

1 Friday, 27 June 2008

2 [Open session]

3 [The accused entered court]

4 --- Upon commencing at 9.03 a.m.

5 JUDGE AGIUS: Yes, Madam Registrar, could you call the case,

6 please.

7 THE REGISTRAR: Yes, good morning, Your Honours. Good morning,

8 everyone. This is case number IT-05-88-T, the Prosecutor versus Vujadin

9 Popovic et al.

10 JUDGE AGIUS: I thank you, Madam, and good morning thank you.stojkovic

11 All the accused are present. From the Defence teams I notice the

12 absence of Mr. Bourgon, Mr. Lazarevic, Mr. Krgovic, and Mr. Haynes.

13 Prosecution we have Mr. McCloskey, Mr. Mitchell, and

14 Ms. Janisiewicz. Anyone else behind because I can't see behind these

15 columns?

16 Good morning, everybody.

17 I understand that Mr. Ostojic as a preliminary.

18 Mr. Ostojic, please go ahead.

19 MR. OSTOJIC: Thank you, Mr. President, Your Honours.

20 Mr. President, yesterday when I asked the question it drew an

21 objection in the court and I think all of us thought it would be wise to

22 raise it outside the presence of the witness. Instead of breaking the

23 flow I think I waited until today and also if I may -- and that goes

24 to -- and I'm asking for permission to ask the witness whether the

25 Prosecutor's involvement in finalisation of cause and manner of death as

Page 22915

1 well as editing of final autopsy reports, and if it's facilitated by an

2 ICTY legal advisor whether that's permissible in his view or what impact

3 that has. There was a question or objection saying there's no evidence  
4 to that fact, but I would like to draw the Court's attention to two  
5 documents, specifically P611 and P616 which are both in evidence and on  
6 page 11 of that document is that very statement I read out to the court.

7 I think it is in evidence. I think the objection is without  
8 merit and I should be permitted to ask that question.

9 JUDGE AGIUS: Before I give you the floor, Mr. McCloskey, let's  
10 see these two documents, please. To my recollection at no time is the  
11 Prosecution specifically mentioned, but I stand to be corrected, of  
12 course.

13 Yes, Mr. McCloskey.

14 MR. McCLOSKEY: Mr. President, the Prosecution is mentioned, but  
15 just -- and I believe Mr. Ostojic knows this, and I think it should be  
16 clear from the record. What is absolutely clear is that Dr. Kirchner  
17 inappropriately changed some causes of death with some pathologists

18 without consulting them. This was brought to our attention very early  
19 on. The investigative team facilitated the contact with all those  
20 pathologists that were involved and provided them with their original  
21 materials so that they could, independently of Dr. Kirchner, provide  
22 their own cause of death. This was done by the investigative team with  
23 me as the legal advisor, and that's what those references are to. I'm  
24 not involved in cause of death or autopsies or anything else. There's  
25 some playing with words going on here and it's -- I think he knows that,

Page 22916

1 and that's why I say there's no foundation to suggest that the  
2 investigative team or the Prosecutor is involved somehow in the cause of  
3 death or doing autopsies.

4 JUDGE AGIUS: Thank you, Mr. McCloskey.

5 Do you accept that as a fact?

6 MR. OSTOJIC: No, I admit there's playing of words. If they can  
7 make allegations, Your Honour, that triage means something that other  
8 words have total incomplete thoughts, they are the ones who are playing  
9 with words. I am offended that they suggest I would. Yesterday they  
10 raised an objection to this court and said there was no such evidence we  
11 saw it in a report yesterday, I think it was 2D70. We see it in two  
12 reports that they brought in evidence, it's exactly what I state it says  
13 verbatim, I'm not the one playing with words. Their the ones who have  
14 manipulating words from the you outset of this case. So I am offended  
15 they would suggest that. I'm not playing with words. It says that the  
16 Prosecution facilitated and they edited, and they also were part of the  
17 finalisation of those cause and effect -- cause and manner of death.  
18 It's clear on both 01491641 of Exhibit P616, that would be page XI, which  
19 Roman numeral XI of P611.

20 JUDGE AGIUS: Thank you, Mr. Ostojic.

21 Mr. McCloskey.

22 MR. McCLOSKEY: Just briefly, I have no problem with the Defence

23 putting the Prosecution on trial and putting ourself to our proof and our

24 documents as such, I have no problem with that. The proper witness to do

25 this through was Dr. Haglund as he wrote this, and I believe he was asked

Page 22917

1 questions on that point and this gentleman is not involved in that

2 process and knows nothing about it and asked him to speculate on these

3 words that Mr. Ostojic and I have a different meaning of I don't think is

4 appropriate. This was an issue, if it was an issue at all, for

5 Dr. Haglund. It's been dealt with, it should be over.

6 JUDGE AGIUS: Thank you.

7 [Trial Chamber confers]

8 JUDGE AGIUS: Our position is unanimous on this. We feel we are

9 perfectly competent to draw conclusions, our own conclusions, from what  
10 emanates from the relevant documents and from what you have stated and  
11 don't need the advice or opinion of this witness on the matter.

12 So let's proceed with -- shall we bring the witness in now?

13 Let's bring the witness in, please.

14 [The witness entered court]

15 JUDGE AGIUS: Good morning to you, Mr. Dunjic, and let's hope  
16 that this will be your last day for you in this courtroom. Mr. Ostojic  
17 is going to proceed with and conclude his direct with you. Thank you.

18 MR. OSTOJIC: Thank you, Mr. President, Your Honours.

19 WITNESS: DUSAN DUNJIC [Resumed]

20 [Witness answered through interpreter]

21 Examination by Mr. Ostojic: [Continued]

22 Q. Good morning, Dr. Dunjic.

23 A. Good morning.

24 Q. Sir, I only have a couple questions for you here this morning,

25 and I would like for you -- again directing your attention to the last

Page 22918

1 several pages of your report, specifically page 129, Roman numeral IX,

2 and there as you're trying to find it I think I should put the question,

3 there you suggest, sir, that you were not given enough hours to complete

4 your analysis and that's why you chose to do what's commonly referred to

5 as a sample methodology in evaluating the autopsy reports and the

6 documents that you evaluated. Can you just explain to us how you came to

7 the figure that you needed an additional 500 hours in order to fully

8 evaluate and determine and to opine as to what the cause and manner of

9 death were for each of the corpses were that were analysed and found by

10 the OTP experts?

11 A. I -- well, the material that I received is vast, an enormous



12 amount, and I've already said how much, which requires systemization and  
13 with the best will in the world and all my efforts I was not able to  
14 systemize the material sufficiently. Now, since we're dealing with a  
15 large number of cases and with the exception of the ones that I have been  
16 through and quoted, that leaves at least 2 and a half thousand cases  
17 which need to be reviewed, maybe more than 2 and a half thousand in  
18 comparison to the first samples and the first analyses.

19 Now, this second part, and I said which ones I received, which  
20 DVDs I received, and how many folders and files each one of them contains  
21 and roughly how many autopsies with the photographs and so on and so  
22 forth. So this is a figure which would require a reasonable amount of  
23 time to be investigated, analysed, reports written, and so on. So  
24 there's several stages in the work to be done, so that that is an  
25 assessment based on the quantity of information that I have to get

1 through to -- documents to read, to analyse, reports to write and compile  
2 and so on. So that would be a sort of optimum time, and of course I  
3 would need to engage other people to help me with the technical aspect of  
4 the matter.

5 Q. And I understood that, doctor, and thank you. But my question  
6 was with respect to the cause and manner of death evaluation. I think  
7 your report and correct me if I'm wrong, and I apologise if I'm leading,  
8 you suggested that you needed an additional 500 hours in order to review  
9 the DVDs which were provided with the additional folders, as you've  
10 described, you needed an additional 400 hours for yourself and your team;  
11 correct?

12 A. Those are two things. One thing is the materials previously  
13 received, which is voluminous indeed, and the cases done up to 2001. So  
14 those are those first 400 hours or 500 hours, whatever I wrote, I can't

15 remember now. Now, the other material I received in April. So in  
16 addition to all the work that I am engaged to and have to do  
17 professionally for my work post, this is extra time that I would need and  
18 that I have to spend working on this. So that's how I calculated it,  
19 based on the number of cases, 500 hours. Now, if I spend for every  
20 corpse, I'm sorry to have to use the term, but for an autopsy report  
21 itself what is stated there and look through it, they're about 20 pages  
22 long each, this would require four to be got through in an hour, and I  
23 think that would be very wrong. That would be much too fast. I don't  
24 think I could keep that tempo up, so I would have to limit myself to a  
25 very small sample or not to do any work at all.

Page 22920

1 Now, as regards the other eight DVDs that I received, as far as I  
2 can see they involve a large number of documents which once again require  
3 detailed analysis and review. So this is time calculated on the basis of

4 the number of cases give or take, but that's a rough framework on the  
5 basis of my calculations done that way, 500 hours, four cases, 2.000  
6 cases, and so on.

7 Q. I understand. Now, let me just change slightly, and I appreciate  
8 that. Thank you for clarifying that. In using your sample  
9 methodologies, just so that we're all clear, you've set out certain  
10 standards and you've given us a certain criteria in how you analysed in  
11 how a reasonably [Realtime transcript read in error "reprehensible"]  
12 prudent pathologist should evaluate and examine these autopsy reports,  
13 and although you've utilised, I think you said 57 in your report we would  
14 use that same analysis and criteria that you've set out for us these last  
15 two days and that's reflected in your report in analysing any one or, in  
16 fact, all of the autopsy reports that are under consideration in this  
17 case. Isn't that true ?

18 A. Yes.

19 Q. Dr. Dunjic, thank you very much. I have no further questions.

20 MR. OSTOJIC: Thank you, Mr. President.

21 JUDGE AGIUS: Thank you so much, Mr. Ostojic.

22 Now, according to my records the Nikolic Defence team doesn't

23 wish to put questions to this witness on direct.

24 Ms. Nikolic.

25 MS. NIKOLIC: [Interpretation] That's correct, Your Honour, yes,

Page 22921

1 thank you.

2 JUDGE AGIUS: Thank you.

3 Mr. Gosnell, that applies too for the Borovcanin Defence team?

4 MR. GOSNELL: We also have no questions. Thank you,

5 Mr. President.

6 JUDGE AGIUS: Thank you.

7 Mr. Sarapa, this is also your witness, would you like to put

8 questions?

9 Yeah, he said he was, and he wasn't.

10 MR. SARAPA: [Interpretation] Regardless of that status, we're not

11 going to ask any questions. We didn't call him as a witness on our list,

12 we won't be asking any questions.

13 JUDGE AGIUS: I just wanted to be sure because then there is

14 another record somewhere that you did, but anyway.

15 That leaves me with Madam Faveau.

16 MS. FAVEAU: [Interpretation] No questions for this witness, Your

17 Honour.

18 JUDGE AGIUS: Thank you.

19 Mr. Josse.

20 MR. JOSSE: No cross-examination, Your Honour.

21 JUDGE AGIUS: And that brings us back to the Prosecution now.

22 Yes, Mr. Ostojic.

23 MR. OSTOJIC: Sorry to interrupt, Your Honour, just an page 7,

24 line 9 --

25 JUDGE AGIUS: One moment.

Page 22922

1 MR. OSTOJIC: Line 8, I think it says reprehensible. I think I

2 said a reasonably prudent pathologist.

3 JUDGE AGIUS: Yes. Thank you, Mr. Ostojic.

4 Yes, Mr. Mitchell, he's all yours. How long do you think you

5 will be cross-examining him?

6 MR. MITCHELL: No more than two hours, Your Honour.

7 JUDGE AGIUS: So the other witness must remain here today so that

8 we start with him.

9 Yes, Mr. Mitchell, please go ahead.

10 Cross-examination by Mr. Mitchell:

11 Q. Good morning, Professor Dunjic.

12 A. Good morning.

13 Q. My name is Christopher Mitchell. I'm going to ask you a few

14 questions on behalf of the Prosecution about your testimony and your

15 expert report.

16 Professor, I'd like to start off by briefly looking at the

17 San Antonio report that you were shown yesterday. Can I please have 65

18 ter number 2D70 in e-court, please. And if we can go to page 7.

19 Professor, I'd like to read you the first sentence under the

20 heading: "Findings" in this report. It says:

21 "The responses of the witnesses do not indicate any wrong-doing

22 on the part of Dr. Haglund nor anything regarding the exhumations that

23 jeopardize their scientific validity."



24 Now, Professor, the San Antonio report cleared Dr. Haglund of any  
25 wrong-doing, didn't it?

Page 22923

1 A. Yes.

2 MR. MITCHELL: Can we please go to page 8.

3 Q. I'd also like to read to you the first recommendation of the

4 oversight committee. It says:

5 "The evidence of war crimes is overwhelming at each site. A few

6 problems of administration or temporary lapses from a scientific ideal

7 could not jeopardize the overall quality of the evidence and its

8 interpretation of autopsy. Any prosecution of war crimes in Yugoslavia

9 will be on firm, scientific grounds. There are literally hundreds of war

10 crime remains that were removed and interpreted by very scientifically

11 sound methods."

12 Now, that's correct, isn't it, Professor?

13 A. You read it out correctly. That's what it says there, and some

14 qualifications were made here as far as I can see. As a forensic expert

15 I don't want to go into any of that.

16 Q. Okay. Now, Professor, you observed Dr. Haglund's work at Ovcara

17 farm in 1996, didn't you?

18 A. Yes.

19 Q. Okay.

20 MR. MITCHELL: Can I please have 65 ter number 3474 in e-court,

21 and it's page 9 in the English and page 7 in the B/C/S.

22 Q. Now, Professor, this is your witness statement of June 2007, and

23 you start out by describing how you were in charge of the forensic team

24 at Lake Radonjic in Kosovo. Then you state at paragraph 41:

25 "I wanted to conduct the above elaborated forensic exhumations

1 and examinations in accordance with the same procedure that I was able to  
2 experience when I attended, back in 1996, as a representative of the  
3 then-Federal Republic of Yugoslavia, the exhumation of the bodies found  
4 at Ovcar (Croatia).

5 "These exhumations were carried out by the American forensic  
6 expert, Dr. William Haglund (who later on also participated until the  
7 exhumation of the Srebrenica bodies)."

8 A. Yes, I wrote that in the report and I have nothing to add to  
9 that. All I can do is to explain it, if you like, to make it more  
10 understandable. I met Mr. Haglund for the first time at Ovcar where I  
11 was an expert on behalf of the federal government and I observed his  
12 work, just like my colleague from Zagreb. And on that occasion I saw the  
13 techniques and technology used by him at Ovcar at the time, and I  
14 considered that it was a forensic pathological technology, which in  
15 forensic anthropology is used very modern equipment, state-of-the-art, as

16 far as that's concerned, from exhumation to examination and so on --

17 well, I have to be allowed to explain.

18 Technology is one thing, the manner of work is another. I saw

19 how this was done, and what I wrote so far, because I think I know what

20 you want to ask me, what I wrote here relates to certain conclusions,

21 segments made by that same forensic expert. So those are two different

22 things.

