

DAY 10 A.M.

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

1997 I No.139

Royal Courts of Justice
Monday, 13th March 2000

Before:

MR. JUSTICE MORLAND

BETWEEN:

- (1) INDEPENDENT TELEVISION NEWS LTD.
- (2) PENNY MARSHALL
- (3) IAN WILLIAMS

Claimants

- and -

- (1) INFORMINC (LM) LTD.
- (2) MICHAEL HUME
- (3) HELENE GULDBERG

Defendants

Transcribed by BEVERLEY F. NUNNERY & CO.
Official Shorthand Writers and Tape Transcribers
Quality House, Quality Court, Chancery Lane, London WC2A 1HP
Telephone: (0171) 831-5627

MR. T. SHIELDS Q.C. and MR. M. BARCA (instructed by Messrs. Biddle) appeared on behalf of the Claimants.

MR. G. MILLAR and MR. A. HUDSON (instructed by Messrs. Christian Fisher Solicitors) appeared on behalf of the Defendants.

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CLOSING SPEECH by Mr. MILLAR

1

Closing speech Mr. Shields _____

23

1 MR. JUSTICE MORLAND: Yes, Mr. Millar.

2
3 MR. MILLAR: Members of the jury, when Mr. Irving filmed the
4 footage of Fikret Alic through the barbed wire fence on 5th
5 August 1992 two crews, ITN and Channel 4, were on its southern
6 side; Fikret Alic was on its northern side. Behind Alic
7 across the field that he was standing in was a community
8 building. The crews had arrived at the intersection of the
9 roads to the south of the camp. They got out of their
10 vehicles and approached the fence and the shop by walking
11 northwards through a gap in the barbed wire fence in front of
12 them. While the crews were at the fence there was a barn
13 behind them past which they had just walked from the south to
14 get to the fence by the field. Running up the east road
15 behind Alic and the other men was ordinary waist-high mesh
16 fencing. On the western side of the field that he was
17 standing in there was also waist-high mesh fencing. The next
18 day, 6th August, Mr. Williams and Ms. Marshall reported on the
19 camp Trnopolje. Their reports were broadcast on national
20 television on the evening of 6th August. Ms. Marshall's was
21 shown on News at Ten to many millions of viewers. None of
22 this is in dispute.

23
24 There are, however, three questions about the events
25 on those days which are at the heart of this trial as far as
26 my clients are concerned. Firstly, when the footage was shot,
27 was it taken from an area of the compound or an enclosure, as
28 it has been described in this trial, surrounded by barbed wire
29 fencing, part of which is in the shot of Alic? Secondly, if
30 it was, did the reports misrepresent Alic as imprisoned and
31 caged inside and by the barbed wire fence? These were the
32 words describing our case which I read out to you twice in
33 opening and I will do so again: "imprisoned and caged inside
34 and by the barbed wire fence." Thirdly, did the reporters
35 compile their reports, the pictures and the words together, so
36 as to deliberately misrepresent Alic in this way? I want to
37 deal with each of these questions in turn before looking, as
38 you must, at the words in the press release and the magazine
39 which are complained of. I do so because we say that the
40 answer to each of those three questions is "Yes" and that
41 because the answer to those questions is "Yes" the criticisms
42 of the reporters and the words complained of are both true and
43 justified.

44
45 I turn to the first question, the barbed wire fencing.
46 Members of the jury, we say that the location of the barbed
47 wire fencing, and indeed the purpose for which it was put up,
48 are now abundantly clear. You will recall that on Thursday
49 afternoon we looked at Mr. Deichmann's 1996 photographs from
50 Trnopolje. The brown rusty poles which we see in those
51 photographs are clearly the poles on which the barbed wire was
52 hanging in 1992, the same poles that we have seen many times
53 in the video footage. I want to look at those photographs
54 again with you, this time comparing what we can see on them to
55 some of the shots on the rushes. The poles that Mr. Deichmann

1 saw had those "D" shaped things (I will not come up with the
2 word for them) to hold the barbed wire in place. In 1996 he
3 saw that these were on the side of the pole facing away from
4 the barn. Look, for example, at photo number 7 and at how
5 that barbed wire in that photograph is held to the pole.
6 Indeed you can see from that photograph that they were still
7 holding some strands of barbed wire in December 1996 and they
8 were on the poles in the famous shot in 1992, once again on
9 the side of the poles facing away from the barn, once again
10 holding up the barbed wire. Indeed if you look closely at the
11 very front page in colour of the magazine complained of - it
12 is in your bundle at tab 6, so you have got originals - you
13 can see to the left the same "D" shaped things holding the
14 barbed wire in place. It is also quite clear, members of
15 the jury, that the poles went all the way around the barn.
16 We ask you when you go to consider your verdict to look at
17 Mr. Deichmann's photographs remembering that, as he told you,
18 he was taking them in sequence from photograph 1 onwards going
19 around the barn from the south-west where the crews arrived,
20 up the east side and east to west along the north side, then
21 finally back down the west side to the south. I want to
22 follow with you the circumference of that enclosure in his
23 photographs and the two short sequences on the rushes.
24

25 Look first at photograph 1. This was taken from the
26 south-east corner. It shows quite clearly the poles going
27 around that corner. Mr. Deichmann then went up the east side
28 and took a shot, shot 3, looking back down the road to where
29 he had come from. Again, the line of the poles is there.
30 Now bearing those images from 1996 in mind, let us look at the
31 short establishing shot of the enclosure taken by Mr. Irving
32 at the end of his visit, and remember this is taken from the
33 east road which you can see to the left in that photograph
34 no.3.
35

36 (Video shown)
37

38 MR. MILLAR: Freeze it there, please. Members of the jury, note
39 while you look at the frozen shot the two figures up at the
40 road by the verge where the barbed wire fencing ends. I will
41 come back to them in a moment. But the poles are exactly the
42 same ones as we see in photograph 3, except in 1992 with the
43 barbed wire fencing and the gate between them. Mr. Deichmann
44 then went across the north side from east to west. This was
45 from the left as we look at it in photograph 10. Please take
46 that photograph. The barbed wire fence in the Alic shot was
47 across this line of poles. If you look closely, coming from
48 the left you can see that in 1996 it looks as though one of
49 those poles was missing, the one which should be in the
50 sequence the second to the left, where there is a larger gap
51 than in between the other poles. But as we have seen and
52 heard from all the witnesses, the fencing along the north side
53 was complete in 1992. Indeed in a moment we are going to look
54 at a shot along that complete line of fencing. That is in the
55 sequence I want to play you in a moment, which you will be

1 very familiar with, the one with the man with water bottles
2 walking up to the fence at which Mr. Alic was filmed and
3 starting with the men on the east road carrying water in and
4 out of the camp.
5

