



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

ឯកសារដើម
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TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

23 July 2012

Trial Day 82

Before the Judges: NIL Nonn, Presiding
Silvia CARTWRIGHT
YA Sokhan
Jean-Marc LAVERGNE
YOU Ottara
THOU Mony (Reserve)
Claudia FENZ (Reserve)

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ABDULHAK	English
MR. BAHOUGNE	French
JUDGE CARTWRIGHT	English
MR. CHANDLER (TCE-11)	English
MR. IANUZZI	English
MR. KARNAVAS	English
JUDGE LAVERGNE	French
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. NUON CHEA	Khmer
MR. PAUW	English
MR. PICH ANG	Khmer
MR. SON ARUN	Khmer

1

1 P R O C E E D I N G S

2 (Court opens at 0902H)

3 MR. PRESIDENT:

4 Please be seated. The Court is now in session.

5 This morning we will continue to hear the testimony of the
6 expert, David Chandler, who will be questioned by the defence
7 teams initially, by Nuon Chea's defence before the other two
8 defence teams.

9 [09.03.13]

10 The floor -- before the floor is handed to Nuon Chea's defence
11 team, Ms. Se Kolvuthy, could you report the participation of the
12 parties and the individuals to the proceeding?

13 THE GREFFIER:

14 Good morning, Mr. President. All parties are present except the
15 accused Ieng Sary, who is present in the holding cell downstairs.
16 He waives his right through his defence counsel not to directly
17 participate in the proceeding for the entire day today. The
18 letter of waiver has been submitted to the greffier. Thank you.

19 MR. PRESIDENT:

20 Thank you.

21 The Chamber has received the letter of waiver by Ieng Sary, dated
22 the 23rd of July, through his counsel, to waive his right to
23 directly participate in the proceeding, and it states to follow
24 it through a remote means and that is for the entire day
25 proceeding due to his poor health that he cannot sit for long to

1 follow the proceeding.

2 [09.04.36]

3 Dr. Lim Sivutha, who is a treating doctor of the Accused at the
4 detention of the ECCC, also recommends that the accused Ieng Sary
5 has a dizziness symptom and fatigue and that he shall be allowed
6 to follow the proceeding through a remote means in the holding
7 cell downstairs.

8 The Chamber is of the view that the accused Ieng Sary, due to his
9 health, who expressly waives his direct participation and instead
10 to follow it through a remote means in the holding cell
11 downstairs and that he is in a position to directly communicate
12 with his defence team. His request is therefore granted, and that
13 he is authorized to follow the proceeding in the holding cell
14 downstairs through audio-visual means for the entire day
15 proceeding.

16 The AV Unit, you're instructed to link the proceeding to the room
17 downstairs so that Mr. Ieng Sary can follow the proceeding
18 through the entire day.

19 [09.06.00]

20 The floor is now given to Nuon Chea's defence to put question to
21 this expert witness. You may proceed.

22 QUESTIONING BY MR. SON ARUN:

23 Good morning, Mr. President. Good morning, Your Honours. Good
24 morning, Mr. David Chandler. I have some questions for you and
25 the first question is the following:

3

1 Q. Mr. Chandler, in your capacity as a researcher and an author,
2 what is the percentage of your belief during the course of your
3 research upon your interviews with the people and upon
4 researching the documents at the original locations? What is the
5 percentage of your belief in that regard?

6 MR. CHANDLER:

7 A. Thank you. I'm not quite sure what the question means. If you
8 mean I've drawn my conclusions, what percent of my conclusions
9 have I've drawn from interviews and how many from documents -- is
10 that what the question means?

11 [09.07.43]

12 If which case -- in which case, I can say, probably, it varies
13 from book to book. I did -- I did very few interviews for the
14 "S-21" book for obvious reasons. I did a lot of interviews for
15 the "Tragedy" book, quite a few for "Pol Pot". Documentary
16 evidence in all of these books was heavy so I'd say, no, maybe
17 75/25 for the history -- for the "Tragedy" book -- this is
18 documents versus interviews; 80/20 for "Brother Number One"
19 documents/interviews, and 95/5 documents/interviews for "Voices
20 From S-21".

21 Q. During the course of writing the books -- that is all the
22 books that you have published, of course, you did conduct your
23 research, but you did not, all the time go to the original
24 locations in the book. Either you were told or you learned of the
25 locations through various documents and then you compiled all

4

1 those facts or all those information in your books.

2 And my first question that I put to you is that -- whether you do
3 trust and believe the information that you received from those
4 various documents?

5 [09.09.32]

6 A. Well, this is exactly the point that a historian has to make a
7 -- choices between the documents he believes because they're
8 heavily corroborated, the documents he distrusts for various
9 reasons that are often are cast aside. The same is true with
10 interviews. It's an intuitive thing, largely, whether you're
11 relying on what the interview is saying or not. These are all
12 different choices, and surely, going to the locations of the
13 sentence or the things that I wrote, I mean, with the time
14 factor, it was impossible for me to go, for instance, to Paris in
15 the 1950s. I couldn't go to the Killing Fields in DK because I
16 wasn't allowed into Cambodia.

17 So exact locations -- I did go as much as I could after 1990 to
18 Cambodia to do my interviews. So I'm not sure that the location
19 where the documents were generated or the original location of
20 the people I interviewed in different places was a factor in what
21 I wrote.

22 Q. Thank you.

23 My second question is the following: On the 18th of July 2012, in
24 your reply to Madam Judge -- quote: "At that time, the Democratic
25 Kampuchea was not recognized by the -- by the world."

5

1 [09.11.30]

2 What did you mean by that?

3 A. Well, I have to revisit to see what "at that time" was but
4 certainly, Democratic Kampuchea did not accept diplomatic
5 recognition from other countries except for, I think, China,
6 North Korea, Vietnam, Laos. There were other embassies that were
7 open for a while in Cuba and other places that closed down.

8 "Recognized", I meant diplomatically recognized. It would depend
9 on what time you're talking about.

10 If you mean April '75 or whatever, it was -- it had fought -- the
11 point I think I was trying to make there, underneath what I said,
12 was that the -- the regime of Democratic Kampuchea didn't pay
13 much attention to diplomatic recognition from other countries,
14 and certainly didn't seek it from countries that it was not
15 closely related to.

16 [09.12.38]

17 Q. Thank you.

18 During the period of the Democratic Kampuchea regime -- that is,
19 from 1975 to 1979 -- as shown by various documents, it is said
20 that Democratic Kampuchea had some diplomatic ties with
21 embassies, in particular with those Communist countries and there
22 were various representatives from the eastern Communist bloc. As
23 I recall, there are about 30 Communist parties who joined the --
24 Communist countries who joined the Communist parties and majority
25 of the eastern Communist bloc had diplomatic ties with Democratic

6

1 Kampuchea. And the question is:
2 As there were a number of diplomatic embassies in particular,
3 those Communist countries who recognized Democratic Kampuchea,
4 who had commercial trade with the regime, and at the United
5 Nations, the flag of the Democratic Kampuchea was also recognized
6 and flown.

7 So the question to you is that: In your response to Judge
8 Cartwright on the 18 of July 2012, what was your interpretation
9 of that?

10 A. Thank you--

11 MR. PRESIDENT:

12 Witness, please hold on. We need to hear the objection by the
13 Prosecution first.

14 You may proceed.

15 [09.15.00]

16 MR. ABDULHAK:

17 Thank you, Mr. President. I'm reluctant to intervene, but we
18 object to the form of questions, particularly, the last question
19 and an earlier question as well.

20 It is not appropriate for counsel to preface his questions by a
21 series of statements or assertions of fact.

22 If counsel wishes to put specific facts to the witness, he can do
23 so by referring to documents and -- and specifically quoting from
24 them, but it's not appropriate for counsel to give facts from his
25 own recollection.

7

1 MR. SON ARUN:

2 Let me respond to the objection by the Prosecution. What I have
3 put into question to Mr. Chandler is based on his response to
4 Judge Cartwright's questions on the 18th of July.

5 MR. PRESIDENT:

6 The objection by the Prosecution is sustained.
7 Your question is weak relying on the response of the expert to
8 Judge Cartwright, who put many questions to the expert on the
9 18th of July 2012. You need to clearly quote the exact term or
10 the exact reference to that particular statement -- the line
11 number, for instance, or the page number and the ERN number of
12 that transcript so that it can be viewed by the parties and the
13 Chamber.

14 [09.16.44]

15 Mr. Expert, you do not need to respond to that question raised by
16 the defence team.

17 BY MR. SON ARUN:

18 Thank you, Mr. President, I'll move on to another question.

19 (Short pause)

20 [09.17.49]

21 Q. My next question to Professor Chandler is the following: Did
22 you ever see the administrative structure and the role of the
23 Democratic Kampuchea that is, official administrative structure
24 and role? Have you ever witnessed or seen that? That is -- I
25 meant the administrative structure from the upper to the lower

8

1 level.

2 [09.18.22]

3 A. You're referring to the structure of the government; is that
4 -- am I right? Any documents that would -- would suggest or
5 define the structure of the DK government is that what I'm being
6 asked? I'm -- your question, I'm afraid, wasn't entirely clear to
7 me. Or were you referring to the embassies again? I'm not sure. I
8 couldn't quite get what you were asking.

9 [09.18.54]

10 MR. PRESIDENT:

11 Counsel, you need to be clear whether you talking about the
12 document or you're referring to the structure without the
13 document. Your question is very difficult to understand. If you
14 refer to the organizational structure or the administrative
15 structure of Democratic Kampuchea, that is the practical
16 structure. That is a separate matter from the official structure.

17 BY MR. SON ARUN:

18 Thank you, Mr. President.

19 [09.19.30]

20 Q. In the Democratic Kampuchea structure that we have relied upon
21 in various documents and that we have discussed for many months,
22 for instance, the structure of the Party, the structure of the
23 government as well as the structure of the National Assembly.
24 What I want to refer to is the structure of the Party. Have you
25 ever seen the official structure of the Party?

1 MR. CHANDLER:

2 A. I've seen documents that helped me to reconstruct what the
3 structure must have been and a lot of this is contained, of
4 course, in the statutes of the Party that we looked at the other
5 day. The structure of the Party running down from the Secretary
6 of the Central Committee on down through zones and offices and
7 what looked like ministries, but weren't called that, has all
8 been heavily documented and it's available for study, yes.

9 [09.20.56]

10 Q. What about the governmental structure of the Communist Party
11 of Kampuchea? Have you ever conducted research into that area or
12 ever witnessed any official document?

13 A. I think -- thank you. I think my testimony of the last few
14 days shows that I am familiar with this structure through my --
15 through familiarity with a whole range of documents. The freshest
16 that I've seen in the last few days, of course, is the Communist
17 Party statutes, but there's the Constitution. There are several
18 organizational charts that are readily available. So it is a
19 subject I've studied, and I -- isn't directly appropriate to the
20 things I was writing, but it was useful and I needed to study it
21 before I wrote what I wrote.

22 [09.21.49]

23 Q. Thank you, Mr. Chandler.

24 The title of your documents as recognized by the Chamber, there
25 is document E3/17 entitled "Pol Pot: Brother Number One".

10

1 My question in regards to that book is: Why do you use or decide
2 to use the title "Pol Pot: Brother Number One" as the title of
3 your book? Is it because, based on the structure, that it is
4 recognized that Pol Pot is Brother Number One and then there are
5 Brother Number Two, Number Three, so on and so forth? Do they
6 really use numerical structure in their structure at the time?

7 [09.22.50]

8 A. This is one of the -- thank you. This is one of the many names
9 by which Pol Pot was known. They didn't use this in official
10 documents. It's a -- it's a, if you like, an intimate -- an
11 intimate and respectful designation formally sometimes called
12 Uncle Secretary or "Om Lekha". But I think Brother Number One
13 being -- he was never called anything lower than Number One, he
14 was, of course, the Secretary of the Central Committee. This is a
15 term in use during Democratic Kampuchea and I thought it would
16 make a suitable title for my book.

17 [09.23.57]

18 Q. You have already clarified the structure of the Party that is
19 -- it's in a pyramid form from the upper to the lower level. What
20 about the subordinate units at the lower level, for instance,
21 Office S-21? To your knowledge, do you think that the lower level
22 would have the same organizational structure as the upper level?

23 A. Well, sometimes yes and sometimes no. In the case of S-21, it
24 was, again, a collective leadership, but with the ruling vote, if
25 you like, in a -- in a -- on certain decisions taken by Duch, who

11

1 was the leader of S-21. He was the -- he was the only one
2 authorized to communicate with higher echelons and primarily only
3 with Son Sen. So, yes, it was somewhat pyramidal, but in the
4 zones, you have political, economic, and administrative groups of
5 three running the situation.

6 So, yes, but it's not as quite as precisely a pyramid form as the
7 Communist Party in theory. Sometimes, things broke down, so
8 there's more people with stronger or weaker than there was
9 supposed to be in the organization chart.

10 Q. Thank you.

11 Mr. Chandler, you have conducted your research for several years
12 and for quite a long time, and some of your books that you
13 published based on your research--

14 The question to you is that: During the course of your research,
15 have you ever seen the signature or the stamp used by the higher
16 level or by the central level? Have you ever seen a document
17 signed and sealed by those official people?

18 A. I don't think I have. I've certainly seen documents that we
19 were discussing the other day that are in Son Sen's handwriting,
20 so I guess he's one of the higher people. Moving a document
21 forward to Brother Van was -- it was Ieng Sary or Brother Nuon
22 who was -- Nuon Chea. Their own signatures, the signatures of --
23 I mean -- people have been working for years to try and find the
24 signatures of Pol Pot on documents.

25 [09.27.01]

12

1 I don't think it's even been found. That people have guessed --
2 maybe that's his handwriting, maybe that -- but no firm view. But
3 certainly Son Sen's handwriting is known quite well. He was
4 number -- roughly number three in the organization.

5 Q. If you have never seen the signature of the upper level or the
6 middle level for the orders to the lower levels, is it your
7 conclusion that the -- generally the orders that were alleged
8 that were issued by the upper echelon for the killing of their
9 own people -- is it your conclusion?

10 A. The question is not clear to me. There certainly are documents
11 in Son Sen's handwriting back to Duch telling him to --
12 suggesting that he continue to work hard to "komtech", or smash
13 individual people in S-21. There's oral evidence from witness
14 statements and so on that I haven't consulted in detail, but I've
15 seen them interviews that other people have conducted, suggesting
16 that orders came down to gather in or to smash certain
17 characters.

18 [09.28.34]

19 Certainly these orders came down. I think they were not signed
20 and -- but they were obeyed, so it seems to me that they obeyed
21 and they were known to be coming from above -- is the proof that
22 I wanted -- is all the proof I needed.

23 [09.29.38]

24 Q. Mr. Chandler, on page 104 of your book "Voices from S-21", you
25 state that the senior cadres selected some of the biographies of

13

1 their subordinates for review:

2 "Nuon Chea expresses regret that he did not pay much attention to
3 this matter, and that is -- he stated he's lacking in this
4 matter, that he did not follow the biographies closely in regards
5 to the core members of the Party and to make measures to sweep
6 clean within the Party, and that he only looked at the general
7 characteristics of those people, and that he did not look into
8 details of their background biographies, and that is the enemies
9 to infiltrate in the Party."

10 [09.30.56]

11 What do you mean when you write that statement in your book? Can
12 you enlighten the Chamber? That is, in regards to Nuon Chea's
13 speech.

14 A. I'm -- I'd need to see the quotation in full. This is a
15 statement that Nuon Chea made. It's certainly exculpatory, so I'm
16 not entirely sure how much we have to rely on it, but I'd need to
17 the page in front of me to answer your question more accurately.
18 Could we maybe get it on the screen? Could we get the page on the
19 screen, maybe, so I could see the full quote?

20 MR. PRESIDENT:

21 Counsel, you appear to have quoted from the text written by the
22 author -- by the witness. So could you also project the ERN
23 numbers in three languages of the code to parties in the Court
24 proceeding? And if available in hard copy, you should also
25 proceed with the document to the expert for examination before he

14

1 can -- he could respond to your question.

2 (Short pause)

3 [09.33.05]

4 BY MR. SON ARUN:

5 Thank you, Mr. President. I am very sorry that I have not
6 prepared all the necessary documents to put questions to the
7 witness, and I believed that the expert could still remember his
8 writing. That's why I did so. I may skip that question, by the
9 way.

10 Q. I have another question. Based on several documents, mainly
11 the telegrams from the military -- from the zones -- in those
12 documents, people who would be addressed would be brothers like
13 Brother Nuon, Brother Van, Brother Hem. In each of the document
14 that addressed to each individual, there should be a copy -- for
15 example, copy to other people in the subordinate section.
16 According to your research, do you believe that people who have
17 been copied had the level of authority as those intended
18 recipients? For example, if it was addressed to Brother Number
19 One and then cc'd -- or to other people, whether these people
20 also exercised some power as the intended recipient.

21 [09.35.17]

22 I don't know whether my question is clear, but it is more about
23 the administrative structure -- thing.

24 MR. CHANDLER:

25 A. That's a very interesting question. Certainly, just as in

15

1 normal bureaucratic procedure, people who are copied on a
2 document do not have authority to act on it. They have authority
3 to read it and to share it with the person to whom it's been
4 addressed.

5 Now, I kept stressing in my earlier testimony that this is a --
6 the DK was a collective leadership, that these people felt
7 themselves -- felt themselves entitled to make collective
8 decisions and to be aware of things that were happening. The fact
9 that the addressed names of many of these telegrams, several of
10 which came to my attention after I finished my research -- my
11 written research, are of a very limited number of people who are
12 familiar to us -- and some of them are here today -- shows how
13 small this pool of informants was.

14 [09.36.24]

15 And I can re-emphasize from that the tight security in which the
16 regime operated, and the secrecy with which it carried on most of
17 its activities.

18 Q. Thank you very much, Mr. Chandler. This is going to be my last
19 question.

20 "The Decision Made by the Central Committee on Other Matters".

21 This document can be referred to document E3/12, dated on the
22 30th of March 1976. First, the document concerns "the right to
23 smash, within and outside the ranks". And the objective is:

24 "1. There shall be a framework to implement our task and also to
25 enforce our authority.

16

1 "[One], at the base level, the decision shall be made from the
2 Centre.

3 "Surrounding the Central Office, the Committee of the Office --
4 of the Centre shall make such the decision.

5 "[And point number 3], in the independent zone, the Standing
6 Committee shall be the one who made the decision."

7 And fourth point is about the central military.

8 So, with regard to this decision, I have a question to you like
9 this. Now, the authority had already been laid down to each
10 respective unit. What was the authority of the supreme leaders?

11 [09.39.14]

12 Because the decision was already made and supposed to be handed
13 down to people at the base or at the respective unit. Did they
14 still carry some authority, or had the authority to know about
15 what happened at the base? For example, the short-coming of
16 medicine and daily affair -- whether it really -- the decision
17 then made by the Central Committee or each respective unit
18 instead?

19 A. That's quite a complicated question. I'm -- the document
20 itself does not speak of any difficulties or hardship happening
21 down below. This was -- there is no -- none of the Standing
22 Committee documents that have survived, as I recall, mention
23 hardships or difficulties in the -- at the lower echelons.

24 [09.40.09]

25 But, certainly, this document, which was never passed on

17

1 literally to the lower echelons but gave some of the people in
2 the Standing Committee a guideline for what orders would go down
3 -- orders which have disappeared -- probably went by telegram, we
4 don't know. But I'm sure there was a tight relationship between
5 the Centre and the bases at this time -- the Centre and the
6 zones.

7 This was before March '76. It's before these zone and sector
8 leaders came under suspicion. It was a period when the central
9 government trusted these people, and these people trusted the
10 central government. So I'd say this is quite an authoritative
11 document that would have been followed up with other more
12 specific orders that have not survived.

13 MR. SON ARUN:

14 Mr. President, I have no further questions to put to the witness.
15 However, my colleagues would like to also put some questions.
16 Before that Mr. Nuon Chea have a question to put to the expert
17 through the President, if you allow him to do so.

18 [09.41.37]

19 MR. PRESIDENT:

20 Mr. Nuon Chea, you may now proceed.

21 MR. NUON CHEA:

22 Good morning, my fellow Cambodian citizens. Good morning, the
23 Court and Mr. President. Good morning, Mr. Expert.

24 [09.41.58]

25 I have two questions, indeed.

18

1 First question is: From the very beginning, until now, the
2 conflicts between Cambodian people and -- the People Party of
3 Cambodia and Vietnam -- what has been the cause of these
4 disputes? Has it been resulted from the border dispute or from
5 other matters? That's first question.

6 MR. PRESIDENT:

7 You could hold on your first question and wait until you hear
8 response from the expert before you proceed to the next question.
9 Mr. Expert, if you get the question, you may respond, should you
10 wish.

11 MR. CHANDLER:

12 Thank you. And with respect to Mr. Nuon Chea, I'll say, who is a
13 person whom I do respect, this is a crucial historical question
14 that would probably take a hundred pages to answer.

15 [09.43.10]

16 The conflict between Vietnam and conflicts between Vietnam and
17 Cambodia, between the CPK and the Vietnamese Communist Party.
18 Between the preceding and the subsequent -- the preceding regimes
19 and so on. It takes us -- to give a proper answer it would take
20 us way outside the parameters of this Court, because of the
21 1975-79 limits that have been set. But certainly the causes that
22 I have tried to come up with -- there's nobody -- wouldn't of
23 course know the primary cause.

24 [09.44.51]

25 This is all a matter -- we've had these discussions in previous

19

1 days. It's a matter of informed opinion. But it seems to me that
2 there's a good deal of blame, if that's what you're looking for
3 -- or responsibility that can be shared by the two parties,
4 springing from -- I think -- sorry, but I think -- a failure to
5 respect the opinion of the other party, an animosity that goes
6 too deep to allow for negotiations.

7 And so it's not a question of who started what, but it's a
8 question of an animosity that was already in -- exhibited by the
9 Lon Nol regime, continued under the DK regime. An animosity of,
10 if you like -- the Vietnamese fought the Lon Nol regime. The
11 Vietnamese and DK were in conflict from -- open -- what was open
12 conflict -- although it was secret to the world -- in late '77,
13 and opened up in '78.

14 Causes of this, I think, if you want to just -- I don't mean to
15 say "you want to", that's not respectful. But if one is looking
16 for a phrase to describe the causes, I would say it's a lot of
17 history and mutual distrust.

18 MR. PRESIDENT:

19 Nuon Chea, you may proceed with your second question.

20 MR. NUON CHEA:

21 What was the cause of the birth of the Communist Party of
22 Kampuchea? Was it born by the people's Movement or by outsiders?

23 [09.46.05]

24 MR. PRESIDENT:

25 Mr. Chandler, you may proceed to respond to the question, if you

20

1 may.

2 MR. CHANDLER:

3 Well, the way it was translated to me was -- it's a question of
4 what was the cause of the birth of the CPK. Well, I think we've
5 seen in the discussions before -- it is widely published -- that
6 the CPK as a name for the Cambodian Communist Movement dates only
7 from 1967.