23 Q. Okay. Well, let me read out the lasting part of paragraph 42

24 when you're talking about your own exhumations at Lake Radonjic. You

25 say: "My intention was to carry out the exhumation of mortal remains

Page 22925

1 found near Lake Radonjic, as much as possible, in the same (professional)

2 way as Dr. Haglund did in Ovcara. I ensured that my colleagues and I

3 would maintain, as much as possible, the same standards and procedures

4 when conducting the exhumation and the forensic examination of the mortal

5 remains and other exhibits, that were discovered near Lake Radonjic ..."

6 Now, do you stand by that, Professor?

7 A. Yes, of course.

8 Q. Okay. I'd like to move to a different area now. You testified

9 that the pathologists working with Dr. Haglund on Nova Kasaba graves 1 to

10 4 didn't meet the standards set Dr. Clark's report. For example, at

11 transcript page 22792, lines 19 to 25, you talked about the autopsy

12 report from Nova Kasaba grave 1, body 1; and then on the next page at

13 transcript reference 22793 you state that that description didn't meet

14 Dr. Clark's methodology. Now, I just want to clarify this with you,

15 Professor. In 1996 Dr. Haglund led the exhumation team at Nova Kasaba 1

16 to 4; correct?

17 A. Yes.

18 Q. And in 1998 Dr. Clark was the chief pathologist for Nova Kasaba

19 graves 5 to 8?

20 A. Yes.

21 Q. So Dr. Haglund and Dr. Clark are working on two separate

22 exhumations, two years apart?

23 A. Yes.

24 Q. Now, the conditions Dr. Haglund was working under in 1996 one

25 year after the end of the war were difficult and dangerous; correct?

Page 22926

1 A. I assume so, although I wasn't there myself.

2 Q. Okay. But the situation was improved in 1998?

3 A. I suppose so.

4 Q. Now, yesterday you were asked some questions about manner of

5 death and cause of death, and these were at -- I apologise, I only have

6 the updated references, but it was transcript references page 55 and 57

7 from yesterday.

8 Now, Professor, are you aware that in the United States forensic  
9 pathologists provide their conclusions regarding manner of death, whereas  
10 in the United Kingdom and many other countries manner of death is  
11 determined either by the courts or the coroner?

12 A. I'm familiar with it to a certain extent; however, the European  
13 school of thought of forensic medicine abides by the standard I  
14 described. It is up to the court to ascertain the manner of death and  
15 the forensic pathologist and all other people participating in the  
16 process of exhumation and autopsy should provide adequate evidence for  
17 the court. That is the standard. As for the United States, it's a  
18 standard of their own.

19 Q. So in the United States there are five categories under manner of  
20 death. These are: Homicide, suicide, accidental death, natural death,  
21 and undetermined. Now, are these the same five categories that are

22 used by the court nervous system Serbia?

23 A. Yes.

24 Q. So the fact --

25 A. Yes.

Page 22927

1 Q. The fact that Dr. Kirchner and the pathologists working under him

2 determined the manner of death as they would have done in the United

3 States, does that suggest any problem or any impropriety on their part?

4 A. Irrespective of whether Dr. Kirchner comes from the United States

5 or Europe, I described what a forensic pathologist needs to do. He needs

6 to provide evidence for the court, out of which from the whole body of

7 evidence they are -- they have to conclude what the manner of death, they

8 have to determine whether it was a natural death or a violent death

9 ranging from homicide, suicide, to an accidental death. I can suppose



10 that some violence may have been involved in the causing of injuries, but

11 that's not up to me to determine. I can talk about any indications of a

12 homicide or suicide, but from the point of forensic medicine the manner

13 of death, that is not something we can determine. We can only determine

14 whether there are any injuries which can indicate that there was an

15 accidental death, homicide, or suicide. When somebody says that it was a

16 homicide, well that -- in that case the forensic pathologist is getting

17 in the shoes of a judge or a lawyer, and this is what I've been trying to

18 explain, that one cannot state that something was a homicide in such a

19 way.

20 Q. Okay. My point, Professor, is in the United States this is the

21 job of the pathologist, to make this determination; correct?

22 A. I don't know that.

23 Q. Okay. Well, it is the job of the pathologist in the United

24 States to make that determination. So knowing that, does the fact that

25 Dr. Kirchner and the pathologists working under him determined that?

Page 22928

1 JUDGE AGIUS: Yes.

2 MR. OSTOJIC: I apologise to object, but I object to the form of

3 the doctor's answer. He didn't know that and I think it may be

4 appropriate if Mr. Mitchell believes that's accurate to show him the

5 document that he's referencing as a matter of fact, stating that in

6 America or in the United States that's what they do.

7 JUDGE AGIUS: But do you contest that, Mr. Ostojic?

8 MR. OSTOJIC: I do --

9 JUDGE AGIUS: Coming from the States yourself?

10 MR. OSTOJIC: I do, Your Honour, and I think the reason why is

11 yesterday we said there's certainly different rules and classifications

12 when we're talking about theatre of war and it is well-known in America

13 what classifications they use.

14 JUDGE AGIUS: Okay. Fair enough.

15 Let's show the witness the document if you have it available,

16 Mr. Mitchell. Do you have it available?

17 MR. MITCHELL: I do have it available, Your Honour.

18 JUDGE AGIUS: Put it on the ELMO; I think that's the best way to

19 go about it, although I see the ELMO is full of papers.

20 MR. MITCHELL: It's an extract from the web site of the American

21 Academy of Forensic Sciences. And it simply says:

22 "Forensic pathologists perform autopsies to determine what caused

23 a person's death. They are also involved in the investigation of the

24 circumstances surrounding the death. Knowing about these circumstances

25 allows them to determine the cause of death. Natural, accident, suicide,

Page 22929

1 homicide, or undetermined."

2 JUDGE AGIUS: Yes, Ms. Faveau.

3 MS. FAVEAU: [Interpretation] Your Honour, I believe that we have  
4 a linguistic problem, because in Serbo-Croatian the term does not cover  
5 only homicide but also murder as a murder in a criminal -- under the  
6 criminal code and this is why I believe that's why the witness has  
7 problems understanding what the Prosecutor is asking. This is why the  
8 witness answered that he's talking about a legal category.

9 MR. MITCHELL: Your Honour --

10 JUDGE AGIUS: Yes.

11 MR. MITCHELL: -- I can move on.

12 JUDGE AGIUS: Okay. Then let's move on. Let's move on.

13 MR. OSTOJIC: If I can just have the 65 ter number for this  
14 document as well.

15 JUDGE AGIUS: I can't help you there.

16       Madam Usher, if you could hand the document back to Mr. Mitchell,

17   please.

18       MR. MITCHELL: Your Honour, it doesn't have a 65 ter number here,

19   I wasn't planning on using it here.

20       JUDGE AGIUS: Let's proceed.

21       Thank you for raising that, Madam Faveau. I think I know exactly

22   what you mean because we have the same problem in my country with the

23   linguistic use of the word.

24       Let's proceed.

25       MR. MITCHELL: Okay.

Page 22930

1       Q. Professor, I'd like to clear up two other issues that you raised

2   with regard to Nova Kasaba graves 1 to 4, and these concerned the

3   ligatures that were found at those graves. Now, you raised two issues,

4   the first related to the total number of ligatures found at Nova Kasaba

5 graves 1 to 4; and the second issue related to how many of the bodies

6 actually had their arms bound behind their back.

7 MR. MITCHELL: Now, can we please have in e-court 65 ter number

8 621, and it's page 58 in the English and 46 in the B/C/S.

9 Q. Okay. Under the second paragraph under heading C. Dr. Haglund

10 states: "27 of the 33 victims recovered from the Nova Kasaba graves had

11 their hands bound behind their backs. Ligatures were recovered from

12 27 ... of the victims."

13 Now, Professor, you testified that there were only 25 ligatures

14 referred to in the autopsy reports, correct? And that was at transcript

15 page 22800.

16 A. Yes.

17 Q. Okay. Well, Professor, there were ligatures found on two other

18 bodies, Nova Kasaba case 1-5 and Nova Kasaba 2-13, which weren't listed

19 in the autopsy reports.

20 MR. MITCHELL: Can we please look at 65 ter number 2066. This is

21 a report from Dean Manning, summary of forensic evidence, execution

22 points, and mass graves 2000. And if we can look at page 81 in the

23 English.

24 Q. Now, Professor, you reviewed Dean Manning's 2000 report when

25 preparing your report; correct?

Page 22931

1 A. Yes.

2 Q. Okay. Professor, this is a photograph of the ligature associated

3 with the body Nova Kasaba 1-5.

4 MR. MITCHELL: If we can have a look at page 92, please. I have

5 a better-quality copy of this photo, if I could show the witness, and

6 also a close-up if you -- if you can -- can we put that on the ELMO,

7 please.

8 Q. Professor, what we're looking at here is a picture of Nova Kasaba

9 case 2-13 with his hands tied behind his back with wire. I also have, if

10 you'd like to see them, photos of all 27 of the ligatures for you to look

11 at.

12 A. If I may, I would like to comment right away. I have not seen or

13 reviewed these photographs, as I have said already. I didn't see most of

14 them. As for this photograph, I can describe it so as to say that this

15 indeed is a human corpse with an advanced degree of putrefaction and a

16 degree of saponification. Here we have a detail which --

17 Q. Professor --

18 A. -- shows that this is some sort of ligature or binding --

19 Q. Professor, can I interrupt for one moment. If we look at your --

20 the list of documents and reports that you reviewed which is on page 4 of

21 your report, you were provided with a copy of Dean Manning's 2000 report;



22 correct? My question is simple. You've seen these extra two photographs

23 now. Can we agree that there are, in fact, 27 bodies from Nova Kasaba

24 that had ligatures, as Dr. Haglund stated in his report?

25 A. Dr. Haglund and Dean Manning stated that in their reports, and I

Page 22932

1 saw it. What I was looking at were the autopsy reports in which that is

2 not mentioned as evidence.

3 Therefore, my report that I've been going through yesterday and

4 the day before concerning the number of ligatures has to do with the

5 number of ligatures noted in the autopsy reports, and I stated that very

6 precisely for each of the cases. For example, this case, number 5, Nova

7 Kasaba 1-5 that you are referring to, and I see that this is corpse 13;

8 therefore, I don't know how they arrived at 1-5. However, the fact

9 is ... I don't know whether, first of all, this is the corpse that we

10 are discussing, that's number one. Number two, in the autopsy reports

11 that is in existence pertaining to the same corpse there is no mention of

12 a ligature in terms of evidence --

13 Q. Professor, that's my point. There are 25 ligatures in the

14 autopsy reports, there's photographs of another two, so there's a total

15 of 27, correct, as Dr. Haglund stated?

16 A. Sorry, I have to stress it once again. I did not see the

17 photographs. I don't see the corpse number 13 being marked as NKS 1-5.

18 We should have one and the same number of the corpse which should cover

19 everything found, items of clothing, and all documents pertaining to this

20 particular corpse. On this photograph, however, the corpse has number

21 13.

22 Q. Now, the second issue that you raised in your testimony was that

23 according to the autopsy reports only six of the bodies appeared to have

24 their hands tied behind their back. Now, when these bodies were

25 uncovered and exhumed, field observations were recorded and summarised on

Page 22933

1 table 1 of Dr. Haglund's report, correct, and that's 65 ter number 621,

2 that's pages 24 to 25.

3 Professor, my question just was: The field observations were

4 recorded and summarized at table 1; correct? You can see them there.

5 A. Yes, I have seen this document and the day before yesterday

6 compared it on several occasions with the autopsy reports, and I arrived

7 at the figure I mentioned. These are field observations, and my comment

8 was referring to the autopsy reports. In the autopsy report, there is no

9 mention of the existence of this. These are two completely different

10 things that we are talking about.

11 Q. Now, there are also a large number of photographs were taken and

12 listed at annex 1 of his report; correct?

13 A. Yes.

14 Q. And these photographs show the position of the bodies that were

15 in the grave?

16 A. I suppose so. I suppose one can see that, but I didn't.

17 Q. Okay. You didn't see them?

18 A. I didn't.

19 Q. Okay. Well, I can tell you there are also photographs of all 27

20 of the ligatures. And Dr. Haglund had all of this information when he

21 reached his conclusion that 27 individuals had their hands bound behind

22 their back; correct?

23 A. Your Honour, we keep going round and round about these things. I

24 am talking about the written document. Mr. Haglund's document is one

25 thing, and I wasn't trying to be subjective. I did refer to what

Page 22934

1 Mr. Haglund had written in the report. He specifies what elements he

2 used. On the other hand, we have other documents, and I insisted upon  
3 the individual autopsy reports which I received later, and that had to  
4 have been noted in the autopsy reports. I'm talking from the point of  
5 view of our work, of course. If a person doing the autopsy takes off the  
6 ligatures, the wires, from the corpse, that needs to be noted in any  
7 form, whether the ligature was on the hands or on the body, and they  
8 should simply write it was next to the body in the body-bag and it can  
9 mean several things. You showed me the photograph of the wire ligature  
10 and with a certain number, but that needs to be related to a certain body  
11 and it has to be in the record. Otherwise, it's just a photograph as if  
12 a pen from my pocket were -- was photographed, but one needs to specify  
13 that indeed that was in my pocket.

14 Q. Okay.

15 A. I am not denying the existence of the 27 ligatures referred to in  
16 the report. I am disputing the number mentioned compared to the number

17 of the ligatures mentioned in the autopsy reports, and the autopsy  
18 reports are the documents that provide us with a possibility to compare  
19 everything with the final report, otherwise we would have ten single --  
20 different documents pertaining to one case alone.

21 Q. Professor, my point was very simple. Dr. Haglund was relying on  
22 the autopsy reports, the photographs, the field observations when he was  
23 drawing his conclusions; correct?

24 A. Yes. But probably not reports such as these.

25 Q. Now, Professor, on Wednesday you analysed a number of reports,

Page 22935

1 autopsy reports, from Nova Kasaba graves 1 to 4. You looked at cases  
2 Nova Kasaba 1-1, 1-2, 1-6, 2-9, 2-12, 2-13, and 2-14.

3 MR. MITCHELL: Now, if I can or if we can have 65 ter number  
4 1D1070 in e-court, please.

5 Q. That's your report, Professor Dunjic, and it's page 23 in the  
6 English and page 26 in the B/C/S. About halfway down this page,  
7 Professor, you state: "We agree that persons on whose body 'ligatures'  
8 and/or blindfolds were found were victims of execution by shooting,"  
9 correct?

10 A. Yes.

11 Q. And there are ligatures associated with each of the cases I just  
12 mentioned; correct?

13 A. In the autopsy reports, 25 persons had ligatures not 27.  
14 According to Haglund, who drafted his report from his immediate  
15 observations and some other documents that you specified, the number was  
16 27. I can agree with it, and I did.

17 Q. My question was, Professor: The cases that you specifically  
18 analysed for us, the ones that I just mentioned, they all have ligatures  
19 associated with them; correct?

20 A. You mean in my report or the autopsy reports that I have been

21 referring to?

22 Q. In the autopsy reports, and one of them has a photograph, each of

23 the cases you talked about has a ligature associated with it. If you'd

24 like to check that, Professor, I can come back to this point.

25 A. I'm just now going through those.

Page 22936

1 Q. Professor, if we can just agree that that's correct. You'd agree

2 in each of these cases that you talked about the individual was executed;

3 correct?