6 But before we look at that sequence I want you to
7 remember these points. The sequence that we are about to
8 look at, starting with that first shot of the bottles being
9 handed over the fence, was taken from the east road looking
10 across the north side of the enclosure. We know that not
11 only because it is obvious from the shot but also because
12 Mr. Irving, the ITN cameraman, pointed out in this
13 establishing shot that we have got frozen on the screen
14 that this was the case. He explained that when I was
15 cross-examining him. He pointed out, if you remember, that
16 we can actually see Mr. James Nicholas and Mr. Hease back up
17 the east road taking the shot of the man with the water
18 bottles and along the fence that we are about to look at.
19 He captured them in his own establishing shot. He said: "The
20 people on the road there, that is Mr. Nicholas and Mr. Hease",
21 and I said, "You are able to identify them up the road taking
22 the shot?", and he said, "Yes, I think the chap on the verge
23 in black is James" - that is Mr. Nicholas - "I think it is
24 that shot that you were asking about along the wire the other
25 day." So, members of the jury, when we see the water bottles
26 being handed over the fence running away from us, the sequence
27 is showing us the whole length of the north side of the fence
28 shot from the east. It is clearly continuous barbed wire
29 fencing on the top of the poles. It is obvious when you
30 look at it. As we have seen from shots through the fence,
31 the lower part of the fence was mesh fencing but of an older
32 and different type to the newer criss-cross mesh fencing seen
33 on the east and the west of the field.
34

35 The last thing I want you to note when you look at
36 this shot of the northern fence is the last of the poles in
37 the line, the furthest away from you in the shot, which seems
38 to lean back at an angle towards the south. Now can we look
39 at that sequence, please.
40

41 (Video shown)
42

43 MR. MILLAR: Thank you. Members of the jury, I ask you to look at
44 those shots, the ones we have just seen, firstly when you come
45 to consider your verdict. I do so not only for what they have
46 told us, as I have just described, about the north side of the
47 enclosure but also for what they show of the western side of
48 the enclosure, to which I turn next.
49

50 In 1996 Mr. Deichmann, having got to the north-west
51 corner, went down the west side to the south. Please look
52 again at photograph 10. He told us he went along the poles to
53 the right in photograph 10, which he told you ran round into
54 the poles which we see in photograph 15. At 15 they are
55 coming round to the right of the photograph, a continuous line

1 of such poles. Look back now, please, at 10 and look closely
2 at that photograph, at the poles to the right of the shot.
3 Can you see that even in 1996 the strands of barbed wire are
4 here between the tops on the poles. Look at the three poles
5 to the right. Look closely also at the one leaning over to
6 the right, or southwards in this photograph. It is the third
7 from the left after that gap in the poles that I mentioned.
8 That may be, you think, the one at the end of the northern
9 part of the fence in the shots of the fence that we have just
10 looked at, where the pole leans backwards to the south. When
11 you are deliberating please also look closely at this other
12 shot. I am not going to show it to you now but I am going
13 to remind you of it. It is the shot in the Channel 4 rushes
14 which you will remember when Mr. Williams is interviewing men
15 in the field over the low mesh fence to the western side. You
16 will remember that in that shot, indeed in two of those shots,
17 we can see the north-west corner of the enclosure to the right
18 of the shot. Look closely at that and ask yourself whether
19 you can see the same leaning pole in that photograph; in other
20 words that we are seeing the same north-western corner of the
21 enclosure but from the other side, outside the enclosure.
22

23 Members of the jury, I want to say a word about the
24 damaged fencing or the damage to the fencing on that western
25 side, the fencing that we have just seen in the background of
26 the shot of the man walking with the water bottles. When you
27 look at those shots we ask you to look carefully at the
28 sequence of poles in the background. These are, as I say, the
29 ones on the west side as it comes to the north-west corner of
30 the enclosure. Look along the areas between the poles in the
31 background. You may find that you have to do this a number of
32 times to get a clear picture of what was there. We have done
33 this and I have taken up my black felt tip, which is a risky
34 exercise at the best of times, so as to have something to look
35 at as I try to describe what we say can definitely be seen in
36 those shots rather than by doing it through words. You can
37 disregard this when you get into the jury room and throw it
38 in the bin. You will look for yourself at what you see there,
39 but this is what we say can be seen in those shots.
40

41 We say that you can see five stretches of wire between
42 six poles. In the first two stretches or gaps between the
43 poles, which I have numbered 1 and 2 in this handwritten
44 drawing, there are three strands of barbed wire going across.
45 In the second gap, if you look closely, you will see that the
46 barbed wire is there because it has things hanging on it,
47 something that is white and something that is darker. Indeed,
48 if I was right when we were looking at photograph 10, that
49 leaning pole that we looked at is indeed the last one in the
50 sequence at the corner, looking at this the other way.
51 Although the pole between 3 and 4 was missing the strands of
52 wire that I have mentioned between 1 and 2 were still there.
53 They were the strands of barbed wire I asked you to look at
54 a moment ago. Remember Mr. Deichmann told you that that
55 wire that he saw in 1996 was indeed barbed wire, and remember

1 what the claimants' own witnesses said about this area.
2 Mr. Williams accepted in cross-examination that there may
3 have been the remnants of a barbed wire fence along that side
4 of the enclosure. We say it is clear from these shots that
5 there was some barbed wire, three or two strands between each
6 of these poles. We accept, you may think, within the last
7 three stretches of wire before you got to the leaning pole
8 (i.e. my 3, 4 and 5) it was perhaps tangled, perhaps had one
9 of the three strands missing, or was sagging, but it was there
10 and it is clearly visible there on the rushes. Mr. Deichmann
11 did not suggest that the fencing was perfect or undamaged. In
12 fact, as he pointed out when he gave evidence, in paragraph 18
13 of his article he actually said: "When Marshall, Williams and
14 Vulliamy entered the compound next to the camp the barbed wire
15 was already torn in several places."
16

17 Now let us look at the last side of the compound.
18 In 1996 Mr. Deichmann returned to where he had started, to
19 the south side, coming from the west. Look again, please,
20 at photograph 15, which we looked at a moment ago. You will
21 recall this is now looking south at the southern end of the
22 compound. As Mr. Deichmann told you and as I mentioned a
23 moment ago, these poles are in a continuous sequence running
24 on from the poles that we have seen in photograph 10. Again
25 look closely at photograph 15. Here again are the top strands
26 of barbed wire that we have seen in so many of the video shots
27 from 5th August. They are still there in 1996. The poles on
28 either side of the transformer building in Mr. Deichmann's two
29 shots of the southern area in photo 1 and photo 15, this one,
30 are, as we know, where the fencing ended in 1992. We have
31 seen on the Channel 4 rushes the gaps that were left between
32 those poles and the transformer building on each side. Do you
33 recall we saw those clearly on the early establishing shots
34 taken by Mr. Nicholas, the Channel 4 cameraman, as and
35 immediately after the crew arrived at the south of the camp?
36 We know, because, as I say, we have seen it a number of times,
37 that at the east of the transformer building this created a
38 gap that was big enough to walk through with a path.
39

