



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
Chambre de première instance

TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 10-Apr-2012, 15:40
CMS/CFO: Kouv Keoratanak

4 April 2012

Trial Day 47

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

The Accused: NUON Chea
IENG Sary
KHIEU Samphan

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UCH Arun

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MR. KAING GUEK EAV, alias DUCH

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ANG UDOM	Khmer
JUDGE CARTWRIGHT	English
MR. KAING GUEK EAV alias DUCH	Khmer
MR. KARNAVAS	English
JUDGE LAVERGNE	French
MR. NEKUJE	French
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PESTMAN	English
MR. PICH ANG	Khmer
MS. SIMONNEAU-FORT	French
MR. SMITH	English

1

1 P R O C E E D I N G S

2 (Court opens at 0904H)

3 MR. PRESIDENT:

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

5 We continue hearing testimonies of Mr. Kaing Guek Eav, alias

6 Duch, the questions to be put by counsels for Nuon Chea. Counsels

7 will proceed from the questions they put to the witness

8 yesterday.

9 Before handing over to the counsels for Nuon Chea, the Chamber

10 wishes to remind additionally on the oral decision made

11 yesterday. The Trial Chamber recalls that, pursuant to Internal

12 Rule 28, a witness may object to making any statement that might

13 tend to incriminate him or her. This right against

14 self-incrimination extends to all facts which have not been

15 finally adjudicated.

16 [09.06.56]

17 In the case of the witness presently testifying before the

18 Chamber, he may object to answering any question relating to

19 facts not adjudicated in Case 001 and which might tend to

20 incriminate him irrespective of the likelihood of a future

21 prosecution. The witness should state clearly if and when he

22 wishes to exercise this right.

23 Also, witness is obligated to respond to questions that are

24 relevant to the events the witness has seen, experienced or

25 noted.

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1 Without further ado, the Chamber wishes to hand over to counsels
2 for Nuon Chea to proceed with their questions.

3 [09.08.36]

4 MR. PESTMAN:

5 Thank you, Mr. President. As I requested yesterday, my client
6 would like to comment briefly on what the witness has said so
7 far. I was wondering whether this is the right moment to do so.
8 It will take five minutes. He won't be here this afternoon
9 probably. Would my client be allowed to comment or respond to
10 what the witness has said so far, at this particular moment,
11 right now?

12 MR. PRESIDENT:

13 International Co-Prosecutor, you may proceed first.

14 [09.09.23]

15 MR. SMITH:

16 Thank you, Your Honour. The Prosecution don't have any objections
17 to the witness commenting. However, of course, the nature of
18 those comments would be testimony, and as a result, the
19 Prosecution would be requesting that they be able to ask
20 questions of the Accused on his testimony either now or at a
21 later time, conducive to the Chamber. And as we've previously
22 submitted in our pleadings, if Accused take the opportunity to
23 testify, they must make themselves available for questions and
24 they should be compelled to answer questions.

25 Secondly, if they do not answer questions after they have given

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1 their testimony on that particular area, we would be submitting
2 to Your Honours that the weight given to that testimony at the
3 end of the case be very little and we would also be asking that
4 adverse inferences would be drawn by the Accused making his
5 statement but not making themselves available for questioning.

6 [09.10.38]

7 Your Honours, we put forward that position in our filing on the
8 17th of February 2012 in relation to Khieu Samphan. We've also
9 orally reiterated that position in relation to Nuon Chea and the
10 position he's taken already, but we would further put forward
11 that position, that -- that's what we would be asking Your
12 Honours to hold, that the Accused must answer questions on the
13 topic on which he testifies on as he's waived his right to
14 silence and, secondly, if he fails to answer questions on those
15 topics, that an adverse inference be taken at the end of the case
16 as to the nature of his testimony.

17 Your Honours have indicated that a decision would be forthcoming
18 in relation to the issue of Khieu Samphan and Nuon Chea, and we
19 would submit this issue is the same again in relation to Nuon
20 Chea in this instance.

21 So we have no objections, but we would ask that we be able to
22 question the Accused even now or at a later date on what he
23 states this morning.

24 [09.11.54]

25 MR. PRESIDENT:

4

1 National Co-Lead Lawyer, you may now proceed.

2 MR. PICH ANG:

3 Mr. President, Your Honours, with your leave, may I ask that
4 Counsel Barnaby Neukuie be heard?

5 MR. PRESIDENT:

6 Counsel, you may proceed.

7 MR. NEKUIE:

8 Yes. Thank you, Mr. President. Your Honours, following what the
9 Prosecution has said, the civil parties must specify that it does
10 not challenge the legitimacy of the Accused' rights to remain
11 silent as well as their right to relinquish their silence when
12 they wish to. However, we should remind another fundamental
13 principle that the Chamber must guarantee, and which is stated in
14 Rule 21(a), according to which the ECCC proceedings must be fair
15 and adversarial and preserve the rights of the parties. So this
16 means also the civil parties and the victims that we represent.

17 [09.13.30]

18 This way that the Defence is using by invoking the right to
19 remain silent and to choose at times to make statements and then
20 to return to silence afterwards does not seem to me to meet the
21 provisions of Rule 21(a) that I just have stated, as well as the
22 principles that are included in the other rules at this Tribunal.
23 And I would like to remind you, Your Honours, as the prosecutor
24 has done as well, that at this phase in the trial and beyond the
25 right of the Accused to make a statement following their opening

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1 statements and following their right to make a final statement as
2 provided for in Rule 94, the only possibilities that the
3 defendants have to express themselves during the proceedings are
4 listed in Rules 90 and 91. And Rule 90 allows the defendant to
5 make statements as a witness and, therefore, to be questioned by
6 the Bench and by the other parties or to put questions to a
7 witness who is appearing before the Court following the
8 provisions of Rule 91.

9 [09.15.06]

10 And there are no other provisions in the Rules allowing the
11 defendants to sometimes step out of their silence to make
12 statements and then to return to their silence. And since this
13 seems to seriously challenge the rights of the civil parties that
14 we represent, we believe that it might be important that as of
15 now, your Chamber indicate specifically what is the nature of
16 this kind of meaning that the Accused are allowed to express
17 themselves at times, and that may have consequences on the other
18 parties. If they decide to make introductory statements, should
19 the Chamber consider these as witness statements and therefore
20 this opens the right to the other parties to question the
21 Accused, or--

22 [09.16.05]

23 MR. PRESIDENT:

24 Counsel, could you please repeat the final part of your
25 statement?

6

1 And please be brief, because the Chamber has already noted this
2 issue, and we are going to have thorough deliberation on this,
3 concerning the right of the Accused.

4 The Chamber just wishes to inform you that the Chamber has noted
5 the position of the accused persons. They have indicated that
6 they would exercise their right to remain silent except -- each
7 Accused has a different position except Ieng Sary, who has
8 indicated that he will remain silent in the whole proceedings.

9 Some Accused -- or the other accused persons have indicated that
10 they may exercise this right to remain silent and they may also
11 abandon this right and return to speak to the Court.

12 So the Chamber is well informed and the Chamber wishes to know
13 from parties concerning the statement by the Accused.

14 The accused Nuon Chea indicated that he would like to have five
15 minutes to express this.

16 So we, the Chamber, would like to know from parties concerning
17 this and we hope counsel will be brief on this.

18 You may proceed, but please be brief and repeat the final part of
19 your statement in a slower pace so that the rendition of your
20 statement into Khmer could be done well and to ensure that the
21 public also hear your statement. Please be slow. Otherwise, you
22 are only talking to yourself.

23 [09.18.35]

24 MR. NEKUIE:

25 Thank you for these clarifications. In fact, I was about to

7

1 finish what I had to say when you decided to provide me with this
2 clarification, and I will slow down.

3 What I said -- and I will repeat what I said -- was that for the
4 civil parties it is necessary that we know if the statements that
5 Mr. Nuon Chea wishes to make following Mr. Duch's testimony will
6 be a witness statement testimony, corresponding to Rule 90, and
7 in this case, we should be able to interrogate him, or otherwise
8 it is -- it might be a statement without any legal value, and
9 then we might understand that the Chamber can tolerate this kind
10 of behaviour on the part of the defendants. But no matter what,
11 the civil parties absolutely wish to remind to the Chamber that
12 Rule 21 has to also be taken into account in this kind of
13 situation.

14 [09.19.47]

15 Our concern -- our main concern is that we should never forget
16 that what is being discussed here or what is at stake here is
17 millions of Cambodian citizens who still suffer, and we represent
18 them -- who died in the thousands and who are still full of
19 tears. And it is absolutely abnormal for the Defence, which of
20 course has the right to exercise its right, does not take this
21 into account when it speaks and tries, rather, to dehumanize this
22 trial. And the civil parties wish to insist upon this and to
23 indicate to the Chamber that Rules 90 and 91 should be applicable
24 in this -- when such statements are made. This is what I wanted
25 to say.

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1 [09.20.49]

2 MR. PRESIDENT:

3 Counsels for Nuon Chea, would you wish to make any response to
4 what counsel for the civil parties just stated?

5 MR. PESTMAN:

6 No, thank you.

7 (Judges deliberate)

8 [09.21.52]

9 MR. PRESIDENT:

10 The Chamber has noted the request by Nuon Chea through his
11 counsel that he would wish to make a statement for five minutes
12 during the testimony of Mr. Kaing Guek Eav, alias Duch.

13 The Chamber notes that such a request is not yet appropriate to
14 be entertained at this moment, so he is not allowed to give this
15 statement yet, at this moment, and he still can make this
16 statement during his allocated time, at a later date.

17 Counsel for Nuon Chea, you may now proceed with your questioning
18 to the witness.

19 QUESTIONING BY MR. PESTMAN RESUMES:

20 Thank you very much, Mr. President. Good morning to everyone.

21 Q. Duch, do you remember the name Nabson Bond?

22 MR. KAING GUEK EAV:

23 A. Mr. President, could you please ask counsel to read the name
24 again? I seem to have problems knowing this.

25 [09.23.48]

1 Q. I understand it's pronounced Nabson Bond. I can spell the --
2 N-a-b-s-o-n, and then Bond, B-o-n-d.

3 A. Yes, I do remember this name.

4 Q. You testified, in your trial, about the interrogation and
5 torture of this person at M-13. I would like to quote what you
6 said at the time. You said: "It took me nearly one month to
7 complete, therefore, the torture, the beating and the
8 interrogation. I did strive my best to do it." End of the quote.
9 And my question to you is: What did you mean when you said "I
10 tried to do my best"?

11 A. This issue is relevant to M-13. I think your question is about
12 tortures being inflicted at M-13, so I may exercise my right not
13 to respond to this.

14 Q. You remember François Bizot, I suppose?

15 A. Yes, I do.

16 Q. He wrote a book about his experiences, his stay in M-13 and
17 his discussions he had with you. And he asked you, "Who did the
18 beating at M-13?" And you responded, according to François Bizot,
19 that you beat the prisoners until you were out of breath. My
20 question to you is: Is that what you mean or what you meant when
21 you said that you would strive to do your best?

22 [09.27.18]

23 A. Bizot spoke the content of which was already reported by me to
24 Judge Lavergne. The book was written in a novel style. It's a
25 more poetic thing and a lot of facts have been fabricated in the

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1 book, as I indicated to Judge Lavergne. I made it clear on this.

2 Q. Did you beat prisoners until you were out of breath?

3 [09.28.21]

4 MR. PRESIDENT:

5 Witness is now instructed not to respond to these questions
6 because these questions are not relevant to the facts and they
7 are self-incriminating in nature.

8 And the witness has already been informed of this. Counsel has
9 already been advised to rephrase the questions and that he has
10 also been informed to focus on the facts in the segment of the
11 trial in Case 002/01.

12 Could you please advise the Chamber to which portion of the
13 segment your questions are framed to be relevant to? That's the
14 first issue.

15 And secondly, the Chamber has already notified the parties, both
16 in the memorandum and orally, parties have been advised to put
17 questions to witness concerning the order of the events listed in
18 the Indictment and the relevant facts in order in the first
19 segment of the trial and also the later segments of the trial. As
20 long as the questions are relevant to the framework of Case File
21 002/001, you may do so, but please advise the Chamber on our
22 first question.

23 [09.30.15]

24 MR. PESTMAN:

25 Many questions: First of all, I take the position that I have the

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1 right to ask questions to the witness with regard to M-13. If the
2 witness desires to avail of his right to remain silent, that's
3 his choice, but I still have the right to ask those questions.
4 And I didn't hear him say anything yet when I asked him my last
5 question. I do not think that's up to the Trial Chamber to
6 protect this particular witness.

7 In addition, I believe that whatever happened before 1975 is part
8 of the historical context and is relevant for this trial, but
9 more importantly, I am here to test the reliability of this
10 witness, the credibility of his statements. And in order to do so
11 effectively, I should be allowed to question him broadly, to ask
12 whatever question I think or my client thinks is appropriate to
13 test this reliability. It goes without saying that my client
14 doesn't agree with what this particular witness has said so far,
15 especially about his own role, the role of my client, and that's
16 the role in S-21, and we should be given the opportunity, I
17 repeat, to challenge, to impeach this witness and we should be
18 allowed to ask whatever question we think is necessary to do so,
19 even if it goes outside the scope of the charges in the first
20 trial.

21 [09.32.09]

22 MR. PRESIDENT:

23 You may continue with a different question. The Chamber has
24 already informed the witness that he does not need to answer the
25 last question you asked because it was not relevant and the

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1 question was self-incriminating in nature regarding the facts
2 that are not adjudicated finally.

3 MR. PESTMAN:

4 Just for the record, I think that only answers can be
5 self-incriminating, not the questions.

6 But I'll continue.

7 BY MR. PESTMAN:

8 Q. Duch, you wrote a paper a couple of weeks ago which you called
9 a study, "Lessons Learned from the Experiences of the Elders of
10 Former Generations". It's correct, isn't it, that that is your
11 document?

12 MR. KAING GUEK EAV:

13 A. I wrote that.

14 [09.33.29]

15 Q. And one of the purposes of that paper, I understand, was to
16 serve the ideal -- I'm quoting -- "of national reunification and
17 reconciliation". I understand you think that's important. Can you
18 explain to the Court how this ideal of reunification and
19 reconciliation, how that relates to your wish to remain silent
20 when I ask you questions about your role at M-13?

21 A. Mr. President, I did not hear the question from counsel. I
22 only heard the description from the lawyer.

23 [09.35.02]

24 Q. You stated in your study that you wished to contribute to
25 reconciliation in Cambodia. Can you tell me why you're not

13

1 answering questions about your role at M-13? Wouldn't your answer
2 to those questions contribute to reconciliation and to closure
3 for the victims?

