



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

ORIGINAL/ORIGINAL

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TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

10 July 2013

Trial Day 208

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

The Accused: NUON Chea
KHIEU Samphan

Lawyers for the Accused:

SON Arun
Victor KOPPE
KONG Sam Onn
Arthur VERCKEN

Trial Chamber Greffiers/Legal Officers:

SE Kolvuthy
Roger PHILLIPS
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Lawyers for the Civil Parties:

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INDEX

MR. STEPHEN HEDER

Questioning by Mr. Raynor page 25

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE CARTWRIGHT	English
MR. HEDER	English
MR. KOPPE	English
JUDGE LAVERGNE	French
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. RAYNOR	English
MS. SIMONNEAU-FORT	French
MR. VERCKEN	French

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 During today's sessions, the Chamber continues to hear the

6 testimony of Mr. Heder.

7 Ms. Se Kovulthy is now directed to report to the Chamber the

8 current status of the parties to the proceedings today.

9 THE GREFFIER:

10 Good morning, Mr. President and Your Honours.

11 All the parties to the proceedings are present. Mr. Nuon Chea is

12 present in his holding cell downstairs as ruled by the Chamber

13 due to his health concerns.

14 And today, the Chamber is hearing the testimony of Mr. Steve

15 Heder who is right in the courtroom. We do not have a reserve

16 witness for today.

17 MR. PRESIDENT:

18 Thank you, Ms. Se Kolvuthy.

19 We would like to now hand over to the Prosecution to continue

20 putting questions to Mr. Heder. You may now proceed – please hold

21 on; the–

22 Counsel Koppe, you're on your feet; you may now proceed.

23 [09.04.15]

24 MR. KOPPE:

25 Thank you, Mr. President. Good morning, Your Honours. Good

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1 morning, Counsel. Good morning, everyone in the courtroom.

2 Mr. President, I am sorry, I apologize to pre-empt my friends
3 from the Prosecution, but we have an urgent request based on what
4 we believe is extraordinary new information; information that we
5 received in the closing minutes of yesterday's hearing.

6 This information has, in our view, far reaching implications for
7 this trial and pertains also directly to Mr. Heder's testimony.
8 My submission will only take 10 minutes of the Court's time and
9 we feel it's very important, so hopefully you will allow me to
10 make this brief submission.

11 (Judges deliberate)

12 MR. RAYNOR:

13 Mr. President, I am sorry to interrupt, but can I say that I have
14 had absolutely no advance notice of this. The courtesy's at the
15 bar are that advance notice should be given of such applications
16 even if in outline.

17 (Judges deliberate)

18 [09.06.19]

19 MR. PRESIDENT:

20 Judge Cartwright, you may now proceed please.

21 JUDGE CARTWRIGHT:

22 Yes, the Chamber just has some queries, Mr. Koppe. First of all,
23 is this a matter that concerns this witness? Should it be dealt
24 with in his absence; should it be dealt with in closed court and
25 that it might have helped had you told the prosecutors because

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1 you've known since last evening? So we could have had some
2 information to allow us to make these arrangements. So perhaps
3 you could comment on that?

4 [09.07.06]

5 MR. KOPPE:

6 I understand your questions Judge Cartwright. It was up until the
7 last moment that we were discussing within our team what to do
8 with this new information that has come to light. I feel it might
9 be better to present our submissions in the absence of this
10 particular witness, although on the other hand, this witness is
11 not somebody who we think would change his testimony after he has
12 heard what I am about, hopefully, to unfold. But if-

13 JUDGE CARTWRIGHT:

14 Well, this is very melodramatic. Either we close the courtroom
15 and dispose of this matter quickly or you continue to do it
16 publicly. Which is better and because neither the Chamber nor the
17 prosecutors have any idea what it is you want to talk about now.
18 We have to be guided by you and I'd like it done quickly, please.

19 [09.08.13]

20 MR. KOPPE:

21 Then, of course, I prefer I to do it in open court. We are in an
22 open court, it's a public trial and requests I think should be
23 made in an open trial at a public Court. Justice must be done,
24 but also must be seen to be done, as you know. So I feel we
25 should make this application and the submission in an open court.

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1 MR. RAYNOR:

2 Judge Cartwright, can I please be heard on this? This is not, in
3 my respectful submission, something that should be dealt with in
4 open court. If these are issues pertaining to this witness, he
5 does not need to whilst their done. Correct and proper procedure
6 is that the witness should retire and I strongly urge the Court
7 to allow the witness to retire whilst this legal argument takes
8 place. If it's to do with him, he does not need to be here. If it
9 is a legal argument, then it can proceed with lawyers making
10 submissions. In my respectful submission, Mr. Heder does not need
11 to be here.

12 MR. KOPPE:

13 If I may quickly reply, Mr. President; it has nothing to do with
14 the person of this witness. It has something to do about the
15 topics of his possible testimony.

16 (Judges deliberate)

17 [09.11.12]

18 MR. PRESIDENT:

19 After noting the application lodged by counsel for Mr. Nuon Chea
20 regarding the topic before us today, the Chamber notes that such
21 a hearing shall be conducted in closed session. Mr. Steve Heder
22 is now directed to be taken to his waiting room and that he would
23 be returned to the courtroom after the session to rule upon the
24 application by counsel for Mr. Nuon Chea is properly addressed.
25 And the Chamber would like to order that the AV booth, rather the

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1 Court officer is now directed to ensure that there is no – Court
2 officer is now directed to ensure that the curtain is drawn
3 closed and that no sound should be connected to the public
4 gallery.

5 The public is now informed that after this closed session, the
6 normal court proceedings and video feeding and audio visual link
7 will be reconnected to the general public. And the Chamber has to
8 rule upon this immediately because the Chamber has not been
9 informed in advance regarding the application counsel's for Mr.
10 Nuon Chea who would like to address it. Mr. Steve Heder, you may
11 now please leave the courtroom temporarily.

12 (Mr. Stephen Heder exits the courtroom)

13 [09.13.20]

14 And, Judge Silvia Cartwright, you would like to have the floor;
15 you may now proceed.

16 Court officer is again directed to make sure that the courtroom –
17 the curtain of the courtroom is now drawn closed.

18 JUDGE CARTWRIGHT:

19 Yes. I simply wish to add that as soon as it becomes clear that
20 this hearing can continue in public, that will occur and secondly
21 that the public will be informed of what has transpired as soon
22 as we have the information that should have been given to us in
23 advance. Thank you.

24 MR. KOPPE:

25 Thank you, Mr. President, and thank you, Judge Cartwright. The

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1 information-

2 MR. PRESIDENT:

3 Mr. Koppe, could you please hold on? We may need to address the
4 technical difficulty because we make sure that there is no
5 audio-visual link to the public gallery before we can proceed
6 properly. Please hold on.

7 [09.14.58]

8 The Chamber wishes to inform parties to the proceeding that due
9 to a technical glitch, it would be difficult for the interpreters
10 to see us and for that we may need to re-open the curtain of the
11 courtroom so that the interpreters could see the actual
12 proceedings; and that will help them in their interpreting.
13 After the public and the people in the public gallery are brought
14 out of the place, then the curtain will be re-opened.

15 MR. KOPPE:

16 Mr. President, there seems to be one additional technical issue
17 and that is because the AV system is cut off , also there's no
18 sound and image going to the holding cell. So, Nuon Chea doesn't
19 know what we're about to submit because simply we didn't have
20 time to speak to him about it. But of course, it's important that
21 he hears it.

22 MR. PRESIDENT:

23 We have dealt with this. We just disconnected the sound and
24 picture to the public gallery and we believe that the
25 audio-visual link to Mr. Nuon Chea, should not - shall not be

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1 disconnected. That's what we believe and if there is any
2 interruption to this, then Court officer is now directed to
3 ensure it is properly checked.

4 Counsel Koppe, you may now proceed.

5 [09.19.10]

6 MR. KOPPE:

7 Thank you, Mr. President.

8 Mr. President, the information we received yesterday was in the
9 form of an email from Rob Lemkin. As the Chamber knows, Mr.
10 Lemkin co-wrote the screenplay for "Enemies of the People" and
11 the related film, "One Day At Po Chrey." This email was delivered
12 to my colleague, Michiel Pestman, who transmitted it at 16.39
13 yesterday to our legal consultants who in turn, forwarded it to
14 me. The email was unsolicited. We have just right now, a few
15 minutes ago, forwarded the email to the Chamber and all of the
16 parties. And the full text of that email reads as follows - and I
17 quote:

18 [09.20.01]

19 "Dear Victor," that's me, "From reading the 'Phnom Penh Post''s
20 account of the trial proceedings yesterday, it seems there may
21 have been a misunderstanding about what Nuon Chea said in our
22 DVD. He did not emphasize, not agree that top Lon Nol officers
23 had been killed. What he said was that half a dozen Lon Nol
24 cabinet and top officials had been put through revolutionary due
25 process and condemned to death by a military tribunal which, from

8

1 memory, Nuon Chea was not part of. It should be added that Radio
2 Phnom Penh, the official state radio station broadcast
3 announcement of these executions at the time and gave the same
4 rationale as Nuon Chea does in our DVD. Nuon Chea does not admit
5 direct responsibility for executing the Lon Nol cabinet members;
6 rather he asserts that the rationale was correct. Of course, that
7 rationale is no different from U.S. killing Bin Laden, etc.

8 [09.21.24]

9 I hope that the evidence to the Court makes it clear that there
10 really is little prosecutorial value in what is reported to have
11 been used of our film in this instance."

12 Now, the important part, Mr. President, comes – and I quote:

13 "By the way, regarding Po Chrey, this was a massacre ordered by
14 Ros Nhim, not Central Command. We have amassed a wealth of
15 evidence about Nhim's agenda that have so been far unable to
16 complete our second film due to Thet Sambath being in the U.S.
17 for personal reasons.

18 "Yours sincerely, Rob Lemkin."

19 Now, Mr. President, Your Honours, this information is obviously
20 extremely important, but let me explain exactly why and how it
21 relates to Mr. Heder's testimony.

22 First, Mr. Lemkin may be in possession of information that is
23 directly exculpatory for Nuon Chea as to the charges at Tuol Po
24 Chrey. If indeed Mr. Lemkin possesses this information, and if it
25 shows what he claims, that it would vindicate exactly the

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1 position we have taken for months, including in our submissions
2 just two days ago, and it even involves Ros Nhim, whose
3 responsibility for the events at Tuol Po Chrey, we have
4 previously explored before the Chamber.

5 [09.23.09]

6 Second, the evidence Mr. Lemkin claims to have concerning Ros
7 Nhim directly corroborates the position we have taken countless
8 times for years about command structures in Democratic Kampuchea
9 and the role of zone leaders. That information, Mr. President,
10 relates directly to Mr. Heder whose analysis has previously been
11 central to our claims in that specific regard. And it appears
12 that the list of Mr. Heder's interviews provided by the
13 Prosecution yesterday include numerous interviews with cadres
14 from the Northwest Zone. Now, Mr. Heder is therefore likely to be
15 in a position to give testimony concerning the same facts as Mr.
16 Lemkin.

17 And third, Mr. President, Mr. Lemkin may be in a possession of
18 information that is directly exculpatory for our client in
19 relation to the alleged execution of top Lon Nol officials, which
20 the Prosecution yesterday says is within the scope of this trial.
21 More to the point Mr. Lemkin may be able to explain that the
22 video that he, himself, produced and which the Prosecution relies
23 on for inculpatory purposes is in fact exculpatory. That
24 testimony would vindicate the submissions previously made by the
25 defence for Khieu Samphan in relation to the admissibility of

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1 this video and by us two days ago in relation to its probative
2 value. Specifically, whether it is a partial and selective
3 treatment of thousands of hours of tape.

4 [09.24.56]

5 Now, Mr. President, Your Honours, in light of all this we have
6 three related requests. First, we ask the Chamber to admit this
7 email as evidence pursuant to Rule 87, paragraph 4. It was
8 previously unavailable and is clearly relevant and it is also
9 similar in form to Thet Sambath's book, which the Prosecution has
10 relied on extensively. Second, we request that the Chamber
11 summons Mr. Lemkin to appear before the Chamber and/or undertake
12 further investigation pursuant to Rule 93. And third, we seek an
13 immediate adjournment of Mr. Heder's testimony pending the
14 outcome of that investigation. An adjournment is necessary so
15 that we have as full a record as possible prior to questioning
16 Mr. Heder on this subject of central crucial relevance to this
17 trial.

18 Thank you, Mr. President.

19 (Judges deliberate)

20 [09.27.23]

21 MR. PRESIDENT:

22 Mr. Co Prosecutor, could you please be seated for a moment,
23 please.

24 The Chamber has already noted the request and application by Mr.
25 Victor Koppe, International Co Counsel for Mr. Nuon Chea. The

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1 Chamber notes that the application is more about admitting, the
2 request for the Chamber to admit this new piece of evidence and
3 new witness, based on the email counsel had obtained very
4 recently. And since this part of the proceeding were not warrant
5 a more closed session, then we would like this matter to be
6 addressed in a public session instead.

7 And Mr. Koppe, when the session is now back in public, we would
8 like you revisit it, but this time in a version where the public
9 can be informed, because that would be also good for our
10 proceedings.

11 And the AV booth officials are now directed to ensure that the
12 audio-visual link and – are now reconnected to the public gallery
13 and to the public.

14 Security personnel are now directed to bring in all the
15 observers, the people who would like to attend this proceeding in
16 the public gallery.

17 [09.29.20]

18 MR. KOPPE:

19 Mr. President, just a quick question. Are you saying that I
20 should use, not Mr. Lemkin's name use a number, or is that not
21 necessary? I can repeat exactly word for word what I have just
22 said, is that what you're saying?

23 MR. PRESIDENT:

24 As in principle, it would be good if you can also maintain the
25 pseudonym used for the witnesses, and we will make sure we can

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1 exercise this until the moment he or she is called.

2 Mr. Koppe, indeed you will have about five minutes to prepare for
3 this, because it's also important that the AV unit needs this
4 amount of time before everything is now reset to the normal
5 courtroom proceedings.

6 (Short pause)

7 [09.32.15]

8 Mr. Victor Koppe, you may now proceed.

9 MR. KOPPE:

10 Thank you, Mr. President.

11 The information, Mr President, Your Honours, received - we
12 received yesterday, the urgent - new information, was in the form
13 of an email from a person to whom we refer to as TCW 382. As the
14 Chamber knows, TCW 382 co wrote the screenplay for "Enemies of
15 the People" and the related film, "One Day at Po Chrey". This
16 email was delivered yesterday at 16.39 to my colleague, Michiel
17 Pestman, who transmitted the email to our legal consultants who
18 in turn forwarded it to me.

19 TCW 382's email was unsolicited. We have just forwarded the email
20 to the Chamber and to all of the parties, and the full text of
21 TCW 382's email reads as follows - and I quote:

22 [09.33.41]

23 "Dear Victor, from reading the Phnom Penh Post's account of the
24 trial proceedings yesterday, it seems there may have been a
25 misunderstanding about what Nuon Chea said in our DVD. He did

13

1 not" - emphasize not - "he did not agree that top Lon Nol
2 officers had been killed. What he said was that half a dozen Lon
3 Nol cabinet and top officials had been put through revolutionary
4 due process and condemned to death by a military tribunal, which
5 from memory, Nuon Chea was not part of.

6 It should be added that Radio Phnom Penh, the official state
7 radio station, broadcast announcements of these executions at the
8 time and gave the same rationale as Nuon Chea does in our DVD.
9 Nuon Chea does not admit direct responsibility for executing the
10 Lon Nol cabinet members; rather, he asserts that the rationale
11 was correct. Of course, that rationale is no different from U.S.
12 killing Bin Laden, etc.

13 "I hope that the evidence to the Court makes it clear that there
14 really is little prosecutorial value in what is reported to have
15 been used of our film in this instance."

16 [09.35.16]

17 And now, Mr. President, the important part from the email, and it
18 says - I quote:

19 "By the way, regarding Po Chrey, this was a massacre ordered by
20 Ros Nhim, not Central Command. We have amassed a wealth of
21 evidence about Nhim's agenda, but have been so far unable to
22 complete our second film due to Thet Sam - yeah, due to the co
23 producer being in the U.S. for personal reasons.

24 "Yours sincerely, TCW 382."

25 Your Honours, this information, this new information which has

14

1 come to light, is obviously extremely important, but let me
2 explain exactly why and how it relates to Mr. Heder's testimony.
3 First, TCW 382 may be in possession of information that is
4 directly exculpatory for Nuon Chea as to the charges at Tuol Po
5 Chrey. If indeed TCW 382 possesses this information, and if it
6 shows what he claims, it would vindicate exactly the position we
7 have taken for months, including in our submissions just two days
8 ago, and it even involves Ros Nhim, whose responsibility for the
9 events at Tuol Po Chrey we have previously explored before the
10 Chamber.

11 [09.36.58]

12 Second, the evidence TCW 382 claims to have concerning Ros Nhim
13 directly corroborates the position we have taken countless times
14 for years about command structures in Democratic Kampuchea and
15 the role of zone leaders. That information relates directly to
16 Mr. Heder whose analysis has previously been central to our
17 claims in that regard. It appears that the list of Mr. Heder's
18 interviews provided by the Prosecution yesterday include numerous
19 interviews with cadres from the Northwest Zone. Mr. Heder is
20 therefore likely to be in a position to give testimony concerning
21 the same facts as TCW 382.

22 Third, Mr. President, TCW 382 may be in a possession of
23 information that is directly exculpatory for our client in
24 relation to the alleged execution of top Lon Nol officials, which
25 the Prosecution says is within the scope of this trial.

