

1 Wednesday, 6 September 2023

2 [Open session]

3 [The accused entered the courtroom]

4 [The Accused Krasniqi appeared via videolink]

5 --- Upon commencing at 9.00 a.m.

6 PRESIDING JUDGE SMITH: Madam Court Officer, you may call the
7 case.

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

11 PRESIDING JUDGE SMITH: Good morning, everyone.

12 Today we will continue the testimony of 04408. I note that the
13 accused are all present in court except Mr. Krasniqi, who once again
14 appears via videolink.

15 Madam Court Usher, please bring the witness in.

16 And just for the record we will be in public session.

17 [The witness takes the stand]

18 PRESIDING JUDGE SMITH: Good morning, Witness.

19 THE WITNESS: Good morning, Your Honours.

20 PRESIDING JUDGE SMITH: Today we will continue with your
21 testimony. I remind you to please try to answer the questions
22 clearly with short sentences. If you don't understand a question,
23 feel free to ask counsel to repeat it, or tell them that you don't
24 understand and they will try to clarify. Also, please remember to
25 try to indicate the basis of your knowledge of the facts and

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1 circumstances upon which you will be questioned.

2 I remind you that you are still under an obligation to tell the
3 truth as stated by you in your solemn declaration.

4 Please also remember to speak into the microphone and wait five
5 seconds before answering a question and speak at a slow pace for the
6 interpreters to catch up.

7 If you feel the need to take breaks, please make an indication
8 and an accommodation will be made.

9 We will resume with the direct examination by the SPO.

10 Mr. Prosecutor, you may begin.

11 MR. TIEGER: Thank you, Your Honours. And good morning.

12 WITNESS: W04408 [Resumed]

13 Examination by Mr. Tieger: [Continued]

14 Q. And good morning, Witness.

15 A. Good morning.

16 Q. As we concluded yesterday, you had just explained to the Court
17 about the arrival of Mr. Thaci and Mr. Limaj at the meeting in Banje,
18 and I want to pick up at that point. Do you recall what they were
19 wearing?

20 A. They were both in uniform. The precise nature of that uniform,
21 camouflage or solid colouring, is -- I do not recall.

22 Q. After they introduced themselves and gave you their names or
23 *noms de guerre*, did you and Mr. Bouckaert introduce yourselves and
24 explain who you were?

25 A. Yes, we did. We would have introduced ourselves personally and

1 the organisation Human Rights Watch.

2 Q. Did you explain the nature of Human Rights Watch and its work in
3 Kosovo?

4 A. Yes, we did. By that time, we had been working in or on Kosovo
5 since 1990, I believe, and intensely, of course, since February of --
6 well, yes, since the events of February and March 1999, and we would
7 have presented that work in summary.

8 Q. And in particular, did you explain to them that Human Rights
9 Watch, and you and Mr. Bouckaert in particular, were monitoring
10 violations of international law in Kosovo?

11 A. Yes. We explained our mandate as an independent international
12 human rights organisation to monitor conduct of the laws of war.

13 Q. And did you indicate to them whether that applied to both
14 parties to the conflict?

15 A. Yes, we did.

16 Q. Did Mr. Thaci and Mr. Limaj indicate to you whether they were
17 already familiar with or generally aware of Human Rights Watch work?

18 A. Yes, they were broadly aware of our work.

19 Q. Did you then raise the issue of the detention of the two Tanjug
20 journalists?

21 A. Yes, we did.

22 Q. And in response, what did Mr. Thaci or Mr. Limaj say?

23 A. So maybe I should say just the opening of our conversation was
24 to talk about our work documenting Serbian and Yugoslav violations or
25 violations by Serbian and Yugoslav forces, which we explained in some

1 detail, and from there, expanded the conversation to include our
2 mandate of monitoring by parties, all parties, to the conflict. And
3 in that context, we raised the issue of the two Tanjug journalists
4 who we understood had been detained, and we sought information about
5 their case.

6 Q. And what, if anything, did they tell you in response to your
7 effort to obtain information about the case?

8 A. They informed us that these two individuals had been tried and
9 convicted. They were serving a sentence. And that -- yes, they --
10 then they would be released after their sentence had been served in
11 its entirety.

12 Q. After they explained that there had been a trial at which the
13 journalists had been sentenced, did you follow up with additional
14 questions or seek more detail about that?

15 A. Yes, we did. We asked for information about the trial itself.
16 And in particular, our concern is about matters pertaining to due
17 process. So, for example: Did the two accused have access to a
18 lawyer of their choice; were they present for the proceedings; do
19 they have the right to an appeal.

20 Q. And what did Mr. Thaci and Mr. Limaj say in response?

21 A. They said that they did not have a lawyer present. If I
22 remember correctly, they said they had been allowed to request one or
23 they had made -- tried to obtain one but none had arrived, and that
24 they were not present during the proceedings.

25 Q. Did you ask whether you could see the detainees, whether you

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1 could have access to them?

2 A. Yes, we did ask for permission to visit the detainees.

3 Q. And what did Mr. Thaci and Mr. Limaj tell you?

4 A. Our request was declined.

5 Q. Did they give a reason?

6 A. I don't recall precisely. I don't remember exactly if there was
7 a reason, but no, we were not allowed.

8 MR. TIEGER: Your Honour, may I have permission to present the
9 witness with a portion of his previous statement by way of refreshing
10 his recollection.

11 PRESIDING JUDGE SMITH: [Microphone not activated]

12 MR. TIEGER: Thank you.

13 Q. Witness, I want to ask you about -- I want to draw your
14 attention to paragraph 93 of the statement you gave to the Office of
15 the Prosecutor in 2019 and 2020. And in particular, with respect to
16 paragraph 93, the portion that said:

17 "We asked if we could visit the detainees, but this request was
18 refused due to 'military secrecy.'"

19 Witness, does that refresh your recollection about the response
20 you received from Mr. Thaci and Mr. Limaj to your request for access
21 to the detainees?

22 A. Yes, it does. There was another request, and maybe I had
23 confused the two, to -- because they mentioned a code of conduct, and
24 we had asked then to see this code, which was not allowed. And I
25 believe that was also because of military secrecy. But, yes, with

1 regards to the detainees, to the best of my recollection, and based
2 on my statement, I -- I've no reason to believe my statement was not
3 accurate at the time.

4 Q. [Microphone not activated]

5 A. Your microphone.

6 Q. You've just related the information provided by Mr. Thaci and
7 Mr. Limaj in response to your request for more details about the
8 proceeding at which the detainees had been sentenced and their
9 response concerning the absence of a lawyer and the fact that they
10 weren't present at what they called the trial.

11 Did you respond to that information about the absence of a
12 lawyer and not being present at a trial?

13 A. Yes. My colleague and I gave our opinion that based on the
14 information we had, these proceedings did not meet standards of due
15 process, international standards of due process.

16 Q. And did you say anything about what you considered should now
17 happen in light of the fact that the proceeding had not accorded with
18 international standards of due process?

19 A. Yes. And we believed that the two journalists should be
20 released.

21 Q. After you told Mr. Thaci and Mr. Limaj that the detention was
22 not in accord with international standards and the detainees should
23 be released, what did they say, if anything?

24 A. They did not commit to this. And I don't recall the exact
25 conclusions of the findings. They did not say, "We agree." But it's

1 possible -- I don't remember exactly if they said "We'll look at it,"
2 but they didn't agree with our assessment.

3 Q. Did they indicate to you whether or not they took the position
4 that release of the detainees was in their hands or not?

5 A. Yes. They said that this was a matter of the independence of
6 the judiciary, and that it was not appropriate for them to intervene
7 in judicial proceedings, and also that this would undermine the
8 authority and credibility of KLA institutions.

9 Q. Did they make any reference to the distinction between military
10 and civilian authorities in connection with the proceeding?

11 A. Yes. They said that any efforts on their behalf to intervene
12 would interfere with civilian judicial authority. That was the
13 comment to the best of my recollection.

14 Q. So if I understand your response, your answer correctly, they
15 indicated to you that they didn't want to interfere with that or
16 wouldn't interfere with that because they asserted that it was a
17 civilian judicial matter?

18 A. That's my recollection, yes.

19 Q. Do you recall whether or not they said anything about the status
20 of the KLA legal system or its state of development or structures?

21 A. Yes, we discussed this at some length, I recall, that they
22 explained that the KLA was in the process of building these judicial
23 institutions. It was, I believe in their words, a new army and
24 working in difficult conditions, and that they were in the process of
25 building up these structures, which I understood to mean courts,

1 prosecutors offices, and other judicial mechanisms.

2 Q. Earlier you mentioned that during the introductory portion of
3 the meeting, you had noted that HR -- that Human Rights Watch, was
4 involved in monitoring alleged violations of international law by
5 both sides. Was there a discussion during your meeting about other
6 allegations of human rights or laws of war violations by the KLA
7 other than detention of the journalists?

8 A. Yes. We began, I believe, by speaking about the two journalists
9 because this case had gained some prominence and attention, but we
10 did raise our concerns about other violations alleged to have been
11 committed by the KLA, including harassment, intimidation, and alleged
12 killings, and reminded them of their obligations before international
13 humanitarian law in that regard.

14 Q. And how did they respond?

15 A. First with verbal commitments. They were both clear that the
16 KLA respected the Geneva Conventions, for example, that they
17 understood their responsibilities and obligations before it. Also
18 that comments such as "problems do occur in war," which is, I
19 think -- which is true and accurate, and I don't dispute for one
20 moment, and certainly would not have disputed at the time. The point
21 is how those mistakes or problems get dealt with: Are they
22 investigated? Are people disciplined? And those are the key
23 indicators that we look for as a human rights organisation.

24 Q. Did the subject of disciplinary procedures or disciplinary
25 measures come up; and if so, what did they say?

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1 A. Yes. They told us they had a code of conduct, the KLA had a
2 code of conduct for its own members. And we asked to see this code,
3 but we were not provided with it.

4 Q. Did you ask for examples of the -- of disciplinary procedures
5 that had been imposed?

6 A. Yes. A question that we typically ask in situations like this,
7 in any conflict, is examples. So if a government or an armed group
8 tells us that members of their forces have been investigated or have
9 been disciplined, we ask for examples. And we did that in this case
10 because they did say that individuals had been disciplined. So we
11 were glad to hear that, we welcome statements like that, but also
12 would not be doing our jobs if we took it at face value, so we asked
13 for examples.

14 Q. And were you provided with such examples?

15 A. No, we were not. No.

16 MR. TIEGER: Can I call up, please, IT-03-66 P212.8.

17 Q. And, Witness, you recognise this document?

18 A. Yes, I do.

19 Q. And what is it?

20 A. This is a letter that I wrote to three members of the KLA
21 following the meeting. This is standard procedure for Human Rights
22 Watch, first of all, to say thank you for the engagement and to
23 reiterate the main points and to share any further recommendations we
24 have, and, in general, to continue the engagement.

25 Q. A couple of questions about that. First of all, at the top of

1 the letter we see the indication "To:" followed by three titles.
2 First is the General Political Representative of the Kosova
3 Liberation Army, next Political Directorate of the General
4 Headquarters, and the third, Judicial Directorate of the General
5 Headquarters.

6 To whom did those titles respond -- or correspond, excuse me?

7 A. The first was Mr. Adem Demaci, the second was Mr. Hashim Thaci,
8 and the third was Mr. Fatmir Limaj.

9 Q. How did you obtain those titles? How did you come to an
10 understanding of those titles?

11 A. Mr. Demaci was a public representative based in Prishtine, as we
12 discussed yesterday. And Mr. Thaci and Mr. Limaj had introduced
13 ourselves -- had introduced themselves to us on November 10. Of
14 course, Mr. Limaj used his *nom de guerre*.

15 Q. And just to be clear, when they introduced themselves, did they
16 also give their titles, and are those the titles that appear in this
17 letter?

18 A. Yes. Yes, that is how they introduced themselves.

19 Q. You mentioned that the letter in part was intended to reiterate
20 some portions of the meeting. Turning to the third paragraph, it
21 indicates:

22 "We were concerned, for example, that the two journalists were
23 not present at their trial, and that no one was allowed to visit them
24 during their detention."

25 Are those two parts of the meeting that are reflected -- two

1 things you were told during the meeting, rather, that are reflected
2 in this letter?

3 A. Yes, that's correct.

4 Q. It also indicates that, in the middle of that paragraph:

5 "We are well aware that the KLA's judicial structures are in the
6 process of formation."

7 Did that information also come from what you had been told
8 during the meeting?

9 A. Yes, that's correct.

10 Q. In the last paragraph, there's a reference to "continuing our
11 discussions on the KLA's code of conduct." And is that a reference
12 to the code of conduct you mentioned earlier that was raised during
13 the meeting?

14 A. Yes.

15 Q. And finally in the bottom paragraph, the third paragraph, it
16 indicates your "hope that other detainees will be able to receive
17 visitors from the International Committee of the Red Cross (ICRC) and
18 other humanitarian and human rights organisations."

19 And was that a reference to the absence -- in part, to what you
20 told us about your earlier request -- the response to your earlier
21 request for access to the detainees?

22 A. Yes, it was. And if I may add one brief point. At the time, I
23 believe in November 1998, the International Committee of the
24 Red Cross had spoken publicly about limitations of access to KLA
25 detainees. And this was, for us, very noteworthy considering the

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1 normal restraint with which ICRC operates and the confidentiality
2 that they frequently maintain. So their decision to speak publicly
3 on this matter caught our attention.

4 MR. TIEGER: Your Honour, I would tender the document.

5 PRESIDING JUDGE SMITH: [Microphone not activated]

6 MR. KEHOE: No objection, Judge.

7 MR. ELLIS: No objection.

8 PRESIDING JUDGE SMITH: IT-03-66 P212.8 is admitted and will be
9 assigned a number.

10 THE COURT OFFICER: Your Honours, that will be Exhibit P376.

11 MR. TIEGER: Can we now call up IT-03-66 P212.4.

12 Q. Witness, I want to ask you about whether there was further
13 memorialisation of the meeting in the next month. And in particular,
14 I want to turn your attention to pages 00676493 and 00676494 in this
15 document, which is the Human Rights Watch Report, Federal Republic of
16 Yugoslavia, Detentions and Abuse in Kosovo.

17 First of all, while we're turning to that page, are you familiar
18 with this report?

19 A. Yes, I was the primary author -- researcher and author of this
20 report.

21 Q. And it bears the date on the front title December 1998. Is that
22 when it was issued?

23 A. Yes.

24 Q. Looking at the bottom of the page which is currently on the
25 screen, which is hard copy page 24 of the document, it notes that:

1 "On October 18, Nebojsa Radosevic, a journalist for the
2 state-run news agency Tanjug, and Vladimir Dobricic, a Tanjug
3 photographer, went missing near the village of Magura. The KLA
4 subsequently confirmed that they were in KLA detention and facing
5 charges of spying. In early November, the two journalists were
6 charged with sixty days in 'KLA prison No. 7' after a trial that,
7 based on the KLA's own information, failed to meet international
8 standards of due process. Although two representatives of the KLA
9 General Headquarters, members of the political and judicial
10 directorate, told Human Rights Watch that the trial was fair, and
11 that the defendants had not been mistreated, they admitted that the
12 defendants had not had legal representation and that they had not
13 been present at their trial. A Human Rights Watch request to visit
14 the detainees was denied for reasons of 'military secrecy.'"

15 The next paragraph goes on to discuss their release at the same
16 time as two ethnic Albanian political activists from the LDK in
17 Malisevo/Malisheve, Jakup Kastrati and Cen Desku. And then at the
18 bottom it refers to:

19 "Two ... journalists believed to have been abducted by the KLA
20 are still missing."

21 It refers to Djuro Slavuj and his driver Ranko Perinic, whom you
22 referred to earlier.

23 Witness, the portion that deals with the two representatives of
24 the KLA General Headquarters, members of the political and judicial
25 directorate, talked to you about the trial and admitted that the

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1 defendants had not had legal representation and had not been present
2 and so on, did that refer to the meeting that you described here to
3 the Court on November 10th?

4 A. Yes.

5 MR. TIEGER: Your Honour, I'd tender these pages of the
6 document.

7 MR. KEHOE: Just these pages? No objection.

8 PRESIDING JUDGE SMITH: Say that again, I'm sorry.

9 MR. KEHOE: I apologise. Just these pages, no objection.

10 PRESIDING JUDGE SMITH: [Microphone not activated]

11 MR. EMMERSON: I have no objection in relation to substance. My
12 concern is, as the Prosecution has repeatedly maintained, with a
13 document which itself is not being admitted in its entirety, there is
14 nothing to prevent the reading of the passages as has just been done
15 standing as the record.

16 We've heard the Prosecution routinely object when the Defence
17 have sought to tender documents from which they've cross-examined on
18 excerpts. And frankly, what's sauce for the goose is sauce for the
19 gander. So the answer should be: It's on the record and that's all
20 it needs to be. And I say that in anticipation of further passages.

21 PRESIDING JUDGE SMITH: There is no objection, so IT-03-66
22 P212.4 is admitted, pages 00676493 and 00676494.

23 THE COURT OFFICER: Your Honours, those pages will receive
24 Exhibit P376.

25 And, Your Honours, if I can confirm the classification, because

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1 the English is classified in Legal Workflow as confidential and the
2 Albanian as public.

3 PRESIDING JUDGE SMITH: [Microphone not activated]

4 MR. TIEGER: I believe so, Your Honour.

5 PRESIDING JUDGE SMITH: Any objection to this being public?

6 MR. KEHOE: No, Your Honour.

7 PRESIDING JUDGE SMITH: All right.

8 [Trial Panel and Court Officer confers]

9 THE COURT OFFICER: The exhibit should be P377, in case I
10 misspoke.

11 PRESIDING JUDGE SMITH: Thank you. We can proceed.

12 MR. TIEGER:

13 Q. Witness, the document we just looked at made reference to the
14 60-day sentence in KLA prison No. 7.

15 MR. TIEGER: And in that connection, I want to call up
16 Exhibit U003-8645 through U003-8645.

17 Q. Witness, this is a document headed "Kosovo Rebels Issue
18 Statement on Jailed Serbian Journalists." And it bears the source
19 date November 1st, 1998. And it states that:

20 "'The Military Court of the Justice Directorate of the KLA
21 General Headquarters, states in its communiqué:

22 "'Following the indictment raised by the Military Prosecution,
23 the Military Court adopts this Verdict:

24 "'The Military Court of the Justice Directorate of KLA General
25 Headquarters, based on the request of the Military Prosecution and in

1 conformity with its working norms ...'"

2 And then it goes on. And you can see that in front of you,
3 refers to the finding of the accused Radosevic and Dobricic were
4 "'charged with violation and disrespect of the regular internal
5 civilian and military dispositions of KLA ...'"

6 It then states:

7 "'The indicted are sentenced to 60 days in prison each. The
8 indicted will be transferred to Prison No. 7. They have the right to
9 appeal ...'" and then so on.

10 "'This verdict goes into force at once.'"

11 Witness, first of all, I want to ask you if you recall whether
12 or not you saw this document at the time -- or, excuse me, if you saw
13 this document prior to your meeting with Mr. Thaci and Mr. Limaj in
14 Banje?

15 A. I do not recall seeing this document prior to the meeting, and I
16 doubt that we did because, otherwise, we are very likely to have
17 asked more detailed questions based on the information that is
18 provided here.

19 Q. And did you see the document or have the document -- so did you
20 see the document before you prepared the relevant portions of the
21 December 1998 report dealing with the meeting?

22 A. I am not sure. And I recall seeing the announcement or the
23 communiqué about the release on November 27, but I don't recall
24 seeing this document or, again, we are likely in our public reporting
25 to have referred to some of the specifics here, you know, for example

1 the particular charges. So, no, I don't believe I saw this prior to
2 our publication.

3 Q. And does the information contained there conform to your
4 understanding of the KLA's position about the detention at the time?

5 A. Yes, it does.

6 MR. TIEGER: Your Honour, I tender this document.

7 MR. KEHOE: No objection.

8 MR. EMMERSON: [Microphone not activated]

9 MR. ROBERTS: No objection.

10 PRESIDING JUDGE SMITH: U003-8645 through U003-8645 is admitted.

11 THE COURT OFFICER: Your Honours, that will be Exhibit P378.

12 PRESIDING JUDGE SMITH: Thank you.

13 MR. TIEGER:

14 Q. Witness, Mr. Thaci has also talked about this November 1998
15 meeting. I want to ask you about a few things that Mr. Thaci
16 asserted were said or not said.

17 MR. TIEGER: And in that respect, can I call up 076563-TR-ET
18 Part 14, page 1.

19 Q. Mr. Thaci was asked about the meeting:

20 "Did Mr. Abrahams ask you about whether the Serb journalists,
21 Mr. Radosevic and Mr. Dobricic, had received any trial or legal
22 process?

23 "A. I don't remember. But the KLA didn't have any judicial or
24 legal process -- mechanism. This is something that has been made
25 up."

1 My question, Witness, is did Mr. Thaci or Mr. Limaj tell you
2 that the KLA didn't have any legal process or mechanism?

3 A. They told us that they were in the process of building these
4 mechanisms.

5 Q. Mr. Thaci was then asked:

6 "And so, in fact, to your knowledge there had been no trial
7 involving Mr. Radosevic and Mr. Dobricic?

8 "A. The only trials that were in Kosovo" --

9 A. I'm sorry, I'm not seeing --

10 Q. Oh, I'm sorry.

11 A. I'm not seeing the text --

12 MR. TIEGER: If we could turn the page, please. I'm sorry.
13 That would be page 2 of the same document.

14 Q. And just to complete that:

15 "Q. And so, in fact, to your knowledge there had been no trial
16 involving Mr. Radosevic and Mr. Dobricic?

17 "A. The only trials that were in Kosovo were those of
18 Milosevic. There were no other trials."

19 Witness, did Mr. Thaci or Mr. Limaj tell you that there had been
20 no trial involving Mr. Radosevic and Mr. Dobricic and no trials
21 whatsoever other than trials by Serbian authorities?

22 A. Well, as reflected in our public reporting, they said the two
23 had been in a trial.

24 Q. And, finally, at the bottom of the page, and we'll be moving on
25 to page 3, Mr. Thaci was asked:

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1 "Did you discuss with Mr. Abrahams, to your recollection,
2 anything about whether Radosevic and Dobricic had been sentenced?

3 "A. I don't remember. I don't remember, because I don't -- I
4 didn't even know whether they were detained, let alone sentenced,
5 because" - next page, please - "there was no judicial or legal
6 process. The only one that existed at the time was that of
7 Milosevic."

8 Witness, did Mr. Thaci tell you at the time that he didn't even
9 know whether the two journalists were detained?

10 A. No, they confirmed that the two were in detention.

11 MR. TIEGER: Can we now call up exhibit K022-5096-K022-5119.

12 Q. Witness, this is a document that bears the name of Human Rights
13 Watch entitled "Abuses Against Serbs and Roma in the New Kosovo" and
14 bears the date August 1999. Are you familiar with this document?

15 A. Yes, I am.

16 Q. And what is it?

17 A. This is a public Human Rights Watch report issued in August 1999
18 based on research and investigations in Kosovo following June 12 of
19 that year.

20 Q. [Microphone not activated]. Witness, did you have a role in the
21 production of this document?

22 A. I did. I was not the primary author, but I did play a role.

23 Q. And can you tell us briefly what the report dealt with, what
24 issues it covered.

25 A. Yes. This was focused on the range of violations that were

1 targeted against the ethnic Serb and Roma population, the non-ethnic
2 Albanian population in Kosovo following the end of hostilities and
3 the arrival of international forces, NATO forces in Kosovo on
4 June 12, 1999.

5 Q. Does it include sections on killings and on the abductions,
6 detention, and abuse of Serbs and Roma taken into detention by the
7 KLA?

8 A. Yes, it covers cases based on extensive research. My colleagues
9 and I visited dozens of locations and interviewed dozens of people
10 about threats, harassment, physical violence, arson, and expulsions
11 of non-ethnic Albanians in Kosovo.

12 Q. Did the report make recommendations or take positions on actions
13 that the KLA leadership should or must take under the circumstances?

14 A. Yes. I would have to look at the recommendations to be precise
15 and accurate, but in general we found that the violations of that
16 time rose to the level requiring urgent attention by the Kosovo
17 authorities - at that time, the provisional government but also the
18 KLA structures that existed still, formally or informally - to take
19 steps in response to this, I would say, extensive pattern of abuse,
20 of violations.

21 Q. Did you make arrangements to get the report to those parties, to
22 the leadership?

23 A. Yes, we did. Yes.

24 Q. And did you manage to meet with someone in connection with that?

25 A. Yes. I had a meeting with the head of the provisional

1 government at that time to deliver the report.

