

DAY 6 P.M.

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

1997 I No.139

Royal Courts of Justice
Tuesday, 7th 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

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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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Cross-examined by Mr. MILLAR; Continued

32

1 MR. MILLAR: Ms. Marshall, we were still at the point in between
2 your departure from the barbed wire fence and your arrival at
3 the end shot we see on the footage up the east road, and
4 however you emerged from that area you came onto the east road
5 and you and your crew went up the east road, correct?
6 A. (No audible reply)
7
8 Q If you look at Mr. Deichmann's plan, and indeed look at what
9 we have seen on the Channel 4 rushes, you will understand that
10 our case is that along the side of the area where the men were
11 on the east road was a waist-high mesh fence. Do you recall
12 that? A. I do not recall it at the time what the fence is
13 made of. I remember the men were behind it. But having seen
14 the tapes in the last few days, yes, I can recall there was a
15 waist-high mesh fence.
16
17 Q So you can recall that having seen the shots on the Channel 4
18 rushes? A. That is correct, yes.
19
20 Q So you are walking up past that on your left-hand side and you
21 must, presumably, have looked into the field which was the
22 area in which you had just filmed the men through the barbed
23 wire fence? A. Well, I was walking somewhere else at the
24 time so I would not have been sort of studying what was on my
25 left. I was talking, as I recall it, to the people who were
26 taking me somewhere else. But I would have been aware of it.
27
28 Q You would have been aware of it? A. I would have been
29 aware that something was on my left but I was having a
30 conversation, I should imagine, with somebody walking in the
31 other direction and you do not, you know, walk along looking
32 that way when you are walking that way, do you?
33
34 Q No, but they had been the focus of your attention at the
35 arrival at the camp behind the barbed wire fence?
36 A. That is correct.
37
38 Q You are now walking up past them? A. That is right.
39
40 Q Past the field. You are saying they have ceased to be the
41 focus of your attention? A. They were the focus of my
42 attention but I was being asked, as I recall it, to go and
43 film something else.
44
45 Q I was going to put this proposition to you at the end when we
46 have seen Mr. Irving's rushes, but the rest of the rushes
47 suggest that he is a fairly thorough cameraman in terms of
48 recording the layout of the area that he is filming? Would
49 you agree with that? A. No, he would not be recording the
50 layout. That is to misunderstand what a television news
51 cameraman does. He is recording what is in front of him.
52 He is not making an archaeological film.
53
54 Q No, but we will see --- A. No, so he would not, he would
55 just -- in fact under the conditions that we were under,

1 because we were escorted, because we did not know how long we
2 were going to be there, and indeed because we were not even
3 sure that we were allowed to be there at all, he was just
4 rolling all the time and doing a very good job.
5

6 Q Right. We will look at that when we come to it and when we
7 come to the end of the rushes. Do you recall whether he was
8 filming as you went up the east road at this point, up past
9 the field? A. I cannot be sure as I have not seen the
10 rushes, but I would imagine he was because there is a clip of
11 it, is there not, in my piece? But I do not have a clear
12 recollection.
13

14 Q And you do not have any recollection of the rushes from when
15 you last saw them? A. No, I do not think I have seen them
16 for seven years so ---
17

18 Q You do not remember whether he filmed into the field from any
19 other angle? A. I should not think he did because if he
20 had done I would have used it and the only film of the field
21 that I used, other than the one at the barbed wire fence, was
22 my colleague Ian Williams. So if I had had them I would have
23 used it. So I should think, because my recollection is we
24 were taken along the road, that he filmed the group of us
25 moving along the road rather than any shots of the fence.
26

27 MR. MILLAR: Okay. Can we run the next sequence I think in time,
28 as I understand your evidence, which is on the broadcast.
29

30 (Video shown)
31

32 THE WITNESS: Excuse me. You wanted me to point out the
33 commander?
34

35 MR. MILLAR: Pause there, please. A. If you want me to
36 point out the people in charge of the camp, I can do that on
37 that ---
38

39 Q We have got to run back to look at that again anyway, so can
40 we do that. If we just run back to the beginning of that
41 sequence. Thank you. Now, just to get this in order, this
42 sequence is missing from the rushes? A. Yes, this is.
43 Yes.
44

45 Q It must follow, therefore, that this comes before, in a point
46 in time, the interviews that you did with Igor and his friend,
47 the footballer? A. Absolutely. It does.
48

49 Q Because they are both in the rushes in the broadcast?
50 A. That is right. So it does, yes.
51

52 Q Right. If you would just run this on a bit. I will give you
53 a chance to point out the commander. If you just run it to
54 where you look up the road. Pause there. Now, that is what
55 you describe as "the other side of Trnopolje" on your report,

1 and I think it is right - it will become clearer when we see
2 the shot - that where you are walking to there, if you look on
3 the plan, is the first group of buildings north of the school
4 up the east road, correct? A. Well, we are just in front
5 of the building on the north-east side of the road, yes.
6
7 Q Yes, but that building up to the left there is not the school
8 building, is it? A. No, it is not. We are walking ---
9
10 Q Further north? A. We are walking further north, yes.
11
12 Q And it is up there in that group of buildings north of the
13 school that you interviewed a boy? A. No. The little
14 boy? No, I interviewed him outside -- my recollection, and
15 the rushes are missing, but my recollection is we interviewed
16 him on the way to the school outside a shop. Because this is
17 a village you are talking about, an entire village, and just
18 before we get to the end of it there is -- I mean, it is very
19 difficult to -- well, I will have to show -- I mean, you asked
20 me and I will try and describe it to you.
21
22 Q Run it on and let us stop at one of the shots of the boy being
23 interviewed. Pause there. A. Yes.
24
25 Q I think you are right to say there is a shop because there is
26 a counter behind him in the window? A. Yes.
27
28 Q A freezer counter. So you tell us where you think that is on
29 the map? A. I think that that is before the school, on
30 the left. What you call the school but I would remind the
31 jury that we had no idea what any of these places were when we
32 were there. They were not being used for their original
33 purposes, so ---
34
35 Q Right. We have taken it from that introductory shot on your
36 broadcast with you going up the road, the building north of
37 the school, and your reference to the other side of the camp.
38 What he has done is taken you all the way up to the north of
39 the camp, to the group of buildings up there? That is not
40 your recollection? A. No, my recollection is -- well,
41 I am sure I am right in this -- we met the boy before we got
42 to the interviews that take place with Igor over the low
43 fence.
44
45 Q Yes, I am sure we are agreed about that, it is just a question
46 of where. A. Yes.
47
48 Q Anyway, it is perhaps not a big point. Can we come back then
49 to the rushes and pick up the rushes and see where you go
50 then. The beginning of the ITN rushes that we have. I will
51 tell you when to pause. Pause there. The building on the
52 left, the white building, is the southwest corner of the
53 school, is it not, as we look at it on the plan?
54 A. According to this map here, which is south and east ---
55

1 Q As it is, north is north and south is south. On
2 Mr. Deichmann's plan, if you see what he says is the low wire
3 fence around the school --- A. Yes.
4
5 Q If you imagine you are standing at the wire fence looking
6 north-east along the front of the school. A. On the road,
7 on that ---
8
9 Q We will see the road behind Igor in the interviews in a
10 minute. The road is off to your right? A. Yes, that is
11 my recollection. Yes.
12
13 Q The white building in the corner there is the corner of the
14 school? A. Yes, that is ---
15
16 Q It is the south-west corner of the school? A. I would
17 agree with that.
18
19 Q The camera is pointing up like that? A. That would make
20 sense, yes..
21
22 Q So the road would be to the right? A. Yes, that would
23 make sense. We did not go any further than that.
24
25 Q You are at the south-east corner, I apologise, my geography
26 has gone wrong. The south-east corner, not south-west. You
27 then go along to the south-west corner. So if you just run
28 this on, we will see the interviews and we will see the road
29 behind Igor. Pause. You want to identify --- A. Yes,
30 the two men behind him, the one with the dark glasses you can
31 just see.
32
33 Q Yes. A. And there is another older man on his left.
34
35 Q Immediately behind his head, yes. A. There is one with a
36 cigarette in his mouth on the right.
37
38 Q Yes. A. And then there is another man, you can only -- he
39 is standing right behind him, who, I think -- my recollection
40 is that they were introduced to me as sort of key people
41 running the camp.
42
43 Q I see. A. They were with me down the road and here.
44
45 MR. JUSTICE MORLAND: The man you were describing as "the
46 commandant" earlier? A. Yes, one of them.
47
48 Q Yes. A. I meant -- I was aware that they were in
49 positions of authority, I think is as strong as I would put
50 it.
51
52 Q Yes. A. I did not write their names down, I am afraid.
53
54 MR. MILLAR: Okay. If we run it on he may peek out, I do not
55 know. Pause there. That is Mr. Irving shooting up, I think,

1 the top row of windows on the school buildings?
2 A. I would not know that.
3
4 Q You do not know? Run on, because I think he does not move
5 much from here. I think we are still at the same location,
6 the south-east corner of the school. Pause there. We are
7 now up at that fence that we could see in the background of
8 the earlier shot, a sort of wrought iron fence, which on
9 Mr. Deichmann's plan is in a square around the school.
10 Do you remember that? A. Yes.
11
12 Q That is a pre-war fence surrounding the school? A. I did
13 not ask when it was built.
14
15 Q If we run this interview to the end, as I say, we will see the
16 east road behind Igor's shoulder at various points so we will
17 be able to locate where he is. Now, pause there. You are
18 now, I think, if we look at the plan with the low iron fence
19 on it, going along from where you were to the west. The
20 school is on the right-hand side, the two rows of buildings,
21 and those men leaning along the inside of the fence. Does
22 that sound right? A. I could not be certain -- actually,
23 I could not be certain. It sounds right but I could not be
24 certain. I thought we were coming along the road again, but
25 I will stand corrected if my impression is wrong.
26
27 Q Well, this is where your cameraman is going and I think we
28 will see from the next shots that he goes to the shelter that
29 is at the west and takes some shots there, one of which was
30 used in your report. I think you are with him because if we
31 listen carefully we can hear you at the end of this sequence
32 say something about a tripod, or "Where is the tripod?" But
33 just for the moment note the building at the back of the
34 school. I am not suggesting you would have noted this at the
35 time but we will see it in some later shots that help us know
36 where you are later on. There is a sort of gap at the end of
37 the school building where the windows end and then another
38 building on the other side of the gap. Do you see it up
39 there? It looks like a gymnasium or something. You go up
40 towards that and we will see that at the back of the school
41 building on some later shots. A. I am going from east to
42 west ---
43
44 Q You are going from east to west along the southern side of the
45 low wrought iron fence around the school. If we run it on, as
46 I say, I think we will hear you and if we look at the end of
47 this, just as you say "tripod" we will see another large group
48 of men in the background at the back of the school. Can you
49 run it on. If we pause there. Do you remember being with
50 Mr. Irving and going up to the shelters at the top, to the
51 west? A. Actually, I do not. I mean, I am sure if my
52 voice is on the track I was there but I do not remember it.
53
54
55