4 A. Thank you. Mr. President, as I understand, this question
5 concerns the ideological struggle. I understand that national
6 reunification and reconciliation is different from destroying the
7 nation itself, and I think this is my answer to the question.

8 Q. I'll move on to the next question, although I didn't
9 understand the answer.

10 You remember witness KW-30, don't you?

11 A. I do. I do remember.

12 Q. His name is Uch Sorn, if I pronounce it correctly. He was a
13 prisoner at M-13 and he testified in your trial. Do you remember?

14 A. Mr. President, as I understand, I'm talking on the basis of my
15 memory, and I'm pretty sure Uch Sorn was sent so that he could be
16 further sent to Pursat and he was not interrogated. This is my
17 answer.

18 [09.37.39]

19 Q. Maybe I can help to refresh your memory a little bit. I would
20 like to quote a very short fragment from his statement at the
21 trial, at your trial, which can be found in document E1/11.1.

22 I've got the English ERN as 00316602 and the Khmer ERN is
23 00321001. I'm sorry; I haven't got the French reference.

24 MR. PRESIDENT:

25 Judge Lavergne, you may proceed.

14

1 JUDGE LAVERGNE:

2 Yes, Mr. Pestman, could you please indicate the case file you are
3 referring to? Is it Case File 001 or Case File 002? Is it your
4 wish to tender into evidence a document that is not in the case
5 file, that is the 002 Case File? Are you talking of a new
6 document?

7 [09.39.04]

8 MR. PESTMAN:

9 It is Case File 001 and I do not wish to tender this as evidence
10 or put this before the Chamber. I wish to put it before the
11 witness. I want to confront the witness with this particular
12 information.

13 JUDGE LAVERGNE:

14 Well, listen, in that case you should make an application that
15 you wish to tender a new document into evidence because this
16 document is not part of the Case File of 002 because it is not on
17 the list of documents that you wish to present to the Chamber.

18 MR. PRESIDENT:

19 Yes, the International Co-Prosecutor, you may proceed.

20 [09.40.07]

21 MR. SMITH:

22 Thank you, Mr. President. We believe the transcripts of Case File
23 001 are in the Case File 002 dossier. It's just that the number
24 that was used by counsel was the Case File 001 number. So the
25 transcripts are in Case File 002. It's a question, of course,

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1 whether or not defence counsel have put that forward to be put
2 before the Chamber, which they haven't, but the transcripts are
3 in the Case File 002 dossier, Your Honour.

4 MR. PESTMAN:

5 Just to quickly respond to that, thank you very much for
6 clarifying that, but we take the position that to impeach a
7 witness, we are allowed to use whatever document we want to use.
8 They don't have to be on the list. I just want to remind everyone
9 that, for example, the prosecutor used websites to question
10 witnesses.

11 And when we asked whether we were required to put all the
12 documents we wanted or intended to use for cross-examination on a
13 list and submit that list to the Court, we were told by the
14 senior legal officer that that was not necessary. We were only
15 supposed to put documents on a list which we intended to put
16 before the Chamber, not the documents we intended to use for the
17 cross-examination of witnesses. So I'm just following
18 instructions from the legal -- senior legal officer.

19 [09.41.48]

20 MR. PRESIDENT:

21 Yes, the Lead Co-Lawyer, you may proceed.

22 MS. SIMONNEAU-FORT:

23 Mr. President, I have understood, like the Co-Prosecutor, that
24 the transcripts of Case File 001 are placed on the Case File of
25 002, but I object to the use of any new documents without abiding

16

1 by the rules that you have set out. I believe that we should seek
2 the Court's leave in advance to use any new documents. This
3 document is not part of the transcript. We cannot afford to
4 present any document that we have. These rules that you have
5 clearly defined should apply to everyone. There shouldn't be any
6 exception.

7 (Judges deliberate)

8 [09.44.33]

9 MR. PRESIDENT:

10 I now hand over to Judge Lavergne to ask some questions to Mr.
11 Pestman regarding the last document that he intends to use to put
12 questions to witness. Judge Lavergne, you may proceed.

13 JUDGE LAVERGNE:

14 Thank you, Mr. President.

15 Mr. Pestman, could you please tell the Chamber on which document
16 you wish to rely in putting your questions to the witness? Is the
17 document part of the transcripts of Case File 001 or are you
18 talking of a new document? Is it the transcript of some hearing
19 or the transcript of any investigations in Case 001? What is the
20 relevance of your question? I note that you have asked questions
21 on the role of the Accused at M-13. We have already made remarks
22 in that regard. As concerns this question, what is its relevance
23 in relation to the facts before us today?

24 [09.46.00]

25 MR. PESTMAN:

17

1 This particular document I wanted to use is a transcript from the
2 trial in Case 001, in the witness' trial, and it has been
3 transferred to Case File 002. It has a new number. I've got a new
4 number in this particular case, which is D288/4.11.1, and it is
5 about the Accused' role in M-13. I was going to present or
6 confront this particular witness with evidence showing that he
7 was involved in torture and that he also seemed to be enjoying
8 it, but if the Trial Chamber thinks or takes the position that I
9 should move on, I will move on. But I would like to repeat, we
10 take the position that we believe that we are allowed to ask
11 whatever we think is necessary to impeach a witness; to challenge
12 the credibility of a witness and that our questions should not be
13 limited to the scope of the first trial.

14 MR. PRESIDENT:

15 The Chamber does not allow counsel to put questions to the
16 witness so that the witness will reveal that he self-incriminates
17 himself because this is the witness' rights not to answer to
18 questions that lead to self-incriminating insofar as the facts at
19 M-13 have not yet been adjudicated.

20 [09.48.10]

21 The Chamber determines that counsel is instructed to put
22 questions concerning the facts set out for the segment Case
23 002/01. Those facts should be relevant to ascertaining the truth.
24 Once again, the Chamber does not allow the witness to answer the
25 last question that counsel has asked. If you have any other

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1 questions, counsel may proceed with a new one.

2 MR. PESTMAN:

3 Your Honours, before I continue, I would like to point out that
4 all of my questions are aimed at testing the reliability and the
5 credibility of this witness. If the Trial Chamber takes the
6 position that I'm not allowed to do that, then I would like to
7 know that now so that there's no need to continue.

8 [09.49.20]

9 The question is: Am I allowed to test the credibility of this
10 witness and am I allowed to confront the witness with whatever
11 evidence we want to use to do that?

12 MR. PRESIDENT:

13 Yes, International Co-Prosecutor, you may proceed.

14 MR. SMITH:

15 Thank you, Your Honour. I mean the Prosecution's view is that it
16 is appropriate, of course, for counsel -- parties to test the
17 reliability and credibility of the witnesses and often that
18 doesn't necessarily follow, line by line, the allegations in the
19 indictment, but it approaches it from another way.

20 [09.50.05]

21 However, what we would like to state is the rules in relation to
22 the use of documents; they should be consistent with all parties.
23 Your Honours have ruled that the Prosecution and the civil
24 parties have not been allowed to put the specific contents of
25 documents to witnesses that they don't, somehow, recognize or not

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1 familiar with from before. Judge Cartwright has said the general
2 allegation can be put, but not the specific contents unless the
3 witness is familiar with that particular document. The rules
4 should apply for all parties.

5 Secondly, in relation to the use of documents that haven't been
6 put forward on the Defence list of which they wish to put before
7 the Chamber, we do understand there is a difference between some
8 documents that may be required to be used to test the reliability
9 and credibility of a witness. If those documents need to be used,
10 we have certainly discussed with the senior legal officer at the
11 trial management meeting that there should be some notice
12 provided to the parties in advance of the documents that they
13 intend to use to challenge the credibility of the witness;
14 otherwise, what will happen is documents will be produced in this
15 Court and the parties will have little knowledge of where they've
16 come from and the purpose for which they're used.

17 [09.51.42]

18 The Prosecution has provided the list of their documents they
19 were to use in this case on the 19th of April last year so the
20 Defence have had notice of that one year in advance. We do accept
21 that sometimes there are some documents that take on an
22 importance during the testimony and perhaps they can be brought
23 forward, but at least notice needs to be given to the parties --
24 at least 24-hour notice. And I think, certainly, this document
25 that is being used is one in which the Defence would have been

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1 aware of well before yesterday. So we would just ask that the
2 same rules apply; the particulars of the document not being put
3 to the witness unless he is familiar with the document himself.

4 MR. PRESIDENT:

5 Yes, Counsel, you may proceed.

6 MS. SIMONNEAU-FORT:

7 Yes, Mr. President, I would like to add a few words; I crave your
8 indulgence.

9 [09.52.46]

10 In light of my learned colleague's reflection that all these
11 issues have to do with the reliability and the credibility of the
12 witness, I have the impression that my learned friend is trying
13 to say that if he is not able to ask his questions, he cannot
14 impeach the credibility of the witness. But this raises another
15 problem that my learned friend wants to deliberately overlook and
16 that is that of the rights of the Accused; he cannot incriminate
17 himself.

18 If the learned friend says he cannot put the questions, this
19 should not impeach on the rights of the witness not to
20 incriminate himself. The Accused is entitled to keep silent; he
21 cannot incriminate himself. My learned friend knows that. He
22 cannot ask questions that will incriminate the witness. It is not
23 a question of credibility of the witness, but we have to protect
24 the witness.

25 The Chamber has clearly spoken on this issue that the witness

1 should not incriminate himself through questions put to him by
2 counsel.

3 (Judges deliberate)

4 [10.00.58]

5 MR. PRESIDENT:

6 Counsel Pestman, the Chamber wishes to inform you that you shall
7 have the full rights to put questions to the witness and your
8 questions concerning the credibility of the witness, Kaing Guek
9 Eav, alias Duch, indeed, you shall exercise this right fully;
10 however, the rights shall be guided by the rules in the Internal
11 Rules concerning the questionings to the witness.

12 And the documents you wish to put before the Chamber shall be the
13 documents that already placed in Case File 002.

14 [10.01.59]

15 And thirdly, the documents you wish to put before the Chamber
16 shall be done in accordance with the guidance of the Chamber. The
17 documents shall be informed to the Chamber at least no later than
18 24 hours before it is put before the Chamber. Parties, at the
19 same time, shall be informed accordingly.

20 And the questions, also, shall be relevant to the facts in the
21 segment of the trials regarding Case File 002/01.

22 We have noted that counsels have raised several objections in the
23 Court proceedings regarding the questions that are not relevant.

24 The leading questions, the repetitious questions, and the
25 questions that draw speculation from the witness, so on and so

22

1 forth have always been objected by counsels and parties to the
2 proceeding. Likewise, we would like your questions to be relevant
3 and that they must not derive from the scope of the trials.

4 [10.03.46]

5 And to be more precise, whether my -- our ruling is not fully
6 conveyed into the language you read, we may hand over to Judge
7 Silvia Cartwright to have the floor.

8 JUDGE CARTWRIGHT:

9 Thank you, President. I simply wish to confirm the President's
10 ruling that counsel for the -- the Accused have the right to ask
11 questions that test the credibility of this or any other witness.
12 If such questions are based on documents, then those documents
13 must be in the Case file and have been notified to the parties
14 and the Chamber at least 24 hours in advance. The questions must
15 comply with the Internal Rules and not be repetitious,
16 irrelevant, and the other examples that the President used.

17 [10.05.07]

18 And, of course, the witness has the right not to incriminate
19 himself so you have to accept that he need not answer certain
20 questions that are outside already finally adjudicated facts.

21 Have we clarified the matter for you, Counsel?

22 MR. PESTMAN:

23 Yes, thank you very much. We will supply the Trial Chamber, next
24 time we cross-examine a witness, with a list.

25 JUDGE CARTWRIGHT:

1 And the parties, of course.

2 MR. PESTMAN:

3 Oh, yes, yes, of course. Yes, we will distribute, I should say, a
4 list next time we cross-examine a witness.

5 [10.05.53]

6 I believe that all documents I was going to use for the
7 cross-examination are on the case file, but we -- we'll take the
8 position that if they're not on the case file and they are
9 relevant for establishing the truth that we should be allowed to
10 use them anyway; if not, put them on the case file after we
11 finish the cross-examination.

12 Of course, we respect the right the witness has to remain silent.

13 I will move on to a different topic. I'm wondering--

14 MR. PRESIDENT:

15 Before you proceed to your line of questioning and in order to
16 ensure that we are on the same page, the new documents that are
17 not placed in the case file are not allowed to be raised or put
18 for examination here. You mentioned concerning the documents --
19 new documents you wish to be brought before this Chamber so the
20 Chamber is not silent on this; the Chamber has already made it
21 clear and is making clear now that new documents are not allowed.

22 BY MR. PESTMAN:

23 Thank you, Mr. President.

24 [10.07.33]

25 Q. Duch, in 2007 you told the Investigating Judges of the ECCC

24

1 that you first heard about the terms "hot group", "cold group",
2 and "chewing group" when you saw Rithy Panh's film on S-21; do
3 you remember saying that?

4 MR. KAING GUEK EAV:

5 A. To ensure that I still recall this, it's better if you can
6 show the document to me please.

7 Q. It's document D86/6; English ERN is 6 and the Khmer ERN is
8 0014663. And I -- again, I apologize for not having the French
9 ERN number, but it's page -- it's page 6 -- 6 of that particular
10 interview.

11 [10.09.24]

12 I'll read it out to you. Investigating Judge Lemonde asked you,
13 "Did you ever hear or see they used the terms 'hot group', 'cold
14 group', 'chewing group' and your answer was then, in 2007, "I
15 knew these terms after I watched Rithy Panh's film." And my
16 question is: Why did you tell the Judges that you did not know,
17 until you saw the film, about these terms?

18 A. Mr. President, could you instruct counsel to project the
19 document up on the screen and a hard copy be handed over to me,
20 please?

21 MR. PRESIDENT:

22 Counsel, have you prepared the hard copy of the document so that
23 witness can also read the document in hard copy because we have
24 already done that in the last few days? For example, when
25 documents are requested to be put up on the screen then hard copy

25

1 may also be handed over to the witness.

2 [10.10.59]

3 Court officer is now instructed to ensure that the relevant
4 document be put up on the screen so that counsel may proceed with
5 his questions.

6 MR. PESTMAN:

7 I hope this does not create a precedent. I would like to quote
8 several documents and I hope the -- the witness is not going to
9 ask, every time I quote, to see the original document on the
10 screen because that will slow down my interrogation considerably
11 and would not be able -- not allow me to finish today.