4 A. I wrote it as well.

5 Q. Thank you. Okay. There is another topic regarding these

6 Nova Kasaba graves 1 to 4 that I'd like to discuss with you.

7 MR. MITCHELL: If we can look at 65 ter number 1D1070, which is



8 Professor Dunjic's report, and it's page 38 in the English and page 45 in  
9 the B/C/S.

10 Q. Okay. Now, Professor, one of your criticisms of Dr. Haglund's  
11 Nova Kasaba reports is his -- relates to his -- to the following  
12 conclusion. You say: "Two graves in particular contain evidence that  
13 suggests many or all of the victims were shot while positioned in the  
14 grave," and then we can see in your report that your conclusion is that  
15 Dr. Haglund's conclusion was absolutely arbitrary; correct?

16 A. Yes. I wrote that because in the autopsy reports such elements  
17 were not recorded, hence my comment. Allow me to finish, please. I  
18 commented that for the individual reports, the individual reports did not  
19 provide me with sufficient information to be able to agree with that  
20 assertion. For me, that is arbitrary, and I can only interpret what is  
21 written in the autopsy reports.

22 Q. Okay.

23 MR. MITCHELL: Can we please look at 65 ter 621.

24 And it's page 9 in the English and page 4 in the B/C/S. Okay.

25 Q. Now, if we look at the third paragraph under subsection C. You

Page 22937

1 can see the passage that I just read out that was quoted in your report;

2 correct?

3 A. Yes.

4 Q. Now, directly underneath this Dr. Haglund explains why he reached

5 this conclusion.

6 MR. MITCHELL: If we can just move to page 5 in the B/C/S.

7 Q. Dr. Haglund says his conclusion was based on the "... kneeling

8 and semi-sitting positions of some of the victims. It was not determined

9 if individuals in graves Nova Kasaba 3 and Nova Kasaba 4 were deceased

10 when placed into the grave or whether they were killed within the grave."

11 Now, Professor, my question is very simple. When you quoted

12 Dr. Haglund in your report, you didn't include his explanation, did you?

13 A. No, I didn't quote the entire report, just the sections that I

14 thought need to be commented on within the context of the autopsy reports

15 provided. Now, in this explanation of his it says as follows. In the

16 last sentence it says that:

17 "It was not determined if individuals in graves NKS3 and 4 were

18 deceased when placed into the grave or whether they were killed within

19 the grave."

20 So he's not sure either in the observation that he makes that

21 they were killed in the grave. Do you understand that? Read it to the

22 end.

23 Q. I understand that --

24 A. Yes, and it was precisely because of that that I found the

25 need -- felt the need to comment on this, that there is evidence which

1 indicates that many or all the victims could have been killed by  
2 fire-arms while they were in the grave. So that is actually an assertion  
3 that they were killed in the grave, and he himself says that this was  
4 never determined whether these individuals from those graves were already  
5 dead, already deceased when they were placed in the grave, or whether  
6 they were killed while they were in the grave. So there is an  
7 alternative, he gives an alternative, and in the previous sentence there  
8 was a claim, an observation. So I'm not going into that part. I'm just  
9 referring to the autopsy reports or report which is relevant as far as  
10 I'm concerned so that I can comment on certain aspects of it. I did not  
11 deny -- let me explain that, I did not deny the existence of ligatures in  
12 this number of victims who were uncovered.  
13 I didn't want to deny that, not for a moment. I even agree that

14 it represents evidence of execution, but just from the forensic aspects I  
15 denied the pathological elements that are unacceptable, or rather, what  
16 was written in the autopsy reports. So I was very clear on that, what  
17 the professional was and what the information was, and that's why I made  
18 that comment.

19 Q. It was a simple question, Professor. You didn't include that  
20 part of his quote in your report, did you? You didn't include  
21 Dr. Haglund's explanation of his conclusion in your report?

22 A. Well, I didn't incorporate that whole explanation of his, I put  
23 three dots. But from his own explanation we can see that he a  
24 contradictory, he contradicts himself in actual fact. But it was far  
25 more important for me -- the sentence where it says that many victims

Page 22939

1 were killed by fire-arms while they were in the grave, that's the  
2 substance of it. I comment that, and later on in his explanations he

3 allows for the alternative and the other possibilities because there's no

4 proof in evidence.

5 So if I may, Mr. Prosecutor, we come back to the substance, the

6 crux, of the issue, how important it is whether the victims were brought

7 dead there from some other localities, already deceased from some other

8 place where they were killed, executed, or whatever, in a conflict or

9 whatever, and then the level of decomposition, and through the autopsy

10 report we can follow this, the observation made on the spot, the position

11 of the body and everything else. So all these changes are recorded and

12 we know what they mean.

13 MR. MITCHELL: If we can move to page 32 in the English, please.

14 This is a photograph so it's not contained in the B/C/S version.

15 Q. But, Professor, this is one -- this is a photograph of one of the

16 individuals executed and buried at Nova Kasaba grave 2, and it's body

17 number 14. Now, in the field observation summary which is at page 25 in  
18 the English and page 21 in the B/C/S, it states that: "When the body was  
19 found it was doubled over in kneeling position with its hands tied behind  
20 the back."

21 Now, Professor, you can see these pictures here. Having seen  
22 these pictures, do you still believe that Dr. Haglund's conclusion is  
23 arbitrary?

24 A. Yes, and here's why. This position, the body's position, in a  
25 mass grave, it indicates that -- well, the possibility is this. Since

Page 22940

1 the hands are tied behind the back, in the autopsy report it says that  
2 the hands were tied with shoelace. The position of the body,  
3 unfortunately I have had an opportunity of seeing many such bodies, the  
4 position of a body in a grave does not indicate that execution had taken  
5 place in the grave. This man could have been killed anywhere and thrown

6 into the grave, which was what was often done, since he wasn't buried  
7 according to protocol and the regulations. So all I can say is -- well,  
8 had he been killed there, there would have had to have been other  
9 parameters, such as the discovery of a projectile that had pierced his  
10 body in the grave, which was not established here. And similar factors,  
11 similar parameters. So this -- here we have just a body in a position  
12 with a ligature, some bent over, others are bent in another way. So  
13 these are bodies mixed up in a grave, and from this I cannot conclude  
14 that execution was actually carried out within the grave.

15 Q. Okay. Professor, I'll move on. You also talked about the 55  
16 bodies that were recovered from Nova Kasaba, graves 5 to 8, and you  
17 testified that some of these individuals may have died in combat;  
18 correct?

19 A. Yes, that is an assumption, one of the assumptions.



20 JUDGE AGIUS: Yes, please go ahead, and sorry for that

21 interruption but we needed to discuss something.

22 MR. MITCHELL:

23 Q. Now, in the example you referred to which was yesterday at

24 transcript page 3, lines 7 to 22, there was a projectile present in the

25 body and you said that this indicates that the projectile arrived from a

Page 22941

1 distance or with reduced energy; correct?

2 A. From a distance.

3 Q. Or with reduced energy?

4 A. Yes.

5 Q. Okay. Professor, are you aware of the evidence in this case that

6 people with existing combat injuries were subsequently executed?

7 A. I'm not sure I understood you correctly. They had injuries from

8 combat you mean and they were subsequently executed; is that what you

9 mean?

10 Q. Correct.

11 A. Well, I'd like to see evidence of that as a forensic expert.

12 Q. Okay. But in your opinion this could explain why some victims of

13 the mass executions displayed some injuries consistent with long distance

14 combat injuries?

15 A. I don't understand how you're asking this within the context of

16 the previous question, how does that tie up? Could you repeat your

17 question, please.

18 Q. Certainly. My question is: Some people with combat injuries are

19 captured, taken prisoner, and executed; that could explain the existence

20 of long-range combat injuries, correct?

21 JUDGE AGIUS: Yes.

22 MR. OSTOJIC: I'm sorry, Mr. President, but -- and I think the

23 witness answered that and asked to see the evidence and my learned friend

24 suggests on page 27, line 19 through 20, that there's that evidence that

25 exists. The good doctor asked to see that evidence, and I think it's

Page 22942

1 required for the Prosecution to show him that evidence.

2 JUDGE AGIUS: No, no, I think it's a perfectly -- unless I'm

3 stopped by my colleagues, it's a perfectly legitimate question.

4 Independently of what the witness would like to see, it's a fair question

5 based on expected forensic expertise which he can answer without any

6 difficulty.

7 Yes, please go ahead, Professor. Even I could answer it for you.

8 THE WITNESS: [Interpretation] Go ahead, please.

9 JUDGE AGIUS: Professor, I was an examiner in forensic medicine

10 for something like 20 years, so that's why I can answer the question.

11 So please proceed.

12 THE WITNESS: [Interpretation] I apologise for that digression,  
13 but one can see that, one can feel it, but that is the case. Now, with  
14 respect to the question, I highlighted this yesterday, if you take a look  
15 at your question, so the observation that somebody was injured in combat  
16 and then taken prisoner and then tied or not tied, doesn't matter, and  
17 that that person was executed afterwards, those are the three stages.  
18 Now, as to the first two stages, I cannot comment on them because  
19 that is beyond my profession, but what I can comment is the third stage,  
20 that the injuries were sustained and that they were executed afterwards,  
21 that means - and this is common knowledge - that one assumes that you as  
22 a forensic have established the order of the injuries, the order in which  
23 the injuries were sustained. For example, a man is injured in the arm,  
24 leg, and head, sustains injuries to the arm, leg, and head, what was the  
25 order of the injuries sustained, which came first? In order to establish

1 the order in which the injuries were sustained, it is impossible to do  
2 that on a body, on a corpse, let alone a skeletonized corpse that has  
3 undergone decomposition. All you can do is to say -- you cannot say that  
4 the last injury, the third injury, was to the head as a result of  
5 execution; that is impossible to establish.

6 MR. MITCHELL:

7 Q. Okay. Let me give you another typical scenario based on evidence  
8 of executions in this case. Five prisoners are taken, lined up, and shot  
9 and another five prisoners are lined up in front of those dead bodies and  
10 shot. This goes on, perhaps all day, until you have a large pile of  
11 bodies. Some of these bodies have been hit multiple times by bullets  
12 that have sometimes passed through other bodies. Now, yesterday you told  
13 us that a projectile could be slowed down when encountering an obstacle  
14 along the way, it can be slowed down by any means and then it remains in

15 the body, and that was at transcript page 3, lines 18 to 22.

16 Now, Professor, isn't this another possible explanation for why

17 there are bullet fragments in these bodies other than long-distance

18 combat injuries?

19 A. Mr. Prosecutor, I don't wish to comment what you said in the

20 sense of some scenario going on, but I said clearly yesterday from the

21 forensic aspect, slowing down of the projectile can be because of

22 distance, due to distance, due to the fact that it is passing through an

23 obstacle, and an obstacle can be anything you like including another

24 body. That's why I said I agreed and that I agreed with the assumptions

25 made by Mr. Clark, because he said that too. So that's how matters stand

Page 22944

1 from the forensic aspect.

2 Now, the other aspect that you highlighted in your example of

3 five bodies, it depends whether they fell on top of each other with  
4 somebody shooting from the top or whether they stood one in front of the  
5 other and somebody was shooting from behind or from in front. So I can't  
6 comment on that kind of scenario as a forensic expert. The only thing I  
7 can do is to comment on the autopsy findings and report. And if I'm  
8 provided evidence of traces on the scene of the killing, then I could  
9 comment on that. So slowing down, when you have a bullet slowing down,  
10 one alternative is there was firing from a distance, or that the  
11 projectile slowed down because it was passing through an obstacle; and  
12 it's up to the Trial Chamber on the basis of the evidence shown and  
13 everything else, witness testimony and so on, what actually happened. So  
14 I didn't deny anything. All I did was provide an alternative and  
15 something that is objective and can be established through forensics,  
16 nothing more than that. So I remain within my field of expertise,  
17 forensics.

18 Q. Okay. Professor, I'd like to talk now about your analysis of the  
19 Pilica mass grave. Now, there were 132 individuals exhumed from that  
20 grave; correct?

21 A. Yes, that was a primary grave unless I'm mistaken.

22 Q. That's correct. Now, yesterday you told us that you didn't look  
23 at the autopsy reports of the bodies that had ligatures associated with  
24 them because you concluded they were summarily executed; correct?

25 A. I did not conclude that. I considered, as I did in the previous

Page 22945

1 case, I considered that we can accept that an execution had taken place  
2 with people with ligatures. Now, for me to take a sample from the  
3 location in order to see and assess the work of the forensic expert  
4 involved and the validity of the autopsy report, because I didn't have  
5 enough time to look at all the details and analyse all the reports.



6 Q. Now, Professor, of the 132 individuals exhumed from Pilica, 77 of

7 those individuals had their wrists bound or there were ligatures or

8 blindfolds associated with a further five victims. So 82 of the 132 had

9 ligatures or blindfolds associated with them; correct?

10 A. Yes, I did read those reports.

11 Q. Wouldn't it be helpful for you to compare the injuries on the

12 bodies which had ligatures associated with them with the group of bodies

13 without ligatures to see if they were killed in the same way?

14 A. Yes, that would be helpful if you had a comfortable time interval

15 for analysis, but since I analysed the previous pits in which

16 witnesses -- victims with ligatures were found, I don't deny the

17 existence of ligatures but I do deny the -- or rather, challenge the

18 autopsy report and findings in support of that, which is not adequate and

19 not commensurate to that, even in these cases. Now, why do I make that

20 conclusion? Because in the cases where there were no ligatures, for

21 example, the autopsy findings only posed diagnoses and a pathologist  
22 cannot allow himself to do that. And we see that in the autopsy reports  
23 in Nova Kasaba where ligatures listed, we know how they were described in  
24 the reports because it's one thing what you see in the field and this is  
25 another.

Page 22946

1 Q. Thank you, Professor. Now, it's been very clear from your  
2 testimony that it's your job to primarily look at what's on the autopsy  
3 table in front of you; correct?

4 A. Yes, and then how this is described in some reports and  
5 interpreted in the reports for those locations.

6 Q. Okay.

7 A. And whether those reports which follow and which were compiled as  
8 a collection of reports for one locality, how far they have objective

9 indices, which in most cases I found they did have; but in certain  
10 sections in certain comments I clearly state that in those collective  
11 reports they go beyond the bounds of objectivity in certain instances,  
12 where they talk about the order in which the injuries were sustained or  
13 how the injuries were inflicted without objective indices and objective  
14 proof and evidence that the victim with ligatures and tied behind their  
15 back were shot point-blank or whatever. So those are two different  
16 things.

17 Q. Okay. Now, in your report, Professor, you cite 18 witness  
18 statements that were provided to you by the Defence when you were  
19 preparing your report; correct?

20 A. Yes.

21 Q. Okay. Now, you also testified - this is at transcript page  
22 22815, line 20, to 22816, line 1, you testified about how witness  
23 statements may be useful for the context of the findings that you

24 obtained. Now, I'll read what you said to us:

25 "Somebody might tell me that somebody was killed by fire-arms or

Page 22947

1 that a burst of fire was directed at a person or that someone stood on a

2 mine or that some other explosive device was used to kill a person. This

3 information is very important for me in the context of the findings that

4 I will obtain in the course of the autopsy."

5 Now, I want to have a look at a photo with you and see if that

6 helps you determine what happened to those people in the Pilica mass

7 grave.