15

1 More to the point, TCW 382 may be able to explain that the video
2 that he, himself, produced and which the Prosecution relies on
3 for inculpatory purposes is in fact exculpatory. That testimony,
4 the testimony of TCW 382, would vindicate the submissions
5 previously made by the defence for Khieu Samphan in relation to
6 the admissibility of this video and by us, of course, two days
7 ago in relation to its probative value. Specifically, Mr.
8 President, that is a partial and selective treatment of thousands
9 of hours of tape.

10 [09.39.01]

11 And in light of all this, of this new information, Mr. President,
12 we have three related requests.

13 First, we ask the Chamber to admit this email as evidence, as new
14 evidence, pursuant to Rule 87, paragraph 4. The email was
15 previously unavailable to us and is clearly very relevant and it
16 is also similar in form to Thet Sambath's book, which the
17 Prosecution has relied on extensively.

18 Second, we request that the Chamber summons TCW 382 to appear
19 before the Chamber and/or undertake further investigation
20 pursuant to Rule 93.

21 And third, we seek an immediate adjournment of Mr. Heder's
22 testimony pending the outcome of that investigation. An
23 adjournment is necessary so that we have as full a record as
24 possible prior to questioning Mr. Heder on this subject of
25 central and crucial relevance to this trial.

16

1 Thank you, Mr. President.

2 MR. PRESIDENT:

3 Thank you, Counsel.

4 Mr. Prosecutor, you may proceed.

5 [09.40.30]

6 MR. RAYNOR:

7 Thank you, Mr. President. Good morning, Mr. President and Your
8 Honours.

9 Mr. President, I thought that the era of devices and stunts from
10 the Defence had come to an end with the previous defence team.

11 The submission you have just heard shows that devices and stunts
12 are still very high on the agenda of the Nuon Chea defence team.

13 In my respectful submission, it is nothing short of scandalous to
14 make an application to this Court, and I deal with the third one,

15 to adjourn the testimony of Mr. Heder. To seek to adjourn his
16 testimony on the grounds that the Defence have an email from

17 somebody who was a producer of a film who was not present when
18 Nuon Chea was being spoken to, and was giving commentary about

19 what Nuon Chea said on the DVD, that's entirely not a matter for

20 Mr. Lemkin, it's a matter for you. You have the DVD on the case

21 file, you can see and hear what Nuon Chea said, you do not need a
22 scrap of assistance from Mr. Lemkin.

23 [09.42.05]

24 He may be in possession of information, if he possesses the

25 information. We don't know what the information is about Ros

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1 Nhim. If the Defence are in possession of the information call
2 it, or make an application to call it. Don't come before the
3 Court asking to adjourn the testimony of a witness because we may
4 have some information that may be relevant. It may be entirely
5 irrelevant. He claims to have information that directly
6 corroborates something.

7 And then we have Mr. Heder introduced as the sideshow to this
8 application, trying desperately somehow to link the producer of
9 this film with Mr. Heder.

10 And then we have the further problem for the Defence, talking
11 about Mr. Heder's analysis. Mr. Heder is not here to provide you,
12 Judges, with analysis, because analysis comes from experts. He is
13 not an expert witness. He cannot give you an analysis because an
14 analysis is about the interpretation of facts, not what the facts
15 are and what evidence goes to support the facts.

16 [09.43.37]

17 The producer, talking about partial and selective information.

18 This, in my respectful submission, is an attempt to try and
19 package a routine Section 87.4 application and trying to make it
20 stick to Mr. Heder. That, in my respectful submission, is
21 dishonest at worst, and disingenuous at best.

22 Can I deal with the three particular points? Do you admit the
23 email?

24 Well, what if the Prosecution said we've got an email who says -
25 we've got an email from somebody who says another film on the

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1 Court's archive doesn't properly reflect what somebody said on
2 the film. It's ridiculous. What was said on the film is shown on
3 the film. You don't need anybody else's interpretation or to help
4 you whether there was a misunderstanding. And I stress,
5 especially from somewhere – someone who was not even present when
6 this interview was taken. He's the producer. He's not even there.
7 He can't help you with what was said. It's shown on the DVD. So
8 what evidential purpose, what relevance does this email have, and
9 the answer is absolutely none.

10 And then an email comment: "[There's] really little prosecutorial
11 value..." He's not here to comment on the Prosecution. He's not a
12 witness who can help this Court. See through this charade for
13 what it is. It's showboating. It's a device. It's a stunt,
14 another stunt from the same team.

15 [09.45.46]

16 Courts are about applications and evidence; they're not about
17 showboating for the press or making stunts in this Court. This
18 email cannot help you at all in ascertaining the truth, and I
19 invite you to reject now, not in a weeks' time, not in due
20 course, reject now, orally, this application. This email has no
21 use. If the Defence want to come with a lever arch file of
22 statements relevant to Ros Nhim, relevant to implementation at
23 Tuol Prey – Tuol Po Chrey, then bring them to the Court. Don't
24 try and ask for adjournments on speculative evidence.
25 We don't even know what they have, and the email talks about

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1 we've got a wealth of evidence about Ros Nhim's agenda. You're
2 not interested in agendas; you're interested in this case with
3 Tuol Po Chrey about what actually happened at Tuol Po Chrey, not
4 what agendas were. If the Defence have the material, get it and
5 make a proper application. Don't try and interrupt this witness
6 with this device.

7 Secondly, summoning TCW 382, to say what? I was the producer of a
8 film and I want to tell the Court that what's shown on the film
9 there's been a misunderstanding? It's a nonsense. If the Defence
10 want to come up with a reason why he can give direct evidence
11 that helps you then do so.

12 [09.47.40]

13 I'm reminded by my learned colleague who sits next to me, here's
14 the flavour of Mr. - here's the flavour of the producer of this
15 film. We asked him to provide or OCIJ asked him to provide the
16 film. No, I refuse. How did OCP get this film? Mr. President, it
17 was purchased off "Amazon", on the Internet. This person cannot
18 assist this Court on the current information. If there's the Ros
19 Nhim binders containing relevant and admissible evidence, that
20 may be another thing, but at this stage summoning a witness would
21 be inviting a witness into "Alice in Wonderland".

22 And then the most egregious part of this application, the third
23 part, to seek to adjourn Mr. Heder's testimony because he's taken
24 perhaps some statements from Northwest Zone soldiers, who we
25 might have some evidence about but we're not sure, because we

20

1 don't know what's being said about Ros Nhim. If the Defence want
2 to put questions to Mr. Heder, not about his analysis of Tuol Po
3 Chrey, because that's impermissible, if they want to put evidence
4 about something he has written about Tuol Po Chrey, get on and do
5 it.

6 [09.49.25]

7 I stress what you have said in three emails to the parties. The
8 purpose of Mr. Heder's testimony is for him to give testimony on
9 books and articles authored by him, interviews conducted by him,
10 and matters of which he has a direct personal involvement. He is
11 not here to give analysis about Tuol Po Chrey or analysis or
12 opinion evidence about any other matter.

13 I stress that I ask you to deal with this matter now,
14 peremptorily, quickly, and consign all three of these
15 applications to where they belong. Let's stop the devices and get
16 on with the evidence.

17 MR. PRESIDENT:

18 Mr. Koppe, please hold on.

19 Madam Lead Co Lawyer for the civil parties, you may proceed.

20 [09.50.45]

21 MS. SIMONNEAU-FORT:

22 Yes, thank you, Mr. President. Good morning to you. Good morning
23 to Your Honours. Good morning to everyone.

24 I would like to add a few words to what was said by the
25 Prosecutor, and I will say first of all that I entirely support

21

1 him as well as his position regarding the three requests made by
2 the Nuon Chea defence. I must say that I'm quite flabbergasted by
3 this submission this morning, even if I understood since
4 yesterday that at this juncture in the trial, anything could be
5 possible and anything could be requested, whether this is
6 grounded or not.

7 [09.51.27]

8 And I am flabbergasted also by the means used – that is to say to
9 – warning us at the last minute, without giving us the slightest
10 piece of information on the submission that was going to be made.

11 I also must say that I am – and to speak lightly, somewhat
12 distrustful of this email coming from nowhere, at the very last
13 moment, coming from someone who is a producer and now who is
14 being presented as a co-author. And who suddenly would be coming
15 to give his opinion in a serious, judicial proceeding taking
16 place for the past 18 months.

17 There is a film on the case file; a film that was not visioned
18 (sic) – that has been seen since the beginning, piece by piece,
19 that everyone can watch and that is essentially in the Khmer
20 language, with Mr. Nuon Chea's face being featured and Mr. Nuon
21 Chea speaking Khmer. And now, suddenly, we have a producer of
22 this film who allegedly would be telling us what Nuon Chea is
23 telling us when you see him. Well, this is completely,
24 extraordinarily wrong.

25 [09.52.49]

22

1 I find this completely off the track and I am surprised to see
2 that this film is being – that this is being considered. The film
3 is there and the Chamber can form its own idea without extra
4 comments; comments from a man who is not a jurist and who is not
5 participating in these serious judicial proceedings. My comments
6 also pertain to the film "One Day at Tuol Po Chrey", which we
7 have here, again, seeing people speaking Khmer in the film
8 without the name Ros Nhim being mentioned, unless I'm mistaken.
9 No matter what, I believe that the slightest thing to do to give
10 a semblance of pertinence to my – to the Defence's application is
11 to submit a written submission pursuant to Article 87.4 to try to
12 support this submission. This is what they should have done. They
13 should have explained to us how an email such as the email that
14 we have just heard right now, very, very, rapidly, could justify
15 that an extra piece of evidence would be put before the Chamber
16 and that extra testimony be requested.

17 [09.54.14]

18 My colleague chose another path. He is asking you to rule today
19 on an oral submission and I am asking the Chamber, in fact, to do
20 so as quickly as possible and not to offer him the possibility
21 that he did not use earlier to make a written submission. Since
22 the request is oral, the Chamber may rule on it now and I believe
23 that based on what the Co-Prosecutor said, – and I support
24 entirely what he's saying – the Chamber can reject the oral
25 submission and reject the request that this email be put before

23

1 the Chamber. This is not a serious submission and the Chamber
2 should reject this submission. Of course, I am asking the Chamber
3 also to reject the request to have this producer testify before
4 the Court.

5 And finally, I am still trying to understand the reasons that may
6 justify us adjourning Mr. Heder's testimony. We are all going to
7 put questions to him for a sufficient amount of time. If the
8 Defence wishes to put questions on this topic to the witness, it
9 may do so but I feel that asking now to adjourn Mr. Heder's
10 testimony is quite clear – clearly reflects the Defence's
11 intents, which is to postpone these hearings as much as possible.
12 I am asking, of course, for the Chamber to reject the third
13 request, which is absolutely groundless. Thank you.

14 [09.56.10]

15 MR. PRESIDENT:

16 Thank you.

17 Mr. Victor Koppe, you may proceed.

18 MR. RAYNOR:

19 President, there is not a right of reply, in my respectful
20 submission. He's made his submissions and we've made ours.

21 MR. KOPPE:

22 Fine, Mr. President; I haven't heard, actually, anything
23 interesting-

24 (Judges deliberate)

25 [10.01.40]

24

1 MR. PRESIDENT:

2 The Chamber would like to hand over to Judge Sylvia Cartwright
3 regarding the ruling by the Bench regarding the application made
4 by counsel for Mr. Nuon Chea.

5 In his request, counsel for Mr. Nuon Chea made these and now we
6 would like to hand over to Judge Sylvia Cartwright to do – to
7 address this. And for the time being, we would like to pause the
8 hearing of the testimony of Mr. Steve Heder temporarily.

9 JUDGE CARTWRIGHT:

10 Yes, thank you, President.

11 The Chamber has decided as follows; that it will not adjourn the
12 testimony of the witness Steve Heder. Secondly, that the
13 information provided thus far by counsel for Nuon Chea does not
14 satisfy the Chamber that it fulfils the requirements of Rule
15 87.4.

16 However, if the Nuon Chea defence team wishes to make an
17 application in writing, pursuant to Rule 87.4, then that should
18 be done by Monday at 2 p.m. and should clearly identify which new
19 evidence it wishes to place before the Chamber. Because of the
20 brevity of time given for filing, this application, if filed, may
21 be filed in English only, to be followed by Khmer as quickly as
22 possible. President, does that encompass the ruling that you wish
23 to make? Thank you.

24 [10.03.54]

25 MR. PRESIDENT:

25

1 Thank you.

2 Court officer is now directed to bring in Mr. Steve Heder back
3 into the courtroom so that we can hear his testimony.

4 (Mr. Stephen Heder enters the courtroom)

5 Thank you, Mr. Heder. Could you please be now reminded that -
6 please keep your distance from your distance from this console,
7 at this pace, so that your responses to all questions will be
8 properly rendered.

9 And we would like to continue hearing your testimony and the
10 questions shall be now proceeded by the Prosecution. You may now
11 proceed.

12 [10.05.58]

13 QUESTIONING BY MR. RAYNOR RESUMES:

14 Thank you, Mr. President.

15 Q. Good morning again, Mr. Heder. I'd like to start by
16 revisiting, in a little more detail, the time in 2005 when you
17 led a SOAS team, collecting evidence in Cambodia.

18 Now, can you help us on how interviews were conducted? What I
19 mean is was there a consistent instruction on question and
20 answers, note taking, how the information was gathered, how the
21 statements were produced? Can you just help us on that part,
22 please?

23 MR. HEDER:

24 A. Again, I think it requires a bit of clarification as regards
25 academic work. It's a bit of a misnomer to describe it as SOAS

1 work. Academics aren't members of disciplined units or
2 organizations that operate according to established internal
3 rules or procedures. We're individual intellectuals, if you will,
4 who function in those individual capacities.

5 [10.07.29]

6 So there's no - for example - oversight by a head of department
7 or another member of the SOAS structure, as regards the work of
8 any particular academic. So there were - in that sense, there are
9 no set rules. There are the sensibilities that one develops or -
10 as a result of one's studies and of one's work about how to go
11 about eliciting and recording information. So I mean, you know,
12 there's a general distinction between so-called structured
13 interviews where you have a prepared set of questions, maybe even
14 a questionnaire that you use or simple, open questioning.
15 And in this instance, the process was simple, open questioning.
16 The discussions - the interviews, if you will, were not recorded.
17 My practice over many years has been to put the questions in
18 Khmer and then to write down the answers in my notebook or my
19 recently, in my computer, in English. So there's no Khmer version
20 which then in subsequently translated. It's - if you will -
21 simultaneous interpretation directly into a notebook. It was made
22 clear that these were not anonymous that the results of the
23 interviews would be available either to history or possibly to
24 the Court because again, I wasn't on assignment. I wasn't acting
25 under rogatory. I was functioning as a political historian or a

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1 political scientist, whichever of those two terms you prefer for
2 describing my profession.

3 [10.09.55]

4 And in that sense, it was for better or for worse, very much the
5 same way I had been doing interviews about matters related to the
6 Khmer Rouge in power since I first began doing that in 1978 or
7 the Khmer Rouge before they were in power, as I was doing as a
8 journalist in 1973, 1975. So I guess, to my academic colleagues,
9 I would have to confess this is art, not science. That's the sort
10 of - the general outline. I don't know if that satisfies your
11 question - your curiosity or not.

12 Q. It does. I've got two supplementals arising from your answers.
13 Firstly, can you tell us, please, your level of proficiency in
14 the Khmer language?

15 A. Well, do you want to give me a test - an oral test - an
16 in-court oral test? I think it's - with all due humility, it's
17 recognized as near fluent. And it - to give you an example, it's
18 still often the case - not always the case but often the case if
19 I telephone someone in Khmer, they initially refuse to believe
20 that I'm not a Cambodian.

21 [10.11.36]

22 This still happens to me. I mean, it gets, of course, a bit rusty
23 when I've been out of the country for a while but it - the level
24 of fluency that I have normally returns after a period of time.
25 And that fluency is largely because actually I didn't study Khmer

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1 in the classroom, I did it - although with a text book - on the
2 ground for the very first day. So the - in what that means is
3 that in contrast to - for example - my Chinese, which is rather
4 formalistic, my Khmer is sort of street Khmer - or paddy Khmer -
5 very colloquial.

6 Q. And can I just ask - I don't know if 1973 is the right
7 starting point but can you give us some idea when proficient in
8 Khmer, when fluent in Khmer from the - doing the textbooks and
9 any other learning?

10 A. I mean had started - which was before I studied Khmer, I had
11 learned Thai. And although genetically the languages are very
12 different because of many years of interaction, there are a lot
13 of similarities, particularly in terms of technical vocabulary.
14 But even with that foundation, it was year and a half of really
15 hard work before I could have a reasonable conversation on most
16 any topic and could read a text on most any topic.
17 So by the time I left - or if you prefer fled - Cambodia in April
18 1975, I was pretty good but not - I would say - actually
19 absolutely fluent.

20 [10.14.02]

21 The fluency is more a result of the time I spent on one or the
22 other side of the Thai Cambodian border between 1978 and 1984,
23 where the immersion in a totally Khmer or sometimes Thai speaking
24 environment was total. And I had very little interaction with
25 people who spoke any other language. Such that by the early '80s,

1 this level of near native sounding fluency, I think, was pretty
2 much achieved.

3 Q. It may become relevant later in my questioning but can we
4 address or can you help us level of fluency Thai, level of
5 fluency Vietnamese, if that's applicable, level of fluency
6 Chinese?

7 A. I think it's fair to say my Khmer spoken fluency is the best
8 of the lot and in some ways, my reading Thai is better than my
9 reading Khmer, and that's simply because there's a lot more to
10 read in Thai than there is in Khmer. The amount of - the number
11 of texts there are to read in Khmer is still rather limited and
12 certainly relatively limited, as compared to what's available in
13 Thai. That said, particularly, I think it's fair to say with
14 regard to what in the academy is known as Stalin speak, that is
15 to say the particular political dialect that's used by - in
16 Communist parties and Communist societies-

17 [10.16.22]

18 Q. Do you mind if I interrupt? I just want to try and get, in
19 fairly short order, if you can help me, level of proficiency in
20 Thai, Vietnamese, Chinese, in fairly short answers, if I can
21 please?