12 MR. PRESIDENT:

13 International Co-Prosecutor, you may now proceed.

14 MR. SMITH:

15 Mr. President, I understand, if counsel hasn't prepared in this
16 manner, it may be difficult to change - change the mode,
17 certainly, for the next couple of hours, but the parties, the
18 Prosecution and the civil parties, have been expected to place
19 the document before the witness so the witness can comment on the
20 accuracy of it, particularly, Your Honours, if the line of
21 questioning is to show the witness -- or put to the witness his
22 prior statements from the Co-Investigating Judges.

23 I think, in fairness to the witness, he should be able to at
24 least look at that statement to refresh his memory of that.

25 [10.12.45]

1 As Your Honours are aware, the witness has given about 300 hours
2 of testimony. And in order that Your Honours can get as full and
3 comprehensive answer as possible, I think any prior statement,
4 whether it be inconsistent or not, that the witness should have
5 the opportunity to be able to look at that statement and then
6 comment on it. The parties have been required to do so, and we
7 believe that the Defence should do so as well.

8 As a matter of interest, the witness has been given a book of all
9 of his prior statements -- and they've been numbered 1 to 500 or
10 so -- and that book is available; the witness has that book, and
11 we can provide a PDF copy to the Defence if that would assist
12 them. But we would submit that so the witness can answer clearly
13 and fairly that the statement, at least, be shown to him rather
14 than just related by counsel. That seems to be what the witness
15 requires, and I think that's reasonable.

16 MR. PESTMAN:

17 Sorry, if I can briefly respond. There is, of course, an
18 important difference between statement a witness has given to the
19 Investigating Judges if there's no need to authenticate a
20 document. It's -- there's an important difference between a
21 document I want the witness to comment on and a statement he has
22 given to the Investigating Judge.

23 [10.14.19]

24 I just quoted one sentence from a statement and there's no need
25 to show him. If he doesn't understand what I told him, I can

1 repeat the sentence, but I don't think there's a need to show the
2 statement this particular witness gave to the Investigating
3 Judges every time he wants to think about the answer.

4 MR. PRESIDENT:

5 Witness, would you prefer to read the document in hard copy?

6 MR. KAING GUEK EAV:

7 Yes, I would, Mr. President.

8 MR. PRESIDENT:

9 Counsels, now witness made it clear that he wishes to have the
10 documents in hard copy and we have already agreed among parties
11 that witness should be handed over the hard copy so that he can
12 refresh his memory before he could respond to questions and this
13 has been understood already and the practice is already obtained.

14 MR. PESTMAN:

15 I understand the document is on the screen now; we can show it to
16 the witness. Maybe he can have a look at the screen; if you
17 cannot read it, we can print out a copy, but it would be easier
18 if he -- if looking at the screen suffices.

19 (Short pause)

20 [10.16.33]

21 Sorry, Mr. President, I -- this is--

22 MR. PRESIDENT:

23 Please proceed.

24 MR. PESTMAN:

25 Sorry, this is not our document. We are not putting this document

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1 on the screen; I don't know who is, but we have the document with
2 a red box around the relevant sentence; that's it.

3 [10.17.11]

4 BY MR. PESTMAN:

5 Q. Would you be able to answer my question now? Why did you tell
6 the Investigating Judges that you had not heard of those terms
7 until you saw Rithy Panh's film?

8 MR. KAING GUEV EAV:

9 A. Regarding the hot, the cold, and the chewing groups, I think
10 we can only quote from this portion of the question. I think to
11 be more genuine, Counsel should have asked other questions
12 instead -- I mean other accounts from my statements before the
13 Co-Investigating Judges to test my credibility and to see how
14 honest I was before the Co-Investigating Judges, and how honest I
15 am now. Because when I gave testimonies before the
16 Co-Investigating Judges I was recalling the accounts that
17 happened 30 years ago. And it is not really proper to just quote
18 only one or two lines from the whole statement, and I can see
19 that this attitude is not good because you are trying to
20 incriminate me by putting the question for me to self-incriminate
21 myself in my response.

22 [10.19.39]

23 Q. When did you first hear about the terms "hot", "cold", and
24 "chewing" groups?

25 A. To make sure that we understand one another very clearly, may

1 I ask that all the relevant documents before the Co-Investigating
2 Judges be brought before us. Otherwise, it's only just a piece of
3 the iceberg.

4 Q. Witness, would you please answer my question? When did you
5 first hear about the terms hot, cold, and chewing group? You used
6 them yourself, didn't you, when you were at S-21?

7 [10.20.39]

8 A. Mr. President, I wish not to respond to this question because
9 this question only covers small part of the whole accounts and
10 the events that happened from 1975.

11 And I just learned that you quoted the document in 2007, and I
12 could have been confused. And when I was giving testimonies or
13 statements before the Co-Investigating Judges, my memory served
14 me well, back then, and that's what I said, but I am not really
15 -- I'm not really telling a lie and I am very honest, but I think
16 your line of questioning is not really proper because it's rather
17 dishonest to me.

18 MR. PESTMAN:

19 Mr. President, could you please instruct the witness to answer my
20 question?

21 (Judges deliberate)

22 [10.22.30]

23 MR. PRESIDENT:

24 We have already informed witness of his duties to respond to
25 counsel based on witness accounts, what he has witnessed, seen,

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1 experienced. So, now, as a witness, you should respond to
2 questions by counsel based on the accounts we have already
3 indicated. You may choose not to respond to the questions that
4 are out of the scope of this trial proceedings or the facts that
5 have not been adjudicated, like those relevant to M-13.

6 And witness may also not respond to counsel when Chamber has not
7 allowed witness to respond, if Chamber notes that the questions
8 are repetitious or the questions that are meant to prolong the
9 trial proceedings or the questions that are not meant to -- for
10 the purpose of finding the truth. Regarding those questions, the
11 Chamber may advise witness not to respond.

12 However, regarding this current question, witness is instructed
13 to respond to counsel. Witness may respond to such question. And
14 if witness has no knowledge of that account, he may choose not to
15 respond, or it is up to the witness.

16 So may we ask that witness focus and be prepared to respond to
17 the questions?

18 MR. KAING GUEK EAV:

19 Thank you, Mr. President. According to my recollection, you asked
20 why I said so in that statement.

21 BY MR. PESTMAN:

22 Q. Duch, let me repeat the question. The question was: When did
23 you first hear about the terms "hot", "cold", and "chewing"
24 groups? Was it not you, in fact, that introduced those terms --
25 those torture methods at S-21?

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1 [10.26.05]

2 MR. KAING GUEK EAV:

3 A. I wish to specify that these terms were put to me by the

4 Co-Investigating Judges; it was 30 years after what happened.

5 Frankly, I had been trying to forget the bitter memories, past

6 bitter memories and I also learned later that the terms were used

7 in Rithy Panh's film when my former interrogator, Comrade Pon,

8 was interviewed in the film. And later on when Co-Investigating

9 Judges asked me the questions concerning the terms, the terms

10 confirmed that I did teach during training sessions, I am

11 familiar with the terms and I am not trying to avoid any response

12 regarding this.

13 Q. Duch, I put it to you that the dishonest person is not me but

14 is you. Why did you lie to the Investigating Judges?

15 MR. SMITH:

16 I object, Your Honour.

17 MR. PRESIDENT:

18 International Co-Prosecutor, you may now proceed.

19 MR. SMITH:

20 It's really not clear from the question what the lie counsel was

21 referring to. In his prior statements, he states that he didn't

22 know of those terms at the time and he learned them afterwards.

23 So it's unclear as to what lie defence counsel was referring to.

24 [10.28.37]

25 They should be more clear in what that lie is, if at all.

1 MR. PESTMAN:

2 Just to briefly respond. He just admitted to teaching staff at
3 S-21 about these various interrogation modes.

4 MR. SMITH:

5 Your Honour, he admitted to teaching the different modes of
6 interrogation but the terms itself he said he wasn't aware of
7 till later. He's never denied teaching interrogation modes and if
8 it's in the same -- falls in the same category as those terms
9 imply, so be it. But he's never actually said he hasn't taught
10 interrogation and torture techniques. He said that quite clearly
11 that he has. It's just the terms he learned afterwards.

12 MR. PRESIDENT:

13 Counsel Karnavas, you may proceed.

14 [10.29.40]

15 MR. KARANAVAS:

16 Good morning, Mr. President, good morning, Your Honours; and good
17 morning to everyone in and around the courtroom. I do not see why
18 the Prosecution is objecting particularly since he comes from the
19 Anglo-Saxon system where a lawyer is entitled to put to the
20 witness. Now he put to the witness that he was being dishonest
21 based on the information that he received, and based on the
22 questions that he expects to put to the
23 witness thereafter. I think it's a bit premature; I think it's at
24 this point it's improper for the Prosecution to be standing up to
25 protect the witness and disrupting counsel's ability to put

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1 questions to the witness. I leave it to the Court to decide
2 whether there was dishonesty or not based on the information
3 received from the witness, but I don't see the benefit of
4 objecting to this line of questioning at this point. There was
5 nothing improper or unfair in the question being put by Mr.
6 Pestman, and the reason I am objecting is because I don't want to
7 be faced with the same objections down the road with other
8 witnesses.

9 [10.39.57]

10 I'm not necessarily saying that I'm going to be confronting this
11 witness in this fashion, but I'm saying that this is a dangerous
12 precedent to set that if we cannot put to a witness that we are
13 submitting that the witness is being dishonest or economical with
14 the truth or what have you. Thank you.

15 MR. SMITH:

16 Mr. President, if I can briefly respond, the Prosecution is not
17 protecting the witness. The Prosecution is just making sure that
18 the question put by the counsel has any legitimate basis.

19 Obviously the defence counsel for the Ieng Sary team wasn't
20 listening to the evidence properly that the evidence was he
21 learned the terms afterwards but he taught the techniques.

22 There's no sort of lie that could arise out of that.

23 [10.31.50]

24 MR. PRESIDENT:

25 Counsel Pestman, you may proceed.

1 BY MR. PESTMAN:

2 Maybe I can put the question once more before this witness and
3 clarify this issue.

4 Q. Duch, when you were working at S-21, were you familiar with
5 the terms hot, cold, and chewing groups?

6 MR. KAING GUEK EAV:

7 A. Thank you. Mr. President, this year is 2012 and it was now
8 five years after 2007. The thing I forgot 30 years ago was
9 recalled again during the trial and now Mr. Counsel is asking me
10 about what I answered five years ago, and my memory here now is
11 different from my memory five years ago, so I do not know how to
12 answer the question.

13 MR. PESTMAN:

14 Mr. President, I don't know whether you would like to break at
15 this particular moment. I could continue, but I think we are past
16 the normal time when we break up.

17 [10.33.35]

18 MR. PRESIDENT:

19 The Chamber is still hearing the observations by the Parties. We
20 are trying to avoid the situations that the same issue will be
21 raised again at the end of the session and we will not be able to
22 deal with this. The Chamber is considering how much time we will
23 need to deal with this issue so that we can move forward. We try
24 to avoid the situations that we are arguing and then the Party
25 will ask for additional time. The Chamber endeavours to have an

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1 expeditious and fair trial. If they are not -- rather if there is
2 no objection further -- further objection from the Prosecution,
3 the Chamber now will have a 20-minute break, and we will resume
4 at -- or after 20 minutes.

5 [10.35.16]

6 Security guard is now instructed to escort the witness back to
7 the waiting room and return him to the courtroom at 11 o'clock.
8 Counsel, you may proceed.

9 MR. ANG UDOM:

10 Thank you, Mr. President.

11 Good Morning, Your Honours. Mr. Ieng Sary would like to request
12 that he waive his rights to be present in this courtroom and that
13 he will be following the proceedings from the holding cells
14 downstairs for the reason of his health, especially his back and
15 leg pains.

16 [10.35.58]

17 MR. PRESIDENT:

18 The Chamber has heard the request of Mr. Ieng Sary that has been
19 made through his counsel, which waives his rights to be present
20 in the courtroom and to follow the proceedings remotely through
21 audio-visual means from the holding cells downstairs for the rest
22 of today's proceedings.

23 Due to his health reasons, the Chamber grants the request that
24 has been made by Mr. Ieng Sary through his counsel, which waives
25 his right to be present in the courtroom and to continue or

1 follow the proceedings from the holding cell downstairs for the
2 rest of today's proceedings.

3 The Chamber requires that the defence counsel for Mr. Ieng Sary
4 submit a written waiver to the Chamber with Mr. Ieng Sary's
5 thumbprint or signature.

6 The AV Unit is now instructed to live the proceedings to the
7 holding cell so that Mr. Ieng Sary can follow the proceeding
8 remotely for the rest of today's proceedings.

9 Security guards are now instructed to bring Mr. Ieng Sary to the
10 holding cell where the equipment is installed.

11 The Court is now adjourned.

12 THE GREFFIER:

13 All rise.

14 (Court recesses from 1037H to 1100H)

15 MR. PRESIDENT:

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

17 We would like to now hand over to counsel for Nuon Chea to
18 proceed with their questions.

19 MR. PESTMAN:

20 Thank you, Mr. President.

21 [11.01.28]

22 BY MR. PESTMAN:

23 Q. Duch, who is Prak Khan?

24 MR. KAING GUEK EAV:

25 A. Prak Khan was an interrogator.

1 Q. In 2007, you told the investigators of the Office of the
2 Co-Investigating Judges that you personally interrogated one of
3 the foreigners, the westerners we were talking about yesterday,
4 and you said that you kicked him during the interrogation at
5 S-21.

6 Do you remember that incident?

7 MR. SMITH:

8 Your Honour.

9 MR. PRESIDENT:

10 International Co-Prosecutor, you may now proceed.

11 MR. SMITH:

12 If the translation is coming through correctly, I think counsel
13 is putting the details of one person's statement to this witness,
14 particular details.

15 [11.02.46]

16 Our understanding of the ruling that Your Honours have provided
17 is that the particulars of the statement should not be put to the
18 witness, but the general subject matter? This witness shouldn't
19 be in a position to weigh-up the credibility or accuracy of the
20 other witness, and so I would submit that the rule is "Did you
21 torture that particular detainee?"

22 But Your Honours have ruled on the fact that the particulars of
23 the statement should not be put to the witness but in more of a
24 general principle terms -- in terms.

25 [11.03.41]

1 MR. PESTMAN:

2 If I may, Your Honours, this is a statement the witness is
3 familiar with. It's a statement which was given in his own case.
4 I'm more than happy to rephrase the question, but I do believe
5 that I have the right, and that we should have the right, to
6 confront this witness with the statement given by another witness
7 that contradicts what he says -- what this particular witness
8 says.

9 (Judges deliberate)

10 [11.04.12]

11 MR. PRESIDENT:

12 Counsel is not allowed to cite the statement by another witness
13 and put before this witness to comment.

14 Counsel may pose questions by citing the general -- the summary
15 of the statement of other witnesses before putting question to
16 this witness.

