

DAY 10 P.M.

IN THE HIGH COURT OF JUSTICE

1997 I No.139

QUEEN'S BENCH DIVISION

Royal Courts of Justice

Monday, 13th March 2000

Before:

MR. JUSTICE MORLAND

B E T W E E N :

- (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.

PROCEEDINGS - DAY 10 A.M.

I N D E X

	<u>Page No.</u>
<u>CLOSING SPEECH</u> by Mr. MILLAR	1
<u>CLOSING SPEECH</u> by Mr. SHIELDS	23
<u>SUMMING-UP</u>	41

S U M M I N G - U P

1
2
3
4 MR. JUSTICE MORLAND: Members of the jury, you may well think that
5 in a democratic society it is vital that journalists are
6 fearless, investigative reporters. It is, you may well think,
7 of the utmost importance that they are accurate and fair
8 reporters. It is right that one journalist, if he considers
9 that another journalist has been inaccurate, unfair and
10 misleading, should say so. But this case, you may think, is
11 not about whether Penny Marshall and Ian Williams have been
12 inaccurate, unfair or misleading; the nub of this case is
13 whether the defendants have established that Penny Marshall
14 and Ian Williams have deliberately - I emphasise that word
15 "deliberately" - compiled misleading television footage.

16 First, what are our roles, yours and mine? It is my
17 responsibility to sum the case up to you by telling you what
18 the law is and summarising the important issues of fact. The
19 law is for me, the facts for you and you alone. You must
20 apply the law that I give you to the facts as you find them.
21 If I make any comment on the facts you can accept or reject
22 that comment as you think fit because you are the judges of
23 fact. You must decide the case on the evidence, reaching your
24 findings of fact and the inferences and the conclusions you
25 draw from the facts from the evidence given in this court.

26 What is evidence? It is the oral evidence given by
27 the witnesses on oath or on affirmation from the witness box
28 in this court. It includes the agreed chronology that you
29 have, the document headed "The list of key protagonists", the

1 ITN organisation chart, and all documents in both the
2 claimants' and the defendants' bundles, and the photographs
3 taken by Dr. Idriz and Mr. Deichmann, and all the video
4 recordings of the broadcasts and the rushes that you have
5 seen. I am not going to play any of the video recordings or
6 the rushes during my summing-up, but do remember this: if
7 during your deliberations you wish to see any recording or any
8 part of the rushes, just send me a written note. You will
9 then return to this court and see whatever you want to look
10 at.

11 What is not evidence? What Mr. Shields and Mr. Millar
12 put to the witnesses by way of question is not evidence unless
13 accepted in his or her answer by the witness. The speeches of
14 Mr. Shields and Mr. Millar are not evidence. They are made to
15 help you by way of argument and submission in your assessment
16 of the evidence. You will, I know, consider their arguments
17 with great care. What I say in the summing-up by way of
18 comment or summary of the facts is not evidence. I shall not
19 summarise much of the evidence, and only mention particular
20 pieces of evidence. If I do not mention some piece of
21 evidence which you consider important, take that piece of
22 evidence into account because you, not me, are the sole judges
23 of fact.

24 Defamation - in other words, in this case libel - is
25 the publication of a written statement which reflects
26 adversely on a person's or a company's reputation and tends to
27 lower him or her or the company in the estimation of right-

1 thinking members of society, in the case of a man or a woman
2 the people with whom he or she mixes and works and tends to
3 make them shun or avoid him or her, and in the case of a
4 company tend to make people and businesses not to do business
5 with that company.

6 I have been talking about reputation. Reputation is
7 what is generally said or believed about a person's character
8 or, in the case of a company, a company's standing. That is
9 the reputation of the company as a company, not of its
10 individual employees.

11 When, during this summing-up, I say that the claimants
12 must prove or establish something, or that the defendants must
13 prove or establish something, what is the standard of proof?
14 I know you all originally came to this court from the Old
15 Bailey. I do not know whether any of you at any time have sat
16 as jurors in a criminal case. This is not a criminal case,
17 but a civil case. In criminal cases the standard of proof is
18 that the jury must be satisfied on the evidence so that they
19 feel sure of the guilt of the defendant or, as it is sometimes
20 put, beyond all reasonable doubt. In this case, which is a
21 civil case, if something has to be proved or established the
22 standard of proof required is that it has to be proved or
23 established on the balance of probabilities, that is: is it
24 more likely than not? Is it more likely than not?

25 There are three claimants: ITN, Penny Marshall and
26 Ian Williams. To succeed in a claim for damages a claimant
27 must first establish that he or she is the person defamed.

