitted  
10 across the base of the skull.

11 Q. In the absence of the brain, it's not possible to see the extent  
12 of any injury that the brain or soft tissue would have been caused as  
13 a result of that blunt force trauma; is that right?

14 A. That's right, yes.

15 Q. In the absence of the brain, and considering the location of the  
16 fracturing in the jaw and at the base of the skull, are you confident  
17 that one could conclusively determine in those circumstances that  
18 that fracturing was the cause of death?

19 A. I could never be a hundred per cent certain, but I think I would  
20 have confidence to say that that probably was -- that was the cause  
21 of death. It's difficult to think of -- that's not an injury which  
22 is -- would typically be caused post-mortem. And we know that a  
23 fracture going to the base of the skull, just where it is, goes past  
24 vital structures in the brain, which are likely to have been damaged  
25 in that. A fracture at the base of a skull is a serious injury and



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1 it's likely to cause damage to vital structures in the brain.

2 So I would be happy to accept that this was the cause of death.

3 Q. We've seen a parallel approach taken to the examination of  
4 skeletal remains in the approach of Dr. Dunjic that we looked at  
5 previously who would be of a school of thought that, absent the  
6 presence of soft tissue, a different approach would -- can be taken  
7 to stating a cause of death. Would a pathologist of that school of  
8 thought in this circumstance likewise find that a cause of death here  
9 equally unascertainable?

10 A. He may well have done. But what I was going to say is that it's  
11 interesting in Dr. Dunjic's -- his consolidated report, he's very  
12 cautious, indeed, about gunshot injuries but far less so about the  
13 other trauma that he describes. And he seems much more willing to  
14 assume that the other trauma, other fractures were caused in life.  
15 And it's an interesting distinction that while he seems to be  
16 unwilling to accept gunshot trauma, far less so for the blunt force  
17 trauma, the non-gunshot trauma.

18 Q. Perhaps if we take it away from the personal for Dr. Dunjic and  
19 just describe that school of thought as being purist, as you had  
20 described it in your view. Talking about pathologists more broadly  
21 of that purist thinking, it would be possible for a pathologist of a  
22 purist school of thought to take a view that, in this circumstance,  
23 cause of death would be unascertainable for them?

24 A. Yes, that's it. Yes, I'm sure there are some people who would  
25 do that.

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Cross-examination by Ms. Rowan (Continued)

1 MS. ROWAN: Could we please turn to page 24 of your report.

2 Q. Dr. Clark, you will notice I don't intend to deal with the  
3 findings in your report of the person dealt with on page 23. There  
4 are findings there. It's correct that again is an autopsy performed  
5 by Dr. Morcillo. No issues to be raised by you?

6 A. No.

7 Q. Okay. For completeness. So I just wish to look at page 24, and  
8 this is the final deceased person dealt with in your report.

9 Now, it's right, Dr. Clark, that for this person you were not  
10 provided with an autopsy report, but what you were provided with for  
11 this person was a death certificate and some imagery taken during the  
12 conduct of the autopsy; is that right?

13 A. Yes, yes. I'd forgotten about the photographs, yes.

14 Q. Yes.

15 A. That would be correct.

16 Q. They were of very poor quality. Would you agree?

17 A. Yes, they were.

18 Q. Might this be another instance where, as you mentioned at the  
19 outset, they were of little to no utility for you in conducting your  
20 analysis given their poor quality?

21 A. Yes. It would be fair to say that it's not necessarily the  
22 quality of the original photograph, it's possibly the reproduction  
23 process after that. But there was little I could gain from looking  
24 at the photographs themselves.

25 Q. The photographs that you were provided with by the Prosecution,

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Cross-examination by Ms. Rowan (Continued)

1 in the state that you received them, were not fit for that purpose,  
2 not useful for that purpose?

3 A. They did show some features but of limited use.

4 Q. You were asked some specific questions by the Prosecution about  
5 the findings that were recorded in the death certificate. The death  
6 certificate read that acute hemorrhagic shock, consistent with  
7 findings that the deceased was murdered -- pardon me, please let me  
8 begin my question again.

9 You were asked by the Prosecution whether acute hemorrhagic  
10 shock was consistent with a finding that the deceased was murdered.

11 Putting aside the appropriateness of that question, just looking  
12 at your answers on the finding, it's right, Dr. Clark, that  
13 hemorrhagic shock can be fatal?

14 A. Yes.

15 Q. It can be caused by trauma to the body, but it can also be  
16 caused by natural disease; is that right?

17 A. Yes.

18 Q. In either circumstance it can be fatal?

19 A. Yes.

20 Q. In the paperwork that you received, there was no information  
21 regarding the extent of any subcutaneous bleeding, bony fractures, or  
22 internal organ damage in writing; is that correct?

23 A. There were -- there's a photograph of an -- an internal  
24 photograph of the liver, which must have been taken to show  
25 something, and I presume it was a tear in the liver and maybe blood

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1 was coming from here. But that was all.

2 Q. Just pausing there, Dr. Clark. Just so that we're clear for the  
3 record, if you could confirm that it is right that in the written  
4 material that you received there was no recording of subcutaneous  
5 bleeding, bony fractures, or internal organ damage? And we'll come  
6 on to deal with the photographs and your interpretation of those in a  
7 moment.

8 A. Yes, there's nothing written. Nothing written, no.

9 Q. What you did have to work with, as you've identified, is the  
10 photographs that were of poor quality; is that right?

11 A. Yes.

12 MR. PACE: Objection, Your Honour. Asked and answered. We  
13 started with this line of questioning for this victim, we returned to  
14 it, and now we're returning to it again.

15 PRESIDING JUDGE SMITH: Sustained.

16 MS. ROWAN: Could I clarify which line of questioning the  
17 objection relates to? Is it about photographs being poor quality?

18 MR. PACE: Your Honour, clearly it relates to the question  
19 immediately as what I objected to.

20 MS. ROWAN:

21 Q. Mr. Clark, for this deceased, given the lack of an autopsy  
22 report and the quality of the material made available to you, are you  
23 in a position today to definitively confirm that this person died of,  
24 firstly, acute hemorrhagic shock?

25 A. I can't confirm that from the photographs or the -- well,

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1 certainly not from the photographs, no.

2 Q. Taking that a step further, therefore it would be impossible for  
3 you, if that is the case, to confirm that it was hemorrhagic shock  
4 caused by blunt force trauma?

5 A. I mean, from -- I'm happy -- this may well be a correct death  
6 certificate, but I don't have the basis, I don't have the information  
7 that it's based on. It may well be correct, but I cannot confirm  
8 that.

9 Q. You are not in a position to confirm the accuracy of any of the  
10 underlying findings in the absence of more material?

11 A. Yes, that's correct. Yes.

12 Q. And as such, would it be correct to say that you're simply not  
13 in a position, absent more information being provided to you, to  
14 confirm that this is a reliable finding?

15 A. Yes, that's correct.

16 Q. Therefore, would it be correct to say that you are not in a  
17 position to confirm or adopt that finding as your own?

18 A. Yes.

19 Q. Thank you. Mr. Clark, yesterday the majority of the questions  
20 that you were asked by the Prosecution actually dealt with a deceased  
21 person not covered in your report. Do you recall those questions?  
22 They dealt with a person we saw in a seated position in a number of  
23 photographs.

24 A. Yes.

25 Q. It's right that you were only asked to provide your opinion on

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1     that person and their circumstances for the first time when you met  
2     the Prosecution over Zoom, I believe it was last week?

3     A.    I think it was 9 January, yes.

4     Q.    And yesterday you took us through the observations that you were  
5     in a position to make based on the photographs shown to you; is that  
6     right?

7     A.    Yes.

8     Q.    It's correct that for that person you were not provided with an  
9     autopsy report as, as far as we understand, an autopsy was not  
10    conducted; is that right?

11    A.    I certainly saw no autopsy report, no.

12    Q.    You were provided with some paperwork. Included in that  
13    paperwork were the notes of an army medic who had examined the body  
14    upon it being discovered; is that right?

15    A.    I was shown that.

16    Q.    Yes.

17    A.    Shown that. I wasn't provided with it.

18    Q.    You were not given a copy to keep?

19    A.    No.

20    Q.    No. But shown it during your Zoom conversation with the  
21    Prosecutor?

22    A.    Yes.

23    Q.    I don't intend to ask you to repeat what has been said by you in  
24    relation to the bruising as you observe it on the person. I simply  
25    wish to ask you in relation to ageing of that bruising. Please let

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1 me know if you would like for us to call the photographs up for your  
2 reference. I don't intend to do so, but if it would assist, please  
3 let me know and we will do so.

4 You recall observing a bruise to that deceased person's thigh?

5 A. Yes.

6 Q. Would you agree that the bruise on the thigh appeared to be  
7 older and more browner in colour than some of the other bruising that  
8 we saw on that deceased person?

9 A. I wouldn't agree with you there. I don't think so. That looked  
10 to me a fairly fresh bruise. That's perhaps not a very helpful  
11 phrase. Bruising is notoriously difficult to age. It goes through  
12 different colours. And that looked to me relatively fresh, possibly  
13 one, two days old or so. I wouldn't classify it as a -- what I would  
14 say is an old bruise, which it would be perhaps green, yellow, which  
15 would be several days old. The most I could say this was probably up  
16 to maybe a couple of days old.

17 Q. Is your view that the bruising was one to two days old only  
18 apply to the bruising that you observed on the thigh, or does that  
19 age apply equally, in your opinion, to the bruising that you also  
20 observed elsewhere on that deceased person's body?

21 A. Yes, I think it's the general application to all the bruises.  
22 So there's nothing that struck me as this was a particularly old  
23 bruise. They all looked to me around about the same age. So, yes, I  
24 would say that they're all fairly similar.

25 Q. That being one to two days?

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1 A. One to two days. I mean, I could stretch it up to three days.  
2 Who knows. Different people bruise differently and -- but they  
3 looked to me relatively fresh bruises.

4 Q. From what you observed in the photograph, is it right that you  
5 would not expect, in your opinion, the blunt force trauma of the  
6 force required to cause those bruises to have caused bony injury?

7 A. I think perhaps there may have been some fractured ribs, because  
8 they are relatively fragile in an older person, but I can't  
9 imagine -- well, from the injury that I saw. Even if there was a  
10 bruise on the thigh, that's not going to fracture the femur. So,  
11 yes, at most it probably would have been -- possibly would have been  
12 some rib fractures.

13 Q. I believe yesterday that your evidence was that while possible,  
14 that would be, in your opinion, unlikely; is that correct?

15 A. The fractures?

16 Q. Yes.

17 MR. PACE: Could we have a reference to that, Your Honour? I  
18 don't recall it.

19 MS. ROWAN: I'll ask for that to be called up.

20 Q. Mr. Clark, you can answer the question while that's being done.  
21 We can continue.

22 A. Sorry. I can't remember if I said fractures were unlikely.

23 MR. PACE: Sorry to interrupt, Your Honour. But the transcript  
24 does need to be called up. I can read it myself, if you like. But  
25 what counsel asked is not actually correct in my submissions, and it



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Cross-examination by Ms. Rowan (Continued)

1 will be at page 24243.

2 MS. ROWAN: If my learned friend wishes to read the evidence,  
3 I'm content for him to do so now.

4 PRESIDING JUDGE SMITH: [Microphone not activated].

5 MS. ROWAN: I don't have the reference.

6 MR. PACE: Your Honour, I just provided the reference. And in  
7 line with the Conduct of Proceedings, when we're referring to  
8 testimony, we should pull up references.

9 PRESIDING JUDGE SMITH: Absolutely.

10 MR. PACE: We don't always do so, but when counsel for the other  
11 party requests it, that does become necessary.

12 PRESIDING JUDGE SMITH: If you can't call up the reference, then  
13 don't ask the question.

14 MS. ROWAN: Very well. Would Your Honour like me to continue or  
15 call up the reference?

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 MS. ROWAN: I'm waiting for that to be done. It needs to be  
18 done. We don't have it to hand. My learned friend has it to hand.  
19 If he wishes to read it into the record, he can do so.

20 MR. PACE: Your Honour, it is not my job to call up a reference.  
21 I am not the counsel who is examining the question [sic]. I  
22 helpfully pointed to the page, but as Your Honour said --

23 PRESIDING JUDGE SMITH: [Overlapping speakers] ... told you the  
24 page number --

25 MR. PACE: -- if you don't have the reference --

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Cross-examination by Ms. Rowan (Continued)

1           PRESIDING JUDGE SMITH:  -- call it up.

2           MS. ROWAN:  We're looking for it.  We don't yet have it ready.

3           MR. PACE:  I'll repeat, page 24243, and I can go into the  
4           question -- the line numbers from question at line 12 till the answer  
5           at line 17.

6           PRESIDING JUDGE SMITH:  Go ahead and read the answer, please,  
7           counsel.  Mr. Pace, go ahead and read what you're looking at.

8           MR. PACE:  Certainly, Your Honour.

9           PRESIDING JUDGE SMITH:  We'll get to it faster that way.  Thank  
10          you.

11          MR. PACE:  Yes.

12          "Q.  And focusing on the injuries you described on the chest  
13          area, in your opinion could such injuries cause damage to the  
14          victim's internal organs?

15          "A.  Probably unlikely.  I mean, there may be other injuries  
16          that we can't see underneath there.  But at most they might be --  
17          they might fracture a rib, but it's unlikely that they would damage  
18          any of the internal organs."

19          MS. ROWAN:  Thank you.

20          Q.  So yesterday you used the word "unlikely" twice.  Mr. Clark,  
21          could you please clarify what your view today is in response to that  
22          question.  Is it likely in your opinion, or not, that the blunt force  
23          trauma that you observed to the chest was likely, or not, to cause  
24          underlying bony injury?

25          A.  What I said there, as I recall, was that I think it's possible

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1     that fractures -- there could have been rib fractures. I said --  
2     then I followed that to say but the -- it's unlikely that there would  
3     be damage to the organs beneath that, like the lungs or the heart. I  
4     think that would be unlikely.

5     Q.    I'm grateful.

6     A.    From the injuries I saw. So fractured ribs perhaps, but  
7     unlikely to be anything more deeper than that.

8     Q.    Thank you for that clarification.

9           PRESIDING JUDGE SMITH: Ms. Rowan, you're coming up on three  
10    hours now. You need to terminate. Get to the end of your  
11    questioning quickly.

