

1                               Wednesday, 2<sup>nd</sup> February, 2000

2                               [Open session]

3                               [The accused entered court]

4                               --- Upon commencing at 9.40 a.m.

5                               THE REGISTRAR: [Interpretation] Good morning,  
6 Your Honours. Case number IT-95-14/2-T, the Prosecutor  
7 versus Dario Kordic and Mario Cerkez.

8                               MR. NICE: Your Honour, both witnesses from  
9 Bosnia are here but literally only just. Therefore,  
10 I'm not going to name either of them, because there's  
11 always the possibility that there will be an  
12 application by one or other for protective measures.

13                              The witness producing the tape I've spoken to  
14 very briefly, and he's expressed some concerns about  
15 being rushed into the process of being a witness  
16 without a little more discussion. He's speaking to  
17 Mr. Lopez-Terres, I hope, at the moment, but before any  
18 time comes for him to give evidence, I'd ask for a  
19 short adjournment to check that he's content with what  
20 he's doing and also to check on his position so far as  
21 protective measures is concerned.

22                              The other witness is also being spoken to and  
23 I hope will be ready this morning, being seen and  
24 should be ready this morning.

25                              In those circumstances, I suggested to

1 Mr. Stein that it might be convenient for him to  
2 address his argument in relation to admissibility of  
3 the tape, obviously without reference to the name, and  
4 to see how far we can progress without the need to call  
5 a witness becoming a live issue.

6 JUDGE MAY: This is the witness whose  
7 statement we have been handed --

8 MR. NICE: Correct.

9 JUDGE MAY: -- with -- just literally a  
10 witness statement, not a summary.

11 MR. NICE: No. In this case, the statement  
12 itself is prepared effectively in the form of a  
13 summary. It's a very recent statement, and it's very  
14 succinct. It also contains, on the third sheet, an  
15 index of calls to be found on the tape.

16 JUDGE MAY: Would it be simplest for you,  
17 briefly, to introduce what the evidence is?

18 MR. NICE: Certainly, yes.

19 JUDGE MAY: We will then read the statements,  
20 and we'll hear the argument.

21 MR. NICE: I'm not sure if you got the other  
22 shorter statement, but that can be made available to  
23 you, and it may be that Mr. Stein will be happy to  
24 proceed on the basis of that being an accurate account  
25 of the history of matters, at least for the purposes of

1 his argument.

2 JUDGE MAY: Let us deal with that, the  
3 shorter statement we don't have.

4 MR. STEIN: Yes, sir. I thought you had been  
5 supplied. It was our intent to read it out. It's six  
6 paragraphs. It suffices, for my purpose. We can put  
7 it on the ELMO. I just don't have extra copies.

8 JUDGE MAY: We don't have the copies.

9 MR. NICE: Copies will be obtained. I can,  
10 with the usher's assistance, lay the body of the  
11 document on the ELMO and read from it for the  
12 transcript.

13 JUDGE MAY: Very well. Mr. Stein, we'll hear  
14 the Prosecutor open the case, as it were, and then  
15 we'll hear your objections.

16 MR. STEIN: Yes. Very good.

17 MR. NICE: Again, I shan't name this witness  
18 just in case he comes to give evidence and does seek  
19 protective measures. So we won't let his signature be  
20 shown. But he said this in his statement, that he --

21 "I am a telecommunications engineer by  
22 profession. On the 1st January, 1993, I was appointed  
23 head of the High Frequency Equipment at the PTT in  
24 Zenica. Part of my duties included liaison with the  
25 3<sup>rd</sup> Corps in Zenica.

1                    "In the beginning of 1993, I was informed by  
2 members of my staff that there was something unusual on  
3 the "official line" of the PTT which ran between Vitez  
4 and Busovaca. The official line was an internal line  
5 normally used by PTT staff in emergency situations to  
6 deal with technical problems within the network.  
7 However, it appeared that the line was being used by  
8 people in Busovaca for military matters.

9                    "I informed Edin Husic at the 3<sup>rd</sup> Corps  
10 headquarters in Zenica. Edin asked for the line to be  
11 diverted to the office of the 3<sup>rd</sup> Corps. I returned to  
12 my office and instructed my staff to divert the line.  
13 The line was disconnected from the inductor switchboard  
14 in the Zenica office to the Technoprojekt building, the  
15 headquarters of the 3<sup>rd</sup> Corps.

16                    "The PTT did not supply any equipment or  
17 technical assistance to the 3<sup>rd</sup> Corps in relation to  
18 this matter.

19                    "At this time, the telephone lines going to  
20 and from Busovaca had been cut and this official cable  
21 which ran via the PTT in Zenica was the only possible  
22 line to use.

23                    "I do not know how long this line was  
24 diverted to the 3<sup>rd</sup> Corps in Zenica. I do not know  
25 when it became undiverted."

1           The other witness is able to produce the  
2 tape. The Court has his statement. In summary, he  
3 sets out how the diverted phone call line was  
4 monitored; how small cassette tapes were made of  
5 certain conversations; how those recordings were  
6 transferred to a standard sized tape, reviewed by him,  
7 the witness; how he, the witness, took another copy of  
8 that tape; how the original copy of the tape, which no  
9 doubt should have gone to archives, became mislaid; and  
10 how it was discovered very recently that his retained  
11 tape might be of value, and thus it was produced. The  
12 tape itself, of which the Court has transcripts, is  
13 plainly --

14           JUDGE MAY: No, we don't. We haven't had the  
15 transcripts.

16           MR. NICE: I'm sorry. If you don't have  
17 transcripts, they'll be coming your way. I'll just  
18 check it before they do come. Yes, the transcripts are  
19 coming your way, and originals -- not the originals,  
20 the B/C/S versions as well. Thank you.

21           The tape has been transcribed and translated  
22 by the official department here. There is, I think,  
23 one potential for confusion arising on the first page  
24 of the English translation of the transcription, where  
25 it says, "Side B." If the Court goes to the third page

1 of the witness statement, the Court will see that the  
2 listing begins on side A and runs down to side B, and  
3 it may be, if and when we listen to the tape, that it  
4 simply should read, on the first page of the  
5 transcript, "Side A" and not "Side B" at all, because  
6 the recorded conversations starting on the first sheet  
7 of the transcription do appear to match the index  
8 provided by the witness.

9           The witness is able to identify voices, and  
10 they were recorded on the cover of the cassette at the  
11 time. They may all be of considerable interest, but  
12 the one that is of starkest and most obvious value is  
13 the first one on the tape. And again since argument on  
14 admissibility is being raised, it may be better, as  
15 we're in open session, to deal with things in this  
16 way: to invite the Court to turn to the second page of  
17 the transcript as an example of the significance of the  
18 tape and to note that Voice 6 is Kordic, Voice 7 is  
19 Blaskic, and simply to read the first seven lines of  
20 that tape for a piece of material of the very greatest  
21 possible significance.

22           MR. STEIN: Excuse me. That, it seems to me,  
23 would be putting the cart before the horse. We're  
24 challenging the admissibility both as to legal matters,  
25 search and seizure, as well as to what we would call

1 chain of custody, or reliability, or providence, as in  
2 other jurisdictions.

3 JUDGE MAY: You're not challenging it on the  
4 grounds of eavesdropping or something of that sort?

5 MR. STEIN: Yes, we are.

6 JUDGE MAY: You are. Very well. You don't  
7 want us to read the tape; is that what you say?

8 MR. STEIN: That's the short of it.

9 JUDGE MAY: I mean normally we need to know  
10 what the evidence is about before we can rule on it.  
11 We're not a jury.

12 MR. NICE: Well, Your Honour, it may be that  
13 there would be no objection to the proposition that, if  
14 admissible or if not inadmissible, the Defence accept  
15 entirely that this is a document -- this is an exhibit  
16 of great potential relevance and materiality, and if  
17 they do, then I needn't introduce the matter further.

18 JUDGE MAY: Very well. It may be the fairest  
19 way to deal with it. We'll assume that it's material  
20 and important.

21 If there are to be these challenges, let's  
22 make sure I have, speaking for myself, that I have the  
23 background.

24 This was a line owned by the Zenica PTT which  
25 was diverted to the 3<sup>rd</sup> Corps?

1                   MR. NICE: Correct. At the time, it was the  
2 only remaining effective telephone line between  
3 Busovaca and Kiseljak. It was, I think, a line for use  
4 by PTT staff rather than a domestic line. It was  
5 obviously thus a line that was being used for their  
6 purposes by, for example, Blaskic and Kordic, in the  
7 absence of other communication.

8                   JUDGE MAY: I think we have that. It was  
9 diverted to the office of the 3<sup>rd</sup> Corps. The line was  
10 then monitored and tapes made of significant  
11 conversations.

12                  MR. NICE: Correct.

13                  JUDGE MAY: In this case, so that we have the  
14 picture precisely, I haven't had time to read the  
15 evidence in detail, but it seems that the monitor  
16 handed the witness a tape, of which he made a copy.

17                  MR. NICE: Yes.

18                  JUDGE MAY: And then made a further copy for  
19 another gentleman whose name appears in paragraph 9. I  
20 don't know whether he's protected or not.

21                  MR. NICE: Well, of course, the gentleman in  
22 paragraph 9 is the person whom we referred to yesterday  
23 and who is one of the sources of intelligence that such  
24 a tape existed, which led to the search for it.

25                  JUDGE MAY: And how does the tape come here?



1                   MR. NICE: Physically, it was produced last  
2 year to an investigator and lawyer from this team and  
3 brought by them, I think, to this building and then  
4 processed in the normal way.

5                   JUDGE MAY: And who produced it to the  
6 investigator?

7                   MR. NICE: The witness himself. If one turns  
8 to paragraph 14 and 15, the tape is dealt with as to  
9 its labelling production and onward production to us.

10                  But in any event, the witness is here, able  
11 to identify the tape, both as to the physical tape  
12 itself and as to the contents of it.

13                  JUDGE MAY: Yes. Well, we'll hear the  
14 objections.

15                  MR. STEIN: Thank you, Your Honour.

16                  First, may I be clear. I'm talking, as I  
17 stand, relative to the legality only as opposed to the  
18 providence or the reliability, although some of the  
19 remarks may be overlapping.

20                  JUDGE MAY: It may be helpful if you deal  
21 with both.

22                  MR. STEIN: Very good, sir.

23                  First, it's clear from the statement read  
24 into the record that the individual was working as a  
25 liaison with the 3<sup>rd</sup> Corps in Zenica, and that's at

1 paragraph 1 of his statement. As part of that liaison  
2 capacity, he suggested to the witness who is ready to  
3 testify that this tape might be -- these conversations  
4 might be of interest. And indeed having listened, this  
5 particular officer, with the TO, decided to accept the  
6 invitation.

7           He was then working for the 3<sup>rd</sup> Corps as head  
8 of the Intelligence Unit. His duties included  
9 Electronic Warfare Unit, including obtaining and  
10 analysing information on the enemy, who at the time  
11 were the HVO, and the Republika Srpska, the JNA, and  
12 the HV. That's set out at paragraph 4 of his  
13 statement.

14           Some but not all of the conversations  
15 listened into after the transmission was diverted were  
16 recorded; some but not all. The decision was based,  
17 apparently, on the monitors who were listening to the  
18 conversation and instructions given to them by their  
19 officers.

20           Apparently, again according to paragraph 7,  
21 and it's unexplained why, the original recording was  
22 done on micro-cassettes, the minis, as we call them --  
23 they're the small ones -- then collected and  
24 transferred to regular cassettes for reasons unstated,  
25 except, apparently according to paragraph 7, the

1 paucity of available of mini cassettes. The time of  
2 the calls was not reported, and the cassette was  
3 eventually handed to the witness who was in waiting.

4           The details of each of the intercepts, the  
5 dates, were apparently put on a list on the outside of  
6 the body of the cassette, although we've not been  
7 provided with that list. In all, there were 13  
8 conversations recorded between the period January 24,  
9 1993 to February 25, 1993. Thirteen have been recorded  
10 for posterity, if you will, and that's as per paragraph  
11 9 of the statement you have before you.

12           Paragraph 12 is significant because in 1996,  
13 this witness received orders from Sarajevo relevant to  
14 all documents and anything else that may be useful for  
15 investigation of war crimes committed during the  
16 conflict, and as per paragraph 13, his -- and I may  
17 quote specifically: "My department was tasked to make  
18 a list of all items and information gathered. Included  
19 in this collection of information was a further copy  
20 made in 1996 of my tape that I compiled in 1993. In  
21 July 1996, I handed over all my archives to my  
22 successor Hasim Saric. I know nothing further about  
23 the copies of the tape."

24           So Mr. Saric apparently had the tape, and at  
25 least according to this paragraph, no copy was kept by

1 the witness, although later he is inconsistent on this  
2 point.

3           In November of 1999, specifically  
4 November 19, in Vienna, during a chance encounter or  
5 discussion relevant to war crimes, he was having a  
6 conference with his Chief, Mr. Mustafa Music -- and  
7 this is paragraph 14, there are two paragraph 14s, this  
8 is the first paragraph 14 -- in which documents that  
9 apparently missing were discussed, and the witness  
10 volunteered that he had a copy of the tape at issue and  
11 the next day handed that tape to Mr. Music.

12           So apparently these paragraphs are somewhat  
13 inconsistent. Either there was one copy delivered and  
14 he had none or he had a copy. He handed it to Music.  
15 Music held that tape until 3 December, 1999, when there  
16 was a meeting between the witness and Colonel Nermin  
17 Eminovic from the sector of security and intelligence,  
18 in which the tape was again shown to the witness and he  
19 recognised the tape as being the tape handed to Music  
20 on 20 November, 1999.

21           On 4 December, 1999 in Zenica, the same tape  
22 was handed by someone to Sue Ellen Taylor and  
23 Mr. Lopez-Terres from the Prosecutor's Office, and this  
24 witness identified the tape as the same number he had  
25 handed over earlier.

1           The tape contains 14 -- I may have said 13  
2 earlier -- conversations intercepted between January  
3 and February, originally record on the micro-cassette  
4 and late re-recorded by this witness onto this tape.

5           So consequently, it's clear from the evidence  
6 that either in 1996 when he handed the tape over to  
7 Mr. Saric it was out of his control or, alternatively,  
8 he kept a copy of a copy. And that's significant. He  
9 kept a copy of a copy in his possession until 1999,  
10 when it was given to Mr. Music, who in turn gave it to  
11 Mr. Nermin Eminovic, who in turn apparently gave it to  
12 the representatives of the Office of the Prosecutor.

13           So clearly it was out of this witness's  
14 custody and control either between July 1996 and  
15 November 20, 1999 or, alternatively, between  
16 November 20, 1999 and December 3, 1999. Whatever the  
17 situation, it is clearly a copy of a copy. The  
18 original also being on cassettes. So this is the third  
19 generation of the tape, the original being the mini  
20 cassettes, the first copy being made and turned over  
21 pursuant to instructions in 1993, this witness  
22 apparently had kept a copy at one point, and this is  
23 either the third or fourth generation of the tape.

24           So those are some of the issues relative to  
25 providence. When we hear from the witness, of course

1 we can resolve others. I will say, parenthetically,  
2 save for the first tape, save the one that the  
3 Prosecutor says is most important, the tapes are  
4 filled, and the transcript so indicates, with the words  
5 "inaudible." There are huge gaps in the tape that you  
6 simply can't hear. We find that fascinating. It's  
7 fascinating that the words of Mr. Kordic that the  
8 Prosecutor finds significant, no one seems to have any  
9 problem hearing, they're perfectly audible, but other  
10 times they're not so audible. So the quality of the  
11 tape and the manner of its recordation and why some  
12 words are heard and not, and why the tape went on and  
13 off, of course, is an issue. But I'd like to --

14 JUDGE MAY: That's an issue which we're going  
15 to have to decide on the evidence.

16 MR. STEIN: Absolutely.

17 JUDGE MAY: But that's your first objection.

18 MR. STEIN: Yes. More significantly,  
19 however, and I did do a skeleton argument about this,  
20 and I'll hand it up now, this is clearly in violation  
21 of the law as it existed in the former Yugoslavia.

22 Under the law as it existed in the former  
23 Yugoslavia, and I would certainly defer to my three  
24 colleagues, all of whom were Judges under the  
25 Yugoslavian legal system, Article 83(3) of the Yugoslav

1 Criminal Code, which is cited at paragraph 4 of my  
2 skeleton argument, allowed only the Police to collect  
3 wire transmissions, and even then it was for limited  
4 purposes. These transmissions needed to be collected  
5 with a Court Order. There is clearly no court order in  
6 this case, and clearly the Police did not involve  
7 themselves in this particular situation.

8 I note that the record doesn't adequately  
9 reflect the citation. The citation is Article 83(3) of  
10 the Yugoslav Criminal Law.

11 On April 11, 1992 the Republic of  
12 Bosnia-Herzegovina adopted legislation incorporating,  
13 by reference, all of the laws of the former  
14 Yugoslavia. The citation for that, unfortunately, is  
15 found at paragraph 4 of my pleading. It's  
16 inappropriate to be there. It should be under  
17 paragraph 5, but the citation of authority is  
18 Article 60 of the laws of Bosnia-Herzegovina, found at  
19 the Sluzbeni List, RBIH, number 2, page 299, April 11.

20 Clearly, therefore, what appears before the  
21 Court is something obtained without court approval, in  
22 violation of the laws of the former Yugoslavia and  
23 Bosnia-Herzegovina as of 1993.

24 Putting aside the issues of quality and the  
25 circumstances, the fortuity of the tape arising, which

1 require evidence, this is evidence that the Prosecution  
2 clearly should not be allowed to use under Rule 95.

3           If Your Honours agree with me that these  
4 tapes have been seized illegally, the question becomes  
5 whether admitting them in this proceeding would run  
6 afoul of our rule that says: "No evidence shall be  
7 admissible if obtained by methods which cast doubt on  
8 its" --

9           JUDGE MAY: Let's just pause here and  
10 consider the situation as it was on the ground.  
11 Suppose, for the sake of the argument, that the  
12 conversation was about shelling Zenica. And it doesn't  
13 matter which side, for the sake of the argument. One  
14 side has information that the other side is about to  
15 shell or indeed conduct any operations, and they know  
16 that such information -- there may be conversations  
17 which they can tape. Are you saying that they should  
18 have gone to a court and -- or spoken to the Police and  
19 gone to The Court before they taped the conversation?

20           MR. STEIN: Mr. Naumovski has much to say as  
21 an expert on this area, and if Your Honour --

22           JUDGE MAY: I would like, Mr. Stein, you  
23 to --

24           MR. STEIN: I'm going to. Believe me. He's  
25 very anxious to add something.



1 JUDGE MAY: Of course.

2 MR. STEIN: My short answer to your question,  
3 Judge, is I'm not so naive as to believe that during a  
4 war there are all kinds of interceptions by satellite,  
5 by other means, et cetera. That's part of war. On the  
6 other hand, the issue becomes having seized all these  
7 things through -- because of war, are they admissible  
8 here?

9 JUDGE MAY: Yes. But your first argument is  
10 that this was illegal.

11 MR. STEIN: That's right. What the army did  
12 illegally, if you will, in the throes of a civil war,  
13 theoretically should have an exception because of a  
14 war, as I understand Your Honour's question. That's  
15 the first thing that ran through my mind. However, it  
16 is the position of the Prosecution, and they have an  
17 expert who will give evidence shortly named Ribicic,  
18 that the laws of Bosnia-Herzegovina were alive and well  
19 in 1992 and 1993. He's going to use that as a basis  
20 for his opinion relative to the legality of the HR H-B  
21 and other Croatian institutions.

