

1 Monday, 24 January 2022

2 [Open session]

3 [The accused entered court]

4 --- Upon commencing at 8.00 a.m.

5 PRESIDING JUDGE SMITH: Good morning and welcome, everyone.

6 Madam Court Officer, please call the case.

7 THE COURT OFFICER: Good morning, Your Honours. This is  
8 KSC-BC-2020-07, The Specialist Prosecutor versus Hysni Gucati and  
9 Nasim Haradinaj.

10 PRESIDING JUDGE SMITH: Thank you, Madam Court Officer.

11 Any change in the appearances, Ms. Bolici?

12 MS. BOLICI: Good morning, Your Honour. We have been joined  
13 today by Mr. Ryan Marr, legal intern. Thank you.

14 PRESIDING JUDGE SMITH: Thank you.

15 MR. BOWDEN: Good morning, Your Honour. As Mr. Rees indicated,  
16 he's not present today. Otherwise, no changes.

17 PRESIDING JUDGE SMITH: Thank you.

18 Mr. Cadman.

19 MR. CADMAN: We are joined this morning by Mr. Buckley.

20 PRESIDING JUDGE SMITH: Thank you.

21 We also note that Mr. Gucati and Mr. Haradinaj are present in  
22 the courtroom.

23 Before we start with Mr. Reid, can the SPO indicate whether they  
24 object to the admissibility of the expert report? I mean, of course,  
25 the parts authorised by the Court of Appeals Panel.

1 MS. BOLICI: Your Honour, we don't object to the admission of  
2 the expert report. We would just like to clarify that in our  
3 understanding of the Court of Appeal's decision are not admissible  
4 paragraph 26 in its entirety; paragraph 27, second period; paragraph  
5 28 in its entirety; paragraph 30, last period; and paragraph 31,  
6 letter (a), the words "in accordance with the Rules of Procedure and  
7 Evidence and." Thank you.

8 PRESIDING JUDGE SMITH: All right. We'll get back to this at  
9 the end of the testimony. I believe that we are now ready for Expert  
10 Witness Number 1253, Mr. Bob Reid.

11 Can we have him online at this time, please.

12 [The witness entered court via videolink]

13 PRESIDING JUDGE SMITH: Good morning, Mr. Reid.

14 THE WITNESS: [via videolink] Good morning, Your Honour.

15 PRESIDING JUDGE SMITH: Can you hear us all okay?

16 THE WITNESS: [via videolink] Yeah, loud and clear. Thank you.

17 PRESIDING JUDGE SMITH: Very good. We realise it's morning here  
18 and late afternoon where you are.

19 THE WITNESS: [via videolink] It is.

20 PRESIDING JUDGE SMITH: We appreciate you being with us under  
21 the circumstances and we hope you're feeling all right.

22 THE WITNESS: [via videolink] Yes, I am. Thank you. Yeah, much  
23 better. Thank you.

24 PRESIDING JUDGE SMITH: We will start now with your testimony.  
25 You will see on your screen the text of the solemn declaration which

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1 you are asked to take pursuant to Rule 149(5) of the Rules.

2 Can you see it?

3 THE WITNESS: [via videolink] No, but I've got a copy of it here.

4 PRESIDING JUDGE SMITH: We better make sure we have this  
5 ability --

6 THE WITNESS: [via videolink] Oh, it's there now.

7 PRESIDING JUDGE SMITH: It's there. Okay.

8 THE WITNESS: [via videolink] Yeah.

9 PRESIDING JUDGE SMITH: There might be a slight delay. So if  
10 you --

11 THE WITNESS: [via videolink] Okay. Conscious of the  
12 significance --

13 PRESIDING JUDGE SMITH: So if you will please read it aloud.  
14 Thank you.

15 THE WITNESS: [via videolink] Yes.

16 Conscious of the significance of my testimony and my legal  
17 responsibility, I solemnly declare that I will perform my expert  
18 analysis conscientiously and to the best of my knowledge and that I  
19 will state my findings and opinion accurately and completely.

20 PRESIDING JUDGE SMITH: Thank you.

21 WITNESS: ROBERT REID

22 [Witness testified via videolink]

23 PRESIDING JUDGE SMITH: Mr. Reid, as you may know, we are hoping  
24 to hear your testimony between now and noon today Hague time and also  
25 if necessary on Friday, 28 January, between 8.00 a.m. and noon Hague

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1 time. These are, as I've earlier stated, afternoon and evening times  
2 at your end.

3 Counsel for Mr. Haradinaj, Mr. Cadman, will go first in asking  
4 you questions. Once he is finished, the Gucati Defence may have some  
5 questions for you. Then it will be the Prosecution's turn to  
6 cross-examine you, and members of the Panel might also ask you  
7 questions.

8 The estimate of Mr. Cadman for the length of your examination  
9 was a half a day, and it may be shorter than that. The Gucati  
10 Defence did not provide an estimate, but we hope that their  
11 questioning, if any, will be relatively short. And the SPO estimate  
12 is up to four hours.

13 The Panel may allow redirect examination if conditions for it  
14 are met. Please try to answer the questions clearly with short  
15 sentences. If you don't understand a question, feel free to ask  
16 counsel to repeat the question or tell them that you don't understand  
17 and they will clarify.

18 And I realise you've done this before, Mr. Reid, and these are  
19 known to you, but we want to make sure we go over the rules.

20 THE WITNESS: [via videolink] Certainly.

21 PRESIDING JUDGE SMITH: Speak clearly into the microphone and  
22 also wait a few seconds before answering a question, and speak at a  
23 slow pace for the interpreters to catch up with you and, also, in the  
24 event one of the counsel needs to say something before you answer,  
25 there is ample time for them to do so.

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1           While you are giving evidence in this court, you are not allowed  
2           to discuss with anyone the content of your testimony. If any person  
3           asks you questions about your testimony, please let us know.

4           Please also base your answers on your experience and your  
5           expertise and respond to questions within the limits set by this  
6           Panel.

7           Mr. Reid, over the weekend you received some additional material  
8           from Mr. Cadman which we authorised to be disclosed to you in  
9           advance. You also received, by now, a list of documents the  
10          Haradinaj Defence intends to use during your examination-in-chief.

11          Just before the Prosecution starts its cross-examination, you  
12          will also receive a list of documents they wish to use today. If  
13          their cross-examination continues into Friday, you might get a list  
14          of additional documents on that day. We might also have to take some  
15          short breaks to get the Prosecution documents to you before the  
16          cross-examination starts.

17          THE WITNESS: [via videolink] Certainly.

18          PRESIDING JUDGE SMITH: We also take it that counsel for  
19          Mr. Haradinaj has informed you of the following.

20          You are not allowed to give evidence in your  
21          examination-in-chief on any matter that goes beyond the scope of  
22          paragraphs 9 to 25, 27, 29, and 31 of your expert report. These are  
23          paragraphs indicated by the Court of Appeals as permissible for the  
24          purpose of you challenging the testimony of Ms. Pumper.

25          The topics you covered in these paragraphs are, first of all,

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1 standing operating procedures and guidelines regarding the  
2 investigations, including search and seizure operations, chain of  
3 custody practices at the ICTY, authentication of materials -  
4 including a comparison with SPO practices, and an analysis of the  
5 SPO's three search and seizure operations at 8, 17, and 22 September  
6 2022. You are authorised to testify on these matters for the purpose  
7 of challenging the testimony of Ms. Pumper.

8 Notwithstanding the additional material you received, you are  
9 directed to answer questions with a view to explaining, but not  
10 exceeding, the analysis you provided in the aforementioned paragraphs  
11 of your report. You received a transcript that has a confidential  
12 segment. Any questions regarding that segment should focus on the  
13 procedures described therein in view of the analysis provided in your  
14 report and should not reveal confidential information.

15 This is the essence of the decision we rendered on Friday as  
16 regards to your anticipated evidence.

17 Do you understand all of that?

18 THE WITNESS: [via videolink] I do, Your Honour. Thank you.

19 PRESIDING JUDGE SMITH: All right.

20 Mr. Cadman, the floor is yours.

21 MR. CADMAN: Your Honour, before we start, I just wanted to  
22 inquire whether we're likely to be taking a break between now and  
23 12.00 just so that I can --

24 PRESIDING JUDGE SMITH: We will in some hopes that we will  
25 finish with your testimony by the time of the break. I think you

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1 have reestimated approximately two hours; is that correct?

2 MR. CADMAN: Yes.

3 PRESIDING JUDGE SMITH: And if you can shorten that so the break  
4 comes earlier, that's fine too. But you go ahead.

5 MR. CADMAN: And I just wanted to clarify that I'm not permitted  
6 to go through paragraphs 28 and 30 of Mr. Reid's report, because that  
7 wasn't my reading of the Court of Appeal decision.

8 PRESIDING JUDGE SMITH: 28 and 30 are not to be -- you are not  
9 to go into 28 and 30. They were crossed out and we gave that notice.

10 MR. CADMAN: Before I begin, can I just ask that Mr. Reid's  
11 report is provided to him. That is DNH0856, DNH0868.

12 THE WITNESS: [via videolink] I have a copy of that, Mr. Cadman,  
13 in front of me, if I'm allowed to look at that.

14 Examination by Mr. Cadman:

15 Q. Can I get you to look at the last page, which is DNH0868, and  
16 confirm that is your signature?

17 A. That is my signature, correct.

18 Q. And can I confirm that that report is dated and signed on  
19 9 November 2021?

20 A. Correct.

21 Q. And that no changes have been made to that report since that  
22 time?

23 A. That's correct.

24 MR. CADMAN: Could I ask that Mr. Reid is shown the document at  
25 DNH1307 to 1310.

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1 Q. And that is the letter of instruction that you received for your  
2 expert evidence in this matter?

3 A. Yeah, I have a copy of that as well, if I may refer to it. Yes.

4 Q. Can I --

5 A. That's correct.

6 Q. Thank you. Can I ask you to look at the last page, which is  
7 1310, in which there are five documents listed that you have been  
8 provided with that forms the basis of your report?

9 A. Yes, I've got the 1, 3, 4, and 5, and I recently got the public  
10 redacted hand -- oh, sorry. I got the public redacted declarations,  
11 number 2, just recently.

12 Q. And that was going to be my next question, that you have the  
13 trial transcripts for when Witness W04841, Ms. Zdenka Pumper, gave  
14 evidence between 18th and 26th October and, as you have said, you  
15 have now received her declarations?

16 A. Yes, that's correct. And I've read those transcripts, the  
17 public transcripts.

18 Q. And can I ask you to confirm that the contents of your report  
19 are true to the best of your knowledge or belief?

20 A. That's correct.

21 Q. And accurately reflects what you will say during your  
22 examination-in-chief today?

23 A. That's correct.

24 Q. Now, the Prosecution, Ms. Bolici, has already indicated that  
25 there is no challenge to your qualifications as an expert, which I'm



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1 most grateful for the indication. But just for the record, I just  
2 have a couple of questions in relation to your professional  
3 background.

4 Can I start by asking what is your current occupation?

5 A. I'm retired now.

6 Q. And what was the last role that you held?

7 A. The last role that I held was between October 2019 and  
8 September 2020. I went back to the IRMCT, the Mechanism for  
9 international criminal tribunals, and worked with Prosecutor  
10 Brammertz on the tracking of the Rwandan fugitives. There were six  
11 to eight outstanding fugitives. I worked with him on that. And when  
12 the arrest of Felicien Kabuga was conducted, I went back into  
13 retirement in September 2020.

14 Q. And what field do you specialise in?

15 A. Well, criminal investigation is my background. I'm a former  
16 New South Wales police officer. And from 1994 up until August 2018,  
17 I worked at the ICTY and the Mechanism for International Criminal  
18 Tribunals, and the last position I held there was the chief of  
19 operations for Prosecutor Brammertz.

20 Q. And prior -- and we'll come back to your work at the ICTY in a  
21 moment. But prior to your appointment in 1994, what was your role in  
22 Australia?

23 A. I was a detective within the New South Wales police force. I  
24 was designated a detective in 1981, and I went immediately from my  
25 detectives course -- or within a month or two of my detectives course

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1 to the homicide squad. I then was seconded to the federal body of  
2 the National Crime Authority, which is new body set up to investigate  
3 organised crime. And then in 1987, I went to the federal Attorney  
4 General's department, again on secondment, where we investigated  
5 persons who had entered Australia who it was alleged had been working  
6 as part of the Nazi regime during the Second World War.

7 In 1991, I then went back to the New South Wales police to the  
8 Drug Enforcement Agency, and I stayed there until June 1994 when I  
9 was -- I left on leave without pay to go to the ICTY as an  
10 investigations team leader in the Office of the Prosecutor.

11 Q. And were you one of the first investigators --

12 A. Yes.

13 Q. -- in 1994 at the ICTY?

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

15 Q. And during that early phase, were there guidelines on standard  
16 operating procedures?

17 A. When I arrived, there was -- there was very little. In the  
18 first few months, that was the focus of what we needed to do. We  
19 needed to set up the office as an Office of the Prosecutor. We  
20 needed to identify investigations that needed to be carried out. We  
21 needed to put in place standard operating procedures and guidelines  
22 in relation to the major areas that we would carry out our  
23 investigations, in addition to the recruitment, et cetera, that any  
24 new office has to undertake.

25 Q. And during that phase, that early phase, did you become an

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1 investigations team leader?

2 A. I was recruited as an investigations team leader into the Office  
3 of the Prosecutor.

4 Q. And was that in relation to a specific investigation or was that  
5 a general appointment?

6 A. No, it's just a general appointment. And then when I arrived,  
7 we looked at the allegations that had been in the media with the  
8 commission of experts as to what investigations we would carry out.  
9 And my duty became -- or one of my duties was to investigate the  
10 crimes that were allegedly occurring in the municipality of Prijedor,  
11 which is in north-western Bosnia, where there were three alleged  
12 concentration camps there.

13 Q. We'll come back to that in a moment.

14 A. Sure.

15 Q. But during the entirety of your time, and I don't want you to  
16 answer this in particular detail, but were you familiar with a system  
17 at the ICTY at that time called ZyLAB?

18 A. Yes.

19 Q. And just, very briefly, could you explain what that is?

20 A. ZyLAB was -- our document collections all went through ZyLAB.  
21 It's a search engine. And there are discrete procedures that need to  
22 be done. We put together -- initially, it was a paper metadata  
23 information form. It then became an electronic form. That gave you  
24 all metadata in relation to each and every document that was going  
25 through. It also gave -- you could also put into the metadata the

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1 author of the document, the classification of the document - whether  
2 it was confidential, whether it was restricted - what the document  
3 was - for example, witness statement of X. And then once that form  
4 was submitted, initially it was manual stamping of each and every  
5 document. Eventually, it became electronic stamping with the  
6 exception, probably, of handwritten documents which was still  
7 manually done.

8 And then once the stamping had been done, the document would be  
9 scanned. The optical character recognition would be run across it to  
10 make it searchable. And we worked closely with Zy because in the  
11 B/C/S language, they had diacritics and it was very difficult to be  
12 able to pick up. So in the beginning, we used to use wild cards, an  
13 asterisk or a question mark, et cetera, to -- so that it would pick  
14 up those names. Eventually, we were able to be able to do a full  
15 search across them.

16 And then once the document was scanned, OCR'ed, the document was  
17 then put into the evidence unit repository, and that was where it was  
18 stored. You know, as I said, the classifications are on it, whether  
19 it was a classified document, it was confidential, whether it was  
20 restricted, and where there was chain of custody.

21 Q. And just for the sake of clarity, you've mentioned a couple of  
22 acronyms. So when you do mention an acronym which may not be  
23 commonly known, if you could just explain what that is. When you say  
24 B/C/S, you mean Bosnian/Croatian/Serbian?

25 A. Yeah, Bosnian/Croatian/Serbian, yes.

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1 Q. And was --

2 A. And then of course -- of course, sorry, once the conflict in  
3 Kosovo, in 1999, we also had the Albanian language as well that we  
4 used.

5 Q. And that was an office-wide system?

6 A. Yes. For the Office of the Prosecutor, yes.

7 Q. Yes. And was that a system that was restricted to access within  
8 the physical office in The Hague or was that something that could be  
9 accessed remotely?

10 A. We couldn't access it remotely. I remember when we first went  
11 into Kosovo in June 1999, I think, we sent a mobile evidence unit  
12 team down to work with the documentation that we were seizing in  
13 Kosovo. And that team, they were based in Skopje, in Macedonia. We  
14 would take the documents from Prishtine or wherever we got on the  
15 documents from, Pec or wherever it was. They would be transported  
16 down to Skopje, and then they would be processed along exactly the  
17 same lines and then taken back to The Hague.

18 Q. So it's fair to say that if there was a field office, that  
19 process would initiate or be initiated within that field office  
20 rather than taking the material back to The Hague and inputting it  
21 into ZyLAB in The Hague?

22 A. The majority of the time it was put into ZyLAB in The Hague.  
23 That was the only exception. There may have been another exception I  
24 can't recall, but I do vividly recollect that one because I was  
25 heavily involved in it, where we -- where we had a field office in

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1 Skopje and we sent our evidence unit down together with mobile  
2 scanners, et cetera, to be able to process the documentation. But  
3 normally we would bring the documentation back to The Hague, whether  
4 we drove it back. If it was chain of custody, we would always drive  
5 it back. If it wasn't chain of custody, then, you know, it would  
6 come back that way, you know, in a bag or something like that, in an  
7 airline flight.

8 Q. And you said, just so its clear, that you sent the evidence team  
9 down to Skopje in order to carry out that function there?

10 A. Yes. We just didn't know how much documentation we were going  
11 to get. And if you recall, we had a fairly tight schedule on our  
12 hands because we'd already indicted President Milosevic and four or  
13 five of the Serbian government. So we wanted to get any  
14 documentation that was coming across from police stations or  
15 municipal buildings that had been evacuated by the Serbs, we wanted  
16 to get that documentation into the process immediately.

17 Q. And just moving on to your experience as a witness, have you  
18 provided expert testimony previously?

19 A. Not so much expert testimony. I've given factual testimony.  
20 But in the beginning when I gave evidence in relation to the cases in  
21 Prijedor, in particular, the Dusko Tadic trial, we did touch on the  
22 chain of custody of certain documents, et cetera. But not actually  
23 as an expert witness. I gave my testimony as a fact witness.