8 But if instead by "birth" one means "precedence", you have to
9 take the history of the Party back, as many authors have done,
10 into the late '40s and early 1950s, when the Cambodian Communist
11 - was - no, let's put it this way, the ideals of the Cambodian
12 Communist Movement were shared with the Communist Party of
13 Vietnam, which was then called the Socialist Party, I think.

14 [09.47.02]

15 The idea was to remove the French colonial power -- France from
16 its colonial power in Laos, Cambodia, and Vietnam. So there was a
17 shared objective. There was a certain amount of Vietnamese
18 training of the Cambodian Party. So you can say that, to some
19 extent, the origins of what later became known as the CPK in 1967
20 -- if you take them back into the late 40s and early 50s -- have
21 a close relationship with Vietnam.

22 When you get closer to 1967 -- when you get to the 1960 Congress,
23 for example, which of course their minutes and decisions have
24 never been fully explained -- it seems to me that Vietnamese
25 influence has diminished quite sharply, and by the time the CPK

21

1 is preparing statutes and so on in the -- during the civil war,
2 that influence has faded.

3 [09.48.01]

4 So there's a whole history of the relationship with an outside
5 power and a whole history of an autonomous movement, first going
6 along with Vietnamese cooperation, and then gradually removing
7 itself from that relationship.

8 MR. NUON CHEA:

9 Mr. President, I thank you very much. Indeed, I have no further
10 question.

11 MR. PRESIDENT:

12 Thank you.

13 Now we hand over to international co-counsel for Mr. Nuon Chea.

14 QUESTIONING BY MR. PAUW:

15 Thank you, Mr. President. And good morning to everyone. And
16 especially good morning to you, Professor Chandler. Thank you for
17 being here with us again after, what I am sure, was a tiring week
18 last week.

19 Q. Today I want to start to ask you some questions about the
20 sources of your knowledge. And we spoke about that -- or, you
21 spoke about that already last week, so I will be quite brief. But
22 I would like to come back to a statement that you made on
23 Wednesday.

24 [09.49.36]

25 It is in the transcript on pages 52 and 53. And I will just quote

1 it. You stated the following -- and I quote:

2 "...just a personal footnote: when I was writing those books in the
3 late 1980s, I would certainly have been much happier had I had
4 access to the materials in the Closing Order, because I've been
5 reading material, in the last couple of days, that would have
6 been just perfect to put into my books, but this material was not
7 available to me."

8 [09.50.12]

9 Professor Chandler, could you tell the Court what material,
10 exactly, you were referring to when you said that you'd been
11 reading material that had not been available to you earlier?

12 MR. CHANDLER:

13 A. For example, I refer to the open letter by Norodom Sihanouk.

14 It was called "Mon Histoire: Les derniers jour du régime--"

15 Democratic Kampuchea, describing -- it's an open document, but

16 it's footnoted in the Closing Order -- describing aspects of the

17 conversation he had in early January 1979 with Pol Pot that had

18 not been available -- things like this, documents that --

19 statements, for example, that were given by some of the people --

20 by some of the -- other direct statements.

21 Nothing in those statements would have altered my general

22 findings. They'd have amplified and added to the footnotes in my

23 book. I didn't find any revelatory material that would have

24 changed it, but the piling up of material that I found in the

25 Closing Order, and many other documents that were given to me,

23

1 like some of the confessions, and so forth, just amplified my
2 knowledge which has been, shall we say, a bit -- I haven't been
3 hard at work on the Khmer Rouge for some time. But it lit up some
4 places in the history that interested me.

5 I think my remark on Wednesday may have seemed a bit jocular, and
6 I didn't mean to mean that as saying, for instance, that anything
7 I had read in the Closing Order would have made me recant or take
8 back anything I said in the others.

9 [09.52.16]

10 But that -- I felt the material that had become available since
11 1998, which is when I stopped writing, would have improved the
12 books I wrote before then -- or some of the material, not all of
13 it, of course.

14 Q. Thank you, Professor Chandler. And the follow-up question to
15 this is: When you were reading the Closing Order, did you get to
16 read all the footnotes that are attached to the Closing Order?

17 [09.52.52]

18 A. There's over 6,000 of them. The answer is no. But I looked up
19 -- when the subject interested me, I looked in the back and found
20 out what I could cite. That's why, for instance -- why I cited
21 that Sihanouk letter. Many of the things that were interesting
22 had witnesses names blanked out and so forth - they would be
23 unusable for me in anything I wrote.

24 [09.53.13]

25 But I often checked something that interested me in the back, and

24

1 there'd -- be something redacted and all this kind of language.
2 Perfectly fair -- so I said it once, a semi-open document. There
3 are also statements made by Khieu Samphan to the Court which are
4 Court documents were cited that way -- they clarified some of his
5 biographical details, details that I had not been aware of.
6 So, when I could -- found something interesting and found that it
7 was an open document, I made a note of that. Otherwise, I'm
8 afraid, I didn't say such and such-- It's untrackable. It's just
9 -- some of these footnotes, you can't -- they way they're rooted
10 in the document, you can't -- there's no way you can use them in
11 a historical work.

12 Q. And I'm asking you for the obvious, but that is sometimes our
13 task: Did you have access to the documents that came out of the
14 investigation by the OCIJ that were labelled "confidential"?

15 A. I don't think I did. I don't recall that.

16 Q. In your testimony last week, you also spoke of three big books
17 which you refer to as primary documents, and I was wondering
18 which three big books you were referring to?

19 [09.54.43]

20 A. These were books that -- I had hard copies made of the
21 documents that people said that they would be talking to me about
22 if I -- when I came to the Court. A biggest -- the biggest book
23 was a book of the confessions that had annotations with it. The
24 third book would have been the Closing Order. And there's a
25 fourth one that I can't quite identify, but it certainly would

25

1 have been -- possibly the translations of the confessions. I
2 think that's it.

3 [09.55.13]

4 Because I looked mainly at the Khmer one to look at the
5 transmittal -- those transmittal things. There were texts of --
6 confessions of several pages I didn't consult, because I've heard
7 here that we can't use that as evidence, so I skipped those
8 pages.

9 Q. And as a follow-up question to that: Have you been reading any
10 documents in preparation for this testimony that have not been
11 provided by the parties to this trial?

12 A. Yes, I've been reading some published books that have been
13 written about the trial. That were written -- to refresh my
14 memory, the book by John Ciorciari with -- about the tribunal is
15 one I've read. I've looked at -- let me think what else - you
16 know, open -- I just think open sources; no confidential
17 documents of any kind, nothing that's not available to the Court
18 and might even be a Court document. But, yes, I've refreshed my
19 memory with some of the books and articles about the Court to see
20 -- just to -- because I had not been paying attention to it for
21 several months.

22 Q. That leads me into the next question, which you partly
23 answered, but have you been following the proceedings of the
24 trial -- this trial, Case 002, and if so, to what extent?

25 [09.56.48]

26

1 A. Primarily by newspaper accounts, but also from, occasionally
2 from emails from people who have been participating in the
3 inquiries. Mainly, I would say journalistic reports, because I
4 haven't been gathering material myself to write a book -- write
5 an article about the Courts. I haven't been assiduous in
6 gathering sources it's been an informal process.

7 Q. And considering your interest in Duch, which is well-known to
8 all parties here in the Court, did you pay attention to Duch's
9 testimony in Case 002?

10 A. I'm not sure I had access to that. I certainly paid attention
11 to him in Case 001. I'm not sure I -- no, I'm sure -- because of
12 the -- his limited use of language, I'm sure I would have
13 remembered reading that testimony. I don't think I did.

14 Q. Do you remember reading newspaper articles about Duch's
15 testimony in Case 002?

16 A. No, I don't.

17 Q. Have you been in touch with any of the other scholars on the
18 DK era in connection with your testimony here at the Court and
19 that can be contacted either by email or a telephone or maybe in
20 person?

21 [09.58.33]

22 A. Yes. I mean, of course I have, and I have not received any
23 suggestions that these contacts should be restricted. I've been
24 in touch with many friends and colleagues, particularly as I was
25 coming to the Court, to just refresh myself on the way the

1 Court's been operating and what testimony's been given.

2 I haven't -- yes, I've missed the Duch testimony, as you suggest,
3 but this -- I have been touch with friends and colleagues.

4 Q. Professor Chandler, to be absolutely clear, I am not placing
5 any blame on you for having contacts with these people -- not at
6 all. I'm just trying to establish what your sources of knowledge
7 are, what your sources of information are, and on what
8 information you base your testimony here today. So that's all I'm
9 trying to establish, and I do not hold you at fault at all.

10 [09.59.28]

11 Having said that, part of your primary research into the DK
12 regime has consisted of studying the S 21 confessions, and you
13 stated last week that you are convinced that the S 21 confessions
14 were culled after the fall of the DK regime. Could you explain to
15 the Court what exactly you mean with the expression "to cull"?

16 A. Well, I'm relying there on the testimony of -- I'm not sure --
17 I don't think he has not testified to the Court, but the person
18 -- intellectual who was -- 1979 one of the first people to be
19 asked to work through the archives of Tuol Sleng, who uses a name
20 called Ong Thong Hoeung who lives in Belgium. He wrote a book
21 called "I Believed in the Khmer Rouge".

22 He described in that book how Vietnamese officials at that time
23 were reading a lot of these confessions. I know that's true
24 because many confessions have Vietnamese writing on them even
25 now. Comments that I can't read. It's certain to me that other

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1 documents have -- several people we know were at S 21, important
2 people, their confessions are not there.

3 [10.01.03]

4 For instance, the key -- one example of something I'm -- how do
5 you say -- I suspect very strongly was culled was the confession
6 of Ney Sarann, or Ya, the secretary of the Northeastern Zone.
7 There's 40 pages, in the archive, mostly consisting of
8 instructions coming from Duch, and so on, whereas one of the
9 interviews that Steven Heder conducted in 1980 -- which was very,
10 very fresh, very close after the regime and long before this
11 published research was around to - I don't know how do you want
12 to say -- change people's minds, one of the people he
13 interviewed, former Khmer Rouge -- or it may be even "active
14 Khmer Rouge" at that time -- but in Thailand, said that there had
15 been speech by a high Party official, quoting from this
16 confession, that took an hour.

17 So here's a -- something happened to that hour long confession,
18 and again, why one thinks - why one thinks it might have been
19 culled is, it's also the only confession that Pol Pot mentioned
20 in his interview with Nate Thayer. Oh, yes, this Ya, that's --
21 remember that confession. I mean, he probably knew a lot more but
22 that's all he said.

23 [10.02.17]

24 This was a very important character, and the Northeast was an
25 area (unintelligible) bordering Vietnam, and it seems to me -

1 again, there's no evidence, sorry -- that this was a confession
2 that actually contained information about his relationship with
3 Vietnam, which is a logical and sensible thing for some of the
4 Khmer Rouge to have, in the sense that they felt things were
5 spinning out of control. Where do we go? Who's more sensible? Go
6 to our friends, this person who had been fighting with the
7 Vietnamese, alongside them for years.

8 So it's not in -- was not in the interest of the Vietnamese in
9 the eighties to have that confession there because it would say
10 -- at least one of the confessions in Tuol Sleng has information
11 that suggests that we were ever subverting this regime.

12 And that's - and I know there's a lot of suppositions there, but
13 we also know, and I've -- that there are collections of documents
14 that are known to be in Vietnam that were taken from here, not
15 available to anybody. We don't know that they include
16 confessions, but I suspect that they might. They certainly
17 include Party documents.

18 So that's -- I mean, that's a long answer, but that's the source
19 of my use of the word "cull".

20 [10.03.41]

21 Q. Thank you. That was a long answer, but very insightful, I
22 think.

23 My initial question, I think, was meant to be a bit more simple,
24 and I simply wanted you to explain the word "cull" to the people
25 here present in the courtroom, because I'm not sure that it

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1 translated very well into Khmer and/or French.

2 A. Well, it means for an outside party to go through a series of
3 documents that they haven't generated and select either things
4 that interest them, particularly to make a smaller pile of
5 documents, or to remove documents that are not in their -- that
6 they feel would be not in their interest. And I'm thinking maybe
7 both processes work in this case, certainly for the Party
8 documents that we know are now in Hanoi, but completely
9 inaccessible. This would be of interest to the Vietnamese and
10 thought by them, of course, not to be useful for the wider
11 public.

12 [10.04.58]

13 Q. And when you were speaking about this topic last week, you
14 also mentioned the PRK in connection with the culling. Could you
15 expand on that a little bit? Because you now spoke about the
16 Vietnamese.

17 A. Well, the Tuol Sleng Museum of Genocide was set up by the
18 Vietnamese with -- and there were Cambodians working there in the
19 archive and so on. I'm not sure if I suggested there was
20 systematic culling of the confessions by officials in the PRK
21 government, that's not right. I mean, I don't -- that's not fair.
22 But it occurred under PRK and this -- early days I think the
23 officials at PRK were not in a position to resist what they were
24 asked to do by their Vietnamese associates.

25 [10.06.04]

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1 Later on, you had -- I mean, if this process of -- you know, I
2 was thinking the second batch of confessions that is mentioned,
3 that went to DC Cam coming from interior, the ones that were from
4 Son Sen's former office, they seem to me not for the PRK but for
5 the Vietnamese, this would be a very nice bunch of documents to
6 take away because they're very revelatory, but certainly the
7 Khmer -- the PRK did nothing to keep these documents out of
8 circulation.

9 Q. And also in connection with this, you stated that the
10 Vietnamese were very historically-minded, and I think you partly
11 answered my question already this morning, but -- just now, but
12 could you explain how the Vietnamese were very
13 historically-minded when it comes to culling the confessions?

14 A. I think there is genuine historical curiosity at work here. I
15 mean, Vietnam has a long tradition of history writing, history
16 reading. Books of history are bestsellers in Vietnam, if they're
17 not necessarily in Cambodia. The notations of confessions in S 21
18 -- texts in S 21, suggest that some of the people assigned to
19 this archive were genuinely interested in finding out what had
20 happened. They didn't understand the Khmer revolution. This is
21 well-known. It didn't seem to operate in a way - in a way that a
22 Communist revolution was "supposed to operate".

23 [10.07.59]

24 So they were reading to try and discover what happened, and they
25 kept documents because -- they keep extensive archives. They got

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1 -- these archives were largely inaccessible to outsiders, but it
2 seems to me if you were a people without historical turn of mind,
3 and this I think is a way you can characterize many Cambodians
4 not having such a turn of mind, you don't have to you if you
5 don't want to, they would have destroyed these archives.

6 I remember, this is an anecdote but it fits, back in the UNTAC
7 period when they were setting up the National Assembly and so on,
8 so on, they suggested that they should have a Hansard situation
9 where all the debates of the National Assembly should be recorded
10 and printed and bound, and this went nowhere. They weren't
11 interested in that history of the National -- this is not bad
12 they said, no, what's the point.

13 Q. Okay.

14 A. But -- so it's a historical cast of mind, is what I'm saying,
15 basically.

16 [10.09.03]

17 Q. Thank you, I understand your answer.

18 In connection with this topic, I would like to show you an
19 excerpt from your own book, "Voices from S 21". It's document
20 number D108/39/2, and English ERN is 00192667 to 32, Khmer ERN is
21 00191816 to 89, and the French ERN is 00357247 to 451. And the
22 page I want to talk about is page 9.

23 And with your permission, President, could this be shown on the
24 screen?

25 MR. PRESIDENT:

1 Yes, you may proceed.

2 Assistant and Court Officer, could you assist with the projection
3 of the document on the screen?

4 MR. PAUW:

5 And we have a hard copy available for you in English, Professor
6 Chandler, but I'm also going to read it out, so it is whatever
7 you prefer. Would you like to have a hard copy in front of you or
8 would you like me to read it out to you?

9 [10.10.34]

10 MR. PRESIDENT:

11 Court Officer, could you deliver the hard copy document from the
12 counsel for the expert to view?

13 BY MR. PAUW:

14 I will read the relevant excerpts to you so that also the wider
15 public can hear it -- and I quote from your work:

16 "Cambodians interpretations of the Pol Pot era slip easily into
17 Manichean frameworks that make poor history but are emotionally
18 satisfying and consistent with much of what they remember. This
19 point has been driven home by the French psychiatrists Hiegel and
20 Landrac, who worked in Khmer Rouge refugee camps in Thailand in
21 the 1980s.

22 "It is always more comfortable to have a Manichean vision of the
23 world, for that allows us not to ask too many questions, or at
24 least to have the answer readily at hand. In this fashion,
25 representing the Khmer Rouge as a homogenous group of

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1 indoctrinated fanatics, the incarnation of absolute evil
2 responsible for all the unhappiness of the Khmer people, is a
3 reductive vision of a complex phenomenon but one which a good
4 many people find satisfying."

5 [10.12.03]

6 And here, Professor Chandler, I get to the quote that I want to
7 ask you about: "Within just such a Manichean framework, the PRK
8 regime worked hard to focus people's anger onto the 'genocidal
9 clique' that had governed Cambodia between April 1975 and January
10 1979."

11 And it continues -- that is relevant for us now, but:

12 "While the new government based its legitimacy on the fact that
13 it had come to power by toppling the Khmer Rouge, it was in no
14 position to condemn the entire Movement since so many prominent
15 PRK figures had been Khmer Rouge themselves until they defected
16 to Vietnam in 1977 and 1978."

17 Professor Chandler, what I want to ask you about is this quote
18 within the quote, "Within just such a Manichean framework the PRK
19 regime worked hard to focus people's anger onto the genocidal
20 clique that had governed Cambodia between April 1975 and January
21 1979".

22 [10.13.23]

23 Can you explain to us in what way the PRK regime worked hard on
24 this enterprise?

25 MR. CHANDLER:

1 A. Thank you. Yes. Certainly, in the trial of Ieng Sary and Pol
2 Pot for genocide that took place, I think, in August 1979, also
3 in the textbooks of Cambodian schools in early the 1980s, through
4 such things as the annual Day of Hate of May 20th, I think every
5 year. The institution of the Museum of Genocidal Crimes, again,
6 not ever suggesting that the leadership of DK was as collective
7 as we know it was, but was in the fact the sort of plaything of a
8 corrupt and insane pair of people, Pol Pot/Ieng Sary.

9 I use those things in quotation. I'm certainly not referring to
10 -- this is what they were trying to do, reduce it to
11 personalities.

12 And just as an aside, and in parenthesis, it's the way we think
13 ourselves, so I'm not talking down to these people. We talk of
14 Reagan's America or -- as if he was entirely responsible for
15 everything that was happening. We talk of -- people in Cambodia
16 talk about the Pol Pot era, when there was a lot of other things
17 happening besides him, but it's a way we concentrate ourselves
18 often on a person. We'd rather do that than talk about
19 institutions that we don't understand.

20 [10.14.57]

21 But, yes, they made an effort to have this history limited to a
22 handful of people, and also to be vindicated in such a way that
23 is was absolutely evil and abhorrent to -- that it would be
24 absolutely evil and abhorrent to any sensible Cambodian citizen.

25 Q. And in connection with this, you have written elsewhere about

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1 a dominant narrative of the Khmer Rouge era, with as you say
2 today, just a few demonic perpetrators and millions of innocent
3 victims.

4 Do you think that narrative that was created during the PRK years
5 is still relevant for our perception of the DK period today?

6 [10.16.05]

7 A. Not if we're trying hard to understand what happened, it isn't
8 much help in trying to understand what happened, and I get the
9 feeling the -- I have a feeling that this is one of the missions
10 of the Court, both Prosecution, Defence, and witnesses, whatever,
11 to try and come to grips with what went on, and I think you can
12 say without hesitation that what went on was not the behaviour of
13 two genocidal people totally in charge of the country at all
14 times.

15 That's so -- this kind of history, I don't think it's relevant at
16 all to what we're doing. I think it's out there, and that's I
17 think perhaps maybe contrary to the good work of the Court.

18 Q. And if we go back to your early research of the DK era
19 documents. Are you confident that the PRK, or Vietnamese
20 officials, did not destroy or tamper with these documents in
21 their possession in such a way to emphasize the criminality of
22 this handful of absent demonic perpetrators?

23 A. Well, my only answer there is if they did, they didn't do a
24 very good job, because the documents have all -- there've been
25 thousands and thousands of pages have come into evidence at the

1 trial at this tribunal.

2 [10.17.47]

3 Q. Then I apologize. I may not have formulated my question
4 clearly enough, but what I'm trying to ask you is whether you
5 think that the Vietnamese have manipulated the evidence in such a
6 way, by taking away documents and -- DK era documents, that might
7 reflect a less important role for the leaders at the top?

8 A. We have no evidence that that's what they did, but I mean,
9 we've heard evidence earlier in the last week that these Standing
10 Committee meetings took minimally, on the basis of once a week
11 and often more frequently, we have 15 -- we have about nine, I
12 think of the 15 documents. So that massive document, it either
13 was destroyed or it went somewhere, and we don't know which. I
14 don't think there's evidence that it survived en masse, and I
15 think people will recall the statement that Duch made, if not at
16 his trial at least in his interviews, that Mr. Nuon Chea in the
17 eighties came across Duch. It wasn't an acquaintance but just
18 distant, and he said, why didn't you burn your documents? We
19 burned our documents. So that's part of the answer, that some of
20 them were, you know, destroyed.

21 I've got no evidence, however, that the PRK or the Vietnamese did
22 anything to -- documentary form to enhance this, because as I
23 said, once you go through the documents this myth doesn't stand
24 up. So it didn't work. If they tried it, it didn't work. I have
25 no evidence that they did.

1 [10.19.37]

2 Q. Thank you. And in connection with this, we have spoken about
3 the 1979 trial of Ieng Sary and Pol Pot. Based on your research,
4 what do you know about the selection of evidence for that
5 particular trial?

6 A. Well, that's an excellent question. The -- some of the witness
7 statements at that trial are extremely valuable today, because
8 they were -- I know for instance the witness statement of the
9 woman whose name is Denise Alfonso, I interviewed her twice in
10 Paris. Her memories coincide exactly with what she said at that
11 Court, and they were a harsh indictment of the kind of
12 experiences she'd had.

13 The evidence was channeled so that it would produce a picture of
14 some of the horrors of the DK period. Many of the witnesses were
15 very well chosen to speak of these horrors and spoke of them
16 accurately.

17 [10.20.49]

18 There was no -- why the trial has not attracted any respect, or
19 much respect, overseas over the years is because it was certainly
20 a kangaroo court, and this will make a good job maybe more
21 difficult. The defence lawyer assigned to Pol Pot and Ieng Sary
22 jumped up and said these people are insane monsters and should be
23 destroyed. This is a defence lawyer.

24 So this is -- this was not -- I mean, all those aspects of the
25 trial were absurd, but at the same time they wanted to show the

1 world, or they hoped to show the world what a terrible thing had
2 happened. And a terrible thing had happened. And these were
3 authentic witnesses who came forward. I think a lot of them have
4 come forward again in this tribunal to suggest -- or several of
5 them, suggest what had happened to them. The value is this is
6 1979, a year away from the collapse of the regime. These memories
7 had not had the time to be tampered with, or altered, or blurred.
8 So there's many valuable things in the trial, and I've drawn from
9 them sometimes, but the format of the trial was very strange.

10 [10.22.06]

11 Q. Okay. Thank you for that answer, and I would like to speak
12 with you about, moving away from your sources of knowledge for
13 now, but I would like to speak to you about the American
14 bombardments of Cambodia in -- well, I'll not give too much
15 information.