22 A. One to four; Khmer, Thai, Chinese, Vietnamese and last but not
23 least, French.

24 Q. Well, on Khmer, I'm a little bit more than "som bat chhveng"
25 (phonetic) in a taxi but you're plainly well advanced.

30

1 Now, can I deal next, please, with – you mentioned 1978. Now, can
2 I ask the question this way; I've obviously looked at an awful
3 lot of interviews that you conducted but can you help us, when
4 was the first time – and I'm using 1978 as a marker. When was the
5 first time that you took a discussion, an interview, a statement
6 that was pertaining to the period of Democratic Kampuchea? Was it
7 during the period – the back end? Was it after? Can you help us?

8 A. If – I presume we're talking about 17 April 1975 through 7
9 January 1979. And if that's the temporal jurisdiction specified,
10 the first, I would say, were in the opening days of January, '79.
11 I would guess maybe the third or the fourth of January 1979.

12 [10.18.32]

13 Q. Can you remember who you – where you were and who the people
14 were that you were taking interviews from?

15 A. I was in the part of Cambodia that is opposite Ta Phraya in
16 Thailand and I believe that that was part of the then CPK sector
17 5 of the Northwest Zone. There were some interviews that were
18 done on what was pretty clearly the Thai side of the border – of
19 that border – the Ta Phraya Sector 5 border – and then some
20 interviews that were done just inside the Cambodian side of that
21 Ta Phraya sector 5 border.

22 Q. And just sort of categories of people, are we talking
23 refugees? Are we talking members of the Regime, lower cadre? Can
24 you just give us some idea?

25 A. Yes. I mean I suppose those that were interviewed on the Thai

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1 side I think could be described as asylum seekers. Those who were
2 interviewed on the sector 5 side were people who were - I - to my
3 knowledge, were ordinary people, not cadre, not armed forces
4 combatants who were on the run from the co-operatives in that
5 part of sector 5, that were beginning to disintegrate because the
6 arrival - impending arrival or feared arrival of the Vietnamese.
7 [10.20.53]

8 Q. I'd like to go back - I handed - you were handed a document
9 yesterday which was an index of your work. Do you still have it
10 or can I provide you with a fresh one? Can you turn, please, to
11 page 4? At the bottom, we have a heading number two, "Heder
12 Interviews with Accused, Refugees, and Others."

13 Now, I'd like to just concentrate on the first two items, under
14 the heading "Interviews with Khieu Samphan". Now, I can show you
15 these if you need to see them, but can I deal first of all with
16 item number 70, and that's an interview on the 4th of August
17 1980? Did you speak with Khieu Samphan on that day, and is there
18 a record?

19 A. The answer is yes, to my recollection. That's the correct
20 date. I believe the encounter was over two days, because I spent
21 a night in this location. And my recollection is that records, or
22 a record if you will, of the encounter - the interviews, the
23 statements - exist in - some of it was taped, and some of it was
24 handwritten into a notebook by this method of Steve Heder's
25 simultaneous interpretation into a notebook.

32

1 So some of it was definitely taped, not all of it was taped, if I
2 recall correctly, but I made either handwritten transcriptions or
3 at least notes on what was said to me.

4 [10.23.29]

5 Q. I just want to ask you and show you, please, a document - with
6 Mr. President's permission. This is about item 69 on the list,
7 and we've all got the document numbers, but I say them; E3/198.
8 Can I ask you to have a look at this? It's also IS20.23. I'm just
9 going to show you this record, please, Mr. Heder, with the
10 President's permission, and just see if this does - once you've
11 read it - record any meeting with Khieu Samphan on the 17th of
12 August, 2005.

13 MR. PRESIDENT:

14 You may proceed.

15 Court officer is now directed to bring this hard copy for the
16 witness for examination.

17 BY MR. RAYNOR:

18 Q. Can I say that counsel might be best looking at IS 20.23?

19 [10.24.52]

20 MR. HEDER:

21 A. This one was not done by me, but one of the other people with
22 whom I - persons with whom I was working. And if I recall
23 correctly, this English - I don't know whether this is a court
24 translation or a translation that I did from Khmer notes that
25 were taken at the time. It looks more to me like a court

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1 translation than the translation that I would have done. It
2 doesn't have the peculiarities that are characteristic of my
3 translation style.

4 Q. Now, given that timing – August 2005 – you were in Cambodia,
5 you've said already. Do you remember seeing that document in its
6 original form, or some notes to do with this interview, or did
7 you oversee these notes? Did you have any connection with this
8 interview, at the time, whether by looking at the notes,
9 translating things? Does it bring anything back, seeing that
10 document?

11 [10.26.13]

12 A. My recollection is that the notes were done originally in
13 handwritten Khmer, and then that – at a subsequent point not too
14 long after the interview occurred – I mean by that weeks or a
15 month, not days or a year – the Khmer was input into a computer
16 file. And this may well be a translation that's done from the
17 computer file version of the earlier – one could say original –
18 handwritten notes.

19 Q. And in terms of the procedure for recording, you've described
20 your procedures for recording. Was it, for the others in the
21 team, the same system of questions and answers being recorded
22 down? Did they have prepared questions? Was it audio-recorded?

23 [10.27.43]

24 A. I'm pretty sure that the methodology, if you will, was the
25 same as the one I described for myself. As you can see, these are

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1 not verbatim. They're not presented in a kind of verbatim format.
2 Without knowing it, we were producing what I was later told are
3 supposed to be called objective summaries.

4 Q. Yes. Can I ask for that document back, please? Can you -? And
5 can I move on, using our index again, to the next page on the
6 index, which is page 5? And this has a heading of "Interviews
7 with Ieng Sary". And we see an interview on the 4th of January
8 1999 and a previous interview on the 17th of December 1996. Can I
9 deal with the 1996 ones first? And you'll see an item - 74, 75,
10 and 76. In relation to that day, we have audio recordings. So is
11 it right that the interview with Ieng Sary on the 17th of
12 December 1996 was audio recorded?

13 A. Yes. I mean, again, I would clarify - I would describe what
14 happened as an encounter with Ieng Sary. And in the course of
15 that encounter, there was a taped interview - taped with his
16 agreement, taped mostly in the presence of his then de facto
17 aide-de-camp, somebody by the name of Y Chhien, who accompanied
18 him to the place where the interview happened, which was in a
19 hotel room in Chanthaburi, in Thailand. In addition to the taped
20 interview, there were some other conversations, including a
21 conversation - a rather informal conversation - that happened
22 over a meal in the hotel - downstairs in the hotel.

23 [10.30.41]

24 So not everything that was exchanged between us - not everything
25 that was said between us is reflected on that - on those three

1 tapes, but most of it's there.

2 Q. I'm going to be asking you more detailed questions later on
3 about this - this is really for verification purposes. And then
4 dealing with the second one in time on the 4th of January 1999;
5 can you help on how that was recorded by you? Was it audiotape?
6 Was it your noting style that you mentioned or any other method?

7 A. Yes, that one was much more informal. We met in the lobby of
8 the then Royal Phnom Penh Hotel, here in Phnom Penh, a venue that
9 no longer exists because it was destroyed in the so-called
10 anti-Thai riots that subsequently occurred.

11 [10.32.01]

12 And I had a little notebook, and we had - I would describe - a
13 mostly quite informal, although in some places substantive,
14 conversation, and I scribbled things down in my notebook.

15 Q. Were you scribbling contemporaneously, or after the event?

16 A. I think there were some things I did at the time, and some
17 things I supplemented later. I think the issues of substance I
18 took at the time, matters relating to the locale of Central
19 Committee documents and a few other very specific items, whereas
20 some of the more informal stuff - the atmospherics, if you will -
21 I think I only added later.

22 Q. Thank you. Can I move to the next box on page 5, which is
23 "Interviews with Refugees"? And can you just explain - I'm not
24 looking for all the academic funding and the academic background.
25 Just who were you with - is it right you undertook interviews on

1 the Thai-Cambodian border in February and March 1980, and who
2 were you with, first of all?

3 A. Yes, these interviews took place on the Thai side - I think,
4 entirely - of the Thai-Cambodian border in those months specified
5 - February to March 1980. And for most if not necessarily every
6 last interview I was accompanied by a Japanese journalist,
7 Matsushita, from "Kyoto News Service".

8 [10.34.16]

9 Q. Now I'm going to be asking - to ask you questions about these
10 refugee interviews later.

11 But can I just clarify, for verification purposes, did you
12 undertake every interview with Matsushita present for some, or -
13 can you help us now on that?

14 A. I'm not sure I fully understand the question, but I think I
15 did every interview myself. I think there were occasions on which
16 I explained to Matsushita what was being said, and he asked me to
17 make some additional queries. But I think it would be fair to say
18 that 99.9 per cent of it is me asking questions and me taking
19 down the answers in the style that I've already twice now
20 described.

21 [10.35.14]

22 Q. Thank you.

23 Can we move to the next heading, on page 5, "OCIJ Interviews"?

24 And can you please just confirm that you did undertake some
25 interviews when you were with OCIJ?

1 A. OCIJ-

2 Q. That's item - on page 5, the bottom box is headed "OCIJ
3 Interviews".

4 A. Yes, those were done when I was employed by UNAKRT and
5 assigned to the Office of the Co-Investigating Judges during the
6 period of the judicial investigation.

7 Q. Thank you. Can I take you to page 6? And if you look at items
8 94, 95, 96, 97, and 99, you'll see in the title box that it's got
9 the name of the person, and then ECCC-OCP. So, do you recollect
10 taking some statements - I think when Mr. Robert Petit was the
11 head of that department?

12 [10.36.55]

13 A. Yes. Those are interviews done while I was - as it were -
14 seconded from the Office of the Co-Investigating Judges to the
15 Office of the Co-Prosecutors. And myself and a number of other
16 people from the Office of the Co-Prosecutors, on some instances
17 including Robert Petit, did these interviews at the times
18 indicated.

19 Q. And then, if we can go, please, to - still on page 6, we have
20 this heading of "Other Interviews". And there's a couple here
21 that I couldn't place in terms of fitting them in under other
22 headings, frankly. Can I ask you to have a look at item 88? Item
23 - well, let's deal with that, perhaps, item-by-item. 88 is a
24 statement on the 7th of August 1990, and the document number for
25 that one is E3/390, and the D number was D210/9.

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1 Mr. President, to assist on this point, can I hand this document
2 to Mr. Heder? Mr. President, can this please be handed to Mr.
3 Heder?

4 And Mr. Heder, I don't want you to mention the name of this
5 witness. I just want you to help us, please, about the
6 circumstances.

7 MR. PRESIDENT:

8 You may proceed.

9 Court Officer, please get the document from the Co-Prosecutor and
10 hand it over to the witness.

11 [10.39.25]

12 MR. HEDER:

13 A. Yes, I did this interview at the time indicated in Phnom Penh
14 with the person named. And as the document that you've handed me
15 indicates, the interview was recorded - tape-recorded. And this
16 is a - not my translation, but a court translation of that - of a
17 transcription of that taped interview. And just for purposes of
18 further clarification, this was done when I was at the Department
19 of History of the Australian National University.

20 MR. PRESIDENT:

21 Mr. Prosecutor and Mr. Witness, thank you very much.

22 The time is now appropriate for adjournment. The Chamber will
23 adjourn now and resume at 11.00. Court officer is instructed to
24 assist the witness during the break and have him returned to this
25 courtroom by 11.00.

39

1 The Court is now adjourned.

2 (Court recesses from 1040H to 1100H)

3 MR. PRESIDENT:

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

5 We now would like to hand over to the Co-Prosecutor to continue
6 putting questions. You may now proceed.

7 BY MR. RAYNOR:

8 Thank you very much, Mr. President.

9 Q. Mr. Heder, we were on page 6, item 88, document number E3/390.

10 You'd said that you'd interviewed that person in Phnom Penh.

11 And can you help me with who did the original transcript or who
12 transcribed this interview after the interview had taken place?

13 MR. HEDER:

14 A. Well, it wasn't me. I don't think I ever did a transcript or a
15 translation of that tape myself, so to my knowledge, the – both
16 the transcript, if a transcript was done in Khmer, and then the
17 translation into English was done in the Court. So what you have
18 on record is the Court's transcription and translation work, not
19 mine.

20 [11.02.30]

21 Q. Thank you.

22 Could I ask for some assistance, please, in retrieving this
23 document from the side of the desk?

24 I'd like to move, if I may, to Item 89. That has the D number
25 D210/10. Again, without mentioning the person, I'd like to show

40

1 you a document in connection with this interview.

2 And can I explain that I'm - I'm not giving the names of people
3 who haven't testified in this Court.

4 Mr. President, can this, please, be handed over?

5 MR. PRESIDENT:

6 You may proceed.

7 Court officer is now directed to bring the hard copy of the
8 document for Mr. Heder for examination.

9 [11.05.05]

10 BY MR. RAYNOR:

11 Q. Mr. Heder, can you - I can see you looking through the
12 document. Please take some time.

13 My first question, once you've had the chance to look, is: Does
14 that show on page 1 an interview by you? But, please, take time
15 to answer if you want to continue looking.

16 MR. HEDER:

17 A. Well, the reason I'm taking some time is that although the
18 heading of the document - the heading of the document says that
19 it's an interview by me of a person who I can't name, it is not
20 an interview of that person. So I'm looking at the substance of
21 the document to try and figure out who, in fact, it's an
22 interview of. And I haven't quite figured that out yet.

23 Q. Please take as much time as you need.

24 (Short pause)

25 [11.07.58]

41

1 A. Without - without more time and a chance to listen to the
2 original tape and look at the original tapes, I can't be sure
3 who, exactly, this is. But it's definitely not the person named
4 at the top of the document.

5 Q. Aside from whether it's the name, did - from looking through
6 it, have you been able to remind yourself whether you conducted
7 the interview, or can you help us?

8 A. Looking at the content, the line and the kind and the
9 substance of the questioning, it certainly looks to me like my
10 work.

11 MR. RAYNOR:

12 Thank you.

13 Mr. President, can I please make this application, that Mr. Heder
14 be able to have that document over lunch so that he can take some
15 time to look at it and that we might be able to clarify this
16 early this afternoon?

17 (Judges deliberate)

18 [11.09.30]

19 MR. PRESIDENT:

20 You may proceed.

21 But witness is advised to make sure that he can maintain the
22 confidentiality of this document distributed to him.

23 MR. RAYNOR:

24 Thank you, Mr. President.

25 Mr. Heder, I'm going to move on, if I may, to another matter, but

1 if you can keep that there. Thank you.

2 Can I ask you next to look at Item 91 on page 6, which is
3 document number E190.1.72. And I can name this person. It's to do
4 with Van Rith.

5 And again, Mr. President, can I please hand over a relevant
6 document?

7 [11.10.22]

8 MR. PRESIDENT:

9 You may proceed.

10 Court officer is now directed to do so.

11 BY MR. RAYNOR:

12 Q. Now, Mr. Heder, this consists of some typewritten pages and
13 some handwritten pages.

14 MR. HEDER:

15 A. Yes, this is the – the handwritten notes are notes in the
16 style that I've described I normally do – have done interviews
17 over the years of Van Rith – I (inaudible) – of Van Rith at his
18 home then in Kandal province. And the interview was done while I
19 was at SOAS, but also in the same period when I was working under
20 my SOAS auspices on documents at DC-Cam.

21 [11.11.37]

22 Q. All right. Thank you–

23 A. The typescript – the typescript is yours, it's the Court's;
24 not mine.

25 Q. But so we're sure, the handwritten notes are yours.

43

1 A. The handwritten notes are - are definitely me, yes.

2 MR. RAYNOR:

3 Can that, please, just be handed back so that we can put it in
4 our folders?

5 Mr. President, all parties in the Court have had this index. I
6 don't know if it will assist for that to form part of the record
7 of Mr. Heder's proceedings so that those who have to make up the
8 transcript have this document to help them where - in their
9 future work.

10 The suggestion is it's attached to the daily record written by
11 the greffier.

12 [11.12.47]

13 MR. PRESIDENT:

14 You may proceed.

15 MR. RAYNOR:

16 Thank you.

17 Mr. Heder, what I want to do next is I want to take you through
18 selectively some portions of your book in its short term,
19 "Cambodian Communism". That is E3/22.

20 Mr. President, in accordance with previous practice with Mr.
21 Chandler and Mr. Short, can I please hand to Mr. Heder a copy of
22 his book so that we can properly assist the Court by going
23 through extracts from it?

24 Yes. Mr. President, I'm just asking to give a copy of this book
25 to Mr. Heder - his book.

1 MR. PRESIDENT:

2 You may proceed.

3 [11.14.14]

4 BY MR. RAYNOR:

5 Q. Mr. Heder, your file should contain on the first page, file 1,
6 "Cambodian Communism and the Vietnamese Model". Next you have a
7 selection of the pages which I'll be taking you to. Next you have
8 footnotes if you need to refer to them. And those are broken down
9 by chapter.

10 You then have indexed on the right-hand side of your file the
11 chapter numbers. And I'm going to be taking you to particular
12 pages.

13 Now, can I stress, it has to be selective. But can I ask – can I
14 ask this? Can you just give us some idea as to what the
15 motivation was behind writing this book?

16 [11.15.13]

17 MR. HEDER:

18 A. Academics aren't supposed to have motivations. We do it out of
19 not of the goodness of our hearts, but just because we're
20 somehow, by some strange circumstance of events, interested in a
21 certain subject.