1 Q Right. A. Are you sure I was on the tape? Because I do
2 not remember being there. I do not think -- I do not remember
3 it.
4
5 Q Okay. We will see his camera pans round. This is a shot that
6 you use in the broadcast and we will see in the background a
7 football pitch with some goalposts and a car driving down the
8 west road. So that is where we are looking. Now pause there.
9 This is where we do know where you are because we can hear you
10 doing these interviews. You are up at the western end of that
11 fence that we were looking at and that is the school in the
12 background with that extension building in the back, and you
13 are interviewing some men who are up around the school. Does
14 that ring a bell? A. I know I am with the cameraman but
15 I am not sure I am where you say I am. I have no recollection
16 of where I was.
17
18 Q You have no recollection at all? Okay. Could you play it,
19 please. Pause there. That was you asking the group of
20 men --- A. That was me asking the questions.
21
22 Q -- whether they had had any mistreatment by the Serbs?
23 A. Yes.
24
25 Q The next sequence you go back down towards the road and one of
26 these shots appears in your film, I think, of some men at the
27 window. Just so you know on the plan where we say you go
28 next, you go back towards the road, along that low, wrought
29 iron fence that we have just looked at, and the camera here is
30 pointing at the back of the community building. So it is
31 pointing at this bit of the community building that faces the
32 school and faces where you were originally doing the interview
33 with Igor, okay? A. No, I am sorry, you have lost me.
34
35 Q You have gone back along that low wrought iron fence towards
36 the east road --- A. West to east?
37
38 Q Yes. A. Okay. I am not sure I was where you said I was
39 when I did those interviews, but if I was I have gone back to
40 the road?
41
42 Q Yes, and this is the northernmost facing face of the community
43 building. We will see it in a moment. A. I do not wish
44 to be difficult but the community building with the medical
45 centre and a public hall is actually a sort of extremely large
46 group of buildings.
47
48 Q Correct. A. Do you literally mean the very large
49 community building or do you mean one of the other buildings
50 at the back of it?
51
52 Q Not the very large building. A. No.
53
54 Q Go north-east. There is a long section of it going north-east
55 parallel to the road. A. Yes.

1 Q Then there is a "T" at the end of that? A. Yes.
2
3 Q That is where you were? A. Yes.
4
5 Q You are at the top of the "T"? A. That is where I think
6 I am, yes.
7
8 Q Yes, and we can see when we pan back it is in the shade.
9 The sun is over in the background because it is the afternoon.
10 The sun is over in the west or south-west so there is no sun
11 immediately on these men, there is shade, as opposed to the
12 men on the other side of the school building. If you run it
13 on a bit, we see some men gesturing at bread or something in
14 the window, the camera moves back. Just stop it there. So
15 that is the corner of the northern side. I want you to note
16 that because when we look at the final establishing shot that
17 your cameraman Mr. Irving takes, he takes a shot in of this
18 from the west, okay? A. Hmm.
19
20 Q And you remember being in this area? A. Well, only as you
21 walk me through it. I do not have the sort of recollection
22 that you want me to have, I am afraid.
23
24 Q All right. If we let it run on, we will see a shot that we
25 have seen before of a man who is in your report, one of the
26 interviewees used in your report, appearing at a window in
27 this building. Pause there. That is the gentleman with the
28 beard and the white towel over his shoulder that you used in
29 your broadcast as somebody out in the field, is it not?
30 A. It is, yes.
31
32 Q You used it in your broadcast. It was taken from the Channel
33 4 rushes and he was leaning over the low fence to the west
34 side of the field? A. Yes. I do not know which side it
35 was.
36
37 Q So it is clear from this shot and him there that he has access
38 all the way through the community building up to the northern
39 end of it? A. Yes. It is my impression that the men in
40 the field had access to the medical centre. There were lots
41 of them in the medical centre when I went in to see the
42 doctor.
43
44 Q Yes. A. But I do not know what other access they had.
45 But they certainly had access from the field to that part of
46 the community building. I think that might be the medical
47 centre in fact, I do not know, because the medical centre is
48 in that group of community buildings, is it not?
49
50 Q It is, yes. I think we are going to see the entrance to the
51 medical centre later. A. Yes, a lot of the people were
52 going obviously to seek medical attention considering the
53 condition they were in.
54
55

1 Q Yes. But at any rate, he was at one stage in the field and
2 he is now right up to the north on the inside of the ...
3 A. Yes.
4
5 Q Could you run on, please. Can you just pause there.
6 You are inside, I think, a first floor somewhere here?
7 A. Mr. Millar, I do not know, but I am sure you will tell me.
8
9 MR. JUSTICE MORLAND: Where are you suggesting they are now? Just
10 point on the plan, would you.
11
12 MR. MILLAR: It looks as though they have gone into the community
13 centre because we were told by the Channel 4 witnesses that
14 they went into the school building and made a point of going
15 into the school building because you had gone into the
16 community building. Does that ring a bell? A. I did not
17 go into the school building, if that is any help to you.
18
19 Q Okay. A. Because I did not get past Igor and the guards
20 who were with me at that end.
21
22 Q Right. A. But at which one of the one, two, three,
23 four -- well, I know it was not the very big one because I was
24 not allowed in there, so it would have been one of the other
25 ones, yes.
26
27 MR. MILLAR: Okay. On the Channel 4 rushes which you have had a
28 chance to see in court we know that the school building that
29 they went into was a sort of gymnasium, it had bars up the
30 wall and had some basket ball hoops at the end of it, and this
31 is a very different sort of room. It has not got the bars and
32 it has not got the basketball hoops. So our understanding is
33 that you go somewhere into the community centre and film this.
34 Does that sound right?
35
36 MR. JUSTICE MORLAND: Well, there is a long arrow from "Community
37 building with medical centre and public hall" pointing to the
38 lower part of the "T". Is it in that building, the lower part
39 of the "T", you are saying these photographs were taken or
40 not?
41
42 MR. MILLAR: No, we cannot be that precise. It is somewhere in
43 the middle building, if the Channel 4 witnesses are right, and
44 the Channel 4 crew went into the top building, the school
45 building, because ---
46
47 MR. JUSTICE MORLAND: This is somewhere in the community building
48 complex?
49
50 MR. MILLAR: Yes.
51
52 MR. JUSTICE MORLAND: I see, yes.
53
54 MR. MILLAR: (To the witness): Does that sound right to you?
55 A. It could be right. I am not disagreeing with you. I know

1 it was not in the very large one because I could not get in
2 there.
3
4 MR. JUSTICE MORLAND: The very large one you were not allowed to
5 go in? A. No.
6
7 Q Is that the long building alongside the fenced in
8 enclosure --- A. That is correct, yes, that is the one,
9 with the big windows.
10
11 Q -- where the emaciated men were? A. The one behind
12 Fikret.
13
14 Q Yes. A. So it is one of the others, I am sure you are
15 right.
16
17 MR. MILLAR: I think it is right that on your rushes, other than
18 in the medical centre, these are the only inside shots we
19 have? A. That is right, yes.
20
21 Q Okay. Could you run it on, please. Just pause there. Your
22 cameraman at any rate is now out on the east road and our
23 understanding is, if you look at the plan and the front of the
24 school building fronting onto the east road it has a kind of
25 recessed front, there are two wings coming out and then a
26 recessed front fronting onto the road. That, I think, is the
27 school building, is it not? A. Yes. I do not think I was
28 with him at this point.
29
30 Q Where were you? A. I cannot recollect. I might have been
31 with him but I do not remember it.
32
33 2.30 p.m.
34 Q Okay. Let it run on, please. Pause here. There is a
35 gentleman who we see in a moment with two bags of food. We
36 just missed the actual clip. A guard shoos him out onto the
37 road because he is causing a stir with the group of men around
38 him. Do you remember being there when this was filmed?
39 A. Not vividly, no, I don't. No, I don't remember it.
40
41 Q Well, let me tell you where this is and we can see it in a
42 moment when we get the shot of him from the road. Your
43 cameraman has now come down to the front of the community
44 building, on Mr. Deichmann's plan roughly at a point between
45 the office and the regional Red Cross and the front of the
46 community building. A. Yes.
47
48 Q And we can see in a moment that you do some interviews with
49 the Serbian Red Cross on the east side of the road. But after
50 he gets shoosed out on to the road, we will see a shot down the
51 east road, which is, I think, something the jury were asking
52 about earlier on in the trial, towards the area where you
53 originally came in. Just at this point note there are some
54 sort of saplings planted there on the way into the community
55 centre and in the background there are some men, and you have

1 to look closely to see it, leaning on a low fence. And that
2 is the northern side of the field, the north eastern side of
3 the field in which the men were coming up to the community
4 centre. Do you follow that?
5

6 MR. JUSTICE MORLAND: I am not certain that I do.
7

8 MR. MILLAR: Okay. (To the witness): If you position yourself on
9 Mr. Deichmann's plan roughly outside of the office of the Red
10 Cross, so you have got the community building on the other
11 side of the road and if you are pointing - we are going to see
12 it more clearly in a moment - roughly southwest, way in the
13 background, although you cannot see it, would be the field
14 where the men originally were. If we run on we will see this
15 a bit more clearly when Mr. Mannion gets to the road and walks
16 back in again. That is the community building. Just pausing
17 now, we look down to the left of that man and we are looking
18 down the east road into the area where the men are in the
19 field. Yes?
20

21 MR. JUSTICE MORLAND: These people here.
22

23 MR. MILLAR: That is right, way down in the distance. A. I am
24 sorry, can I look at yours to see what you did?
25

26 MR. JUSTICE MORLAND: Yes, do come round. There seems to be a
27 line of men right across in the background here. I indicated
28 here.
29

30 MR. MILLAR: Now we have got our bearings, perhaps you could just
31 run back a bit and run the shot where he is being shooed out
32 and have a look in the background. Okay. Run that bit now.
33 You can see men in the background there. That is now looking
34 over them into the field, is it not? A. (No audible
35 reply).
36

37 Q There are men all the way up from the field up to the
38 community centre? A. There are men -- yes, I can see the
39 men on the screen.
40

41 Q We can see there is a boy there standing with his foot on the
42 piece of chainmail or chain railing on the way into the
43 community centre. As I say, I think if you look closely at
44 the left hand side of this behind those saplings, you can see
45 some of the men leaning on one of those wrought iron fences.
46 Anyway, we can run it on and have one more look at the shot
47 down the road. Pause there. That is the interview with the
48 Serbian Red Cross? A. Yes, that is Pero Curguz.
49

