

DAY 8 P.M.

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

1997 I No.139

Royal Courts of Justice
Thursday, 9th March 2000

Before:

MR. JUSTICE MORLAND

BETWEEN:

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

Claimants

- and -

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

Defendants

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

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

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Examined by Mr. MILLAR

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Cross-examined by Mr. SHIELDS

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1 MR. JUSTICE MORLAND: Members of the jury, tomorrow at 1 o'clock
2 at the latest I will have to stop trying this case and deal
3 with something else in the afternoon. It may be, I do not
4 know, that the evidence may be completed by then. If so, that
5 would be probably quite a convenient time and then you will
6 hear the speeches of counsel on Monday and the summing up from
7 me on Tuesday. That is the probable plan. Yes, Mr. Shields?
8

9 MR. SHIELDS: Mr. Hume, before the short adjournment I was asking
10 you about the article at tab 6. If you could go over the
11 page, and I was asking you about the paragraph where it was
12 written in the column "a collection centre for refugees, many
13 of whom went there seeking safety and could leave again if
14 they wished." That, I was suggesting, was the theme which
15 repeatedly comes within this article, is that not right?
16 A. I do not think it is identifiable as a theme of the
17 article. I think what is discussed later in the article is,
18 as I indicated before, that what is keeping them there is the
19 war zone that they find themselves in.
20

21 Q I see. Look at paragraph 21 and see how you deal with it
22 again. A. I am sorry, my paragraphs are not numbered.
23

24 Q I do apologise. Page 7, at the bottom, it begins "Yet an
25 important element of that 'key image'". Have you got that?
26 It is beside Mr. Deichmann's map. A. Yes.
27

28 Q "Yet an important element of that 'key image' had been
29 produced by camera angles and editing. The other
30 pictures, which were not broadcast, show clearly that
31 the large area on which the refugees were standing was
32 not fenced-in with barbed wire."
33

34 Pausing there, you had of course seen all the rushes, had you
35 not? A. I had seen all the rushes that Mr. Deichmann sent
36 me. There were some small parts of the rushes we did not have
37 that were then sent later -- disclosed later with ITN.
38

39 Q But you had seen nearly all the rushes? A. I had seen all
40 the rushes that Mr. Deichmann had, yes.
41

42 Q "You can see that the people are free to move on the
43 road and on the open area, and have already erected a
44 few protective tents. Within the compound next door
45 that is surrounded with barbed wire, you can see about
46 15 people, including women and children, sitting under
47 the shade of a tree. Penny Marshall's team were able
48 to walk in and out of this compound to get their film,
49 and the refugees could do the same as they searched
50 for some shelter from the August sun."
51

52 Do you stand by that as a fair representation of what that
53 camp was like on August 5th? A. It seems to me to be
54 describing the very chaotic and confused character of
55 different people that found themselves there on that day.

1 Q That is your answer, is it? A. It seems to me to be
2 describing the very confused and chaotic character of the
3 camp.
4

5 Q You told us you saw the rushes? A. Yes, I saw
6 Mr. Deichmann's rushes.
7

8 MR. SHIELDS: But did you see this particular rush. We will see
9 it now. It has been shown in court several times.
10

11 (Video shown)

12
13 MR. SHIELDS: Do you remember seeing this particular rush?
14 A. I think so, yes.
15

16 (Video continued)

17
18 MR. SHIELDS: Do you remember seeing that rush before you wrote
19 this --- A. I think so, yes.
20

21 Q -- when you published this article. Did you see there the
22 guards with guns? A. I do, yes.
23

24 Q And do you see the prisoners who are not prepared to come
25 forward? A. I made it clear that there are guards with
26 guns there already in my description, and you have told us
27 many times in this court. But I think there is a distinction
28 made in the article between a refugee camp and a prison and to
29 describe something as "a refugee camp" or "refugee centre" is
30 not to say there are not armed guards there. Refugee centres
31 all over the world, refugee camps in the middle of war zones,
32 have armed guards walking around them. If you were to look at
33 the Palestinian camps in the Lebanon you would find that they
34 are not open villages.
35

36 MR. JUSTICE MORLAND: Mr. Shields, I think only part of your
37 question was answered. One of the questions was "Did you see
38 the prisoners", that has not been answered.
39

40 MR. SHIELDS: No, my Lord.
41

42 MR. JUSTICE MORLAND: I do not know whether you want to put it
43 again.
44

45 MR. SHIELDS: I will ask. (To the witness): Did you see any
46 prisoners there? A. I saw those men there, yes, with the
47 guards. Yes.
48

49 Q Were they free to go? A. Well, there is no suggestion in
50 this article that everybody at this camp is free to come and
51 go as they please. There seems to be an implicit argument in
52 your questions, Mr. Shields, that somehow this article
53 describes this hell-hole of a place as a holiday camp.
54 I have made it absolutely certain that that is not the case.
55 There is no inference as such in this article at all.

1 Q This article contains a number of quotes, does it not, from
2 people out in Bosnia? A. Yes.
3
4 Q Did you rely on Mr. Deichmann for those quotes? A. Yes,
5 and as I say, I have relied on him, on the word of his written
6 statement from his translator that they were accurate and on
7 the pressure I put on him to check the voracity of them.
8
9 Q Let us look at some of them, shall we? Look at p.8, what
10 I call paragraph 24 but you do not have a paragraph number?
11 A. No.
12
13 Q It is the paragraph beginning "I met Pero Curguz in his office
14 in Prijedor." A. Yes.
15
16 Q I will ask you a few questions about Mr. Curguz. He was part
17 of the Serbian Red Cross at the camp, was he not? A. Yes.
18
19 Q And of course the Serbian Red Cross was in the camp prior to
20 the arrival of the International Red Cross? A. Yes.
21
22 Q And it was present at the camp when Dr. Merdzanic was there,
23 was it not? A. Yes.
24
25 Q You heard his evidence yesterday of what was happening in the
26 camp, did you? A. I did, yes.
27
28 Q And you accept that evidence, do you not? A. I accept the
29 general description he gave of the camp conditions, yes.
30
31 Q And what was happening at that camp? A. Yes.
32
33 Q It was not challenged, was it? A. No, it was not. No.
34
35 Q And you accept there was a shortage of medical supplies
36 allotted to Dr. Merdzanic? A. Oh, absolutely, yes.
37
38 Q Did you yourself make any attempt to contact Mr. Curguz before
39 you published his statement in the article? A. No.
40
41 Q Have you attempted to obtain a statement from him since this
42 action was started? A. No.
43
44 Q You have not attempted to take a statement? A. No. He is
45 not involved in this case, as far as I can see.
46
47 Q You did not ask him to come to this court to support the
48 statements he made in this article? A. No, Mr. Shields.
49 I would find it very difficult to -- my magazine would find it
50 very difficult to find the funds to get a witness across
51 London, let alone ---
52
53 Q You did not even attempt to get a statement from him, a signed
54 statement, yourself? A. No, I have not. No.
55

1 Q Let us see what he says. In the third line:
2
3 "He was interviewed by the British journalists in
4 August 1992. He says he told them that the people had
5 come to the camp ... during the entire time of the
6 operation of the camp, no fence had been erected. On
7 the contrary: when the other camps in Kereterm and
8 Omarska were closed, and Trnopolje became overcrowded
9 with up to 7500 people, the refugees had pulled down
10 fences and taken all other available materials to
11 build shelters. Curguz stressed that this was no
12 internment or prisoner camp; it was a collecting camp
13 for exiled Muslims. Everybody I spoke to confirmed
14 that the refugees could leave the camp area at almost
15 any time."
16
17 Now, that was a statement you published in your magazine in
18 this article, is it not? A. Yes. That was a statement
19 from Pero Curguz we published, yes.
20
21 Q And you made no attempt whatsoever to find out whether that
22 statement was true or false? A. Mr. Deichmann had made
23 stringent attempts -- I made stringent inquiries of
24 Mr. Deichmann to check the voracity. He stood by the
25 interviews he had done. That was good enough for me. I am
26 an editor. When you are editing an article your job is not
27 surely, you would suggest, to travel the world re-doing the
28 interviews that the journalist has done that is given to you.
29 I thought Mr. Deichmann's research was thorough, that it stood
30 up, and I was prepared to publish it as such. That is a
31 statement from Pero Curguz. It is not a statement from
32 Mr. Thomas Deichmann.
33
34 Q Your criticism, as I understand it, of other journalists is
35 that they take liberties with the facts? A. No, that is
36 not my criticism of other journalists in general, no.
37
38 Q It is a criticism of Mr. Williams and Ms. Penny Marshall?
39 A. It is a warning that I published in an editorial in the
40 same magazine about what I saw as a danger in a school of war
41 reporting.
42
43 Q So once this action was begun you never thought of trying to
44 find out whether Mr. Curguz of the Serbian Red Cross was
45 telling the truth or not? A. I have no means to travel to
46 Bosnia and interview anybody, Mr. Shields. It is not part of
47 my case that Pero Curguz is one thing or another.
48
49 Q So do you withdraw that sentence? A. No.
50
51 Q Let us look further down, three paragraphs down:
52
53 "Misa Radulovic, 68, was a teacher in Kozarac and
54 Trnopolje. Now he walks with a stick and is nearly
55 blind. But like all other men considered able-bodied,

1 he was enlisted in the army during the war and
2 stationed as a camp guard in Trnopolje for three days.
3 'We protected the Muslims from Serbian extremists who
4 wanted to take revenge', he said. 'The people could
5 leave the camp without papers, but this was dangerous.
6 A barbed wire fence existed only at this corner around
7 the barn, this little shop for rural products and the
8 electricity station.'"
9

10 Did you make any attempts to check with Mr. Radulovic?

11 A. No.

12
13 Q Before publication? A. No.

14
15 Q Have you thought of contacting him afterwards to see whether
16 that is true? A. To see whether what is true?
17

18 Q What he says there, that they were protecting Muslims from
19 Serbian extremists who wanted to take revenge? A. Well,
20 I had other evidence to support the fact that that is what
21 some of the guards were doing, not only from the interview we
22 saw Ms. Marshall did with the young guard Igor but also Paddy
23 Ashdown, leader of the Liberal Democrats, made exactly the
24 same point in his article in the Independent, that things had
25 improved since the local Serbs had taken pity on the inmates
26 of Trnopolje and were defending them against the extremists.
27 He made the same point. I did not take steps to interview him
28 about it, to ask him whether he was lying or not.
29

30 Q If you look through it, there are a number of people mentioned
31 in this article, are there not, who are giving evidence about
32 the enclosure and are giving evidence about conditions?
33 A. Yes.
34

35 Q It is right, is it, that none of them have been contacted
36 prior to the article or since it was published? A. I have
37 not contacted the people, no.
38

39 Q None of them has signed a single statement for the purpose of
40 these proceedings? A. I have not sought to get them to
41 sign a statement. As I explained, Mr. Shields, the reason
42 that I did not re-interview them for the article is that I am
43 running a penniless magazine in London. A journalist whom
44 I trust has been and interviewed them in Serbia at his own
45 expense and I am publishing an article that I have taken the
46 most rigorous steps to check every fact that I can within my
47 power. That is why I do not re-interview them for an article.
48 It is slightly odd to image that any editor would do something
49 different. The reason that I have made no attempt to get them
50 here is, I do not have the resources or means to do so.
51

52 Q You do not have the means and resources to write to them to
53 ask them to sign a statement? A. Well, I saw no purpose
54 in getting them to sign a statement if I could not bring them
55 to the court.

1 Q Of course the advantage if they come to court is that they
2 could be cross-examined, could they not? A. Well, that
3 may be to my advantage, it may be to yours.
4
5 Q It is right that during the last seven or so days a number of
6 witnesses called by the claimants have been cross-examined in
7 this court, is it not? A. Yes.
8
9 Q And they have been cross-examined on your instructions,
10 presumably? A. Yes.
11
12 Q Would that also be in relation to Ms. Guldberg, it is on her
13 instructions as well? A. Yes -- I am sorry, I did not
14 really understand the question, but ---
15
16 Q What counsel asks is asked on the specific instructions of
17 their clients. A. Well, I have not written my counsel's
18 script for him.
19
20 Q No, I --- A. I do not know if your clients have done that
21 for you, Mr. Shields, but ---
22
23 Q I appreciate that, but any allegations made by counsel are on
24 the instructions of their clients? A. Broadly speaking
25 that would be the case.
26
27 Q I am going to ask you ... just so that I understand exactly
28 what your case is against my clients. Let us look at the case
29 against ITN. Is it your case that nothing in the press
30 release or the article contains anything which is critical of
31 ITN? A. I do not think it is against the law to be
32 critical of anybody, is it? There is certainly nothing in the
33 press release or the article which defames them in legal
34 terms, as I understand it.
35
36 MR. JUSTICE MORLAND: Would you put the question again, and listen
37 to the question. A. Yes.
38
39 MR. SHIELDS: Is it your case that nothing in the press release or
40 in the article editorial is critical of ITN? A. My
41 understanding is that there is nothing -- I mean, my reading
42 of the situation is that there is nothing in the article or
43 the press release that justifies ITN taking legal action
44 against me.
45
46 Q So no one reading the press release or the article would think
47 the less of them? A. I think there is nothing in this
48 article that is defamatory -- that makes defamatory mention of
49 ITN.
50
51 Q Do you accept then that if the jury finds that it is a
52 defamatory article of ITN you are not suggesting that any such
53 criticism is true, is well-founded? A. Well, I am
54 suggesting that there is not a defamatory mention of ITN.
55