22 I mean, there's a kind of history to the writing of this
23 particular piece of work which is, it's an expanded version of
24 part of the introductory chapter of my PhD dissertation. So I
25 suppose if you're looking for a motivation, the motivation is to

45

1 get a PhD and the motivation is to get published because that's -
2 those are two things that one needs to do in order to be an
3 academic and thereby have the title of Doctor.

4 [11.16.27]

5 Q. All right. Thank you.

6 A. Even if it's not appropriate for use in every circumstance.

7 Q. Well, the Court has directed.

8 Can I take you, please, to - and can I stress that to answer - or
9 to repeat my answer to Judge Cartwright yesterday, there is not a
10 French version or it has translated extracts in Khmer, translated
11 extracts, and that I will be asking for every single portion to
12 be translated after today.

13 Mr. Heder, page 26, and that is within Chapter 1. English ERN
14 00393689. Now, it seemed to me that you're dealing on this page
15 with events in the 1950s. At the top of the page, "1950" is
16 mentioned, then "1951", and then "1954". And it's talking about
17 Cambodian Communists.

18 The extract that I'd like to deal with is in the following terms
19 - and I quote:

20 "Whatever the Cambodian numbers, the Vietnamese instilled them
21 with an attitude of implacable hostility towards the revolution's
22 enemies, foreign and local. Siv declared during a visit to
23 Vietnam that the only way for the Cambodia people to live in
24 freedom was to kill all imperialist aggressors who were merely 'a
25 collection of mad dogs who can and must be exterminated'."

1 [11.18.29]

2 There is a footnote there, number 80, and your footnote quotes a
3 speech given by Siv Heng at the "First Congress of Vietnamese
4 Peace Defenders", VNS-R, 2 December 1950.

5 It's the source of the footnote here, and VNS. I didn't
6 understand what that referred to. Can you help what - or where
7 you sourced this speech by Siv Heng with VNS?

8 A. That stands for Vietnam News Service, and it was the official
9 news service of the then Democratic Republic of Vietnam and
10 disseminated in various languages, including English. And if I
11 recall correctly, a more or less complete set of VNS news
12 releases, as it were, are on file at the - in the library of
13 Cornell University.

14 [11.19.58]

15 Q. Thank you. On the same page, there's another extract - and I'm
16 quoting:

17 "At the same time, the Cambodians must carry out a programme of
18 execution of traitors in the zones that they were liberating and
19 deal with the numerous secret agents that had infiltrated into
20 the movement to try and sabotage the revolution and destroy its
21 organizations."

22 And the footnote number 82 refers to the Khmer Peace Committee,
23 Khmer Armed Resistance October 1952, a pamphlet produced by the
24 Rangoon branch of the Vietnam News Service.

25 So was that source the same source as the one you've already

1 covered, VNS?

2 A. The – the earlier source is a kind of – was a kind of daily
3 release by Vietnam News Service. This was a special publication.
4 And that special publication, again in English, is also on
5 deposit in the university – Cornell University library. That's
6 where I found the – the document.

7 [11.21.42]

8 Q. Can I take you next to Chapter 3 using the tabs on the side,
9 and it is page 52. This is English ERN 00393715. And you're
10 talking about events in 1960 – and I quote:

11 "In January 1960, however, the southern leadership ordered an
12 upgrading of the strategic priority given to military action,
13 conceding that political struggle coordinated with armed
14 propaganda was no longer enough to protect the revolutionary
15 bases, and that the masses were justified in using armed struggle
16 to resist the violent and barbarous actions of the enemy. The
17 strategic slogan was: 'political struggle and armed struggle
18 coordinated in tandem, both playing the key and decisive role in
19 the movement'. In other words, the military and political arms of
20 the revolution should enjoy parity."

21 Footnote 17 refers to Elliott, "Vietnamese War", page 40.

22 So first of all, can you confirm that that was the source and if
23 you'd like to expand on the source, please do?

24 [11.23.30]

25 A. It's – David William Penn Elliott is the author. And he has

1 written what is, in my view, the definitive work on the Southern
2 Vietnamese Communist movement in the sixties based in part on his
3 experience as a military intelligence officer there and in larger
4 part his subsequent work as an academic. So that's a published
5 book.

6 It's - I mean, I have to say in this context that this does refer
7 to the Southern Vietnamese Communists and not to the Cambodian
8 Communists, so it's relevant only to the extent that you accept
9 the argument of my book that there is an influence of the
10 Southern Vietnamese Communists on the Cambodian Communists.

11 [11.24.31]

12 Q. You just answered my next question. Still on Chapter 3, page
13 59; English ERN 00393722. It's the section dealing with Khieu
14 Samphan, his return back to the country, Cambodia. And in the
15 last sentence before the Footnote 65, it states as follows, and
16 this is in reference - well, correct me if I'm wrong - in
17 reference to Khieu Samphan: "He also did not become a member of
18 the Cambodian party upon his return, but was much more inclined
19 to act on its instructions than Hou Youn and Hu Nim."

20 Footnote 65 refers to In Sopheap, Khieu Samphan, and pages are
21 then quoted.

22 Again, can you help me a little bit more on the source In
23 Sopheap?

24 [11.25.56]

25 A. In Sopheap it comes - it comes from a - it's a - I don't have

1 the footnote in front of me. It - it's cited not to an interview,
2 but to a written source, it appears.

3 In Sopheap is a Cambodian leftist who later wrote a published
4 kind of biography, if I recall correctly, of Khieu Samphan. And
5 the text from which I am working is an - was an early draft of
6 that biographical publication which I think must have come to me
7 in the mid-nineties at some point when I met and spoke to In
8 Sopheap.

9 Q. Met and spoke to In Sopheap. And you had access to the draft
10 of the book, or have I misunderstood?

11 A. I met him - encountered him, as I like to say - I frankly
12 don't remember. It would have been in Cambodia; should have been
13 early, mid-nineties. And yes, he gave me a copy of this text,
14 draft text, typescript text which, if I recall correctly, was in
15 - not in Khmer, but in French. The last language on my list, but
16 with a dictionary, I can muddle through.

17 Q. Thank you. Chapter 4, page 69, English ERN 00393726, talking
18 now about the 1960 Party Congress. And the extract I quote as
19 follows:

20 [11.28.29]

21 "Under this ideological green light, a Cambodian Party Congress
22 was finally convened secretly in Phnom Penh from the 28th to the
23 30th of September 1960, attended by seven members-"

24 Sorry. Chapter 4 - so, down the side on the tabs to number 4, and
25 page 63 - I'll start again:

1 "Under this ideological green light, a Cambodian Party Congress
2 was finally convened secretly in Phnom Penh from the 28th to the
3 30th of September 1960, attended by seven members of its urban
4 organization and 14 from its rural branches. Three main documents
5 drafted by Sar and agreed by Nuon were endorsed; the party
6 statutes, its strategic and tactical lines and united front
7 line."

8 Footnote number 1 refers in short form to "Nuon History", but the
9 full title of the document is as follows: "History of the
10 Struggle Movement of Our Cambodian Peasants from 1954 to 1970
11 Given to Nate Thayer in 1997." That is document number, in our
12 case file, E3/131.

13 Mr. Heder, again a question about the source in terms of this
14 document.

15 [11.29.45]

16 A. If memory serves, this was a handwritten Khmer language
17 document given to Nate Thayer by somebody by the name of Khem
18 Ngun, K-h-e-m, new word N-g-u-n. I believe he's now in prison
19 here in Cambodia. And Khem Ngun gave Nate to understand that it
20 was either based on something that Nuon had written himself or
21 notes that Khem Ngun had taken verbatim from something that Nuon
22 had written or said.

23 Q. Thank you. Still in Chapter 4, page 69; English ERN 00393732.

24 It's talking about contradictions. And the extract is as follows:

25 "The contradictions within Cambodian society, among the five main

51

1 class elements that the Vietnamese had identified as existing in
2 Cambodia in the early 1950s (peasants, workers, petite
3 bourgeoisie, capitalists and feudalists), were also portrayed as
4 virtually identical to those the Vietnamese Workers Party said
5 existed in Southern Vietnam in 1960. The Kampuchea Workers Party
6 Congress declared that various complex and very entangled
7 contradictions could be identified, including between the workers
8 and the bourgeoisie, but that the dominant and most antagonistic
9 one was between the peasants and the landlords.

10 [11.33.11]

11 "Thus, the struggle in the Cambodian countryside was the most
12 basic one for the revolution, requiring mobilization of peasants
13 who comprised 85 per cent of the country's population. As
14 purported victims of the capitalists and the landlords, they were
15 the most exploited and numerous class. The main domestic content
16 of the revolution in Cambodia, therefore, was the liberation of
17 this 85 per cent of the people from landlords."

18 Footnote 25 refers to two sources, "Pol Pot Long Live", which the
19 full title is "Long Live the 17th Anniversary of the Communist
20 Party of Kampuchea" dated the 30th of September 1977, page 30.
21 That total document is E3/145 on the case file. And the second
22 source was the statement of Nuon Chea, which is E3/196.

23 [11.34.56]

24 Mr. Heder, can I ask you first about the first source, "Pol Pot
25 Long Live"? Can you explain that document and how it helped you

1 on this footnote?

2 A. I believe that what I used for this was the Khmer version,
3 Khmer language version, of the speech made by Pol Pot on the
4 occasion of the public announcement of the existence of the Party
5 in September 1977, a Khmer version which was made available in
6 the United States because I was, at the time, at Cornell
7 University there, via an organization known as G.K. RAM, which
8 was a group of - the small group of those Cambodians then
9 resident in the United States who saw themselves as supportive of
10 what they thought or liked to believe was going on in Cambodia at
11 the time.

12 So instead of relying on the translation made, for example, by
13 the Foreign Broadcast Information Service, I tried to use what I
14 presumed to be the original Khmer text and made my own
15 translation or paraphrase from that original Khmer text.

16 [11.36.58]

17 Q. Now, the next reference in the footnotes is to statement of
18 Nuon Chea, pages 19 and 20. Can you help us on that document,
19 please?

20 A. I'm pretty sure that that's a little research note that was
21 published in a now-defunct academic journal, "The Journal of
22 Communist Studies", by Laura Summers based on-

23 Q. I'm - I'm going to interrupt because I think I can help you.

24 A. Oh.

25 Q. I've found it on the screen now. A statement of the Communist

53

1 Party of Kampuchea to the Communist Workers' Party of Denmark
2 July 1978 by Nuon Chea, Deputy Secretary, CPK. And the document
3 number again for that in our system, E3/196.

4 And it says that this statement was made orally in two parts on
5 the 30th, 31st of July 1978.

6 So does that help more on the document?

7 [11.38.36]

8 A. It is, I think, therefore, indeed, "The Journal of Communist
9 Studies" and placed there by a Cambodia scholar by the name of
10 Laura Summers, who got a transcript from the Danish Communist
11 Party - Workers' Party delegation that made the visit. And here,
12 the chain of translation is a little bit more problematic.
13 Nuon presumably spoke in Khmer. That was translated - interpreted
14 either into French or English, not Danish. I don't know what
15 language the notes were written down in. They may have been the
16 English or the French. They may have been Danish. There may have
17 been a further translation before the final publication. So as an
18 academic, I would say that's a less reliable chain of translation
19 than I would like to say my own direct from the Khmer to English
20 would be.

21 [11.39.58]

22 Q. Thank you. I'd like to stay in Chapter 4, page 75; English ERN
23 00393738, still talking about the 1960 Congress - and I quote:
24 "The Congress thus recognized two inter-related forms of
25 struggle, political and armed, concluding that eventually the

1 Kampuchea Workers Party would have to conduct people's war to
2 overcome all obstacles, make any sacrifice so as to resolutely
3 and finally to win victory."

4 Footnote 51 again refers to the statement of Nuon Chea. You've
5 covered that.

6 Carrying on: "Because the U.S. imperialists, their lackeys and
7 all kinds of exploiting classes used dictatorship and force in
8 their attempt to kill and terrorize the people, political action
9 alone would not succeed in crushing and overthrowing these
10 enemies of the revolution. This would require transforming
11 unarmed revolutionary forces into a revolutionary army."

12 Footnote 52, in support of that, references a speech by Nuon Chea
13 the 16th of January 1977 as broadcast on the 17th of January 1977
14 by Phnom Penh Radio celebrating the ninth anniversary of the
15 formation of the Republican Army of - sorry, Revolutionary Army
16 of Kampuchea.

17 Again, can you help us a bit more on this source?

18 [11.42.21]

19 A. Yes, that's a U.S. Foreign Broadcast Information Service daily
20 report translation, so I've taken it from their translation. At
21 the time, the Khmer original as published Revolutionary Flags was
22 not available to me.

23 Q. Carrying on, on the same page with the same extract: "The
24 Kampuchea Workers Party had to be ready to use every form of
25 struggle, political, economic and arms."

1 Footnote 53 refers to "Nuon History". You've already covered
2 that.

3 [11.43.05]

4 The next sentence: "According to Sar, the 'first form of struggle
5 required was the use of revolutionary violence through politics',
6 but armed revolutionary violence would one day follow in the form
7 of both political and armed struggle."

8 Footnote 54 references "Pol Pot Long Live". You've already
9 covered that; to remind everyone, E3/145.

10 Mr. Heder, still Chapter 4, page 78, English ERN 00393741, still
11 on the 1960 Congress: "The 1960 Congress also resulted in the
12 formation of an eight-person Kampuchea Workers Party Central
13 Committee."

14 And it goes on:

15 "With Tou Samouth as secretary and Nuon as deputy secretary,
16 together with Sar, they comprised the Standing Committee of the
17 Central Committee. The other members of the Central Committee
18 included Ieng Sary and Kaev Meah from the urban organization, two
19 cadre from the base areas in the southwest and Pheum [if I've
20 said that right] of the east."

21 And the last footnote is 72, which is a footnote to Nuon History
22 that you've already covered.

23 Kaev Meah, who was he and what happened to him?

24 [11.45.27]

25 A. It's one of those trademark crackpot Steve Heder

56

1 transliterations that leaves people confused. It's - would more
2 commonly be transliterated Keo Meas . That's K-e-o; new word,
3 M-e-a-s. And he was a veteran Communist since the late forties,
4 early 1950s who, after the Geneva Accords of 1954 and the
5 transformation of the party's struggle into political struggle
6 was a prominent leading figure in the overt wing of the party
7 that attempted to contest elections.

8 He then remained in - went underground after that kind of
9 struggle was deemed impossible to continue, travelled quite a bit
10 with Pol, with Pol Pot, but ended up out of political favour. And
11 after - on or about April '75 was effectively placed under house
12 arrest and then, when the situation inside the party became one
13 of serious crisis or was seen to be as one of serious crisis by
14 the senior leaders, was transferred from house arrest to S-21,
15 where he produced some confessions and then was subsequently
16 executed.

17 [11.47.18]

18 Q. Whilst we're on confessions, can I just clarify that for all
19 the questions I'm asking you, I'm certain - the Defence will
20 correct me if I get this wrong. But I'm certain I'm not asking
21 you questions based on confessions.

22 Now, still on Cambodian Communism, page 78 still, there's an
23 extract towards the bottom:

24 "The anti-imperialist rhetoric and trenchant social critiques
25 voiced by Hou Youn, Hu Nim and Khieu Samphan primed them for

1 Kampuchea Workers Party recruitment, helping open them to even
2 more radical explanations for what they saw and make them ready
3 to contemplate revolutionary action against a government that
4 allowed no other forms of dissent, a peasantry seemingly
5 condemned to the perennial hardships resulting from low yields
6 and incomes and sharing with students a vision of the regime as
7 synonymous with corruption."

8 Footnote 74 refers to David Chandler's book, "Tragedy". That is
9 E3/1683 on our case file.

10 [11.48.58]

11 My question is about part of the sentence about Hou Youn, Hu Nim,
12 and Khieu Samphan primed for KWP recruitment. Is there anything
13 else you would like to add on this matter?

14 A. Without looking at the Chandler original, no.

15 Q. Thank you. Moving, please, to page 83; English ERN 00393746,
16 general topic Khieu Samphan, Hu Nim and Hou Youn:

17 "The KWP treated them as patriotic personalities to whom it fed
18 propaganda based on the party's united front themes of
19 anti-Americanism, social justice and freedom for workers,
20 peasants and intellectuals."

21 Footnote 96 refers to the statement of Nuon Chea. We've already
22 covered that.

23 Nuon-

24 MR. PRESIDENT:

25 Mr. Witness, please hold on. And Mr. Prosecutor, please hold on,

1 too.

2 Mr. Victor Koppe, you may proceed.

3 [11.50.54]

4 MR. KOPPE:

5 Thank you, Mr. President. I'm not quite sure what's - what the
6 prosecutors are doing at this stage. They're reading a passage
7 from the witness' book asking him to confirm a footnote. This
8 last passage, there wasn't even a question about a footnote.

9 We concede that this book is part of the case file. We have all
10 read it. If the purpose of this exercise is just reading this
11 passage and then ask a seemingly useless question about a
12 footnote, then I think it's a waste of the Court's time.

13 I mean, it's not necessarily that we object. It just doesn't
14 really make a whole lot of sense what we are seeing here today.

15 Of course, I understand where it's coming from, Mr. Heder not
16 wanting to appear as an expert. But if we can say we have read
17 the book and we accept it as being on the case file and if there
18 are some "unclarities" about footnotes, just ask about the
19 footnote and then we're all done with it.

20 [11.52.11]

21 MR. RAYNOR:

22 Well, firstly, Mr. President, it's not even an objection, so I
23 ask to continue.

24 But can I just say this; the Chamber has obviously laid down the
25 rules for Mr. Heder's testimony, that he will be a witness of

59

1 fact in relation to documents on the case file authored by him,
2 email of the 1st of July of this year. The questions shall be
3 directed primarily to evidence the witness gathered, either
4 during the interviews he conducted or the evidence he accumulated
5 in research which forms the basis for the books or articles
6 authored by him. So that's all I'm doing.