2 Q. And that was who specifically?

3 A. That was Mr. Hashim Thaci.

4 Q. Did you provide Mr. Thaci with a copy of this report?

5 A. Yes, I did.

6 Q. And where did that take place?

7 A. The meeting took place in his office, which was in the centre of
8 Prishtine. It was the two of us. And, of course, it was the first
9 time we had met after the end of the conflict, and we had known each
10 other or had met in that first meeting. And I raised our concerns
11 about the situation. By that time, tens of thousands of Serbs had
12 left or fled Kosovo, and the report had documented extensive
13 violations and abuse, including killings and missing persons. And so
14 I raised these concerns in the hope that they would be addressed.

15 Q. In what language was the meeting conducted?

16 A. In Albanian.

17 Q. And did you explain to Mr. Thaci what the report was about and
18 what its contents were?

19 A. I describe -- yes. I described the report in broad strokes. We
20 did not go through case by case. The meeting was also not that long.
21 But I raised the general findings and the conclusions that these
22 abuses were pervasive enough, persistent enough, and serious enough
23 to require attention and action.

24 Q. And what, if anything, did Mr. Thaci say to you in response?

25 A. He acknowledged that there were problems. And, of course, you

1 know, tens of thousands of Serbs had left, maybe more at that point,
2 and there was no denying that. And there had been violent incidents,
3 you know, attacks, which I also note Mr. Thaci had condemned publicly
4 some of these attacks, killings of, I believe, Serbian farmers. I
5 believe it was in July, if I'm not mistaken. So he acknowledged that
6 there -- you know, crimes were taking place.

7 The disagreement, I think, or where I disagreed with his
8 assessment was that these were the actions of individuals, and that,
9 in particular, anyone could don the uniform of the KLA and commit
10 acts in its name, and that this was happening, and there was not a
11 coordinated policy to commit or condone or support this criminal
12 conduct.

13 Q. Did he accept that -- I'm just trying to understand this. Did
14 he accept that members of the KLA had committed these crimes, or did
15 you understand his answer to be that he did not accept that members
16 of the KLA were involved in any crimes?

17 A. My understanding was that he rejected the allegation and said
18 that these were, you know, private individuals, including those who
19 might be masquerading as KLA.

20 Q. Well, let me ask you briefly about that. First of all, from
21 what you're aware, was it correct that people could buy uniforms or
22 obtain uniforms or patches?

23 A. No question.

24 Q. Were there factors outlined in the report -- let me ask you,
25 before I get to the report, were there factors that -- under the

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1 circumstances, that bore on the relative likelihood that people would
2 or would not obtain KLA uniforms, put on KLA uniforms and commit
3 crimes?

4 MR. KEHOE: Objection, Judge. Foundation. That question.

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 The objection is overruled.

7 THE WITNESS: I had no doubt at the time, and I still hold to be
8 true, that any individual could have obtained a KLA uniform or any
9 uniform and attached the UCK patch. No question. And I take it to
10 be true that there were instances where crimes were committed by
11 individuals wearing fake uniforms or pretending to be KLA fighters.

12 At the same time, I did not believe then, and I do not believe
13 now --

14 MR. KEHOE: Objection, Judge. This is clear opinion evidence.
15 "I did not believe then, I do not believe now."

16 PRESIDING JUDGE SMITH: He has laid sufficient foundation to be
17 able to express an opinion based upon his experience, his research,
18 his consultations. The objection is overruled.

19 THE WITNESS: I did not believe, and based on our primary
20 research, interviewing victims and the witnesses of these incidents
21 and crimes, that the explanation of individuals wearing a KLA uniform
22 was adequate -- was accurate or descriptive of the situation in its
23 entirety.

24 So while there may be incidents, the extent of these violations,
25 the patterns of these violations, the consistency of reports we

1 received directly from the victims of these violations suggested to
2 us and informed my opinion that there was more to the story, and it
3 couldn't be only select individuals.

4 I would add, if I may, that at the time the KLA had high
5 authority in Kosovo. They had fought and suffered and died, some of
6 them. And they were viewed with high regard by many in Kosovo as the
7 liberators of Kosovo, viewed by many as such. And I also believed
8 then, from that, it would be unwise for individuals to pretend that
9 they were KLA fighters to a great extent, although there may be
10 cases, because that would not be tolerated by those who truly wore
11 the uniform and engaged at great risk to themselves in armed conflict
12 with a powerful Serbian adversary.

13 So I didn't think that this fully explained the situation.

14 MR. TIEGER:

15 Q. Witness, after the meeting, did Mr. Thaci ever subsequently
16 engage you about the report, its findings or recommendations?

17 A. No. And I will say this. You know, that meeting and the
18 delivery of the report, it was done in good faith in an interest to
19 inform and encourage more human rights-respecting policies. We were
20 looking for action. And although in one meeting, that material --
21 you don't expect results right away. I did not get a commitment to
22 say: Yes, we will look at this; or, yes, we will get back to you on
23 this. And that indeed never did happen. I was never contacted by
24 the provisional government or any other authority to say, you know,
25 let's go through these cases, let's look at the recommendations,

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1 let's talk together about how this might be addressed.

2 MR. TIEGER: Your Honour, I tender the report.

3 PRESIDING JUDGE SMITH: [Microphone not activated]

4 MR. KEHOE: [Microphone not activated]

5 PRESIDING JUDGE SMITH: No objection heard. K022-5096 to
6 K022-5119 is admitted.

7 THE COURT OFFICER: Your Honours, that will be Exhibit P379.

8 PRESIDING JUDGE SMITH: Thank you.

9 MR. TIEGER: And can we call up now exhibit IT-05-87.1 P00741.

10 PRESIDING JUDGE SMITH: Is this already admitted?

11 MR. TIEGER: No, I don't believe so, Your Honour.

12 THE COURT OFFICER: No, it's not.

13 MR. TIEGER: Oh, the P? That's a reference to its exhibit
14 number in a previous case.

15 PRESIDING JUDGE SMITH: Okay.

16 MR. TIEGER:

17 Q. Witness, do you recognise this report and did you participate in
18 the production of this report?

19 A. Yes, I was the primary researcher and author of this report.

20 Q. And if we turn to K0364789, it should be a table of contents.
21 Does the report contain a section on violations of the rules of war
22 by the KLA?

23 A. Yes. The majority of this report, and we could count the pages
24 to be precise, covers serious and grave violations of the laws of war
25 by Serbian and Yugoslav forces and as well this chapter, number 10,

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1 about the UCK.

2 Q. And just to be clear, does that section rely basically on
3 primary sources or secondary sources?

4 A. The section -- this section of the report relies more and
5 primarily on secondary sources.

6 Q. Were you nevertheless satisfied that the findings overall were
7 sufficient to warrant publication in the report and exposure of the
8 findings?

9 A. Yes, I was. And I can explain the methodology and the
10 reasoning, if it's helpful to the Court.

11 Q. Well, let me conclude these initial questions, and we'll see if
12 that's necessary. Let me ask you, did you -- well, go ahead. I
13 think we have -- why don't you explain.

14 A. Sure. So whenever possible, we aim to investigate first-hand
15 sources - witnesses, victims, and so on. In this case, regarding
16 violations by the KLA, that proved difficult for a number of reasons.
17 The main one was security. And even approaching an individual about
18 these violations was highly sensitive. This is not unique to Kosovo.
19 We see it today in our work on Ukraine, where I'm deeply involved --

20 MR. EMMERSON: I'm sorry. With the greatest of respect, it's
21 very interesting to hear about the methodology generally, but
22 specifically in relation to the sections that Mr. Tieger is seeking
23 to elicit, in this report, this is pure echo chamber. What we need
24 to establish first from the witness is where did the information
25 about the KLA that is published in the report come from, and the

1 answer is another international organisation.

2 PRESIDING JUDGE SMITH: [Microphone not activated]

3 MR. EMMERSON: Yes. There is an objection to the fact that the
4 questions that -- the question being asked is how the information
5 came to be compiled, and it's non-responsive to talk about the
6 difficulties that the -- that's an explanation for why there's no
7 primary material.

8 PRESIDING JUDGE SMITH: I'm going to allow the Prosecution to
9 lead the questions the way they want to. It's not your witness.
10 It's his witness.

11 Go ahead.

12 MR. TIEGER:

13 Q. Witness, perhaps we can cut to the chase on this process by --
14 with this question: Did you attempt to provide the sources of the
15 information upon which that section was grounded so that readers
16 could see the basis or limitations themselves?

17 A. Yes. Let me explain. And I very strongly disagree with the
18 categorisation of this as an echo chamber. Very strongly.

19 In this case, our -- the sources are as follows. These are
20 credible international organisations, either non-governmental, like
21 the Humanitarian Law Centre, like Amnesty International. These are
22 statements by, for example, the ICRC. I mentioned them going public
23 about lack of access. These are media reports. And what's important
24 is the combination.

25 So we would never take any one individual claim and assert that

1 as definitive when we're looking at a pattern; right? And that's the
2 key distinction I'd like to make here, is investigations that are
3 looking at individual cases and investigations that connect the dots
4 and present the full spectrum of violations to make a case.

5 And in this situation, the cases presented in this chapter tell
6 a story when connected, so that we may have multiple sources of
7 credible secondary sources about individual cases but we see them in
8 their entirety, which brings us to a threshold where we feel
9 comfortable and confident to make assertions.

10 And I'd like to just stress the point that Human Rights Watch is
11 not a court of law; right? We gather evidence in order to present
12 credible cases for the public and for policymakers, and that's what I
13 believe we've done here.

14 Q. And finally, Witness --

15 MR. EMMERSON: Before my learned friend carries on --

16 MR. TIEGER: Your Honour, I'm trying --

17 MR. EMMERSON: Well, with the greatest of respect, the witness
18 has now answered the question, and, therefore, I can make the
19 objection with the basis of the information that the witness has
20 testified about.

21 What he has said --

22 PRESIDING JUDGE SMITH: [Microphone not activated]

23 MR. EMMERSON: Yes. The objection is that this is inadmissible
24 evidence according to the authorities that have been already cited to
25 the Court in advance because, just from the witness's own testimony,

1 this is not -- it's three steps removed from any original source, it
2 doesn't cite the source of the information on which it is based so
3 that that can be examined for credibility, it is drafted together to,
4 quote from the witness, "make a case." In other words, it's designed
5 to present an argument, which happens to coincide with the aspects of
6 the Prosecution's argument. That is not admissible evidence.

7 There is nothing from which the Court, on the basis of that
8 foundation, can evaluate the credibility of the testimony. And in
9 particular, where the witness says, "We thought it was credible,"
10 that's the Court's job to decide what happened, not Human Rights
11 Watch's job, reading reports by other people and never having
12 interviewed the sources themselves. I mean, this is as far as it can
13 get from admissible evidence.

14 PRESIDING JUDGE SMITH: The objection is overruled. The witness
15 clearly stated his methodology. He clearly stated how they gathered
16 the information. It is subject to cross-examination. It's subject
17 to an examination by the Court Panel during the period of making any
18 judgment in this case. I will allow the question. That's all.

19 Go ahead.

20 MR. TIEGER:

21 Q. And, finally, Witness, was the issuance of this report after the
22 creation of Mr. Demaci's office in Prishtine and after you started
23 providing Human Rights Watch reports to that office?

24 A. I apologise. Can you repeat the question?

25 Q. Sorry. Was this report one of those that was issued after the

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1 establishment of Mr. Demaci's office and after the time that you
2 began to provide Human Rights Watch reports to that office?

3 A. Yes.

4 MR. TIEGER: Your Honour, I'd tender the report.

5 PRESIDING JUDGE SMITH: [Microphone not activated]

6 MR. TIEGER: I tender the portions of the report to which we
7 referred found at pages 75 through 86 of that document, and I gave
8 the relevant ERN numbers.

9 PRESIDING JUDGE SMITH: [Microphone not activated]

10 MR. KEHOE: Yes, Your Honour, there is an objection. Obviously
11 it's inadmissible. These come from secondary sources, and this is
12 somebody else's independent assessment of what secondary sources have
13 said.

14 What we have with this document, in addition to the comments of
15 Mr. Emmerson, is a usurpation of the Prosecutor's role. If, in fact,
16 they want to present evidence of individual alleged crimes, they can
17 do that, and they have done that in any number of witnesses that we
18 have seen under Rule 154 and elsewhere. But here what we have is a
19 distillation of information that is taken not even from the victims
20 but secondary sources compiled in, I take it, 13, 14 pages of this
21 report that the Prosecution is attempting to present as substantive
22 evidence.

23 And if you're saying -- cross-examining on that report,
24 secondary sources, where do these secondary sources come from? Who
25 are these secondary sources? I mean, there is a secondary,

1 tertiary-level objection to this that is well beyond what should be
2 admissible.

3 MR. EMMERSON: May I add to that. If Your Honour just casts an
4 eye down to the footnotes cited in that passage, Your Honour will see
5 the substantive allegations, such as they are, are largely drawn from
6 either a report of the Humanitarian Law Centre published shortly
7 before this report, this being the first of these reports, and news
8 media.

9 And my question is how is it different from bringing any other
10 commentator on international relations into the Court and saying:
11 Well, I've read a lot of stuff and this is what I think. How is it
12 different from that?

13 PRESIDING JUDGE SMITH: [Microphone not activated].

14 MR. ELLIS: Your Honour, we strongly join the objections that
15 have been made. And the point I would wish to add is to contrast the
16 approach now being taken by the Prosecution to the one earlier this
17 morning, where in relation to the other report, "Detentions and
18 Abuses in Kosovo," the witness was taken specifically to a couple of
19 paragraphs which were based on his personal knowledge and the report
20 was then admitted on that basis. Whereas now, an entire chapter
21 which the witness has said is based on secondary sources, not his own
22 knowledge, is now being moved, and we object.

23 [Trial Panel confers]

24 PRESIDING JUDGE SMITH: The exhibit at pages 75 to 86 is
25 admitted. There is no question there is hearsay involved, and we've

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1 discussed that time and again. There's going to be hearsay. There
2 is no exclusion of that in our rules. This begs the determination of
3 the weight to be given to this report. It's obvious -- just because
4 it's a report does not mean it's true. We're as aware of that as
5 anybody else. But it is a validly prepared, authenticated report,
6 and we will admit it.

7 MR. TIEGER: Thank you, Your Honour.

8 I just note that it actually continues to page 87 with one
9 paragraph. So I misstated it as --

10 PRESIDING JUDGE SMITH: So it's 75 to 87?

11 MR. TIEGER: Yes, correct.

12 PRESIDING JUDGE SMITH: Okay. And one other thing,
13 Mr. Prosecutor. Can we assume that, unless you say otherwise, all of
14 these documents you're presenting are public?

15 MR. TIEGER: Yes, that's correct, Your Honour.

16 PRESIDING JUDGE SMITH: All right.

17 MR. TIEGER: Thank you.

18 PRESIDING JUDGE SMITH: Thank you.

19 MR. TIEGER: And, Your Honour -- oh, sorry.

20 THE COURT OFFICER: Your Honours, the admitted portions will be
21 assigned Exhibit P380.

22 MR. TIEGER: And, Your Honour, that concludes the direct
23 examination. Thank you.

24 Cross-examination by Mr. Kehoe:

25 Q. Good morning, Mr. Abrahams. My name is Gregory Kehoe. I

1 represent President Thaci, and I just want to ask you a few questions
2 on what you said yesterday and likewise today. Again, if you don't
3 understand any question I ask you, please let me know. And if I
4 don't let you complete an answer, I apologise ahead of time, but let
5 me know that as well.

6 Now, I want to start preliminarily with some of your comments
7 with regard to Adem Demaci, Mr. Demaci, which I believe that you had
8 said you met one time; is that right?

9 A. No, we met more than one time.

10 Q. Okay. And how many times did you meet him?

11 A. Are you asking about during his -- during the time he held the
12 position as representative or --

13 Q. Fair question.

14 A. -- prior to that?

15 Q. Fair question. When he was a representative for the KLA.

16 A. Okay. Well, at least twice. But I don't recall the precise.

17 Q. And you noted on page, I believe is, 140, line 3, 4, of
18 yesterday's transcript, that you believe that Mr. Demaci's influence
19 on the decision-making was limited; is that right?

20 A. Yes, that's correct.

21 Q. Now, take me through this. You mentioned yesterday that
22 Mr. Demaci had an office, and I understand that he had about a dozen
23 advisers; is that right?

24 A. I can't speak to the number of advisers that he had.

25 Q. And do you know if any of his -- if his advisers included former

1 JNA generals?

2 A. I do not know the answer to that, no.

3 Q. And you do know that he gave regular press conferences from, I
4 believe, the beginning of September 1998; right?

5 A. He was speaking regularly with the media, that's correct.

6 Q. And you do know that he represented the KLA and in Kosovo --
7 excuse me, in Kosovo and other countries; is that right?

8 A. As far as I know, he did. Although, I don't believe he was a
9 representative to the Rambouillet negotiations.

10 Q. But he went to Albania, he went to Macedonia, he went to
11 Slovenia, all while representing the KLA; is that right?

12 A. To the best of my recollection, yes, that's correct.

13 Q. And you noted during the course of your statement that
14 Mr. Demaci was the one who signed or authorised travel permits for
15 people like you and others to go through KLA territory; right?

16 A. That is correct, yes.

17 Q. And those travel permits were respected throughout Kosovo,
18 weren't they?

19 A. That is correct. By the Kosovo Albanians.

20 Q. Fair response. By the Kosovo Albanians. And members of the KLA
21 at checkpoints, et cetera, did, in fact, respect the travel permits
22 signed by Adem Demaci's office; right?

23 A. For the most part they did, yes.

24 Q. And he issued communiqués and declarations on behalf of the KLA,
25 did he not?

1 A. I'm not sure about that, but --

2 Q. Okay.

3 A. -- it's quite possible, yes.

4 Q. Okay. But the -- so it's quite possible according to your --

5 A. Well, he spoke --

6 Q. -- recollection?

7 A. He did speak publicly in the name of the KLA, yes.

8 Q. Let's just watch out that we don't run over one another because
9 there are folks up there translating, so --

10 A. Excuse me.

11 Q. -- if I may.

12 And he, in fact, mediated -- excuse me, just going back to some
13 of his international travel. Do you recall that he was involved in
14 the Oslo Accords with the KLA and FARK to try to bring the KLA and
15 FARK together in May 1998, wasn't he?

16 A. Well, I'm not aware of that specific detail. No.

17 Q. Were you aware of his travel to Istanbul in that regard?

18 A. No, I was not.

19 Q. Were you aware that he, in fact, issued comments in the press
20 to -- once the Milosevic-Holbrooke Accords came out, that the Kosovo
21 Liberation Army should exercise self-restraint? Are you aware of
22 that?

23 A. Can you please remind me which accords you're referring to?

24 Q. So correct me if I'm wrong, there was a cease-fire or tentative
25 cease-fire in the beginning of October 1998 with Milosevic and with

1 Ambassador Holbrooke; right?

2 A. That's correct.

3 Q. And the person who publicly proclaimed a restraint on behalf of
4 the KLA was Adem Demaci, wasn't it?

5 A. I do not recall the statement, but I accept it is possible that
6 he made that declaration.

7 Q. So, I mean, so -- and, in fact, barring some minor exceptions,
8 the KLA followed that restraint in October as we moved into the fall
9 months of 1998, didn't they?

10 A. That's correct.

11 Q. So if I may, with regard to -- staying with him. Now, you also
12 mentioned -- and if I can just get this quote correctly by you, if I
13 may, because I want to be as accurate as possible. You also say --
14 and this, again, is on page 140, line 21 and 22.

15 MR. KEHOE: And, unfortunately, Your Honour, it's yesterday's
16 transcript. I don't have a complete transcript. So it's the
17 temporary transcript. My apologies. But if I'm reading it
18 improperly, please correct me.

19 Q. You noted with regard to Mr. Demaci:

20 "I always emerged from those conversations understanding that
21 his influence over those engaged in armed struggle was limited."

22 Do you remember saying that?

23 A. Yes, I do.

24 Q. And let me read to you a portion of a transcript of testimony in
25 this trial.

1 MR. KEHOE: And this would be page 5611, line 23, over to 5612,
2 line 24.

3 Q. And these were questions by the Prosecution. And --

4 PRESIDING JUDGE SMITH: Excuse me, of who?

5 MR. KEHOE: By the Prosecution.

6 PRESIDING JUDGE SMITH: Of -- of --

7 MR. KEHOE: Of Rrustem Mustafa.

8 PRESIDING JUDGE SMITH: That's who the person being asked was?

9 MR. KEHOE: Yes, and I was just going to -- it's
10 self-identification in the first -- okay.

11 Q. So this was a question of Rrustem Mustafa whose *nom de guerre*,
12 if you will, is Commander Remi, and this is a question by the
13 Prosecution:

14 "Good morning, Mr. Mustafa. You've mentioned Adem Demaci a
15 number of times in your testimony. What was his official position in
16 the KLA?

17 "A. He was director of the political directorate of the Kosovo
18 Liberation Army. But above all, he was a leader of Albanians -- of
19 Albanian people for many years while we were under Serbian
20 occupation.

21 "Q. Are you referring to the overall political directorate of
22 the KLA, or are you referring to a specific political office?

23 "A. For me, this was the biggest political directorate of the
24 KLA.

25 "Q. So I understand that for you it was the most important one,

1 but which one was it?

2 "A. For me, the office led by Adem Demaci in Prishtine was the
3 most important one.

4 "Q. So it was the KLA political office in Prishtine that he
5 led; is that correct?

6 "A. Correct.

7 "Q. You've just indicated he was someone that was very
8 important to you. Did you know him well?

9 "A. Yes, I did know him well.

10 "Q. And clearly he had influence over [the] political matters;
11 is that right?

12 "A. Yes. In general, I was very cooperative with Teacher
13 Demaci.

14 "Q. Would you say more so ... than [over] other members of the
15 KLA?

16 "A. He was in general for the Albanian people and the KLA in
17 its entirety, but to me, [and very honest], I -- I recognise he was
18 even more special to me."

19 So this is the statement of Rrustem Mustafa who do you know was
20 the operative zone commander of the KLA in the Llap zone?

21 A. Yes, I'm aware of that.

22 Q. Okay. And would you consider Mr. Mustafa, Commander Remi, one
23 of those engaged in the armed struggle?

24 A. Yes, I would.

25 Q. So is it clear to you that, in fact, Adem Demaci did have

1 influence over people involved in the armed struggle such as
2 Commander Remi?

3 A. I cannot speak to the views of Mr. Mustafa. I never met him,
4 never spoke with him, so I am not able to comment on how he viewed
5 Mr. Demaci or anyone else. I stand by my view which is that when it
6 came to military matters or strategic decisions outside of the -- on
7 concrete security matters, I never saw evidence that suggested
8 Mr. Demaci had an influence.

9 Q. Given the fact that you do not know what influence Demaci had
10 over Commander Remi, Rrustem Mustafa, let me just go into some
11 other -- and this is the -- I want to clarify your last answer in
12 this regard.

13 MR. KEHOE: Again, this is the testimony of Mr. Mustafa on 14
14 July 2023, page 5752, line 22, to 5753, line 5.

15 Q. The question of Mr. Mustafa:

16 "Q. Do you recall, were there efforts made by the KLA
17 General Staff to ask you to withdraw from that line of
18 communication?"

19 Now, you understand a line of communication is a road, right,
20 that -- in military terminology, it's a road that goes to a place.
21 That's a communication line; right?

22 A. I'm sorry, I think I would have to see the material to answer
23 you accurately. This is a question that was asked of Mr. Mustafa?

24 Q. Yes. Let me go through the whole question.

25 A. Yeah.

1 Q. "Do you recall, were efforts made by the KLA General Staff to
2 ask you to withdraw from that line of communication?

3 "A. Yes, I know there were attempts, but I told them not to
4 tackle this issue any further. I wasn't going to obey them on this
5 issue."

6 So this is testimony from Commander Remi telling this Court that
7 he was not going to obey what the General Staff wanted him to do. Is
8 that understood?

9 A. Yes, I understand the point you're referencing.

10 Q. Question, again, of Mr. Mustafa:

11 "And the reason you weren't going to obey the General Staff is
12 because the highest authority in the Llap zone was you and your
13 command; correct?

14 "A. Correct. And I had an agreement with the head of the
15 political office, Mr. Adem Demaci."

16 So in this particular instance, you have a -- as you call them,
17 one involved in the armed struggle who has an agreement with
18 Mr. Demaci to do something that is contrary to what the General Staff
19 wants to do. You understand that is what he was saying; correct?

20 A. That is what it appears from the statement or the testimony you
21 are citing from Mr. Mustafa, but I don't have direct knowledge of
22 that relationship or interaction.

23 Q. I understand, sir. And I am trying to explore your statement
24 that Demaci didn't have influence over those engaged in the armed
25 struggle, and you say that without information such as what I just

1 read you concerning the testimony of a zone commander,
2 Rrustem Mustafa; is that right?