12          MS. ROWAN: This is my last body.

13          PRESIDING JUDGE SMITH: [Microphone not activated].

14          MS. ROWAN: Yeah.

15          PRESIDING JUDGE SMITH: All right. Go ahead.

16          MS. ROWAN:

17    Q.    Mr. Clark, I'm going to read to you, and please let me know if  
18    you would like to be able to follow with us in writing, because I can  
19    bring the document up if you wish. This is from the army medic's  
20    report. It was a Dr. Schreckenbauer who had the opportunity -- I  
21    don't believe, as you said, the Prosecution provided you with this,  
22    which is why I intend to read it to you. It was his notes following  
23    his examination of the person that we saw in the photographs.

24          MS. ROWAN: For those following, it is SITF00189121 to  
25    SITF000189140-ET Revised, and I'm told that that's now P858.

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Cross-examination by Ms. Rowan (Continued)

1 Q. But before I read his notes, Mr. Clark, he states that no  
2 autopsy was -- the position is no autopsy was conducted on the body  
3 because his note reads:

4 "[Report] of the autopsy, MUP building ..."

5 But for you to keep that caveat in mind, there's no suggestion  
6 this was, in fact, an autopsy.

7 "... 18 June 1999, 1630 hours.

8 "Male body, approximately 70 years old, estimated time of death  
9 on 18 June 1999, at 0300 hours or before.

10 "Rigor mortis from the jaw down to the feet, livor mortis on  
11 fingers and distal lower legs, toes, and back of thighs, in  
12 accordance with the seated position the body was found in. The right  
13 wrist was tied to the right armrest with handcuffs.

14 "The following characteristics of external forceful impact were  
15 identified: Welts and bruises across the left and right chest,  
16 massive hematoma in the upper half of the back with welts, bruises on  
17 the right thigh, front, and an approximately 15cm long hematoma on  
18 the left thigh, front.

19 "I could not identify a shot wound, stab wound or strangulation  
20 mark, mouth cavity and anus empty.

21 "In the clothing, an ID was found, 150 dinars, and a packet of  
22 /?Kaptopil/ ...

23 "Assessment:

24 "The bruises, in my opinion, do not represent a fatal injury,  
25 the tablets found indicates a possible cardiovascular condition. In

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1       that case, a sudden cardiac death would be quite conceivable."

2               Now, Mr. Schreckenbauer was asked by the Prosecution at a later  
3       stage in these proceedings to elaborate upon that assessment that he  
4       made, and he said this.

5               MS. ROWAN: And for those following, that is KSC-BC-2020-06  
6       071320 to 071356-ET RED, page 071346.

7               MR. PACE: Yes, could that be called up, please, so that we can  
8       follow it.

9               MS. ROWAN: It's not on our queue.

10              MR. PACE: Then they can't refer to it, Your Honour, if it's not  
11      on their queue. I'm not sure what I'm meant to do to ensure the  
12      accuracy of what's being said. I certainly do not recall specific  
13      content of random documents.

14              PRESIDING JUDGE SMITH: Please bring the document up.

15              THE COURT OFFICER: Could we have the ERN again, please.

16              MS. ROWAN: Of course. It's KSC-BC-2020-06 071320 to 071356-ET  
17      RED.

18                               [Trial Panel and Court Officer confers]

19              PRESIDING JUDGE SMITH: We're trying to find the document.

20              MS. ROWAN: [Microphone not activated].

21              PRESIDING JUDGE SMITH: [Microphone not activated].

22              MS. ROWAN: Perhaps in the interests of time, in the interim I  
23      could read the one paragraph to the witness?

24              MR. PACE: Your Honour, frankly, we'd object to that. We've had  
25      no notice the Defence was going to use this document, which, as you

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Cross-examination by Ms. Rowan (Continued)

1 know, we only get notice once cross-examination starts. We are not  
2 prepared to address it, so reading an isolated paragraph is not  
3 helpful. Even adding it and allowing the reading at all to be done  
4 is not helpful to us.

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 MS. ROWAN: It's page 071346 in this. Thank you.

7 PRESIDING JUDGE SMITH: Thank you, Mr. Court Officer.

8 MS. ROWAN: Can we please scroll down on the right. Thank you.  
9 And scroll out, please, because it's too far in. Thank you. All  
10 right.

11 Q. Almost there, Mr. Clark. When asked at a later stage about that  
12 assessment, Mr. Schreckebauer said this in response to this  
13 question:

14 "In your 'assessment' at the end of the report it says that the  
15 bruises were not fatal injuries but that a 'sudden cardiac death was  
16 quite possible'. If possible, can you explain how you came to this  
17 conclusion?

18 "The injuries recognisable on the body were not so serious that  
19 they could have explained the death. Ultimately, I also noted in my  
20 report that the exact cause of death could only be determined through  
21 an autopsy. Due to the old age of the dead person, another cause of  
22 death could be quite plausible. The injuries to the other ... people  
23 were similar in ... nature and degree to the ones of the dead person  
24 and they were not fatal either."

25 Can you see that?

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Cross-examination by Ms. Rowan (Continued)

1 A. Yes.

2 Q. Mr. Clark, turning back to the assessment that we are  
3 discussing, would you agree that Dr. Schreckenbauer's assessment  
4 contains three parts: One, in his opinion, the bruises do not  
5 represent a fatal injury; two, the presence of those tablets  
6 indicates a possible cardiovascular condition; and, three, a sudden  
7 cardiac death would be quite conceivable? Do you agree that they are  
8 the three aspects of his assessment from what you've been read?

9 A. Yes.

10 Q. You were shown that assessment by the Prosecution; is that  
11 right?

12 A. No.

13 Q. You weren't shown this.

14 A. I wasn't shown that, no.

15 Q. No. You were shown the assessment?

16 A. The original comment, yes.

17 Q. Yes. This is shown simply to provide you with additional  
18 context for his answer.

19 Mr. Clark, is there anything in the photographs or the papers  
20 that you have been provided by the SPO that would cause you to  
21 disagree with Dr. Schreckenbauer's assessment?

22 A. I wouldn't disagree. I would add to it. I don't disagree that  
23 the injuries as seen, the ones that we can see, would not in  
24 themselves be fatal. There could be other injuries we don't see. I  
25 mean, like a head -- there could be a head injury which would not

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1 necessarily be visible externally. It's a possibility. It could be  
2 that there's internal damage, that there's other blows to the chest,  
3 tearing of the liver, perhaps, et cetera. So that's one side of it.

4 The tablets, Captopril, are generally given to people with high  
5 blood pressure and with heart disease, heart failure. So, yes, the  
6 implication was that he would have some sort of cardiac condition.  
7 And it's true that he could have dropped down dead at any time from  
8 that condition. I think, however, it would be fair also to add  
9 that -- I mean, these external injuries are not insignificant, and I  
10 think it would be fair to add that there's a possibility that he  
11 could have died from a heart attack precipitated by the stress of the  
12 injuries received, and I think that would be only fair to add to  
13 that.

14 PRESIDING JUDGE SMITH: Ms. Rowan, you're about out of time.

15 MS. ROWAN: Yes, I'll conclude.

16 Q. When you say "to add to that," is it right that the position, as  
17 you assess it to be, is that there are a number of ways in which this  
18 man could have died, and it is not possible to make a determination  
19 as to cause of death without an autopsy?

20 A. Yes, I think that's correct.

21 Q. And I have one more matter just to raise briefly, which is in  
22 relation to time of death, which you were asked by the Prosecution.  
23 You noted -- well, it was noted for you by the Prosecutor in your  
24 preparation note, which is their note of your Zoom discussion, that  
25 in your view the body looked relatively fresh. Is that a correct



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1 description?

2 A. Yes.

3 Q. And that in your opinion the body had been dead at least several  
4 hours?

5 A. Yes.

6 Q. In your view, is it possible, were these photographs to have  
7 been taken in the late afternoon or evening, that this person may  
8 well have been alive earlier in that day?

9 A. It's possible, yes.

10 Q. Thank you, Mr. Clark.

11 PRESIDING JUDGE SMITH: Thank you very much.

12 Witness, we'll give you a half-hour break at this time. We'll  
13 be back at 11.30.

14 [The witness stands down]

15 PRESIDING JUDGE SMITH: We're adjourned until 11.30.

16 --- Recess taken at 10.56 a.m.

17 --- On resuming at 11.31 a.m.

18 PRESIDING JUDGE SMITH: Bring the witness in, please.

19 [The witness takes the stand]

20 PRESIDING JUDGE SMITH: Ms. Tavakoli.

21 [Trial Panel and Court Officer confers]

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 MS. TAVAKOLI: Thank you.

24 PRESIDING JUDGE SMITH: So we'll wait till he's on the screen.

25 We have to wait for just a minute, Witness, to get somebody on

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Cross-examination by Ms. S. Alagendra

1 video.

2 While we're waiting, Ms. Tavakoli, do you have questions?

3 MS. TAVAKOLI: No, I don't. Thank you.

4 PRESIDING JUDGE SMITH: All right. Mr. Tully?

5 MR. TULLY: Neither do I, Your Honour. Thank you.

6 PRESIDING JUDGE SMITH: Ms. Alagendra?

7 MS. S. ALAGENDRA: Just a few, Your Honour.

8 PRESIDING JUDGE SMITH: Okay. We'll get to you in just a  
9 minute, then.

10 [The Accused Thaci appeared via videolink]

11 PRESIDING JUDGE SMITH: All right. Mr. Thaci is now with us.  
12 Ms. Alagendra.

13 MS. S. ALAGENDRA: Thank you, Your Honour.

14 PRESIDING JUDGE SMITH: You may go ahead.

15 MS. S. ALAGENDRA: Thank you.

16 Cross-examination by Ms. S. Alagendra:

17 Q. Good morning, Dr. Clark.

18 A. Good morning.

19 THE ACCUSED THACI: [via videolink] [No interpretation].

20 PRESIDING JUDGE SMITH: Good morning. Thank you for coming  
21 back, Mr. Thaci. Do you have a question?

22 THE ACCUSED THACI: [via videolink] [Interpretation] Yes,  
23 Your Honour. Could we please move into private session.

24 MS. TAVAKOLI: Your Honour, could we please move into private  
25 session.

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1           PRESIDING JUDGE SMITH:   Yeah.

2           [Microphone not activated].

3                               [Private session]

4                               [Private session text removed]

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1 [Private session text removed]

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10 [Open session]

11 THE COURT OFFICER: Your Honours, we're in public session.

12 Thank you.

13 PRESIDING JUDGE SMITH: Now you may proceed, Ms. Alagendra.

14 MS. S. ALAGENDRA: Thank you, Your Honour.

15 Q. Dr. Clark, my name is Shyamala Alagendra, and I represent  
16 Mr. Jakup Krasniqi who sits behind me today. Sir, I just have a few  
17 questions for you, so we won't be here too long.

18 A. Okay.

19 Q. Dr. Clark, we note that you were the chief pathologist for the  
20 ICTY, and you would be quite familiar, wouldn't you, with the context  
21 of the conflict concerning the former Yugoslavia?

22 A. Yes.

23 Q. And you're also familiar with the context of what was happening  
24 particularly in Kosovo?

25 A. Yes. Less familiar. I had not great many dealings with Kosovo.

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1 My main work was in Bosnia and in Croatia.

2 Q. You've provided training to pathologists in Bosnia and Croatia  
3 and also in Kosovo?

4 A. And in Kosovo, yes.

5 Q. And this was to improve standards and to share your expertise?

6 A. Yes.

7 Q. Yes. And your CV also states, Dr. Clark, that you were also  
8 conducting war crimes examinations in Kosovo; correct?

9 A. Yes, yes.

10 Q. You must therefore be quite familiar with the applicable  
11 frameworks of forensic pathology in those jurisdictions?

12 A. Yes.

13 Q. Dr. Clark, one of the pathologist reports and work that you were  
14 asked to comment on and that you've been testifying extensively about  
15 was that of Professor Slavisa Dobricanin.

16 A. Yes.

17 Q. Have you had any personal or professional contact with Professor  
18 Dobricanin?

19 A. No.

20 Q. You will agree with me, Dr. Clark, that an expert must be able  
21 to provide impartial, unbiased, objective evidence on matters within  
22 their field of expertise?

23 A. Yes.

24 Q. And you will also agree with me that all experts have a duty, in  
25 fact, to disclose anything that might reasonably be thought capable

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1 of undermining their expert opinion or detracting, shall I say, from  
2 their credibility or impartiality?

3 A. Yes.

4 Q. Now, especially in cases such as the ones prosecuted at the ICTY  
5 and by this Court as well, you would agree with me that any potential  
6 personal, ideological, or nationalistic biases of experts, especially  
7 experts coming from the communities involved in the conflict, should  
8 be considered in assessing the impartiality of that particular  
9 expert? Do you agree with that?

10 A. Yes, I would agree. Yeah.

11 Q. And as part of the instructions from the Prosecution, sir, did  
12 they provide you with any information about Professor Dobricanin's  
13 political or personal beliefs that may have affected his  
14 impartiality?

15 A. None at all, no.

16 Q. Now, in your report at page 5, and also during your testimony,  
17 you describe what I put to you is the classical position, that  
18 pathologists do not ordinarily decide or comment on the manner of  
19 death, that being the role really of the prosecutor or judges?

20 A. Yes.

21 Q. Rather, pathologists analyse the state of the body, they  
22 describe what they see, and they give their conclusions as to the  
23 cause of death. That's right, isn't it?

24 A. Yes.

25 Q. You also mention on that page that in other parts of the world,

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1 pathologists may be expected to decide the manner of death, and you  
2 refer to Professor Dobricanin's report as "presumably" being in line  
3 with that practice. And I'd like to draw down a little bit on the  
4 word "presumably," if I may.

5 Now, based on your extensive experience and training you've  
6 conducted in Kosovo and in other parts of former Yugoslavia, are you  
7 actually aware of any legal requirement in Serbia that required  
8 pathologists when making findings on the cause of death to attach  
9 labels such as murder?

10 A. No, I don't have any direct evidence of that. I think why I  
11 said "presumably" was because I find it unexpected that somebody  
12 would write that, and I'm trying to think of explanations for it, and  
13 one of them would be that perhaps in their jurisdiction it is  
14 expected of them. So I just thought it was sufficiently unusual to  
15 comment on.

16 Q. But you cannot cite to any specific legal or other provision  
17 applicable in Serbia that require that, can you?

18 A. No, no.

19 Q. Dr. Clark, were you aware that Professor Slavisa Dobricanin was  
20 a defence witness for Mr. Milosevic at his trial at the ICTY, and, in  
21 fact, he testified as a witness of fact on his behalf in relation to  
22 the Recak massacre that you may be familiar with? Were you aware of  
23 that fact?