1 Each of the claimants claims damages in respect of the press
2 release, "Journalist exposes the truth behind Bosnia death
3 camp photograph" and in respect of the article, "The picture
4 that fooled the world", and the associated editorial. Each of
5 the claimants must establish that he or she is defamed by
6 those publications of the defendants. The publications
7 specifically refer to Penny Marshall and Ian Williams and
8 there is no dispute that they have some defamatory meaning
9 defamatory of them. However, in relation to Independent
10 Television News, ITN, the defendants contend that the
11 publications, although making a passing reference to ITN, do
12 not bear any meaning defamatory of ITN. No other defence is
13 advanced against ITN's claim.

14 In relation to ITN's claim, the question you must
15 answer is whether it is established that the words complained
16 of as being defamatory might be understood by reasonable
17 people to refer to ITN as a company as opposed to its
18 individual employees. If your answer to that question is yes,
19 ITN must succeed in their claim and would be entitled to an
20 award of damages. So when considering the publications
21 remember there are two questions. The first: what defamatory
22 message or messages or meanings do they send out? The second:
23 do any of the defamatory messages or meanings refer to ITN as
24 a company?

25 The claimants say that the press release, the magazine
26 article and the accompanying editorial, defame them. The
27 claimants, who must establish a defamatory meaning, say the

1 meaning is as follows: that the claimants had in August 1992
2 fabricated and broadcast grossly distorted television footage
3 which deliberately exaggerated and sensationalised the
4 treatment suffered by Bosnian Muslims detained in the Bosnian
5 Serb camp at Trnopolje; that the claimants had wilfully set
6 out to distort the truth in this manner because, contrary to
7 their outward display of impartiality, they had secretly taken
8 sides against the Bosnian Serbs; that the claimants had kept
9 silent about their deceitful distortion and bias when the
10 footage predictably led to widespread public speculation and
11 concern that the Bosnian Serbs were running Nazi-style
12 concentration camps; that the claimants had for four and a
13 half years continued their deception of the public by
14 concealing the truth about the fabrication of their footage;
15 and that the claimants had shown their willingness to engage
16 in the most cynical and unethical kind of journalism.

17 The defendants say that the publications have these
18 meanings: that Penny Marshall and Ian Williams had compiled
19 television footage which deliberately misrepresented an
20 emaciated Bosnian Muslim, Fikret Alic, as being caged behind a
21 barbed wire fence at the Serbian-run Trnopolje camp on 5th
22 August 1992 by the selective use of video shots of him; and
23 that they, that is Penny Marshall and Ian Williams, failed to
24 explain publicly that the shots were of Fikret Alic standing
25 outside a barbed wire fence which surrounded the area from
26 which the cameraman was filming, when the misleading image of
27 Fikret Alic was widely interpreted as evidence that the
28 Bosnian Serbs were running Nazi-style concentration camps; and

1 that Penny Marshall and Ian Williams ought in the
2 circumstances to have given such a public explanation but
3 discredibly failed to do so.

4 It is for you, a cross-section of people, reasonable,
5 ordinary men and women, to decide to what the words complained
6 of mean, using your general knowledge and your experience of
7 the world. The words have a natural and ordinary meaning.
8 You can read between the lines but do not give the words an
9 artificial or strained meaning, or the worst possible
10 defamatory meaning if other defamatory meanings are readily
11 and reasonably there. It is really a matter of impression,
12 not one of analysis or dissection, not a case of getting a
13 dictionary out and saying: "Well, what does that word mean?"
14 You must put yourself in the position of someone, for example,
15 who came across the press release or the LM magazine and read
16 it for the first time. You must not - and I emphasise this -
17 take into account any evidence given in the trial in deciding
18 what the meaning is. You have to get yourself back into the
19 position of a reader in January/February 1997 who has heard
20 none of the evidence in this case to decide what the
21 defamatory meaning is. Just as if, for example, on the way
22 home tonight you buy the **Evening Standard** and you read an
23 article and said: "That is pretty critical of X or Y, saying
24 pretty hard things about X and Y; what is the defamatory
25 message?" You may know nothing about the background, you may
26 not know the people. That is the sort of position you have
27 got to put yourselves in. Put yourselves back to January/
28 February 1997 before you had ever clapped eyes on Penny

1 Marshall or Ian Williams. Put out of your minds completely
2 all the evidence that you have heard about Penny Marshall, Ian
3 Williams, Michael Hume, Thomas Deichmann and about Trnopolje
4 and Omarska. Indeed, put aside all the evidence in deciding
5 what are the defamatory meanings or meaning of the press
6 release, the article and the editorial.

7 I must emphasise that Michael Hume's and Thomas
8 Deichmann's state of mind or intention at the time the
9 articles were written and published and the press release
10 issued, are totally irrelevant and are inadmissible in
11 deciding what is the defamatory meaning.

12 You may not find a worse or higher defamatory meaning
13 in the press release or in the article or its editorial than
14 contended for by the claimants, but you can find any lesser
15 defamatory meaning.