3 A. I said that everything that I understood about the conflict, I
4 did not see evidence that Mr. Demaci had an influence over forces in
5 the field. Again, I noted he was not a representative to the
6 Rambouillet accords. I don't know if Mr. Demaci was consulted when
7 Mr. Thaci returned to Kosovo to consult about signing the Rambouillet
8 accords. I don't know the answer to that. But if there are
9 connections between Mr. Demaci and Mr. Mustafa, that is something
10 I -- I cannot speak to. I can only refer to the testimony you're
11 citing here.

12 Q. And I'm just -- bear with me, I'm just referring to your
13 testimony, if you can. But you would agree with me that in order to
14 make a statement that Mr. Demaci's influence over those engaged in an
15 armed struggle was limited, in order to do that you would have to
16 have an important understanding of Demaci's relationship with the
17 zone commanders, wouldn't you?

18 A. Yes.

19 Q. Well, do you know what Demaci's relationship was with
20 Ramush Haradinaj, which was the zone commander in the Dukagjin zone?

21 A. No, I do not. But --

22 Q. Do you have any idea what - for instance, I'll just pick one out
23 - Mr. Demaci's relationship was with Sylejman Selimi, who was the
24 zone commander in the Drenica zone and then became the general
25 commander of the KLA? Do you know what that is?

1 A. I cannot speak to their relationship.

2 Q. Do you know what his relationship was with any one - any one -
3 of the zone commanders in Kosovo during 1998 and 1999?

4 A. My assessment is based on the role and the profile of Mr. Demaci
5 at that time and the actions in the field. And I was never aware of
6 a connection so that he had an influence over those who were
7 fighting, largely from a different generation, but the direct
8 relationships that he had with individual members or commanders is
9 something I am not privy to.

10 Q. Okay. So given the fact that you were not privy to that, you
11 cannot give a complete, wholesome answer to what, if anything,
12 Demaci's influence was over those who were engaged in the armed
13 struggle because you just don't know.

14 A. I disagree with that.

15 Q. Okay. Well, tell us about the relationship that he had with the
16 zone commanders. We're back to that question. Tell us about his
17 relationship with Haradinaj or his relationship with Sylejman Selimi
18 or any other? Pick a zone commander.

19 MR. TIEGER: Objection, asked and answered.

20 PRESIDING JUDGE SMITH: [Microphone not activated].

21 I believe he did say he didn't know of any connection with them.
22 But if there's a different answer, you can certainly give it.

23 THE WITNESS: No, Your Honour. That is my answer.

24 MR. KEHOE:

25 Q. Well, did you know -- you talked about Rambouillet. Did you

1 know that Mr. Thaci, during Rambouillet, flew to Slovenia to meet
2 with Mr. Demaci to discuss the Rambouillet accords? Did you know
3 that?

4 A. No, I did not know that.

5 Q. Did you know that during the Rambouillet accords, that
6 Mr. Demaci -- let me withdraw that. You do know, do you not, that
7 during the Rambouillet accords that the then commander of the KLA,
8 Azem Sylja, while the Rambouillet accords were going on and Mr. Sylja,
9 Commander Sylja, was in Rambouillet, he was replaced by the zone
10 commanders in -- back in Kosovo. Are you aware of that?

11 A. I'm sorry, I did not follow. Mr. Sylja was replaced by who?

12 Q. That's a bad question. Let me rephrase the question. I thank
13 you. And any time I do that, let me know. Sometimes your head moves
14 faster than your ability to articulate, or maybe I just don't
15 articulate questions well.

16 Are you aware that during the Rambouillet accords, during those
17 discussions in February 1999, that Azem Sylja, the then commander,
18 overall commander of the KLA, was being replaced back in Kosovo by
19 zone commanders while Thaci and Sylja and the rest of the delegation
20 were in Rambouillet? Were you aware of that?

21 A. No. And I wasn't aware that Mr. Sylja was the overall commander.
22 So, no, I can't speak to that.

23 Q. Were you aware that Mr. Demaci was an intricate part of the
24 discussions with the zone commanders to appoint Sylejman Selimi in
25 February going into March 1999? Were you aware of that?

1 A. I have not heard that before. If it is true or not, I cannot
2 speak to.

3 Q. Now, you spoke quite a bit about the release of the Tanjug --
4 two Tanjug -- alleged Tanjug reporters. Were you aware that it was,
5 in fact, Demaci who orchestrated that release?

6 A. The details of the release on November 27 are unknown to me, but
7 we certainly raised our concerns with Mr. Demaci. And he was in
8 contact with a range of international organisations working in the
9 area at the time.

10 Q. Now, let me put on the screen what is SPOE00225229. Now, this
11 is Communiqué 63, and it notes -- it's dated, of course, on 27
12 November 1998: On the occasion of the November celebration, the
13 Kosovo Liberation Army decided to grant amnesty to a number of
14 prisoners, the two alleged Tanjug journalists, and their sentence was
15 commuted.

16 And I think you noted in one of your exhibits that the 27th,
17 28th are a big celebration day for the Kosovo people. Flag day, I
18 believe it is; is that right?

19 A. That's correct.

20 Q. And I believe it's also Adem Jashari's birthday; right?

21 A. That I did not know.

22 Q. But you were aware that this was taking place and that the KLA
23 was -- issued a communiqué such as this; right?

24 A. Yes, I'm aware of this.

25 MR. KEHOE: Your Honour, at this time I'll offer this document

1 into evidence.

2 MR. TIEGER: No objection.

3 PRESIDING JUDGE SMITH: SPOE00225229 is admitted.

4 THE COURT OFFICER: Your Honours, that will be Exhibit 1D47.

5 MR. KEHOE: Now, let me put up on the screen SPOE00225737, just
6 that one page, both in English and in Albanian.

7 Q. Now, this is a handwritten note. I don't expect you to read it
8 in Albanian, Mr. Abrahams. If you go back down to the bottom of the
9 page, it says:

10 "This is Adem Demaci's message."

11 And it notes it's from Albin Kurti. You know who Albin Kurti
12 is, do you not?

13 A. Yes, I do.

14 Q. And at the time Albin Kurti was an aide to Mr. Demaci; right?

15 A. That is correct.

16 Q. And if we turn to paragraph 5 of this document, it reflects
17 that:

18 "It is a good idea that Tanjug journalists are released before
19 they completely serve their sentence, because if they do end up
20 serving the sentence imposed fully they are likely to appear as
21 heroes. It would be good for their release to take place on the
22 celebrations for the 28th November. The release must be carried out
23 by you personally, or together with Adem Demaci, but not in
24 conjunction with KDOM because it would seem that they (KDOM) were the
25 ones who released them."

1 Now, this is in fact what happened, albeit a day earlier, but
2 this is in fact what happened per the -- as it says, per the message
3 of Demaci, wasn't it?

4 A. Prior to answering this question, I would just like to
5 understand the source of this document. Can you scroll up to --

6 Q. Sure.

7 A. -- so I can understand what we're looking at.

8 Q. It was a document that was sent to the General Staff. This was
9 provided to us by the Office of the Prosecutor.

10 A. Sent to the General Staff. It's notes from a meeting?

11 Q. It's notes from what -- you see what we see. This is a note
12 from Albin Kurti to the General Staff.

13 A. Okay. Yes, I understand now.

14 Q. So, in fact --

15 MR. TIEGER: Sorry, excuse me, can you point to the part of the
16 document that indicates precisely that?

17 MR. KEHOE: Precisely what?

18 MR. TIEGER: Well, the document obviously speaks for itself, and
19 that's fine. But you're indicating that, I think, the document also
20 contains a portion that indicates where it was sent, and I'm not
21 seeing that.

22 MR. KEHOE: Well, I believe that's what the SPO told us when
23 they gave the document to us. And if you see number 6, it says:

24 "You must appoint a general staff commander."

25 MR. TIEGER: I'm not disputing any kind of -- at the moment, any

1 kind of argument you may make from the content of the document. I
2 just wanted to know where I might find the source of the particular
3 reference.

4 MR. KEHOE: That was my understanding, Judge. This is a
5 document that came from the SPO.

6 PRESIDING JUDGE SMITH: Well, if it doesn't say where it went,
7 who it was sent to. You have to have some authenticity.

8 MR. KEHOE: Well, Your Honour, I will look back and see what
9 other authenticity we have to get coming from the massive amount of
10 documents that we have received from the SPO to --

11 MR. TIEGER: I --

12 PRESIDING JUDGE SMITH: I would just say it's a note from Albin
13 Kurti and --

14 MR. KEHOE: That's fine.

15 PRESIDING JUDGE SMITH: -- go ahead and ask questions about
16 that.

17 MR. KEHOE: And just we'll move on that level. Thank you,
18 Judge.

19 Q. So this note from Albin Kurti reflecting the release was at or
20 about the same time that the individuals were released, wasn't it?

21 A. Based on this, a document, yes. Although I don't see the date
22 on my screen at the moment. It's probably below or above.

23 Q. No, in fairness to you, sir, I don't believe there is a date.

24 A. So I can't speak to the timing.

25 Q. Okay. But you would get from the timing that it's clearly after

1 the two Tanjug journalists were detained but before they were
2 released.

3 A. It does appear to be with that timing, yes.

4 MR. KEHOE: Your Honour, subject to further clarification, just
5 saying it is a document from Albin Kurti, we'll move this document
6 into evidence.

7 MR. TIEGER: No objection.

8 MR. KEHOE:

9 Q. Now, we -- I'm sorry.

10 PRESIDING JUDGE SMITH: [Microphone not activated].

11 SPOE00225737, a single page in English and Albanian, is
12 admitted.

13 THE COURT OFFICER: Your Honours, this will be Exhibit 1D48.
14 And, Your Honours, this, as well as 1D47, are classified as
15 confidential. Should they remain so or public?

16 PRESIDING JUDGE SMITH: Public?

17 MR. KEHOE: Public, yes, Your Honour.

18 PRESIDING JUDGE SMITH: All right.

19 MR. KEHOE: And in the spirit of candour, Your Honour, I was --
20 received more information on this document. There is no metadata on
21 this document, and our understanding was it was seized from
22 Mr. Krasniqi.

23 PRESIDING JUDGE SMITH: [Microphone not activated]

24 MR. KEHOE: Krasniqi. But we will look into it further, Judge.

25 I'm just trying to keep the Court updated on what information I have.

1 PRESIDING JUDGE SMITH: [Microphone not activated]

2 MR. KEHOE: That's fine.

3 Q. Now, on the date that the individuals were released, were you
4 aware that Mr. Demaci's office contacted Sokol Bashota to release
5 them?

6 A. No, I was not aware of the specifics of the arrangements.

7 Q. Well, do you know who Sokol Bashota is?

8 A. The name is familiar to me, but I do not recall his position.

9 Q. Did you understand him to be the deputy commander of the KLA? A
10 military person.

11 A. Yes, a member of the KLA, yes. But his position was not known
12 to me.

13 Q. But, again, were you aware that he was told by Demaci to release
14 these people?

15 A. No.

16 Q. Now with regard to influence on decision-making, let me have you
17 look at yet another article.

18 MR. KEHOE: That is -- and this will be DHT1457.

19 Q. Now, this is a newspaper article on Koha Ditore, and pardon me
20 if I am pronouncing that incorrectly. I'm sure I am.

21 A. Indeed.

22 Q. And it is a note -- it is a press conference by the KLA office
23 of the political representative, and it notes that there will be no
24 political decision without Adem Demaci's consent. Now, does this
25 indicate to you -- obviously, you can take a look at it, and you can

1 see the quote, where it notes, by Mr. Kurti:

2 "No political decision can be taken without the consent and
3 approval of KLA General Political Representative, Adem Demaci ..."

4 This does indicate to you, does it not, that Mr. Demaci was a
5 man who did, in fact, have decision-making authority and then
6 exercised that; isn't that right?

7 A. No, I disagree. But if you'll allow me, I can explain why.

8 Q. Sure.

9 A. So, first, the -- there were competing interests and attempts to
10 be the political -- to hold the mantle of political representation in
11 this time, not to mention Ibrahim Rugova and the LDK. And I have no
12 doubt this reflects the desire and the intention of Mr. Demaci and
13 Mr. Kurti to exercise authority.

14 I also do not reject or I do not claim otherwise that Mr. Demaci
15 had no authority. I don't believe I said that. If I did say that,
16 my -- then it's not what I intended to mean. Mr. Demaci did have a
17 moral authority and some political authority. My view, and this does
18 not contradict that view or doesn't change my opinion, is that he did
19 not exercise significant authority over military or security affairs
20 over the forces who were engaged in hostilities. And I still believe
21 that to be true.

22 MR. KEHOE: Your Honour, at this time I'll offer this document
23 into evidence.

24 PRESIDING JUDGE SMITH: Any objection?

25 MR. TIEGER: No, Your Honour.

1 PRESIDING JUDGE SMITH: DHT01457 is admitted.

2 MR. KEHOE:

3 Q. Now let me shift gears if we may --

4 PRESIDING JUDGE SMITH: Just a second.

5 MR. KEHOE: I'm sorry. Again, I apologise to the Court Officer.

6 THE COURT OFFICER: Thank you. Your Honours, that will be 1D49.

7 PRESIDING JUDGE SMITH: Thank you.

8 Go ahead.

9 MR. KEHOE: Again, my apologies to the Court. I do that from
10 time to time.

11 Q. Mr. Abrahams, I just want to shift gears with you and just talk
12 a little bit about the methodology that your organisation employs,
13 and I believe you spoke about it at some length yesterday. And I
14 believe you highlighted the importance of methodology for the work of
15 the Human Rights Watch; is that right?

16 A. That is correct.

17 Q. And I think you told the Panel, just for reference sake, and I
18 believe this is at page 113 of yesterday's provisional transcript,
19 lines 22 and 23:

20 "I also am responsible for supervising our training of research
21 staff, onboarding new staff and teaching them our methodology."

22 Do you recall that?

23 A. Yes, I do.

24 Q. And one of the most important functions that you have for Human
25 Rights Watch is to document the human rights violations around the

1 world; is that right?

2 A. That is correct.

3 Q. And yesterday -- and, again, bear with me as I go in through
4 your transcript. Yesterday, at provisional transcript page 118,
5 lines 1 to 10, you noted that the core work -- and this is actually
6 on page, line 9. You noted that the core pillar work of the Human
7 Rights Watch is to interview witnesses and, where possible, alleged
8 perpetrators; is that right?

9 A. Yes.

10 Q. And the document -- the methodology, I believe, and stop me if
11 I'm incorrect in any of this, okay? This is my distillation, if you
12 will, of your testimony yesterday. So my understanding is you create
13 a documentary record of what human rights investigators have seen and
14 heard. You take notes of what witnesses on the ground and alleged
15 perpetrators, when possible, I think you said, have told you -- is
16 that right?

17 A. That's correct.

18 Q. So it's important that you document these individuals instances
19 with note-taking and reports for future reference; right?

20 A. Yes.

21 Q. And the reason this is important is so you can, down the line,
22 have a frame of reference from those notes, et cetera, to provide
23 information to courts or any other entity that might seek that
24 information; right?

25 A. That's correct.

1 Q. Now, yesterday you spoke to us -- and I'm moving ahead to page
2 123 in yesterday's transcript. Beginning on page 123, you noted that
3 "there were cases where I ... conducted interviews" with victims and
4 witnesses who had expressed fear about speaking to you about alleged
5 KLA crimes. Do you recall that?

6 A. Yes, I do.

7 Q. And as you sit here, sir, and we can move into private session
8 if need be, can you give us the names of these victims and witnesses?

9 A. Sitting here at this moment today, I cannot, no.

10 Q. Well, you must have taken notes at those meetings, did you not,
11 when victims told you about these fears of reprisals?

12 A. Yes, I would have done.

13 Q. Did you review those notes in preparation for your interviews
14 with the SPO?

15 A. No, I did not.

16 Q. Did you review those notes in preparation for your testimony
17 before this Trial Chamber?

18 A. No.

19 Q. So you are talking to us about fear of victims or individuals
20 and, as you sit here, you haven't reviewed the notes in preparation
21 for your testimony for the SPO, you haven't reviewed your notes in
22 preparation for this testimony, and you can't tell us who those
23 alleged victims are; is that right?

24 A. I -- yes, the first part of the -- of your comment or your
25 statement is correct. But I do recall with certainty that

1 individuals expressed to me this concern. I have no doubt about
2 that.

3 Q. Well, you would agree with me, Mr. Abrahams, that it is
4 important to have an understanding about who is expressing those
5 concerns, when those concerns are expressed, and where; isn't it?

6 A. I am giving you my reflections and memories from the research in
7 its entirety. And I am certain that both formal interviews and what
8 I would call informal conversations from my six years of this work
9 contained and included communications of that sort and people who
10 expressed or made their fears understood about talking about those
11 crimes. With this, I have no hesitation.

12 Q. With all due respect, that was not my question. And if we can
13 go back, and I can ask you my question again, and say -- and I'll
14 read it back to you:

15 "... you would agree with me, Mr. Abrahams, that it is important
16 to have an understanding about who is expressing those concerns, when
17 those concerns are expressed, and where; isn't it?"

18 A. I would agree with you that it's important to have those
19 specifics. You mean for -- for what purpose, sir?

20 Q. If you give testimony concerning the fear that you're talking
21 about, it is important for us to understand who these people are,
22 when they gave this statement, and where they gave this statement;
23 isn't that right?

24 A. Yes, I agree --

25 Q. Okay.

1 A. -- with that.

2 Q. And we have none of that today or yesterday, do we?

3 A. You have our reporting which references our investigations.

4 Q. Sir, where the notes of these interviews?

5 A. The notes from my Kosovo work are dispersed in a couple of
6 places but in the United States, because I no longer live in the
7 United States.

8 Q. Well, you still work for Human Rights Watch, don't you? You
9 have access to those notes, don't you?

10 A. I could find them if I needed to, yes.

11 Q. Okay. But you didn't in preparation for this testimony or your
12 interview with the SPO, as I understand you; is that right?

13 A. For this testimony, definitely not. To the best of my
14 recollection, not for the statement. I may be -- now I don't know
15 if -- I'm not 100 per cent certain if I didn't consult them when I
16 gave my statement. I'm now reflecting on my previous answer. I'd
17 have to think about them. I don't believe so. But for this
18 appearance here today, definitely not.

19 Q. And did the SPO at any point in your interviews with the
20 Prosecutor's Office ask you to produce those notes?

21 A. To produce the notes, no. And I would not have obliged.

22 Q. And did the Prosecutor ask the Human Rights Watch to produce
23 those notes?

24 A. No, and the organisation would not have obliged.

25 Q. Well, in fact, the organisation, you have testified previously,

1 it would have been reviewed by the legal department in your office to
2 determine what the answer to that request would be; isn't that right?

3 A. What would have been reviewed?

4 Q. If the SPO had asked for the notes from Human Rights Watch of
5 your interviews of victims, the legal department in the Human Rights
6 Watch would have reviewed that request; correct?

7 A. The general counsel's office. Yes, that's correct.

8 Q. I stand corrected, the general counsel's office.

9 A. But you are correct.

10 Q. Okay. And that never happened, did it, because the request was
11 never made?

12 A. To the best of my knowledge, it was not made. No.

13 Q. Now, you also talked to us a bit about collaborators. And I
14 think that you had some discussion about that yesterday.

15 MR. KEHOE: And if I can just get this page correct, Judge, from
16 yesterday's transcript. If I can have one moment. In my dyslexic
17 writing, it wrote it down -- it's page 131 and not what I -- I don't
18 want to tell you what I wrote. But in any event, it is at page 131
19 of yesterday's transcript.

20 Q. And you begin to talk about collaborators, and you were asked by
21 Mr. Tieger whether you had received information about the KLA
22 labelling or targeting people as collaborators. And I believe you
23 said on page 132 that:

24 "... we also, as an organisation, conducted interviews of family
25 members who had had a relative who they alleged had been abducted and

1 targeted because of perceived or alleged collaboration."

2 Do you recall that?

3 A. Not specifically, but I take your word you're reading accurately
4 from the transcript.

5 Q. I'm doing my best. It is for -- if anybody thinks it is
6 different, it's line 14, page 17 of yesterday's transcript.

7 Now, did you personally conduct any such interviews with family
8 members?

9 A. Family members of people who alleged to have been -- that a
10 family member was abducted on accusations of collaboration, is that
11 your --

12 Q. Yes, that's the question.

13 A. -- question? I cannot testify that I did because I don't have
14 specific recollections of me personally. However, my colleagues,
15 yes, for sure.

16 Q. Well, so as you sit here today, do you know who these family
17 members are that gave such interviews to the Human Rights Watch?

18 A. If I looked back through our reporting, I might be able to shed
19 light on that.

20 Q. Well, as you sit here absent that, can you give us any names
21 so we can go into private session?

22 A. No, I am not able to provide you names sitting here from those
23 interviews.

24 Q. And I take it from those interviews that notes were taken as
25 well?

1 A. Yes.

2 Q. And, again, as with the other questions I asked, did you review
3 those notes about people who gave evidence concerning collaborators?
4 Did you review those notes prior to giving your statement to the SPO?

5 A. As I mentioned, prior to giving the statement, I don't recall.
6 I really cannot remember if I went back to my notes. The statement
7 was some time ago. But for appearing here today, definitely not.

8 Q. And, again, those notes are at Human Rights Watch; is that
9 right?

10 A. These notes are in my possession. But, you know, we will not
11 share them with the Prosecutor or anyone else. We consider them
12 privileged material.

13 Q. So the individual notes are in your possession. You didn't
14 review them prior to the SPO interview nor prior to your testimony
15 here today. Is that right so far?

16 A. Well, I am not certain that I didn't review them prior to giving
17 my statement.

18 Q. Okay.

19 A. I cannot recall.

20 Q. Then when and where did you do that?

21 A. Do what?

22 Q. When and where did you review those notes?

23 MR. TIEGER: I'm afraid there is a misunderstanding. I think
24 the witness said at least twice, maybe three times, that he does not
25 remember whether or not.

1 PRESIDING JUDGE SMITH: That is a correct statement. He didn't
2 say he did it. He said he could not remember whether he did or not.

3 MR. KEHOE: Then I stand corrected, Your Honour.

4 Q. So with regard to those notes that you have, that human
5 rights -- again, did the SPO request disclosure of those notes from
6 either you or Human Rights Watch?

7 A. No. And we would have let the Prosecution know that we consider
8 this privileged material and would not hand it over.

9 Q. Okay. And that was not your decision, was it? As you
10 previously testified, that would have been a decision that would go
11 to the general counsel of Human Rights Watch for his or her decision;
12 correct?

13 A. It is organisational policy not to share privileged material.

14 Q. Again -- I'll ask the question again. And that request would
15 have gone to the human rights counsel, in-house counsel for that
16 final decision as to if they should disclose any part or anything
17 related to those notes; isn't that right?

18 A. That's correct.

19 Q. And that request was never made by the SPO, was it?

20 MR. TIEGER: Asked and answered.

21 MR. KEHOE: No, we're dealing with a different point.

22 PRESIDING JUDGE SMITH: Go ahead. Answer the question.

23 THE WITNESS: To the best of my knowledge, that request was not
24 made.

25 MR. KEHOE: Thank you.

1 PRESIDING JUDGE SMITH: Let's take the morning break, please.

2 Mr. Abrahams, we will take a half-hour break at this time. The
3 Court Usher will escort you out of the room. We'll see you back here
4 at 11.30.

5 [The witness stands down]

6 --- Recess taken at 11.02 a.m.

7 --- On resuming at 11.30 a.m.

8 PRESIDING JUDGE SMITH: Madam Usher, please bring in the
9 witness.

10 [The witness takes the stand]

11 PRESIDING JUDGE SMITH: [Microphone not activated].

12 We will continue with your testimony now. Mr. Kehoe still has
13 the floor on cross-examination.

14 MR. KEHOE:

15 Q. Mr. Abrahams, welcome back. I hope you've had a bit of a rest.
16 I just want to continue on with following some of the issues that you
17 have addressed both yesterday and today. And I'd like to first
18 address this meeting with President Thaci and Mr. Limaj that you told
19 us about.

20 And I think you told us yesterday, and, again, this is at page
21 141, lines 1 and 2, that you requested a meeting with KLA
22 representatives to discuss the two Tanjug journalists and other
23 matters; is that right?

24 A. Yes. And other matters.

25 Q. And, ultimately, this led to the meeting that we talked about

1 yesterday and today on 10 November 1998; right?

2 A. Correct.

3 Q. And did you view Mr. Thaci or Mr. Limaj as potential
4 perpetrators either before, during, or after the meeting?

5 A. Before the meeting, certainly not. I was not familiar with
6 either of them or their names. And during the meeting, also not. We
7 were there to introduce ourselves, to raise our concerns, to hear
8 from them. And we also walked away encouraged by the engagement, the
9 fact that we had a line of communication, that we had begun to raise
10 issues of concern around human rights in the hope this would lead to
11 improved protections.

12 Q. And this particular interview, among other things, was asked for
13 by you and on behalf of Human Rights Watch and Mr. Bouckaert, I
14 believe that's how you pronounce his name.