24 A. I wasn't, no.

25 MS. S. ALAGENDRA: Could I please have on the screen

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1 DJK01160-1161, please.

2 MR. PACE: Your Honour, I'd like to make an objection as this  
3 document is being called up.

4 First of all, this document contains two pages excerpted from  
5 presumably a much longer testimony. We do not have the rest of the  
6 testimony.

7 Second of all, as we know here, the expert is here as a forensic  
8 pathologist. And in relation to the victims charged in the  
9 indictment, the Recak massacre does not figure in the indictment to  
10 that extent.

11 So if counsel is going to be allowed to go on with further  
12 questioning, they need to state their case in line with the Order on  
13 the Conduct of Proceedings.

14 PRESIDING JUDGE SMITH: Please state your case if you wish to go  
15 into this.

16 MS. S. ALAGENDRA: Yes, Your Honour. Firstly, I wanted to get  
17 Professor Clark's opinion on the physiology of Kosovans which --

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 MS. S. ALAGENDRA: The physiology, the physical attributes of  
20 Kosovans. Having been someone who has done medical examinations in  
21 Kosovo, he may be able to. And additionally, I just wanted to go  
22 into some information which may actually touch on the possible lack  
23 of impartiality of Professor Dobricanin.

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 This document is important why?



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1 MS. S. ALAGENDRA: I wanted Dr. Clark to comment on certain  
2 aspects of the professor's testimony here.

3 PRESIDING JUDGE SMITH: Is there some reason there's only a part  
4 of the document?

5 MS. S. ALAGENDRA: I can provide the whole transcript, which is  
6 actually a public document, but it's just that it's over a hundred or  
7 200 pages.

8 PRESIDING JUDGE SMITH: Okay. We'll start out with -- go ahead  
9 and look at the document. The objection is overruled at this time.

10 MS. S. ALAGENDRA: Could I go to the next page, please. To  
11 lines 11.

12 Q. Dr. Clark, what you see there is an excerpt of Professor  
13 Dobricanin's testimony at ICTY, and these are his answers to  
14 questions put by ICTY prosecutor Mr. Dan Saxon about the killing of a  
15 14-year-old child who was shot from behind, and he's asked if it's  
16 possible the child was simply an innocent civilian.

17 Now, his response to prosecution cross-examination is recorded  
18 as:

19 "Among the Albanians, boys of that age are mature."

20 Now, having worked there and being familiar with the country,  
21 have you come across any information or medical evidence that Kosovan  
22 children grow up faster than children from Serbia or Bosnia or  
23 elsewhere?

24 A. I have no evidence one way or the other, no.

25 MS. S. ALAGENDRA: Could we have, please, DPS00270 to 00863 on

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1 the screen, please. Just the front page will do.

2 Q. Dr. Clark, have you come across this book or were you made aware  
3 of this book by the Prosecution at all?

4 A. No, I've never seen it.

5 Q. Now, we're not going to go into the details of it, but at  
6 page 124 of this book --

7 MS. S. ALAGENDRA: If we could just ... I'm sorry, at 121,  
8 please.

9 Q. Dr. Clark, in that section of the book titled "The Forensic  
10 Results and the Hippocratic Oath," the author seeks to expose, in  
11 fact, the pro-Serbian bias of pathologist Professor Dobricanin. I'm  
12 not going to go over it, but I'm just interested to know whether this  
13 was brought to your attention at all?

14 A. No at all, no.

15 Q. Now, I put all this to you, Dr. Clark, because in the absence of  
16 any legal requirement that you know of or that we have been able to  
17 find for a pathologist to label a death as murder and some of the  
18 other weaknesses in his report that you have identified in your own  
19 report and testified about, isn't it possible that factors such as  
20 anti-Albanian bias or even personal motive to label the KLA as  
21 murderous may have influenced his conclusions?

22 A. They may well have done, yes. I mean, it's difficult. We all  
23 have some bias in anything we do, but we try to lessen that as much  
24 as we can.

25 Q. Thank you, Dr. Clark. Now, Doctor, moving on now to your

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1     answers in relation to all the five victims that were grouped  
2     together, and I won't mention them since we're in a public session,  
3     the conclusion that the evidence presented to you would suggest that  
4     the men were killed where they were found is based on your assessment  
5     that if they had been shot elsewhere and the body dumped on the road,  
6     you would expect a lot more bloodstaining on the body; correct?

7     A.    That was one factor. There were other factors. I mean, the  
8     actual photographs of the bodies at the scene do show what, to me,  
9     looks like somebody who's just collapsed there. Particularly, one  
10    case, his knees are bent as if he's just fallen backwards. There's  
11    also the absence of -- the clothing doesn't look disturbed. You  
12    know, if they had been dragged or pulled, you would have expected  
13    more dragging of the clothing. There is no injuries from dragging on  
14    the body. The shoes are still in position as if they hadn't --  
15    hadn't been pulled off.

16         So all in all, I felt that they had probably just been -- they  
17    died where they were. Probably they were shot where they were found.

18    Q.    The question I have for you is this: Is that if the body had  
19    been shot and the person died where they laid, and after a period of  
20    time the body was moved, would you ordinarily expect the passage of  
21    time between the death and the movement of that body to result in  
22    less bleeding or bloodstaining on the body?

23    A.    It depends how they were moved. I mean, bodies will bleed after  
24    death. There's no doubt about that. There are holes in the skin,  
25    there's blood in the body, it will leak out. So when -- we tend to

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1 find some blood-stains roundabout from where the body had been taken.

2 That doesn't seem to be described anywhere.

3 Q. And with the passage of time, for example, would that result in  
4 less bloodstaining?

5 A. Not particularly. Not in this sort of fresh period. If we're  
6 speaking about weeks, months, yes, that might be different, but not  
7 when the bodies are still fresh.

8 Q. Isn't it also possible that the bodies may have been transported  
9 in a manner that prevented blood from spilling, such as in a vehicle  
10 or wrapped in a material, for example?

11 A. That's a possibility, yes. Yes, it's possible.

12 Q. And then the bodies could then be placed on the road as if it's  
13 staged to look like the killing occurred where the bodies were found.  
14 That's possible, isn't it?

15 A. Everything's possible, yes.

16 Q. And also you're not able to discount the possibility that the  
17 astonishing absence of any bullets, as you describe it, on the bodies  
18 of the deceased or even the crime scene may also be indicative of a  
19 staged crime scene that may also affect other observations of  
20 Professor Dobricanin?

21 A. Yes. Well, there were cartridges at the scene but no bullets.

22 Q. No bullets.

23 A. Now, ostensibly, most of the wounds had entrances and exits, so  
24 you would have expected the bullets to have come out -- well, they  
25 did come out, and you would expect some bullets lying around, which

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1 are not recorded. I think there's possibly one which was noted. But  
2 the fact that there are lots of cartridges around would tend to  
3 suggest the shooting had occurred there.

4 PRESIDING JUDGE SMITH: Ms. Alagendra, this material was already  
5 asked extensively by Ms. Rowan, so please move on to something else.

6 MS. S. ALAGENDRA: Your Honour, just to clarify. I'm not sure  
7 whether or not the possibility to a staged was, in fact, asked by  
8 Ms. Rowan.

9 PRESIDING JUDGE SMITH: [Microphone not activated].

10 MS. S. ALAGENDRA: That was in fact my question. I was going to  
11 put it back to him.

12 PRESIDING JUDGE SMITH: [Microphone not activated].

13 MS. S. ALAGENDRA:

14 Q. Dr. Clark, do you agree with me that it's possible that the  
15 crime scene could have been staged given these peculiarities?

16 A. Yes.

17 Q. Now, Doctor, when you're interpreting the report of  
18 Professor Dobricanin, you note that some of the wounds would have  
19 been caused by the same weapon or weapons which would be consistent  
20 with it being a high-velocity weapon?

21 A. I think I used the word "could" rather than "would."

22 Q. Could, I beg your pardon.

23 A. Yes.

24 Q. Now, that is something -- if I'm not mistaken, you are  
25 speculating about that, aren't you?

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1 A. Well, all these injuries appear to me typical of high-velocity  
2 weapons. I mean, the fact that there was -- really just all the  
3 wounds exited from the body. Now, if this had been handguns, which  
4 are, you know, pistols or revolvers, chances are some of these  
5 bullets would have remained in the body and not come out. So the  
6 fact that they've all come out of the body would suggest a sort of  
7 high-velocity weapon, as would the size, to some extent, the size of  
8 the entrance wounds, which are approximately the size of  
9 high-velocity weapon ammunition.

10 Q. But just to be clear, you didn't see any ballistic report to  
11 support the conclusion of what kind of weapons may have been used?

12 A. Not at all, no. And that's why it would have been helpful if  
13 there had been bullets found, they could have been analysed.

14 Q. Now, Doctor, in relation to the first individual, which appears  
15 at page 6 of your report, and in answer to question 5, you state that  
16 given the wounds were on the upper part of the chest, he was likely  
17 to have been standing at that time.

18 A. Yes.

19 Q. And then in relation to now to another individual who appears at  
20 page 9 to 10 of your report, again, you note at page 10 that there  
21 were no bullets recovered from his body. Do you see that, Doctor?

22 A. This is on page 9 of my report?

23 Q. Page 9 -- the individual I'm talking about is at page 9, and  
24 your observation that no bullets were recovered from his body appears  
25 at page 10 in answer to question 3. Do you see that?

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1 A. Okay, yes.

2 Q. Yeah. So my questions are this: If a victim was forced to lie  
3 down before being shot, it's very likely, isn't it, that bullets  
4 would have been recoverable from the body?

5 A. If they'd been fired in the front and they'd come out the back,  
6 the bullet would have -- almost certainly the bullet would be on the  
7 ground underneath them. Yes, it would be found.

8 Q. So either on the body or on the ground, it would have been  
9 there?

10 A. Yes. We know the bullets came out because there's a hole, so  
11 you would have expected the bullet on the ground underneath the body.

12 Q. Now also in your report you take the view that the shooter was  
13 to the right and front of the victim. And would that mean that in  
14 standing position as well?

15 A. Yes.

16 Q. Now, Doctor, I don't believe you were provided with this report  
17 but you will confirm that.

18 MS. S. ALAGENDRA: Could I please have document  
19 0188-3494-0188-3591 on the screen, please. And I would like to have  
20 page 0188-3501. Now, if we go to the bottom of the page.

21 Q. So the last line there, Dr. Clark, you see it states -- now,  
22 this is an on-site investigation report related to these individuals  
23 that you've been asked to -- whose autopsies you've been asked to  
24 comment on, and there you can read what it says, that:

25 "Most likely, the victims were forced to lie down and shot."

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1           Now, given your own observations, you agree that this view that  
2   they were most likely forced to lie down and shot, it's a bit  
3   doubtful, isn't it?

4   A.   Yes, I certainly would use the word "most likely." It's  
5   possible. But I think it's more likely, in my view, that they were  
6   standing up. I mean, some have been shot in -- ostensibly in two  
7   surfaces, you know, in the front of the body and in the back of the  
8   body occasionally, which would imply that the body had been then  
9   turned round.

10          So I just felt because all the -- the bulk of the injuries were  
11   at sort of trunk level, apart from one in the head, and in the arms,  
12   that they were most likely standing up. And the fact that the  
13   arms -- there were injuries to the arms would fit better with people  
14   standing up rather than lying down, when the arms might be to the  
15   sides and in different positions.

16          So my view is that I would say -- I would say most likely they  
17   were standing up. This person has said they were "forced to lie down  
18   and shot." I wouldn't necessarily agree with that. Well, I wouldn't  
19   agree with it.

20   Q.   Doctor, regarding skeletal remains, I just have a couple of  
21   questions. You would agree that distinguishing between trauma that  
22   occurred near the time of death and post-mortem changes is especially  
23   difficult when soft tissue is absent; correct?

24          MR. PACE: Objection, Your Honour. That was certainly asked by  
25   counsel for Mr. Veseli.



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1           PRESIDING JUDGE SMITH: Sustained.

2           MS. S. ALAGENDRA:

3       Q.   And I believe your answer to that was yes, it would be.

4           MR. PACE: Your Honour, my objection was sustained. We don't  
5   need to go over the answer that has been elicited.

6           PRESIDING JUDGE SMITH: You're giving an answer to a question  
7   that was not allowed.

8           MS. S. ALAGENDRA: Your Honour, I would like --

9           PRESIDING JUDGE SMITH: [Microphone not activated].

10          MS. S. ALAGENDRA: If you would permit me to re-ask the question  
11   because it's the premise for my next question, Your Honour.

12          PRESIDING JUDGE SMITH: [Microphone not activated].

13          MS. S. ALAGENDRA: Could counsel remind me what his answer was?

14          MR. PACE: Your Honour, once again, it's not my job to do that.

15          PRESIDING JUDGE SMITH: No, this is up to you. This is your  
16   cross-examination, not the Prosecution's.

17          MS. S. ALAGENDRA:

18       Q.   Dr. Clark, you would acknowledge post-mortem damage to the bones  
19   from environmental factors or scavenging could potentially mimic or  
20   even obscure signs of a traumatic injury. Would you agree with that?

21       A.   Yes and no. It's not so much environmental factors or  
22   scavenging. They would leave more distinctive marks. What I'm  
23   talking about in post-mortem trauma is movement of the body, physical  
24   movement by machines or whatever, causing injury that way. It's not  
25   so much the environmental factors or animals. It's much more

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1 physical than that.

2 Q. But that kind of damage, it can obscure or even mimic traumatic  
3 injury at times, doesn't it?

4 A. Sorry, what kind of damage?

5 Q. Any kind of non-traumatic damage caused to skeletal remains.

6 A. Well --

7 Q. Is it easy to mistake?

8 A. No. I mean -- well, certain things we can tell. If, for  
9 instance, a body has been exhumed after many years and the bones are  
10 injured in taking out the skeleton, we can usually tell that's caused  
11 at that time. There's a different appearance to it. I can tell if a  
12 bone has been nibbled away by an animal, for instance. That has a  
13 characteristic appearance. But -- I've forgotten what I was going to  
14 say.

15 So, yeah, there are distinctive patterns of injuries. It's not  
16 always easy to say that, say, a fracture, a straightforward fracture  
17 in a bone was caused in life or after death. It's not 100 per cent  
18 possible to tell.