16 Now let us look together at the press release which is
17 your tab 4, and consider together - but it is your decision,
18 not mine, nothing to do with me - what are or may be the
19 defamatory meanings. First of all, you look at the headline
20 "Journalist exposes the truth behind the Bosnian death camp
21 photograph". Does that suggest that the photograph lied?
22 Then if we look at the first paragraph:

23 "Thomas Deichmann says that the image of an emaciated
24 Bosnian Muslim caged behind barbed wire was created by
25 'camera angles and editing'."

26 Does that suggest cheating, faking, fabricating photographic
27 images? Or did it merely state that there was that rack

1 photograph so that the barbed wire from the southern end was
2 superimposed over the barbed wire and Alic beyond the
3 west/east fence at the north end? Then the end of the next
4 paragraph:

5 "But Deichmann in an exclusive article published in
6 February's LM magazine insists 'The image is
7 misleading and has fooled the world'."

8 Does that suggest dishonesty?

9 "The picture of Fikret Alic was taken from videotape
10 shot at Trnopolje on 5 August 1992 by an award winning
11 British television team led by Penny Marshall, ITN,
12 with her cameraman, Jeremy Irving, accompanied by Ian
13 Williams, Channel 4, and **Guardian** reporter Ed
14 Vulliamy."

15 Is that spelling out not merely that Penny Marshall and Ian
16 Williams were ITN journalists but were doing their job under
17 direction of ITN?

18 The next paragraph:

19 "Deichmann visited Trnopolje and has also seen unused
20 video footage that shows how this powerful image was
21 created."

22 Is that use of the word "created" a suggestion of
23 faking?

24 "There was no barbed wire fence surrounding Trnopolje
25 camp. The camp was a collection centre for refugees,
26 not a prison. The refugees in the picture were not
27 surrounded by barbed wire. The barbed wire surrounded
28

1 the news team who were filming from inside a small
2 enclosure next to the camp."

3 Does that suggest, in those sentences, that the claimants were
4 deceiving the public in picturing Trnopolje as a prison or a
5 detention camp?

6 Thomas Deichmann says

7 "I am shocked that over the past four and a half years
8 none of the journalists involved has told the full
9 story about that barbed wire fence which made such an
10 impact on world opinion. The photograph has been
11 taken as proof that Trnopolje was a Nazi style
12 concentration camp but the journalists knew it was no
13 such thing."

14 Is this a suggestion that Penny Marshall and Ian Williams were
15 portraying Trnopolje as a concentration camp when they knew
16 full well it was not?

17 Then, Mike Hume, LM editor, says:

18 "If they are not very careful, journalists who have
19 some kind of emotional attachment in a conflict can
20 end up seeing what they want to see rather than what
21 is really there. Taking sides cannot be an excuse for
22 taking liberties with the facts."

23 Is that a clear suggestion that they were not telling the true
24 facts but were distorting them?

25 Let us now go to tab six and look at the article.

26 First of all, on the outside of the magazine:

27 "It became a symbol of the horrors of the Bosnian war
28
29

1 but it is not quite what it seems. The picture that
2 fooled the world."

3 Is that another way of saying that the picture was a
4 deception? If we turn over the page, we then have the body of
5 the article. Mr. Millar has said that the whole thrust of the
6 article is about this one picture, this one image, but is it?
7 In paragraph one:

8 "The picture reproduced on these pages is of Fikret
9 Alic, a Bosnian Muslim, emaciated and stripped to the
10 waist, apparently imprisoned behind a barbed wire
11 fence ...".

12 Is the suggestion from that sentence that he was not
13 imprisoned or, as Mr. Millar would have it, apparently
14 imprisoned behind a barbed wire fence?

15 If we look at the second paragraph:

16 "For many, this picture has become a symbol of the
17 horrors of the Bosnian war - 'Belsen '92' as one
18 British newspaper headline captioned the photograph
19 (**Daily Mirror**, 7 August 1992). But that image is
20 misleading."

21 Is the suggestion that it is a deception? Then, the next
22 paragraph:

23 "The fact is that Fikret Alic and his fellow Bosnian
24 Muslims were not imprisoned behind a barbed wire
25 fence. There was no barbed wire fence surrounding
26 Trnopolje camp. It was not a prison, and certainly
27 not a 'concentration camp' ..."

28 If it was not a prison, what was it so far as Fikret Alic was
29 concerned? What do the words mean? "It was not a prison".

1 Is that not a suggestion that Penny Marshall and Ian Williams
2 were saying and suggesting it was a prison when in truth it
3 was not a prison?

4 If we go over a couple of pages where we have on the
5 left **The Daily Mail** and **The Mirror**. At the top of the page:

6 "In the eyes of many who saw them, the resulting
7 pictures left the false impression that the Bosnian
8 Muslims were caged behind barbed wire."

