



Khieu Samphan's defense counsel Arthur Vercken leads the questioning of witness Oeun Tan for the defense.

Court Adjourns Early as Defense Proceeds Swiftly through Cross-Examination

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Evidentiary hearings resumed Thursday, June 14, 2012 at the Extraordinary Chambers in the Courts of Cambodia (ECCC) with the continued testimony of former bodyguard of Pol Pot, Oeun Tan, in Case 002 against accused Nuon Chea, Khieu Samphan, and Ieng Sary. Though all parties of the defense put questions to the witness, cross-examinations concluded shortly before noon. With no reserve witness waiting to testify, President Nonn postponed further proceedings until the following week, when witness TCW 321 would begin testimony before the Chamber.

Three hundred students from Phnom Kravanh High School in Svay Rieng province came to view the morning's proceedings; leaving around 4:00 a.m., the group made the 140 km trip to arrive before the Chamber convened at 9:00 a.m. Despite the early departure and five-hour bus ride, the students appeared refreshed and composed, chatting enthusiastically with one another before being drawn to silence as the Chamber curtain opened before them. They presented themselves as model students for the duration of morning proceedings, sitting in silent fascination while court proceeded in front of them.

The 100 villagers who arrived from Kandal province shortly after noon, however, had to settle for a tour of the facilities. The villagers appeared disappointed that they had just missed the opportunity to watch the trial.

Witness Struggles to Understand Defense Counsel's Questions

After granting Ieng Sary permission to participate remotely in proceedings from his holding cell, President Nonn handed the floor to International Co-Lawyer for Khieu Samphan Arthur Vercken. The first of three defense lawyers who would take the floor that day, Mr. Vercken jumped right into questioning Oeun Tan on his memory, his ability to recollect events, and contradictions between statements he had made in his interview with the Office of Co-Investigating Judges (OCIJ) and his testimony before the Chamber.

Mr. Vercken, whose initial question was long and drawn out, elicited censure from President Nonn before the witness was able to respond. Appearing eager once again to bestow guidance on the counsel in the Court, the president reminded Mr. Vercken, among other things, to put simple questions to the witness that remain within the realm of his knowledge and understanding.

After a three-minute tutorial on clear and “efficient” examination technique from the president, Mr. Vercken responded, “Mr. President, I am not entirely sure what your instruction is.”

“The witness cannot understand your question. He is quiet!” President Nonn retorted loudly.

Mr. Vercken thanked the president and attempted to rephrase his question. “Was Pol Pot with you in Kampong Cham on the day of Phnom Penh?” Mr. Vercken repeated.

Instead of answering the question, Mr. Tan proceeded to instruct Mr. Vercken on his trial technique as well. “I think to be more precise, you should put your question in short because I had problems listening to the questions in long form,” he stated.

“Mr. Witness, the question is as simple as this!” the President interjected, after which he repeated Mr. Vercken’s question. Mr. Tan responded, “Yes, he was. Pol Pot was in Kampong Cham.”

Mr. Vercken then asked the witness how long after this date “he” left for Phnom Penh. Mr. Tan replied, “A fortnight later I went to Phnom Penh.” Clarifying, Mr. Vercken told the witness he did not ask how many days until *he* entered Phnom Penh after Pol Pot but how many days until *Pol Pot* entered Phnom Penh after the liberation.

When Mr. Tan provided another extraneous response, the President interrupted again, “Mr. Witness, please try your best to listen carefully to the question. The question is more about Pol Pot.”

Thanking the President for clarifying his question to the witness, Mr. Vercken repeated his question once again. Mr. Tan responded on topic and informed the Court that Pol Pot left Kampong Cham a fortnight after the fall of Phnom Penh. He clarified his earlier statement and explained that he himself was called to travel to Phnom Penh a fortnight after Pol Pot had left Kampong Cham for Phnom Penh. Pong, who accompanied Pol Pot to Phnom Penh two weeks previously, requested that Mr. Tan come to Phnom Penh.

“Does that mean you witnessed Pol Pot and Pong depart for Phnom Penh at the end of April or early May of 1975? Is this correct?” Mr. Vercken inquired. The witness said it was. Asked if others left along with Pol Pot and Pong, Mr. Tan replied, “There were other people, but I don’t know who they were.”

“Does that mean Khieu Samphan did not accompany Pol Pot during that trip?” Mr. Vercken followed. The witness verified that Khieu Samphan did not travel to Phnom Penh with Pol Pot. He also confirmed that, upon entering Phnom Penh, he went directly to Office K-1, which was, he added, fully operational upon his arrival.