40 I want to say a word also about those gaps at
41 the southern part of the compound next to the transformer
42 building. We have seen that track, the well-worn track
43 into the enclosure through the gap on the east side of the
44 building, many times. As I said, it is in that short clip on
45 the ITN News at Ten broadcast of Penny Marshall walking into
46 the compound. The fact that there is a pathway into the
47 enclosure through this gap does not mean that there is not an
48 enclosure or that it is not an area surrounded by barbed wire;
49 it just means, as you would expect, there is a way to get into
50 the enclosure. No one has ever said that the fencing was
51 absolutely continuous without a break of any sort. Look again
52 at paragraph 18 of the article. Again Mr. Deichmann referred
53 to the gap through which the crews walked.
54
55

1 On 5th August 1992, as we have seen on Mr. Irving's
2 final establishing shot looking south-west from the east
3 road, there was a long shed with a sloping roof in front of
4 the poles that we see in photograph 15 to the side of the
5 transformer building. The bushes or trees that are also
6 apparent from some of the rushes from 1992 can be seen there
7 in this photograph, in winter without their leaves. If
8 anything, members of the jury, all of this - the long shed and
9 the trees - would have made the area, would it not, even more
10 obviously an enclosure in 1992, separate and distinct from the
11 field on the other side in which the men were standing? So
12 this was an area surrounded by and enclosed within barbed
13 wire. Clearly, members of the jury, it had been put there
14 to enclose and protect the barn from which materials had
15 been sold before the war. You will recall that this is what
16 Mr. Deichmann was told by witnesses that he interviewed in
17 1996, Misa Radulovic and Dragan Baltic. Moreover, the fencing
18 had obviously been there some time. There is rust on some of
19 the barbed wire in the shots from 1992. The poles appear to
20 be old and, as I have pointed out to the witnesses, whenever
21 we see the bottom of the poles and fencing in the rushes there
22 is grass and foliage growing outside. It is also clear that
23 on the south, east and north sides the lower part of the
24 fencing below the strands of barbed wire was that old,
25 slightly rusty, six-sided mesh fencing that we have seen in
26 the close-ups from the north and the south sides. This mesh
27 fencing, as I have said, is quite clearly different from the
28 newer low mesh fencing running along the east and the west
29 side of the field. What about the west side, where the
30 damaged fencing was? It may be that there is no shot in the
31 rushes which is sufficiently clear to enable you to see one
32 way or another whether this older mesh fencing was there as
33 well on 5th August or, if it was, what condition it was in.
34 But you will look closely, we hope, as I have asked, at the
35 man walking with the water bottles to see if you can see any
36 mesh fencing or remnants of mesh fencing there on the west
37 side. You will recall we have suggested in cross-examination
38 that the whiter area under the barbed wire appears to us to be
39 some such fencing. That is a matter for you, members of the
40 jury, but we ask you to look closely at those shots.

41
42 So given that the famous shot of Alic was taken
43 roughly where Mr. Deichmann indicates on his plan in the
44 article, in the middle of the south side of the northern
45 fence, looking forwards towards the community building, the
46 answer to question 1 is clearly "Yes". The barbed wire
47 fencing was around the area where the crews were and not
48 around Alic.

49
50 I turn then to question 2: did the reports
51 misrepresent Alic as imprisoned and caged inside and by the
52 barbed wire fence shown in the reports?
53

54 Members of the jury, I want to say a word first about
55 viewing the reports when you come to consider your verdict.

1 You will no doubt want to watch these carefully when you do
2 so. When you do, however, you will no longer be watching them
3 as you did the first time you saw them. You will be watching
4 them having heard two weeks of detailed evidence in court
5 about the layout of Trnopolje camp on 5th August 1992. You
6 will know where each shot is taken from, what it is of, which
7 fence is which. If you have any doubts about these matters,
8 you will be able to look at the material that you have - the
9 rushes, the Serb footage, the satellite plan and the Deichmann
10 photographs - to try and resolve any such doubts. But you may
11 forget what impressions those reports gave you the first time
12 you saw them without all this accumulated knowledge and
13 understanding about the layout of the camp. Remember, members
14 of the jury, this is precisely how you saw them on the evening
15 of 6th August 1992. We want you to try and look at them that
16 way. The viewer on 6th August did not have your acquired
17 understanding. The viewer on that evening knew nothing about
18 the lay out of Trnopolje camp or where the barbed wire was
19 other than what could be gleaned from the words and pictures
20 in the reports.

21
22 Bearing that in mind, we want to make the following
23 points about the reports. Neither report says in words or in
24 pictures what we now know about the location and the original
25 purpose of the barbed wire fence, or that the crew was inside
26 the enclosure when the shots were taken. There are shots of
27 men behind a low mesh fence. In fact we know, we have seen it
28 through the Channel 4 rushes, it is the one on the west side.
29 They appear in the reports. But nowhere, members of the jury,
30 is there a shot of the corners of the field where this fence
31 meets the fence on the northern side of the enclosure. There
32 were such shorts on the Channel 4 rushes and we have seen
33 them. For all we know there may have been similar shots on
34 the lost ITN rushes.

35
36 Moreover, nowhere in the reports is there a shot of
37 the Alic fence, the northern side of the compound, from the
38 other side. For example, looking back at it over the low mesh
39 fences on the east or the west side. The result, members of
40 the jury, is that the viewer is left thinking that the low
41 mesh fence when it appears briefly in the reports is somewhere
42 in the camp but nothing more. It is not linked in the reports
43 in any way at all to the same high intimidating barbed wire
44 fence seen in the Alic shot and a number of other shots in the
45 reports. The same is true of the metal fence around the
46 school at which Igor has shown introducing Miss Marshall to
47 his friends in the News at Ten report. It is simply somewhere
48 there inside the camp.

49
50 Perhaps most importantly of all, look at the last shot
51 in each of the reports. It was Mr. Nicholas' rack shot, was
52 it not? The one taken from the south zooming backwards from
53 the fence where Alic was filmed, across the dry area of ground
54 immediately in front of the barn and ending with that
55 evocative close up shot of a second barbed wire fence

1 immediately in front of the cameraman. In the middle of this
2 area, the front of the fence, apparently enclosing the men in
3 the field, you will recall there are shown two armed guards in
4 uniform. We know, members of the jury, that in fact they are
5 in the middle of a pre-war compound to the south of the camp
6 in which there is a barn. Ask yourself: does it look like
7 this in the reports? Of course it does not. What it looks
8 like is perimeter fencing, two rows of barbed wire in the
9 middle of which two armed guards are patrolling.

10
11 And listen carefully as well to the words that
12 accompany the pictures in the reports. Indeed, we would like
13 you to read the transcripts, which you have, of the reports as
14 you watch the images being used. You will recall
15 Mr. Williams, telling you that reporters write what he called
16 "words to pictures". Words are written to accompany the
17 visual report and the reporter takes into account what is
18 being shown in the pictures at the time. This is obvious.
19 You would not say, for example "We then went to Trnopolje" if
20 the report was still showing footage of Omarska. But this
21 means that the impression received by the viewer of the images
22 is inevitably being influenced by what he or she hears at the
23 same time. The reporter who is heard has, after all, been
24 there and should be able to state accurately what the picture
25 is showing us.