50 Q We are facing the front of the office of the regional Red
51 Cross. We can see it on Mr. Deichmann's plan. If fact you
52 can see in the reflection in the front of the Red Cross the
53 community building on the other side of the road. So you are
54 straddling the two buildings there where you were located.
55 Indeed, it is where you have just taken the last sequence of

1 shots. A. Yes. I might be wrong, but I don't think I was
2 with Jeremy when he took those shots because I think I was
3 talking to -- my host was saying: "Come and meet the Red
4 Cross", so I was probably talking to them while he took those
5 pictures.
6
7 Q Okay. But you spent a little time in that area that we are
8 looking at? A. Well, yes, but I wasn't, sort of, you
9 know, with Jeremy, watching what he was doing. I mean, it is
10 a long time ago but my recollection now that you -- this is
11 directly afterwards. Somebody was saying: "Come and meet the
12 Red Cross. You must see the Red Cross", so I had probably
13 been talking and doing that sort of journalism rather than
14 watching Jeremy filming. He had a very little amount of time.
15
16 Q Just let it run on to the end of this. Pause at the end of
17 this sequence. Just run that back a bit and see if you can
18 catch the first shot. Stop. The man in the white coat going
19 in there with something in his hand. This, I think, is the
20 entrance to the medical centre. Is that right? Because the
21 next sequence is in the medical centre? A. I don't know,
22 Mr. Millar.
23
24 Q You do not know. And you cannot help us with where on the
25 plan the medical centre was? A. Well, I know it was
26 certainly not near the school at the back, and it was
27 certainly not in the ----
28
29 Q The big building? A. -- big building near the fields, so
30 it was in that group, but I don't know where, no.
31
32 Q If we run on, we can go through the ---- A. At this point
33 I would have been arguing with the people to try and stop them
34 coming with me, because I had been unable to do anything
35 without being escorted and it was clear that people weren't
36 going to talk to me or I wasn't going to discover what was
37 happening unless I could be on my own. So I wouldn't have
38 been noticing particularly where it was.
39
40 Q You would not have been noticing. So if we run on, we will
41 just see inside the medical centre. Pause there. If you
42 could take that out and put the final sequence on the Serb
43 tape back in, which is the shot of you on the east road. It
44 should be where we were at when we last looked at it. Run it
45 on a bit. That is the school where you did your interviews
46 with Igor. Just pause there, that is you, Mr. Williams.
47 A. Yes.
48
49 Q Whose cameraman is that? A. It is Jeremy Irving, my
50 camera.
51
52 Q You are with him and he is shooting down the east road in a
53 southwesterly direction? A. Yes, that would seem to be
54 the case.
55

1 Q So at some point in all this you bumped into or joined up with
2 the Channel 4 crew on the east road? A. Not the crew.
3 Ian.
4
5 Q Just Ian? A. I can't remember whether -- I have no
6 recollection of meeting the Channel 4 crew and I cannot
7 remember whether I did, but clearly Ian is there.
8
9 Q Just play this on to the end. That is Micha, your translator?
10 A. Yes. There are our minders again.
11
12 Q And you are just coming up to the community building with Ian
13 now? A. That would appear to be the case, yes.
14
15 Q So that is just shortly before the shots we saw probably of
16 the man with the bags? A. Yes. We didn't go back down
17 there so it would ...
18
19 Q Now if you could put the last shots, please, of your own
20 rushes in. . Pause it there. When you came away from the camp,
21 I think it is right that you came from where we have seen you
22 last down the east road, the same way you had gone in.
23 Correct? A. Correct.
24
25 Q Your car was somewhere down at the south where the
26 intersection of the two roads is. So you walked past on your
27 right hand side on your way out, the area that you had spent
28 some time in originally filming Alic and the other men through
29 the barbed wire fence? A. That would be the case, yes.
30
31 Q And this is a shot of the area which I have not put to you
32 before, but can we just watch it through and can we make sure
33 the volume is up because I think you are referred to by one of
34 the crew as having just walked past that point. Pause there.
35 Somebody says: "Penny has now past us", and this is Mr.
36 Irving, your cameraman, taking a final -- establishing a
37 layout shot of the camp, is it not? A. It certainly is
38 Jeremy's -- Mr. Irving's material, yes.
39
40 Q Because when he had gone in, you had moved very quickly up to
41 the fence. He had not had a chance to take any establishing
42 shots of the layout and the area at the south of the camp, had
43 he? A. He certainly didn't, no, have any chance to do
44 anything other than what we did when we arrived. But you
45 would have to ask Mr. Irving what his intentions were with
46 that shot because I was ----
47
48 Q You do not know what his intentions were? A. No, I wasn't
49 there. You just heard someone say I wasn't there. I mean, it
50 looks to me, as a journalist, as if he was taking a picture
51 establishing it, but ask Mr. Irving.
52
53 Q That is the gate which you think, but you are speculating, you
54 might have come out, if you did not go back out the gap?
55 A. That is the gate, yes. Mr. Deichmann says it is open in

1 his article. I don't know how he would know, but he does say
2 it is open, so perhaps that is where I went through.
3
4 Q Now if we could look at those final shots. Run it on, and it
5 is almost immediately. Pause there. Now, at some point after
6 you have left the camp it looks like up the west road, it is
7 certainly up to the west, Mr. Irving takes some establishing
8 shots of the west of the camp, the area where you have been
9 filming. Do you remember that? A. I don't remember that,
10 Mr. Millar, no. But he clearly did.
11
12 Q If we look at the big building in the middle, that is the back
13 of the school, the extension building at the back of the
14 school, and if we watch as the camera goes in, please, we can
15 see to the right of that with the grey walls and the red roof
16 the back of the community building where the man was leaning
17 out the window and you took the shots in the shade of the man
18 leaning out the window. Come in a little bit. Pause there.
19 So he is taking a last shot from the west of that area that
20 you have been in, the top of the east road where you were
21 doing interviews and taking shots. That is another
22 establishing shot, is it not? A. We don't always think in
23 terms -- I mean, you are very keen to define each of these
24 shots. I mean, he is taking a picture. I don't know whether
25 it is an establishing shot or not. I accept what you say,
26 that it must be from the west, but I don't understand what you
27 said about it being a northeast road, I am sorry.
28
29 Q Well, I can only really ask you for your recollection, but
30 looking at it on the plan it is directly to the west,
31 northwest of the camp behind the shelters, and you can see the
32 shelters in the foreground and the west side of the community
33 building. That is what we are looking at there. So he is
34 some way across that field and it looks as though he is
35 somewhere up on the west road here. A. Okay, yes.
36
37 Q Do you see? A. Yes.
38
39 Q And I was just wondering whether you remembered in those
40 minutes after you left the camp perhaps the car stopping and
41 him getting out and taking these shots? A. I don't
42 remember, no. I don't remember. I was busy.
43
44 Q You were busy? A. Yes.
45
46 Q In the van? A. Yes. I was probably talking to Ian about
47 the film. I was extremely nervous that we had just taken a
48 film. I was communicating with my other team what we had
49 done. I wasn't aware what Jeremy was doing particularly.
50
51 Q If you just look at the last shot, we will see the final shot
52 he takes (although it a very indistinct one because he is a
53 long way away) appears to be back down to the field from the
54 west side, where the men are. It is a very brief shot. Is
55 that what that is? A. Is that what that is?

1 Q Yes. A. The men in the field?
2
3 Q Yes. A. I would have to see it again. Could I see it
4 again?
5
6 Q Yes, can you run it briefly? It is an angle we have not seen
7 the field at from before but it would fit if he is in the same
8 location when he takes the two shots. Pause. You see all the
9 men? A. Yes.
10
11 Q Is that your ---- A. Yes. Now looking at it, that must
12 be where he is, yes. Or it would appear so, but I wouldn't
13 swear an oath on it.
14
15 Q You see, I have to put it to you, now that we have followed
16 your movements around the camp, I think you were there, it is
17 common ground, for something approaching an hour - is that
18 right? A. Actually I would put it slightly less.
19
20 Q Slightly less. 45 minutes to an hour? A. 45 minutes to
21 an hour, yes.
22
23 Q You have done a fairly thorough trip around the top part of
24 the camp. You started in the southern part and you have gone
25 up and down the east road past that enclosure that we saw in
26 the establishing shot. The cameraman has even taken a final
27 establishing shot from the west back down to that area. And
28 you have even come up the west road along the back of that
29 area on your way out. It must have been plain as a pikestaff
30 to you, must it not, that there was an old pre-war enclosure
31 in that southern part around the barn? A. It most
32 certainly was not, Mr. Millar. Neither was it plain as a
33 pikestaff that we had done a good tour of the camp. Nobody
34 explained to us that it was a village, and I am not at all
35 satisfied either from Mr. Deichmann's map or indeed from my
36 own recollections that it didn't extend much further along
37 that way or much further along that way. We were very limited
38 in what we saw, and I am taking you at face value that this is
39 the extent of this, but it could have been three times as
40 large for all I knew. And I have absolutely no recollection
41 of being in an enclosure or noticing it as I went past.
42
43 Q So what is the "it" that may have been extending? A. The
44 camp. I am sorry, the camp.
45
46 Q So it is the dimensions of the diagram that you ----
47 A. No, you said it must be clear as a pikestaff, I think your
48 expression ----
49
50 Q Plain as a pikestaff. A. Plain as a pikestaff that we had
51 noticed the enclosure given that we had been shown around the
52 camp, you know, had such access to the camp. What I am saying
53 is that I felt we had not seen very much at all. And I am not
54 at all satisfied that this is all that there is to the camp
55 anyway.