7 In accordance with the Trial Chamber's direction, I'm asking him
8 about his book, the extracts from the book and the source of the
9 footnotes.

10 Can I remind the Chamber of the testimony of Mr. Short and Mr.
11 Chandler where exactly the same procedure was adopted with
12 neither objection nor observation by the Defence?

13 Can I please continue?

14 MR. PRESIDENT:

15 Yes, you may proceed.

16 [11.53.39]

17 BY MR. RAYNOR:

18 Q. Mr. Heder, page 83, continuing the quote:

19 "Nuon was particularly impressed by Khieu Samphan's fidelity to
20 these themes and his effectiveness in mobilizing popular forces
21 that became available for recruitment by the party, ensuring that
22 those outside the party could not find out who was leading the
23 revolution and to make them falsely believe that he, Hou Youn and
24 Hu Nim were its real leaders."

25 Footnote 97 refers to the statement of Nuon Chea, page 21.

60

1 Carrying on: "Ieng Sary also prized Khieu Samphan's usefulness in
2 garnering support for anti-imperialism and reform from urban
3 intellectuals, civil servants, the national bourgeoisie and even
4 Sangkum military officers who credited his views in part because
5 of his academic credentials."

6 Footnote 98 refers to an article published in the "Vietnam
7 Courier" Number 347 the 15th of November 1971. That is E3/3708.

8 My question, Mr. Heder, is this: When we're talking about
9 garnering support for anti-imperialism and reform from urban
10 intellectuals, civil servants, the national bourgeoisie, and even
11 Sangkum military officers, can you just help me on Sangkum
12 military officers? I'm not familiar with that part.

13 [11.55.49]

14 MR. HEDER:

15 A. Sangkum here is merely a-

16 MR. PRESIDENT:

17 Mr. Witness, please hold on.

18 And Counsel, you may proceed.

19 MR. VERCKEN:

20 Mr. President, I wish to raise an objection that is consistent
21 with the objection that was just lodged by the defence team for
22 Mr. Nuon Chea. We have just observed what has happened, and it is
23 abundantly clear that Mr. Witness' testimony is being distorted
24 by the Co-Prosecutor because he is proceeding to read a passage
25 from his publications. We have just been served a long excerpt

61

1 from Mr. Heder's book and he is following up with a question on a
2 detail that is not at all related to the scope of this witness'
3 purpose for being here.

4 I wish to echo the objection made previously by the Nuon Chea
5 team and respectfully ask that the Co-Prosecutor pose his
6 questions within the confines as prescribed by your Chamber.

7 [11.57.19]

8 MR. RAYNOR:

9 Again, not even an objection. All I'm doing is, this is the
10 extract from the book authored by you, what's the footnote and
11 can you help us with the middle.

12 There's nothing here about expert evidence. Who people were is a
13 matter of fact. It's not a matter of opinion.

14 Can I please proceed?

15 (Judges deliberate)

16 [11.57.58]

17 MR. PRESIDENT:

18 The objection by the defence team for Mr. Khieu Samphan is not
19 appropriate and does not sustain, and Mr. Prosecutor may proceed
20 with your question to the witness.

21 BY MR. RAYNOR:

22 Q. Mr. Heder, Sangkum military officers.

23 MR. HEDER:

24 A. That's simply a - a shorthand reference to the Sangkum Reastr
25 Niyum regime, that is to say, the regime in the period when the

1 country was led by Norodom Sihanouk.

2 Q. Thank you. And the source about Ieng Sary, the "Vietnam
3 Courier", our case file seems to show it a newspaper, but can you
4 confirm?

5 A. Not exactly a newspaper, but a periodical. A kind of magazine
6 published in French and English, official magazine published in
7 French and English by the then - the government of the then and
8 still Democratic Republic of Vietnam.

9 Q. Can I ask you, please, to go to Chapter 6, page 102, English
10 ERN-

11 [11.59.39]

12 MR. PRESIDENT:

13 Mr. Prosecutor, please hold on.

14 The time, actually, is now appropriate for lunch adjournment. The
15 Chamber will adjourn now and resume at 1.30 this afternoon.

16 Court officer is now instructed to assist the witness during the
17 lunch break and please accommodate him in the waiting room and
18 have him return to this courtroom by 1.30 this afternoon.

19 Security guards are instructed to bring Mr. Khieu Samphan to the
20 holding cell downstairs and have him return to this courtroom
21 this afternoon before 1.30.

22 The Court is now adjourned.

23 (Court recesses from 1200H to 1332H)

24 MR. PRESIDENT:

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

63

1 We now would like to hand over to the Prosecution to continue
2 putting questions to Mr. Heder.

3 MR. RAYNOR:

4 Thank you, Mr. President.

5 Mr. President, so far today I've been discussing this book, but
6 none of you have been able to see it on the screen. I think it
7 might help everyone in the court if the AV Unit can now pull up
8 the extracts that I'm referring to so that the information is
9 available for everyone. Can I please make that application?

10 MR. PRESIDENT:

11 AV Unit booth, can you advise the Chamber whether this document
12 can be put up on the screens as requested by the Co-Prosecutor?

13 [13.34.21]

14 MR. RAYNOR:

15 Mr. President, we have all these items already. It's just a
16 matter of switching the screen so that they can be displayed.

17 MR. PRESIDENT:

18 AV booth is now directed to put up this document on the screens.

19 MR. RAYNOR:

20 To assist the AV Unit or everyone, it's E3/22 and the next page
21 I'm moving to is English ERN 00393765.

22 BY MR. RAYNOR:

23 Q. Mr. Heder, page 102. We're still in the 1960s and the quote is
24 towards the bottom of this page:

25 "Thus urban protest and peasant unrest against this Sangkum

64

1 regime broke out in 1966 and intensified in early 1967. This
2 created possibilities for the Kampuchea Workers' Party to
3 organize opposition either directly, or via Khieu Samphan and
4 other dissident intellectuals amenable to its views, through whom
5 the party continued to try to project influence and the image of
6 a Cambodian revolution lead by French educated doctors of
7 philosophy."

8 [13.36.09]

9 Footnote 14 in short form quotes Pol Pot presents. The long title
10 is "Pol Pot Presents the Cambodian Party's Experiences to
11 Khamtan, the Secretary General of the Communist party of
12 Thailand: Informal Talks held in August 1977", a document from
13 the Vietnamese archives, translated into English by Thomas
14 Engelbert and Christopher Goscha from a Vietnamese translation of
15 the Khmer original. Can I ask, Mr. Heder, how you came into
16 possession of this document?

17 MR. HEDER:

18 A. That was given to me by Chris Goscha. But can I – the mystery
19 document, I can now say who I think this is an interview of, if
20 this is an appropriate time to deal with that issue.

21 Q. And so who is this person, do you think?

22 A. This is an interview with someone – can I say the name? How do
23 I do this? I can tell you I know who it is, maybe there's another
24 venue in which I can say who I think the person is.

25 [13.37.57]

65

1 Q. Do you know if the person is still alive or deceased?

2 A. Actually, no. The person whose name is on the document is
3 actually deceased. The person whose name was on the other similar
4 document that you showed me, whose name we didn't mention, is in
5 fact also deceased. As it happens, the person whom this is in
6 fact the interview of, I'm not sure whether he's dead or alive.

7 MR. RAYNOR:

8 Mr. President, can I suggest that Mr. Heder write down the name
9 of this person and passes it to the greffier and then to -
10 certainly, to us please?

11 MR. PRESIDENT:

12 Yes, you may proceed.

13 And Mr. Heder, you may write it on a piece of paper and have it
14 handed over to the Co-Prosecutor.

15 And court officer is now directed to take this name written by
16 the witness to the prosecutor.

17 [13.39.43]

18 BY MR. RAYNOR:

19 Mr. President, what I'm going to suggest is we will now email
20 everybody so that they have this name.

21 Q. Can I ask, Mr. Heder, what position this person held or just a
22 little bit more information about this person?

23 MR. HEDER:

24 A. As he says in the interview, he was a district secretary in
25 Sector 22 of the East Zone.

1 Q. Thank you. Can we continue with page 102? I'm following on
2 from footnote 14 - and I quote:

3 "In accordance with the KWP tactic, adopted for the 1962
4 elections, underground KWP networks worked hard to ensure Khieu
5 Samphan's re-election in the next ballot in September 1966. The
6 party also helped Hu Nim, but not Hu Youn during a campaign in
7 which all three had to compete against each other" - sorry -
8 "against other Sangkum candidates backed by Sihanouk."

9 [13.41.14]

10 The footnote number 15, I'd like to read.

11 "In Sopheap, Khieu Samphan, pages 72-73, who quotes Samphan as
12 indicating he was very reliant on this assistance and notes that
13 Hu Nim was the more dynamic campaigner. Khieu Samphan's
14 constituency was in southern Kandal province, in what was then a
15 part of the East Zone that bordered directly on Takeo province in
16 the Southwest Zone. The underground networks of both zones
17 supported his campaigning activities."

18 And then there are just these words: "Interview with a former
19 communist party member from Prey Kabbas district, Takeo province,
20 Sector 13, Southwest Zone."

21 [13.42.08]

22 We know about In Sopheap. Does just giving you this bare
23 information about an interview with a former communist party
24 member help at all, or not?

25 A. Not without access to files that I only have somewhere in the

1 U.K..

2 Q. I'd like next to move to a new chapter in your book. It's
3 tabbed, on yours, with "Conc.", toward the bottom, to indicate
4 conclusion.

5 Can I check you have that chapter? And the first page of the
6 chapter is 159, and the title of the chapter is "Conclusion,
7 People's War, Revolution, and Popularity 1970 to 1975." The first
8 page that I'd like to ask you about within this chapter is on
9 page 162, and the ERN in English that I'd like the AV to show is
10 00393825. This is talking about the period after the coup, in
11 1970.

12 [13.43.42]

13 I quote: "Within a month of the coup the Vietnamese Workers'
14 Party was in control of a swath of territory 20 to 60 kilometres
15 deep into Cambodia. Together with areas where the Lon Nol
16 administration was paralysed, this created a liberated area with
17 a population of 1 million. The VWP considered that this and
18 Sihanouk's stance against the coup meant the Cambodian revolution
19 was making a great leap forward, being well on the way to
20 creating a revolutionary government."

21 Footnote 27 refers to "'Documents Illustrating Vietnamese
22 Communist Subversion in Cambodia. Document number 6, Base Area
23 meeting', Lieutenant Colonel..." - and can I spell his name,
24 because I'll pronounce it improperly - "...N-g-u-y-e-n; Van,
25 V-a-n; Vang, V-a-n-g, B.1924, Go vap district, Gia Dinh,

1 G-i-a-d-i-n-h, First XO, SR-2 (Pike collection)."

2 Again, can you help us on the source?

3 [13.45.22]

4 A. That - the original of that document, which is a document
5 obviously in translation from another document in Vietnamese,
6 this is only the original document of the English translation, I
7 think I have from two places. One is a collection of such
8 document given to me by one of my academic mentors at Cornell
9 University in the 1970s, late professor George Kahin, who was
10 given a collection of such documents by the U.S. Embassy in
11 Saigon, in or around 1970 or '71.
12 A second place, more accessible, is the collection of Vietnam war
13 related documents at Texas Tech University, which inherited the
14 documents collected by Douglas Pike who was an American official
15 in South Vietnam during the war period. He collected all kinds of
16 bits and pieces of paper and when he died he bequeathed them to
17 this collection.

18 [13.46.56]

19 Q. Thank you. Page 163, English ERN to show, 00393826; talking
20 about 1970:

21 "A Khieu Samphan communiqué making no mention of the Vietnamese
22 declared that, the Cambodian people's struggle to set up people's
23 power was spreading vigorously as the Cambodian National
24 Liberation Armed Forces developed quickly, attacking 12
25 provincial capitals, liberating four of them, many district

1 capitals and hundreds of villages."

2 Footnote 32, "20th of June 1970, communiqué by the Ministry of
3 National Defence of the government of the National Union of
4 Cambodia, VNA 29 June 1970."

5 I think I know the answer, but VNA – and how did you obtain this?
6 [13.48.23]

7 A. VNA, Vietnam News Agency, was the successor to VNS, Vietnam
8 News Service. So it's the official news agency of the then still
9 Democratic Republic of Vietnam, and material of that sort was
10 collected and is held in the Cornell University libraries.

11 Q. Continuing on from footnote 32: "In August – so in August 1970
12 – FUNK claimed that its armed forces had wiped out 80,000 U.S.,
13 Lon Nol and Saigon enemy troops and completely liberated five
14 provinces of Cambodia."

15 Footnote 33: "New China News Agency 7 August 1970, citing the
16 FUNK information bureau."

17 Again, just a little bit about New China News Agency?

18 A. New China News Agency is the official news agency of the
19 Peoples' Republic of China.

20 [13.49.48]

21 Q. Continuing on with the next sentence: "In September 1970 it
22 said it controlled nearly three of Cambodia's 7 million people."

23 Footnote 34 references: "17 September communiqué of the political
24 bureau of the NUFK central committee and the Royal Government of
25 National Union of Cambodia, New China News Agency, 7 August

1 1970."

2 It was the political bureau of the NUFK central committee. Can
3 you help a little bit on that?

4 A. Formally speaking, the National United Front of Kampuchea,
5 which was the ostensibly, and in many ways in fact, non-communist
6 political organization backing the Royal Government of National
7 Unity of Kampuchea, was headed by a central committee, and above
8 the central committee was a political bureau. So it was organized
9 as if it was - organized along Communist party lines, but it was
10 in fact not a Communist Party organization.

11 [13.51.25]

12 Q. Thank you. Page 164, English ERN 00393827. Extract - I quote:

13 "The CPK began in 1971, formerly to demand the Vietnamese
14 dissolve and turn over its control of the armed forces and
15 political structures they had organized in Cambodia, especially
16 in the East and Southwest Zones, where these were most numerous."
17 Forty-five, the Black paper: "Facts and evidence of the acts of
18 aggression and annexation of Vietnam against Kampuchea, Phnom
19 Penh, Ministry of Foreign Affairs, September 1978."

20 So again, just how you sourced that, or this reference to Black
21 paper?

22 A. I mean, in this instance it's a full academic citation to that
23 publication which, in its English version, was disseminated in
24 the United States by the same G.K. RAM organization I previously
25 mentioned.

1 [13.52.56]

2 Q. Do you know where it was printed?

3 A. It looks like to me the version that reached me had been
4 printed in Phnom Penh.

5 Q. Next, it'll be the bottom of page 165, moving into page 166;

6 ERN English, 00393828: "As late as the end of 1972 the CPK again
7 fell back on Vietnamese military intervention to defeat key Lon
8 Nol offensives."

9 Footnote 57: "Engelbert and Goscha falling out, page 116."

10 That's another academic, is it a book or an article? I don't know
11 if Mr. Heder's microphone can come on but-

12 A. Yes, that's an academic publication.

13 [13.54.28]

14 Q. Carrying on with the same page: "And as late as August 1973,
15 Vietnamese special weapons units assisted CPK attacks."

16 Again, Engelbert and Goscha: "Nevertheless, throughout 1972 and
17 into 1973 the CPK pursued its goal of getting the troops to
18 evacuate its liberated zones. In some places it managed to
19 negotiate their departure. But where the negotiations failed, it
20 organized the population to demonstrate against them, or launched
21 military attacks on them. By the end of 1973 they were gone from
22 most CPK controlled areas."

23 Footnote 59 references Matsushita interviews, number 15, 18, 23,
24 and 30, describing events in the East, Southwest, and Special
25 Zones. We're going to come to some of the refugee interviews.

1 You've already touched upon these with Matsushita; it's the same
2 interviews, I take it?

3 [13.56.08]

4 A. Yes, it's drawn from that collection of typed up versions of
5 interviews done in February, March 1980 under the auspices of
6 Kyoto News Service.

7 Q. Now, in terms of this withdrawal of the Vietnamese from
8 Cambodia in 1973, aside from the 1980 Matsushita interviews, have
9 you been in possession of, seen, considered, had other interviews
10 that support the fact of the Vietnamese withdrawal at that time
11 in these circumstances?

12 A. For once, the short answer, yes.

13 Q. A short expansion?

14 A. There are other interviews which I did in the period between
15 1978 and 1984 which - I'm sure there are interviews that I did,
16 other additional interviews in that period, over that period,
17 that touch upon this issue. I don't think any of that material is
18 on the case file - not to my knowledge.

19 [13.58.05]

20 In addition to that, the - another of these potentially lucrative
21 source is the various memoirs, blogs, and other old fashion print
22 published materials and digitally disseminated materials written
23 by Vietnamese communist military veterans who served in Cambodia
24 in this period and have discussed what happened in those books,
25 those memoirs, those blogs, those chat rooms, and so on.

1 A. I'd like you to concentrate on the interviews you conducted on
2 this subject.

3 First question: Can you remember the sorts of people, or is that
4 too simplistic a question, that you interviewed who gave
5 information about this subject?

6 Q. Yes is the short answer. And the brief elaboration, there's a
7 series of, one might call quantitative interviews that I did in
8 1980 and '81, if I recall correctly, that led to some statistic
9 like data that has been part of the basis for some of the
10 estimations of the mortality that occurred under the Khmer Rouge
11 Regime. Quoted by, used by Ben Kiernan, or used by Patrick
12 Heuveline and others.