9 Is again the suggestion made that the two journalists
10 were deceitful, deliberately misleading? Then, the next
11 paragraph starts off with:

12 "Whatever the British news Team's intentions may have
13 been, their pictures were seen around the world ..."

14 If we go down to paragraph seven:

15 "It was through my role as an expert witness to the
16 War Crimes Tribunal" -- that is Mr. Deichmann talking
17 -- "that I first realised that something was wrong
18 with the famous pictures from Trnopolje."

19 Wrong? Does that suggest something faked or deceitful or
20 fabricated?

21 If we go over the page to paragraph 11, towards the
22 end of that paragraph, after mention is made of Mr Roy
23 Gutman's and Maggie O'Kane's articles:

24 "Nevertheless, they caused an international
25 sensation."

26 Then we start the next paragraph:

27

1 "When Marshall, Williams and Vulliamy arrived in
2 Bosnia at the end of July 1992, they were under
3 intense pressure to get the story of the camps."

4 Who do the words of the article suggest the intense pressure
5 came from? Does it suggest to you, in the position of the
6 ordinary reader, that intense pressure came from ITN? Does it
7 suggest that Penny Marshall and Ian Williams were prepared to
8 prostitute their professional integrity at the expense of the
9 truth in order to get a scoop? It goes on to say:

10 "Roy Gutman's article about the 'death camp' Omarska,
11 published while the British team were in Bosnia, had
12 further raised expectations in the London editorial
13 offices."

14 What are the editorial offices? Whose editorial offices? To
15 the ordinary, reasonable reader, would it suggest the
16 editorial offices of ITN?

17 "After her return Penny Marshall told how she and
18 Williams had received orders from the managing editors
19 of ITN and Channel 4 to do nothing else before they
20 had the camps story in the bag: 'They had set Ian
21 Williams and myself loose with an open-ended brief to
22 find and visit the detention camps, and with orders to
23 file nothing until we had come up with the story.'
24 (**Sunday Times**, 16 August 1992)."

25 Would that suggest to the ordinary, reasonable, fair minded
26 reader that there is a clear reference to the management of
27 ITN and that the management of ITN were to get Penny Marshall
28 and Ian Williams to get the story, irrespective of its truth?

29 Let us go over the page to paragraph 18:

1 "When Marshall, Williams and Vulliamy entered the
2 compound next to the camp, the barbed wire was already
3 torn in several places. They did not use the open
4 gate, but entered from the south through a gap in the
5 fence. They approached the fence on the north side,
6 where curious refugees quickly gathered inside the
7 camp, but on the outside of the area fenced in by
8 barbed wire. It was through the barbed wire fence at
9 this point that the famous shots of Fikret Alic were
10 taken."

11 Is the suggestion being made that Ian Williams and Penny
12 Marshall untruthfully and deceitfully portrayed the people
13 gathered at the fence as prisoners or detainees when the truth
14 was that they were just curious refugees?

15 If you go down to paragraph 21:

16 "Yet an important element of that 'key image' had been
17 produced by camera angles and editing."

18 You, in the position of the ordinary, reasonable, fair minded
19 reader back in 1997: would you say that the message being
20 given from that sentence was that distortion was being
21 practised and, if distortion, deliberate distortion of images
22 to produce what is described as the 'key image'?

23 Let us turn over to paragraph 36. There it is said
24 that Penny Marshall did not mention the barbed wire fence in
25 the first report she wrote in 35, after returning from
26 Trnopolje, published in **The Sunday Times**.

27 "About her first visit to the camp she simply wrote
28 that 'Outside was barbed wire'. Describing her second
29 visit to the camp in the same article, she noted that
30 'Outside, the camp had changed in the week since our

1 original report. The barbed wire fence had been
2 removed and the Serbians had left building materials
3 for the prisoners to make shelters'.

4 "This was true; the barbed wire fence (and the
5 ordinary wire mesh fences) which Marshall's cameraman
6 had shot during the first visit had indeed been
7 removed before her return. But Penny Marshall had
8 left open the question of precisely whereabouts
9 'outside' the barbed wire fence had been located. She
10 thus failed to correct the false interpretation which
11 so many people had placed upon the pictures."

12 Would that suggest to the ordinary, reasonable, fair minded
13 reader in February 1997 that Penny Marshall, knowing that she
14 had been misleading, had done nothing about it?

15 At the top of the page overleaf:

16 "'It was a PR mistake in the Bosnian Serbs' terms.'
17 She did not mention her team making any mistakes in
18 their presentation of the Trnopolje story."

19 Would the ordinary, reasonable, fair minded reader say that
20 the message coming from those words was that Penny Marshall
21 was lacking in integrity as a journalist in failing to correct
22 the mistake?