19 Q. I have another general question for you. Would you agree that  
20 anti-coagulants are usually prescribed to manage heart conditions,  
21 heart failures, enlarged hearts?

22 A. In certain heart conditions they would be. If the heart is  
23 beating irregularly, that's when they would most likely be provided.  
24 Yes.

25 Q. And am I right or am I not that blood thinners can lead to worse

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1 bruising or bruising more easily?

2 A. Yes.

3 Q. Now, Dr. Clark, in relation to the individual at page 24 to 25  
4 of your report, I just have a few questions. And my question, in  
5 fact, is about the missing autopsy report.

6 Now, you note that the autopsy was performed probably on 2 March  
7 by Dr. Suzana Matejic. Do you see that?

8 A. Yes.

9 Q. Now, were you made aware, Dr. Clark, that the autopsy report  
10 was, in fact, signed off by the same Milosevic defence witness we  
11 spoke about earlier, Professor Dobricanin?

12 A. I wasn't aware of that, no.

13 MS. S. ALAGENDRA: Could we please have on the screen, please,  
14 SPOE00078233-SPOE00078234, and page 2.

15 Q. This is a note compiled by a EULEX officer reporting on efforts  
16 to locate the missing autopsy report. Now, as you can see, the EULEX  
17 officer was unable to retrieve the report, but he noted - and this is  
18 the second paragraph from the bottom - that the annotation in the  
19 registry indicated that "the report was signed by ... Slavisa  
20 Dobricanin." Do you see that?

21 A. I see that, yes.

22 Q. Now, just to confirm, Dr. Clark, you were not provided with this  
23 document, were you?

24 A. No.

25 Q. And also in your report on page 24, you note that the cause of

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1 death is listed as homicide, "murder" in brackets, and you explain  
2 that:

3 "... homicide is not a cause of death but rather a manner, to be  
4 proved by others." And you also say that:

5 "Many pathologists would not have included it under Part 1c."

6 Now, you would agree with me, Dr. Clark, that this approach is  
7 not only contrary to international standards, but it could also  
8 suggest a potential bias in how cause of death is characterised?  
9 Would you agree with that?

10 MR. PACE: Objection, Your Honour. It's not for the forensic  
11 expert who is a witness here to assess bias. He can comment on  
12 procedures, but that calls for something that the Judges will do in  
13 terms of bias in report. He does not have a position to do that.

14 PRESIDING JUDGE SMITH: [Microphone not activated].

15 It's overruled. He can answer the question if he knows.

16 THE WITNESS: Could you repeat the question, sorry?

17 MS. S. ALAGENDRA:

18 Q. Yes. So my question was that in your report, page 24, you note  
19 that the cause of death is listed as homicide, in brackets "murder,"  
20 and you explain that:

21 "... homicide is not a cause of death but rather a manner, to be  
22 proved by others."

23 A. Yes.

24 Q. And that:

25 "Many pathologists would not have included it under Part 1c."

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1           My question was: You would agree, wouldn't you, that this  
2           approach is not only contrary to international standards, but it  
3           could also suggest a potential bias in how the cause of death was  
4           characterised?

5           A.     Yes.

6           MS. S. ALAGENDRA: Your Honours, I tender this document for  
7           admission and ask that it be given an exhibit number, please.

8           PRESIDING JUDGE SMITH: Mr. Pace?

9           MR. PACE: No, I think might be wrong that it's even tendered in  
10          our bar table motion, but certainly no objection to admission.

11          PRESIDING JUDGE SMITH: Under our standard, we'll mark it as MFI  
12          now and rule on it later.

13          Please assign a number.

14          THE COURT OFFICER: Thank you, Your Honours. SPOE00078233 to  
15          SPOE00078234 RED will be marked for identification with 4D00103, and  
16          it's classified as confidential. Thank you, Your Honours.

17          MS. S. ALAGENDRA: Can we please have on the screen  
18          SPOE00078351-00078351. It's just one page.

19          Q.     Dr. Clark, this is another EULEX report concerning efforts to  
20          locate the missing autopsy report of this individual. Do you see  
21          that on your screen, sir?

22          A.     Yes, yes.

23          Q.     Now, in paragraph 3 of that document, it reads:

24                 "In the relative diagnose (Protocol number 145, 02.03.1999) it  
25          states that the victim had a medical history of having an enlarged

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Cross-examination by Ms. S. Alagendra

1 heart."

2 Do you see that?

3 A. Yes.

4 Q. Now, can you confirm that this document was not provided to you  
5 by the SPO?

6 A. I can confirm it wasn't. Yes.

7 Q. And you can also confirm that this information about the  
8 individual's heart condition was also not mentioned in the death  
9 certificate at all, is it?

10 A. That's correct, it's not. It's not there at all, no.

11 Q. And would you agree with me that in cases where cardiomegaly is  
12 found alongside signs of trauma, it would be crucial to consider  
13 whether heart failure due to that condition or another preexisting  
14 heart condition could have been the primary cause of death rather  
15 than trauma itself being the direct cause?

16 A. Yes, it could have been the primary cause or it could also be a  
17 contributing cause. And a death certificate is structured that  
18 you're allowed to put potential contributing causes. It's in part 2  
19 of the death certificate. So either -- if the decision had been that  
20 this was the primary cause, you would put it in the part 1. If you felt  
21 it didn't help him, shall we say, with all these injuries, then you  
22 would put it under probably part 2. So it would be right to consider  
23 it and include, if necessary.

24 Q. And isn't it true that an enlarged heart can, in fact, increase  
25 the risk of sudden cardiac arrest even without external trauma?

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1 A. Over -- yes. Yes, indeed.

2 Q. And would you agree with me that if you were furnished with this  
3 information, your views on the likelihood of death being caused as  
4 stated may have been different?

5 A. Yes, I -- I would have to take into context the -- what  
6 injuries, if any, were present. And if I assessed them as inevitably  
7 fatal in themselves, I would put less emphasis on the heart  
8 condition. But if perhaps the injuries were of a lesser, not  
9 necessarily fatal variation, the person had died and they had a heart  
10 condition, I would have probably included the heart condition as  
11 well.

12 Q. But this is definitely information that should have been  
13 provided to you in order to make a more thorough assessment of this  
14 particular case --

15 A. Well --

16 Q. -- isn't it?

17 A. -- I'm not going to comment on what should have been provided to  
18 me. I'll just say it wasn't provided to me.

19 Q. That's fair enough, Dr. Clark.

20 MS. S. ALAGENDRA: Your Honour, I tender this document as well  
21 for admission and ask that it be marked as an exhibit.

22 PRESIDING JUDGE SMITH: Any objection?

23 MR. PACE: No.

24 PRESIDING JUDGE SMITH: SPOE00078351 to 78351, a single page, is  
25 admitted -- or, not is admitted, is granted an MFI number.

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Re-examination by Mr. Pace

1 THE COURT OFFICER: Thank you, Your Honours. It will be MFI'd  
2 with 4D00104, and it's classified as confidential. Thank you,  
3 Your Honours.

4 MS. S. ALAGENDRA:

5 Q. Dr. Clark, thank you very much for answering my questions.

6 A. Thank you.

7 Q. Those were all my questions. And thank you for being here.

8 A. Thank you.

9 PRESIDING JUDGE SMITH: Thank you, Ms. Alagendra.

10 Redirect, Mr. Pace.

11 MR. PACE: Yes. I'll be brief, Your Honour.

12 Re-examination by Mr. Pace:

13 Q. Good afternoon, Dr. Clark.

14 A. Good afternoon.

15 Q. During cross-examination by counsel for Mr. Veseli, you were  
16 asked about certain issues you raised concerning the autopsy reports  
17 of the set of five victims dealt with in your expert report.

18 MR. PACE: For those in the courtroom, I'm referring, for  
19 example, to page 24285 of yesterday's transcript.

20 Q. During direct examination, so when I asked you questions earlier  
21 yesterday, in relation to two of these five victims, you testified  
22 that despite your concerns with some of the gunshot trajectories, the  
23 first victim nevertheless died from a straightforward gunshot injury  
24 to the chest while the second died of multiple gunshot injuries.

25 My question is does that remain correct based on the information



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1 available to you?

2 A. Yes, it does. Yes.

3 Q. And in your expert report that we've been talking about today  
4 and yesterday, in relation to these five victims, at page 103121 you  
5 state the following:

6 "The autopsy findings in these five men were all very similar.  
7 They each died from multiple gunshot injuries, with most of the shots  
8 being to the trunk and arms, and most to the front or side of the  
9 body. Only one man had been shot in the head (as well as the trunk),  
10 only one shot in the back (as well as his front) and none shot in the  
11 legs. Whatever the distribution of the shots the men would ... have  
12 died quickly."

13 And my question is does that remain correct based on the  
14 information available to you?

15 A. Yes.

16 Q. Thank you.

17 MR. PACE: No further questions.

18 PRESIDING JUDGE SMITH: Judge Barthe, you had some questions.

19 JUDGE BARTHE: Thank you, Judge Smith.

20 Questioned by the Trial Panel:

21 JUDGE BARTHE: And good afternoon --

22 A. Good afternoon.

23 JUDGE BARTHE: -- Dr. Clark. The Panel has a few more questions  
24 for you to clarify some points that are not yet entirely clear to us  
25 and to fully and accurately understand your evidence.

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1           Could I ask the Court Officer to bring up Exhibit P1991 MFI,  
2     please. Thank you.

3           Dr. Clark, as you can see, this is again your forensic pathology  
4     report of 15 September 2021.

5           And can we please go to page 3. A little bit further down,  
6     please. Thank you.

7     Q. On this page, Dr. Clark, in response to question 9 of the  
8     Prosecution, you described the term rigor mortis as one of the four  
9     classical physical changes in the human body after death, and explain  
10    that it means the stiffening of the muscles caused by a specific  
11    chemical reaction. You also stated that the stiffening usually  
12    begins around four hours after death and that typically the whole  
13    body would be rigid by about 12 hours or so. Rigor would then  
14    persist until decomposition starts, which would perhaps appear  
15    between 24 to 48 hours in average conditions.

16          Is this summary correct, Dr. Clark?

17    A. Yes.

18          JUDGE BARTHE: Thank you. My first question is the following:  
19    If someone dies, let's say, in a room or building without air  
20    conditioning in midsummer, on a day that is not extremely hot or  
21    cold, when would the decomposition process be expected to start,  
22    roughly speaking? After 24 hours or earlier or later?

23    A. Decomposition starts really at the time of death, but the  
24    visible changes of it would usually be -- in average conditions are  
25    some, as I said, 24 to 48 hours afterwards. The first changes that

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1 one sees is a discolouration, a greenish discolouration on the  
2 abdomen, skin of the abdomen. And that's -- decomposition is -- the  
3 bacteria which is in the bowel start to digest the body tissues after  
4 death, and so the first changes are usually in the abdomen and then  
5 they will spread.

6 So although the process starts almost immediately, the visible  
7 appearances will be, on average, 48 hours, 24 to 48 hours. Having  
8 said that, in a very warm condition, decomposition can start --  
9 visible decomposition can start within several hours. Conversely, in  
10 cold conditions, it could a week before any changes appear.

11 So this is average conditions.

12 JUDGE BARTHE: Thank you. So in my example, the example I just  
13 gave, when would be the latest conceivable time for the start of the  
14 decomposition? Can you say that?

15 A. I think, as I recall, you said a sort of standard  
16 air-conditioned room, not too hot, not too cold --

17 JUDGE BARTHE: No air condition, not too cold, not extremely  
18 hot, and not extremely cold.

19 A. I would have thought by certainly within two to three days one  
20 would -- there would be visible signs starting.

21 JUDGE BARTHE: Thank you. And which part -- this is my next  
22 question. On which part of the body does rigor mortis appear first  
23 and where does it end?

24 A. It tends to initially involve the smaller muscles of the body,  
25 so perhaps the fingers, and then will gradually involve the larger

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1 muscle groups on the limbs and in the trunk as well.

2 JUDGE BARTHE: And, again, roughly speaking, when would the  
3 rigor disappear in my example under -- or in average conditions at  
4 the latest?

5 A. It would probably -- it could stay on for three or four days  
6 anyway until the decomposition changes start to break it down.

7 JUDGE BARTHE: If I understood you correctly, you said yesterday  
8 that the livor mortis, or lividity, as you called it, would occur  
9 depending on the position in which a person died; is that right?

10 A. That's right, yes.

11 JUDGE BARTHE: So if a person dies in a sitting position, where  
12 would you expect the lividity to appear?

13 A. Under the points of gravity. So it will go down to the --  
14 probably naturally to the legs, to the back of the thighs if you're  
15 sitting in a chair, perhaps a lower part of the back. That sort of  
16 distribution. And into the legs.

17 JUDGE BARTHE: Thank you. Now, I have a question in relation to  
18 paragraph 9 of the SPO's preparation note. And I don't think it's  
19 necessary to bring the note up.

20 According to this paragraph, you stated that the terms  
21 "post-mortem examination" and "autopsy" are the same for you. Do you  
22 remember that?

23 A. Yes.

24 JUDGE BARTHE: Are you aware, Dr. Clark, that in some countries,  
25 such as Germany, the two terms have different meaning in fact and in

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1 law, where the former, for example, means the mere inspection of the  
2 body of the deceased from the outside, and the latter refers to the  
3 opening and subsequent examination of the inside of the body by one  
4 or more physicians? Are you aware of that?

5 A. Yes, and I would accept that. I was really kind of talking  
6 about it in general lay terms. But I fully accept what you say  
7 there.

8 JUDGE BARTHE: No, I understand. This might be -- might well be  
9 a translation issue. We don't know.

10 Dr. Clark, very briefly, on a related issue that goes to  
11 translation, you were asked by the Defence -- actually, by two  
12 Defence teams whether the use of the word "murder" was not in line  
13 with international standards or could even be a sign of bias. Do you  
14 remember that?

15 A. Yes.

16 JUDGE BARTHE: Have you checked, Dr. Clark, whether the word  
17 used in the original Serbian version of the autopsy report actually  
18 meant "murder" in the English?

19 A. No, I -- I went by the translation, yes.

20 JUDGE BARTHE: Thank you. You were shown photos of a deceased  
21 man by the Prosecution yesterday, and this topic was also addressed  
22 by the Defence today.

23 And for the record, I'm referring to Exhibit P858, pages 4 and  
24 the following.

25 Do you remember, Dr. Clark, seeing and discussing these

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1     photographs?