- 1 Q Let us focus on the enclosure, please, Ms. Marshall. You have
2 gone into it through a gap at the south. You have accepted
3 that. A. Yes.
4
- 5 Q Walked past the barn? A. Yes.
6
- 7 Q Walked up to the fence on the northern side? A. Yes.
8
- 9 Q Spent five or six minutes there? A. Yes.
10
- 11 Q Come out on to the east road either through a gate on to the
12 east road or going back down to the south through that gap?
13 A. Yes.
14
- 15 Q Correct? A. Yes.
16
- 17 Q You have walked up the east road past it on your left hand
18 side. You have walked past it on your right hand side on the
19 way out and you have driven round the back of it in the car
20 when you are leaving. A. Yes.
21
- 22 Q You are a fact-gathering, you are a journalist, are you not?
23 A. Yes, but not a fence-gatherer, Mr. Millar.
24
- 25 Q But you used shots of the barbed wire fence prominently in
26 your report, did you not? A. Yes.
27
- 28 Q So it would be important, would it not, to establish a general
29 understanding of the layout of the camp and the barbed wire
30 fence while you are there? A. No, it would be important
31 to establish why men were being held behind it in that sort of
32 condition.
33
- 34 Q So would it not be important to establish the layout of that
35 barbed wire fence? A. No, not unless it was not
36 imprisoning him, which it clearly was.
37
- 38 Q Do you not think the viewer looking at a shot like that in
39 your report as you used it of that thin man through the barbed
40 wire fence might have raised an eyebrow if you had said at
41 that point in your report: "By the way, this barbed wire
42 fence you see here is around us, not the man that you are
43 looking at"? A. I would have thought it was an
44 extraordinary thing to say. Most people when they see that
45 shot, think: "Oh, my Lord. How can somebody be reduced to
46 that?" They don't think: "I wonder whether the barbed wire
47 fence went all the way round him or the cameraman". It would
48 be an extraordinary way to approach it.
49
- 50 Q Now let us look at your return to the camp in the next set of
51 rushes, please, at the point where you approach the camp.
52 Now, pause there. You are coming in down the west road there,
53 are you not? A. Yes, I am coming down the west road.
54
- 55 Q Five days later. A. Yes.

- 1 Q And across in the distance we can see the school building
2 there with its two rows of windows. Correct? A. (No
3 audible reply).
4
- 5 Q The bigger building? A. Is it not the Dom? Is it not the
6 community centre?
7
- 8 Q No, that is to the right. To the left, a long building with
9 two rows of windows, the school building. To the right, with
10 the sloping grey roofs and the grey walls, is the back of the
11 community building that we have just looked at in the last
12 sequence. A. Yes.
13
- 14 Q Do you see that? A. Yes.
15
- 16 Q You are coming down the west road and we can see you in the
17 shot there looking out to the left at the west side of the
18 camp. Yes? A. Yes.
19
- 20 Q If we follow this through, you come down the west road to the
21 junction, the car or van turns sharp left and parks, as it
22 were, just pointing up the east road right at the junction.
23 Just see if we can follow that through, and I will stop it.
24 Pause there. Now, what the car does now is it comes round the
25 corner pointing up the east road and stops and parks, and you
26 point with your finger at the enclosure up the east side of
27 the road, and we will see what you say. Could you run it on?
28 Stop it there, please. The moment you arrive back at the camp
29 the point at which you left from, down the southern-most point
30 of the intersection of the roads, you have an immediate and
31 clear recollection that there was barbed wire running along
32 down that stretch of the east road, do you not? A. No.
33 I think I'm referring to the barbed wire -- you know, the fact
34 that the first thing that hit me is that where there had once
35 been a pen full of men there was now no fencing at all and
36 people moving. I don't think I was specifically pointing at
37 the east road, no.
38
- 39 Q All right. Let us look at it again, please. Can you run it
40 back? You see you are pointing with your pen up and down, are
41 you not, on the east road? A. Well, it's not what I think
42 I mean. I think I mean, you know, all the way along, where
43 they were imprisoned behind. That would have been my
44 strongest recollection, was where the men had been imprisoned.
45 I wouldn't have been pointing at a fence that had no meaning
46 or purpose.
47
- 48 Q You see, we can see on that shot, as you come round the
49 corner, can we not, all the poles that we looked at in that
50 very first establishing shot taken by Mr. Nicholas at the
51 southern corner of the fence, the ones running from the
52 transformer down to the junction of the roads, and the ones
53 running up the east side. A. You cannot see at the back
54 though, can you?
55

1 Q Can you run it back a bit, please, and we will look at that.
2 A. There.
3
4 Q Watch as we come round. A bit further. Just watch as we come
5 round this corner. Stop there. This is where that shot ----
6 A. Where are the poles there? There is a hedgerow.
7
8 Q Yes. A. Where are the poles on Mr. Deichmann's map?
9
10 Q Well, there is a garage and a transformer building ----
11 A. Yes, around which there is a barbed wire fence. There is
12 a hedgerow.
13
14 Q Yes, behind that, you see the sloping roof? A. Yes.
15
16 Q To the left of the transformer building. A. Yes.
17
18 Q We can go back to the last establishing shot ----
19 A. Sure, but I wouldn't have seen it, would I? I mean, the
20 point is I wouldn't have seen it. You keep saying to me why
21 didn't I realise that I was in an enclosure. Under all the
22 pressures that we were under, Mr. Millar, even now I can't see
23 it.
24
25 Q Can we just go round the corner then and watch the poles going
26 round the corner. Stop there. You see them? A. Yes,
27 I see them there. We have done that. That is the gap I went
28 through. I can't see on the left hand side.
29
30 Q There is a building on the left hand side? A. According
31 to Mr. Deichmann's map there is a fence round the building.
32 I can't see it. You know, I mean, you are the one fixated
33 with fences, not me. And where is it? There is a hedgerow.
34 If you rewind it, will you see a hedgerow.
35
36 Q If we look at those poles, there is no barbed wire fencing
37 between them now? A. No, not any more. No.
38
39 Q So run it on again and we will have one last look at what you
40 are pointing at when you made that comment. Pause there. So
41 you say pointing into the distance at that point to the fence
42 where you filmed Alic? A. That is what I say I am doing,
43 yes.
44
45 Q If we just run it lastly so that we can finish this sequence
46 of you walking up the road with this woman, you have got that
47 area on your left hand side now, have you not, as you walk up
48 here? A. Yes.
49
50 Q You can see all the poles that constituted the barbed wire
51 fence when you were there five days before. Just watch it, on
52 the left hand side. Pause there. Your case is that you still
53 did not understand, after this visit five days later, that
54 there was fencing around that compound? A. That is my
55

1 case. Mr. Millar, if you look at me as I walk up the road, am
2 I looking at the poles?
3

4 Q When you left the camp after your second visit were you aware
5 then that this area that the barn is in had been surrounded by
6 poles and barbed wire fencing when you were there before?

7 A. No, I was not aware that the area you say was whatever you
8 say it was, no.
9

10 Q Thank you. That is all the video evidence I want at this
11 stage. Now, can I go back, as I did with Mr. Williams, to the
12 circumstances in which you went to obtain this story. In the
13 claimant's bundle at tab 10 is the article by the US
14 journalist Roy Gutman published on 19th July 1992 for Newsday
15 in America. Mr. Williams has told us that he had a copy of
16 this article with him in Belgrade. Did he show you a copy?

17 A. I don't remember him showing me a copy, no, Mr. Millar.
18

19 Q Were you aware by the time of your stay in Belgrade and flying
20 off to Pale in northern Bosnia, that the original report in
21 the world media of possible concentration camps in northern
22 Bosnia had been the Roy Gutman report in America? A. No,
23 I don't believe I was. I was aware in Belgrade of some wire
24 copy which I talked to Mr. Karadzic about. You can hear me
25 talking to him about it, AP and Reuter wire copy, which may
26 well have been a synopsis or a cut-down version of
27 Mr. Gutman's, but I wasn't aware of him as the source of it.
28

29 Q I am not sure it was, because Mr. Gutman published a second
30 article I think on 2nd August and it may have been that one
31 which was the wire copy. A. Okay.
32

33 Q But this one on 29th or 19th July was the very first article
34 anywhere in the world by a journalist who had access to any of
35 these camps and he had had access to Manjaca. Correct?
36 A. Yes.
37

38 Q You knew nothing about that? A. No, I wasn't aware --
39 well, I hadn't read this article - I think was your original
40 question. And I wasn't aware of it. But when I got to Banja
41 Luka I was aware that someone had visited Manjaca but I don't
42 think I knew it was Roy Gutman and I certainly had not seen
43 his article. But I was aware that somebody had been there.
44

45 Q And you had not seen his photograph by Andre Kaiser of the men
46 with shaven heads ---- A. Correct me if I am wrong, but I
47 think that was the one on Maggie O'Kane's article as well.
48

49 Q It is reproduced in her article. A. Yes, so I had seen
50 that in Maggie O'Kane's.
51

52 Q You had seen in the **Guardian**? A. Yes. But I think
53 wrongly they said that was Trnopolje in the **Guardian**, if I am
54 not mistaken. I don't think it was said to be Manjaca.
55

- 1 Q No. I think it is Manjaca. We can turn it up actually. It
2 is tab 11. It is called Manjac camp, I think, if you read the
3 caption under the picture. A. Yes.
4
- 5 Q But we can see at the right along the bottom that it is
6 attributed to Andre Kaiser. You had had this when you left
7 London and you would have noticed when you read it in the
8 second column that Trnopolje is described as a concentration
9 camp. Do you see that, the penultimate paragraph in the
10 second column? A. Yes.
11
- 12 Q In a sort of throwaway line that somebody was taken to
13 Trnopolje concentration camp. Then in the third column, about
14 two thirds of the way down:
15
16 "Of the four concentration camps in this area of what
17 was once Bosnia, now the Serbian Republic, Trnopolje
18 is the best one to be sent to."
19
- 20 Q So you would have read that? A. Where is that?
21
- 22 Q In the next column, right next to that, in the third column.
23 There are two references ---- A. Yes, okay. Yes, I have
24 got that, yes.
25
- 26 Q It is supposed to be one of four concentration camps in this
27 area? A. Yes.
28
- 29 Q Although at the left of the article it says "She saw the
30 camps", if you read the article - was this your understanding?
31 - it is apparent from the text of the article that she had
32 never actually been to any of these camps? A. That is my
33 understanding, yes.
34
- 35 Q That she was doing this on hearsay accounts from Banja Luka?
36 A. Yes.
37
- 38 Q As we know, in the light of those reports Channel 4 decided to
39 launch its own investigation and issued the challenge to
40 Dr. Karadzic which was returned in the form of an invitation
41 to visit the camps. A. That's correct, yes.
42
- 43 3 p.m.
44
- 45 Q You did not know about that at the time? A. No, I did not
46 know about that at the time; no.
47
- 48 Q But it was challenged, was it not, by Mr. Karadzic to ITN to
49 come and see the camps and see whether they were indeed
50 concentration camps or not? A. I think it was an
51 invitation. I'm not - I mean, it doesn't matter but he said
52 he'd let us go.
53
- 54 Q The only reason I put that to you, and we will see this later
55 on, is that in the very second sentence of your broadcast on