1 MR. SHIELDS: Would you look at tab 18.
2
3 MR. JUSTICE MORLAND: This is the question from the jury:
4 "You" - that is you, Mr. Hume - "said that Mr. Deichmann's
5 research for the article was thorough. Why didn't it include
6 an interview or explanation from Ian Williams or Penny
7 Marshall?" A. As to why Mr. Deichmann did not, I think --
8 I am sorry, my Lord.
9
10 Q I will read the question again, because it is not my question,
11 it is the jury's question: "You said Mr. Deichmann's research
12 for the article was thorough" --- A. Yes.
13
14 Q "Why didn't it include" - that is the article - "an interview
15 or explanation from Ian Williams or Penny Marshall?"
16 A. Did you want me to answer?
17
18 Q Yes. A. I have attempted to answer the question as to why
19 I felt on balance it would be unwise of me to contact ITN or
20 its journalists in publishing the article.
21
22 Q Obviously the jury would like you to either repeat your answer
23 or re-state it. A. Yes. Mr. Deichmann obviously can
24 answer for himself.
25
26 Q Yes, but you as the editor and someone who did edit the
27 article --- A. Yes, absolutely. As I say, this was a
28 decision that was taken not recklessly but in very careful and
29 lengthy consideration of the pros and cons of doing so, and
30 I decided on balance that I believed what I had seen from
31 Mr. Deichmann's research stood up as a true story and that my
32 overriding obligation was to get that into the public area;
33 and I felt at that stage that notifying ITN of what we were
34 intending to publish would bring them down on our heads in an
35 attempt to prevent publication. And I looked upon the record
36 of John Major's injunction against New Statesman and other
37 magazines a couple of years earlier as an example of that
38 being done. We know in this society of ours it is not unknown
39 for those with the means to use the law to suppress criticism
40 of them and I was very fearful that that would be the case.
41 And, as I say, I feel in retrospect I have been entirely
42 vindicated because as soon as ITN got one look at the press
43 release they had their lawyers demand that we pulp every issue
44 of the magazine, before they had even read the article, and
45 have for three years attempted to suppress any discussion of
46 these issues. So I do feel it was a difficult decision I made
47 on balance and I feel I have been vindicated over the last
48 three years.
49
50 Q That is the second time you have referred to Mr. Major
51 stopping the New Statesman, that is the Prime Minister?
52 A. As was, yes.
53
54
55

1 Q Would it be right that the reason he stopped the New Statesman
2 from publishing was because they were publishing something
3 about him which was untrue? A. Yes.
4

5 Q You do not think it is right that people should be stopped
6 from publishing things about other people which are untrue?
7 A. No, I do not think that I published anything that was
8 untrue.
9

10 Q It is your case of course in relation to ITN that you
11 published nothing which was defamatory about them?
12 A. In this article and press release, I think so, yes.
13

14 Q I ask you to look at your response to the letter which is at
15 tab 18 in the big bundle, where the article is. That was your
16 response to the letter from ITN, was it not? A. Yes.
17

18 Q The public response. Is there anything in there which says to
19 the world that you are actually not saying anything which is
20 defamatory of ITN at all? A. Of course not, because this
21 is not about the article, this is about the attempt to
22 suppress it. This is again something I would like to make an
23 absolute separation between. I published an article which was
24 then met with the threat of pulping, and it then became an
25 issue between myself and my magazine and ITN, of course it
26 did. At the moment when ITN threw its corporate weight behind
27 an attempt to suppress my magazine then of course the issue
28 became ITN's "gagging order" as it is described in this press
29 release. That is a quite separate issue from the content of
30 the article.
31

32 Q It has got nothing to do with the article at all? A. My
33 determination to see it through has got absolutely everything
34 to do with the fact that I believed the article to be true.
35

36 Q I am going to ask you what your case is against Ms. Marshall
37 and Mr. Williams. I will take this in stages. Is it part of
38 your case that they were not objective when they set out to
39 Belgrade and then on to north Bosnia? A. No, that is no
40 part.
41

42 Q It is not part of your case that they were wedded to the cause
43 of Bosnian Muslims? A. Absolutely not. I never suggested
44 anything of the sort. I have no idea of the political views
45 of either of those journalists.
46

47 Q Are you suggesting that they have lied to this court when they
48 said that they would file the report, whatever they found?
49 A. Well, I have not idea whether they have told lies to this
50 court.
51

52 Q Are you suggesting that? A. You would have to ask them.
53 It is not for me to say whether anybody else is lying when
54 they give ---
55

1 Q I am trying to find out because ... for a long time. I just
2 want to find out exactly your case is. A. Well, the case,
3 as I understand it, Mr. Shields - and my legal knowledge is
4 limited - the case is as pleaded, which I think my counsel
5 outlined this morning.
6
7 Q Is it your case that they knew full well that they were in an
8 enclosure when they went to Trnopolje and filmed and
9 interviewed the inmates there? A. My case is -- my case
10 is not, if I could just clarify it to start with -- our case
11 is not that they deliberately entered this compound surrounded
12 by barbed wire in order to get that shot. I think we have
13 made that clear this morning. I would like to repeat it.
14 When the word "deliberately" appears it is not in relation to
15 their walking into that compound to take that shot. There is
16 no criticism in our case at all of that or of Mr. Jeremy
17 Irving taking this shot.
18
19 Q I will ask the question again. A. Yes.
20
21 Q Is it your case that they knew full well that they were in
22 an enclosure when they went inside Trnopolje and filmed and
23 interviewed the inmates there? A. It is my case on the
24 balance of all the evidence that I had seen that by the
25 time -- that when they were inside the enclosure it is very
26 likely; by the time they left the camp I am absolutely certain
27 they must have known.
28
29 Q So therefore it is your case they have lied by suggesting that
30 is not the case? A. Well, I think when they -- I can see
31 no sense in their interpretation of saying -- I mean, I have
32 heard many witnesses admit that they were inside an enclosure
33 this week, so I do not know which ones we are talking about
34 but ---
35
36 Q Is it your case --- A. It is my case that they were
37 inside a barbed wire surrounded enclosure.
38
39 Q Is it your case that they could not get out of that enclosure
40 save by the way they went in? A. No.
41
42 Q I am going to ask you about this because there was a lot of
43 cross-examination about this. Is it your case that they could
44 have got out by the west side through a hole in the barbed
45 wire? A. Well, that is surely a matter for the jury to
46 decide on the balance of what they have seen? I mean, the
47 article describes the barbed wire compound as being broken
48 down in places. There has been no suggestion that it is a
49 complete barbed wire surround. It is our case that they could
50 not have gone in there, filmed, left it, walked around the
51 camp and come back past it again without realising that that
52 was a compound surrounded by a barbed wire fence.
53
54 Q And it is right it is not just Ms. Marshall and Mr. Williams
55 who must have known this, because as your counsel opened it:

1 "How could seven professionals have left the camp without
2 realising it?" A. Well, some of them have said they did
3 realise it, so I do not quite know what your point is there.
4 There is only two of them in the case, as far as I understand
5 it.
6

7 Q So you are saying that all seven knew it when they left the
8 camp? A. I am saying that on my evidence of watching the
9 rushes and all the evidence, any reasonable person would draw
10 that conclusion, that they must have known.
11

12 Q Are you saying that they knew therefore that they were caged
13 in when they filmed Fikret Alic behind the barbed wire?
14 A. No, the point is more that when they came to review their
15 film at the very least by the time they had reviewed the
16 rushes in the way that we have reviewed it they should have
17 been left with that undeniable conclusion.
18

19 Q I just want to get this right, because your counsel said
20 "seven professionals". I want to make sure who you are making
21 the allegations against. A. I think there is only two
22 people involved in the case, Mr. Shields, as I understand it.
23

24 Q I want to ask you the question. If his Lordship says you
25 cannot answer it, I will resist answering it. Your counsel
26 said: "How could seven professionals have left the camp
27 without realising they had been surrounded by barbed wire
28 although they must have realised it after they had seen the
29 rushes?" I want to make this absolutely clear. Are you
30 suggesting that all the Channel 4 people, Penny Marshall -
31 Channel 4 - Mr. Williams, Mr. Braddel, Mr. Nicholas and
32 Mr. Hease knew that when they left the camp or subsequently
33 knew it after the rushes were shown? A. Some of them have
34 already conceded that they knew it. What I am saying is that
35 anybody reviewing the rushes in the way that we have done must
36 have been left with that impression, must have know that.
37

38 Q In the case of Channel 3, is it your case that Penny Marshall,
39 Mr. Irving, Mr. Lawrence, knew that? A. I am not picking
40 any arguments with Mr. Irving and Mr. Lawrence. Penny
41 Marshall is the one who has brought the writ against me. I am
42 suggesting that she must have known by the time she reviewed
43 her rushes the circumstances in which that film had been
44 taken.
45

46 Q There is something else I want to clear up because there was a
47 lot of cross-examination directed towards this. Is it your
48 case that they had in fact viewed the rushes before they
49 reached the editing suite in Budapest? A. I do not know.
50 As I understood it, the questions being put by my counsel
51 concerned the fact that it might be considered general
52 practice to do so. There seemed to be a lot of conflicting
53 evidence from your witnesses. I have no opinion -- I have no
54 idea of whether that is the fact or not. But my case as
55

1 pleaded, Mr. Shields, as I understand it -- which I think was
2 very clearly outlined by our counsel this morning.

3
4 Q It is right, is it not, that the broadcast contained footage
5 from Omarska as well as from Trnopolje? A. Yes, indeed.

6
7 Q You make no criticism whatsoever, do you, of how the footage
8 of Omarska was communicated to the public? A. No. No,
9 that is no part of my case. The article is called "The
10 Picture that Fooled the World", Mr. Shields. It is concerned
11 with that image and the world's reaction to it.

12
13 Q It is right that you make no mention whatsoever, do you, in
14 the article about the fact that they revealed what they had
15 discovered in Omarska? A. No.

16
17 Q Prior to publishing the article you had access only to
18 materials supplied to you by Mr. Deichmann? A. All the
19 material that I outlined this morning.

20
21 Q Did you have any access to any other material from the Bosnian
22 Serbs? A. No.

23
24 Q Did Mr. Deichmann have a cassette, a video cassette of Bosnian
25 Serbian t.v. footage? A. No.

26
27 Q Where did you obtain that? A. Well, I first saw it later
28 in the same year.

29
30 2.30 p.m.

31
32 MR. JUSTICE MORLAND: Well, the question, I will put it now, and
33 it is effectively addressed to you, Mr. Hume:

34
35 "If the article had included an interview or
36 explanation from Mr. Williams or Miss Marshall, thus
37 giving a view from both sides rather than the opinion
38 of one man, would you still have published it?"

39
40 A. Certainly, yes. But I didn't feel it was possible in the
41 circumstances to take that risk.

42
43 Q What was the risk? A. The risk of contacting ITN in an
44 honestly-held belief -- well, in the light of two honestly-
45 held beliefs that I had. One, that I was absolutely certain
46 from the rushes that I had seen and the evidence I had seen,
47 the two points that I had made, that they were in that
48 enclosure and they must have known. And, secondly, my
49 honestly-held belief that to alert a corporation like ITN to
50 such an embarrassing story could have drastic consequences in
51 terms of them taking legal action to suppress publication.
52 But I have nothing -- you know, in an ideal world, it would
53 have been ideal, of course, to have an interview with all
54 those concerned. But their refusal to say a word about it for
55

1 the last three years doesn't suggest that we would have got
2 very much out of them.
3

4 MR. SHIELDS: All right, Mr. Hume, let us put aside anyone to do
5 with ITN. Let us look at the article which is full of quotes
6 from Bosnian Serbs. Did you make any attempt to contact
7 anybody who may have been at the camp that might not be on the
8 Serb side? A. No, I had no idea how I would have gone
9 about that. I am editing an article, Mr. Shields, in the
10 context, you must remember, of a worldwide propaganda
11 response. Media response to these broadcasts was in one
12 direction, everybody saying: "This is the proof, the first
13 proof we have that Bosnian Serbs are running Nazi-style
14 concentration camps". That was almost universally accepted.
15 There was the odd intelligent criticism made of those points.
16 Simon Vizental pointed out that it was a very dangerous road
17 to go down, but, generally speaking, that was the media's
18 universal response. My attempt was to present a truth of the
19 matter which had not been aired in the public arena, to throw
20 a different take on that reality, to show that people were
21 working on the wrong assumptions when they published all those
22 articles about death camps and barbed wire fences and
23 Belsen '92.
24

25 Q Since these proceedings have been brought, do you have access
26 to any other material from Serbia? A. Since these
27 proceedings have been brought - from where, sir?
28

29 Q From Bosnian Serbs? A. I have seen the Bosnian Serb
30 footage that has been shown in the court.
31

32 Q Did you obtain a tape from the Bosnian Serb TV of the film of
33 the camp? A. Myself, no. I had no part in obtaining
34 that.
35

36 Q Was that obtained by Mr. Deichmann? A. The getting
37 together of all the material and evidence for the case was
38 done by Helene Guldberg and our instructing solicitors, with
39 the help of Mr. Deichmann where he was helpful.
40

41 Q Mr. Deichmann, did he obtain the second tape? A. ...
42

43 Q You have seen that second tape, have you not? A. I have,
44 yes.
45

46 Q And you know that second tape which we have not seen contains
47 part film from Bosnian Serbian TV, does it not? A. It
48 contains film shot by Bosnian Serb cameramen.
49

50 Q It also contains in the middle of it film shot by the other
51 Bosnia cameraman, the military cameraman, does it not?
52 A. There is film there from both Bosnian cameramen, as
53 I recall, yes.
54
55