24 Q. And when you were giving your expert testimony of a fact  
25 witness, what kind of fact evidence would you give?

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1 A. Well, it would be the interviewing of the witnesses. It was  
2 mainly we -- in February -- sorry, January, February 1996, we got the  
3 opportunity to go and do crime scenes examination of the area of  
4 Prijedor. We went into the Omarska camp, we went into the Keraterm  
5 camp, we went into the Trnopolje camp. We did crime scene  
6 examinations, we did videos, we did photographs, et cetera,  
7 et cetera. So I was, like, tendering evidence in relation to those  
8 particular areas that we had investigated. We had already issued the  
9 indictments in relation to those crime -- crime bases, and this was  
10 the first opportunity we'd had to go in and do the crime scene  
11 investigations. So I was giving the evidence of what we had done  
12 when we went into Prijedor and how we collected the evidence,  
13 et cetera.

14 Q. And so would you have given evidence on the search and seizure  
15 operations that were carried out as part of those operations?

16 A. Yeah, one of the -- well, a couple of the search and seizures  
17 there. We seized documentation in 1996 from the camps. We had a  
18 search warrant issued by a judge of the ICTY. And then in -- I think  
19 it was in 1997, we went into Prijedor again, again with a search  
20 warrant issued by a judge of the ICTY, and we searched the municipal  
21 building, the police station, and I think the political headquarters  
22 of the SDS. And we took thousands and thousands of pages of  
23 documentation there, and that was treated as chain of custody. And  
24 it was taken from Prijedor back to Banja Luka, from Banja Luka to  
25 Zagreb, and then it was driven from Zagreb up to The Hague under

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1 chain of custody conditions.

2 Q. I want to come to that in a bit more detail in a moment --

3 A. Sure.

4 Q. -- and you have touched upon issues of chain of custody. So  
5 were you required to give evidence on the chain of custody procedures  
6 that were undertaken?

7 A. I don't recall actually giving the evidence of the chain of  
8 custody. No, I don't recall that.

9 Q. And during your time at the ICTY, what teams and units were you  
10 in charge of?

11 A. Well, I was in charge of the investigative team that did the  
12 investigation in relation to north-west Bosnia. That eventually  
13 broadened from Prijedor and it broadened into the hierarchy of the  
14 Prijedor municipality. Then we went up another level to the -- what  
15 I call the Banja Luka, the regional level, and indictments were  
16 issued against the political leader and the military leader in  
17 Banja Luka. And then I also, I think in about 2000, maybe 1999, I  
18 also took control of a number of the support units - the evidence  
19 unit, the document/video indexing unit, our searching unit, and the  
20 trial support unit.

21 Q. Now, turning to paragraph 10 of your report, you use the phrase  
22 "standard operating procedures and guidelines."

23 A. Yes.

24 Q. What types of, we'll call them SOPG, were put in place at the  
25 ICTY with which you were familiar?



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1 A. Well, the majority of the SOPGs that we put in place I was very  
2 familiar with. Can I just go through -- can I read from my report?

3 PRESIDING JUDGE SMITH: Yes, you may.

4 THE WITNESS: [via videolink] Thank you, Your Honour.

5 PRESIDING JUDGE SMITH: Just briefly. Do not read the entire  
6 report. Just briefly.

7 THE WITNESS: [via videolink] No, no, no. No. No. No. I mean,  
8 the types of guidelines and standard operating procedures that we put  
9 together were file management guidelines, how to put together a  
10 request for a field mission, search and seizure mission guidelines,  
11 opening of an investigation, taking of statements from victims,  
12 interviewing of suspects and accused, how to conduct the mission that  
13 you're current -- you're going on, what to take on the particular  
14 mission, reporting conditions while you're on the mission, reports at  
15 the conclusion of a mission, acquittal of mission expenses, the  
16 gathering of evidence while you're in the field, how to register that  
17 evidence when you obtain that evidence and got it back to the office,  
18 search warrants, how to apply for a search warrant, what needed to go  
19 into the application for the search warrant, and similar things like  
20 that, and payment for out-of-pocket expenses to witnesses.

21 And that was probably one of the last ones because we found that  
22 when witnesses were travelling to us, they would have out-of-pocket  
23 expenses, and at that particular time the UN had never heard of that  
24 type thing, so we put together some guidelines so that the UN would  
25 understand what we were doing.

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1 MR. CADMAN:

2 Q. And who defined those principles?

3 A. Well, they're principles that would have come at that particular  
4 time probably from the deputy prosecutor's office because we didn't  
5 really have a prosecutor in place until about September, I don't  
6 think. So the deputy prosecutor would have been issuing the  
7 instructions. There was a chief of investigations at that particular  
8 time, and it would have been generated from the chief of  
9 investigations. I know I worked closely with the chief of  
10 investigations at that time to put together those particular standard  
11 operating procedures and guidelines.

12 Q. And how were those guidelines disseminated amongst the staff of  
13 the Office of the Prosecutor?

14 A. Once they were put in place and the deputy prosecutor had signed  
15 off on them, we then brought into practice an induction course for  
16 all new members. And as you arrived in the office, whether you were  
17 a secretary, whether you were a senior investigator, a legal officer,  
18 or you worked in the trial support unit, wherever, you were inducted.  
19 And certain members of the office would give lectures in relation to  
20 the standard operating procedures or the background to the conflict  
21 of the war. Some of the lawyers would give the legal proofs of the  
22 elements of the charges, elements of the crimes, et cetera,  
23 et cetera.

24 So we had an induction course and that went up until around  
25 about -- I think it was about 2000 that that induction course was in

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1 place. And the new prosecutor who came in decided that it would be  
2 better to not so much have the induction course but to put the new  
3 member into an experienced trial or investigation team and they  
4 learned -- but we had an edited induction and there was a booklet  
5 that they were given. Each new staff member had to come to the chief  
6 of investigations to say that they'd read that booklet and that they  
7 understood what the -- for instance, the Rules of Procedure and  
8 Evidence were that related to the investigations, et cetera,  
9 et cetera. That's how the people learnt their trade at the tribunal.

10 Q. And as part of that induction programme and the booklet that you  
11 mentioned, would it set out the structure of the office so that staff  
12 within the office were aware of different units like evidence  
13 custodians, disclosure officers?

14 A. Yes. Yes, I mean, one of the -- one of the people that would  
15 give the lecture to the induction course was the head of the evidence  
16 unit, and what was expected of the staff member to work with the  
17 evidence unit, what was required, the forms that were required, how  
18 you had to, you know, set your evidence out and bring it to the  
19 evidence unit, et cetera.

20 Q. Now moving on to the search and seizure operations. Were you  
21 involved yourself in the planning or carrying out of search and  
22 seizure operations?

23 A. The first two search and seizure operations we did, the first  
24 one was in February -- January, February of 1996, and I was the  
25 investigations team leader. We went in with a team. There were

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1 investigators, lawyers, and that was our crime scene examination.  
2 What I call our crime scene examination mission. We were armed with  
3 a search warrant issued by a judge, and we took thousands of pages  
4 from the camps, the different areas. We took photographs and we just  
5 carried out, basically, a crime scene examination. And where there  
6 was documentation, we took that documentation and took it back to The  
7 Hague.

8 The second search and seizure mission was much, much more  
9 complicated because we had asked for the assistance of -- I think  
10 they were IFOR at that stage, the Implementation -- NATO  
11 Implementation Force, and they were the military, and we asked for  
12 their assistance to go in and do a search warrant in the municipality  
13 of Prijedor of the police station, of the municipal building, and the  
14 SDS headquarters. Now, this was unheard of, and in some quarters of  
15 the military they saw it as mission creep. But we were very, very  
16 lucky. The area that we wanted to do, the British forces were there,  
17 and they were very, very supportive and they supported us fully.

18 So armed with a search warrant from a judge in the tribunal, we  
19 carried out the search and seizure of those buildings. It was very,  
20 very closely coordinated with the military. We went in early  
21 morning. The military sent one of their advisers to the president of  
22 Republika Srpska who was Mrs. Plavsic at the time. She knew about  
23 the search. And when I got to the police station with the chief of  
24 police, his phone was ringing and Ms. Plavsic said to assist the  
25 tribunal as much as she could. So that sort of lessened the anger a

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1 little bit.

2 And then we went out with the Republika Srpska police and the  
3 military as our security. We searched the various establishments.  
4 We took thousands and -- I can't remember exactly how many pages it  
5 was, but it was tens of thousands of pages from those establishments.

6 And then the military were a bit concerned about the amount of  
7 time we were taking, so we went back to the military headquarters in  
8 Banja Luka where we did the inventory. And as the inventory was  
9 finished the next morning, we took it back to the authorities in  
10 Prijedor, we left them a copy of the inventory, and then we drove the  
11 documentation in the evidence boxes back to the Zagreb field office.  
12 And from the Zagreb field office, the documents were then driven by  
13 an investigator and a driver from the office back to The Hague where  
14 they were then processed along the stream that I've just outlined  
15 earlier.

16 Q. And that was carried out, effectively, just shortly after the  
17 end of the conflict?

18 A. December 1997, I think it was. Prijedor was a particularly  
19 fragile area in Bosnia. In July of 1997, we'd issued a sealed  
20 indictment against the mayor of Prijedor, the executive officer of  
21 Prijedor, and the chief of police. And, unfortunately, in the  
22 attempt to arrest the chief of police, he was shot dead. So there  
23 was a lot of anger towards the tribunal, if I can put it that way.  
24 So, yeah.

25 Q. So in difficult circumstances. I want to ask you now about the

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1 planning prior to mission that's carried out. What kind of planning  
2 was carried out?

3 A. Well, initially we -- a legal officer and myself, we flew to  
4 Sarajevo to meet with the command of the military, the NATO military,  
5 and I am sure they were still called the Implementation Force in  
6 those days. And we met with them. A lot of them were very hesitant,  
7 but eventually we were able to convince them that, look, this is, you  
8 know, what we need to do. We're a court of law. And, luckily, as I  
9 said, we had the British, and the British were able to assist us  
10 greatly, and they agreed. And once they agreed, then the mission  
11 could start to be planned.

12 We then went to -- the same legal officer and I then went to  
13 Banja Luka where the British military were based, and we met with the  
14 commander and his deputy, outlined exactly what we wanted to do. So  
15 once we had agreement as to a rough date as to when we wanted to do  
16 it, we went back, we planned our side of things from the ICTY and the  
17 military planned their side of things. And then we went back again a  
18 week before the date we were due to do the mission, and it all came  
19 together. Our teams came in. It was a big team that came in because  
20 we had to cover three buildings. There is a team leader for each  
21 building. I think I did the police station -- no, sorry, I did the  
22 municipal building. One of the other team leaders did the police  
23 station, another team leader did the SDS headquarters, the political  
24 party headquarters.

25 There was exhibit officers allocated. We had all the forms. We

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1 had exhibit forms, inventory forms, et cetera, et cetera. So, yeah,  
2 it was a fairly detailed mission that we had to go on. Yeah.

3 Q. And in the carrying out of that mission, was that carried out in  
4 accordance with the SOPG that were in place at that time?

5 A. Yes. I mean, we refined it probably after that to include, you  
6 know, other amendments like, you know, working with the military,  
7 what you've got to supply to the military, et cetera, et cetera. And  
8 then a short time after that, I think in March 1999, we then -- we  
9 did the military barracks in Banja Luka. That was done by another  
10 team leader, but I went on that mission but as support.

11 Q. And in your experience and in your professional opinion, why is  
12 it important to have SOPGs for missions of this kind?

13 A. So you have uniformity right across the office, that everybody  
14 carries out their duties in exactly the same way. It's not just a  
15 search and seizure mission. It's everything right across the office.  
16 Your file management systems, your evidence unit, processing. If  
17 everybody's on the same page -- and the only way you can get  
18 everybody on the same page is having a standard operating procedure  
19 or guideline in place to be able to do that. Particularly when your  
20 office gets to the size that our office got to. I mean, in the early  
21 days, we were very small and you could communicate it. But once you  
22 got office of -- you know, when we were working in Kosovo, our office  
23 was up to 8- or 900 staff with seconded staff as well, exhumation  
24 staff and things like that. So when you have a large office like  
25 that it's important to have those sorts of things in place.

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1 Q. And on a mission of this kind where you said that there was a  
2 big team, would you have ensured that all members of that team were  
3 familiar with the SOPG?

4 A. Yes, definitely. Before we left The Hague, the teams were  
5 briefed as to what we wanted to do. And then the night before we  
6 went in, we had a full briefing with the military. I briefed both  
7 the ICTY staff and the military staff as to exactly what was  
8 happening.

9 Q. And your instruction to carry out that mission, how would you  
10 have received those instructions?

11 A. Well, I think it was a team decision that we made. I think we  
12 saw that we had a number of people that had been indicted and that  
13 were in custody, and we needed a lot more documentary evidence. So  
14 the team -- and I'm pretty sure we would have gone to the prosecutor  
15 as a team, to the prosecutor and the deputy prosecutor, and said,  
16 "This is what we want to do," and we got the sign-off.

17 Normally, the deputy prosecutor was the person who was the  
18 operational person, if I can put it that way. The prosecutor knew  
19 everything that was going on, but the deputy prosecutor was more at  
20 the level of operation level, so he would have signed off on it and  
21 given us the with approval to go and meet with the military in  
22 Sarajevo, to meet with the military in Banja Luka, et cetera,  
23 et cetera.

24 Q. So prior to embarking on the mission, you would have had a team  
25 meeting with members of your team, you may have even been briefed by



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1 the deputy prosecutor prior to embarking on that mission?

2 A. Yeah, he may have been at the briefings. I can't recall now.  
3 But he was very hands-on as a deputy prosecutor.

4 Q. I want to move now to the practices and procedures related to  
5 chain of custody. And for ease of reference, I'm referring to  
6 paragraph 13 of your report.

7 Now, what steps were taken, in your view, to comply with  
8 practices and procedures relating to chain of custody?

9 A. A chain of custody is pretty basic and simple. It's that the  
10 minute the document comes into your possession, you must know where  
11 it is 24 hours a day, seven days a week, even when it's in your  
12 evidence unit. And that's basically what we did. When we went on  
13 mission to Prijedor, we had an evidence officer who when a document  
14 was -- when a group of documents, perhaps, was taken out, he would  
15 then record. Now, he wouldn't record every single page of every  
16 single document that came out, but he would say a binder labelled X,  
17 Y, Z, and he would ensure that that binder went into an evidence bag  
18 or into an evidence box which would be numbered, and then he would  
19 record that number on his inventory sheet. And then once we'd  
20 finished our searches, we took all those documents back, we were able  
21 to say exactly which box or which bag each and every document was in.  
22 And then if needed to be, we would then do a more detailed inventory  
23 to be able to be taken back to the Prijedor authorities.

24 And the reason we took everything back to the Prijedor  
25 authorities was so that they knew everything we had taken and they

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1 agreed with what we had taken and they signed for it and said: Yes,  
2 we agree that you've taken all that. And we did the same thing in  
3 Banja Luka when we went to the 1st Krajina Corps, the military  
4 barracks in Banja Luka. In some instances, we didn't give them the  
5 document back, but we burned a DVD for things such as soldiers'  
6 files, and they were needed for pension rights and things like that.  
7 So we would then burn a DVD and send that back to them so that they  
8 could do that. But we kept the original documentation, and we made  
9 sure that at every stage of the process we knew exactly where that  
10 document was every minute of every day.

11 And even when it gets back to the evidence unit, there was a  
12 process there for recording the chain of custody so that in some  
13 instances, and if I can give an example, in the Milosevic trial, the  
14 presiding judge in the Milosevic trial ordered that the original  
15 documents had to be tendered in evidence. Some of the other trial  
16 chambers said, no, a copy is sufficient, but the presiding judge in  
17 the Milosevic trial wanted the originals. So you will probably see  
18 or you will see in the evidence unit, if it's chain of custody, if  
19 it's come from, say, Banja Luka or it's come from Srebrenica,  
20 wherever it's come from, from the search and seizure mission, you  
21 will see exactly where that document is: The ERN number 1 to 4 is  
22 Exhibit P7 in the Milosevic trial; or the document has been taken by  
23 investigator so-and-so to the Netherlands Forensic Institute for  
24 handwriting analysis or for blood sampling or whatever. So you know  
25 where the documentation is all the time.

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1 Q. And at paragraph 14 and 15, you give these two examples, one  
2 from December 1997 in Prijedor and then --

3 A. Yeah.

4 Q. -- you give the other example at paragraph 15 in relation to  
5 Banja Luka.

6 A. Yeah.

7 Q. Now, just dealing with the first example that you gave. Just  
8 talk us through, briefly if you can, specifically what chain of  
9 custody was followed in that case?

10 A. Well, exactly what I've said. It's that the -- the search  
11 team -- you would divide your team up. You would have a search team,  
12 you would have an exhibit officer, you would have a photographer  
13 and/or a videographer. And it was the exhibit officer's duty to  
14 ensure that every single document that was being taken was recorded  
15 and was placed into either an evidence bag or into an evidence box.

16 Now, I can't recall now whether we were using evidence bags. I  
17 do know that when we got back to Zagreb we had boxes, but it could  
18 have been that the evidence bags were put into the boxes. So the  
19 evidence custodian or the evidence officer would record what was  
20 being taken. And then we would seal everything up and we then took  
21 it back to the military headquarters at Banja Luka where they were  
22 unsealed again, and we went through the specific documents there to  
23 say, okay, what exactly have we got. And I know it was a huge  
24 process that we went through, and the interpreters and -- they were  
25 up all night going through all the documentation so that we could do

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1 a fairly detailed inventory. Again, not page by page, but to give  
2 the authorities a general idea of what we had taken.

3 And then once that was done and that was delivered to the  
4 authorities in Prijedor, everything was sealed again and it was  
5 driven with the military security to Zagreb, to our Zagreb field  
6 office, where, again, it was put into our -- a locked room and that  
7 room was also sealed overnight. And I'm pretty sure, although I  
8 can't be 100 per cent certain, that one of the security guards from  
9 the Zagreb field office stayed in the office that night to guard that  
10 documentation.