Moving onto the topics of meetings held at K-1, Mr. Vercken reminded the witness of the two kinds of meetings he had discussed during his OCIJ interview as well as in his testimony the previous day. The meetings, Mr. Vercken continued, were larger meetings composed of sector and zone committee members as well as head party leaders, and smaller, ad-hoc “special meetings,” composed of only head party leaders. Mr. Tan confirmed his statements.

Mr. Vercken, however, informed the witness of a discrepancy between his statements before the OCIJ and his testimony before the Trial Chamber. The discrepancy, the counsel explained, concerned the frequency in which the large meetings were convened.

When presented with one statement where he had said the meetings took place three or four times a month and another statement where he had said they took place twice a month, Mr. Tan contended, “I am illiterate and I don’t understand politics. I am confused and I am forgetful.”



Explaining that he understood that these events occurred over 30 years prior to the current date, Mr. Vercken, explaining his line of reasoning in detail, inquired, “So are you unable to say with certainty those 44 or 88 meetings were attended by Khieu Samphan?”

International Senior Assistant Prosecutor Tarik Abdulhak made the first objection of the morning, “It is a very long compound question with a number of assertions put to it. ... If that could be done in a more structured way, I think the witness would be less confused.”

“Mr. President, it is possible that the witness has understood the question. Perhaps we should put it to the witness first,” Mr. Vercken responded.

President Nonn announced, “Counsel is instructed to rephrase the question. I am also of the view that the question is long.”

After Mr. Vercken rephrased his question, Mr. Tan replied that he did not understand the topics being discussed in the meeting “As the president said, ... as an old person with a weak brain, I cannot understand your questions. Please ask shorter questions for me to understand.”

“My question,” Mr. Vercken explained diligently, “is not on the subject of the meetings, but on the persons attending the meetings at K-1.” The witness, as he had stated the previous day, confirmed Khieu Samphan attended the large meetings.

Mr. Vercken replied that he understood that. He clarified once again that he was inquiring whether Khieu Samphan attended all these meetings during the three and a half years. Mr. Tan replied that Khieu Samphan had.

“You mean *all* of the meetings within three and a half years?” Mr. Vercken asked incredulously. “Yes, it is true,” the witness replied.

When Mr. Vercken asked the witness if he could recall any of the dates these meetings took place, the witness sat silent, frowning his brow, appearing lost in complex thought. After Mr. Vercken repeated his question, Mr. Tan responded, “No, I cannot tell you about the dates. It was many years ago. ... But I just know that there were meetings.”

“So I put it to you, Sir, it is impossible 30 years after the fact to say that a person attended 50 meetings, which you yourself did not attend! Do you agree?” Mr. Vercken asked.

The president interrupted once again, informing Mr. Vercken that the question had already been answered.

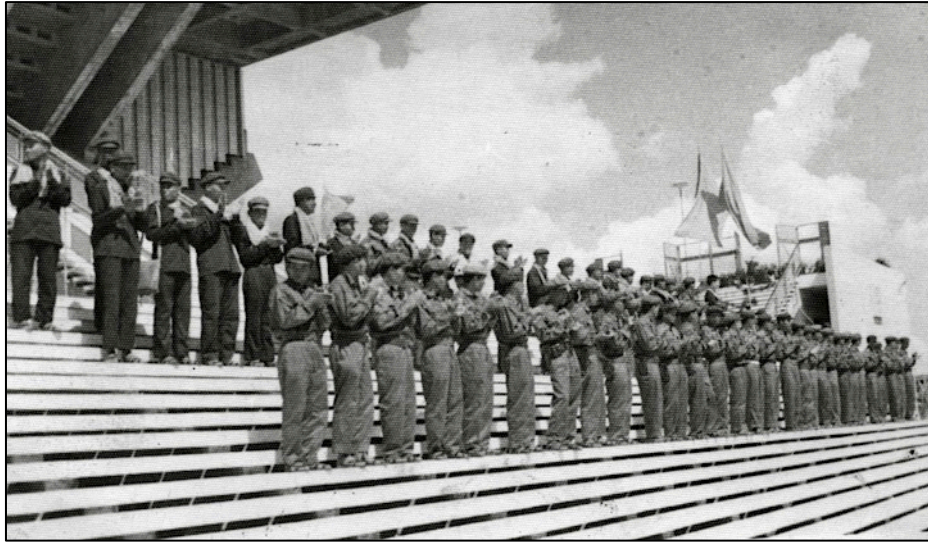
Mr. Vercken Presents Witness with Discrepancies between Interview and Testimony

Moving on, Mr. Vercken informed the witness that there was another issue he “did not understand”; this issue concerned a few statements on the smaller meetings that he had made in his OCIJ interview. Mr. Vercken proceeded to read the following excerpt from the witness’s OCIJ interview: “The special meetings of less than 10 were held with regard to food supplies at road blocks.”