26
27 Nothing, members of the jury, is said in the verbal
28 reports to tell the viewer that the barbed wire fencing shown
29 is surrounding the crew, not the men in the field. Indeed, in
30 Mr. Williams' report he actually says that the men in the
31 field are forced to eat and sleep outside in a field behind
32 barbed wire. Surely, members of the jury, that suggests that
33 the barbed wire is surrounding them. And when in his report
34 there is for the first time some mention of anything other
35 than "the men" or "the prisoners" at Trnopolje, which is when
36 he speaks of refugees towards the end of his report, they are
37 said to be on one side of the camp. But it is not explained
38 to the viewer what "on one side of the camp" means. The
39 accompanying pictures at this point of the report are of the
40 sleeping areas inside the sports hall in the school. Look
41 carefully at those words and pictures, members of the jury.
42 Do they not suggest to the viewer that this sleeping area is
43 somehow entirely separate from the men, the prisoners, behind
44 the barbed wire in the field?

45
46 A similar things happens in Miss Marshall's report.
47 Her report does not show any inside shots at all. Look
48 closely at the sequence in that report, members of the jury,
49 where Igor is shown taking Miss Marshall up a road which we
50 know now is the east road. She says he is taking her to meet
51 some who had come here by choice on "the other side of the
52 camp". Again, it is not explained what this means. But,
53 again, is the impression that this is a place entirely
54 separate from the men encaged behind barbed wire in the field?
55

1 And all of this, members of the jury, is not just a
2 matter of detail. The Alic shot, everyone is agreed, is a
3 very, very powerful image. So powerful that Mr. Williams made
4 a point of taking it from the ITN feed at 5.45 and cutting it
5 into the middle of his report which was due to be fed at 6.30.
6 It is undoubtedly a powerful symbol of imprisonment - I will
7 deal with this in a moment - but the viewer also sees it as a
8 factual statement about imprisonment, a statement that "This
9 man you see is a man surrounded by and caged behind this high
10 barbed wire fence". The message is so strong, members of the
11 jury, that it will inevitably be received by the viewer in
12 precisely this way, unless a clear explanation is given in
13 words or pictures of the true position. This did not happen.
14

15 So we say the answer to the second question is "Yes",
16 and surely, members of the jury, the proof that we are correct
17 about that, that the report did represent and misrepresent
18 Alic as surrounded by barbed wire, is in the reaction to the
19 reports. These reports could not and would not have been
20 taken as showing camps comparable to Nazi concentration camps
21 unless they had suggested that Alic and the other men in the
22 shot were in a camp sounded by barbed wire, just as we all
23 understand in our minds that the Nazi concentration camps were
24 when we recall them.
25

26 I turn to the third question. So, two experienced
27 television news reports have been produced creating this
28 impression, a false impression. How likely, members of the
29 jury, is it that this would have happened anything other than
30 deliberately? The reporters had several hours to prepare
31 their reports in Budapest. No one has suggested they did not
32 have enough time or indeed had anything less than the usual
33 one hour per minute of report that is the preparation time
34 usually required. They have tried to suggest that when they
35 came to compile their reports they did not even realise that
36 the shots through the barbed wire fence had been taken from
37 the area where they were surrounded by barbed wire fencing.
38 We do not accept this. It cannot be true.
39

40 Let us look at the facts. They spent something
41 approaching an hour at the camp. They were not at the south
42 side of the fence for a few seconds. They were there for
43 anything between 10 and 15 minutes, conducting interviews and
44 filming through the fence. We hope, members of the jury, that
45 you will look closely at the sequence on the Serb tape when
46 you are considering your verdicts. This continuous sequence
47 of the fence shows quite clearly what the ITN crew were doing
48 during the time the Alic shots were filmed. While they were
49 there, as we have seen from the rushes, they were in an area
50 littered with wheelbarrows and building bricks, an area that
51 was clearly very different from the field in which the men
52 were standing.
53

54 After this period at the fence both groups had to
55 decide where to go next. Obviously they would want to get

1 further northwards towards the field containing the men and
2 the buildings they were seeing in the background. This was
3 precisely what they did. The Channel 4 crew left the area to
4 the west and, they have told you, near the point where that
5 northern section of barbed wire fencing comes to an end. To
6 do this, they had to pass through the line of poles which we
7 have seen on the shots of the man carrying the water the
8 bottles, the ones that I have tried to draw in my diagram.
9 But those pictures show, do they not, that they had to pass
10 under strands of barbed wire the same height as the barbed
11 wires they had just seen at the northern fence and between the
12 same sorts of poles. As we have seen, there is not one of the
13 sections between the poles in that area that does not have
14 some barbed wire going across along the top.
15

16 Now, Mr. Hease, the sound recordist for the Channel 4
17 crew, had the clearest recollection of this. You may recall
18 that I played him the sequence of the man approaching the
19 fence with the water bottles. I want to remind you of how the
20 question and answer went.
21

22 "Q But you do have a recollection of coming out of
23 this area on that far side and going up to the west
24 side of the camp? A. Yes. If you go back a few
25 frames ... that is it. Can you see where the wire is
26 pushed up and bunched together?
27

28 "Q Yes. Well, it goes criss-cross. A. Yes,
29 I think that's the way we went through there. Where
30 they all seem to be tied up. Can you see where they
31 seem to cross?
32

33 "MR. JUSTICE MORLAND: It is almost straight behind
34 the man?"
35

36 And on the shot we had at the time he said:
37

38 "Yes. Just where the chap's nose is now, all the
39 wires pushed up.
40

41 "Q As if the second strand has been pushed up to the
42 top strand? A. Yes, that's it.
43

44 "Q To give a gap? A. Yes."
45

46 Is that what I have shown as stretch 3 on my drawing, where
47 the wire is pushed up to criss-cross the one right in the
48 middle of that sequence?
49

50 In any event, surely Mr. Williams must have
51 appreciated that this was the same fence at which he had just
52 been standing for several minutes, and indeed had just walked
53 all the way along from the eastern end where the Channel 4
54 crew were filming to the western end. Here it was, coming
55 round in front of them.