11 And then the next morning, one of the investigations team  
12 leaders and the driver from the Zagreb field office, they drove from  
13 Zagreb to The Hague where the documentation was then handed over  
14 under chain of custody to the evidence unit. And I'm pretty sure it  
15 was the head of the evidence unit it was handed over to, and then  
16 they processed that evidence from that time on.

17 Q. And just a couple of points on that. So you said that there  
18 would have been an exhibits officer, and correct me if that's not  
19 exactly what you said, but my understanding was that you said there  
20 was an exhibits officer who would have accompanied the team on the  
21 seizure?

22 A. Yeah, each of the teams had an exhibit officer. Like, for the  
23 police station, there was an investigations team leader, searchers, a  
24 photographer, videographer, and an exhibits officer, for the police  
25 station, for the municipal building where I was, and for the SDS

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1 headquarters.

2 Q. And when dealing with the various different stages of the chain  
3 of custody, would those individuals have been required to give a  
4 statement at any stage on the basis of what they had carried out?

5 A. I don't think they gave, like, a statement. They may have  
6 given -- they may have put together an Official Note. I really can't  
7 remember now. But we knew who the exhibit officers were because each  
8 of the exhibit officers would sign -- as they'd finish each page,  
9 they'd sign. So, I suppose, yes, that technically is a statement,  
10 they'd sign at the bottom of the inventory form that they have taken  
11 custody of this documentation.

12 Q. And you said earlier that, certainly in relation to the Prijedor  
13 situation, was that you would have done the inventory on the scene;  
14 if not, it would have been taken to another location where the  
15 inventory is done but taken back to the Prijedor authorities to get  
16 them to verify what was taken?

17 A. Yes. Yes, we always did that. We always wanted them, whether  
18 it was the Serbs, whether it was the Muslims, whoever it was, the  
19 Croats, it didn't matter, we always took the inventory back so that  
20 they knew exactly what we had taken. In fact, that's how  
21 Republika Srpska knew that we had a lot of the staff records from the  
22 1st Krajina Corps because they asked us could they please have those  
23 records back because they needed it for pension and entitlements of  
24 the soldiers, and we burned a CD and sent it back. So that's how  
25 they knew we had those type of records.

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1 Q. And they would have confirmed the inventory against the  
2 documents seized?

3 A. They wouldn't have gone through each and every document, but  
4 there was always -- when we did the search, particularly at Prijedor,  
5 we had a Republika Srpska police officer with us, and he was also  
6 seeing -- or she, I think there was a couple of ladies as well, they  
7 were seeing what we were taking as well. And they -- I'm not sure if  
8 they signed off on the inventory as well. I can't recall now whether  
9 they signed off on the field inventory as to what we were taking. I  
10 just can't recall. But we always had the -- we had three or four  
11 Serb police officers with us when we were doing the search.

12 Q. And you've said that after this process of what you've just  
13 explained it was taken to the Zagreb field office?

14 A. Yes.

15 Q. Just explain once it was at the Zagreb field office, is that the  
16 stage in which it would have been scanned or would that --

17 A. No.

18 Q. -- have happened at a later stage?

19 A. No, that happened when it got to The Hague. The Zagreb field  
20 office was just a staging post for us. And it was too much to expect  
21 the driver and the investigations team leader to drive all the way  
22 from Banja Luka back to -- I think it's a five-hour drive between  
23 Banja Luka and Zagreb. So we did a stage point. We had a field  
24 office in Zagreb. We decided that we'd stop there overnight, they  
25 would have a good night's sleep, and then early the next morning they

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1 set off. I think they set off about 6.00 in the morning. They took  
2 that in the truck that the OTP had in the Zagreb field office. The  
3 Zagreb field office was an OTP office. It wasn't an ICTY office. It  
4 was an Office of the Prosecutor field office. So they set off early  
5 in the morning and then the rest of the team, we all flew home.

6 Q. And then once that material arrived in The Hague, what process  
7 would then follow?

8 A. The evidence unit -- I met the truck when it arrived and the  
9 evidence unit met the truck. We unloaded the truck, took everything  
10 to the evidence unit, to the vault. We had two big vaults in the  
11 ICTY. It's a former insurance building, so we were quite lucky that  
12 we had two massive vaults where, I think, they held the insurance  
13 policies. They were fire resistant, they were flood resistant,  
14 et cetera, et cetera. And we put it all into their so that we could  
15 establish exactly -- we had everything that we had seized. Once we'd  
16 established that, then the evidence unit, they took over. They  
17 signed for it under the chain of custody. There is a special form  
18 that they would have signed, and they signed for it, and then the  
19 documentation is in their custody.

20 We, as investigators, lawyers, interpreters, et cetera,  
21 et cetera, we had done our job. The evidence unit was now to do  
22 their job. The only thing, sorry, that we probably would have done  
23 extra is that we probably -- I can't remember in 1997 whether we had  
24 electronic or paper metadata. But the evidence unit would have  
25 required some metadata to be able to start the process rolling so --

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1 but either way, someone would have put the metadata in as to what the  
2 documents were, where they were seized from, dates that they were  
3 seized, the authors of the documents, et cetera, et cetera.

4 Q. And you'd said that the documents were actually driven from  
5 Zagreb to The Hague.

6 A. Yeah.

7 Q. Was that standard?

8 A. No. In some areas, we couldn't do that. But we just -- we  
9 always erred on the side of caution in the OTP. If we thought  
10 something could go wrong, we always tried to mitigate the fact that  
11 it could go wrong. We just figured that if we flew such large  
12 quantities of documentation back, you couldn't fit this in your hand  
13 luggage, so it would have had to go into an airline cargo hold or  
14 baggage hold, and we just weren't willing to take that risk, so we  
15 just decided that we would drive it back.

16 Q. You then mention another example at paragraph 15 which is  
17 Banja Luka. I'm not going to ask you to go through that.

18 A. Yeah.

19 Q. But can you --

20 A. It's exactly the same process.

21 Q. The same process?

22 A. Yeah.

23 Q. And bearing in mind this, as you've said, fairly labourious  
24 process that was undertaken in missions like this, what would have  
25 been the consequences if you hadn't used such procedures?



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1 A. Well, the documentation could have been questioned in court. I  
2 mean, we've used a lot of this documentation. When I retired in  
3 August 2018, we had nearly 10 million pages in our evidence unit.  
4 And I think, conservatively, probably 70 to 75 per cent of that  
5 documentation was authored by the parties to the conflict and was  
6 either given to us by the parties or obtained under search and  
7 seizure.

8 So, as I say, we always like to err on the side of caution. And  
9 if we thought that a document had the potential to be evidence, then  
10 we said, okay, that's got to be treated in a different category to,  
11 say, for example, a witness statement, and it has to have all the  
12 hallmarks of chain of custody. The fact that we can say in court --  
13 if it's challenged, we are able to say in court: No, this is exactly  
14 what we did and these were our procedures. And by having our  
15 standard operating procedures and guidelines, it's all uniform and  
16 you can do it.

17 Q. And by having an unbroken chain of custody --

18 A. Yes.

19 Q. -- you can verify?

20 A. Yes. Yes. And you can verify that by the paperwork. The  
21 paperwork follows the documents. Yeah.

22 Q. Moving on to -- you then mentioned that you were part of the  
23 investigations section senior management.

24 A. Yes.

25 Q. What were you required to be -- well, let me put it this way:

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1 Were you required to sign-off on mission requests as part of that?

2 A. If it was my team that was involved, yes. Every mission request  
3 had to come across my desk. And if they were going to do search and  
4 seizure missions, then, yes, that would come across my desk as well.  
5 And it was the same with the other commanders. I think we had three  
6 investigations commanders, and they were the same.

7 And we used to have a morning meeting, so everybody knew exactly  
8 what was going on. The chief of investigations and the three  
9 investigations commanders, we met at 8.00 every morning, we'd go  
10 through what had happened the day before, what was going to happen  
11 today, in the next week, et cetera, et cetera. So we basically knew  
12 what was happening in everybody's team.

13 Q. And ordinarily, how much time would go into the preparation of  
14 one of these missions?

15 A. It depends. I mean, if it was a mission to interview five or  
16 six witnesses, then it would be a mission request. You'd make sure  
17 that all the boxes were ticked, that -- you know, that the field  
18 office knew that they were coming, that the vehicles were available,  
19 et cetera, et cetera.

20 But if it was a search and seizure mission, that was quite a big  
21 deal, you know. So -- and it wasn't just north-west Bosnia that we  
22 did. I mean, eventually we did the presidency in Sarajevo. We did  
23 the Bosnian Croats in Siroki Brijeg, et cetera, et cetera. So the  
24 search and seizures, they're a different sort of category because  
25 particularly in Bosnia, and to a lesser degree Kosovo, we had to

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1 include the military because they were our security.

2 In Kosovo it wasn't so bad. Although, we did have liaison with  
3 the military, and the British were the driving force in the  
4 beginning, so we had a very good working relationship with them from  
5 our work in Bosnia. But the Serbs had left Kosovo, so we really  
6 didn't get a lot of resistance. The main thing that we wanted from  
7 the military was to make sure that when we went in there weren't  
8 unexploded devices and things like that being left in buildings that,  
9 you know, would be harmful to our staff. So that was the sort of  
10 things. And the military also helped with, you know, accommodation  
11 and helping us with transport, et cetera, et cetera.

12 Q. I just want to focus on the advanced planning and what would go  
13 into the search and seizure missions.

14 Now, you will have seen from the transcript -- or you read from  
15 the transcripts that Ms. Pumper, who gave evidence at this trial,  
16 initially stated that she'd received instructions from the Prosecutor  
17 orally, later confirmed that she'd received an e-mail instruction,  
18 but hadn't made any contemporaneous notes of those instructions.  
19 Would that be a normal practice in your view?

20 A. No. We would have a mission request and it would come from the  
21 person requesting the mission. It would be in the form of a report.  
22 And, again, your standard operating procedures make sure that they're  
23 uniform. And it would go -- in some instances if it was a search and  
24 seizure, it would go to the deputy prosecutor, but it would go  
25 through the chief of investigations and the investigations commander.

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1 So for example, if you were doing -- like I was in charge of the  
2 investigations where Muslim perpetrators were involved. So we did  
3 the Tuzla Corps of the Bosnian army. So the team leader would send  
4 it to me, and then I would make sure that everything was done before  
5 I forwarded it on to the deputy prosecutor. In fact, I would always  
6 walk it down to his office and sit in his office and walk him through  
7 it.

8 So, yeah, and you have got to -- you had to make sure that all  
9 the arrangements were in place, that the military had been fully  
10 briefed, that the military were on board with it. Because if you're  
11 looking at, say, Tuzla, that's a totally different area of  
12 responsibility. That was the American area of responsibility. We  
13 had to make sure that the Americans were agreeable to doing the  
14 search and seizure and that they would fully support us, because you  
15 can't send a team into that area where they're not secure, and we  
16 depended on the military all the time. So it was a multi-disciplined  
17 effort.

18 But, yeah, there would be a record of everything that was being  
19 done, and then you would be kept up to date. And I always kept a  
20 diary, so I would always write it in my diary what was going on, I  
21 had a meeting with the team leader or whatever. Or there would be  
22 e-mails coming from the team leader to me saying: Look, General  
23 so-and-so has agreed, I've had a meeting with him, here's the e-mail  
24 traffic, et cetera, et cetera.

25 Q. And as the lead investigator in a search and seizure operation,

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1 would you have expected Ms. Pumper to have been involved in the  
2 planning?

3 A. If she's the lead investigator, yes, certainly.

4 Q. Now, she wasn't involved in the seizure operations on the 8th,  
5 17th, and 22nd. That was another investigator. Now, would that  
6 investigator who is coordinating those searches, I'm assuming the  
7 same principle would apply, he would have been involved in those  
8 planning discussions?

9 A. You would think so, yeah. But the -- and there really should  
10 have been a paper trail from that lead investigator, first of all,  
11 asking for permission for the mission to take place.

12 Q. Now, you've also read from the transcripts the process that took  
13 place within those search operations or seizure operations on the  
14 8th, 17th, and 22nd. You've seen that we've not been provided with a  
15 detailed index or itinerary of the material. We'll come to the  
16 handover sheets in a moment.

17 A. Yes.

18 Q. But certainly there is no index or inventory of the material  
19 that was seized. Would you say that that would be in accordance  
20 with, as you understand them, standard operating procedure  
21 guidelines?

22 A. Our standard operating procedures always said that there had to  
23 be an inventory. So, yeah, I find it strange that you would go in  
24 and take a heap of documents and not know what you've taken.

25 Q. And --

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1 A. I mean, in the beginning, I mean, we probably -- in the SPO's  
2 defence, I mean, in the beginning we used to go in and just vacuum  
3 everything up because of the security situation. But after about a  
4 year of doing this, we knew, in many instances, where documents were,  
5 et cetera, et cetera, so we were able to then go in and take our time  
6 in doing the search. The security arrangements weren't as strict as  
7 what they were when we first started it, which was shortly after the  
8 conflict.

9 Q. And obviously a lot of what you are talking about is in a  
10 conflict or an immediate post-conflict situation where there was  
11 still --

12 A. Yes.

13 Q. -- tension.

14 A. Yes.

15 Q. Here we're dealing with a slightly different situation --

16 A. Yes.

17 Q. -- where there is perhaps more time for planning and  
18 preparation.

19 A. I would think so, yes.

20 Q. And you would also note that on those three dates it was a  
21 seizure operation. No search was conducted of those premises. Do  
22 you consider that to have been -- well, in your opinion, if you were  
23 in charge of reviewing this operation, would you not have directed a  
24 search?

25 A. It depends what you're looking for. I mean, if you know what

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1 you're looking for, then you go in, and if it's given to you, then,  
2 okay, you seize it. If you're not happy with that or you're hesitant  
3 that you've been given all the material, then, yeah, I'd carry out a  
4 search. I don't know what the size of the premises are, and I don't  
5 know how many people were involved or anything like that because I  
6 don't have access to that material.

7 But, you know, if you're not happy that you've got all the  
8 material, then, yeah, you should carry out a search.

9 Q. And in circumstances where the documents were seized and there  
10 was the handover forms that you've seen --

11 A. Yes.

12 Q. -- no index of inventory, no evidence of sealed evidence bags,  
13 again, in your professional opinion, would this be in accordance with  
14 standard operating procedures?

15 MS. BOLICI: Your Honour, there is --

16 THE WITNESS: [via videolink] Not really.

17 MS. BOLICI: -- an objection. I have to note that counsel is  
18 testifying for most of the questions he's putting to the witness, so  
19 I would request that if such a line of questioning is to be pursued,  
20 the counsel request what's the knowledge of the witness.

21 PRESIDING JUDGE SMITH: [Microphone not activated]. Are you  
22 stating it is a leading question?

23 MS. BOLICI: It's a leading question, but also it's assuming  
24 information that the witness did not state that he knows.

25 PRESIDING JUDGE SMITH: Well, we'll have to find that out.

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1           But please don't lead him. Ask questions that he can answer  
2 without you leading him to the answer.

3           MR. CADMAN:

4           Q. From what you have seen in terms of the -- or what you've read  
5 in terms of the transcripts and the declarations, you've already said  
6 that from you can see there was no inventory.

7           A. Yes.

8           Q. Can you see any evidence of sealed evidence bags and chain of  
9 custody, as you would understand it, being adopted in this case?

10          A. No. From what I've read and from what I've been provided, I  
11 can't see any of that at all.

12          Q. And, again, what would be the consequence of such a practice?

13          A. Then you're leaving yourself open to criticism. You're leaving  
14 yourself open, more importantly, that when you get to court, which is  
15 the whole reason why you're seizing documentation, is when you get to  
16 court the integrity of the document collection is being called into  
17 question. Whereas if you follow these guidelines and these chain of  
18 custody guidelines, then, yeah, you'll still probably be called on  
19 it, but you can prove the integrity of the collection.

20          Q. And in the way in which you understand those procedures to have  
21 been adopted in this case, how would you be able to establish, in the  
22 absence of chain of custody, that the documents now being relied upon  
23 are the documents that were seized?

24          A. You're relying on the investigator, I suppose, who seized them,  
25 and the integrity of that investigator by saying: Yes, they're the



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1 documents that I seized.

2 Q. Now, I want to turn to what you set out in paragraph 17 and then  
3 on to 18 of your report.

4 MR. CADMAN: We can go to paragraph 18.

5 Q. You refer to a manual that was published in 2009. Can you  
6 explain what that manual is?

7 MR. CADMAN: And for the benefit of the Court, it's at DNH1023.

8 THE WITNESS: [via videolink] Yeah, that manual was a  
9 consolidated effort between UNICRI and the UN ICTY to capture the  
10 best practices of the ICTY -- or shall I say, maybe not the best  
11 practices, but the lessons learned from the ICTY. And as a result of  
12 the work that we had done over a period of, what, we'd been existence  
13 then for 15 years, the manual was put together of best practices for  
14 -- and it was done with the assistance for the international  
15 community, not only for other tribunals but for national  
16 jurisdictions, et cetera, et cetera.

17 MR. CADMAN:

18 Q. And to the best of your knowledge, who worked or contributed to  
19 the production of that manual?

20 A. I know that in our office the chief of prosecutions had a very  
21 high level of work on the manual, but all of us sort of contributed.  
22 If we had, you know, any expertise on the investigative side -- I  
23 think I would have seen some of the chapters that would have been put  
24 together for the investigative side, particularly in relation to, you  
25 know, the standard operating procedures, et cetera. Plus, we would

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1 have supplied a lot of the standard operating procedures to the  
2 working group that was working on it so that they could be see,  
3 actually, what the types of guidelines and procedures had been put in  
4 place in the ICT -- in the OTP.

5 Q. And was the content of the manual -- okay. Was the manual  
6 widely disseminated amongst the staff of the OTP?

7 A. I can't really recall now, but I think, yeah. I think we got  
8 copies of it. I certainly got a copy of it. But, yeah, I can't  
9 recall. I know that we did get quite a few copies in the office.

10 Q. And do you consider that what's set out in that manual reflects,  
11 generally, what were accepted principles or SOPGs within the OTP at  
12 that time?