8 MR. MITCHELL: Can we please look at P3009.

9 Q. Professor, this is an aerial of the Branjevo Farm taken on the

10 17th of July, 1995, the day after the executions happened. It was taken

11 while the burials were occurring, you can see the bodies, you can see the

12 grave that was later exhumed by Dr. Haglund, and we've also heard

13 testimony from Cvijetin Ristanovic, who was the excavator who dug the

14 grave. Now, Professor, does this look like combat to you?

15 A. Well, quite frankly, I'm not an expert in analysing satellite

16 photographs, I really am not. All I can see here -- all I can do is

17 describe what I see that in a large segment on a large area there is

18 something that marks bodies, then we have the excavator digging, probable

19 bodies, and so on. That is all I say -- describe what I see on the

20 photograph.

21 Q. Now, Professor, Drazen Erdemovic is a former 4th Sabotage

22 Detachment soldier who is convicted for participating in the execution of

23 over 1.000 men at the Branjevo Military Farm on the 16th of July, 1995.

24 He testified in this trial on the 4th and the 7th of May, 2007, and he

25 described those executions. Now, I'd like to read to you a couple of

1 things he said. Now, at transcript reference T10972, Mr. Erdemovic

2 testified that the men in his execution squad were using automatic

3 rifles. He also testified that an M-84 machine-gun was used and that

4 this machine-gun caused extremely traumatic injuries to the victims.

5 We've also heard testimony from Ahmo Hasic, who was there, who saw what

6 happened, and who survived the Branjevo Farm execution.

7 Professor, would this information assist you in forming an

8 opinion on how these individuals died?

9 A. From what you've just read out, I'd like to set aside segments

10 which for me as a forensic pathologist are important as pieces of

11 information, and they are the following. I have information that says

12 they were executed. The second important piece of information is that

13 fire-arms were used, specific fire-arms. The third piece of information

14 is that they were buried there. So those are the only three pieces of

15 information that I have to retain in my head.

16 Now, for you to be able to confirm something or refute something,  
17 you have to have on the other side the objective information, which means  
18 that projectiles were in fact found on the body, or rather, injuries  
19 caused by projectiles; then you have to see the distribution of the  
20 injuries although there's very little difference in whether injuries were  
21 sustained from a distance, whether it was an execution or war conflict  
22 and combat. There aren't any distinctions if you receive a bullet to the  
23 head from 5 or 50 metres, there's not much difference, but let's leave  
24 that apart. And what's important for me as a forensic pathologist is I  
25 should be able to see what types of weapons were used. And in that

Page 22949

1 context I quoted the statements of these witnesses, witnesses who tell us  
2 of a large number of people killed during combat, because you find a  
3 large number of bodies, and people killed in numerous locations around

4 Srebrenica.

5 So the information that we obtain from witnesses has this meaning

6 for me, that in the autopsy findings and through the autopsy report, not

7 from the police report or investigator's report, but that through autopsy

8 findings and reports I can see whether we're dealing with -- whether we

9 have decomposition in the bodies. One body might be saponified, others

10 skeletonized; or if we find injuries inflicted by animals, for example.

11 And then from all this different information in fact indirectly you

12 receive confirmation that the bodies were lying in different localities,

13 although they were found in one pit, one grave, but it doesn't mean that

14 they were all killed there. Most of the men -- well, various artillery

15 pieces were used, and as we know the different artillery pieces, we look

16 for large shells, small shells, parts of shells, projectiles, large and

17 small -- bigger and smaller calibres and so on. But the information that



18 was interesting was that certain dead bodies had already been  
19 skeletonized. So bodies were found in the woods and forest and this  
20 takes place between the 11th and 17th of July that were already  
21 skeletonized.

22 Now, what does that mean? Me as a forensic pathologist, that  
23 tells me that the individual before, a long time before, the interval was  
24 killed, that is the piece of information that is important for me. And  
25 that in the bodies that were found, whether more such skeletonized

Page 22950

1 examples exist. So looking at the witness statements, I'm able to use  
2 them or parts of these statements to either confirm my autopsy findings  
3 or not or provide the Court with proof and evidence that they're going to  
4 accept or not. So that was the substance of my work, and that is why I  
5 quoted from some of the witness testimonies and statements, just as you  
6 did in reading this out.

7 Q. Okay. I just have one more question before I think it's time for

8 the break, Your Honour.

9 Professor, you weren't provided with this photograph, the

10 testimony of the excavation, the excavator driver, the testimony of

11 Mr. Erdemovic, the testimony of the survivor; you weren't provided with

12 any of this information specific to the Branjevo Farm executions when you

13 were drafting your report on that mass grave?

14 A. No.

15 JUDGE AGIUS: Thank you.

16 Mr. Mitchell, how much longer do you think you will be because we

17 have another witness?

18 MR. MITCHELL: Half an hour at most.

19 JUDGE AGIUS: All right.

20 Okay. Will there be a re-examination, Mr. Zivanovic?

21 MR. ZIVANOVIC: Yes, Your Honours.

22 JUDGE AGIUS: And you, Mr. Ostojic?

23 MR. OSTOJIC: Not at this time, Mr. President.

24 JUDGE AGIUS: Thank you.

25 So we'll have a 25-minute break starting from now.

Page 22951

1 --- Recess taken at 10.31 a.m.

2 --- On resuming at 11.01 a.m.

3 JUDGE AGIUS: All right.

4 Mr. Mitchell.

5 MR. MITCHELL: Your Honours, during the break I was able to cut

6 down my cross-examination a little bit, and I only have one more topic to

7 cover with the witness.

8 JUDGE AGIUS: I thank you, Mr. Mitchell.

9 MR. MITCHELL:

10 Q. Professor, on Wednesday you were asked about some material that

11 you received in April 2008 and transcript reference 22777 you talked

12 about the material that you've received. And you said:

13 "I had a look at those eight DVDs, and at the end of my analysis

14 I was very precise. One of the DVDs -- there were eight of them, one of

15 the DVDs, the first one, for example, has ten folders and each folder

16 contains a number of files and a huge quantity of photographs. When I

17 was preparing for this testimony I printed out one case or rather one

18 file and it consists of 22 pages. It's the smallest file. And here you

19 can see that this file concerns autopsies that were performed in, let's

20 say, Potocari exhumation on the 25th of April, 2006; and it was not

21 possible for me to analyse any of these documents, I could only prepare

22 it physically or rather bring it here so I can show it to you and tell

23 you how many autopsies are concerned. This was done under the

24 supervision of the cantonal prosecution of the Tuzla canton."

25 Now, yesterday when you were discussing Dr. Haglund's conclusions

Page 22952

1 you said -- and this is at transcript -- yesterday's transcript page 23,

2 line 8:

3 "Certain explanations provided by Dr. Haglund are more or less

4 acceptable, but they have to tally with the other data arrived at once

5 DNA identification is complete and one we have personal identification.

6 We need to compare all the information we have with the date of

7 disappearance, the identity needs to be confirmed, and then all that

8 needs to be cross-referenced with the data contained in the autopsy

9 reports, the putrefaction changes, anthropological characteristics, it is

10 only then that we can arrive at a precise time of death."

11 Now, I want to briefly have a look at this 22 page report you

12 referred to yesterday, Professor. Can I please have 65 ter 3485 in

13 e-court.

14 Now, Professor, you've had a chance to briefly look over this

15 document, and this document contains ten -- ten autopsy reports of

16 remains exhumed from Potocari; correct?

17 A. Yes, I was just going through the numbers.

18 Q. Okay. I'd like to take a look at one of these autopsy reports

19 with you for case number POT 01 SRE 006 and it's on page 12 in that

20 document and page 1 in the English. Now, I'd just like to run through

21 this report with you and ask you a couple of questions. Now, on page 12,

22 Professor, can you tell us -- describe what's under the heading document

23 "Dokumenti"?

24 A. This is not the document. This one has to do with SRE 001. I

25 believe you said 006.

1 Q. That's correct.

2 MR. MITCHELL: Page 12 in the B/C/S. Just down the bottom of the  
3 page.

4 Q. Just under this heading here, Professor, "Dokumenti." It's page  
5 2 in the English. If you can just describe what the information under  
6 this heading tells you.

7 A. It says documents, description, and place of finding. Then it  
8 says parts of documents, "Kundenkarte" --

9 THE INTERPRETER: Interpreter's correction.

10 THE WITNESS: [Interpretation] Part of a document, customer card  
11 with a name of Hasib Cavkusic in a grey wallet. Other items: A men's  
12 ring with a square plate and C. Hasib engraved on it.

13 Q. Okay.

14 MR. MITCHELL: If we can go to page 14 in the B/C/S now, page 3  
15 in English.

16 Q. Now, Professor, what can you tell us about the information that's

17 on heading D., the other observations?

18 A. "Evidence of injuries: None." Then I have a subheading:

19 "Other observations: Damage and defect of the supraspinatus and

20 infraspinatus fossa of both scapulae, post mortem damage to the ribs on

21 both sides and a thoracic vertebrae, damage of a large part of a pubic

22 symphysis on the right pubic bone and a pelvis, damage to the left side

23 of a median of ala of the ilium of the pelvis, remains of a secondary

24 mummified tissue. Deformities and old fractures: None. Internal

25 findings: Unknown. Material evidence: Projectile."

Page 22954

1 And then there is a mention of a right femur, et cetera.

2 Q. What does this report tell you about the manner of death, can you

3 include anything from this, Professor?



4 A. Do you mean the cause of death or manner of death?

5 Q. Cause of death.

6 A. Cause of death, the person doing the autopsy on the first page of

7 the report says "unascertained" as regards the cause of death. I'm

8 reading this for the first time, and without going into any detailed

9 analysis of additional information I cannot arrive at any conclusions

10 except that it was a male corpse, as stated here in the anthropological

11 characteristics and based on this material it would be highly

12 insufficient.

13 If I may, I wanted to comment briefly. Damage and defects of the

14 bones, but there's no description of what type of damage or defect to the

15 bones there was. As I said yesterday, if there is a defect it needs to

16 be described, rectangular under the right angle, elongated, circular, et

17 cetera. This is merely an assertion that there was something, there was

18 a general defect on both scapulae, and that's it. Then it says internal

19 findings: Unknown. It cannot be unknown. It means that there were no  
20 organs because they had all decayed I suppose, then that  
21 internally/externally there was skeletonization and it should have been  
22 recorded as such. Therefore, it cannot be unknown, it is unknown  
23 globally viewed only because there were no organs, but that needs to be  
24 recorded then, one needs to say there were no organs left. And it says  
25 that a projectile was found, but what does it actually mean? Where from?

Page 22955

1 I'm not talking about ballistics, I'm talking about whether it was taken  
2 out of a bone, of the body, was it found next to the body? And when you  
3 have all that written down the way it was, there was nothing else for the  
4 person to conclude than to say that the cause of death was unascertained.  
5 It was a very superficial description, and I'll stick with that term.  
6 Q. Okay. Now, I'd like to take a look at a couple of other

7 documents with you, which as you've said may help to illuminate or

8 illustrate what happened to these individuals.

9 MR. MITCHELL: Your Honour, can we go into private session,

10 please?

11 JUDGE AGIUS: Certainly, Mr. Mitchell.

12 Let's go into private session for a short while, please.

13 [Private session]

14 (redacted)

15 (redacted)

16 (redacted)

17 (redacted)

18 (redacted)

19 (redacted)

20 (redacted)

21 (redacted)

22 (redacted)

23 (redacted)

24 (redacted)

25 (redacted)

Page 22956

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11 Pages 22956-22958 redacted. Private session.

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Page 22959

1 (redacted)

2 (redacted)

3 (redacted)

4 (redacted)

5 (redacted)

6 (redacted)

7 [Open session]

8 JUDGE AGIUS: Yes, the Prosecution has finished its

9 cross-examination and we are back to Mr. Zivanovic for his re-direct.

10 MR. ZIVANOVIC: Thank you.

11 Re-examination by Mr. Zivanovic:

12 Q. [Interpretation] Professor, I will start with the San Antonio

13 report that you were asked about by my learned friend the Prosecutor. He

14 quoted part of that report at page 7, where it is stated that

15 Professor Haglund was exonerated and that the work was conducted

16 adequately and properly. I wanted to read a few things from that report

17 and ask for your professional interpretation. I will start with the

18 San Antonio report -- [In English] Page -- just a moment. Yes, it is

19 2D70, page 7, findings.

20 [Interpretation] I will read out two or three initial sentences.

21 [In English] "The responses of the witnesses did not indicate any

22 wrong-doing on the part of Dr. Haglund or anything regarding the

23 excavations that jeopardized based on scientific validity. The

24 pathologists who were working in the morgue made no complaints about the

25 exhumation of the bodies or the conduct of pathologists who were working

Page 22960

1 in the morgue or at the grave-sites; rather, it became apparent that the

2 main problems with the exhumations were administrative and logistic.

3 Whether real or imagined, there were concerns regarding international

4 politics imposing a great deal of pressure on the teams to complete the

5 exhumations quite rapidly."

6 [Interpretation] From your professional point of view, tell me

7 what is your understanding first of all of the pressure, whether real or

8 imaginary by international politics, as stated here, to complete the

9 exhumations quite rapidly?

10 A. If you're asking me to comment on that, I will have to go beyond

11 the scope of my profession. I'd rather not comment on it. It would be

12 better for the person who drafted this report to comment on it to say

13 something further about such pressures if there were any, indeed.

14 Q. Thank you. You saw the part of it referring to Dr. Haglund, and

15 let us now move to page 11 of the report, item 9.



16 [In English] "There was too much subjectivity and not enough

17 objectivity in the performance of the exhumations and post mortem

18 examinations."

19 [Interpretation] In the paragraph we read a moment ago and in

20 this item, do you see certain inconsistencies between the two?

21 JUDGE AGIUS: Yes, Mr. Mitchell.

22 MR. MITCHELL: Your Honour, this was asked and answered and

23 covered in some detail in the direct.

24 JUDGE AGIUS: Yes, Mr. Zivanovic.

25 MR. ZIVANOVIC: No, these inconsistencies were not subject of my

Page 22961

1 direct.

2 JUDGE AGIUS: Where was it asked and answered, Mr. Mitchell?

3 Could you pin-point the part of the transcript where you believe that

4 happened?

5        Shall we proceed, Mr. Mitchell?

6        MR. MITCHELL: Yes, Your Honour.

7        JUDGE AGIUS: Okay. Let's proceed.

8        Professor, can you answer that question, please?

9        THE WITNESS: [Interpretation] If we compare what it says under

10    point 9 with what you read out previously, then quite obviously there is

11    a slight collision in the whole report, this report, this one here.

12    However, I wish to state again that I would prefer remaining within my

13    profession which is forensic medicine. Now, in this point 9, I said that

14    in a way it is consistent with my report, my analysis, of the individual

15    cases, where I showed that it was insufficiently described and that

16    certain conclusions were made that were more subjectively rather than

17    objectively documented, and so on and so forth.