23 Then, the next paragraph ends with these words:

24 "But neither have they" -- referring to both Marshall,
25 Williams and indeed Vulliamy -- "have corrected the
26 false interpretation of the picture of Fikret Alic
27 apparently imprisoned behind the barbed wire."

28 It does not say "Fikret Alic imprisoned apparently
29 behind barbed wire" but "apparently imprisoned".

1 Let us turn over to the editorial. Looking at the end
2 of the editorial, last sentence:

3 "Taking sides, however, cannot be an excuse for taking
4 liberties with the facts."

5 Is the suggestion or meaning to be derived from that
6 that there was a deliberate distortion of the facts? When you
7 have decided what is the defamatory message or meaning or
8 meanings, you then have to consider what is the defence.
9 Remember: if you find the press release and the LM article and
10 the accompanying editorial defamatory of ITN, there is no
11 defence to ITN's claim.

12 The defence -- what lawyers call "justification" -- is
13 a defence only against the claims of Penny Marshall and Ian
14 Williams. A defendant can justify the publication of
15 defamatory statements if he establishes that the charges he
16 makes against the claimants are true in substance and in fact.
17 The defendants do not have to establish that every detail of
18 the charges they make is established or that every detail is
19 true but as much must be justified as meets the sting of the
20 charge. That is as, in effect, covers the charge they are
21 making.

22 In this case, the charge that the defendants make
23 against Penny Marshall and Ian Williams is that they had
24 compiled television footage which deliberately -- I emphasise
25 that word again: deliberately -- misrepresented Fikret Alic as
26 being caged behind a barbed wire fence at Trnopolje camp on
27 5 August 1992 by the selective use of videotape shots of him.

1 If the defendants prove that charge is true in
2 substance and in fact, your verdict must be for the
3 defendants. If not, you must find for Penny Marshall and Ian
4 Williams.

5 You may think that there is little dispute as to the
6 factual background. In 1992, a civil war was raging between
7 the Bosnian Serbs and the Bosnian Muslims. Allegations were
8 made that atrocities were being committed by both sides in
9 detention camps. ITN operated its news services in two halves
10 under the editor in chief, Stuart Purvis, one for ITN news on
11 Channel 3, ITV, and the other for Channel 4.

12 The chain of command from Stuart Purvis down to those
13 operating in the field, including Penny Marshall, the head of
14 the Channel 3 team, and Ian Williams, head of the Channel 4
15 team, is illustrated in your agreed organisation chart which
16 you have with your agreed list of the key protagonists.

17 Sue English, the senior foreign editor for Channel 4,
18 read articles in **The International Herald Tribune** by Roy
19 Gutman and Maggie O'Kane in **The Guardian** -- you have seen
20 those articles; Maggie O'Kane's is tab 11 -- in the summer of
21 1992. She rang her opposite number at Channel 3, Victoria
22 Knighton, in the morning that the Maggie O'Kane article came
23 out.

24 Dr. Karadzic, the leader of the Bosnian Serbs, came to
25 London and gave a press conference attended by Nick Guy,
26 Channel 4's diplomatic editor, who told Sue English that
27 Dr. Karadzic had absolutely denied the allegations of people

1 being held in camps and had offered us the chance to go and
2 see, as he put it, with your own eyes, that there is
3 absolutely no truth in these rumours.

4 Channel 4 decided to take up Dr. Karadzic's challenge
5 and both Channel 3 and Channel 4 decided to send separate but
6 complementary teams to northern Bosnia. Great care, you may
7 think, was taken in choosing highly experienced and
8 professionally competent members for the two teams.

9 Penny Marshall told you how she came to be sent out to
10 Bosnia. She had not been there before. She was at home and
11 Victoria Knighton, her foreign editor, rang her to say she was
12 sorry but she was going to ask her to go to Bosnia. Victoria
13 Knighton said to her there were some serious allegations about
14 atrocities taking place in the area. "There were some
15 allegations of camps and she wanted me to go and investigate
16 and see if I could get there."

17 Penny Marshall said that they had a system in ITN
18 where there is a cuttings library with information and books
19 and,

20 "As I had not been before and I had not followed the
21 war particularly closely, I went straight to the
22 cuttings library and I took out the cuttings covering
23 the conflict and trying to understand who was fighting
24 who, why and in what area and looking at the maps to
25 see where I was going. I read the Maggie O'Kane
26 article."

27 You have before you the agreed chronology and I shall
28 pick up the story after the hair raising trip in the old

1 Soviet helicopter and the arrival of the two teams in Pale on
2 3 August, when you will remember they interviewed Dr. Karadzic
3 who emphasised the dangers of going to northern Bosnia.