13 A. Yes.

14 Q. Looking at paragraph 19 of your report, you refer specifically  
15 to the section at page 28 of the report on chain of custody.

16 A. Yes.

17 Q. Just, again, what is set out there represents the practice that  
18 was undertaken by the OTP at that time as recognised standards?

19 A. Correct.

20 Q. And would you say that that is a standard that should be adhered  
21 to?

22 A. Wherever possible, yes, it should always be adhered to. I mean,  
23 you're collecting evidence ultimately for production in court, so you  
24 should make sure that every I is dotted and every T is crossed. And  
25 by adopting best practices, that's how you can ensure that the

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1 integrity of the collection is almost impeachable -- unimpeachable.

2 Q. And again on the basis of what you've seen in this case, would  
3 you say that the practice adheres to those principles set out in that  
4 manual?

5 A. From what I've seen and read, no. But there's a lot that I  
6 haven't seen, so I, you know -- but it doesn't appear as though chain  
7 of custody has been adhered to. And even when I was reading some of  
8 the material, even the processing of the documentation I wondered  
9 about because the batches weren't processed in chronological order.  
10 Batch 3, I can't tell when that was processed because it's an  
11 entirely different ERN range, but the other ERN ranges, you can see  
12 that Batch 4 was processed before Batch 1, and before batch -- I've  
13 just made a note of it. Can I refer to my note?

14 PRESIDING JUDGE SMITH: Yes, you may. Just refresh your memory.

15 THE WITNESS: [via videolink] Thank you, Your Honour. Yes.

16 Yeah, the chronological order should have been Batch 1, 4, 2,  
17 and 3. That's what the seizures were. But the processing was  
18 Batch 4, Batch 2, and Batch 1, and to me that doesn't make any sense  
19 either because -- maybe with Batch 4 and Batch 1 you can understand  
20 it, they may have got it confused. But the second batch was  
21 something like nine days later. And Batch 3, as I say, I can't tell  
22 when that was processed, whether it was processed as part of all the  
23 other batches or not, because it's an entirely different ERN range.

24 MR. CADMAN:

25 Q. Now, as we're moving on to the analysis of the material, I want

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1 to go back to ZyLAB, as we started at the beginning. And you start  
2 here at paragraph 20 of your report. I just want to ask you, I mean,  
3 how does one comply with the practices and procedures relating to  
4 authentication of material to be confidential or non-public?

5 A. I mean, that's a very difficult question. I mean, that's one of  
6 the main reasons why we had it put onto the metadata form, that you  
7 could look at it quickly. When you were searching for documents, you  
8 could automatically tell straightaway from the metadata whether the  
9 document was restricted, and confidential, and chain of custody, or  
10 one of the three, and you could tell that straightaway just by  
11 looking at the metadata form. And that's why we put it on there, so  
12 that you could tell straightaway.

13 The other way we were able to tell is that in certain instances,  
14 in ZyLAB you'd build indexes or indices. And, for example, we used  
15 to have a Rule 70 index. Now, Rule 70 was to be treated in a totally  
16 different way to anything else. It was information that was given to  
17 us by states, so we decided to put that into its own separate index  
18 so that, inadvertently, documentation wouldn't be disclosed without  
19 the consent of the state or the person who supplied the information.

20 Now, occasionally things slipped through, and they always do,  
21 but these were the things that we put in place in a best effort not  
22 to see them slip through the cracks.

23 Q. And dealing with material like Rule 70 and other forms of  
24 restricted information --

25 A. Yes.

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1 Q. -- would ZyLAB have the ability to restrict users' access --

2 A. Yes.

3 Q. -- depending upon --

4 A. Yes, yes. Yes, everybody has a certain access. And you may get  
5 access to -- for example, you know, we had, say, Team 2, so all of  
6 Team 2 would have access to anything that related to Team 2. But  
7 other documentation that related to, say, Team 9 or to Team 7, they  
8 didn't have access to that. And not everybody even had access to  
9 Rule 70. You had to have a clearance from various governments before  
10 you could have access to Rule 70.

11 Q. And just again, Rule 70 relates to information provided by  
12 another state?

13 A. Correct. And could only be used for lead purposes without the  
14 consent of that party or that state.

15 Q. And access to that, in your experience, would be limited to  
16 certain users?

17 A. Yes.

18 Q. And to the best of your knowledge, recollection, would ZyLAB  
19 offer the technical possibility to review a document within ZyLAB and  
20 who had accessed it and when?

21 A. We could always grant access and deny access. So if somebody  
22 had a particular job to do, you could say to the evidence unit, you  
23 know, X needs to look at this, so I want them to have access to this  
24 index, this index, this index, and this index, and they would be  
25 given access. And then when they didn't require that access anymore,

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1 you would take that access away from them. So it had that ability to  
2 do it. That's -- it wasn't a document management system as such. It  
3 was more a search engine for us, ZyLAB. We used CaseMap for our  
4 document management.

5 But you could grant access and you could deny access. And for a  
6 specific job, you could give whatever access you wanted to ZyLAB to  
7 an individual, but then you could also take it away from them.

8 Q. And as a member of the senior management of the investigations  
9 team, you would be able to see who had access to that particular  
10 document?

11 A. Yes. Through the evidence unit, yes. I used to regularly  
12 review the access rights, because sometimes we would have a lot of  
13 people -- and particularly it was staff that had departed who still  
14 had access rights. So I would regularly review probably every six to  
15 nine months and say, no, you can take that person away from there, or  
16 that person no longer works in the OTP, they're working in Chambers  
17 or whatever, so their access can be taken away from all of that.

18 Q. And would you be able to identify if certain documents had been  
19 accessed, downloaded by certain users?

20 A. That, I can't recall. But I'm fairly certain that you would be  
21 able to because there's a -- yeah, there is a -- look, I can't  
22 believe 100 per cent certain on that. I really can't. I'm sorry.

23 Q. Now, prior to documentation being put into ZyLAB, as you've  
24 said, chain of custody or otherwise, into the evidence unit, what  
25 kind of process would be followed? So, for example, as we have in

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1 this case, the documents are seized, they are transported to  
2 The Hague, they are put into the ZyLAB. What process would be taken  
3 before they're actually put into the system?

4 A. Well, the metadata should be provided to the evidence unit to  
5 enable them. That's a specific form. So the type of document that  
6 it is, a description of the document, the author of the document,  
7 whether it's chain of custody, whether it's restricted, whether it is  
8 confidential. I think we also had a tick box whether it was a  
9 witness statement. There was also a drop-down box as to what  
10 investigation it specifically -- this particular document referred  
11 to. If it was an individual investigation, sometimes they went right  
12 across the board, so you couldn't answer that. But, yeah, there was  
13 a lot of information that you needed to fill out before they would  
14 start to process it.

15 A lot of the boxes we made mandatory so that if you didn't  
16 answer in that box, then the MIF, the metadata information form,  
17 couldn't be completed.

18 Q. Now, in terms of authenticating documents, and if you can turn  
19 to paragraph 22 of your report --

20 A. Yes.

21 Q. -- talk us through how documents would be authenticated in such  
22 circumstances.

23 A. Authenticated that it would be a document from our office or --

24 Q. Yes.

25 A. -- authenticated -- yeah. Well, if it's -- I mean, I don't know

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1 the answer to this, and this is why I put the two scenarios. But if  
2 you've seized documentation with the ERN number on it, then it's a  
3 very simple way of authenticating that it's one of your documents.  
4 And you can go into the -- into Zy, search on those particular ERNs,  
5 and they'll come up straightaway.

6 If they're not ERN'd, then there are specific searches that you  
7 can do within Zy to be able to say, okay, is this a document that we  
8 have within our document collection. And you just do key word  
9 searches. And we had a specific unit within the Office of the  
10 Prosecutor that could do that type of searching. They also used to  
11 do all the searches for our disclosure. And we would give them --  
12 the lawyers would give them the parameters, if they wanted to search  
13 for, for example, exculpatory evidence, and they would do the  
14 searches and they were very effective at it.

15 Q. And staying with paragraph 22, why, in your opinion, is it  
16 necessary to check each and every page?

17 A. Well, if you're alleging that these documents came from the  
18 office, then by only checking every single page can you get a  
19 definitive answer to that. And, I mean, I -- it's a time-consuming  
20 job, but I think -- I just added up in my head this afternoon,  
21 there's only about 3.000 pages. I mean, we're not talking about a  
22 document collection of 100.000 pages like, you know, 1st Krajina  
23 Corps in Bosnia. It's 3.000 pages. So, you know, with a team on it,  
24 you should be able to knock it over fairly quickly. I would have  
25 thought, anyway.



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1 Q. You mentioned before about Batch 4 and Batch 1. So why --  
2 again, sticking with paragraph 22, and your answer may well be the  
3 same, but why should each and every page of Batch 4 and Batch 1 have  
4 been reviewed or compared?

5 A. Well, my understanding was that Batch 4 was taken from the media  
6 outlet and formed the basis of the documentation for Batch 1, so I  
7 would want to know that, okay, every single document that's in  
8 Batch 1 went to the media outlet or which ones didn't go to the media  
9 outlet.

10 Q. And having read what Ms. Pumper said in evidence, which you  
11 refer to in paragraph 23 of your report, that the analysis was done  
12 by way of sampling, sometimes just looking at one witness on the  
13 list, I mean, what's your view of taking such an approach?

14 A. I don't agree with the sampling approach. I think if you're  
15 going to do a job, particularly where people are not going to get the  
16 documentation to be able to do an independent assessment, you have to  
17 check each and every single name or each and every single document --  
18 page of every document that's there, and then make an assessment of  
19 that.

20 You know, for example, with witnesses, if it's a letter that's  
21 been written to somebody with an annex of a hundred names on it, then  
22 I would make sure that every single one of those names were put  
23 through the databases, whether it be ZyLAB, whether it be a witness  
24 database, and that you have a classification for that witness. You  
25 know, the witness is deceased, the witness refused to cooperate, the

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1 witness couldn't be found, the witness has got protective measures  
2 from the ICTY, trial case, or whatever. So that you know exactly  
3 what's happening with each and every single person.

4 From what I could see, that hadn't been done. And I think as an  
5 investigator, I think it should be done that way. And, again, as I  
6 said, and I may be misunderstanding, but there can't be another  
7 independent assessment made because people can't see the  
8 documentation.

9 Q. And I think you'd mentioned that that difficulty is because the  
10 Defence has not seen that information, and, actually, the Trial Panel  
11 to some extent has not been able to see that documentation. That is  
12 why a full independent assessment is so necessary. Is that what  
13 you're saying?

14 A. That's so that you can be 100 per cent confident in what you're  
15 saying is correct. And that somebody who doesn't get to see the  
16 documentation can have confidence in the spreadsheets that you've put  
17 together.

18 Q. And in evidence, as you have seen from the transcripts of  
19 Ms. Pumper, she said that the verification process was not completed.  
20 Can you think of any reason why it would have been stopped?

21 A. No. I mean, no, I can't give any reason for that. Only she can  
22 give that reason. But for, as I say, for 3.000-odd pages, 3.100  
23 pages, whatever it is, it's not a massive job. It's a time-consuming  
24 and it's a tedious job, but to my mind, it's a job that needs to be  
25 done.

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1 Q. Now, moving on to paragraph 24, you have obviously looked at the  
2 analysis of the three operations on the 8th, 17th, and the 22nd.  
3 With reference to those delivery notes, so the first two are referred  
4 to as delivery notes, in your expert opinion, is that a sufficient  
5 basis when seizing material such as this?

6 A. Not in my view. You know, absent an inventory, I mean, all that  
7 is basically is that, you know, we've taken some documents from you  
8 and a signature, but you don't know what documents has been taken.  
9 In fact, you don't even know how many pages have been taken. And you  
10 don't know what's happened to them, where they've gone or anything  
11 like that. It just looks like a receipt to me.

12 Q. And I appreciate that you've said that you haven't seen  
13 everything, but if all we have is those delivery notes, again, in  
14 terms of chain of custody, how would you establish that?

15 MS. BOLICI: Your Honour, there is --

16 THE WITNESS: [via videolink] You can't.

17 MS. BOLICI: -- an objection. It calls for speculation.

18 PRESIDING JUDGE SMITH: Overruled, you can answer. Overruled.

19 THE WITNESS: [via videolink] That can't be substituted for chain  
20 of custody. That is not chain of custody.

21 MR. CADMAN:

22 Q. Now, I want to take you to paragraph 26. I just want to check  
23 that paragraph 26 is not one of those that has --

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 MR. CADMAN: It's not to be mentioned?

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1           PRESIDING JUDGE SMITH: Correct, 26 is not to be mentioned.

2           MR. CADMAN: So it's 26 to 28 that I'm ...

3                           [Specialist Counsel confer]

4           PRESIDING JUDGE SMITH: Mr. Cadman, 27 can be used except for  
5 the last sentence.

6           MR. CADMAN:

7           Q. Well, if I can get you to look at paragraph 27.

8           A. Yes.

9           Q. And just give me one second whilst I pull it up. And not  
10 straying into the last sentence of 27.

11          A. Sure.

12          Q. So you draw a conclusion that no detailed inventory was  
13 provided. Now, going back to what you'd said earlier where, looking  
14 at the Prijedor example, if an inventory hadn't been prepared at that  
15 time, could it have been prepared at a later stage and then taken  
16 back to the WVA?

17          A. Yes, I can't see any reason why it couldn't be.

18          Q. Would that, in your opinion, have been a sufficient basis for  
19 establishing a chain of custody?

20          A. Not for -- not for establishing a chain of custody. It would  
21 have been enough to establish the inventory has been delivered. But  
22 the chain of custody needs further -- further development, if I can  
23 put it that way. That's not chain of custody just by delivering the  
24 inventory.

25          PRESIDING JUDGE SMITH: Mr. Cadman --

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1 THE WITNESS: [via videolink] Chain --

2 PRESIDING JUDGE SMITH: -- I don't want to interrupt you, but we  
3 are at 9.30. Can you tell me approximately how much time you have  
4 left?

5 MR. CADMAN: Well, in light of the parts that I'm not supposed  
6 to go through, I probably can finish by 10.00.

7 PRESIDING JUDGE SMITH: Okay, go ahead.

8 MR. CADMAN:

9 Q. I want to move on now to an item that relates to the leak of the  
10 documents themselves, or the security breach, as it's been suggested.

11 A. Yes.

12 Q. Now, in your 25 years of experience at the ICTY, are you aware  
13 of any security breach of that magnitude?

14 MS. BOLICI: Objection, Your Honour. I would like to note which  
15 paragraph of the expert's report the counsel is referring to?

16 PRESIDING JUDGE SMITH: Please so indicate, Mr. Cadman.

17 MR. CADMAN: I'm referring to what -- the expert has been  
18 provided with the transcripts of Ms. Pumper's evidence. These are  
19 matters that she referred to. It's also --

20 PRESIDING JUDGE SMITH: But we are dealing today with the  
21 allowed portion of his report, so answer the question: What  
22 paragraph?

23 MR. CADMAN: It's not set out in his report. But he was  
24 provided with the transcripts. He's entitled by the Court of  
25 Appeal's decision to comment on Ms. Pumper's evidence to the extent

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1 of the investigation. It's not in his report, but we say it falls  
2 squarely within what the Court of Appeals has said we can refer to.

3 PRESIDING JUDGE SMITH: Madam Prosecutor.

4 MS. BOLICI: Your Honour, there is an objection in relation to  
5 the fact that the testimony of this witness is permitted in relation  
6 to specific paragraphs of the report, clarification to those  
7 paragraphs and explanation on those paragraphs.

8 In any event, there is not even a reference to the specific  
9 portion of Ms. Pumper's testimony that counsel is referring to, and I  
10 don't believe there is any reference that the counsel can provide.

11 [Trial Panel confers]

12 MR. CADMAN: We can refer to the declaration of 9 February at  
13 paragraphs 7 and 11. I'm more than happy --

14 PRESIDING JUDGE SMITH: Mr. Cadman, we were discussing.

15 MR. CADMAN: I do apologise.

16 PRESIDING JUDGE SMITH: First of all, what portion specifically  
17 of the transcript are you referring to?

18 MR. CADMAN: Well, we're referring to -- and I can identify the  
19 reference, but there's certainly reference to those matters in the  
20 9th of February declaration, 7th, and 11th. There is also matters  
21 that were put to Ms. Pumper, and I will identify the actual reference  
22 for Your Honours, when she was asked questions about what steps were  
23 taken within the office following the announcement of the security  
24 breach.

25 Those are the specific points that I want to put to the witness,

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1 but I will identify the transcript references for that.

2 PRESIDING JUDGE SMITH: So what you are getting at and what you  
3 want to ask questions about is what happened in the internal  
4 functions of that office?

5 MR. CADMAN: Yes.

6 PRESIDING JUDGE SMITH: During the investigation of the leak?

7 MR. CADMAN: Yes.

8 PRESIDING JUDGE SMITH: And that's all?

9 MR. CADMAN: Yes.

10 [Trial Panel confers]

11 PRESIDING JUDGE SMITH: Your objection will be sustained. That  
12 is clearly beyond the scope of the report and the decision of the  
13 Court of Appeals and by any decision we have made. That is not what  
14 this witness was called to testify about, and his report mentions  
15 nothing about it, so the objection is sustained.

16 MR. CADMAN: Your Honours' ruling is I'm not allowed to put any  
17 questions to Mr. Reid on the actual leak and the matters that  
18 Ms. Pumper commented on in relation to what steps were taken both in  
19 terms of announcement to the staff and security measures that were  
20 taken as a result of the leak?

21 PRESIDING JUDGE SMITH: Yes, because that's clearly beyond  
22 anything that was notified to the Prosecution. It would be unfair to  
23 them. They have not had a chance to prepare for it. And the  
24 witness's report does not mention it in any way, nor does your  
25 instruction.

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1 MR. CADMAN:

2 Q. Mr. Reid, earlier when we were discussing the planning for the  
3 search and seizure operation -- and, again, I appreciate it is  
4 difficult to give a hypothetical opinion as to the level of planning  
5 that would have been required.

6 Let me ask you this: Would it have been appropriate for the  
7 planning for a mission such as this or the 25th September search and  
8 seizure operation, for that to have been planned on the day or a day  
9 before the operation was carried out?