16 But let me first ask you an open question: Could you give us a
17 brief introduction of maybe two minutes about the American
18 bombardments of Cambodia as they occurred in the 1970s and,
19 perhaps, the 1960s?

20 A. Yes, I'd be happy to do so with the Court's permission,
21 because this is -- seems to me the sixties, seventies, sometimes
22 in, sometimes not, in our purview. If this question is allowed,
23 I'd be happy to answer it, but I don't want to get lead back into
24 a question about the sixties and seventies without knowing that
25 this is an area that we can talk about fully and at length.

40

1 [10.23.40]

2 I'm not trying to avoid the question; it's a good question, I
3 want to answer it, but only if I'm allowed to do so.

4 Q. Well, the question is meant to understand the context in which
5 the DK regime--

6 (Judges deliberate)

7 [10.25.16]

8 MR. PRESIDENT:

9 Mr. Expert, you can respond to the question put to you by the
10 international counsel for Nuon Chea, and please make it brief,
11 and -- because you are an expert and also a historian, so you
12 should respond. You may proceed.

13 MR. CHANDLER:

14 A. Thank you, Mr. President. I'm happy to answer that question.

15 As a American citizen, at the time -- I now have dual citizenship
16 -- and as a scholar of Cambodia in the 1970s, I was appalled by
17 the American bombardment, where a massive number of bombs were
18 dropped on a country with which America was not at war, and I had
19 written that this was one of the, to my mind, one of the darker
20 moments in American behavior overseas and I should mention, in
21 that context, that I am a loyal American citizen. I am not going
22 to throw in my passport. If I was ashamed of that conduct, other
23 things just as bad or worse have happened since, but this is
24 right in -- in the context of '73.

25 Now, the effects of the bombing on the -- on the Khmer Rouge

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1 Movement has been widely debated. The sources are quite
2 contradictory whether the bombing encouraged people to join the
3 Khmer Rouge or encouraged people to flee to Phnom Penh. I think
4 it did both to some extent.

5 [10.26.51]

6 I think at one of his interviews in the eighties, I think -- this
7 is not verified, I mean, I don't have the document in front of
8 me, but Khieu Samphan said: "It didn't make any difference. We
9 moved away. We were always -- our troops were in good shape. We
10 didn't get damaged. The troops didn't get damaged by this
11 bombardment." He was saying this is -- the Khmer Rouge forces
12 were skillful enough to -- not to be decimated by the bombing.
13 We don't know the amount of casualties the bombing inflicted on
14 the Khmer Rouge military. We do know that their capacity to take
15 Phnom Penh was postponed by two years and this, taking a very
16 cold, amoral, foreign-policy view, was the objective of the
17 bombardment -- was to keep a Communist regime from coming to
18 power to the west of Vietnam which was still west of South
19 Vietnam which was still a non-Communist state allied to the
20 United States.

21 [10.27.47]

22 So there are tactical explanations for it that don't wash with
23 me. I don't -- have no -- well, I think my preceding comments,
24 this is -- was a shameful moment in -- in American history, I
25 think, very well described in many public sources. See I'm sorry,

1 not just in American history, but a shameful event for
2 Cambodians, also, by all means. The Americans didn't suffer at
3 all.

4 Q. Thank you. That -- that's a very clear answer. And you
5 mentioned -- mentioned the year 1973 and that's also a year I've
6 seen in your writings. I don't want to steer you in any way, but
7 was 1973 the only year of the American bombardments or the only
8 year that American bombardments took place?

9 A. Oh, not at all. I didn't mean to suggest that. '73 was,
10 however, the year of the most intense bombardments on areas that
11 did not have apparently clear military significance. It was also
12 the year in which these bombings were stopped as immoral by the
13 U.S. Congress.

14 Bombing the border areas with Vietnam began in 1960 -- officially
15 began in 1968, 69. There had been stray planes crossing across
16 the border a little bit before that, but as a serious campaign of
17 bombing began in -- particularly in '73 when the cease fire had
18 been signed by the Vietnamese and the -- and the Americans and
19 the Khmer Rouge had refused to sign. Cambodia was, as one cynical
20 general said, "the only war in town". This was a place that the
21 Americans felt their cease fire didn't apply, so therefore they
22 could unleash resources on to the country that they could no
23 longer unleash on Vietnam.

24 [10.29.50]

25 So, yes, there's a long history of American bombardment, but I

1 think '73 is the year when most of the bombs were dropped when
2 there was the least -- or they had the least connection with the
3 Vietnam War and most connection was simply a war undeclared and
4 -- and I think unjustified between the United States and
5 Cambodia.

6 Q. And you have stated, Professor Chandler, that you have, if I
7 may paraphrase, stopped writing books about this era in 1998.
8 Since 1998, have you studied or encountered new material relating
9 to these bombings that's informed you in any way?

10 A. Yes. There's a -- yes, indeed, thank you. There's some
11 material published. It's quite a strange publication in a
12 Canadian journal called "The Walrus" by my former student Ben
13 Kiernan and his -- one of his students at Yale, and when that
14 material came out, it was quite shocking. It amplified the number
15 of bombs that had been dropped and the amount of destruction that
16 took place, but when I read it I wondered why this article had
17 not been sent to a refereed academic journal where someone could
18 have been -- verified. It was -- it was printed as journalism and
19 it could well be that those figures and the conclusions are
20 completely valid I'm not saying they're not. I was -- I was quite
21 -- as a scholar, I said this is not the way these figures should
22 reach the public through an unverified journal of -- well, it
23 turns out the journal has a kind of anti-American slant. That's
24 okay, but, I mean, it should come through a refereed journal. For
25 some reason -- I don't know I'm not in touch with either of those

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1 people -- they chose not to do it this way and that's why I don't
2 ever cite that document when I -- when I talk about the
3 bombardment. If all those charges are true -- and it's possible
4 they are -- many, many more thousands of tons of bombs were
5 dropped in '73 than were realized -- than -- than previously
6 announced.

7 Q. And--

8 MR. PRESIDENT:

9 The time is now appropriate for a break. We shall break for 20
10 minutes and we return at 10 to 11.

11 Court Officer, could you assist the expert during the break and
12 have him returned at 10 to 11?

13 (Court recesses from 1032H to 1052H)

14 MR. PRESIDENT:

15 Please be seated. The Court is now back in session.

16 We continue hearing the testimonies from Mr. David Chandler. The
17 questions continue to be put by counsel for Mr. Nuon Chea. You
18 may now proceed.

19 [10.53.02]

20 BY MR. PAUW:

21 Thank you, Mr. President.

22 Q. Professor Chandler, before the break, we were speaking about
23 the American bombardments and you have provided some information
24 with regard to these bombardments. But in your "Brother Number
25 One" book, you state -- and I am happy to put it on the screen,

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1 but, I will try, if I can, just to quote the language and you can
2 respond to it -- quote: "The bombing campaign's effect on rural
3 society is difficult to judge, but in view of the tonnage
4 involved in Cambodia's unpreparedness, it must have been
5 catastrophic."

6 And then you -- well, let me first ask you to respond to that.
7 What would you say if you were asked about the effects of the
8 bombing on Cambodia's rural society?

9 [10.54.11]

10 MR. CHANDLER:

11 A. Well that -- that sentence, of course, which I stand -- I
12 stand by in the sense that I stand by what I wrote in 1991. Now,
13 since that time, I've come back to Cambodia many times and I'm
14 sure the effect of the bombing in rural areas -- in many rural
15 areas was, indeed, catastrophic, but it doesn't seem to feature
16 as much as one might have thought it would in all the -- many of
17 the survivors' statements and witness statements that accord with
18 other things. It looks to me as if a lot of the tonnage was not
19 dropped intentionally on -- on unpopulated areas, but did fall on
20 unpopulated areas. We read in many of the reports about the
21 punishment centers around the country. A lot of times victims
22 were thrown into B-52 craters which were -- dotted the
23 countryside.

24 [10.55.02]

25 Yes. I mean, I think I would still stick by that sentence, but I

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1 want to say that, you know, there's 20 more years of people being
2 able to say -- come forward and say "this is the worst thing that
3 happened" and they haven't come forward to say that, which isn't
4 to say that, occasionally -- or it may be often -- villages were
5 destroyed.

6 I think a primary effect of this bombing was the forced exodus
7 from the countryside, especially around Phnom Penh, into Phnom
8 Penh for -- to take refuge. You look at the map of the bombing
9 that was before this increased tonnage figure was available in
10 Shawcross's book, "Sideshow," it's a ring of fire around the
11 capital -- so around provinces, around the capital. Obviously,
12 we've thrown people into the city, I would think, rather than
13 families into the revolution. Certainly, some young men -- either
14 enraged by the bombardment or for other reasons joined the Khmer
15 Rouge at this time, but we don't have the precise evidence of the
16 quantity of these recruits at that time or that this might be a
17 result of the bombing.

18 [10.56.22]

19 Q. Professor Chandler, sorry--

20 A. Sorry.

21 Q. Sorry to interrupt you.

22 A. Oh, please.

23 Q. And I truly find it very fascinating, the things you are

24 saying here today, and also, by the way, the things you've

25 written in all your books, but time is short, so I sometimes have

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1 to interrupt. And you actually had touched on the next topic that
2 I wanted to ask a question on, and that was the -- as you called
3 it, the forced exodus of people from the countryside.

4 It's a matter of words, but would you agree, Professor Chandler,
5 that the bombing, in that sense, created a stream of refugees
6 that were fleeing towards Phnom Penh and into Phnom Penh?

7 [10.57.21]

8 A. Certainly. There's a brief answer for you.

9 Q. And do you have an estimate as to the number of refugees that
10 had fled to Phnom Penh by 1973 -- or at the end of 1973, because
11 of the American bombings. And perhaps the effects lasted longer
12 into '74 or '75, but that's for you to answer.

13 A. All we know for sure -- and it isn't really for sure either --
14 is that the size of Phnom Penh in April '75 has been estimated
15 between two and two and a half million people. This was not the
16 size of the city in 1970, '71. It was maybe half a million. So we
17 don't know when those extra people, if you like -- I don't mean
18 to demean them at all -- came into the city or what their reasons
19 were.

20 [10.58.10]

21 You have to assume, I think that -- at least that a proportion of
22 them came from nearby provinces fleeing the bombing. But I'm not
23 able to say what kind of percentage this might be. There's never
24 been any work on this kind of data.

25 Q. And are you able to tell us something about the living

1 conditions in Phnom Penh in April of 1975, before the Khmer Rouge
2 took over?

3 A. Only from secondary sources and interviews I've conducted, but
4 they were pretty horrendous. The town was jammed with people who
5 did not have enough to eat or sanitary conditions to live under.
6 This has been heavily reported in many sources.

7 Q. And that leads me into the next topic, and that is the
8 evacuation of Phnom Penh after the DK forces moved into the city.
9 And you have stated last week, on July 19th, on the transcripts,
10 pages 73 to 75 -- and I quote:

11 "When they were approached by outsiders, they often came up with
12 other reasons, which I think were also valid. There's a bunch of
13 reasons. I'm not saying that the shortage of food was bad, or the
14 fear of an American attack -- there's lots of ones that were
15 mentioned." End of quote.

16 And to be clear, for the people that are attending these
17 proceedings today and that were not present last week, we're
18 talking about the reasons the leadership of the DK regime gave
19 for the evacuation of Phnom Penh.

20 [11.00.20]

21 So you state that you're not saying that the shortage of food was
22 bad, or the fear of an American attack. And I would like to focus
23 just for now on that last point, the fear for an American attack.
24 You're saying that you're not saying that the fear of an American
25 attack was a -- was not a valid reason. Could you expand on that

1 a little bit?

2 A. Yes, I think -- I don't think -- it's an explanation that may
3 have been given and seemed to have been given at the time to some
4 people in the city, but the Americans had gone and were not going
5 to come back. I think the regime may have known that.

6 When the decision was made to evacuate the cities, in February
7 1975, as we've seen, this was never given as one of the main
8 reasons. It seems to me the city had to be evacuated for reasons
9 that the regime decided on, backed up by practical points that
10 make it seem more humanitarian. There really wasn't food in this
11 city to feed these 2 million people, unless they took outside
12 aid, which they refused to do.

13 And it was a wartime situation, and they had built up a -- as I
14 said, a huge reservoir of hatred of city people among their own
15 followers. But I think the American -- renewed American raids --
16 and I don't have access to the thinking of American regime at
17 this time, but I think I can say with pretty much assurance there
18 was no plan to bomb Phnom Penh at the event of -- after the Khmer
19 Rouge victory. Certainly no documents that were ever -- surfaced
20 said anything like that as a--

21 [11.02.15

22 Q. No, no.

23 A. --policy procedure.

24 Q. That's -- I don't mean for you to speculate on the American
25 intentions in the line of this questioning. But speaking about

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1 this food situation that you referenced -- and you've stated
2 there was not enough food to eat in Phnom Penh.

3 [11.02.34]

4 In your book "A History of Cambodia", you state -- and we have
5 looked at the passage last week, so I -- if we can just quote the
6 page in that book, and I'm very happy to provide a hard copy to
7 you and provide it on the screen, but for now let me read the
8 quote. And the quote is:

9 "Conditions were severe, particularly for those unaccustomed to
10 physical labour, but because in most districts there was enough
11 to eat, many survivors of DK who had been evacuated from Phnom
12 Penh came to look back on these months as a comparative Golden
13 Age". End of quote.

14 And this speaks about the people that were evacuated from Phnom
15 Penh to the countryside, and you write in this passage that in
16 most districts there was enough to eat at that time. Could you
17 elaborate briefly on this comment?

18 A. Only in the sense that I assume the people I've spoken to, and
19 that other people have spoken to were telling the truth. I don't
20 think you can invent a pleasant period of your past. If it was
21 unpleasant, they'd say so.

22 They went to the countryside and there was enough to eat -- not
23 very much. They complained that it was not, really, enough, but
24 it certainly was not starvation and certainly not the kind of
25 terrible restrictions that many of them had enjoyed en route to

1 their destinations, to their -- perhaps -- villages where
2 relatives lived or whatever, into a countryside that did have
3 some rice stored.

4 [11.04.13]

5 This was not a harvest season. There was not a lot in storage,
6 but they felt -- many of the survivors whose testimony we have --
7 felt that these first few months were not as bad as the exodus
8 itself, and if they were people who were later relocated into the
9 northwest, particularly, it was not as bad as what followed.

10 Q. Thank you. And then, if we look at that period after the
11 evacuation, and we are -- I would like to discuss a conference
12 that allegedly took place on May 20, 1975. And I'm mentioning
13 this conference because our colleague for the civil parties, last
14 Friday, asked you some questions relating to this conference.

15 [11.05.19]

16 But -- I am not sure if you were listening to the English
17 translation, but in the English translation, it was made to
18 appear that in this conference certain decisions were adopted and
19 that -- the civil party lawyer asked you to confirm whether these
20 decisions were in conformity with Khmer Rouge policies.

21 I want to make clear, for the record, that the document we were
22 looking at -- document 4.26 -- is actually a Ben Kiernan -- it's
23 a passage from Ben Kiernan's book, and I -- it's the book "The
24 Pol Pot Regime", and it's not actually a document -- a DK-era
25 document -- that was discussed.

1 So I, first of all, would like to -- I wanted to make that clear,
2 to make sure that we -- you know that we're not talking about a
3 DK-era document.

4 [11.06.25]

5 Professor Chandler, based on your research, do you know which
6 meeting is meant when we're talking about a May 20, 1975,
7 conference?

8 A. I don't think I've referred to it. I think Ben Kiernan, when
9 he did his research, was told this information: "My people had
10 been at the meeting". He had -- never saw any documents. So I
11 would have to be reporting third-hand. I don't -- I'm not sure
12 that I referred to this meeting. I think its -- I'm not -- I'm
13 pretty sure that what he found out from the people who'd been
14 there was accurate.

15 [11.07.08]

16 I don't think -- any reason for them to make it up. But as you --
17 I confirm it's certainly not a document from the Khmer Rouge
18 period that has survived.

19 Q. Indeed, Professor Chandler, Ben Kiernan himself states in his
20 book, on ERN 0010425 -- that's the English ERN -- that -- and I
21 quote -- "no documents and very few members of its audience
22 appear to have survived" -- end of quote. So that it is
23 consistent with what you just told me.

24 Could you, from memory, and I understand you have not prepared
25 for this, but could you name any of those persons in the audience

1 that may have attended this meeting?

2 A. I could stand corrected, but--

3 [11.08.09]

4 MR. PRESIDENT:

5 Mr. Expert, please hold; there is an objection from the Lead
6 Co-Lawyers.

7 You may proceed.

8 MR. BAHOUGNE:

9 Thank you, Mr. President. I did have an objection. The way this
10 question is worded is going to lead to an answer in the shape of
11 an assumption.

12 BY MR. PAUW:

13 Q. I'm happy to rephrase the question to the following: Based on
14 your research, Professor Chandler, can you -- research into
15 primary DK sources and/or secondary sources, such as scholarly
16 literature -- can you name any of the persons from the audience
17 -- the very few members of its audience -- that may have
18 survived, that attended this meeting?

19 MR. CHANDLER:

20 A. I'm almost certain, from memory, that the person he spoke to
21 might have been Heng Samrin himself. I think that was a person
22 who was at the meeting. It might have been Chea Sim, but it was
23 one of the people who were top officials in the PRK who had told
24 Ben Kiernan, who had arrived in the country very early, and was a
25 very favoured guest -- they were -- I think some of the material

1 that he obtained is invaluable because it was so close to the --
2 it's just factual.

3 [11.09.53]

4 It's not anything that puts these people in a bad light or
5 whatever. So I think it was Heng Samrin, just remembering from
6 the book, but I'm not sure -- or was one of the people, in other
7 words, first who told Ben about the meeting.

8 Q. In fact, the eight points that were discussed by our colleague
9 for the civil parties on Friday were not -- had, as source, a
10 certain Sin Song -- and this person, Sin Song did not attend that
11 meeting in person but had heard it from one of his superiors.

12 [11.10.32]

13 So, just for the records, the eight points that were discussed by
14 the civil party lawyer were related to Ben Kiernan by this
15 certain Sin Song. And as the civil party lawyer discussed on
16 Friday -- or mentioned on Friday -- that under point five of the
17 issues that were allegedly discussed at this meeting was the
18 execution of all leaders of the Lon Nol regime, beginning with
19 the top leaders. And you, yourself, in response to this -- to
20 these comments -- you said that "the level to which Lon Nol
21 officer were executed has never been entirely clear".

22 [11.11.26]

23 Could you expand on that particular comment that you made, as to
24 that level to which Lon Nol officers were executed has never been
25 entirely clear?

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1 A. Well, I mean -- the direct answer to your question is it's not
2 entirely clear because we don't have clear evidence. But
3 certainly the people who were running the country, at the last
4 moment, they sort of -- I forget what they were called -- the
5 villainous six or seven people, including Sirik Matak and Long
6 Boret and some of these other people -- Lon Nol's brother and son
7 were executed at the spot -- and this has come up in open
8 reports.

9 [11.12.26]

10 Directions of the event also survived in documents saying that
11 certainly, high-ranking military officials, I think, probably
12 going -- I may be inexact here, but I think, including all of
13 commissioned officers -- would be smashed and obviously, as this
14 was happening, people who'd belonged at all in the chaotic
15 expression -- the chaotic conditions of April '75 -- some of
16 these people did not draw the line between a commissioned officer
17 and a non-commissioned officer.

18 I think -- now, the evidence is unclear, but very -- I mean, let
19 me put it this way -- very few senior officers of the Khmer -- of
20 the Lon Nol army are known to have survived and be among the
21 refugees in other countries. A few have, but they had to be
22 extremely adroit to escape notice and assassination.

23 [11.13.18]

24 Q. Thank you for that clarification.

25 I would like to read to you a quote from the Ben Kiernan article,

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1 and if we can produce it on the screen, it is the document that
2 was used by the civil parties last week, on Friday, and we saw
3 the Khmer version on the screen. I would like the professor, for
4 obvious reasons, to read the English version. So I would like to
5 hand the professor a hard copy. And the document that I want to
6 display is document number IS 4.26. And it has been used by the
7 civil parties on Friday, and it's actually been mentioned on the
8 Prosecution's list for documents to be admitted for trial.

9 So, with your permission, I would like to show an excerpt of Ben
10 Kiernan's book, "The Pol Pot Regime", on page 57.

11 And shall I hand a hard copy to the professor? It's in English.
12 It's the actual book, by Ben Kiernan, so it might be easier for
13 the professor to read.

14 MR. PRESIDENT:

15 Yes, you may proceed.

16 [11.14.53]

17 Court Officer, could you deliver the hard-copy document from the
18 counsel for the expert examination?

19 BY MR. PAUW:

20 Q. And I'm not going through the entirety of that page, but let
21 me, before I actually read the full quote, summarize what's on
22 the left page, which is page 56. On that page, Ben Kiernan writes
23 that, indeed, Chea Sim confirms Sin Song's list, and Chea Sim
24 allegedly added in that interview: "This was a very important
25 order to kill." And Chea Sim also states that it was Nuon Chea

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1 who spoke these words.

2 Another participant of that meeting -- and your memory -- or,
3 rather, your research served you right -- was indeed Heng Samrin.
4 And, according to Ben Kiernan at least, he, Heng Samrin, had an
5 importantly different reading of the facts.

6 [11.16.26]

7 And here I come to the quotation on page 57, and it's a paragraph
8 that starts with Heng Samrin. And I'll read:

9 "Heng Samrin, then studying military affairs under Son Sen, was
10 also at the meeting. He recalls the use of yet another term. They
11 did not say 'kill'. They said 'scatter the people of the old
12 government'. Scatter, or 'komchat', them away. Don't allow them
13 to remain in the framework. It does not mean smash, 'komtec'.
14 Smash means kill, but they used a general word scatter. Nuon Chea
15 used this phrase. This appears to be Sin Song's point number
16 five, though the use of varied euphemisms is an important
17 qualification." End of quote.

18 [11.17.16]

19 Professor Chandler, based on your knowledge of the language that
20 was used in these DK era documents, would you agree with Heng
21 Samrin that the use of the term "scatter" rather than "to smash"
22 is relevant when studying this meeting, especially concerning
23 Chea Sim's adamant statement that this was a "very important
24 order to kill"? Do you find it an important qualification, like
25 Ben Kiernan does?

1 MR. CHANDLER:

2 A. Well, it's certainly a contradiction of information, and I'm
3 not in a position to say which -- what I believe. I have no
4 access to the full text of the interviews. I haven't seen that
5 word "to scatter" used often in Khmer Rouge documents.

6 He may well have used this word and the memory of the man who
7 says he did might be accurate. It seems to me the -- these two
8 high-ranking officials should have been on the same page, but
9 they don't seem to have been.

10 [11.18.39]

11 They have pretty sharp differing memories. They obviously weren't
12 in the same room when Ben was interviewing them, but I think it's
13 very interesting that Heng Samrin didn't agree. But I can't, you
14 know, prefer his testimony, because I'm not in a position to take
15 a side on it. But it would seem to me that a big meeting that
16 included the five or six kind of -- the six points we're talking
17 about -- wouldn't have used a more -- slightly more genteel word
18 like "scatter", because that was already taking place. That was
19 already -- they'd been "scattered" already, that was -- sent to
20 the countryside.