2     A.     This is the man in the chair?

3           JUDGE BARTHE:   The man in the chair, exactly.

4     A.     Yeah.

5           JUDGE BARTHE:   So I assume you don't need to see them again?

6     A.     No, I can -- I can picture it.

7           JUDGE BARTHE:   If this person was actually seen alive about 24  
8     hours before these photos were taken, would that be inconsistent with  
9     your estimate of the approximate time of death, which was, as you  
10    said, from several hours to one or two days or less?

11    A.     No.   What you say would -- that's consistent with my  
12    observations, yes.

13          JUDGE BARTHE:   Thank you.   And your estimate of one or two days  
14    in relation to the bruising that you described as relatively fresh -  
15    this is on page 46 of our realtime transcript - can this be  
16    reconciled with what I have just described to you?   In other words,  
17    assuming the person was seen alive and unharmed about 24 hours  
18    earlier, could the bruising have occurred within the last 24 hours,  
19    or would you assume that it occurred earlier?

20    A.     Yes.

21          JUDGE BARTHE:   So it could be?

22    A.     It could be -- it could only be just a few hours old, yes.

23          JUDGE BARTHE:   Thank you.

24          Dr. Clark, you said earlier this morning, on page 54 of our  
25    realtime transcript, that the external injuries that you saw on the

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1 man in the photos were not insignificant, and you think it would be  
2 fair to say that there's a possibility that he could have died from a  
3 heart attack precipitated by the stress of the injuries received.  
4 And you also said that it was true that the man could have dropped  
5 down dead at any time --

6 A. Yes.

7 JUDGE BARTHE: -- from his heart condition. Do you remember  
8 saying that?

9 A. Yes.

10 JUDGE BARTHE: From your point of view as an expert, Dr. Clark,  
11 how likely is it that a 70-year-old person with a cardiovascular  
12 position who was tied to a chair and has injuries such as those shown  
13 in the photo will die of causes unrelated to the circumstances; in  
14 other words, just because of a simple heart attack that can happen  
15 any time and anywhere?

16 A. I would consider that unlikely. I think the chances are that  
17 it's not just a coincidence. That the injuries probably did play --  
18 could well have played a part in his death. Yes.

19 JUDGE BARTHE: Thank you. I would like to move on to a  
20 different topic.

21 Mr. Court Officer, could we please go into private session for  
22 the protection of witnesses and other persons.

23 [Private session]

24 [Private session text removed]

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1 [Private session text removed]

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Witness: John Clark (Resumed) (Private Session)

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Questioned by the Trial Panel

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17 [Open session]

18 THE COURT OFFICER: Your Honours, we're in public session.

19 Thank you.

20 JUDGE GAYNOR: Thank you.

21 Good afternoon, Dr. Clark.

22 A. Good afternoon.

23 JUDGE GAYNOR: I want to start with the question of matching up  
24 entry and exit wounds. If you have a body with multiple entry wounds  
25 and exit wounds, how important is it to match up the entry wounds

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1 with the exit wounds in order to conclude that the victim died as a  
2 result of gunshot injuries?

3 A. It's not essential because we can still tell that bullets  
4 travelled through the body, injured internal organs, and came out.  
5 It's not crucial that we know that the one exit wound matched up with  
6 the internal one. It's helpful in perhaps reconstructing, giving  
7 other information, but it's not absolutely crucial.

8 JUDGE GAYNOR: And on the basis of your professional experience,  
9 is it the general practice for an autopsy report to match up multiple  
10 entry wounds and exit wounds in the case of multiple gunshot injuries  
11 in order to reach a conclusion that the victim died of gunshot  
12 injuries?

13 A. I think the pathologist would try as much as possible to match  
14 up the injuries. But if they were in any doubt, they would state  
15 that. But they would probably go on to say that even though there's  
16 some doubt which was entrance -- what was the exit of that entrance,  
17 there's no doubt that these -- the gunshot injuries still killed this  
18 person.

19 JUDGE GAYNOR: I want to turn now to the issue of the presence  
20 of a bullet, in whole or in fragments, within the body.

21 On the basis of your experience examining gunshot injuries in  
22 Bosnia, Croatia, Kosovo, and elsewhere, roughly how common is it to  
23 find bullets embedded in the body rather than to have passed through  
24 the body?

25 A. It is fairly common. I would have thought the majority of cases

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1     that I dealt with in Bosnia, we did find at least a fragment of  
2     bullet in most cases. Not all, but most cases. I mean,  
3     high-velocity ammunition is designed to go through a body, to go in  
4     and out the other side. But if it strikes bone, then it tends to  
5     fragment and perhaps bits of it will emerge but bits will remain.  
6     And the bits that emerge don't necessarily go out the same way you  
7     would expect them to do. They can be deflected as well.

8             So I think it's quite -- it is common to find bullet fragments  
9     in bodies and even whole bullets, which I could never understand, but  
10    that was a finding as well.

11            JUDGE GAYNOR: Now, I want to turn to the importance of  
12    recovering a bullet, whether from a body or from woodwork or  
13    furniture at the crime scene.

14            Is it right to say that recovering a bullet is helpful in  
15    determining whether that bullet was fired from a specific firearm,  
16    but it is not, in fact, particularly important in determining whether  
17    the victim died from gunshot injury?

18    A.     That's correct, yes. Yes.

19            JUDGE GAYNOR: And I want to turn now to trajectories. Is it  
20    right that recovering a bullet from a wall or an item of furniture at  
21    the crime scene is useful in determining the trajectory of the  
22    bullet, which in turn is useful in determining the location of the  
23    person who fired the bullet?

24    A.     Yes. Yes, it would be. Yes.

25            JUDGE GAYNOR: Now, establishing the trajectory of the bullet

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1 through the body itself might also be useful in determining the  
2 location of the person who fired the bullet; is that right?

3 A. Yes.

4 JUDGE GAYNOR: Now, how important is it to recover a bullet or a  
5 fragment in order to determine whether that person has died of  
6 gunshot injury?

7 A. It's not crucial. I mean, we can -- a gunshot injury is very  
8 recognisable as such, so we can recognise a bullet entrance wound and  
9 damage caused and know that that's a gunshot injury without actually  
10 finding a bullet or even a fragment. So it's not crucial. The  
11 retrieval of bullets is much more important in reconstruction of the  
12 scene or identifying a weapon, as you correctly said.

13 JUDGE GAYNOR: Now, in a body with multiple gunshot injuries,  
14 how important is it to establish the precise trajectory of the  
15 bullets through the body to determine that the person has died of  
16 gunshot injury?

17 A. It is important to establish that the bullet has damaged vital  
18 organs. So a bullet going through the back of the arm was not going  
19 to -- generally not going to kill you, so you would not give that as  
20 a cause of death. But it's important to be able to establish that  
21 the bullet caused damage to lungs, heart, blood vessels, et cetera,  
22 to be confident of the cause of death.

23 JUDGE GAYNOR: And where there is a single entry and exit wound,  
24 how important is establishing the trajectory there in order to  
25 determine that the person has died of gunshot injury?

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1 A. Well, that's -- I think it falls to my last answer. If we have  
2 established that the gunshot, the bullet has gone through vital  
3 structures, then that gives us all the answers we need.

4 JUDGE GAYNOR: And just to round up, and please clarify if I've  
5 got this right or not, if one is not trying to match a bullet to a  
6 specific firearm, or if one is not trying to establish the location  
7 of the person firing the bullet, then neither the trajectory nor  
8 obtaining the bullet itself is particularly crucial in determining  
9 whether the person, in fact, died of gunshot injury?

10 A. Yes, that's correct. Yes.

11 JUDGE GAYNOR: All right. Thank you. No further questions.

12 A. Thank you.

13 PRESIDING JUDGE SMITH: Any follow-up questions, Mr. Pace?

14 MR. PACE: No, thank you.

15 PRESIDING JUDGE SMITH: Ms. Tavakoli -- oh, I'm sorry,  
16 Ms. Rowan?

17 MS. ROWAN: No, thank you.

18 PRESIDING JUDGE SMITH: Ms. Tavakoli, anything?

19 Mr. Tully?

20 MR. TULLY: No, Your Honour.

21 PRESIDING JUDGE SMITH: Ms. Alagendra?

22 MS. S. ALAGENDRA: [Microphone not activated].

23 PRESIDING JUDGE SMITH: Thank you.

24 [Microphone not activated] ... that signals the fact that you're  
25 finished testifying.

1 THE WITNESS: Thank you.

2 PRESIDING JUDGE SMITH: So we appreciate you being with us. You  
3 are excused. We wish you well in the future. And, once again, thank  
4 you for your help.

5 THE WITNESS: Thank you very much.

6 [The witness withdrew]

7 [Trial Panel confers]

8 PRESIDING JUDGE SMITH: Yes, ma'am.

9 MS. ROWAN: Your Honour, just two matters briefly, please,  
10 before I assume we may well be breaking for the lunch.

11 PRESIDING JUDGE SMITH: [Microphone not activated].

12 MS. ROWAN: Very well.

13 Firstly, in relation to my learned friend's tender of the  
14 exhibits that he wishes to tender with this witness. We would ask  
15 that the Panel afford us the same amount of time we were afforded for  
16 Professor Goodwin to respond to those admissibility arguments, in  
17 order to enable us to perform the same exercise to make submissions  
18 incorporating the testimony. That would bring us to next Wednesday.

19 PRESIDING JUDGE SMITH: I would like especially -- I agree in  
20 part or in total. I would like to have a list made by the  
21 Prosecution of the MFI offer, the tender, so that we make sure we  
22 don't miss anything.

23 And you have some MFI exhibits also. Are you going to ask those  
24 to be offered?

25 MS. ROWAN: No, they would only be tendered in the event that

1 Your Honour tenders the Prosecution, so it must be dealt with  
2 sequentially.

3 PRESIDING JUDGE SMITH: Okay.

4 MR. PACE: To clarify, Your Honour, our -- I'm sorry to  
5 interrupt. Our tender is in Annex 1 to the preparation note. That's  
6 all of those documents. I haven't -- the only item I MFI'd beyond  
7 that are the courtroom screenshots. We're happy to send the  
8 Registry's codes for those.

9 And in terms of the tender by, I think, two Defence teams, we  
10 have no objection to their admission. And we understand that the  
11 Defence -- at least the Veseli Defence would only want them admitted  
12 if our items are admitted, whereas I understand Krasniqi Defence  
13 would have them admitted regardless, but I don't want to speak for  
14 them.

15 PRESIDING JUDGE SMITH: So that's fine. And Wednesday is fine.  
16 A week yesterday.

17 MS. ROWAN: I'm grateful. Thank you.

18 PRESIDING JUDGE SMITH: All right.

19 MS. ROWAN: That would mirror the timeline we were afforded  
20 before.

21 The second issue is this. Your Honour has twice in the course  
22 of cross-examination asked the Defence to state their case to this  
23 witness. We would ask that the Prosecution is required to state  
24 their case on this evidence today in advance of us replying to their  
25 motion for admission, because their case on this evidence is simply



1     unclear.

2             The crystal-clear example of the issue lies in *[REDACTED] Pursuant to In Court Redaction Order F2854RED*.

3     Pardon me, there will have to be a transcript redaction. Lies in  
4     relation to that deceased person. The Prosecution are seeking to  
5     tender an autopsy for the truth of its contents and rely upon it,  
6     which states that the cause of death is unascertained. On the other  
7     hand, they seek to call a witness who says, "I can give you the cause  
8     of death. I've come to a separate conclusion." Your Honour, that  
9     cannot be a tenable position. The Prosecution cannot do that.

10            Equally, we have five autopsy reports that they have called  
11     their own witness to significantly undermine --

12            PRESIDING JUDGE SMITH: I'd much rather you make this in your  
13     argument rather than doing it today because we have other cases to  
14     get on to.

15            MS. ROWAN: Your Honour, I appreciate the ongoing and persistent  
16     need to hurry up, but the difficulty is the Defence cannot respond to  
17     a case when they don't know what case it is we are meeting.

18            The difficulty is we cannot make a submission on -- and I  
19     appreciate Mr. Pace is on his feet. If he could allow me a moment,  
20     please.

21            We cannot respond to an admissibility argument when we don't  
22     know if the autopsy report is being tendered for the truth of its  
23     contents or they are seeking to rely on Clark for the truth of his  
24     evidence. They can't have both, and we can't respond unless we know  
25     their case.

1           PRESIDING JUDGE SMITH: Thank you.

2           MS. ROWAN: And we would ask that they state their case on all  
3 of it.

4           PRESIDING JUDGE SMITH: Thank you.

5           MR. PACE: Briefly, Your Honour. Thank you.

6           Although the arguments you just heard are in the context of  
7 autopsies and expert evidence, Your Honour has dealt with essentially  
8 identical submissions before and rejected them, and Your Honour  
9 should do the same in this case.

10          Where counsel for the Defence have argued in relation to other  
11 issues that the Prosecution has to state their case now today with  
12 finality, they have been overruled, and rightly so, because the time  
13 to make those final submissions are at the end of the case, based on  
14 all the evidence admitted at trial. And there is no prejudice to the  
15 Defence responding if they -- now, if they want, they could argue  
16 both ways, they could argue neither. That is entirely their choice.  
17 There is no undue prejudice in that regard. And there is certainly  
18 no need to reinvent the wheel in terms of stating our case. Thank  
19 you.

20          PRESIDING JUDGE SMITH: We're finished with this. The  
21 Prosecution can make their tender in writing. You may respond by  
22 Wednesday. The Court will rule on it.

23          MS. ROWAN: One question, Your Honour, because it's becoming an  
24 ongoing --

25          PRESIDING JUDGE SMITH: [Microphone not activated] ... understand

1 English? I said we are finished with this now. That's the way we're  
2 going to handle it. They will file their submission, you may  
3 respond, we'll decide. We will use Rule 138, as we always do, and we  
4 will use the rule on expert witnesses in connection with that, and  
5 that's it.

6 [Microphone not activated].

7 MS. S. ALAGENDRA: Your Honour, I have a -- Your Honour, I have  
8 a separate issue to raise, please.

9 PRESIDING JUDGE SMITH: [Microphone not activated].

10 We'll break until 2.00. We'll go from 2.00, hopefully, until we  
11 can finish with that witness.

12 Yes, Ms. Alagendra.

13 MR. PACE: Your Honour, if I may, mine relates to the same  
14 issue. Just for clarity, is it now different to the last expert,  
15 where we are filing first and the Defence responds, or is it still  
16 the Defence files --

17 PRESIDING JUDGE SMITH: [Microphone not activated].

18 MR. PACE: No, I'm seeking clarity on the schedule for the  
19 filings in relation to this witness. With Dr. Goodwin, the Defence  
20 filed and then we were entitled to a reply. Do you want to follow  
21 the same procedure in relation to Dr. Clark, or are we doing  
22 something differently?