1 Moreover, he then went up the west side of the field,
2 spending 15 or so minutes there. He must surely have looked
3 around at some stage and seen the area that he had just come
4 from, with the line of poles and barbed wire running across
5 the top, running east west and then down to the south.
6

7 And what of the ITN crew? Meanwhile, as it were, the
8 ITN crew had gone up the east road. None of them would have
9 been able to recall exactly how they got there from the
10 southern side of the fence at which Alic was filmed. But we
11 know from their evidence and that of the Channel 4 crew that
12 they went straight there. They did not go out to the west.
13 They have accepted, as they have to, in the light of
14 Mr. Irving's shots of the fence on the east side, that there
15 are only two possible routes. Either they went through the
16 gate on to the east road or they went back out the way they
17 came up, through the gap to the south.
18

19 I want to look at each of those possibilities. If
20 Penny Marshall went back through the same gap, is it
21 conceivable that she never asked herself why she was having to
22 do that to get out on to the east road; that she would not
23 have noticed the same fencing through which they had been
24 conducting her interviews was at the gap through which they
25 were going back to the south, and then was running alongside
26 her, along the east road. Remember, members of the jury, if
27 she had got out that way, she would have passed this eastern
28 stretch of barbed wire fencing, not once but twice to get up
29 the east road at this stage, because she would have walked
30 back down the inside of it, out on to the road at the south,
31 round the south eastern corner and back up the outside of it
32 on the east road.
33

34 Let us look at the other possibility. The crew went
35 out of the gate. Would they not have asked themselves why
36 they had to go out of the gate and the barbed wire fencing to
37 get on to the east road? Would it not have been obvious to
38 her, as it from the rushes, that this was a gate to let
39 vehicles into the area where the barn was and where she had
40 been filming? However she got out, how could she have walked
41 up the east road, alongside the eastern side of the field and
42 the low mesh fence without ever looking to see why the fencing
43 was so completely different on this side of the field?
44

45 Members of the jury, this is not the end of it. Both
46 reporters came back down the east road with their crews when
47 they came to leave the camp. They walked alongside that
48 stretch of fencing that we have just seen today, Mr. Irving's
49 final establishing shot. And before they compiled their
50 reports they would have looked at their rushes, no doubt with
51 care, to see what they showed and what might be worth using in
52 their reports. They may even have been able to start studying
53 and thinking about them on a monitor or playing them back on
54 their cameras before they got to Budapest, although they were
55 at pains to deny that this was the case. After all, would you

1 not expect two crews with 400 kilograms of equipment between
2 them to have had some sort of facility to play back the
3 rushes?
4

5 Sue English, the Channel 4 foreign editor, said, when
6 I cross-examined her, that she assumed they had taken a
7 monitor with them to Belgrade. Mr. Braddel, the producer of
8 the Channel 4 crew told you of discussions before Budapest
9 about "pictures taken at the camp". Mr. Jerney, the head of
10 ITN's foreign news said that he stood by his statement that
11 Miss Marshall had phoned him from Belgrade and outlined "the
12 pictures her cameraman had filmed". Now, both of these
13 witnesses claim that by the word "pictures" they meant the
14 footage that they thought they had. But would they really
15 have referred to "pictures" if this is what they had meant?
16

17 Whenever they reviewed those rushes, members of the
18 jury, they would have seen the enclosure quite clearly. The
19 Channel 4 rushes showed the south, east and north side of the
20 enclosure in the early establishing shots. The shots of the
21 man carrying water to the northern fence show the west side.
22 We do not know whether Mr. Irving had any early shots showing
23 the barbed wire enclosure to the south. The ITN rushes of
24 their period in the south of the camp at the start of their
25 visit have of course been lost. You may think, members of the
26 jury, that he probably did have such shots. He was certainly
27 thorough, was he not, in recording the area that they went to
28 in the north of the camp on the rushes that we do have. But
29 even on his rushes, even the ones that remain, we have his
30 final establishing shots showing the enclosure round the barn,
31 as we have seen them this morning, panning round from the east
32 road across the whole of the eastern side of that enclosure -
33 road, gate, barn, fencing. It is perfectly clear. So their
34 viewing of their rushes before they compiled their reports
35 would have reminded them of the barbed wire enclosure they had
36 seen the day before when they were there.
37

38 Again, members of the jury, look at the footage of
39 Penny Marshall when her car stops after arriving at the camp
40 on her return five days later. Does she not seem to indicate
41 precisely with her hand the compound area shown in those final
42 ITN establishing shots when she makes her comment about the
43 fence having come down? Does not her gesture and her words
44 mean that she understood full well when she returned five days
45 later where the barbed wire fence had been?
46

47 So, members of the jury, we say they did deliberately
48 misrepresent Alic as being surrounded by the barbed wire in
49 this way. We say the reason why they did this is clear. The
50 world wanted to know whether allegations of concentration
51 camps in northern Bosnia could be substantiated. Mr. Shields
52 told you as much in his opening. Their reports were compiled
53 and indeed presented by them in such a way as to emphasise to
54 the viewer a comparison between these camps in the report and
55 Nazi concentration camps. When you consider your verdicts,

1 I ask you to look closely at their own words on television on
2 6th August. Do you recall what Ian Williams said in his "as
3 live" interview immediately after his report? He referred to
4 the five camps on the Bosnian Muslim list of "concentration
5 camps" which the crew had seen when they were in Serbia, and
6 he said this:

7
8 "Now we are convinced, we are satisfied that these are
9 not concentration camps."

10
11 That is the five in Serbia.

12
13 "At most they are refugee collection centres. The
14 area that does give a matter of great concern is in
15 northern Bosnia in the area of Banja Luka."

16
17 His report had just ended seconds before by reminding the
18 viewer that Trnopolje camp is near Banja Luka. Is this not
19 telling the viewer that the camp that has just been shown may
20 be a concentration camp? And look at what Penny Marshall said
21 without pictures in her telephone interview at lunchtime on
22 6th August. She said that the image - that was her word - of
23 the canteen in Omarska was "reminiscent of something very
24 sinister indeed". In cross-examination she accepted, as she
25 had to, that by this she meant a concentration camp. Was this
26 interview not in part intended to introduce viewers to the
27 images that were to come that evening on her report, to the
28 idea that they would be seeing images reminiscent of
29 concentration camps?

30
31 Then, members of the jury, remember the very first
32 sentence in her report on News at Ten:

33
34 "The Bosnian Serbs do not call Omarska a concentration
35 camp."

36
37 "The Bosnian Serbs do not call Omarska a concentration camp" -
38 is this not a way of saying: "Well, it might be"?

39
40 After her report had been broadcast on the same News
41 at Ten programme she spoke of the camps on her "as live"
42 interview to camera and this is what she said:

43
44 "I don't think we have conclusive evidence that there
45 are mass executions taking place or even extermination
46 camps."

47
48 "I don't think we have conclusive evidence that there are mass
49 executions taking place or even extermination camps" -
50 extermination camps, members of the jury. In cross-
51 examination I asked her what she meant by this, and this is
52 what she said: "Where people were herded together and
53 killed". It was not a simple answer, concentration camps.
54 Again, does not this comment of hers suggest to the viewer
55 that they have or may have seen some such evidence?

1 It is hardly surprising, is it, members of the jury,
2 that after all this the British tabloids and many others round
3 the world felt that they could compare these camps to
4 concentration camps, to Auschwitz and Belsen.

5
6 11.15 a.m.