22 So at first blush I ask myself the same or  
23 similar question that Your Honour posed. Then I  
24 thought about the Prosecution's position on this  
25 subject and rethought our position, and that's why

1 we're here today.

2 I don't think for two seconds that both  
3 sides, three sides, five sides, the intelligence  
4 community and whoever else was interested wasn't  
5 conducting electronic warfare. Of course it was, but  
6 the question is whether we should accept it here.

7 Again, I guess the answer is what is done in  
8 war is illegal by definition, if you will, on some  
9 level. I mean killing and spying and all the things  
10 that go with conflict in a civilised world doesn't  
11 exist, so you have to decide, "Do you have laws or  
12 don't you have laws," and the Prosecution contends,  
13 based on the contention we apply, that the laws of  
14 Bosnia did apply, that if they are going to tap phones,  
15 as they clearly did, they needed authorisation. But  
16 the second prong of the law is that even if it's  
17 illegally tapped, it's not admissible under Bosnian law  
18 in any proceeding unless the defendant agrees.

19 JUDGE ROBINSON: Mr. Stein, its  
20 inadmissibility under Bosnian law wouldn't necessarily  
21 make it inadmissible in these proceedings.

22 MR. STEIN: Right, and that's why I cite, if  
23 Your Honour pleases, Rule 95.

24 JUDGE ROBINSON: 95. But even before you get  
25 to 95, the governing norm, as I understand it, is

1 relevance, subject to prejudice. That, as I understand  
2 it, is the governing norm, and that is reflected in  
3 Rule 95.

4 MR. STEIN: It is.

5 JUDGE ROBINSON: So the mere fact that it is  
6 inadmissible under domestic law doesn't make it  
7 inadmissible here.

8 MR. STEIN: With respect, sir, the last words  
9 of 95 are "seriously damage the integrity of the  
10 proceedings."

11 JUDGE ROBINSON: The proceedings, yes.

12 MR. STEIN: If Your Honour agrees, assume  
13 it's relevant, assume it's accurate, assume it's  
14 material, but assume it's illegally obtained. Then  
15 Your Honours would be giving improbiture [phoen] tacit  
16 approval to illegal conduct by admitting it into  
17 evidence as something we do --

18 JUDGE MAY: Not necessarily. It doesn't mean  
19 that you are approving the conduct. The only question  
20 you have to decide in a case of this sort is whether  
21 it's admissible in these proceedings.

22 It's not the duty of this Tribunal to  
23 discipline armies or anything of that sort. Its duty  
24 is to determine whether the accused is guilty or not.

25 MR. STEIN: Yes, sir, and as Your Honour

1 articulates it, that's half, if you will, of the basis  
2 of the exclusionary rule, discipline and future conduct  
3 of those whose evidence is no longer allowed. That is  
4 not certainly something that I'm going to argue in this  
5 setting.

6           However, the tacit approval, by allowing said  
7 evidence into this record --

8           JUDGE MAY: No, I'm not accepting that we are  
9 approving or disapproving the conduct. All we are  
10 deciding is whether this evidence is admissible under  
11 Rule 95. And the test is, as 95 sets out: "No  
12 evidence shall be admissible if obtained by methods  
13 which cast substantial doubt on its reliability." That  
14 is the first part which you're going to argue when  
15 you've heard the evidence. "... or if its admission is  
16 antithetical to and would seriously damage the  
17 integrity of the proceedings." And it's the integrity  
18 of the proceedings, as I understand it, that you're  
19 saying would be damaged if we admitted this evidence.

20           MR. STEIN: By way of a homily example, if a  
21 confession, which we're all familiar with, was  
22 literally stomped out of an individual or prisoner, the  
23 confession is relevant, it's probative. It may not be  
24 reliable, but I dare say the Court would not admit it  
25 under the circumstances by which it was obtained.

1 That's one example of illegality imposed on a court,  
2 and I would argue in that situation, as I do here, the  
3 Court ought not to take that evidence because of the  
4 manner in which it was collected.

5 JUDGE MAY: That's the point, as to whether  
6 we should admit it or not, not whether we approve or  
7 disapprove the conduct.

8 MR. STEIN: Exactly, but the reason for  
9 taking it or not taking it is based on circumstances  
10 extraneous to the proceedings at some level but, on the  
11 other hand, important to the role of courts in society  
12 everywhere, which goes, I think, to Judge Robinson's  
13 issue as well.

14 JUDGE BENNOUNA: [Interpretation] I should  
15 like to address a question to the Office of the  
16 Prosecutor, to Mr. Nice.

17 Mr. Nice, there is the tape, the transcript  
18 of the tape. There is the testimony on the whole issue  
19 around the tape. The witness or some other person,  
20 could they tell you what was the use made or the  
21 information drawn outside the tape and the use made of  
22 that information, because if we limit ourselves to this  
23 particular case, we have had a lot of intelligence  
24 information and military information taken left and  
25 right which ended up in the milinfosums or in various

1 intelligence reports, military reports, and in that  
2 case we didn't discuss the legality of the source, of  
3 the provenance, how they were obtained. We were  
4 satisfied by hearing the testimony of persons who  
5 produced that information.

6           Is there any testimony on the information  
7 itself, on the contents, because for the moment we just  
8 have testimony on the actual procedure by means of  
9 which this tape was obtained, how it was recorded and  
10 re-recorded, and so on. Is there anything, any  
11 testimony, regarding the contents and what was done  
12 with the contents or, rather, the information contained  
13 on the tape?

14           MR. NICE: At the moment, the statement isn't  
15 explicit on the topic, but it makes it clear, at  
16 paragraph 7, that the conversations being taped were  
17 for purposes of the Electronic Warfare Unit, and we can  
18 see from those selected that they all have the  
19 characteristic of being relevant to tactical or  
20 strategic matters in hand at the time. And although I  
21 haven't asked him specifically, I can be pretty  
22 confident that the witness would tell the Court that,  
23 of course, this was intelligence gathered for the  
24 purposes of conducting the war and that that was the  
25 way it was used, insofar as it was used at all.

1                   JUDGE BENNOUNA: [Interpretation] Yes, but the  
2 problem is to learn, and perhaps you could do that,  
3 whether that witness is ready to tell the Court,  
4 outside the recording itself, whether he could testify  
5 on the contents and what was done with that information  
6 -- the substance of the information, and what was done  
7 with that information. Could he do that, not limiting  
8 himself to the actual tape?

9                   MR. NICE: He certainly can do that, and to  
10 some degree he covers that. For example, Your Honour  
11 will have noted at paragraph 8, as His Honour Judge May  
12 also observed, that one particular conversation which  
13 has a particular obvious potential military  
14 significance was communicated forthwith to a named  
15 person, indeed a named person from whom we might  
16 otherwise have heard about the contents of the tape or  
17 might otherwise hear about the contents of the tape.  
18 And he sets out there the reason why he was  
19 communicating that particular conversation to the  
20 person named.

21                   There's no difficulty in my finding out.  
22 Indeed, if Mr. Scott is able to leave us briefly, if  
23 you would like us to deal with this swiftly, he can,  
24 I'm sure, find out, in general terms, further whether  
25 any of these particular tapes were communicated to

1 individuals for particular purposes. But it's pretty  
2 obvious that it was all communicated, or insofar as it  
3 was communicated, it was as in paragraph 8, which was  
4 communicating to Military Commanders for their use.

5           We can look at other conversations in detail  
6 to see the sort of topics that were being covered,  
7 which are exactly the sort of topics that we have  
8 covered with intelligence reports coming from other  
9 agencies, convoys, obstructions of convoys, matters of  
10 that sort.

11           JUDGE BENNOUNA: [Interpretation] In that  
12 case, that is my question. Couldn't you cover this  
13 information through testimony rather than through the  
14 transcript of the tape itself?

15           MR. NICE: I think that here Your Honour is  
16 missing something or I am. The fact that the contents  
17 of the tapes were communicated to other people and that  
18 other people would be able to say, "I was informed that  
19 this, that, or the other thing was likely to happen,"  
20 is capable of being of value to you, but it's not the  
21 real value of this tape. This tape, and of course  
22 you're not being allowed to look at it at the moment,  
23 but this tape shows the sort of things that Kordic  
24 said, the sort of instructions he gave, the position he  
25 occupied, the authority he had, and it is therefore the



1 best evidence of that. It's exactly the same as, if  
2 not rather better than, a person standing beside a  
3 defendant, coming to the Court and saying, "I heard the  
4 defendant," take a different example, "give an  
5 instruction to attack Sarajevo," something like that.  
6 This is the best conceivable evidence of that sort, and  
7 its value -- well, its value may be many and various,  
8 but its greatest value is in showing what Kordic said  
9 and, by so saying, did. And so it goes beyond, to this  
10 extent --

11 JUDGE MAY: Just one moment.

12 [Trial Chamber confers]

13 JUDGE MAY: Yes, Mr. Stein.

14 MR. STEIN: I would like to defer to  
15 Mr. Naumovski for a moment, if I may.

16 JUDGE MAY: Well, Mr. Naumovski, we may be  
17 prepared to accept -- I don't know, perhaps the  
18 Prosecution can assist us if there is any argument  
19 about this -- that the law in Bosnia at the time was,  
20 as stated by Mr. Stein, following the Yugoslav law, and  
21 we may be able to accept, for the purposes of this  
22 argument, that this interception was illegal for those  
23 purposes. I don't know if that's accepted or not.

24 MR. NICE: I don't think we'll be in a  
25 position to accept that. We've only had the skeleton

1 very recently. The law is not that simple, and there  
2 may be derogation of rights in times of war.

3 JUDGE MAY: Very well.

4 MR. NICE: But it's always possible to  
5 proceed on two alternative bases, because if there is  
6 no ground for objection even if it were illegal, then  
7 we needn't descend to the other detailed argument.

8 JUDGE MAY: We'll hear Mr. Naumovski. Yes.

9 MR. NAUMOVSKI: [Interpretation] Thank you,  
10 Your Honours. I'll be as brief as possible.

11 This is what I wanted to say. I accept what  
12 my learned colleague Mr. Stein has just said, and what  
13 he said is correct. In the area of the former  
14 Yugoslavia, and that same law held true in the Republic  
15 of Bosnia-Herzegovina in 1993 because the Republic of  
16 Bosnia-Herzegovina took it over as its own on the basis  
17 of a set provision, which my colleague quoted, it was  
18 only the Police, only the Civilian Police, the organs  
19 of internal affairs, as we like to call them, had the  
20 possibility of amassing intelligence from citizens, and  
21 as this was regulated by Article 151 of the Law on  
22 Criminal Procedure, the matter in hand, that is to say,  
23 the monitoring of other peoples' phone calls, was not  
24 regulated by that particular law but by a bylaw and its  
25 provisions which regulated the functioning of the

1 Internal Affairs organs. According to those bylaws and  
2 provisions, the Police, in a legal way, were able to  
3 tape somebody's telephone calls only with Authorisation  
4 from the Internal Affairs Minister.

5           And if I may respond to a question raised by  
6 you too, Mr. Stein, in relation to the assumed  
7 shelling, the only legal way in monitoring a telephone  
8 call of that nature, which could have an effect on  
9 proceedings, was exclusively by permission received  
10 from the Minister of Internal Affairs. And I don't  
11 want to tire you there, because there are certain  
12 details and finer details within that, but the  
13 essential thing is that the Civilian Police and the  
14 internal organs were the only people who could have  
15 undertaken such an action. No other body was permitted  
16 to do this, not only because it is a process which  
17 could not be applied in the criminal proceedings  
18 against an accused but because, and I feel that this is  
19 something that Your Honours should be aware of, as I  
20 say, but because primarily any unauthorised taping and  
21 taping and recording was a criminal act in itself.  
22 There was a sentence of imprisonment to be enforced if  
23 this were done by an official, and it was a term of  
24 imprisonment of up to three years. That is Article 60  
25 of the Penal Code of the Republic of Bosnia-Herzegovina

1 which stipulates that. Similar provisions existed in  
2 all the other Republics of the former Yugoslavia.

3           Therefore, we had two situations, in point of  
4 fact; first, the tape that was recorded, it is  
5 absolutely impermissible not only for the former  
6 Yugoslavia but throughout the world as well. All  
7 countries, as far as I know, and Bosnia-Herzegovina and  
8 the Republic of Croatia, for example, have taken over  
9 in substantial practice with what was prevalent in the  
10 world. And on the other hand, what was done represents  
11 a criminal act, in fact, because the recording was  
12 made, the tape was made by an unauthorised individual  
13 who abused his official capacities.

14           Perhaps my translation of article -- of  
15 Rule 95 is not exactly in line with the English text,  
16 but as far as I'm able to understand Rule 95, it seems  
17 to be that it would be -- well, I don't know. Perhaps  
18 I'm going to use a strong word, but it would be immoral  
19 and it would do a great deal of harm to the proceedings  
20 in this case if we were to actually admit something  
21 which was the result of a criminal act for which a  
22 prison sentence can be enforced. So not only because  
23 it cannot be used in this particular proceeding but  
24 also because it is the product of a criminal act.

25           That is how I understand the meaning of Rule

1 95 as expounded here.

2           Of course, the question remains, the one that  
3 Mr. Stein touched upon, the authenticity and  
4 reliability of the tape, because it is a copy of a  
5 copy, if I have understood it correctly, it is not the  
6 original, which, once again, leads to other things.

7           JUDGE MAY: We are going to hear evidence  
8 about that. So we don't need to hear any argument  
9 about it at this stage.

10           Now, we've heard Mr. Stein on Rule 95, and I  
11 thought, Mr. Naumovski, you were going to address us  
12 upon the Yugoslav law or the law of Bosnia, which you  
13 have done.

14           Now, is there anything else you want to add?

15           MR. NAUMOVSKI: [Interpretation] Well, there  
16 are a whole series of finer points, Your Honour, with  
17 which I did not wish to tire you, but it all boils down  
18 to two basic principles, the ones that I have  
19 explained; that is to say, that on the territory of the  
20 former Yugoslavia and in Bosnia-Herzegovina at that  
21 time, you could do recordings of this kind exclusively  
22 if you had permission to do so from the Minister of the  
23 Interior.

24           Today, for example, as I have already said,  
25 the Prosecutor must ask permission from a court of law,

1 and then it is the court that can permit conversations  
2 to be taped in a given case and proceedings against an  
3 individual. So even according to the provisions that  
4 hold true today, you cannot tape all phone calls, only  
5 the phone calls of individuals whom you suspect to have  
6 committed a criminal act.

7 JUDGE BENNOUNA: [Interpretation]  
8 Mr. Naumovski, because personally I must admit I'm  
9 ignorant regarding the legislation in force in  
10 Bosnia-Herzegovina, but we know, in general terms, that  
11 this type of rule knows exceptions, specifically, as I  
12 think the representative of the Office of the  
13 Prosecutor reminded us a moment ago, at times of armed  
14 conflicts, wars, the ruptures of peace. Are there such  
15 exceptions envisaged to this rule? There is no need  
16 for us to hear argument about the rule itself, but are  
17 there exceptions when such recordings are permitted,  
18 when we know that a -- normally permission from a court  
19 of law is required. But we know there are exceptions.  
20 In the legislation that you are referring to, are there  
21 any exceptions envisaged for exceptional circumstances  
22 in specific cases? That is what is of interest to us.

23 MR. NAUMOVSKI: [Interpretation] Your Honour,  
24 let me answer in the only way open to me. The Republic  
25 of Bosnia-Herzegovina, by a provision having the law of

1 force, a decree with the law of force, took over the  
2 Law on Criminal Procedure, and that decree law was  
3 published in the Official Gazette of Bosnia-Herzegovina  
4 on the 11<sup>th</sup> of April, 1992.

5           In taking over this old Law on Criminal  
6 Procedure, one that was held true in Yugoslavia,  
7 Bosnia-Herzegovina changed certain articles of that  
8 decree law; however, not the article which relates to  
9 the internal affairs organs and their conduct,  
10 Article 151, in fact, on the Law of Criminal  
11 Procedure.

12           And quite honestly, to be quite frank, I  
13 haven't got the provisions in front of me and I don't  
14 know if anything was done in taking over the bylaws as  
15 well and the provision of those bylaws; that is to say,  
16 whether the competencies of the organs of the Ministry  
17 of Internal Affairs have perhaps been expanded in any  
18 direction. But I should like to repeat once again that  
19 this was possible only within the organs of the  
20 Interior. Nobody is outside the Internal Affairs  
21 organs; that is to say, the Civilian Police.

22           JUDGE MAY: Thank you.

23           MR. NAUMOVSKI: [Interpretation] Thank you,  
24 Your Honours.

25           JUDGE MAY: Judge Robinson.

1                   JUDGE ROBINSON: I just wanted to make a  
2 brief comment on the significance of Rule 95, which  
3 represents a very important development in  
4 international humanitarian law. The presence of  
5 Rule 95 is entirely due to the developments that have  
6 taken place in human rights law since 1945. For  
7 example, you'd have no such provision in the regime  
8 that governed the Nuremberg trials.

9                   This is entirely due to the importance which  
10 contemporary international law attaches to human  
11 rights. But it has to be properly understood. The  
12 concept of serious damage to the integrity of the  
13 proceedings is one that connotes, in my view, shades of  
14 conduct, shades of illegality. It is not illegality  
15 which will seriously damage the integrity of the  
16 proceedings.

17                  I, for one, would never sanction the  
18 admission of evidence which is derived from a  
19 confession that is procured by intimidation or by  
20 force. I would consider that that is conduct which  
21 would seriously damage the integrity of the  
22 proceedings, but each case has to be judged on its own  
23 merits.

24                  True, there are some kinds of illegality  
25 which, within the contemplation of Rule 95, would call



1 for its application, but it is not every illegality,  
2 not every act. Rule 95 challenges what, in Mr. Stein's  
3 jurisdiction is called the concept of the fruits of the  
4 poison tree, but there are really shades of conduct,  
5 and we have to examine each case on its own merits.

6 MR. NICE: I cannot deal comprehensively with  
7 the question of legality, having only just received the  
8 skeleton argument. It would be astonishing, however,  
9 if Commanders of the Electronic Warfare Unit, properly  
10 conducting the war that it was their duty to conduct in  
11 defence of the people they represented, were vulnerable  
12 both at the time and thereafter to criminal process for  
13 doing that which they did for strategic or tactical  
14 purposes.

15 I note that this was not the tap of a private  
16 line, for what it's worth. Of course, if the issue of  
17 legality were ever to be taken to the limit, thought  
18 would have to be given to the fact that the line that  
19 was being used was probably itself being misused, for  
20 it was the PTT line, somehow taken over by Blaskic and  
21 Kordic and others using it for military purposes, not a  
22 private line.

23 Mr. Guariglia, in anticipation of what might  
24 come today, helped me -- and I'm grateful to him -- by  
25 some citations from the code, the prevailing code,

1 which, in any event, may provide exceptions to what is  
2 being argued should apply, and under 205, Article 205,  
3 where there is a requirement that telephone  
4 conversations can only be recorded pursuant to the  
5 orders of an investigative Judge, there may, I think,  
6 be exceptions where the circumstances are such as to  
7 involve disproportionate difficulties. It's worth  
8 noting that under Article 210, there's provision made  
9 for the seizure of material that would otherwise  
10 require a search warrant, again in particular  
11 circumstances.

12           So if it's ever necessary to look at the  
13 matter in detail, it may well be (A) that this isn't a  
14 tap; (B) that the fact that the parties concerned were  
15 using somebody else's or misusing somebody else's line;  
16 and (C) provisions within the code itself would make  
17 this well outside any alleged illegality.