18        MR. ZIVANOVIC: [Interpretation]

19 Q. My learned friend Mr. Mitchell also asked you whether Dr. Haglund  
20 in his collective reports relied on photographs and his observations in  
21 the field, and that's to be found on page 21, line 15, of today's  
22 transcript. Now, what I'd like to ask you is this -- or rather, I'd like  
23 to show you an excerpt from the report, so may we go back to page 7 now,  
24 please, it was on our screens. And I'd like to focus on item 3 which  
25 reads as follows:

Page 22962

1 [In English] "Having two sites open at the same time caused  
2 severe logistic problems in transportation and equipment. Dr. Haglund  
3 often spent hours driving between the sites. That impeded his ability to  
4 routinely supervise the work being done."

5 [Interpretation] My question to you is this, Professor Dunjic:  
6 Could that have affected the fact that Dr. Haglund noticed certain things  
7 which later on were not noticed or recorded in the findings at autopsy?

8 A. Very possible.

9 Q. Now let's move on to the next page, please, page 5 -- or rather,

10 item 5 on the next page, page 8, item 5 on our screens, please. It reads

11 as follows:

12 [In English] "There had been some pressure to standardize the

13 cause and manner of death statements on autopsy reports. We believe this

14 has been corrected and at this point does not remain a problem for ICTY

15 in the prosecution of war criminals in the former Yugoslavia."

16 [Interpretation] Can you now tell me whether you consider -- or

17 rather, whether what it says here, this standardization of the cause and

18 manner of death, whether you can see in that any similarity with your

19 conclusion to the effect that in certain conclusions based on the autopsy

20 reports that you mentioned here killings were mentioned as the cause of

21 death, although there were no grounds to make that conclusion in the

22 analysis itself?

23 A. Well, I've already addressed that issue, that due to

24 inconsistency in the findings with respect to the cause of death that

25 there is -- there are observations made about the manner of death, which

Page 22963

1 does not emanate from the objective findings, and I illustrated that on

2 the basis of examples yesterday. So I don't want to go back to what we

3 mean by cause of death and manner of death. We discussed that

4 previously. Now, in this report it says that that was put right,

5 corrected, and that that would no longer be done in future as far as I

6 understand this paragraph. That is to say that something was previously

7 done and Haglund in his report testified to that, and I quoted from the

8 report, not have to repeat that, but that this something was corrected.

9 So that would be my comment.

10 Q. Thank you. Now, it also referred to the difficult situation in

11 which Dr. Haglund and the others on the team worked in 1996, and that's

12 on page 12, line 20, of today's transcript. I'd like to ask you now if

13 you can remember where, physically speaking, these autopsies were

14 conducted that were the subject of your analyses?

15 A. They were conducted in Visoko, unless I'm very much mistaken,

16 which is a site, a locality - I think this occurs near Tuzla,

17 geographically I'm not quite certain but in that general area - and there

18 was a site there where the bodies were brought in from different sites,

19 different locations, where conditions existed. I think there was a

20 hangar that was there where the autopsies were conducted and all the

21 other procedure attending autopsies.

22 Q. Tell me, please, at that time and at the places where the

23 autopsies were conducted, was there a war going on? Were there any

24 conflicts, fighting, that was -- the year was 1996, wasn't it, after the

25 Dayton Accords?

Page 22964

1 A. Well, I really don't know. I don't know whether there was any  
2 fighting or not, but in 1996 -- well, before that I was -- well, in 1996  
3 I was with Mr. Haglund at Ovcara, and he told me that he would be going  
4 to Srebrenica afterwards. So that's when I learned from him -- or  
5 rather, not to Srebrenica but to Bosnia, that's what he said. So that's  
6 when I learnt that they would be going, but if I were to make a  
7 comparison I don't know what the conditions were like on site, but that  
8 was when there was not a war going on.

9 Q. Thank you. I'd now like to ask you the following linked to an  
10 exhibit shown you by Mr. Mitchell on page 33, line 22, he showed you a  
11 photograph and the number is 3009, it's a Prosecution exhibit, so may we  
12 have a look at it again.

13 You told us that you saw the headings on the photograph that

14 we're dealing with, bodies, and I'd like to ask you as a forensic expert

15 whether a photograph like this could tell you anything about the number

16 of people killed there, for example?

17 A. No.

18 Q. And could it tell you, for example, the manner in which they were

19 killed or died?

20 A. No, no, you can't do that from this photograph, you can't make

21 those conclusions. All you can see is the general area where the bodies

22 were found, how many bodies and how they came to their death, you can't

23 say anything about that.

24 Q. As a professional forensic expert, is this photograph something

25 you would take into account in establishing the number of bodies, for

Page 22965

1 example, and establishing the cause of death and all the rest?



2 A. No. I'm guided as an expert exclusively by individual cases and  
3 analysis of each of these cases individually. So -- well, I'm not  
4 somebody who can assess that on a surface area you have such and such a  
5 number of people. If an expert who is able to analyse this  
6 superficial -- or rather, this photograph of this kind and then can tell  
7 you that his estimation was that there are 500 bodies on the photograph,  
8 where I have autopsy findings for 200 bodies, then I can only evaluate  
9 that through the number of bodies ascertained. But as a forensic expert,  
10 if you want me to discuss this, that's absolutely impossible.

11 Q. In this connection let me ask you this: As a forensic expert,  
12 does it mean anything to you if, for example, a man would come and  
13 acknowledge that he had taken part in executions and said that there were  
14 more than a thousand people? Would that be a relevant piece of  
15 information for you to take this number and then take that as being the  
16 cause of death, the manner of death?

17 JUDGE AGIUS: One moment, because it's not a fair question.

18 In respect to what?

19 MR. ZIVANOVIC: Sorry?

20 JUDGE AGIUS: In respect to what? Someone comes over to the

21 witness and says or the witness comes to know that --

22 MR. ZIVANOVIC: Sorry --

23 JUDGE AGIUS: In respect to what, to a particular burial site?

24 MR. ZIVANOVIC: Yes, yes.

25 JUDGE AGIUS: But you need to be specific. I mean, you can't

Page 22966

1 be --

2 MR. ZIVANOVIC: Yes, Your Honour.

3 JUDGE AGIUS: We are not talking of how many people were executed

4 at any given time in any given place; we're talking about forensic

5 examinations of recovered bodies. That's what we're talking about.

6 MR. ZIVANOVIC: It was subject of cross-examination. I'm

7 strictly -- stick to this --

8 JUDGE AGIUS: Anyway --

9 MR. ZIVANOVIC: -- subject.

10 JUDGE AGIUS: -- just be more specific. Of course you can ask

11 the question, but you need to be more specific.

12 MR. ZIVANOVIC: [Interpretation]

13 Q. The Prosecutor on page 34, line 10, mentioned Erdemovic,

14 Drazen Erdemovic, who testified here and who was convicted, as was

15 stated, for having taken part in the execution of over a thousand men and

16 who said how those people died. He asked you that within the same

17 context that I'm putting your question to you. So my question to you

18 within that context is should that have any bearing on your own work as a

19 forensic pathologist with regards to the establishment of the number of

20 people, the cause and manner of death, and so on?

21 A. Mr. Zivanovic, I'll try and be brief in my answer and I'll answer

22 in the same way that I answered the Prosecutor. All I'm interested in is

23 facts, it's only facts that are valid for me to interpret them. Now,

24 from the entire statement and testimony regardless of what the number is,

25 the only relevant fact which I will retain in my head is that they were

Page 22967

1 executed -- or rather, that they were hit by fire-arms, not to mention

2 execution or anything. So from the whole statement the only thing that

3 is relevant for me is the number if the number was mentioned by him and

4 the way in which this was done. Now, through individual reports I will

5 be able to see and provide proof and evidence to you on the basis of

6 which you as the Trial Chamber will conclude whether his statement and

7 testimony is valid or not. Do I make myself clear? The only valid thing

8 for me is what I can see and the observations I can make, the diagnosis I

9 can make and confirm that there were injuries caused by fire-arms.

10 Q. In response to a question from the Prosecutor on page 36 now,

11 line I think it was 25 onwards, going on to page 37, you said that when

12 you compiled your report, you did not have the statements and photographs

13 that we discussed. Now, is that necessary to offer you to give your

14 forensic opinion, your medical opinion, about the value of the findings?

15 A. No, I don't need statements or testimony. They are relevant just

16 as a piece of information as to whether one type of weapon was used. So

17 just in that area is the statement important and significant. For

18 example, I mentioned that the witnesses saw skeletonized decomposed body,

19 that was interesting for the decomposition that took place, putrefaction,

20 and that they said they were shot at by the PAM-type weapons, artillery

21 weapons, that there were explosions, that there was shooting from other

22 types of fire-arms. So these fire-arms leave their marks on a body, and

23 I try on the basis of my autopsy findings and observations looking at the  
24 corpse to provide evidence to the Court whether that was what happened or  
25 not. So if the Court asked me were there injuries caused by explosions,

Page 22968

1 my answer would be yes because on such and such a corpse we found  
2 explosive injuries, shells, charring of the body, and so on and so forth,  
3 which would be evidence for the Court. But it's not up to me to assess  
4 the statement and testimony of individuals; that just serves as a piece  
5 of information which I can check out and establish. If I cannot do that,  
6 then the witness can think up anything he likes, invent anything he  
7 likes, or he might be telling the truth. Everything will depend on the  
8 autopsy findings.

9 Q. On page 22, line 10, the Prosecutor put to you a question about  
10 ligatures which were associated with the bodies, that was how it read in

11 the original, I don't know what interpretation you received. But could

12 you now tell me, please, how you understood this, the word "associated,"

13 did you understand it as the ligatures being tied to the bodies or that

14 the ligatures were in some way linked to the bodies and associated with

15 the bodies in that way?

16 A. Well, my interpretation would be that the ligatures were linked

17 to the bodies or found near the bodies or by the bodies, because if you

18 say that somebody was tied then you know what was -- what can be tied,

19 arms, legs, heads, and so on; or they were exhibits attached to the body

20 because they were found next to the body in a given site, somebody might

21 have taken them off the body and sent the body without the ligature. I

22 don't know that, I cannot know that. I understood it as the ligature

23 being connected to the body or linked to the body, just as other things

24 could be linked to the body such as glasses, a cap, a comb, falling out

25 of the clothing the person was wearing, and then all of this is marked

1 and then they say all these objects were found with body number so and

2 so, and this is recorded.

3 Q. And just one more question linked to Dr. Haglund. Tell me,

4 please, when collective reports are compiled, is the right method from

5 the forensic point of view to include in those collective reports the

6 personal observations of the person compiling such reports, regardless of

7 whether something like that was not observed in the individual autopsy

8 findings? And I am specifically referring to -- well, you were asked a

9 question here on page 21, line 15, that Dr. Haglund in the compilation of

10 these reports relied on photographs and from his own weighing-up of the

11 situation in the field.

12 A. Let me tell you, reports can be objective and subjective, but

13 when you compile a collective report from one site, one locality, it has



14 to be highly objective without any subjective elements because then it is  
15 no longer conclusions that are made but a subjective opinion of the  
16 person compiling it or drafting it. But those opinions must also be  
17 based on precisely established facts. So in principle, the subjective  
18 point of view must be eliminated as far as possible and the report must  
19 be based in objectively established facts.

20 Q. And just one more thing that I'd like to ask you and for us to  
21 clarify here. In response to my questions and questions from the  
22 Prosecutor, you said that you didn't have sufficient time to analyse all  
23 the autopsy findings, those up until 2001 as well as those that came in  
24 later on and that were conducted by the authorities of  
25 Bosnia-Herzegovina. Now, I'd just like to ask you to clarify this point.

Page 22970

1 When you said you didn't have enough time, does that mean that you didn't  
2 have enough time because you were too busy with other matters, engaged in

3 other work, or because you didn't have additional time given by us

4 Defence teams because we couldn't provide you with a larger number of

5 working hours?

6 A. Well, the latter. I wasn't given more hours, and of course I am

7 very busy doing my own work as a professor and forensic expert. So I was

8 given a certain number of hours, and it was within that number of hours

9 allotted to me that I did the work, although I did -- I put in many more

10 hours of work than the allotted time in order to compile a report that

11 could be useful to this Trial Chamber. So that what the Prosecutor put

12 to me and showed me, the report that I subsequently received and that's

13 why I printed out so that you could see it physically, I need a certain

14 amount of time because it concerns ten bodies. And I read case number 6,

15 for example, for the first time and ad hoc noticed certain points that I

16 would have to explain why I think they should be this way and not the

17 other way. And there are many such reports. I don't know the total  
18 number of exhumations and records and photographs, I don't know what the  
19 number is up until April 2008. So I could do that within a reasonable  
20 space of time allotted to me, and depending on the time given me I will  
21 do my best and can compile a report which will be useful to you in order  
22 for you to be able to assess what was done later on, from 2002 to 2008.

23 Q. Thank you, Professor, I have no further questions.

24 MR. ZIVANOVIC: No more questions.

25 JUDGE AGIUS: Thank you so much, Mr. Zivanovic.

Page 22971

1 [Trial Chamber confers]

2 JUDGE AGIUS: You will be glad to know that we don't have any  
3 further questions for you, Professor, and that after three days of solid  
4 testimony you will now have the opportunity to return back to your home.  
5 However, before you leave this courtroom, on behalf of the Trial Chamber

6 I wish to thank you so much for being so kind to come over and give

7 testimony, which I must say I found extremely, extremely interesting.

8 And on behalf of everyone here present, I wish you a safe journey back

9 home.

10 THE WITNESS: [Interpretation] I would like to thank the Chamber

11 and everyone else and apologise at the same time if sometimes I went off

12 on a tangent. That's what professors often do. Thank you.

13 JUDGE AGIUS: That's well-known and that's why it's tolerated

14 here. Thank you.

15 [The witness withdrew]

16 JUDGE AGIUS: So documents, Mr. Zivanovic.

17 MR. ZIVANOVIC: We provided a list, Your Honours.

18 JUDGE AGIUS: Yes.

19 We have the list here, I don't need to read it out.

20 Mr. Mitchell, do you have any objections?

21 MR. MITCHELL: No objections, Your Honour.

22 JUDGE AGIUS: Okay. Thank you.

23 Any objections from any of the other Defence teams ? They are

24 all admitted.

25 Mr. Ostojic, I suppose you don't have any documents, do you?

Page 22972

1 MR. OSTOJIC: That's correct, Your Honour, we do not.

2 JUDGE AGIUS: Thank you.

3 Mr. Mitchell.

4 MR. MITCHELL: We have five documents, Your Honour, 65 ter number

5 3002D.

6 [Prosecution counsel confer]

7 MR. MITCHELL: That's the extract that was placed on the ELMO.

8 JUDGE AGIUS: Mm-hmm.

9 MR. MITCHELL: 65 ter 3474, just the part of Dr. Dunjic's prior

10 statement that I read out; 3485; 3486; and 3487.

11 JUDGE AGIUS: Okay. Thank you, Mr. Mitchell.

12 Any objections?

13 MR. ZIVANOVIC: No objections, Your Honour.

14 JUDGE AGIUS: Any objections from any of the other Defence teams?

15 None. So they are also admitted.

16 This brings us to the next witness.

17 Do you wish to make any statements before he is ushered in? Yes,

18 Madam Tapuskovic.

19 MS. TAPUSKOVIC: [Interpretation] Thank you, Your Honour. Good

20 morning. I just wanted to address the Chamber briefly. In the proofing

21 for this witness, with this witness, we received some documentation at

22 the last minute, and I subsequently added them on to our 65 ter list.