7
8 As one of your questions pointed out, members of the jury, the
9 tabloids might be said to have misrepresented the camp when
10 they did this but the question is why did they feel able to do
11 this. As their picture splashes on the front page show, it
12 was the reports and the understanding that the Alic shot
13 showed men in a camp comparable to a Nazi concentration camp
14 that enabled them to do this.

15
16 The reporters did not in fact have any images
17 powerfully reminiscent of Nazi concentration camps. The first
18 camp they visited Omarska. Look closely at the rushes of
19 those camps. There is no barbed wire anywhere. Do not take
20 this from me. Remember what Mr. Baker, Penny Marshall's
21 programme editor, said in that article that I have put to you
22 which is at tab 11 in the defendants' bundle.

23
24 He told us he had reviewed all the ITN rushes on
25 5 August when he arrived in Budapest, including those from
26 Omarska. He wrote this:

27
28 "I advised that the image that would shape the world
29 was of skeletal men behind barbed wire."

30
31 He told you in this court, when he saw those Alic shots, he
32 was prompted to ask, "Could this be described as a
33 concentration camp?" Do you recall, members of the jury, that
34 I put it to him that there were three component parts of that
35 image that conveyed this powerful message: skeletal man,
36 barbed wire, in behind barbed wire. Have I got that right?
37 Answer: yes.

38
39 It was the Alic image, members of the jury, which
40 enabled the reporters to make these suggestions on 6 August.
41 They used it as a sensational image of suffering, knowing that
42 it would leave in the viewer's mind the thought that this camp
43 was somehow comparable with a Nazi concentration camp.

44
45 The Alic image could only do this if it was used in
46 the report in a way which suggested that the barbed wire
47 surrounded the men, like a Nazi concentration camp. It could
48 not, could it, members of the jury, if the report told the
49 truth that the wire was in fact around the cameraman and Penny
50 Marshall?

51
52 Of course, Mr. Williams and Ms. Marshall were at pains
53 to suggest that they did not see the image in this way. To
54 them, it was in some unspecified way a powerful image or a
55 symbol of the suffering of the men in the field but can they

1 have been the only ones not to see this when so many others,
2 even their own colleagues at ITN, seem to have seen this
3 immediately, or were they trying to distance themselves from
4 the obvious conclusion that they were aware of and had this
5 comparison between the image and a concentration camp in mind
6 when they chose to give such prominence to this image.
7

8 Was not Ian Williams still deliberately
9 misrepresenting the location of the fence when he wrote his
10 article in **The Sunday Express** a few days later, when he said
11 there was a field surrounded by barbed wire and behind it
12 hundreds of men? Surrounded by barbed wire.
13

14 Members of the jury, I now turn to the words of which
15 complaint is made and I ask you to look first, please, at the
16 article which is at tab six in the claimants' bundle. Look
17 first, please, at the headline and the text immediately below
18 the headline: "The picture that fooled the world."
19

20 "This image of an emaciated Muslim caged behind Serb
21 barbed wire, filmed by a British news team, became a
22 worldwide symbol of the war in Bosnia. But the
23 picture is not quite what it seems. German journalist
24 Thomas Deichmann reveals the full story."
25

26 These words made clear, did they not, members of the jury,
27 from the outset the article is about the picture? It is about
28 the image of Fikret Alic. That is what this is telling the
29 reader. You are able to read an article that is about the
30 picture and the image.
31

32 Look next at paragraph one:
33

34 "The picture reproduced on these pages is of Fikret
35 Alic, a Bosnian Muslim, emaciated and stripped to the
36 waist, apparently imprisoned behind a barbed wire
37 fence in a Bosnian Serb camp at Trnopolje. It was
38 taken from a videotape shot on 5 August 1992 by an
39 award-winning British television team, led by Penny
40 Marshall (ITN) with her cameraman Jeremy Irvin,
41 accompanied by Ian Williams (Channel 4) and the
42 reporter Ed Vulliamy from the **Guardian** newspaper."
43

44 Straight away, members of the jury, in paragraph one the text
45 makes clear that the issue raised by the article is whether
46 Alic was imprisoned behind the barbed wire fence, as suggested
47 by the image, by the picture; not whether he was imprisoned at
48 Trnopolje, full stop. Paragraph one does not say that. "...
49 apparently imprisoned behind a barbed wire fence ...". That
50 is the issue. Is that shown in the picture?
51

52 In paragraph two, it is emphasised that this image is
53 what is being questioned which is misleading. It says:
54
55

1 "For many, this picture has become a symbol of the
2 horrors of the Bosnian war - 'Belsen '92' as one
3 British newspaper headline captioned the photograph
4 (**Daily Mirror**, 7 August 1992). But that image is
5 misleading."
6

7 I repeat: it is the image that is being questioned by the
8 article. It is the image which is said to be misleading.
9 Paragraphs three and four state the central facts as we have
10 put them in this trial. I want to read them to you:
11

12 "The fact is that Fikret Alic and his fellow Bosnian
13 Muslims were not imprisoned behind a barbed wire
14 fence. There was no barbed wire fence surrounding
15 Trnopolje camp. It was not a prison, and certainly
16 not a 'concentration camp', but a collection centre
17 for refugees, many of whom went there seeking safety
18 and could leave again if they wished.
19

20 "The barbed wire in the picture is not around the
21 Bosnian Muslims; it is around the cameraman and the
22 journalists. It formed part of a broken-down barbed
23 wire fence encircling a small compound that was next
24 to Trnopolje camp. The British news team filmed from
25 inside this compound, shooting pictures of the
26 refugees and the camp through the compound fence. In
27 the eyes of many who saw them, the resulting pictures
28 left the false impression that the Bosnian Muslims
29 were caged behind barbed wire."
30

31 The central facts, as we have put them in this trial. Indeed,
32 exactly the same form of words is used as in the first
33 paragraph. Alic, it is said, was not imprisoned behind the
34 barbed wire fence; not that he was not imprisoned, full stop.
35

36 Remember, members of the jury, what I emphasised to
37 you in opening. It is no part of the defendants' case that
38 these men in the field were or were not being forcibly
39 detained in the camp at Trnopolje. Nor does the article that
40 Alic was not detained in this way on 5 August. Paragraph four
41 emphasises that there was no barbed wire surrounding Trnopolje
42 camp. It explains the truth, as we put it to you at this
43 trial, about the barbed wire fencing, about it surrounding the
44 cameraman and the journalists.
45

46 Look on, members of the jury, to paragraphs 17 and 18.
47 Can I ask you to look at these by use of the plan next to 18
48 on page 28? Those paragraphs give more detail about what we
49 have just read in three and four.
50

51 "To film these refugees, Marshall and her cameraman
52 Irvin entered a compound next to the camp area.
53 Inside this small compound were a kind of garage shed,
54 an electricity transformer station, and a brick barn.
55 Before the war, horticultural products could be bought

1 there and tractors and construction machinery had been
2 housed in the barn. To protect all this from thieves,
3 the compound area of approximately 500 square metres
4 had been fenced in with barbed wire a couple of years
5 before. The erection of the barbed wire fence had
6 nothing to do with the refugees, the camp or the war.
7 The poles to which this barbed wire was attached are
8 still standing today, and traces of the wire can be
9 found on the west side of the compound.