23 PRESIDING JUDGE SMITH: I would like to just see the tender,  
24 first of all, in writing, all of it. You have some additional ones  
25 so get that all to us, then they can respond, and then you can reply.

1 MR. PACE: Certainly. We will do the tender --

2 PRESIDING JUDGE SMITH: And if they're going to file on  
3 Wednesday, you can reply by Friday.

4 MR. PACE: Sure. But then in that case, could it be Wednesday  
5 by 4.00 so we get it on Wednesday, please.

6 PRESIDING JUDGE SMITH: Close of business -- or 4.00 on Friday.  
7 Understood?

8 MS. ROWAN: I do speak English.

9 PRESIDING JUDGE SMITH: Okay.

10 Ms. Alagendra.

11 MS. S. ALAGENDRA: Your Honour, just on the issue raised by  
12 Judge Barthe, we have just confirmed that the translation of the word  
13 in Serbian is accurate. It is "murder."

14 PRESIDING JUDGE SMITH: We'll see on that.

15 All right. We're going to break now till 2.00. We're adjourned  
16 until then.

17 --- Luncheon recess taken at 12.49 p.m.

18 --- On resuming at 2.03 p.m.

19 PRESIDING JUDGE SMITH: Since it was brought up as an issue, the  
20 Prosecution as the tendering party should be in a position to check  
21 with the Language Unit whether the word "*ubijaca*" [phoen] could have  
22 several meanings in Serbian, and I believe that would clarify the  
23 record.

24 MS. INSINGA: Yes, Your Honour. We will do so and get back to  
25 the Court as soon as practicable.

1           PRESIDING JUDGE SMITH: Thank you. We will now start hearing  
2 the evidence of Prosecution Witness W02586.

3           Madam Court Usher, please bring the witness in.

4                       [The witness entered court]

5           PRESIDING JUDGE SMITH: [Microphone not activated].

6           Can you hear now? Good afternoon, Doctor. I'm going to read  
7 out the text of the solemn declaration which you are asked to take  
8 pursuant to our Rule 141(2). I will ask you to repeat the text after  
9 I've read portions of it and then indicate your consent at the end.  
10 Is that understood?

11          THE WITNESS: [Interpretation] Yes, I have.

12          PRESIDING JUDGE SMITH: This is the declaration: Conscious of  
13 the significance of my testimony.

14          THE WITNESS: [Interpretation] Conscious of the significance of  
15 my testimony.

16          PRESIDING JUDGE SMITH: And my legal responsibility.

17          THE WITNESS: [Interpretation] And my legal responsibility.

18          PRESIDING JUDGE SMITH: I solemnly declare that I will tell the  
19 truth.

20          THE WITNESS: [Interpretation] I solemnly declare that I will  
21 tell the truth.

22          PRESIDING JUDGE SMITH: The whole truth and nothing but the  
23 truth.

24          THE WITNESS: [Interpretation] The whole truth and nothing but  
25 the truth.

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1           PRESIDING JUDGE SMITH: And that I shall not withhold anything  
2           which has come to my knowledge.

3           THE WITNESS: [Interpretation] And that I shall not withhold  
4           anything which has come to my knowledge.

5           PRESIDING JUDGE SMITH: And do you consent to that solemn  
6           declaration?

7           THE WITNESS: [Interpretation] I do.

8                         WITNESS: HELMUT SCHRECKENBAUER

9                         [The witness answered through interpreter]

10          PRESIDING JUDGE SMITH: You may be seated.

11          THE WITNESS: [Interpretation] Thank you.

12          PRESIDING JUDGE SMITH: Witness, Dr. Schreckenbauer, today we  
13          will start your testimony, which is expected to last less than a day.  
14          As you may know, the Prosecution will ask you questions first. Once  
15          they are finished, the Defence has the right to ask questions of you,  
16          and members of the Panel may have questions for you.

17          The Prosecution's estimate for your examination is one hour.  
18          The Defence estimates that it will need around one hour. As regards  
19          each estimate, we hope that counsel will be judicious in the use of  
20          their time. The Panel may allow redirect examination if conditions  
21          for it are met.

22          Witness, please try to answer the questions clearly, with short  
23          sentences. If you don't understand a question, feel free to ask  
24          counsel to repeat the question or tell them you don't understand and  
25          they will clarify.

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1           Also, please try to indicate the basis of your knowledge of  
2 facts and circumstances that you will be asked about.

3           In the event you are asked by the SPO to attest to some  
4 corrections made regarding your statements, you are reminded to  
5 confirm on the record that the written statement, as corrected by the  
6 list of corrections, accurately reflects your declaration.

7           Please also speak into the microphones and wait five seconds  
8 before answering a question, and then speak at a slow pace for the  
9 interpreters to catch up.

10          During the next days while you are giving evidence in court, you  
11 are not allowed to discuss with anyone the content of your testimony  
12 outside of the courtroom. If any person asks you questions outside  
13 the Court about your testimony, please let us know.

14          Please stop talking if I ask you to do so and also stop talking  
15 if you see me raise my hand. These indications mean that I need to  
16 give you an instruction.

17          If you feel the need to take breaks, please make an indication  
18 and we will accommodate you.

19          So we begin now, first, with the examination by the  
20 Prosecution's office. They are seated to your left. Please give  
21 them your attention.

22          Madam Prosecutor, you have the floor.

23          MS. INSINGA: Thank you, Your Honour.

24                       Examination by Ms. Insinga:

25          Q.    Good afternoon, Doctor.

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1 A. Good afternoon.

2 Q. We have met before, but I will introduce myself again. My name  
3 is Alexandra Insinga, and I will be asking you questions this  
4 afternoon on behalf of the SPO. As I explained during our last  
5 meeting, rather than ask you questions about every relevant issue  
6 that you may have information about, it may be possible to admit your  
7 prior statement containing such information into evidence.

8 There are a number of procedural steps to follow. And so in  
9 order to do that, first I'm going to establish your identity. Can  
10 you please state your full name for the record.

11 A. My name is Dr. Helmut Schreckenbauer.

12 Q. And what is your date and place of birth?

13 A. I was born on 23 March 1968 in Traunstein.

14 Q. Doctor, what is your occupation?

15 A. I am a medical doctor specialising in internal medicine and  
16 gastroenterology.

17 Q. And what is your current rank and title?

18 A. I am an *Oberfeldarzt*, a medical staff officer surgeon, and I'm  
19 the head of the gastroenterology division in a hospital.

20 Q. And, Doctor, what was your rank and title in June 1999?

21 A. In 1999, I was a staff surgeon and a troop medical officer, but  
22 I had not finished my specialised training yet, my specialised  
23 medical training.

24 Q. Thank you. The next questions concern the prior statement that  
25 you made. Do you recall being interviewed by the SPO in 2019?



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1 A. I do recall that.

2 MS. INSINGA: And if the Court Officer could please bring up  
3 071408-TR Part 1 Revised 2 RED in German, as well as the English  
4 translation 071408-TR-ET Part 1 Revised 2 RED. Thank you.

5 Q. Doctor, on the screen in front of you is the first page of the  
6 first part of an interview. Do you recognise this as part of the  
7 transcript of your SPO interview from 2019?

8 A. Yes.

9 Q. And do you recall reading this statement in your language before  
10 our meeting earlier this week?

11 A. I can recall that, yes.

12 Q. And do you recall that you had the opportunity to provide  
13 clarifications to this statement during that meeting we had?

14 A. That is correct.

15 Q. Do you recall that those clarifications were written down in a  
16 note and read back to you in your language by an interpreter?

17 A. Yes.

18 Q. And with the clarifications that you made earlier this week, is  
19 the information in your statement accurate and truthful to the best  
20 of your knowledge and belief?

21 A. Yes, the way it was demonstrated to me on Monday.

22 Q. And if we include all of the corrections and clarifications that  
23 you made earlier this week, does your statement accurately reflect  
24 what you would say if you were asked the same questions today about  
25 the events recorded in those statements?

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1 A. Yes.

2 MS. INSINGA: Your Honours, having fulfilled the Rule 154  
3 criteria, and in accordance with decision F02720, we seek the  
4 admission of the prior statement of the witness as well as  
5 Preparation Note 1 and the associated exhibits. The ERNs for the  
6 prior statement as well as the associated exhibits are found in  
7 F02720, footnote 24, and I have them ready to read if the Court would  
8 prefer that.

9 PRESIDING JUDGE SMITH: That's not necessary at this time.  
10 Any objection?

11 Ms. Tavakoli?

12 MS. TAVAKOLI: Nothing beyond our previous filing.

13 MS. ROWAN: Simply to reiterate those set out in the filing.

14 MR. TULLY: The same for us, Your Honour.

15 MR. BAIESU: No objections.

16 PRESIDING JUDGE SMITH: 071408-TR -- how many parts is it?

17 MS. INSINGA: There are three parts, Your Honour.

18 PRESIDING JUDGE SMITH: In three parts, Revised 2 RED, in German  
19 and English is admitted.

20 THE COURT OFFICER: Thank you, Your Honours. If I may seek for  
21 a clarification. We have Albanian as well. Are we going to --

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 THE COURT OFFICER: Thank you. In that case, Part 1 will be  
24 assigned Exhibit P01994.1, Part 2 will be .2, and Part 3 will be .3,  
25 for all three languages. Classified as confidential. Thank you,

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1 Your Honours.

2 PRESIDING JUDGE SMITH: And then the Prep Note 1 and the  
3 associated exhibits are admitted.

4 THE COURT OFFICER: Prep Note 1, which is ERN 124730 to 124733,  
5 will be assigned Exhibit P01995, and it's classified as confidential.

6 The associated exhibits: ERN 071394 to 071407 and its English  
7 translation will be assigned Exhibit P01996, and it's classified as  
8 confidential.

9 The ERN SITF00189402 to SITF00189426-ET, and in particular pages  
10 SITF00189408 to SITF00189409, in English and German, will be assigned  
11 Exhibit P01998, and it's classified as confidential.

12 The ERN SITF00189430-SITF00189430, in English and German -  
13 however, for the German only page SITF00189430 - will be assigned  
14 Exhibit P01999, and it's classified as confidential.

15 And the last associated exhibit, which is SITF00189465 to  
16 SITF00189484, where only the page SITF00189482 in English and German  
17 will be assigned Exhibit P02000, and it's classified as confidential.  
18 Thank you, Your Honours.

19 PRESIDING JUDGE SMITH: You might want to double-check. I  
20 didn't hear any document assigned 1997.

21 MS. INSINGA: That's correct, Your Honour. And that's the  
22 second associated exhibit. I think you just missed that ERN. That  
23 ends in 189348.

24 THE COURT OFFICER: And my apologies for that. I did definitely  
25 skip that one, so I will read it now.

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1 ERN SITF00189342 to SITF00189362, page SITF00189348, in both  
2 English and German, will be assigned P01997, and it's classified as  
3 confidential. Thank you, Your Honours.

4 MS. INSINGA: Thank you, Your Honour. And for purposes of  
5 classification, the statement as well as the preparation note can be  
6 public. The associated exhibits need to remain confidential.

7 PRESIDING JUDGE SMITH: So noted and ordered.

8 MS. INSINGA: Thank you.

9 And, Your Honours, on 21 January 2025, the SPO submitted a  
10 proposed summary of this witness's now admitted Rule 154 statement to  
11 the Panel, Defence, and Victims. We have not received any objection,  
12 so with your leave I will now read that summary.

13 PRESIDING JUDGE SMITH: You may go ahead.

14 MS. INSINGA: Thank you, Your Honour.

15 Dr. Schreckenbauer is a German army medical doctor who deployed  
16 with KFOR to Kosovo from June to August 1999 and was stationed in the  
17 Prizren area. He was present on 18 June 1999 when KFOR raided the  
18 former MUP building in Prizren, where he treated injured detainees  
19 and prepared a post-mortem report of the deceased detainee discovered  
20 in the building.

21 Q. Doctor, I would like you to please explain where you're  
22 presently employed.

23 A. I currently work at the German Federal Army's hospital in Ulm.

24 Q. And how long have you been employed there?

25 A. I've been working at this hospital in Ulm since 1996, with a few

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1 breaks in between. I started there after I finished my studies.

2 Q. And that leads directly into my next question, Doctor. Can you  
3 please explain your educational background.

4 A. After my high school leaving exam in 1988, I entered the Federal  
5 Army for a specific amount of time. At the time, I received 15  
6 months of military training. And in October 1989, I started studying  
7 medicine and finished my studies in 1996.

8 PRESIDING JUDGE SMITH: Madam Prosecutor, please give a small  
9 pause after the questions answered before you begin your next  
10 question.

11 MS. INSINGA: Yes, Your Honour. I apologise.

12 And I would note that these statements are still up on the  
13 screen. They can be taken down at this time. I apologise for not  
14 raising that earlier.

15 Q. Doctor, you just stated that you finished your studies in 1996.  
16 Is that when you first qualified as a medical doctor?

17 A. Yes, that is when I first qualified as a medical doctor. That's  
18 right.

19 Q. Now, Doctor, in your SPO statement, you described some of your  
20 duties and responsibilities in Kosovo in June to August 1999 as being  
21 primarily to provide medical care for the German army forces.

22 MS. INSINGA: And for the record, this is in what is now  
23 P01194.1 at page 7 in both languages.

24 Q. Doctor, when you arrived in Kosovo, did you have other  
25 responsibilities other than caring just for the German army forces?

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1 A. When I arrived in my country of deployment, my primary task was  
2 to look after the members of the German Federal Army troops.

3 Q. And when you arrived, did you discover that, in addition to that  
4 primary responsibility, you had other responsibilities?

5 A. Not initially when I had just arrived, but in due course, other  
6 tasks emerged.

7 Q. And can you please describe what those other tasks were?

8 A. We were called in the case of accidents, for example, involving  
9 civilians or involving civilians and military vehicles. We were  
10 called in the case of illness or sickness among the civilian  
11 population, because at that point in time there was no structure or  
12 no hospital or medical structure on the ground shortly after we'd  
13 arrived in Kosovo. And later on, we were also called in to establish  
14 deaths.