13 [14.00.18]

14 And if I recall correctly there were some maybe 1,500 of those
15 interviews which also tended to include some very basic
16 biographical data. And when I looked at the basic biographical
17 data I sometimes thought to myself, that person would be
18 interesting to talk to in more detail, to do a qualitative
19 interview. And normally what that meant was that there was some
20 indication to me that the persons was probably a cadre, someone
21 in a position of authority who would have some inside knowledge,
22 or relatively high level and detailed knowledge of what had
23 happened.

24 Q. If I ask you to go on the Internet tonight or do whatever
25 research you can, is there any possibility that if I came back to

74

1 this subject tomorrow, about the 1973 Vietnamese withdrawal, that
2 you may be in a position to pinpoint any particular interviews
3 that you had? I can see you shaking your head.
4 Now, can I please move to page 167 for you; ERN, English,
5 00393830, a portion in the middle of the page – I quote:
6 "Inside Cambodia, the CPK kept GRUNK Minister of Propaganda, Hu
7 Nim, and Minister of Interior, Hou Youn, under virtual house
8 arrest, while exploiting their names in propaganda they sometimes
9 wrote themselves that still gave the impression that they were
10 leaders of the Revolution. Unofficially, however, Hou Youn was
11 openly critical of the CPK, its leadership, and policies. Hu Nim
12 agreed with him but was more circumspect and sycophantic."
13 Footnote 69, Peung Say interview, Steve Heder's interview with
14 Peung Say, Phnom Penh, 25 July 1999.
15 [14.03.11]
16 So, again, to confirm the source – and just a little bit, please
17 – about interview, Peung Say, and a general description of him,
18 and his position, or how he fits in to the overall picture?
19 A. Peung Say was a – one of the – the first generation of
20 Cambodian Communists, same generation as Pol Pot, same generation
21 as Ieng Sary, and so on. If I recall correctly, also had a
22 sojourn, an educational sojourn in France, came back, was part of
23 the Communist Party Organization inside Cambodia, either shortly
24 before or immediately after the 1954 Geneva Agreement, and then
25 was a member of the Phnom Penh Party apparatus, underground Party

75

1 apparatus in the post Geneva period, we're talking about the mid
2 to late 1950s, and then fell out with the Communist Party or kind
3 of lapsed from membership but continued to be a kind of leftist
4 politicians - leftist politician. And then in the - after the
5 change of government in 1970, went into the marquis and was at
6 the Party - the complex of offices that constituted the Party
7 headquarters in the marquis and was in touch with his old
8 friends, in some senses, his old comrades; and then, after '75,
9 worked at the Ministry of - in the Democratic Kampuchea Ministry
10 of Education; survived; also spent some time in prison under the
11 People's Republic of Kampuchea after '79; survived; and
12 eventually re emerged and worked for the Office of the High
13 Commissioner for Human Rights.

14 [14.05.33]

15 Q. I'm slightly frightened, every time I ask you a question, on
16 the response is going to be-

17 But can I just go to this part of the extract, "Hou Youn was
18 openly critical of the CPK, its leadership and policies." Is the
19 source for that only Peung Say, or can you help us on any other
20 sources that support this statement of fact that Hou Youn was
21 openly critical of the CPK?

22 A. Not off the top of my head. I can say that it's one of those
23 things that is widely said, widely asserted, but to find somebody
24 who was actually there and actually heard it, I'd have to think
25 about it some more, and is still alive, is a bit - doesn't

1 immediately pop to mind.

2 Q. I'm moving on, same page, after Footnote 69: "The even more
3 compliant GRUNK Deputy Premier Khieu Samphan was the odd man in:
4 he'd been rewarded for his submissiveness by promotion to
5 alternate Central Committee membership."

6 Footnote 70 - and that reference is Khieu Samphan's "Open Letter
7 to My Compatriots", 16th of August 2001, and your - it says:
8 "Interview with Steve Heder." We'll come to that later.

9 [14.07.35]

10 In terms of the year that your research or documentation or
11 interviews has yielded, can you tell us what your understanding
12 is of what year Khieu Samphan was promoted to Central Committee
13 membership?

14 A. Alternate or full?

15 Q. Alternate?

16 A. My understanding is '71.

17 Q. Continuing with the extract referring to Khieu Samphan: "And
18 the post working as a kind of personal secretary to Nuon,
19 although even he had no independent decision-making power."

20 Footnote 71 states "Thiounn Prasith Interview": Interview of
21 Thiounn Prasith", New York, 8 September 1997.

22 First question: Was that an interview you had with Thiounn
23 Prasith?

24 A. Yes.

25 [14.09.08]

77

1 Q. I'm interested in the phrase "post working as a kind of
2 personal secretary to Nuon". Can you help us on what Thiounn
3 Prasith actually said or is it too long ago? Please comment and
4 if you can help us.

5 A. I, without seeking out the notes and hopefully finding them, I
6 can't be absolutely sure how much I may have paraphrased what
7 Prasith said. I suspect he said something very similar to that,
8 but I wouldn't swear to it, to coin a phrase.

9 Q. Still on this page, bottom of page 167 – quote:

10 "Although the CPK would for the most part steadfastly deny it,
11 its victory was due in large part to unwelcome Vietnamese
12 assistance of 1970 to 1972: Vietnamese armed intervention and
13 political and military organization and training provided the
14 shield behind which the CPK developed its strength, and also many
15 of the cadres and forces that became part of that strength as the
16 CPK took them over."

17 Footnote 72, Carney, "Unexpected Victory", pages given. That, I
18 take it's another academic source, or again, can you explain?

19 [14.11.08]

20 A. It's an academic publication by a U.S. Government State
21 Department political officer who was in Cambodia, '71, '75 or
22 thereabouts and followed Cambodia from outside Cambodia after
23 '75.

24 Q. Thank you.

25 Page 168, English ERN on the screen please, 00393831 – quote:

78

1 "Already in late 1970, early 1971, the Vietnamese Worker's Party,
2 while it remained predominant, and the CPK, as it took control,
3 increasingly relied on the pressure of their armed power to
4 maintain and extend their control. Where the Vietnamese military
5 operated in overwhelming force, it sealed off the 'liberated
6 zones' from the rest of the country..."

7 Footnote 75, reference, David Brown on Vietnamese Communists,
8 1971.

9 Can you help on that source?

10 A. I believe that's one of the documents that's in the Vietnam
11 collection at Texas Tech. Probably part of the Douglas Pike
12 Collection but it might be catalogued in a different manner.
13 [14.13.10]

14 Q. Thank you. Continuing with the sentence about the Vietnamese
15 military:

16 "...enforcing a ban on population movements between them." - in
17 other words, between the liberated zones. Reference 76. It's got
18 H7 "Forwards the July 1970 resolution, adopted by the Current
19 Affairs Committee of CL2 to agencies for study and execution", 19
20 July 1970 [Pike Collection], the same collection you've already
21 covered:

22 "Many rural folk felt trapped in the liberated zones, reluctantly
23 acquiescing to Communist control, whether Vietnamese or
24 Cambodian."

25 Footnote 77 references two things: "David Brown on "Vietnamese

79

1 Communists [Recovered]"; but secondly, "Cambodian Star, Formerly
2 an Enemy Captive, Says that Peasants are joining the Reds", "New
3 York Times", 2nd November 1970.

4 So I obviously take it you saw the "New York Times" and
5 referenced that to this event, is that correct?

6 A. Correct.

7 [14.14.52]

8 Q. "They fled when they could." Footnote 78 is the same document
9 that we've just covered from the "New York Times". No, sorry,
10 forgive me: "Peasants Flee Red Control in Cambodia", the "Los
11 Angeles Times", 3rd of January 1971, and "Montagnards Who Fled
12 Cambodia Get Little Aid", "New York Times", 10 April 1971. Are
13 those correct footnote references?

14 A. I presume so, yes. And all of those kinds of materials were -
15 are collected by the Cornell University Library and bound there.
16 So they should be sitting there in the bowels of that university
17 library.

18 Q. Talking of the people fleeing, and I carry on with a quote in
19 context: "...fled from a revolution that enjoyed even less
20 popular support than that in Southern Vietnam."

21 Footnote 79 references "Why Cambodia Didn't Fall", Christian
22 Science Monitor, 10 November 1970. Is that correct?

23 A. Same answer, yes, correct, and presumably from the Cornell
24 University Library collection.

25 Q. Moving to page 169; English ERN 00393832 - quote:

1 [14.16.51]

2 "As the CPK became more politically autonomous of the VWP in
3 1971-1972, much of the population remained "cynical, distrustful
4 and fearful", of a revolution that maintained its position
5 through threats and executions." Footnote 83, references, "A U.S.
6 Central Intelligence Agency, Intelligence Information Report,
7 'Khmer Communist Educational and Indoctrinational Activities in
8 Banteay Srei District, Siem Reap Province; Khmer Communist
9 Detention Camp at Roluos, Siem Reap Province for Civilian
10 Offenders", 6 June 1972.

11 How did you, please, access this report?

12 A. Not to speak ill of the dead, but the late Douglas Pike often
13 had access to classified material which he put into his public
14 collection to what's known as field declassification. That means
15 you cut off the bit at the top, you cut off the bit at the
16 bottom, and you put it out there where others can read it. So I
17 think this material almost certainly is in the Texas Tech
18 collection of Vietnam War era documents.

19 [14.19.06]

20 Q. Thank you. Continuing:

21 "As the CPK expelled Vietnamese armed forces in 1972-73, it
22 replaced their military domination with increasingly extreme
23 coercion to ensure peasant compliance with its demands. The CPK
24 became even more violent and repressive after mid 1973" - and I
25 read on - "when it radicalized its policies, insisting on the

81

1 formation of agricultural cooperatives in the zones under its
2 control, curtailing the practice of religion, imposing even
3 stricter prohibitions on villagers' movements, and mobilizing the
4 population for attacks on Phnom Penh."

5 Footnote 84 about coercion references Donald Kirk, "Revolution
6 and Political Violence in Cambodia", 1970 to 1974 in Joseph J.
7 Zasloff and MacAlister Brown, "Communism in Indochina: New
8 Perspectives".

9 Firstly, who was Donald Kirk?

10 A. Donald Kirk was an American war correspondent active
11 throughout Indochina during the, what we call the Second
12 Indochina War, that is, the one that ended in 1975. I believe
13 he's still alive. He's a journalist now in Korea.

14 [14.21.20]

15 Q. Another portion on the same page:

16 "The CPK never convinced the majority that the revolution it was
17 pushing forward was in their interests. Coercion, force, and
18 threats maintained only the semblance of mass support and of the
19 popular success of the National People's Democratic Revolution."

20 Reference: Frieson, "Revolution and Rural Response". Who was
21 Frieson?

22 A. It's Kate Frieson, who did a PhD with David Chandler. And I
23 believe this passage is taken from her PhD, although there was a
24 published article based on her PhD, which may be what I'm citing.

25 Q. I want to go back, because I've neglected to speak about

1 Footnote 85, which is about in part mobilizing the population for
2 attacks on Phnom Penh. And your source for that, Kenneth M.
3 Quinn, "Political Change in Wartime: The Khmer Kraham Revolution
4 in Southern Cambodia, 1970 to 1974", Naval War College Review,
5 Spring 1976; Kiernan, "How Pol Pot Came to Power"; and Frieson,
6 "Revolution and Rural Response".

7 You've explained Frieson, we know Kiernan, who was Kenneth M.
8 Quinn?

9 [14.23.28]

10 A. Ken Quinn was a U.S. Foreign Service officer based, if I
11 recall correctly, in the U.S. Consulate in Can Tho in Southern
12 Vietnam from which he did political reporting, including
13 reporting based on what he was told by Cambodians who came from
14 Cambodia into Vietnam. And the - this article was based on what
15 they used to call an "air gram" which was a report that he sent
16 back to - either to the embassy or to Washington, and he later
17 got governmental permission to publish it as a journal article.

18 Q. Thank you. One of the references is Ben Kiernan, "How Pol Pot
19 Came to Power", pages 368 to 393. You should have in one of your
20 next tabs, I hope, extracts from Ben Kiernan. Do you - can you
21 confirm whether that is in your file or not?

22 A. Yes.

23 Q. Can I explain, please, Mr. President and Your Honours; these
24 documents have been presented already to you by me in a document
25 presentation. They are extracts from E3/1815, and I want to

83

1 summarize and ask Mr. Heder some questions.

2 [14.25.16]

3 Mr. Heder, can I take you to the second page in your pack now,
4 which should be page 369 of Kiernan; English ERN - and I wonder
5 if this can go up on the screen - 00487489; the Khmer is
6 00104869; this part not available in French.

7 I am going to try and summarize, if we may, Mr. Heder. It's
8 talking about 1973 and the evacuation of Kratie. Now, from your
9 research, studying documentation, interviews you conducted, did
10 you come into possession of information or facts that can help
11 this cause on the evacuation of Kratie in 1973?

12 MR. PRESIDENT:

13 Mr. Witness, could you please hold on?

14 And Counsel Vercken, you can now proceed.

15 [14.26.40]

16 MR. VERCKEN:

17 Thank you very much, Mr. President.

18 I'm not entirely sure if Mr. Heder himself is aware of this, but
19 he is in the midst of slipping from his capacity of testifying as
20 a witness to that of an expert. Based on the questions being put
21 to him by the Co Prosecutors, in spite of the cosmetics that
22 adorn his questions, he seems to be referring to certain
23 documents and asking the witness questions as though he were an
24 expert.

25 We are all very well aware, despite what our opinions are, we are

84

1 very well aware that Mr. Heder is appearing before this Court as
2 a witness and not as an expert, and the purpose of his testimony
3 is to provide indications on the method with which he conducted
4 his work before his work at the tribunal.

5 He is potentially testifying as though he were an expert, and I
6 object to the questions being put to Mr. Heder.

7 [14.28.21]

8 MR. RAYNOR:

9 I haven't asked one question about opinion. I'm not going to ask
10 one question about opinion because you've given your directions.
11 I'm not asking his opinion about Kratie, I'm asking him did he,
12 through his research and his interviews and documents he's seen.
13 I'm not asking him what his opinion is.

14 And can I add this, because I think it's important. Already Mr.
15 Heder's made it clear he has conducted many interviews that are
16 not on our case file, and so, in my respectful submission, I'm
17 perfectly entitled to ask him, based on his direct knowledge,
18 interviews that he has had, and to quote the Trial Chamber's
19 memo. Can I please proceed?

20 (Judges deliberate)

21 [14.29.36]

22 MR. PRESIDENT:

23 The objection by counsel for Mr. Khieu Samphan is not sustained.
24 The question the Co Prosecutor put or the questions put to Mr.
25 Steve Heder are appropriate.

1 Mr. Heder, you are now instructed to respond to the question.

2 BY MR. RAYNOR:

3 Q. Mr. Heder, can I repeat the question? Here, Kiernan's talking
4 about the evacuation of Kratie in 1973. You said already I think
5 that you were in Cambodia 1973 to 1975, so perhaps I'll ask you
6 that first. Is it right that you were in Cambodia from 1973 to
7 1975?

8 MR. HEDER:

9 A. Yes, I recall correctly from May of 1973, and I recall
10 specifically until 11 April 1975.

11 Q. Kratie, 1973, evacuation, help or no help?

12 A. Frankly, nothing leaps immediately to mind. If I looked in my
13 old notebooks I might find something, but there is nothing that's
14 in the front of my mind that I can say to you with certainty,
15 yes, I know there is something there.

16 [14.31.20]

17 Q. Moving on to Kiernan, page 371, English ERN 00487491; Khmer
18 00104870; no French: "Kiernan, 1973. Kampong Thom. Reference to
19 the organization was led by very severe men. Their discipline was
20 terrible. There were many executions."

21 Can you help – Kampong Thom, 1973, executions?

22 A. Again, off the top of my head, no. You might find something,
23 however, in the work of the previously-mentioned Donald Kirk who
24 did some interviewing, as I recall, in Kampong Thom, in 1974,
25 which he either may have included in the article that you

1 referred to, or have written up in newspaper articles that
2 appeared at the time.

3 Q. Thank you. Kiernan, page 384, English 00487504; Khmer 0010487
4 – I think 89. Can you pull up this page, please, on Kiernan page
5 384?

6 [14.33.53]

7 "Udong, March 1974, talks about Donald Kirk investigating the
8 aftermath. I don't want to lead in anyway. Your interviews, your
9 research, your books, your knowledge. Udong, 1974."

10 What happened? Can you help?

11 A. On this one, as it happens, I can. I went to Udong in the
12 aftermath of this attack. I did interview some people who talked
13 about the population being removed to the countryside. I also
14 interviewed some people who said that there had been executions
15 on the spot of some categories of people, including Buddhist
16 nuns. And I have a pretty clear recollection of the state of
17 those bodies. I certainly saw the bodies. I vaguely remember
18 having seen maybe half a dozen bodies, but there definitely
19 bodies of women dressed as Buddhist nuns who had been killed
20 there.

21 Q. Did you see anyone dressed in uniform, or a body in uniform?
22 Or can you help on what may have happened to the Lon Nol
23 soldiers?

24 [14.35.46]

25 A. I don't recall anything specific about – I certainly don't

1 recall seeing any bodies of Lon Nol Khmer Republic military
2 personnel. I may have been told that there were executions. I
3 don't specifically recall that I was.

4 Q. In terms of what you were told about executions in Udong,
5 you've mentioned - I think you used the phrase "classes of
6 people". And I understand the Buddhist nuns. But can you
7 recollect - first question; what were your interviewees telling
8 you about who had killed these people?

9 A. I think there was no ambiguity, at least in the minds of the
10 people that I interviewed, that the executions had been carried
11 out by the Khmer Rouge troops who had entered Udong, killed
12 certain people, and taken most, if not all, of the rest of the
13 population out to the countryside.