17 BY MR. PESTMAN:

18 Q. Duch, when at S-21, did you interrogate one of the foreigners
19 we talked about yesterday?

20 MR. KAING GUEK EAV:

21 A. I did not conduct the interrogation myself. I was, during the
22 interrogation session, only to check the quality of the
23 interpreter I hand-picked. I already made this clear to the
24 questions posed to me by counsel for the civil parties. I did not
25 really interrogate the foreigner but I was there to check the

1 interpreting service.

2 Q. Did you kick one of the foreign prisoners at S-21?

3 A. Mr. President, I had nothing to interrogate other people or
4 prisoners other than Koy Thuon. I had other tasks to perform and
5 I didn't have time to kick other prisoners.

6 [11.07.50]

7 Q. Do you remember interrogating and torturing a woman at S-21
8 using, among other techniques, electric shocks?

9 A. This never happened at S-21. I just to wish to reiterate
10 again, I never interrogated anyone.

11 MR. PESTMAN:

12 Your Honours, at this point I would like to refresh the memory of
13 the witness by quoting part of a statement given by Prak Khan in
14 the case of this particular witness. And I would like to add that
15 this witness is not on the witness list so we won't be able to
16 question this other witness, Prak Khan, on this particular issue.
17 And I would like to refresh and to ask this witness to react to
18 the statement.

19 MR. PRESIDENT:

20 The Chamber has already ruled on this and we still stand by our
21 ruling.

22 [11.09.27]

23 MR. PESTMAN:

24 But I understand the ruling to be that we can ask that particular
25 witness if he comes and testifies about the incident, but this

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1 particular witness is not going to come to testify. I won't be
2 able to ask this witness about the incident.

3 I won't be able to confront this witness with the information if
4 I'm not allowed to quote from that statement and it is a
5 statement which is on the case file, and this particular witness
6 is familiar with this witness and his statement. And I really
7 maintain that it will become surreal if we were not allowed to
8 confront this witness with the information given by other
9 witnesses that contradicts what this witness states.

10 We have to be given the opportunity to challenge the credibility
11 of this witness. If we're not allowed to do -- to show -- or to
12 quote from other statements, then we are basically barred from
13 doing so.

14 [11.10.24]

15 MR. PRESIDENT:

16 The Chamber wishes not to rule on the same matter that it has
17 already ruled upon.

18 International Co-Prosecutor, you may proceed.

19 MR. SMITH:

20 Thank you, Your Honour.

21 Your Honours, the Prosecution obviously believes it's important
22 that the Defence can put their case to the witness. However, the
23 details -- the specific details from another witness's statement,
24 the witness shouldn't be put in the position where he has to
25 comment on the reliability of another witness; and that places

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1 undue pressure on this witness.

2 But what can happen, what counsel can do is put the substance of
3 that statement to the witness, and then it's a matter for Your
4 Honours to decide on the credibility of those answers and weigh
5 up the value of that other statement.

6 [11.11.32]

7 But this witness shouldn't be in a position to judge or placed to
8 decide on the value of another person's statement against his
9 own.

10 But the matters can be put, and they can be put in substance.
11 Otherwise, it starts to become a battle between personalities,
12 and that's really not the role of this witness. The case should
13 be put, but it's not required that particular witnesses be made
14 known to him on that basis.

15 MR. PRESIDENT:

16 Counsel Karnavas, you may now proceed.

17 MR. KARNAVAS:

18 Thank you, Mr. President. I partly agree with the Prosecution.
19 In this instance, the gentleman was asked about the individual
20 who provided this statement to the OCIJ. He indicated that he
21 knew him, that he worked at S-21, thereby laying a foundation
22 that he knew the individual and the individual would have been in
23 a position to at least observe certain things.

24 [11.12.34]

25 If I understand the Prosecution correctly, they seem to have

1 reversed, in part, their position from earlier. The witness can
2 be confronted with what the other witness has indicated, with
3 what he observed, and then it's up to this particular witness to
4 decide -- to answer the question in the affirmative or in the
5 negative.

6 So, in other words, nothing should prevent any of the parties to
7 say, what if I were to say that this particular individual, when
8 being questioned by the OCIJ, provided the following?

9 The witness has indicated -- Duch has indicated, one, he's never
10 tortured. Now you have a statement from somebody else who said
11 yes, indeed, he -- at least did some things.

12 Duch has indicated that he knows the individual and that the
13 individual worked at S-21. There's nothing to prevent the party,
14 then, to put to the witness whether what the statement -- what's
15 in the statement is accurate or inaccurate. He can deny it or he
16 can qualify it, or what have you.

17 [11.13.57]

18 And, in fact, this was the technique that the judges -- the
19 Investigative Judges used throughout their investigation. This is
20 classic -- classic confrontation, and there's nothing, nothing
21 wrong, as long as a foundation is laid. Thank you.

22 MR. PESTMAN:

23 If I may?

24 MR. PRESIDENT:

25 Counsel (sic) has already ruled, and the ruling stands. And the

1 Chamber has indicated very clearly that counsel is only allowed
2 to rephrase the general questions concerning the statement of the
3 witness counsel feels necessary. And we believe that the Chamber
4 has made it significantly clear.

5 [11.15.04]

6 MR. PESTMAN:

7 Well, maybe to give me some further guidance. Does this rule
8 apply to every witness? Does it matter whether this particular
9 witness, Duch, is familiar with the statement? Does it matter
10 whether he's familiar with the witness? Is it relevant whether
11 that particular witness is going to be heard in Court?

12 I need some guidance. I cannot work with this direction or the
13 ruling.

14 (Judges deliberate)

15 [11.15.40]

16 MR. PRESIDENT:

17 Mr. Kaing Guek Eav, you were put the question concerning the time
18 when you were the Chairman of S-21 and whether you tortured a
19 prisoner. Counsel referred to the statement of a witness who said
20 you tortured a prisoner; is that correct?

21 MR. KAING GUEK EAV:

22 Mr. President, I already testified before the Chamber that at
23 S-21 I only interrogated one prisoner, Koy Thuon. However when I
24 worked -- during my work with Nat, Nat was about to hit -- or to
25 beat Chhit Iv and without allowing him to do so, I acted on

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1 behalf of him by slapping the person. And I -- apart from that, I
2 never interrogated other person or torture anyone. I was too busy
3 with my tasks to do that. I don't understand the statement made
4 by another witness, and I personally never done that.

5 MR. PRESIDENT:

6 Counsel for Nuon Chea, would you wish to proceed with other
7 questions?

8 [11.22.40]

9 MR. PESTMAN:

10 I regret that I'm not able to pursue this line of questioning. I
11 think it's important -- it would have been important also to
12 establish the truth, more specifically, the credibility of this
13 witness. I will move on to another topic.

14 BY MR. PESTMAN:

15 Q. Duch, you stated several times that Koy Thuon was the only
16 prisoner you ever interrogated; is that correct?

17 MR. KAING GUEK EAV:

18 A. Yes, it is.

19 Q. On 9 June 1999, you testified before the Investigating Judge
20 of the Military Court in Cambodia. I would like to show you, with
21 permission of the President and the Court, a page from that
22 statement, and I would like--

23 [11.23.56]

24 MR. PRESIDENT:

25 Could you advise the Court whether the document is already placed

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1 in Case File 002 and advise the Chamber on the identification of
2 the document, its ERN number, for example?

3 MR. PESTMAN:

4 Sorry, Your Honours, I will. D288/6.52/4.25, ERN English is
5 00377326; Khmer 00320787, and that last page is the page I would
6 like to show to the witness.

7 MR. PRESIDENT:

8 Court officer is now instructed to locate the document so that it
9 can be put up on the screen.

10 BY MR. PESTMAN:

11 Q. Mr. Witness, have you finished reading your statement?

12 MR. KAING GUEK EAV:

13 A. Yes, I have.

14 [11.26.41]

15 Q. Do you remember giving this statement?

16 A. Yes, I do.

17 Q. Could you read out the last sentence of this statement, the
18 statement in the box which starts with "As for personally
19 interrogating"?

20 A. I may read this as follows: "As for personally interrogating,
21 enjoined in interrogating, following orders from Son Sen, that
22 is, interrogated Koy Thuon and Seat Chhae."

23 [11.27.45]

24 Q. Do you remember interrogating Seat Chhae?

25 A. I had never thought of Seat Chhae for some time, so I may have

1 forgotten this for a while.

2 Q. But is your statement correct? Did you indeed interrogate him?

3 A. I went there only very briefly. I went to explain to Seat

4 Chhae with the letter sent by Son Sen to -- Son Sen wanted Seat

5 Chhae to confess. Son Sen contacted me through phone conversation

6 and he asked me whether it was a good idea to write him a letter,

7 and I responded to Son Sen that it would be a good idea indeed.

8 So I wrote -- Son Sen wrote a letter to me so that I could send

9 it to Seat Chhae, alias Tum, and if Seat Chhae, alias Tum,

10 honestly confessed, then the upper echelon would think of a

11 pardon for Seat Chhae. I got the letter from Son Sen and I

12 brought it to Seat Chhae. I did not talk any other thing other

13 than presenting the letter to him. That's all.

14 [11.29.02]

15 Q. You stated before this Court that Koy Thuon was the only

16 prisoner at S-21 who was not tortured; is that correct?

17 A. Yes, it is correct.

18 Q. On the 4th, the 5th and the 6th of May 1999, you gave a long

19 interview to Christophe Peschoux. Do you remember?

20 A. I checked already the documents of Christophe Peschoux, and I

21 believe that his document is not in the case file. May I advise

22 the Court to examine this issue?

23 Q. I'm sorry; I have to interrupt you here. You did not reject

24 the statement. In fact, you stated yesterday that you told

25 Peschoux the truth. You rejected interviews you gave to Nic

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1 Dunlop and Nate Thayer.

2 I would like to show this particular witness part of the
3 transcript of the interview he gave to Peschoux which was taped
4 and later typed out.

5 [11.31.54]

6 MR. PRESIDENT:

7 The International Co-Prosecutor, you may proceed.

8 MR. SMITH:

9 Could you provide the document number and the ERN number of the
10 page that you're referring to?

11 MR. PESTMAN:

12 The document is IS20.19. The ERN number in English is 00185024.

13 ERN in Khmer is 00160904, and just to be completely clear, it is
14 mentioned in the footnote of the Closing Order, numbered 3672 and
15 has thus been put before this Chamber.

16 MR. PRESIDENT:

17 Mr. Pestman, can you provide the footnote number again because it
18 was not translated?

19 [11.33.11]

20 MR. PESTMAN:

21 Three, six, seven, two.

22 MR. PRESIDENT:

23 Court Officer is instructed to search for the document and put up
24 this document onto the screen.

25 BY MR. PESTMAN:

1 Q. Mr. Witness, this is the transcript of the tape -- the tape
2 recording of that interview with Christophe Peschoux. My question
3 to you is: Could you please read out the text in the red boxes?
4 [11.35.16]

5 MR. PRESIDENT:

6 Can the greffier search for or cross-check the footnote number
7 that is 3672, whether it is as stated by counsel?

8 MR. PESTMAN:

9 Your Honours, while the footnote is being checked, the document
10 is mentioned in probably 20 different footnotes in the Closing
11 Order. I have a list of all the relevant footnote numbers.

12 JUDGE CARTWRIGHT:

13 When you say in the Closing Order, Mr. Pestman, do you mean Case
14 002? It's not clear to the Chamber whether this document has been
15 imported into Case 002 or not.

16 MR. PESTMAN:

17 Let me just check one second, please. I'm not sure what
18 "imported" it means, but it is the footnote -- a footnote in Case
19 002 Closing Order.

20 MR. PRESIDENT:

21 We will wait until the footnote is found. Again, the footnote
22 number is 3672.

23 Counsel, you may proceed with your questioning.

24 [11.37.28]

25 BY MR. PESTMAN:

1 Q. Duch, could you please read out the text in the red box -- in
2 the two red boxes?

3 MR. KAING GUEK EAV:

4 A. Thank you, Mr. President. My interview with Nic Dunlop, I
5 rejected that from the very beginning because the original
6 document has never been submitted to the Court. Only the copy of
7 the document was submitted to me. This is the first thing.
8 For the other thing, the tape of the interview, as I listened to
9 it, it was very confusing.

10 Q. Could you please read out the text in the red boxes?

11 A. I am appealing to the Court against the authenticity of the
12 document that you are presenting to me. So before I can answer to
13 your question, I want to express my concern over the authenticity
14 of the document. In Case 001, this document was never included in
15 the case file.

16 MR. PESTMAN:

17 Mr. President, Duch is a witness. He is not an accused. Can you
18 please instruct him to answer the question and not argue?

19 (Judges deliberate)

20 [11.44.01]

21 MR. PRESIDENT:

22 Before we continue our proceedings, I would like to hand it over
23 to Judge Cartwright in order to respond to Counsel Pestman
24 regarding the document he intends to put before the Chamber.
25 Judge Cartwright, you may now proceed.

1 JUDGE CARTWRIGHT:

2 Thank you, President.

3 This particular document, Counsel, was discussed during Case 001,
4 but the Court made no rulings on its authenticity and therefore
5 on its probative value. You may put questions to the witness
6 based on this document, but simply because it is in the footnotes
7 does not automatically confer authenticity on it and, therefore,
8 the witness is allowed to say -- to challenge it in any way that
9 he thinks appropriate.

10 Is that sufficient for your purposes?

11 [11.45.06]

12 MR. PESTMAN:

13 That was exactly the purpose of my questioning.

14 JUDGE CARTWRIGHT:

15 Thank you.

16 BY MR. PESTMAN:

17 And I agree. Can I continue?

18 Q. Duch, please read out the underlined lines in this document.

19 MR. KAING GUEK EAV:

20 A. Mr. President, from what Judge Cartwright has said, this
21 document has not yet been accepted of its authenticity.

22 Q. Duch, please answer the question.

23 A. Therefore, I would like to exercise my right not to read it.

24 Q. Mr. Duch, you have no such right not to read a document. Can
25 you please read the underlined lines?

1 [11.46.21]

2 A. Thank you. I am here to listen to the Judges, not you.

3 Q. I'm afraid I'm the one asking the questions. Could you please
4 read out those lines?

5 JUDGE CARTWRIGHT:

6 Duch, you should answer counsel's questions, but you are entitled
7 to give your views on the authenticity of the document.

8 So perhaps you can make those comments first, and then counsel
9 can put his questions. Is that clear to you?

10 MR. KAING GUEK EAV:

11 Thank you, Your Honour. From what I have heard from you just now,
12 that I am entitled to express my concerns over the authenticity
13 of the document, my concern against the authenticity of the
14 document is that the document provided to me was not in the
15 original form.