4 Two days later, the two teams motored to Prijedor.
5 You will remember the long line of women, huddled together
6 outside some municipal building, presumably enquiring of the
7 whereabouts of their menfolk. This was followed with the
8 meeting with the militia and you will remember probably the
9 walrus moustached militia chief. You will not forget the
10 stoutish lady interpreter with the long, reddish blouse.

11 The convoy with the two TV teams then moved on towards
12 Omarska. Just before reaching it, they were subjected to what
13 appeared to them to be the fake ambush.

14 At Omarska, you saw on the films what they saw. You
15 will probably never forget the lines of men trotting in groups
16 of about 20 at a time, under the eyes of heavily armed Serbs
17 to the canteen, famished, haunted, emaciated men, collecting
18 their bowls of bean soup, their hunks of bread and their
19 spoons, sitting down in silence, ravenously gulping down the
20 bean soup and wiping their bowls with small pieces of bread;
21 then, after a very few minutes, trotting off with the
22 remainder of their bread, presumably to assuage their hunger
23 for the rest of the day.

24 Can you have any doubt that these men were prisoners
25 and severely maltreated prisoners? The visit to Omarska ended
26 in an incident which we saw again this morning, which was
27 almost farcical. Ian Williams and Penny Marshall wanted to

1 see inside the large warehouse looking building, where they
2 suspected the men were housed in conditions that can only be
3 imagined.

4 The militia would not let them in and the lady
5 interpreter said, "You can do this, this and that but not
6 that."

7 Penny Marshall gave her descriptions to you of
8 Omarska.

9 "They looked absolutely terrified for their lives.
10 They were thin, half dead really, paper thin, sort of
11 dead eyes. They looked as if they had not seen any
12 sunshine or daylight, as far as I could see, for
13 several months. I did try and talk to these people
14 inside the canteen. I think they were dazed, confused
15 and terrified and I did not think they wanted to speak
16 to me. I remember talking to one man who said, 'I
17 cannot tell you the truth but I cannot lie' and quite
18 a lot of people we sat down next to got up and moved
19 quickly. I think they felt -- this is partly
20 hindsight, but at the time I sensed a great evil in
21 that place and I think they felt that by talking to us
22 they were risking their lives.

23 "The guards were armed. They had side arms and semi-
24 automatic weapons."

25 Leaving Omarska, the TV teams came across Trnopolje,
26 parking their vehicles near the south east corner of the site,
27 beside the junction of the east and the west roads. There is
28 no dispute that both teams entered the enclosure by the gap in
29 the fence to the right or the east of the electricity
30 transformer building. Ahead was a large group of men, beyond

1 the fence, with two or three strands of barbed wire at the top
2 and below that chicken wire.

3 Penny Marshall described her arrival in these words:

4 "I got out of the vehicle and they must have made a
5 very quick decision, because there was only one
6 soldier, that we would probably get away with it. We
7 decided to go as quickly as we possibly could to
8 investigate. We headed towards the group of men who
9 we could clearly see. We went through the first
10 available, the most direct, route from where we got
11 out of the vehicle. My recollection is that very
12 quickly we were joined by all the other people who did
13 exactly the same thing. I should think in a matter of
14 two or three minutes, which meant very quickly, I was
15 once again surrounded by all the Serb minders and the
16 soldiers and so it was going to be impossible again to
17 get anyone to speak to me. There was the Serb
18 military cameraman; there were the Bosnian Serb film
19 crew and there would have been two or three soldiers
20 from the green bus, the military major from my bus and
21 all the guards that you could see guarding the men,
22 walking up and down. Fikret must have been one come
23 forward or been pushed forward within about two or
24 three minutes of us being at the fence. I have not
25 seen the footage myself for several years but it is my
26 recollection that within two or three minutes of
27 arriving, that appalling, badly treated, half-dead man
28 was at the fence. They were unwilling to talk to me
29 and they were even unwilling to approach the fence as
30 if there was almost a sort of electric shock thing
31 there, you know. They would not come forward."

32 And you remember the pictures of a line of men and there
33 seemed to be a gap between the line of men and the fence
34 itself until Alic and Memet and one or two others came

1 forward. Her cameraman, Jeremy Irving, described how he came
2 to film Fikret Alic. He was asked:

3 "Did you go up to the fence behind which the gaggle of
4 people were present? A. I certainly did.

5 "Did you film at that fence? A. I did.

6 "When you were taking that film, what were you
7 focusing on? A. Well, the prisoners beyond it and
8 eventually, as the Serbian footage has shown us,
9 Mr. Alic was prompted forward and there he was.

10 "He was the first? A. Well, we had seen some
11 emaciated people at Omarska but he was the first one
12 we had seen without his shirt on and the first one we
13 could see the state he was in.