15 A. Correct.

16 Q. Both you and he were together?

17 A. Correct.

18 Q. And there was a translator there as well?

19 A. Correct.

20 Q. And that was [REDACTED] Pursuant to In-Court Redaction Order
21 F01770RED.; is that right?

22 A. I mean, I don't feel comfortable confirming or denying that
23 without his consent.

24 MR. KEHOE: Can we go into private session, Your Honour, just
25 briefly.

PRESIDING JUDGE SMITH: Please into private session,

Witness: W04408 (Resumed) (Private Session)

Page 7378

Cross-examination by Mr. Kehoe

1 Madam Court Officer.

2 [Private session]

3 [Private session text removed]

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Witness: W04408 (Resumed) (Private Session)

Page 7379

Cross-examination by Mr. Kehoe

1 [Private session text removed]

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Witness: W04408 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

1 [Private session text removed]

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1 [Private session text removed]

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3 [Open session]

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

5 MR. KEHOE: I'm sorry.

6 If we can just put this document back up on the screen. It's
7 IT-03-66 P212.7. I do believe that an exhibit number has been given
8 to this already.

9 THE COURT OFFICER: P375.

10 MR. KEHOE: If we can just put that on the screen briefly.

11 Q. So this is P375. And, of course, Mr. Abrahams, you're glad to
12 read it, but I know you know what's in it already. This was the
13 document you talked about with Mr. Tieger yesterday, dated 24 October
14 1998, expressing concern about these detentions and condemning the
15 detentions; is that right?

16 A. Correct.

17 Q. And, again, this was a document -- I think -- well, let me
18 withdraw that question. I think you told us yesterday in response to
19 some questions by Mr. Tieger that the methodology of the Human Rights
20 Watch is to issue information to as many outlets as possible, media,
21 et cetera, and/or the people who were potentially involved; is that
22 right?

23 A. That is correct. Depending on the context and the situation.

24 Q. And this particular press release, I guess it was, was likewise
25 sent out to media sources throughout Kosovo -- at least Kosovo; is

1 that right?

2 A. That's correct.

3 Q. Before your meeting on 10 November 1998, you would agree with me
4 that there was a lot of information out there -- or information out
5 there concerning the detention of these Tanjug reporters, and it was
6 known in the international community that this had occurred; right?

7 A. That's correct.

8 Q. So when you came to the meeting with Mr. Thaci and Mr. Limaj,
9 this is information that you came with that we're talk -- we're
10 coming here to talk to you about a topic that most people know about;
11 right?

12 A. I'm not sure about most people, but it was known by those who
13 follow human rights issues related to the conflict. This case was
14 known.

15 Q. Understood. So I presume in conducting your discussion with
16 Mr. Limaj and President Thaci, you wanted to find out what was going
17 on and what happened; right?

18 A. That's correct. And how if there were human rights concerns
19 related to the case.

20 Q. And I presume that you took notes during that meeting about what
21 was said with President Thaci and Mr. Limaj; right?

22 A. I'm not sure. I believe so, but I'm not certain that we did.

23 Q. So you're not certain that notes were taken?

24 A. It would have been common practice. What I do recall very
25 clearly is writing a memo after the meeting to my supervisors

1 explaining the exchange.

2 Q. Well, you would agree with me that the reason why you take notes
3 during the course of an interview was to ensure that you had some
4 basis upon which to file some subsequent memo, et cetera; is that
5 right?

6 A. I wouldn't have called this meeting an interview, and it's
7 different from -- certainly different from interviews where we're
8 gathering evidence of abuses from witnesses and victims. But in this
9 case, I don't recall if we took notes or not, but I do know that we
10 enshrined, I guess you would call it, I'm not sure this is the right
11 term -- well, no, contemporaneous notes would be during the meeting,
12 but after the meeting that I wrote a memo.

13 Q. Well, Mr. Abrahams, before you came here today, did you go and
14 look for those notes and review them?

15 A. Prior to this --

16 Q. Prior to this --

17 A. -- appearance?

18 Q. -- testimony in this courtroom yesterday, 5 September, and
19 today, 6 September 2023. Did you do that?

20 A. To look for my notes, no. I did look for the memo.

21 Q. My question is with regard to the notes. Did you look for the
22 notes? No.

23 A. No.

24 Q. And the notes were the contemporaneous note-taking that you
25 might have taken when you were sitting down with Mr. Thaci and

1 Mr. Limaj; right?

2 A. The notes -- I'm not sure of the question.

3 Q. Well, the notes are taken during the course of the discussion
4 with these --

5 A. Yes.

6 Q. -- individuals; right?

7 A. That's correct.

8 Q. And, by the way, did you find this memo that you're talking
9 about?

10 A. No. Unfortunately, I did not.

11 Q. Well, do you know if it exists?

12 A. Well, it certainly existed because I wrote it.

13 Q. Okay.

14 A. But I was not able to discover -- to find it.

15 Q. So to be clear, you didn't go back to see if -- or review any
16 notes if you have any, and you didn't review any memo you say that
17 you produced after this meeting; right?

18 A. I reviewed our published material.

19 Q. When we go back to -- excuse me. By the way, when we go back to
20 the issue of either the notes -- and better still, let's just stay
21 with the memo. Where did you look for?

22 A. Through my archives, digital archives, but which unfortunately
23 didn't go back that far because we've upgraded systems in the 25
24 years since that time. And I even contacted -- I believe she's
25 mentioned here. My supervisor at the time was Ms. Holly Cartner.

1 She was -- and I asked her if she had -- if she could find it, and
2 unfortunately she could not.

3 Q. So there is no notes, no memo, and you're not sure if, in fact,
4 you actually took notes during the course of this meeting; right?

5 A. Correct.

6 Q. Would it surprise you to say -- well, let's go to
7 Mr. Bouckaert's statement to the ICTY.

8 MR. KEHOE: And that would be U0081334 to U0081346, and we're
9 looking at paragraph 36 -- excuse me, looking at paragraph 7. I'm
10 sorry, paragraph 7. If I said 36, I'm mistaken. It was paragraph 7.

11 Q. This is your colleague Mr. Bouckaert, and he told the ICTY, if I
12 can get the date, back in 2004, that:

13 "No written record or notes were kept of the meeting ..."

14 Do you see that?

15 A. Yes, I do.

16 Q. "No written record," and that would encompass any notes as well
17 as any other documentation as a result of this meeting according to
18 Mr. Bouckaert.

19 MR. TIEGER: Objection. I don't know how -- the transcript
20 speaks for itself. I don't think it bears the -- necessarily bears
21 the interpretation that counsel is putting on it.

22 PRESIDING JUDGE SMITH: Sustained.

23 MR. KEHOE:

24 Q. Well, so would you agree with Mr. Bouckaert that no written
25 record or notes were kept of this meeting?

1 A. This is consistent with my view. I do not recall if we took
2 notes. And I note Mr. Bouckaert's comments here. So I cannot
3 confirm that we took notes, no.

4 Q. And you would agree with me that 2004, it's self-evident, is
5 much closer to the events than we sit here in 2023?

6 A. I agree with that, yes.

7 Q. By the way, who did you write this memo to?

8 A. It certainly would have been addressed to my supervisor, who was
9 Ms. Cartner, who I mentioned, and who I contacted. And it's possible
10 there were people in CC, in copy, other managers in the organisation
11 at the time, but that I don't recall.

12 Q. Well, did you check with those people to see if they had it?

13 A. No, I did not.

14 Q. Now, when he writes here that no -- if I may, that no written
15 record was made, that would incorporate the memo that you are talking
16 about as well, wouldn't it?

17 A. No, I believe he is here referencing notes from the meeting.

18 Q. Okay. Well, what it says is that:

19 "No written record or notes were kept of the meeting ..."

20 And you're saying to me that that does not envision the
21 subsequent memo that you allegedly wrote to your supervisor; is that
22 right?

23 A. No, I -- I believe he's referencing notes taken
24 contemporaneously, but I did write a memo that summarised the
25 contents or the conversation.

1 Q. Again, with regard to this memo that you allegedly wrote to your
2 supervisor, did you check Human Rights Watch archives for this?

3 A. Yes, I did.

4 Q. And you couldn't find it there because it had pre-dated your
5 record keeping; is that right?

6 MR. TIEGER: Well, I didn't want to interrupt before, but now
7 counsel is asking questions that he already knows he received an
8 answer to because he's following up with the answer he received.

9 MR. KEHOE: Then I'm moving on to this --

10 PRESIDING JUDGE SMITH: It has been asked and answered.

11 MR. KEHOE: That's fine, Judge. And I'm just moving this as a
12 segue to the next topic. Excuse me.

13 So I'm reminded of one last question on this, Judge, which I
14 probably inarticulately answered before, and if I could just have
15 some leave to clarify my question.

16 PRESIDING JUDGE SMITH: [Microphone not activated]

17 MR. KEHOE: Okay.

18 PRESIDING JUDGE SMITH: [Microphone not activated]

19 MR. KEHOE: I think you got to put the microphone on, Judge.

20 PRESIDING JUDGE SMITH: Go ahead. We'll see how it comes out.

21 MR. KEHOE: Okay.

22 Q. Now, when you said you searched the archive, you searched your
23 own personal archive?

24 A. Correct.

25 Q. And does that -- so you searched your personal archive and you

1 searched the human rights archive, both?

2 A. They are largely one and the same because everything that I had
3 maintained from my work in Kosovo was either in e-mail or on -- in my
4 digital archive, and that is what I searched, because I was the
5 primary researcher responsible for Kosovo at that time.

6 Q. So anything that you had was digitised, and anything that was
7 left on your computer is gone; is that right?

8 A. I'm sorry, I don't understand the --

9 Q. Well, if you said -- if you said you sent it to others, it may,
10 for instance, be in the New York archives; right?

11 A. It would be ostensibly in there in people's e-mail inboxes,
12 which is why I contacted Mrs. Cartner.

13 Q. And that's one. And she didn't have it either?

14 A. She did not have it.

15 Q. Now, let me show you some matters that you called upon to talk
16 about this morning, and I want to show you what is marked as
17 Exhibit P376, which is the human rights report.

18 MR. KEHOE: Can you put that on the screen for me, please. Do
19 we have the wrong number? 376? I think that's the Human Rights
20 Watch report. Am I incorrect about that? The two pages that counsel
21 had put into evidence this morning. Let me check my notes.

22 It's 377. I stand corrected, Judge.

23 PRESIDING JUDGE SMITH: Yes, that's the two pages. It's 377.

24 MR. KEHOE: I stand corrected. I thought it was 376.

25 Q. [Microphone not activated].

1 A. Your microphone, counsellor.

2 Q. Thank you. The Judge and I do that from time to time. And the
3 report includes the information that was charged.

4 MR. KEHOE: And if you can just blow up that particular
5 paragraph that Mr. Tieger was talking about this morning. We can put
6 it on the full screen because I don't think there is ... I think it's
7 on page 2 of this document. No. Can you just flip back? Yeah, flip
8 back, please. On the bottom -- yeah, there we go. In October.
9 That's it.

10 Q. And on this page, this is the page where you say that the -- in
11 this meeting, that:

12 "The KLA subsequently confirmed that they were in KLA detention
13 and facing charges of spying. In early November, the two journalists
14 were charged with sixty days in 'KLA prison No. 7' after a trial
15 that, based on the KLA's own information, failed to meet
16 international standards ..."

17 Now, if we turn down -- and I believe if we get to the end of
18 that, the footnote that you have to support that, in footnote 65 --

19 MR. KEHOE: No, it's the -- I think it's the prior page,
20 footnote 65.

21 THE WITNESS: No, it's the --

22 MR. KEHOE: Oh, there it is. Okay.

23 Q. So footnote 65, that is your interview with Mr. Thaci and
24 Mr. Limaj on 10 November; right?

25 A. That's correct.

1 Q. Okay. Now, let me show -- you were also shown by Mr. Tieger
2 P378. And that was the press release issued by the KLA on
3 November -- 1 November 1998.

4 MR. KEHOE: Put that on the screen, Madam Officer. And if we
5 can --

6 Q. I would just note in here, this particular document, issued on
7 the 1st, ten days before your meeting with Mr. Thaci and Limaj, the
8 KLA released the same information, that the Military Court of the
9 Justice Directorate of the KLA General Headquarters had issued a
10 60-day sentence to each so-called journalist and that they will be
11 transferred to Prison No. 7.

12 Now, do you recall testifying in response to some questions by
13 the Prosecution that you do not recall seeing this document before
14 you published. And I assume you're talking about the human rights
15 report that we just looked at in Exhibit 377. What you said was:

16 "So, no" --

17 This is page 16 of today's transcript, lines 20 to 21:

18 "So, no, I don't believe I saw this prior to our publication."

19 Is that right?

20 A. I recall that, yes.

21 Q. So you're saying you didn't see this article before your
22 publication that we looked at just on those two pages; right?

23 A. I'm saying I don't recall seeing it before publication.

24 Q. I would like to show you Mr. Bouckaert's testimony in the Limaj
25 trial.

1 MR. KEHOE: And that would be DHT01827 to DHT01940. And I want
2 to begin on page 01898. And if we can begin on line 3.

3 Q. And this is Mr. Bouckaert testifying in the Limaj trial, and it
4 says:

5 "And before we continue on that, just looking back over what you
6 have just told us about the discussion about the two journalists.
7 You say 'they,' they responded, speaking of the two KLA
8 representatives. If you can, please be more clear [as to] who was
9 speaking?

10 "A. [As] I recall ... both of them actively participated in
11 this discussion and both familiar with the details of this trial.
12 And we had specifically asked our intermediary for a meeting with the
13 KLA to discuss this case ... I believe that Mr. Celiku was part of
14 the KLA delegation at this meeting because he was in charge of the
15 legal department."

16 Now, just stopping there for a moment, you agree with
17 Mr. Bouckaert that it was Mr. Celiku who said he was in charge of the
18 legal department and not Mr. Thaci. Is that right?

19 A. No, it's Celiku.

20 Q. Celiku.

21 A. Celiku. And, yes, he was -- he introduced himself as the head
22 of the judicial department or the legal department. I take those to
23 be the same.

24 Q. And the question goes on:

25 "And you say that there's a reference to more potentially --

1 charges potentially more serious than spying. Do [you] understand
2 from that that spying was the charge that these persons were
3 convicted of or was that explained or addressed?

4 "A. Yes."

5 A. Can we scroll down?

6 Q. Oh, I'm sorry.

7 MR. KEHOE: If we can just keep scrolling down.

8 Q. I'm reading the actual transcript, and my apologies. I'll try
9 to be more sensitive to that, Mr. Abrahams.

10 So you're back with me?

11 MR. KEHOE: If we can just go back -- stay right there.

12 Q. So I was just reading down from line 12, if you can catch up
13 with me there. Okay?

14 A. Mm-hm.

15 Q. So going to line 12:

16 "And you say that that there's reference to more potentially --
17 charges potentially more serious than spying. Do we understand from
18 that that spying was the charge that these persons were convicted of
19 or was that explained or addressed?

20 "A. Yes. Through our sources we already knew that the men had
21 been convicted of spying and sentenced to 60 days in KLA prison
22 number 7 which is a prison that we were not familiar with and we
23 didn't know the location of that prison.

24 "Q. If you could be a little more clear ..."

25 Do we need to scroll down there?

1 A. You're fine.

2 Q. Okay.

3 "If you could be a little more clear about that. Who told you
4 about -- who told you that they were being held in prison number
5 seven?

6 "A. They were -- it was through journalists at Koha Ditore that
7 we received this information. I'm not sure if [it was] issued a
8 formal statement affirming this or not.

9 "Q. Just so we're clear --

10 MR. TIEGER: Sorry, counsel, you just -- that wasn't accurately
11 read and it may --

12 MR. KEHOE: I'll read it again.

13 PRESIDING JUDGE SMITH: You skipped the word "KLA," counsellor.

14 MR. KEHOE: I'm sorry. I apologise.

15 Q. So:

16 "They were -- it was through journalists at Koha Ditore that we
17 received this information. I'm not sure if the KLA issued a formal
18 statement affirming this or not.

19 "Just so we're clear, was there a reference to prison number 7
20 during this meeting?

21 "A. I'm not sure if the actual location was discussed.
22 However, we did ask for -- after -- I should continue with the
23 chronology of the meeting."

24 Now, do you agree with Mr. Bouckaert that it was the journalists
25 at Koha Ditore who told you that the two so-called journalists were

1 being held in Prison No. 7?

2 A. I -- it's not that I agree or disagree. I do not have that same
3 recollection. No. I cannot speak to what Mr. Bouckaert was
4 referencing here. And I do not recall if we went into that meeting
5 with knowledge of the detainees, the journalists, being held in
6 Prison No. 7 or not. I do recall asking for access, but I do not
7 recall if we had this information prior to the meeting.

8 Q. So, you know, thank you. But like Mr. Bouckaert, you're
9 uncertain, are you not, whether the transfer of the two so-called
10 journalists to Prison No. 7 was discussed during this meeting; isn't
11 that right?

12 A. That's correct. About Prison No. 7, I do not recall if that was
13 discussed.

14 Q. And in your published human rights report --

15 MR. KEHOE: If we can go back to Exhibit P377.

16 Q. So this is again going to footnote 65. And it is clear -- if
17 you go to the next page, on footnote 65. It is clear that you
18 attributed the information about the 60-day sentence and the transfer
19 to Prison No. 7 to your meeting with Mr. Thaci and Mr. Limaj
20 according to your footnotes; right?

21 A. It's a little difficult for me because I'm looking at footnote
22 65 without the corresponding text.

23 Q. And then we'll flip back up. You know, sometimes -- I mean
24 [indiscernible] review articles, et cetera, it kind of bleeds over.

25 MR. KEHOE: If we can go back to where footnote 65 on the prior

1 page is noted.

2 Q. It goes through -- the information that we talk about and then:

3 "Although two representatives of the KLA General [Staff],
4 members of the political and judicial directorate, told Human Rights
5 Watch that the trial was fair, and that the defendants had not been
6 mistreated" --

7 A. Right.

8 Q. -- "they admitted that the defendants had not had legal
9 representation and that they had not been present at ... trial. A
10 Human Rights Watch request to visit the detainees was denied for
11 reasons of 'military secrecy.'"

12 For all of that information, you footnote footnote 65, which is
13 just this interview.

14 A. I am not sure that's correct. The footnote 65 is after the
15 second sentence.

16 Q. Well, let's go back then to the prior page. Go back to the
17 bottom. Okay. Let's go to this:

18 "The KLA subsequently confirmed that they were in KLA detention
19 and facing charges of spying. In early November, the two journalists
20 were charged with sixty days in 'KLA prison No. 7' after a trial
21 that, based on the KLA's own information, failed to meet
22 international standards of due process."

23 Where did that information come from?

24 THE INTERPRETER: The counsellor is kindly ask to slow down when
25 reading for the purposes of interpretation. Thank you.

1 MR. KEHOE: And my apologies to the folks in the interpreters'
2 booth.

3 Q. If I may just read that again, Mr. Abraham, so the interpreters
4 can get it all.

5 "The KLA subsequently confirmed that they were in KLA detention
6 and facing charges of spying. In early November, the two journalists
7 were charged with 60 days in 'KLA prison No. 7' after a trial that,
8 based on the KLA's own admission [sic], failed to meet international
9 standards of due process."

10 So where did that come from if it didn't -- if it -- I withdraw
11 that. Where did that come from?

12 A. So this sentence is not footnoted. And there are two parts to
13 it, though, to answer your question. The second part is, you know,
14 "based on the KLA's own information," that would have stemmed from
15 the meeting, because it was the information provided to us about the
16 defence and right to appeal and other concerns that we raised.

17 In reference to KLA Prison No. 7, I'm not sure. To the best of
18 my recollection, it wasn't raised in the meeting. So it's possible
19 that came from the statement, the communiqué, the public communiqué.
20 I do not recall precisely where we obtained that information.

21 Q. So is it your statement that they did not talk about Prison
22 No. 7 in the meeting?

23 A. No. My statement is I do not recall discussing Prison No. 7 in
24 the meeting.

25 Q. So we have no footnote there. You will agree with me that this

1 line "failed to meet international standards of due process," that
2 did allegedly come from your meeting; right?

3 A. Which? "Failed to meet" -- yes, correct.

4 Q. So let me say -- let's just circle back to this. So you write
5 this report, footnote this, prepared from virtual memory, because you
6 didn't make any notes at the time of this meeting; is that right?
7 That's where we are here?

8 A. I would categorise it differently. Mr. Bouckaert and I
9 discussed this meeting immediately thereafter. No doubt. And this
10 was a significant event, I would stress. One that I remember to this
11 day. It was an important moment to meet relevant and important
12 figures within the KLA. And then I prepared the memo for my
13 supervisors.

14 So the information gleaned from that meeting, I have a high
15 degree of confidence in what has been remembered and relayed about
16 that engagement.

17 Q. Tell me, sir - and we've established that you don't have the
18 notes, you don't have the memo - I mean, is it proper for the Human
19 Rights Watch to document meetings and interviews of this calibre if
20 it has no central place where those notes and memos are stored?

21 A. This is consistent with our practices, that the individuals
22 involved, in this case two researchers, recalled the meeting in ways
23 that were deemed accurate and acceptable.

24 Q. Isn't it possible, Mr. Abrahams, that you just don't want these
25 notes to come out?

1 A. The reason for considering our notes privileged is to enable us
2 to do our work in conflicts and countries around the world securely
3 and accurately and respecting the confidentiality of sources when
4 required.

5 Q. Now, sir, the actual individuals that you have spoken about --
6 MR. KEHOE: If we can put Exhibit 300 on the screen.

7 Q. If I may, and I just -- if I can just ask one last question
8 based on your prior answer. By the way, did you copy Mr. Bouckaert
9 on the memo that you wrote?

10 A. I cannot recall.

11 Q. And just to round this out. We now have a report that we are
12 looking at in 2023. You know, frankly, what's the point of
13 documenting human rights violations if you can't find the supporting
14 documents when you need them?

15 A. I'm sorry. I'm not understanding the question. 2023?

16 Q. Well, you have a document that you are testifying for in this
17 courtroom and making certain allegations concerning my client. And
18 my question for you is: What's the point of Human Rights Watch
19 looking at these and reporting this if you can't find supporting
20 documents when you need to?

21 MR. TIEGER: Objection. Argumentative. And all the relevant
22 factors have been asked and answered.

23 PRESIDING JUDGE SMITH: Overruled.

24 MR. KEHOE: I'll withdraw the question.

25 PRESIDING JUDGE SMITH: You can answer it.

1 MR. KEHOE:

2 Q. Let me -- please, answer the question. What's the point?

3 A. The point is to understand the facts and to promote and achieve
4 accountability for serious crimes.

5 Q. And that is in the face of your inability to retrieve the
6 documents or memoranda that you wrote to support those allegations;
7 is that right?

8 A. It's in the face of our public reporting, my professional
9 experience, and my recollections.

10 Q. Let me shift gears to the actual detention itself, and let me
11 put Exhibit 300 -- 300's on the screen. And this is a document
12 concerning the two alleged Tanjug reporters. And it notes that, this
13 issuance of this document, that:

14 "After the sign was given to them to stop, they stopped after a
15 delay, thus allowing them to hide their identities. This also led to
16 doubts about their identity; that is, not believing that they are
17 journalists and that the purpose of their visit is espionage."

18 Now, prior to your meeting in 10 November 1998, if I may, were
19 you aware of these particular individuals, and specifically
20 Mr. Dobricic, that he was, in fact, involved in war activities with
21 the Republic of Serb Krajina in around the Benkovac area, for which
22 there were numerous murders for which numerous people were convicted?
23 Were you aware of that?

24 A. I don't know that to be true, and I never heard that allegation.
25 But I also don't know if it's accurate.

1 Q. Well, in talking -- you've testified in other locales. I mean,
2 were you told by anybody at the ICTY that people considered or that
3 people concluded that Mr. Dobricic was a hardcore Chetnik, and not
4 only was he involved in these Benkovac murders in 1991 but that he
5 had been moving guns to the Serbs in Bosnia in 1992? Were you aware
6 of that?

7 A. Well, I've never heard those allegations, no.

8 Q. Did you bother, before you went to talk to Mr. Thaci and
9 Mr. Limaj, to learn something about these reporters; and if, in fact,
10 you did, who did you speak to?

11 A. We went into that meeting exactly to understand the specifics of
12 the case.

13 Q. Well, your colleague noted that he had read a newspaper article
14 concerning these events, this document that we have been talking
15 about, the article from 1 November, I believe it was. So did you --

16 MR. TIEGER: This is a minor objection, but I don't think that
17 was stated in the transcript. I think it said: We learned it
18 through journalists, rather than they read the document itself. It
19 may not be more important, but I think it is more accurate.

20 PRESIDING JUDGE SMITH: Let's be as accurate as possible.

21 MR. KEHOE: Absolutely.

22 Q. You know, your colleague Mr. Bouckaert noted in his testimony
23 that he had learned about Prison No. 7 and this detention from
24 journalists -- other journalists, to be as accurate as we possibly
25 can. In the spirit of talking to people and journalists about what

1 had -- these two individuals, did you take any steps to find out who
2 they were?