15 Q. How many people, other than yourself, had medical training or  
16 experience on this mission that you were aware of with the German  
17 armed forces?

18 A. Regarding the group that I was part of during this deployment,  
19 there were two others who were responsible for looking after the  
20 troops. There was a staff -- chief staff surgeon and myself, and we  
21 had some paramedics and medical sergeants that had received some  
22 medical training. And in other areas, in other companies, there were  
23 actual medical doctors as well. So I was not the only medic on the  
24 ground.

25 Q. And I understand that some of the responsibilities you had on

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1 the ground were to prepare certain documents, including post-mortem  
2 reports. Approximately how many post-mortem reports had you done  
3 before this mission to Kosovo?

4 A. Before I was sent to Kosovo, I had been working for almost three  
5 years as a medical doctor, and my estimate is that I had done  
6 approximately 20 of these post-mortem reports, post-mortem  
7 examination reports.

8 Q. And approximately how many post-mortem reports have you done  
9 since that mission to Kosovo in your career?

10 A. I have been working as a medical doctor for 29 years now, if I  
11 remember correctly, if I've calculated it correctly, so I think it  
12 must have been up to a hundred or even more.

13 Q. And in addition to the post-mortem reports, did you prepare  
14 other official documents such as death certificates while you were on  
15 mission in Kosovo?

16 A. I don't understand the difference between a post-mortem report  
17 and a death certificate. It's the same.

18 Q. So -- okay. In your general practice outside of Kosovo, do  
19 those terms have different meanings?

20 A. No. In Germany, you have a death certificate -- well, it's the  
21 same as a death certificate even though the form is a different one.

22 Q. And when you say "form," do you mean the actual document that  
23 you are filling out?

24 A. Yes. When we first had to issue such a statement in Kosovo, we  
25 didn't have a form. What we did was we used a -- what we called a

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1     mediblock to -- a notepad to write down the certificate. And then it  
2     was only after that that a specific form with a NATO symbol was  
3     developed. In Germany, we've got completely different forms. They  
4     are standardised.

5     Q.    Thank you, Doctor. In your prior statements, you described how  
6     when you arrived at the MUP building in Prizren on 18 June 1999, you  
7     provided medical aid to several injured people. Are you able to  
8     recall the mental state of those individuals that you treated?

9     A.    Not in any detail. Not in any detail. They didn't have  
10    life-threatening injuries. They were awake. We could talk to them.  
11    Of course, they were a bit excited because they were injured, but I  
12    can't remember any specific certain mental state.

13    Q.    And can you briefly describe their injuries as you recall them.

14    A.    Yes. Some of them had wounds that looked like they had been  
15    stabbed with knives or other thrusting weapons, for example, in their  
16    thighs, on their arms. They had lacerations on their heads and  
17    injuries that looked like they had received blows; i.e. they had  
18    bruises on their belly, for example, or their breast area.

19           MS. INSINGA: At this time if the Court Officer could please  
20    bring up P01188.1.

21           And while that is being brought up, I just wanted to clarify the  
22    record. I misstated the exhibit number for the statement. And just  
23    for the record to be clear where I stated at line 14 of page, I  
24    believe, T107, I stated P01194.1. The correct exhibit number is  
25    P01994.1.



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1           Thank you, Court Officer. I was going to ask that we zoom in on  
2           the photo as you already have done.

3           Q. Doctor, do you recognise anything in this photograph?

4           A. Well, I can see three of the injured people. I can see a  
5           soldier who gives medical treatment and measures the blood pressure  
6           of one person. And I can see my medical supplies bag on the side  
7           which is open. But whether it is me standing there in a uniform in  
8           the background, I cannot say I'm afraid.

9           Q. And, Doctor, just for clarity of the record, you stated that you  
10          can see three of the injured people. What injured persons -- or in  
11          what situation are you referring to?

12          A. Well, that was the first medical treatment that we carried out  
13          when we arrived at the scene and found these injured people outside  
14          the building.

15          Q. And is the scene that you're referring to the MUP building in  
16          Prizren that you responded to?

17          A. Yes, that's the place, just in front of the MUP building.

18          Q. And, Doctor, you described the individual who appears to be  
19          providing medical aid to one of the injured persons. At this time,  
20          are you able to recall what that person's name is?

21          A. No, unfortunately I do not recall the name of this person.

22          Q. Doctor, I'd now like to ask you some questions about the  
23          deceased found in the building. In order to do that, we will not  
24          publicly display any of the photos we discuss or use any names.

25          MS. INSINGA: And so at this time if the Court Officer could

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1 please pull up P00858 and go to page 7 of that exhibit, which is  
2 SITF00189127. It's page 7. And this is not for public broadcast.  
3 Thank you.

4 Q. Doctor, the photo shown to you on the screen in front of you, is  
5 this how you recall finding the deceased in the building?

6 A. Yes, I do.

7 Q. And we're going to look at a few of these photos, but from the  
8 photo currently displayed, can you please describe some of the  
9 injuries, briefly, that you observe in this photo.

10 A. Well, on this photo, you can see a bruise at the breast of the  
11 person, because the person is still wearing their clothes.

12 MS. INSINGA: And if the Court Officer could please go now to  
13 page 6 of this exhibit. Thank you.

14 Q. And, Doctor, in this photo, can you please describe the injuries  
15 that you observed on this individual.

16 A. Well, the deceased is in a prone position or was put into a  
17 prone position, and the shirt was taken off. We can see post-mortem  
18 lividity in the lower area of the upper body. And on the upper part  
19 of the upper body, you can see wounds which look more or less like a  
20 blunt force trauma, so being hit with blunt objects.

21 Q. And is there anything in particular that you notice about the  
22 bruising to the individual?

23 A. Well, it's always difficult to say what is exactly a bruise and  
24 what is post-mortem lividity, but it seems that the bruises are a  
25 little bit older, so they were probably inflicted on the person when

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1 the person was still alive.

2 MS. INSINGA: And if we could call up now a different exhibit,  
3 which is now admitted as P01996. And if we could go to page P071395.  
4 It's page 2. Thank you.

5 Q. Doctor, this is another photo of the same area of the  
6 individual's body that you were just discussing. Are you able to say  
7 anything about the bruising that you see in this photo?

8 A. Well, the bruises are dark red on the upper part of the body and  
9 further down in the lower part of the body. I would interpret them  
10 as post-mortem lividity. And, otherwise, the person is only wearing  
11 underwear, so no trousers anymore.

12 Q. Doctor, you discuss in your SPO statement some of the objects  
13 that were found in this building and you described them as "torture  
14 instruments."

15 MS. INSINGA: And for the record, this is P01994.2 at page 53.

16 Q. Doctor, are you able to say whether any of the injuries that you  
17 observed on the deceased are consistent with objects that you recall  
18 seeing found in the building?

19 A. I can unfortunately not see the photo of the object. I don't  
20 know if you want me to tell you what I recall from this photo, but I  
21 cannot see it on screen just now.

22 Q. I will ask the Court Officer to pull it up for you.

23 MS. INSINGA: Court Officer, if you could please pull up P01179,  
24 and this is page U002-4994. Thank you.

25 Q. Doctor, is this the photo that you were referring to about the

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1 objects in the building?

2 A. Yes, indeed. That is the photo that I was shown.

3 Q. And, Doctor, are you able to say whether any of the objects in  
4 this photo are consistent with the injuries you observed on the  
5 deceased?

6 MS. ROWAN: Your Honour, objection to that question. In our  
7 submission, that's outside the area of expertise of a  
8 gastroenterologist. Mechanism of injury is the purview of a  
9 pathologist only. This witness is not an expert in pathology. He is  
10 not entitled to give an opinion on mechanism of injury.

11 PRESIDING JUDGE SMITH: Objection is overruled.

12 Go ahead.

13 MS. INSINGA:

14 Q. Doctor, you can answer the question. Would you like me to  
15 repeat it?

16 A. No, you don't need to repeat the question. Well, it is possible  
17 that these wooden batons or wooden or maybe metal objects might be  
18 used in order to inflict these injuries. That is possible.

19 Q. And is there anything about the bruising depicted on the  
20 deceased that led you to be able to say that that is a possibility?

21 A. Well, we also had these elongated injuries which might have been  
22 inflicted by these batons or hitting objects.

23 MS. TAVAKOLI: Sorry, could I -- is the Prosecutor calling this  
24 witness as a witness of fact or as an expert medical witness entitled  
25 to give an opinion? Please could the Defence have some clarity.

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Examination by Ms. Insinga

1 MS. INSINGA: The witness is testifying as a witness of fact  
2 based on his observations at the scene as he's describing in his  
3 testimony.

4 PRESIDING JUDGE SMITH: [Microphone not activated].

5 MS. INSINGA: Thank you, Your Honour.

6 MS. ROWAN: Your Honour, apologies to interrupt. But in light  
7 of that observation, our last objection should therefore stand as if  
8 this witness is not being called as an expert, he's not entitled to  
9 give an opinion.

10 PRESIDING JUDGE SMITH: Overruled.

11 Go ahead.

12 MS. INSINGA: Thank you, Your Honour.

13 Q. Doctor, that was actually all the questions I have for you.

14 MS. INSINGA: Thank you, Your Honours.

15 PRESIDING JUDGE SMITH: All right. Fine.

16 Ms. Tavakoli.

17 MS. TAVAKOLI: No questions.

18 MS. ROWAN: No, thank you.

19 MR. TULLY: No, thank you, Your Honour.

20 PRESIDING JUDGE SMITH: Mr. Baiesu, I see you getting ready.

21 You may go ahead when ready.

22 Cross-examination by Mr. Baiesu:

23 Q. Good afternoon, Witness. My name is Victor Baiesu. I represent  
24 Mr. Jakup Krasniqi, and I have a few questions for you.

25 A. Good afternoon.

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Cross-examination by Mr. Baiesu

1 Q. You arrived in Kosovo as part of the KFOR forces on or around  
2 12 June 1999; is that correct?

3 A. I do not recall the exact date, but roughly around that date,  
4 yes.

5 Q. And you were a military physician in the medical corps; correct?

6 A. Yes, that's correct.

7 Q. And you were in Kosovo till 10 August 1999; yes?

8 A. Yes, more or less that's correct.

9 Q. You explained to the Prosecution that your primary  
10 responsibility was to provide medical care to the *Bundeswehr* members  
11 of KFOR; correct?

12 A. Yes, that was our primary task.

13 Q. And you were also handing outside medicines to the local  
14 population but not really providing medical treatment during your  
15 patrols; correct?

16 A. Well, handing out medicine to the population, this was something  
17 that was possible and that was in agreement with patrol leaders, so  
18 that's something that we did during our patrols.

19 Q. In fact, usually a doctor would not go on these patrols, but  
20 because your own soldiers were well and healthy, you were able to  
21 join those patrols; correct?

22 A. Yes, that's correct. And there were also two of us, so one of  
23 the physicians was always able to take care of our own soldiers and  
24 one could go on patrol. But otherwise, it would not have been  
25 possible.

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Cross-examination by Mr. Baiesu

1 Q. And you had no contact with the KLA, and you don't have any  
2 knowledge about the KLA soldiers or commanders; correct?

3 A. Well, personally I did not have any contact with KLA people or  
4 KLA-affiliated people, no.

5 Q. At medical university, you only had a basic general course in  
6 forensic medicine; correct?

7 A. Yes, that's correct.

8 Q. And shortly before starting your mission in Kosovo in 1999, you  
9 underwent military preparation, but this was not focused on medical  
10 treatments; is that correct?

11 A. Well, the preparation for this deployment was a military  
12 preparation but not a medical one.

13 Q. And you began serving in the army before you finished your  
14 specialisation in internal medicine; correct?

15 A. Yes, that's correct, and that was also the normal way of doing  
16 it because -- well, because the medical studies took place within the  
17 framework of my military training. So that was the way it was  
18 usually done. Bless you.

19 Q. Thank you. You did not have any specialised training in  
20 forensics or criminal investigations, did you?

21 A. Yes, that is correct. And this is also not the task of a  
22 physician, but it's rather the task of the police forces.

23 Q. Would you agree that in order to give a reliable opinion on the  
24 methods and instruments of torture used, one would need specialised  
25 training in the forensic analysis of torture tools and the physical

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1 and psychological effects they cause?

2 A. Well, in order to be able to find out the exact cause of death,  
3 a forensic autopsy would have been necessary, but this is something  
4 that was not possible in the country of deployment.

5 Q. And in university and after university, you didn't receive any  
6 specialised training in forensic analysis?

7 A. No, no specific training in this area. That's correct.

8 Q. While you are an experienced medical doctor, isn't it true that  
9 the study and forensic analysis of torture and its effects require  
10 very specific forensic expertise which often goes beyond the scope of  
11 the general medical training?

12 A. After the medical studies -- or the medical studies consist of a  
13 basic training, and forensic medicine is then a specialised topic  
14 which takes place after having finished the general medical studies.

15 Q. And you did not pursue such a subject or such course after  
16 university?

17 A. Yes, that's correct.

18 Q. Considering that torture techniques can vary widely and may  
19 involve complex instruments, do you believe that your level of  
20 expertise allows you to confidently identify the exact tools and  
21 methods used in this case, in the case we are talking about?

22 A. Well, of course, I can't do that. It was just an assumption.

23 Q. Thank you. I'm moving now to a different topic. In your  
24 interview, you said that when you arrived at the former MUP building  
25 on 18 June 1999, you did not recall seeing any KLA member outside or



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1 inside the building; is that right?

2 A. Yes, that is correct. I can't recall having seen any of them.

3 Q. And when you entered the MUP building, there were no civilians  
4 inside. The 10, 15 civilians you saw were gathered outside the  
5 building; correct?

6 A. Well, I seem to recall that. And we then let these people back  
7 into the MUP building so that we were able to give them medical  
8 treatment inside, without the bystanders.

9 Q. But I am talking about the moment of arrival. When you arrived  
10 at the MUP building, they were not inside. They were already  
11 gathered outside; correct?

12 A. Well, I remember at least that several of them were outside, but  
13 I cannot recall whether some of them had still been inside at that  
14 point of time.

15 Q. So you cannot recall or confirm if these civilians were inside  
16 the building; and if so, for how long they were inside the building  
17 before KFOR arrived?

18 A. I can only recall that there were several people outside the  
19 building, but whether some people were still inside the building, I  
20 do not know.