14 "When you stopped filming there, where do you remember
15 where you went? A. I'm not sure how we got out of
16 that compound and I'm aware of the guard Igor and
17 taking us up the road and seeing the young lad and
18 then seeing his footballing chums up the east road."

19 I think, members of the jury, as much as I would like you
20 would also like a break, so we will have a quarter of an hour
21 break now.

22 (Adjourned for a short time)

23 MR. JUSTICE MORLAND: I propose to rise at about quarter past
24 four, it might be a little earlier.

25 Back to the camp at Trnopolje. Ian Williams' team
26 followed Penny Marshall's to the fence but initially, you may
27 think, concentrated at the east end of the fence. Andrew
28 Braddel, the Russian-speaking producer in Ian Williams' team,
29 described his reaction:

30

1 "I was fairly shocked and appalled by the physical
2 condition of many of the men that I could see. They
3 were very malnourished, emaciated, fairly shocking.
4 We did get close up to the wire but, interestingly
5 enough, they didn't come close to the wire for quite a
6 while. They stood four or five paces behind it as if
7 there was some kind of invisible boundary they were
8 not going to cross over."

9 And James Nicholas, the Channel 4 team cameraman, said this:

10 "It was again obviously people who had certainly been
11 malnourished in some way, and there were enough people
12 there in the same kind of condition to make you
13 realise that there was something deeply wrong."

14 It is the thrust of the defendants' case that Ian
15 Williams and Penny Marshall must have known and did know that
16 the men were not caged in behind barbed wire but it was they,
17 with their TV teams, that were enclosed by the barbed wire
18 fence which surrounded the barn area. It is a matter for you
19 but, having seen the rushes and the bundle of Mr. Deichmann's
20 photographs, is it not clear that before the civil war there
21 was fencing surrounding the area containing the barn, the
22 garage and the electricity transformer? That fence was made
23 of tall metal posts with barbed wire strands at the top, and
24 below chicken wire, with a gate on to the east road. Clearly
25 Ian Williams and Penny Marshall and their TV teams were
26 mistaken in thinking they were not enclosed by the old barbed
27 wire fence, but does it matter? Penny Marshall and Ian
28 Williams were only in the camp for a total of about one hour
29 or less. Their time in the camp included Ian Williams' time
30 spent in and around the school buildings to the north, and

1 Penny Marshall's time in the medical centre and with
2 Dr. Idriz.

3 You have been carried through a detailed investigation
4 of the fencing for over a fortnight. They, Penny Marshall and
5 Ian Williams, you may think, were concentrating on the men
6 beyond the fence, many of them emaciated men, penned beyond
7 and behind the fence. That is the fence that runs from west
8 to east which had these strands of barbed wire at the top with
9 the chicken wire below. It was that fence, you may well think
10 - it is a matter for you - that was effectively imprisoning
11 the men on the south side of the field. Of course on the east
12 and west sides of the field were low metal fences. The one on
13 the west side was clearly a new fence that had obviously been
14 put up after the grass had last been cut. But all the fences
15 were patrolled on the outside by armed guards. You remember
16 the picture we saw again this morning of the gap further up
17 the east road when the man was collecting the pieces of bread
18 and how the group again stood back as if there was an
19 invisible fence stopping them coming forward, all huddled
20 together. You may think - it is a matter for you - there is
21 really only one conclusion, that the men in the field were
22 prisoners or detainees.

23 Penny Marshall and her team left the barn enclosure
24 and went up the east road. Bearing in mind that Penny
25 Marshall and indeed Ian Williams and all the witnesses were
26 having to cast their minds back to August 1992, seven and a
27 half years ago, she cannot remember whether she went through

1 the gap by the transformer or possibly the guards opened the
2 gate and she went out that way on to the east road before
3 eventually meeting Dr. Idriz in the medical centre.

4 Ian Williams said, and his team said, that they went
5 up the west side of the field, and there is no doubt they did
6 go up the west side of the field because of course they were
7 talking to the men over the low new fence. He said he
8 interviewed several men, including there was that man you
9 remember who had the sort of towel as a shawl over his
10 shoulders, and he was a man whose face appeared in the window
11 of the medical centre or the centre block. The suggestion by
12 the defendants is that that indicated that there was some form
13 of free access from the field into the community buildings
14 which included the medical centre. Somehow, Ian Williams and
15 his team got on to the west side of the field round the
16 southwest corner of the field. May there have been a gap in
17 that area or at some point the chicken wire had been trodden
18 down and the strands of wire hitched up? Assuming Ian
19 Williams has given you honest evidence, he has no recollection
20 of anything barring access round the southwest corner of the
21 fence to the outside of the new wire mesh fence on the west
22 side. It is a matter for you, but do you think there was any
23 reason why the ITN team should remember these sort of details?
24 As I have said, the visit to Trnopolje was seven and a half
25 years ago and they were not called upon to refresh their
26 recollection of August 1992 until the LM magazine and a press
27 release came out four and a half years later in January/
28 February 1997 when they saw the rushes. You may recollect

1 that Ian Williams thought they may have been sent to him when
2 he was in Hong Kong.