1 Q Edited in between? A. No. I think there is a clear
2 distinction. I am talking from memory, but I think there is a
3 clear distinction between the sequence at the fence which is a
4 shorter version of the long sequence we have seen in court a
5 few times and a little bit tacked on the end from the TV with
6 a voice over. But I'm talking from memory.
7
8 Q Do you know where that came from? A. As I said, I had no
9 part in getting these -- obtaining these films. You would
10 have to ask Mr. Deichmann about it.
11
12 Q Do you remember the third one which was shown in court?
13 A. Yes.
14
15 Q Which was said to be a copy, was it not, of the second one?
16 A. Yes.
17
18 Q And that has no Bosnian Serbian TV on it, does it? A. As
19 far as I recall, no broadcast with voice over certainly.
20
21 Q Who obtained that one? A. Mr. Deichmann. Neither I nor
22 anybody in my magazine has ever had any contact with Bosnian
23 Serb journalists, TV companies or authorities.
24
25 Q It is right that you have been editor of LM since 1988?
26 A. Yes, Living Marxism as was, LM now, yes.
27
28 Q As you say, you often write articles in it? A. I do.
29
30 Q We have seen one of those articles this morning and I would
31 like to look at it again. Tab 7. You see there that is the
32 article written by you on "how and why America, Britain and
33 Germany have constructed the Serbian demon"? A. Yes, that
34 was written by me, yes.
35
36 Q You whose the headline - would that be right? A. That's
37 correct.
38
39 Q Did you commission the cartoon? A. Commission the
40 cartoon? It has been published from the Independent.
41
42 Q The Independent, and you have selected that cartoon ----
43 A. Well, the Independent commissioned ----
44
45 Q No, you selected to use that cartoon in your magazine?
46 A. Oh, absolutely, yes.
47
48 Q Absolutely. A. But the Independent commissioned Heath to
49 draw it and published it in their paper. That's why I thought
50 it was important to point that out.
51
52 Q If we look under the words "New bogey" - can you see that on
53 the first page? A. Yes.
54
55

1 Q "The image of Serbia as the new villain of world
2 affairs has been artificially constructed by the
3 Western powers for their own purposes. The Serbs, and
4 the other peoples of the old Yugoslavia, have got
5 caught up in the crossfire of the struggle for
6 influence in the post-Cold War World.
7

8 "Ever since the collapse of the Soviet bloc removed
9 the old communist bogey, the Western elites have been
10 trying to set up surrogate enemies, against which they
11 can demonstrate their power and fulfil their self-
12 appointed role as the champions of right. The Serbs
13 are the latest people to be demonised for this
14 purpose."
15

16 If I go on to:

17 "Nato rules
18

19 "The US administration had wanted no part of the
20 campaign against Serbia when the Germans were leading
21 the charge. Now, however, it has become a handy
22 excuse for Washington (and London) to play up to the
23 importance of their military alliance, Nato, as
24 against the emerging Euro-Army run from Bonn and
25 Paris. That is the main reason why Serbs have
26 suddenly appeared all over our newspapers depicted as
27 monkeys and mass murderers."
28
29

30 Pausing there, this article is essentially attacking the west
31 for taking a side against Serbia, is it not? A. Yes. For
32 demonising the Serbs, I think is the expression I would use.
33 For singling the Serbs out as the arch villains of the new
34 world order.
35

36 Q And that was a subject you felt strongly about? A. Well,
37 as I have explained, my interest in Yugoslavia is really about
38 the repercussions of that conflict, than a discussion about it
39 for us in the West. But I certainly am strongly critical of
40 the attempt to demonise anybody in these kind of racial terms.
41 I am also very concerned about the consequences of the
42 intervention which follows, which history suggests tends to
43 make these conflicts worse rather than better.
44

45 Q Now, I think you said earlier in answer to me that you took
46 the view that the kind of crimes described by Dr. Merdzanic in
47 this court yesterday ought to be punished. You agreed with
48 me, I think? A. I have no problem with that, yes.
49

50 Q You have no problem about that. But you disagree with the
51 idea of the war tribunal punishing them, do you not?
52 A. I disagree with the legal basis and political actions of
53 the war crimes tribunal. That is what these articles are
54 critical of. None of these articles are an attempt to say
55 that an individual Serb is innocent. I have absolutely no

1 doubt that many of these Serbs, as indeed people from all
2 sides in the Yugoslav civil war, had blood on their hands.
3 There are atrocities committed in all civil wars. I think
4 this is not a matter of argument.
5

6 Q But what was wrong with the war crimes tribunal trying people
7 who were alleged to have committed terrible crime? A. My
8 point about the war crimes tribunal is that its modus operandi
9 is mixing up politics with justice and it is applying a double
10 standard.
11

12 Q So if we look at the article that you wrote, which we find at
13 tab 9, and if we look at it as published, it might be helpful.
14 If we look on what I have at the bottom p.5, you state there
15 in the right hand column, two paragraphs up:
16

17 "The war crimes tribunals can ignore the facts behind
18 their chosen conflict because their brief has nothing
19 to do with achieving justice."
20

21 Tab 8. I am sorry, tab 8.
22

23 MR. JUSTICE MORLAND: We are back on tab 8.
24

25 MR. SHIELDS: Tab 8 "What's a war crime between friends?" I am
26 sorry.
27

28 MR. JUSTICE MORLAND: And you said p.5.
29

30 MR. SHIELDS: If you look in the bottom right hand corner, one can
31 see that. I apologise.
32

33 MR. JUSTICE MORLAND: It is the second page of this that has a
34 picture of Mr. Hume in the top left hand corner. The second
35 page of that. It is the page over, the next page, I think.
36 That is the one. It has "Nobody at the UN whispered". Have
37 you all got that? No. I will take mine out. It looks like
38 that and the second page is that one. You want the second
39 page, do you not?
40

41 MR. SHIELDS: To start with, yes. (To the witness): Now let us
42 just look there at what you write. A. Yes.
43

44 Q "The war crimes tribunals can ignore the facts behind
45 their chosen conflicts because their brief has nothing
46 to do with achieving justice. These are political
47 showtrials, set up by the USA and its allies on the
48 United Nations Security Council to demonstrate the
49 divide between the moral nations of the West and the
50 essentially immoral peoples of the rest of the world;
51 between the savages in the dock and civilised men who
52 sit in judgment on them.
53
54
55

1 "The aim of this charade is to boost the authority of
2 the Western elites by denigrating the third world and
3 the East."
4

5 If I can just pause there, who are you suggesting should be
6 trying people who committed these terrible crimes?

7 A. Well, the point is, Mr. Shields, that to say the war
8 crimes tribunal has no basis in justice relates to my previous
9 point that there is no basis of international law and that its
10 own legal practices, use of anonymous witnesses, no juries,
11 hearsay evidence, are all highly dubious by normal legal
12 practice. Now, I appreciate it is possible to hold the
13 opinion that it doesn't matter if you have justice or a proper
14 legal system as long as you lock up the people that you want
15 locked up. I appreciate it is possible to hold that opinion.
16 Some people do, and there are even parts of the world where
17 I believe the system is organised on that basis. I myself
18 believe that law should be just.
19

20 Q Can we look back on the first page, p.4? This is in relation
21 to Tadic, it is the first column, four paragraphs down.
22

23 "Yet the crimes of which Tadic stands accused are
24 hardly the first - and far from the worst - atrocities
25 that have been committed during the wars of the past
26 half-century. So why is the UN Security Council
27 suddenly setting up war crimes trials for the first
28 time in 50 years?"
29

30 Presumably you had made enquiries about what were the crimes
31 of which Mr. Tadic stood accused before you wrote that?

32 A. Yes, I had seen reports of them, yes.
33

34 Q You had seen reports of it. Because if we look up, what he
35 had been accused of, in the paragraph above, according to your
36 own article:
37

38 "13 counts of murder, torture and rape of Muslim
39 prisoners in Bosnia."
40

41 A. It is stated there. I am not denying that.
42

43 Q You do not regard that as an atrocity? A. I think it
44 says -- if you can find where it says in here, Mr. Shields,
45 rape and murder are not atrocities, then I will gladly
46 apologise. I think it says they are hardly the first and far
47 from the worst atrocities that have been committed during the
48 wars of the past half century.
49

50 Q But the whole flow of this article, is it not, is to suggest
51 that he has done really nothing too wrong in the context of
52 world crime? A. No, there is nothing to suggest that he
53 has done nothing wrong. It is to suggest that for those who
54 have for 50 years deployed their own forces in a way that is
55 far from civilised, to suggest that war crimes tribunals

1 should now be set up and the new Nazis should be named in
2 Serbia or in Africa is a bit rich.

3
4 MR. JUSTICE MORLAND: The jury have this question for you,
5 Mr. Hume:

6
7 "The jury was not asking why you did not alert ITN of
8 your intention to publish the article but why you did
9 not consider asking for their side of the story before
10 deciding whether it should be published or not."
11

12 A. Yes. I think it amounts to the same thing. I felt
13 that -- I mean, I understand the question is -- not the same
14 thing, I think it would in practice have been the same thing,
15 that once they had known that we were publishing -- planning
16 to publish any allegations of this sort, that would have been
17 the likely response. And, as I say, over the last three years
18 it is worth pointing out that every time any journalist has
19 shown any interest in this story, ITN have refused to comment
20 on any of these allegations and have merely said: "If you
21 reprint those allegations, we will sue". They have had no
22 from whatsoever in a public discussion of these issues or in
23 responding with their side of the story, as they might put it.
24 Their only interest has been in suppressing our story. They
25 have had ample opportunity to do -- they had ample opportunity
26 in the previous five years to say what the truth was, and they
27 certainly had ample opportunity in the three years -- the last
28 three years.
29

30 MR. SHIELDS: You were very sympathetic, were you, to Mr. Tadic's
31 cause? A. I have no sympathies for Mr. Tadic, no.
32

33 Q Mr. Deichmann gave evidence as an expert witness for him, did
34 he not, at his trial? A. Yes. He didn't give evidence as
35 to his guilt or innocence. He gave evidence as an expert
36 witness on German media coverage of the conflict in Bosnia, a
37 purely -- well, Mr. Deichmann could tell you this himself, but
38 a purely statistical and factual report which was well
39 received by the judges. That is my understanding.
40

41 Q Why did you describe Mr. Deichmann as that when you issued the
42 press release at tab 4? A. Well, as I say, I didn't write
43 the press release but I take responsibility for it.
44

45 Q Look at the press release at tab 4. You approved for it?
46 A. I did. No, no, I did.
47

48 Q The first paragraph. A. I am not sure of my tabs. I am
49 very sorry. I cannot find tab -- but I'm aware of the ----
50

51 Q I will read it to you. A. Yes.
52

53 Q "The picture that came to symbolise the Bosnian war
54 was being condemned by an expert witness at the UN war
55

1 crimes tribunal at the Hague, German journalist Thomas
2 Deichmann."

3
4 You did not tell anyone there, did you, what his expertise was
5 confined to? A. It's a very brief press release,
6 Mr. Shields. It is not going to have a full CV for all those
7 concerned.
8

9 Q He was an authority, was he, on how much media coverage there
10 had been given to Mr. Tadic in Germany? A. In my opinion,
11 he is an authority on the Bosnian civil war.
12

13 Q Did he ever tell you he had been there during the civil war?
14 A. I beg your pardon?
15

16 Q Did he ever tell you that he had been there during the civil
17 war? A. He has been to Yugoslavia ----
18

19 Q During the civil war? A. I don't remember the dates. You
20 would have to ask him.
21

22 Q Just to complete this while we are on these articles,
23 Mr. Tadic of course was convicted, was he not? A. Yes,
24 indeed he was.
25

26 Q And you published an article as editor in LM, which we will
27 come on to next, written by Helen Searls, the next tab, tab 9.
28 A. Yes.
29

30 Q Headed "Time to put the War Crimes Tribunal in the dock". Is
31 that right? A. That's correct, yes.
32

33 Q Who chose that headline? A. I don't remember. It may
34 have been Miss Searls, it may have been me.
35

36 Q Just look over the page. The premise of this article is that
37 it was not a fair trial? A. The premise of this article
38 is not to take a position on the guilt or innocence of Dusko
39 Tadic, as you appear to want to suggest. It is to point out
40 both the lack of basis of international law for the operations
41 of the international war crimes tribunal, and the highly
42 suspect way in which we suddenly have the reintroduction of
43 war crimes tribunal and the reinvention of Nazis, the
44 rediscovery of Naziism in Europe 50 years on, when nothing has
45 been said or done about the atrocities committed in the 50
46 years before. It is a very simple point.
47

48 Q I presume that before you published this article you found out
49 exactly what the war crimes tribunal had found in its
50 judgment? A. Miss Searls looked into the case before she
51 wrote the article.
52

53 Q If we turn over the page, the second page, the second
54 paragraph down:
55

1 "Throughout the trial the press made much of the
2 charges against Tadic. Less widely publicised was the
3 fact that the judges decided that there was evidence
4 to convict Tadic of only 11 of the total of 31 counts
5 against him. What is more, all of the more serious
6 specific charges of gang rape, sexual mutilation and
7 murder were thrown out. In all he was found guilty of
8 beating 14 Muslim men and of a 'crime against
9 humanity' which is defined as 'persecution'. It is
10 worth examining these charges a little more closely."
11

12 Are you suggesting to the court that that is an accurate
13 representation of what Mr. Tadic was found guilty of?

14 A. Well, this is the first trial, not on the appeal.
15

16 Q I am talking about the first trial. A. Well, it's five
17 years ago, Mr. Shields, you know, I didn't write the article,
18 but that's the article we published.
19

20 Q You are the editor, are you not? A. Yes, of course.
21

22 Q You accept responsibility for articles you publish?
23 A. Yes, indeed.
24

25 Q I think it is right that Mr. Tadic was found guilty of
26 murdering two policemen. A. I don't remember anything
27 other than what's in this article.
28