3 A. We went into the meeting giving an opportunity and with an
4 interest to learn who they were.

5 Q. So is the answer to my question that you did not ask anybody, on
6 the Serb side, for instance, or on the Kosovo Albanian side, who
7 these guys were?

8 A. We did ask two people in this meeting.

9 Q. No. Before the meeting -- I stand corrected. Before the
10 meeting, before you walked into that meeting, did you talk to
11 anybody -- let's start with the -- anybody on the Serb side or
12 anybody at Tanjug to ask you about Vladimir Dobricic,
13 D-o-b-r-i-c-i-c. Did you?

14 A. Dobricic.

15 Q. Dobricic.

16 A. No, I do not recall conversations about the backgrounds of these
17 individuals.

18 Q. And you didn't call anybody just -- your other journalist
19 friends, to find out who these guys were, did you?

20 A. Not that I recall, no.

21 Q. So you walked into a meeting talking with this guy, and they, in
22 fact -- you had no idea that Dobricic was alleged by the ICTY to have
23 been engaged in all this criminal activity; right?

24 A. At the time of the meeting, I do not recall having that
25 information. No.

1 Q. And you would agree with me that if there was any suspicion that
2 these guys were somebody other than they were, their detention would
3 have been proper; right?

4 A. So I need to make a distinction, which is between the charges
5 against them and the evidence to substantiate those charges. Well,
6 this is an important point, I think, to your question.

7 There's a distinction in my work between the charges and the
8 evidence to substantiate those charges and due process. And our
9 concern was with the latter.

10 Q. And you understand that when there is a suspicion of somebody,
11 that the detaining authorities have a period of time to attempt to
12 determine who these people are and what they were doing; right?

13 A. In general, yes.

14 Q. And you likewise understand that these two -- well, let me back
15 up. When you were travelling around in KLA areas, you obtained a
16 pass from Mr. Demaci; right?

17 A. That's correct.

18 Q. Did you understand that when these people -- these two
19 individuals were travelling around, that they had no such
20 authorisation from Mr. Demaci?

21 A. I was not aware of that, and I don't recall it being
22 communicated to us, but I certainly accept it to be a possibility.

23 Q. I mean, did you ask people, other than Mr. Thaci and Mr. Limaj,
24 which it doesn't appear you did, did you ask other people whether or
25 not these people had authorisation from Mr. Demaci to move in KLA

1 areas?

2 A. I don't recall that we did, and I am not disputing that they
3 could be detained on charges of espionage or other -- or for other
4 reasons [Overlapping speakers] ...

5 Q. Now, you noted for us in your conversation that Mr. Limaj had
6 identified himself as, what, a judicial person in some fashion; is
7 that right?

8 A. I believe it was head of the judicial directorate.

9 Q. And Mr. Thaci did not identify himself other than as a political
10 representative; right?

11 A. No, I believe he was the head of the political directorate.

12 Q. And we'll get into the accuracy of that later. But it is a
13 fact, sir, that -- when you say in their discussions that he
14 maintained that this was a civilian matter; is that right?

15 A. So there is some confusion around that because the term
16 "civilian" and "military" was used a bit interchangeably. My
17 recollection is that they said they could not intervene in a civilian
18 judicial process. But, on the other hand, there was talk of military
19 courts and military procedures. And even the statements, the
20 subsequent statements came from the military and referenced that.

21 Q. Okay.

22 A. So there's a bit of confusion there.

23 Q. Precisely. And it was Mr. Thaci that said to you that there
24 were not -- you have maintained that he said they weren't going to
25 get involved in civilian matters; right?

1 A. That's correct.

2 Q. Okay. And if we put Exhibit P378 on the screen, which is the
3 article dated 1 November 1998. And you read this, did you not, sir?

4 A. Here today I did, yes.

5 Q. Well, put it -- if you can read this, the first line. It says:

6 "'The Military Court of the Justice Directorate of the KLA
7 General Headquarters ...'"

8 It is a fact that President Thaci didn't know whether this was a
9 civil proceeding or a military proceeding, did he?

10 A. I can't testify to what he knew or didn't know.

11 Q. Well, he talked to you about civilian matters, and then this
12 document that was presented by the Prosecution talks about military
13 matters; right?

14 A. Well, as I said, I think there was -- there were -- there was
15 confusion and some mixed messages because, on the one hand, there was
16 talk about KLA holding these individuals; and on the other, that
17 there could not be action by the KLA in a civilian process. So
18 there's a bit of -- a bit of contradiction there.

19 Q. And I'm talking about President Thaci. Thaci is the one that
20 said that they are not -- you maintain that he said that he was not
21 going to get involved in civilian judicial matters; is that right?

22 A. Yes.

23 Q. It was Thaci?

24 A. To respect the independence of the judiciary.

25 Q. Of the civilian judiciary --

1 A. That's my --

2 Q. Right?

3 A. -- recollection.

4 Q. And this, P378, is talking about a military court, isn't it?

5 A. Yes, it is.

6 Q. And from that, as you sit here, it's quite clear that whatever

7 Thaci, he was talking about -- or whatever Thaci -- you guys were

8 talking about, assuming everything is accurate that you say, he

9 didn't know if this was a military court or a civilian court, did he?

10 A. I can't speak to what he knew or didn't know.

11 Q. Well, it's clear he was ignorant about these facts, wasn't he?

12 A. Not to me, no. He spoke in some detail about the case.

13 Q. And he got the most significant matter concerning this case,

14 according to your testimony incorrect?

15 A. I wouldn't call it the most significant matter, no.

16 MR. KEHOE: If I might have one moment.

17 Q. Did you or Mr. Bouckaert -- and let's just go back to that

18 document.

19 MR. KEHOE: And that would be Exhibit 378. If we can put that

20 on the screen. It's the one on the screen. Excuse me.

21 Q. Well, did you and Mr. Bouckaert ask Mr. Thaci why he was

22 referring to a civilian judiciary when the KLA clearly announced ten

23 days before that it was military? Did you ask him that?

24 A. I don't recall. I don't recall asking about that specific

25 reference. But I do recall having detailed conversations about the

1 proceedings, where both of these gentlemen had specific information
2 about the case.

3 Q. But, Mr. Abrahams, you would agree with me that under the most
4 fundamental issue of this case - i.e., where a case is being tried or
5 held - there are, by your own admission, two versions as to where
6 that took place, military or civilian, and my client, Mr. Thaci, said
7 civilian, when it's in fact military; isn't that right?

8 A. My understanding, then and now, is it was they were in military
9 detention, and the communiqués and this statement are consistent with
10 that.

11 Q. And my client didn't even know, in conversations with you,
12 according to you, that they were in fact in military detention, did
13 he?

14 MR. TIEGER: I think it's time to say asked and answered and --

15 MR. KEHOE: I'll move on, Judge. I'll move on.

16 PRESIDING JUDGE SMITH: Move on. Thank you.

17 MR. KEHOE:

18 Q. Now, they were talking -- in the midst of this conversation that
19 we don't have your notes and memo for, there is discussion about -- I
20 believe you said things happen during war, Mr. Thaci said; right?

21 A. Correct.

22 Q. And he also noted that structures, judicial structures, they
23 take some time to build up. He said that, did he not?

24 A. One of the two of them said that.

25 Q. Well --

1 A. Definitely.

2 Q. -- who said that?

3 A. I do not recall precisely, but it was a point that was made and
4 agreed to by both, regardless of who said it.

5 MR. KEHOE: Well, if we can go to the Bouckaert statement and on
6 paragraph 36.

7 Q. And I can just read it to you. It says at this stage --

8 MR. KEHOE: This is paragraph 36 of Bouckaert, counsel.

9 Q. "At this stage, Thaci explained that the UCK was a new army and
10 was just formalising its structures."

11 That was Mr. Thaci, wasn't it?

12 A. Yes. I agree with that.

13 Q. Okay. And he noted for you how difficult it is to set up these
14 structures during an ongoing combat -- or during ongoing combat that
15 they were having it with the Serbs; right?

16 A. That's correct.

17 Q. And, by the way, this is December 1998 --

18 A. November.

19 Q. Excuse me, November. My -- I stand corrected. Thank you. It's
20 November 1998. And to be fair, the KLA had a pretty rough go of it
21 from July, August, September into October, until the
22 Holbrooke-Milosevic cease-fire, if you will; right?

23 A. No doubt.

24 Q. And so militarily, this is a very, very difficult situation for
25 a combat force that is on its back foot; right?

1 A. I agree the conditions were tense.

2 Q. And do you have any idea what it takes to, in fact, set up a
3 judicial system and how long that takes?

4 A. I cannot speak from personal experience setting up a judicial
5 mechanism in that environment, but I readily admit that it is a
6 difficult task.

7 Q. Well, you do this throughout the world, sir, so you do know that
8 for an insurgent movement such as the KLA, which, by the way, I don't
9 want to put words in your mouth, grew up 1997 -- 1996, 1997, and
10 obviously became somewhat larger after the Jashari killings, that in
11 that very short period of time it is very, very difficult to set up
12 the proper structures, isn't it?

13 A. I agree with that, yes.

14 Q. And that what normally happens during combat situations, putting
15 aside the minimal cases that took place at the ICTY, most -- these
16 types of trials for crimes take place after the war is over; isn't
17 that right?

18 A. The challenge of building judicial mechanisms in that
19 environment is without doubt considerable, and it does not relieve
20 the parties from their obligations to respect the rights of
21 detainees. And this was the point we made in the meeting.

22 Q. And your point is taken. And my question is: The punishment
23 aspect of things like this is oftentimes quite difficult during the
24 course of a war, and most times it is undertaken once combat
25 activities stop; isn't that right?

1 A. I would answer that a little differently. The word "most," it's
2 very context-specific, and there are situations where discipline is
3 pursued and meted out by insurgent groups in a prompt fashion. There
4 are also allowances given circumstances. But what we look for as a
5 human rights organisation are indications and efforts to move in the
6 right direction, and that includes steps to investigate or to remove
7 people from service and otherwise help take steps to ensure they are
8 not in a position to commit abuses going forward.

9 Q. So, Mr. Abrahams, let us talk about this timeframe in -- your
10 having this conversation with Mr. Thaci and Mr. Limaj in November
11 1998 going in through the entire war. You would agree with me that
12 there were no laws, there were no prosecutions, there were no courts,
13 there was no civil structure at that point for the KLA to employ,
14 other than the Milosevic courts, to employ to bring people to trial
15 for crimes; isn't that right?

16 A. No, I wouldn't agree with that.

17 Q. And is it you're saying -- is it your position that the KLA did,
18 in fact, have laws -- excuse me, did, in fact, have laws upon which
19 to base investigations and prosecutions; and if so, what law are you
20 talking about?

21 A. No, I disagree because --

22 Q. That was a question, so you can't disagree. I'm just asking a
23 question.

24 A. Okay. Well, the information we received in that meeting
25 included that there existed a code of conduct, for example, which we

1 asked to see. And that code can -- by the information we were
2 provided, provides a basis on which KLA members could be
3 investigated, disciplined, and abuses could be addressed.

4 Q. Tell me, Mr. Abrahams, do you have any idea what steps the
5 General Staff took to set up a judicial system in 1998 going into
6 1999? Do you have any idea?

7 A. That's the information we sought in other places -- from this
8 meeting, and we were informed that it was in process.

9 Q. I'm talking about your knowledge. You spent all of this time in
10 Kosovo and Albania. Do you have any idea, as you sit here in 2023,
11 what steps the General Staff took to set up judicial systems in
12 Kosovo during this timeframe? What steps did they take?

13 A. Yes, I have some indications. Some.

14 Q. What steps did they take?

15 A. Well, for one they apparently created a code of conduct.
16 Although, I -- not having seen it, I can't confirm that it existed.
17 But they also, by their own statements, had created military courts.
18 There was a judicial department of the General Staff or a legal
19 department -- directorate. So my understanding, from their own
20 information, was that courts were in existence.

21 There was also definitely the existence of military police
22 because I encountered some of them during my travels or my work.

23 Q. So, in fact, they did take steps, as we move into 1998, with the
24 establishment of courts to try to address some of these issues;
25 right?

1 A. They took the -- the steps that I just mentioned are what they
2 announced. How those were functioning, I cannot testify to.

3 [Overlapping speakers] ...

4 Q. Precisely. Precisely. And what we are then talking about
5 functioning is the operative zone commanders obeying what the
6 General Staff may have issued; isn't that right? That's a
7 fundamental aspect of this.

8 A. Yes.

9 Q. And if the operative zone commanders elect to ignore missives
10 coming from the General Staff, it adds yet another layer of problems
11 to the -- setting up the judicial system, doesn't it?

12 A. I agree.

13 Q. So when you have somebody like Rrustem Mustafa, Commander Remi -
14 and this is, again, at his testimony at 5752, 22, to 5753, to 5 -
15 that when they had a particular issue coming from the General Staff,
16 he noted, "I told them not to tackle this issue," that "I wasn't
17 going to obey them on this issue."

18 So if you have a operative zone commander who's refusing to obey
19 the General Staff or anything -- or something coming from the
20 General Staff with which they disagree, that makes it problematic,
21 does it not, to have an efficient functioning judicial system?

22 A. I agree.

23 Q. Right? Okay. Let me just shift gears to this meeting that you
24 had with Mr. Thaci in -- I believe it's August 1999?

25 A. I believe that's right, yes.

1 Q. Okay. And you gave him this document concerning what you
2 perceived to be abuses of what was going on in Kosovo post war;
3 right?

4 A. Abuses that we had documented through extensive research.

5 Q. And during this period of time, who was responsible for -- well,
6 let me withdraw that. It is a fact that -- or your familiar with --
7 let me withdraw that question. You are familiar with UN
8 Resolution 1244, are you not?

9 A. Broadly.

10 Q. I'm sure. I'm sure you -- and the entity that was responsible
11 for investigation, arrest, prosecution, and detention of malfeasors
12 was UNMIK, wasn't it?

13 A. That's correct.

14 Q. And no other entity within Kosovo had the legal authority to do
15 any of that, investigate, prosecute, or incarcerate, did they?

16 A. Correct.

17 Q. So when you came to them and you gave him this report, his
18 responsibilities for the Provisional Government of Kosovo were to
19 UNMIK; is that right? His legal responsibilities.

20 A. His legal -- I mean, the period in time is complicated. You are
21 right, under 1244, UNMIK authorities were the ones empowered to
22 conduct investigations, prosecutions, maintain detention facilities.
23 But we went to Mr. Thaci at the time as the head of the provisional
24 government, considering his authority and the power that he had
25 assumed in this interim position.

1 Q. Let's backup to what you just said. At this time in August
2 1999, the Provisional Government of Kosovo was in charge of nothing
3 legally, were they?

4 A. Legally, no.

5 Q. And in August 1999, to repeat what we said, at the risk of
6 repeating it, the legal authority and the sole legal authority was
7 UNMIK; right?

8 A. Correct.

9 Q. And you walk in -- by the way, I mean, obviously, with all due
10 respect, we were all much younger in 1999 than we are now.
11 Obviously, Mr. Thaci or anybody had no legal responsibilities to you;
12 right?

13 A. No one has legal responsibilities to me or my organisation as an
14 NGO, but they do before domestic and international law.

15 Q. And to your knowledge, did Mr. Thaci take your report and give
16 it to UNMIK and KFOR?

17 A. That, I am unaware of.

18 Q. So if he did that -- if he did that in conjunction with you and
19 presented this information to UNMIK and KFOR, they would be able to
20 act on anything that you had?

21 A. Indeed. And we also delivered our report to UNMIK and KFOR.

22 Q. Let me ask you this: Throughout your period of time in
23 Kosovo -- and you obviously know Ambassador Kouchner; is that right?

24 A. I do. Not personally, though.

25 Q. [Overlapping speakers] ...

1 A. Never met him.

2 Q. Obviously. You know him as the Special Representative of the
3 Secretary-General?

4 A. Correct.

5 Q. And do you know Ambassador Covey there, his assistant?

6 A. Familiar with his name, but never met Mr. Covey.

7 Q. And, of course, you're familiar with the name of General Sir
8 Mike Jackson who was in charge of KFOR?

9 A. Yes, I am.

10 Q. Now, during the entire time you were there, do you have any
11 information, any incidents - incidents - when Mr. Thaci was asked to
12 do something by Mr. Covey, Ambassador Kouchner, General Jackson, or
13 any of their subordinates, where he refused? And if so, tell us when
14 and where.

15 A. No, I cannot speak to that.

16 Q. Okay. So as far as you know, throughout this period of time,
17 Thaci is out condemning violence; right? Is that right?

18 A. He spoke publicly against attacks on Serbs, correct.

19 Q. And he spoke publicly on numerous occasions, didn't he?

20 A. I would have to look back. But, yes, I take that to be correct.
21 Yes.

22 Q. And during that same period of time, there is no information
23 that you have as someone monitoring human rights issues, you have,
24 where Thaci -- Mr. Thaci refused to comply with any request or edict
25 coming from UNMIK, KFOR, or any of the subordinates under those two

1 respective regimes; isn't that right?

2 A. I cannot speak to the conversations he had with UNMIK, KFOR, or
3 any other authority.

4 MR. KEHOE: Your Honour, if I might just have one moment.

5 [Specialist Counsel confer]

6 MR. KEHOE: I know this is significantly shorter than my time,
7 but I have no further questions.

8 Q. Mr. Abrahams, thank you very much.

9 PRESIDING JUDGE SMITH: Thank you.

10 Mr. Emmerson, you have the floor.

11 MR. EMMERSON: [Microphone not activated]

12 MR. KEHOE: In defence of Mr. Emmerson, I thought that I was
13 going to be going to lunchtime.

14 MR. EMMERSON: [Microphone not activated]

15 THE INTERPRETER: Microphone, please.

16 MR. EMMERSON: I do apologise.

17 Cross-examination by Mr. Emmerson:

18 Q. I want to start by asking you some general questions about the
19 role of Human Rights Watch in a conflict situation and, again, your
20 current role in training researchers, because presumably you can tell
21 us a little bit about what you tell people a good human rights
22 investigation should look like.

23 First of all, you've described several times Human Rights Watch
24 as including an advocacy function. What do you mean by an advocacy
25 function?

1 A. Our mandate and our intention is to promote policies that
2 protect human rights.

3 Q. So that's legal policies or political policies on the ground as
4 implemented either at UN level or IGO level or at the level of
5 governments?

6 A. Both.

7 Q. Yes. So raising the alarm is part of an advocacy process, isn't
8 it?

9 A. Alerting the public and policymakers to serious human rights
10 situations is part of our job.

11 Q. When you say "serious human rights situations," you mean a
12 situation in which there are concerns about human rights violations,
13 who is responsible, the scale of them, and so forth? Or do you mean
14 situations where you, as an organisation, have determined that the
15 human rights of an appreciable number of victims have been violated
16 by one party to the conflict or another?

17 A. Sorry, I'm just struggling to reconstruct the question.

18 Q. Let me do it again for you --

19 A. Yes.

20 Q. -- then.

21 A. Thank you.

22 Q. "Human rights situations" is an extremely vague, virtually
23 unintelligible expression, so what I'm asking you to do is to explain
24 what constitutes a human rights situation that you would be raising,
25 as you say, international communities' awareness of.

1 Now, obviously, at one extreme, it will be the first information
2 that you have that something is being done or said to have been done
3 by one party to another party, which you, obviously, at the early
4 stages, won't know very much about the truth or accuracy of those
5 reports until you've done some further research.

6 A. That's correct.

7 Q. And that's where the research comes in.

8 A. That's correct.

9 Q. At the other end of the process, you might have sufficient
10 information, it would have to be very specific, I'm sure, but you
11 might have sufficient information to accuse an individual of
12 responsibility for war crimes, and sometimes even submit confidential
13 information to international investigating bodies; is that right?
14 Would you ever give a list of potential indictees to the UN High
15 Commissioner's Office or to the Office of the Prosecutor of the ICC?

16 A. No, we're --

17 Q. Do you get that specific?

18 A. No --

19 Q. No.

20 A. -- not really. In our public reporting --

21 Q. Yes.

22 A. -- we can get that specific.

23 Q. Yes.

24 A. But the bar for making accusations against individuals is
25 considerably higher.

1 Q. And you're not making any accusations against any individuals in
2 the evidence that you're giving to the Court, are you, in this case?

3 A. I am testifying about the --

4 Q. Can you answer my question? You're not making any accusations
5 against any individuals that they committed a crime?

6 A. No, I am --

7 Q. No.

8 A. -- not.

9 Q. Thank you. Now, when you're teaching your students,
10 Mr. Abrahams, about what the role of Human Rights Watch is and what
11 it is not, do you tell them, as you told us this morning, that:
12 We're not involved as a court of law or as a criminal investigation,
13 investigator; is that right?

14 A. Yes, that's correct.

15 Q. Yes. Can we just look at what the differences are between, if
16 you were involved, looking at things in a judicial function and what
17 you actually do.

18 First of all, do you consider Human Rights Watch to be
19 exercising a quasi-judicial function?

20 A. No.

21 Q. No.

22 A. I don't.

23 Q. But you are prepared as an organisation to make definitive
24 conclusions, aren't you?

25 A. It depends what you mean by "definitive."

1 Q. Well, for example, you are -- you yourself, in fact, are quite
2 willing to say -- in relation to 1998 and this conflict, you're quite
3 willing to say that the commander of the area around Lake Radonjic in
4 the Dukagjin region must have known about the execution at an
5 execution site of somewhere between 30 and 40 individuals.

6 A. I would have to look at the --

7 Q. Well, I'll take you to it after lunch. You did say that.

8 A. I would have to look at it --

9 Q. But I'm --

10 A. -- before I can comment on that.

11 Q. Take it from me for the purposes of this early stage -- we're
12 going to break in ten minutes. We'll go into a lot more detail after
13 lunch. But if you take it from me, you, in a report that you have
14 signed off on, allege -- you don't allege. You state as a fact that
15 the commander of the Dukagjin region must have known about what you
16 describe as one of the worst atrocities committed by the KLA in 1998;
17 namely, an execution site in the vicinity of Lake Radonjic in
18 Dukagjin in which in excess of 30 to 40 people were killed.

19 A. Well, I'm -- what is the question?

20 Q. In fact, until you've seen the document, I won't put the
21 question on that to you. But what I want to say, take that from
22 me -- let's look at how -- I see it's being looked up for me. I do
23 have the reference. But take it from me that that's what you wrote.
24 I want to see how your function differs from a function of a court of
25 law, is or is not quasi-judicial, or a balanced criminal

1 investigation. Would you agree with me that any investigation which
2 is to be admitted and featured as reliable in a court of law would
3 respect the presumption of innocence?

4 A. Yes.

5 Q. Yes. And human rights is big on fair trial rights, isn't it?
6 And so anything that constituted a violation of the presumption of
7 innocence would be condemned by Human Rights Watch if it was done by
8 a state?

9 A. Correct.

10 Q. And announcing that somebody is guilty of a very serious crime
11 without any investigation of the facts and when the person indeed,
12 is, in fact, innocent of the crime, that would be Human Rights Watch
13 violating the principles that it holds dear and holds other parties
14 to, wouldn't it?

15 A. I would have to look at the material you're referencing to
16 comment on that.

17 Q. You wouldn't have to because you can answer the question, but
18 let's see if we can dig it up in the short time that's available.

19 MR. EMMERSON: So we'll need to -- it's -- I think it hasn't
20 been admitted yet with a P exhibit number, but it has been shown to
21 the witness. K036-0808 to K036-1247. And it will be on page -- the
22 stamp number 0935.

23 Q. So this is the October 2001 compendium report "Under Orders: War
24 Crimes in Kosovo," covering the entire conflict, and you're dealing
25 at this point in the report with crimes allegedly committed by the

1 KLA in 1998.

2 MR. EMMERSON: Let me just see if it's come up. I don't think
3 we have the right page here. Oh, I see. Sorry. Yes, it should be
4 0934 and 0935. We'll come back to 0934. If we could just look at
5 0935 for a moment. It should say page 101 at the top right.

6 Q. Opposite the large text on the right, there is a paragraph that
7 reads -- and this is -- we're going to look at the time scale and how
8 evolved over time, but this is 1998:

9 "Given the regional divisions within the KLA, a central chain of
10 command was sometimes difficult to discern." At this period. "Even
11 within the operational zones, it was not always clear how much
12 control the various commanders had over their troops."

13 So starting with that first. During that period up to the end
14 of 1998, you are saying here that there are regional divisions, and I
15 think by that you meant referring to the different zones; correct?

16 A. That's correct.

17 Q. And you're expressing the view that during 1998 a central
18 command was difficult to discern; correct?

19 A. Correct.

20 Q. But not so difficult at the regional level?

21 A. Less difficult.

22 Q. Less difficult. Yes, exactly. Still difficult to determine in
23 many cases whether a crime was committed with the authority of the
24 zone commander, although sometimes there might be. Correct?