- 1 News at Ten you say this: "Come in", they challenged ITN,
2 referring to the Bosnian Serbs and your visits to the camp.
3 So it is one of the very first things you say on your report,
4 that they are challenging you to come in and look at these
5 camps. So that would be a fair summary of what was going on?
6 A. A fair summary, yes.
7
- 8 Q You are phoned at home by Vicky Knighton who wants you to move
9 as swiftly as possible, to get out there. Correct?
10 A. Yes.
11
- 12 Q And you would agree, would you, with your counsel,
13 Mr. Shields, as he put it in opening, that there was
14 considerable world attention as to whether concentration camp
15 allegations could be substantiated. A. That is the case,
16 yes, amongst the people it concerned; yes.
17
- 18 Q Well, amongst the world at large and the media. A. Well,
19 politicians and some - I had only seen this one article
20 myself, so I wouldn't say it was at this stage on the front
21 pages or - I myself was not aware of it actually when Vicky
22 rang up, that's what I'm saying.
23
- 24 Q Yes, but by the time you get out there, having been asked to
25 go urgently by ITN, knowing about the Karadzic offer, knowing
26 about the O'Kane article, knowing that Channel Four have got a
27 crew out there, you can see the potential importance of the
28 story, can you not? A. Er, certainly, yes. But there was
29 nobody else going out there at that stage, either - there was
30 no other news organisation sent on it, so it wasn't quite as -
31 Well, it was too dangerous to go is the point, but also nobody
32 else was sort of hysterical about it, if that is what you are
33 trying to imply.
34
- 35 Q When you got to Belgrade you saw the list of concentration
36 camps put out by the Bosnian Muslims. A. Yes, I did.
37
- 38 Q Alleging in terms a list of camps said to be concentration
39 camps? A. In terms? What ----
40
- 41 Q Referring to them as concentration camps. A. Oh, yes,
42 yes.
43
- 44 Q By the time you got to the two camps in the report, Omarska
45 and Trnopolje, you would have been and were very conscious of
46 the fact that you were the first western journalist of any
47 sort to get to those camps. Correct? A. Correct.
48
- 49 Q So you had a potential scoop on your hands, did you not, as
50 the Sunday Times described it the Sunday afterwards?
51 A. We had a potential scoop on our hands before we got there
52 on when we got back, are you ----
53
- 54 Q When you get to the two camps? A. Its - No, I don't think
55 we were thinking in those terms.

- 1 Q You had got a world exclusive, in a piece of television
2 investigation journalism the whole world was interested in.
3 That is a scoop, is it not? A. It is a scoop if it is -
4 what you find is sensational, but we had no idea what we would
5 find. We weren't, you don't think - I mean, you just don't
6 think quite like this. It is sort of a bit caricaturist to
7 say, you know, "We are on the verge of a world scoop". You
8 know, we were extremely frightened, we were extremely
9 responsible and nervous. Lots of scribbling, you know, "Let's
10 have a" - "This is a good scoop." I mean, at every stage, we
11 were trying to analyse whether it was safe to go on. You
12 know, yes, it was a scoop and rightly so, but we did not know
13 it was a scoop at the moment we were there. We were trying to
14 establish whether or not it was safe to go.
15
- 16 Q I have to put it to you that, being realistic about this in
17 the environment created by the Goodman and O'Kane articles and
18 the challenge issued by Dr. Karadzic, it would not have been
19 much of a story to come back and say "The camps are okay."
20 A. Yes, it would have done. If you're right about saying
21 everyone was hysterical about the fact there were
22 concentration camps, we came back and said "No, there aren't,"
23 that would have been a story; and the point about ITN and
24 what was so fantastic about the decision to send was they were
25 the only people who had the courage and responsible foresight
26 to actually go and have a look rather than repeat hearsay from
27 refugees.
28
- 29 Q But you filed nothing on the basis of all that footage that we
30 saw this morning from Loznica. A. Oh, we weren't in a
31 position, as you understand, because we did not have editing
32 to file and it wasn't, the purpose of our trip wasn't to file
33 from inside Serbia. The purpose of our trip was clearly to go
34 into Northern Bosnia where the reports of the camps were
35 strongest.
36
- 37 Q Well, now, help me with that, because I was going to ask you
38 about that later on. We have heard about the Channel Four
39 plan, the contingency plan for how you would get the report
40 edited and fed to London in the event that you get a
41 newsworthy story; we heard that evidence yesterday. So what
42 was the ITN contingency plan while you are in Yugoslavia,
43 Serbia and Northern Bosnia should you come across a story;
44 what was going to happen? A. If we got a story in
45 Northern Bosnia? I'd go back to base, hopefully get there
46 safely and ring London and they would provide back-up for me.
47
- 48 Q That had been agreed before, had it? A. Yes.
49
- 50 Q And on what footing was it agreed that they would fly people
51 out to help you? A. When I returned.
52
- 53 Q And told them what? A. Told them if we'd established
54 anything of any importance whether there were or were not
55 camps, or if we got there at all. But its not worth, really -

1 I think you have to - These sort of decisions are made at
2 base, not by me. I'll try and help you but you will have a
3 chance to cross-examine the people who makes the decisions,
4 but it would be very expensive to send out an editor and a
5 producer and have them sitting for a week/10 days doing
6 nothing just in case I came back, so ----
7

8 Q Exactly. So the contingency plan, as I understand it, was you
9 were going to go back to Belgrade, phone base; you had no
10 editing equipment with you there, you can't satellite feed
11 from Belgrade and you have got no editor there; and you are
12 going to make a phone call to London on the strength of which
13 specialists are going to be flown out to Budapest, an editing
14 suite booked, and you are going to go to Budapest and edit the
15 film and satellite it back from there. Is that the
16 contingency plan? A. Its not a contingency plan. That's
17 how television works, you know.
18

19 Q And all that, with that expense and that trouble, was going to
20 be put into effect presumably on the basis that you had got
21 some footage that was worth editing? A. No, Mr. Millar.
22 Not that we'd got footage that was worth editing, but we had
23 established something that was worth reporting.
24

25 Q Right. So all that was going to be done, with that cost and
26 that trouble and that transportation and movement and
27 everything, and it might be possible at the end of that that
28 the camera - the film was jammed in the camera and you didn't
29 have anything in the can. Is that right? A. Sorry, I've
30 lost you slightly.
31

32 Q The contingency plan was to get two people flown from London,
33 book an editing suite, book a satellite feed, to be viewed
34 from Belgrade and Budapest, all on the understanding that you
35 had filmed something which was worth editing into a report but
36 nobody knew it till you got to Budapest? A. You don't
37 make a decision about whether you report based on what you
38 have got in the camera, just like people in Mozambique. They
39 can see there's a flood. They don't have to look in the
40 camera to make a decision about whether it is worth reporting
41 it. No. We knew we had established something extraordinary
42 was taking place that needed to be reported on, as clear from
43 the rushes, and on the bases of that I rang London and they
44 sent out a team. If I'd come back, you know, from anywhere,
45 that's how it works.
46

47 Q So it was no part of that contingency plan that you should
48 have available to you in Belgrade a facility to review rushes
49 that you had taken? Is that right? A. I'm still not
50 clear about you mean by this contingency plan.
51

52 Q You are going to report back to London saying "We want to put
53 this plan into action and get over to Budapest, start editing
54 and send it back. What I am putting to you is that it would
55 be sensible and logical in those circumstances to have as part

1 of the equipment that you have at the hotel, a monitor so that
2 you can look at what you've filmed before you make a phone
3 call, would it not? A. No - Well, it might be sensible
4 but it is not how we operated. We were driving for eight or
5 nine hours back to Belgrade. We were exhausted. I hadn't got
6 an editor. I hadn't got a producer. I didn't know how I was
7 going to get transport to Budapest the next day. As far as I
8 was concerned ----
9
10 Q You had to have a monitor ---- A. And I was absolutely
11 convinced that Jeremy had not shot, you know, his material.
12 He's a very good cameraman; it's like going into an operating
13 theatre with a surgeon, you don't sort of assume that he's not
14 going to be able to do it, so I knew that he'd shot what
15 I had seen. So my next step was to get a good night's sleep
16 and to make sure - And the other thing is I had a whole day to
17 do an edit the next day, so my next priority was to get to
18 sleep. No, I wouldn't.
19
20 Q Miss Marshall, you didn't know he'd shot what you had seen.
21 You were at pains to make the point when we were taking you
22 round the camp, he was filming things that you weren't looking
23 at. A. Well, I knew in gen ----
24
25 Q You were off doing interviews ---- A. No, but in general
26 terms, he had been in Omarska and Trnopolje with me and he'd
27 seen exactly the same horrific things as I'd seen. We had
28 something that we would want to report.
29
30 Q No monitor in a hotel room. A. Actually I asked Jeremy
31 yesterday and he thinks he might have had one but I didn't
32 know that at the time. But you must ask him that.
33
34 Q Okay. He might have had one. You were there for five days.
35 Before you went to Pale filming other camps, filming around
36 Belgrade. It never became apparent that he might have one?
37 A. Absolutely not because one of the things that happened is
38 when we were taken into Bosnia we were asked to travel
39 extremely lightly because of the helicopter trip and so on,
40 and there was a limit to what technology we had, so we never
41 took anything with us into Bosnia.
42
43 Q I am not talking about Northern Bosnia. I am talking about
44 the four days you spend in Belgrade before you fly to Pale.
45 A. No, I never asked him; no; and we never looked at any
46 rushes, no.
47
48 Q You were filming during those days, were you not? A. Yes,
49 we filmed at Loznica, yes.
50
51 Q Yes, and you reckon that was good stuff, you told us today
52 that you thought it was good stuff because it had the guy who
53 lost his home who you spent some time interviewing.
54 A. Yes.
55

1 Q So again at the end of that day, for example, nobody said "Has
2 anybody got a monitor so that we can look at the rushes we
3 filmed today?" A. No, nobody did, because generally you
4 don't sort of start looking at your material until you are
5 going to put it together.
6

7 Q Till you are together? A. Till you start putting it
8 together.
9

10 Q Your case is that whole contingency plan is put into operation
11 when it comes to it, you go to Budapest and cut the film,
12 people being flown out, without anybody in your team having
13 reviewed the rushes that had been taken in Omarska and
14 Trnopolje? A. That is exactly what happened, yes, because
15 we knew without looking at any rushes what we had seen. You
16 don't think in terms of images all the time, Mr. Millar. We
17 also thin in terms of facts and reporting and, you know - I am
18 sorry I'm eating a Polo.
19

20 Q So when you were driving back to Belgrade in the Channel Three
21 minibus during a sort of eight hour, nine hour journey I
22 think, you got there about midnight. A. I might be wrong,
23 it was very long anyway; I think it was seven or eight hours,
24 something like that.
25

26 Q Was there any discussion about what you had seen at Trnopolje
27 in the van? A. There was considerable discussion about
28 what we had seen in Omarska and Trnopolje, yes.
29

30 Q And presumably at that point you are very keen over the course
31 of that journey to know whether you had got any good shots and
32 whether your cameraman has got good shots. A. No,
33 Mr. Millar, I assumed that my cameraman had got very good
34 shots because he's a superb cameraman, and I was very keen to
35 get out of Bosnia safely with all our tapes, because you are
36 often stopped in these circumstances at road blocks and very
37 often they'll confiscate all your tapes from you, sometimes
38 even taken your equipment, which happened to me on a
39 subsequent trip about two weeks later. So we were actually
40 extremely anxious and there's nobody to my knowledge who had
41 made that journey across that particular area before safely.
42 We were just very anxious to do it.
43