29 Q You did not bother to check it out? A. This is an
30 analytical article written by a journalist who was writing for
31 me. She had done the research and written the article.
32

33 Q I thought you were a person who would like to check out
34 articles so that they can stand on their own before you
35 publish them? A. I certainly do, particularly if it is a
36 piece of controversial research.
37

38 Q Are you aware he was found guilty of aiding and abetting and
39 sexual mutilation of men at Omarska? A. Are we talking
40 about on appeal now? Are you talking about the appeal?
41

42 Q No, I am talking then. A. I am only aware -- at this
43 point five years on, I'm only aware of what I'm reading from
44 this article.
45

46 Q You did not bother to find out at the time? A. You have
47 to trust the journalist that writes for you. They are writing
48 commentary and analysis. I am a one-man operation of the
49 magazine. I can't check every word in every article.
50 Mr. Deichmann's articles are quite a different case where
51 there was important first-hand research being done that
52 I wanted to make -- and very controversial allegations being
53 put that I wanted to make sure could stand up.
54
55

1 Q Let us go back to this article then. You have had the
2 information in your possession since the Autumn of 1996. Is
3 that right? A. I'm sorry, which article are we talking
4 about now?
5
6 Q The one that was ... A. Yes.
7
8 Q Now, Autumn is a fairly broad period. Which month in the
9 Autumn did you ---- A. Well, no, the information, no.
10 The first I heard from Mr. Deichmann that he was writing the
11 article was in Autumn 1996.
12
13 Q So how long did you have all the material in your possession
14 before you chose or made your decision to publish?
15 A. Most of it came in December. I think the odd piece may
16 have come start of the new year. But most of it in December.
17
18 Q And there was no urgency to publish this story, was there?
19 A. Well, in the sense that it relates to events of five years
20 ago, no.
21
22 Q So you had ample time, if you had wanted, to contact any of
23 the people who had gone on behalf of ITN to Bosnia?
24 A. Well, I've already explained why I considered that very
25 seriously and decided not to, and it wasn't the time factor
26 that was the decisive one in my decision.
27
28 Q So you accept you had ample time if you so wished?
29 A. Yes, indeed. Well, I don't know where they were, but I am
30 sure I could have contacted ITN at Gray's Inn Road, certainly,
31 had I wanted to.
32
33 Q And you had ample time to find out whether anyone else other
34 than those people with some knowledge of Bosnia at the time
35 might have a different version of what happened at that camp?
36 A. Well, I looked into a lot of contemporary material that
37 Mr. Deichmann had of that. I've already talked about, for
38 example, Paddy Ashdown's visit to the camp and his description
39 of it as a refugee camp, and his point about local Serbs ----
40
41 Q It is well known that Paddy Ashdown visited the week after
42 ITN, did he not? A. Yes.
43
44 Q You know that? A. Yes.
45
46 Q And did you hear what Dr. Merdzanic said in court what
47 happened after the ITN crew film had been broadcast?
48 A. Yes.
49
50 Q The camp had changed, had it not? A. But he was talking
51 to the local people there and the men in the camp, his story
52 was based on. He made the point things are better now because
53 the local Serbs had taken pity on the inmates, apart from
54 everything else that had gone on. That was his argument in
55 the Independent.

1 Q That is right. You were very anxious, were you not, to launch
2 the new LM with a big story? A. Yes.
3
4 Q So it was very important that you established the reputation
5 of LM? A. I wanted a good story for the first issue of
6 the relaunch of LM, of course.
7
8 Q Because you wanted to boost subscriptions, did you not?
9 A. I wanted -- I hoped to have a good story that would both
10 bring us to the attention of the media and hopefully, yes,
11 sell a few magazines. We are a very cash-strapped operation.
12
13 Q So that is why you chose to send this press release to all the
14 most powerful media organisations? A. I think we sent it
15 to the usual round of 100-odd outlets. I don't remember.
16 I didn't do it myself. I mean, I don't have, you know, the
17 5.40 news bulletin on which to plug my ten o'clock news. All
18 I have got is a few press releases to send round, and that is
19 what we use. It is a very standard device - a press release,
20 which is a truncated version of the article to try and stir up
21 some interest in it.
22
23 Q And you recognised full well that what you were doing was
24 attacking the reputations of these journalists and ITN?
25 A. No, I recognised full well that what I was doing was
26 telling the untold truth about what lay behind that story and
27 the world reaction to it.
28
29 Q You see, I put it to you, that you were quite happy to sell
30 their reputation to benefit your reputation? A. No.
31 There was nothing absolutely nothing reckless about what I did
32 in the promotion of this article, Mr. Shields. I was at the
33 greatest pains to make sure that I could -- I was convinced
34 that it was true and I)----
35
36 Q You thought it would benefit you personally, did you not?
37 A. Benefit me personally?
38
39 Q Yes. A. How would that be so?
40
41 Q Well, at the bottom of the press release at tab 4 we see that
42 you are available for interview and you have had your
43 photograph taken. A. Yes. Well, as I explained to you,
44 one of reasons -- I mean, I don't know if this is unusual in
45 the media, but one of the reasons you want a good story is in
46 order to attract some publicity. But to leap from there to
47 the idea that you would publish, knowingly publish, lies,
48 falsehoods and be reckless about the facts in order to do that
49 I think is a quite different matter.
50
51 Q Well, look at the press release at tab 4, at the bottom.
52 A. Yes.
53
54 Q You and Mr. Deichmann were available for interview?
55 A. Yes.

1 Q Photographs on request. When was your photograph taken then
2 for that? A. I think it would have been the one we were
3 using in the magazine at the time.
4

5 Q Mr. Deichmann had supplied you with his photograph, had he?
6 A. I don't remember whether we had it or whether we could get
7 it. I don't recall at that moment. You seem to think this is
8 something extraordinary about it, Mr. Shields. You should try
9 and promote your best stories and attract some media interest
10 in them in order to maximise your publicity. To me it is not
11 an unusual thing for a magazine or a television company that
12 is trying to make its way in the world to do. But the
13 suggestion that that somehow implies that I would be reckless
14 as to the truth in order to promote it I think is quite false.
15

16 Q You see, the position is this, is it not, Mr. Hume? You were
17 not really concerned with the truth when it came to publishing
18 this article because if you had you would have taken the
19 elementary step of contacting the people who you were about to
20 condemn? A. I was concerned with the truth of this
21 article above all else. As I have explained I consider that
22 to be the first and last responsibility of a journalist, is to
23 publish the truth as you understand it. The reason in the
24 end, having calculated very carefully, that I decided it would
25 be too risky to notify them was precisely because I believed
26 that this article was true. The reason these allegations are
27 damaging is because they are true. I agree totally that a
28 false allegation is a very damaging thing but it is not nearly
29 as damaging as a true one, and it was the truth of these
30 allegations that I felt would embarrass and stir ITN to come
31 down on it if I had notified them before publication. It is
32 on that basis that I took that decision. As I say, I think
33 what they have done over the last three years has entirely
34 vindicated it.)
35

36 Q You made no attempt, did you, to contact anybody, anybody, who
37 had been in Trnopolje in August 1992? A. We assembled a
38 mass of evidence, the best we could, on the basis of the very
39 slender resources we had at our disposal. I believe that the
40 rushes alone were evidence enough to stand up the two
41 allegations which were being made.
42

43 Q And when ITN reacted, you started a campaign against them, did
44 you not? A. We started a campaign against their attempt
45 to suppress the magazine. I organised a press conference.
46 Many supporters of our magazine independently took great
47 umbrage at it. I mean, it is unprecedented for a major media
48 organisation with a commitment to freedom of expression to sue
49 for libel a small independent magazine. It has never happened
50 before. So the idea that -- I'm not surprised that people
51 were very angry about it.
52

53 Q Let me get this clear. It is your right, as far as you are
54 concerned, to tell untruths? A. No. But I believe that
55 the truth or otherwise of matters should be judged in a court

1 of public opinion. I believe in freedom of speech and press
2 freedom. I believe in the right of the public to decide on a
3 matter like this for themselves, Mr. Shields, and not to have
4 that decided by ITN or indeed by yourself, or indeed even by
5 the High Court.

6
7 Q So you believe in freedom of speech but you do not believe in
8 the freedom of those who are being attacked to give an
9 opportunity to answer the charges against them?

10 A. I absolutely do, and I think the idea that ITN and its
11 journalists have had no opportunity to answer the charges
12 against them is ridiculous. They are a huge media
13 organisation with all the resources they need to answer me a
14 thousand-fold. And indeed my allegations, or Thomas
15 Deichmann's allegations in my magazine, have been answered
16 many times in rather scurrilous fashion in the press since.
17 So the idea that somehow we are picking on them is, I think, a
18 rather bizarre inversion of reality.

19
20 Q Did you once give an interview to the Guardian about yourself?

21 A. Yes, I may have done. I'm sure I have, yes. When are we
22 talking about, Mr. Shields?

23
24 Q Was a profile published about you in the Guardian?

25 A. Which date are we talking about?

26
27 Q In 1999? A. 1999, yes, a Guardian journalist visited our
28 office and did some interviews, yes, and wrote a very bad
29 article about it.

30
31 Q You saw it afterwards? A. You did, yes.

32
33 Q Did it contain a quote you made in 1988 about yourself?

34 A. It may have done. I'm sorry, I haven't got it in front of
35 me.

36
37 Q No. May I show it to you? A. Yes, by all means. (Same
38 handed). Yes, I see that.

39
40 Q Do you remember that quote? A. I don't doubt that I said
41 it. I don't remember saying it but it seems ----

42
43 Q What does it say? A. It says:

44
45 "Our readers are young, angry, thinking people'
46 announced Hume, then a 29 year old graduate in
47 American studies from Manchester University. 'I think
48 of myself as a communist who writes propaganda rather
49 than a journalist who happens to be left wing'."

50
51 Was this a piece of propoganda? A. No, not at all. This
52 is something I said at 29 when I was launching a monthly
53 magazine as published by the Revolutionary Communist Party.
54 When I called myself a Communist at that time, as I made clear
55 - and I would never call myself a Communist now - as I made

1 clear, it had nothing to do with any sense of support for the
2 Soviet Union, the Yugoslav regime or anybody else in eastern
3 Europe. What I believed in when I was 29 was the Communist
4 ideals as outlined by Marx - from each according to their
5 ability, to each according to their means. It seems to me an
6 ideal that was worth trying to popularise.
7

8 MR. JUSTICE MORLAND: The question I have had from the jury,
9 Mr. Hume, is:

10
11 "How did LM magazine get access to the rushes?"
12

13 That is the first question. And:

14
15 "Did you see them before publication of the article?"
16

17 I think you have answered the second question? A. Yes,
18 I did see them before publication.
19

20 Q Now what about the first question?

21
22 "How did LM magazine get access to the rushes?"
23

24 A. I received them from Mr. Deichmann. I received a copy of
25 them from Mr. Deichmann. He would be able to answer you where
26 he got them from.
27

28 Q Now:

29
30 "Did you see them before publication of the article?
31 Which rushes did you see before publication of the
32 article?"
33

34 A. It is virtually the complete set that we have seen here.
35 There was the odd little snatch that was disclosed by ITN
36 later that wasn't in that set, but the substantive matters
37 were there that I saw beforehand.
38

39 MR. JUSTICE MORLAND: Thank you. Yes, Mr. Millar?

40
41 3.00 p.m.
42

43 MR. MILLAR: I have no re-examination, my Lord.
44

45 MR. JUSTICE MORLAND: Would that be a convenient moment to have
46 the break before the next witness is called? We will have
47 the break now until just before twenty past.
48

49 (Adjourned for a short time)
50

51 MR. JUSTICE MORLAND: Yes, Mr. Millar?
52

53 MR. MILLAR: Thomas Deichmann, please.
54
55

1 Mr. THOMAS JURGEN DEICHMANN, Sworn
2 Examined by Mr. MILLAR

3
4 MR. MILLAR: Mr. Deichmann, could you give the court your full
5 name please? A. Thomas Jurgen Deichmann.

6
7 Q And for the record your address, please, which I think is in
8 Germany? A. It is in Germany. Epsteiner Strasse 6, No.
9 323, Frankfurt, Germany.

10
11 Q Are you a freelance journalist? A. Yes, I am.

12
13 Q And an editor in chief of a bi-monthly magazine called **Novo**?
14 A. Freelance editor in chief, yes.

15
16 Q And have you written for other publications in Germany?
17 A. In Germany, yes.

18
19 Q And elsewhere? A. Yes, Europe wide, and also in the
20 States.

21
22 Q Have they included newspapers? A. Yes, various dailies,
23 weekly magazines, monthlies, quarterlies, maybe about 40
24 different papers all together.

25
26 Q Have you also lectured and given seminars on journalism
27 courses in Cologne and Berlin? A. Yes, that's right.

28
29 Q What was your education background - what did you train as?
30 A. I am trained as a civil engineer.

31
32 Q And when did you complete your engineering studies? A. In
33 the late 80s, in 1989.

34
35 Q Did you go into civil engineering for any period of time?
36 A. I did, yes, for a couple of years. First I had a job at
37 Darmstadt University and then I started working, I think in
38 1991, in a small civil engineering company close to Frankfurt.

39
40 Q Can you tell us how you became interested in journalism and
41 moved into journalism from that civil engineering background?
42 A. I was interested in journalism already while I was
43 studying. I was writing for student papers and when
44 I finished my civil engineering diploma and worked as a civil
45 engineer, after a while I wasn't too happy about that and
46 I felt that I maybe try a career in journalism. That is what
47 I did in 1992.

48
49 Q When was **Novo** launched? A. In the end of 1992. The
50 first issue came out in November 1992.