23 However, due to the pace of work, we did not formally request that the 65

24 ter list be expanded. In agreement with the Prosecution colleague who

25 will be examining the witness, she said that she would not object to

Page 22973

1 that. That is why I'm making our request formally in this way, I'm

2 requesting that the list be expanded initially for the documents to be

3 used with the witness and later on tendered.

4 JUDGE AGIUS: Okay. Thank you.

5 Ms. Janisiewicz to you confirm that?

6 MS. JANISIEWICZ: Good morning, Your Honour, yes, I do confirm

7 that.

8 JUDGE AGIUS: I don't think we need to waste time identifying

9 these documents and we can proceed since there is no problem.

10 Meantime, while the witness is being ushered in, Mr. Zivanovic,

11 going through our records we discovered again -- not discovered, realized

12 that we need to crystallise a little bit the situation in regard to what

13 was supposed to be Witness Milka Ilic. It's not clear to us whether you

14 have definitely abandoned the idea of --

15 MR. ZIVANOVIC: Yes.

16 JUDGE AGIUS: In which case what we would like you to do is to

17 formally announce while you are standing withdraw her from your 65 ter

18 witness list?

19 MR. ZIVANOVIC: Yes, Your Honour, I withdraw her from our Rule 65

20 ter list.

21 JUDGE AGIUS: Thank you.

22 The other thing, Mr. McCloskey, we received this morning motion

23 tabled by or filed by Ms. Nikolic on behalf of Dragan Nikolic for the

24 addition of two documents to the 65 ter list in relation to the witness

25 who will be coming next week, Professor or Dr. Vuga. If you could



1 possibly give your response to that motion today, if you are in a  
2 position to do so; filing which, on Monday which would be the latest, as  
3 we need to know what the position is before he starts giving evidence.

4 MR. McCLOSKEY: Yes, Mr. President, I've seen those, spoken  
5 briefly to Ms. Nikolic, and I have no objection.

6 JUDGE AGIUS: Okay. So we are deciding the motion here and now  
7 orally. The motion is granted, amongst other reasons for the fact that  
8 it's not being opposed by the Prosecution.

9 [The witness entered court]

10 JUDGE AGIUS: Dobar dan, Gospodine Stojkovic.

11 THE WITNESS: [Interpretation] Good afternoon.

12 JUDGE AGIUS: And you are most welcome as an expert witness  
13 produced by or brought forward by Mr. Zivanovic, that being the Defence  
14 team for accused Vujadin Popovic in this case. Before you start giving

15 evidence our rules require that you make a solemn declaration that you

16 will be testifying the truth. It's going to be handed to you now by

17 Madam Usher, please read it out aloud and that will be your solemn

18 undertaking with us.

19 THE WITNESS: [Interpretation] I solemnly declare that I will

20 speak the truth, the whole truth, and nothing but the truth.

21 JUDGE AGIUS: Okay. I thank you, Professor. Please make

22 yourself comfortable.

23 You will first be asked some questions by Mr. Zivanovic who will

24 introduce himself further and he will then be followed by -- my apologies

25 to you, Madam Tapuskovic, also counsel in the Defence team mentioned to

Page 22975

1 you. She will then be followed by others on cross-examination.

2 Madam Tapuskovic.

3 MS. TAPUSKOVIC: [Interpretation] Thank you, Your Honour.

4 WITNESS: OLIVER STOJKOVIC

5 [Witness answered through interpreter]

6 Examination by Ms. Tapuskovic:

7 Q. [Interpretation] Good afternoon, Mr. Stojkovic. I have to

8 introduce myself. My name is Mira Tapuskovic, and I am on the Defence

9 team of Mr. Vujadin Popovic. During your testimony I would like to ask

10 you to speak slowly so that everything you say due to the specific

11 terminology that you will be using can be entered in the transcript

12 accurately.

13 First of all, tell us your first and last name.

14 A. My name is Oliver Stojkovic.

15 Q. Tell us something about your educational background, please.

16 A. I completed molecular biology, that was my BS; and after that, I

17 had my master thesis and doctoral thesis at the medical school of

18 Belgrade University in the field of molecular genetics.

19 Q. What was your professional clear from the moment you completed

20 your education?

21 A. First I worked at the biological research institute as the

22 research assistants. After that, I worked at the school of biology,

23 Belgrade University, and I was an assistant teacher of molecular

24 genetics. I taught for five years at the school of biology, after which

25 I got employment with the medical school of Belgrade first as a senior

Page 22976

1 research assistant and as of 2006 I am a professor of human genetics at a

2 human genetics chair of the school; and I'm also quite active in the

3 various associations of the Belgrade University.

4 Q. I would have to ask you to speak a bit more slowly since

5 everything needs to be recorded in the transcript.

6 As regards this case, can you remember when you were engaged for  
7 the first time by Mr. Popovic's Defence team?

8 A. I cannot recall the exact date, but I believe it was in early  
9 2008.

10 Q. Thank you. And for this case you drafted a report that you  
11 submitted to us?

12 A. That is correct.

13 Q. It is Exhibit 1D1069. With the report we also have the expert's

**Kommentar [M1]:** We should try to get the report

14 CV.

15 Mr. Stojkovic, during your professional career, as you described,  
16 in the course of your work, did you cooperate with the International  
17 Commission for Missing Persons from Sarajevo?

18 A. Yes. As of 2010 [as interpreted] and until August 2006 I believe

19 I worked as the national coordinator of the DNA programme of the ICMP.

**Kommentar [M2]:** Possible conflict of interest?

20 Q. What kind of work was it? Were you an employee of the ICMP or

21 did that cooperation take part in somewhat different conditions?

22 A. I was never an ICMP employee --

23 JUDGE AGIUS: Yes, Ms. Janisiewicz.

24 MS. JANISIEWICZ: Yes, if we could just clarify the dates,

25 they're a bit unclear from the transcript.

Page 22977

1 JUDGE AGIUS: Yes, thank you.

2 Ms. Tapuskovic, which period of time are you referring the

3 witness to?

4 MS. TAPUSKOVIC: [Interpretation] I will repeat my question.

5 Q. Can you remember when you started working -- when you started

6 your cooperation with the ICMP from Sarajevo?

7 A. I might not be able to remember the exact date, but I do believe

8 that it was in 2002 in June I began cooperating with the ICMP. That

9 cooperation was concluded in August 2006. I have to stress again that I

10 cannot recall the exact months. It may have been one or two months

11 before or after that date, but the years are as I stated.

12 Q. At the moment when you began working with the ICMP, where were

13 you employed and what was your position at the time?

14 A. As I've just tried to explain, I was an employee of the

15 University of Belgrade throughout. First I taught at the school of

16 biology and then at the medical school. In that regard my academic

17 career and my full employment was with the University of Belgrade, and

18 that was never interrupted due to my cooperation with the ICMP.

19 Q. Can you give us more information about the contents and the

20 framework of your cooperation with the ICMP?

21 A. The ICMP offered to me to sign a letter of appointment.

22 THE INTERPRETER: Interpreter's note: The witness used the

23 English term.

24 THE WITNESS: [Interpretation] I don't know what the exact

25 translation is in B/C/S, as opposed to their regular employees which

Page 22978

1 signed letter of employment. My task with the ICMP had to do with

2 coordinating the DNA programme which was formally the title of my

3 position with the ICMP. The tasks I was assigned had to do with

4 occasional visits to the Sarajevo headquarters. Once a month we held

5 meetings on the topics of DNA programme development as well as

6 development of other ICMP programmes in the region covered by their

7 mandate.

8 Q. What is the region involved?

9 A. The ICMP was mandated to operate in the territory of the former

10 Yugoslavia. In that regard they covered the territory of Croatia,

11 Bosnia, Serbia, Kosovo, and Macedonia -- or rather, the territory of the

**Kommentar [M3]:** As admitted below, no DNA work was performed. What was the purpose of the Belgrade lab? To create the appearance of other activities besides Srebrenica?



12 former Yugoslavia where there were armed conflicts.

13 JUDGE AGIUS: One moment, one moment, Ms. Tapuskovic, because I

14 think we need to clear this up.

15 There is a bit of confusion here because one -- the witness

16 started off by indicating that he was the national coordinator for this

17 DNA project with ICMP, and then he stated that he was never -- I was

18 never an ICMP employee. Then he mentioned this letter of appointment and

19 it seems that, from what I could see from the transcript, that he used

20 the English term, the same words that I have used. Perhaps he could

21 explain to us whether what was exactly his role and whether he was on the

22 payroll of ICMP while he was conducting this role.

23 MS. TAPUSKOVIC: [Interpretation] Your Honour, yes, I was -- had

24 just asked that question which wasn't recorded in the transcript.

25 Q. Can you tell us the form that your involvement took, your

1 involvement with the ICMP. Did that mean that you changed your employer

2 and were you paid by the ICMP?

3 A. Throughout my involvement with the ICMP, I had not changed my

4 employer at any time, that is to say I was employed at the University of

5 Belgrade throughout. And at that time they were my employer and they

6 still are today, whereas my involvement with the ICMP, International

7 Commission for Missing Persons, was paid by the ICMP itself; and I

8 received remuneration for my work in the ICMP.

9 Q. Can I interpret that as being just one of the things you did, one

10 of your jobs?

11 A. In addition to my involvement with the ICMP, I was also engaged

12 in the commission for the reform of jurisdiction of the Ministry of

13 Justice of Serbia, the national commission for security, the Government

14 of Serbia, and many other organizations in which I was active and

**Kommentar [M4]:** Served as paid  
ICMP consultant

15 involved. And I was paid for my involvement on all these projects, in  
16 all these institutions.

17 Q. As we're talking about the ICMP's presence in Serbia, could you  
18 tell us in terms of equipment, laboratories, and so on, how did the ICMP  
19 function in Serbia?

20 A. The ICMP in Serbia had its offices and their job was to organize  
21 the collection of samples, blood samples, from the family and relatives  
22 of missing persons and a DNA laboratory, which was housed at the  
23 Institute for Forensic Medicine at that time. That's where the  
24 laboratory was located. Now, this particular laboratory was a donation  
25 from the International Committee for Missing Persons, it was a donation

Page 22980

1 to a Serb organization entitled the Coordination Centre for Kosovo and  
2 Metohija. And that laboratory, based on this donors' agreement or  
3 contract, although I didn't have an insight into those documents at the

4 time, but anyway it was handed over in 2006 to the Institute for Forensic

5 Medicines for the coordination centre for Kosovo and Metohija so that

6 they could use it all the time.

7 Q. When you say laboratory, what does this laboratory incorporate?

8 Does it mean the people working there, the premises, and so on. Tell us

9 what you mean when you say laboratory. What did it comprise of?

10 A. The DNA laboratory of the ICMP which was located at the Institute

11 for Forensic Medicine for the Faculty of Medicine of the University of

12 Belgrade incorporated a number of rooms and premises equipped with all

13 the necessary material and equipment for DNA analyses and forensic

14 procedure, and in addition to the premises which were suitable for that

15 type of work, it also had parameters for DNA analysis, it included

16 equipment, state-of-the-art equipment, the most modern equipment in

17 genetics and DNA analysis. And there was one employee working there,

18 working in the laboratory, which was not me.

19 Q. Now, in the space of the three years that you were involved and

20 working for the ICMP, could you tell us whether you as the coordinator

21 performed any DNA analysis at the request of the ICMP?

22 A. In the DNA laboratory of the ICMP, throughout that period of

23 time, not a single sample was sent in for DNA analysis so that neither I

24 nor my female colleague working in the ICMP ever performed DNA analysis

25 for the requirements of the ICMP or any other analyses for that matter.

**Kommentar [M5]:** So what was the point of the laboratory if it did not perform a single analysis?

Page 22981

1 Q. You said no other analysis either, right. Thank you.

2 The Defence teams working on this case and in this trial over the

3 years received many letters, tables, and reports which we provided to you

4 for you to be able to compile your report and which you enumerate in your

5 report. It is 1D1069. Could you please tell us now -- well, the lists

6 of all the documents we sent to you, can you tell us how you checked out

7 the authenticity and validity of the results in the documents provided

8 you.

9 A. The Defence team supplied me with a series of documents in

10 electronic form of which a number of documents related to standard

11 operational procedure in DNA laboratories of the ICMP, standards or SOPs,

12 and the second set of documents were lists with names and other

13 particulars of people who had gone missing and were allegedly identified

14 by means of DNA analyses. In addition to that, I was provided with a

15 number of other documents which were correspondence, for example, between

16 individuals included in this -- these proceedings as well as Dr. Parsons'

17 testimony, who is the active leader of the forensic programme of the

18 ICMP. I studied these in detail, I studied all the documents carefully,

19 all the documents I was sent; and I was not able to find the

20 corresponding parameters in them which would enable me to assess and test

21 the correctness of the findings of the ICMP in respect of the names,

22 matching them up with the names of people on the list that I was provided

23 with.

**Kommentar [M6]:** This statement has huge implications

24 Q. Could you please tell me what the standard elements are of a DNA

25 analysis so that one could test the validity of the analysis?

Page 22982

1 A. The SOPs imply, among other things, the name of the laboratory in

2 which the DNA analysis was conducted, the date of the samples, when the

3 samples were taken, the date the analysis was performed, and the date the

4 results were published. Next identificational features for biological

5 trace samples, and in this specific case the skeleton material of the

6 exhumed bodies and identifications and features of the family members of

7 the missing person. And in that the DNA analysis, the DNA analysis would

8 have to include genetic markers which were used in the specific analysis

9 conducted as well as DNA profiles established on the basis of an analysis

10 of the genetic markers from the DNA samples that were analysed.

11 Following that, and finally, in the DNA report you would have to

12 find a verbal description of the conclusion and an opinion stated which

13 must contain biostatistical calculations of the correctness of the

14 assertions made about identity and a conclusion of possibly established

15 identities on the basis of the biostatistical calculations made in that

16 way. You must also have the names of the people that carried out the

17 analysis, and I have to say those are all the elements that are

18 stipulated in the standard operating procedure, the SOP, for considering

19 report on whether DNA matches, DNA matching or not.

**Kommentar [M7]:** Presumably these requirements were not satisfied by samples furnished by ICMP? Or which were and which were not?

20 Q. You used the term genetic markers and biostatistical procedure,

21 those two terms. Can you explain them to us more fully. What do you

22 mean by genetic markers?

23 A. Genetic markers used in forensic genetics, as that branch of



24 science is called, are defined or were defined as early on as 1994 in the

25 United States of America. After a body that was set up and was called a

Page 22983

1 technical working group for methods of DNA analysis considered which

2 genetic markers of the hundreds of thousands of genetic markers that each

3 person has in his genetic make-up are necessary and should be analysed

4 for each person to be described individually through those genetic

5 markers.

6 Now, this technical working group arrived at a certain number and

7 it was 13 standard genetic markers that they pin-pointed and which are

8 used in the United States of America, and many other countries in the

9 world today, as standard forensic genetic markers for DNA analysis in

10 legal proceedings.

11 Now, as far as biostatistical calculations are concerned, they

12 are calculations based on populational and genetical analysis, the

13 frequency of certain combinations of states with respect to the analysis

14 of genetic markers for a given population for which it is believed that

15 the individual to be identified comes from.

16 Q. Tell us, please, DNA analyses and to what extent, are they used

17 in order to establish the identity of people in legal cases on the basis

18 of what you were able to see so far?