25 A. It would depend on the --

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1 Q. Circumstances.

2 A. -- situation and the --

3 Q. And the circumstances, yes. But above zone commander level, you
4 saw no evidence during 1998 of a central command; correct?

5 A. No, I wouldn't agree with that.

6 Q. Okay. Well, we'll go back to that after lunch. But you would
7 agree that a central chain of command was difficult to discern?

8 A. More difficult to discern, yes.

9 Q. Yes. Well, difficult or not? Was it easy to discern?

10 A. No, it was --

11 Q. No.

12 A. -- difficult to discern.

13 Q. Was it difficult to discern?

14 A. Yes.

15 Q. Thank you. I mean, we don't need to banter because it sounds as
16 though you're trying to put a spin on things. Perhaps you could just
17 answer the questions if you don't mind.

18 If we look a little bit down, further down --

19 MR. TIEGER: I --

20 MR. EMMERSON: Well, I'm sorry. Look at the last question and
21 answer.

22 MR. TIEGER: I still think commentary is really not necessary.

23 MR. EMMERSON: Well, I'm just hoping the witness will answer the
24 questions.

25 PRESIDING JUDGE SMITH: Yes, just go ahead with the questions.

1 MR. EMMERSON: Exactly. Thank you.

2 PRESIDING JUDGE SMITH: We don't need commentary on it.

3 MR. EMMERSON:

4 Q. Now, if you look at the second-to-last paragraph beginning
5 "Despite," because here is a situation where you do feel quite
6 comfortable in asserting as a fact that the zone commander committed
7 a grave crime.

8 A. Which paragraph are you --

9 Q. The penultimate paragraph on the page. It begins "Despite," and
10 I want to take you about three lines down after the full stop.

11 "It is clear that in certain cases, such as the September 1998
12 murder by KLA forces of thirty-four people near Glodjane, that the
13 local commanders must have known, if not directly ordered, the
14 killings."

15 Do you see that?

16 A. I do.

17 Q. Yes. Just to be clear, do you want to qualify that in the light
18 of what you now know about that -- the Glogjan, Lake Radonjic
19 killings?

20 A. I would emphasise --

21 Q. No, just a "yes" or "no" answer, please. Would you like to
22 qualify?

23 A. To qualify it. No, I can explain it if you wish, but not
24 qualify.

25 Q. No -- well, yes, explain.

1 A. Yes. I would emphasise the "must have known" element.

2 Q. Well, I would emphasise the entire sentence: "... must have
3 known, if not directly ordered, the killing." Now --

4 MR. TIEGER: Can the witness be allowed to complete his answer.

5 MR. EMMERSON: Well -- it's -- go ahead.

6 PRESIDING JUDGE SMITH: Please -- had you finished your answer?

7 THE WITNESS: Well, no, Your Honour.

8 PRESIDING JUDGE SMITH: Please finish it.

9 THE WITNESS: The emphasis to me that is most relevant is that
10 they must have known, that there would have been knowledge and -- and
11 if not, ordered the killings. But the stress is that they -- or the
12 standard by which we would hold someone to account is the knowledge.

13 MR. EMMERSON:

14 Q. And was that based on your conclusion that this was a regularly
15 used execution site?

16 A. It is based on our conclusions that the bodies - I believe 34
17 bodies - were found in or around the lake.

18 Q. Do you know that nine of those bodies were people who'd last
19 been seen alive in Serbian custody? Do you know that?

20 A. I am not aware of the identities of all the --

21 Q. Yeah.

22 A. -- victims.

23 Q. But you were comfortable then, without knowing anything about
24 the facts, to make that assertion?

25 A. Yes.

1 Q. And you stand by it?

2 A. By this assertion?

3 Q. Well, it's one of the two what you described as most serious --
4 in fact, it was the most serious incident you identified as a KLA war
5 crime in 1998.

6 A. I think knowing what we know today, I would have crafted this
7 sentence slightly differently.

8 Q. Is it a violation of the presumption of innocence of a man who
9 is, in fact, innocent of those crimes?

10 A. Well, I don't know that he is innocent. But --

11 Q. Well, so you haven't followed the trial?

12 A. I am aware that he was not convicted.

13 Q. Yes.

14 A. Yes.

15 Q. Did you read the judgment?

16 A. Not in its [Overlapping speakers] ...

17 Q. There was no joint criminal enterprise, according to the court.
18 It wasn't an execution site. People had dumped bodies in the river
19 that had ended up at that point. There was nothing to connect it to
20 any joint criminal enterprise or to the commander of the region.
21 Your entire analysis was proved completely wrong.

22 A. I wouldn't agree with that assessment.

23 Q. Well, you haven't read it but you wouldn't agree with it?

24 A. No, the way you --

25 Q. How can you say that?

1 A. With the way that you just presented it now.

2 Q. Well, the facts I just put to you are facts that you could have
3 read for yourself if you were following the situation in the
4 judgment.

5 A. Okay.

6 Q. You've read the Dick Marty report and revised some of your
7 opinions on the basis of that; correct?

8 A. That I disagree with. No.

9 Q. You haven't read it?

10 A. Oh, I've read it. Yes.

11 Q. And you disagree with it?

12 A. No, I disagree with the fact that I've revised my opinions based
13 on --

14 Q. Well, we'll look at that after --

15 A. -- it.

16 Q. -- the break.

17 PRESIDING JUDGE SMITH: It is time for the break now if that's
18 not difficult.

19 MR. EMMERSON: Not at all.

20 PRESIDING JUDGE SMITH: We will break for an hour and a half for
21 lunch. We will be back here at 2.30.

22 Thank you for being with us. Madam Usher will escort you out.

23 MR. MISETIC: Mr. President, I have just one short issue to
24 raise.

25 [The witness stands down]

1 MR. MISETIC: I just wanted to alert the Panel and the
2 Prosecution that we have -- the Thaci and Selimi Defence have filed
3 our response to the videolink application a day early because we
4 think, once you read the application, you'll see there is a lot of
5 issues raised there. It may need a response from the Prosecution,
6 and we wanted to draw your attention perhaps to take a look at it
7 over lunch.

8 PRESIDING JUDGE SMITH: Is anybody else in the Defence teams --
9 are anybody else going to file a resistance?

10 MR. ELLIS: We're not going to file anything else, Your Honour.
11 We've read the Selimi and Thaci --

12 PRESIDING JUDGE SMITH: You're willing to stand by those?

13 MR. ELLIS: Your Honour?

14 PRESIDING JUDGE SMITH: You're willing to stand by their
15 application?

16 MR. ELLIS: Yes, Your Honour.

17 PRESIDING JUDGE SMITH: Mr. Roberts, anything?

18 MR. MISETIC: Mr. President, it's a joint Thaci-Selimi response.

19 PRESIDING JUDGE SMITH: So the Prosecution will still have their
20 response -- or did we say no reply? Do you wish to reply?

21 MR. TIEGER: Your Honour, I think -- what I understood
22 Mr. Misetic to be doing was to be courteously advising us that it had
23 been filed early so we take as quick a look at it as possible so
24 we're in a position to answer the Court's question.

25 PRESIDING JUDGE SMITH: Okay. Thank you.

1 [Microphone not activated].

2 --- Luncheon recess taken at 1.05 p.m.

3 --- On resuming at 2.30 p.m.

4 PRESIDING JUDGE SMITH: Two things before we bring the witness
5 in.

6 Number one, and probably most importantly, we have to leave five
7 seconds after a question. You are overlapping significantly, and
8 it's very difficult for the interpreters, and they made a point of
9 coming to tell us about it. I do the same thing, so I'm just
10 warning. So please do your best to give a pause before you launch
11 into the next very logical question.

12 Secondly, I have an oral order on the SPO reply to F01768.

13 The Panel notes that in F01768, the Thaci and Selimi Defence
14 responded to the SPO's request for video-conference testimony for
15 W03827. That is filing F01759.

16 In light of the fact that W03827 is due to testify next week,
17 the Panel orders the SPO to file its reply, if any, by tomorrow at
18 noon.

19 MR. TIEGER: Your Honour, thank you. We will file a reply. I
20 would simply ask, given the number of issues raised, for a bit more
21 time. Tomorrow for sure, but I think some more time would be
22 helpful. I know the Court wants time to consider it, but --

23 PRESIDING JUDGE SMITH: Well, I wrote down noon or 4.00 p.m., so
24 I said noon because I thought that was the reasonable response.

25 MR. TIEGER: Did you say noon or 4.00 p.m., did you say?

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1 PRESIDING JUDGE SMITH: 4.00 p.m. would be all right.

2 MR. TIEGER: Okay, thank you.

3 PRESIDING JUDGE SMITH: Begging works.

4 All right. Madam Usher, you can bring the witness in.

5 MR. KEHOE: I'll have to remember that, Judge.

6 [The witness takes the stand]

7 PRESIDING JUDGE SMITH: All right, Mr. Abrahams. Welcome back.

8 THE WITNESS: Thank you.

9 PRESIDING JUDGE SMITH: Reminding you to, as I said, speak
10 slowly, speak into the microphone. Please, please wait and pause
11 before you answer a question so you don't cut somebody off or cut the
12 interpreters off. That has been a problem before --

13 THE WITNESS: Okay.

14 PRESIDING JUDGE SMITH: -- in the morning's testimony.

15 THE WITNESS: Okay.

16 PRESIDING JUDGE SMITH: I also remind you you're still under an
17 obligation, of course, to tell the truth as set out in your solemn
18 declaration.

19 Mr. Emmerson will continue with his cross-examination.

20 THE WITNESS: Thank you.

21 MR. EMMERSON:

22 Q. So, Mr. Abrahams, I was asking you at that stage about the
23 "Under Orders" report, which was in 2001, and about the passage on
24 page 101 of that report, where you said, and you can see it there in
25 the second half of the penultimate paragraph:

1 "Despite these structures, there are no known cases of KLA
2 soldiers having been punished for committing abuses against civilians
3 or government forces no longer taking active part in hostilities."

4 And when you say there "there are no known cases," you mean no
5 cases you knew about?

6 A. That is correct.

7 Q. It doesn't mean that there weren't cases?

8 A. That's correct.

9 Q. Or that they weren't known to somebody with better information
10 than you had?

11 A. Well -- yes, that's correct.

12 Q. Exactly. You then go on:

13 "It is clear that in certain cases, such as the September 1998
14 murder by KLA forces of thirty-four people near Glodjane, that the
15 local commanders must have known, if not directly ordered, the
16 killings."

17 And then you go on to talk about some discipline by commanders
18 in the case of other journalists and so forth.

19 A. Yes.

20 Q. Now, do you accept that by 2001, that's the end of your
21 reporting process for the 1998 period, that before making a statement
22 like that, it was incumbent upon you to establish the facts?

23 A. I -- reading this statement now, I do accept that it should be
24 constructed differently.

25 Q. Yes, well, it was -- I am grateful for that concession. But it

1 goes a little bit further than that, doesn't it, really, because,
2 first of all, you describe it as a "September 1998 murder by KLA
3 forces." What evidence did you have fact that there was a murder in
4 September 1998?

5 A. Yes. Indeed, I would insert, reading it now, "alleged murder."
6 These were the claims at the time.

7 Q. Yes, claims by the Serbs?

8 A. Yes.

9 Q. Correct?

10 A. Correct.

11 Q. You recycled Serbian propaganda, didn't you?

12 A. This should have been written differently. I --

13 Q. Well, you got the allegation from the Serb side, didn't you?

14 A. Correct. And we tried to [Overlapping speakers] ...

15 Q. And you got the allegation in September -- I'm sorry. Sorry, do
16 finish. I'm so sorry.

17 A. Yes, we received this information from the Serbian government or
18 official sources.

19 Q. Yes.

20 A. Yes.

21 Q. And you never visited the site?

22 A. We attempted to visit the site --

23 Q. But you didn't visit it.

24 A. We were denied permission.

25 Q. By the Serbs?

1 A. Correct.

2 PRESIDING JUDGE SMITH: Once again, slow down the responses.

3 MR. EMMERSON:

4 Q. Did you interview any witness in connection with any of the
5 alleged murders?

6 A. No.

7 Q. No. And when you say "September 1998 murder" -- I mean, are you
8 now aware that no one on that indictment was murdered in September
9 1998?

10 A. Yes. This was poorly phrased.

11 Q. Well, I think we can -- it's -- if you wish to describe it that
12 way, you're welcome. But it's more than poorly phrased. It's
13 completely wrong. The people in that discovery, such as it was,
14 included nine victims of Serbian murder in custody, which were then
15 dropped from the indictment for that reason. It included individuals
16 who had died in unknown circumstances in different places at
17 different times throughout the Dukagjin region but whose bodies had
18 ended up in the Lake Radonjic canal. So when you talk about the
19 September murder by KLA forces, there was no such murder?

20 A. I accept your point.

21 Q. So it isn't just inelegantly phrased. It's completely wrong.

22 A. I didn't say it's inelegantly phrased.

23 Q. Well, you said "it could have been better phrased." It's not
24 about phraseology. It's about being factually completely wrong.

25 A. Completely --

1 Q. Completely wrong.

2 A. No, I -- I would write this differently. I agree with you --

3 Q. No, it is factually, as a statement of fact, completely wrong.

4 And if you would like to support any part of it, let's perhaps do.

5 A. Well, the September 1998 is not accurate. That is correct. It
6 is --

7 Q. It's not accurate. Neither is the murder by KLA forces.

8 A. I would say "alleged murder," but maybe not of all. So that is
9 also --

10 Q. Exactly.

11 A. It could be phrased better. But that's the -- to your point
12 about --

13 PRESIDING JUDGE SMITH: Excuse me, please slow down.

14 THE WITNESS: I'm sorry. Excuse me.

15 To your point about "completely," we should break it down.

16 MR. EMMERSON:

17 Q. Well, we'll come to the evidence of the murders, because we're
18 looking at the moment about your process. This is not about the
19 Glllogjan case. It's about the difference between the sort of
20 opinions that you feel free to express and come and testify about
21 before a court of law and, as you've told us, the way you teach your
22 students you don't have to be rigorous like a court of law. You
23 can -- I'm sorry?

24 MR. TIEGER: I'm waiting for a question rather than --

25 MR. EMMERSON: I'm explaining --

1 MR. TIEGER: -- a long predicate.

2 MR. EMMERSON: Well, it is a predicate and it's a necessary
3 predicate.

4 Q. What I'm trying to explore with you is how you go about making
5 such findings and how that differs, as you've told us you teach your
6 students it differs, from a proper forensic examination of the
7 evidence.

8 So I'm going to put to you the only accurate part of that entire
9 passage is that bodies were found near Glogjan in September 1998.
10 And that's the only part you can legitimately defend, isn't it?

11 A. I can definitely defend that. Those bodies were found. And
12 that there were allegations of KLA responsibility. But I readily
13 accept that this sentence should be written differently, and I take
14 that into account.

15 Q. And the allegations were being made by the Serbs; correct?

16 A. These allegations were made by Serbian officials, yes.

17 Q. Who we now know planted some of the bodies in that vicinity.

18 A. I'm not aware of that, but --

19 Q. Well, they did move bodies and plant bodies in different places,
20 didn't they? You know that?

21 A. What I can speak to is another example of a claim about alleged
22 KLA crimes in the town or area of Klecke that we did investigate.

23 Q. Which I'm going to come to in a second. That's the kiln, the
24 oven?

25 A. That's correct.

1 Q. Yes.

2 A. Which we did investigate with a little more -- with --

3 Q. A little more?

4 A. Well, a little more rigour.

5 Q. A little more rigour?

6 A. Yes, because --

7 Q. Did you do any investigation on this one?

8 A. On Gllogjan? No.

9 Q. No.

10 A. No.

11 Q. I mean, the reason this is important is because you've told us
12 in your witness statement all about how careful your methodology is
13 before you express an opinion. You never use single sources, only
14 multiple sources. You check the facts where possible. You wholly
15 fail to do any of those things in this instance, didn't you?

16 A. You have identified a case here that was not done up to those
17 standards and --

18 Q. Yeah. You identified it as one of the two most important
19 atrocities -- sorry.

20 PRESIDING JUDGE SMITH: Yes.

21 MR. TIEGER: Mr. Emmerson, and I don't know if it's intentional
22 or not, I'm not making an accusation, but is repeatedly stepping on
23 the witness as he's trying to answer.

24 MR. EMMERSON: Well, I'm so sorry. If I am doing that, it's
25 definitely not intentional. I've heard the Judge's ruling --

1 PRESIDING JUDGE SMITH: You are doing it, and I've reminded --

2 MR. EMMERSON: [Overlapping speakers] ...

3 PRESIDING JUDGE SMITH: -- you three times already since we
4 started.

5 MR. EMMERSON: You're absolutely right and sometimes it -- it's
6 definitely not intentional. I will leave a gap between the two.

7 PRESIDING JUDGE SMITH: Count to three.

8 MR. EMMERSON: It's probably a good idea for more reasons than
9 one.

10 Q. You didn't conduct any investigation in relation to the
11 allegation that the Serb authorities put out, did you?

12 A. We did not conduct an in-depth investigation and --

13 Q. Any investigation?

14 A. May I continue my --

15 Q. Mm-hm.

16 A. And mentioned this but did not feature it prominently. This is
17 in a chapter about -- well, I'm not sure if it's the chain of command
18 chapter. I believe it is.

19 Q. Can I -- yeah.

20 A. But it's different than presenting it, and we never did present
21 Glogjan or Lake Radonjic as a case or claimed that we had
22 investigated it.

23 Q. No. First of all, let's just take it stages. You didn't
24 investigate it at all?

25 A. That's correct -- no, that's not correct. Sorry. We attempted

1 --

2 Q. Well, did you --

3 A. Well, we attempted to visit the site.

4 Q. Yes. You --

5 A. We attempted to visit the site.

6 Q. You didn't succeed and you conducted no investigation. And all
7 of the things --

8 A. We were prevented. We were blocked from access.

9 Q. Yes.

10 PRESIDING JUDGE SMITH: You're talking over each other again.

11 MR. EMMERSON: I think it's the other way around this time.

12 Let's both make an effort, simply for the translators and the
13 transcript as well as everything else.

14 THE WITNESS: Yes.

15 MR. EMMERSON:

16 Q. You, Human Rights Watch, did not conduct an investigation. You
17 might have tried to, you might have wanted to, but you didn't?

18 A. Maybe we are parsing words here.

19 Q. Okay.

20 A. Right. Because we --

21 Q. I think one of us is, definitely.

22 A. We attempted. We went to the site --

23 Q. You got to the site?

24 A. We went -- we tried to go to Lake Radonjic. We were denied --
25 no, excuse me. I -- my -- my recollection is at that point the

1 bodies had already been removed and were being held, I believe, in a
2 hotel as a --

3 Q. Correct.

4 A. -- makeshift morgue.

5 Q. Correct.

6 A. We were denied access to the hotel.

7 Q. But you did go to Lake Radonjic?

8 A. To the lake itself? I do not believe we went to the lake
9 itself.

10 Q. To the area where the bodies had been recovered from?

11 A. We went to this makeshift morgue.

12 Q. So you didn't look at the site of the --

13 A. No.

14 Q. -- recovery of the bodies? So you weren't able to do any of the
15 things that you've said in your witness statement Human Rights Watch
16 always does before making a finding or a declaration?

17 A. We did not conduct a deep investigation and did not pretend to
18 in this case.

19 Q. So there are two things I want to say about that -- I want to
20 ask you about. First of all, your witness statement tells us
21 unequivocally that you would never make a statement about a
22 particular event without multiple sources to corroborate. Did you
23 have any? Did you have multiple sources to corroborate any of the
24 things that you put in the reports about this incident?

25 A. About this incident. This statement, and the references to the

1 Glllogjan, are based on the information we had at the time. And I
2 readily accept that we did not conduct a full investigation. We did
3 not claim to. So I accept your proposition and your critique.

4 Q. And you readily accept as well that in at least one instance,
5 which we'll come to, the Klecke so-called kiln incident, as matters
6 turned out on investigation, it was a fabricated crime scene by the
7 Serbs.

8 A. So I can say a bit more about the Klecke case --

9 Q. Okay. I'm going to ask you about -- I don't want to take it out
10 of order, because we're going to have to look at that in a bit of
11 detail. When it comes -- and I accept, by the way, straightaway,
12 that you did qualify in relation to that the nature of your findings
13 from the outset.

14 But my question here is you were very much aware that it was the
15 practice of the Serbian military forces to move bodies either out of
16 Kosovo, even exhuming whole grave scenes and taking them to Serbia,
17 and that they would also manipulate crime scenes to implicate the KLA
18 in false-flag operations? Two questions.

19 A. I'm just pausing. Yes, two parts. So on the first part of that
20 question, I am in full agreement. There was a well-orchestrated
21 systematic campaign by Serbian forces to remove bodies out of Kosovo
22 into Serbia for which there is still glaring impunity, and I
23 personally documented cases where bodies were removed.

24 On the second part, I believe --

25 Q. Yeah, false-flag operation.

1 A. -- of your question. The Klecke case raised significant
2 concerns.

3 Q. Which we'll come to.

4 A. I don't have evidence that they manipulated or moved bodies with
5 regards to Klecke. They may have. What I do believe about Klecke is
6 the evidence they presented was highly problematic.

7 Q. Yes. Well, we'll come to that in a minute. But knowing what
8 you know -- I mean, were you aware that it emerged in the Haradinaj
9 trial that Serbian forces had deliberately been issued with Chinese
10 ammunition to make it appear that attacks had been committed by the
11 KLA, the only party to the conflict that used Chinese as opposed to
12 Yugoslav ammunition? Is that something you're aware of?

13 A. No, I'm hearing that for the first time.

14 Q. Well, there was -- take it from me, there was very clear
15 evidence to that effect. So with that -- I mean, there were, indeed,
16 if you comb through the transcript, there are orders of the Serbian
17 forces operating in that area with that intention.

18 On the first limb of the question. I mean, you must, I'm sure,
19 be aware of the lorry load of Kosovar Albanian civilian bodies that
20 were found in a container at the bottom of the Danube?

21 A. Indeed, very aware.

22 Q. And of the very large number of Albanian civilian corpses that
23 were found buried within the precincts of a PJP, Serbian military
24 police compound inside Serbia?

25 A. Indeed.

1 Q. And more generally, I think it's right to say, isn't it, that
2 you're bound to be aware of the fact that as the war emerged towards
3 the end of 1998 and throughout the early part of the 1999, there was,
4 in fact, a completely coordinated approach to clean up the crime
5 scenes of Serbian crimes in Kosovo?

6 A. My investigations on that are fully confirming post --

7 Q. Yes.

8 A. -- or to -- in the -- the operation was in June --

9 Q. Yeah.

10 A. -- 1999. That's what I can speak to. And it was systematic.

11 Q. Did it have a name?

12 A. This cleansing operation?

13 Q. Yeah.

14 A. I'm not sure. I'm not sure. It very well may have.

15 Q. I mean, there is documentation establishing that it was Serbian
16 military policy to uplift as many Albanian corpses as a result of
17 Serbian massacres as could be uploaded and have them out of the sight
18 of war crimes investigators.

19 A. I have written about this, and I consider it an ongoing crime
20 for which there has been a woeful lack of accountability.

21 Q. So let's go back to this sentence for a last time then.

22 Obviously, you wish you'd written it in different language. I mean,
23 do you agree that, even when you're in charge, Human Rights Watch can
24 get things completely wrong?

25 A. I acknowledge that this sentence should have been written

1 differently.

2 Q. And certainly if you knew -- sorry.

3 A. Yes.

4 Q. Certainly if you knew then what you know now, you obviously
5 wouldn't write it like that?

6 A. Correct. I would have written that:

7 "The local commander must have known about the existence of
8 bodies."

9 That I do believe.

10 Q. Why do you believe that?

11 A. My view is when 34 people are dumped, regardless of the
12 circumstances, it's very likely, let me put it that way, I wouldn't
13 say "must have known" --

14 Q. No, certainly.

15 A. --- but he likely would have known --

16 Q. Do you know where they were dumped?

17 A. -- and should have investigated.

18 Q. Sorry, I apologise.

19 A. And should have investigated.

20 Q. So you make that statement, must have known, but if --

21 MR. EMMERSON: Sorry, I'm not talking across him now. I
22 appreciate there was a little overlap but ... I'm very much conscious
23 of the ruling. Sometimes I think both of us slip, but I'm trying my
24 best. I'm sorry if I'm falling short.

25 Q. Do you know now, or did you know then, that all of these

1 individuals had been found in completely disparate parts of -- sorry,
2 had been taken or disappeared in completely disparate parts of the
3 Dukagjin region and had entered the canal area at completely
4 different times? Did you know that?

5 A. I'm not familiar with the specifics of the case, no.

6 Q. I mean, would you still say that, that he must have known that,
7 the commander must have known, if for a large number of them nobody
8 knows who killed them or how or when they went into the canal?