14 [14.36.56]

15 Q. How long after the 18th of March 1974 - can you help? - were
16 you in Udong? Days? Weeks? Months?

17 A. I suspect it was on the 19th - the next day. It's close to
18 Phnom Penh. It was relatively easy to get to. I went there right
19 away. The recollection of the bodies that they were fresh. So I
20 think that it was probably the next day.

21 Q. Just roughly, population before the evacuation? Population
22 afterwards? Or can't you help?

23 A. I don't have those figures in my head.

24 Q. What was Udong like? The state of the town, in term of
25 buildings - I don't know - destruction? Normal? Can you just

88

1 paint a little bit of a picture for us? Udong, 19th of March
2 1974.

3 [14.38.06]

4 A. My recollection is that the town was largely destroyed, very
5 much shot up, that the pagoda on the top of the hill was also
6 seriously damaged. The bodies of the nuns were actually on the
7 hillside, on the way up to the top of that pagoda. The town
8 itself was deserted. Nobody there. Some Khmer Republic military
9 had come into the area, but no local population except for a
10 handful of people, and those are the ones to whom I spoke who had
11 somehow managed to not get evacuated, had evaded the evacuation.
12 And I think we're talking about, you know, in that regard, dozens
13 of people - certainly not hundreds and absolutely not thousands -
14 several handfals.

15 Q. Were you able to ascertain where the evacuated people had gone
16 to?

17 A. My recollection is west.

18 Q. Can you help us on who had commanded the Khmer Rouge troops,
19 either by name or by zone? In other words, which Khmer troops
20 undertook this activity in Udong in March 1974?

21 A. Should be - should be special zone sector 15, probably sector-

22 MR. PRESIDENT:

23 Mr. Witness, could you please hold on?

24 And Counsel Koppe, you may now proceed.

25 [14.40.25]

1 MR. KOPPE:

2 Mr. President, now we're passing exactly the zone or the border
3 between being a witness and being an expert. The question was
4 first what did you see when you arrived there? Where did they go?
5 Probably westwards – that is still within the realm of what a
6 witness could have seen, could have heard. But the moment the
7 question now comes as to who was the Khmer Rouge leader in charge
8 of all this – is a typical expert opinion, and its crossing that
9 narrow border that we have all established. So I object to this
10 question.

11 BY MR. RAYNOR:

12 Q. I agree. Can I ask the question a different way? Did you speak
13 to anyone – I don't want you to speculate – did you speak to
14 anyone, have discussions with anyone, obtain direct evidence from
15 anyone about which troops had been involved, without speculating?

16 [14.41.46]

17 MR. HEDER:

18 A. The answer is – certainly not at the time. In other words,
19 presuming that I'm right that it was the 19th – the next day – I
20 wasn't in those days in the kind – in a position to ask those
21 kinds of questions, or even in a position to know to ask those
22 kinds of questions. And the reason I phrased my answer the way I
23 did is I'm thinking about what I know from other interviews that
24 I subsequently did, about who it was that was operational in
25 those areas. Whether or not – so, by putting together the

90

1 location with my information from my subsequent interviews, I can
2 draw an inference. Whether there's, among those subsequent
3 interviews, somebody that I had the good sense to ask this
4 specific questions of and got an explicitly answer - yet again, I
5 could only answer by going through all the notebooks and looking
6 for it.

7 Q. From my perspective, this is important. Now, we've already
8 said there's - lots of your interviews are not on our case file.
9 I've asked you once already, in connection with a different
10 aspect, but is there any way that you would be able to identify
11 material that assists the Court on which troops undertook this
12 activity overnight, into the next day - how long would you need?
13 Is it feasible? Is it possible?

14 [14.43.46]

15 A. Let me try and explain about these 1978-1984 interviews.
16 First, of course, it's pre-digital. The way in which most of
17 those interviews eventuated I have described. They were - I
18 looked at the quantitative interviews, with the minimal bio-data,
19 and then tried to track down - to try and follow up on cases that
20 I thought were interesting. I have to say that this material was
21 repeatedly offered to the Court.

22 First, when I was in the Office of the Co-Prosecutors, and second
23 when I was in the Office of the Co-Investigating Judges, and
24 there was no interest - or little - little or no interest would
25 be a fairer, perhaps, summary. And the reason for that is that

91

1 the assessment was that they were of – and I have to say this, I
2 guess – they were of little or no probative value. And the
3 reason–

4 Q. I'm interrupting. I'm asking you a simple question.

5 A. No. The simple is answer is no. It's not easy. It's not
6 simple.

7 MR. RAYNOR:

8 Thank you. Now–

9 MR. PRESIDENT:

10 Thank you, Mr. Co-Prosecutor, and Thank you, Mr. Witness.

11 I think it is now appropriate moment already to have – or to
12 adjourn for 15 minutes.

13 Court officer is now directed to assist Mr. Heder during this
14 adjournment and have him return to the courtroom when the next
15 session resumes at 3.00 – or rather, five past 3.00.

16 (Court recesses from 1445H to 1506H)

17 MR. PRESIDENT:

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

19 We would like now to hand over to the Co-Prosecutor to continue
20 putting questions to Mr. Heder. But before that we would like to
21 hand over to Judge Cartwright to make some observation regarding
22 the proceedings.

23 JUDGE CARTWRIGHT:

24 Yes. Thank you, President.

25 Mr. Header, the President has asked me to mention a couple of

1 matters to you.

2 First of all, the evidence before this tribunal has certain rules
3 that have already been ruled upon and that includes that we don't
4 look at the investigation. So, if this matter comes up again, the
5 Chamber asks you not to stray into the area of the investigation.

6 [15.07.44]

7 Secondly, it would be greatly appreciated because of time
8 constraints if you could compress your answers. And we all know
9 undoubtedly you have a great deal of information but please
10 listen to the prosecutor and keep your answers as brief as
11 possible.

12 And thirdly, earlier this afternoon the Prosecutor asked you to
13 write down the name of an interviewee, which you did. The
14 President has now asked me to ask you to state the name of that
15 person publically because he does not have a pseudonym assigned
16 by the Court, and therefore it is quite proper for that person's
17 name to be mentioned in open Court.

18 President, is that everything? Thank you.

19 MR. PRESIDENT:

20 Thank you, Judge Cartwright.

21 And Judge Lavergne, you may now proceed.

22 [15.09.09]

23 JUDGE LAVERGNE:

24 I don't wish to monopolize the floor. However, I do have a
25 question of clarification since this morning and this afternoon,

1 since you were questioned on a certain number of sources that
2 were cited in your publications.

3 There was also reference to a book written by In Sopheap. I wish
4 to know if you describe that document as a type written document
5 that was drafted in French and if the following title rings a
6 bell, the possible translation is Khieu Samphan enlarged and
7 real. Are you aware of this particular reference?

8 MR. HEDER:

9 I think that's probably, indeed, the title that was at the top of
10 the type script.

11 JUDGE LAVERGNE:

12 Perhaps you would be so kind as to make that confirmation by
13 tomorrow.

14 And I will here by advise all parties that the document in
15 question was admitted into the proceedings based on the ruling on
16 the Chamber, under E/236/4/2. This document has received an E3
17 classification.

18 [15.11.07]

19 BY MR. RAYNOR:

20 Q. Mr. Heder can you read the name please?

21 MR. HEDER:

22 A. The name is Daok Som Ol.

23 Q. And can you read the document number if there is one, I can't
24 remember if it you have the E number on that document or a D
25 number?

1 A. It's got a D number and the D number is D210/10.

2 Q. Thank you. Can I collect that back just so that it's kept?

3 Now, Mr. Heder, Udong 1974 is this a sequence of events that he

4 Khmer Republic Forces were in control of the town. The Khmer

5 Rouge come in in what you described as an attack. You've

6 mentioned evacuation and on the day you went the Khmer Republic

7 were back in the town. Is that correct?

8 [15.12.38]

9 A. That's correct.

10 Q. Can you help us on how long the attack was on Udong by the

11 Khmer Rouge - days, hours?

12 A. My recollection was that it was over a 24-, 36-hour period.

13 Q. And how long were the Khmer Rouge in control of Udong?

14 A. Again my recollection is a day or so but I'm frankly not

15 absolutely sure.

16 Q. In terms of executions you mentioned the Buddhist nuns, but

17 you use this phrase other categories. Now, can you help on your

18 observations or your interviews about other categories?

19 A. Again my vague recollection is there was talk about executions

20 of military personnel, civil servants, and then there was the

21 specific mention of the nuns and I was then taken or went to see

22 the bodies of the nuns.

23 Q. Civil servants and soldiers of whom?

24 [15.14.12]

25 A. Khmer Republic civil servants and Khmer Republic military

1 personnel.

2 Q. Now, from your observations, from the interviews that you
3 conducted, or from any other direct sources without speculating
4 did you receive any other information about what had precipitated
5 the evacuation – humanitarian crisis, bombing, anything of that
6 nature?

7 A. I don't recall any explanation as to why the evacuation had
8 been carried out coming up.

9 Q. Same question in respect of sources, but in the period from
10 1971 to 1975 17 of April: Did you obtain information about any
11 other evacuations in any other area of the country apart from
12 what you've mentioned about Udong?

13 A. Yes, I did do some interviewing after the partial occupation
14 by Khmer Rouge forces of Kampong Cham provincial town during
15 which, according to what I recall of the interviews, I was told
16 people were evacuated again to the West and some people were
17 killed on the spot before being evacuated to the West. And before
18 the Khmer Republic marine forces, if I remember correctly, came
19 up river and reasserted military control over the whole of the
20 provincial town. I think that was September '73, if I recall
21 correctly.

22 [15.16.36]

23 MR. PRESIDENT:

24 Counsel Vercken, you may now proceed.

25 MY. VERCKEN:

1 I wish to raise an objection, Mr. President. I believe that we
2 find ourselves in a rather difficult situation.

3 The Co-Prosecutor, as we clearly see, is asking questions
4 relating to events. And the only answers Mr. Heder is able to
5 provide in good faith is he did hear about certain events through
6 the interviews he conducted. However we are here in a legal
7 courtroom; there have been thousands of documents that have been
8 admitted into evidence by this Chamber.

9 [15.17.34]

10 If there are interviews that comprise the body of evidence that
11 this Chamber will take into its deliberations that is for you to
12 decide. However they make up the body of evidence. We are told
13 that Mr. Heder is appearing in the capacity of witness. He is to
14 speak on the method with which he gathered information and
15 evidence for the tribunal. I imagine that his presence at Udong
16 was the subject of possible investigations. However when he is
17 being asked general and broad questions to which he can only
18 respond I'm told that, I heard that so on and so forth, I would
19 point out that he that is to say the witness is in a position to
20 describe the situation without any details. He is unable to
21 consult his notes that he would have taken. We have no idea as to
22 whether or not Mr. Heder has the notes with him or if they are at
23 his residence.

24 This brings to mind the testimony of Mr. Schanberg who himself
25 had consulted the notes that he had in his hotel room and that he

1 had to verify during the evening after which he would provide us
2 confirmation the next day.

3 And Mr. Heder is not appearing as an expert, he has refused to
4 appear as an expert he is appearing before this Court as a
5 witness. And I believe that once again we appear to be hearing
6 questions that are not put to a witness but rather an expert who
7 enjoys certain credibility in order to verify – in order to state
8 whether or not he had heard certain information.

9 [15.20.30]

10 MR. RAYNOR:

11 Memorandum, email 3rd of July. Mr. Roberts, all parties – quote:

12 "The questions shall be directed primarily to evidence the
13 witness gathered either during the interviews he conducted
14 [etc.]"

15 These questions are about the interviews he conducted. The
16 answers are about the interviews he conducted. All these
17 submissions go to weight not admissibility. The Defence can cross
18 examine Mr. Heder in the same way they cross examined Mr.
19 Schanberg on exactly the same sort of themes. I have consistently
20 today restrained my questioning to Mr. Heder's direct knowledge,
21 interviews he's undertaken.

22 Can I please proceed?

23 (Judges deliberate)

24 [15.21.59]

25 MR. PRESIDENT:

98

1 The Chamber notes that the objection by counsel for Mr. Khieu
2 Samphan regarding the line of questioning by the Co-prosecutor is
3 not appropriate and the objection is not sustained.

4 And, yes, the Co-Prosecutor, you may now proceed.

5 BY MR. RAYNOR:

6 Thank you very much, Mr. President.

7 Q. Mr. Heder, Kampong Cham provincial town, September 1973, you
8 interviewing people, they tell you some executed on the spot. Who
9 had done the execution?

10 MR. HEDER:

11 A. I was told the incoming Khmer Rouge forces.

12 Q. Kampong Cham provincial town September 1973, your interviews,
13 told people were evacuated again to the west. Any help on numbers
14 or the extent of that evacuation in Kampong Cham in September
15 1973?

16 [15.23.49]

17 A. Again I don't have the figures in my head. But as I said the
18 situation as it was described to me after the fact was that only
19 about half or only a part of the town was controlled by the Khmer
20 Rouge so only those parts of the town that were controlled by the
21 Khmer Rouge were evacuated. People fled from other parts, people
22 hid in other parts, but not the entire population was taken away
23 because not the entirety of the town was seized.

24 Q. You've given evidence about Udong and special - or categories,
25 any similar interviewers - interviewee's rather saying anything

99

1 about categories of people in respect of execution or evacuation
2 in Kampong Cham in September 1973?

3 A. Again my general recollection is that the same kinds of
4 categories were mentioned – that is to say, Khmer Republic, Civil
5 Servants, and military personnel in particular.

6 MR. RAYNOR:

7 All right. Thank you. You can close that index binder.

8 Mr. President, I've prepared files for Mr. Heder. We have indexes
9 to these files. Can I hand out copies of the indexes so that
10 everyone knows where I'm going with my questioning? What the
11 files contain and the purpose is to assist Mr. Heder by having
12 the material he's authored in front of him so that I don't have
13 to keep asking for a document and getting it back and changing my
14 files. I hope it will assist your understanding of his evidence
15 to have these on hand.

16 Can I please distribute them?

17 [15.26.43]

18 MR. PRESIDENT:

19 You may proceed.

20 And court officer is now directed to bring these documents for
21 the witness and the parties, including the Bench, for
22 examination.

23 MR. RAYNOR:

24 Mr. President, given that everyone now has the indexes, can I
25 please now provide the lever arch files to Mr. Heder?

100

1 MR. PRESIDENT:

2 Indeed, you may proceed.

3 [15.28.44]

4 MR. RAYNOR:

5 Q. Mr. Heder, three additional files; the file on the spine of
6 each file has a number 2, 3, and 4. Can I ask you, please, to
7 turn to file 2, tab 7, document number D210/10? This is now, as
8 far as you're concerned, the statement of the gentleman whose
9 name you gave in to the Court.

10 I'd like you, please, to turn to - easiest for you page 6 of the
11 statement - English ERN 00436882; Khmer, 00392113; French,
12 00463018. So, this is your interview with this gentleman.
13 Question at the top of the page: "But the place you previously
14 stay belonged to the East Zone."

15 And I wonder if this can be displayed, please - this document.

16 "And the problem started since around '73 and later on you
17 understood that there might be problems within the leadership of
18 the East Zone?" Answer from the interviewee, "In general starting
19 from 1973 onward I started to be suspicious about them because I
20 saw their activities in '73 and '74.

21 [15.31.22]

22 "They purged the internal cadres and regular cadres, accusing
23 them of being corrupted and wild. At that time there were just
24 two main accusations, one of which was the immoral act of
25 womanizing and the second one was the internal enemy burrowing

101

1 from within."

2 Can you confirm that that is what you were told in this
3 interview?

4 MR. HEDER:

5 A. Yes.

6 Q. And just to remind us, this interview held - this interviewee
7 held what position in what sector or zone?

8 A. He was a - he moved around various positions within the East
9 Zone and was in several sectors, but ended up as being secretary
10 of Sithor, Kandal district of Sector 22.

11 Q. Right, thank you. I want to move on to a topic now of the
12 Vietnamese and the Khmer Hanoi, and fortunately the first
13 question I have is on this same witness statement. Can you turn
14 back one page to page 5 - English ERN 00436881; French, 00463017;
15 Khmer, 00392112.

16 [15.33.25]

17 Question: "Just year 1973?"

18 Answer: "Yes, since year '73 because at that time I saw the
19 situation was changed. The first main problem was when they
20 expelled the Vietnamese. They expelled the Vietnamese forces from
21 the Cambodia/Vietnam borders and from our territory in '73. That
22 was around July or August. I do not recall which month exactly.
23 That was the first event, and the second event began in 1973. It
24 was the purge and arrest of the cadres from the North Zone who
25 had been trained in the North Vietnam in Hanoi. They started to

102

1 arrest them, step by step."

2 Can you confirm that that was what was said to you in this
3 interview?

4 A. Yes, except for the fact that I think there's a slight mistake
5 in the translation. Where the translation reads "North Zone" as
6 if it refers to the North Zone in the Khmer Rouge administrative
7 system, it's actually referring to the northern half of Vietnam.
8 Otherwise, fine.

9 [15.34.58]

10 Q. Next, please. File - we're going on to another statement now -
11 file 2, tab 1, E number E3/1714, first page. So this is at your
12 Index 1, file 2, so it's the same file you have but at the front,
13 Mr. Heder. You've got numbers going down the tabs, so tab 1,
14 behind tab 1, yes? Now this is E3/1714, and can this be
15 displayed, please?

16 The heading of the document "Interviews with Kampuchean Refugees
17 at the Thai/Cambodia Border, February/March 1980, Interviewers
18 Masato Matsushita and Stephen R. Heder, graduate student, Cornell
19 University". And you've explained already the background to this,
20 so can I please take you to page 20, and that's using the page
21 numbers shown in the bottom of the document. They're a bit
22 indistinct.