19 A. Well, yes, that's absolutely correct. DNA analyses have for a

20 number of years, for about 15 years, are the most important instruments

21 in the hands of the judiciary in order to identify persons who have left

22 biological traces on the site of the crime and that can be linked to a

23 crime committed and are found on the body or in the body of a witness, on

24 the body of the perpetrator of a crime, and so on and so forth. So DNA

25 analysis helps us -- has been helping us over the past two decades and

1 has become a very important instrument in solving criminal cases. In  
2 addition to that, DNA analysis is used in courts and in litigation  
3 generally in order to establish paternity cases and things of that  
4 nature. DNA analysis is also used in humanitarian aims, in the aim of  
5 identifying people who were killed in wars or natural disasters; for  
6 example, such as the Katrina hurricane disaster or the tsunami in  
7 south-east Asia or in wars and conflicts that have occurred in the former  
8 Yugoslavia, Iraq, and so on and so forth.

**Kommentar [M8]:** Scope of DNA analysis: identifying crime perpetrators, establishing paternity, and victim ID

9 Q. Thank you, Mr. Stojkovic. Now may we have on e-court document  
10 number 1D1221, and I'd like page 6 of the B/C/S and page 10 of the  
11 English to be displayed, please.

12 Mr. Stojkovic, I'm going to read out a portion from the paragraph  
13 where you address the Trial Chamber, it's the transcript, the audio  
14 recording, from the examination-in-chief of the court in Belgrade on the  
15 22nd of November, 2004, in the case 6/103 or case 6/03.

16 [In English] "I have here results of this electrophoresis in this  
17 particular case, and I can give them to the court if need be. So those  
18 are the results that are interpreted and cannot be forced later on in the  
19 sense that I cannot nor can anyone else make these device to place this  
20 pointed parts, spade, on this exact spot.

21 A. Forgeries, falsifications.

22 Q. [Interpretation] Mr. Stojkovic, you said here that you had some  
23 electrophoretic analysis that you provided to the Chamber. Can you tell  
24 us what that is?

25 A. Electropherograms represent the results of specific genetic

Page 22985

1 analysis from a specific biological sample analysed at each specific  
2 case. It is on the basis of these electropherograms that are collected  
3 together and stored in electronic form by the computer which is attached

4 to the system for electrophoresis, and it is on the basis of these

5 electropherograms that the computer with the help of two separate

6 softwares, software programmes, can create, is able to create with the

7 application of certain rules the DNA profile which represents a component

8 part of the DNA report. In the sense that the DNA report that I referred

9 to earlier on and which must necessarily contain the DNA profile can be

10 interpreted independently and autonomously only if with the DNA analysis

11 the electropherogram is supplied as well which shows concrete DNA

12 profiles for a given case.

**Kommentar [M9]:** Barely comprehensible

13 Q. Mr. Stojkovic, along with the documents we provided you with, did

14 we also provide you with the electropherograms?

15 A. No, I did not receive from you a single electropherogram,

16 although I have to mention that I received very little DNA reports as

17 well -- or rather, just three.

**Kommentar [M10]:** Referring to the Popovic case

18 Q. When you previously explained to us -- well, you used the term

19 biological trace and reference sample. Can you explain what you mean by

20 that, from your point of view, what is a biological trace and what are

21 reference samples?

22 A. According to the definitions of science, biological -- a

23 biological trace is the sample used for DNA analysis whose identity has

24 not yet been established. So this can be, as I said, biological traces

25 found on -- at the crime scene or if we're talking about the results of

Page 22986

1 an identification of a skeleton, biological traces would be parts of the

2 skeletal material, parts of the skeleton. On the other hand, reference

3 samples represent, specifically for DNA analysis, are samples taken most

4 often from the mucous swabs, from saliva, or blood samples taken from the

5 finger or veins from individuals whose identity has been established

6 without doubt in some other way. Reference samples during analysis and

7 professional studies are compared to samples -- or rather, biological  
8 traces taken at the crime scene from a given crime. And this kind of  
9 comparison is done through the help of biostatistical calculations, on  
10 the basis of which the expert will give his opinion as to the identity of  
11 the person who could have left a biological trace. And in this type of  
12 case the identity of the person to which the skeleton sample belongs.

13 Q. Tell us, please, must these electropherograms be made for every  
14 biological trace and every reference sample?

15 A. As a rule, before all the courts in Serbia, as well as before all  
16 the courts in the United States of America, such electropherograms must  
17 be made available to the e-courts themselves and all the parties to a  
18 proceeding, that's to say both the prosecution and the defence, so that  
19 every side could hire their own respective experts who would then check  
20 the trust-worthiness of DNA profiles taken and of the biostatistical  
21 calculation taken as well as of the expert opinion given by the expert

22 who had already testified in a given case.

**Kommentar [M11]:** Fair enough, but the electropherograms are pictures not the samples themselves. Does not analyzing them instead of physical samples presuppose faith in the integrity of the provider of these electropherograms?

23 JUDGE AGIUS: I think we all deserve a break now. 25 minutes,

24 please. Thank you.

25 --- Recess taken at 12.32 p.m.

Page 22987

1 --- On resuming at 12.58 p.m.

2 JUDGE AGIUS: Madam Tapuskovic, you may proceed, please.

3 MS. TAPUSKOVIC: [Interpretation] Thank you, Your Honour.

4 Q. Mr. Stojkovic, let us resume where we left it off. I have to

5 alert you to the fact that you have to speak slowly so that everything is

6 entered into the transcript. I will continue dwelling on this document,

7 which is 1D1221, we have it on our screens. This is the English

8 version -- or rather, page 10 of the English version, and page 6 of the

9 B/C/S version.



10 This is what the transcript reads: "It is established that

11 Dr. Stojkovic submitted to the court. What is this?"

12 Dr. Oliver Stojkovic, expert witness speaks: "Electropherograms

13 with marked DNA profiles obtained through the analysis of the sent

14 biological samples."

15 Next follows a question by the Presiding Judge: "This can remain

16 in the case files?

17 "Dr. Oliver Stojkovic, expert witness: That is right. It exists

18 in electronic form in my computer and countless originals can be made of

19 it if necessary."

20 Tell us, please, you said there that electropherograms were made

21 and stored in electronic format. Can you tell us what this is like?

22 A. Electropherograms are, in fact, electronic documents containing

23 information on all the established signals based on electrophoresis of

24 the then-DNA molecules based on the specific biological trace provided or

25 the specific reference sample provided. This electronic form can be

Page 22988

1 printed out on paper and thus a hard copy can be produced of a specific

2 electropherogram, which can also be used at a later stage to verify the

3 reliability of the analysis carried out.

4 The electronic format itself contains additional information,

5 however, which are not visible in hard copy. For this reason in most of

6 the cases I was asked and submitted to the Court information in

7 electronic form rather than in hard copy. In this specific case I

8 submitted a hard copy because I was not requested to provide them with an

9 electronic copy.

10 Q. Can you tell us why it is important to have electropherograms in

11 court proceedings?

12 A. The DNA analyses, because they are widely used in court

**Kommentar [M12]:** Does hard copy mean actual biological sample?

13 proceedings and because they carry a great probative value in criminal

14 proceedings and litigations alike --

15 JUDGE AGIUS: Yes, Ms. Janisiewicz.

16 MS. JANISIEWICZ: Yes, Your Honour, we're going to object to this

17 line of questioning on relevance grounds. We have no information that

18 that has been requested.

19 JUDGE AGIUS: Yes, Ms. Tapuskovic, would you like to comment?

20 And in commenting can you indicate the relevance of this line of

21 questions, please.

22 MS. TAPUSKOVIC: [Interpretation] Your Honours, when Witness

23 Parsons was heard, that was on the 1st of February, 2008, he was asked

24 about whether he had brought along electropherograms to present and

25 produce to the Court, his answer was in the negative, that was page

Page 22989

1 20911. What the significance of electropherograms is, is something that

2 the witness has just been explaining to us. He's been explaining to us

3 what their probative value is.

4 JUDGE AGIUS: Yes, Ms. Janisiewicz.

5 MS. JANISIEWICZ: Yes, Mr. President, our understanding is that

6 they've never asked him to provide - him being the ICMP - to provide

7 electropherograms nor have they ever requested them from us.

8 JUDGE AGIUS: Is that correct, Ms. Tapuskovic?

9 MS. TAPUSKOVIC: [Interpretation] No. Your Honour, this was

10 not -- or rather, it -- he was asked that. My further questions will

11 make it clear to you why this line of questioning is important. We want

12 to see in what form electropherograms are made and in what form DNA

13 reports are made, and what it is that the Defence can glean from these

14 electropherograms. The Defence did ask for these electropherograms, but

15 they were denied and I can't recall exactly when this was.

**Kommentar [M13]:** Not a good answer. Should be able to cite the formal request if there was one

16 MS. JANISIEWICZ: Yes, we would be interested in more information  
17 as to when that request was posed and whether it was posed to the Office  
18 of the Prosecutor or to the ICMP directly.

19 MS. TAPUSKOVIC: [Interpretation] Your Honours, we can check that  
20 at a later stage. I can't give you the information as to when the  
21 request was made. I didn't think that this was going to become an issue,

22 but the Prosecution should tell us whether they do have the

23 electropherograms or not. The question put to Mr. Parsons was whether he

24 had submitted electropherograms to the Tribunal, and his answer at that  
25 page of the transcript was that he had not submitted electropherograms to

Page 22990

1 the ICTY.

2 JUDGE AGIUS: Yes, Ms. Janisiewicz.

3 MS. JANISIEWICZ: No, I -- we have not requested

4 electropherograms from the ICMP. We in certain instances for certain

**Kommentar [M14]:** A great example of defence frivolity generally at ICTY

5 reasons were provided with some matching reports, but that has not been

6 an issue that we've sought additional material from them on.

7 JUDGE AGIUS: Right --

8 MS. JANISIEWICZ: And may --

9 JUDGE AGIUS: Still, if the situation is what has been described,

10 even though the two versions do not exactly tally, why do you still

11 object to the question put by Ms. Tapuskovic asking from the witness,

12 from the expert witness, information as to why electropherograms would be

13 useful?

14 MS. JANISIEWICZ: Well, Mr. President, our apologies for not

15 having the exact transcript reference, but our understanding of

16 Mr. Parsons' testimony was that he stated that electropherograms could be

17 used, they are the raw data; however, it's also possible to rely on the

18 established record of the institution and thus --

**Kommentar [M15]:** How can the prosecution pursue its case without having requested and examined such key evidence? Tallies with the admission of prosecutor in Karadzic that ICMP did not show DNA data to the prosecution (Prosecutor v. Karadzic), Status conference, 23 July, 2009, p. 364, lines 21–23)

**Kommentar [M16]:** Established record of the institution is a euphemism for taking it on faith. Cross-check Parson's statement on this issue

19 JUDGE AGIUS: All right. Stop, stop, because then you're  
20 prompting an answer to the witness himself. But let me consult with my  
21 colleagues.

22 [Trial Chamber confers]

23 JUDGE AGIUS: Yes, we've come to the conclusion that the question  
24 put by Ms. Tapuskovic is a legitimate one.

25 So, Mr. Stojkovic, if you could answer the question. If you need

Page 22991

1 Ms. Tapuskovic to repeat the question to you, that can be done.

2 THE WITNESS: [Interpretation] Can the question be repeated,  
3 please, but let me tell you something before the question is put to me  
4 again. I'd like to say something that might perhaps help to solve the  
5 dilemma.

6 JUDGE AGIUS: Please go ahead.

7 THE WITNESS: [Interpretation] In this specific instance of the

8 material that was obtained by the OTP for the Tribunal which had to do  
9 with the case in Serbia where I was an expert witness, nobody asked me to  
10 produce electropherograms, neither of the parties, because with good  
11 laboratory practice and in application of standard operational procedures  
12 applied in our country I myself submitted them to the Court in the first  
13 place, before anybody had to ask me to do that.

**Kommentar [M17]:** Good point

14 MS. TAPUSKOVIC: [Interpretation]

15 Q. Let me go back to my earlier question, Dr. Stojkovic, and that

16 was: Why is it important to produce electropherograms in court  
17 proceedings?

18 A. As I've already said, electropherograms carry high probative  
19 value in court proceedings. Sometimes DNA analyses can be overestimated  
20 in court proceedings. A specific piece of evidence can be decisive in  
21 terms of establishing responsibility for a crime. Electropherogram is



22 the crucial piece of evidence, by the same token as, for instance, a

23 transcript of a given conversation can be proof of the conversation

24 having taken place before the court of law. Failure to produce

25 electropherograms would be tantamount to an expert testifying about a

Page 22992

1 conversation which took place between certain individuals without having

2 had prior insight into the tape of the conversation or the transcript of

3 the conversation. By the same token, a bone sampling can be likened to

4 the tape-recording and -- or to the transcript. Thus, pherograms would

5 indicate the results of the DNA analysis of the bone and the individuals

6 concerned, just as the tape-recording would indicate whether the

7 conversation took place. This is necessary in order for the expert to

8 pronounce his opinion on the reliability of a given piece of evidence.

**Kommentar [M18]:** Probative  
significance of electropherograms

9 Q. Therefore, without electropherograms, you are not able to advance

10 your opinion about the reliability of a given DNA analysis?

11 A. Of course, electropherograms -- that's correct.

12 Electropherograms are one of the elements which I would produce if I were

13 hired by either the Trial Chamber or Prosecution or Defence to testify in

14 respect of some DNA analysis in order to give my opinion as an expert in

15 genetics, I cannot give my expert opinion on specific cases unless I have

16 an insight into electropherograms, just as a physician cannot give his

17 opinion without having an insight into the medical documentation.

**Kommentar [M19]:** Drives the point home

18 JUDGE AGIUS: Yes, one moment, please, Ms. Tapuskovic. Earlier

19 on, page 71, lines 19 and following, you were asked by Ms. Tapuskovic:

20 "Mr. Stojkovic, along with the documents we provided you with, did we

21 also provide you with the electropherograms?"

22 And your answer was: "No, I did not receive from you a single

23 electropherogram, although I have to mention that I received very little

24 DNA reports as well, or rather, just three."

25 Did you ask for more DNA reports and did you ask for

Page 22993

1 electropherograms from the Popovic Defence team?

2 THE WITNESS: [Interpretation] No, I didn't ask for either the

3 reports or electropherograms or any other document given to me by the

4 Prosecution. I merely referred to the documents that were given to me in

5 my report; and since none of them contained anything that I would be able

6 to use in advancing my expert opinion, that was where my engagement for

7 the purposes of the Defence team ended.

8 JUDGE AGIUS: Yes --

9 THE WITNESS: [Interpretation] Admittedly, I did state in my

10 report that I would need DNA reports of several cases as well as

11 electropherograms from the same cases in order to be able to draw any

12 sort of an expert conclusion, even at the level of statistics.

13 JUDGE AGIUS: Yes, Ms. Janisiewicz.

**Kommentar [M20]:** Does this mean he was unable to perform his task as a result of failure to furnish him with the necessary means?