51
52 Q Were you involved in deciding to set it up? A. Yes, it
53 was basically me and a friend, the idea of me and a friend, a
54 flatmate of mine.
55

- 1 Q What prompted you to do that? A. Well, we were - or
2 I was, talking about me - I was interested in journalism and
3 I had the feeling that it would be a good idea to start a
4 magazine with a kind of critical and fresh approach towards
5 all kinds of issues in society.
6
- 7 Q At that stage, we heard from Mr. Hume this morning, that
8 **Living Marxism** was being published in this country, by 1992?
9 A. Yes.
- 10 Q Did you know of **Living Marxism**? A. Oh, yes, I did.
- 11 Q When did you first meet Mr. Hume? A. That was some time
12 in the late 80s, 1988 or 1989. A flatmate of mine introduced
13 me to people who set up **Living Marxism**. While I was visiting
14 him in London he was studying for a year in the United
15 Kingdom. I visited him on a summer holiday and there was
16 some kind of summer conference organised by these people and
17 we went there for a day or two.
18
- 19 Q Over the period of time since then have you got to know him
20 better and become acquainted with him? A. Yes, especially
21 after we had started **Novo** magazine in Frankfurt I was in more
22 regular contact with him. On a kind of professional basis
23 because we occasionally reprinted articles from **LM** magazine -
24 **Living Marxism** - at the time in **Novo**.
25
- 26 Q So from 1992 onwards you are working as editor in chief of
27 **Novo** and as a freelance journalist? A. Yes.
28
- 29 Q Did you develop any particular specialisms as a journalist?
30 A. Yes, I did. Actually in 1993 when I decided not only to
31 work for **Novo** magazine, but also to establish myself as a
32 freelance writer in Europe, I quickly felt that it would be
33 necessary or a good help to specialise in one subject,
34 actually become expert on one topic instead of writing as a
35 nobody, which I was in journalism at that time. So I felt
36 that it would be useful.
37
- 38 Q What did you specialise in? A. I specialised in German
39 foreign politics and as a result of that also on the Bosnian
40 war, the crisis in Yugoslavia and the Balkans.
41
- 42 Q Were those two topics connected? A. German foreign policy
43 and ----
44
- 45 Q And the crisis in the Balkans? A. Oh, yes, it was. At
46 this time, 1992, it was intensively connected. So my
47 interest was that it was connected in the sense that in
48 Germany there was a big debate about that. Germany was the
49 first country to recognise Croatia and Slovenia at the time,
50 and there was a discussion about it. That may have been a
51 mistake because it escalated the conflict to a certain extent.
52 So there was a clear connection at that time, yes.
53
54
55

1 Q I want to ask you about the article you wrote for LM that
2 Mr. Hume has given evidence about. Can you remember when you
3 first contacted LM and spoke to Mr. Hume about the article?
4 A. Yes, as far as I remember that was the beginning of
5 November after I had returned from the Hague where
6 I interviewed Professor Wladimiroff, the Dutch Advocaat, who
7 we have heard about, about this question of Trnopolje camp and
8 the location of barbed wire. So after I came back
9 I contacted Mr. Hume, as I contacted various other European
10 editors, to point out to them that I possibly could provide a
11 story in the near future.
12
13 Q How had you originally met Professor Wladimiroff?
14 A. I was an expert witness in the Hague at the War Crimes
15 Tribunal and I was working for his Advocaat company,
16 Wladimiroff & Spong, which is one of the biggest companies in
17 the Netherlands based in the Hague.
18
19 Q And they were representing the defence? A. They were
20 representing the defence, yes.
21
22 Q Did Mr. Hume express an interest in it when you contacted him?
23 A. Yes, he did.
24
25 Q Did you take further steps to research the story that we have
26 seen in your article? A. Oh, yes, I did the best I could
27 actually to substantiate what then was a suspicion from me at
28 that stage of my research in November 1996, the suspicion
29 actually Professor Wladimiroff, himself, pointed out to me.
30 When I came back I was reading a lot, actually all I could
31 get, printed in various papers about Trnopolje camp. I read
32 a lot of books which I had anyhow at home. I read through
33 them what was said about Trnopolje camp. I visited all
34 possible web sites to find references to Trnopolje camp and
35 especially about the location of the barbed wire at that camp.
36
37 Q Did there come a point where you actually went to Trnopolje to
38 look at the location and the site of the camp? A. Yes,
39 that was for me a decision which I took very early. I had at
40 this stage in November already also very carefully studied the
41 rushes of ITN which I had at this stage already in the
42 beginning of November.
43
44 Q How had you obtained those? A. I obtained those through
45 Professor Wladimiroff in the Hague. I was giving expert
46 evidence on not the quality or even not on the Bosnian
47 conflict but just on a question of how often the German media
48 had reported about this case in particular. Mr. Wladimiroff
49 handed out a bundle of tapes to me while I was doing that job,
50 and I carefully watched them and I found out that part of them
51 was the ITN rushes and I took copies of them.
52
53 Q When did you go to the camp - to the location? Can you
54 remember? A. I flew out of Frankfurt on 2nd December
55 1996. I stayed overnight in Belgrade, met with my fixer and

1 interpreter, and the next morning on 3rd December we travelled
2 with a bus to Banja Luka. It was quite a long bus drive.
3 We arrived in the late afternoon, where we found
4 accommodation. Actually, my fixer had already arranged
5 accommodation. We got the car. Then on 4th December for
6 the first time I went to the location, to Trnopolje. Then we
7 stayed there the 4th, the 5th, the 6th and the 7th we returned
8 to Belgrade.
9

10 Q This was in December 1996? A. Yes.

11
12 Q I want to ask you about what you saw there. Did you take any
13 photographs as a record of what you saw? A. Yes, I did.
14

15 Q Can we produce, please, through you for the jury - again it is
16 six between 12, and for his Lordship - copies of the
17 photographs that you took which are numbered, top right hand
18 corner, 1 to 18. (Same handed to the learned Judge and the
19 members of the jury) Are these the photographs that you took
20 on your visit? A. Yes, they are.
21

22 Q Could you also have in front of you open the defendants'
23 bundle, which is the thin black one, at tab 1, and have a look
24 at the plan there of the camp? A. Yes.
25

26 Q What I want to ask you to do is go through the photographs
27 that you took one by one indicating, if it assists by
28 reference to the plan, where you took the photograph from and
29 in what direction you were pointing when you took it. So
30 number 1, please, where was that photograph taken from?
31 A. At the south of the area, at the, I think it is called,
32 the conjuncture, the corner of the two streets where the east
33 road and the west road meet, shot in direction north-west.
34

35 Q On the plan that is down at the bottom where the roads meet?
36 A. Yes, correct.
37

38 Q Pointing north-west, and we can see a tall building there on
39 the left? A. Yes.
40

41 Q And a barn ahead of us? A. Yes, and the poles where the
42 barbed wire was fixed are past along the east road, and also
43 right to the electricity transformer, the poles - the metal
44 poles - which still existed when I was there.
45

46 Q Those posts, you looked at them, and they are made of metal?
47 A. Pardon?
48

49 Q Are they made of metal or wood? A. Yes, strong metal.
50

51 Q I think we will see some closer photographs of them in due
52 course. Number 2, please? A. Yes, that is taken just a
53 bit further up the east road, a shot taken west towards the
54 barn. Again, the metal poles which we see are the poles
55 along the east road.

- 1 Q Thank you. Number 3, please, where are you there: is that
2 the barn on the right? A. Yes, that's a barn on the
3 right, and the background behind this little bush, you can see
4 the electricity transformer, the further bit up the east road
5 and the shot is taken southwards.
6
- 7 Q So that is back down to where you originally took the first
8 shot? A. Yes, correct. Again, we see the metal poles
9 along the east road at the east side of the enclosure.
10
- 11 Q Number 4, please? A. This is taken from inside the barbed
12 wire enclosure standing a bit north-east from the barn, from
13 the northern part of the barn, and the shot is taken in
14 direction north/north-west, direction of the community
15 building, the community centre.
16
- 17 Q We can see in the right hand side of the photograph that there
18 are some trees. They look like pine trees or conifer trees
19 of some sort that have grown quite high there? A. Yes.
20
- 21 Q Who is the gentleman in the photograph? A. The gentleman
22 in the photograph is Veljko Grmusa, whom I also interviewed.
23
- 24 Q I will ask you about him in a moment. Were the poles, as we
25 have seen them, from the south up the east side and now on the
26 north side the same type of poles? A. Yes, all the way
27 round this enclosure were all the same type of poles.
28
- 29 Q Number 5, please. Where are you now? A. This is from
30 the position I just have been, about ten, 15 metres further up
31 north, but filmed in the opposite direction, so it is filmed
32 backwards direction south-west, and we see the barn on the
33 right side and the electricity transformer in the background.
34 We see the metal poles along the east road. We see the other
35 metal pole from the northern part of the enclosure, and we see
36 next to the electricity transformer, to the right and to the
37 left, the metal poles on the southern part of the enclosure.
38
- 39 Q If we look at this photograph from the transformer and
40 following the poles up to the left and across to where we are,
41 we can follow the route, as it were, of the first five
42 photographs? A. Yes.
43
- 44 Q You have gone up the east road and you are now going across
45 the north? A. Yes.
46
- 47 Q Towards the west. Number 6, please? A. Number 6, I went
48 just a bit further back, or it is taken a bit further back to
49 the north. It's approximately the same position, about 20
50 metres direction to the electricity transformer. So I am
51 standing now inside the enclosure, the barbed wire enclosure.
52
- 53 Q You have walked towards the barn from where you took number 5?
54 A. Correct.
55

- 1 Q You have got it on your right hand side? A. Yes.
2
3 Q And if we look to the right of the tall building, were there
4 poles running across in that area - that is the southern part
5 of the compound? A. Yes, you can see three, I think, on
6 that photo, and you can also see here two strands of barbed
7 wire. You can see them vaguely there on the right side.
8 That is actually the area which I should explain where, in the
9 past, in 1992 when the ITN teams were there, this garage
10 building was standing, the wooden garage building. That had
11 gone at the time I was there in 1996. It didn't exist.
12
13 Q Did you go and look at that area that we are looking at to the
14 right of the transformer building? A. Yes, I did.
15
16 Q Were there any visible signs of a building having been there
17 at one stage? A. Yes, the ground was a bit muddy, more
18 muddy than elsewhere, and a bit of dirty stuff lying around,
19 so it was quite obvious to me.
20
21 Q To the south of those poles that we have just looked at
22 running to the right from the transformer building, what is
23 there between the poles and the road in the background?
24 A. Again, I couldn't follow you now - what?
25
26 Q Do you remember the three poles that we were looking at going
27 across from the right from the transformer building in the
28 background? A. Yes.
29
30 Q There is a road behind that, is there not? A. Yes.
31
32 Q You cannot see the road behind that? A. No, you see it on
33 the left side.
34
35 Q But what is it that is blocking it down there on the right?
36 Is it bushes, or what? A. It is bushes, yes.
37
38 Q Number 7, please? A. This is a shot taken from just west
39 to the barbed wire enclosure. So if I would turn right now
40 I would look at the barn. It is taken in a north-eastern
41 direction. So actually, I am standing outside of the barbed
42 wire enclosure here and Mr. Grmusa is standing inside, or
43 leaning on the poles.
44
45 MR. JUSTICE MORLAND: Could you indicate on tab 1 of the
46 defendants' bundle, the black bundle, where you were standing
47 for this particular photograph 7. Could you hold that up?
48 A. About there.
49
50 Q To the left of the barn - is that right? A. Yes, to the
51 left of the barn, and the shot is taken in that direction.
52
53 Q Looking north-east? A. Yes.
54
55 Q Are you able to see that? No.