16 Secondly, the date of the document was different from the actual
17 date of my interview with Mr. Peschoux. The interview that I had
18 with him was from -- was on the 30th of March, but the date of
19 the document read instead it was on the 4th of -- rather, from
20 the 4th to the 6th of March and there were some inconsistencies,
21 some issues that I was not aware of. And as I listened to the
22 tape -- as I listened to the tapes, I can see that the tapes are
23 not accurate. And I'm sure that the tapes now still exist in the
24 Office of the Co-Prosecutors. One of the copies that I was
25 provided was not the correct one. So this reflects the

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1 inauthenticity of the document. Back then, the document was put
2 in the Court for examination and my counsel, François Roux,
3 challenged the document

4 [11.49.18]

5 A few days ago -- I'm not sure whether it was Mr. President or
6 some other person who referred to Christophe Peschoux's document
7 as having no transparency or authenticity because there were no
8 lawyers challenging the authenticity of the document. This is my
9 concern regarding the authenticity of the document.

10 And following the order from Judge Cartwright, I will now read
11 the document and explain that later on.

12 (Judges deliberate)

13 [11.51.38]

14 MR. PRESIDENT:

15 We are still faced with the issues of authenticity and the
16 reliability of the document even though we have settled the issue
17 several times. For the reason of the large volume of the
18 documents in the case file and before we move on with our
19 proceedings, the Chamber will need to first decide on the
20 authenticity and reliability of the document -- that is, before
21 giving the floor to defence counsel for Nuon Chea to continue his
22 questioning to this witness.

23 To obtain further information, the Chamber would like to ask the
24 parties whether they do wish to provide any views on this issue.

25 MR. PESTMAN:

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1 I certainly have a view on this issue, if I may.
2 First of all, it's not up to the witness to challenge the
3 authenticity of a document. It's up to the parties in a
4 procedure. I noticed that -- I note that the prosecutor has used
5 this particular document in the Introductory Submission. I assume
6 they will not challenge the authenticity of this document. As I
7 said, the Investigating Judges have used that document. I assume
8 they think it's authentic, or they thought it was authentic, and
9 we don't wish to challenge the authenticity of this document. So
10 it's not an issue.

11 I would like the witness to read out the lines we have
12 underlined, and then the witness can say whether he has actually
13 said so or not, and then we can go on with my examination.

14 [11.53.38]

15 MR. SMITH:

16 Thank you, Mr. President. As you're aware, the Prosecution has
17 put this document forward to place before the Chamber, and all we
18 can say is that, in Case File 001, Your Honours declared it
19 inadmissible, and, I think, largely on the basis that the Accused
20 -- or the witness, who was then accused -- was not given his
21 rights prior to this interview. And there were issues surrounding
22 the circumstances of the interview, which Your Honours said you
23 couldn't rule on at that stage, as in relation to the trial it
24 would require the calling of witnesses. And because you were
25 concerned about the expeditiousness of the proceedings, you

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1 decided not to admit the document, bearing in mind, though, the
2 wealth of other interviews before the Court.

3 So, Your Honours, the Prosecution have put this document forward.

4 Clearly, we are in a slightly different position in that the
5 statement was given by an accused back then. He is a witness now.

6 We have no objection to the witness commenting on any matter in
7 that document, but it's really a matter for Your Honours in terms
8 of admissibility. There are issues surrounding it, and whether
9 you would like to explore them further in this case, it's really
10 a matter for you.

11 [11.55.18]

12 MR. PRESIDENT:

13 Yes, the Lead Co-Lawyers, you may proceed.

14 MS. SIMONNEAU-FORT:

15 Mr. President, apart from the fact that I find it quite
16 interesting that counsel for Nuon Chea is raising arguments
17 regarding the origins of copies -- the originals and copies of
18 the documents, perhaps if the witness could read the document, he
19 would be able to make his remarks on it. So we would like the
20 witness to be able to read the document.

21 MR. PRESIDENT:

22 Counsel Karnavas, you may proceed.

23 [11.55.59]

24 MR. KARNAVAS:

25 Thank you, Mr. President. It's one thing if the document has been

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1 manufactured, has been tampered with, and now the question is: Is
2 it authentic, which would then call into question the reliability
3 of the document. As far as I understand, it may be that the
4 witness is contesting the substance of what's in the document. So
5 the question is whether he agrees or disagrees with that. He
6 certainly can comment on it.

7 But to certainly say that the document is not authentic is to
8 suggest that it's been either tampered or manufactured. It's a
9 confabulation -- sorry for using that word, but it's something
10 that's been made up.

11 I don't think that that is the issue. I think the gentleman here
12 contests the content of what's in it and he's perfectly capable,
13 as any other witness, in commenting on that. And then it's for
14 Your Honours to decide what to accept or not accept.

15 [11.57.16]

16 MR. PRESIDENT:

17 Mr. Michael Karnavas, would you like to have any idea on the
18 authenticity and reliability of the document? Rather, it's Mr.
19 Pestman.

20 MR. PESTMAN:

21 I'm honoured, Mr. President.

22 No, I just want to state that the document has already been
23 admitted and put before the Chamber, so it's not a question of
24 admissibility. It's just a question of authenticity, and that
25 question -- exactly that question can only be answered after we

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1 hear this particular witness who can tell us whether the
2 transcript is accurate or not. So we need to hear this witness in
3 order to be able to answer that question.

4 [11.58.05]

5 MR. SMITH:

6 Your Honour, I'll be brief. The document hasn't been admitted.
7 Annexes 12 and 13 are still to be decided on by the Chamber, so
8 it actually hasn't been admitted yet. We're awaiting your
9 decision on that matter.

10 But I think one thing that can be agreed on, whilst the witness
11 is here it's reasonable that he comment on that particular part
12 of the statement, and then the issue of admissibility can be
13 addressed later.

14 MR. PRESIDENT:

15 Thank you very much.

16 The Chamber is interested in this issue. Concerning the fact that
17 the document was presented during Case 001 and the Chamber
18 decided not to include that document in Case File 002, and now we
19 have differing views regarding the document, when the document is
20 used to put questions to a witness. Parties have objected to the
21 questions on the basis of this document.

22 [11.59.37]

23 Because it is now appropriate for us to adjourn for lunch break
24 and because of the complexity of the issue, the Chamber will now
25 adjourn for lunch break and the proceedings will resume at 1.30,

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1 and the Chamber will decide on the matter at the beginning of the
2 afternoon session in order to expedite the proceedings.

3 The security personnel is now instructed to escort the witness
4 back to the waiting room and to return him to the courtroom by
5 1.30.

6 Yes, Mr. Pestman.

7 MR. PESTMAN:

8 For the reasons which by now should be -- or, as you well know,
9 my client would like to remain downstairs after the break.

10 [12.00.52]

11 MR. PRESIDENT:

12 You may be seated, Counsel.

13 Having heard the request of Mr. Nuon Chea that has been made
14 through his counsel, which seeks the leave from the Chamber to
15 follow the proceedings from the holding cell downstairs, that is,
16 to waive his right to be present in the courtroom, the Chamber
17 decides to grant the request of Mr. Nuon Chea that has been made
18 through his counsel to follow the proceedings remotely from the
19 holding cell downstairs through audio-visual means for the
20 afternoon session. The Accused has waived his right to be present
21 in the courtroom. The Chamber instructs that defence counsel
22 submit the written waiver with a thumbprint or signature of the
23 accused Nuon Chea.

24 The AV Unit is now instructed to live the proceedings to the
25 holding cell for the afternoon session.

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1 Security guards are now instructed to bring the two accused
2 persons to the holding cell and to return Mr. Khieu Samphan to
3 the courtroom by 1.30.

4 The Court is now adjourned.

5 (Court recesses from 1202H to 1336H)

6 MR. PRESIDENT:

7 Please be seated. The Court is now in session.

8 [13.37.52]

9 Before we proceed to counsel for Nuon Chea to pose questions to
10 witness Kaing Guek Eav, alias Duch, the Chamber wishes to put
11 document E43/4, which is a decision concerning the documents
12 counsel for Nuon Chea wish to put for examination during this
13 hearing before the break -- the lunch adjournment. This -- the
14 decision is on the admissibility of the materials to be used as
15 evidence in the case file.

16 Now, counsel for Nuon Chea is handed over the floor.

17 However, the Chamber wishes to inform parties that the evaluation
18 of the evidence including the documents put before us today will
19 be up to the discretion of the Chamber to assess its probative
20 value.

21 And to be more precise, Judge Lavergne will be handed over to
22 clarify this to the parties. Judge Lavergne, you may proceed.

23 JUDGE LAVERGNE:

24 Yes. Thank you, Mr. President.

25 [13.39.57]

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1 It's not clarification that -- I'm seeking, essentially,
2 clarification because I think that part of what you said has not
3 been properly translated. So what you announced, in fact, is that
4 document E43/4, which are the decisions taken by the Chamber in
5 Case 001 and regarding an interview that was conducted by
6 Christophe Peschoux -- and this decision was placed -- is also
7 placed on case file for Case 002.

8 And the Defence can continue its questioning, as long as the
9 questions are relevant, and we will assess the probative value of
10 this interview later on, when we will hand down our decision.

11 BY MR. PESTMAN:

12 Q. Duch, would you mind reading the underlined sections in the
13 red boxes?

14 MR. KAING GUEK EAV:

15 A. I would like to read it as follows:

16 "Question: In what case were hot methods used?

17 "Response: When they did not answer or the answers were
18 unsatisfactory. In the case of Koy Thuon, we used torture because
19 he reacted."

20 [13.42.11]

21 I would like to only read on this part.

22 Q. Please continue.

23 A. I would like to reject the term that I read. I did say that we
24 used hot method when Koy Thuon reacted; I didn't say "torture". I
25 was reading from it, but I didn't say that.

1 Q. Duch, why did you use the hot method on Koy Thuon?

2 A. This is the point that I contest the document. I was the one
3 who interrogated Koy Thuon and I already stated again and again;
4 when Koy Thuon was sent in, I later on kept him on the fourth
5 floor guarded by a security guard to ensure that he did not
6 react. When he calmed down and I went to see him, I asked him
7 that he should talk to me because what he confessed would be for
8 Angkar and he would treat me as the messenger instead and he
9 started to write down his confession.

10 [13.44.31]

11 A few minutes later, he broke the pen and was very angry. He said
12 that he was already acting as Angkar, but was not properly
13 treated.

14 Q. My question was: Why did you use the hot method on Koy Thuon.
15 Could you please answer that question?

16 A. Mr. President, if I am not allowed to elaborate on this
17 document, I wish not to respond to further questions from counsel
18 because this document has caught me off guard. And there are a
19 lot of -- this document is very contradictory to others, and this
20 is the piece of document that I pay great attention to, and I
21 wish to clarify things on this matter before I can respond to
22 questions, and it is important to know who was a real liar and
23 who was telling the truth.

24 Q. It is indeed important to know who is a real liar and who is
25 telling the truth; that's exactly the reason why I'm asking you

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1 this question.

2 [13.45.52]

3 Why did you apply the hot method on Koy Thuon?

4 MR. SMITH:

5 Your Honour.

6 MR. PRESIDENT:

7 Co-Prosecutor, you may proceed.

8 MR. SMITH:

9 Mr. President, this is the third time that the question's been
10 asked. The witness has never said, in his testimony, that he's
11 used the hot method on Koy Thuon; that's what appears in the
12 interview.

13 [13.46.26]

14 Obviously, the witness is concerned that he's not being given an
15 opportunity to explain why that appears in the interview; that's
16 what he wants to do. So the premise of the question that he used
17 hot methods on Koy Thuon has not come from this particular
18 witness; it's come from the statement and the witness wants a
19 chance to explain why that statement appears there, and I think
20 the witness should be able to do that. I think the question's
21 misleading.

22 [13.47.05]

23 MR. PRESIDENT:

24 Counsel for the civil party, you may proceed first.

25 MR. PICH ANG:

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1 Thank you, Mr. President. The text is rather mixed up and
2 misleading and the reason that witness asked for clarification
3 should be considered and that he should be given opportunity to
4 explain.

5 MR. PRESIDENT:

6 Objection is sustained. And we already noted that Duch wished to
7 observe or to give his observation regarding the document, and
8 the Chamber has already ruled on this and the Chamber has decided
9 to put document E43/4 for examination before the Chamber.

10 [13.48.02]

11 So, if counsel has new questions other than this, he may proceed.
12 The last question was regarded as having been put to the witness.

13 BY MR. PESTMAN:

14 Q. Duch, what do you or did you mean when you said that the
15 witness or the -- the prisoner, Koy Thuon, reacted back?

16 (Judges deliberate)

17 [13.51.39]

18 MR. PRESIDENT:

19 Mr. Witness, have you ever said Koy Thuon reacted back during the
20 interrogation; have you ever said such words or phrase before?

21 MR. KAING GUEK EAV:

22 A. I have talked a lot on this. When I discussed the details of
23 Koy Thuon, then I would say that he reacted back three times.
24 Every time he reacted, I would do something to control the
25 situation and I asked Koy Thuon, in some special circumstances,

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1 the particulars of which had already been reiterated and
2 testified time and again. That is why I ask the Chamber so that I
3 can explain in detail on this if you allow me.

4 MR. PRESIDENT:

5 You may proceed, then; let us know the details.

6 MR. KAING GUEK EAV:

7 Your Honours and Cambodian fellow citizen, I used to be under
8 supervision of Koy Thuon from October 1967. I was at Boeng Thum,
9 behind the factory in Kampong Cham. I had great affiliation and
10 sentiment towards this person, and when my superior asked me
11 about Koy Thuon's characteristic, I told him in detail and later
12 on, Koy Thuon had some problem.

13 [13.53.42]

14 MR. PRESIDENT:

15 Counsel, we note you are on your feet; you may proceed.

16 MR. PESTMAN:

17 I'm a bit worried about where this is going. I was asking him
18 particular questions about the witness's response when Koy Thuon
19 reacted back and I can rephrase my question with that regard, but
20 I object to the witness starting on the exposé that it takes
21 available time out of my cross-examination. So I'm willing to
22 rephrase my question about the hot method if that is what the
23 Trial Chamber desires.

24 MR. PRESIDENT:

25 The Co-Prosecutor, you may now proceed.

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1 MR. SMITH:

2 Thank you, Your Honours. I don't want to interrupt the flow any
3 more than it has been, but I think the premise of these questions
4 are that the Accused -- I'm sorry, the witness, in fact, did make
5 the statement.