14 MS. JANISIEWICZ: Yes, Mr. President, in light of the witness's

15 answer, we again question the relevance of this testimony. He has just

16 stated that he did not receive --

17 JUDGE AGIUS: Yeah, but he didn't receive them, and he didn't

18 ask --

19 MS. JANISIEWICZ: -- ask for them.

20 JUDGE AGIUS: -- for them.

21 Perhaps you can tell Ms. Tapuskovic, and she can relay what you

22 need to say.

23 And at this point it's -- also becomes important for us to know

24 whether indeed a request was tabled with the Prosecution for the

25 provision of these electropherograms or not. That you can tell us or you

Page 22994

1 can confirm at a later stage.

2 Yes, Ms. Tapuskovic.

3 MS. TAPUSKOVIC: [Interpretation] Thank you, Your Honour.

4 Q. Mr. Stojkovic --

5 JUDGE AGIUS: Are you proceeding with the questions on

6 pherograms -- electropherograms or are you moving to something --

7 MS. TAPUSKOVIC: [Interpretation] One more question has to do with

8 electropherograms, that is to say about the way electropherograms are

9 made at the ICMP; and we will answer your query later on because I told

10 you I don't know the date when the request for electropherograms was

11 made.

12 [Trial Chamber confers]

13 JUDGE AGIUS: Let's leave this and then move on, Ms. Tapuskovic,

14 please.

15 MS. TAPUSKOVIC: [Interpretation] Thank you.

16 Can we call up document, or rather, Exhibit P3235, page 2.

17 Q. Mr. Stojkovic -- let's wait for the document to appear. P32 --

18 I'm sorry 3225.

19 Mr. Stojkovic, do you know what this represents?

20 A. Yes. This is part of the standard operational procedure of the

21 International Commission of Missing Persons called standard operational

22 procedure for the review of DNA matching reports.

23 Q. I will read one portion in the middle of the paragraph starting

24 with Roman numeral I entitled: "Principle," and I'll read one part of

25 it.

Page 22995

1 [In English] "Match reports contained the following information:

2 Bone sample, code assigned by the submitting pathologist, the bone

3 bar-code assigned at the ICD, a picture of the bone sample including the

4 assigned bar-code, and the measuring device, STR profiles for the bone

5 sample and the potential family reference (often, these are coded for

6 purposes of genetic privacy) ..."

7 [Interpretation] Mr. Stojkovic, coding such reports, is this

8 standard procedure in laboratories dealing with DNA analysis?

9 A. No, but before I answer that question I wanted to say that all of

10 these elements you mentioned when reading from the principal chapter

11 concerning the contents of a DNA report are the elements I cited as the

12 basic elements of any DNA report. DNA reports need to contain, among

13 others, DNA profiles, which are marked here as STR profiles, but I don't

14 know of any instance of anyone coding those determined DNA profiles in

15 order to protect anyone's genetic privacy.

**Kommentar [M21]:** ICMP  
disregards its own SOP rules?

16 Q. Even had we been given these reports by the ICMP --

17 JUDGE AGIUS: Yes, Ms. Tapuskovic -- Ms. Janisiewicz.

18 MS. JANISIEWICZ: Yes, if we could ask for the witness to

19 identify one -- the date of the SOP to which he's referring and also to

20 the extent he refers to other standard operating procedures, if he could

21 provide the date and perhaps the file numbers of that as well.

22 JUDGE AGIUS: Yes.

23 Ms. Tapuskovic, you could take care of that with the witness,

24 please.

25 MS. TAPUSKOVIC: [Interpretation] For the witness to be able to

Page 22996

1 answer the question, could we please go back to page 1 of this document

2 that we have on the screen. Could we please zoom in, and to show us the

3 bottom part of the page.

4 Q. Mr. Stojkovic, can you read for us what it says here.

5 A. On the first page of this standard operational procedure it says

6 that it was distributed internally DNA, in Sarajevo, the 8th of May,

7 2007. Also, in my report, I state that on the last page of the report



8 that was forwarded to me there was neither a date nor a signature that

9 would indicate that a specific report was approved. That is why in my

10 report I wrote that the document contains no date and signature, setting

11 aside the internal distribution time that we can see on the first page.

**Kommentar [M22]:** Defence expert provided with a dubious SOP manual

12 Q. To go back to my previous question then. Had any of the Defence

13 teams asked you to analyse the veracity and authenticity of the

14 individual DNA reports? Irrespective of when those were done, could you

15 have been -- could it have been possible for you to actually ascertain

16 their authenticity because they are coded?

17 JUDGE AGIUS: Yes.

18 MS. JANISIEWICZ: Well, first -- again, the witness has already

19 testified that he has not asked for electropherograms or DNA reports. To

20 the extent he did have DNA reports in his possession, we would ask that

21 those be identified if referring to any such elements.

22 JUDGE AGIUS: Yes, Ms. Tapuskovic.

23 MS. TAPUSKOVIC: [Interpretation] We are in a position to tell you  
24 which reports were handed over to the witness. DNA reports under the  
25 following numbers: 1D1242 and 1D1243, and I will get to that one later

Page 22997

1 on while examining the witness.

2 JUDGE AGIUS: I think try to condense it because I don't want us

3 to run at a tangent here. The whole issue is the following:

4 Given what you have been given by the Defence team for

5 Mr. Popovic, were you in a position to ascertain the authenticity of the

6 individual DNA reports had you been asked to do that? This is the

7 question basically that it all boils down to.

**Kommentar [M23]:** Basic issue according to judge

8 THE WITNESS: [Interpretation] My response to that question is not

9 so simple. It depends on what form of the DNA reports they would be

10 delivered to me. If any of the parties would request me to provide an

11 expert opinion on any such matters, I would first ask to see some 300 DNA

12 reports and the corresponding electropherograms, so as to be able to

13 state anything about their validity. However, if those DNA reports would

14 be delivered to me in electronic form, as stated in the SOP, such DNA

15 reports would then be useless to me for any expertise because -- or

16 rather, except in situations in which I would be also given a key to be

17 able to understand the code.

**Kommentar [M24]:** This is probably the origin of the 300 samples promised but never delivered to the Karadzic defence team

**Kommentar [M25]:** DNA reports insufficient; ask expert to clarify the significance of code

18 JUDGE AGIUS: One moment, just stop for a moment, please,

19 Professor. I'd like to seek clearance on this. You were given a bundle

20 of documents relating to DNA analysis by the Defence team for

21 Colonel Popovic; is that correct? Just answer yes or no.

22 THE WITNESS: [Interpretation] Precisely so.

23 JUDGE AGIUS: What were you asked to do?

24 THE WITNESS: [Interpretation] I was asked to state my position

25 whether, based on the documentation that was at the disposal of the

1 Defence, if it would be possible for me to provide an expert opinion on

2 the authenticity of DNA profiles in the cases pertaining to the

3 Srebrenica event in July 1993 or 1995. It is in the documents. I

**Kommentar [M26]:** What exactly does authenticity mean in this context?

4 mentioned that in my report. The request was to offer my comments about

5 the forwarded documents, whether the SOPs I was given in relation to the

6 activities of the ICMP in the process of DNA identification of missing

7 persons are in keeping with the rules of the profession and science. I

8 studied the SOPs in detail and my position was a positive one, save for

9 the SOP pertaining to the publication of a DNA report. I stated that

10 that particular SOP is not transparent and that it makes impossible any

11 additional insight into any additional evidence that may be arriving from

12 the ICMP concerning the identity of the persons involved.

13 JUDGE AGIUS: Okay. Thank you.

14 Ms. Tapuskovic.

15 MS. TAPUSKOVIC: [Interpretation] Thank you, Your Honour.

16 Q. Let us move to Exhibit 1D1069. In the English it is page 16. In

17 the B/C/S version it is page 10.

18 Mr. Stojkovic, on the screen in front of you -- well, I can see

19 it's there now. Can you tell me first of all, do you recognise the

20 document?

21 A. Yes.

22 Q. Can you tell me what it is.

23 A. That is my report which is an analysis of the documents handed

24 over to me and pursuant to a request made by the Defence.

25 Q. In paragraph 3.3 what was your explanation of the issue of coding

Page 22999

1 DNA reports?

2 A. This paragraph -- deals with one part of the principles

3 concerning the standard operational procedures dealing with DNA reports

4 studied in which it is stated that specific DNA results are often handed

5 over in coded form. I was of the opinion, as I am now, that it is in

6 complete disaccord with the rules of profession to have any DNA results

7 handed over in coded form. From the text of the SOP principles, it is

8 completely unclear in which cases such coding is done as opposed to in

9 what cases the ICMP chose to hand over to the pathologist involved the

10 original results instead of the coded ones. The frequency of coding is

11 something I could not see from the documents I had.

12 Q. Concerning the SOP you referred to from the exhibit we just saw,

13 what does the term "genetic privacy" mean?

14 A. It is unclear to me what the author of the SOP had in mind when

15 using the term "genetic privacy," given that the genetic markers I have

16 discussed at the beginning of my testimony do not contain any genetic

17 information whatsoever concerning any characteristic of those tested

18 except at the level of matching concerning blood relations between the

19 person whose identity is being sought on the one hand and the persons who

20 gave the samples. The term genetic privacy has to do with the protection

21 of that part of genetic information which have to do with the medically

22 relevant facts on the chances of a certain person to develop specific

23 hereditary diseases or the susceptibility of that person to develop any

24 symptoms of the mentioned hereditary disease or to develop certain

25 behaviour of patterns or any other physiological or pathological symptoms

Page 23000

1 in that person.

2 I also wanted to say again that in the specific forensic genetic

3 analysis, such analysis is not done when analysing specific genetic

4 markers, which as I said were established in 1984; no medical information

5 or any other type of information that needs to be protected cannot be

6 arrived at in analysing these markers. That is why I believe that the

7 argument in favour of genetic privacy, protection, does not stand.

8 On the other hand, it is possible that the author of this SOP had

9 in mind that by coding this information he would be able to protect the

10 genetic information pertaining to the blood relationship between the

11 tested persons. However, even if such information is coded such

12 relationship can be gleaned from other data. Therefore, the argument of

13 genetic privacy, protection, does not stand.

14 (redacted)

15 (redacted)

16 (redacted)

17 (redacted)

18 (redacted)

19 (redacted)



20 (redacted)

21 (redacted)

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Page 23001

1 (redacted)

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10 (redacted)

11 (redacted)

12 (redacted)

13 (redacted)

14 Yes, Madam Tapuskovic.

15 MS. TAPUSKOVIC: [Microphone not activated]

16 THE INTERPRETER: Microphone, please.

17 MS. TAPUSKOVIC: [Interpretation]

18 Q. I'll read it out.

19 "With reference to your letter, as referenced and dated above,

20 please find enclosed information regarding exhumations and identification

21 carried out in the period from 1996 to 2007 in the area of Srebrenica,

22 including the municipalities of Srebrenica, Bijeljina, Bratunac, Han

23 Pijesak, Kalesija, Kladanj, Rogatica, Sekovici, Vlasenica, and Zvornik.

24 "The information relates to 4.415 identified victims."

**Kommentar [M27]:** Establish source and reference number of this document. Why does its victim count include individuals from districts far beyond the location of any Srebrenica grave sites?

25 Now, in preparing for the Defence, Mr. Stojkovic, had you seen

Page 23002

1 this document before?

2 A. Yes, I was shown this document, and I am familiar with its

3 contents.

4 Q. Thank you. And you're also familiar that we had testimony here

5 from Mr. Parsons, who you mentioned a moment ago -- or rather, I

6 mentioned him a moment ago.

7 A. Yes, I think I mentioned him too -- but, yes, I am familiar with

8 that. I received from the Defence the transcript of the testimony of

9 Dr. Parsons before this Tribunal.

10 Q. Do you remember from the transcript what Mr. Parsons said? When

11 did the ICMP receive accreditation?

12 A. I think that Dr. Parsons said that it was in July of 2007 that

13 the International Commission for Missing Persons received accreditation

14 from a German company for accreditation, which is called DAC.

15 Q. Mr. Parsons spoke about that at 20082, lines 7 to 9 of the

16 transcript.

17 On that page of the transcript, Mr. Parsons said that the

18 accreditation was received in October 2007.

19 A. Well, then I failed to remember that particular piece of

20 information, but I did remember him speaking about it, what the period of

21 time was.

**Kommentar [M28]:** ICMP received accreditation only in 2007

22 Q. May we now move on to P2993, page 2, please. May we have page 1

23 displayed on our screens first, please.

24 Mr. Stojkovic, are you familiar with this document? Was it shown

25 you during preparations for your testimony?

1 A. Yes, I am familiar with the contents of this document, and it was

2 shown to me during the preparations.

3 Q. Could you read out the date of the document.

4 A. This document is dated the 27th of November, 2007.

5 Q. And whose summary is it, tell us, please?

6 A. Judging by the title page, this summary was compiled by

7 Dean Manning, the former investigator, or rather, former ICTY

8 investigations team leader, the ICTY, Tribunal for the former Yugoslavia.

9 Q. Thank you. Now we can go on to page 2 --

10 JUDGE AGIUS: Ms. Tapuskovic, I hate to interrupt you, but we've

11 only got one more minute left, basically. So I don't know if you wish to

12 proceed with your questions now. If it's a short question, we can do

13 that; otherwise, we adjourn to Monday.

14 MS. TAPUSKOVIC: [Interpretation] Your Honour, thank you for that.

15 I would just like to ask one more question to round off this area. Thank

16 you.

17 JUDGE AGIUS: Go ahead.

18 MS. TAPUSKOVIC: [Interpretation]

19 Q. On page 2 here, the lower part of that page, in bold letters it

20 says -- or rather, can you read out what it says.

21 A. "All victims linked to Srebrenica identified by ICMP by DNA is

22 5.021."

23 Q. Now, Mr. Stojkovic, my question to you is this: Bearing in mind

24 the date when Mr. Parsons said that the ICMP received its accreditation

25 and bearing in mind the previous letter dated July when the

Page 23004

1 identification of 4.000-odd cases was conducted and this document dated

2 November 2007, if you take all of that into consideration, what is your

3 conclusion, what is the conclusion that follows from all this?

4 A. Bearing in mind your previous question with respect to the period

5 of the accreditation itself and all the rest, it is evident that at least

6 4.000-odd cases which were shown in the previous document were analysed

7 and the identity established before the ICMP had its accreditation for

8 its laboratories and procedures by the accreditation agency.

9 Q. Do you mean the 4.451 individuals mentioned a moment ago?

10 A. Yes, but that's the minimum number. So quite possibly of all the

11 5.021 persons the analysis had been conducted for all of them by October

12 2007 or November - when was it when the accreditation arrived? - and

13 that the process of identification, DNA analysis, and other procedures as

14 well and comparing data bases, biostatistical calculations, and all the

15 rest of it that is necessary in the SOP, standard operational procedure,

16 which were put to me, that would be it.

17 Q. Thank you, Mr. Stojkovic.

**Kommentar [M29]:** Huge number of identifications performed by ICMP without proper accreditation

18 MS. TAPUSKOVIC: [Interpretation] I think that we can break for

19 the day, adjourn for the day.

20 JUDGE AGIUS: And for the week, Ms. Tapuskovic. We'll reconvene

21 Monday morning at 9.00. Thank you. Have a nice weekend everyone.

22 --- Whereupon the hearing adjourned at 1.47 p.m.,

23 to be reconvened on Monday, the 30th day of

24 June, 2008, at 9.00 a.m.