21 But that's not the word they usually used. They usually use
22 "chomleas" to the countryside, not scattered--

23 Q. Okay, so--

24 A. So, you know, I can't take a side on this.

25 Q. That is perfectly reasonable, Professor Chandler. I'm not

1 asking you to take a side in this instance.

2 [11.19.34]

3 And this bring me to the next topic, which is a bit later in
4 time, and it is 1977 that we are speaking about. And I would like
5 to quote from a -- excerpt from "Brother Number One", your own
6 book, and again, it's been discussed, and I will proceed by
7 reading the quote. And if -- I propose that if you have questions
8 on the quote, I can provide you with a hard copy. And I quote, on
9 page 117 to 118 of "Brother Number One":

10 "The situation deteriorated in 1977, when thousands more starved
11 to death, while others became ineffective because of illness and
12 insufficient food. Reports of these conditions took time to reach
13 the higher organization, and since disagreement with the
14 organization amounted to treason, the reports were never critical
15 of the plan or its framers. Instead, the news transmitted up the
16 line was always good, causing false optimism at the top, even as
17 rice production faltered and rural workers died". End of quote.

18 [11.20.57]

19 Professor Chandler, based on your research, was there a practice
20 among subordinates in the DK to shield their superiors from
21 information that their superiors would have found distasteful or
22 problematic?

23 [11.21.21]

24 A. Yes, I think so. I mean, certainly they were shielding
25 themselves from any criticism, trying to stay safe. There's

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1 evidence that they would send seed and consumer rice up the line
2 to show that they were producing surpluses which were not taking
3 place.

4 The regime -- I think it's become very clear over the last few
5 days and also in many, many sources -- had a very crowded work
6 schedule. These people were jammed up with things they had to
7 decide on, and conditions in the countryside, particularly among
8 New People, was rather low on their list of priorities. And this
9 information did -- accurate information came to them very slowly.
10 I think Ms. Ieng Thirith went to the countryside and came back
11 with some bad reports but said to the - to the leadership that
12 this must be the work of traitors rather than the plan.

13 [11.22.14]

14 So this is one of the high-ranking people -- makes the same
15 explanation. So, yes -- I mean, there's shielding all around.
16 Everybody's hiding bad news about themselves from people who
17 would then punish them for this behaviour or bad news.

18 Q. Thank you. I think that answers my question fully, so I can
19 move on to the next topic.

20 And I would like to put up a document from your own work. It's
21 "Brother Number One", document number E3/17, and I would like to
22 have a brief look at page 160 of that book. And the English ERN
23 for that passage is 00393074.

24 And actually, as I see the passage, its brief enough and it's
25 been working well, so I will just quote the passage to you -- and

1 I quote:

2 [11.23.39]

3 "Perhaps a hundred thousand men and women, and probably more,
4 were executed without trial. In rural areas, most of the killings
5 occurred when young cadre enforced what they understood to be the
6 will of the organization. Some of these executions, perhaps most,
7 were impulsive overreactions." End of quote.

8 On Friday -- when preparing these questions, I did not possess
9 Friday's transcript yet, but I will try to paraphrase -- you
10 spoke of executions in an ad hoc way and snap decisions by
11 enthusiastic cadre. Can you tell us a little bit about this
12 topic? The -- what you call impulsive overreactions and snap
13 decisions?

14 A. We now know that probably many more than 100,000 people were
15 executed and that the system of prisons and executions in the
16 countryside was more heavily documented than I knew at the time.
17 But I still would stand by what I wrote in -- I guess it's the
18 second edition, it's 1999 -- that a great deal evidence has come
19 down, particularly through interviews, of just the behaviour of
20 cadre in villages. Impulsive, often mysterious, chaotic, but
21 sometimes quite organized and -- always cruel, of course -- but
22 less impulsive than that, was only coming from orders from above
23 or whatever, but the passage reflects lots of the information I
24 got from -- over the years, with many, many Cambodian people I
25 interviewed.

1 [11.26.01]

2 And certainly, I should add -- I'm sorry - certainly I should
3 add, never in the confessions of S-21 did I read of someone
4 confessing to impulsive behaviour in the provinces. This was not
5 the kind of crime that people confessed to.

6 Q. That, indeed, was going to be my follow-up question, Professor
7 Chandler, whether you had any knowledge of to what extent the
8 lower downs, so to speak, would report ad hoc positions and
9 impulsive overreactions to the people in the higher echelons?

10 [11.26.59]

11 A. No, it wouldn't be in their interest, but to get back to
12 something I said last week, that in -- I think the Statutes of
13 the Communist Party or one of the other documents that we've been
14 discussing, "leftist deviation" is in quotation marks; "rightist
15 deviation" is left as a fact, as the kind of thing that could be
16 easily recognized. So "overenthusiastic achievement of
17 revolutionary goals", however vaguely understood, was not
18 systematically punished. The cadre was given, in so many cases,
19 if not a free reign, it certainly operated with impunity for
20 those activities. Many of these people came into S 21 later
21 charged with being agents and so on they didn't confess to
22 impulsive killings, they confessed to systematic wrecking of the
23 program in the countryside.

24 So we know these impulsive things took place, but they're not
25 going to send news up because the people at the top -- you're not

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1 supposed to be impulsive, but yes, the news never went up there,
2 I would guess. It's not the kind of thing you'd report, I don't
3 think.

4 [11.28.16]

5 Q. Thank you, that's clear. And in that same context I would like
6 to show you a document, an article by Steve Heder. The title of
7 the document is "Reassessing the Role of Senior Leaders and Local
8 Officials in Democratic Kampuchea Crimes: Cambodian
9 Accountability in Comparative Perspective", and it is document
10 number E190.1.398, and the English ERN is 00661455 to 491, and
11 the French ERN is 00792913 to page 950. And I would like to show
12 you an excerpt from page 12 at this point and that has English
13 ERN 00661466, and we have a hard copy for you available.
14 And with your permission, President, I would like to show this on
15 the screen.

16 (Judges deliberate)

17 [11.31.03]

18 MR. PRESIDENT:

19 Counsel, with regard to this document, is it placed in the case
20 file already, or not yet?

21 MR. PAUW:

22 Mr. President, as far as I'm aware, the Prosecution informed in
23 an earlier session that this document was indeed named on their
24 list of documents to be put before the case file, and I think
25 also judging from the document number that it is part of the

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1 documents that were submitted by Khieu Samphan to be put before
2 the Chamber, that's what the E190.1.398 number suggests to me. So
3 I do not want to misinform you, but in my best understanding it
4 should be admissible for these two reasons.

5 MR. PRESIDENT:

6 You may proceed then.

7 Court officer is now instructed to take the hard copy of the
8 document to be presented to the witness for examination.

9 BY MR. PAUW:

10 Q. And, Professor Chandler, those are three pages from the same
11 article, and I will now be speaking only about page 12, which
12 would be the first page in your collection. And I will quote
13 Steve Heder where he speaks about killings -- and I quote:

14 "But other killings, probably most, were committed by regional
15 and local authorities acting not as part of such a tight chain of
16 commands, but of a looser and more diffuse hierarchical structure
17 of delegated and discretionary authority in which the top
18 provided only vague and general guidelines, giving wide latitude
19 to the lower downs, all the way to the bottom, to decide who was
20 and who was not an enemy and what do with them. These lower downs
21 were certainly not just following orders."

22 [11.33.33]

23 Would you agree with this characterization by Steve Heder?

24 MR. CHANDLER:

25 A. Yes, I would.

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1 Q. I'm sorry, maybe I should have asked a different question
2 first. Are you familiar with this article that may inform our
3 understanding today?

4 A. Yes, I am.

5 Q. And the second excerpt I would like to show you from the same
6 article is on page 21, and the English ERN for that page is
7 00661475 -- and I will quote:

8 "It seems that most commonly, however, people arrested in
9 villages were sent to district security for interrogation and
10 although the district answered to the sector secretary most
11 prisoners were sooner or later executed on the authority of the
12 district itself. This reflected the reality that zone and sector
13 secretaries often merely passed on the general instructions from
14 above to local cadre, down to the district level, but paid little
15 attention to whether they were doing what they were supposed to
16 do or not."

17 [11.35.01]

18 Mr. Chandler, would you -- Professor Chandler, would you agree
19 with this characterization by Steve Heder?

20 A. Yes, I would.

21 Q. And then, on page 2, Steve Heder discusses the historical and
22 legal model relating to the genocides committed by the Nazis, and
23 he discusses this model and the rights:

24 "In short, the historical and legal model is a top down
25 conspiracy to commit genocides and other crimes against humanity.

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1 It targets first of all the big fish who are presumed to be
2 overwhelming responsible for most, if not all, of these crimes
3 committed while they were in power."

4 [11.36.07]

5 And that's the end of the quote for now. But let me ask you --
6 well, at this point, does this characterization by Steve Heder,
7 of the historical and legal model relating to the Nazi genocide
8 --does that remind you of the dominant narrative that we
9 discussed earlier this morning, the dominant narrative relating
10 to the DK regime?

11 A. Yes, it does, but with a slight qualification. I think, and
12 this again I'm stating an opinion, but you've got to accept the
13 idea that the top people were ultimately responsible for what was
14 happening, because they were in charge of the country.

15 [11.37.05]

16 Overwhelmingly, I think in this case, this is a word I wouldn't
17 -- if I -- I didn't write this passage, but I wouldn't have used
18 overwhelmingly, but yes, it reminds me of the other, but your
19 question's quite good -- quite clear, I mean.

20 [11.37.26]

21 Q. And as a historian -- and let me rephrase that: Are you
22 satisfied that enough historical research has been conducted as
23 to the responsibility of people in the DK regime that were at a
24 lower status than let's say the Central or Standing Committee?
25 Let me rephrase the question like this at first.

1 (Short pause)

2 Yes, sorry, I meant to say that I had phrased the question as
3 such. Are you satisfied that from a historical perspective that
4 enough scholarly research has been done with regard to the
5 responsibility of people lower than the top echelon leaders of
6 the DK regime?

7 A. Well, in a sense, I'm never sure of what's enough, and here is
8 an area I don't really want to venture into, because it seems to
9 me that a great deal of the research that's been done recently on
10 this issue was in connection with cases that are not being tried,
11 are going to be – perhaps, I don't know. There -- cases beyond
12 the case under discussion.

13 [11.39.40]

14 So, I mean, enough, if -- it's not for me to enter into the
15 business of the Court, but let's just assume for the -- that this
16 -- these other cases will go forward. Then you'll have more
17 research, and in some case you might reach what would be
18 considered by, say, the Prosecution enough for an indictment. But
19 if the case -- this kind of research is impossible to carry out
20 without some sort of mandate. You can't wander into the
21 countryside and find this material out.

22 So we have a lot of material on this -- on these lower down
23 activities and lower down behaviour. A lot of it is not able to
24 be discussed here; a lot of it's not open to scrutiny. And so,
25 from an independent historian's point of view, I say no, it's not

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1 enough because it's not in the open record, but it's -- a lot
2 more is known about this behaviour now than was known when I was
3 writing my own books.

4 And that's why I was agreeing earlier with these Steve Heder
5 statements which are drawn from his own very extensive research
6 long before he had anything to do with the tribunal. So he made
7 those conclusions early on the basis of extensive research. So
8 I'll leave it at that.

9 [11.41.03]

10 Q. Thank you, Professor Chandler. And just to be absolutely
11 clear, I don't ask you to opine on anything that relates to the
12 tribunal as such, I am asking you for your opinions as a
13 historian.

14 And something that you just mentioned attracted my attention, and
15 I would like to ask something more about this. You state that
16 this information that you might be looking at is not something
17 that is "part of an open record", if I may -- if I wrote down
18 your words correctly. Could you elaborate on that for us?

19 A. Not really. A lot of this stuff is draft material that I've
20 seen that has not yet been published, but it's not classified by
21 any authority, so I can't elaborate that much further of that.
22 There is certainly ample material, the archives of DC-Cam that
23 point toward these activities also if one were to do sustained
24 research in there.

25 [11.42.17]

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1 A problem, of course, that arises, as you see from the footnotes
2 to Heder's work, is that a great deal of this organizational
3 information comes out of confessions, and I know that he has
4 argued -- told me anyway, I'm not sure whether he wrote it down,
5 that he feels strongly that this organizational material deserves
6 to be included as, you know, official documents because you find
7 out who was in command of places -- that's verifiable information
8 that you could finally dig up, but -- you know, it's not -- well,
9 I'll stop there.

10 Q. And I understand you don't want to speculate on Steve Heder's
11 research, so I will not ask you to, but has Steve Heder told you,
12 or do you have any reason to believe -- other reasons to believe
13 to know where this organizational material that Steve Heder
14 speaks about is located?

15 A. Well, it's located -- I just mentioned, it's located primarily
16 in confessions at Tuol Sleng. This is where the information is
17 drawn. If you look at his footnotes, this is where he's got his
18 material, plus from extensive interviews, two places.

19 [11.43.44]

20 Q. But are you familiar or are you aware of any research that
21 Steve Heder has conducted in this -- into this topic after
22 publication of this paper?

23 A. Not specifically. I've read his published material. I have now
24 read some unpublished material, but not much. You know, I can't
25 -- that's my answer to that.

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1 Q. In that same Steve Heder article, on page 2, I will -- if it
2 can be shown on the screen again? It's again the article by Steve
3 Heder that we were discussing earlier. And I quote the Steve
4 Heder document:

5 "This chapter argues that this approach has misappropriately
6 dominated the historical and legal approaches to the massive
7 murders committed in Democratic Kampuchea under the rule from 17
8 April 1975 to 7 January 1979 of the Communist Party of Kampuchea
9 and efforts to bring those responsible for these murders to
10 justice.

11 "The only single volume history of DK, Ben Kiernan's recently
12 republished 'The Pol Pot Regime: Race, Power and Genocide in
13 Cambodia under the Khmer Rouge', strains to make the DK case
14 analogous to a totalitarian and intentionalist and thus,
15 implicitly Nazi-like, genocides. He advocates that Pol Pot and
16 his leading associates should be held accountable for CPK crimes,
17 which he says resulted from an explosive combination of
18 totalitarian political ambition and racialist product of ethnic
19 purification, but does not mention accountability for lower
20 downs."

21 [11.46.11]

22 And I think you partly answered this question already in your
23 earlier comments, but Steve Heder takes issue with this failure
24 of this, let's say the omission by Ben Kiernan of accountability
25 for lower downs in his volume "The Pol Pot Regime". Do you share

1 Steve Heder's view that that is an important omission if one
2 wants to understand the DK regime?

3 A. The three word answer is: Yes, I do. But it's a complicated
4 question and one that we have to expand out into other areas.
5 But, certainly, what you're hearing here in the Kiernan book --
6 and one of the reasons I took a little bit of issue with it when
7 I reviewed it was that making this -- making racism the essence
8 of the entire regime, as opposed to aspects of certain periods in
9 the regime, seemed to me a bit of a stretch, and this is why
10 Heder uses the word "strains".

11 And I think he's trying to move back into something of an
12 indictment -- an informal indictment, a historical indictment not
13 very far different from the one raised at the 1979 trial, which
14 doesn't seem to me to be a fair, an accurate assessment of what
15 went on under DK unless you're talking about the single man at
16 the top is in fact, you know, not overwhelmingly responsible, as
17 I said before, but ultimately responsible.

18 But that's -- that doesn't get you very far in terms of studying
19 what's happening, so I think this paragraph of Heder's is quite
20 justified.

21 [11.48.34]

22 Q. You are an historian, and we've been speaking about context
23 several times today, and my question to you is, do you think that
24 events and political realities that have occurred after the fall
25 of the DK regime colour or influence the way we look at the

1 "facts" of this case today?

2 [11.49.31]

3 A. I think that's inevitable; that's the way people operate. I
4 mean, we're operating in terms of the testimony of last week. I
5 mean, we benefited from that. We have a different, I think maybe
6 context today than we had on last Wednesday, but I'm not boasting
7 that this is cleared it, I'm not saying that, but it's just this
8 is how people operate with the information they have.

9 And as you go on, once a regime has fallen, you - when
10 information comes available that was not available before, this
11 is a very secretive regime, you have to be very cautious in
12 sorting out the information you get, looking out for easy exits,
13 like the Pol Pot/Ieng Sary genocidal clique, or exits that
14 suggest that the top officials knew nothing about this so
15 therefore they shouldn't be here.

16 But as time goes on -- and one wishes in a way that we were 10
17 years ago, when information was fresher, but as time goes on, you
18 find out more and more detail that encourages us to make more
19 nuanced judgments, and this is, I think what makes history an
20 evolving thing. You can't write the last word. I can say I've
21 written my last book, but that's not the last word, that'll be by
22 somebody else.

23 [11.50.58]

24 Q. I think that makes a lot of sense, Professor Chandler. And in
25 that context, could you elaborate a little bit on the political

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1 colouring of the party that took over power after 1979 and how
2 that political colouring may have dominated the dominant
3 narrative that we have been discussing? And I'm asking you this
4 as a historian and not as a legal scholar, obviously.

5 MR. PRESIDENT:

6 Professor Chandler, could you please hold on? Wait until we hear
7 the words from the Prosecution and co-lawyers for the civil party
8 first.

9 Co Prosecutor, you may proceed first.

10 [11.52.00]

11 MR. ABDULHAK:

12 Your Honours, we would object to this question.

13 Political colouring or otherwise by regimes subsequent to the DK
14 is not relevant for the purposes of Professor Chandler's
15 testimony. What we're interested in is Professor Chandler's
16 expert opinion on the events and authority structures of '75 to
17 '79.

18 MR. PRESIDENT:

19 Counsel for the civil party, you may now proceed.

20 [11.52.33]

21 MR. BAHOUAGNE:

22 Thank you, Mr. President. Not only is this a leading question but
23 it is out of context because it is situated during the period
24 after 1979, and if we are referring to the experience of a
25 historian that means referring to documents that are dated after

1 1979.

2 MR. PAUW:

3 To respond to that, Mr. President, there was a reason why I asked
4 the professor first whether he was of the opinion that events
5 that took place after the fall of the DK regime could influence
6 the way we perceive facts at this moment, and the professor has
7 answered from a historical perspective, "yes, they can", if I may
8 paraphrase the professor, and he can correct if I'm wrong.

9 [11.53.38]

10 We're talking here about the facts of this case. We have heard
11 earlier today and last week testimony of the culling of evidence
12 by the Vietnamese, the PRK regime may or may not have been
13 involved.

14 This -- and this is implicit in the question, this may or may not
15 have been a result of the political colouring of the PRK regime
16 and its history, and Professor Chandler is an expert on the
17 history of Cambodia. He knows a whole lot about the history of
18 the CPK, and I would like to have Professor Chandler's historical
19 opinion, no more than that, on how -- or whether or not he is of
20 the opinion that these facts have been coloured by later -- the
21 later regime that was put in place or took over power, depending
22 on who you ask, after the DK regime fell.

23 [11.54.56]

24 So I think it's clearly relevant. It relates to history and we
25 are here to ask Professor Chandler to explain Cambodian history

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1 to us, and I think, I for sure, need some--

2 MR. PRESIDENT:

3 Counsel for the civil parties, you are not allowed to reply to
4 the statement by the other party.

5 The Chamber now rules that the statements by both the prosecutor
6 and the civil party sustained. The objection is sustained, and
7 indeed the question should not be responded by the witness.

8 Counsel Michael Karnavas, you may now proceed.

9 [11.56.20]

10 MR. KARNAVAS:

11 Thank you, Mr. President. And good morning, Mr. President. Good
12 morning, Your Honours. And good morning to everyone in and around
13 the courtroom. I just wish to supplement that if the dominant
14 narrative that has emerged as a result of the colouring, it may
15 have impacted on the way certain witnesses may have provided
16 evidence--

17 [11.56.50]

18 MR. PRESIDENT:

19 Counsel has - rather, the Chamber has already ruled upon this.

20 You are not allowed to touch upon this. If you have other matter
21 to raise, you may proceed.

22 Now, we proceed to counsel for Mr. Nuon Chea to continue with the
23 questions.

24 MR. KARNAVAS:

25 If I may, just one second, Mr. President, I was merely--

1 MR. PRESIDENT:

2 The Chamber will not allow you to dwell on the same matter
3 because it has already been ruled. You are not allowed to talk on
4 the same topic.

5 In the interest of time, we shall now proceed to other counsel.

6 [11.57.22]

7 MR. KARNAVAS:

8 I'm not trying to dwell on the topic, I'm trying to bring to your
9 attention and to your colleagues' attention that we have the
10 right to make a record. We're not one group here. I represent a
11 different--

12 MR. PRESIDENT:

13 Indeed, you can have the floor and make such statement when the
14 time allocated to your counsel arrives.

15 Counsel for Mr. Nuon Chea, you may now proceed with a few more
16 questions before we adjourn for lunch break.

17 MR. PAUW:

18 Thank you, Mr. President. And I respect your ruling that I'm not
19 allowed to ask the question I just posed, but I would like to
20 have a reasoned decision on the objections by the Prosecution and
21 the civil parties, because again, for recordkeeping purposes, we
22 know -- we need to know what the reasons are for your decision to
23 not allow this question. So it will also help me to formulate my
24 next round of questions. So if you could be of assistance?

25 [11.58.48]

1 MR. PRESIDENT:

2 The Chamber has already ruled on this, and the objection by both
3 the Co Prosecutor and counsel for the civil parties is sustained,
4 and your question is not in the scope of the fact and that
5 they're not supported by any evidence, and you have failed to
6 pinpoint to any actual evidentiary documents to support your
7 question, and the Chamber has ruled already on this.

8 BY MR. PAUW:

9 That makes it clearer, Mr. President. Thank you. That will help
10 me to formulate my next question in reference to what I will say,
11 pinpointing and referring to specific documents.

12 [11.59.47]

13 Q. Professor Chandler, you -- when you spoke about the culling
14 you spoke about Vietnam's reasons for doing so. As we discussed,
15 the PRK officials may or may not have been involved on this, you
16 were not entirely clear.

17 But my question to you is: Do you think that the culling of the
18 evidence that has come out of the DK regime was influenced by the
19 political colouring of the PRK?

20 MR. ABDULHAK:

21 Your Honours, we would--

22 MR. PRESIDENT:

23 Indeed, Mr. Co Prosecutor, you may proceed.

24 MR. ABDULHAK:

25 First of all, the culling is speculative. It's an assumption the

1 professor's made.

2 But, secondly, to ask then for an interpretation of how a
3 speculated event might have taken place is completely -- is not
4 appropriate and it also is beyond the scope of relevance of
5 Professor Chandler's testimony.

6 [12.01.14]

7 MR. PRESIDENT:

8 Thank you.

9 Counsel for the civil parties, you may now proceed.

10 MR. BAHOUGNE:

11 Thank you, Mr. President. My learned friend is insisting his
12 question has to do with acts that are presumed to have been
13 committed after 1979, and he qualifies them as destruction of
14 evidence without any certainty, and that the documents destroyed
15 were evidence. So we are again talking of an assumption here
16 which is made by the -- my learned friend. Thank you.