44 Q What's your understanding ---- A. And we weren't thinking
45 about looking at shops; that's not how television people
46 work, at least not how we were working.
47

48 Q What is your understanding, you have been with Mr. Nicholas
49 for four or five days on this trip, and been filming things?
50 A. Mr. Irving.
51

52 Q Mr. Irving, I beg your pardon. What's your understanding,
53 does he have a replay facility on his camera? A. There is
54 a replay facility on his camera, yes.
55

1 Q Does he use it? A. Does Mr. Irving use it?
2
3 Q Yes. A. Or did I use it on the van?
4
5 Q No, has Mr. Irving ever used it? A. I've only worked with
6 him once before and he didn't use it, no.
7
8 Q Not once before during this trip, during those four or five
9 days? A. He never used it, ,no.
10
11 Q Not once? A. No, and I've only used - I have used it
12 myself but I've only used it once. I some - It is quite
13 common to check or, I mean, I haven't worked full time for
14 three or four years so it might have changed, but when I was
15 working all the time it was quite common to check a piece to
16 camera or something, something little, just to check it was
17 okay and you'd - But I've only ever once watched my rushes.
18 I have done it, I did it in Rumania and we had a journey which
19 lasted about an hour and a half and then we had forty, I knew
20 I only had 40 minutes when I got back to the TV station to put
21 it together, and it was just unachievable, so I watched the
22 rushes in the camera on that occasion. But on this occasion
23 it never occurred to me to do so.
24
25 Q Would you look at tab 19, in the claimants' bundle, please.
26 Your article of the 16th August, the second column, the
27 penultimate paragraph beginning "Jeremy Irvin" - misspelt.
28 What you say is this:
29
30 "Jeremy Irving, our cameraman, knew he had come away
31 with powerful images from Prijedor. Only when we
32 screened them in our Budapest editing suite did we
33 begin to sense their impact."
34
35 Now, did he know he had come away with powerful images ----
36
37 MR. JUSTICE MORLAND: Well, that is really a matter for him, is it
38 not?
39
40 MR. MILLAR: Why did you say he knew he had come away with
41 powerful images? A. Because I knew he would film what we
42 had seen.
43
44 Q But he did not know until he got to Budapest what he had got.
45 He did not know what ---- A. No, but its like, as I said,
46 if you are filming something, you can see it. You don't have
47 to look in the camera to check it; you can see it. We knew.
48 It was appalling. We could see it with our own eyes. The
49 television viewers could only see it through the lens of
50 Jeremy Irving. We could see it. I didn't need to check it.
51
52
53
54
55

1 MR. MILLAR: Is that a convenient moment, my Lord.
2
3 MR. JUSTICE MORLAND: Certainly.
4
5 (Adjourned for a short time)
6
7 MR. JUSTICE MORLAND: Members of the jury, I have some
8 administrative matters to deal with, so as far as you are
9 concerned we will rise at 4 o'clock or thereabouts today.
10
11 MR. MILLAR: Ms. Marshall, you leave Belgrade and drive to
12 Budapest on the morning of 6th August and you leave
13 Mr. Irving and Mr. Lawrence from your crew behind?
14 A. That is correct.
15
16 Q And you go with the members of the Channel 4 crew on the
17 drive? A. That is correct.
18
19 Q Mr. Williams told us that the four of you discussed the power
20 of the images that you believed you had and how you could
21 define or describe what you had in your reports, what you had
22 seen in your reports, using those images. Do you remember
23 such a conversation? A. I do, yes.
24
25 Q What was the nature of that discussion? A. Well, the
26 conclusion of it was that none of us felt we would use the
27 term "concentration camps" to describe what we had seen.
28
29 Q There was some discussion about concentrations camps?
30 A. There was discussion, yes, in the framework that we were
31 sent, obviously, and the Muslim list and the Serb list of
32 propaganda, both of which describing their own camps,
33 concentration camps.
34
35 Q What was the upshot, that you agreed you could not say "They
36 are concentration camps"? A. Well, certainly that, yes.
37 Yes.
38
39 Q You compiled the report in the course of 6th August in
40 Budapest and it is apparent from the broadcast that you cut
41 into your reports a number of clips from the C4 rushes?
42 A. Yes.
43
44 Q So did you see those in the course of the day or in the
45 course of the afternoon after you got to the editing suite?
46 A. In the course of the afternoon, yes. I think only when
47 they had finished I saw them all, when they had finished their
48 edit.
49
50 Q Right, because you had a little longer to do it?
51 A. Yes, I did. Yes. They finished at about 6.00 and
52 I think I finished about 9.00.
53
54 Q I just want to ask you about your decision to use in your
55 report that shot of Alic. Could you, in our bundle, please,

1 open tab 3. This was page 2 of the Mirror the morning after
2 your report. Did you see this subsequently? A. I think
3 I only saw it once the court proceedings began.
4
5 Q You had not seen it before. But you had seen some of the
6 other front pages? A. Yes, I had.
7
8 Q We have seen you on the rushes taking the Daily Mail out to
9 the camp on your return visit? A. Yes, I had. Yes.
10
11 Q Just have that open there in front of you, p.2: "Oh God, not
12 again!" Then rather than using the rather poor photocopy of
13 the shot in this, I just want to ask the operator if we can
14 get it up as a still shot on the video to look at. Pause
15 there. Now, you know that a number of newspapers and a number
16 of other broadcasters around the world after your reports were
17 broadcast took this as suggestive of a concentration camp, did
18 they not? A. Yes, they did.
19
20 Q In no uncertain terms? A. Well, certainly the Mirror
21 obviously has, yes.
22
23 Q "Belsen '92", and the day after the report on the lunchtime
24 ITN news we get that world reaction to the ITN reports
25 sequence with ABC telling us it is a glimpse into genocide?
26 Do you remember that? A. I remember that. I saw that
27 yesterday, yes, or whenever -- the first day of the trial.
28
29 Q Just look at the image as it is up on the screen. The strands
30 of barbed wire fence running across, the hut or the hall or
31 whatever it is in the background, the floodlights up there at
32 the back and the very thin man -- the other thin men standing
33 up at the barbed wire fence. Can you see now why so many
34 people took it as reminiscent of an image of a concentration
35 camp in the Second World War? A. Do you know, I have
36 never to this day, until you mentioned it, noticed the
37 floodlights; and I can see why they do but in my opinion what
38 is shocking about it is the condition of Fikret.
39
40 Q But you can see why they do now? A. Yes.
41
42 Q And here you were on a trip producing a report the backdrop
43 to which was considerable world attention as to whether
44 allegations about this camp amongst others that it was a
45 concentration camp could be substantiated, and you are saying
46 that at the time you looked at this shot and you decided to
47 use it in your report you did not make that connection?
48 A. No, because at the time it did not really exist as a
49 sort of shot or a picture. I mean, subsequently it became
50 famous -- not actually like that, I think the torso, the
51 close-up shot is more famous, but as a single photograph.
52 At the time it was part of a sequence which in itself was part
53 of a report. I am not a photographer, I am a television
54 reporter, so I would have always been thinking in terms of a
55 report. It is only when, you know, you have asked the court

1 to freeze it. There is a very different thing between a
2 frozen image and something that is part of the report, so
3 I would not have been thinking like that.
4

5 Q We have seen that Mr. Williams took a very short segment of
6 this passage, including the shot of Alic and the shot up his
7 torso, and cut it into the middle of his report. Was there
8 any discussion between you about him doing that? A. No,
9 but I think it is a very good decision. I think it is a
10 superb shot, a superb sequence.
11

12 Q It is clear from his report that he saw it as almost a
13 snapshot image in the way he used it, did he not? A. No,
14 I do not think he did. I think he saw it as another image of
15 another man in the same place as all the other men he was
16 using. It was not a snapshot, it was part of a quite well --
17 both in his piece and in my piece quite a well -- you know,
18 there is a context to it. There were men in a camp and he was
19 one of them.
20

21 Q Just broadening it a little bit before we come and look at
22 what was broadcast, was there in the course of that day any
23 discussion at all between you and Mr. Williams about these
24 shots that you had got in your original report?
25 A. No, I do not believe I ever had a conversation with Ian
26 about that shot, no. I talked to my team, Nigel and Bill, but
27 I would not have discussed it with Ian, no.
28

29 Q Not about the power of the image? A. No.
30

31 Q Your two colleagues who had flown out there had not been at
32 the camp and were coming, as it were, cold to these rushes,
33 not having been at the camp and seeing them for their
34 televisual effect really? A. No.
35

36 Q No? A. No, but ---
37

38 Q What were they seeing them for? A. Well, they were
39 seeing them not for their televisual effect but for their
40 significance, their importance, their journalistic importance.
41

42 Q Right. I have got that wrong. Did they, approaching it in
43 that way, from the point of view of their journalistic
44 importance, either of them, say when they saw these shots:
45 "That is reminiscent of a concentration camp shot"?

46 A. No, but they certainly said they thought they were much
47 more powerful than the Omarska shots. I remember that,
48 because I remember them saying: "Oh, look at that. I just
49 can't believe that's happening in Europe", or something like
50 that, and, "You must start it with that", and I was adamant
51 that we should not. So I was aware, I think probably more
52 when I met up with people who had not been there, that these
53 were more accessible and powerful shots than the Omarska one.
54
55

1 Q But there was no discussion or comment by them, the two men
2 who had come out, to this effect? A. To ---
3
4 Q That it looked like a concentration camp? A. Not that
5 I recall because, as I say, they were not freezing them and
6 sort of pointing out watchtowers and strands of barbed wire.
7 We were just, you know, going through the rushes and looking
8 at the pictures.
9
10 Q When you did your call from your hotel room in Budapest at
11 lunchtime you spoke about Omarska. We can see, if we look at
12 the transcript, which is at tab 20 in the claimants' bundle,
13 at p.2 that you are asked to comment. This is the one where
14 we have got the shot of you up on the screen but we have got
15 no footage at this stage? A. That is correct.
16
17 Q So it is just you describing to the viewer. Right in the
18 middle of the page you say this, describing Omarska: "The
19 image was reminiscent of something very sinister indeed."
20 Do you see that? A. Yes.
21
22 Q What were you referring to there? Reminiscent of what that
23 was very sinister indeed? A. I would be referring to the
24 treatment of people in the Second World War in concentration
25 camps.
26
27 Q This conversation is being run as the earliest possible report
28 that the viewer or ITN may see in advance of getting any of
29 the shots on the teatime news on the 10 o'clock news?
30 A. That is correct, and at that point I had not seen any of
31 the rushes.
32
33 Q You had not seen any? A. No. Not at that point, no.
34
35 Q But you are suggesting that what you have seen at Omarska is
36 reminiscent of a concentration camp, is it? A. Yes.
37
38 Q Then at 5.45 - and we have seen it, I do not want to take you
39 to it, I am sure you will remember it - by which time you have
40 seen the footage and there is a feed through for the teatime
41 news, you lead with the walk up and the handshake with Alic,
42 do you not? A. That would not have been my decision but
43 it is what it led on, yes.
44
45 Q I apologise because I have made a note when you were giving
46 evidence and I understood you to be saying it was your
47 decision. But you say it was not? A. No.
48
49 Q Whose decision was it? A. Is it -- I think it is being
50 played while John Suchet is speaking, if I am not mistaken, so
51 it would have been done in London. John Suchet would have
52 done it -- oh, not John Suchet himself but it would have been
53 done by people in London.
54
55

1 Q Could we just run back and look at it, because I think that is
2 the best way to do this. It is in the report before this one.
3 We are on the 10 o'clock here. So if we can run back quickly
4 through the 10 o'clock we will get the teatime segment.
5 Right, that is lunchtime -- oh, no, that is after ---
6 A. No, that is the 5.40. That is the bit I did, me talking.