18           On top of that I make two or three other  
19 points and that's all I think I need stay at this  
20 stage.

21           What is involved here, of course, is not  
22 material procured by the Office of the Prosecutor or  
23 investigators or anything of that sort, to pick up his  
24 owner Judge Robinson's point about confessions.  
25 Indeed, at the time these conversations occurred, this

1 Tribunal hadn't even been thought of.

2           What is at stake here is the use by this  
3 Tribunal of material seized -- well, produced and then  
4 retained by others. And the Chamber will well know  
5 there are many jurisdictions where such material,  
6 whatever the circumstances, if it's original generation  
7 or seizure, will be admitted.

8           Second point, also building on His Honour  
9 Judge Robinson's explanation of the origins of Rule 95  
10 and the development of humanitarian law, the  
11 conventions upon which our present humanitarian law are  
12 built themselves contain provision for derogation in  
13 times of war, and they might have to be looked at again  
14 with some care if the overall question of this alleged  
15 illegality had to be considered.

16           It's worth observing, although to some degree  
17 this stems from the reading of the transcripts  
18 themselves, it's worth observing that there is no  
19 question of privacy here, nor any expectation of  
20 privacy, and indeed the tape recordings make it clear  
21 when the parties started to be oblique in their  
22 references and cautious in their terminology, that they  
23 were expecting or countenancing the possibility of  
24 being overheard.

25           It's also worth having in mind that we've

1 already had evidence from an open-session witness,  
2 General Merdan. He spoke of overhearing a tape  
3 recording of a conversation, and at that stage, there  
4 was no challenge to his evidence on grounds of  
5 admissibility.

6 In our respectful submission, there is simply  
7 nothing in the --

8 THE INTERPRETER: Mr. Nice, slow down,  
9 please.

10 MR. NICE: I'm so sorry. There's nothing in  
11 the illegality point, and Rule 95 is not in any sense  
12 offended. On the contrary, this is evidence, as we  
13 know, because it's conceded, of relevance and value and  
14 should be before the Tribunal. And unless it's now  
15 desired to test admissibility on grounds of provenance,  
16 for which evidence is required, perhaps it would then  
17 be in a private or closed session.

18 We would invite the Court to reject this  
19 argument on the basis that, at this stage, it's quite  
20 impossible to test fully whether any law was breached,  
21 and indeed Mr. Naumovski candidly acknowledges he  
22 doesn't have all the law at hand, but the Chamber could  
23 deal with it either on the basis of saying even if  
24 illegality were established, nevertheless, there is no  
25 breach of our Rules. Alternatively, it could say that

1 in seeking to exclude, the Defence should be subject to  
2 the burden of proving illegality, and they haven't  
3 proved it. But by one means or another, we would  
4 invite you to say there is nothing in this point and  
5 move to the next stage of either the argument on  
6 admissibility or, alternatively, simply to take the  
7 evidence.

8 JUDGE MAY: Mr. Nice, you want a short  
9 adjournment before calling the witness; is that right?

10 MR. NICE: Yes. I've been told that he would  
11 seek protection in the form of pseudonym and face  
12 distortion. So I'll have to get details of that, in  
13 any event, to explain to you.

14 JUDGE MAY: Yes. We're, in fact, nearing the  
15 time for an adjournment. We'll hear any reply,  
16 briefly, at this stage, and then we'll consider what to  
17 do next.

18 Yes, Mr. Naumovski.

19 MR. NAUMOVSKI: [Interpretation] Thank you,  
20 Your Honour. I shall be really brief.

21 The Prosecution wishes to underline that the  
22 important thing is whether this was a private  
23 conversation or not and whether it was a private line  
24 or not and that everything should be reduced to  
25 legality.

1                   I think I was precise in my statement. I  
2 said that one point is the fact on the Law on Criminal  
3 Procedure that was in force in the territory of the  
4 former Yugoslavia would consider such a tape  
5 impermissible, unacceptable in court proceedings which,  
6 in my view, makes it illegal. But what is important is  
7 also that I underline that this tape was obtained by  
8 committing an act of crime.

9                   Let me refer to the first sentence from this  
10 article, which will show you that it doesn't matter  
11 which line is being tapped and whose conversation, and  
12 I quote: "Who uses special equipment to tap or record  
13 a conversation by using special means, conversation  
14 that is not addressed to him."

15                   I think it is convincing enough to confirm  
16 that this tape was obtained by a person committing a  
17 criminal act. That is why, I think, that the product  
18 of a criminal act cannot be used in this court or in  
19 any other court of law as evidence, nor can any  
20 judgement be based on it or rely on it. That is all I  
21 wanted to say, Your Honour.

22                   JUDGE BENNOUNA: [Interpretation]  
23 Mr. Naumovski, in the legislation that you are familiar  
24 with, there are surely situations specific to war. In  
25 times of war, certainly there is humanitarian law which

1 is applied, and that's why we're here, but there are a  
2 certain number of exceptions to the regular legislation  
3 in force regarding behaviour. You know that. In all  
4 legislations there are exceptions for times of war, for  
5 emergencies, for times of conflicts, and so on.

6 THE INTERPRETER: Microphone.

7 MR. NAUMOVSKI: [Interpretation] I apologise.  
8 As regards this situation you're referring to, Your  
9 Honour, by the Law on Criminal Procedure, it is  
10 prescribed through the competencies envisaged for the  
11 Internal Affairs bodies.

12 In those exceptional situations, the bodies  
13 of Internal Affairs -- that is, the Police - for the  
14 needs of an investigation are authorised to collect  
15 information from all and sundry sources but, again, in  
16 a lawful manner. For instance, they could call  
17 citizens for interviews. They could record certain  
18 persons' telephone conversations with the permission of  
19 the Minister of the Interior. They could search  
20 apartments. They could identify people, ask for  
21 identity papers, and many other means were available to  
22 them. However, the information obtained by the Police,  
23 on the basis of an interview with a citizen, could not  
24 be used as evidence in proceedings.

25 JUDGE BENNOUNA: [Interpretation]

1 Mr. Naumovski, that is not the question. I was asking  
2 you about a situation when there is a break in  
3 authority. There are several authorities that were  
4 confronted amongst each other. The situation you're  
5 referring to means that there was one authority that  
6 was in jeopardy and takes exceptional measures.

7           You're not going to say that the enemy is  
8 going to ask permission from the opponent's Minister of  
9 the Interior to record a telephone conversation in a  
10 situation of war. There is a break in authority.

11           MR. NAUMOVSKI: [Interpretation] You're quite  
12 right, Your Honour, but precisely because of that  
13 rupture, that break in authority -- just a moment,  
14 please -- the Presidency of the Republic of  
15 Bosnia-Herzegovina, headed by President Alija  
16 Izetbegovic, bridged that gap by passing, adopting a  
17 decree with a law of force on the takeover of the Law  
18 on Criminal Procedure, and this decree regulates  
19 criminal procedure under exceptional circumstances;  
20 namely, as in all countries, in the Territory of the  
21 former Yugoslavia too, laws were passed by the  
22 Assembly, but this was a constitutional exception. In  
23 the case of a state of war, the Presidency is allowed  
24 to adopt decrees with the force of law.

25           So bridging this gap, if I can call it that,



1 the Presidency of the Republic of Bosnia-Herzegovina  
2 took over this Law on Criminal Procedure, amended it to  
3 some extent, adjusting it to the situation in  
4 Bosnia-Herzegovina at the time, but it did not amend  
5 those articles that I referred to, Articles 151, 83,  
6 84, and so on -- 83, rather.

7 Therefore, I consider this to be my answer to  
8 your question, Your Honour Judge Bennouna.

9 JUDGE BENNOUNA: [Interpretation] Thank you.

10 [Trial Chamber deliberates]

11 JUDGE MAY: This application is in two parts  
12 under Rule 95, and I deal with that part which has been  
13 argued so far; namely, that the admission of this  
14 evidence would be antithetical to or would seriously  
15 damage the integrity of the proceedings.

16 Our ruling on this part, of course, has no  
17 bearing at all as to our ruling on the second argument,  
18 which relates to the reliability of the evidence, again  
19 under Rule 95, and about which we will hear evidence  
20 and rule after the adjournment.

21 But turning to the issue, as I have explained  
22 it, of the first part of the argument, I might say at  
23 the outset that the Chamber is disappointed that it has  
24 not been provided with full material as to the law of  
25 the Republic of Bosnia and Herzegovina on this

1 particular topic. Parts have been referred to but not  
2 the whole. Were this ruling to turn on that, we would  
3 have to adjourn it.

4           We would invite counsel, in fact, instruct  
5 them, that in future if reference is to be made to  
6 these matters, it must be done fully and the matter  
7 must be fully ventilated before us.

8           But we can rule on this basis, that even if  
9 the illegality was established, and we're not saying it  
10 has been because, as I say, we haven't heard full  
11 argument, but even if it was, we have to decide whether  
12 this is evidence obtained by methods which -- the  
13 admission of which would be antithetical to and would  
14 seriously damage the integrity of the proceedings.

15           We have come to the conclusion that the  
16 evidence obtained, as put before us in this way,  
17 evidence obtained by eavesdropping on an enemy's  
18 telephone calls during the course of a war is certainly  
19 not within the conduct which is referred to in  
20 Rule 95. It's not antithetical to and certainly would  
21 not seriously damage the integrity of the proceedings.

22           In those circumstances, as far as this  
23 argument is concerned, we reject it.

24           We will deal, after the adjournment, with the  
25 argument as to whether the way in which it was obtained

1 casts substantial doubt on its reliability.

2           You'll be ready, Mr. Nice, with your witness  
3 at half past 11.00?

4           MR. NICE: Certainly. There is, as I  
5 indicated, an application for a measure of protection,  
6 so may we reconvene initially in closed session and  
7 I'll make the application as soon as you like, half  
8 past 11.00 or twenty-five past, whatever you'd prefer.

9           JUDGE MAY: We will reconvene at half past.

10           --- Recess taken at 10.50 a.m.

11           [The witness entered court]

12           --- On resuming at 11.36 a.m.

13           JUDGE MAY: Yes.

14           MR. NICE: I discussed the issue of  
15 protection further with the witness. He is entirely  
16 content to give evidence with no protection.

17           JUDGE MAY: Very well. Let the witness take  
18 the declaration.

19           THE WITNESS: [Interpretation] I solemnly  
20 declare that I will speak the truth, the whole truth,  
21 and nothing but the truth.

22           WITNESS: EDIN HUSIC

23           [Witness answered through interpreter]

24           Examined by Mr. Nice:

25           Q. Can you give the Chamber, please, your full

1 name?

2 A. My name is Edin Husic.

3 Q. Are you presently a Colonel in the Army of  
4 the Federation of Bosnia-Herzegovina, having been most  
5 recently in Vienna, and currently waiting to take up a  
6 new post elsewhere?

7 A. Yes.

8 Q. Did your career start in 1986 at the military  
9 academy in Belgrade, becoming a lieutenant, working in  
10 Zagreb until 1991, when you deserted the JNA and went  
11 to Zenica, where, as a volunteer, you joined the  
12 Territorial Defence?

13 A. Yes.

14 Q. In December 1992, when the Territorial  
15 Defence ceased to exist and the 3<sup>rd</sup> Corps of the BiH  
16 came into existence under the command of Enver  
17 Hadzihanovic, did you join that Corps?

18 A. I did, yes. I was seconded from the district  
19 Territorial Defence staff to the 3<sup>rd</sup> Corps.

20 Q. Did you work in the intelligence section, and  
21 did that section have the assistance of soldiers from  
22 the Electronic Warfare Unit, and did your duties  
23 include the obtaining and analysing of information on  
24 the enemy?

25 A. Yes.

1 Q. At that time, did the enemy count the HVO,  
2 the Army of the Republika Srpska, the JNA and the Army  
3 of Croatia?

4 A. Yes, we perceived them as such, that is, all  
5 those who were a threat to us.

6 Q. You've set out in your statement the area of  
7 your interest generally, but for these purposes, is it  
8 the case that your area of interest included Busovaca,  
9 Kiseljak and other places in the Lasva Valley?

10 A. Yes.

11 Q. In January 1993, did you receive information  
12 from a man who we need not name but who worked in the  
13 Zenica post office?

14 A. Yes.

15 Q. As a result of what he told you, were  
16 arrangements made for a telephone line to be diverted  
17 from the Zenica post office to your intelligence unit,  
18 and did you thereafter monitor that line?

19 A. Yes, we did. The line was diverted to the  
20 Corps Command.

21 Q. Did you know the number of the line or not?

22 A. No. I don't think that particular line had  
23 any number of its own.

24 Q. What did you believe the line to be?

25 A. Well, that man told us it was a line which

1 covered conversations between military persons, that  
2 is, that it was a military line, as they called it.  
3 And we then agreed to survey it, but we had no advance  
4 knowledge as to what we might hear, what might happen,  
5 or anything.

6 Q. Who monitored the calls as they came through  
7 to your department? Don't give the names, but give the  
8 description of the people who did it.

9 A. Those were members of our unit for  
10 anti-electronic warfare. In the beginning, it was two  
11 soldiers who were tasked with monitoring that line.

12 Q. With what equipment?

13 A. The equipment was makeshift. The line was  
14 directed from the Zenica post office to one of the  
15 offices of the Corps Command, which belonged to the  
16 Intelligence Section, and it was -- and the equipment  
17 switched on to that particular office allowed to --  
18 allowed the surveillance on the basis of an interphone,  
19 and there was a micro-cassette recorder, a micro-tape  
20 recorder which was switched on to that appliance.

21 How did we monitor? By directly listening on  
22 the conversations, it would be decided whether to go on  
23 with the recording during the conversation itself. At  
24 any rate, it was all an improvisation. Nothing was  
25 automatically done.

1 Q. The microcassettes having been made or having  
2 been used in the way you describe, who then reviewed  
3 the tape recordings that had been made?

4 A. I did it myself mostly, depending on the  
5 number of conversations, rather, the frequency of those  
6 conversations, but we paid attention to those that had  
7 been pointed out to us as more interesting. Then I  
8 would listen to them over and over again and make  
9 suggestions as to possible further analysis or storage  
10 of that information.

11 Q. Did you communicate what you heard on the  
12 tapes to your senior officers at the time on  
13 occasions?

14 A. All conversations of particular interest were  
15 interpreted in the original to my superiors.

16 Q. You speak of storage of the recordings. How  
17 were they stored?

18 A. As these microcassettes were in very short  
19 supply, we decided to record only the most interesting  
20 conversations, and the material which I had handed  
21 over, that is, when my Commander would ask us to record  
22 those conversations, and then I would record that  
23 cassette, and you have that cassette now.

24 Q. The cassette of which you speak contained,  
25 ultimately, how many different conversations recorded

1 on it?

2 A. I really cannot give you an accurate number,  
3 but there must be about a dozen different conversations  
4 involving several persons.

5 MR. NICE: Your Honour, may I lay on the ELMO  
6 a document that will become Exhibit 28 -- well, may  
7 become Exhibit 2801.3. Further copies will be provided  
8 in due course.

9 Q. Can you tell us, please, what this document  
10 is and in whose handwriting it is?

11 A. So this is the jacket of the cassette, and  
12 what is written here is the contents or, rather, not  
13 the contents, but the sequence of the conversations  
14 which were taped on the "A" and the "B" side, with  
15 dates, persons engaged in each one of those particular  
16 conversations, and it was -- this is my handwriting.

17 Q. The entries on this jacket of the tape, were  
18 they made on the dates given or at some date  
19 thereafter, and if so, how long after?

20 A. These were after the 25<sup>th</sup> of February but  
21 perhaps a day or two after the 25<sup>th</sup> of February. It  
22 was at that time that I received the order from my  
23 Commander to record some conversations which I would  
24 think to be of particular interest, and then I decided  
25 to do it in this manner.



1           The first conversation which is particularly  
2 important was preserved from that period of time; that  
3 is, the 23<sup>rd</sup> or the 24<sup>th</sup> of January, 1993. Other  
4 conversations happened to be on our cassettes at the  
5 time. And after I recorded this conversation, I took  
6 other conversations also and then copied them over onto  
7 this cassette.

8           Naturally, people involved in this, rather,  
9 soldiers who did it, they took down the dates, the  
10 times, and so on and so forth. What I wrote down was  
11 this information that you can find on this cassette.

12         Q.   From what you tell us then, the first  
13 conversation of the 24<sup>th</sup> of January was preserved on a  
14 tape until the day, sometime at the end of February,  
15 when it was placed as the first recording on the new  
16 tape. Can you remember on what sort of tape that 24<sup>th</sup>  
17 of January conversation had been preserved in the  
18 meantime or not?

19         A.   I don't remember really, but it must have  
20 been a micro-cassette or a cassette of this type, but I  
21 really don't remember.

22         Q.   Why was that first conversation of sufficient  
23 importance for you to preserve it?

24         A.   The first conversation shows the intentions  
25 of the HVO at the time; that is, who is in command,

1 what are their plans, what they are getting ready to  
2 do, who is issuing orders to whom. In view of my job,  
3 this conversation was a proper information; that is, it  
4 told us what we needed to know.

5 Q. We see, as your evidence explains, that the  
6 balance of the tapes start no earlier than the 22nd of  
7 February and run on to the 25th. Was that the tapes  
8 that you had available, the microtapes that you had  
9 available at the time that your superior instructed you  
10 to prepare a series of recorded conversations?

11 A. No. Had we been ordered earlier to keep all  
12 that we were recording; we would have tried to find a  
13 way to do that. But that order came at a later date,  
14 and it was at a later date that he asked us to copy  
15 these conversations onto this cassette. This is the  
16 way I did it. But at that time we were merely told to  
17 store, to keep this conversation because it was of  
18 particular significance. Other conversations, I won't  
19 say they are of lesser importance or they are  
20 unimportant, but they simply happen to be there, so  
21 that I recorded a full cassette of this for his needs.

22 Q. One last question about that first  
23 recording. Was there one particular Commander of yours  
24 to whom you reported the existence of this recording?

25 A. The report about the existence of this

1 recording was submitted by me to General  
2 Hadzihasanovic, who at that time commanded the 3<sup>rd</sup>  
3 Corps.

4 Q. Dealing with the balance of the conversations  
5 recorded, starting on the 22<sup>nd</sup> of February, give us  
6 some examples of the things that you heard on the  
7 conversations that justified their being preserved as  
8 opposed to discarded in the way that other  
9 conversations were discarded. What sort of things  
10 justified the keeping of these particular  
11 conversations?

12 A. If we tried to analyse these conversations,  
13 then naturally it would be good to listen to them once  
14 again. But these conversations provided us with a lot  
15 of information about the situation in the area, the  
16 intentions, and among other things we could also see  
17 who were the persons directly in command, who were the  
18 ones who made decisions, how they organised their  
19 system of command and things like that.

20 Q. Even to the extent of picking up by what  
21 titles people were referred to?

22 A. Yes. It was curious that about Mr. Blaskic,  
23 and I'm referring to that time, at that time he was a  
24 Commander, we knew that he was a Colonel, but by the  
25 end of these conversations, we could learn that

1 Mr. Kordic also had the rank of a Colonel.

2 Q. Having made the tape pursuant to the orders  
3 you received, what happened to that tape, in summary?  
4 And tell us, please, about any other copies of the tape  
5 that were made.

6 A. In the beginning, there were two identical  
7 tapes. The jacket of one of them we see here, and  
8 another one, identical with this one, I handed over to  
9 my Commander, General Hadzihasanovic. What happened to  
10 it, I really don't know.