10 A. Yes, it can be. I mean, from what I've seen, I don't know how  
11 the allegations that these documents got into the War Veterans  
12 Association, how it came about. I don't know what the length of time  
13 before the SPO knew. So I have no idea about that. But if you got  
14 it on one day, I would expect that you would be in there the next day  
15 to get your documentation back.

16 But, again, by having uniform SPOs -- or standard operating  
17 procedures and guidelines, that's not difficult. It's just, you  
18 know, you fill it out and you go. So I wouldn't have a problem with  
19 expediency there. In fact, I'd criticise if they didn't go in as  
20 quickly as they possibly could to get their documentation there.

21 Q. But you would nonetheless require them, the team, whether you  
22 were leading that or overseeing that, for that to be carried out  
23 strictly in accordance with the SOPG as you've stated?

24 A. Yeah, I mean, that's why you've got them in place, to ensure  
25 that there's uniformity right across the board and that, you know,



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1 the search that's done on -- or the seizure that's done on the 8th is  
2 done exactly the same way on the 9th, the same way on the 17th and  
3 et cetera, so that they're all uniform.

4 Q. And you'd also mentioned earlier when you were carrying out some  
5 of the operations in Prijedor and Banja Luka that it would be -- I  
6 don't want to put words in your mouth, but it would be advisable to  
7 photograph or film such an operation?

8 A. Yes. Where you can, yes. It's always desirable. I mean, a  
9 picture is worth a thousand words. If you've got a video showing the  
10 search procedure and everything going on, then you play the video and  
11 it corroborates what you're saying in the witness box.

12 Q. And what kind of process when -- when the documents are being  
13 seized, and looking at the specific facts of this case as to what had  
14 happened in the time leading up to the seizure, would it have been a  
15 standard practice for any of those persons present to have been  
16 questioned by your officers?

17 A. I would probably want a statement taken from the people that are  
18 involved with the War Veterans Association as to how they came to be  
19 in possession of them, yes. Now, I mean, you know, you'd be --  
20 again, you know, you'd be looking at them as probably suspects, so  
21 then the rights of that particular person kick in. But absent, you  
22 know -- I wouldn't -- I would want them interviewed to find out how  
23 they got the documents, et cetera, et cetera, and a full detailed  
24 statement taken.

25 Q. And would you also have looked at the surrounding area to

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1 identify whether there was any CCTV, for example?

2 MS. BOLICI: Your Honour --

3 THE WITNESS: [via videolink] Yes, I mean --

4 MS. BOLICI: -- just to highlight -- sorry, Mr. Reid --

5 THE WITNESS: [via videolink] Go ahead.

6 MS. BOLICI: -- that this is also outside the scope of the  
7 expert report.

8 PRESIDING JUDGE SMITH: Sustained.

9 MR. CADMAN:

10 Q. Based on the information that you have been provided with and  
11 the trial transcripts, the witness declarations, do you consider that  
12 the Prosecution took all reasonable steps to identify who had  
13 actually dropped the material off?

14 MS. BOLICI: This is --

15 THE WITNESS: [via videolink] No.

16 MS. BOLICI: -- in line with the previous question, and there is  
17 a continuous objection.

18 PRESIDING JUDGE SMITH: The objection was sustained.

19 MR. CADMAN: If I could just take one moment, Your Honour.

20 PRESIDING JUDGE SMITH: Certainly.

21 [Specialist Counsel confer]

22 MR. CADMAN:

23 Q. Now, Mr. Reid, based on what you have reviewed, the transcripts,  
24 the declarations, and I appreciate you haven't seen everything, let  
25 me ask you this: What you haven't seen in terms of some of the

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1 documents that you've referred to, would you have expected to have  
2 seen those presented in a matter such as this?

3 A. There's documentation that I would expect to see in a case like  
4 this, yes.

5 Q. Would you have expected the investigator who carried out the  
6 seizures to have given evidence in proceedings such as this?

7 MS. BOLICI: Objection, Your Honour. The opinion of the expert  
8 on this point is irrelevant.

9 PRESIDING JUDGE SMITH: Sustained. It is irrelevant.

10 MR. CADMAN:

11 Q. Based on everything that you've seen and your assessment, with  
12 25 years experience, in your professional opinion, was this operation  
13 carried out according to standards that you have set out, SOPG? Do  
14 you think this was an effective investigation, in your professional  
15 opinion?

16 MS. BOLICI: Objections. First of all, it's not clear to which  
17 operation the counsel is referring. And, second, it's in line with  
18 the previous question, and it's outside the scope of the expert  
19 report.

20 PRESIDING JUDGE SMITH: It's not outside the scope of the expert  
21 report, but you need to be specific, Mr. Cadman, about which portion,  
22 or are you saying the entire thing?

23 MR. CADMAN:

24 Q. Well, let me start by saying with reference to the operations of  
25 the 8th, the 17th, and the 22nd.

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1 A. No, I don't believe that they followed the best practices. I  
2 don't believe they followed what we had in place, the standard  
3 operating procedures and guidelines at the ICTY. I don't believe  
4 that they have been followed.

5 Q. Well, let me ask you the question on a general level. On your  
6 general assessment of this matter, do you believe that this was  
7 carried out to proper, effective standards?

8 MS. BOLICI: That was asked and answered.

9 PRESIDING JUDGE SMITH: Overruled.

10 Answer the question.

11 THE WITNESS: [via videolink] No, I don't believe that it was  
12 carried out to those standards.

13 MR. CADMAN:

14 Q. Thank you, Mr. Reid. I don't have any further questions at this  
15 time.

16 PRESIDING JUDGE SMITH: Does the Gucati Defence have any  
17 questions?

18 MR. BOWDEN: No, thank you, Your Honour.

19 PRESIDING JUDGE SMITH: We'll take a break at this time so you  
20 have an opportunity to download anything that you need to do. Is a  
21 half an hour sufficient?

22 MS. BOLICI: I would say so, Your Honour. Yes.

23 PRESIDING JUDGE SMITH: We will reconvene then at 10.15, and we  
24 are adjourned.

25 --- Recess taken at 9.45 a.m.

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1 --- On resuming at 10.15 a.m.

2 PRESIDING JUDGE SMITH: Ms. Bolici, you have the floor.

3 MS. BOLICI: Thank you, Your Honour.

4 Cross-examination by Ms. Bolici:

5 Q. Good morning, Mr. Reid. I would like to start with the  
6 assertion that you make in the last period of paragraph 22 of your  
7 report.

8 MS. BOLICI: That would be on pages DNH0864 to DNH0865.

9 Q. And you state there:

10 "For Batch 4, it is my opinion that the investigator should have  
11 gone through each page of the batch and then compare it to Batch 1  
12 and reported on the documents that were common to both batches and  
13 those that were not in Batch 1, if any."

14 Now, when you filed your report, Mr. Reid, were you aware  
15 whether any such comparison had, in fact, been carried out by an SPO  
16 investigator?

17 A. Not by an SPO investigator. At that stage, I think, when I  
18 prepared my report, I'd only read the transcripts. But I didn't have  
19 the declarations or the redacted declarations of Ms. Pumper.

20 Q. And did you read the transcript of Ms. Pumper's testimony  
21 carefully when you prepared to file your report?

22 A. Yes, I did.

23 Q. And did you look for information whether a comparison between  
24 Batch 1 and Batch 4 had, in fact, been carried out by the SPO  
25 investigator?

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1 A. It was unclear to me from the transcripts as to whether that  
2 type of analysis had been carried out.

3 Q. I see. I would like to refer, Mr. Reid, to the transcript of  
4 18 October 2021 of these proceedings and, in particular, page 893, if  
5 you have it in front of you.

6 A. I don't have the transcripts printed out.

7 MS. BOLICI: I will ask, if possible, as notified to the  
8 Court Officer, to put this page on screen.

9 THE WITNESS: [via videolink] Okay. Thank you.

10 MS. BOLICI:

11 Q. If you look at lines 10 to 15 on this page, Mr. Reid, the  
12 investigator was asked:

13 "... can you tell what kind of documents -- what kind of  
14 information did you capture in this table?"

15 And the answer was:

16 "I captured the same information as I captured for Batch 1, with  
17 the exception here we have two more columns. One is Corresponding  
18 Pages in Batch 1 and Differences Batch 1/Batch 4."

19 Later on, she's asked to explain which kind of information is  
20 captured in these two columns, and she answers:

21 "As it is evident here, the composition between of where the  
22 pages were was different between Batch 1 and Batch 4 and was rather a  
23 tedious work to find the corresponding pages. But we checked -- I  
24 checked and was able to come up with this column."

25 Can you see the relevant part of the transcript, Mr. Reid?

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1 A. Yes.

2 Q. Thank you. And if you look at the following page, which is  
3 page 894, lines 19 to 23.

4 A. Yes.

5 Q. So the question to the investigator was:

6 "Thank you. So just to conclude ... so I understand correctly  
7 that whenever a page of Batch 4 is also included in Batch 1, under  
8 the column Corresponding Pages in Batch 1 you have indicated ...  
9 which page of Batch 1 that particular page corresponds?"

10 And the answer is:

11 "Yes ..."

12 If you look further --

13 A. Yes.

14 Q. -- down --

15 A. Correct.

16 Q. -- in lines 17 to 23, you will see that the question was, to the  
17 investigator:

18 "Am I correct to read this table that whenever a page of Batch 4  
19 was not included in Batch 1, you have written 'Page not included' in  
20 the Corresponding Page column?"

21 To which she answers:

22 "That is correct ..."

23 And then the question again was:

24 "So besides the instances when you wrote 'Page not included,'  
25 all the pages of Batch 4 could be found also in Batch 1?"

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1 And the answer was:

2 "That is correct."

3 A. Yes.

4 Q. Have you read the relevant transcript, Mr. Reid?

5 A. Yes, correct.

6 Q. Okay. Now that I've walked you through the relevant transcripts  
7 of the public testimony of Ms. Pumper, can you state whether you  
8 understand whether a table was, in fact, provided and an analysis was  
9 carried out comparing the pages of Batch 1 and Batch 4 page by page?

10 A. Yeah, I think I got them in the redacted declarations of  
11 Ms. Pumper, but mine was all redacted. I had just all black, with  
12 the exception of the first column.

13 Q. Based on the public transcript that I just read you, now that we  
14 read it line by line, can you --

15 A. Yes.

16 Q. -- conclude whether, from this public transcript, you can get  
17 information whether a comparison of Batches 1 and 4 had been carried  
18 out page by page?

19 A. That's correct.

20 Q. You can infer this information from the transcript that we just  
21 read; is this correct?

22 A. That's right.

23 Q. And you state in your report that your ideal course of action  
24 was to make a comparison page by page between Batch 1 and Batch 4; is  
25 this correct?



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1 A. Correct. Together with the information that was gathered within  
2 those documents, yes.

3 Q. And could you explain why you deemed appropriate to note in your  
4 report what the SPO investigator should have done while not noting  
5 that this was, in fact, precisely the course of action that had been  
6 carried out by the SPO investigator?

7 A. I agree with you now, yes. Correct.

8 Q. So if you agree with me now, does it mean that when you first  
9 read the public transcript that was provided to you in order to  
10 prepare your report, you did not read it carefully?

11 A. I read it carefully, but I've obviously misunderstood what she's  
12 been saying. But now that you've highlighted it, I agree with you.

13 Q. I see. And would you like then to correct the last period of  
14 paragraph 22 of your report in order to acknowledge that, in fact,  
15 there is no comment to be made on this specific task carried out by  
16 the SPO investigator?

17 A. In paragraph 27, do you say?

18 Q. 22nd, last period.

19 A. Yes, I've agreed with you on that. Yes.

20 Q. Thank you, Mr. Reid. Now, when you speak again in paragraph 22  
21 of ways of authenticating documents --

22 A. Yes.

23 Q. -- you say there are numerous ways of authenticating documents.  
24 And earlier in the course of the examination-in-chief today, correct  
25 me if I'm wrong, you clarified to the counsel for Mr. Haradinaj that

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1 you envisaged two different ways to authenticate documents in  
2 relation to the present case. If the seized document had ERN  
3 numbers, then the ERN numbers had to be checked against the  
4 evidentiary database; correct?

5 A. Correct.

6 Q. If the seized documents did not have ERN numbers, then each and  
7 every page should be gone through a search, word search or other  
8 searching methods, against the evidentiary database; is this correct?

9 A. Correct.

10 Q. And are you aware, Mr. Reid, whether the documents that were  
11 seized by the SPO at the KLA War Veterans Association had or had not  
12 ERN numbers stamped on them at the time of the search?

13 A. No, I was not aware.

14 Q. And, again, did you look for this information in the public  
15 transcripts that were provided to you and that you state you read  
16 carefully in order to prepare your report?

17 A. Yes.

18 Q. I would like to refer to one out of the many portions of the  
19 transcripts that clarify this matter.

20 MS. BOLICI: And in particular, to the transcript of 26 October  
21 2021, and the pages are 1476 to 1477. In particular, for the  
22 Court Officer, it's page 1477 and the answer is on lines 6 to 7.

23 Q. Now, here, answering to a question from one of the Trial Panel  
24 Judges, whether --

25 A. Yes.

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1 Q. -- the documents that were seized were stamped with ERN, the  
2 investigator answer, line 6:

3 "The documents which we have seized, they do not bear an ERN  
4 number."

5 Can you see that?

6 A. Yes, I can see that.

7 Q. Did you overlook this information which appears here and in  
8 other portions of the public transcripts when you compiled your  
9 report?

10 A. No, I'm talking about the four batches in my report as to how to  
11 authenticate the document, not just Batch 4 or Batch 1. I'm talking  
12 about overall, 1 to 4.

13 Q. And do you have information whether the four batches, 1 to 4, at  
14 the moment when they were seized, presented ERN numbers stamped on  
15 them?

16 A. I couldn't find any, no.

17 Q. You couldn't find any information in the public transcripts on  
18 this particular aspect?

19 A. Well, on the reading of the transcripts, that's why I came up  
20 with the two scenarios, one with the ERN, and one without the ERN,  
21 how to authenticate the documentation.

22 Q. But at the time when you wrote the report, you say you were not  
23 aware, you were not informed whether ERNs were present or not present  
24 on the seized documents?

25 A. Not on all the seized documents, no. I don't believe I was

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1     aware.

2     Q.     Okay.  And you deemed appropriate to provide your expertise even  
3     without having information on facts or circumstances that you  
4     considered relevant to defining the practices to be followed; is this  
5     correct?

6     A.     That's why I gave the two scenarios, because I was unclear as to  
7     whether there are ERNs or not, and that's why I gave the two  
8     scenarios.

9     Q.     So if I were to tell you that ERN numbers, as results from the  
10    public transcripts, were not present on the seized documents, we  
11    could exclude right away one of the two best practices that you have  
12    suggested to authenticate documents; is this correct?

13    A.     Yes.

14    Q.     So when you say there are numerous ways of authenticating  
15    documents, it all comes down in the end to comparing page by page  
16    with the ZyLAB database.  This is the conclusion that we need to draw  
17    from paragraph 22 of your report together with the clarifications you  
18    provided today?

19    A.     Yes, page by page.  That's the way I'd do it, yes.

20    Q.     And I would like to consider, first of all, the case of Batch 3.

21    A.     Yes.

22    Q.     Now, based on the materials that you have reviewed, do you have  
23    an idea of what is the nature of the document referred to as Batch 3?

24    A.     I'm sorry, in what way?

25    Q.     You read, you said -- or you wrote, the public transcript of

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1 Ms. Pumper; correct?

2 A. Yes, yes.

3 Q. You read the indictment, did you?

4 A. Yes.

5 Q. You read the pre-trial brief of the Prosecution, the public  
6 redacted version; is this correct?

7 A. Of the indictment, yes, correct -- pre-trial brief, yes,  
8 correct.

9 Q. You read the pre-trial brief of the Haradinaj Defence, did you?

10 A. Yes.

11 Q. Carefully?

12 A. I read it, yes.

13 Q. Not carefully?

14 A. Of course I read it carefully. I wouldn't have done the report  
15 if I hadn't have read it carefully.

16 Q. How much time did you have to prepare this report, Mr. Reid?

17 A. I'm not sure. There was deadlines put upon the report. I think  
18 I had to report by 9 November, I think, was the last day, and that  
19 was when I filed the -- when I sent the report through. Maybe I sent  
20 it through the night before, I can't recall. But I didn't have a  
21 long time to prepare the report.

22 Q. So roughly how many hours did you spend in analysing the  
23 materials that were provided to you, assessing it and providing your  
24 expert opinion?

25 A. I couldn't tell you how many hours, but I spent a considerable

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1 amount of time.

2 Q. And you asserted you had sufficient time to understand what you  
3 were talking about or what material provided to you was?

4 A. A bit more time would have been nice. But with the deadline, I  
5 met the deadline.

6 Q. So with more time you would have read the material more  
7 carefully?

8 A. I probably would have read the transcripts three or four times,  
9 whereas I didn't have the time to do that.

10 Q. You couldn't look into the details of what you read?

11 A. I looked into the details and --

12 Q. But you missed some?

13 A. Yeah, of course I missed something. Yeah. And I've admitted to  
14 you earlier --

15 PRESIDING JUDGE SMITH: Ms. Bolici, slow down and don't talk  
16 over.

17 MS. BOLICI: Sorry.

18 Q. Now, going back to Batch 3, based on the materials that you have  
19 reviewed, do you have an idea what kind of document Batch 3 is?

20 A. I can't recall off the top of my head now. I'd have to go back  
21 to the -- to some of the redacted declarations of Ms. Pumper to see  
22 exactly what it is.

23 Q. Based on the public transcript, Mr. Reid, which you say you have  
24 read, do you have --

25 A. As I say --

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1 Q. -- an idea of --

2 A. -- off -- off the top of my head now, I can't recall. I know  
3 that Batch 2 -- or one of the batches, and I can't remember which one  
4 now, were court records, records from the ICTY. There was a German  
5 document from KFOR, and Serb requests. But as to which batch it was,  
6 I can't recall now.