21 MR. BAIESU: If I may refresh your recollection by calling up  
22 Exhibit P01994.2, page 47. Excuse me, .2 -- 1994.2, page 10 first,  
23 side by side with the German one, please, which is page 10 at the  
24 bottom. I don't -- the German one needs to go -- if you can scroll  
25 further down.

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1 Q. And I will read out to you the relevant excerpt:

2 "Exact number roughly 10-15; they were outside the building.

3 But they did not have obvious life-threatening injuries."

4 Do you see this in the German version?

5 MR. BAIESU: The German version should be page 10 at the bottom,  
6 from lines 22 -- towards the bottom, and first line on the next page,  
7 on page 11.

8 And then, if we can, in the same exhibit, scroll to page 47.

9 Page 47 would be in the English version. And in the German version  
10 is page 51. Lines 1 to 5 in the German version.

11 Q. And I will read it out. Investigator question:

12 "When you entered the building, what did you see? Were there  
13 people there, was it empty?

14 "Mr. Schreckenbauer: The building was empty when I entered it."

15 Is this your evidence?

16 A. Yes, that is correct. Well, first of all, the building was  
17 empty. But when we led the injured back to the building, there was  
18 sort of a separate room where we treated the injured. And I do not  
19 recall whether when we arrived all the injured were already outside  
20 the building or maybe the military police let them outside the  
21 building. I do not know that. And in order to treat them, we let  
22 them back into the building.

23 And when I entered the building together with the military  
24 police, because I got the information that there would be a deceased  
25 person on the 1st floor of the building, at that time I cannot recall

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1       that there were any other people inside the building.

2       Q.     And these injured people, these injured persons, they were able  
3       to walk independently; that is correct?

4       A.     Yes, that's correct.

5       Q.     When you later entered the building, you say you looked inside  
6       but you did not enter a room where you say the torture instruments  
7       were; correct?

8       A.     Yes, that is correct. So that was on the same floor where the  
9       deceased person was. I don't recall whether it was the room next to  
10      that one or maybe two or three rooms further along, but it was close  
11      to the room where the deceased person was found.

12      Q.     And you did not search in detail that room?

13      A.     That is correct. That was not my task. That was the task of  
14      the military police to do that.

15      Q.     And you did not physically examine what you described to be  
16      torture instruments; correct?

17      A.     Yes, that's correct.

18      Q.     But you had the opportunity to physically examine those  
19      instruments should you have chosen to do so; yes? Just yes or no.

20      A.     I assume yes.

21      Q.     If you had examined them, you would have been able to determine  
22      the size of those instruments. Would that be correct?

23      A.     If I had looked at them, it would have been possible to see the  
24      size of these instruments, yes.

25      Q.     And you would have been able to ascertain if there were traces

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1 of blood or other evidence on each of those instruments; yes?

2 A. Yes, that is correct. But that is also not the task of a  
3 physician. That's the task of the military police.

4 Q. And when there are traces of blood on weapons used to inflict  
5 injury, especially of the kind that you saw in the photographs the  
6 Prosecution showed you, you will agree with me that DNA and  
7 fingerprint analysis could have easily been carried out on those  
8 instruments; yes?

9 A. Yes. But in 1999, I think the technical requirements weren't  
10 met yet for DNA analysis.

11 Q. In any event, you have not mentioned being aware of any DNA  
12 analysis performed on those instruments in your interview, so it's  
13 fair to say that you don't know if a DNA analysis was done on those  
14 instruments?

15 A. That's correct.

16 Q. At Part 2 of Exhibit P01994.2, page 25, lines 18 to 24 of your  
17 interview, you have told the Prosecution:

18 "... what I could not say is whether these blows were or were  
19 not caused by objects, I could not say that. And also not which  
20 objects were used."

21 And a couple of lines down, you added:

22 "I could not determine whether objects were used for this or  
23 not."

24 That is still your evidence; yes?

25 A. I cannot be entirely certain. As I said at the beginning, it is

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1 an assumption that I made, and the instruments of torture that were  
2 shown to me could possibly have caused this kind of injury.

3 Q. But that is indeed your assumption?

4 MS. INSINGA: Objection, asked and answered.

5 PRESIDING JUDGE SMITH: Sustained.

6 MR. BAIESU: I'll move on.

7 Q. On Monday, this Monday, during the preparation session, the  
8 Prosecution showed to you photographs with instruments found in the  
9 building. Do you recall that?

10 A. I was shown these pictures, yes.

11 Q. Since you did not physically examine the instruments and, as you  
12 said in your interview, the room in which they were found was dark,  
13 you could not conclude that those instruments were, in fact, used to  
14 mistreat the individuals you saw outside; correct?

15 A. That is correct.

16 Q. You also said in your interview that you could not even recall  
17 if you have seen the instruments in the former MUP building or in  
18 another building. Do you recall saying that?

19 MR. BAIESU: The reference for this is P1994.2, page 54 and 55.

20 THE WITNESS: [Interpretation] Well, it's not about it possibly  
21 being in a different building. The picture that was shown to me, I  
22 cannot recall seeing exactly these objects in this dark room that  
23 were shown to me in the picture.

24 MR. BAIESU:

25 Q. And to assess if marks are consistent with the instruments, it

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1 would need both forensic and physical examination of the injuries --  
2 of both the injuries and the instruments; yes?

3 MS. INSINGA: Objection, asked and answered.

4 PRESIDING JUDGE SMITH: Sustained.

5 MR. BAIESU:

6 Q. Witness, would you agree that it's not always feasible to  
7 identify a specific instrument used in torture based purely on the  
8 appearance of the injury?

9 A. I think that this would be correct, but I am not a pathologist,  
10 a forensic scientist.

11 Q. Thank you. I'm moving to a different topic now. During the  
12 interview, the Prosecution showed you a number of death certificates  
13 that you had prepared at the time. Do you recall that?

14 A. Yes.

15 Q. And I would like take a look at one of these reports in more  
16 detail.

17 MR. BAIESU: If I could please have on screen SITF00189342 to  
18 SITF00189362. Both versions, the English and the German original,  
19 have the same ERN number, so if we could have them, please, side by  
20 side.

21 Q. Now, you were present at the scene of the crime where you  
22 undertook the medical examination of the person involved in this  
23 report; is that right?

24 A. This is a military police report. On the basis of this report,  
25 I cannot determine whether I was actually there. This recalls a

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1 situation that I can remember, but whether it's actually that same  
2 situation, I'm not sure.

3 MR. BAIESU: If we please can scroll to page 7 in both English  
4 and German version.

5 Q. Do you see your name, Witness?

6 A. Yes.

7 Q. Yes, so it's part of this report. I will ask then my question  
8 again. You were present at the crime scene when you undertook the  
9 medical examination; correct?

10 A. That is correct.

11 MR. BAIESU: Can we please scroll back to page 3 of the PDF of  
12 this document in both English and German version. Thank you.

13 Q. Under paragraph 3.1, "Witness statements," it says that the  
14 witnesses, who were the victim's neighbours, reported hearing a  
15 gunshot but they could not provide any other information. Do you see  
16 that?

17 A. Yes, I can read that in this military police report.

18 MR. BAIESU: And if we can please scroll to the next page, page  
19 4, in both versions.

20 Q. At paragraph 4.3, entitled "Number of perpetrators," the  
21 perpetrators are listed as "unknown." Do you see that?

22 A. Yes.

23 Q. It's quite clear from this report that the perpetrators were not  
24 identified. Would you agree?

25 MS. INSINGA: Objection. I'm not sure the relevance of this

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1 line of questioning for this witness.

2 PRESIDING JUDGE SMITH: This is way beyond the scope of the  
3 direct examination, Mr. Baiesu. If it has something to do with your  
4 case, you need to state your case to him and then ask him the  
5 question.

6 MR. BAIESU:

7 Q. The case is that based on this report, it was not possible to  
8 conclude if indeed the perpetrators were Albanian or not.

9 PRESIDING JUDGE SMITH: What's the relevance? What is the  
10 relevance, sir?

11 MR. BAIESU: The relevance is that these reports are being  
12 tendered and the perpetrators in these reports are unidentified.

13 PRESIDING JUDGE SMITH: [Microphone not activated].

14 How does that relate to the direct examination?

15 MR. BAIESU: He was present at the scene when this examination  
16 was -- when he undertook this examination, and there was no  
17 information provided to him as to the perpetrators. Whereas the  
18 report that is --

19 PRESIDING JUDGE SMITH: All right. Go ahead. We'll let you ask  
20 the question.

21 MS. INSINGA: Briefly, Your Honour, just so the record is clear,  
22 the only page of this report that has been tendered with this witness  
23 is his post-mortem report, which is the SITF0018348 [sic] and 9,  
24 which is not the page on the screen and not what the Defence counsel  
25 is questioning this witness about.



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1           PRESIDING JUDGE SMITH: Do we have the wrong document up?

2           MR. BAIESU: No, it's not the wrong document. The full document  
3 is -- the document -- only page 6 of this document an hour ago became  
4 Exhibit 1997. Whereas the full document with the full range is in  
5 the presentation queue of the Prosecution.

6           PRESIDING JUDGE SMITH: [Microphone not activated].

7           MR. BAIESU: And I asked --

8           PRESIDING JUDGE SMITH: [Microphone not activated].

9           MR. BAIESU: Those were my questions. The answer -- can I get  
10 before -- can I go back to the answer that was not given by the  
11 witness --

12          PRESIDING JUDGE SMITH: Yes, go ahead.

13          MR. BAIESU: -- whether this --

14 Q. Witness, based on what we've seen on these two pages of this  
15 document, and confining ourselves to this report, you would agree  
16 with me that it was not possible to conclude if indeed the  
17 perpetrators were Albanian or not?

18 A. It would not have been my task as a medical doctor, anyway, to  
19 find the perpetrators. My task was to establish that somebody had  
20 died and, as far as possible, to provide some information about the  
21 cause of death. I am not a police officer looking for perpetrators  
22 or finding them.

23 Q. And when you were at the scene conducting your examination, no  
24 information was provided to you that the perpetrators were Albanian;  
25 correct?

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Questioned by the Trial Panel

1 MS. INSINGA: Objection, asked and answered, and relevance.

2 PRESIDING JUDGE SMITH: Answer the question.

3 THE WITNESS: [Interpretation] No, I did not receive any  
4 information.

5 MR. BAIESU:

6 Q. Thank you, Witness. Those were my questions.

7 MR. BAIESU: Thank you, Your Honour.

8 PRESIDING JUDGE SMITH: Thank you, Mr. Baiesu.

9 Redirect examination? None?

10 MS. INSINGA: No, Your Honour.

11 PRESIDING JUDGE SMITH: All right.

12 Judge Barthe.

13 JUDGE BARTHE: Thank you, Judge Smith.

14 Questioned by the Trial Panel:

15 JUDGE BARTHE: And good afternoon, Dr. Schreckenbauer.

16 A. Thank you very much, Your Honour.

17 JUDGE BARTHE: Thank you for being with us today.

18 A. It was my honour and I felt it was also my duty.

19 JUDGE BARTHE: Unfortunately, I have to say we are not done for  
20 this afternoon. I have only a few brief questions for you on behalf  
21 of the Bench about the events at the former MUP building or MUP  
22 station in Prizren on 18 June 1999.

23 Dr. Schreckenbauer, on the day the building was raided, did you  
24 personally see Serbian troops in or in the vicinity of the building?

25 A. I did not notice any Serbian troops on that day. The only

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1 Serbian troops that I noticed were on the day we came to Prizren,  
2 because back then there were still Serbian forces there. After that,  
3 I didn't notice them again.

4 JUDGE BARTHE: Thank you. Can you state for the record what day  
5 it was? What was the date of your entry to Kosovo?

6 A. I don't recall the exact date, but it was between the 12th and  
7 14th June.

8 JUDGE BARTHE: So you did not see any Serbian forces elsewhere  
9 in the city of Prizren on the day of the raid of the MUP building or  
10 on the day before the raid, on 17 June 1999?

11 A. No, I didn't see them around that time.

12 JUDGE BARTHE: Do you have any information about when the  
13 Serbian troops had left Prizren?

14 A. The last Serbian forces were still there but were in the course  
15 of leaving on the day that we arrived.

16 JUDGE BARTHE: Thank you, Dr. Schreckenbauer. Did you notice  
17 anything special on the MUP building that indicated who was in the  
18 building or who used the building at the time on 18 June in the  
19 afternoon?

20 A. No.

21 JUDGE BARTHE: Can I ask the Court Officer to bring  
22 Exhibit P01179 up on the screen for us briefly, please. Thank you.

23 Dr. Schreckenbauer, do you recognise this building in the photo?

24 A. It's the MUP building.

25 JUDGE BARTHE: Thank you. Can you say whether the photo - this

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1 photo - was taken during the raid on the building on 18 June 1999?

2 A. I cannot tell.

3 JUDGE BARTHE: Thank you. Do you know of any other raids on  
4 that building during your time in Kosovo?

5 A. No, I don't know about any other similar circumstances relating  
6 to this building.

7 JUDGE BARTHE: Thank you, Dr. Schreckenbauer. Can you see  
8 something in the first -- or in this photo above the entrance area  
9 that looks like a red flag?

10 A. It looks like a red flag but I can't see what's on it.

11 JUDGE BARTHE: That's fine. Do you remember seeing this flag  
12 when you were there?

13 A. I don't recall.

14 JUDGE BARTHE: Thank you very much, Dr. Schreckenbauer. Those  
15 were my questions.

16 Thank you.

17 PRESIDING JUDGE SMITH: Any additional questions brought up but  
18 the Judges' questions?

19 MS. INSINGA: No, Your Honour.

20 PRESIDING JUDGE SMITH: Ms. Tavakoli?

21 MS. TAVAKOLI: No, thank you.

22 MS. ROWAN: No, thank you.

23 MR. TULLY: No, Your Honour.

24 PRESIDING JUDGE SMITH: Any additional questions, Mr. Baiesu?

25 MR. BAIESU: No questions. Thank you.

PRESIDING JUDGE SMITH: Dr. Schreckenbauer, you are finished now. Thank you for being with us for this short time. Your information was important to us. We wish you well in the future, and you may leave the courtroom now.

THE WITNESS: [Interpretation] Thank you very much, Your Honours.

[The witness withdrew]

PRESIDING JUDGE SMITH: [Microphone not activated].

Unless there's something more to come before the Panel? We'll see you Monday morning at 9.00 a.m. We're adjourned until then.

--- Whereupon the hearing adjourned at 3.21 p.m.