11 But then as I was getting ready to depart for  
12 my new post in Vienna, I left a copy of the cassette in  
13 the archives to my successor, and I had made that copy  
14 at that particular time. And this cassette, the  
15 original, if I may call it that, I kept for personal  
16 reasons, for reasons of my own, because this is an  
17 excellent example both for education and so on. So  
18 that at the time when this tape originated, I really  
19 could not foresee what would happen to it, but later on  
20 I thought it would be good if I kept it as a curio, if  
21 I may put it that way.

22 Q. Is this tape that you produced, the tape that  
23 is here in the building, the same as the tape provided  
24 for the archives and the same as the tape provided to  
25 General Hadzihasanovic?

1           A.    Yes.

2           Q.    When did you first discover that the copy of  
3 the tape you had might be of value to this trial?

4           A.    I discovered it recently. It was in the  
5 latter half of November last year when Mr. Mustafa  
6 Music came to see me in Vienna. That is, I was about  
7 to return and it was a part of my preparations for  
8 return, so the activities that we performed in the  
9 office in our embassy in Vienna where I worked.

10                   During the conversation we had, the question  
11 of war crimes came up and documentation about all that  
12 and all this, and so we just happened on it by chance.  
13 And then I said that -- I say I had just one tape from  
14 that period of time, and during our conversation we  
15 then thought that this tape might be valuable, because  
16 those other copies that I mentioned before were simply  
17 missing. And he then asked me to give him that tape,  
18 and I gave it to him.

19           Q.    And was it eventually to an investigator  
20 called Sue Ellen Taylor and a lawyer called Patrick  
21 Lopez-Terres that you identified the tape on the 4<sup>th</sup> of  
22 December, 1999, in Zenica, and that tape you then left  
23 with them to bring to this Tribunal?

24           A.    On that occasion in Zenica, I confirmed that  
25 that was indeed the tape which I had handed over. At

1 that time when we talked, they already were in  
2 possession of that tape. And as far as I know, they  
3 had received it that day or perhaps the day before;  
4 that is, that it was officially turned over to them.  
5 It wasn't done by me, but I established that that was  
6 indeed the tape which I had turned over to my  
7 superior.

8 MR. NICE: I don't imagine there's any issue  
9 on the fact that the lawyer and investigator bring the  
10 tape properly to this Court.

11 Q. One other question before we turn to whether  
12 the tape should now be listened to or not at this  
13 stage. When did monitoring of the telephone line cease  
14 and why?

15 A. We ceased to monitor that particular line, I  
16 think, sometime in March. Quite certainly, it was  
17 after the talks and conversations, the last ones. I  
18 cannot tell you exactly the time, but the reason was  
19 quite simple. The communication via that military  
20 switchboard became -- was no longer interesting, ceased  
21 to be of interest to us, so there was no further reason  
22 to monitor the line, so that, quite simply, we gave it  
23 up and stopped engaging in that activity.

24 MR. NICE: Your Honour, at that stage or at  
25 this stage, depending on the nature of the challenge,

1 it may be appropriate to hear the tape or it may be  
2 possible to defer listening to the tape until the  
3 cross-examination for admissibility reasons is  
4 completed. But I can easily see circumstances arising  
5 where the issues to be raised might themselves require  
6 listening to the tape, but I'm in the Defence hands on  
7 this one.

8 JUDGE MAY: Before you do, how much of the  
9 tape would you invite us to listen to?

10 MR. NICE: Your Honour, I think you would  
11 want, in due course, to hear all of it. There is one  
12 conversation which the witness can tell us is really of  
13 no value that is very short. The others all turn on  
14 matters that are likely to be of value to the Chamber,  
15 given the time of the tape-recording and the  
16 personalities involved.

17 JUDGE MAY: How long will it take to play?

18 MR. NICE: The tape takes, I think, about an  
19 hour.

20 JUDGE MAY: It may be that we should hear the  
21 cross-examination and then decide whether it would be  
22 sensible to hear the tape or not.

23 [Trial Chamber confers]

24 JUDGE MAY: Yes. Has the tape got an exhibit  
25 number, while we're dealing with it?

1 MR. NICE: The tape's exhibit number is  
2 2801.1. The transcript is 2801.2.

3 Wait there. You'll be asked some further  
4 questions.

5 JUDGE MAY: Yes, Mr. Stein.

6 MR. STEIN: Thank you, sir.

7 Cross-examined by Mr. Stein:

8 Q. Sir, my name is Bob Stein. I represent Dario  
9 Kordic. If there's any question that I ask you that  
10 you don't understand, will you please let me know?

11 A. Very well. Yes.

12 Q. After 1993, when this tape was made as you  
13 described, when did you next listen to the tape, if at  
14 all?

15 A. It's difficult for me to give you a precise  
16 answer to that question, but after the tape was made, I  
17 listened to that tape immediately after it was made.  
18 Later on, I cannot say that it was listened to again,  
19 but perhaps several times, yes, but it was no longer of  
20 any special importance.

21 Q. Those several other times that you may have  
22 listened to the tape would have been before 1999;  
23 correct?

24 A. Yes. Before 1990 [sic]. So if you're  
25 thinking up to the present day, if that's what you



1 mean, I listened to the tape, together with my superior  
2 at the time. So when I handed him the tape, we  
3 listened to it together.

4 I later on listened to that same tape to  
5 ascertain its authenticity, together with Mr. Patrick  
6 and Mrs. -- I can't remember her name. I apologise.  
7 But anyway, with individuals whom I talked to and to  
8 whom I gave my statement.

9 Q. I want to be clear. In 1999 you listened to  
10 the tape with your Chief, Mustafa Music; is that  
11 correct?

12 A. That's correct.

13 Q. Then again, did you listen to the entire tape  
14 with Mr. Patrick Lopez-Terres and Mrs. Sue Ellen  
15 Taylor?

16 A. Yes, the entire tape.

17 Q. At that time or at any other time, did you  
18 have a written transcript of the tape?

19 A. No.

20 Q. Now, let me go back to the period in which  
21 this all started. You actually had a liaison with the  
22 PTT company in Zenica, did you not?

23 A. That's right.

24 Q. And that liaison was the one who reported  
25 that there was something that you might want to hear on

1 one of the phone lines; is that right?

2 A. That conversation came about quite by chance,  
3 so it was an individual who did not work directly for  
4 us, but when we talked, he happened to offer us the  
5 possibility; that is to say, he asked us whether we  
6 were interested in anything like that. After that,  
7 when I informed my superior, the decision was taken to  
8 go ahead with it. So there was no separate information  
9 about that line except that it was a military line and  
10 that it contained conversations of a military nature,  
11 but it was a man who worked at the PTT, yes.

12 Q. I understand that, sir. Perhaps my question  
13 wasn't clear. The man who worked at the PTT was  
14 liaising, that is, co-operating with the 3<sup>rd</sup> Corps in  
15 Zenica relative to interesting conversations. Isn't  
16 that true?

17 A. No. We cannot put it that way, because I do  
18 not know what he did at that time and whether he did  
19 what you, in fact, stated he was doing. But as I say,  
20 we knew each other from before, and he offered us this  
21 as a possibility to take up, because while he was  
22 working in the post office, he came across this  
23 conversation line. Then we put into motion the  
24 procedure that I have just explained and decided to go  
25 ahead. So he was not an intelligence man for us and

1 didn't do that kind of work alone. So these kinds of  
2 activities on his part not did not exist, so I cannot  
3 confirm that in the way that you had put it.

4 Q. I don't want to quibble with you, sir.

5 MR. STEIN: The Court's attention, if it  
6 please the Court, is drawn to the testimony of the  
7 witness that was read out earlier in the morning, in  
8 which at paragraph 1 he notes: "Part of my duties  
9 included liaison with a 3<sup>rd</sup> Corps in Zenica."

10 Q. Sir, let me ask you one other question  
11 parenthetically, and that is: Were you in the public  
12 gallery this morning listening to the proceedings?

13 A. No.

14 Q. And another preliminary question: Do I take  
15 of all the conversations that you listened to, you kept  
16 only this one tape? Is that right?

17 A. I personally, yes. I kept just that one  
18 tape.

19 Q. And the taping, in this particular situation,  
20 started in January of 1993; correct?

21 A. Yes.

22 Q. And the first taping occurred on January 24,  
23 1993?

24 A. I cannot say that. Perhaps it started  
25 earlier on. I cannot be precise, but the conversation

1 of the 24<sup>th</sup> of January was saved.

2 Q. So you cannot tell us how many conversations  
3 before January 24<sup>th</sup> were discarded?

4 A. No, I can't.

5 Q. And can you tell us the exact time of any of  
6 these conversations?

7 A. If you mean the hours, then I cannot.

8 Q. That is what I mean. Can you tell us, with  
9 specificity, the hours of the conversation of the  
10 January 24<sup>th</sup> intercept?

11 A. I can't give you the exact time, the exact  
12 hour, no.

13 Q. Do I take it between using the index, which I  
14 think is to your right on the ELMO --

15 JUDGE MAY: We don't have -- it might be  
16 helpful to have that.

17 MR. STEIN: My understanding is that the  
18 Prosecution was going to make extra copies and give it  
19 to the Court.

20 JUDGE MAY: We only got one.

21 MR. NICE: My oversight. I distributed the  
22 only ones available without having them adequately  
23 copied. If they can be made available to Ms. Verhaag,  
24 we'll take it out, and the usher perhaps --

25 JUDGE MAY: You want to cross-examine on it,

1 Mr. Stein. Let it go on the ELMO.

2 MR. STEIN: Very good, sir. It is on the  
3 ELMO now.

4 JUDGE MAY: Very well.

5 MR. STEIN:

6 Q. Between January 24, 1993 and February 22nd,  
7 1993, do I take it you found nothing of interest to  
8 record?

9 A. I'm sure there were some interesting things,  
10 but, unfortunately, nothing was saved.

11 Q. And whose decision was it to save or not to  
12 save the material coming to you over the phone line?

13 A. I could say that I did that. This  
14 conversation -- for this conversation, among others, I  
15 issued orders that this tape be saved, and the order  
16 was principally issued by the Commander. So the other  
17 part of the conversation; that is, other conversations  
18 which -- just used at the time and not saved for  
19 subsequent purposes.

20 Q. Let me make sure we understand the process  
21 that you were in charge of. There were two other  
22 monitors working with you; is that correct?

23 A. I did not work on it directly, they did.  
24 They taped it. They would come -- the end information  
25 would come to me; that is to say, the taped

1 conversations. What was urgent we would listen to  
2 straightaway. Anything that wasn't vital was not  
3 listened to again, but they submitted it in a form of  
4 report describing the conversations, the participants  
5 in the conversation, and possibly they emphasised  
6 whether the conversation would be of interest to us or  
7 not. So after that, I would be in a position to either  
8 listen to the tape again or not to do so.

9 Q. All right, sir. I think we've gone rather  
10 far afield from my question. There were two other  
11 individuals also listening to the phone lines besides  
12 yourself. True or false?

13 A. At the time, they existed when they were  
14 engaged. One man was engaged. It was not able to  
15 engage one man to do this job the whole time.

16 Q. In any event, the one man who was listening  
17 to the phone call, if he felt it was important, he  
18 would record it on a micro-cassette; is that correct?

19 A. Yes. All the conversations that were  
20 considered to be of importance were recorded.

21 Q. And that micro-cassette you would then listen  
22 to; is that right?

23 A. Yes.

24 Q. And if it was important, you then would copy  
25 it onto the bigger cassette; is that right?

1           A.    Quite so, but only in this particular case.

2           Q.    You have me confused by your answer.  The  
3 other cases, the other cases on the index set forth is  
4 numbers 2 through 11 and then 1 through 3 were in a  
5 different process?

6           A.    Well, let me put it this way:  Had there not  
7 been an order to record the cassette, it would not have  
8 been recorded.  Neither would it have, perhaps, been  
9 saved.  So there wasn't a permanent, ongoing process  
10 for saving these conversations.  The conversation that  
11 was the first was saved because of its importance and  
12 contents; that is to say, the information that it had  
13 to convey, and that is why it was interesting.  And it  
14 would have been saved even if we did not have the  
15 orders issued by the Commander.  But as the Commander  
16 ordered a cassette to be made with these conversations  
17 that were considered particularly interesting, then we  
18 placed this first one as being the most interesting,  
19 whereas the other ones were also saved as conversations  
20 which we had on the micro-cassette, saved on the  
21 micro-cassette.

22                   Of course, quite possibly there might have  
23 been more conversations on those micro-cassettes, but  
24 these were the ones that we saved and retaped onto the  
25 other cassette.

1 Q. That's really what I'm trying to get at,  
2 sir. The first copy, if you will, of the  
3 microcassettes, all of those microcassettes were  
4 reduced to a copy on one bigger cassette; is that  
5 right?

6 A. Yes, but only parts of the conversation.

7 Q. I want to ask you two questions. First, we  
8 have, do we not, in front of us, one copy of all the  
9 information? Is that right? Correct?

10 A. Are you asking me that question?

11 Q. Yes, I am, sir.

12 A. Because I've got nothing here with me.

13 Q. This document to your -- I'm sorry, you don't  
14 have it any more. My error.

15 All of the micro-cassettes were ultimately,  
16 not every word, put on this bigger cassette, and the  
17 index of that cassette you have in front of you now;  
18 correct?

19 A. I have before me a copy of that particular  
20 cassette and the conversation that is on this tape;  
21 that is to say, all the conversations that were saved.

22 Q. Right. And we'll get to that in a minute,  
23 but there is a second copy; correct? In other words,  
24 there were two copies, one you gave away and one you  
25 kept. Is that your testimony?



1           A.    Of exactly the same contents.  Absolutely the  
2 same contents.  One was taped from the other.

3           Q.    All right.  And can you tell us now which is  
4 the first copy and which is the second copy?

5           A.    I think that this is the first copy.

6           Q.    But you're not sure?

7           A.    I am sure.

8           Q.    So you kept the original copy and turned in  
9 the second copy to your superiors in 1993 -- I'm sorry,  
10 1996, July; is that correct?

11          A.    No.  The copy that I made at the time I gave  
12 to the Commander at that time, at the end of February,  
13 therefore, 1993.  This cassette, that is to say, the  
14 jacket that we have and the tape that is here is the  
15 original tape that I saved and that I gave to my  
16 superior in November 1999.

17          Q.    Is there another copy out there somewhere?

18          A.    There is another copy, yes, from this  
19 cassette.  So I taped it for my own archive.

20          Q.    So you gave one to your superior in 1993,  
21 kept one for your archives, and there's another copy  
22 that was given to your superior in July of 1996; isn't  
23 that right?

24          A.    Not in July 1996.  I don't know where you get  
25 the "July 1996" from.  November 1999, I gave this

1 cassette to my superior, Mr. Mustafa Music.

2 Q. In your statement to investigators from the  
3 Tribunal, at paragraph -- and by the way, this  
4 statement was taken December 4, 1999 -- at paragraph 13  
5 it's represented that you said:

6 "My department was tasked to make a list of  
7 all items and information gathered. Included in this  
8 collection of information was a further copy made in  
9 1996 of my tape that I compiled in 1993."

10 "In July 1996, I handed over all my archives  
11 to my successor, Hasim Saric. I know nothing further  
12 about this copy of the tape."

13 Now --

14 A. What I stated, I stand by that. And let us  
15 repeat so that there is no lack of understanding  
16 between us.

17 When I received the order, I made two tapes.  
18 One of those tapes is now here, and that is the first  
19 tape that was made. A copy of that same tape was made  
20 at that time immediately, that is to say, in February  
21 1993, and I gave it to the Commander, and that one  
22 stayed in the archives. When I took up my new duties,  
23 I made a copy which I left to my successor, and that  
24 was then in July 1996.

25 So this tape I had with me all the time, so

1 that when we happened to discuss the tape and hear that  
2 the tape did not turn up here as evidence, I said that  
3 I would be ready to hand over the tape, which is what I  
4 did, and you were informed about that tape and it was  
5 handed over to you. But at that time I made another  
6 tape for myself, so I still wish to have a copy of that  
7 tape.

8 Q. All in all, there are now three copies of  
9 this tape, is that right, or four?

10 A. Two in January -- that is to say, in February  
11 of 1993, one in June '96, that is three, and one which  
12 I made for myself and which I have myself at the moment  
13 is the fourth. So the first one is the one you have,  
14 but there were four tapes in all.

15 Q. Now, let's go back to the point that you made  
16 earlier. Your monitors did not monitor all of the  
17 conversations -- sorry. They didn't record all of the  
18 conversations; correct?

19 A. According to the instructions that I gave  
20 them, they need not have recorded conversations which  
21 they did not think were interesting --

22 Q. All right.

23 A. -- in view of the fact that the technology  
24 they used was not automatic and they did not have the  
25 means to do so, they did not have the technical means,

1 or they could record conversations of interest.  
2 Others, they would have to return the tape back, wind  
3 it back, and then wait for another interesting  
4 conversation to turn up.

5 Q. As I understand your testimony, and I want to  
6 be clear, the monitors, as they were listening to the  
7 phone calls and had the microcassette at their -- had  
8 their microcassettes available to them, would determine  
9 when to turn the microcassette on and when to turn it  
10 off; is that right?

11 A. They are the immediate executors.

12 Q. And whether they recorded the entirety of a  
13 conversation was in their discretion; correct?

14 A. The conversation that was interesting, that  
15 they deemed interesting, had to be taped in extenso.

16 Q. But if the conversation didn't start off  
17 interesting, did they have the discretion to then turn  
18 the tape on when it became interesting?

19 A. The instructions were such that they should  
20 listen to the conversation in its entirety.

21 Q. But not --

22 A. Yes, to tape it, of course. But at the same  
23 time it was listened in to, because I explained the  
24 technology we used. There was an interphone system so  
25 that you could also listen in to the conversation.

1 Q. Let me make sure I'm clear on this. Once the  
2 tape was turned on to listen to a conversation, could  
3 the monitors turn it off when the conversation they had  
4 deemed was not important?

5 A. They could have, only in cases when it was  
6 highly unimportant, when you had two civilians, for  
7 example, talking and discussing something which was of  
8 no importance whatsoever. But all conversations  
9 undertaken by military personnel had to be taped, so  
10 that they would switch on the taping device, the  
11 listening device, they would listen to the  
12 conversation, and at the end of the conversation, if  
13 they did not think it was interesting, then they would  
14 turn the tape back to the beginning and do it that way.

15 Q. All right. And let me ask you this: Having  
16 listened to the tape, you found it clear, the  
17 conversations that were recorded on the tapes were  
18 clear?

19 A. Yes.

20 Q. Audible?

21 A. Sometimes they were, sometimes there was a  
22 lot of interference and it was difficult to hear.  
23 However, the part of the conversation that we have on  
24 this particular tape, for the most part, enables us to  
25 hear the conversation and what was said by both

1 parties.

2 Q. And having listened to the tape, you are  
3 aware, are you not, that there are gaps in the -- by  
4 the way, I want to be clear. I'm talking about all the  
5 tapes, not just the first one. There are gaps in the  
6 tapes, are there not?

7 A. Well, I don't understand this notion of gaps,  
8 but let me try and explain.

9 There were, of course, conversations where  
10 the other side or other party could not be heard or his  
11 conversation was inaudible, you couldn't understand it,  
12 so we didn't have any technical possibilities to  
13 improve the tone. So we used what was audible --

14 Q. Or the monitor --

15 A. -- and discernible.

16 Q. Or the monitors turned off the tape and  
17 started it again; correct?

18 A. No. If they heard only one party and if that  
19 was interesting, then they would save it.

20 Q. Let me ask you this, sir: This taping  
21 occurred in January and February of 1993. Do I take it  
22 you consider the HVO the enemy at that time?