23 Page 20 - English ERN 00170712; French, 00648977; Khmer, 00324703
24 - it references interview number 13, 6 March 1980 in Sa Kaeo, and
25 I just want to read the introduction.

103

1 [15.37.11]

2 "Two sources, both are teachers from the Sa Kaeo School. One is
3 called Khem and he was born in Kampong Luong, was in a liberated
4 zone in 1970. He was considered a Base Person, seems to have some
5 education, but claims to have held no position in the Party or in
6 the Administration. The other source is named Hem, was an
7 instructor at the Ruessei Keo technical school at Kilometre 6,
8 north of Phnom Penh. After 1975 he became an automobile
9 mechanic."

10 Can you confirm that's the people we're speaking about in the
11 context of this interview?

12 [15.38.02]

13 A. Yes.

14 Q. Next page, page 21 for you at the bottom – English ERN
15 00170713; French, 00648978; Khmer 00324705:

16 "Khem: There were Vietnamese troops in Sector 15 up until
17 mid-1973 when they were driven out. There were continuous
18 negotiations aimed at obtaining the Vietnamese withdrawal from
19 Sector 15 after 1970, but in 1970 the Vietnamese were strong.
20 According to the Party position, the Vietnamese had no right to
21 stay there and the Party wished them to leave, but was too weak
22 to get them leave. Starting in 1971, diplomatic and military
23 pressure was put on the Vietnamese to leave.
24 This pressure continued in 1972. In 1973, there were negotiations
25 between Cambodian and Vietnamese commanders and they agreed in

104

1 principle that Vietnamese would leave. But some Vietnamese units
2 were stubborn and did not leave and they had to be forced out.
3 There was a lot of bloodshed in 1973 before all the Vietnamese
4 finally left.

5 "After that, we also forced out Vietnamese residents. This was
6 considered a repatriation. The Party line was that anyone who
7 loved Kampuchea could stay but it was made clear that if in the
8 future contradictions developed and Vietnamese residents could
9 not accept the regime in Cambodia, they would not be kept."

10 Can you confirm that that is what was said?

11 [15.40.22]

12 A. Yes.

13 Q. Staying within the same document but going to page 32 -

14 English ERN 00170723; Khmer, 00324722; and French, 00648987 -

15 interview number 18 in Takeo; the source was a man from tambon 13
16 in the southwest, presumably a Party person.

17 And can I take you to the next page on your document 33 -

18 English, 00170724; French, 000648988; and Khmer, 00324725:

19 [15.41.40]

20 "At the time of the Lon Nol's coup, Vietnamese troops came into
21 and established state power under their control in tambon 13. The
22 Khmers who had gone to Hanoi in 1954 were put in charge but under
23 the Vietnamese control. I can only remember the name of one of
24 them. Yem was a Khmer secretary and there were hundreds of such
25 Khmers who came to tambon 13 from Hanoi.

105

1 The Vietnamese intention was to control Cambodia, the same way
2 they controlled Laos. From the villages up, Khmers from Hanoi
3 were at the Khum district and tambon level. I don't know whether
4 there were also such people at the region level. These Khmers
5 were the subject of purges starting in the end of 1971."

6 Is that correct that you were told this by this witness?

7 A. Yes.

8 Q. Next page for you, 34 - English, 00170725; French, 00648989
9 through 90; Khmer, 00324726 through 27 - quote:

10 [15.43.17]

11 "But by early 1972, all the Khmer forces were turned over to the
12 Khmer organization. At this time, those Khmers who had come back
13 from Hanoi were not accepted into the Khmer organization. They
14 were prohibited from mixing in our state power. Neither the
15 military nor the civilian cadres were accepted.

16 "Our organization dealt with this problem in the following
17 manner. We called those Khmers from Hanoi to come to study and
18 someone led them away, so really we were expelling them.

19 "The majority of these Khmers were in the administrative
20 positions not military positions. These administrators were not
21 concentrated, there was only one or two in each place, separated
22 from each other, so when we began pulling them out the others did
23 not realize what was happening and so we were able to get rid of
24 almost all of them. Very few realized what was happening in time
25 and escaped to Vietnam.

106

1 [15.44.40]

2 "I don't know where this overall plan came from, but in each
3 level of the Khmer organization there were meetings to discuss
4 how to carry it out. Each level received instructions from the
5 level about it."

6 Can you confirm, please, the content on this page?

7 A. Yes.

8 MR. PRESIDENT:

9 Mr. Witness, please hold on. Mr. Victor Koppe, you may proceed.

10 MR. KOPPE:

11 The question is from the prosecutor, "Can you confirm the content
12 of this page?" That would imply that what's written down here was
13 actually the truth or actually happened. The question should be,
14 "Have you written this down? Has somebody told you this?", and
15 then, of course, the answer will be, "Yes, somebody told me this
16 and I have written it down", but it doesn't make it true. So the
17 question should be - completely superfluous question, I think,
18 but nevertheless should be, "Did you write this down? Did
19 somebody tell you that?" - nothing more, nothing less.

20 [15.45.54]

21 BY MR. RAYNOR:

22 I agree.

23 Q. Did somebody tell you this? And was it written down?

24 MR. HEDER:

25 A. Yes.

107

1 Q. Now, on the description of the person, we've obviously got
2 "man from tambon 13, Takeo in the southwest, presumably party
3 person". Can you remember anything else about the position of
4 this person or their status?

5 A. No. I've a vague recollection of the guy's appearance but I
6 couldn't tell you any more.

7 Q. Within the same body, so the same document, E3/1714, and I now
8 take you, please, to page 54, page 54 for you – English, ERN
9 00170745; French, 00649007; Khmer, 00324757 – interview number 29
10 took place at the navy camp 62 in Chanthaburi, March the 12th,
11 1980, the source Lonh also known as Lorn, a member of the Kampong
12 Som City Standing Committee.

13 Can you help us on what this Kampong Som City Standing Committee
14 is a reference to?

15 A. Yes. Kampong Som was one of only two places in the CPK
16 structure where they had a municipal committee, the other being
17 Phnom Penh. So this was the party – the CPK leading committee for
18 Kampong Som city of which Lorn was one of the members.

19 Q. Your page 57 – English ERN 00170748; French, 00649010; Khmer,
20 00324763–

21 And can this please be shown?

22 "If we had captured Phnom Penh in 1974 it would also have been an
23 evacuation. This had been a long-standing plan. Slogan was 'Dry
24 Up the People from the Enemy'."

25 Is this an accurate recording of what you were told?

108

1 [15.50.05]

2 A. Yes.

3 Q. In the course of all the direct interviews you have had with
4 personnel relating to the Democratic Kampuchea period, has any
5 other witness or any other document that you can recall mentioned
6 the phrase "Dry Up the People from the Enemy"?

7 A. Yes, many - many, many.

8 [15.50.42]

9 MR. PRESIDENT:

10 Witness, please hold on.

11 Counsel Victor Koppe, you may proceed.

12 MR. KOPPE:

13 Thank you, Mr. President. A request for clarification.

14 The prosecutor was asking about "has any other witness". Is that
15 "witness" in the legal phrase of the word or is that "witness" in
16 the sense of an eye witness that spoke to this witness. We need
17 to have clarification on the use of the word "witness".

18 BY MR. RAYNOR:

19 I agree.

20 Q. Has any other-

21 Let's break it down.

22 Firstly, has any other individual that you have interviewed
23 directly used the phrase "Dry up the people from the enemy"?

24 MR. HEDER:

25 A. Yes.

1 [15.51.31]

2 Q. Can you give us some indication – the odd individual, a few
3 individuals, just paint the picture?

4 A. I mean, here I have to generalize. This particular phrase has
5 been mentioned to me by many people over many years. If I had to
6 guess how many, we're talking dozens. And certainly going right
7 back indeed to the pre-April 1975 period when I was in Phnom
8 Penh, I'd already heard this phrase.

9 And I'll add, since you already asked the question, that it also
10 frequently appeared in public broadcasts, both – in the pre-April
11 '75 period the various radio stations that were directly or
12 indirectly under the control of the Khmer Rouge used this phrase
13 in their broadcasts. And if one were to comb through the FBIS,
14 the FBIS for the pre-April '75 period, I'm sure you would find
15 numerous references to it.

16 [15.52.56]

17 Q. Thank you. The next page of this individual that you
18 interviewed is page 58 for you – English ERN 00170749; Khmer,
19 00324763; French, 00649011: "After the failure of early 1974
20 offensive, there were study sessions. In the end of 1974 there
21 were generalized study sessions. The purpose was the preparations
22 for the attack in 1979."

23 Is this an accurate recording of what you were told?

24 A. Yes.

25 Q. I'd like you next within your file to go to tab 2. This is

110

1 your interview with Ieng Sary, 17 December 1996, E number E3/89.

2 Can you please turn to page 5 of this document – English ERN

3 00417603; French, 00332685; Khmer, 00062457 through 58. In

4 discussing a September 1978 meeting, reply, Ieng Sary-

5 And can this be shown, please?

6 "No, that matter was not discussed at that meeting. The matter of

7 the evacuation from Phnom Penh had been previously decided.

8 That's according to what I was told."

9 You: "February 1975?"

10 [15.55.42]

11 Ieng Sary: "No, April, May. But in early April or late March

12 1975, they brought up the possibilities of what to do when Phnom

13 Penh was won. I raised this matter with Pol Pot in 1974, asking

14 what preparations had been made for when we won Phnom Penh. We

15 discussed the population at that time."

16 You: "On that – pardon me, where did you meet him?"

17 Ieng Sary: "I met him near Phnom Penh. I had returned from

18 Beijing. I came back in '73 and met the prince in Hanoi. I went

19 to Beijing and came back in '74."

20 [15.56.27]

21 You: "When you led the economic delegation to Vietnam and went to

22 Beijing?"

23 Ieng Sary: "Yes. I returned. I returned and then we discussed

24 what we should do when we won and what preparations should be

25 made. This was the view of His Excellency Zhou Enlai. He had

111

1 asked me what plans we had after we won. I was in a difficult
2 spot. I did not dare respond at all at the time. I said that I
3 did not yet have any clear knowledge and he would have to wait
4 until I could ask inside Cambodia.

5 "When I did ask inside the country, I did not dare ask about army
6 matters, but I did ask what solution there would be to the
7 problem of the people; what solution there would be to the
8 problem of the three million people in Phnom Penh. Pol Pot
9 replied to me that they already had all the experience they
10 needed and that I should not concern myself with this and should
11 instead concern myself with my duties abroad.

12 "I then said that I had been specifically asked by the Chinese
13 leadership about this problem. He said that it was a very easy
14 matter to resolve and that our Chinese comrades had nothing to
15 worry about because we Khmer had clear-cut notions in this regard
16 having been able to solve the problem in Stung Treng and Kratie
17 provinces.

18 [15.58.39]

19 "So the solution to the problem was to evacuate. That was the
20 only way to solve the problem. I responded by asking whether this
21 meant a total evacuation or what, and he said to wait and see
22 what the concrete situation would be at the time. Nevertheless,
23 the term 'evacuation' was already being used in 1974."

24 Is this an accurate recording of what you were told?

25 A. Yes.

112

1 Q. Now, just pausing here about the interview with Ieng Sary, can
2 you just give us a flavour of how this interview was set up, what
3 sort of efforts you needed to go to organize the interview, a
4 little bit of background, please?

5 A. This happened after Ieng Sary was officially presented as
6 having led a breakaway of Khmer Rouge troops to join with the
7 government and I'd had some contact with Sary by telephone at
8 various points in time, even before that. And then in December
9 '96 I attended an academic conference in Australia and while I
10 was in Australia I decided I would try and see Sary on my way
11 back to Europe. So I called him from Australia and said could I
12 interview you and he said yes.
13 And I said where and he said Pailin, and I said when and he gave
14 I guess it was this date.

15 [16.00.35]

16 So I made my way to Chanthaburi, which is the largest Thai town
17 near Pailin, made telephone contact with him again, and he
18 explained that the Thai authorities weren't going to allow me to
19 cross into Pailin so, therefore, he would have to come to see me
20 and would I, please, wait for him in a certain hotel. And I
21 proceeded to wait for him in that hotel until he appeared.
22 Then we had a formal interview during which Y Chhien, his
23 aide-de-camp, de facto aide-de-camp, was mostly present, after
24 which we had a meal and then he returned to Pailin.

25 Q. Thank you. We can see from the front of the document E3/89,

113

1 "Transcript from the audio tape". So a handheld dictaphone, old
2 fashioned tape recorder? Can you help?

3 [16.01.35]

4 A. No, it was a little tape cassette machine of the standard kind
5 that journalists used in those days. I think there were three
6 cassettes all total.

7 Q. Now, can you just help us on - I'm back on page 5 for you
8 which is the part I've quoted. It's the bit to try and give some
9 timing to what Ieng Sary - Ieng Sary, you asked him - well let me
10 break it down. He said: "I went to Beijing and came back in '74."
11 You asked: "When you led the economic delegation to Vietnam and
12 went to Beijing" and he said: "Yes." Now, can you help us on what
13 month we are in 1974, for when Ieng Sary comes back from an
14 economic delegation to Vietnam and went to Beijing?

15 A. I'm guessing here, frankly. I think it's late '74, but I would
16 have to check the files.

17 Q. All right, thank you.

18 I'm moving now to a separate topic; it is the evacuation itself.

19 Mr. President, can I perhaps ask just to ask one part of one
20 book. And then - I'm conscious of the time, but I would just like
21 to at least get into this second subject with one question.

22 Mr. Heder, file 2 aside for a minute, can you please pick up file
23 4 which is on your seat; it's the bottom file on your seat. File
24 4, tab 1, document E190.1.398; title: "Reassessing the Role of
25 Senior Leaders and Local Officials in Democratic Kampuchea

114

1 Crimes: Cambodian Accountability in Comparative Perspective."

2 [16.04.27]

3 Can I please take you to page 6? The heading to this part was

4 "Rethinking the Dynamics of and Responsibility for DK Era

5 Crimes". Quote:

6 "The problem is posed right from the start of CPK rule,

7 notoriously marked by the coercive violent and murderous

8 evacuation to use the CPK terms of the population of Phnom Penh

9 and other towns and areas previously governed by Marshall Lon

10 Nol's Khmer Republic. The CPK leadership intended this mass

11 deportation to abolish the urban based feudalism, bourgeois and

12 petty-bourgeois intellectual strata as classes by sending them to

13 live under the political control of the toiling peasantry in the

14 countryside and make them forever a part of a work of peasant

15 class information which was henceforth to comprise 99 per cent of

16 the country's population."

17 [16.06.05]

18 Footnote 16 references a "Notebook of the First Rank, S" - it

19 says S-2, I don't know if that's right, "S-2 Interrogator Tong

20 Soeng Heuan, alias Pon, in an entry dated the 7th of December

21 1977." It says here, "From the Archives of the Documentation

22 Centre of Cambodia, hereafter DC-Cam Collection, author's

23 translation."

24 Can you confirm that that was your source for this statement in

25 your book?

115

1 A. Yes and it should be S-21, of course.

2 Q. Now, that document, if anyone wants to follow is D313/1.2.251.

3 Just a little bit of information, this notebook of Pang, a little
4 bit more detail, not too much. Can you just describe, please?

5 A. This was at a time before DC-Cam had catalogued its materials.

6 So this was a notebook in the handwriting of Thong which was
7 among the many documents that were then in DC-Cam's un-catalogued
8 possession.

9 MR. RAYNOR:

10 Thank you.

11 Mr. President, I said one theme; I hope that's been covered.

12 Can I please just make this observation that the application made
13 this morning used up one hour of the Prosecution's time. Can I
14 please ask that that's borne in mind? Thank you.

15 And thank you, Mr. Heder.

16 [16.08.03]

17 MR. PRESIDENT:

18 The request is well grounded and appropriate. The Chamber will
19 definitely consider granting extra time to compensate the time
20 lost.

21 Mr. Co-Prosecutor, you already asked the Chamber that the
22 document be delivered to the witness. Can you advise the Chamber
23 as to how you managed to have them delivered – the documents that
24 you already delivered, rather, to the witness?

25 Now it is time for adjournment. Can you advise the Chamber as to

116

1 how these documents can be managed?

2 [16.08.57]

3 MR. RAYNOR:

4 Mr. President, can I suggest that we keep them; we've had them
5 all day. We are going to effectively just store them overnight
6 and then bring them back to Court tomorrow, if that meets with
7 the Court's satisfaction.

8 MR. PRESIDENT:

9 That is fine. Thank you, Mr. Co-Prosecutor, for the
10 clarification.

11 And we expect that by the end of the session today the documents
12 would be retrieved from the witness by the court officer. And
13 tomorrow the documents can be delivered back to the witness for
14 further examination.

15 Now, it is appropriate moment already for today's adjournment.

16 The Chamber will adjourn now, and the hearing will resume
17 tomorrow at 9 a.m.

18 During tomorrow's sessions, the Chamber will continue hearing the
19 testimony of Mr. Heder, questions continue to be put by the
20 Co-Prosecutors.

21 Mr. Steve Heder, your testimony has not yet been complete, and
22 the Chamber would like to hear more from you tomorrow, so please
23 return to the courtroom by 9 a.m.

24 [16.10.36]

25 Court officer is now directed to assist Mr. Steve Heder during

117

1 the adjournment and have him return to the courtroom by 9 a.m.

2 tomorrow.

3 Security personnel are now directed to take Mr. Nuon Chea and

4 Khieu Samphan back to the detention facility and have them return

5 to the courtroom by tomorrow morning at 9 a.m., saving Mr. Nuon

6 Chea, who is directed to be brought only to his holding cell

7 downstairs where – he can observe the proceedings from there

8 through audio-visual link.

9 The Court is adjourned.

10 (Court adjourns at 1611H)

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