17 MR. PAUW:

18 In response to my colleague from the Office of the Co
19 Prosecutors, Professor Chandler, in his opinion, is speculating
20 about the culling. I would submit that that is a way to describe
21 Professor Chandler's testimony, but I think we could then
22 describe most of his testimony as speculation, but I would like
23 to point out, and I think Professor Chandler was very careful to
24 point out, that he has objective indications to assume that these
25 confessions were culled.

1 [12.02.33]

2 There are Vietnamese notes on the confessions that were found in
3 S 21. So he is not speculating; he is delivering an informed
4 opinion on this matter, just as he has been doing throughout his
5 testimony.

6 And another thing I think is important when we look at the
7 knowledge of Professor Chandler on this issue, Professor Chandler
8 has done very early research into DK era documents. He has spoken
9 to very many people, partly people that were involved in the
10 original collection, partly people that have been involved in
11 later collection of documents, so he can form a reasoned opinion
12 on the question I just posed.

13 As to a response to my colleague from the civil parties, the
14 colleague from the civil parties states that I am asking
15 questions about facts that pre date or that -- or after the DK
16 period. Just for the record, we are talking here about documents
17 that come from the DK period. They are, at least according to
18 Professor Chandler, and several other people that, for example,
19 DC Cam, stem from the DK period, and that's what my question
20 relates to. The fact that it is dated slightly later than January
21 1979 does not change that fact.

22 [12.04.03]

23 And I'm not talking necessarily about just the evidence that is
24 being used in this trial, which is in this way possibly culled,
25 or manipulated, or destroyed, whatever name you want to put on

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1 it, but I'm also talking about the historical sources that
2 Professor Chandler and other historians has had to rely on. So
3 it's clearly an historical question and Professor Chandler is
4 totally capable of providing us a reasoned and balanced opinion
5 on this matter.

6 (Judges deliberate)

7 [12.08.34]

8 MR. PRESIDENT:

9 After deliberation, the Chamber notes that to be precise on this
10 the expert should respond to the current question put by counsel
11 for Nuon Chea. And as an historian on history of Cambodia, the
12 witness may be in the good position to respond to this. And at
13 the same time the Chamber rules that the objections by the Co
14 Prosecutor and counsel for the civil party is not sustained.

15 [12.09.28]

16 So, Witness, you may now proceed to respond to that question.

17 MR. CHANDLER:

18 A. I certainly do. I think maybe -- I think maybe too much is
19 being made of this whole culling issue, which is extremely
20 speculative. I would not base any deep research on it. The
21 scattered evidence suggests that it occurred.

22 I'm reminded of an exchange that, some of you may remember, of my
23 testimony at the Case 001, when the lawyers for Duch asked me
24 what material was in the undiscovered archives. I had to reply
25 that it was difficult to tell what material was in the

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1 undiscovered archives but be polite as I could. Same thing here.
2 We don't know where these documents went. We don't know which
3 documents disappeared. We don't know what was in them. We don't
4 know why, if they were culled, they were culled. I think we can
5 make a supposition that as the Vietnamese obviously went through
6 many of the materials at S 21 and probably other materials, so we
7 don't know that for sure, they took out some materials that did
8 not seem to them to meet their interests at the time.

9 [12.10.37]

10 So much material survived about the DK regime that we are able
11 here to speak with, you know, some documentary authority. I don't
12 want to get into the culling issue too deeply, I think as
13 evidence of it, but what was -- we don't know if some things were
14 removed, burned by the DK people themselves, disappeared and are
15 locked up somewhere. I can't say -- answer these questions.

16 [12.11.07]

17 So, I mean, I don't know where the questions are going to go, and
18 I, of course, am here to answer questions, but I'm not prepared
19 to go in much further into this issue.

20 MR. PRESIDENT:

21 Thank you very much, Professor Chandler. And thank you, counsels.
22 Since it is now appropriate time for lunch adjournment, the Court
23 will adjourn for a while and the next session will be resumed by
24 1.30.

25 Court officer is now instructed to ensure that Professor Chandler

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1 will be well accommodated during lunch break and that he be
2 returned to the courtroom by 1.30.
3 Counsel for Nuon Chea is still on your feet. You may now proceed.

4 MR. PAUW:

5 Thank you, Mr. President. I just want to tell you that Nuon Chea
6 would like to follow this afternoon's proceedings from his
7 holding cell. He is suffering from a headache, back pain, and he
8 has problems concentrating. So we have the waiver prepared, if
9 you agree.

10 [12.12.33]

11 MR. PRESIDENT:

12 The Chamber notes the request of Nuon Chea made through his
13 counsel asking the Chamber to allow him to observe the
14 proceedings from his holding cell due to the fact that he has
15 some headache, back pain and trouble concentrating.
16 Counsel has already made it clear that the waiver will be
17 produced before the Chamber shortly. The Chamber therefore grants
18 such request. Nuon Chea can now observe the proceedings from the
19 holding cell for the remainder of the day. Mr. Nuon Chea has
20 already made it expressly clear that he has waived his right to
21 directly participate in the courtroom.
22 The Chamber therefore asks that counsel produce this waiver,
23 signed or given thumbprint by Mr. Nuon Chea, immediately to the
24 Chamber. Mr. Nuon Chea can now be taken to the holding cells
25 where he can observe the proceedings from there.

1 [12.13.50]

2 Security personnel are now instructed to bring the accused
3 persons to the holding cell and bring Khieu Samphan back to the
4 courtroom but leaving Mr. Nuon Chea in his holding cell to
5 observe the proceedings from there.

6 The Court is now adjourned.

7 (Court recesses from 1214H to 1330H)

8 MR. PRESIDENT:

9 Please be seated. The Court is now back in session.

10 Therefore, we begin with Nuon Chea's defence team to continue
11 putting questions to the expert. You may proceed.

12 [13.32.09]

13 BY MR. PAUW:

14 Thank you, Mr. President.

15 Q. Professor Chandler, we left off before the break speaking
16 about the 1980s and how the PRK regime may or may not have been
17 involved in the culling of documents, and I think we've, for now
18 at least, from our side, heard enough about that topic.

19 I would like to go back to something that we discussed earlier
20 this morning. In fact, I started to ask you on this topic, and we
21 discussed your statements, your -- that was referenced in one of
22 your books, that the PRK worked hard to focus people's anger onto
23 the genocidal clique that had governed the DK. And based on your
24 knowledge of Cambodia at the time, would you agree with the
25 statement that these activities, so this "working hard to focus

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1 people's anger", was at least partly informed by the fact that
2 several high-ranking members of the PRK had themselves been
3 members of the Khmer Rouge?

4 [13.33.57]

5 MR. CHANDLER:

6 A. I don't think I can really draw that inference from the
7 evidence as I know it. It's been said that that was a motive, but
8 these motives have never been put forth. So I think to give them
9 the benefit of the doubt, the idea of blaming everything on the
10 genocidal clique was a way of being able to move Cambodia forward
11 without having massive trials and recriminations.

12 But for your own statement, I don't think that entered
13 particularly into the planning of these people.

14 MR. PAUW:

15 If I could, once again, put on the screen the same documents that
16 we discussed before that I started the questioning with, and it's
17 English ERN 00192688, and Khmer ERN is 00191839. I would ask your
18 permission, Mr. President, to put it on the screen? We looked at
19 it this morning.

20 [13.35.22]

21 MR. PRESIDENT:

22 Yes, you may proceed.

23 [13.35.25]

24 BY MR. PAUW:

25 Q. Mr. Chandler, for your reference, this is an excerpt from

1 "Voices from S-21". And I wanted to quote -- I will, just for
2 clarity purposes, start with the following line -- and I quote:
3 "Within just such a Manichean framework, the PRK regime worked
4 hard to focus people's anger onto the genocidal clique that had
5 governed Cambodia between April 1975 and January 1979. While the
6 new government based its legitimacy on the fact that it had come
7 to power by toppling the Khmer Rouge, it was in no position to
8 condemn the entire Movement since so many prominent PRK figures
9 had been Khmer Rouge themselves until they defected to Vietnam in
10 1977 and 1978."

11 [13.36.22]

12 Professor Chandler, if I read that language, it, to me, seems
13 that your position in this book, at least, is that this Khmer
14 Rouge provenance of some of the PRK high-ranking officials was at
15 least part of the reason for the focusing of people's anger onto
16 the genocidal clique. Would you agree that's a fair reading of
17 this excerpt?

18 MR. CHANDLER:

19 A. Yes, I would. I would qualify my answer, however, by saying
20 that the former Khmer Rouge, by fleeing the Movement, had become
21 ex-Khmer Rouge and were not, in that case, subject to Vietnamese
22 persecution, if you like, or judgment. Also, their own feeling
23 was and the feeling of the PRK was that all the former PRK who
24 did not flee the country with the other leaders of the Party and
25 the large number of soldiers who fled to Thailand had made --

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1 that way, made a statement that they were no longer under the --
2 they were no longer loyal to the Khmer Rouge. So that complicates
3 your -- I mean, the answer is of course it was a factor, but is
4 complicated by these two kind of -- not forgiveness exactly, but
5 a way of operating with the people they were operating with --
6 they had fled. They hadn't been caught in Phnom Penh and put into
7 office. They'd fled to the Vietnamese -- in -- Hun Sen earlier
8 than the other -- than many of the others, but they all had
9 sought asylum and support in Vietnam.

10 [13.38.22]

11 Q. You mentioned that Hun Sen had fled earlier than the others.
12 Could you give us years or estimates of years as to when Hun Sen
13 and the others -- and/or the others fled to Vietnam?

14 MR. PRESIDENT:

15 The International Prosecutor, you may proceed.

16 MR. ABDULHAK:

17 I'm reluctant to intervene, Your Honours, but I just see no
18 relevance to this -- to this line of examination whatsoever. It
19 does not assist in a better understanding of CPK authority
20 structures, of the history of the Movement or the policies, of
21 the crimes committed. It seems to me an inquiry into matters that
22 are not related to the indictment.

23 [13.39.18]

24 MR. PAUW:

25 In response, I can say that it is the Defence's position that

1 what happened after '79 and including the 1980s is directly
2 relevant for what we are discussing today.

3 Several of the people that we are talking about that were
4 high-ranking KRP officials in the 1980s are still powerful
5 figures today, so their motivations and their views of the Khmer
6 Rouge Movement in the 1980s are relevant when we are discussing
7 the facts that are under discussion now.

8 I'm not naming names; I am leaving it to the professor to come up
9 with answers. But clearly there's a line that can be drawn in a
10 historical sense, and I think the professor can agree with me on
11 this, between the party that was in power in the 1980s and the
12 power that is in power still today. So the attitude of the PRK in
13 1980 -- in the 1980s is relevant when we discuss these
14 proceedings.

15 And of course I am leading -- I will follow up these questions
16 with more questions that make it clearer why they are relevant or
17 why this particular question was relevant.

18 MR. PRESIDENT:

19 The objection by the Prosecution has sufficient grounds, so it is
20 sustained.

21 The Expert, you do not need to respond to the last question by
22 the international counsel for Nuon Chea.

23 [13.41.52]

24 BY MR. PAUW:

25 Q. I will then move on to the next question, and I am again

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1 relying on your historical knowledge of Cambodia. And you have
2 discussed in the past the notion that a trial of the Khmer Rouge
3 leaders might be embarrassing to the current regime of Cambodia,
4 and I want to verify with you whether that is indeed your
5 opinion.

6 [13.42.36]

7 MR. CHANDLER:

8 A. I'm not sure that that statement of which I must have made in
9 a journalistic context has something I need to -- my views about
10 the trial are -- have always been for the trial. I've made some
11 comments about it certainly in other contexts, but I'm not going
12 to take some sentence out of context and try and defend it.

13 Q. I am not referring to any documents, so I will just ask you,
14 in the context of this questioning: Do you agree with the
15 statements that a trial of the Khmer Rouge leaders might be
16 embarrassing to the current regime of Cambodia?

17 A. (Microphone not activated)

18 MR. PRESIDENT:

19 Counsel, your question is irrelevant to the facts before us.

20 [13.43.43]

21 Mr. Expert, you do not need to respond to this last question by
22 Nuon Chea's defence counsel.

23 The Chamber would like to inquire from Nuon Chea's defence team,
24 how much time do you anticipate to question this expert. Had you
25 allocated times clearly between the three defence teams? Because

1 we notice that you seem to use a lot of time to raise questions
2 which are not relevant to the facts before us.

3 [13.44.19]

4 MR. PAUW:

5 Thank you, Mr. President. Yes, we have allocated time and we have
6 been given -- or we have agreed that the Nuon Chea defence team
7 will have until 3.35 p.m. So that should leave ample room for
8 more questions, and amongst ourselves, we have agreed that after
9 me, Mr. Ianuzzi will have some further questions.

10 So I understand that some of the questions that I ask may or may
11 not be objected to, but I feel it's my responsibility to place
12 them on the record. They are not inappropriate. You might rule
13 they're not admissible, but they're clearly relevant to these
14 trial proceedings. So even if they get objected to, I would like
15 to proceed, and it will take -- this specific topic will take no
16 more than five minutes, I anticipate.

17 [13.45.28]

18 MR. PRESIDENT:

19 Please make your questions more direct to the facts. And your
20 previous question has been denied to be responded by the expert.

21 BY MR. PAUW:

22 Thank you, Your Honours, President.

23 [13.46.00]

24 Q. Based on your knowledge of Cambodia, and then specifically
25 Cambodia in the 1970s and 1980s and the role that certain people

1 played during the 1970s and 1980s in Cambodia, did it surprise
2 you that several currently high-ranking Cambodian government
3 officials have ignored summons to testify before the ECCC,
4 summons that were undoubtedly issued by the International
5 Co-Investigating Judge Marcel Lemonde?

6 MR. PRESIDENT:

7 Mr. Expert, you do not need to respond to this question. It is
8 not your role as a historian to respond to the process in a
9 proceeding within the ECCC context.

10 [13.47.08]

11 MR. PAUW:

12 For the record, Mr. President, I respect your ruling, but I do
13 think that--

14 MR. PRESIDENT:

15 Please move on, Counsel. Don't try to take this opportunity to
16 put on the record of something which are not relevant to the
17 proceeding. If you don't have any more questions, please dedicate
18 the time to your other colleagues. Try to use the time as
19 effectively as you can so that we can expedite the proceeding. If
20 you can conclude your questions before the allocated time, that
21 would be more effective in your cooperation in ascertaining the
22 truth.

23 BY MR. PAUW:

24 Thank you, Mr. President. I will move on. And I think this fits
25 neatly in our quest to ascertain the truth.

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1 Q. Mr. Chandler, you have stated in the past that Hun Sen only
2 allowed this trial to occur because he was satisfied that his
3 government, rather than the foreigners involved, would be in
4 charge of the outcome. Do you still stand by that statement?

5 [13.48.42]

6 MR. ABDULHAK:

7 Again, Your Honours--

8 MR. PRESIDENT:

9 The Prosecutor, you may proceed.

10 MR. ABDULHAK:

11 First of all, we object to the way the question is asked. The
12 professor should first be shown the prior statement.

13 But putting aside the form in which the question is put, the
14 question is completely irrelevant. The intentions of any
15 government and the professor's reading of intentions is
16 completely irrelevant for the purposes of what we're here to
17 discuss today.

18 [13.49.17]

19 MR. PAUW:

20 In response, I'll--

21 MR. PRESIDENT:

22 Defence Counsel, please hold.

23 I notice the Lead Co-Lawyer. Please proceed.

24 MR. BAHOUAGNE:

25 Thank you, Mr. President. I just wanted to ask you if it was

1 possible to remind our learned friend to -- of what the scope of
2 the particular trial is in terms of the Closing Order so that he
3 should conform to its limitations and not go beyond them. Thank
4 you.

5 MR. PRESIDENT:

6 Defence Counsel for Nuon Chea, do you have any reply to the
7 objections raised by the Prosecution?

8 [13.50.05]

9 MR. PAUW:

10 Thank you, Mr. President. Yes, two points in response to my
11 colleague from the OCP.

12 I totally agree, I would love to show Professor Chandler this
13 actual statement, which I've paraphrased without referring to any
14 document, but we're not allowed to use the document in question.
15 We can only rely on the contents of the document in formulating
16 questions. So I am simply trying to respect the rulings of the
17 Trial Chamber on this issue.

18 The second point is clearly what I'm trying to establish is that
19 the historical background of the CPP regime and certain of the
20 high-ranking officials of the CPP are relevant to today's
21 proceedings. This is a historical issue, and I'm asking David --
22 Professor Chandler to formulate answers based on his historical
23 knowledge of Cambodian society. And he has published quite a bit
24 on this particular topic, so I'm sure that if Professor Chandler
25 is given the floor on this issue, he might enlighten us all in

1 this attempt to ascertain the truth.

2 [13.51.19]

3 MR. PRESIDENT:

4 The objection and the ground for the objection by the Prosecution
5 is sustained. Professor, you do not need to respond to the last
6 question by the international defence counsel for Nuon Chea.
7 Counsel, you have heard the request by the Lead Co-Lawyer for
8 civil parties in regards to the facts before us regarding the
9 portions of the indictment that we are dealing with today. So
10 please try to conform to that limitation.

11 MR. PAUW:

12 Thank you, Mr. President. I had indeed not responded to my
13 colleague from the civil parties. I apologize, and I would just
14 note that the facts that we are talking about, as I think
15 Professor Chandler agreed to -- or he agreed with the statement
16 that facts, as such, are -- can be influenced by later historical
17 conventions and understandings. And that's all I'm trying to do.
18 I'm trying to link together the history of the CPP, the history
19 of certain persons in the CPP to explain what now their attitude
20 towards the trial might be. But I understand that this Court does
21 not give me room to ask these questions, so I -- it seems I'm
22 forced to abandon this line of questioning.

23 [13.53.08]

24 I have two minor points before I cede the floor to Mr. Ianuzzi.
25 Just for the record, I just want to note that Professor

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1 Chandler's microphone was not on when he actually answered the
2 question whether or not this trial might be embarrassing to the
3 current regime of Cambodia, and Professor Chandler could be heard
4 saying: "Might be, yes." And if we want to verify that, I would
5 be delighted, but I think it's enough to mention it on -- for the
6 record.

7 (Judges deliberate)

8 [13.55.41]

9 MR. PRESIDENT:

10 Judge Cartwright, please proceed in response to the question
11 raised by the international defence counsel for Nuon Chea.

12 JUDGE CARTWRIGHT:

13 The comments that counsel just made are not part of the formal
14 record. This is an unfortunate attempt to get comment in by a
15 very informal path.

16 Professor Chandler's microphone was off, and certainly no one in
17 the Trial Chamber, among the Judges, heard any such comments, and
18 nor are they confirmed as part of the record. Thank you.

19 MR. PAUW:

20 Thank you, Mr. - Thank you, Judge Cartwright, for that
21 clarification.

22 And your use of the word "unfortunate" leads me to clarify that
23 this might seem that there is some doubt as to whether Professor
24 Chandler actually said this, and I will refer gladly to Mr.
25 Ianuzzi, who has separately--

1 [13.56.58]

2 MR. PRESIDENT:

3 Counsel, your questions should be put to the expert or do you
4 prefer to use this opportunity to make comments? The floor is
5 given to you to put questions to this expert witness, and if you
6 run out of questions, you can hand over the floor to your
7 colleague. You're not allowed to make comments which are
8 irrelevant to the facts put before the Chamber today. And you
9 have been repeatedly reminded of that. It seems that you run out
10 of question. If that is the case, then don't try to raise any
11 comment which is frivolous.

12 [13.57.50]

13 MR. PAUW:

14 Thank you, Mr. President. I am - I was not trying to do that. I'm
15 just trying to clarify that what I tried to do wasn't--

16 [13.58.00]

17 MR. PRESIDENT:

18 Again, Counsel, do you have any more questions for the expert?
19 You're not allowed to make any comment.

20 MR. PAUW:

21 Mr. President, in a context where my colleagues have been
22 sanctioned or have been -- where complaints have been filed to
23 their respective bar associations, I think it's absolutely
24 crucial that we get on the record--

25 MR. PRESIDENT:

1 You are not allowed to make any comment. You cannot use this
2 opportunity to make a statement or comment without relevance to
3 the purpose of hearing this witness today -- this expert witness.

4 MR. PAUW:

5 I will respect your ruling, Mr. President.

6 It leaves me to say that Professor Chandler has given a few
7 answers that seem to be in contradiction to some material that he
8 has written in the past. We are not allowed to use that before
9 this Court--

10 [13.59.35]

11 MR. PRESIDENT:

12 If you prefer to make a conclusion, please try to adhere to Rule
13 -- Internal Rule 92. Your conclusion or submission shall be made
14 in writing pursuant to Rule 92 of the Internal Rule. Let me
15 repeat the rule:

16 "The parties may, up until the closing statements, make written
17 submissions as provided in the practice direction on filing of
18 documents. The greffier of the Chamber shall sign such written
19 submissions and indicate the date of receipt and place them on
20 the case file."

21 If you intend to make such written submissions, you cannot do it
22 orally. You should make it in writing pursuant to the Internal
23 Rule which I just read out and the Practice Direction.

24 MR. PAUW:

25 Thank you, Mr. President. I would also like to point out that

1 you, as the President, have the explicit task, under the Internal
2 Rules, to make sure that the fair trial rights of the Defence are
3 respected--

4 [14.01.12]

5 MR. PRESIDENT:

6 It appears to us that you have no more questions. You can't take
7 this advantage by making such statement that has already been
8 ruled out. You may put questions that are relevant to these facts
9 -- the events that happened during the Democratic Kampuchea --
10 while Mr. David Chandler is here with us. He may shed some light
11 on the remaining matters that need to -- the questions needed to
12 be asked to him, you may take that opportunity to do so.

13 MR. PAUW:

14 Thank you, Mr. President. And that's what I am trying to point
15 out that my comments relate directly to Professor Chandler's
16 testimony. It will take me one minute to explain.

17 Professor Chandler has authored a document that seems to
18 contradict some of his statements here today and we want to use
19 that document for -- for purposes of--

20 [14.02.24]

21 MR. PRESIDENT:

22 We already informed you already that this is your closing
23 statement and that if you would like to do so, you should refer
24 to Rule 92 of the Internal Rules and the proceedings concerning
25 the filing of documents before the Chamber. You should have

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1 already been well informed. This current statement you made
2 concerning the speculation or assumption or, rather, the
3 conclusion made by witness Mr. David Chandler, you are not
4 allowed to do that. If you wish to do, you still have the ability
5 to do so by referring or following the Internal Rule as indicated
6 however, now, at this moment, you're not allowed to do it.
7 Judge Cartwright, you may now proceed.

8 [14.03.29]

9 JUDGE CARTWRIGHT:

10 Thank you. Thank you, President. I just want to clarify one
11 matter. This is not about the use of contradictory documents, but
12 you are being asked to put questions that are relevant to the
13 issues in Case 002/001. That is the sole reason for preventing
14 you from pursuing this line of questioning. If you have a
15 relevant question, you may certainly put it. Thank you.