23 A. Yes.

24 Q. And do I take it you consider there was a war  
25 going on at that time?

1           A.    Yes.

2           Q.    And I gather, then, turning our attentions to  
3 November 1999, it was by pure happenstance that you and  
4 your superior, Mr. Mustafa Music, were talking about  
5 evidence which had disappeared from the archives of the  
6 BiH Army when this tape came up; is that correct?

7           A.    We discussed our duties and my particular  
8 duties that were awaiting me. How we came to discuss  
9 this tape, I really cannot recollect, but I said that I  
10 had possession of this tape or, rather, the material  
11 that is lacking and that many of us had contact with,  
12 we felt it should be in existence. And I said that  
13 among all those materials, I had preserved only this  
14 tape.

15          Q.    Let me refresh your recollection, sir, by  
16 pointing to your ICTY statement at the first of the two  
17 paragraphs numbered 14, in which it's represented that  
18 you said:

19                    "On the 19 November 1999 in Vienna, during a  
20 discussion relating to war crimes during the conflict,  
21 with my Chief, Mustafa Music, he happened to mention  
22 that lots of documents had disappeared, including an  
23 important tape related to the Busovaca-Vitez area. I  
24 said, 'I have a copy of the tape.'"

25                    And then the paragraph goes on, so I'll stop

1 reading from it.

2           This just happened by happenstance, then,  
3 sir, you and Mr. Music having a conversation and  
4 disappearing evidence came up during the conversation;  
5 is that correct?

6           A. Yes, exactly as you stated there.

7           Q. The next day, the next day, November 20, you  
8 gave your copy of the tape to Mr. Music; is that right?

9           A. Yes, the one that we have a copy of here.

10          Q. And what he did with it or to whom he gave it  
11 you have no knowledge of?

12          A. He told me at the time that the tape would be  
13 listened to, that a brief abstract of the conversations  
14 would be made, and that it would officially be sent to  
15 this institution. And should they have an interest --  
16 if you have an interest in it, it would be placed at  
17 your disposal.

18                 What precisely he did after that, I don't  
19 know. But as far as I can tell, he did as he said he  
20 would.

21          Q. In fact, sir, the next time you saw or heard  
22 the tape was on 3 December 1999 at a meeting of the  
23 army home of the Federation in Sarajevo; correct?

24          A. I'm not quite sure that that tape was shown  
25 at the meeting or, rather, the joint meeting we had, at



1 that meeting it was not shown. But when I saw it was  
2 when it was shown to me in a separate conversation the  
3 next day.

4 Q. Let me turn to your ICTY statement at the  
5 second paragraph 14. It's laid out there, sir:

6 "On 3 December 1999, at a meeting in the  
7 army home of the Federation Army in Sarajevo, Colonel  
8 Nermin Eminovic from the Sector of Security and  
9 Intelligence showed me a tape marked 'JPS audio C60.'  
10 I recognised the tape as being my tape that I handed to  
11 Mr. Music on 20 November 1999."

12 Does that jog your memory about the December  
13 3, 1999 meeting?

14 A. Yes, it does. However, I have to tell you  
15 that the tape was not handed over then, if that is what  
16 you mean. It was not handed over to the investigators  
17 of this Tribunal. If it was shown to them, it was not  
18 listened to or anything.

19 Q. I understand that, sir. You just saw the  
20 tape. The investigators of the Tribunal were not  
21 present on 3 December 1999; correct?

22 A. They were present. We did have a meeting,  
23 but I no longer had the tape in my possession.

24 Q. All right. Well, perhaps you're confused,  
25 sir, so let me read on. First, we can agree that you

1 didn't have the tape in your possession, Colonel  
2 Eminovic had it; correct?

3 A. Yes.

4 Q. And according to your ICTY statement at  
5 paragraph 15:

6 "On 4 December 1999 in Zenica, Sue Ellen  
7 Taylor and Patrick Terres-Lopez showed me a cassette  
8 tape marked 'JPS audio C60.' I listened to the tape.  
9 I recognised that tape as being my personal tape that I  
10 handed to the Federal Ministry of Defence."

11 So there were two meetings, sir, is that  
12 correct, two meetings, one on 3 December and one on 4  
13 December?

14 A. Yes, but I don't believe that I stated to the  
15 Minister of Defence but the Ministry of Defence.

16 JUDGE ROBINSON: Something I'm not clear  
17 about. He recognised the tape by virtue of its bearing  
18 the mark "JPS audio C60," which is the same marking  
19 referred to in paragraph 14. Is that the only way that  
20 he recognised the tape? What I want to find out is  
21 whether he's able to say that the contents of the tape  
22 were the same as the one that -- the same as the  
23 contents of the one that he handed over referred to in  
24 paragraph 14.

25 MR. STEIN:

1 Q. Sir, do you have in mind the Court's  
2 question? If not, I will try to recast it.

3 A. Yes, I understand the question. I recognise  
4 the tape, and that is how we called it in the  
5 statement. I recognised it in its physical --  
6 according to its physical appearance and also,  
7 listening to it, by its contents.

8 Q. Now, sir -- I'm sorry.

9 JUDGE ROBINSON: You listened to the tape on  
10 the 3rd of December?

11 A. Not on the 3<sup>rd</sup> but at a separate meeting. I  
12 think it was on the 4th, the next day, when your  
13 investigators were present.

14 MR. STEIN:

15 Q. And, sir, you and I can agree that this  
16 particular tape was out of your presence, out of your  
17 control, out of your custody, from at least 20 November  
18 1999 until 3 December 1999; correct?

19 A. Yes, it was not in my possession.

20 Q. And whether words, a word, or a paragraph  
21 were erased from the tape or a word, a paragraph, was  
22 added to the tape, you can't tell this Court; correct?

23 A. At the time, I confirmed the contents to be  
24 the same as the one I can remember when the tape was in  
25 my possession and when I had listened to it. Whether a

1 word had been added or deleted, I am personally not  
2 quite sure. But what I can say, that if I hear it  
3 again, then I can confirm that that is the same tape.

4 Q. Well, sir, with respect and not to argue, the  
5 last time you heard or listened to or studied this tape  
6 before 1999 was in 1996 or even 1993, and you had no  
7 transcript of the tape at that time; correct?

8 A. Correct.

9 Q. So my question, sir --

10 A. But if you're referring to my ability --

11 Q. No. Very simple.

12 A. Correct.

13 Q. Having no transcript available to you of the  
14 1993 recording up to and including the present day,  
15 your comparison of 13 or 16 or so entries on this tape,  
16 which takes an hour, certainly would not be a perfect  
17 verbatim, word-for-word comparison of what was on the  
18 tape in 1993 as compared to the tape as it now exists  
19 in its current state; you would have to agree with  
20 that, wouldn't you, sir?

21 A. I can say that I cannot recollect each and  
22 every word, just as I cannot recollect the exact hour  
23 and time of the recording. But I think that it is  
24 possible to make a technical expert -- to seek a  
25 technical expert opinion of the tape. I think no one

1 can recollect exactly, regardless of whether there was  
2 a transcript, because then the question that could be  
3 asked was whether the transcript had been written by  
4 myself or by someone else.

5 Q. Well, sir, thank you for agreeing with me.  
6 We can agree further that the original cassettes are  
7 now destroyed, gone, no one has them, the  
8 micro-cassettes?

9 A. Yes, that is correct.

10 Q. What we have available is copies of the  
11 micro-cassettes onto a big cassette and then copies of  
12 that three or four times. Yes?

13 A. I can agree with you that we have a copy on a  
14 large cassette of what was recorded on the  
15 mini-cassette.

16 Q. There are three or four of those copies that  
17 existed over time and were given to various people.  
18 You've already testified to that I believe.

19 JUDGE MAY: Mr. Stein, let's understand  
20 what's being put. Are you suggesting that somebody's  
21 tampered with this recording?

22 MR. STEIN: I'm suggesting that the integrity  
23 of the tape is called into question, sir. As the  
24 witness just testified to, the only way you can verify  
25 whether a tape has been tampered with, as far as my

1 understanding of the technology, is to have the  
2 original.

3 JUDGE MAY: What is the evidence that  
4 anybody's tampered with this?

5 MR. STEIN: The evidence is that it is out of  
6 this witness's care and custody, and then it  
7 miraculously appears. The evidence further is, quite  
8 frankly, when you see, should you rule adverse to us,  
9 you will see that it is remarkable in the sense that  
10 the inaudible portions and the gaps in the tape that I  
11 referred to in my examination does not occur in the  
12 very first of the 13 intercepts but occur throughout  
13 the latter, which causes some question and doubt as  
14 well.

15 JUDGE MAY: Are you going to invite us to  
16 listen to this before we rule?

17 MR. STEIN: I don't think there's any dispute  
18 that the tape has 120 or so inaudible sections to it.  
19 Your Honours are certainly able, if you choose, holding  
20 your ruling under advisement until you hear the tape  
21 or, alternatively, if you think there has been an  
22 insufficient chain of custody established and integrity  
23 to the tape established by the Prosecution to rule  
24 without hearing the tape. I'm certainly in your hands  
25 as to which approach you take.

1                   JUDGE MAY: I mean, what you're suggesting is  
2 that somebody's tampered with it, or you're suggesting  
3 there must be a risk because it was out of this  
4 witness's custody. But it's up to you, is it not, to  
5 establish that it was obtained by methods which cast  
6 substantial doubt, not doubt, substantial doubt on its  
7 integrity.

8                   So we would have to be of the mind, would we,  
9 that somebody, either Mr. Music or in the Office of the  
10 Prosecutor, has tampered with the tape. I mean, that  
11 is your position.

12                  MR. STEIN: Well, not -- actually, no, sir,  
13 with respect. The Office of the Prosecution has not  
14 tampered with the tape. That is not our position. But  
15 it was out of Mr. Music's control from 20 December --  
16 I'm sorry, 20 November, 1999 to 3 December, 1999 or  
17 4 December, when he then listened to it. And it was,  
18 indeed, in the hands of the superiors in the  
19 Intelligence Unit, if I recall the testimony. That's  
20 right. Sector of Security and Intelligence. So the  
21 integrity of the tape, at that point, is the subject of  
22 our challenge.

23                  And just to also amplify, this tape, of  
24 course, and its existence, these tapes first became  
25 known to us in December of 1999, I believe 4 December

1 when Mr. Nice first presented them to us, and then in  
2 January of the year 2000 we were given the rest of the  
3 cassettes. But again, we do not have the technical  
4 expertise, nor is it available to anyone, to take a  
5 fourth or fifth generation copy and have it analysed by  
6 anyone. That's our position, if it please the Court.

7 [Trial Chamber confers]

8 Questioned by the Court:

9 JUDGE MAY: Mr. Husic, help us with this.  
10 Did you have any other souvenirs of the war which you  
11 kept?

12 A. No.

13 JUDGE MAY: Well, why was it that you chose  
14 to keep this one tape as a souvenir?

15 A. For me, it was of special interest, and it  
16 represented an example which could serve in the process  
17 of training of our personnel. It can be used for an  
18 analysis of the content, and it can be viewed from  
19 different aspects, audibility, so on and so forth. For  
20 us, it is an original document that can serve a  
21 purpose, and those were my intentions when I preserved  
22 the tape. I could not have assumed that at some day in  
23 the future it would be material that would be viewed as  
24 evidence in this Tribunal.

25 JUDGE MAY: Did you know that Mr. Kordic was



1 on trial here?

2 A. Yes, of course.

3 JUDGE MAY: And Mr. Blaskic?

4 A. Yes.

5 JUDGE MAY: Did it not occur to you that what  
6 was on the tape may be of importance as far as such  
7 trials were concerned?

8 A. Of course it did occur to me, but I counted  
9 on the copy that I kept for myself when I handed over  
10 my duties. I held that it had been preserved and that  
11 it had been given in the process of selection of  
12 documents among those that were considered to be of  
13 interest.

14 JUDGE MAY: How was it then that when you  
15 were talking to Mr. Music that the importance of this  
16 tape became apparent?

17 A. Because he told me that we were now in a  
18 situation that documents were lacking potential  
19 evidence regarding war crimes and that what we had been  
20 doing in the past was disappearing in a strange way,  
21 and when a search is made through the archives these  
22 things could not be found. I told him then that in the  
23 course of my work I had a whole series of materials and  
24 documents captured, and that I know that I was  
25 succeeded by a person who continued this work and who

1 was supposed to hand it over to the Superior Command.

2 I said, from the host of material that we  
3 had, that I had preserved just this one tape. And in  
4 our further conversation, we realised that this tape  
5 could be interesting, because it has been mentioned  
6 that it couldn't be traced.

7 JUDGE ROBINSON: Mr. Husic, you say that you  
8 kept the tape for training purposes.

9 A. Yes.

10 JUDGE ROBINSON: You kept just this single  
11 tape for training purposes. Why would you keep just  
12 that one tape for training purposes?

13 A. This was of special interest, this tape. I  
14 cannot tell you why I didn't keep others. The others  
15 simply didn't seem to be so interesting. And if we're  
16 talking about this particular line that was being  
17 monitored, only this tape was preserved, only this tape  
18 was archived. There was other materials based on radio  
19 links and radio communications, but this one was of  
20 special interest because it has a very transparent  
21 content, and it could be used in training when we're  
22 talking about reconnaissance of this type of  
23 communications. I simply did not have any special  
24 interest in others.

25 Later on, in fact, I didn't get in touch with

1 such materials, because the organisation was developing  
2 and there was not just one man who took care of these  
3 but several. So that due to circumstances, I happened  
4 to have preserved this one tape.

5 JUDGE MAY: Does anybody want to ask any  
6 questions arising from that?

7 MR. NICE: If the cross-examination by the  
8 Defence at this stage is concluded, then I have some  
9 re-examination that I'd like to address. I know the  
10 Chamber wouldn't want us to be jumping up and down.

11 JUDGE MAY: I thought the cross-examination  
12 had finished.

13 MR. STEIN: Yes, sir.

14 MR. NICE: There are a number of matters that  
15 do arise.

16 Re-examined by Mr. Nice:

17 Q. So far as this particular tape is concerned,  
18 was there any other occasion when there'd been taping  
19 of this particular type of telephone line to your  
20 knowledge or not?

21 A. We didn't monitor this telephone line only.

22 Q. No. This particular type of line, which was  
23 also used for -- by other people for other purposes,  
24 did you monitor other lines of that type or was this  
25 the only type of line of that type that was being

1 monitored?

2 A. Yes, we did. But as for wire lines, only  
3 this line was monitored.

4 Q. You told us about making a copy for yourself,  
5 for your own personal archive. When did you make  
6 that?

7 A. The day before I handed over the tape to  
8 Mr. Music.

9 Q. Where is that particular copy of the tape,  
10 your own? Is it here today?

11 A. It is.

12 Q. So that that tape was prepared before the  
13 time when it's now being suggested that the tape was  
14 interfered with?

15 A. If that is a question addressed to me, if it  
16 would be of assistance for me to produce that copy, I  
17 shall gladly do so immediately.

18 Q. Subject to any differences in quality of  
19 reproduction, should that be identical to the one  
20 that's been produced via Mr. Music?

21 A. In terms of contents, it should be  
22 identical. As for the quality of the recording and  
23 reproduction, that's a technical matter. A copy  
24 probably is of a lower copy than the original.

25 Q. Two other questions, I think. One, you've

1 been asked about breaks in the recording and poor  
2 quality of audibility. Do you remember --

3 MR. NICE: The Chamber can find this simply,  
4 I think, as an example, but the Chamber can find it at  
5 page 19 of the transcript in the English.

6 Q. You remember that the people speaking on the  
7 lines were themselves heard from time to time to say  
8 that the line was bad, page 19, line 6, or even that  
9 the line disconnected, page 19, line 5.

10 A. Yes. I remember not only from the  
11 conversation, but when you listen to it, it is quite  
12 evident. Regardless of the fact that it is a  
13 recording, it is quite clear that the line is of a poor  
14 quality.

15 Q. For example, page 18, line 27, a male voice,  
16 with a bad connection, and then we see what's written.

17 Can you give me some examples of the other  
18 uses to which this line was put that had no military  
19 connection, some that may be even slightly assuming  
20 examples, I think.

21 A. If you are referring to the content of the  
22 recordings, there is one recording that is absolutely  
23 uninteresting and even perhaps for the Court. That is  
24 under number 6 as written on the jacket, of somebody  
25 Boro. But that is quite uninteresting, but it was also

1 recorded.

2 Q. I was asking you about the matters that were  
3 heard by the monitors but not recorded at all. Can you  
4 give us some examples of the sort of things that the  
5 line was used for by people other than the military?

6 A. It is rather difficult for me, except to give  
7 a generalised answer by saying that this was a line to  
8 which the military exchange was attached, and it could  
9 be used by a very limited number of people. So that  
10 the one example that exists on the tape is an example  
11 of that.

12 Q. Very well.

13 MR. NICE: Your Honour, I think the witness  
14 has said not only that he makes his own earlier copy  
15 available, but that by listening to the tape, he can  
16 identify it as essentially genuine in the sense that,  
17 of course, he can't recollect each and every word --  
18 that would be an absurd position for him to take -- but  
19 he can recognise it in general terms, and if this  
20 challenge on the grounds of interference is seriously  
21 being pursued, then no doubt that would be the  
22 appropriate course to take.

23 JUDGE MAY: It's now after 1.00. We will  
24 adjourn now and continue at 1.35 [sic].

25 Mr. Husic, would you be back, please, at 1.35

1 [sic]? I'm sorry. At 2.35 I should be saying, 2.35.

2 An hour and a half.

3           Would you not, please, speak to anybody about  
4 your evidence during the adjournment and, of course,  
5 not to allow anyone to speak to you, and that does  
6 include the members of the Prosecution.

7           MR. NICE: Before Your Honour rises, it  
8 occurs to me that we might possibly, if we have  
9 manpower, be able to save time by listening to the --  
10 some of us, possibly with the Defence counsel as well,  
11 listening to the witness's own copy and comparing it  
12 with the transcript. That will sort that problem out  
13 and deal with the issue of the alleged tampering by  
14 people between the end of November and the beginning of  
15 December.

16           MR. STEIN: I certainly would love to have  
17 the copy or actually to have the tape that this man now  
18 has with him and listen to it, but I can't do it over  
19 lunch.

20           JUDGE MAY: Let's do what you can over lunch,  
21 because the sooner this matter is resolved, the  
22 better. We don't want to put it off until tomorrow if  
23 we can.

24           MR. NICE: In that case, may I have leave to  
25 speak to him, limited to that issue?

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JUDGE MAY: Yes, by all means.

--- Luncheon recess taken at 1.05 p.m.



1                    --- On resuming at 2.38 p.m.

2                    JUDGE MAY: Yes, Mr. Nice.

3                    MR. NICE: Your Honour, I don't want to  
4 obviously conclude argument at this stage, but can I  
5 make one point and make one suggestion.

6                    The point is that in reality, I think this is  
7 barely a Rule 95 application, because the points being  
8 raised are really matters of weight, nearly all of them  
9 at this stage, and for the Rule 95 application to be  
10 appropriate, the Chamber has to be satisfied that the  
11 evidence is obtained by methods which casts substantial  
12 doubt on the reliability. That's, of course, the Rule  
13 invoked when a witness turns up and says, "I heard  
14 something from 'A' from 'B' from 'C'," and so on, and  
15 then on the witness's own testimony, the decision can  
16 be made. But this witness is saying, "I heard a  
17 conversation on a tape, or conversations. Here is the  
18 tape," which relevance is not challenged, and  
19 everything else really goes to weight.