3 You may remember the evidence of Chris Hease, Ian
4 Williams' sound recordist, when he was being taken through the
5 rushes by Mr. Millar, where there was that man with the water
6 bottle taking it to the men at the fence. Mr. Millar's
7 question was:

8 "You have no independent recollection now of any of
9 this?"

10 You may think understandably Mr. Hease said:

11 "No. Not in this detail, no. I know we went round
12 the camp in a clockwise direction and did come down
13 the east road back to where the vehicles were but
14 exactly where we stopped and what James shot --
15 Mr. Nicholas shot, I don't recall.

16 "But you do have a recollection of coming out of this
17 area on that far side and going up the west side of
18 the camp? A. Yes. If you go back a few frames,
19 back a little bit more, that is it. Can you see where
20 the wire is pushed up and bunched together?"

21 You have had the advantage this morning of Mr. Millar's
22 sketch. Mr. Millar said:

23 "Yes. Well, it goes criss-cross? A. Yes.
24 I think that's the way we went through there, where
25 they all seem to be tied up."

26 That is the barbed wire.

27 "Can you see where they all seem to cross?"

28 And then I interposed:

1 "It is almost straight behind the man? A. Yes,
2 just where the chap's nose is now, all the wires
3 pushed up.

4 "As if the second strand has been pushed up to the top
5 strand. A. Yes, that's it.

6 "To give a gap. A. Yes.

7 "Presumably a gap over the chicken wire, if there is
8 chicken wire there, so that you can just step over the
9 chicken wire and under the barbed wire?

10 A. I don't remember the chicken wire but I'm sure
11 that's where we went through there."

12 Ian Williams was cross-examined at length and in detail about
13 the fencing. Among his answers were these:

14 "I have no close recollection of what buildings
15 I passed and what poles I passed. My focus at that
16 moment was to get to where I saw those people
17 incarcerated as speedily and as directly as I could."

18 He accepted, when it was put to him, in these words:

19 "Once upon a time it might have been some sort of
20 enclosure. Frankly I was not aware of it at the time
21 and subsequently I was not aware of the existence of
22 what you call an enclosure. As far as I could see and
23 as far as my focus went it was on what that stretch of
24 barbed wire was being used for now."

25 By "now" he means when he went up to the fence.

26 "It is significant that there are prisoners being kept
27 behind barbed wire and that barbed wire forms part of
28 a compound within which are men who have clearly been
29 treated in an abysmal way and are clearly imprisoned,
30 frightened and regard themselves as being in prison.
31 That was what I focused on. That is what I regarded
32

1 as important, not which bit of wire starts where or
2 what type of wire starts where."

3 Mr. Millar put to him:

4 "It must have been blindingly obvious to you that the
5 barbed wire fence was part of a pre-war compound
6 designed to protect the barn in the middle?"

7 Mr. Williams replied:

8 "No, it was not blindingly obvious. During my entire
9 stay at this camp my focus was on the people
10 imprisoned in the compound. Part of the wire
11 imprisoning them was barbed wire. Frankly, I was
12 concentrating on those people, not on the different
13 make-up of the wire surrounding them."

14 Penny Marshall was also cross-examined about the
15 fencing. Of course she did not go up the west side at all,
16 she went up the east road. It was put to her:

17 "Would it not be important to establish the lay-out of
18 that barbed wire fence?"

19 Her answer was:

20 "No, not unless it was not imprisoning him, which it
21 clearly was. I was not very interested in the fences
22 but it was clear from the report that they were in
23 prison and that was an impression or a fact that I was
24 conveying."

25 You heard the evidence of Dr. Idriz. I need not
26 remind you of his descriptions of beatings with table legs,
27 rapes and deaths. His evidence was wholly unchallenged and he
28 was not cross-examined. In the face of his evidence can it be
29 fairly concluded that either Ian Williams or Penny Marshall

1 gave a false or misleading description by word, picture or
2 image of the gruesome reality of Trnopolje camp in the news
3 reports broadcast on both Channel 3 and Channel 4?

4 Tomorrow morning I will go ahead to Thursday, 6th
5 August, and to Budapest. Bearing in mind that you have been
6 listening to three voices today, I think you certainly deserve
7 a short day and I think we will rise now. If you could be
8 back here at quarter past ten in the morning, hopefully you
9 will retire to consider your deliberations round about the
10 time of the mid-morning break, or thereabouts. I will rise
11 now.

12 (Adjourned until 10.15 a.m. on Tuesday, 14th March 2000)