6 [13.54.54]

7 Now, he said that he wanted to clarify how this statement came
8 about. So rather than have the matter confused more, I would
9 suggest that the questions be asked, did you make the statement;
10 if you did make the statement, is it accurate and if you did make
11 the statement, why was the statement made. But, at the moment, we
12 have questions based on facts which the witness, himself, has
13 said that didn't happen.

14 MR. PESTMAN:

15 Mr. President, I agree with the prosecutor.

16 MR. PRESIDENT:

17 Duch, you are now asked to conclude your comment on Koy Thuon
18 issue and please be prepared to listen to the questions by
19 counsel for Nuon Chea and respond to the questions if you feel
20 necessary.

21 [13.56.05]

22 Counsel for Nuon Chea is also advised to put the questions that
23 are allowed only by the law; if not, the Chamber shall exercise
24 its discretion to interrupt.

25 BY MR. PESTMAN:

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1 Q. Duch, did you tell Christophe Peschoux that you used hot
2 methods on Koy Thuon when he reacted back?

3 MR. KAING GUEK EAV:

4 A. That question could be answered. Koy Thuon reacted back three
5 times, but I did not use hot method; I used political means --
6 ideology.

7 Q. To go back to this morning, very briefly, when I asked you
8 whether, at the time, you knew about the hot and the cold and the
9 chewing methods, your answer was not completely clear to me.

10 [13.57.37]

11 Can you tell me whether you know now or whether you know now
12 whether you knew, at the time, about those terms? My question is,
13 maybe, slightly confusing, but it's also caused by your answer
14 this morning. Can you tell me -- do you know whether, at the
15 time, you knew about the cold, the hot, and the chewing methods?

16 MR. KAING GUEK EAV:

17 A. Mr. President, I think the question is repetitious; I don't
18 know whether I should respond to this or not.

19 MR. PRESIDENT:

20 Indeed, you supposed to respond to the question because counsel
21 already indicated that he could not yet get the message yet.
22 Counsel was putting this question during his allotted time, and
23 you should now respond.

24 [13.59.00]

25 MR. KAING GUEK EAV:

1 Mr. President, could you ask Mr. Pestman to rephrase the question
2 please?

3 MR. PRESIDENT:

4 Counsel, you have already heard from the witness and please,
5 rephrase your question. Witness -- party is advised to make sure
6 that the question is also taken note so that it's not repeated.

7 BY MR. PESTMAN:

8 Q. Duch, it's not up to you to decide whether you have to answer
9 a question if you think it's repetitious; it's up to the Trial
10 Chamber.

11 [13.59.35]

12 Did you know, at the time, what the terms "hot," "cold," and
13 "chewing methods" meant?

14 MR. KAING GUEK EAV:

15 A. The hot, the cold, and the chewing methods were used and we
16 used the cold method with Koy Thuon when he reacted and to put it
17 simply and honestly, we only used cold method all along with Koy
18 Thuon when he reacted -- only when the interrogators noted that
19 hot method shall be applied that they would use the method. The
20 hot and cold methods are used interchangeably, from time to time,
21 in order to extract confessions.

22 Q. So, just to -- to be absolutely clear, why did you tell the
23 Investigating Judges that you had never heard of those terms
24 until you saw Rithy Pahn's film?

25 A. Thank you. Mr. President, this morning I said that, from 1975

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1 to 2007, it was 30 years ago and so I was confused.

2 [14.01.48]

3 Later on, with the help from the Co-Investigating Judges, I was
4 told that I was not making differentiation from the hot, the
5 cold, or the chewing methods. Later on, I was facilitated by the
6 Co-Prosecutors in order to help me remember this point.

7 MR. PESTMAN:

8 Your Honours, I would like to move on to a different topic and I
9 would like to show some documents -- confessions to the witness
10 and I would like to start with a confession which the witness has
11 already seen earlier this -- during this trial which is document
12 D43/IV-Annex 75. It is the confession of Tiv Mei and the Khmer
13 ERN is 00174754 so I'm asking for permission to put this document
14 on the screen.

15 MR. PRESIDENT:

16 Court officer is instructed to put up the document onto the
17 screen.

18 BY MR. PESTMAN:

19 And Mr. President, I've noticed that the documents are not shown
20 on the -- the public's screen. Maybe it is possible to -- for the
21 public to see this document as well, not only for the parties
22 here in this courtroom.

23 [14.04.03]

24 It's being shown. Thank you very much.

25 Q. Mr. Duch, do you recognize this document? If you prefer, we

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1 can give you a hard copy; that may be easier to read.

2 MR. KAING GUEK EAV:

3 A. Thank you, Mr. President. I recognize this document but, at
4 the same time, may I request that this document be enlarged so
5 that I can read the annotation -- my annotations? Yes, it is now
6 large enough for me to read.

7 MR. PESTMAN:

8 Mr. President, maybe it's easier if we give him a hard copy; we
9 have one. Maybe the court officer can assist us.

10 MR. PRESIDENT:

11 The Chamber permit; court officer is instructed to take the
12 document from counsel and bring it to the witness for
13 examination.

14 [14.05.34]

15 BY MR. PESTMAN:

16 Q. Duch, you already mentioned or recognized your own handwriting
17 at the bottom of the document. Can you read the document or your
18 annotation for us please?

19 MR. KAING GUEK EAV:

20 A. Thank you.

21 "Beloved Brother, this document includes those old regime people.
22 On the 10 November 1977."

23 Q. Thank you. Who is the "Beloved Brother" you addressed it --
24 this annotation to?

25 A. Thank you, Mr. President. The "Beloved Brother", here, is to

1 both Son Sen -- that was when I was with Son Sen and when I was
2 with Brother Nuon, I addressed to Brother Nuon.

3 Q. Can you explain what you mean when with - when I was with
4 Brother Nuon, when I was with Nuon - Son Sen; can you explain
5 what you mean by that?

6 A. Mr. President, when I was with Son Sen, I went to report,
7 personally, to Son Sen and when I was with Nuon Chea, I also went
8 to report, personally, to Nuon Chea. We were approximately half a
9 metre away from each other.

10 Q. Thank you. But the "Beloved Brother", here, is that Son Sen or
11 is that Nuon Chea?

12 [14.08.02]

13 A. I wrote this word to reflect the people at the upper echelon
14 -- to reflect the Angkar, Pol Pot.

15 Q. Do I understand your answer to mean that the "Beloved Brother"
16 in this particular annotation refers to Pol Pot?

17 A. The word "Respected Brother" or "Beloved Brother" does not
18 refer to Pol Pot; it refers to any brother who led me.

19 Q. I understand your answer, but who is that brother? Who led you
20 when you wrote this annotation?

21 A. At the time, I referred to Nuon Chea because it was then that
22 Nuon Chea supervised me directly.

23 Q. Are you saying that because you have seen the date, 10
24 November 1977, which is after the 15th of August 1977; is that
25 why you're saying that it's addressed to Nuon Chea?

1 A. I base on the date that I wrote at the bottom of my annotation
2 which reads 10th November 1977. This document came from me; I
3 signed it on that day.

4 [14.10.35]

5 Q. Thank you. Could you please read the annotation in the other
6 box -- small box on the left?

7 A. "Sent to Brother Nuon, one copy, 11th November 1977."

8 Q. You told the Trial Chamber that earlier during your testimony
9 that -- that is Son Sen's handwriting; is that correct?

10 A. Yes, it is correct.

11 [14.11.42]

12 Q. And the date of the annotation is one day after the date of
13 your annotation; would you agree?

14 A. Yes.

15 Q. Are you sure this document was not sent to Son Sen by you and
16 are you sure the annotation underneath was addressed -- or wasn't
17 addressed to Son Sen?

18 A. I am sure. My annotation was directed to Brother Nuon. The
19 annotation above that was the annotation of Son Sen.

20 Q. Can -- can you explain to me then and to the Court why a copy
21 of this confession had to be sent by Son Sen to Nuon Chea when
22 you stated that all confessions after the 15th of August 1977
23 were only sent to Nuon Chea? Why did he have to receive a copy of
24 a confession he already had?

25 A. Mr. President, as I have heard, the counsel requires me to

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1 elaborate on this issue, so allow me to do so.

2 [14.14.30]

3 After I no longer work closely with Son Sen, I communicated with
4 him through communication radios. We did not have only this one
5 document which was dated back to the 11th of November 1977. Son
6 Sen's role was to read the document so that he could report to
7 the upper echelon. So, at that time, he went to a meeting in
8 Phnom Penh; that's what I believe. That's why he had his
9 annotation on this document. From what I understand from Case 001
10 hearing, the last annotation of Nuon Chea was on the 20 --rather,
11 the last annotation of Son Sen was on the 25th of November 1977.
12 So, in short, after Son Sen no longer works closely with me, he
13 frequently went to the meeting in Phnom Penh and his duty was to
14 read documents. He did this work since the 9th of October 1975
15 until the 25th of 11, 1977 when he became very engaged with other
16 tasks.

17 [14.15.07]

18 Q. Your Honours, I would like to show the next document which is
19 another confession which was shown to the witness earlier on the
20 29th of March. It's document D43/IV-Annex 26, Khmer ERN 00173049.
21 I request permission to put that on the screen and to give a copy
22 - a hard copy to the witness.

23 MR. PRESIDENT:

24 The Chamber permits. Court officer is instructed to take the
25 document from the counsel to the witness.

1 BY MR. PESTMAN:

2 Q. Duch, do you remember seeing this document on the 29th of
3 March?

4 MR. KAING GUEK EAV:

5 A. I have seen that.

6 Q. Could you please read out the annotation in the top left-hand
7 corner of this document?

8 A. I would like to read as follows:

9 "The Ministry of Social Affairs already resolved."

10 Q. On the 29th of March, you also stated that you recognized the
11 handwriting. Whose handwriting is it according to you?

12 A. Thank you. Mr. President, this handwriting is Brother Nuon's.
13 [14.17.52]

14 Q. Duch, that is not what you told the Investigating Judges when
15 you were questioned about this document. Do you remember what you
16 told the Investigating Judges in document D95; ERN English
17 00205159, Khmer 00205150, and French 00205167?

18 Do you remember what you told the Investigating Judges about the
19 annotation in the top left-hand corner?

20 A. Thank you. Initially, I got confused; I mistaken that it was
21 the annotation of Brother Son Sen. Later, I seem to have an
22 opportunity to inform the Co-Investigating Judges to be precise.
23 It seems that I had another opportunity to tell that to the
24 Co-Investigating Judges.

25 Q. Did you change your statement when you realized that a date on

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1 the document was in February 1978 and that you therefore assumed
2 that it had to be Nuon Chea instead of Son Sen?

3 [14.19.49]

4 A. Mr. President, when I made a correction I did not base on the
5 date of issuance, I based on the writing itself.

6 Brother Son Sen never wrote the word "already" -- or "haoy" in
7 Khmer -- like that.

8 Q. Duch, you spent a long period of your life in intelligence.

9 Did you ever receive any training in the recognition of
10 handwriting?

11 A. Thank you. I had no expertise training on that.

12 MR. PESTMAN:

13 Your Honours, I would like to show the next confession, Khmer
14 00174736. Translation in English can be found on ERN 00629418.
15 The French translation can be found at 00280058.

16 MR. PRESIDENT:

17 The Chamber permits.

18 Do you have the hard copy?

19 Court officer is instructed to take the document from counsel and
20 bring it to the witness for examination.

21 [14.22.02]

22 BY MR. PESTMAN:

23 I have covered -- or asked our case manager to cover part of the
24 document. I have covered the annotations which were made after
25 the confession was given to Duch.

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1 Q. My question is: Without looking at the annotations, Duch, do
2 you recognize this document?

3 MR. KAING GUEK EAV:

4 A. Mr. President, the document that is provided to me is
5 different from the one that is put up on the screen. Which
6 document are you referring to, Counsel?

7 MR. PRESIDENT:

8 Counsel, can you indicate which document you are using because
9 the document in the hands of the witness is different from the
10 one that is put up on the screen regarding the covered parts?

11 [14.23.21]

12 MR. PESTMAN:

13 I'm sorry; it is indeed the wrong number. This is -- the right
14 document is showing on-screen now. It was the ERN number I gave
15 and I understand this is the document the witness has in his
16 hands now.

17 MR. PRESIDENT:

18 The witness should wait.

19 Yes, International Co-Prosecutor, you may proceed.

20 MR. SMITH:

21 Your Honour, I don't know the purpose for the Defence altering
22 the document that the witness has been given. I think the witness
23 should get the document that appears on the case file and he
24 should be asked questions about that.

25 Unless there's some explanation for the alteration of the

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1 document that the witness is getting compared to what everyone
2 else is receiving, I would submit that the full document be shown
3 not an altered version.

4 [14.24.29]

5 MR. PESTMAN:

6 Your Honours, I--

7 MR. PRESIDENT:

8 Yes, Lead Co-Lawyer, you may proceed.

9 MS. SIMONNEAU-FORT:

10 Yes, Mr. President. I totally agree with the prosecutor. We are
11 not guessing here. The document should be presented in its
12 entirety, and the witness shouldn't be shown parts that are
13 hidden by one of the parties to the proceedings.

14 So we cannot modify a document with a view to protecting any
15 person; that is not the case here, so I think the document should
16 be shown to the witness in its entirety.

17 MR. PRESIDENT:

18 Yes, Mr. Pestman, you may proceed.

19 [14.25.16]

20 MR. PESTMAN:

21 I will show the document in its entirety.

22 The purpose of this exercise is to show to the Court and to
23 everyone in this courtroom when annotations were made and what
24 the witness saw at the time. I will ask my case manager to reveal
25 the first annotation, and then I would like to ask the witness

1 whether the document looked like this when he transferred it to
2 his superiors. That was my question, and I will reveal the other
3 annotations as well.

4 BY MR. PESTMAN:

5 Q. But my question is: Did the document look like this when you
6 transferred it to your superior? That is to be absolutely sure
7 the other annotations were not there when you transferred this
8 document to your superior.

9 [14.26.18]

10 But also I'm going to ask him first whether he recognized the
11 document and the witness has not had the opportunity to answer
12 yet.

13 MR. PRESIDENT:

14 Yes, Lead Co-Lawyer, you may proceed.

15 MS. SIMONNEAU-FORT:

16 Mr. President, I want to reiterate my objection. We cannot show
17 the document to the witness in bits and pieces. We should present
18 the document as it is on the case file. Let us not play a
19 cat-and-mouse game here. We should show the entire document
20 without any modifications.

21 MR. PRESIDENT:

22 Yes, Mr. Pestman, you may proceed.

23 MR. PESTMAN:

24 I'm just trying to be helpful. I'm trying to show to everyone and
25 to Your Honours the way this document went; the persons that saw

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1 this document in a chronological order because I noticed that
2 last week there was some confusion about this issue.
3 I will reveal them within a minute. I just wanted to show
4 step-by-step how this document travelled from one person to the
5 other person, and I don't want to confuse the witness by giving
6 him the entire document so that he will start speculating.