1 MR. MILLAR: My Lord, there is - I do not know if it helps the
2 witness - a blown-up version of the plan. This is a
3 satellite picture.
4
5 MR. JUSTICE MORLAND: Yes, if I go round. A. On the right you
6 can see the east road.
7
8 Q Is that approximately the position? A. Maybe a bit
9 further down.
10
11 Q If you can see, about there, looking in that direction,
12 pointing the camera in that direction. It is to the left of
13 the barn, pointing the camera in a north-east direction. You
14 have got that, Mr. Shields, have you? (Laughter) The red
15 spot being approximately where the camera would be.
16
17 MR. SHIELDS: Oh, I see.
18
19 MR. MILLAR: Mr. Deichmann, if we look in the distance on the left
20 hand side of the photograph we see a white building with a
21 sloping roof, a reddish coloured roof? A. Yes.
22
23 Q Is that the southernmost tip of the building of the plan that
24 we can see in the middle? A. Of the community centre?
25
26 Q Yes? A. Yes.
27
28 Q It may be slightly obscured because of the lower strand of
29 barbed wire to the right of the man, there is a little bit of
30 grey running along there, is that the east road? A. This
31 is the east road, yes.
32
33 Q If we look at the barbed wire pole - the pole on which this
34 barbed wire is suspended here - can you just describe to us
35 what it is on the pole that is holding it in place?
36 A. It's a bit difficult to do it in English because I don't
37 know the expression, but it is a metal kind of clamp, do you
38 call it "clamp"?
39
40 3.45 p.m.
41
42 Q Yes. Is it part of the pole? A. It is part of the pole,
43 yes. That was properly fixed there, yes.
44
45 Q Yes, so it is a sort of "D" shaped thing stuck on the side of
46 the pole? A. Yes, which you would do with a schweizgeraet
47 in German, which ---
48
49 Q Well, I am not going to try. (Laughter) On which side of the
50 pole is that? We may have got it in the orientation of the
51 picture. To which side of the pole is the barbed wire
52 attached on that shot? Is it the inside or the outside?
53 A. It is attached from the outside. It is usually fixed
54 fences.
55

- 1 Q The next shot, please, no.8. Have you moved far in this
2 shot? If we look at the pole in the background it is leaning
3 over to the right, just as the pole was to the left in the
4 other shot? A. Yes. The only thing I did, I got under
5 the two strands of barbed wire and turned around a bit to the
6 west and took another shot, and you see the big hall of the
7 community centre in the background.
8
- 9 Q So it is the same two poles we are looking at in that shot but
10 you have just come inside and you are looking directly north
11 now? A. More or less directly north, yes.
12
- 13 Q No.9, please. A. No.9 is at the same kind of side of the
14 barbed wire enclosure but a bit further down, maybe 10 metres
15 further down, 6 metres, to the south and the shot was taken
16 straight southwards in direction of the electricity
17 transformer.
18
- 19 Q Is that the corner of the barn there in the right-hand
20 photograph? A. Yes.
21
- 22 Q And that would be the corner on the plan that is farthest to
23 the west on the plan? It is slightly diagonal on the barn?
24 A. Yes, that is right.
25
- 26 Q It is the westernmost corner? A. Yes.
27
- 28 Q Therefore, is this right in this sequence of photographs,
29 essentially you are going all the way round the poles?
30 A. Yes.
31
- 32 Q In a circle? A. Yes, and there are still two strands of
33 barbed wire there.
34
- 35 Q Where are you now, no.10? You are some distance away from the
36 barn. A. Yes, that is now -- I went westwards a bit more
37 into the field.
38
- 39 Q Backwards from where you were? A. Backwards and took a
40 wider shot of the barbed wire enclosure. We see the barn in
41 the middle and on the right side the electricity transformer
42 building.
43
- 44 Q Yes, and if we look, can you just point out the pole which
45 represents the point at which the line of the poles come from
46 the east across and then turn down? Which is the cornermost
47 pole in that shot? A. You mean on that side?
48
- 49 Q No. A. The most eastern? Just hang on.
50
- 51 Q Well, you describe in your own words. If we look to the left,
52 the pole farthest to the left on this photograph. A. Yes.
53
- 54 Q That is up towards the east road? A. Yes.
55

1 Q And if we look at the pole on the right, that is going down
2 towards the south road -- is that the west road? A. Yes.
3
4 Q So how do those poles, as it were, come round the corner?
5 Did they go in a right-angle like that? A. Yes, quite a
6 right ---
7
8 Q A right-angle? A. Yes, the corner like that, a 90 degree
9 ---
10
11 Q So which pole is it that is the corner of the right-angle, can
12 you say? A. If I come from that direction ---
13
14 Q From the right? A. From the right, yes. One, two, three,
15 four, five, then six is missing, seven -- six, sorry. We see
16 six is the corner.
17
18 Q It is the one that is directly in front of the foliage or
19 whatever it is that is growing up the side of the barn?
20 A. Yes.
21
22 Q That is the corner one? A. Uh-huh.
23
24 MR. JUSTICE MORLAND: That one there, is it? A. There is one
25 there, yes, but -- you may be right, my Lord, but I think it
26 looks to me that is a part of the northern line of this
27 enclosure.
28
29 Q Would you show me? Where do you say is the corner one?
30 A. I know that it was this one, but you just indicated this
31 one. Yes. Well, that is what I meant.
32
33 MR. JUSTICE MORLAND: The witness said the corner one is that one
34 there. Mr. Shields, that one. Yes. That is 10.
35
36 MR. MILLAR: To the right, right to the right of this picture,
37 if we look at the earlier shot, at 6, but try and keep your
38 finger in both 6 and 10 --- A. Yes. It is falling apart,
39 unfortunately, but I will try.
40
41 Q Yes. The area in 6, running to the right of the transformer
42 building is coming round towards us, to the right of this
43 photograph? A. Yes, that is right.
44
45 Q And there is the growth and the foliage down there that we can
46 see in the background on no.6? A. Yes.
47
48 Q Are the poles continuous, the ones we can see to the right in
49 10 and directly ahead in 6? Is that a continuous sequence of
50 poles? A. Yes.
51
52 MR. JUSTICE MORLAND: Is it tobacco? A. Pardon?
53
54 Q What is this foliage? Is it tobacco? You do not know?
55 A. I do not know. I think it is just wild foliage.

1 MR. JUSTICE MORLAND: I see.
2
3 MR. MILLAR: If we look at no.10 and look at the side of the barn,
4 particularly to the right of the one right in the middle of
5 the barn, is that the barbed wire fencing running between
6 those poles that we saw in the earlier shot? A. Yes.
7
8 Q Looking north to the community centre? A. Yes, that is
9 correct.
10
11 Q And north-east. A. We can see between the first two it is
12 one strand of barbed wire and then between the next, three,
13 four, it is two strands of barbed wire still there.
14
15 Q Right. Then no.11, I think we probably know where we are
16 there. You have come back around past the transformer
17 building? A. Uh-huh.
18
19 Q No.12, presumably now we are further out to the west,
20 looking eastwards to the side of the barn and the community
21 building? A. Right. As far as I remember, I was standing
22 on the west road here, taking that from the west road.
23
24 Q On the west road? A. Yes.
25
26 Q Looking to the left of this shot, were there any similar
27 barbed wire poles up there? A. No, nowhere else.
28
29 Q Were there any similar barbed wire poles in the area between
30 the community building and the barn? A. No.
31
32 Q Other than the ones we have seen? A. No.
33
34 Q Then 13. A. That is taken -- well, I am standing on the
35 east road just a bit further down from the school building and
36 the shot is taken direction west. So this low fence is around
37 the school building. So it went further up the east road and
38 then actually went around the school building.
39
40 Q Right. Then no.14. A. This is also from the east road, a
41 bit further back to the south and filmed into the area in
42 front of the community centre.
43
44 Q If we look at the plan, the community centre seems to have a
45 main building, which is the one that we have seen in the
46 background in the earlier shots? A. Yes.
47
48 Q Then an extension that runs north-east? A. Yes.
49
50 Q And then there is another building in a "T" shape across the
51 top? A. Yes, that is it. Yes.
52
53 Q Is it the building that comes out towards the road in the "T"
54 shape that we are looking at here? A. Yes, that is right.
55

1 Q No.15, please. A. This is again taken standing on the
2 enclosure. This is actually taken in direction south. That
3 is the southern part of the barbed wire fence around the
4 enclosure, which was in 1992 behind the garage, the garage
5 building.
6
7 Q So can we take this carefully. We are looking there on the
8 satellite plan, which of course is 199, at the area where that
9 rectangular building is to the south? A. Yes.
10
11 Q And we are looking, as it were, from the northernmost corner
12 of that as it appears on the plan? A. Uh-huh.
13
14 Q Through towards the intersection of the two roads, which we
15 can see in the gap between the tall building and the last
16 pole? A. Yes.
17
18 Q This is the area, is it, that you mentioned earlier on where
19 the ground was muddy and dirty? A. Yes, and dirty, and
20 you can see over the poles in the bushes, or in the foliage,
21 and you can also see the two strands of barbed wire still
22 existing there.
23
24 Q Again the same question: as you come round is there any gap
25 in the poles down the west side, the ones that we see running
26 across here north to south? A. No.
27
28 Q Until you get to the transformer building? A. You mean
29 along that area here?
30
31 Q Yes. A. No, there was no gap.
32
33 Q It is slightly difficult to see to the left but it looks as
34 though from the right until the second last pole to the left
35 there is barbed wire - two strands of barbed wire?
36 A. Yes.
37
38 Q Then behind it there are the trees and the bushes that you
39 have described? A. Yes.
40
41 MR. JUSTICE MORLAND: Are the trees and bushes on both sides of
42 the fence at this stage? A. They are, yes.
43
44 Q And in the summer it would not necessarily be obvious that
45 there was a barbed wire fence there? A. No, maybe not.
46 That was taken in December, so it was in winter, my Lord.
47
48 MR. MILLAR: And indeed there would have been, according to the
49 satellite plan, a long barn here on this side of the poles?
50 A. Yes, that side.
51
52 Q In 1992? A. Yes.
53
54 Q Then 16. A. That is just -- I approach now the fence we
55 just talked about. I went a bit further south and I was

1 taking a shot through the fence, which went along the west
2 road at this area, so the southern part of the enclosure as we
3 call it so far.
4
5 Q So what are the two buildings in this shot? A. What they
6 are?
7
8 Q Yes. A. I think these are the buildings indicated on the
9 satellite plan, which we see left to the west road.
10
11 MR. JUSTICE MORLAND: To the south-west of the west road? Down
12 here? A. To the west of the west road, yes -- south-west
13 of the west road, yes.
14
15 MR. JUSTICE MORLAND: Those down there. Yes.
16
17 MR. MILLAR: So what is in between the buildings and what we are
18 looking at is the west road? A. Yes.
19
20 Q Then 17, I think is another one of those shots of the western
21 side looking westwards? A. Yes.
22
23 Q Of the poles that we have seen? A. Yes.
24
25 Q 18, please. A. 18 is ---
26
27 Q Right down in the south? A. Right down in the south.
28 I am standing on the road.
29
30 Q Yes. A. And just taking a shot in the other direction
31 from what we have just discussed, in direction north, and you
32 see on the left the poles of the west side of the enclosure,
33 here, which we discussed as well.
34
35 Q Yes. A. This barbed wire.
36
37 Q And that is the community building in the background?
38 A. Yes.
39
40 MR. MILLAR: Thank you.
41
42 MR. JUSTICE MORLAND: That bundle ought formally to be called D1,
43 ought it not?
44
45 MR. MILLAR: Correct, my Lord.
46
47 MR. JUSTICE MORLAND: So that we know what we are talking about.
48 Yes.
49
50 MR. MILLAR: (To the witness): Could you turn in the big bundle,
51 the red bundle, please, to the article itself, which is behind
52 tab 6. Did you do this diagram that appears in the article?
53 A. Yes, I did it.
54
55

1 Q What did you use as the lay-out? Did you use the satellite
2 plan? A. Yes, that is the basis of it.
3
4 Q You have taken some of your pictures and put them around the
5 article? A. Yes.
6
7 Q But did you use your recollection of the camp and the pictures
8 that you had taken and the rushes to construct this article?
9 A. Yes, and some more material. I also had a video tape from
10 Wladimiroff which I have not raised yet. He himself was there
11 in 1996 investigating.
12
13 Q Right, but that was at a similar sort of time to when you had
14 been there and taken these photographs? A. It was two
15 months earlier, yes.
16
17 Q Around the bottom we can see you have marked with the long
18 line, dot, long line, dot, and so on, what you describe as
19 "barbed wire fence"? A. Yes.
20
21 Q Is that the area that we have just looked around represented
22 by poles on the photographs? A. Yes, that is it. That is
23 a schematic plan I did, yes.
24
25 Q At the top you have marked "low wire fence around the
26 school"? A. Yes.
27
28 Q Is that the fence that we have also seen in one of the
29 photographs that is made of metal? A. Yes.
30
31 Q So it is not wire in the sense that we see wire on the strands
32 of barbed wire? A. No.
33
34 Q Or any other shots we have seen of the rushes, it is a heavy
35 metal fence? A. Yes.
36
37 Q That is photograph 13, I think? A. Yes, that is right.
38
39 Q Now you have drawn on the east side and the west side by
40 dotted lines what you have indicated as "low fence"?
41 A. Yes.
42
43 Q Was that there when you went in '96? A. No, what I have
44 done.
45
46 Q So how did you construct that bit of your diagram?
47 A. From the ITN rushes.
48
49 Q From what you saw on the rushes? A. From what I saw on
50 the rushes and also from the interviews where some people
51 indicating that there was this low fence, wire mesh fence
52 along the road.
53
54 Q We will come to that in a moment. I just wanted to ask you
55 about this because it is one of the things the jury have

1 raised. If one looks at the east road, going up the east
2 road, your dotted line runs out - the one you have described
3 as "the low fence" on the eastern side? A. Yes.
4

5 Q But there does not appear to be anything north of that on your
6 diagram? A. That is true, it does not appear.
7

8 4.00 p.m.
9

10 Q Is it correct? A. Actually there was another kind of
11 small, decorative fence a bit further up so just -- can I
12 explain one thing? When I wrote the article in 1996 I did not
13 have all of the rushes that have been disclosed here. I had
14 most of it but not all of it and especially there is one,
15 I think it is a Channel 4 rushes, has a long shot along the
16 east road when we see the women handing over something to men
17 in the field. That is a part which I did not have. But there
18 when I saw that last year, when the rushes were disclosed, I
19 wrote that also to ITN that this fence was missing. That was
20 a kind of small decorated fence, I would call it, and from my
21 line here, which is called low fence, it went maybe on that
22 fence a millimetre further up and there it ended. And it
23 already began a bit further down the road. So actually my
24 indication of a low fence here is a bit too long but the end
25 of it was a kind of small decorative fence. And then the gap
26 which I indicated here was a bit further up. And then this
27 low decorative fence continued another five/six metres up the
28 east road until the corner of the T-shape building what we
29 just discussed.
30

31 Q Is that, to locate it, to the east of the trees that we saw
32 growing up in one of your photographs? A. Yes.
33

34 Q Just hold on, I will see if I can get the right one. Number
35 4. It is not in shot because the road is going up to the
36 right. A. Um hum.
37

38 Q But it would be to the right of those trees? A. Yes.
39 I think this decorative fence there was built to protect young
40 trees so that nobody would run over them. But, as I said, in
41 1996, this fence had gone.
42

43 Q Now you conducted some interviews while you were there in 1996
44 with various people who are identified in the article and
45 referred to in the article? A. Yes.
46