20                    I can enlarge on that generalised argument  
21 later, but it would be my submission that however the  
22 argument is structured at the moment, the tape has to  
23 be listened to, because the witness is saying, "This is  
24 the tape," and any issues of integrity will be affected  
25 by knowing what the tape is like.

1 I would also respectfully suggest that since  
2 the witness is able to produce a version that has  
3 remained in his custody at all times until he arrived  
4 here today and it is therefore free of the allegation  
5 that can be raised in respect of any other tape that  
6 was out of his custody for a couple of days, that he  
7 produce that tape to the Chamber and that that tape be  
8 played and we listen to that, having the transcript  
9 prepared in respect of the other tape to read.

10 JUDGE ROBINSON: Mr. Nice, sorry to interrupt  
11 you. Can I ask you, to what degree must the Chamber be  
12 satisfied as to the reliability in this matter? In  
13 other words, what is the standard of proof?

14 MR. NICE: I don't think there's any -- if  
15 there's any jurisprudence on the topic that I'm unaware  
16 of, I'll have to be guided and come back to you on that  
17 later, but Rule 95 reads and is applied -- first of  
18 all, it reads: "No evidence is admissible if obtained  
19 by methods which casts substantial doubt on its  
20 reliability," et cetera. As I read it and as I've  
21 experienced in this court, if and only if the Chamber  
22 is satisfied to feel sure that there is the appropriate  
23 unreliability is evidence excluded. At any test  
24 lesser -- at any standard lower than that, the standard  
25 effectively being on the excluder, why, then, the

1 evidence is admitted subject to weight. Now, it  
2 doesn't read specifically in that way, but that's the  
3 way it's applied, if I may respectfully so suggest.

4           What happens is typically it's said, "Well,  
5 this is not direct evidence from a witness. It comes  
6 from 'A' from 'B' from 'C' from rumour." And the  
7 Chamber says, "Well, yes, there's no way we could  
8 attach any weight to that," by inference or implication  
9 revealing that it's looked at the test from the point  
10 of view of the excluder, and in other cases it says,  
11 "Well, it may not be of much value; i.e., it may, when  
12 all the deliberations are in, fall alongside of the  
13 line. But at the moment, we're going to let it in."

14           So that would be my answer. If there's any  
15 jurisprudence on it of which I'm not aware, I'll have  
16 to come back to you on that.

17                           [Trial Chamber confers]

18           JUDGE MAY: I think we're going to have to  
19 listen to the tape.

20           MR. NICE: Your Honour, yes.

21           JUDGE MAY: There will be then no need, if  
22 it's admitted, to play it again.

23           MR. NICE: Of course not, no. But to avoid  
24 the problem of any lack of congruence between the  
25 version that was brought by the investigator and the

1 lawyer to the Tribunal and the version retained by the  
2 witness, if his version is played, produced as an  
3 exhibit, then that deals with that problem.

4           As I explained I would, I spoke to him about  
5 it over the short adjournment to the extent of  
6 listening myself to the first conversation and  
7 following it in the imperfect way I could beside the  
8 B/C/S transcript, and it seems to me both of a  
9 sufficient quality and similar quality, I think, to the  
10 quality of the other tape, and it seemed to me to  
11 match. But that's obviously a matter outside my  
12 expertise or abilities, to follow, in another language,  
13 words that you hear on a tape, so I've equipped myself  
14 this afternoon with a language speaker who may be able  
15 to give me some assistance if any contentious issues  
16 arise.

17           I would ask that the witness now formally  
18 produces the tape from his briefcase, I think, and that  
19 it goes into the technical room so that there's no  
20 challenge as to the --

21                           [Trial Chamber confers]

22           JUDGE MAY: Yes. Now, I'm sorry, Mr. Stein,  
23 did you want to say something?

24           MR. STEIN: Again, sir, being the pragmatist  
25 that I am, although normally I wouldn't want the cart

1 before the horse, I think this is a pragmatic solution  
2 to where we are in the problem now.

3 Just for the record, we challenge the  
4 authenticity and reliability of the tape, not just on  
5 the gap between 20 November and 4 December but earlier  
6 on as well.

7 JUDGE MAY: Yes, of course, for the reasons  
8 you've set out.

9 Now, how is this to be done? The tape is  
10 going to be played, and is it going to be interpreted?  
11 How are you asking for it to be done, rather?

12 MR. NICE: I think the usual way that these  
13 things are done, for example, with videotapes where  
14 there is a commentary, is that the tape is played and  
15 the interpreters interpret what they hear to us.

16 Let's be realistic. What sometimes happens  
17 is that the interpreters have the benefit of the  
18 prepared transcript, which they may also be looking at,  
19 and that may guide, I suppose, the way they translate  
20 what they hear over the headphones.

21 On this occasion we must trust them to do  
22 their job conscientiously, but I suspect they should be  
23 interpreting from what they hear, if it's possible to  
24 do that at the speed rather than from any printed  
25 transcript.

1           The inevitable upshot of that will be that,  
2 because translations are an art and not a science, will  
3 be that the words that they use will not be as  
4 congruent with the English, for example, or the French  
5 translation as is sometimes the case. An allowance  
6 will have to be made for that if any issues arise, but  
7 I suspect that's what Mr. Stein would want. I see he  
8 nods.

9           MR. STEIN: It is. I would respectfully  
10 suggest, and it's not my place. This is a very speedy  
11 conversation, and it may do well that the interpreters  
12 be given leave to ask for a pause themselves to catch  
13 their breaths before they move on.

14           JUDGE MAY: Yes. We'll do that. If the  
15 interpreters have any difficulty in keeping pace,  
16 perhaps they could say so. We can certainly have a  
17 pause, presumably have a pause between the tapes,  
18 between conversations.

19           MR. NICE: Between the conversations.

20           JUDGE MAY: Perhaps, Mr. Nice, since you're  
21 producing it, effectively you could keep an eye on that  
22 and suggest suitable pauses.

23           MR. NICE: Certainly. I've marked where the  
24 various conversations start and stop, and it may that  
25 we'll all be assisted by marking the pages as we go

1 along.

2 In those circumstances, may the witness  
3 please produce the tape. Hand it to the usher. Can it  
4 be marked as Exhibit 2801.4. It better be marked, I  
5 suppose: 2801.4.

6 While that's happening, if the Chamber has  
7 the English version of the translation, the first  
8 conversation is clearly pages 1 to 3, with the second  
9 conversation picking up at what is then, I think, also  
10 numbered as 1, and that conversation goes down to  
11 page 2, line 7, I think. That will probably be as far  
12 as we need to go for the time being.

13 While I'm listening to the tape, may I sit  
14 down?

15 JUDGE MAY: Yes. Somewhere we should have a  
16 list of what these conversations are.

17 MR. NICE: Yes. It's at the back of the  
18 statement of the witness, the fourth page or  
19 something. If the Chamber finds that, it will note  
20 that there's the reference listed to on side A and  
21 listed on side B, and I've already made the point that  
22 the heading of the very first sheet of the transcript,  
23 which reads: "Side B, 00:00 - 00:003, should probably  
24 read "Side A", and it may not be of much matter in any  
25 event.

1 JUDGE MAY: Yes. We'll play the tapes.

2 THE INTERPRETER: Your Honour, may the  
3 interpreters be heard?

4 JUDGE MAY: Yes. The interpreters have a  
5 point.

6 THE INTERPRETER: We should like to stay in  
7 simultaneous interpretation. The principle for  
8 interpreting tapes is to have a transcript in the  
9 original language precisely because of the problems of  
10 audibility, and in this case it seems to us that we can  
11 read the transcript that we have before us.

12 JUDGE MAY: Yes. I think the only problem  
13 which arises is if there is a discrepancy between  
14 transcript and what's said, a serious discrepancy.  
15 Would it be possible for the interpreters to stop at  
16 that stage and point it out?

17 THE INTERPRETER: If it is audible enough.

18 JUDGE MAY: Yes, of course. If it's audible  
19 and substantial. A matter of translation need not  
20 really trouble us in a minor matter, but if there is a  
21 substantial discrepancy, we should find out. So would  
22 you tell us if that happens, and also let us know  
23 whether things are going too fast.

24 With that, are we ready?

25 THE INTERPRETER: We'll do our best, Your



1 Honour.

2 JUDGE MAY: Thank you very much.

3 [Audiotape played]

4 THE INTEPRETER: [Voiceover]

5 "Male Voice: Hello.

6 "Male Voice: Hello.

7 "Male Voice: Yes. Who is it?

8 "Male Voice: Is Dusko there?

9 "Male Voice: It's not Dusko.

10 "Male Voice: Who is it?

11 "Male Voice: This is the boss. Let me talk

12 to Busovaca.

13 "Male Voice: Well, that's me.

14 "Male Voice: Oh, you there, go ahead.

15 "Male Voice: Tell me, but briefly, how far

16 you've got and is the boss there?

17 "Male Voice: He is.

18 "Male Voice: What?

19 "Male Voice: Is the Colonel there?

20 "Male Voice: Is the Colonel there?

21 "Male Voice: Yes, he's here. He's here.

22 "Male Voice: Where is he up there?

23 "Male Voice: Hey, friend. Let's go ahead,

24 friend.

25 "Male Voice: Are you alive? Are you all

1 right?

2 "Male Voice: Hello? Are you all right?

3 "Male Voice: Yes.

4 "Male Voice: Well, fuck it. You always take

5 to your heels when there's trouble there. What the

6 fuck are we going to do with you from there?

7 "Male Voice: Who? Me?

8 "Male Voice: Well, you're in the Sarajevo

9 province, fuck it. Shall we help you out?

10 "Male Voice: Oh, come on, friend. Let's

11 have that multiple rocket launcher. Get it ready for

12 me for Kacuni, Lugovi over there. Let's hear it roar.

13 "Male Voice: When? Now? Well, you don't

14 have to do it right now.

15 "Male Voice: Now, you don't have to do it

16 right now. When we also --

17 "Male Voice: Well, you just tell me when.

18 "Male Voice: Listen, you prepare

19 everything. You just find the targets for the mortars

20 and the launchers and all the rest. Let's burn it

21 down.

22 "Male Voice: Yes, sir. Prepare that.

23 "Male Voice: You prepare everything but

24 we're also preparing.

25 "Male Voice: So you're also preparing."

1 THE INTERPRETER: The interpreters are  
2 sorry. This is going much too fast and the quality of  
3 the sound is poor indeed.

4 JUDGE MAY: Let us simply, at least for this  
5 tape, hear the tape. We've got the translation in  
6 front of us. Would the interpreters follow with the  
7 transcription, and if there are any substantial errors  
8 in the transcription, would they point that out at the  
9 end of the tape?

10 THE INTERPRETER: Your Honour, it is  
11 impossible to tell, because if we didn't have the  
12 transcript, it could not be interpreted at all.

13 JUDGE MAY: Very well. Let's hear at least  
14 this version. Let's hear this tape. Could we go on  
15 playing it?

16 [Audiotape played]

17 THE INTERPRETER: [Voiceover] "Let them" --

18 JUDGE MAY: Don't bother to translate.

19 [Audiotape played]

20 THE INTERPRETER: From what we could hear,  
21 this tape is identical to the transcript that we were  
22 given before.

23 JUDGE MAY: Well, Mr. Nice, I'm not sure in  
24 those circumstances it's going to be a great deal to be  
25 gained by going through all these tapes unless there

1 are points which the Prosecution or Defence want us to  
2 hear on the tapes, but I'll hear submissions on it.

3 MR. NICE: I'm entirely content for the  
4 following to happen if this should be acceptable: For  
5 the transcript, as is, to be counted as produced; for a  
6 couple of supplementary questions to be asked of the  
7 witness, in particular whether the names recorded by  
8 him on the jacket of the tape are the names that he  
9 associated at the time with the people speaking and  
10 whether he's able to recognise them; and, thereafter,  
11 for the Defence to be provided with a copy of the  
12 latest tape so that they can then have the two tapes to  
13 compare if they wish to pursue the allegation of  
14 corruption between the time of surrender of the tape  
15 and today's date; and for the argument then to proceed  
16 on the basis of the transcript. But of course, their  
17 comparison of the tape won't be able to happen today,  
18 but that shouldn't hold up the argument, because the  
19 Chamber can work on the basis that there is no  
20 corruption revealed by the two tapes, and because it's  
21 a Chamber of professional Judges, amended any decision  
22 it makes at a later stage if more material comes to  
23 hand.

24 JUDGE MAY: Mr. Nice, before you sit down, it  
25 may be helpful if you just indicated, since you say

1 you've marked them, where the various conversations  
2 begin and end.

3 MR. NICE: Certainly. The second page 1,  
4 serial number 908749, is the beginning of what in the  
5 witness's statement is referred to as conversation 2  
6 between Kapetanovic and Cosic. Indeed, you can see  
7 those names on page 1.

8 That conversation ends on page 2 at line 7, I  
9 think. So line 8 can be marked with the number 3,  
10 which the witness, in his statement, identifies as a  
11 conversation between Grubestic and Blaskic, and that is,  
12 again, I think, supported by the content.

13 That conversation ends on page 3, at line 17,  
14 I think, and then what follows is conversation number  
15 4, again between Grubestic and Blaskic, and the names  
16 can be seen in the transcript itself.

17 That conversation goes over to page 5, at the  
18 top, with Blaskic saying, "Good-bye." Then at line 3  
19 is the beginning of conversation number 5, identified  
20 as between Blaskic and Kordic, the conversation going  
21 on until page 10 at line 15.

22 At line 16, conversation 6, the irrelevant  
23 one, as it were, the short one between Ljilja and Boro  
24 begins. That conversation ends at the top -- the  
25 bottom of page 10 or the top of page 11. So that

1 should be marked as conversation 7 between Grubestic and  
2 Blaskic, and that occupies that page. We see at the  
3 foot of page 11, "Bye-bye. We'll keep in touch."

4           So the top of page 8 the Chamber could mark  
5 8, the conversation between Blaskic and Kordic. That  
6 conversation goes over to page 14, line 9, where you  
7 see the beginning of a conversation recorded in the  
8 notes of the witness as between Pero and Grubestic.

9           Conversation 9 goes on --

10           JUDGE MAY: Not too quickly.

11           MR. NICE: I'm sorry.

12           JUDGE ROBINSON: This is conversation 9.

13           MR. NICE: Conversation 9 starts on page 14,  
14 line 9, and goes on to page 18, line 25. So that at  
15 line 26 or 27, there is the beginning of conversation  
16 10 between Kordic and Blaskic. That conversation goes  
17 on to -- and this is the only place where there is some  
18 confusion in my mind. I think that conversation goes  
19 on probably until the foot of page 18, and is a short  
20 conversation, and it may be, and I stress that, it may  
21 be that at the very top of page 19 we should write 11,  
22 noting that at line 5 there is a change to side B, and  
23 observing that in his witness statement, the witness  
24 says of conversation 11 that it is continued on  
25 side B.

1           I think that that conversation concludes at  
2 about line 9, so that from about line 10, but I may be  
3 wrong, about line 10 we start off with what is the  
4 first of the three conversations listed on side B,  
5 therefore, to be marked again with the figure 1. And  
6 whether I'm right or wrong about the start point of  
7 that conversation, it goes on to page 25, line 13,  
8 where there is the beginning -- page 25, line 13, where  
9 there's the beginning of the second conversation on  
10 side B, said to be between Blaskic and an unidentified  
11 person. That conversation goes on to page 31, ending  
12 at line 8, and with the third and last conversation  
13 starting at line 10, being a conversation between Nakic  
14 and Blaskic.

15           JUDGE MAY: I've not got that last one.

16           MR. NICE: Page 31, line 8 is the end of  
17 conversation 2, and line 10 the beginning of  
18 conversation 3.

19           JUDGE MAY: Now, is there anything you want  
20 to ask the witness about these tapes or anything about  
21 the conversation?

22           MR. NICE: Just a couple of things, if I  
23 may.

24           Re-examined by Mr. Nice [continued]:

25           Q. First of all, I don't know if you were

1 following me when I was seeking to identify where the  
2 conversation started and finished or not. Were you?

3 A. I did follow, but in my translation, in my  
4 text, the lines are different, the numbers of the  
5 lines. But as far as I was able to follow, it's okay.

6 Q. Second, we've seen your document, which is  
7 the cover sheet for the tape itself, which has the  
8 names of people said to be speaking in the  
9 conversation. We know that the handwriting of that  
10 document is yours, but where did you get the names to  
11 write down? Was it your own knowledge of the voices,  
12 was it a calculation from the contents of the tapes,  
13 was it information coming to you from someone else, or  
14 how else did you manage to write down these names?

15 A. In most of the cases, the people appearing on  
16 the tape and talking say their own names, introduce  
17 themselves. So on the basis of previous knowledge, if  
18 they give their surname, then we are able to add their  
19 names, or vice versa.

20 Another parameter that we used was that we  
21 listened to them for some considerable length of time  
22 so we could tell by their voices, and we were able to  
23 conclude who was doing the speaking.

24 The third way, the third method, was one  
25 which I used, that when we listened to the tape



1 repeatedly, we would write down who the participants  
2 were, or it would be something that we would decide  
3 upon later on when we were not quite sure who it  
4 actually was. But after writing down what we  
5 considered -- I considered to be valid, we did write  
6 this down and it is what was on the tape.

7 Q. The conversation we did hear this afternoon,  
8 involving several voices but then principally two  
9 voices in conversation, are you able now to recognise  
10 those two voices or not?

11 A. Of course, I can. When the real conversation  
12 begins, apart from the introduction -- you know, when  
13 they just say, "Hello," and so on, I can't tell who  
14 they are. But when the conversation begins between the  
15 two main speakers, then it's quite obvious who the  
16 speakers are.

17 Q. And they were --

18 A. They were Mr. Kordic and Mr. Blaskic.

19 Q. And I don't know if in your version it's got  
20 "Voice 6" and "Voice 7." Can you tell us who it was  
21 who was speaking of, "Let's burn everything"? Who was  
22 that? If you can't remember because you need to listen  
23 to it again, you must say so and we'll probably move  
24 on. But if you can remember, just tell us who it was.

25 A. Voice Number 6 would be Mr. Kordic, and Voice

1 Number 7 would be Mr. Blaskic. But what you have just  
2 mentioned, I can't say off the bat. I would have to  
3 either read or listen to it again.

4 Q. I needn't trouble you with that.

5 One other question that you may be able to  
6 help us with, and the Chamber will find this on page 2  
7 at line 29. I'm not sure of the exact reference for  
8 this for you on your transcript, but I think it will be  
9 on page 2 at line 29 as well.

10 There was a reference by the voice you say  
11 was the voice of Kordic to: "... two of our boys  
12 killed perfidiously from behind at the checkpoint in  
13 Kacuni." Do you now remember any event to which that  
14 related; "yes" or "no"?

15 A. What I can -- I can say "yes," and let me try  
16 and explain. Whether I'm right or not, I don't know.

17 Q. What is it you can remember, then, please?

18 A. I remember that on many occasions there were  
19 problems with those checkpoints, but I know that at  
20 that time there were talks concerning these checkpoints  
21 and demands were made that they be dismantled, and the  
22 European Monitors were also included in these events.  
23 Now, as far as this particular incident is concerned, I  
24 cannot say whether it was on that date or not.

25 Q. Do you remember an incident like this having

1 happened?