16 [14.04.03]

17 Thank you, President, for allowing me to clarify that.

18 MR. PAUW:

19 Thank you, Judge Cartwright, for that clarification.

20 And I have no further questions at this stage, but as I was
21 trying to make clear, we want to rely on a document for
22 impeachment purposes that we will file a written motion on, as
23 your President requests. And based on that document, we do want
24 to reserve the right to ask follow-up questions after this
25 document has been -- if and when that document has been admitted

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1 to be used for the impeachment of this witness or the basing of
2 questions for this witness and that can be done today. And
3 considering that the Defence has until Wednesday to question this
4 witness, I just wanted to give you advance notice of what our
5 plans were.

6 [14.05.03]

7 So I have finished my questions. Now that I put this on the
8 record that I reserve the right to ask some follow-up questions
9 if and when this particular document is admitted to be used in
10 these proceedings, I would like to reserve the right to come back
11 to some of these issues, but for now I cede the floor to my
12 colleague, Mr. Ianuzzi.

13 QUESTIONING BY MR. IANUZZI:

14 Thank you, Mr. Pauw. Thank you, Mr. President. Good afternoon,
15 everyone. I will be very, very brief, as usual, and just to give
16 my -- my colleagues to my right, on this side of the stage, some
17 advance notice, I will surely finish before the next coffee
18 break.

19 Q. So, if I could, Professor Chandler, very quickly return to
20 Wednesday the 18th of July, I'm -- I'm going to be using the
21 draft transcripts so I would appreciate it if you'd correct me if
22 I make any -- any errors.

23 [14.06.11]

24 On Wednesday, referring to a -- a document, document number E3/12
25 -- and I don't want you to look at that document. That's the

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1 document we're all -- we're all were aware of. That's the Central
2 Committee decision on a variety of matters. You and Judge
3 Cartwright engaged in a short exchange regarding that document.
4 I'll just slow down a bit; I'll take your wife's advice.

5 The question put to you was:

6 "The document also states that the government is to be 'a pure
7 party organization'. Is this how the government operated in
8 practice, namely, with no distinction made between the governing
9 of the country and the political party in power?" And that was
10 Judge Cartwright's question.

11 And your answer was:

12 "Yes, I think there was really to be no genuine distinction. The
13 Secretary of the Central Committee of the Communist Party was
14 also, simultaneously and all the time, the prime minister of the
15 country, so there's no distinction there. There were no balancing
16 elements to the Party rule that were independent of it. It was -
17 and, I mean, they have described it truthfully, I think, as a
18 government by and for a ruling party."

19 [14.07.24]

20 Does that accurately, in your recollection, reflect the exchange
21 you had with Judge Cartwright, more or less?

22 MR. CHANDLER:

23 A. Yes, that's fine.

24 Q. Thank you.

25 So my question to you is this: If you, Professor Chandler, were

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1 simply to change the language in your answer, "Secretary of the
2 Central Committee of the Communist Party" to, perhaps - quote --
3 "Vice Chairman of the Cambodian Peoples' Party" -- and that of
4 course is Hun Sen -- would the assessment, on its face,
5 accurately describe the political state of affairs in Cambodia
6 today, more or less?

7 MR. PRESIDENT:

8 International Co-Prosecutor, you may now proceed first.

9 [14.08.15]

10 MR. ABDULHAK:

11 I'm sorry to object to my friend's very first question, but
12 clearly it's entirely irrelevant and should be ruled out.

13 MR. IANUZZI:

14 Well, if it makes any difference, Your Honours, I'll repeat what
15 we've been saying all along: parallels between activities of the
16 Khmer Rouge and the current government in power are relevant for
17 a whole host of reasons. We're on the record as making those
18 submissions. I assume this question is not going to be allowed,
19 so I'll end it there and move on to my next question.
20 And this, if I could just briefly, very briefly -- and I promise,
21 Professor Chandler, this will be the last question on the issue
22 of culling. There's just one thing that's unclear in my mind. And
23 I do take the point you made just before the lunch break about
24 not being prepared to go too much further on that point, and
25 you've already given your opinion as to the effect of any such

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1 culling that may or may not have happened on the three gentlemen
2 on trial today.

3 [14.09.10]

4 My question's slightly different. What is your expert opinion --
5 if, indeed, you have one -- on the effect of any culling on other
6 individuals? For example, is it reasonable to suggest that such
7 culling may have worked to the benefit of former PRK officials
8 who are currently sitting in power in Cambodia today? Is that a
9 reasonable thing to suggest?

10 I see there's going to be an objection from my good friend across
11 the stage.

12 MR. PRESIDENT:

13 Professor Chandler, could you please hold on? Wait until we hear
14 from the civil party counsel.

15 You may now proceed.

16 MR. PICH ANG:

17 Thank you, Mr. President. Thank you, Your Honours. The question
18 that was just put is repetitive and out of the scope under
19 discussion, and this question appears to draw speculation or
20 personal conclusion from the witness.

21 [14.10.37]

22 We, on behalf of the civil parties, time and again, are in the
23 position that we wish to ensure that the trial's proceeding are
24 more expeditious and again, maybe insist that counsel be advised
25 to ensure that the proceedings are, indeed, expeditious for the

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1 benefit of the victims and parties concerned.

2 MR. IANUZZI:

3 Well, for all the -- all the reasons that I've said before, I
4 think it's a relevant question. It does require a bit of
5 speculation; that's certainly a task that's within the purview of
6 this expert. That's what experts do: they make guesses based on
7 objectively available information.

8 If Professor Chandler doesn't know, if he has no idea, that --
9 that's a perfectly acceptable answer to me.

10 [14.11.43]

11 MR. PRESIDENT:

12 The objection and ground for the objection by the civil parties'
13 counsel is sustained.

14 Expert is now instructed not to respond to the current question
15 put by counsel for Mr. Nuon Chea.

16 BY MR. IANUZZI:

17 Thank you, Your Honour. I'm -- I'm almost finished. I've got two
18 more questions.

19 Q. Moving on to a slightly different topic, on more than one
20 occasion in this courtroom, I have noticed -- personally noticed
21 that certain former Khmer Rouge cadre, when questioned regarding
22 the activity of other former cadre, have drawn certain curious
23 blanks when one would reasonably expect them to know this
24 information.

25 [14.12.27]

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1 So, with this as the sort of context, my question to Mr. --
2 Professor Chandler is -- I know that you mentioned on -- I think
3 it was Thursday -- that you didn't want to suggest that the Khmer
4 Rouge was some kind of a gangster group and I'm not trying to
5 draw any -- any parallels here with the mafia by using this word,
6 "omerta", but I think you're probably familiar with that.
7 Professor, are you aware -- are you aware of any evidence
8 suggesting that any insider witness -- that is, any former Khmer
9 Rouge cadre who may have been testifying in this Court may be
10 acting -- may be acting pursuant to some kind of Khmer Rouge code
11 of silence with respect to those individuals who are either in
12 the government or under the government's protection at the
13 moment?

14 I see my -- my colleague is again on his feet. I suppose this is
15 going to be the way it goes today.

16 MR. PRESIDENT:

17 Professor Chandler, please hold on. Wait until we hear anything
18 from the civil parties' counsel first.

19 Counsel for the civil parties, you may now proceed.

20 [14.13.45]

21 MR. PICH ANG:

22 Thank you, Mr. President. This matter has already been, time and
23 again, ruled upon.

24 In particular, when witness is asked to comment on the
25 proceedings before this Chamber, witness is not entitled and is

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1 not expected to share his comments concerning this rather
2 irrelevant topic. And I fully ask that the Chamber rule out the
3 question.

4 MR. IANUZZI:

5 I would just like to point out that Professor Chandler did
6 indicate that he was doing his best to follow these proceedings.
7 He was reading about it in the newspaper. He was discussing it
8 with certain colleagues. Perhaps, if he doesn't know, if he's
9 never noticed this sort of a thing, that's perfectly acceptable.
10 That's a perfectly acceptable answer. He may be in a position to
11 shed some light on this issue. If it's no, that's fine. I'm not
12 going to put words in the man's mouth.

13 [14.14.45]

14 MR. PRESIDENT:

15 The objection and the ground for the objection by the civil
16 parties' counsel is sustained.

17 Professor Chandler is now instructed not to respond to that
18 question -- the recurrent question.

19 BY MR. IANUZZI:

20 Q. Well, let me -- let me, finally, then turn to some words
21 which, I believe, actually have come out of the Professor's
22 mouth, and I'm just paraphrasing here.

23 But, Professor, my -- my question would be: Have you ever made
24 the following assessment of a former Khmer Rouge cadre, and if
25 so, who, in fact, were you describing? And, again, I'm

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1 paraphrasing: "He is an extremely competent politician, the most
2 competent politician in Cambodia. He listens. He's got good
3 advice. He's modernized. He's very quick. He's also a thug. He
4 has blood on his hands. He does things to people who get in his
5 way, and they are not at all pleasant."

6 Professor, did you ever make any remark like that that you're
7 aware of?

8 [14.15.52]

9 MR. PRESIDENT:

10 Professor Chandler, please hold on. We wait until we hear from
11 international Co-Prosecutor before we proceed to your floor.
12 Co-Prosecutor, you may now proceed.

13 MR. ABDULHAK:

14 I do apologize again. I objected to the first question, and I
15 think this is the last question. Clearly, the subject matter of
16 the question is completely irrelevant to the proceedings.

17 Whether or not Professor Chandler expressed this view about an
18 unnamed politician is completely irrelevant. My friend hasn't
19 made any connection with -- with the case and with the topics
20 that we've been discussing for the last four days or so. The
21 question should be ruled out.

22 [14.16.37]

23 MR. IANUZZI:

24 Just if I may very briefly respond, the -- this use of the word
25 "thug", that's actually a word I've used in this same courtroom

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1 to describe that very same individual, so it's not the first time
2 we've heard this. And our position would be that thuggish
3 government behavior, which, in our point of view or from our
4 point of view, has an effect on the operation of the judiciary in
5 this country, is a major fair-trial issue that needs to be
6 addressed in this Court. Obviously, Your Honours don't agree with
7 us. That's my position, for the record.

8 MR. PRESIDENT:

9 International Co-Prosecutor objection is appropriate and
10 sustained.

11 Professor Chandler, you are now instructed not to respond to that
12 question.

13 [14.17.26]

14 And counsel is now reminded -- rather counsel for the civil
15 parties are now reminded that if you wish to make any objection,
16 do that after the Co-Prosecutor has done so, and by doing so, it
17 is more convenient that the full objection is made from one side
18 before we proceed to hear the reply from the other side of the
19 Court.

20 Counsel, you may proceed with another question if you wish.

21 MR. IANUZZI:

22 Thank you, Your Honours. I have no further questions, just a
23 comment.

24 That remark, as I understand it, was attributed to or was
25 describing Mr. Hun Sen.

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1 I have a document here, in my hands, which bears a case file
2 number. Unfortunately, it's part of this bundle that we have been
3 prevented from using. In fact, I've got a whole stack of them in
4 front of me, here, those documents which, as I've said -- I
5 think, twice already -- were disclosed to all the parties well in
6 advance, and I'm unable to use it, unfortunately.

7 [14.18.37]

8 I'll do my best to make a retroactive or a post-active Rule 87.4
9 application with respect to this document.

10 But for the moment, I cede the floor to my colleagues on the
11 right, emphasizing what my colleague said, that we do reserve the
12 right to have a bit more time, should his request be granted.

13 Thank you very much.

14 Thank you, Professor Chandler, for coming to assist us. We're
15 grateful.

16 MR. PRESIDENT:

17 Thank you.

18 Since it is now appropriate time for the adjournment and, indeed,
19 it would be appropriate to offer some break for another counsel
20 to be prepared for questioning after the counsel for Nuon Chea
21 already put the question, then we would adjourn for 20 minutes.

22 [14.19.53]

23 Court officer is instructed to assist Professor Chandler during
24 the adjournment and have him return to the courtroom after this.

25 (Court recesses from 1420H to 1440H)

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1 MR. PRESIDENT:

2 Please be seated. The Chamber is now back in session.

3 The floor is given to Ieng Sary defence team to put question to
4 the expert, Mr. Chandler. You may proceed.

5 [14.41.38]

6 QUESTIONING BY MR. KARNAVAS:

7 Good afternoon, Mr. President. Good afternoon, Your Honours. And
8 good afternoon to everyone in and around the courtroom, and
9 especially to Dr. Chandler. Along with Mr. Ang Udom, we represent
10 Mr. Ieng Sary.

11 Q. This morning I noticed a question was posed to you concerning
12 the bombings in 1973, and at which point you stopped, you looked
13 at the Trial Chamber, and you asked whether you would be
14 permitted to go into that period, though one could not help
15 notice that you did not do that last week, when you were asked
16 questions by the Prosecution concerning periods of 1960s, which
17 was outside the scope of the indictment, and of course when the
18 civil parties were questioning you concerning events in 1940s and
19 fifties.

20 [14.42.48]

21 So my question to you, Dr. Chandler -- and there's no need to
22 write this stuff down, I'm sure you can figure out the answer:
23 Why was it necessary to seek permission from the Trial Chamber
24 for the Defence and not for the Prosecution or the civil parties?

25 MR. CHANDLER:

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1 A. Thank you. My answer to that question is, the questions
2 dealing with material before 1975, to my recollection - I can
3 stand corrected if not -- all dealt with the history of the
4 Communist Party of Kampuchea, about which I've written
5 extensively and, I think, which is -- that history is relevant to
6 my own expertise -- I'm not an expert on the American bombing --
7 and also important to the proceedings of this trial, for both the
8 Prosecution and the Defence.

9 When the question came up of the American bombing, as you could
10 see from the answer that I eventually gave, I was not reluctant
11 to talk about this -- this is a horrible event in American and
12 Cambodian history -- but I did feel this is a question bringing
13 something else into the -- to the table, a foreign power that had
14 not been discussed before, and I just wanted to make sure that
15 this was not a diversion. I was told it wasn't, so I gave the
16 answer I did.

17 [14.44.14]

18 Q. Okay. Thank you. You could see, however, where it would be
19 tempting for me to imagine that the purpose for you doing so is
20 because you're here thinking, perhaps -- most likely to assist
21 the Prosecution, as opposed to being here to give objective
22 evidence. That would be one way of looking at it, would it not?

23 A. I take a little offence at that. Quite frankly, I'm not that
24 kind of a cynical person.

25 Q. Very well.

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1 Let's talk about your contacts. Let's talk about your contacts
2 and about the sources that you looked at. This morning you were
3 asked a series of questions. I'm going to ask follow-up on some
4 of those questions because I don't think they went deep enough.
5 Could you please tell us, exactly, who it was that you had
6 contact with prior to coming here to give your evidence? And I'm
7 not speaking merely for this trial, but also for the other trial,
8 for 001. And I'm speaking about individuals working for, either,
9 the Office of the Prosecution or the Office of the
10 Co-Investigative Judges?

11 [14.45.43]

12 MR. PRESIDENT:

13 Mr. Expert, please wait. Wait until the Chamber decides on the
14 objection raised by the Prosecution to the last question posed to
15 you by the defence team for Ieng Sary.
16 International Prosecutor, you may proceed.

17 MR. ABDULHAK:

18 I rose before my learned friend finished his question.
19 We don't have a problem, in principle, with a question as
20 specific as whether or not Professor Chandler has spoken to
21 members of the Prosecution or OCIJ about his testimony, but the
22 questions need to be specific. And if that's question, it can be
23 asked; we have no objection to it being asked.

24 [14.46.35]

25 BY MR. KARNAVAS:

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1 Mr. President, I will go from the general to the specific.

2 Q. First, I want to know with whom he spoke with. Did you have a
3 chance to speak with Mr. Heder?

4 MR. CHANDLER:

5 A. Yes, if email counts as speaking, I did.

6 Q. Yes, it does count.

7 A. Okay, fair enough.

8 Q. And how often have you contacted and exchanged emails with Mr.
9 Heder?

10 A. You mean in this year or -- what?

11 [14.47.19]

12 Q. From the moment he started working for this institution.
13 Because, first, he worked as -- for the Prosecution in drafting
14 the Introductory Submission, then switched over to the
15 investigative sector to see whether what he drafted was correct.
16 So I want to know: As of when did you have contact with him? And
17 I believe this institution began somewhere around the
18 neighbourhood of 2005, 2006.

19 A. (Microphone not activated) -- Since his work was of interest
20 to me but it was not -- did not feed into any of my ongoing
21 research. I think my contacts with him were quite irregular,
22 mostly on a social basis, just trying to find out what kind of an
23 event was happening here, in Phnom Penh.

24 As I -- my testimony, as the time for my testimony approached, I
25 would not specifically approach him and ask him in any sense how

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1 -- what I should do or what I should say, but I did -- as it came
2 closer, I familiarized myself with more of the material that's
3 readily available about the trial, that I had not consulted in
4 detail beforehand.

5 [14.48.27]

6 Q. Now, was that for 001 as well as for 002? That is Duch, who
7 was the first one. Is there a particular problem with my English?
8 I see you pausing.

9 A. (Microphone not activated)

10 Q. Okay. Sorry.

11 A. Okay. I did much less preparation for Case 001, since that was
12 largely about my book, which I re-read in preparation for the
13 trial.

14 For this - this case, I had to re-study, not only the books that
15 I have read that have been decided here, but lots of other
16 secondary material, to try and be as helpful as I could be.

17 Q. Dr. Chandler, stick with me; I'm speaking about your contacts
18 with Heder. Did you have contacts with Heder concerning the Duch
19 trial? Yes or no? If so, to what extent?

20 [14.49.41]

21 A. Very limited - very limited contact, but yes.

22 Q. And with respect to this particular case, did you have any
23 contact with Mr. Heder while he was working for the Office of the
24 Prosecution -- that is, while he was drafting the Introductory
25 Submission along with the other team members of the Prosecution?

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1 A. Yes, I'm sure I did, but it wasn't to find out what was going
2 on, because I wasn't involved in the trial; it was just -- we
3 exchanged documents about other parts of Cambodian history and
4 stuff like that. But I wasn't seeking particular information from
5 him at this time.

6 Q. Let me make it very clear, Dr. Chandler: I am not suggesting
7 that you were seeking any sort of information from him. Right
8 now, I'm merely trying to establish if you had any contact with
9 him and, if so, to what extent. And if documents were exchanged,
10 that's something that does peak my interest. Could you please
11 tell us what documents were brought to your attention by Dr.
12 Heder during this period of time?

13 [14.50.54]

14 A. He really -- he directed me to much of his published material
15 that I hadn't read, and that's mainly what he did. But, yes, it
16 was contact with him about - of this time.

17 Q. And the published material that he directed you to, was that
18 related to, in part, what he was doing for the - for the Office
19 of the Prosecution at the time?

20 A. Not directly related. It had - it had preceded this -- his
21 role in the courts. He led me to the documents cited this morning
22 -- from 1999, I think it was -- led me to another -- some at a
23 later date, but not just Court documents. I had never seen any
24 Court documents before I came here.

25 Q. So would it be fair to say, from that particular answer, that

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1 he also provided you with primary sources of information,
2 documents that he had available which had not been available or
3 known to you?

4 [14.52.02]

5 A. No, that's not true. He did not give me any primary source
6 material that was not available to me beforehand.

7 Q. That was a question, not a statement.

8 A. Well, okay. Well, I mean, he did not - yes. I mean, I didn't
9 -- he did not provide me with such material, there's no -- that's
10 the answer to your question.

11 Q. All right. Now, after Dr. -- after Mr. Heder went over and
12 started working with the Office of the Co-Investigative Judges,
13 did you continue to have contacts with him? And, if so, could you
14 please tell us how those contacts -- what those contacts were all
15 about?

16 A. Well, it's difficult to tell you what the contacts were all
17 about; they were frequently -- frequent contacts between two
18 colleagues who had been friends for 30 years. But let me say they
19 were not about -- they were not -- let me - let me put it another
20 way: these contacts did not involve any information that was not
21 widely - widely open. I was not trying to publish anything, I was
22 not doing any -- my own research. I talked to him about the
23 progress of the trial, to an extent. And this is interesting to
24 me, it's all -- he said "off the record", so I'm not going to put
25 it on the record now.

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1 [14.53.06]

2 Q. I see. When he said it was "off the record"--

3 MR. PRESIDENT:

4 Counsel, could you please pause between the question and answer
5 session in order to facilitate the interpretation through the
6 system?

7 BY MR. KARNAVAS:

8 Apologies.

9 Q. When you say "off the record" -- just let me make sure I
10 understand -- in my -- are we to conclude that there were some
11 discussions, exchanges of emails, concerning his work, that you
12 consider "off the record" and, therefore, you're not privy to
13 discuss with us here today? Is that - is that how we're to
14 understand that answer?

15 [14.53.57]

16 MR. CHANDLER:

17 A. (Microphone not activated) -- He made it clear in some of
18 these discussions that he didn't want me to write anything up,
19 that's all. That's what I understood to mean "off the record" and
20 I never did write anything up from these discussions.

21 Q. Right. But what he didn't want you--

22 A. Sorry to interrupt - was that translated, I'm not sure.

23 Q. Okay. While he did not want you to write up anything about it,
24 does that -- can I conclude that he was writing, or he was
25 researching, or he was drafting something for the Office of the

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1 Co-Investigative Judges, which is why he was having this sort of
2 private communication with you, which you feel today you are not
3 privy to discuss in the public?

4 [14.54.47]

5 MR. ABDULHAK:

6 Your Honours--

7 MR. PRSIDENT:

8 Mr. Expert, please wait. We wait to hear the objection raised by
9 the Prosecution, first, to the last question put to you by the
10 defence team for Ieng Sary.

11 The Prosecution, you may proceed.

12 MR. ABDULHAK:

13 Our objection is on relevance, Your Honours.

14 [14.55.11]

15 We had assumed that where counsel was going was to ask questions
16 that might elicit responses relevant to Professor Chandler's
17 studies. And questions along those lines, we wouldn't object to.
18 But counsel seems to now be turning to an impromptu inquiry into
19 what information staff of the Co-Investigating Judges Office
20 considered on or off the record in their communication with other
21 people-- This is completely irrelevant.

22 If counsel wishes to ask Professor Chandler what information he
23 was provided, what information he considered in forming his
24 opinion, then that is appropriate. Going into other people's work
25 and attempting to conduct an inquiry into other individuals who

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1 are not here testifying today is irrelevant and inappropriate.

2 [14.56.13]

3 MR. KARNAVAS:

4 Let me briefly respond, Mr. President.

5 If, in fact, Heder was working for the Office of the

6 Co-Investigating Judges, first and foremost, he had no business

7 discussing that business -- what he was doing -- with anyone

8 else. That should have been within the Office of the

9 Co-Investigating Judges, unless, perhaps, I'm mistaken how the
10 system is supposed to work. That's first and foremost.

11 Second of all, Heder is a historian. As we've indicated, he

12 worked for the Prosecution; he then work for the Co-Investigating

13 Judges. If, in fact, Heder now is talking to Chandler, and

14 Chandler knows he's going to be testifying, as Heder would have

15 known that he would be testifying, then we have a problem. And

16 that's why I'm entitled to go into this, especially since, as of

17 last week, we've heard testimony from Professor Chandler that he

18 has in some ways shifted his position.

19 [14.57.19]

20 Now, today he says what he received and what he has learned has

21 been more for amplification purposes, as opposed to revelation.