7 (Judges deliberate)

8 [14.28.40]

9 MR. PRESIDENT:

10 The Chamber decides that the objection by the Prosecution and the
11 civil party lawyers stands.

12 If defence counsel for Nuon Chea intends to put this document
13 before the Chamber, the entire document should be shown to the
14 witness for him to examine -- for him to decide whether he has
15 seen, has read, this document before -- before the counsel can
16 put further questions. Otherwise, counsel is not allowed to put
17 questions regarding this document.

18 BY MR. PESTMAN:

19 Q. Mr. Duch, do you recognize this document; have you seen this
20 before?

21 MR. PRESIDENT:

22 Counsel, you are instructed to remove the blockage so that
23 witness can see the whole document, so that you can ask whether
24 the witness has seen or have read this document, otherwise you
25 are not allowed to put further questions concerning these

1 documents.

2 [14.30.29]

3 BY MR. PESTMAN:

4 Q. Duch, do you recognize this document?

5 MR. KAING GUEK EAV:

6 A. Yes, I do.

7 Q. Could you please read out the annotation at the bottom of the
8 document? And I have a copy of the -- the hard copy of the entire
9 document for the witness.

10 [14.31.16]

11 MR. PRESIDENT:

12 Witness has already obtained the hard copy, but please be more
13 specific to the portion you wish the witness to read so that he
14 could be well informed and what to act.

15 MR. PESTMAN:

16 I have the -- a copy of the entire document without the
17 redactions. The whole purpose of my exercise was to make it
18 easier for the witness to read the appropriate sections, but
19 maybe the court officer can give him a copy of the document.

20 MR. PRESIDENT:

21 Court officer is now instructed to fetch the document from
22 counsel and hand it over to the witness.

23 [14.32.16]

24 BY MR. PESTMAN:

25 Q. Duch, do you understand which annotation I would like you to

1 read? It's the one you made.

2 MR. KAING GUEK EAV:

3 A. I would like to read the following passage as follows:

4 "Dear Respected Brother,

5 "1. The forces reported this time were all from Sector 22 -- both
6 in the revolutionary line and the network of Kok Minh Tang at
7 Pearang.

8 "2. The highest force that he mentioned was Tum.

9 "3. He said that Comrade Si Pheng was a revolutionist -- he said
10 in his own stance.

11 "Regards,

12 "Duch, 15 October 1977."

13 Q. Thank you. Who is the "Beloved Brother" this annotation is
14 addressed to?

15 [14.33.52]

16 A. This document was dated on the 15 October 1977. I was
17 referring this document to Brother Nuon.

18 Q. Could you read out the annotation with the date 17 October
19 '77?

20 A. "Point number 1. Can be important.

21 "2. This man is a string of the Cambodian-Chinese, interpreter or
22 translator.

23 "3. I haven't read it yet. I would like you to read it first.

24 "[Signature:] Khieu."

25 Q. And the date?

1 A. 17 October 1977.

2 Q. And who is Khieu?

3 A. "Khieu", here, refers to Brother Son Sen.

4 [14.35.30]

5 Q. And do you agree with me that the date under this annotation
6 is two days after the date under your annotation; do you agree?

7 A. Yes, I do.

8 Q. Are you sure this confession was sent to Nuon Chea?

9 A. Yes, I am.

10 Q. There's another annotation in the top left. It is not very
11 easy to read but maybe you can help us. Can you read it, please?

12 A. I will read it as follows: "Special: On the path of Comrade
13 Khieu contacting the East."

14 Q. And who wrote that annotation?

15 A. According to the content written by Son Sen which indicated
16 that you could read first and this was the special request
17 concerning the request -- regarding the contact of the Comrade
18 Khieu in -- at the East, so my observation this annotation could
19 have been made by Pol Pot.

20 [14.37.51]

21 Q. That's indeed what you told the Investigating Judges that
22 Khieu -- Son Sen, sent the confession to Pol Pot who then,
23 according to your statement, sent it back to Son Sen who
24 annotated the confession on 11 November 1977.

25 Can you just, for the record, read that small annotation as well?

1 A. "Already sent, 11 November 1977".

2 Q. And do you recognize the handwriting?

3 [14.38.56]

4 A. I think I made a mistake on this. I said it was written by Son
5 Sen based on the date, the 11th of November '77, because on that
6 date Son Sen wrote several annotations. However, having looked at
7 this annotation again, I think it could have been written by
8 Brother Nuon, so I am mixed up myself.

9 Q. So, if I understand you correctly, you're correcting your
10 statement which you gave to the Investigating Judges where you
11 said that this annotation was Son Sen's annotation on the basis
12 of the date under -- on the document -- or under the annotation;
13 is that correct?

14 A. I did make it very clear that before the Co-Investigating
15 Judges, I said that annotation was made by Son Sen based on the
16 date and the task given to him by Pol Pot.

17 Q. That's what you told the Investigating Judges, but are you
18 telling the Court now that it is, in fact, Nuon Chea's
19 handwriting? And my question was: Are you saying that because the
20 date is 11 November 1977? Can you please explain?

21 A. Having seen this writing, I now feel that it was instead
22 written by Brother Nuon Chea because I -- the annotation made by
23 upper echelon, and I am now rather confused when it comes to this
24 particular annotation. That's all I can tell the Court.

25 [14.41.46]

1 Q. Duch, you told the Investigating Judges that confessions you
2 sent to your superior were never returned to S-21; is that
3 correct?

4 A. Yes.

5 Q. So, to be absolutely clear and have no misunderstanding, when
6 you were at S-21 you sent the document to your superior, without
7 the annotations which are not yours, and you never saw any of the
8 annotations made by the superiors until this document was shown
9 to you in your own case. Am I summarizing your position
10 correctly?

11 A. S-21 documents that were sent to my superior contain only my
12 annotations on top of the confessions of the prisoners. After
13 they were sent, I never received the documents that I annotated
14 earlier again.

15 [14.43.49]

16 However, I wish to also emphasize that Mr. Pestman did not give
17 me the full message of it. Mr. Nate Thayer, when he met me in
18 April 1999, he presented the confession of Kung Kien to me asking
19 me the -- to confirm the annotations on the confessions, and I
20 noted the annotations of Son Sen and Nuon Chea. And that was the
21 first time indeed I saw the annotations made by my superior on
22 the confessions that I annotated earlier.

23 Q. Just to be sure about the date. When did you first see
24 confessions annotated by your superior?

25 A. That was in April 1999.

1 MR. PESTMAN:

2 Your Honours, I would like to move onto the next confession.

3 MR. PRESIDENT:

4 Counsel Karnavas, you may proceed.

5 [14.45.36]

6 MR. KARNAVAS:

7 Mr. President, before counsel moves on, perhaps he can tell us
8 exactly which statement -- he made reference to a statement, but
9 there was nothing for the record and there's so many, so perhaps
10 the better practice would be to cite the exhibit number and then
11 maybe the ERN number, and that way if it's done once at least we
12 know what statement he's referring to.

13 MR. PESTMAN:

14 I'm not sure which statement--

15 MR. KARNAVAS:

16 I'm speaking about the one that you just confronted the witness
17 with, where you indicated that he had given the Investigative
18 Judges one version versus the version that he's giving here today
19 for the purposes of confrontation.

20 [14.46.23]

21 MR. PESTMAN:

22 I'm sorry; I will give you the ERN number. ERN number in English
23 is 00398164; Khmer 00398157.

24 MR. PRESIDENT:

25 Counsel, could you repeat the ERN number of the document again?

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1 MR. PESTMAN:

2 The English number is 00398164; Khmer, 00398157; French,
3 00398171. Document number is D225. I'm sorry for not giving you
4 the reference. It's the document where the witness states that
5 that particular annotation was written by Son Sen.

6 With permission, I would like to show the next confession,
7 D43/IV-Annex 77, and the Khmer ERN is 0017--
8 [14.48.04]

9 MR. PRESIDENT:

10 Since it is now an appropriate time for adjournment, the Court
11 will adjourn for 20 minutes. The next session will resume at 10
12 after 3.

13 Security personnel are instructed to bring the witness to his
14 waiting room and have him returned to the courtroom by 3.10.
15 (Court recesses from 1448H to 1509H)

16 MR. PRESIDENT:

17 Please be seated. The Court is now in session.

18 And the floor is handed over to defence counsel for Nuon Chea to
19 continue questioning the witness.

20 MR. PESTMAN:

21 Thank you, Mr. President.

22 I have a couple of other confessions I would like to show. I will
23 try to go through them a bit more quickly than the others. First
24 of all, I would like to show D43/IV-Annex 77, Khmer ERN 00174764.
25 I can also give the ERNs for the translations. Would you

1 appreciate that? English ERN 00223909; French 00280059. And my
2 request as well, I can put it on the screen.

3 [15.10.38]

4 MR. PRESIDENT:

5 The Chamber permits.

6 Court officer is instructed to put up the document on the screen
7 and to take the hardcopy of the document from counsel and bring
8 it to the witness.

9 BY MR. PESTMAN:

10 Q. Duch, please take your time to look at the document, but my
11 question is: Do you recognize this document?

12 [15.11.30]

13 MR. KAING GUEK EAV:

14 A. Mr. President, I know this document.

15 Q. Thank you. It is conveniently annotated in two different
16 colours. Could you -- without reading the whole annotation in
17 red, could you just translate for the Court the top of the
18 annotation and the bottom with the signature and the date?

19 A. Thank you. The red annotation on top is already taken minute
20 and the red below reads: "Respected Brother, the first reason for
21 the arrest of A Huong was that--

22 Q. Sorry, Duch, I don't think it's necessary to read the whole
23 annotation, just the top, which you just did, "Respected Brother"
24 and the bottom, the signature there with the date.

25 A. Thank you. "Respectfully yours, Duch, 9th November 1977".

1 Q. And is that your handwriting?

2 [15.13.30]

3 A. Thank you. This is my handwriting.

4 Q. Who is the "Respected Brother" or "Beloved Brother" this
5 annotation is addressed to?

6 A. Thank you. The "Respected Brother" refers to Brother Nuon.

7 Q. Could you then please read the annotation in black, this time
8 the whole annotation, please?

9 A. Thank you. "This confession involves the investigating section
10 of the electricity sector. Two, there are still Sok's strings who
11 are ready to take actions against us because hand grenades have
12 been found in his house." I cannot read the first two words after
13 that. I will start with "three or four other strings of A Sok,
14 with whom we have not yet had any measures against. Duch, 10th
15 November 1977".

16 [15.15.45]

17 Q. I'm sorry, I just misunderstood the signature. Did you say it
18 was your signature?

19 A. The signature is that of Brother Son Sen.

20 Q. Thank you. The date is one day after your annotation. Can you
21 explain why this document appears to be sent to Son Sen and not
22 to Nuon Chea while the date is after the 15th of August 1977?

23 A. Thank you, Mr. President. I have briefly described or
24 explained this matter and I believe that I need to indicate this
25 precisely.

1 [15.17.07]

2 From the 15 August 1975, rather 1977, Son Sen no longer called
3 upon me to work with him personally. I started to work with
4 Brother Nuon instead. We worked close together about half a metre
5 away from each other. So let me make this clear that after
6 Brother Son Sen went out, I communicated with him through air
7 communication once a month. So I -- there was no need for me to
8 write any document to Brother Son Sen because he was then
9 positioned at Neak Loeng. That is why I said this document was
10 sent by me to Brother Nuon because it was my duty to send to
11 whoever person is, but the document was sent to Brother Nuon.
12 Most documents also bear the signature of Brother Khieu on the
13 11th of November 1977. I did not talk about this before the
14 Chamber during Case 001 Trial. But the last document with a
15 signature of Brother Khieu or Brother Son Sen was on the 25th
16 November 1977.

17 Having seen these dates and considering the work that I was
18 assigned by Pol Pot to work on the security, I made -- I would
19 like to make these provisional conclusions that Brother Khieu was
20 assigned to work on security from the 9th of October 1975. So,
21 even though -- rather 1977. So even after he went to Neak Loeng,
22 Brother Khieu still came to join the meeting in Phnom Penh.

23 [15.19.58]

24 I since then did not see any annotations seeking advice from
25 Brother Pol. So from the 25th of November 1975 - '77 Brother Nuon

1 no longer sought advice from Brother Pol. He made the decision by
2 himself. So this is my conclusion on the basis of the documents
3 that I have seen. This is my conclusion only and it is up to the
4 Court to consider this.

5 Q. I would like to move on to the next document which has number
6 D108/50/1.5. The translation into English is at ERN 548892,
7 there's no French translation as far as I know.

8 [15.21.21]

9 So my request is whether I'm allowed to put it on the screen and
10 give the witness a hard copy to comment.

11 MR. PRESIDENT:

12 The Chamber permits. The Court officer is instructed to put up
13 the document onto the screen and to take the document from
14 counsel to the witness.

15 BY MR. PESTMAN:

16 Q. My question to you, Duch, is whether you recognize this
17 document.

18 MR. KAING GUEK EAV:

19 A. Thank you. Mr. President, I recognize this document.

20 Q. You would have to maybe, first of all, explain whether the
21 text on the left and the text on the right is the same -- is the
22 same -- whether the handwritten version is the same as the typed
23 version.

24 A. Thank you. Mr. President, they are identical.

25 Q. Could you read the document, please?

1 A. Mr. President, please allow me to read it as follows:

2 [15.23.29]

3 "To Beloved Comrade Duch.

4 "[...] Paper must be saved, however, more importantly, attention
5 must be paid to the content.

6 "The confessions must be thorough and responsible.

7 "Scribbling or guess work cannot be accepted.

8 "2. For the most important group – for the important group, the
9 method must be the following:

10 "1. Ask them to write or;

11 "2. Tape the confession and transcribe it.

12 "The experience shows that typing takes less time than writing.
13 For the less important group, confession records may be
14 sufficient. Some in the less important group simply implicates
15 anything. Must be careful with them.

16 "3. However, each confession must be examined thoroughly as they
17 attack us in some confessions. Some of them attack us
18 intentionally. Some are scared and simply say anything.
19 Therefore, you must make extremely thorough examination.

20 "With the greatest revolutionary fraternity,

21 "Khieu, 5th October 1977."

22 [15.25.12]

23 Q. Before the Investigating Judges, you also mentioned a letter
24 you received from Son Sen and that is in document D86/11, ERN in
25 English is 00159558; Khmer 00158841; French 00158849. And I would

1 just like to quote this, a very short paragraph where you talk
2 about the letter you received from Son Sen. I quote:

3 "At the end of 1977, I wrote to Son Sen and asked for his
4 assistance. The confessions accused a considerable number of
5 people. He replied that the interrogators had to be careful and
6 not accept confessions which accused too many people. I stenotype
7 this letter and distributed a copy to the interrogators."