2 A. I can't say that I remember this particular  
3 event.

4 MR. NICE: Very well. Your Honour, I think  
5 there may be other evidence of that already before the  
6 Chamber.

7 Q. The other passage I would like you to have a  
8 look at on your document is at page 4, and it's line  
9 17, I think. In the English version, it's at page 4,  
10 line 25. You may not have listened to this particular  
11 tape or part of the tape for some time, but you spoke  
12 this morning of Kordic being addressed and/or referred  
13 to as "Colonel." Do you remember?

14 A. Yes. I think that one individual speaks  
15 about that, that Mr. Kordic has the rank of Colonel. I  
16 don't know which of the conversations.

17 Q. If you look at your page 4, line 17, I'm only  
18 asking if this is the place you have in mind? It's our  
19 English page 4, line 25.

20 JUDGE MAY: The numbers have been cut off our  
21 pages. You are, I assume, referring to ten lines up  
22 from the bottom.

23 MR. NICE: Yes.

24 Q. Witness, do you have page -- there are two  
25 pages 4, so give me the copy and I'll hand you mine,

1 actually, and I'll mark it. Look at this marked  
2 version, please.

3 A. As far as this is concerned, I couldn't say  
4 whether that is that or not.

5 MR. NICE: Very well. There may be another  
6 reference, and we'll find that later.

7 That's all I need to ask the witness in  
8 relation to the tapes at this stage on the issue of  
9 admissibility, I think.

10 JUDGE MAY: What else do you want to ask him  
11 generally?

12 MR. NICE: Probably nothing actually  
13 generally, either. If we're dealing with an  
14 admissibility topic, nothing else, and the tapes really  
15 speak for themselves because he's identified the  
16 witnesses, he's told us the generality of what the  
17 tapes reveal, and it will be possible for the Chamber  
18 to read the transcripts to themselves in due course or  
19 tell us to have them read out in full so that there's a  
20 public hearing.

21 JUDGE MAY: Very well. We'll deal with the  
22 admissibility point now. Yes.

23 MR. STEIN: Thank you, Your Honour.

24 First, just to clarify, I think you'll find,  
25 with regard to the last point made by Mr. Nice and the

1 witness, the reference on page 4 of the English, line  
2 25, to the word "Colonel" does not appear in the  
3 Croatian version which accompanied this translation to  
4 us.

5           With regard to admissibility and with regard  
6 to the manner in which you can compare the tape which  
7 the witness has brought with him today, let me suggest  
8 the following:

9           If that tape is, having now been given to the  
10 Court, copied to us, we could take on the task which we  
11 proposed to do at lunch, but there was not enough time,  
12 to compare that which is before us now, the fourth  
13 version of the tape, to the third version of the tape,  
14 and we'll see whether issues are resolved or made more  
15 difficult. I think they'll be made more difficult, and  
16 the proof of that is if you look at the index, 2801.3,  
17 the index has "Side A" and "Side B." The "A" side, the  
18 first entry is the January 24, '93, Kordic/Blaskic  
19 conversation. That's the first thing on this tape, and  
20 it's on side A and it's clear. Yet the --

21           JUDGE BENNOUNA: Sorry, Mr. Stein. One  
22 minute, please.

23                           [Trial Chamber confers]

24           JUDGE MAY: Well, Mr. Nice, this isn't a very  
25 satisfactory position in which we find ourselves.

1 There are now two versions of the tape, one of which we  
2 have with a transcript; the other one, we don't. Now,  
3 we need to know what the difference between the two is,  
4 if any, and we have in mind inviting our translators to  
5 look at this as promptly as possible to resolve, if  
6 there are any differences. And once we've done that,  
7 we will rule upon the subject.

8 I am going to ask the Legal Officer  
9 something.

10 [Trial Chamber confers]

11 JUDGE MAY: Well, it's not satisfactory, as  
12 I've said. In fact, it's highly unsatisfactory. But  
13 what we're going to have to do is to order that this  
14 second tape be transcribed and any differences between  
15 this and the original be noted, in whichever way seems  
16 appropriate, and any differences between the transcript  
17 and the new tape be noted.

18 MR. NICE: Your Honour, I'm in Your Honour's  
19 hands. This all arose because of the nature of the  
20 allegation made. I know that this exercise is likely  
21 to take some time.

22 JUDGE MAY: How long did it take to get a  
23 translation last time?

24 MR. NICE: I think it was over Christmas, but  
25 it took over a month altogether.

1 JUDGE MAY: This must be dealt with as a  
2 priority.

3 MR. NICE: Yes, of course.

4 JUDGE MAY: And we shall order that that be  
5 done.

6 Now, we cannot keep the witness here or ask  
7 him to come back, so any examination which anybody has  
8 on any aspect of the tape that they would want to ask,  
9 outside the admissibility question, covering any  
10 aspect, had better be done now.

11 MR. NICE: I have no further questions of  
12 this witness. I do, at some stage, have a few  
13 arguments on the question of admissibility, but maybe I  
14 can defer those, indeed, until after the witness has  
15 withdrawn.

16 JUDGE MAY: Yes, or until after we know what  
17 the answer to the tape is.

18 MR. NICE: Indeed.

19 MR. STEIN: My position is the same. I have  
20 no further questions of the witness. Should we not  
21 prevail on the admissibility issue, then I would ask  
22 that the cross-examination be incorporated by reference  
23 on issues of weight as opposed to admissibility.

24 JUDGE MAY: Yes. I mean we don't have to  
25 have a distinct phase here between the arguments as to

1 admissibility and the substantive trial. It's all part  
2 of the trial.

3 MR. STEIN: And I do have a few comments as  
4 well relative to admissibility, if Your Honour  
5 pleases.

6 JUDGE MAY: But you've got no further  
7 questions?

8 MR. STEIN: No, sir.

9 JUDGE MAY: Mr. Husic, that concludes your  
10 evidence. There are no further questions. Thank you  
11 very much for coming to the Tribunal to give your  
12 evidence. You are now free to go.

13 THE WITNESS: Thank you too.

14 [The witness withdrew]

15 MR. NICE: Mr. Lopez-Terres will withdraw  
16 with the witness. And, of course, the witness has  
17 surrendered what is his only remaining copy of the  
18 tape, so we will arrange, by one means or another, that  
19 he has a copy to take with him, because he has an  
20 interest in retaining it.

21 The next witness is in the building and is  
22 ready to give evidence, but we weren't sure how long  
23 was going to be taken. It may take just a couple of  
24 minutes to find him, and indeed Ms. Somers, who's going  
25 to take him.



1                   While that's happening, the position about  
2 the map is probably worth ventilating. The Chamber  
3 will recall requiring the front-line maps. They were  
4 provided fairly swiftly. The person who provided those  
5 maps has done a great deal of further work to both  
6 check his original works, to correct it, and to provide  
7 more detail.

8                   The amended maps have now been served, I  
9 think today. The amendments are, I think,  
10 comparatively modest, but supporting material is  
11 considerable in quantity.

12                   I've had two approaches today, one from  
13 Mr. Kovacic, with the helpful suggestion that it might  
14 be possible to negotiate between the parties to see  
15 where the common ground is and to see what, if  
16 anything, remains outstanding for dispute. I hope I  
17 correctly summarised his position, although he was  
18 going to talk to Mr. Lopez-Terres about it in more  
19 detail.

20                   On the other hand, I understand there may be  
21 a more root and branch problem raised by those  
22 representing Mr. Kordic. They're concerned, indeed,  
23 about the expertise of the witness, and also concerned  
24 about the reliance he has placed on answers that  
25 Blaskic gave in his trial.

1           It seems to me that on this particular topic,  
2 without prejudice to any other arguments about Blaskic  
3 testimony, the witness has simply done the best he can  
4 on the available information to try and draw front-line  
5 maps identifying where he has got his information from,  
6 information that is necessarily hearsay if he wasn't  
7 there in the field himself. So that to draw material  
8 from Blaskic's evidence in trial is hardly  
9 inappropriate.

10           JUDGE MAY: I think this arises out of a  
11 request that I made.

12           MR. NICE: It did, yes.

13           JUDGE MAY: It was a matter which was of  
14 interest to me, and I thought might be useful for the  
15 trial and would assist me in understanding the trial,  
16 and to take narrow points on admissibility doesn't  
17 seem, to me, to be very helpful.

18           MR. NICE: In any case, I do accept that the  
19 Defence have been provided with a great deal of  
20 material only today to consider, but the material is  
21 simply the supporting material. They must know from  
22 their own instructions, in relation to the vast  
23 majority of the points that are on the maps and in  
24 indeed in the accompanying report, they must know  
25 whether it's accurate or inaccurate, and it should be

1 possible for them to focus the points of dispute pretty  
2 narrowly.

3           Now, we've got a witness today, and I know  
4 we've got another witness for tomorrow, but I would ask  
5 that Mr. Elford, at the very least, be accommodated for  
6 the purposes of giving the evidence in chief this week,  
7 assuming we have time for him, and he can present his  
8 maps, for which we have a board in court, and explain  
9 his findings. And I'm sure the Defence will have had  
10 an opportunity by then to consider the supporting  
11 material and to cross-examine him as far as that may be  
12 necessary. I certainly hope so.

13           JUDGE MAY: Yes, Mr. Stein.

14           MR. STEIN: Thank you, sir. May it please  
15 the Court. I do want to address the Court at some time  
16 about the admissibility of the tape, and I have a few  
17 points to make but I won't do that now.

18           JUDGE MAY: On the tape.

19           MR. STEIN: Yes.

20           JUDGE MAY: Well, it maybe more convenient,  
21 unless there's some particular point you want us to  
22 deal with now, to deal with all the arguments when we  
23 know what the answer is.

24           MR. STEIN: Fine. Not a problem.

25           Relative to Mr. Elford and the maps, we,

1 yesterday, were given his report. A brief read clearly  
2 shows that he's talking about troop strength, troop  
3 movements, front lines, perfectly relevant things, but  
4 he's doing it from the perspective of an expert or  
5 someone who has compiled expert evidence, and it has  
6 not been given to us in adequate time to prepare, nor  
7 are we given the requisite number of days under the  
8 Rule. Moreover, it's not been given to us in a  
9 language the accused can understand.

10           But beyond that, we have been given today the  
11 backup material for this report, and it includes -- it  
12 includes -- the backup material for these maps includes  
13 statements of General Blaskic, to be sure an  
14 interesting issue, but a lot of milinfosums. We've  
15 tried to figure out the ones we've never seen before  
16 quickly last night. There seemed to be at least a  
17 dozen, if not more. So the report and the map together  
18 are based on brand new information for us, indeed  
19 information we've been looking for for some time.

20           It may be that when all is said and done, and  
21 these ultimately may be exactly consistent with our  
22 theory, or at least close enough, we can negotiate.  
23 But we're not at that point, having been given volumes  
24 of material yesterday and today as to the Blaskic  
25 issue, because this is going to come up again and

1 again.

2           It is our considered judgement that unless or  
3 until we have all of Colonel Blaskic's testimony,  
4 including that which was given in closed session, and  
5 all of the exhibits, we can't pick part of his  
6 testimony and just choose part. If the Prosecution  
7 wants to call Colonel Blaskic, they may do so, as  
8 apparently is our right. But to take his evidence in  
9 the parts they like and use it in support here and in  
10 other situations, it's in the binders, it's in some  
11 other international armed conflict issues, it's coming  
12 more and more, is unfair to us because with a unitary  
13 Prosecutor they know it all. They know everything that  
14 he said during the course of his trial. We may agree  
15 or disagree with some or part, but we're not in a  
16 position to know. If we had it all, then we might  
17 say, "We'll stipulate to all of it or part of it." But  
18 to use his --

19           THE INTERPRETER: Would Mr. Stein slow down,  
20 please.

21           MR. STEIN: -- his testimony in support of  
22 this witness's maps and conclusion, in our view, would  
23 be wrong.

24                           [Trial Chamber confers]

25           JUDGE MAY: Mr. Stein, what have you got from

1 the transcript of Blaskic? What have you got?

2 MR. STEIN: Yes. We have his open session  
3 testimony. Anything that's made public we have.

4 JUDGE MAY: You don't have closed session.

5 MR. STEIN: Correct. And he testified for  
6 30 days, as you recall. I'm not sure how many days  
7 were in closed session.

8 JUDGE MAY: How much of it have you got?

9 MR. STEIN: How much of the 30 days?

10 JUDGE MAY: Yes.

11 MR. STEIN: I don't know off the top of my  
12 head, sir. I just don't.

13 JUDGE MAY: Do you want the closed session  
14 testimony?

15 MR. STEIN: Yes, sir.

16 JUDGE MAY: You have to remind me. Have you  
17 asked for it?

18 MR. STEIN: I know we asked for the closed  
19 session testimony of one if not both of the court  
20 witnesses that were called, in a prior application. I  
21 don't believe we've specifically asked, although I  
22 could stand to be corrected, about General Blaskic's  
23 testimony. The issue of his being used by the  
24 Prosecution is a relatively new one. As I'm standing  
25 here I'm trying to think back, and I have a vague

1 memory of this coming up, but I'm sorry, sir, it's just  
2 not leaping to the front of my mind.

3 JUDGE MAY: Yes.

4 MR. KOVACIC: [Interpretation] Your Honours, I  
5 agree with the thoughts conveyed by my learned friend  
6 Mr. Stein regarding the totality of Blaskic's  
7 testimony. That should be provided to us as one of the  
8 sources on the basis of which an expert person can  
9 reconstruct the positions of the conflicting parties.  
10 That is only one source. And of course, the totality  
11 of that testimony would be desirable, rather than  
12 having only parts of it.

13 However, it is my opinion that we need to  
14 think about something else. Today, again, we are  
15 confronting a highly peculiar situation. I consider it  
16 to be specific as compared to customary procedure, even  
17 in this Court. The value of evidence, the parties, the  
18 provenance of evidence and so on, but I won't  
19 theoretise. I would rather say the following: As far  
20 as I have been able to understand my colleagues, this  
21 material, this evidence, the maps and the supporting  
22 material on which the maps were drafted, were compiled  
23 by a professional person -- I don't know exactly what  
24 qualifications he has -- but is formally a member of  
25 the Prosecution team in this case, which means that a

1 party has prepared a piece of evidence and produced it  
2 in court.

3 JUDGE MAY: What can the objection be to  
4 this? I find these whole proceedings confrontational.  
5 Now, this should be a straightforward matter to agree a  
6 map or not agree it. I find it hard to believe that  
7 there cannot be agreement about something as  
8 straightforward as that. If it said the lines vary,  
9 let us find out how it is that the lines vary, but  
10 points are taken the whole time in the most  
11 confrontational way.

12 The fact that the witness comes from the  
13 investigators doesn't matter. It's the weight of the  
14 evidence.

15 Now, we've got a witness outside. I suggest  
16 that what we do is get on with him rather than waste  
17 further time about these maps. I shall instruct  
18 counsel to discuss the matter over the adjournment and  
19 find how best to deal with a matter which I raised,  
20 because it would be of assistance to the court, and I  
21 would be grateful if we could have that assistance put  
22 before us in the most straightforward way, rather than  
23 constant arguments about admissibility.

24 Mr. Kovacic, I'm sorry to interrupt you, but  
25 it's time that we moved on to something else.



1                   MR. KOVACIC: [Interpretation] Mr. President,  
2 if I may, that was the direction in which I was  
3 heading, because the situation is specific. I am not  
4 quite sure that we understand who is who and what the  
5 value of things are, because I think, going on the  
6 basis of what you have said, if the Prosecutor is  
7 preparing evidence, it would be the same as if I were  
8 to testify.

9                   I was going to ask you if I could give  
10 certain instructions as to whether that presentation is  
11 considered to be evidence in the classical formal  
12 sense, or is it merely a means to portray things? If  
13 it is the latter, and it seems to me to be somewhere in  
14 between, in our view, it would be more practical, more  
15 sensible, and more economical in time if we could  
16 discuss with the Prosecutor, in a constructive fashion,  
17 which other sources need to be taken into consideration  
18 for the maps to be drafted correctly.

19                  I personally think, on the basis of what I  
20 have looked through, that 80 percent at least of the  
21 material is more or less unchallenged. I think a small  
22 additional effort would be needed, and the willingness  
23 of the Prosecutor to accept some other sources, our own  
24 and from the Blaskic case, then we would have a far  
25 greater degree of certainty. Otherwise, we will be

1 wasting time on the cross-examination, and we will have  
2 to produce the same evidence in our own defence case,  
3 bring experts, draw from the Blaskic evidence, and so  
4 on. Some of these things may be important, others not,  
5 but clearly this does not provide a complete picture.

6 I think the proposal is a constructive one.  
7 Could you give us certain limits? Is this classical  
8 evidence or is it simply a presentation? If it is a  
9 presentation, as a summary of the evidence at the  
10 disposal of the Prosecution, taken from other cases,  
11 then perhaps we could make our contribution to that.

12 JUDGE MAY: I have in mind an agreed document  
13 that is put before the Court. If, as appear possible,  
14 it is not going to be practicable to agree anything in  
15 this case, then we'll have to find some other way of  
16 dealing with it.

17 JUDGE BENNOUNA: [Interpretation] I think, and  
18 I join my colleague Judge May, that it is necessary for  
19 you, amongst yourselves, outside the courtroom, that  
20 is, between the Defence and the Prosecution, as you  
21 have proposed anyway and as Mr. Nice has mentioned, to  
22 find a maximum number of points of agreement. On the  
23 points that you are not in agreement, you can mention  
24 them, if you insist, saying, "Here are the points on  
25 which we agree, here is the point of the Defence, on

1 such and such a point, whereas the Prosecution is of  
2 such and such an opinion." But we need to know what  
3 are the points of agreement, mentioning at the same  
4 time points of disagreement, and in that way we will  
5 not use too much time. Try and find a common  
6 denominator. Then regarding the elements of  
7 disagreement, mention them. Tell us about them.  
8 That's all.

9 MR. KOVACIC: [Interpretation] Absolutely,  
10 Your Honour. But, Your Honour, please. We have to be  
11 practical. I'm sorry to be wasting -- taking up your  
12 time. We got the maps a month ago. We couldn't engage  
13 in a serious analysis of those maps until we received  
14 the author's material, supporting material. We got it  
15 yesterday. It is excellently well written, logically,  
16 and fine in every respect, but in the footnotes, the  
17 sources are indicated.

18 JUDGE BENNOUNA: [Interpretation] How much  
19 time do you need for all this? Tell the Court. Tell  
20 us, how much time do you need to examine all these  
21 papers? We're not pressuring anyone here, including  
22 you.

23 MR. KOVACIC: [Interpretation] Your Honour, we  
24 got this today. I don't even know how much of it I  
25 have to study. I cannot, in all sincerity, tell you

1 20 days or 100 days. Give me at least 24 hours to look  
2 through this pile to be able then to tell you whether  
3 we need 10 days, 15 days, a reasonable amount of time.

4 Of course, you are aware also of the amounts  
5 of material we have received in the last month.

6 JUDGE BENNOUNA: [Interpretation] Mr. Kovacic,  
7 I think I agree with you. Will you -- both of us --  
8 both Mr. Stein and yourself, tell us tomorrow how much  
9 time -- in the course of the day -- tell us in the  
10 course of the day how much time you will need, because,  
11 in the meantime, you will at least have an opportunity  
12 to look through the documents and be able to tell us.  
13 That is all.

14 MR. KOVACIC: [Interpretation] Of course I am  
15 ready to give you an estimate tomorrow. If I can have  
16 up to Friday, that would be better.