7 Q. So let's go back to this information together to refresh your  
8 memory on this respect.

9 A. Okay.

10 Q. Now, if you look, for example, at the pre-trial brief of the  
11 SPO, this would be F00181RED, paragraph 81. Perhaps I can read it  
12 without --

13 A. Sure.

14 Q. -- putting it on the screen.

15 MS. BOLICI: Unless the Court Officer has no difficulties with  
16 that? I'll wait.

17 Q. So paragraph 81 of the public redacted version of the pre-trial  
18 brief reads that:

19 "Batch 3 is comprised of two incomplete copies of an SPO  
20 confidential document pertaining to SPO investigations and official  
21 proceedings ..."

22 A. Yes.

23 Q. "It includes an analysis of certain available evidence and  
24 applicable law ..."

25 The rest is redacted.

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1 A. Yeah.

2 Q. "It also contains references to ... (potential) witnesses ..."

3 A. Yes. Yes, I recall that now. It was the JCE and all that.

4 Yes, I recall those documents. Yes.

5 Q. Okay. And do you recall whether in the course of the public  
6 testimony of the SPO investigator evidence was provided that these  
7 documents was an internal work product of the SPO?

8 A. Yes, I believe I -- yes, I read that. Yes.

9 Q. Thank you. And do you agree, Mr. Reid, that a draft analysis of  
10 applicable law and evidence concerning a criminal case, an internal  
11 work product, particularly if not finalised yet, is not something  
12 that you would upload in the evidentiary database such as ZyLAB?  
13 Would you agree with that?

14 A. Yes, but it would also be found on your -- in your files. If  
15 you do a search across -- right across in your file management  
16 system, it would be found in the file management system.

17 Q. Yes. So, first of all, do you agree that in relation to  
18 Batch 3, looking into ZyLAB in order to confirm that Batch 3 was an  
19 SPO document pertaining to SPO investigation, it would be completely  
20 meaningless, don't you?

21 A. Yes. But when you're looking at it, as a senior investigator,  
22 you would know that that was internal work product.

23 Q. Exactly. I'm talking about the suggested practice in  
24 paragraph 22 of your report.

25 A. Yes.



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1 Q. You state in order to authenticate all the batches, including  
2 Batch 3 - there is no difference there, they are all listed together  
3 --

4 A. Oh, yeah.

5 Q. -- you should have looked into ZyLAB.

6 Now, do you agree that looking into ZyLAB in order to  
7 authenticate a document such as Batch 3 would not serve any purpose?  
8 It would be completely meaningless. Do you agree with that?

9 A. I agree with that, yes. If it's not --

10 Q. Would you like to correct -- yes, would you like to correct this  
11 part of your report in relation to what we just discussed?

12 A. Only in relation to Batch 3. I mean, I don't know in relation  
13 to the other three batches -- or other two batches, 1 and 2.

14 Q. Okay. So for Batch 3 the suggested methods that you proposed is  
15 not applicable; is this correct?

16 PRESIDING JUDGE SMITH: Hold on a moment.

17 Mr. Cadman.

18 MR. CADMAN: It's not an objection as such, but if Ms. Bolici  
19 can actually let the witness answer before she interrupts and asks  
20 another question. It's happening repeatedly. The witness was trying  
21 to explain his answer and Ms. Bolici fired another question to him.

22 PRESIDING JUDGE SMITH: Thank you.

23 MR. CADMAN: There may be a slight delay --

24 PRESIDING JUDGE SMITH: Thank you.

25 MR. CADMAN: -- please be aware of that.

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1           PRESIDING JUDGE SMITH: Thank you.

2           MS. BOLICI: I will do my --

3           PRESIDING JUDGE SMITH: Please pause, each of you, before you go  
4 on to the next question.

5           MS. BOLICI: I will be mindful, Your Honour. Thank you.

6           Q. So going back to this point. You suggest in paragraph 22 that  
7 the one method to authenticate Batch 3 would be to compare it with  
8 ZyLAB. Do you agree today, after having been reminded what Batch 3  
9 is, that your suggested method is, in fact, inapplicable in this  
10 case?

11          A. In relation to ZyLAB, yes. But there's numerous otherwise ways,  
12 as I say, that you can authenticate the documents. Those were only  
13 two of the scenarios that I gave. And as I say, if you do a search  
14 across the file management system, which, at the ICTY, all our  
15 searches for exculpatory evidence did that, then you would pick it up  
16 there. Or as a senior investigator, you would identify it  
17 immediately as being internal work product.

18          Q. Yes. And --

19          A. So --

20          Q. Yes, we will move to that in a moment. And I just would like  
21 to --

22          PRESIDING JUDGE SMITH: Ms. Bolici, please, you've interrupted  
23 him again.

24          MS. BOLICI: Sorry, I will be more mindful.

25          THE WITNESS: [via videolink] No, it's fine. I'd finished my

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1 answer. Thank you.

2 MS. BOLICI:

3 Q. Mr. Reid, you say there are multiple ways of authenticating  
4 documents in paragraph 22, but this is the one method that you  
5 propose. Did you propose it without having any idea what Batch 3  
6 contained?

7 A. As having no idea as to how you file your or do your filing  
8 systems. I don't know whether you put internal work product into Zy.  
9 I don't know how you do your filing. In the ICTY, we would not have  
10 put it into Zy. I agree with you there. And you've now highlighted  
11 to me that you don't do that either.

12 Q. Okay.

13 A. So, yes, searching ZyLAB wouldn't pick the document up.

14 Q. So based on the ICTY experience, as well as the SPO experience,  
15 your suggested method would be inapplicable. We can agree on that?

16 A. Yes, I agree with you there, but we would have picked it up with  
17 search across our file management system.

18 Q. And now you say that there would be other ways to verify whether  
19 Batch 3 was an SPO document. Now, do you have any idea whether the  
20 SPO investigator, in fact, did identify a document corresponding to  
21 Batch 3 within the SPO database?

22 A. I can't recall now, but I presume she would have. I mean, I  
23 would expected her to have.

24 Q. Did you read the testimony of Ms. Pumper in order to look for  
25 information whether she had or she had not retrieved a document

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1 corresponding to Batch 3 in the SPO internal database?

2 A. I can't recall now. I can't recall having -- whether I saw that  
3 or not in the transcript. I don't know.

4 Q. But did you at least look for this information?

5 A. I looked for all the types of information that would assist me  
6 in compiling my report.

7 Q. Exactly. And then at a certain point you made an assessment  
8 saying what should have been done and was not done. Now, before  
9 saying that something was not done, did you check whether the  
10 material that was provided to you, in fact, offered you the  
11 information that your ideal course of action had, in the specific  
12 case, been followed?

13 A. I looked at the information. I can't recall now whether it had  
14 been done or not. The scenarios that I put forward were things that  
15 we would have done in the ICTY to be able to authenticate documents.  
16 I was asked generally about the authentication of documents, and  
17 that's a way that -- or two ways that you can authenticate  
18 documentation.

19 Q. But you were asked generally how to authenticate documents in  
20 relation to this case where you are testifying as an expert  
21 witness --

22 A. True.

23 Q. -- didn't you?

24 A. True. Yes, that's true.

25 Q. So I'm just trying to understand your process of drafting this

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1 report. Before stating what should have been done and was not done,  
2 did you even look in the materials that was provided to you for  
3 information confirming or denying what had been done or not?

4 A. Yes, I looked at all the material that had been supplied to me.

5 Q. And not for this specific information?

6 A. I was looking for information that could assist me as to what  
7 had been done or what had not been done or what the best practices  
8 were to be able to find that documentation.

9 Q. So you looked for information and you must have missed it, then,  
10 when you were reading these transcripts? You didn't read them  
11 carefully?

12 A. I read them very carefully. Given more time, I probably would  
13 have read them a third and a fourth time.

14 Q. How many hours did you spend on compiling this report?

15 MR. CADMAN: The question has been --

16 THE WITNESS: [via videolink] I can't --

17 MR. CADMAN: -- asked and answered.

18 MS. BOLICI: Not answered --

19 MR. CADMAN: Yes, it has. It's been asked and answered.

20 PRESIDING JUDGE SMITH: [Microphone not activated].

21 MS. BOLICI:

22 Q. I would like to show you, Mr. Reid, a transcript from the public  
23 testimony of the SPO investigator.

24 MS. BOLICI: And this is the transcript of 19 October 2021, and  
25 the page is 951.

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1 Q. So if you look, Mr. Reid, from line 21 of page 951 to line 25 of  
2 page 952, this is about a page and a half about the comparison that  
3 the investigator carried out between the documents that she retrieved  
4 in the SPO database and Batch 3. And I would like to draw your  
5 attention in particular to the last two lines of page 952, where the  
6 investigator stated:

7 "I have seen in the SPO database different versions of this  
8 documents was work in progress, so to speak."

9 A. Yes.

10 Q. Had you missed this part --

11 A. No.

12 Q. -- of the --

13 A. No.

14 Q. -- transcript? You were aware?

15 A. I remember reading this. I remember the internal work product.  
16 I remember that she got it in the electronic format. What I'm trying  
17 to say to you is that my assessment was an overall assessment of the  
18 documentation and what we would have done to authenticate  
19 documentation at the ICTY. That's what I'm trying to say.

20 Q. Yeah. But your overall assessment also referred specifically  
21 also to Batch 3?

22 A. Yeah, and Batch 1, and Batch 2, and Batch 4.

23 Q. Yes.

24 A. And overall what we do.

25 Q. Okay.

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1 A. Or what we would have done at the ICTY.

2 Q. Okay.

3 A. Yes.

4 Q. So you said it should have been found in ZyLAB, but we agreed  
5 this is not a good working method. And you said -- stated it should  
6 have been found somewhere else in the database, you could have  
7 carried out a search -- a word search. And based on the transcript  
8 that I have just highlighted to you, we can agree that this is  
9 what -- in fact, what had been done; is this correct?

10 A. She got the electronic document, yes. I remember reading that,  
11 yes.

12 Q. Okay. So the authentication of Batch 3 corresponds to your  
13 ideal course of action, doesn't it?

14 A. It's one way that she could authenticate it and she has, yes.

15 Q. It's an effective way?

16 A. Yes.

17 Q. Thank you. Now, moving to Batch 1. Based on the materials that  
18 you have reviewed, do you have an idea of what is the nature of the  
19 documents that were included in Batch 1?

20 A. In Batch 1, I think, if I recollect correctly, they were  
21 requests from SITF or from the SPO to the war crimes prosecutor  
22 together with annexes of witness names, asking specific requests of  
23 the war crimes prosecutor in Belgrade to find witnesses, et cetera,  
24 et cetera.

25 Q. Yes. And based on your experience as an investigator, is this

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1 the kind of material that is part of the record of a criminal  
2 investigation?

3 A. It would be part of the administrative record, the request, yes.

4 Q. And the statements of witnesses that were received, for example,  
5 as a response to such request, would they be part of the records of  
6 the investigation?

7 A. Yes.

8 Q. And based on your experience as an investigator, are records of  
9 investigations typically confidential until the time when they are to  
10 be disclosed in public trials?

11 A. They're confidential until such time, yes, as you submit to your  
12 disclosure obligations. So I suppose the first public knowledge of  
13 that would be disclosing the witness statements or declarations,  
14 whatever they are, to the defence, and then into the public domain if  
15 there was a public trial. Yes.

16 Q. And did you verify if any public trial has started before the  
17 Kosovo Specialist Chambers as of September 2020?

18 A. No, I don't know.

19 MR. CADMAN: Your Honour.

20 PRESIDING JUDGE SMITH: Yes.

21 MR. CADMAN: I do object. Mr. Reid is being asked to comment on  
22 matters that he hasn't seen. He has not been able to inspect the  
23 documentation. He's only seen the very redacted version. He's being  
24 asked to give an opinion on matters that he hasn't seen.

25 MS. BOLICI: Your Honour, if I may answer to this objection.



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1 The witness has seen the materials that the Haradinaj Defence has  
2 instructed him to see.

3 PRESIDING JUDGE SMITH: The objection is overruled.

4 Go ahead.

5 MS. BOLICI:

6 Q. So, Mr. Reid, were you aware whether as of September 2020 there  
7 was any public trial before the Kosovo Specialist Chambers?

8 A. No, I don't -- I don't know.

9 Q. But if I were to tell you that there was no public trial as of  
10 September 2020 before the Kosovo Specialist Chambers, would you agree  
11 that records of investigation up to that time would typically be  
12 confidential, wouldn't you?

13 A. Yes, definitely. Yes.

14 Q. And if at a certain point in time the investigative record of a  
15 prosecution office were to be entirely confidential, there would be  
16 no point in checking every single document against a database to  
17 verify whether a specific particular document were confidential  
18 because there were no public documents. Would you agree with that?

19 A. It depends. I mean, in certain circumstances, even if we didn't  
20 have a trial, we would put documentation into ZyLAB which was not  
21 classified confidential or restricted and we may share it with other  
22 parties who are conducting trials. For example, you know, if Sweden  
23 was conducting a trial and we hadn't started a trial, then if the  
24 document wasn't confidential or restricted, we would share it with  
25 the Swedish authorities. That's just one example.

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1 I'm not saying that the Swedish -- that that happened with the  
2 Swedes, but I'm just giving an example.

3 Q. Okay.

4 A. So, yes, it depends.

5 Q. And the statement of witnesses, the identities of witnesses on  
6 an investigation that had no -- on a case that had not gone to trial  
7 yet, would you regard those materials as confidential in a typical  
8 criminal investigation?

9 A. They'd be confidential. But, again, I sort of say -- we used to  
10 have a paragraph, the first paragraph of our witness statements in  
11 the latter part of the tribunal, in the first paragraph, that had  
12 that the witness was willing to share the witness statement with  
13 another law enforcement body of another country.

14 Q. Yes.

15 A. Now, if we -- or they weren't. One or the other. Now, if they  
16 agreed to that and we got a request from a national authority for  
17 statements relating to crimes occurring in X, then, if the witness  
18 had agreed to it, we would share it.

19 Q. And that would be a specific waiver to share a document with a  
20 specific law enforcement authority; is this correct?

21 A. Yes, correct.

22 Q. With another prosecution office, with a judicial office; is this  
23 correct?

24 A. Correct. Correct.

25 Q. So would you agree that before a public proceedings starts, the

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1 records of investigation are not public documents that, for example,  
2 you would publish on the ICTY OTP web site? Would you agree with  
3 that?

4 A. No, I agree. Of course, I agree with that.

5 Q. So is it true that when you suggested that every single document  
6 had to be checked against the ZyLAB metadata, you considered,  
7 perhaps, a scenario when a trial had already started and part of the  
8 evidence beared a public classification because it had been presented  
9 in the course of criminal trials or disclosed publicly, and some of  
10 the evidence presented a confidential classification because it had  
11 not been reclassified yet, and not the case when all the records of  
12 investigations were still maintained confidential; is this correct?

13 A. I'm not sure. Could you just repeat that again, please?

14 PRESIDING JUDGE SMITH: You might break that up into some parts.  
15 It was a very long question and it had multiple parts.

16 MS. BOLICI: Thank you, Your Honour.

17 Q. The need to check against ZyLAB whether a document is public or  
18 confidential is pretty immediate when there is a situation when there  
19 are public proceedings already ongoing and confidential  
20 investigations still being carried out. In that case, you have  
21 multiple classification in the evidentiary database. So for every  
22 document, you might need to check what is the classification of that  
23 document; is this correct? Do you agree with that?

24 A. Yeah, I agree with what you're saying. But the premise of what  
25 my statement was is to search each and every document to ensure that

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1 what we've seized is SPO or SITF documentation.

2 Q. Yes.

3 A. That was the premise of what my statement was.

4 Q. I understand. And in relation to the confidentiality instead,  
5 when you said you need to check the metadata to verify whether a  
6 document is public or confidential, you had in mind the scenario  
7 where the ZyLAB database would include record of investigation that  
8 had been reclassified already as public; is this correct?

9 A. But some of those documents could have been ICTY documents that  
10 we supplied to the SPO, so they could have already been used in a  
11 public trial.

12 Q. What I'm --

13 A. That's what I'm saying. It's the classification of the  
14 documentation. And mainly what the premise of my statement there was  
15 in relation to witnesses, where you have an attachment, a witness  
16 list attached to a request for assistance, then each of the witnesses  
17 should have been checked.

18 Q. This is --

19 A. Every single --

20 Q. -- a different topic.

21 A. Okay.

22 Q. This is a different topic. My question focuses on this point:  
23 The need to verify the classification of a document as confidential  
24 or public arises when there are multiple classifications of  
25 documents, whether there is a possibility that a document is

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1 classified as confidential or public; is this correct?

2 A. That's true. But again --

3 Q. At the point in time when the record of investigation is  
4 entirely confidential, the check of each and every page and the  
5 metadata to verify the status of that document would be a useless  
6 exercise. Would you agree with that?

7 A. No, I don't think it is useless. I disagree with you. The  
8 reason that I say each page should be checked in the database is to  
9 ensure that it's an SPO document. I mean, you're making allegations  
10 that all your documents were handed over to the War Veterans  
11 Association. What I'm saying is that each page of every document  
12 should be checked to say, yes, that's correct. That is an  
13 affirmative statement. That is one of our documents which is  
14 confidential.

15 Q. We'll go to the authenticity, as you call it, in a moment. I  
16 was, like, focusing on the confidential classification at the moment.

17 A. Yes.

18 Q. Now, would you agree, as a matter of logic, that if all the  
19 records of the investigation at a certain point in time were  
20 confidential, there would be no need to verify that the specific page  
21 belonging to the record of investigation was marked as confidential  
22 because all --

23 A. That's true.

24 Q. -- of them were? You would agree with that?

25 A. The investigation is confidential, yes.

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1 Q. Thank you. Now, when you filed your report, you've not been  
2 provided with any samples of Batch 1; is this correct?

3 A. That's correct.

4 Q. And you were not provided with Annex 1 to the declaration of the  
5 SPO investigator admitted as P90, which is the table describing  
6 Batch 1; is this correct?

7 A. When I did my report, no, I'd not been given any of the  
8 declarations of the investigator.

9 Q. So at the time you had no information about the confidentiality  
10 of the markings that appeared on any pages of Batch 1; is this  
11 correct?

12 A. Of any of the batches. I never had any of that.

13 Q. Nor you had any information about the indicia of confidentiality  
14 that had been identified by the SPO investigator in providing the  
15 detailed description of each and every document?