47 Q And you recorded those interviews. Is that right?
48 A. Most of them, yes.
49

50 Q How did you record them? A. I have a little Sony recorder
51 with me and even a microphone and I recorded it.
52

53 Q After you had recorded them, did you transcribe them? Do you
54 understand what I mean? A. Yes.
55

1 Q Did you make a written record of what you could hear on the
2 tape? A. Yes, and I gave all that material to ITN.
3
4 Q In what language? A. Partly done in English, partly --
5 mostly done -- some in German, some in English. Most was in
6 English because my interpreter spoke Serbo-Croat and English,
7 so I put the questions to him in English, he put them to the
8 people, and then he translated back.
9
10 Q Can I just check that I understand? When you say you gave it
11 to ITN, did you give it to Mr. Hume at the time of the
12 article? A. Yes, I did.
13
14 Q The interview? A. Yes, yes.
15
16 Q When you say you gave it to ITN, what do you mean - at the
17 time or in connection with the ---- A. No, no, in
18 connection with the proceedings here.
19
20 Q You have extracted, in order not to have to deal with the full
21 transcripts and pick them out and put them before the witness,
22 the relevant extracts as they have been recorded. Could
23 I just take you to them, please? Veljko Grmusa - who was
24 that? A. Veljko Grmusa is a person who we have seen on
25 the photos.
26
27 Q Did you interview Mr. Grmusa using any plan or at the site?
28 How did you do it? A. Well, it was a long interview or a
29 long conversation which I had with him and I wouldn't, you
30 know, show him the site plan or the photos, not from the
31 start. So I asked him at the beginning where he came from,
32 why he was in Trnopolje ----
33
34 Q Apart from that, I just want to deal with the bit where you
35 are dealing with the layout of the camp with him. A. Yes,
36 okay.
37
38 Q From his recollection in 1992. Did you show him something
39 when you interviewed him? A. Yes. I produced to him the
40 site plan which we have in front of us.
41
42 Q The one at tab 1 in the defendants' bundle? A. Yes.
43
44 Q The satellite plan? A. Yes. And I also had with me
45 shots, stills which I had taken from the ITN rushes in
46 Frankfurt and I asked lots of people to help me to locate
47 where those shots were taken.
48
49 Q Now in the interview with Mr. Grmusa, did you ask him about
50 the area in the corner that we have looked at where the barn
51 is identified on your diagram? A. Yes, I did.
52
53 Q Can you tell us from the summary you have got what he said
54 about that, according to your records? A. He called it
55 the barn and agricultural pharmacy.

1 Q Can you just read from your record what he said to you?
2 A. Okay. He said to me:
3
4 "Before the war it used to be an agricultural
5 pharmacy. They had seats, you know, for different
6 kinds of plants and things. They were selling the
7 tractors and all the agriculture machinery that you
8 need to work on a farm. This used to be" ----
9
10 A. "That is what it used to be before the war."
11
12 Q Did you also interview Misa Radulovic? A. Yes, I did.
13
14 Q Who is she? A. It is a him.
15
16 Q A him? A. Yes. Misa Radulovic.
17
18 Q I beg his pardon. I get my ... and my Misas mixed up.
19 A. He was very old. He was 68 when I met him. He was a
20 former teacher in Trnopolje and in Kosorac, and also he
21 operated as a guard.
22
23 Q Did you show him or ask him about that barn as well?
24 A. Yes, I did.
25
26 Q Can you just tell us from your records, which you have
27 extracted, what he said? A. Yes:
28
29 "A barbed wire fence existed only at this corner
30 around this little shop for rural products. This
31 fence already existed before the war because of these
32 products. And here [he was indicating the school
33 building on the site plan] was only a very small
34 fence, how it practically exists today."
35
36 Q Did you interview Igor Curguz, who was the guard that we saw
37 on the rushes and on the ITN ---- A. Igor Curguz, yes.
38
39 Q Did you ask him about the area where the barn was?
40 A. I did, yes.
41
42 Q And what did he say? A. He said:
43
44 "The barbed wire fence only existed in this area where
45 the barn was."
46
47 Q Did you interview Pero Curguz? A. I did.
48
49 Q And what did he say? A. He said:
50
51 "During the operation of the camp no fence was built.
52 The short fence already existed, as did the barbed
53 wire fence."
54
55

1 By the short fence he also meant the fence around the school
2 building.

3
4 Q He identified that when he said that? A. Yes.

5
6 Q Then Dragan Baltic, did you interview him? A. I did, yes.

7
8 Q And can you say again from your records what your interview
9 with him records? A. Yes. He indicated that he was going
10 at Trnopolje and he indicated the school building on the plan
11 and he said:

12
13 "This fence, the school fence, it was the same fence
14 here before."

15
16 Q Carry on, please. A. Then he said:

17
18 "This barbed wire on top and that fence we see on that
19 photo around the bottom [indicating the barn at the
20 south bottom of the plan] this was just securing so
21 that somebody wouldn't steal stuff from this
22 agricultural shop."

23
24 And again indicating a shot of the barbed wire fence from the
25 ITN rushes there.

26
27 Q And did you ask him about the road along the western side and
28 whether there was any fencing there? A. Yes, I asked him
29 if there was any fence there. He said no.

30
31 Q And did you ask him any other questions? A. Yes, I asked
32 him if he had been at the site of the camp, of the refugee
33 centre, while it was operating. He said yes. I asked him if
34 he seen refugees. He said yes, a lot of people. I asked him
35 again about no fence, so did he not realise any changes in the
36 area, and he said:

37
38 "The fence that was there before the war, that's the
39 way it was when I was there."

40
41 Indicating at the school building again.

42
43 MR. MILLAR: Is that a convenient point? I have finished
44 examination in chief, so I suspect it is, my Lord.

45
46 MR. SHIELDS: I am happy to start for 10 minutes, my Lord.

47
48 MR. JUSTICE MORLAND: Right.

49
50 Cross-examined by Mr. SHIELDS

51
52 Q Mr. Deichmann, you took these photographs, did you not, in
53 December 1996? A. Yes.

1 Q Just part of a number of people to whom people you spoke in
2 December 1996? A. Yes.
3
4 Q Were any of those people inmates at Trnopolje? A. The
5 people we talk now, no.
6
7 Q No. Did you try and talk to any inmates at Trnopolje when you
8 made your visit out there in December 1996? A. Yes,
9 I did, and I talked to two Muslim families in Prijedor.
10
11 Q Did you talk to inmates in Trnopolje who had been there in
12 August 1992? A. Yes. August -- July, I didn't -- I can't
13 remember the exact date when they were there, but in summer
14 1992 when it operated as a refugee centre, yes.
15
16 Q Did you take transcripts of what they told you? A. No,
17 I did not, because the people, who were Muslim people, were
18 only a few hundred living in Prijedor at the time I was there,
19 and it was still a tense situation, and they asked me not to
20 be interviewed, no photos to be taken and not mentioned
21 anywhere because they feared they could be identified and get
22 into trouble because of that.
23
24 Q The Bosnian Serbs had taken over, had they not, at December
25 1996? A. Again ----
26
27 Q The Bosnian Serbs had taken over by December 1996? A. By
28 December 1996, that was already after the agreement, so
29 Muslims had already come back and the City Council operated
30 already. There were must Muslims on the City Council as well.
31 But it was still, after such a bloody civil war, a very kind
32 of tense situation and, as I said, only a few hundred Muslims
33 stayed during the civil war in Prijedor.
34
35 Q The man in this picture is the man who you referred to in the
36 article, is it not? A. Yes.
37
38 Q What is his name again? A. Veljko Grmusa.
39
40 Q Grmusa. And the bit you have just read out is that bit of his
41 statement in the article upon which you are relying in this
42 case - that is right, is it not? That is right, it was read
43 out? A. Yes.
44
45 Q ... A. Not only. As I said, I discussed a lot of -- you
46 know, quite a length with him. I even went down with him to
47 the area and he showed me ----
48
49 Q Would you accept from me that that is one bit which the
50 defendants rely upon in this case? Now, you took a statement
51 from him, did you not? A. Not a statement. I interviewed
52 him, yes.
53
54 Q And you thought he was a guard at the camp. Is that right?
55 A. Yes.

1 Q When did he become a guard at the camp? A. He became a
2 guard in -- I can't remember, mid August.
3
4 Q 15th August. A. Yes.
5
6 Q So he was not even there, was he, when the photographs were
7 taken and the film was made of Trnopolje? A. That's true,
8 yes. That is what he explained to me. He indicated to me
9 that when he came there actually the area with the barn and
10 the enclosure looked pretty the same as it did when we visited
11 -- both of us visited the camp in December 1996. He showed me
12 that when he arrived that on the west side of this enclosure
13 the two strands of the barbed wire which still existed in
14 December 1996 already existed at the time when he was there.
15
16 Q Were you here when Dr. Merdzanic gave evidence yesterday?
17 A. Yes, I was.
18
19 Q Do you accept that he gave evidence ---- A. Oh, yes.
20
21 Q You accept it in its entirety. Did you see the rushes of the
22 return visit of Channel 3 to ---- A. Yes, I did.
23
24 Q You saw fences being pulled down, did you not? A. Yes.
25
26 Q And you heard and know that that happened after the visit on
27 2nd August, do you not? A. Yes. But that's what
28 I indicate in my article. I've described that. That's what
29 happened, yes.
30
31 Q Well, let us look at how you deal with it in your article. It
32 is on p.8. A. They are not numbered.
33
34 Q Tab 6, I am sorry, I apologise. Tab 6, p.8, in the bundle you
35 will find it very quickly. A. My article is not numbered
36 with ----
37
38 Q I know that. Look at p.8 on the right hand side. Do you have
39 page numbers in your article ---- A. Sorry, I'm a bit
40 confused.
41
42 Q Tab 6. A. Yes, but there are no numbers 1 to 8.
43
44 MR. JUSTICE MORLAND: Where are these numbers?
45
46 MR. SHIELDS: Down the bottom I have got p.8.
47
48 MR. JUSTICE MORLAND: I think you are luckier than us.
49
50 MR. SHIELDS: I apologise to everyone. Opposite the diagram.
51 Anyway, it is para.25 for members of the jury and my Lord.
52
53 MR. JUSTICE MORLAND: Yes, opposite the diagram.
54
55

1 MR. SHIELDS: (To the witness): This is you:
2

3 "When I showed the picture of Fikret Alic behind the
4 barbed wire to people in Trnopolje, I saw always the
5 same reaction: anger and disappointment. They had
6 expected fair treatment from the Western journalists
7 and had welcomed them."
8

9 Then we go on to someone presumably to whom you had shown the
10 pictures.
11

12 "Veljko Grmusa and his family were exiled from
13 Bosanska Bojna near Velika Kladusa and were assigned
14 the house of an exiled Muslim in Trnopolje. In the
15 middle of August 1992 he worked as a guard in the
16 refugee centre for a couple of days, before he was
17 sent to the front. He was glad when I told him that
18 Fikret Alic had survived the war, but angry about this
19 image."
20

21 He had not even been there when that image was taken, had he?
22 A. But he knew it fairly well.
23

24 Q But he did not know whether this was true or not, that
25 Mr. Fikret Alic was emaciated and standing behind barbed wire?
26 A. Well, it's not about only being emaciated but the image --
27 the impression that is given by that image is that Trnopolje
28 was a camp reminiscent to Nazi concentration camps and was
29 surrounded by barbed wire fence, which wasn't true.
30

31 Q Now, another person you rely upon is Mr. Curguz. Let us look
32 above, the paragraph above. A. Above, yes.
33

34 Q And what you rely upon from Mr. Curguz -- as I understand that
35 is all that is relied upon for the purpose of these
36 proceedings, is the sentence five lines down:
37

38 "He told me that, during the ... operation of the
39 camp, no fence had been erected."
40

41 Now, what we had just read to us were these words:
42

43 "During the operation of the camp no fence was built.
44 The short fence already existed, as did the barbed
45 wire."
46

47 Let us just see what is actually in the article.
48

49 "He told me that, during the entire time of the
50 operation of the camp, no fence had been erected."
51

52 Quite a difference, is it not? A. No, I wouldn't say
53 that. That's what he told me.
54
55

1 MR. JUSTICE MORLAND: It was clearly untrue, was it not?
2 A. Well, I don't know what you mean, my Lord.
3
4 Q Well, on the west side the fence was erected, was it not?
5 A. Yes. That it looks on the ITN rushes, yes.
6
7 Q What? A. That is how it looks on the ITN rushes.
8 I indicate that in my article very well, that there was this
9 fence on the west side and also along the east road.
10
11 MR. SHIELDS: So Mr. Curguz in that quote is not telling the
12 truth, is he? A. Well, he may not have remembered it, you
13 know, but that's the way he put it to me, and that's how
14 I quote him.
15
16 Q Mr. Curguz ... Red Cross, as we have seen on the reels, have
17 we not? A. Yes.
18
19 Q He says, if we read up the page, the third line down:
20
21 "He says he told them that the people had come to the
22 camp of their own free will for protection."
23
24 Then he says at the bottom, if you read:
25
26 "Curguz stressed that this was no internment or
27 prisoner camp; it was a collecting camp for exiled
28 Muslims. Everybody I spoke to confirmed that the
29 refugees could leave the camp area at almost any
30 time."
31
32 Now, Mr. Deichmann, did you write that? A. Yes.
33
34 Q Have you heard the evidence given in this court?
35 A. I did.
36
37 Q Do you now withdraw that statement? A. No, I don't.
38
39 MR. SHIELDS: Would that be a convenient moment?
40
41 MR. JUSTICE MORLAND: Yes. I have two questions from the jury.
42 This is really for you, Mr. Deichmann. I think it probably
43 refers to your map on the page before. A. Yes.
44
45 Q The question is this:
46
47 "Did you consciously show the area on your map where
48 Ian Williams and Penny Marshall were as complete and
49 the area where the prisoners were with spaces in the
50 fencing to strengthen your claim that Mr. Williams and
51 Miss Marshall were enclosed and the prisoners had
52 freedom of movement?"
53
54 No, I did not do that. The reason why I used these different
55 types of lines is probably because I'm a trained civil

1 engineer. That is what you do when you want to locate on a
2 kind of schematic plan different material on a plan. That is
3 why I did it, just to help the reader of the article to find
4 the difference between a low fence and a barbed wire fence.
5 But I also indicated in my article that the barbed wire fence
6 was torn into pieces at several times. I could find where it
7 is exactly, and that it had a gap to the electricity
8 transformer where Penny Marshall and the ITN team entered
9 into, but there was not any attempt to consciously bring that
10 across.