22 But, nonetheless, we're entitled to explore that because it goes

23 to the gentlemen's credibility. That's why I think I should be

24 permitted to have this discussion, because it wasn't just Heder,

25 it was also Etcheson, and there was also Locard -- they were

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1 working for the Office of the Co-Prosecutors.

2 So -- and we're not suggesting that Professor Chandler was doing
3 anything inappropriate, but certainly, if members of the
4 Prosecution or if members of the Co-Investigating Judges are
5 reaching out to potential witnesses and are having discussions
6 concerning this case and showing them documents, then it could
7 lead us into a problem to thinking that perhaps those working in
8 those institutions might be gaming the process.

9 (Judges deliberate)

10 [15.01.50]

11 MR. PRESIDENT:

12 The Chamber wishes to cede the floor to Judge Lavergne to rule on
13 the objection and the question by counsel by Mr. Ieng Sary. Judge
14 Lavergne, you may now proceed.

15 JUDGE LAVERGNE:

16 Thank you, Mr. President. The Chamber would like to draw Counsel
17 Karnavas' attention to the fact that what we are interested in
18 today is accusations levelled against the Accused in Case 002
19 and, more precisely, to review what is relevant in terms of the
20 facts covered in the "first trial" in Case 002.

21 Other issues that may concern the way in which the investigation
22 may have been conducted in Case 001 is irrelevant, and that line
23 of questioning will not be authorized by the Chamber because it
24 seems to be lacking in all pertinence.

25 And, therefore, the Chamber would like you to focus your

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1 questions on those that are relevant to probative matters in Case
2 002. Thank you very much.

3 [15.03.28]

4 MR. KARNAVAS:

5 Thank you, Judge Lavergne. For the record, a witness's
6 credibility is always pertinent, at least in the Anglo-Saxon
7 system.

8 BY MR. KARNAVAS:

9 Q. Now, you indicated that you had looked at the Closing Order.
10 Can you please tell us whether you read the entire Closing Order
11 or just sections of the Closing Order?

12 MR. CHANDLER:

13 A. I read the text of the Closing Order. And I should make it
14 clear -- it was not clear for -- a little bit from one of your
15 earlier questions -- I had never seen any of this Closing Order
16 before I came to Phnom Penh last week. I asked for it -- to be
17 shown it. This was a legitimate request. I was shown it to give
18 me background, get me to -- up to speed on where the things were.

19 [15.04.16]

20 Now, I did not read all the footnotes -- I've been asked that. I
21 checked footnotes when there was something that looked to me --
22 like, "Where did this come from?" Sometimes I couldn't think it--
23 And that's it. That's all I want to say.

24 Q. All right. So let me make sure that I have your testimony
25 correct. It was -- when you came to Phnom Penh to testify was

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1 when -- the first time that you were provided with the Closing
2 Order.

3 A. Yes.

4 Q. Now was there a hard copy or an electronic copy?

5 A. Hard copy.

6 Q. And when you did look at the footnotes to go to the original
7 sources that are cited in the footnotes, it's my understanding
8 you had a very limited -- you had limited access to those - to
9 those documents; correct? What's cited in the footnotes?

10 [15.05.19]

11 A. I had no access to any of the documents. I was familiar with
12 some of them but I did not have access to them in Phnom Penh when
13 I was reading the document.

14 Q. And prior to coming to Phnom Penh, I understand it that you
15 were provided with some documents, from the Trial Chamber, to
16 review. You were informed that the parties would want you to look
17 at certain documents; is that correct?

18 A. Yes.

19 Q. Aside from those documents, did you look at any other
20 documents -- and let me specify, original source documents?

21 A. I would have to say no to that. If you mean original source in
22 Khmer, I'm not doing research in Khmer for this appearance.

23 [15.06.24]

24 Q. All right. What if they were translated into English? I'm -- I
25 guess what I'm trying to do is exclude academic journals, text,

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1 and what have you. So, other than the documents that were
2 provided to you, which we have a list of, I would like to know
3 whether you looked at other primary source documents, not
4 necessarily in Khmer, that might have been translated?

5 A. The things I looked - the things I looked at, outside of those
6 documents, were printed sources produced by the study of the -
7 excuse me -- the tribunal, by John Ciorciari, that's been
8 published, the "Seven Candidates for Prosecution" that came out
9 several years ago -- I read that. I had read that before but --
10 so I went back to it; I read that years ago. Some of these
11 printed things I just went around. I couldn't read them all; I
12 had two weeks' notice and I wanted to concentrate on the
13 documents sent to me by the Court.

14 Q. And the "Seven Candidates for Prosecution", that's by Heder,
15 where he names the Accused, among others; correct?

16 A. Yes, that's right.

17 [15.07.47]

18 Q. Now, last week you indicated - last week you indicated on
19 several occasions - we will probably get into that tomorrow --
20 that having read the Closing Order, it was -- I don't want to say
21 a "constant", but it was a -- it was certainly a repeated
22 refrain. Having read the Closing Order, you had reached certain
23 conclusions or you wanted to adjust your thinking -- or your
24 positions.

25 Having heard what you just told us now, can we assume, since

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1 you've told us you did not have access to the documents that were
2 in support of the Closing Order other than that was provided to
3 you by the Trial Chamber, that when you say "having read the
4 Closing Order", you're talking about the text of the Closing
5 Order?

6 A. That's right.

7 [15.09.03]

8 Q. In other words -- and I'm not trying to pin you down and
9 certainly not trying to ascribe blame in any way, although it may
10 appear that way -- this is a process of asking questions in
11 Court; it is, I understand, uncomfortable. You're relying on the
12 text as opposed to doing a due diligence to actually look at the
13 document that's being cited and to see whether what is cited is
14 indeed correct, accurate, complete, and in support of that -- the
15 assertions made in the Closing Order.

16 A. Thank you - thank you for smiling back there; that was
17 welcome.

18 Okay. One thing to correct your wording slightly: I never said
19 that I'd reached new conclusions or altered -- adjusted my
20 thinking. I never said that. I said new information came my way
21 which was interesting, that I wished I had been able to cite. I
22 said this morning this was supplement to some of the statements I
23 made in other books. I cited the Sihanouk letter, for example,
24 about the conversation with Pol Pot. That was a revelation to me;
25 I would love to have folded that into my book. So please don't

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1 say that I said things that I didn't say, such as "change my
2 thinking", because I did not say that.

3 Q. All right. All right.

4 [15.10.24]

5 A. The Closing Order did not change my thinking. I'm getting a
6 bit aggressive; I'm sorry.

7 Second thing, there was no way, I think, that I could have
8 conducted due diligence on documents when I was in my hotel room
9 in Phnom Penh, so I didn't. I agree that I did not. I did not
10 have the occasion to do so, I don't think that forbade me from
11 finishing the document -- finishing reading the document for my
12 -- for information purposes.

13 Q. Well, first, let me apologize if I - if I've misquoted you,
14 although it wasn't a quote; I was trying to paraphrase. And if I
15 got it wrong, I certainly appreciate you correcting me, and
16 please do so on each and every occasion, and I will endeavour to
17 be as accurate as possible.

18 [15.11.09]

19 And, secondly, let me point out that I'm not suggesting that you
20 should have done a due diligence. I just merely wished to make
21 sure I understand you that when you say "based on the Closing
22 Order we now know", you're referring to the text of the Closing
23 Order, as opposed to the text plus footnotes, having done a due
24 diligence on the footnotes to see whether it is supportive,
25 actually, of what is being asserted in the Closing Order. So I

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1 think we are in agreement; is that correct?

2 A. Yes, I think we are, after the way you stated it. Yes, you are
3 -- we are.

4 Q. (Microphone not activated) -- thank you very much. And I'll -
5 I'll try to smile a little more to make it go easier.

6 If I could take you back a little bit to that period that was
7 referenced earlier this morning, on the U.S. bombing, and -- not
8 that I want to belabour the point, and it's not for purposes of
9 justification, but merely for historical context, because I think
10 you would agree with me -- would you not, Professor Chandler --
11 that context is pretty important when we're trying to understand
12 historical events, albeit in a court of law. Would you agree with
13 me on that?

14 [15.12.41]

15 A. Certainly.

16 Q. So, for contextual purposes, could you please tell us on or
17 about what year did the bombing begin in Cambodia? You talked
18 about 1973, but it happened several years earlier -- it started,
19 that is; correct?

20 A. Yes, and I mentioned the earlier bombings in my statement this
21 morning. It began in 1967.

22 Q. All right. I'm merely trying to make a record.

23 A. Yes. No, fair enough.

24 Q. I have to go through some background, and -- so, if you could
25 be patient with me -- and I appreciate the frustration that you

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1 must be feeling.

2 [15.13.27]

3 But there must have been a reason why this bombing was occurring.

4 Can you please tell us why the U.S. was bombing Cambodia?

5 A. I really can't believe as an American you need an answer to
6 that, but I will give it for the Court.

7 The Americans were bombing Cambodia as support of their war
8 against the North Vietnamese and - and the left forces fighting
9 is Southern Vietnam. That's the answer to that.

10 This was a -- it was not the bombing of Cambodia per se, it was
11 an element of the war against Vietnam, which the Vietnamese, for
12 example, did not refer to as the Vietnam War, but a total war
13 against the Americans, wherever it took place.

14 Q. Thank you. We're trying to make a record, sir--

15 A. Sure.

16 Q. --so just bear with me. And I apologize if some of my
17 questions seem simple.

18 [15.14.23]

19 Now, before the bombing occurred - started, that is -- can you
20 please describe to us the context a little bit? Sihanouk, as I
21 understand it was the Head of State.

22 And could you please tell us what was happening in Cambodia that
23 would motivate the Americans to bomb Cambodia?

24 A. Nothing was happening in the Cambodian government or in the --
25 visible to the rest of the world that would make the Americans

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1 bomb Cambodia. What they were bombing -- or hope they were
2 bombing and, in many cases, succeeded -- was the Ho Chi Minh
3 Trail which ran through Cambodia from North Vietnam and Laos into
4 Southern Vietnam.

5 Q. And when you say "the Ho Chi Minh Trail", are you speaking
6 about Sihanouk having made arrangements with China to allow
7 weapons to go through Cambodia to assist the North Vietnamese
8 Communists, who were at the time, you know, fighting the South?
9 Is that what you're talking about?

10 [15.15.45]

11 A. For the sequence, I'd have to get back to my book. I have - I
12 have written about this.

13 Yes, this was certainly connected. Sihanouk -- the phrase
14 frequent - and, I think, accurately used --about him is
15 "balancing act"; a bit of this, a bit of that, bit of this, bit
16 of that. Play to the Chinese, then play to the Americans.
17 He renewed -- when the war was going badly in - or, no, that's
18 not the right way to put it. In 1968, he feared that having
19 broken relations with the Americans in '64 may have been a
20 mistake, so he - he resumed relations. And it seems from the
21 evidence -- this is not entirely certain, but it seems that a
22 quid pro quo for renewing American diplomatic relations was to
23 continue the bombing along the Ho Chi Minh Trail. That's -- and I
24 think it's part of the public records. Sihanouk had said: If you
25 kill Cambodians, I'll go public; if you don't, I won't. Because

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1 he didn't care what happened in the jungle or what happened to
2 Vietnamese troops.

3 So, yes, in that sense, it was a reaction to Sihanouk.

4 [15.16.52]

5 Q. All right.

6 And politically -- I mean, as a historian, did you also study the
7 politics in Cambodia at that period of time and what Sihanouk may
8 have been doing to his political opponents?

9 A. Sure, there's a whole chapter in my book about that last phase
10 of Sihanouk's -- Sihanouk's time in office, when he was very
11 severe with his opponents. We heard that -- a bit of that in some
12 of the previous discussion on Samlaut, where it was put down very
13 brutally: if he had not been harsh with his opponents, Mr. Khieu
14 Samphan, Mr. Ieng Sary would not have fled to the countryside,
15 and so on. I mean, yes, I've written about this; it's well known.

16 Q. And if you could tell us a little bit -- you told us that
17 there was bombing. We know a little about what's happening in
18 Phnom Penh. But outside, in the countryside, how is that
19 affecting -- or please describe to us, I should say, what it was
20 - what it must have been like for the average Cambodian living
21 outside, in the rural area -- if there is such a thing as an
22 "average Cambodian"?

23 [15.18.08]

24 A. That's a question I wish I could answer better than I will,
25 but certainly, in areas along the border, it was pretty difficult

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1 for these people to have Vietnamese soldiers stationed among them
2 who behaved -- all records show they behaved very well, actually,
3 as it turns out. But that was difficult, and particularly after
4 the Tet Offensive, which was -- of February 1968, which was
5 launched from Cambodia -- people know that, it was launched from
6 bases here in Cambodia into South Vietnam. And as soon as that
7 failed, which it did, except for public relations purposes -
8 first of all, those forces were bombed down, and the North
9 Vietnamese forces came into the border areas, as opposed to the
10 kind of (unintelligible). Southern Vietnamese people had always -
11 had been there for years, often since the 1950s.

12 So it gets a lot harsher when the North Vietnamese get in there.
13 The fighting gets worse, the war is going more -- it's getting
14 more questionable for Sihanouk. Also his own political base is
15 getting unsteady. The Assembly, elected in 1966, was the only one
16 that had been elected without his handpicking the candidates, so
17 these candidates who were elected were not his - his people -- a
18 few were but not all of them. So he's getting nervous. And this
19 is -- I've documented this.

20 [15.19.29]

21 And there's so many things going on at once: there's a growing
22 resistance to his rule; there's growing discontent in the towns,
23 among people; the economy is not going that well; in the
24 countryside, there are people who are being pulled toward the
25 war; it's--

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1 Yes, I mean, it's a complicated but unpleasant situation, as you
2 suggested.

3 Q. All right. And this continues on for some period, and then we
4 know in 1970 there's the coup, but the bombings continue all the
5 way, as you indicated this morning -- they were going on in 1973.
6 Do you know, by that point, how the bombings would have -- what
7 impact it had on the countryside -- we're talking about the
8 physical impact, that is, villages, farming, livestock -- if you
9 could help us out on that?

10 [15.20.38]

11 A. That's a question I answered rather poorly this morning, and I
12 can't answer it any better now because I have no -- I wasn't out
13 there, I don't have evidence. I said in a document that, I think,
14 the previous counsel had cited, it must have been catastrophic,
15 and I still stand by that. But I don't know how catastrophic, how
16 worse, were some places better than others.

17 But, still, I should -- not correct, but amplify it a bit. In
18 1971 and '72, the bombing continued to be along the Ho Chi Minh
19 Trail. '73 was the shift to bombing populated areas, and that's
20 the bombing that people usually talk about, that's the outright
21 bombardment of -- the "ring of fire" around Phnom Penh that I
22 mentioned this morning. So, yes, I mean -- I don't -- I would say
23 "must have been catastrophic", but I don't have first-hand
24 evidence, I haven't talked to anyone who was in one of those
25 villages, and so on, so I -- that's all I can say.

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1 [15.21.30]

2 Q. All right. Now, aside – aside from the physical impact, as a
3 historian having met with various individuals out there,
4 interviewing, and what have you, did you -- are you able to tell
5 us the psychological impact that it might have had -- or would
6 have had on those people?

7 I see that there's a – there's an objection, Dr. Chandler, so
8 please wait.

9 MR. PRESIDENT:

10 Dr. Chandler, could you hold on? We wait until we hear from
11 counsel for the civil parties.

12 Counsel, you may proceed.

13 MR. BAHOUAGNE:

14 Thank you, Mr. President.

15 I am objecting to the question that has just been asked regarding
16 the assessment of the psychological impact.

17 And I would like to refer to your jurisprudence of yesterday.

18 Yesterday you stated that Mr. Chandler is not competent to answer
19 any questions of a psychological nature.

20 [15.22.47]

21 MR. KARNAVAS:

22 If I may, Mr. President -- and we might get into that at some
23 point, but I'm not asking for a psycho-analysis. If he has met
24 with individuals and they described to him what it was like
25 living -- and the impact it had on their lives, that's what I'm

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1 asking for; I'm not asking whether it caused any mental illnesses
2 to any of those individuals. So I think, in that limited context,
3 if the gentleman has an answer, that's what I'm seeking from him.

4 MR. PRESIDENT:

5 Dr. Chandler, you may respond to the rephrased question.

6 MR. CHANDLER:

7 A. I can only repeat my previous answer. I said I'd not spoke to
8 these people, but the effects must have been catastrophic in many
9 places. I mean, you can qualify further on, but I say it must
10 have been -- I'll stick with that wording.

11 [15.24.01]

12 BY MR. KARNAVAS:

13 Q. Thank you.

14 Now, on 20 July 2012, on page 98 -- and this is a draft
15 transcript -- you said the following -- let me read it, I'll go
16 slowly and I can provide you with a hard copy, but it's --
17 there's no dilemma here. You indicate, starting at line 12 on
18 page 98 of the English version:

19 "Rural populations were told that American bombers were coming
20 from Phnom Penh, so people -- there's lot of evidence of this --
21 the forces that enter Phnom Penh and some of the forces that
22 entered from Battambang were extremely angry. They had been told
23 to be angry. They had been told that this was the place that was
24 not just a western American, but a place that was out to destroy
25 them -- the cities. And so the cities were the place of New

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1 People, who were also, just by definition, people who had not
2 taken part in the revolution, which makes them, in Khmer Rouge
3 thinking, 'not us, but them' -- in other words, enemies."

4 [15.25.24]

5 Now, my question to you, sir, is this: The people that were being
6 bombed and their villages destroyed, their cattle and their
7 children maimed and killed, were they aware -- based on your
8 historical studies, were they aware that those bombs were
9 American bombs?

10 A. I can't directly answer that question because I wasn't -
11 wasn't there, of course, but it seems to me they were told --
12 when Khmer Rouge - when Khmer Rouge forces could be in contact
13 with these people, they told them the fact that these were
14 American bombs; they didn't tell them they were anything
15 (unintelligible) they weren't.

16 Q. And were they aware that the government of Cambodia, both
17 under Sihanouk and then under Lon Nol, was allowing the American
18 government to bomb those areas? Were they aware of that, based on
19 your historical studies?

20 [15.26.48]

21 MR. PRESIDENT:

22 Dr. Chandler, could you please hold on?

23 International Co-Prosecutor is now on his feet. He may proceed
24 first.

25 MR. ABDULHAK:

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1 Our objection is simple, Mr. President: the question seeks to
2 elicit speculation on the part of the professor as to the state
3 of mind of the people in liberated areas in 1975. It's not an
4 issue on which the expert can be expected to opine.

5 The question can be rephrased: Is there evidence of information
6 being given to cadre about A, B, and C?

7 BY MR. KARNAVAS:

8 I'll - I'm perfectly happy to rephrase.

9 [15.27.42]

10 Q. You told us that the bombing started somewhere in 1967 and it
11 continued for approximately six years. You told us that it would
12 -- that folks would have known that the bombing was by the
13 Americans. Do you know whether, during this period, the people of
14 Cambodia outside of Phnom Penh would have known that the
15 governments of Cambodia, under Sihanouk and Lon Nol, were in line
16 with the United States?

17 MR. CHANDLER:

18 A. (Microphone not activated) - I mean, it's a matter of -- of
19 how they would have known and which ones would have known. People
20 that were told this would have known; people who weren't informed
21 probably wouldn't have guessed that the government was in -- tied
22 up with the Americans. This was certainly a -- they didn't call
23 it "propaganda", but it was -- which it was, but it was also a
24 very valuable tool of the Khmer Rouge to explain that the -- the
25 betrayal of the government -- what they saw as a betrayal of the

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1 government, that allowed such bombing to take place.

2 [15.28.54]

3 And I want, once again, to re-clarify and back off a bit on the
4 -- I don't want to leave the impression in the record that the
5 bombing of Cambodia -- the blanket bombing of Cambodia in 1973
6 continued on -- had been unabated from 1967. I think a lot of
7 people in Cambodia didn't know there was bombing going on from
8 '67 to '70, really. It was in the far Northeast, particularly;
9 the trail ran through some very heavily forested, unpopulated
10 areas.

11 If we're talking about '73, I think this is already after the
12 Vietnamese have withdrawn their support, the cease -- from the
13 Khmer Rouge, the cease fire with America has happened, the Khmer
14 Rouge are starting to take command of the -- their half of the
15 civil war, which they had not had command of before.

16 [15.29.42]

17 And one of their weapons -- psychological weapons -- was to tell
18 as many people as they could reach that these bombs were
19 American, that they were being directed at them from -- but this
20 is a thing that was -- the only untruth was they were being
21 directed from -- the planes were flying out of Phnom Penh, that,
22 in other words, they were -- their own city -- in fact, those
23 planes couldn't have taken off from Phnom Penh, but the people
24 didn't know that - that their own government is letting these
25 planes fly out of Phnom Penh.

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1 Q. That's a minor detail, though, whether they were flying out of
2 Phnom Penh or whether they were flying out of Guam.
3 You would agree, would you not, that the bombs were landing in
4 Cambodia on those villages, killing those people?

5 [15.30.28]

6 A. (Microphone not activated)

7 Q. If you could answer the question? The mic wasn't on, sir.

8 A. I'm sorry; I didn't mean to -- didn't mean to seem crass, but
9 it seems to be a very effective piece of tactic to put this idea
10 in people's heads, which was very hard to absorb, that their own
11 government was helping to bomb them.

12 Foreigners bothering Cambodia has been in their history for
13 centuries, so that part of it was -- okay, another set of
14 foreigners. But in cahoots with the people -- your own people,
15 this would have, I think, really increased the anger -- I'm
16 guessing again, but I'm sure it would have made people angrier
17 than they would have been if it was just foreigners for no
18 apparent reason, like a typhoon having an effect on the
19 countryside.

20 [15.31.15]

21 Q. Of course, that was the truth, though, wasn't it? Wasn't the
22 Cambodian government allowing the U.S. to ravage the Cambodian
23 countryside through bombings? It wasn't that they were giving
24 them misinformation; that was the truth, was it not? You, as an
25 American, should know that.

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1 A. I guess it's not a leading question. You lead me back to
2 something I've said already. I have said this already, that --
3 what you're suggesting. I'm not leaning in any other direction
4 and I certainly don't want to detract from the - what I've - as
5 I've said, it must have been catastrophic suffering that was
6 involved here. But I'm answering your questions as best I can,
7 otherwise.

8 Q. All right.

9 If we could move on to another area, since the -- the notion of
10 psycho-analysis came up. I want to look at passages from your
11 book, "Brother Number One" -- certain phrases. And perhaps you
12 could help us out here.

13 [15.32.21]

14 So, if we could -- I'm referring to E3/17. And the -- if you have
15 your -- we could provide you with a copy of this material, unless
16 you have the book itself, the revised edition. I'm referring to
17 page 9. And for the -- the ERN number is 00392923. The Khmer
18 version is 00821673. And I don't believe that this has been
19 translated into French; our apologies. I will just pick out some
20 of these phrases in this book.

21 Here, on this particular page, you say: "Sar must have been
22 traumatized by the solemn discipline of the monastery..."

23 Now, here you seem to be trying to psycho-analyze Pol Pot; are
24 you not?

25 A. I prefer the word "understand", but, yes, it has psychological

1 implications, certainly.