10
11 "When Marshall, Williams and Vulliamy entered the
12 compound next to the camp, the barbed wire was already
13 torn in several places. They did not use the open
14 gate, but entered from the south through a gap in the
15 fence. They approached the fence on the north side,
16 where curious refugees quickly gathered inside the
17 camp, but on the outside of the area fenced in by
18 barbed wire. It was through the barbed wire fence at
19 this point that the famous shots of Fikret Alic were
20 taken."

21
22 There is the plan which shows exactly what the reader is being
23 told in those paragraphs. Members of the jury, you may think
24 that the plan is not absolutely perfect in every detail.
25 Perhaps you may think that the low fencing on the east road
26 goes a little further up the east road towards the community
27 building, perhaps in the form of that low metal fence than
28 does Mr. Deichmann's dotted line. The purpose of the plan,
29 members of the jury, is to illustrate the central point in the
30 text, is it not, that the barbed wire fence was around the
31 crew, not the men in the field.

32
33 The crucial detail about the plan is the bottom part
34 of it, the drawing of the location of the barbed wire fence
35 which is correct and the indication of where Penny Marshall
36 took the picture from.

37
38 (Adjourned for a short time)

39
40 Members of the jury, we were looking at the article and you
41 will recall that the claimants have tried to make much of the
42 statement in paragraph three in the article:

43
44 "It was not a prison and certainly not a
45 'concentration camp', but a collection centre for
46 refugees, many of whom went there seeking safety and
47 could leave again if they wished."
48

49 You may want to ask yourselves why. As I have said, it is
50 obvious to anyone who reads the rest of the article that the
51 key point is that this was not a concentration camp, as we all
52 understand that term from our knowledge of the Second World
53 War.
54
55

1 Paragraph five in the very first sentence explains
2 almost immediately to the reader how the pictures were wrongly
3 seen around the world as the first hard evidence of such camps
4 in northern Bosnia.
5

6 11.45 a.m.
7

8 Bear this in mind when you consider the points the
9 claimants make about that statement in paragraph three:
10 neither reporter described it as a prison in their reports.
11 Indeed, Penny Marshall in her report described Trnopolje as a
12 refugee centre. The presence of armed guards at Trnopolje did
13 not lead her to describe it as a prison. You may recall that,
14 as Mr. Deichmann pointed out to you on Friday, you may think
15 quite obviously correctly, many refugee camps in civil war
16 zones will have armed guards. This does not make them
17 prisons. Nor indeed did Dr. Merdzanic describe it as a prison
18 in his evidence last week. He simply described it as a camp.
19 Yes, he described terrible, terrible things that happened
20 there, and we did not challenge his evidence on this. We do
21 not question it now. But he did not try to describe that
22 chaotic camp containing the various buildings and the many
23 people, men women and children who we have seen on the rushes,
24 in a single simple word. And, members of the jury, he most
25 certainly did not describe it as a concentration camp.
26

27 Moreover, both reporters said in their reports that
28 there were people who had come to the camp voluntarily. Do
29 you recall they were described as refugees. Ian Williams said
30 they were refugees who "had nowhere else to go". Ms. Marshall
31 said some had "come here by choice; those who had run for
32 their lives to this pitiful camp". What does this mean if not
33 that they had gone there seeking safety, as para.3 of
34 Mr. Deichmann's article states?
35

36 We would ask you to find, members of the jury, after
37 everything you have heard and seen on the rushes, that these
38 paragraphs and this statement is carefully and accurately
39 worded. Paragraph 3 does not say that everyone there from
40 Trnopolje on that day could leave if they wished. It says
41 that people such as these, those who had gone there seeking
42 safety, could leave again if they wished, though no doubt at
43 their own risk.
44

45 There, members of the jury, in the first five
46 paragraphs of the article, you have the basis of the defence
47 as you have heard it at this trial. The pictures in the
48 reports did leave a false impression that the Bosnian Muslims
49 were caged behind the barbed wire, and the world did react by
50 seeing an image of a Nazi concentration camp.
51

52 I now move on to paras.12 and 13 which Mr. Shields
53 suggests are particularly important in ITN's claim. Members
54 of the jury, one of the ways in which lawyers describe a
55 defamatory statement is as one which contains an imputation

1 which would tend to lower the person in the estimation of
2 right-thinking members of society. His Lordship, from whom
3 you must take the law, will explain to you that a company can
4 be a person defamed. It has a trading character as a company
5 and for this reason a reputation which may be injured by a
6 defamatory statement. But ITN, the company, must be defamed.
7 It is not enough simply for its name to be present in the
8 words complained of. There must be a meaning within those
9 words which contains such an imputation in respect of the
10 company. As I explained in my opening, we do not accept that
11 ITN, the company, though referred to, has been defamed by the
12 words complained of.

13
14 Certainly these paragraphs, 12 and 13, do state that
15 ITN and its editors wanted the story of the camps in northern
16 Bosnia, that they sent the crews to get it, without being
17 distracted by other stories. But, as I put it in my opening,
18 why is it defamatory of a large news-gathering organisation to
19 say that it was keen for its reporters to get a story that the
20 whole world was interested in. Remember again what
21 Mr. Shields said in his opening - there was considerable world
22 attention as to whether the concentration camp allegations
23 could be substantiated. We repeat, these photographs say
24 nothing more than the ITN editors were doing their job. There
25 is nothing defamatory of ITN in that. We also repeat this:
26 we have not set out to prove that there was some sort of
27 conspiracy to compile misleading reports involving all the ITN
28 employees who ever had anything to do with these reports,
29 whether in London or in Bosnia, or indeed any of them.
30 Because the words complained of do not say this. The word
31 "conspiracy" does not appear anywhere in the article.

32
33 Let us move on, members of the jury, still within the
34 words of the article. The claimants point to para.21 and
35 emphasise the words "camera angles and editing". Let us read
36 what is said:

37
38 "Yet an important element of that 'key image' had been
39 produced by camera angles and editing. The other
40 pictures, which were not broadcast, show clearly that
41 the large area on which the refugees were standing was
42 not fenced-in with the barbed wire."