11
12 Q The other matter, which is not for the witness:

13
14 "Is it normal practice for television news companies
15 to allow copies of their rushes to be left or given to
16 other journalists to use as they wish or are
17 conditions imposed as to what they can be used for?
18 Are they covered by copyright laws?"
19

20 Now, as I understood it, and I think it was the evidence of
21 Mr. Stewart Purvis, who was the editor in chief at the time of
22 ITN, that really it was to assist war crimes that all the
23 rushes that could be found were handed over to war crimes in
24 the Hague and, as I understood it, you, as part of the defence
25 team, so to speak, at the war crimes trial got hold of the
26 rushes then. Is that right? A. That is right, yes.
27

28 MR. SHIELDS: Could I just ask a question in the light of that,
29 because I am coming to it?
30

31 MR. JUSTICE MORLAND: Yes.
32

33 MR. SHIELDS: (To the witness): Mr. Deichmann, can I ask you this
34 question? Who gave you those rushes? A. Professor Mischa
35 Wladimiroff the Dutch advocate ----
36

37 Q Did he know that you were going to make a copy of them?

38 A. I don't think so. I'm not sure. He didn't tell me not to
39 do it. He didn't instruct me, you know, not to do any copies.
40

41 Q Mr. Deichmann, you know full well that they have been provided
42 to the war crimes tribunal for the purpose of the hearing
43 before it, did you not? A. Well, I knew that he had got
44 them from the prosecution but that's all I knew.
45

46 Q So you thought you had a right to go and copy them?

47 A. Yes. I didn't see any problem with that.
48

49 Q Did you ask the Professor? A. No. I told him later but
50 he didn't see a big problem with that.
51

52 MR. JUSTICE MORLAND: We will break off so far as you are
53 concerned until quarter past ten in the morning. As I said
54 before, you will only be here tomorrow morning and then back
55

1 on Monday. If the jury would like to leave and you can leave
2 court too, Mr. Deichmann.

3
4 (The jury left court)
5

6 MR. JUSTICE MORLAND: I do not propose to have a prolonged legal
7 argument now, but clearly we ought to have some submissions on
8 the law before final speeches. Do I understand this right,
9 Mr. Millar? You accept that 8A of your defence is an
10 assertion of fact. That is a meaning which you seek to
11 justify as an assertion of fact?
12

13 MR. MILLAR: Yes.
14

15 MR. JUSTICE MORLAND: With regard to 8B and C, are you saying
16 those are comments essentially on the fact that you seek to
17 justify in 8A?
18

19 MR. MILLAR: C is.
20

21 MR. JUSTICE MORLAND: What about B? There was no explanation.
22

23 MR. MILLAR: Fact.
24

25 MR. JUSTICE MORLAND: That is a fact, but does it not all depend
26 on whether it was a deliberately misleading image, because
27 unless it was a deliberately misleading image there would be
28 an omission to explain, but there would be no failure, in a
29 sense, because there would be no obligation to explain, would
30 there?
31

32 MR. MILLAR: I am not sure that your Lordship's reference to a
33 misleading image is the way we would put it, or the way we put
34 it in the pleading. What is raised in A is the issue of
35 whether the television footage, the reports, deliberately
36 misrepresented that which is being claimed behind the barbed
37 wire.
38

39 MR. JUSTICE MORLAND: Yes.
40

41 MR. MILLAR: If we prove that as a matter of fact, as we invited
42 the jury to find this morning, it follows from the finding
43 that it was deliberately misrepresented that they must have
44 known they were misrepresenting it - that is what
45 "deliberately" means - and therefore must have known the true
46 lay-out of the camp and the barbed wire fence. It is on that
47 basis that they failed to explained publicly.
48

49 So I am not a million miles from your Lordship ----
50

51 MR. JUSTICE MORLAND: No, B is dependent on A and, in a sense, is
52 a conclusion from A and C is based on A, the factual basis
53 for C.
54
55

1 MR. MILLAR: Oh, yes: "In the above mentioned circumstances" is a
2 reference back to A and B.
3
4 MR. JUSTICE MORLAND: You could not succeed on B and C, in
5 justifying B and C, or B and C being fair comment, unless A
6 was established. Is that right?
7
8 MR. MILLAR: Yes, C being fair comment.
9
10 MR. JUSTICE MORLAND: C being, you say, fair comment.
11
12 MR. MILLAR: Yes, the same principle applies.
13
14 MR. JUSTICE MORLAND: Yes, I see. You might like to think about
15 that, both of you, those points in relation to 8A, B and C
16 tomorrow.
17
18 MR. SHIELDS: I think that is right. I agree with your Lordship.
19 I think that is ---
20
21 MR. JUSTICE MORLAND: Is the right way.
22
23 MR. SHIELDS: As I opened it, this is about A.
24
25 MR. JUSTICE MORLAND: Yes.
26
27 MR. SHIELDS: It is a plea of justification, we say, to A.
28
29 MR. JUSTICE MORLAND: So far as malice is concerned, I will want
30 to know what are the facts and matters on the evidence that
31 you rely on as showing malice. Clearly, if Mr. Hume had no
32 honest belief with regard to 8A that would be malice.
33
34 MR. SHIELDS: Or was reckless.
35
36 MR. JUSTICE MORLAND: Well, yes.
37
38 MR. SHIELDS: Or had an improper dominant motive.
39
40 MR. JUSTICE MORLAND: Yes, I appreciate that.
41
42 MR. SHIELDS: My cross-examination hopefully has mirrored how
43 I put it in my opening ---
44
45 MR. JUSTICE MORLAND: Yes. If you would like to think how you are
46 finally going to put it in your speech.
47
48 MR. SHIELDS: Yes, I will prepare that for your Lordship, how
49 I put that in my speech.
50
51 MR. JUSTICE MORLAND: On the question of reference to ITN, first
52 of all it has to be established by ITN that the article and
53 the press release are defamatory of ITN, and that can only be
54 determined from looking at the article and the editorial, is
55 that right?

1 MR. SHIELDS: Essentially because we have got a separate press
2 release sued on and a separate article they should be asking,
3 looking at each one separately and asking themselves ---
4
5 MR. JUSTICE MORLAND: Yes, but they can look at both because they
6 are in the same publication.
7
8 MR. SHIELDS: Oh, yes, that is the pragmatic way forward.
9
10 MR. JUSTICE MORLAND: Theoretically if there was a libel in the
11 editorial and that there could be separate causes of action in
12 relation to -- I mean, that is nonsense.
13
14 MR. SHIELDS: I am distinguishing between the press release and
15 the article ---
16
17 MR. JUSTICE MORLAND: Yes.
18
19 MR. SHIELDS: They have to ask themselves, would anyone reading
20 the article have understood it in the defamatory sense about
21 ITN?
22
23 MR. JUSTICE MORLAND: Yes.
24
25 MR. SHIELDS: And they make the same -- which really involves them
26 finding what does it mean, and if that meaning involves a
27 reference to ITN then it is defamatory of ITN. It is always
28 difficult to know whether meaning or reference ---
29
30 MR. JUSTICE MORLAND: Yes.
31
32 MR. SHIELDS: -- but they are so interwoven it is ultimately a
33 single question.
34
35 MR. JUSTICE MORLAND: No, the mere fact that there is a mention or
36 reference in ordinary language of ITN does not mean in the
37 technical -- or defamation when we talk of reference, it is a
38 slightly different connotation, is it not? It is defamation
39 of ITN.
40
41 MR. SHIELDS: Would you, when you read that article, think the
42 less of ITN?
43
44 MR. JUSTICE MORLAND: Yes, was this impugning the reputation of
45 ITN?
46
47 MR. SHIELDS: That can be simply put, that is right.
48
49 MR. JUSTICE MORLAND: Yes.
50
51 MR. SHIELDS: And of course they ask themselves in what meaning,
52 because the meaning which they may find may be, as we would
53 say, a higher meaning than the defendant was even seeking to
54 justify because there is a gap between them. But that is the
55 first question they have to ask themselves.

1 MR. JUSTICE MORLAND: Yes. I mean, the jury can find any meaning,
2 assuming they find it is defamatory, which is not higher than
3 the meaning pleaded by you. It may be the meaning pleaded by
4 the defendants, it may be somewhere in between, or it might
5 even be a lesser defamatory meaning theoretically than ---
6
7 MR. SHIELDS: Theoretically, yes, that is right.
8
9 MR. JUSTICE MORLAND: So far as damages are concerned, the jury
10 would have to give separate awards for each claimant.
11
12 MR. SHIELDS: Yes.
13
14 MR. JUSTICE MORLAND: So far as Mr. Williams and Ms. Marshall are
15 concerned, of course the jury has to take into account, which
16 they do not in the case of ITN, injury to feelings.
17
18 MR. SHIELDS: Correct.
19
20 MR. JUSTICE MORLAND: So far as aggravation is concerned, the only
21 aggravation vis-a-vis ITN would be the continuous assertion
22 that ITN had not been defamed essentially.
23
24 MR. SHIELDS: Yes, but that is well put. I do not mean that about
25 your Lordship, that is well put, that is about the highest.
26
27 MR. JUSTICE MORLAND: Yes.
28
29 MR. SHIELDS: If they argue that it does not refer to it in any
30 defamatory sense, I cannot seek damages for failure to
31 apologise.
32
33 MR. JUSTICE MORLAND: No, no.
34
35 MR. SHIELDS: Also because they have no hurt feelings I cannot
36 seek any damages for the way they have conducted the trial in
37 any cross-examination of ITN employees.
38
39 MR. JUSTICE MORLAND: No, no.
40
41 MR. SHIELDS: So the damage for ITN, really it is a vindication
42 figure in the light of the gravity of the allegations.
43
44 MR. JUSTICE MORLAND: Bearing in mind it has been a reputation
45 unvindicated since the publication of the press release.
46
47 MR. SHIELDS: Yes, it has lain on the record, as it were, though
48 it is quite different in relation to the individuals, because
49 there is a plea of justification, so all the usual aggravation
50 features come into play.
51
52 MR. JUSTICE MORLAND: Take, for example, the Awards Dinner and the
53 handing out of leaflets for ITN, they could only sound in
54 damages if there was evidence that Mr. Hume or Miss Guldberg
55 or the defendant company had personally accepted

1 responsibility. The mere fact that they were sympathisers
2 would not make it sound in damages, would it?
3

4 MR. SHIELDS: Well, I think as regards the leaflet, it was not
5 challenged that leaflets were handed out. There was a
6 specific challenge, as I understand it, that Mr. Hume had
7 anything to do with the Awards Dinner. He gave evidence
8 specifically on that front, and I did not cross-examine him
9 any further on that. The only argument about that could be
10 is, for example, if, following the publication of a defamatory
11 article you receive anonymous telephone calls, you are allowed
12 to rely upon that as evidence of the circulation of the libel.
13 Therefore, you can give it as evidence of the damage and hurt
14 that it caused you.
15

16 If it could be said to a jury, which we say it
17 naturally could, that that would never have happened but for
18 the article and the bringing of these proceedings, then it is
19 indicative of the damage they suffer as a result of the
20 article being published.
21

22 MR. JUSTICE MORLAND: So the defamatory story was in the public
23 domain, was being circulated; but I would then have to say
24 there was no evidence that it was circulated personally by
25 Mr. Hume or he was responsible, but nonetheless Miss Marshall
26 and Mr. Williams suffered upset and annoyance but from the
27 fact that they were recipients or knew that other people were
28 recipients of this defamatory material.
29

30 MR. SHIELDS: Mr. Hume, as the transcript will show, was extremely
31 candid about his reaction to the issue of proceedings, how he
32 reacted to these proceedings. He dissented from the
33 suggestion from me - I shall have to see the transcript - that
34 he started on a campaign. I will have to see the transcript.
35 If the transcript does not support it then I obviously cannot
36 put ----
37

38 MR. JUSTICE MORLAND: Those are matters that - are there any
39 matters?
40

41 MR. SHIELDS: I will just be relying on John v. MGA as to the
42 basis upon which the rule of damages should be made and the
43 speech of the Master of the Rolls, as he then was, about
44 allegations which go to the heart of people's character.
45 That would be the kind of passage ----
46

47 MR. JUSTICE MORLAND: What, on the size of the award?
48

49 MR. SHIELDS: Yes, that is all. If your Lordship wants me to
50 send you a copy of ----
51

52 MR. JUSTICE MORLAND: Oh, I do not want a copy. Perhaps tomorrow
53 we could just tie up the odds and ends of how you are going to
54 put in law and the same with you, Mr. Millar. The evidence
55 should finish ----

1 MR. SHIELDS: In an hour.

2

3 MR. JUSTICE MORLAND: In an hour. Right, thank you both.

4

5 (Adjourned until 10.15 a.m. on Friday, 10th March 2000)