8 My question is: Is this the letter you typed out and distributed
9 to the interrogators?

10 A. Thank you. Mr. President, this is the letter that I had been
11 waiting for and I also said that during the interview.

12 [15.27.32]

13 Q. Why did you send the letter to Son Sen at the end of 1977 when
14 you previously stated that, at the time -- at that time, you were
15 not reporting to Son Sen anymore but to Nuon Chea? Can you
16 explain?

17 A. Thank you. Mr. President, the letter that I wrote to Brother
18 Son Sen was when he was supervising me. It was not yet the time
19 that he left. It took -- for a long time that I saw the reply
20 from him.

21 Q. So, if I understand you correctly, when you say at the end of
22 1977, you actually mean before the 15th of August 1977; am I
23 correct?

24 [15.28.52]

25 A. Yes, it is correct.

1 Q. And the letter addressed to you by Son Sen was dated the 5th
2 of October 1977? Can you explain why Son Sen wrote that letter
3 and not Nuon Chea?

4 A. Thank you. I do not wish to answer this otherwise I will be
5 speculating. If you insist that I must answer this question I
6 will talk on behalf -- on the basis of my conclusion.

7 MR. PRESIDENT:

8 Witness, you must answer the question on the basis of your memory
9 and experiences.

10 MR. KAING GUEK EAV:

11 Thank you. I think I presented this document to Brother Khieu,
12 Son Sen when he was my immediate supervisor. But immediately he
13 had to be transferred to Neak Loeang and then he got the letter
14 and responded to me in Phnom Penh. That's why it was not relevant
15 to Brother Nuon, who supposed to write to me instead.

16 BY MR. PESTMAN:

17 Q. Thank you. I would like to move on to another confession which
18 is number Annex -- no, number D43/IV-Annex 96, ERN 00175121; the
19 French ERN is 00244529; and the English ERN is 00224132.

20 Duch, do you recognize this document? Would you like a hard copy
21 of the document? Maybe we can provide you with a hard copy which
22 might be easier to read.

23 MR. PRESIDENT:

24 Court officer is now instructed to bring the document from
25 counsel to the witness for examination.

1 [15.32.17]

2 MR. KAING GUEK EAV:

3 I would like to read the annotation in the red box: "Gave two
4 copies to Angkar; have not been read yet; 2nd of August 1977; a
5 summary for Angkar; a copy, the 14th October 1977".

6 BY MR. PESTMAN:

7 Q. Do you recognise the handwriting?

8 [15.34.06]

9 MR. KAING GUEK EAV:

10 A. To the best of my recollection, this annotation could have
11 been made by Bong Nuon or Brother Nuon.

12 Q. Your Honours, I would like to quote from document D238, there
13 is a statement this witness gave to the Investigating Judges,
14 English ERN 00403888; Khmer 00403877 and French 00403898. And I
15 quote: "Answer by the charged person: On page 00175121", that's
16 the one we're looking at now. "I wrote 'S' in a square box".
17 That's the annotation for your information, Your Honours, in the
18 middle with a circle around it.

19 So, Duch testified -- stated "I wrote 'S' in a square box, which
20 means 'secret'. Son Sen wrote all the rest", and then he quotes:
21 "Give two copies to Angkar, not read yet, 2nd of August 1977. A
22 summary for Angkar 14 October 1977; the summary has been read".
23 Can you explain to us and to the Judges, Duch, how it is possible
24 that when you testified before the OCIJ, the Office of the
25 Investigating Judges, you said that this was Son Sen's

1 handwriting and that today you think that it's Nuon Chea's
2 handwriting?

3 [15.36.50]

4 A. The statement I made before the Co-Investigating Judges I
5 still stand by it. And previously I concluded that this
6 annotation could have been made by Brother Nuon because from the
7 internal section I was pressed. This annotation in here is brief
8 and we could read from the writing and I can say that my
9 conclusion back then was not precise and now I have changed that
10 position so it is now up to the Chamber for the decision, because
11 this is how I understood the situation now and then.

12 Q. Duch, are you speculating at the moment about the handwriting?

13 A. Yes, I do. I am now. Before the Co-Investigating Judges I
14 speculated on this and here I am doing this again and it is now
15 up to the Chamber to decide.

16 Q. Thank you. The Court officer gave you two copies of documents.
17 Your Honours, I would like to ask permission to show another
18 document which is the same confession, a different page of the
19 same confession, which is also the same annex but has a different
20 ERN number.

21 [15.39.38]

22 In Khmer, it is 00175172; the translation of this document is in
23 the same document, or has the same ERN numbers in the other
24 languages as the numbers I already gave.

25 So, with your permission I'll just continue.

1 Duch, do you recognize this document and do you agree it's the
2 same confession?

3 A. This document reference page 172 is recognizable. Document 121
4 also is recognizable. I just wish to confirm that I recognize
5 them.

6 Q. Just for the record, whose confession is it?

7 A. I would like to read this confession as follows: "The document
8 transcribed -- Confession transcribed from the recording tape of
9 Pich Phan, alias Mai Phau, chief of the East Region, Rubber
10 Plantation, Communication".

11 Q. Could you just read the text in the red boxes please, at the
12 top and the bottom of the document?

13 [15.42.31]

14 A. In that small box, it reads "very confidential", and
15 underneath it reads:

16 "1. To give to you, Brother, a copy of a Mai Phau excerpt. Our
17 people have made a detailed excerpt so that we can understand the
18 whole content. But the document should be further well read. I am
19 reading it now. I will give it to you later.

20 "[Number] 2. He implicated Comrade Phuong heavily."

21 Q. Duch, but you don't have to read the whole annotation, just at
22 the bottom of the annotation; of the date and if there is a
23 signature.

24 [15.43.47]

25 A. In the last box, it reads: "14th October 1977".

1 Q. You agree I assume, that the date under this annotation is the
2 same as the date under the annotation you just said, was made by
3 Nuon Chea on the other document?

4 They both have the date 14th of October 1977, don't you agree?

5 A. I do agree.

6 Q. Who wrote this annotation, the long one?

7 A. The annotation that contains four paragraphs were written by
8 Son Sen.

9 Q. So you're sure that this handwriting is Son Sen's?

10 A. Yes, I am. I recognize Son Sen's writing more than I recognize
11 Nuon Chea's writing. So the possibility or the chances that I
12 recognize Son Sen's writing is higher than that of Nuon Chea.

13 Q. Thank you, that's very helpful. Who is the "you" Son Sen is
14 addressing in the first paragraph of the annotation, the
15 paragraph you just read out for the Court?

16 [15.46.27]

17 A. According to my observation and having read a lot of documents
18 written by Brother Khieu, when he says "Attention to Brother" and
19 that short, it means he addressing Pol Pot.

20 Q. Thank you.

21 I would like to move on to the next document. I have two more
22 documents to go -- and again, this is a confession and the number
23 is D43/IV-Annex 63, ERN 00174502 and English translation can be
24 found at ERN 00224130 and the French translation can be found at
25 00269783.

1 MR. PRESIDENT:

2 Have you had the hard copy available for witness? Court officer
3 is instructed to bring the copy to the witness.

4 [15.49.07]

5 BY MR. PESTMAN:

6 Q. Do you recognize the document?

7 MR. KAING GUEK EAV:

8 A. Yes, I do.

9 Q. Could you read the red annotation at the bottom please?

10 A. Mr. President, I would like to read it as follows:

11 "Dear Respected Brother: This document has some new elements
12 regarding his connection in the old town of Kampong Thom. We
13 could not find the connection immediately, but his relatives who
14 were connected to him since 1965 to 1966 since he was in Kampong
15 Thom until after 17th of April 1975 when he stayed in the Region
16 5, lived in Kap Ruos, Stoung district, Kampong Thom province.
17 They were in contact with him. It is easy to find them. It
18 remains only his -- this family.

19 As far as I know them, due to the confession of A Hoeung, it
20 could be true..."

21 I think I may repeat: "As far as I know them, due to the
22 confession of A Hoeung, it could be true because there are his
23 relatives and, on the other hand, they were real estate owner.
24 They belong to Prum Pou family. Respectfully, 6 of November
25 1977."

1 Q. Thank you. Who wrote this annotation?

2 A. It was I who wrote it.

3 Q. Who is the Brother it is --is addressed to?

4 A. The document dated the 6 of 11 of -- rather November 1977 was
5 addressed to Brother Nuon.

6 Q. Could you now please read out the annotation in black?

7 [15.52.47]

8 A. On the left-hand side it reads, "There is a new problem."

9 On the right-hand side, I read as follows:

10 "1. One copy for you, Brother.

11 "2. The new problem concerns his connection in the old town of
12 Kampong Thom.

13 "3. I would like to request you to examine it first. It is not
14 necessary that I give you a copy, because there is no emergency
15 yet in the Northwest Zone. What is important maybe during the
16 period, when he was in Phnom Penh.

17 "The 9th of November 1977."

18 Q. Who is the Brother you - or, let me first ask; who wrote this
19 annotation?

20 A. This annotation was made by Son Sen.

21 Q. Thank you. And who is the "you" and the Brother he's referring
22 to in this annotation?

23 A. Brother here refers to Pol Pot. Son Sen addressed Pol Pot as
24 Bong or Brother.

25 [15.54.53]

1 MR. PRESIDENT:

2 International Co-Prosecutor, you may now proceed.

3 MR. SMITH:

4 Thank you, Your Honour, just a point of clarification. The
5 witness has read out two annotations; one on the left-hand side
6 and then one on the right-hand side, and it's not clear whether
7 or not he's stating that both annotations are related to the same
8 person or whether the annotation on the left is different to the
9 -- the person who wrote the annotation on the left is different
10 to the person who wrote the annotation on the right, and I would
11 just ask if counsel, perhaps, could clarify that.

12 MR. PRESIDENT:

13 Thank you, Co-Prosecutor.

14 [15.55.44]

15 Counsel for Nuon Chea, we hope you understand the observation
16 made by the Prosecution because witness read two confessions --
17 rather, two portions of annotations; the one in dark on the left
18 margin of the page and the one on the right-hand side. Could you
19 please clarify this for us?

20 BY MR. PESTMAN:

21 Thank you.

22 Q. Duch, the short annotation on the left, who wrote that? Can
23 you say something about the handwriting?

24 MR. KAING GUEK EAV:

25 A. This very short annotation -- we can see that it was annotated

1 with less-bold pen so this annotation on the left margin of the
2 page could not be confirmed. I am not in the position to say
3 whose writing it is. Indeed, it's -- doesn't belong to Brother
4 Pol or Brother Khieu.

5 [15.57.33]

6 I think, having looked at the term -- the word, the first word,
7 "there is", in Khmer. I think the same person could have
8 annotated this with just different pens.

9 Q. Thank you, Duch. This document seems to suggest, like the
10 other documents I showed you, that the confessions or at least
11 this confession and the others I showed you went from you to Son
12 Sen and from Son Sen to Pol Pot; wouldn't you agree?

13 A. I can neither agree or deny the observation made by counsel
14 because I am testifying here based on the -- the comparison of
15 the writing, I have noted, made by my superior on the right-hand
16 side of the page. It is my observation. Brother Nuon normally
17 annotated with one term at the end of each annotation; the term
18 "ready" or "already" could have been used by him to identify his
19 signature.

20 MR. PESTMAN:

21 Your Honours, I noted it's 4 o'clock. I have one more document; I
22 can show it now; I can also show it tomorrow morning. It would
23 take a bit longer to show that last document, so I can continue
24 for, maybe, 10 minutes, 15 minutes. Otherwise, I will continue
25 tomorrow morning.

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1 MR. PRESIDENT:

2 Since it is now appropriate time for adjournment and we conduct
3 the hearing every day, it is -- it is good that we should not go
4 beyond the schedule so it is now appropriate for the adjournment.
5 The Chamber will adjourn and the next session will be resumed
6 tomorrow, at 9 a.m.

7 [16.00.55]

8 Security personnels -- Counsel, you may proceed first.

9 MR. PESTMAN:

10 Thank you very much, Mr. President. I would just like to predict
11 or to say that my prediction is that tomorrow we will need a bit
12 more time than originally thought. There were many interruptions
13 today and adjournments, and I would like to ask permission to use
14 the entire day tomorrow to finish the cross-examination.

15 [16.01.36]

16 My prediction is that -- if things go as they went today, that we
17 will finish tomorrow, by the end of the day. That will be an
18 extra hour of time, so it's not an excessive request, but still
19 that is what I request.

20 MR. PRESIDENT:

21 Your request is granted. The Chamber hereby grants or offers
22 counsel some more time due to the fact that there has been some
23 interruption during the proceedings. However, Chamber wishes to
24 notify counsel for Nuon Chea and other counsels that, if counsels
25 wishes to put any document for examination before the Chamber and

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1 -- make sure that counsels prepare both the hard copy of the
2 document and that requests could have been -- should be made very
3 clearly in order for the Chamber to rule upon accordingly.

4 [16.02.59]

5 The Chamber wishes to ensure that, if the parties can be prepared
6 for that, our proceeding can be more expeditious and that parties
7 or counsels may even have more ample time to put questions to the
8 witness. We believe that counsels will take this suggestion
9 seriously.

10 Judge Silvia Cartwright, you may now proceed.

11 JUDGE CARTWRIGHT:

12 Thank you, President. I would just like to add a little to the
13 President's ruling.

14 If documents are to be used by counsel, then they should notify
15 the Chamber and the other parties of those documents in advance
16 of the day that they are to be used. This will save time and also
17 give the other parties the opportunity to see those documents, in
18 case there are the -- there is the occasional one that requires
19 some discussion.

20 [16.04.20]

21 I note that the Trial Chamber has set up a daily trial documents
22 interface on ZyLAB, and this may well be -- it was notified to
23 counsel by the senior legal officer, but this may well be a very
24 convenient way to notify these document numbers and details. It
25 is probably clear to everyone that it's very hard to pick up on

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1 numbers that are just read orally so that the document can be
2 accessed quickly in Court.

3 So we ask the cooperation of counsel to provide these lists in
4 advance. Thank you.

5 MR. PRESIDENT:

6 The Chamber is now adjourned, and the next session will be
7 resumed tomorrow, at 9 a.m.

8 Security personnels are now instructed to bring both the accused
9 persons and witness to the detention facility and have them
10 returned to the courtroom before 9 a.m.

11 The Court is adjourned.

12 (Court adjourns at 1605H)

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