43
44 Now, just pause there, pause at that point. The words "camera
45 angles and editing" in para.21 are not designed to be taken in
46 isolation. They are designed to be taken in conjunction with
47 the facts that follow and the facts that have been led earlier
48 on in the afternoon. Moreover, it is not being said here, or
49 indeed in the press release where these words appear, that the
50 footage has somehow been falsified or fabricated. The words
51 "falsified and fabricated" do not appear anywhere. What is
52 said - look at it closely - is that an important element of
53 that key image had been produced in this way. An important
54 element of that key image. And, read in the context of the
55 article as a whole, the meaning of these words is clear. The

1 important element is the false impression that Alic is caged
2 behind barbed wire. The very next sentence that we have just
3 looked at in para.21 states that the rushes contain other
4 shots which show that this was not the case. So it is the way
5 in which the shot is used in the reports to create an image of
6 Alic surrounded by barbed wire fencing like a prisoner in a
7 Nazi concentration camp that is the central criticism of the
8 two reporters in the article.
9

10 It was Mr. Williams and Ms. Marshall who had the
11 responsibility for ensuring that the reports at Trnopolje
12 which they sent back in their names and with their voices did
13 not mislead in this way. As Ms. Marshall put it, "the buck
14 stops with me". As you know, we say that the article suggests
15 that through their reports they deliberately misled in this
16 way.
17

18 In putting together their reports on 6th August 1992
19 Mr. Williams and Ms. Marshall - and I will read again the
20 words that I read you in opening:
21

22 "... had compiled television footage which deliberately
23 misrepresented an emaciated Bosnian Muslim, Fikret
24 Alic, as being caged behind a barbed wire fence in a
25 Serbian-run Trnopolje camp on 5th August 1992 by the
26 selective use of video tape shots of him."
27

28 In opening, Mr. Shields took you also to paras.6 and 37.
29 Paragraph 6, you will recall, is the one that contains the
30 statement of the claimants.
31

32 "... none of them has told the full story about that
33 barbed wire fence which made such an impact on world
34 opinion."
35

36 Paragraph 37, which is a few pages on, was the one which
37 contained the statement, again at the end of the paragraph:
38

39 "Despite her plea of objectivity [that is of
40 Ms. Marshall], however, she did not explain how 'that
41 image' of Fikret Alic behind barbed wire had been
42 produced by her team."
43

44 By these paragraphs we accept and say that the article was
45 also saying that the two reporters had failed to explain
46 publicly that the shots were of Fikret Alic standing outside a
47 barbed wire fence which surrounded the area from which the
48 cameraman was filming, when the misleading image of Fikret
49 Alic was widely interpreted as evidence that Bosnian Serbs
50 were running Nazi-style concentration camps. And we say that
51 they ought, in the circumstances I have outlined, to have
52 given such a public explanation but discredibly failed to do
53 so.
54
55

1 We say that those meanings are true, members of the
2 jury. It is not dispute that they did not give such an
3 explanation. And, as responsible journalists, they ought to
4 have done so because it is wrong, as Mr. Hume said, to
5 deliberately use an image to suggest that this camp was
6 comparable to a Nazi concentration camp. Remember what
7 Mr. Hume said:

8
9 "This distorts and degrades our view of the past. The
10 holocaust is an absolutely unique horror in history,
11 the great crime of the 20th industry and if you start
12 putting it on a par with civil wars of today you can
13 only diminish its horror, I think, and you do a
14 disservice to the victims of the holocaust by making
15 those kinds of inappropriate comparisons."

16
17 This, members of the jury, was one of the reasons why he felt
18 it was important to run the story in a magazine. The other is
19 clear from his editorial on p.5 of the magazine. This is at
20 the back of tab 6. Members of the jury, we say that this
21 editorial does not add to any of the criticisms of the
22 reporters contained in the article. Indeed, we say, and you
23 may think, it is entirely separate from the article. It does
24 not mention the reporters. Rather, it deals with the wider
25 issue of principle about war reporting. Should war reporters
26 stand neutrally between good and evil or should they have an
27 attachment as journalists, as Martin Bell puts it, although
28 many others subscribe to that view. Mr. Hume feels strongly,
29 and he told you, that war reporters who report in this way
30 with that attachment run the risk of degrading journalistic
31 standards and compromising their objectivity as reporters.
32 But he told you, and indeed it is apparent when you make the
33 comparison, when part of this editorial "First casualty?" was
34 transposed to the press release as a quote from him, the words
35 "to one side" after the word "attachment" were removed. Look
36 at the press release which is at tab 4. Look at the quote at
37 the bottom and compare it, as it were keeping your finger in
38 both tabs, with the second paragraph from the end in the
39 editorial. The editorial says:

40
41 "If they are not very careful, journalists who have
42 some kind of emotional 'attachment' to one side can
43 end up seeing what they want to see, rather than what
44 is really there."

45
46 But in the press release, which is about this particular
47 article and these particular reporters, reads:

48
49 "If they are not very careful, journalists who have
50 some kind of emotional 'attachment' in a conflict can
51 end up seeing what they want to see."

52
53 He told you that he was responsible for removing those words
54 from the quote when it was used in the press release. We say
55 that this gives the quote in the press release a very

1 different meaning. It does not say or suggest that the
2 reporters took sides in favour of the Muslims and against the
3 Bosnian Serbs.
4

5 Nor, members of the jury, is this said anywhere in the
6 article. Like the article, the press release which we have
7 just looked at sets out clearly the basic facts about the
8 barbed wire fence surrounding the film crew, not the men in
9 the field. Look at the bullet points, as they are called,
10 next to the little dots. There they are in the bullet points,
11 the basic facts about the barbed wire fence sounding the film
12 crew, not the men in the field.
13

14 And the press release repeats the central criticism of
15 the reporters, that the image was used in their reports in a
16 misleading way - one that did not make this clear, did not
17 make clear what the reader is being told in those bullet
18 points. Again, members of the jury, we say it contains the
19 same meanings as the magazine, nothing more and nothing less.
20

21 A few final words, members of the jury. When he came
22 to run the article, Mr. Hume did not contact the reporters.
23 He admits this and he has explained why. He believed that ITN
24 would try to suppress what he believed was a true and
25 important story. Did not subsequent events show him to be
26 correct? We have seen how ITN did react when the press
27 release was put out before the magazine had even been
28 published. Through its solicitor it demanded that all copies
29 of the magazine should be pulped. And he has told you how the
30 solicitors' letter gave rise to, and these are his words:
31

32 "A campaign, if you like, amongst supporters of my
33 magazine against their attempt to suppress our story.
34 The campaign is a free speech campaign against the
35 attempts of the claimants to silence LM magazine. The
36 campaign is not a personal campaign against the two
37 ITN journalists or anyone else."
38

39 Members of the jury, the rights or wrongs of that campaign are
40 not being tried here. His Lordship will direct you as to how
41 actions of the defendants after publication may have added to
42 or aggravated any damage done to the claimants by the
43 publication. But we hope that you will bear this in mind in
44 distinguishing what the defendants did after publication from
45 things like the Golden Gag and the leafleting which Mr. Hume
46 explained were undertaken by those supporters without his
47 involvement as part of this campaign.
48

49 We hope you will also bear one other point in mind on
50 damage should you come to consider it. Apart from some early
51 phone calls to ITN executives, or CNN or BBC, there is no real
52 evidence that the press release had any great effect. There
53 is no evidence of any newspaper or television coverage of LM's
54 story in the days after the press release.
55