16 A. I had an inkling of what she was doing. But then, just as I was  
17 reading the transcript, then you would go into private session, so I  
18 never ever got any of that information.

19 Q. I understand.

20 A. And that's not -- that's not a criticism of you going into  
21 private session. I fully understand.

22 Q. Yes. But you are aware that you have no information at all  
23 about which kind of confidential markings do appear or not appear on  
24 this --

25 A. No.

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1 Q. -- pages?

2 A. No.

3 Q. This is correct.

4 A. Correct. That's correct.

5 Q. Yes. I have omitted to complete the questions in relation to  
6 the confidentiality character of Batch 3 before, and I would like to  
7 ask you if we can go one moment back to that topic.

8 A. Sure, sure.

9 Q. We were talking about the draft analysis of evidence, an  
10 assessment of the law and the evidence available on a criminal  
11 proceedings against certain accused persons.

12 A. Yes.

13 Q. Now, do you agree that if a draft analysis of evidence  
14 summarised, described, assessed confidential evidence, confidential  
15 witness statement, for example, the draft analysis would bear the  
16 same classification as the confidential evidence that it describes or  
17 summarises?

18 A. Yes, correct.

19 MS. BOLICI: I would like to show to the expert witness the  
20 document with the ERN SPOE002222921 public redacted version.

21 THE WITNESS: [via videolink] I think I've got that in paper  
22 format. Did you send that to me earlier?

23 MS. BOLICI:

24 Q. We did, yes.

25 A. I printed that out. That's 222291 ending, SPOE.

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1 Q. Yes.

2 A. Yeah, I have that printed out in front of me.

3 Q. I will wait for the Court Officer to put it on the screen for  
4 the benefit of the Panel.

5 A. Okay.

6 Q. Now, Mr. Reid, looking at the page in front of you, can you see  
7 the SPO logo on the top of the page in the centre?

8 A. Yes.

9 Q. And can you see the words "Confidential" on the top right  
10 corner?

11 A. Yes.

12 Q. Can you see the words "Internal Work Product" on the top right  
13 corner?

14 A. Yes.

15 Q. And the word "Confidential" on the bottom left corner.

16 A. Correct.

17 Q. Now, that's a redacted page --

18 A. Yes.

19 Q. -- of Batch 3. And according to your expert opinion, what is  
20 the classification of this SPO document which includes in the heading  
21 and footing the word "confidential" twice and the expression  
22 "internal work product" as well?

23 A. It's exactly the same as it would have been at the ICTY. It's a  
24 confidential document.

25 Q. And --



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1 A. That shouldn't be shared -- and internal work product, it  
2 shouldn't be shared outside of the office.

3 Q. And you did not need to look into the SPO ZyLAB database to come  
4 to this conclusion; is this correct?

5 A. No, that's what I said -- I said to you a few answers ago when  
6 we were discussing Batch 3, is that this is one way the investigator  
7 probably wouldn't have had to interrogate anything. You just look at  
8 it and say that's internal work product. That's confidential.  
9 That's what I'm saying.

10 Q. So do you agree that a way of authenticating this document is  
11 for a person who knows what this document is to find it in the SPO  
12 database, to verify that it's a draft analysis, and to confirm that  
13 it is an SPO document dealing with SPO investigations and is an  
14 internal work product; is this correct?

15 A. You wouldn't have to go through those processes. You would just  
16 look at it and say: That's our document.

17 Q. Indeed.

18 A. Correct.

19 Q. Thank you. Now, Mr. Reid, do you agree that the chain of  
20 custody is a way of demonstrating that the materials that have been  
21 seized are, in fact, the materials that are presented as evidence?  
22 Would you agree with that?

23 A. That are presented in court, yes.

24 Q. And the proof of authenticity would be the goal, and the chain  
25 of custody is the tool to reach this goal; is this correct?

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1 A. Correct, yes.

2 Q. Now, for example, in a case where the accused described the  
3 materials prior to the seizure and this description matched with the  
4 seized evidence, that would militate as an additional argument for  
5 authenticity; would you agree with that?

6 A. I'm sorry, I don't understand what ...

7 Q. So imagine a case where the accused were to describe a certain  
8 batch of documents in quite a lot of details, and then that batch of  
9 documents would be seized.

10 A. Yes.

11 Q. Now, if the description provided by the accused prior to the  
12 seizure matched to what the documents, in fact, were, would this be  
13 an argument in favour of authenticity of the documents that are  
14 considered?

15 A. Well, it depends -- it depends if it's admissible or not, what  
16 he's saying. The documentation -- the chain of custody of the  
17 documentation is taking it from where you seize the documentation,  
18 you can prove every minute of every day where that particular  
19 document has been. That's the chain of custody regardless of what  
20 the accused says.

21 Q. Yes. But let's assume these assertions are public evidence.  
22 The accused describes what he has in his hands. Now, then, what is  
23 considered as evidence, what is presented later on matches the  
24 description of what the accused describes. Do you agree that this  
25 assists in establishing authenticity of what has been, in fact, taken

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1 from the accused?

2 A. It would certainly assist. And the chain of custody would then  
3 corroborate and bolster --

4 Q. Yes.

5 A. -- that particular evidence that you are trying to present.

6 Q. Yes. Now, in a case where the accused showed on camera some of  
7 the materials prior to the seizure and images from the video  
8 recordings matched with the seized evidence, that would militate as  
9 an additional argument for authenticity, wouldn't it?

10 A. I disagree with you.

11 Q. You disagree?

12 A. Yes, no, I disagree with you. I think it's extra evidence that  
13 you've got in relation to your case, but you've still got to prove  
14 the authenticity of the particular document. The video would just  
15 corroborate what you're saying, but you should always - in my view,  
16 anyway - you should always treat the documentation to the highest  
17 level that you can. And if you can do it, then you should.

18 Q. Absolutely. And the video evidence that would show what the  
19 accused had in their hand would corroborate that what was seized  
20 later on was, in fact, what the accused had if the images matched; is  
21 this correct?

22 A. Exactly. And the video should also be treated when you seize  
23 that as chain of custody.

24 Q. Yes. And imagine a case where the evidence shows that there  
25 were multiple copies of the same batch of documents, and of these

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1 copies, one was seized and one was subsequently retrieved by a third  
2 party.

3 A. Yes.

4 Q. Now, if the two copies were to match with each other, like in  
5 the case of Batch 1 and Batch 4, that would --

6 A. Yes.

7 Q. -- be an additional argument for authenticity, wouldn't it?

8 A. It's a great argument for your prosecution case, yes.

9 Q. Thank you. And in a case where the accused never denied that  
10 they possessed and made available to the press copies of the  
11 documents that were subsequently seized but only argued that their  
12 course of action was somehow justified, would this position be an  
13 additional argument for authenticity? Do you agree with that?

14 A. Well, it depends on the admissions they made in relation to the  
15 individual documents. I mean, I don't know what that is. But, yeah,  
16 I mean, my -- the reason for me saying that you should treat the  
17 documentation at the highest level -- if you're going to lay charges  
18 against somebody, your documentation should be squeaky clean.

19 Q. Absolutely.

20 A. And all that sort of evidence that you're putting to me now  
21 should also be held to the highest regard - the videotape, the  
22 statements of accused, whatever. I mean, that should all --

23 Q. Yes, absolutely.

24 A. -- be held --

25 Q. Yes, I agree. And staying in relation to what I asked you. So

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1 in a case where the accused never disagreed that, in fact, they  
2 deliver the documents that the prosecuting authorities seized to the  
3 prosecution authority, would you consider that this is an argument in  
4 favour of authenticity of those documents?

5 MR. CADMAN: Objection, Your Honour. The -- rephrasing the same  
6 question several times just because Ms. Bolici is not happy with the  
7 answer -- it's asked and answered.

8 MS. BOLICI: He answered --

9 PRESIDING JUDGE SMITH: Overruled. You can answer the question.

10 THE WITNESS: [via videolink] Look, I -- I think it's one way of  
11 proving the authenticity. But it's -- I mean, in any investigation,  
12 as you probably know, you should be trying to get as much evidence as  
13 you possibly can to the highest standard that you can get that  
14 evidence.

15 MS. BOLICI:

16 Q. Absolutely.

17 A. And the documentation should be treated, if you can treat it, to  
18 the highest degree and put the highest standard on it. If you know  
19 that you're going to use that in a criminal trial, then you should  
20 try and put chain of custody on it and take it from when you got it  
21 to when -- it just adds weight to your case.

22 Q. Agreed. And we also agree that the chain of custody is a tool  
23 for authenticity. It's the goal. It's not the goal, it's the tool.  
24 Is that correct? Do you agree with that?

25 A. Well, it proves. I mean, you can sit in the witness box and be

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1 totally confident that if you're questioned on the authenticity of  
2 those documents you can say: That is the document that I seized at  
3 that place, and I can prove it. And you've got the paperwork to  
4 prove it.

5 Q. Yes. And in a case where pictures of the documents published by  
6 the press match with the pages of documents that were seized --  
7 sorry. In a case where the accused never denied that they made  
8 available to the press copies of the judgement and those pictures  
9 that were published by the press matched with the seized documents,  
10 that would be an additional argument in favour of authenticity. You  
11 would agree with that?

12 A. It's additional evidence, I mean, that you're getting.

13 Q. Yes.

14 A. But, I mean, the accused could come to court the next day and  
15 say, "I never said that," or, "They weren't the documents they took  
16 from my premises." And you've got to be able to prove conclusively  
17 that that is. And that's why I'm saying that best practices should  
18 be employed when you're seizing the documentation or you're taking a  
19 video or you're seizing the photographs from a media outlet or  
20 whatever, or newspaper columns, whatever it is.

21 Q. Yes. And in your report, at no point you assert that based on  
22 the materials that you have reviewed, you came to the conclusion that  
23 the chain of custody was broken, do you?

24 A. As far as I was concerned in my report, there is no chain of  
25 custody --

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1 Q. Have you --

2 A. -- that I can see.

3 Q. And have you requested to the counsel who appointed you all the  
4 relevant materials that was disclosed by the SPO to the Defence in  
5 relation to chain of custody?

6 A. No, I've taken the instructions from counsel. And I've looked  
7 at the documentation that he has supplied me -- or his office has  
8 supplied me.

9 Q. And have you verified that at any point in time whether counsel  
10 had available any other documentation concerning chain of custody?  
11 Did you ask?

12 A. No, because I presumed I would have got it if there was anything  
13 there.

14 Q. So you never asked whether, for example, there was a paper trail  
15 that was disclosed to the Defence concerning the movement of these  
16 documents, did you?

17 A. No.

18 Q. You never asked whether there was documentation that was  
19 disclosed to the Defence concerning the submission of these documents  
20 into evidence?

21 A. No, I never got any sort of documentation like that. And, as I  
22 say, I presume that had that documentation existed, it would have  
23 been supplied to me to assist me with my report.

24 Q. But it has been not; is it correct?

25 A. I've not got any of that document -- no. Like a paper trail,

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1 I've never -- I've never seen a paper trail of when the documents  
2 were seized, whether it be Batch 1, 2, or 3, whether there's a paper  
3 trail from the office of the War Veterans Association to when it hits  
4 the evidence unit and it's processed in your evidence unit, or CMU I  
5 think you call it.

6 Q. Okay.

7 A. I've not seen any paper trail like that, no.

8 Q. Okay. And if you wanted to argue, let's say hypothetically,  
9 that the chain of custody had been broken, you would need to give a  
10 look to this paper trail, wouldn't you?

11 A. If there's a paper trail that exists, yes, you would have to  
12 look at the paper trail to say: Yes, the chain of custody has been  
13 broken, or it's perfect.

14 Q. Thank you. And I would like to refer to the manual on developed  
15 practice that --

16 A. Yeah.

17 Q. -- you have attached to your report.

18 A. Yes.

19 Q. Now, I would like to refer in particular to page 5 of the  
20 manual.

21 MS. BOLICI: If I can ask the Court Officer, please, to put it  
22 on the screen. Page 5, please. That would be the -- yes -- no. I  
23 apologise. So I would like, Court Officer, please, to move to  
24 page DNH1030. And paragraph 80 of the manual. If this could be put  
25 on screen.



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1 Q. Now, in this part of the manual you are referring to, there is a  
2 reference to the OTP practices on appointing and instructing expert  
3 witnesses. And in particular, paragraph 80 reads that:

4 "Internal OTP policies and procedures regarding the handling of  
5 experts emphasise that," inter alia:

6 "Experts should be fully informed regarding the matters at  
7 issue."

8 Now, did you consider that this particular guideline of -- that  
9 was applied at the ICTY OTP did not apply to you in providing your  
10 expert opinion in the present case?

11 A. No, and I don't go away from what the best practice is there.  
12 But my knowledge, and having worked with experts, is that we always  
13 supplied the information to the expert.

14 Q. So you assumed that you were provided with the information that  
15 you needed and when you didn't have such information, you just  
16 assumed the information did not exist. Is this a fair conclusion?

17 A. Yes, that's what I've said just a little while ago. I presumed  
18 that if I'd -- if the evidence -- if the information was there, it  
19 would have been supplied to me.

20 Q. And when you omitted to note that, for example, items seized at  
21 the KLA War Veterans Association did not present ERN numbers on them,  
22 did you consider to have been fully informed when you provided that  
23 part of your expertise?

24 A. Well, I had that information before me. You've pointed that out  
25 earlier in the public transcript of the investigator. So I was

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1 supplied with that, but there were no ERNs on there.

2 Q. You had the information. You didn't elaborate on that, you  
3 mean?

4 A. I had the information. I just misunderstood what it meant.

5 Q. I understand.

6 A. But I'd been supplied with that information. That was in the  
7 public transcripts that I'd been supplied with, the investigator.

8 Q. And when you omitted to note that a comparison between Batch 1  
9 and Batch 4 had been carried out, were you fully informed about the  
10 matter at issue?

11 A. Well, you've fully informed me now by pointing it out in the  
12 public transcript and had I read it more carefully, then I should  
13 have picked it up as well. If I'd read it three or four times, I  
14 probably would have picked it up. But I didn't pick it up, for which  
15 I apologise, but it was there. So I had been given that information.

16 Q. So you were fully informed but you did not elaborate on the  
17 information; is this correct?

18 A. Yeah, I suppose that's correct. Yes.

19 Q. And when we look at this manual that you cited as an authority,  
20 do you agree that this publication is intended to provide an overview  
21 of the working methods developed at the ICTY and it is not a  
22 dissertation on legal requirements for investigation, adjudications  
23 or prosecution of criminal cases?

24 A. No, it outlines right across the board, chambers, registry,  
25 office of the prosecutor, the best practices as we saw it. And it's

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1 meant as a guide to practitioners in international law as to what we  
2 saw as being the best practices.

3 Q. And if you look at the index of this manual, you will see that  
4 the entire section concerning the investigation - and this is in  
5 page DNH0996 - is summarised in about 18 pages, from page 11 to  
6 page 29. Do you understand that summarising the working methods for  
7 large crimes investigation in more than 18 pages imposes an  
8 indispensable level of generalisation and abstraction?

9 A. I wouldn't say obstruction, but it is generalisation, yes. But  
10 they're the key -- the key factors that we saw in working best  
11 practices.

12 Q. Yes.

13 A. But I wouldn't say it's an obstruction. It's not meant to be an  
14 obstruction. It's supposed to be something that people can use as a  
15 tool or not.

16 Q. Yes, I meant abstraction. Generalisation and abstraction.

17 A. Oh, sorry. Sorry. I apologise.

18 Q. Yeah, my pronunciation --

19 A. I misunderstood you. Sorry.

20 Q. I know. I'm aware of that.

21 A. I apologise.

22 Q. So there is an unavoidable level of generalisation; is this  
23 correct?

24 A. If we were to write a manual on best practices of the ICTY or of  
25 any tribunal, it would be thousands and thousands and thousands of

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1 pages. So this is -- yes, it's generalisation and to be used for  
2 assistance.

3 Q. Yeah. And you also agree that it's not even a manual on best  
4 practices, it's a manual on developed practice. Like it just states  
5 what was being done. There is no comparison with any other practice.  
6 It just states a description of what has been done at the ICTY with a  
7 fair level of generalisation; is this correct?

8 A. It was developed practices that the ICTY or I believe worked for  
9 the ICTY. And worked quite well, I thought.

10 Q. And do you agree that working methods and practices need to be  
11 tailored in relation to the specificities of each case; right?

12 A. Exactly. Exactly. Of course they do.

13 Q. And that it would be difficult to summarise in 18 pages  
14 guidelines applicable to all cases with a fair level of scientific  
15 preciseness?

16 A. Yeah, but I think you're overstating the manual. I think what  
17 the basic of the manual is, is that the Office of the Prosecutor, I  
18 can't speak for chambers or for registry, but the Office of the  
19 Prosecutor had numerous standard operating procedures and guidelines  
20 which they used. So it's not so much the manual. It's the  
21 guidelines and the special -- and we were developing them all the  
22 time.

23 I mean, like in Prijedor, when we went on that mission in  
24 Prijedor, the one thing that we didn't address was the press. And so  
25 when we got back, we amended the standard operating procedure to

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1 include a press component of it. So, yes, you're always changing.

2 And case by case, yes.

3 Q. But in relation to this one authority that you cite, I mean, I  
4 think we agree that in 18 pages that is as much as you can say. You  
5 cannot be precise. You cannot adapt to every situation. Is this  
6 correct?

7 A. No, you can't. But in the particular -- what I was asked to do  
8 in my report, I thought that the documentation that was outlined in  
9 the manual could be of assistance as a best practice that we had --  
10 or of a developed practice, if you like, at the ICTY and that's why I  
11 included it.

12 Q. And is it correct, Mr. Reid, that you have not cited to any  
13 other single authority in your expert report but the manual on  
14 developed practices that we just considered?

15 A. There is many manuals that have been written that you could cite  
16 to but --

17 Q. But you didn't?

18 A. No, because I was asked what the practices were at the ICTY.  
19 And since I'd been there since 1994 until 2018, I used my experience.

20 Q. So the best practices that you are describing are not, in  
21 general, the practices of international criminal tribunals. You're  
22 referring to this one particular experience that you are familiar  
23 with; is it correct?