7
8 MR. MILLAR: Okay. There. We have just had it, I think. This is
9 at teatime.

10
11 (Video shown)

12
13 MR. MILLAR: So your evidence is that that short feed and sequence
14 of shots we see on it you had no say in that? A. No.
15 I mean, I would have had a say in which shots. It is called
16 "a clip reel". We were asked to send some shots to London in
17 advance of the big material coming and we just sent a
18 selection of shots, but in what order and how they were put
19 together would have nothing to do with me, no.

20
21 MR. JUSTICE MORLAND: There would be an editor, would there, or
22 producer for that programme who would be responsible?
23 A. Yes, Bill Frost, who was with me, would have sent some
24 shots and I think they would have then been edited again in
25 London to fit in with John's words.

26
27 MR. MILLAR: Then we come to your report and I want to bring you
28 to the bit at Trnopolje, but I just want to take you on in the
29 transcript, since we are on 20, to p.8 in that section of the
30 transcript, which is the very beginning of your report when
31 you are driving up to Omarska and you have the shots of the
32 approach to Omarska.

33
34 MR. JUSTICE MORLAND: We are now at the 10 o'clock news.

35
36 MR. MILLAR: At 10 o'clock, yes. We are going to look at the
37 report in a minute. This is the very first thing you say to
38 the viewer in your report: "The Bosnian Serbs don't call
39 Omarska a concentration camp." Do you see that?
40 A. Yes, I do.

41
42 Q What you are suggesting there, is it not, is that it may be
43 but they are not prepared to admit to it? A. No, I am not
44 suggesting that. I am saying they do not call it a
45 concentration camp. I could have equally started it by
46 saying: "The Bosnian Muslims do call it a concentration
47 camp." That would be more suggestive that it was one.

48
49 Q I apologise for putting it to you this way but it is self-
50 evident, is it not, that the Serbs are not going to run a camp
51 like this Omarska and call it a concentration camp? That is
52 the last thing they are going to do? A. Well, they
53 subsequently have admitted to it.

1 Q So you think in this climate, at this point we have looked at,
2 they would run a camp like this and call it a concentration
3 camp? A. No. I mean, what I was trying to do was -- we
4 are not making a documentary or a long film, we have to
5 condense everything, and the framework as you have outlined it
6 that we were going in was to investigate allegations at camps.
7 Now, I could either say: "One side says it" -- "The Bosnian
8 Muslims say it is", or, "The Bosnian Serbs say it is not."
9 But, I mean, that was what we were there to investigate, if
10 you remember, the whole framework of the piece.

11
12 Q But if you had said: "The Bosnian Muslims say it is. I am a
13 reporter and have been there and I am telling you it is not",
14 that is one thing? A. Yes.

15
16 Q You do not say that? A. No.

17
18 Q No, you start with the negative proposition: "The Serbs don't
19 call it a concentration camp"? A. No, I was extremely
20 concerned about it. It was clearly a hell on earth.

21
22 Q Yes, and you are suggesting right from the start of the
23 report that it may be comparable to a concentration camp?
24 A. I am not saying it may be comparable to a concentration
25 camp. I never say that. I say the Bosnian Serbs don't call
26 it one.

27
28 Q This is the place at lunchtime that you have described
29 visually as reminiscent of a concentration camp. You have
30 accepted that? A. No, I said it was reminiscent of
31 something very sinister indeed, which I said was referring to
32 concentration camps, yes.

33
34 Q Right. A. And it was reminiscent ---

35
36 Q Of a concentration camp? A. -- of something very, very
37 sinister - reminiscent - and it has subsequently been called,
38 I think, "a death camp" by the War Crimes Tribunal.

39
40 MR. MILLAR: Now could we run the report, please, News at Ten.

41
42 (Video shown)

43
44 MR. JUSTICE MORLAND: Stop it there, please. Did you have
45 any responsibility for choosing that lead photograph?
46 A. No, I did not.

47
48 MR. JUSTICE MORLAND: Right, continue.

49
50 (Video continued)

51
52 4.00 p.m.

53
54 MR. MILLAR: My Lord, would that be a convenient point? I was
55 going to ask some questions about it.

1 MR. JUSTICE MORLAND: Is there any sort of short question you
2 could ask at this stage while the film is clear in our minds?
3
4 MR. MILLAR: Yes, I can probably do it if we go five minutes over.
5 That may be the best way to do it.
6
7 MR. JUSTICE MORLAND: Yes.
8
9 MR. MILLAR: (To the witness): You did not use in your report any
10 inside shots, did you, other than in the medical centre?
11 A. No, I didn't.
12
13 Q The shots of the community centre. A. I didn't, no.
14
15 Q Such as the child that we saw eating yoghurt or something
16 sitting on the floor? A. I think there is a shot of a
17 child eating yoghurt, yes.
18
19 Q I think the only shot of the road outside the camp is where
20 Igor is said to be taking you to the other side of the camp.
21 Correct? A. The road? I am not sure the road is outside
22 the camp but the only shot of the road was where Igor ought to
23 stand, yes.
24
25 Q The only shot of you that looks as though you are outside the
26 camp on the road ---- A. Actually no, I'm not though
27 because on the right hand side, as we now know, is part of the
28 camp as well, I think. The Red Cross centre is, by your own
29 admission, on the right hand side of road.
30
31 Q I am just concerned with what is conveyed to the viewer of the
32 report. Okay? A. Yes.
33
34 Q The only shot of you outside the camp, self-evidently or
35 visibly on the road outside is with Igor being taken up a road
36 to somewhere at the other side of the camp? A. I don't
37 mean to be difficult, Mr. Millar, but I am not sure what you
38 are getting at.
39
40 Q It may be that it is comment. Do you agree that the shot at
41 the end which you have used from Channel 4 suggests that the
42 men in the field are caged behind barbed wire, the rack shot
43 back with the two rows of barbed wire and the men in the
44 middle with guns? A. It doesn't suggest it, you can see
45 they are caged behind the barbed wire.
46
47 Q Would you agree with me that that is the impression left as to
48 those men in your report in the mind of viewer, and that this
49 was your intention when you watched the report through, that
50 they are caged behind that barbed wire in the sense that it is
51 surrounding them in the field? A. No, not in the sense
52 that it is surrounding them, but in the sense that they are in
53 prison, yes.
54
55

1 Q But not in the sense that it is surrounding them ----
2 A. I didn't -- as you know, I wasn't very interested in the
3 fences, but it is clear from the report that they were in
4 prison and that was an impression or a fact that I was
5 conveying.
6
7 MR. MILLAR: That was all I wanted to ask about the construction.
8
9 MR. JUSTICE MORLAND: Well, members of the jury if you could
10 return at quarter past ten tomorrow morning, please.
11
12 (The jury left court)
13
14 MR. JUSTICE MORLAND: What is the problem?
15
16 MR. MILLAR: My Lord, we understand that the next witness to be
17 called after Ms. Marshall is not the logical ITN witness, the
18 cameraman, as we had in Channel 4, but that the claimants wish
19 to called Dr. Merdzanic next, from whom a statement is in
20 existence in the bundle before your Lordship at the directions
21 hearing.
22
23 MR. JUSTICE MORLAND: Yes.
24
25 MR. MILLAR: Your Lordship may recall that I actually raised it at
26 the directions hearing and indicated to my learned friend
27 outside court that we were having some difficulty following
28 the translation of Dr. Merdzanic's statement. Some parts of
29 it, in particular right at the end, and it is no disrespect to
30 whoever did it, are, frankly, incomprehensible. We have asked
31 for a better translation so that we can consider his evidence
32 if it was to be relied upon. Now, he is to be called tomorrow
33 and we are still working from that translation. We have a
34 number of concerns about the chunks at the beginning of the
35 statement. I call them chunks ----
36
37 MR. JUSTICE MORLAND: What page are we on?
38
39 MR. MILLAR: My Lord, do you have the directions bundle, the
40 statements bundle? It is the 16th statement in the list of
41 the claimants' witnesses.
42
43 MR. SHIELDS: Bundle B.
44
45 MR. JUSTICE MORLAND: Bundle B. Yes, I have got bundle B open in
46 front of me. Tab?
47
48 MR. MILLAR: 16.
49
50 MR. JUSTICE MORLAND: Yes. Which paragraphs do not make sense?
51
52 MR. MILLAR: My Lord, the difficulty we are having with the
53 translation is at the end. At para.30 it gets very difficult.
54 (After a pause):
55