17 JUDGE MAY: Friday. Yes. Now, we're going  
18 to hear a witness, but before we do, Mr. Stein, you  
19 could help with something else. I have in mind the  
20 matter we were dealing with, the new tape, and your  
21 suggestion that you might listen to it or those  
22 instructing you. What I'm concerned about is the fact  
23 that it took a month to get the last translation, and  
24 it could well be a long time before we get a new one.

25 MR. STEIN: Yes.

1 JUDGE MAY: Now, if it was possible for you  
2 to listen to it and give us at least a preliminary view  
3 on it. If you accept it, for instance, you could say  
4 so, or if there are substantial areas of disagreement,  
5 you could point them out.

6 MR. STEIN: Yes.

7 JUDGE MAY: And it may be, with the  
8 Prosecution, between you you could come up with a  
9 quicker answer.

10 MR. STEIN: I suggested that. Over lunch we  
11 were doing a lot of things. I would be delighted to do  
12 that, take that burden on and then we could report  
13 whether there are disparities or not, and what they  
14 are, show them to the Prosecution. They can do a  
15 double-check and present it to the Court.

16 JUDGE MAY: It may be a more practical way of  
17 dealing with the matter.

18 MR. STEIN: I would be glad to take -- I'm  
19 sorry.

20 JUDGE MAY: Meanwhile, we will ask the  
21 translators how long they would need to do this, if, as  
22 we suggest, they do it as a matter of priority, and  
23 then you perhaps can tell us in the next day or two  
24 what the position is.

25 MR. STEIN: Certainly. We'll be glad to.

1 And we'll also tell you our position on the readiness  
2 for the maps, although, I would probably -- I'll be  
3 specific tomorrow, but we'll probably need the break  
4 period to finally resolve that. The reason is, and you  
5 should know this, we now have the Prosecution seeking  
6 to admit the testimony of 41 witnesses from other  
7 cases. The span of testimony is about 12.700 pages.  
8 So you can see we are very busy. Not that I mind being  
9 busy, but I wasn't hyperbolising when we talked about  
10 two metres of paper. So we are ploughing through it.  
11 That's all I have to say now. I'll save it for later.

12 JUDGE MAY: We'll hear about the maps on  
13 Friday. And if you, at some stage, need a reading day,  
14 I'm not encouraging you, but if you do, will you say  
15 so.

16 MR. STEIN: Thank you, Your Honour. We're  
17 looking forward to next week and a change in my glasses  
18 thereafter.

19 JUDGE MAY: Yes. Let's begin the next  
20 witness, please.

21 [The witness entered court]

22 JUDGE MAY: Yes. Let the witness take the  
23 declaration.

24 THE WITNESS: I solemnly declare that I will  
25 speak the truth, the whole truth, and nothing but the

1 truth.

2 WITNESS: MIRSAD AHMIC

3 [Witness answered through interpreter]

4 JUDGE MAY: If you would like to take a  
5 seat.

6 Examined by Ms. Somers:

7 Q. Would you state your complete name.

8 A. Mirsad Ahmic.

9 Q. Your date of birth?

10 A. The 12<sup>th</sup> of September, 1968.

11 Q. Your place of birth?

12 A. Zenica.

13 Q. Your current occupation?

14 A. An electronics technician for  
15 telecommunications.

16 Q. Though you were born in Zenica, where did  
17 your family live in Central Bosnia up until 1993? What  
18 was the principal city of residence?

19 A. We lived in Vitez, in the town of Vitez, and  
20 I was born in Zenica, merely because the maternity ward  
21 was in Zenica at the time, the maternity hospital.

22 Q. Would you tell the Court about your military  
23 experience?

24 A. You mean before 1992/1993?

25 Q. Yes. Your complete military experience from

1 the 1980s onward.

2 A. I did my regular military service in the  
3 Yugoslav People's Army in September 1987 until  
4 September 1988. After that, in 1992, sometime in June,  
5 I was mobilised to the Territorial Defence, and I was  
6 there, which later became the Army of  
7 Bosnia-Herzegovina, until roughly the 30<sup>th</sup> of August,  
8 1994.

9 Q. You were with the Territorial Defence on  
10 approximately 20<sup>th</sup> of October, 1992, when it had to  
11 abandon its headquarters in the high school in Vitez  
12 and relocate to Stari Vitez; is that correct?

13 A. It is.

14 Q. Can you very briefly state why the  
15 headquarters changed?

16 A. Well, you see, I think the main reason was  
17 that that was the only place in town. For the HVO to  
18 have full control of the town, we had to leave it.

19 Q. Were there any attacks to speak of by the  
20 HVO?

21 A. Yes. We had a rather strong attack.  
22 Actually, it was a rocket fired from a rocket  
23 launcher. It wasn't a real attack. Also, there was  
24 some shooting at the school from automatic weapons.

25 Q. Your residence is in Vitez. Can you describe



1 where you and your family lived?

2 A. Our house was in the centre of town, one  
3 could say.

4 Q. Was it a house or an apartment in the centre  
5 of town?

6 A. It was an apartment building in the centre of  
7 town.

8 Q. Did you have a house anywhere in the  
9 municipality of Vitez?

10 A. Yes, we did. We had a house, a family home,  
11 newly built.

12 Q. Where?

13 A. It's called Zume or Ahmici. It depends.  
14 Some people call it one, some the other. These are  
15 close by.

16 Q. Did you ever occupy that house?

17 A. No.

18 Q. Was anyone occupying that house in Ahmici on  
19 16 April 1993?

20 A. Yes. There was a family there from Karaule,  
21 I think their surname was Memeledzija, as refugees.

22 Q. Were they occupying the house with the  
23 consent of your family?

24 A. Yes.

25 Q. What happened to that family on April 16th,

1 1993, specifically in the course of the attack on  
2 Ahmici?

3 A. Well, you see, we saw them later on. The  
4 women were immediately taken to a camp at the railway  
5 station, and the men hid, because close to the house  
6 was a kind of auxiliary building with a cellar, and  
7 they hid there, covered themselves with a kind of  
8 cover. And as my mother kept some food there, they  
9 were able to feed themselves there for a couple of days  
10 in this cellar, which was about one and a half by one  
11 and a half metres in size.

12 Q. What happened to that house, to your house in  
13 Ahmici?

14 A. The house was set alight that very same  
15 morning.

16 Q. And do you know whether or not the  
17 Memeledzija family was in the house at the time it was  
18 set alight?

19 A. No one was in the house. The main members  
20 of the family were in this outhouse, in a kind of  
21 cellar that we had where we kept some foodstuffs. So  
22 no one was in the house itself. The women were taken  
23 to a camp, and the men were in this outhouse in the  
24 cellar.

25 Q. One last question about this house. Do you

1 have any idea as to who may have set the house ablaze?

2 JUDGE MAY: Now, how is the witness going to  
3 know this?

4 MS. SOMERS: It will come across as not being  
5 direct; it will be what is referred to as hearsay, if  
6 the Court is willing to accept the witness's rendition  
7 in paragraph --

8 JUDGE MAY: Well, if you can lay the  
9 foundations for it, please, Ms. Somers, first.

10 MS. SOMERS:

11 Q. Did you personally hear any comment about who  
12 may have set the house ablaze?

13 A. Something that could serve as an indication  
14 was a conversation that my father had with  
15 Mr. Memeledzija, when the latter said that he heard, as  
16 the house was set ablaze, that there were two men -- of  
17 course, he couldn't see them -- and their conversation  
18 was roughly as follows: "Set the house alight." And he  
19 said, "No, you do it. You were his friend."

20 Q. Discussing your own situation on 16 April  
21 1993, what happened in Vitez, where you were?

22 A. Well, we were woken up by the explosions  
23 about 5.30 in the morning. Of course, we had no  
24 knowledge as to what might happen. For security  
25 reasons, we hid in the basement of the building, which

1 had previously been prepared for that purpose, ever  
2 since the bombing from the air.

3 Q. Are you able to say from which direction the  
4 shelling was coming? Is there any way you could have  
5 detected that?

6 A. You see, the explosions could be heard. They  
7 were close by. That was clear. So it could roughly  
8 come from the region of Stari Vitez, because our  
9 building is about 150 to 200 metres away from it as the  
10 crow flies.

11 Q. And was it Stari Vitez which was being  
12 shelled, just to be clear?

13 A. I think it was, among other places.  
14 Explosions could be heard from other parts of the town  
15 as well, but as this was very close, these were the  
16 ones we heard best.

17 Q. While you were in the basement of your  
18 apartment building, were you approached by any persons  
19 or were you able to remain there undisturbed?

20 A. No. Two or three hours later, soldiers  
21 appeared.

22 Q. What kind of soldiers?

23 A. Soldiers wearing camouflage uniforms, with  
24 black masks over their faces.

25 Q. From which Army?

1 A. They were Vitezovi, HVO Vitezovi.

2 Q. And how were you able to identify that they  
3 were Vitezovi?

4 A. On their sleeves they had the patches of  
5 Vitezovi, and we were all familiar with those patches.

6 Q. Did they also bear HVO patches?

7 A. Yes. They always had both patches, the HVO  
8 and the Vitezovi. I think one was on one shoulder and  
9 the other on the other.

10 Q. Were you in any way able to determine the  
11 identity of any of these masked HVO Vitezovi?

12 A. Yes. I identified one of them by his voice.  
13 We knew each other well, so I had no difficulty in  
14 recognising his voice.

15 Q. Who was he?

16 A. His name was Robert Safradin.

17 Q. What, if anything, did Safradin and the  
18 others ask of you?

19 A. They asked for weapons, and they threatened  
20 should they find anything in anybody's apartment, that  
21 they would be killed. And he said that only the Turks  
22 should watch out, not the others.

23 Q. Were there others in the basement with you or  
24 were there only members of the Muslim community?

25 A. No, all the tenants of that building were

1 there or, rather, of that entrance.

2 Q. Does that mean that there were Serbs and  
3 Croats as well?

4 A. Yes.

5 Q. Did Safradin make any comments to you about  
6 what territory the HVO may have had or was interested  
7 in?

8 A. After that incursion of theirs into the  
9 basement, if I can call it that, we went outside. I  
10 asked when would all this stop, because we had no idea  
11 that anything like this could happen. We had had two  
12 clashes before, and we thought that this was like one  
13 of those. And he said, roughly, "Today we're clearing  
14 out Stari Vitez, and then only Grbavica will be left."

15 Q. Did you know who Safradin's superiors were?

16 A. By chance, as he was a member of the  
17 Vitezovi, I know that there was Darko Kraljevic, Niko  
18 and Jakov Krizanac, and some others.

19 Q. Sorry, what was the last name of Niko?

20 A. Krizanac, and Jakov Krizanac.

21 Q. Did you yourself know Darko Kraljevic?

22 A. I did.

23 Q. Did you remain in the basement or did you go  
24 elsewhere with Safradin and his colleagues?

25 A. I called them in, mainly in the interests of

1 my own family, and for things to calm down I invited  
2 them to go to my apartment, to have a drink together  
3 for them, to rest for a while.

4 Q. Did they do that?

5 A. Yes.

6 Q. Did they keep their masks on?

7 A. When we started climbing the steps and when  
8 we reached the apartment, all three of them took off  
9 their masks.

10 Q. Did you confirm it was, in fact, Safradin?

11 A. Yes.

12 Q. The morning of April 19<sup>th</sup> or thereabouts,  
13 were you taken from your apartment building, and if so,  
14 where?

15 A. Yes. A group of members of the Military  
16 Police, I think they were, came with a van.

17 Q. Whose Military Police, which Army?

18 A. HVO, of course.

19 Q. And what happened?

20 A. And they told us roughly this: that in the  
21 interests of our own personal security, it would be  
22 better for us to go with them because some soldiers  
23 coming from the front line might be irritated and that  
24 something could happen to us. So the reason --  
25 explanation given to us was that it was in the

1 interests of our personal security.

2 Q. And which group of persons were they  
3 addressing? Were they all women, children; can you be  
4 specific, please?

5 A. I believe I said I can't remember exactly  
6 whether those from 17 to 65 or from 18 to 60. I don't  
7 know exactly. But there was an age limit to it,  
8 because I know that a neighbour was left behind simply  
9 because he was beyond that age limit. But whether it  
10 was 17 to 60 or what was it, I don't remember exactly.

11 Q. And were they only men in this age group or  
12 were they also women?

13 A. No, no, no, only men, absolutely.

14 Q. Did you go to the SDK building?

15 A. Yes. That's where they took us straight by a  
16 van.

17 Q. Once you got to SDK, were you free to leave  
18 or were you detained?

19 A. We were imprisoned there, and when we arrived  
20 that area was already half full, I mean in the SDK, and  
21 we were kept there. We were detained and could not  
22 leave the area.

23 Q. You say "half full." Half full of what type  
24 of person? Who was being kept there?

25 A. Well, I should say that they were all, I



1 mean, Bosniaks, Muslims, within that age range  
2 somewhere between 18 and 60.

3 Q. Also only men?

4 A. Yes.

5 Q. Do you know the name "Zabac"?

6 A. Zabac?

7 Q. Yes.

8 A. He's a bloke from Vitez. His nickname was  
9 Zabac.

10 Q. What was his real name?

11 A. I don't know his real first name, but his  
12 surname was Kovac. I really don't know. I can't  
13 remember. But he was -- he was a well-known person in  
14 Vitez, because he used to play football and he played  
15 for the local club, and everybody knew him, more or  
16 less.

17 Q. Did you have any observation about Zabac's  
18 role in the SDK?

19 A. My impression is that he was one of the  
20 people who commanded, one of the Commanders, because he  
21 would come from time to time in an HVO Military Police  
22 vehicle, and the guards who were there for us would ask  
23 him various questions such as when would another shift  
24 come and things like that. So that is where I gained  
25 the impression that he was one of the Commanding Staff.

1 Q. Was it your observation that he was in the  
2 Military Police?

3 A. Yes, he was in the Military Police,  
4 because -- and in any event, he had the insignia, he  
5 had a white belt. And that vehicle -- I also knew that  
6 vehicle, and I knew that it was a vehicle that was used  
7 by the guys from the HVO Military Police.

8 Q. Did you personally know Mario Cerkez? If  
9 not, how did you come to know about him?

10 A. I did not know him personally, but it was  
11 owing to the local television. I think it was the -- I  
12 think that was the first time that he appeared there as  
13 an HVO Officer.

14 Q. Are you able to identify what his role was in  
15 the HVO, of what, if anything, he commanded, or what he  
16 commanded?

17 A. I think that afterwards -- that is, when I  
18 saw him first, I simply did not pay any attention to  
19 what his role might be or his function, but  
20 subsequently I think he figured as a Brigade Commander.

21 Q. Do you know his relationship to Darko  
22 Kraljevic?

23 A. I don't really know what the relationship  
24 was. That is, I do not have any definite pros or cons  
25 in one or the other direction. But on the basis of

1 what I knew and what I know now about the HVO structure  
2 and the organisation of Herceg-Bosna as a whole, I  
3 believe that the relationship was very close and that  
4 there was kind of a subordination relationship between  
5 them.

6 Q. Who was subordinate to whom, if you know?

7 A. I think that Cerkez was a superior. I  
8 believe that Kraljevic -- well, at least I knew him  
9 personally, and I do not think he really would have  
10 been able to do certain things by himself, for various  
11 reasons.

12 Q. For how long were you detained in the SDK?

13 A. I think it must have been some 15 days or so.

14 Q. And during those 15 days, were you taken to  
15 do any forced labour?

16 A. Yes.

17 Q. What was that labour?

18 A. Well, we were mostly taken to dig trenches  
19 and arrange these military facilities.

20 Q. During that particular period, where were the  
21 trenches located?

22 A. Well, what I know is where I was. The first  
23 time, it was a group of about five or six of us, and we  
24 were taken to an area below the village of Vranjska.  
25 Its name should be Rijeka, and we were there awhile and

1 then we were taken to the area of Kratine, which is  
2 below Kuber.

3 Q. These locations are both in the Vitez  
4 municipality?

5 A. Yes.

6 Q. Discussing Kratine, was the situation  
7 involving an active or not a terribly active front  
8 line?

9 A. The fire hardly ever stopped from both  
10 sides. There was shelling from time to time. But  
11 fighting, that is, attacks on one side on the other,  
12 no, as far as I know, there were none at that time.

13 Q. Perhaps I was less than clear. Was your  
14 trench-digging at Kratine on an active, dangerous front  
15 line?

16 A. Oh, yes. That, yes, because bullets were  
17 whistling by around us. Fortunately, nobody was hit,  
18 and even those shells were falling not too far from us,  
19 and fire was a common phenomenon during those days.

20 Q. Is Kratine anywhere near Nadioci?

21 A. Why, yes. You go to Kratine from Nadioci.  
22 How far that is, I wouldn't know, but perhaps a  
23 kilometre or two, not more than that.

24 Q. When you were taken to Kratine, who was the  
25 HVO person in charge of Kratine?

1           A.    Our first encounter, the person we met first  
2 was somebody who was called Cicko. I believe his last  
3 name was Bralo, but I know we all called him Cicko. He  
4 was the first man to see us up there, and he appeared  
5 to be some kind of a Commander.

6           Q.    And what particular aspect of your existence  
7 at Kratine did he control?

8           A.    By and large, the part which had to do with  
9 our accommodation, or perhaps food, and various types  
10 of ill treatment, if I may call it that.

11          Q.    Who is Ivica Vujica?

12          A.    Ivica Vujica at that time, that is, precisely  
13 at that time, they called him the Front Line Commander  
14 or the Front Commander, so that should mean the  
15 Commander of that Sector. I don't know. I don't know  
16 how long that particular front line segment was  
17 supposed to be.

18          Q.    Was he also at Kratine?

19          A.    Yes.

20          Q.    Sorry, what was your answer?

21          A.    Yes.

22                JUDGE MAY: Ms. Somers, when you get to a  
23 convenient moment. It's after 4.00.

24                MS. SOMERS: Certainly.

25          Q.    Are you aware of any special units that Ivica

1 Vujica was a member of?

2 A. He had a flash -- a patch of Jokers on his  
3 sleeve, so that there was no dilemma as to what unit he  
4 belonged. After all, nobody tried to conceal the  
5 fact.

6 MS. SOMERS: This is a convenient moment,  
7 Your Honour.

8 JUDGE MAY: Thank you. Just let me deal with  
9 two matters.

10 Tomorrow there will be an extended luncheon  
11 adjournment from half past 1.00 [sic] to half past  
12 2.00.

13 The other matter is more long-term, and that  
14 is about the dates. I mention it now. We have in mind  
15 at the moment beginning the Defence on the 10<sup>th</sup> of  
16 April. That will mean that there will be a month  
17 between Prosecution and Defence. However, the Defence  
18 will thereafter have two weeks, beginning the 17<sup>th</sup> of  
19 April and the 24<sup>th</sup> of April, additional which the Court  
20 will not be sitting. We shall resume on the 2<sup>nd</sup> of  
21 May. Those dates may be subject to change, but at the  
22 moment everyone should work on that basis.

23 Did I say "half past 1"? Half past 12  
24 to half past 2 tomorrow.

25 Mr. Ahmic, could you be back, please,

1 tomorrow at half past 9. Could you remember this in  
2 the adjournment and any others there may be: Don't  
3 speak to anybody about your evidence until it's over,  
4 and don't let anybody speak to you about it, and that  
5 does include the members of the Prosecution. So would  
6 you be back, please, at half past 9 tomorrow  
7 morning.

8                               --- Whereupon the hearing adjourned at  
9                               4.15 p.m., to be reconvened on  
10                              Thursday, the 3<sup>rd</sup> day of February, 2000,  
11                              at 9.30 a.m.

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