9 A. I would say likely should have known.

10 Q. Oh, so we're now "should have known."

11 A. That's what I said.

12 Q. "Must have known" is what you said.

13 A. No, no, I believe I said "should have known."

14 Q. Sorry, no -- I mean, on the page it says "must have known."
15 That's what you wrote, "He must have known."

16 A. No, I'm saying what I would say now. You asked me --

17 Q. Oh, I see. Sorry. I apologise. "Likely should have known."
18 Can you tell us what that's based on?

19 A. The authority --

20 Q. What elements you rely on for that conclusion. Yeah.

21 A. The authority of the regional commanders and their knowledge of
22 activities within their zones of command, which was not absolute --

23 Q. Yes, but --

24 A. -- and hence my "likely should have known."

25 Q. But just to be clear, let us say, for the sake of hypothesis,

1 that there was no evidence at all that any of the people in the canal
2 had been killed by the KLA, that isn't the case, some of them had,
3 were killed by members of the KLA at different times and in different
4 places, but your presumption of knowledge is based on hypothetical
5 facts that you don't know to exist, isn't it?

6 A. It's based on my analysis of the situation. But not having
7 investigated it -- and I'm -- maybe I should clarify because -- so
8 we're -- you know, if -- there's a difference between if I were
9 obliged to rewrite this sentence now is different from me publishing
10 something now on that point, if you understand the distinction I'm --

11 Q. I think that is quite a fine distinction. But --

12 A. I'm trying to -- no, I don't agree with you.

13 Q. Okay. Would you agree with me that if you were trying to
14 rewrite this sentence now, it would be appropriate to take the word
15 "must" and turn it into a "might"?

16 A. Yes, I agree with that.

17 Q. Yes.

18 A. I'm okay with that.

19 Q. So would you agree then that no court could hang a cat on that
20 sentence?

21 A. I think we have established that this sentence falls short of
22 our standards.

23 Q. Yes.

24 A. Because -- and if I may complete my thought. Because you have
25 referenced trainings and teachings, one of the points that I make to

1 students and trainees is to be open to critique and to accept when
2 something could be improved, and that is a core and fundamental
3 aspect of accurate and professional reporting.

4 Q. And I absolutely accept that being open to admit your mistakes
5 is an important part of improvement as well. So do you use this
6 example as a case study of poor reporting in your teaching?

7 A. Until now, no.

8 Q. Will you?

9 A. But I will gladly consider it in courses for the future.

10 Q. Thank you. You see, you say you weren't -- you didn't report on
11 it, but, in fact, that crime appears throughout the reports, doesn't
12 it? Right from the beginning when you first report it as fact, just
13 the allegation that the Serbs had given to you.

14 A. The Gllogjan -- you're speaking of Gllogjan --

15 Q. Yeah.

16 A. -- and Radoniq? That incident and that situation, that location
17 is mentioned in a number of reports.

18 Q. Well, it's mentioned in your first report, humanitarian law
19 violations, then you cite back to that report to mention it in the
20 second report detentions -- I'm sorry, the next -- the "Under Orders"
21 report which we've just seen, and there's an earlier passage about
22 it. But even in your witness statement to the SPO you cite two
23 examples of serious -- the most serious crimes. That's one of them
24 and the other one is Klecke.

25 Now, we'll look at Klecke literally in just a second. But can

1 we just first call up -- well, actually, what -- whilst we're here,
2 can I just go through one other passage without -- I'm sorry, whilst
3 we're on this exhibit, and on the page before as well, I want to ask
4 you about a slightly different topic so we don't have to keep going
5 back to the same exhibit.

6 MR. EMMERSON: Can we go to 935 at the top. That's the page
7 before.

8 Q. I just want to just ask you about certain aspects --

9 MR. EMMERSON: I don't -- is that right? No. I'm sorry, I
10 should have taken you to 934. I apologise.

11 Q. So looking at the second paragraph there:

12 "Throughout early 1998, the KLA was primarily a disorganised
13 collection of armed villagers, often built around family structures,
14 without a clear chain of command."

15 And you agree with that?

16 A. Yes, primarily. And in early 1998, yes.

17 Q. And that would be up till when? June, July?

18 A. Yes, I would say that's correct. The July, August. The first
19 major operation was July in Rahovec.

20 Q. Yes. We'll come back to that, your views on Rahovec in a while.
21 It goes on:

22 "Strong regionalism dominated the organisations, as evidenced by
23 the post-war splintering of the insurgency. Operational areas ..."

24 And for that can we assume you mean zones?

25 A. Yes.

1 Q. "... raised their own funds and purchased their own weapons."

2 You see just to the end of that paragraph; yes?

3 A. Yes.

4 Q. So can I take it you would agree, therefore, that during that
5 period -- indeed, the first zone commanders we know from other
6 evidence weren't appointed until June. But is it your assessment
7 that the zone commanders enjoyed a very high degree of autonomy
8 within their own zones?

9 A. Yes, that is my understanding. It was my understanding at the
10 time of writing, which is -- this is "Under Orders" --

11 Q. Yes.

12 A. -- so 2001.

13 Q. And we'll come back to how your views have changed since then.
14 But that was certainly your view, a very high degree of decentralised
15 operation where the zone commanders were, effectively, the lords of
16 their own domain.

17 A. That's correct. And their relationship to any central authority
18 was at the time unclear.

19 Q. Yes.

20 A. Unclear to me.

21 Q. Yes. There then followed, very shortly after this period of
22 June, July, the major Serbian offensive that routed the KLA; is that
23 right?

24 A. That's correct. July 19 and 21, if I'm not mistaken.

25 Q. Yes. And it went right the way through and continued all the

1 way through to September?

2 A. That's correct.

3 Q. Yes.

4 A. That's correct.

5 Q. And all the centres of KLA activity, such as the Dukagjin
6 region, the KLA was dispersed, it had lost its -- even the
7 rudimentary command structures that it had at that time during the
8 Serbian -- and as a result of the Serbian offensive?

9 A. It was certainly dispersed.

10 Q. Yes.

11 A. How the Serbian offensive, Serbian and Yugoslav offensive
12 impacted the command structure was unclear to me.

13 Q. Yes. Well, you said some things about it in the past, which
14 I'll come back to.

15 If we look further down that paragraph then, halfway down the
16 next paragraph, there's a sentence that begins:

17 "The ceasefire period from December 1998 to March 1999 was used
18 to strengthen the central command and to reorganise operations."

19 Do you see that?

20 A. I do.

21 Q. "By March 1999, the KLA was a better organised rebel force,
22 albeit with strong personalities in the various regions who did not
23 always agree with one another."

24 Do you see that?

25 A. I do.

1 Q. So you appear to be saying here that the level of
2 disorganisation and the lack of central command was only put right in
3 or by March 1999.

4 A. I would -- I take this to mean that it was strengthened in that
5 period, that it existed to a degree prior to that, but became more
6 formalised by March 1999.

7 Q. And that, of course, is when -- 24 March is when the NATO
8 bombing began.

9 A. Correct.

10 Q. And it's also, we know from the record, when the Serbian
11 campaign of crimes against humanity throughout Kosovo, and which was
12 the subject of the Djordjevic and Milutinovic trials in which you
13 testified, began?

14 A. Correct. And Milosevic.

15 Q. And Milosevic. Exactly. The most intense period of systematic
16 widespread crimes against humanity in which something in the region
17 of 10.000 people, is that right, lost their lives, Albanians?

18 A. That's the estimate number, yes.

19 Q. That came straight after you say the KLA got its act together, a
20 bit more?

21 A. You mean the timing of the Serbian offensive -- not offensive,
22 but the beginning of the NATO --

23 Q. NATO bombed on 24 March.

24 A. Sorry, I'm not following exactly your point.

25 Q. Okay.

1 A. I apologise.

2 Q. Okay. NATO bombing began on 24 March.

3 A. Correct.

4 Q. And that immediately triggered a massive ethnic cleansing
5 campaign which was the basis of the prosecutions in Milutinovic,
6 Djordjevic and, as you say, Milosevic, in which there was an
7 intensification of hostilities against -- specifically against
8 civilians, with a view of causing -- and it was done, we've had some
9 discussion about this before, people use the expression either
10 Operation Horseshoe, which I think is open to doubt as a correct
11 operation name, but a horseshoe formation. It was from the
12 north-east of Kosovo down to push those who were fleeing in its wake
13 over the borders with Macedonia, Albania, and to a lesser extent
14 Montenegro. Is that right?

15 A. I agree with that description.

16 Q. So that Serbian crimes against humanity began at the moment,
17 you're saying, the KLA had become better organised.

18 A. The timing is the same --

19 Q. Yes.

20 A. Yes.

21 Q. Yes. I mean it's important just to get the context of
22 organisation questions. But you say by March the KLA was a better
23 organised rebel force, and then you go on to say:

24 "... albeit with strong personalities in the various regions who
25 did not always agree with one another."

1 Correct?

2 A. Correct.

3 Q. The strong personalities in the various regions, that's a
4 reference to the zone commanders, isn't it?

5 A. That's correct.

6 Q. Yes. So the zone commanders didn't agree with each other about
7 what to do? According to this; is that right?

8 A. Oh, yes. There were -- in my opinion, there were disagreements
9 and not always full agreement on --

10 Q. Yes.

11 A. -- policy, strategy.

12 Q. Exactly. But the biggest disagreement came at Rambouillet,
13 didn't it, where those who represented the KLA tried to sign an
14 agreement that would postpone a final solution of the Kosovo status
15 for three years? I mean, I hope I don't trespass in any way. This
16 is the delegation that Mr. Thaci was leading, was trying to reach a
17 peace agreement that would end the immediate violence but postpone
18 the final resolution of Kosovo independence with an interim period of
19 autonomy.

20 A. Correct.

21 Q. And you know, don't you, that the zone commanders were violently
22 opposed to that happening?

23 A. My understanding is there were disagreements because signing the
24 Rambouillet agreement meant autonomy, which was less than full
25 independence.

1 Q. Yes.

2 A. And so I can't speak to violent or not, but certainly there were
3 disagreements which necessitated Mr. Thaci and others to go back to
4 Kosovo and to speak --

5 Q. Because they --

6 A. -- consult. To consult.

7 Q. Because they didn't have the authority to make an agreement
8 because of the zone commanders, these strong personalities, having
9 such a grip over their own individual fiefdoms.

10 A. Well --

11 Q. Is that fair?

12 A. -- may I respond to that?

13 Q. Yes, please.

14 A. My assessment, and this is an analysis, is, you know, this
15 decision to sign the Rambouillet accords was deeply significant. It
16 was a pivotal moment for the history of the Kosovo. And there were
17 clear indications that -- of disagreement. So I always understood,
18 you know, Mr. Thaci and the delegation's return or hesitancy and need
19 to consult as a reflection of that seriousness.

20 Q. Yes. And you know, don't you, that when it was eventually -- or
21 an amended version was eventually negotiated and signed by the KLA
22 delegation in Paris, that there was still a very high degree of
23 dissent amongst the zone commanders, and that Adem Demaci, until then
24 the head of the political directorate in Prishtine, resigned because
25 of the decision that had been taken. You know that?

1 A. So I am aware that not everybody agreed --

2 Q. Yes.

3 A. -- with the signing of the accords.

4 Q. Yes. Can we just turn -- I'm -- you see, my concern in these
5 questions is looking at command as it seems to you in 2001. So we
6 just look over the page. We then get that second passage that we
7 mentioned.

8 "Given the regional divisions ..."

9 This is at page 0935, towards the top. It's the second
10 paragraph. We'd looked at this briefly, but it's in the context of
11 the previous passage and your views there:

12 "Given the regional divisions within the KLA, a central chain of
13 command was sometimes difficult to discern. Even within the
14 operational zones, it was not ... clear how much control the various
15 commanders had over their troops."

16 So as a description of the period 1998 up until, as you've told
17 us, March 1999, that's a fair summary?

18 A. Yes.

19 Q. Yes.

20 A. I believe that's accurate.

21 Q. Yes.

22 MR. EMMERSON: Could we -- I just want to look at a couple of
23 your answers in the Djordjevic trial, which is on the Prosecution's
24 queue, in relation to the period 1998. So we need to call it up as
25 ERN -- sorry, I apologise. ERN IT-05-87_1 or P00740.

1 I'm sorry, apparently there's a slight difference between the
2 references. One is to a PDF. So in the PDF version in the system,
3 it's page 77 of the PDF I'm told.

4 If we can look first at -- it's the following page, I think.
5 882. Exactly.

6 Q. If we can start - I hope I've got this right - at lines 4 to 10:
7 "Thank you."

8 Is the question. And this is your testimony, just to orientate
9 yourself.

10 "Do you have any information" --

11 A. Sorry, I apologise, just where -- just identifying the line --

12 Q. It should be line 4.

13 A. Yes, sorry. I see it.

14 Q. So the question is:

15 "Thank you. Do you have any information - and we are still in
16 1998 - about the strength of the KLA, how many members did it have?
17 How were they organised?"

18 You reply, not unreasonably:

19 "What month in 1998?"

20 "Q. We are talking about June, July, August ..."

21 And you say:

22 "At that time the KLA was still a disparately organised armed
23 group. My understanding from that time and from subsequent research
24 is that it was highly decentralised so that there was a central
25 command, but authority rested, to a great extent, with the regional

1 commanders in the field."

2 So, again, is that another way of putting the same testimony or
3 is it a slightly different way?

4 A. I think it's consistent.

5 Q. So highly decentralised with authority resting throughout the
6 summer of 1998 to a great extent with the zone commanders; is that
7 right?

8 A. I think that's -- that is correct.

9 Q. Thank you.

10 A. Yes.

11 Q. If we look down a little further, lines 10 to 13, it should --
12 yes.

13 "At that time ..."

14 This is -- I'm sorry, have we just had that one? No -- I think,
15 sorry.

16 [Specialist Counsel confer]

17 MR. EMMERSON: [Microphone not activated]. It's been covered
18 already in the previous citation. Apologies for that.

19 Q. So that's the first item I wanted to ask you about.

20 Could we also look at how you describe this in your interview
21 notes with the Prosecution, the notes of your interview with the --
22 or the statement that you made for the Prosecution.

23 MR. EMMERSON: Which is 07 -- so it's ET-075552 to 0755578 --
24 sorry, 075578. So it starts with 075552. Which should -- if we can
25 go to page -- well, I've got it down as paragraph 103 and 104. So

1 that is page 22.

2 Q. Now, you're talking here about the post June 1999 violence and
3 the issue of whether -- and I'm going to come to that in a little bit
4 more detail, the issue of whether people may have just sewn a KLA
5 patch on and gone out and attacked their neighbours and so forth.
6 But I want to look at to where you thought things stood then in
7 relation to the autonomy of the zone commanders, because you say:

8 "Although it is correct that anyone can sew a badge on the
9 uniform, I did not believe then and do not believe now that this
10 explained the whole situation. My view was that the frequency and
11 extent of those crimes wouldn't have been possible without, at the
12 very least, the consent of local KLA commanders, who mostly had
13 effective control over activities within their respective areas of
14 responsibility, and that these commanders could have significantly
15 reduced if not stopped these crimes if they had wanted to."

16 You see that passage?

17 A. I do.

18 Q. Yeah. So we're talking now about people returning to Kosovo in
19 the post-Kumanovo, June 12th, immediate aftermath where you described
20 there having been quite a number of crimes committed against Serb
21 civilians, and the discussion that you had had with Mr. Thaci about,
22 was it -- was it people sewing badges or what was -- which is a
23 separate question.

24 But your considered position in your statement in this Tribunal
25 is that the highest it can be put is that the local KLA commanders,

1 who continued to have effective control on activities within their
2 respective areas of responsibility, could have stopped it if they'd
3 wanted to.

4 A. So I believe I -- I stand by this statement with just a response
5 to your comment now. I believe you said "the highest it could be
6 put."

7 Q. Well, I'm looking at the words "without, at the very least, the
8 consent of the local commanders."

9 A. At the very least.

10 Q. So that means you can't put it any higher, doesn't it?

11 A. So it means I believe the local commanders could have taken
12 steps. And, yes, that's --

13 Q. That's what you mean.

14 A. That's what's meant here. Yes.

15 Q. And you've already told us you're not accusing anybody in this
16 courtroom of having command responsibility or having committed a
17 crime on that basis, so presumably that's why you can't say anything
18 further than the local zone commanders could have stopped it if they
19 wanted to, in your opinion?

20 A. That's my opinion.

21 Q. Yeah. And in the following paragraph, 104, you begin to talk
22 about the property disputes. I mean, we've heard about long-running
23 property disputes between Albanians and so forth, but there were
24 really serious problems when people had occupied or were in houses
25 who were Serbian ethnicity which the Albanians believed were theirs;

1 correct?

2 A. I'm sorry. I just want to make sure I understood.

3 Q. The long-running property disputes was one of the factors that
4 erupted when the refugees all returned.

5 A. Property disputes were among the issues that were prominent.

6 Q. Long-running grudges going back to the pre-war days.

7 A. I can't speak to that. I don't know the nature of all of these
8 disputes. What I do know is -- because I am -- I was made aware, I
9 learned of cases at the time of Serbian families who fled, left their
10 apartments, and then those apartments were occupied, and there were
11 sometimes disputes over then who could live there, who would own that
12 property. And those types of disputes were not infrequent.

13 Q. And with a lot of weapons flowing around and no effective law
14 and order, they not infrequently resulted in killings; correct?

15 A. I'm not aware of concrete cases that resulted in killings, but
16 it is true there were arms and tensions did rise to violence.

17 Q. Well, you're -- yeah. And given your -- if I can put it this
18 way, your willingness to help the Court with your opinions, you would
19 regard it as highly likely, wouldn't you, that with weapons flowing
20 around, disputes like that, long-running grudges, would erupt into
21 shootings and killings?

22 A. They could.

23 Q. They could.

24 A. I would say they could.

25 Q. Yes, exactly. And if we look a little further down:

1 "These properties disputes were common in Pristina because some
2 Kosovar Albanians had occupied the apartments of local Serbs who had
3 fled, often after being threatened. Similarly, I heard that people
4 apparently went to KLA commanders for permission to open a business.
5 I therefore suspect that there are examples of KLA commanders or
6 influential members exercising that type of *de facto* authority."

7 Again, you are talking about zone commanders and sub, beneath
8 that level, local commanders?

9 A. Yes, we're talking -- well, I'm talking here specifically about
10 Prishtine.

11 Q. Yes, I see that.

12 A. Right. So those would have been commanders with authority in
13 that area.

14 Q. Yes. But it wasn't just in Prishtine that these things were
15 happening, was it?

16 A. Correct. I am more familiar with what happened in Prishtine.

17 Q. That's perfectly a reasonable observation. And before I move on
18 to my next topic, tell us in summary about the kiln and the
19 allegation of a crematorium to burn KLA victims' remains in Klecke.
20 Tell us the story from when you first heard about it to the
21 involvement of the Serbian judge and your conclusions.

22 A. I first learned about this accusation in, I believe, September
23 when I was in Kosovo. The Serbian state claimed to have uncovered
24 evidence of grave KLA crimes, and the discovery of bodies in this --
25 this -- it's not a city, really, Klecke.

1 And we did look into it and found that the Serbian claims raised
2 serious questions and concerns. So I cannot say that no crimes were
3 committed there. I cannot say that the KLA is not responsible for
4 violence against people who were found there. But I can say -- or
5 who are alleged to have been found there. But I can say the Serbian
6 presentation left very serious doubts.

7 For example, if you want me to continue, I can, they brought I
8 believe - is it two or one? - at least one individual to testify
9 before the media. And this person was interrogated by an
10 investigative judge from Prishtine who was quite notorious. I
11 remember her name. Danica Marinkovic. She was known for being the
12 prosecutor in cases that involved political detainees and torture,
13 and I documented many of those cases. And she interrogated this
14 person before the media, which is, of course, for us a -- needless to
15 say, a large red flag.

16 Q. And is it fair to say, and I don't need to take you to the
17 passages, but I accept that the way that you described it, from the
18 outset in your report, was as a highly questionable allegation
19 potentially staged by the Serbian authorities?

20 A. Yes. The way we presented it was to clarify our remaining
21 questions about the allegations.

22 Q. Yes. So the two examples that you've cited in your witness
23 statement as the most significant crimes committed by the KLA, albeit
24 that you qualify that one, are that one, which you don't -- you're
25 not in a position to support, but you do make that clear from the

1 outset, and the Lake Radonjic investigation, which you didn't conduct
2 but, in fact, I don't mean to be rude, but recycled Serbian
3 propaganda about, albeit unwittingly; correct?

4 A. I would ask to see the -- where in my statements I refer to
5 those.

6 Q. Give me a moment.

7 A. To those two ...

8 Q. Well, I think we will find it -- give me a moment. I'll have it
9 looked up and I'll come back to you. But you -- here we are. I
10 think we can start, in fact, with the humanitarian law violations
11 report, and so that's 0364783 at 0364787.

12 THE COURT OFFICER: Can we perhaps repeat the number or identify
13 the presentation queue?

14 MR. EMMERSON: Yes, it's a report we looked at this afternoon
15 and before. It's "Humanitarian Law Violations in Kosovo." Its ERN
16 is 0634783. Oh, it's K063 -- oh, it's been given a P number already,
17 has it? P380.

18 Q. It's where you deal with these two incidents together under --
19 if we start at page 75 of the report, which is 364865. Yes, exactly.
20 Start there. We can see it's under the heading "Violations of the
21 Rules of Law ..." and you make various general comments. And if we
22 go over the page to 866, you will see you set out some quotations
23 from KLA public statements. And then when you move to the specifics
24 at 77, that's 867, the next page, after the quotations, you move
25 directly to the specifics in which you first of all deal with the

1 Lake Radonjic attack, and then:

2 "The most serious allegation made against the UCK prior to the
3 September 9 announcement was the Yugoslav government's accusation
4 that in the village of Klecka the UCK had executed twenty-two
5 civilians, including women and children, and burned the bodies. The
6 police claimed to have discovered human remains and a kiln used to
7 cremate bodies when they recaptured Klecka from the UCK on August 27.
8 The details of the execution-style killings were provided by two
9 ethnic Albanians who the Yugoslav authorities said were UCK fighters.
10 One of them, Bekim Mazreku, was presented to foreign reporters while
11 in police custody and then questioned by Danica Marinkovic, an
12 investigating judge from Pristina who had been involved in a number
13 of political trials in which ethnic Albanians were tortured. Mazreku
14 was not allowed to speak independently to the journalists. According
15 to the *New York Times*, 'one man, whose videotaped interrogation was
16 made available to the *New York Times* today, gave accounts that did
17 not make sense and which the police say they cannot corroborate.'"

18 There is a denial by the UCK spokesman. And then you conclude:

19 "As of September 1, 1998, Human Rights Watch was not able to
20 confirm the charges about Klecka."

21 So that's one way you very clearly, from the earliest stage,
22 make it clear, however, that there were very serious doubts that this
23 is a genuine crime scene at all and that it may have been a
24 fabricated allegation backed up by confessions, if that's the right
25 word, obtained under torture.

1 But it's bracketed there, you see, with your first reference on
2 September 9th to the other announcement made on the same day by the
3 Serbs of the finding of the bodies at Lake Radonjic. Do you see
4 that?

5 A. But I believe that's back up, no? The --

6 Q. Yes, exactly. There were two announcements made by the Serb
7 authorities on the same day: One was the Klecke kiln crematorium
8 allegation, which you qualify; and one was the announcement that
9 there'd been a UCK site discovered with 34 bodies. Both of them
10 announced on the same day. And you managed it, did you, to get to
11 see the situation at Klecke but not at Gllogjan?

12 A. So may I respond --

13 Q. Yes.

14 A. -- to this? So, first, scrolling up, if I may, to page 77, I
15 believe. It's in the -- at least in the printed version of this
16 report would be page 77. You can see -- thank you. That's -- yes.
17 The first paragraph about the allegations in Gllogjan --

18 Q. Yup.

19 A. And I note this is different from -- I mean, this is phrased as
20 a police announcement; right?

21 Q. Yes.

22 A. It is an allegation.

23 Q. And you don't purport to --

24 A. No.

25 Q. -- back it up until 2001, when you adopt it as a fact.

1 A. And here it is presented in a qualified way. And the Klecke
2 allegations are the same, but we were -- we had more details --

3 Q. Yeah.

4 A. -- about -- at the time about the Klecke allegations, which we
5 considered problematic.

6 Q. And, obviously, you read the opinions of other people as well,
7 that they considered in the New York Times, for example, that they
8 considered it problematic as well?

9 A. Apparently.

10 Q. Yes. Did you -- is that something you would have attached
11 weight to, the opinion of the New York Times?

12 A. We use media sources as a part of the mosaic, if I may use that
13 term, not to rely on allegations but to use it in ways that will help
14 us understand the full --

15 Q. The thing I'm struggling with is there you are perfectly
16 properly qualifying that allegation, and as regards the Lake
17 Radonjic, reporting it what it was, which was an allegation,
18 uninvestigated, unverified, by the Serbs, announced on the same day.
19 Nothing more than that.