24 A. That's correct. But, I mean, when I went back to Africa, when I  
25 came out of retirement in 2019 - and, admittedly, it's the Mechanism

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1 which goes across the former ICTY and the former ICTR - the practices  
2 at the ICTR were very much the same as what they were at the ICTY.  
3 And that could be explained because in the beginning we had the same  
4 prosecutor. But for a long part of the ICTR, they had a separate  
5 prosecutor to the ICTY but they still used very, very similar work  
6 methods that the ICTY were using.

7 If you go to Cambodia, you can see that, you know, practices  
8 were adopted there, because, you know, staff of the ICTY would go to  
9 Cambodia or go to ICTR, so you would take your experience with you.  
10 So I think that's a bit of a generalisation to say what you are  
11 saying, that it was only specific to the ICTY.

12 Q. What I'm saying is that you cite to one authority, which is a  
13 manual --

14 A. Yes.

15 Q. -- developed at the ICTY. You do not cite to any other  
16 authority. So what I'm asking is what you're referring to is the  
17 practice of the ICTY. This is the scope of the references you give.  
18 Is this correct?

19 A. What I'm citing to is my experience both as a police officer  
20 here in Australia and to my work at the ICTY and then at the  
21 Mechanism for international criminal tribunals. That's what I'm  
22 citing to. And this developed practices manual, if you like,  
23 corroborates some of the things that I'm saying in relation to chain  
24 of custody and the seizure of documents.

25 Q. And we agree that besides this manual, you did not consult any

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1 other literature or authority in general in?

2 A. No.

3 Q. Is this correct?

4 A. No, I didn't. No, I didn't.

5 Q. Thank you.

6 MS. BOLICI: I will just consult with my colleagues.

7 One moment, Your Honour, if possible.

8 PRESIDING JUDGE SMITH: Yes, go ahead.

9 [Specialist Prosecutor confers]

10 MS. BOLICI: Your Honour, just to understand how much time do I  
11 have left for today's session?

12 PRESIDING JUDGE SMITH: That depends a little bit. How much  
13 longer do you think you'll be?

14 MS. BOLICI: I have an issue with some documents that were not  
15 yet provided to the witness, so that's the one -- the topic that I  
16 want to go next, I cannot go, but I could touch another matter if  
17 that would be permitted. I was just wondering how long ...

18 PRESIDING JUDGE SMITH: Well, we are scheduled until noon. If  
19 we were closed to being finished with this witness, we would extend  
20 on a little bit. But it doesn't look like we're going to be.

21 MS. BOLICI: No. I will need Friday for sure. And I have a  
22 long section that requires disclosing some documents to the expert  
23 witness, and that's why. But I could cover another part of the cross  
24 otherwise.

25 PRESIDING JUDGE SMITH: Knowing that, why don't you cover the

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1 other part, and then we'll break and we'll be finished for today, and  
2 you can download the documents.

3 MS. BOLICI: Yes.

4 PRESIDING JUDGE SMITH: Understood, Mr. Cadman?

5 MR. CADMAN: Yes, I was just going to say that Mr. Reid had  
6 previously indicated yesterday that if we need to go a little bit  
7 further today rather than having to sit on Friday, he can. But he's  
8 also available on Friday as well.

9 PRESIDING JUDGE SMITH: Yes, and I appreciate that.

10 And I appreciate that, Mr. Reid. But it sounds like we're going  
11 to be beyond that.

12 So go ahead, Ms. Bolici.

13 MS. BOLICI: Yes, one moment.

14 I would like to show to the witness a video. And that is the  
15 video with the ERN 10472901.

16 PRESIDING JUDGE SMITH: Ms. Bolici, is this a public document?

17 MS. BOLICI: It's a public document retrieved online on the web  
18 site of the Humanitarian Law Centre.

19 PRESIDING JUDGE SMITH: Okay.

20 Mr. Cadman.

21 MR. CADMAN: I would just ask the Prosecutor to explain what is  
22 the relevance of some of these matters that are going to be put to  
23 the witness.

24 PRESIDING JUDGE SMITH: You should state your case about this so  
25 the witness knows where you're going.



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1 MS. BOLICI: Yes.

2 MR. CADMAN: Before Ms. Bolici continues, I also note that there  
3 were some additional items that were put into the presentation queue  
4 that we only picked up earlier that deals with ICTY judgements.  
5 Again, to explain the relevance of those.

6 MS. BOLICI: Well, the timing for the Prosecution to disclose  
7 its presentation queue is at the end of the examination-in-chief. So  
8 that's the moment when the presentation queue was disclosed.

9 MR. CADMAN: It wasn't a criticism of late.

10 MS. BOLICI: Okay.

11 MR. CADMAN: It was a question --

12 MS. BOLICI: Thank you for the clarification.

13 MR. CADMAN: -- of relevance.

14 MS. BOLICI: Yes.

15 PRESIDING JUDGE SMITH: Go ahead, Ms. Bolici.

16 MS. BOLICI: Thank you.

17 PRESIDING JUDGE SMITH: Please state your case.

18 MS. BOLICI: The witness provided, I believe, an interview about  
19 some of the difficulties he had with investigating Kosovo cases. And  
20 in order to put in context the best practices that he's highlighting  
21 as applicable to this case, I would like him to confirm these  
22 contextual circumstances concerning Kosovo cases.

23 PRESIDING JUDGE SMITH: All right. Go ahead.

24 MS. BOLICI: I would like to play for Mr. Reid the portion of  
25 the video that goes from minutes 06:55 to 07:29.

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1 [Video-clip played]

2 "Witness intimidation in the trials for Kosovo, I've really  
3 never seen anything like it before. I was a policeman for 20 years  
4 and I've worked here for 23 years, and I've never seen intimidation  
5 like it. It was really quite frightening.

6 "And I'm not linking that to any individuals or any  
7 organisation, but just the fear that was engendered in the society  
8 I've not seen any. Even in organised crime, I've never seen anything  
9 like it."

10 MS. BOLICI:

11 Q. Thank you. And is this an interview that you have provided,  
12 Mr. Reid?

13 A. Yeah, I believe it was an interview -- I think it was with  
14 Mirko Klarin, I think. Yes. I remember the interview, yes.

15 PRESIDING JUDGE SMITH: Mr. Cadman had a comment.

16 MR. CADMAN: Again, relevance to these proceedings, Your Honour.

17 MS. BOLICI: The relevance --

18 MR. CADMAN: The Prosecutor is dealing with matters that are  
19 historic. I'm at a loss to understand how they're relevant to these  
20 proceedings.

21 PRESIDING JUDGE SMITH: You're going to have to state your case  
22 with a little more clarity as to why we're going into this. You  
23 didn't say that.

24 MS. BOLICI: Your Honour, this is a case about witness  
25 intimidation. It's a case about witness intimidation in Kosovo and

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1 obstruction of justice.

2 Mr. Reid has experience about Kosovo cases and witness  
3 intimidation in Kosovo cases. I would like to receive the expert  
4 testimony about this particular topic.

5 PRESIDING JUDGE SMITH: Mr. Cadman.

6 MR. CADMAN: And I maintain my objection. That is not what  
7 Mr. Haradinaj is on trial for. They can put matters that are  
8 relevant to these proceedings. We have, throughout these  
9 proceedings, been prevented from bringing in matters that fall  
10 outside the scope of the indictment. These are highly irrelevant  
11 matters.

12 MS. BOLICI: If I may --

13 MR. CADMAN: They should not be allowed, Your Honour.

14 MS. BOLICI: If I may add --

15 PRESIDING JUDGE SMITH: I've heard enough. Thank you. I'm  
16 going to consult.

17 MS. BOLICI: Yes.

18 [Trial Panel confers]

19 PRESIDING JUDGE SMITH: The question is relevant. Witness  
20 intimidation is central in this case. It has something to do with  
21 this case. And the question will be allowed.

22 So go ahead.

23 MS. BOLICI: Thank you, Your Honour.

24 Q. Mr. Reid, is this video that I've just played to you, is it an  
25 interview that you have provided about your experience in Kosovo

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1 cases?

2 A. Yeah, it was a longer interview than that and touched on a lot  
3 of other subjects. But, yes, part of it was relating to Kosovo.

4 Q. And are you speaking in the interview, in this excerpt that I  
5 played, about your experience in investigating war crime cases  
6 against members of the KLA?

7 A. Look, I never, as an investigations leader -- at that particular  
8 time, I think I was the chief of operations and my -- my sole --  
9 well, part of my work was the apprehension of outstanding fugitives.  
10 But I worked very, very closely with the trial teams, and  
11 particularly the trial teams on Kosovo, and I had a very close  
12 understanding of what they were going through in their trials. And I  
13 don't take a word back of what I just said.

14 Q. So you stand by your assertion that you've never seen something  
15 like witness intimidation in Kosovo, not even in organised crime  
16 cases?

17 A. It's very underground. It's always there. But, yeah, I mean,  
18 you can speak to a witness one day and the witness just -- I mean, I  
19 know in one particular case, the witness came to The Hague and  
20 preferred to be charged with contempt of court than give evidence.

21 Q. Yes. And you say that it was quite frightening, that you have  
22 never seen anything like that, and there is a fear that was  
23 ingenerated in the society. Can you elaborate on that?

24 A. Yeah, I mean, it's as if you're a traitor to the cause. And,  
25 yeah, that was -- it was the -- always the undertone. And, I mean,

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1 you can speak with any of the trial attorneys that worked on the  
2 cases or the investigators who worked on the cases, and they would go  
3 and speak to a witness one day and they would go back another day and  
4 the witness had either gone out of the country or they refused to be  
5 interviewed any further.

6 Now, as I said in the interview, I'm not pointing the finger at  
7 any one individual or organisation, but it was just an undercurrent  
8 that was there.

9 Q. And when you say it is like if "you're a traitor to the cause,"  
10 can you elaborate on that? So a witness, somebody who cooperates  
11 with investigation, prosecution authorities, is regarded as a  
12 traitor? Is this the case?

13 A. In some instances that was the way they were treated, yes.

14 Q. They would be isolated?

15 A. Look, I can't give you any specific examples. The specific  
16 example I gave you was that a particular witness came to The Hague,  
17 was put in the witness box. When asked to answer the questions, he  
18 refused. The judge, presiding judge then told him he would be  
19 charged with contempt of court, and he preferred to be charged with  
20 contempt of court and imprisoned rather than give evidence against  
21 individuals.

22 Now, again, I'm not making any assertions against any of the  
23 accused in those particular trials or anything there. But there's  
24 something there when a witness would rather go to jail for contempt  
25 of court than give evidence.

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1 Q. And are you familiar with the case that was tried at the ICTY  
2 against Ramush Haradinaj?

3 A. Yes.

4 Q. And do you recall what was the experience of witness  
5 intimidation in that case?

6 PRESIDING JUDGE SMITH: Hold on.

7 Mr. Cadman.

8 MR. CADMAN: Again, objection to this entire line of  
9 questioning. It's completely inappropriate. They have no relevance  
10 to these proceedings. Has no relevance to these accused.

11 PRESIDING JUDGE SMITH: Overruled.

12 You may answer the question.

13 MS. BOLICI:

14 Q. Did you get my question, Mr. Reid?

15 A. I'm sorry, could you repeat it again, please.

16 Q. Do you have a fair recollection whether the Haradinaj case at  
17 the ICTY was affected by an issue of witness intimidation?

18 A. It was a very, very difficult trial. And, yeah, I mean, that's  
19 pretty much all I can say is that, you know, witnesses who had been  
20 interviewed just refused to give evidence.

21 Q. And I would like to read a small excerpt from the Haradinaj  
22 trial judgement, it's IT-04-84-T, of 3 April 2008, and it's  
23 paragraph 6. And it reads:

24 "... The Trial Chamber encountered significant difficulties in  
25 securing the testimony of a large number of witnesses. Many

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1 witnesses cited fear as a prominent reason for not wishing to appear  
2 before the Trial Chamber to give evidence. The Trial Chamber gained  
3 a strong impression that the trial was being held in an atmosphere  
4 where witnesses felt unsafe. This was due to a number of factors  
5 specific to Kosovo/Kosova, for example Kosovo/Kosova's small  
6 communities and tight family and community networks which made  
7 guaranteeing anonymity difficult."

8 Does this description correspond to your experience in dealing  
9 with witnesses in cases against KLA members?

10 PRESIDING JUDGE SMITH: Mr. Cadman.

11 THE WITNESS: [via videolink] Yes.

12 MR. CADMAN: I maintain the objection. I will continue to  
13 maintain the objection through this entire line of questioning.  
14 Again, it is completely irrelevant to these proceedings.

15 The Defence has been prevented from putting historical matters.  
16 These are historical matters. The Prosecution should not be  
17 permitted to continue with this line of questioning. It is  
18 inappropriate, and I am at a loss to understand how the Trial Panel  
19 can allow this to continue.

20 PRESIDING JUDGE SMITH: The objection is overruled.

21 MS. BOLICI:

22 Q. Mr. Reid, the tight, small communities in Kosovo, have you  
23 experienced difficulties in securing witness evidence in relation to  
24 the difficulties of maintaining the anonymity of the cooperation of a  
25 witness with the OTP of the ICTY?

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1 A. Yes. Yes. And what the trial chamber outlined in that  
2 judgement is -- yeah, that's correct.

3 Q. And would you agree that in this climate of witness  
4 intimidation, if somebody who cooperated with the prosecution  
5 authorities were to be addressed as a traitor or a collaborator or a  
6 spy, this would produce an intimidating effect on witnesses? Do you  
7 agree with that?

8 A. Yes.

9 Q. And would you agree that if in the course of investigations  
10 somebody were to announce that all the persons who cooperated with  
11 the prosecution authorities were now known and that nobody was  
12 unknown and they would be called spies or traitors or collaborators,  
13 this could ingenerate an intimidating effect on witnesses? Do you  
14 agree with that?

15 A. On witnesses and the investigation generally, yes. But I was  
16 never asked to comment on that in the report.

17 Q. Yes. And would a witness who cooperated with the ICTY OTP in  
18 Kosovo cases against KLA members normally require that his identity  
19 be maintained confidential, at least until the trial proceedings  
20 started?

21 A. Until the disclosure process started, yes. And many of them  
22 didn't even understand why we had to give their name over to the  
23 defence.

24 Q. And --

25 PRESIDING JUDGE SMITH: Just a second.



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1 Mr. Cadman.

2 MR. CADMAN: Your Honour, I would just ask for reference to  
3 Rule 143(3), which deals with the scope of cross-examination. These  
4 are matters that fall outside of that.

5 If Your Honours are going to allow Ms. Bolici to deal with  
6 historical matters that we don't think are necessary or relevant, it  
7 certainly falls outside of the scope of cross-examination. It  
8 doesn't deal with any matter that the expert has done with in direct  
9 examination, and it doesn't deal with any matter as to his  
10 credibility.

11 MS. BOLICI: Your Honour --

12 PRESIDING JUDGE SMITH: And if you read the balance of  
13 paragraph 3, you will see that the witness may be examined on the  
14 subject matter of the case of the cross-examining party, and that is  
15 what the Prosecution is doing. Your objection is overruled.

16 [Microphone not activated].

17 MS. BOLICI:

18 Q. Mr. Reid, and do you agree that in your experience in  
19 investigating cases against KLA members, maintaining the anonymity of  
20 those who cooperated with the prosecution authorities, at least up to  
21 the commencement of the trial, was crucial to the success of the  
22 investigation and prosecution; is this correct?

23 A. Of the investigation, yes. But not so much the prosecution.

24 Q. And when you state that there were witnesses who requested  
25 protective measures in relation to their testimony in Kosovo cases

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1 against KLA members, in your experience, is the request for  
2 protective measures something that occurs once an indictment is filed  
3 and confirmed; is this correct?

4 A. The protective measures at the ICTY, if I remember correctly,  
5 were allowed -- we had to make an application to the trial  
6 chamber for the granting --

7 PRESIDING JUDGE SMITH: Mr. Cadman.

8 THE WITNESS: [via videolink] -- of protective measures.

9 MR. CADMAN: There is no evidence here that the witnesses that  
10 the Prosecution purports to rely on in this matter are subject to any  
11 protective measures. I fail to see the relevance. I will continue  
12 to object.

13 PRESIDING JUDGE SMITH: The objection is overruled.

14 Go ahead.

15 MS. BOLICI:

16 Q. And, Mr. Reid, even before protective measures were granted in  
17 the course of a criminal trial, would you regard the statements, the  
18 identity of those who cooperated with the OTP of the ICTY as  
19 confidential statements provided by witnesses whose identity had to  
20 be maintained confidential for security reasons?

21 A. Well, I mean, that was right across the board. That was just an  
22 operating procedure that we had with all witnesses, regardless of  
23 their ethnicity. But, yeah. So the confidentiality of the  
24 investigative stage remained, but then it went out of our control  
25 once the investigative stage had concluded, the indictment had been

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1 confirmed, and the trial stage, if I can put it that way, commenced.

2 Q. And the very last question on this topic. You said that this  
3 fear was something that was widespread within Kosovo society. And  
4 would you agree that individuals, witnesses in general, would fear  
5 for their safety, their personal safety, the safety of their family,  
6 regardless of being the subject of a specific direct threat, but in  
7 general in relation to how witnesses against KLA members were  
8 regarded in the Kosovo society?

9 A. Well, I mean, that -- it depends on the individual witnesses.  
10 And I can't really answer that sort of general question because even  
11 for non-Kosovo witnesses, some witnesses had fears that we needed to  
12 address. So it's a fairly general question.

13 But as I said in the interview, Kosovo just seemed to be  
14 different, if I can put it that way.

15 Q. Thank you, Mr. Reid.

16 MS. BOLICI: Your Honour, my next topic would require the  
17 disclosure of materials, so I would rather move it to Friday, if  
18 possible.

19 PRESIDING JUDGE SMITH: All right. Mr. Reid, we will adjourn  
20 today and have you back at 8.00 on Friday, the same place, the same  
21 time, and we appreciate your being with us today.

22 Anything else from the parties?

23 MS. BOLICI: No, Your Honour. Thank you.

24 PRESIDING JUDGE SMITH: We are adjourned.

25 --- Whereupon the hearing adjourned at 11.52 a.m.