1 MR. JUSTICE MORLAND: I see.
2
3 MR. MILLAR: There is a sentence which says:
4
5 "... they were placed in the compound surrounded by
6 the fence (barbed wire fence) at the shop for
7 construction material, which existed there from the
8 past. (Out of this fence-surrounded place did Penny
9 Marshall first take the photographs of prisoners, who
10 were inmidst this fence, which had been built up
11 especially for the prisoners)."
12
13 It is utterly impossible to make any sense of what has been
14 said there.
15
16 MR. JUSTICE MORLAND: Is the doctor going to give evidence through
17 an interpreter?
18
19 MR. MILLAR: Yes, he is.
20
21 MR. JUSTICE MORLAND: Then you will hear what he says, will you
22 not?
23
24 MR. MILLAR: My Lord, yes. That is the not the only concern that
25 we have about it.
26
27 MR. JUSTICE MORLAND: Right.
28
29 MR. MILLAR: The other concern that we have about it is that after
30 the first two paragraphs in the first line of para.3 where he
31 introduces himself, a lengthy account is given of the war and
32 his involvement in the war prior to coming to the camp and his
33 arrival at the camp is in para.7.
34
35 MR. JUSTICE MORLAND: As I understood it, Penny Marshall's
36 evidence and what she has said on Channel 3 was the doctor was
37 really terrified out of his wits and it took great courage to
38 hand over the camera and so forth.
39
40 MR. MILLAR: Yes. We are not challenging for a moment the right
41 of the claimants to give evidence through Dr. Merdzanic as to
42 what the doctor told Penny Marshall as to the ----
43
44 MR. JUSTICE MORLAND: As to what the doctor had suffered?
45
46 MR. MILLAR: Well, my Lord, if it is going to turn into detailed
47 evidence about the camp that was not within the understanding
48 of the reporters because it was material and allegations that
49 were not told to them at the camp when they were there, we are
50 into a whole area of evidence and fact that certainly it was
51 my understanding from the directions hearing that we were not
52 straying into because there are a variety of sources of
53 evidence for the camp and what was going on at the camp, and
54 it is not part of our case to get into that, and I had
55 understood that it was not, save insofar as it formed part of

1 the reporter's understanding, part of the claimants' case. It
2 is simply not relevant.
3
4 MR. JUSTICE MORLAND: Is your case still that the reporters
5 deliberately and dishonestly in effect doctored the evidence
6 that they in fact saw with their eyes, heard with their ears
7 and took with their cameras?
8
9 MR. MILLAR: My Lord, our case is as pleaded.
10
11 MR. JUSTICE MORLAND: I see. That is not quite an answer to my
12 question.
13
14 MR. MILLAR: My Lord, as you have summarised it to me there, that
15 is not my case.
16
17 MR. JUSTICE MORLAND: I see. Well, what is your case now?
18
19 MR. MILLAR: Our case is now what it was ----
20
21 MR. JUSTICE MORLAND: It has never changed even though ----
22
23 MR. MILLAR: Never changed.
24
25 MR. JUSTICE MORLAND: -- we have reached this stage in the
26 evidence.
27
28 MR. MILLAR: No, it has never changed.
29
30 MR. JUSTICE MORLAND: I see.
31
32 MR. MILLAR: And it is as particularised in the pleadings. I do
33 not know if your Lordship has the defence to hand.
34
35 MR. JUSTICE MORLAND: Yes.
36
37 MR. MILLAR: Paragraph ... in the defence.
38
39 MR. JUSTICE MORLAND: Yes. Are you objecting, for example, to
40 para.26 of the doctor's evidence?
41
42 MR. MILLAR: Well, if it is not something that the doctor told
43 Penny Marshall and therefore conditioned her understanding of
44 the camp at the time ----
45
46 MR. JUSTICE MORLAND: But they were told there had been rapes,
47 were they not?
48
49 MR. MILLAR: They were told what other people had told the ----
50
51 MR. JUSTICE MORLAND: Yes. Well, you are not challenging that,
52 are you?
53
54 MR. MILLAR: No. And we are applying the same principle to
55 Dr. Merdzanic as a live witness here as the witnesses they

1 interviewed at the camp whose evidence to them they have
2 described to the jury, namely that we can go into what he told
3 them and he can produce the pictures and he can say what is on
4 the pictures. But it is not a relevant issue in this case to
5 go through in detail his allegations about what went on at the
6 camp, no doubt any more than it would be if I sought to call
7 somebody else who had been there to say that things such as
8 this were not happening at that camp. We could have had a
9 trial on that. My learned friend raised the question of the
10 judgment of the war crimes tribunal at the directions hearing,
11 the characterisation of the camp in that, and I was jumped on
12 for alluding to the findings of the US Commission of Experts
13 insofar as this camp is concerned. There are any number of
14 different views and findings as to what was going on in this
15 camp but it has been our understanding that we were not
16 getting into a trial about that because it was not relevant to
17 our case and it was not relevant to the claimants' case.
18 Certainly what they were told by people they interviewed there
19 is very relevant. But it is starting to throw the net very
20 wide.

21
22 MR. JUSTICE MORLAND: So you are not going to suggest that the
23 message in the television broadcasts was an untrue message,
24 are you, at any stage?

25
26 MR. MILLAR: Well, it is a matter for the jury what the message
27 is. We have pleaded that it misrepresented Fikret Alic, and
28 this is our case, as caged behind the barbed wire fence.

29
30 MR. JUSTICE MORLAND: Yes.

31
32 MR. MILLAR: That is our case. It does not assert a
33 misrepresentation about what was going on at the camp, or
34 indeed get into that. It is a very simple pleading,
35 straightforward. So the answer is no, we are sticking to our
36 pleaded case. But, that being so, it is a very large area of
37 fact and evidence to get into. It is not relevant, and one
38 can see why the claimants wish to lead it as evidence about
39 the camp that was not in their possession, but we do not say
40 it is relevant at all to the issue raised by our pleading and
41 indeed gives the jury one view, no doubt a view of a man who
42 knows a lot about the camp, of what was going on there that is
43 not dealt with in any other evidence anywhere in the case.
44 There are passages in the statement which deal with what he
45 said to Penny Marshall, what he gave her and the layout of the
46 camp, which is where his evidence lies at the moment.

47
48 MR. JUSTICE MORLAND: Do you object to para.28?

49
50 MR. MILLAR: No, because he is proving the photographs at that
51 point, which of course he is entitled to do. But, my Lord, to
52 take another example, at the beginning of the statement his
53 account of the taking of Kozarac, of that town, which is an
54 episode in the war, is clearly nothing to do with the issues
55 that we are looking at. That is para.4. You will recall

1 Mr. Shields opened the case on the basis to the jury: "Well,
2 terrible things happened on this conflict on all sides and
3 everybody accepts that". What we are getting in the beginning
4 part of this statement is detailed evidence from one side
5 about terrible things which happened which does not seem to be
6 important or relevant in the light of the way Mr. Shields
7 opened it, and we all accepted, which is that terrible things
8 did happen on both sides in the war.
9

10 MR. JUSTICE MORLAND: Mr. Shields, how on the pleadings do the
11 matters from paras.4 until 9 -- how are they relevant?
12

13 MR. SHIELDS: Is this the only bit your Lordship wants me to deal
14 with, or do you want me to deal with it in stages? I only say
15 that ----
16

17 MR. JUSTICE MORLAND: Well, that stage.
18

19 MR. SHIELDS: -- because I have got general submissions to make to
20 your Lordship in any event.
21

22 MR. JUSTICE MORLAND: Yes. Well, I may hear those tomorrow
23 morning at nine o'clock because I have got to attend a lecture
24 in a few minutes.
25

26 MR. SHIELDS: I understand, my Lord. Paragraphs 4 to 9?
27

28 MR. JUSTICE MORLAND: 4 to 8. (After a pause):
29

30 MR. SHIELDS: Well, it is historical background about who he is.
31 It is quite important. So, my Lord, I believe ----
32

33 MR. JUSTICE MORLAND: Does it need to be anything more than to be
34 said that he is a Muslim and he is a doctor and following
35 attacks by Serbians he was taken to Trnopolje on 26th May
36 1992?
37

38 MR. SHIELDS: I am very happy, my Lord. Obviously one will look
39 at the statement. When he comes to give evidence, I will
40 intend to take him without leading him, but direct him how he
41 came to -- I am not going to lead him, but take him to how he
42 got into the camp.
43

44 MR. JUSTICE MORLAND: Yes.
45

46 MR. SHIELDS: In the terms in which your Lordship has said.
47 Obviously I will try and control him. Your Lordship
48 understands that I do not have complete control.
49

50 MR. JUSTICE MORLAND: Yes. One of the advantages of taking a
51 witness in chief through interpreters is that you can at least
52 do a considerable amount of leading.
53

54 MR. SHIELDS: Well, I would be very careful, my Lord. I hope your
55 Lordship would trust that from me, because I will set the

1 background and then I want to call the doctor and say -- talk
2 about his experiences in this camp. And I hope I can persuade
3 your Lordship how it fully comes within both the words of the
4 article and the pleadings.
5

6 MR. JUSTICE MORLAND: Yes. Certainly para.13 would appear to be
7 inadmissible.
8

9 MR. SHIELDS: I do not want to introduce hearsay to that
10 extent ----
11

12 MR. JUSTICE MORLAND: No, no, I am not saying you do. Perhaps the
13 best thing would be if you and Mr. Millar got together now,
14 and you told Mr. Millar what parts you were not seeking to
15 introduce. Then I might know what small parts I might have to
16 adjudicate on at nine o'clock.
17

18 MR. SHIELDS: I am obliged.
19

20 MR. JUSTICE MORLAND: How long will it take? One thing is that
21 I am sitting at ten o'clock in another matter and then we
22 start before the jury at 10.15.
23

24 MR. SHIELDS: I think it will have to be nine o'clock -- well,
25 nine o'clock. If your Lordship says nine o'clock, it is nine
26 o'clock.
27

28 MR. JUSTICE MORLAND: Nine o'clock.
29

30 MR. SHIELDS: Can I just set my stall out in one minute?
31

32 MR. JUSTICE MORLAND: Yes.
33

34 MR. SHIELDS: I will keep it to one minute and I will watch the
35 clock and talk very quickly. My Lord, our submission is as
36 follows: it is an issue in this case by virtue of the reply
37 and also by virtue of the way the article is put as to whether
38 this was purely a refugee camp or not. The words say it is,
39 and we join specific issue in the reply on that part of the
40 defence of justification. The fact that my learned friend
41 chooses not to put his case at some stage, I would say, does
42 not stop me from putting my affirmative case and that is quite
43 clear if your Lordship looks at the reply what the affirmative
44 case is. Against that background, I must be able to call
45 someone who was there who has been exposed to the jury on the
46 jury and who is able to give his first-hand experience of what
47 occurred at that camp. That is what the doctor is going to
48 do. And he is also to give first hand experience of whether
49 people were enclosed or not enclosed, because the argument
50 against us is that we were the ones who were caged in.
51

52 MR. JUSTICE MORLAND: Yes. I picked out paras. 4 to 8 and 13 as
53 examples of ones that should be excluded. It does not mean,
54 for example, 10, 12 are not admissible.
55

1 MR. SHIELDS: I am obliged, my Lord. And I would say 15, for
2 example, is a prime example.
3

4 MR. JUSTICE MORLAND: 15, yes. Well, I suggest you and
5 Mr. Millar, if you get a message to my clerk by a quarter to
6 nine that you have reached an accommodation, we will not have
7 the hearing at nine o'clock. There is an incentive! I am
8 going to learn about human rights now.
9

10 (Adjourned until 9.00 a.m. on Wednesday, 8th March 2000)