20 A. We have stated the facts.

21 Q. So what changed between that report in 2001 when you endorsed it
22 as a known fact that these were -- so the KLA killings in September
23 1998 and that the zone commander must have either ordered them or
24 known about them because they were KLA killings in his zone? What
25 changed between these two reports? You told us you didn't conduct

1 any investigations. So did something change or was it just a change
2 of heart, change of mind, change of nuance, parsing the language?
3 What was it that changed? I mean, you see there is a difference,
4 don't you? You see there is a difference?

5 A. Yes, I recognise the difference.

6 Q. Can you tell us why it's so different?

7 A. No, I cannot.

8 Q. Did you just make it up? Did you just change your mind about
9 how you were going to endorse and recycle the allegation?

10 A. No, we didn't just make it up, but I would have written that
11 line differently as I've said previously.

12 Q. No, but that's not the concession I'm inviting you to make. I'm
13 inviting -- so that the Judges can analyse the quality of your
14 materials and decide what weight to put on your opinions, this is how
15 you put it accurately in October 1998. In the 2001 report, as we've
16 seen, you categorically describe it as killings by the KLA in
17 September 1998, so not reported in but in September 1998, about which
18 the zone commander must have known or have authorised.

19 Now, what changed? What did you do between those two reports?
20 What did you learn between those two reports that caused such a
21 dramatic change of position from a this has been reported along with
22 another bogus report to we endorse this as a fact? What changed?

23 A. I'm not aware of anything changing.

24 Q. So you just changed your mind about the language you would use?

25 A. We crafted those sentences in ways that I would do differently,

1 that did not --

2 Q. No, no. It's not that --

3 A. -- meet our standards.

4 Q. I do apologise, but you're not answering my question.

5 A. [Overlapping speakers] ...

6 Q. You've already conceded you made a big mistake on the facts in
7 the second report. That's not what I'm asking. Is it the case that
8 nothing changed between the two?

9 MR. TIEGER: I am going to object now. This has been asked and
10 answered --

11 MR. EMMERSON: Well, that has.

12 MR. TIEGER: -- a number of times.

13 MR. EMMERSON: That has.

14 PRESIDING JUDGE SMITH: Yes, it has.

15 MR. EMMERSON:

16 Q. Nothing changed. Correctly understood?

17 A. Between --

18 MR. TIEGER: It's the same -- just made the objection. I
19 believe it was ruled on and he asked the question again.

20 PRESIDING JUDGE SMITH: The objection is sustained. You've
21 asked it enough times.

22 MR. EMMERSON: Very well.

23 Q. So the overall theme here is what is the difference between --
24 as you teach your students, between your process of investigating the
25 facts and making conclusion of fact and what happens in a courtroom?

1 Because your evidence is being tendered to assist the Judges.

2 MR. TIEGER: Your Honour, please, can we move on to questions
3 rather than argument or statements?

4 MR. EMMERSON: Very well.

5 PRESIDING JUDGE SMITH: Just make a straightforward question --

6 MR. EMMERSON: Yes.

7 PRESIDING JUDGE SMITH: -- if you have it.

8 MR. EMMERSON: Yes, I'm going to.

9 Q. I want to ask you -- first of all, I want to read to you, if I
10 may, from the analysis that was done in the Haradinaj case about the
11 killings, because you've testified that you know of nothing to
12 suggest that these -- any killings by -- attributed to the KLA were
13 investigated. That's what you've testified; correct?

14 A. That we did not investigate those --

15 Q. No.

16 A. -- killings.

17 Q. You've also testified that you are not aware of the KLA
18 investigating those types of deaths. You've made quite a big point
19 about it, in fact, haven't you?

20 A. To the best of my knowledge, they did not. No.

21 Q. Just bear with me a moment. So if you'll bear with me for a
22 moment, I'm just going to read to you two short passages from the
23 judgments in that case which might -- I'm going to ask you to comment
24 on.

25 MR. EMMERSON: So the reference is IT-04-84, and it's the trial

1 judgment of 3 April 2008.

2 Q. "The Trial Chamber has received extensive evidence, in
3 particular about the perpetrators and the circumstances surrounding
4 the death, of only one of the alleged murders, namely that of Sanije
5 Balaj. The case of this victim demonstrates the level of caution
6 with which the Trial Chamber should proceed when considering
7 inferences as to responsibility on the mere basis of the
8 disappearance or abduction of a person and the discovery of the body
9 of that person in the Radonjic/Radoniq canal area."

10 That's paragraph 159. Paragraph 161:

11 "If the Trial Chamber would not have received the more detailed
12 evidence in relation to the alleged murder of Sanije Balaj this
13 incident would likely have impressed upon the Trial Chamber that the
14 murder had been committed 'in KLA custody,' as defined above. All
15 the elements appear to be present: An arrest by KLA soldiers; the
16 inclusion of Sanije Balaj on what seems to have been a wanted list,
17 used by those soldiers; transportation to and interrogation in a KLA
18 headquarters; retrieval of the bodily remains in the Radonjic/Radoniq
19 canal area; and forensic medical evidence of a violent death. At
20 first sight this would make it among the strongest cases for which
21 the Prosecution asks the Trial Chamber to draw the inference about
22 the murders committed 'in KLA custody.' However, in this case, where
23 detailed evidence was led about the circumstances under which Sanije
24 Balaj met her death, the apparent conclusion would have been the
25 wrong conclusion."

1 Now, pausing there. You accept, don't you, that a proper
2 examination can, in circumstances such as this, lead to the entirely
3 opposite conclusion about this case that you have commented on?

4 A. I'm just struggling to understand the question exactly. You're
5 asking me --

6 Q. Well, I'm saying a proper examination under critical
7 circumstances where the evidence is fairly evaluated could lead to
8 the opposite conclusion to the sort of knee-jerk conclusion that you
9 chose to put out.

10 A. A thorough and proper and professional investigation is the best
11 way to expose the facts.

12 Q. And at paragraph 475, and this is what I wanted to ask you about
13 your assertion about investigations.

14 "With regard to the murders of Sanije Balaj and Istref and
15 Nurije Krasniqi the Trial Chamber has, in sections [of the judgment],
16 above, concluded that there are reasonable alternatives to KLA
17 involvement in the crimes, namely that the three persons were
18 murdered by persons who were not acting under the direction of or in
19 pursuit of the policies of the KLA."

20 That's just a factual conclusion.

21 "In this respect, the Trial Chamber considers, with regard to
22 Sanije Balaj, in particular that Ramush Haradinaj among others
23 insisted on an investigation into her death and that such
24 investigations in fact were undertaken."

25 So there is clear conclusion and evidence that there were

1 investigations being conducted.

2 A. I take your word for that.

3 Q. But you do understand that when you repeatedly say the
4 investigations were not, as far as we know, conducted by the KLA,
5 that is capable of being misunderstood as an assertion that these
6 deaths were not investigated by the local KLA commanders.

7 A. We never asserted that there were no. We said always that we
8 were not aware of any.

9 Q. But you understand the implication, don't you, of that
10 statement?

11 A. Well --

12 Q. As a Human Rights Watch representative, you understand the
13 implication is that no such investigations were conducted.

14 A. No, I do not accept that. We stated clearly to convey that we
15 are not aware, but there may be other cases beyond our knowledge.

16 Q. Can we then go back to the humanitarian law violations report.

17 MR. EMMERSON: That's -- I'll just make sure I get it right this
18 time. It's 380, P380. Thank you.

19 If we can just hold that up on the screen for a moment, there
20 are a couple of issues I want to ask you about it. We may not need
21 to go to the citations.

22 But apart from those two instances, most of the report, just
23 like the "Under Orders" report, is concerned with proving Serb
24 crimes; correct?

25 A. Correct, Serb and Yugoslav.

1 Q. Pardon?

2 A. Serb and Yugoslav.

3 Q. Serb and Yugoslav. And you explained that's because they were
4 far, far greater in number and seriousness, but that's not an issue
5 for this Trial Chamber.

6 My point is that apart from those two instances that we've
7 looked at, the other examples that you give in that report are all
8 cited to the Humanitarian Law Centre. I mean, we can go through it
9 if you want, but the footnotes have been checked, and all of the
10 examples of the abduction of Serbs and others are cited to
11 Humanitarian Law Centre report.

12 A. So maybe I can --

13 Q. Please.

14 A. -- attempt to answer your question. There are perhaps two parts
15 to my answer, if you'll --

16 Q. Please.

17 A. -- bear -- bear with me.

18 Q. Of course.

19 A. The first part is this report, the IHL violations in Kosovo is
20 predominantly focused on Serbian and Yugoslav crimes. Our resources
21 were primarily --

22 Q. Understood.

23 A. -- focused on that. At the same time, we felt it was important
24 to include mention and report on violations by all parties --

25 Q. Absolutely.

1 A. -- to the conflict. Just bear with me. I implore you. And
2 part of that is also to remind the parties to the conflict of their
3 obligations and to raise what we considered to be credible
4 allegations.

5 Now, that is one reason why this report is reliant on these
6 credible secondary sources coupled with the atmosphere in Kosovo at
7 the time, including concerns for security, which made it more
8 difficult to investigate crimes or alleged crimes by the KLA because
9 people were less willing to speak about them.

10 Now, the reason we included the chapter and felt it crossed a
11 threshold was not for any specific case but the full collection and
12 the full body of evidence, if you will, that rose to us to a point of
13 credibility, stating the sources and putting on notice.

14 One moment, please.

15 So that's the context of this reporting. And the second part of
16 my question -- of my response, if I may, briefly, is I would like to
17 make a distinction between the reporting by us on KLA abuses over
18 time, and it's relevant, because the timing of this report was where
19 the predominant -- the majority of abuses were by state forces and
20 our focus was on state forces.

21 Following this was the report "Detentions and Abuse," I believe
22 it's called, which continued that trajectory and also relied
23 primarily on secondary sources. But over time that changed. And I
24 do believe there's a distinction to be made in particular with the
25 report "Abuses Against Serbs and Roma in the New Kosovo," where the

1 context is entirely different. This is post Kumanovo. And I'm just
2 coming to my end. But the methodology is distinctly different.

3 Q. Absolutely.

4 A. And in that report, we visited dozens of locations. We
5 interviewed dozens of witnesses and victims. We visited crime
6 scenes. My colleague even saw bodies. And so there is a difference
7 and a distinction --

8 Q. Absolutely.

9 A. -- between those.

10 Q. And we're going to look at that period which is relating to post
11 Kumanovo June 1999. It will be tomorrow now. But I am not asking
12 you about the work that was done by -- it was Ben Ward, wasn't it,
13 who authored that report?

14 A. Primarily.

15 Q. Yes.

16 A. Not exclusively.

17 Q. And interviews were conducted. And I'm going to look at that
18 with you and things you've said about it in the past tomorrow.

19 I asked you a really very simple question, which is that the
20 remainder of that section where you're describing alleged abductions
21 by the KLA -- and they are specific cases, so it's not just a
22 pattern. We're not just saying we've looked at the Humanitarian Law
23 Centre. We like them. They're credible. Therefore, this is what
24 they find. No. You adopt them case by case, and the citation in the
25 footnote is to a published Humanitarian Law Centre report which had

1 just been published when you published your report.

2 Now, I entirely understand your main focus was Serbian crimes,
3 and I entirely understand you can't overlook allegations against the
4 KLA. But apart from the two we've already discussed, the Glogjan
5 incident and the Klecke incident, everything else is cited to
6 Humanitarian Law Centre report. Would you accept that or do I need
7 to go through footnote by footnote and show you?

8 A. Yes, I -- to spare time, I accept your --

9 Q. Yes. Well, it can be checked if I'm wrong. Now, we talked
10 about the presumption of innocence and not making statements about
11 people's guilt as an important safeguard for a fair investigation and
12 a fair trial. But also presumably you accept what the fundamental
13 difference between this type of reporting and the proper examination
14 of the facts is that you need to be able to evaluate the reliability
15 of the information; correct?

16 A. Correct.

17 Q. Now, does the Humanitarian -- or did the Humanitarian Law Centre
18 adopt the same approach to disclosing the identities and statements
19 of its witnesses as Human Rights Watch?

20 A. Did they reveal their sources is your question?

21 Q. Mm-hm. Mm-hm.

22 A. I would have to look back at their -- but I would say one point,
23 because I knew the Humanitarian Law Centre very well.

24 Q. This is Natasa Kandic?

25 A. She was the director and still is, I believe, the director of

1 the organisation. I knew her. I knew her researchers who worked in
2 Kosovo and held them in very high regard. And this is worth
3 mentioning because it's not just that I liked them, but I was aware
4 of their methodology. We discussed together how to conduct research.
5 We shared information about leads and investigative approaches. And
6 I considered their methodology to be professional.

7 So relying on their reporting is not how I would put it. Citing
8 their reporting is -- was based on -- was based on my first-hand
9 experience and the seriousness with which they pursued their work.

10 Q. Well, I understand that you regarded them as a reliable NGO and
11 -- despite the fact that they were based in Belgrade and Serbian, I'm
12 not challenging any of that, because we know that they reported on
13 both sides with equal determination. So there's no suggestion of
14 that.

15 But clearly, before you can state something happened, as you've
16 told us, you need to have multiple sources, you need to ensure that
17 you triangulate the information, I think, was your word, you look for
18 corroboration, never rely on a single source, and you have to
19 evaluate somebody that you're interviewing; yes?

20 A. Agreed.

21 Q. Did you ever meet any of the people who gave that information to
22 Natasa Kandic's organisation? Did you ever interview them?

23 A. You mean --

24 Q. Yes.

25 A. -- directly myself?

1 Q. Anyone from Human Rights Watch?

2 A. Those people, no.

3 Q. No. So you didn't make an assessment of credibility of the
4 witnesses?

5 A. I made an assessment of the credibility of the interviewers.

6 Q. Exactly. You made an assessment of the credibility of somebody
7 who was describing events based on witnesses that they had
8 interviewed; correct?

9 A. Correct.

10 Q. And then you assessed that because the assessor was credible,
11 that meant you could state them as facts.

12 A. Yes and no, because the key here is the distinction between
13 documentation of individual cases and the full collection of those
14 cases. And that's a distinction that we talk about in our training,
15 and it's about the burden of proof on individual cases and the burden
16 of proof on patterns, because we're talking about multiple cases here
17 and consistent patterns of abuse, so that taken together in their
18 entirety we believed it presented a credible case that deserved a
19 public reporting.

20 Q. Yes. Well, if we can just look at how that then plays out. So
21 at -- we start at K036-4868, which is the last page we looked at when
22 you were describing the kiln allegations in Klecke. And immediately
23 after that, we can see the heading: "Abductions of Ethnic Serbs."
24 Right?

25 And you then explain in the second paragraph there that the

1 Humanitarian Law Centre had documented unaccounted for individuals,
2 39 of whom were last seen in UCK custody. Also documented three
3 cases of ethnic Albanians. And then if we just go over to the next
4 page, you start to go through the cases.

5 So 79 abductions in Rahovec. You describe that example by
6 reference to the Humanitarian Law Centre, we can see. Do you see?

7 A. Which footnote are you --

8 Q. Well, footnote 138, footnote 134, which is for the previous
9 paragraph where you're making more general allegations.

10 A. I can't see 138, but I take your word for it.

11 Q. Can we go down to --

12 A. Yes. Mm-hm.

13 Q. And then we go over the page to 4870, to Jovan Lukic, the case
14 of Jovan Lukic. And there again your citation is to Tang and the
15 Humanitarian Law Centre, your citations are. Tanjug, sorry.

16 A. Yes.

17 Q. And if we go over the page to 81, we've got -- so that's 871,
18 the next page. Individual specific cases of Ratko and Branko
19 Staletic, Vojko and Ivan Bakrac, ten employees of the Belacevac mine,
20 and then over the page, and so it goes on.

21 So there are many, many individual cases you are presenting, but
22 you are doing so without having any opportunity to evaluate the
23 credibility of the evidence that you've been given other than relying
24 on the evaluation of somebody else; is that right?

25 A. I would not categorise it as such.

1 Q. Well, then did you conduct any evaluation -- do you read the
2 statements, even, that they've given?

3 A. I do not recall --

4 Q. Okay.

5 A. -- if I did. But --

6 Q. But that wouldn't be a problem if you hadn't seen the evidence
7 at all?

8 A. But -- no, but we definitely were in regular communication and
9 conversation with our Humanitarian Law Centre colleagues, and that
10 would include on these individual cases.

11 Q. But you do understand that if one person says, "I've assessed
12 this to be credible" -- and, look, we've just looked at the example
13 of Sanije Balaj in the Haradinaj case where, as it turns out, all the
14 people who looked as though they died in KLA custody, in fact, the
15 evidence showed something completely different. Hence, your very
16 important statements of principle in your witness statement about how
17 you would never make such a finding of fact.

18 My question for you, in those circumstances, is why are you
19 listing these in the report when you haven't any idea about the
20 witnesses themselves, whether they've got corroboration, other than
21 the fact that somebody else has done that exercise and you trust them
22 outside your organisation?

23 PRESIDING JUDGE SMITH: Mr. Tieger.

24 MR. TIEGER: Objection. Basically, the objection is asked and
25 answered. It's a long argument in the purported guise of an question

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1 that's already been addressed.

2 MR. EMMERSON: All right. Well, let me ask the question --

3 PRESIDING JUDGE SMITH: Sustained.

4 MR. EMMERSON: [Overlapping speakers] ... shorn of the
5 introduction, if that's okay.

6 MR. TIEGER: And I'll make the same objection. It's asked and
7 answered.

8 MR. EMMERSON: Well, it -- I'll leave Your Honour to rule about
9 this [Overlapping speakers] ...

10 PRESIDING JUDGE SMITH: We've been on this subject -- I said it
11 was sustained.

12 MR. EMMERSON: Yeah. Oh, I'm sorry, I didn't hear that. We
13 have been on the subject, but I'm just going to make one general
14 comment about --

15 PRESIDING JUDGE SMITH: [Microphone not activated]

16 MR. EMMERSON: Well --

17 PRESIDING JUDGE SMITH: Just --

18 MR. EMMERSON: Your Honour has already ruled this evidence in on
19 the basis that its weight and credibility will be evaluated by the
20 Panel at the end. To then seek to restrict the way I cross-examine
21 the witness about reliability and weight would, respectfully, not be
22 the right course.

23 PRESIDING JUDGE SMITH: [Microphone not activated].

24 Think about your question and I'd like you to ask it in a more
25 understandable way.

1 MR. EMMERSON:

2 Q. Do you accept that if you put into your report identified cases
3 based on an assessment of credibility by a different organisation,
4 that you are engaging, as I suggested to you earlier, in an echo
5 chamber in this particular instance?

6 A. No, I don't accept that.

7 Q. Well, I take the point about the later methodology that you made
8 earlier on, and we'll look at that tomorrow. But what does Human
9 Rights Watch's endorsement of this add to the assessment of its
10 credibility? How do you -- how do you make any assertion that you
11 regard this as credible other than it's percolated up from another
12 international NGO?

13 A. Well, this is an NGO that we know well and partner with, so
14 place a high degree of credibility on their work. Secondly, we state
15 the sources. So --

16 Q. Well, you state --

17 A. We -- please.

18 Q. You state them as a source. You don't state their sources --

19 MR. TIEGER: This -- I'm sorry, I'll count to three for
20 Mr. Emmerson if he likes, but that's another example of stepping on
21 the witness's answer, I'm afraid.

22 PRESIDING JUDGE SMITH: Yes, please pause between the questions,
23 both of you.

24 MR. EMMERSON: Well, I'm sorry, I just didn't want the answer to
25 go on on a false basis.

1 Q. You haven't stated the sources, have you? You've stated the
2 organisation but not their sources.

3 A. Well, that is what I meant by "the source."

4 Q. No --

5 A. No, but we -- it is a source. You may not find the source --
6 the -- reliable, but it is a source. And we are putting it in there
7 so that readers may assess the material for themselves. So that's
8 why we don't -- we state it as from -- we are clear about from where
9 it's coming coupled with - coupled with - what is the important
10 information from other organisations like the ICRC, which spoke about
11 missing persons.

12 But, again, the principle that I'm trying to make here, and
13 maybe this will help -- or please stop me if I've made this point. I
14 don't want to --

15 Q. I can't stop you.

16 A. -- repeat myself.

17 Q. I'll be stopped if I stop you.

18 A. I was speaking to the Panel. But is that the crux of this work
19 was on Serbian and Yugoslav forces, but we felt it was critically
20 important for civilian protection to highlight cases that we deemed
21 credible, stating what we knew about them and giving the source, if
22 it's the Humanitarian Law Centre, to make clear that IHL applies to
23 all parties.

24 Q. Yes.

25 A. And that was the --

1 Q. Just so that we're clear. As you may have heard earlier on,
2 there is no prohibition on this Court in hearsay evidence, but there
3 is a difference between primary hearsay and multiple hearsay, and you
4 understand that difference as a fair trial advocate, don't you? You
5 understand the difference as a fair trial advocate yourself, which
6 you accept you are? Human Rights Watch is an organisation promoting
7 fair trial rights; correct?

8 A. Correct.

9 Q. And you understand that one of the fair trial guarantees is an
10 ability to examine the reliability of the original source, don't you?

11 A. I believe that every panel will assess the witness, and there
12 should be proceedings that allow that to be done as rigorously as
13 possible.

14 Q. And the witness in this case being the person who gave the
15 account in the first place or who?

16 A. Well, in this case we're talking -- the organisation could be
17 asked themselves about their methodology and about their information,
18 and maybe they have a different policy on sharing notes or not. I
19 cannot speak for the Humanitarian Law Centre. Or, if possible, the
20 individuals themselves.

21 Q. Absolutely.

22 A. Of course. Getting as close as possible to the primary source
23 is, without any question, an important -- the --

24 Q. A fair trial right.

25 A. -- the goal of the best possible investigation.

1 Q. And a fair trial right, you would say, and Human Rights Watch
2 would say, wouldn't they, that the use of anonymous witness
3 statements is a violation of Article 14 of the ICCPR, and has said
4 so.

5 MR. TIEGER: Objection. Now we are way beyond seeking --

6 PRESIDING JUDGE SMITH: We're also at the -- just -- we're at
7 the end of our day. You can start this over tomorrow if you wish.

8 MR. EMMERSON: I can leave this topic with one final question.

9 Q. You're suggesting, therefore, in your answer that the right
10 person to testify about this would at least be Natasa Kandic or
11 somebody from the human rights centre and not yourself, correct,
12 about this period?

13 A. I wouldn't say that it's the right person or the wrong person.
14 I believe I have something to contribute. But if other people want
15 to be called for questioning, then that is, of course -- whatever can
16 shed light on the facts is welcome.

17 Q. Very well. Thank you.

18 PRESIDING JUDGE SMITH: Mr. Abrahams, we'll finish for the day.
19 You will be escorted from the courtroom by the usher. We will start
20 again tomorrow at 9.00, and you will still be testifying.

21 THE WITNESS: Thank you.

22 [The witness stands down]

23 PRESIDING JUDGE SMITH: [Microphone not activated] ... next
24 week's witnesses?

25 MR. TIEGER: I'm sorry, Your Honour. I realise in this position

1 I should have that information readily at hand. I do not. I can
2 ask -- I don't know if Mr. Halling does or not. If you can give me
3 just one second.

4 MR. HALLING: I believe that 3827, who's the subject of the
5 videolink application, is set to be next week. And the other
6 witnesses' codes we can have for you tomorrow morning.

7 PRESIDING JUDGE SMITH: [Microphone not activated]

8 MR. HALLING: Yes.

9 PRESIDING JUDGE SMITH: [Microphone not activated]

10 MR. HALLING: Yes, we can.

11 PRESIDING JUDGE SMITH: [Microphone not activated] ... today,
12 everyone would appreciate it.

13 Mr. Ellis, something?

14 MR. ELLIS: Your Honour, I was only going to update my time
15 estimate. I think we had three hours --

16 PRESIDING JUDGE SMITH: [Microphone not activated]

17 MR. ELLIS: I'm sorry for pre-empting. I think we had three
18 hours for this witness. It's very unlikely that I'll use that. More
19 like one hour, I'd have thought.

20 PRESIDING JUDGE SMITH: [Microphone not activated]

21 MR. ROBERTS: Similarly, Your Honour. Maximum of an hour, I
22 think, at this stage.

23 PRESIDING JUDGE SMITH: [Microphone not activated]

24 MR. EMMERSON: Well, I -- I think I gave an estimate of three
25 hours, and so with -- by the mid-morning break I'll be finished. I

1 will finish by the mid-morning break.

2 PRESIDING JUDGE SMITH: Thank you very much.

3 Thank you, everyone, for today. We are adjourned until 9.00
4 tomorrow.

5 --- Whereupon the hearing adjourned at 4.05 p.m.

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