2 [15.34.02]

3 Q. Okay. And I'm going to read a few others, so -- and then let
4 you give one more or less global answer at some point.

5 On page 10, the following page, which in Khmer would be 00821674
6 and in English is 00392924, you say:

7 "It is easy to imagine Saloth Sar in the 1930s, huddled at the
8 edge of the stage, watching the masked and powdered dancers
9 trained by his cousin and perhaps including his sister and his
10 brother's wife perform by the light of hundreds of candles (and
11 the moon)."

12 You go on to say the following in the next page - Khmer,
13 00821675; this would be page 12, in English, or 00392926: "It is
14 impossible to say which impression of the palace prevailed among
15 Saloth Sar's [memoirs] once he came to power."

16 You then go on to say: "He may have been thinking about the
17 dancers or about the peasants he encountered later on. He may
18 have been thinking of his own uprooted childhood in a potentially
19 hostile city."

20 [15.35.40]

21 The next passage, which would be on page 15 in English -- the
22 Khmer is 00821678, or 00392929:

23 "More important, his affectionate family, orderly domestic life,
24 and insulation from poverty may have helped to produce a
25 deceptively smooth psychological surface and equanimity that

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1 impressed observers for the rest of his career."
2 Khmer ERN number 00821682 -- this would be page 19, in English,
3 or 00392933: "In view of Saloth Sar's late success as a teacher
4 and his reputation for fairness, it is tempting to see Khvan
5 Siphon as the first of several role models he chose to emulate."
6 Next, Khmer, 00821688. There's a--
7 [15.37.27]

8 MR. PRESIDENT:

9 The Prosecution, you may proceed.

10 MR. ABDULHAK:

11 I hate to break up my learned friend's rhythm, but I think by now
12 we've all forgotten the first quote.

13 I think you've got to break it up into manageable components. I
14 think there might be a point that is coming, but I think that
15 point can be made with two or three quotes. I think expecting the
16 professor to, as it were, be able to bring all of this together
17 and respond to a question is just too much. The question will be
18 too complex and difficult to answer, and it won't help the Court.

19 [15.38.03]

20 MR. KARNAVAS:

21 Mr. President, the professor wrote these quite eloquent passages
22 and he is a historian.

23 There was an objection about psycho-analysis. At some point, I
24 wish to ask the gentleman whether this is the way historians
25 write, or is this some sort of a historical novel, or is he

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1 taking literary licence and poetic licence in writing, as opposed
2 to providing actual -- an actual historical account of Brother
3 Number One. That's the thrust of -- the purpose behind pointing
4 out these very eloquent passages in Professor Chandler's book,
5 "Brother Number One".

6 (Judges deliberate)

7 [15.39.47]

8 MR. PRESIDENT:

9 Counsel, please put the question directly to the expert.

10 BY MR. KARNAVAS:

11 Thank you, Mr. President.

12 Q. Just from the passages -- and we may get some more of these
13 vignettes, but just from the passages that we've just -- I've
14 just read out, first of all, you would agree with me they can be
15 found in your book; can they not? Or would you like to see them?

16 MR. CHANDLER:

17 A. I wanted my light to go on. No, I know they're in my book.

18 Q. Okay. I just needed to make sure that -- that we're all on the
19 same page. Work with me, Dr. Chandler. I know - I know it can be
20 frustrating.

21 [15.40.38]

22 Well, when you say "it's tempting to imagine" and then you go on
23 to psycho-analyze, is this for the -- is this because you're
24 trying to make history sort of a popular read, as opposed to
25 writing history?

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1 A. Of course, I don't really like the implication -- it's been -
2 several times in the Court -- that history is some sort of
3 unreadable pile of junk. This is a biography. The key point of
4 this book, I think -- the key point of the book is a biography.
5 The purpose of the biography was not to write a chronological
6 history or a chronological record of Pol Pot's life, a c.v., if
7 you like, which I could have done -- it would have covered about
8 two pages -- but to try and understand not only the person from
9 what we knew about his life, but also the person we discovered
10 from the effect he had on people who met him. I, of course, never
11 interviewed him.

12 [15.41.35]

13 For example, I knew people who had been to the same school with
14 him in Kampong Cham, talked about this Professor Khvan Siphon as
15 a very inspiring figure and that Hu Nim was there, Khieu Samphan
16 went to the same school. So I had evidence that this man had been
17 very inspiring and forthright. Before that, Pol Pot had been in,
18 more or less, French schools, had not been -- had a teacher that
19 he ever mentioned.

20 Secondly, the - this is of his smooth outer appearance -- that's
21 the first thing anybody who ever met him said to me about him --
22 "s'aat s'om" is what they say, in Cambodian. They would rub their
23 arm to show how smooth his skin was. This was a character who had
24 a smooth outer exterior. Photographs reveal that. So I was trying
25 to say that coming, perhaps, from such a comfortable, close

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1 family might have given him a -- if you like, a persona that
2 could act this way.

3 [15.42.25]

4 But, yes, we are trying to make it readable, but it's not the
5 same -- this is -- was a biographical experiment. I didn't make
6 those excursions in my -- in my other books, that I know of. I
7 didn't try to say what was in Duch's mind, for example, or
8 Sihanouk's -- sometimes, but not as much. I was trying to get in
9 -- not inside, but get toward -- toward an understanding of a
10 person who was -- and remains -- very mysterious to me. And you
11 have to do some guesswork to try and put light on the -- and I
12 think I'm disclosing -- I think in the preface I mentioned I
13 often had the feeling that he was in the room looking at me. I
14 wasn't looking at him. I couldn't find him. He was behind me,
15 somewhere, because he's unattainable, in a way. Yes, go ahead.

16 Q. Well, I certainly hope I have not given the impression that
17 history should be dull or a bunch of "junk". We do appreciate
18 your fine writing.

19 [15.43.25]

20 But let me go on one more passage, and then I'll move on to my
21 next topic. At some point, you seem to be speculating as to what
22 he might have read when you say -- you talk about various books,
23 and by Stalin, and what have you, and you say: "It is likely
24 that, by 1952, Sar received most of his news and formed many of
25 his opinions from journals produced by the French Communist

1 Party..."

2 And then you go on: "He would have - he would also have been
3 familiar with Stalin's writing, especially his widely circulated
4 'History of Communist Party of the Soviet Union'..."

5 And then you go on to say:

6 "It is tempting to picture Saloth Sar working through these
7 turgid materials by dim light, absorbing a view of the world that
8 emphasized conspiracies, empowerment, vigilance, and
9 clandestinity. It would probably be misleading, however, to endow
10 his activities at this stage with too much coherence or
11 ambition."

12 And I was just reading from Khmer 00821695, English page 32 or
13 00392946.

14 [15.44.54]

15 And my question, Dr. Chandler, is: Are you not here speculating
16 that he would have read this material -- setting aside your
17 phrase that it is tempting to do this and tempting to picture him
18 as this -- setting that phrase aside, are you not, as a
19 historian, taking liberties and making assumptions?

20 A. You have to take some, and some -- and if they're -- if
21 they're illegitimate, they're -- it's right to object to them. My
22 material on his reading comes from several interviews with people
23 who belonged to the French Communist Party at that time, French
24 Communist Party history, which I studied for my work on Pol Pot.
25 The atmosphere that was in the country with the most Stalinist

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1 regime even -- it was more Stalinist than the regimes, even, that
2 had Communist governments. This was a very dogmatic Communist
3 party. And what you had to do every day was to read "L'Humanité",
4 the paper. All members read the paper. And if they didn't, they
5 were -- I don't know what punishment happened, but you had to do
6 that.

7 [15.46.10]

8 Stalin's "History of the Soviet Party -- of the Communist Party
9 of the Soviet Union", CPSU, was also required reading at party
10 meetings. They had to study this text. So I assumed that Pol Pot
11 had done some of the things that other French Communists were
12 doing because he was a member of the Party. Now, that might be a
13 stretch, but I don't think so.

14 As to the dim light, we've located his apartment and in 1990 this
15 was one of the most dimly-lit places I've ever seen. Now, he may
16 have had a good light in 1950, but I doubt it. It's a funny
17 little garret on top of a bar in the 15th Arrondissement.

18 Q. Thank you, Dr. Chandler. Speaking of assumptions, if I
19 understand your answer, part of your craft, part of your trade is
20 to -- at least, after looking at certain material, to make
21 reasoned assumptions; do I have it right?

22 (Short pause)

23 A. Sorry. I spilled some water. But I heard your question. The
24 answer is yes.

25 Q. Okay. And so, barring having what you call the proverbial

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1 "smoking gun", there are times when you need to make certain
2 assumptions based on the available evidence that you have.
3 But can I ask you -- at least in your experience or having viewed
4 others, do you think that historians sometimes just get it wrong
5 because they've made assumptions or maybe assuming a bit too much
6 based on the evidence available to them?

7 [15.48.12]

8 A. Certainly, that's a great risk that historians face.

9 Q. Okay.

10 Now, the next topic I want to discuss a little bit is some of
11 your figures that you've come up with as far as the death toll
12 during this period. And the reason I want to do so is because,
13 having looked at a variety of things that you have published in
14 the past -- I don't want to say your position has shifted, but
15 let's just say the numbers often seem to be slightly different,
16 if I can put it that way.

17 And before we go into the actual numbers, can you please tell us,
18 what is your estimation of the number of people that would have
19 been -- that were killed prior to the fall of Phnom Penh -- prior
20 to April 1975? And let's just say -- we'll pick a window --
21 between the starting of the bombings or slightly thereafter, all
22 the way until '75. Do you have a figure in mind?

23 A. I've seen a figure of half a million, but that was not based
24 on my research. There may be higher figures. That's -- that's a
25 good question, however.

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1 [15.49.40]

2 Q. All right. Now, when you say you saw a figure, was this by a
3 demographer or was this by a historian or journalist, or a
4 combination?

5 A. Oh, this was by demographers, certainly. I didn't -- this is
6 not a figure guessed at by a journalist that I cite.

7 Q. Okay. Now, when you say "demographer", do you have one in
8 mind?

9 (Short pause)

10 [15.50.02]

11 I hate to pin you down, but-

12 A. I mean-- You're taking my pauses for reluctance; it's really
13 because of the light. Here you go. I have no reluctance to answer
14 that question.

15 The two books -- one is "Le Génocide des Khmer rouges". It's by a
16 man with a Polish name, I forget, -- It's Sliwinski , I think.

17 The other is by a man called Patrick Heuveline, who wrote a very
18 good article on -- and his figure that, I think, was -- appeared
19 in one or both of those -- of those published documents. That's
20 why I cite it to you.

21 [15.50.37]

22 Q. All right. And in reading those articles, did you check, by
23 any chance, the sources that they used in coming up with that
24 figure?

25 A. I looked at the -- what they cited, but I had no way of

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1 verifying it. I was -- I respected these two scholars, so I have
2 to put it that way.

3 Q. You respected them because of their reputation or was it
4 because of the journal in which they had published, or because
5 you had heard of them, or a combination of all three?

6 A. (No microphone)

7 Just the level of detail in their arguments and their
8 professional qualifications.

9 Q. Do you know if a census had been done prior to '75? And if so,
10 when was the last census for Cambodia and what was the number?

11 A. I'm certain the last full census was in 1962. The exact figure
12 was in those sources I cited, but they're not in front of me what
13 the population of Cambodia was at that time. This is often used
14 as a base figure for later population figures. I think it was six
15 million, but don't -- that doesn't make me the authority of who
16 said that.

17 [15.52.04]

18 Q. All right. And do you know what census figures these two
19 demographers would have picked for that period, '70 to '75, as a
20 starting point and then, from there, you know, deducting or
21 concluding that up to 500,000 would have perished?

22 A. It just occurred to me they were also being able to cite the
23 work for another demographer called Migozzi, who wrote in French
24 about this period. I haven't been in touch with that book for
25 many years, but I know that was one of the things -- he

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1 extrapolated some of these population figures in what struck me
2 as a fairly professional fashion, so I went along with that.

3 [15.52.56]

4 Q. All right. And have you read his work, by any chance – the
5 gentleman that you just cited, the French demographer?

6 A. Yes, I did. Long ago now, but yes, I did.

7 Q. All right. And was that a book that you used in coming up with
8 your own figures, or were you relying more or less on what others
9 had been writing about as far as the death toll?

10 A. I don't have any -- any demographic talents, so I have to rely
11 on these other people.

12 Q. All right. And that's one of the reasons why I'm asking.

13 Now, we put together a chart and we'll make it available. We have
14 it also in Khmer. I should note to the Trial Chamber that we just
15 put this together.

16 We have all the source material, although some of the source
17 material is not on the case file, although it is by Dr. Chandler.
18 And we're not trying to get the material on, but for illustrative
19 purposes we want to show the different positions that Dr.
20 Chandler has -- or the different numbers he's come up on
21 different occasions.

22 [15.54.20]

23 And because it involves several different documents, we have no
24 objections, Your Honour, to allowing Dr. Chandler to have this --
25 this chart and a copy of the material for him to look over and

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1 then we can get to that area -- or get to that tomorrow morning
2 first thing, if that would be convenient for Dr. Chandler. But
3 I'm in your hands.

4 MR. PRESIDENT:

5 The Prosecution, you may proceed.

6 [15.54.54]

7 MR. ABDULHAK:

8 Mr. President, I'm on my feet just to request that if such a
9 document is to be given Professor Chandler, it should be given to
10 all of the parties and the Chamber and it should refer to the
11 original documents from which these figures are sourced. In that
12 case, we have no objection if those conditions can be complied
13 with.

14 MR. KARNAVAS:

15 Absolutely. We certainly think that everybody should have -- be
16 provided with a copy, and we apologize for not thinking of
17 providing a hard copy to everyone. We can provide -- perhaps, Mr.
18 President, we could provide you with hard copies. I notice that
19 we forgot French. I think French will probably -- although we do
20 have a French lawyer working with us, so we're trying to cover
21 that base as well. Perhaps what we can do is we'll revisit this
22 in the morning. We'll try to provide this information to you
23 before we leave today or before you leave the premises today, so
24 you'll have it, and we can go on first thing in the morning, if
25 that would be more convenient.

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1 MR. PRESIDENT:

2 Counsel, could you provide a detailed specification of the
3 document ID of the document that you intend to show to the
4 expert, and whether you submitted a request for the document to
5 be placed on the case file, and whether the Chamber has decided
6 on its status before you attempt to show the document to the
7 Professor and other parties for the sole purpose of the
8 proceeding tomorrow morning? Could you provide the details of
9 such a document for the Chamber to consider whether the document
10 will be accepted per the proceedings and procedures practised at
11 ECCC?

12 [15.57.16]

13 MR. KARNAVAS:

14 First, let me make sure that -- perhaps I was -- inarticulately
15 put my position forward.

16 We have looked at various documents -- some which are on the
17 file, some which are not -- that Dr. Chandler has generated. From
18 that, we have -- we have come up with a chart to illustrate the
19 point and to guide us through.

20 [15.57.43]

21 The documents that we are trying -- that we are referring to is
22 -- I can give you the ERN number of a document that's not in the
23 file. It's -- Professor Chandler's "Facing the Cambodian Past".
24 It's ERN number -- in English, it's 00822745, in -- to 00822754.
25 Then we have an excerpt from "Tragedy of Cambodian History", and

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1 this is the '93 edition. And this -- I believe we do have a
2 French number on this one. But the English is 00193077, and
3 French is 00824486.

4 And then, again, in the same document, in the introduction,
5 there's 00193084. Then on page 236, which is 00193319, and then,
6 again, page 271, 00193354. So that's from David Chandler's book
7 "Tragedy of Cambodian History: Politics, War and Revolution" and
8 this, as I indicated, was the '93 -- reprinted in '94.

9 There's another document which is not on the file. It's called
10 "Epitaph for the Khmer Rouge". It's in the "New Left Review"
11 published May to June 1994. We have it in all three languages.
12 Khmer is 00820894; English, 00813915; and French, 00823369.

13 [16.00.34]

14 Then there's "Voices from S-21". This is already in. It's
15 D108/39/2, and this is the 1999 edition. And it's Khmer,
16 00191825; English, 00192672; French, 00357259.

17 Then there's "Brother Number One", and this is the 1992 version.
18 And the pages are, Khmer, 00821668; English, 00818412. Then
19 there's "Brother Number One" again. This is the 1999 version. I
20 have the Khmer -- the English ERN number is 00392918.

21 There's an article from -- in The Ethics in International Affairs
22 Annual Journal, Carnegie Council on Ethics in International
23 Affairs, article by Dr. Chandler, "Will There Be a Trial for the
24 Khmer Rouge". This is not in evidence in the file, but it has
25 been provided so everyone should have it, and the pages are,

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1 Khmer--

2 MR. PRESIDENT:

3 Counsel, I think we are confused now that -- as the President I
4 am ambivalent as to what you are doing now because we wish to
5 know the documents you would like to put before the Chamber or
6 presented to the witness and parties to the proceeding.

7 [16.03.18]

8 May we know whether the documents intended to be put before the
9 Chamber have already been placed or -- before the Chamber for
10 this purpose? And you indicated that the documents -- some of
11 which are already on the file while the others not yet on the
12 file.

13 You refer to documents ERN numbers. Could you please be more
14 precise as to whether the ERN's in French, in Khmer or in
15 English?

16 We believe that parties have already been well informed of how to
17 proceed with the filing of documents and indeed, if the documents
18 are of new nature then they -- the rule of Rule 87.4 shall be
19 abided, whether the documents will be allowed for examination or
20 not.

21 And at the same time, counsel is advised to advise the Chamber
22 whether the documents have already been on the file proposed by
23 another party. By doing so, we believe that we can save a lot of
24 time and that we are less ambivalent.

25 [16.05.02]

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1 So, please, Counsel, be prepared on that and you -- by doing so,
2 you would be brief and that we will be certain as to the
3 identification of the document, in particular the documents meant
4 to be put before the Chamber for tomorrow's examination.

5 Judge Silvia Cartwright, you may also add some further points for
6 the sake of clarification so that counsel is fully informed and
7 that the Chamber has the ground for our discussion or decision
8 for tomorrow's session.

9 JUDGE CARTWRIGHT:

10 Thank you, President.

11 Mr. Karnavas, you've read out an extremely long list of
12 documents. Before you can use them tomorrow, the Chamber must
13 know whether those documents are on the case file and whether
14 they have been put before the Chamber because, as you are well
15 aware, the Chamber's consistent ruling is that if they have not
16 been put before the Chamber then a Rule 87.4 application must be
17 filed in writing.

18 So I think the Chamber wishes to interrupt this very long
19 rehearsal of documents so that we can get to the ones that can be
20 used validly in putting questions to this expert. And I suspect
21 that the President would want that information before you begin
22 tomorrow morning, and you can anticipate the Chamber's ruling if
23 the documents have not been put before the Chamber that you must
24 make a Rule 87.4 application. Placing them on the daily trial
25 file is not sufficient. Thank you.

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1 [16.07.16]

2 MR. KARNAVAS:

3 Just one point of clarification. We will revise our little chart
4 to reflect all of that, Your Honours. Assuming -- assuming that a
5 document is -- has not been placed on the file, can we,
6 nonetheless, pose a question to Professor Chandler that
7 elsewhere, for instance, you have noted that it's .13 million as
8 opposed to .15 or .17, or one in eight as opposed to one in
9 seven? Can - would we be allowed to do that if the purpose is to
10 get the gentleman to testify as to what he has written in the
11 past? That's why I laid the foundation concerning these numbers
12 in demography.

13 Then I don't see the problem in simply asking him whether he has
14 had different numbers on different occasions and give him an
15 opportunity to explain. But I'm at your -- I'm in your hands.

16 [16.08.30]

17 JUDGE CARTWRIGHT:

18 Yes. Thank you, President.

19 As the Chamber has ruled previously, you may use documents that
20 have not been put before the Chamber as a means of -- as the
21 basis for putting questions to the expert but you may not
22 identify the documents, or else we simply have to go through the
23 whole process of authentication, distribution, and all of those
24 issues, giving adequate notice to the parties.

25 So you may use them as the basis for putting questions, no more

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1 than that. I know it's subtle, but this is the situation we are
2 in with the huge numbers of documents that the Trial Chamber is
3 faced with and of course, the parties are faced with as well
4 And it would be preferable if you would give us your little chart
5 today rather than spend time on it before we begin questioning
6 the witness -- the expert in the morning -- before you return to
7 questioning the expert in the morning. Thank you.

8 [16.09.41]

9 MR. KARNAVAS:

10 I know it's late, and I fully understand.
11 The chart -- in light of your ruling, I will need to revise it,
12 because now, in light of the ruling I see that perhaps it needs a
13 little bit of revision.
14 But another point of clarification. To be fair to the parties and
15 to be fair to Dr. Chandler, without putting something in, would
16 we be permitted to at least have a physical copy in the event
17 that Dr. Chandler wished to see whether in fact this is the
18 figure that he put down? I know this is sort of subtle, but I'm
19 trying.

20 JUDGE CARTWRIGHT:

21 No. The short answer is you would still need to make an
22 application to put that document before the Chamber and have
23 argument on it at a later stage. Thank you.

24 MR. PRESIDENT:

25 International Co-Prosecutor, you may now proceed.

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1 [16.10.50]

2 MR. ABDULHAK:

3 In the interest of cooperation among all the parties, we've been
4 looking through the various filings, and counsel's application
5 E172/24/3 refers to, as far as we can tell, at least two of the
6 documents. That was an 87.4 application. So at least two of the
7 documents have already been the subject of an application. That
8 was E172/24/3, and then counsel also made a second application,
9 E172/24/5, which doesn't seem to relate to the documents being
10 cited now, but I just wanted to share those for everyone's
11 benefit.

12 (Judges deliberate)

13 [16.15.29]

14 MR. PRESIDENT:

15 Since it is now appropriate for the adjournment, nonetheless,
16 counsel for Ieng Sary already raised some documents to be put for
17 examination before -- during tomorrow's sessions, and due to the
18 fact that there is a late submission of the lists of documents,
19 the Chamber therefore rules that counsel for Ieng Sary prepare
20 the list of the documents to be provided to the Chamber through
21 the greffiers before the commencement of tomorrow's session.
22 Thank you very much, Dr. Chandler. It is now appropriate time for
23 the adjournment. We are 15 minutes past the normal break time,
24 and we thank you very much indeed, Doctor, for your time.

25 [16.16.55]

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1 And we note that, indeed, we are 15 minutes late concerning the
2 adjournment of today's hearing. We will adjourn the hearing and
3 the next sessions will be resumed by 9 o'clock as usual.

4 Tomorrow's sessions will begin with the questions by counsel for
5 Mr. Ieng Sary.

6 Dr. Chandler, the Chamber has not yet completed your testimony
7 session, so you are invited to come back to the courtroom
8 tomorrow.

9 And the court officer is also now instructed to ensure that
10 Professor Chandler be well assisted during the adjournment and
11 that he be returned to the courtroom by 9 a.m.

12 Security personnel are now instructed to bring all the three
13 accused persons to the detention facility and have them returned
14 to the courtroom Tuesday, the 24th of July, by 9 a.m.

15 The Court is adjourned.

16 (Court adjourns at 1618H)

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