Mr. Vercken then asked, “How are you capable of citing the contents [of the small meetings]?” Mr. Tan asked to consult with his duty counsel before responding. A few minutes later he replied, “For big meetings, I learned about the big meetings from Pong, the meetings of about 20 people. Then we had smaller meetings, meetings [of] about 10 people. I knew about these meetings from Pong as well. He asked me to prepare for these smaller meetings. He told me that about 10 attendants would be there.”

Hunching over the podium and staring directly at the witness, Mr. Vercken countered, “You stated in your prior interview that you did not prepare for smaller meetings, precisely because they were smaller.” Mr. Tan explained, “Yes, for smaller meetings ... I personally was a body guard. During my previous interview, I forgot to mention about that. But I maintain what I answered in my previous statements.”

“Are you saying that you prepared or did not prepare for smaller meetings?” Mr. Vercken asked, seeking clarification. “I would like to indicate this very clearly, from the best of my memory, I did not prepare for smaller meetings,” Mr. Tan asserted, “I answered a while ago that I did prepare the smaller meetings, but I would like to reconsider that I did not prepare the smaller meetings. Pong gave orders for the preparations of the smaller meetings.”



*Khmer Rouge soldiers gather at Olympic Stadium during the national meeting of Cambodian Army.
(Source: Documentation Center of Cambodia)*

Witness Informed of Contradictory Statements on Military Meetings at Olympic Stadium

Moving on, Mr. Vercken put a series of questions to the witness regarding meeting at the Olympic Stadium in Borei Keila in Phnom Penh. Mr. Tan explained, “In the meetings I saw people dressed in military uniforms. There were about 100 people.” He then added that he attended these large meetings twice between 1975 and 1979.

Reading from the witness’s OCIJ interview, Mr. Vercken quoted the following: “Those meetings held with soldiers took place twice a year.” He countered, “Which means that more than six such meetings were held during the DK regime. Which is the truth? Which of the statements are we to consider today?”

“I must consult with my duty counsel,” the witness requested again.

Mr. Abdulhak addressed the Court then, stating that the witness may have been responding in two different contexts, one regarding the number of meetings that were held, the other regarding the number of meetings he attended.

“Your observation is accurate,” President Nonn clarified, “We have two different contexts here. The one in the interview of the OCIJ. The other is the one put by Counsel. The one from the interview is the number of times the meetings were held. The other is the number of times the witness was present at the meetings.”

Moving on, Mr. Vercken put another question to the witness, asking if he remained Pol Pot's bodyguard from 1975 all the way to the Vietnamese invasion in 1979. Mr. Tan informed Mr. Vercken he was Pol Pot's bodyguard between 1975 and 1979.

"So were you informed of all Pol Pot's travels and trips?" Mr. Vercken followed. The witness once again requested a moment to consult with his duty counsel; he never answered the question.

Mr. Vercken gave him another question. "Even if you were not yourself responsible for accompanying Pol Pot on one of his trips, one of your subordinates was. Is that correct?" Mr. Tan replied, "Yes, it is."

"Therefore," Mr. Vercken concluded, "You would be aware of every trip Pol Pot made to the Olympic Stadium during that time?" The witness replied that he would be aware. However, Mr. Tan was not able to recall the number of times Pol Pot attended military meetings at the Olympic Stadium.

"Did you remember the number of times he attended these meetings in 2008 when you were being interviewed?" Mr. Vercken inquired. The witness replied, "I may need your citing of the statement I gave before the co-investigating judges to refresh my memory." Complying, Mr. Vercken proceeded to read Mr. Tan's OCIJ statement from 2008: "They were not frequent. Sometimes twice a year. And Pol Pot was the person who called the meetings. I remembered that Son Sen attended the meetings. As for the other leaders like Nuon Chea, Ieng Sary, and Khieu Samphan, I did not see them attend the meetings."

The witness recalled the events he discussed in the interview and advised Mr. Vercken that he would be more precise if the counsel simply read to him the OCIJ statements.

"The problem I have, Mr. Witness, is this," Mr. Vercken explained, reading from another OCIJ statement: "There were only military meetings at the Olympic stadium. They were chaired by Pol Pot and they were held every three to four months." He then challenged, "Within the span of one page, Sir, you seem to double the number of meetings that were held. You seem to change your statement within one single testimony. How do you explain that, Witness?"

"As said, I sometimes do not remember the details. However, as long as the statement I gave before the co-investigating judges is referred to, then I will stand by that," Mr. Tan replied.

"Therefore," Mr. Vercken followed, "what exactly are you confirming with respect to the meetings at the Olympic Stadium?"

Before the witness could answer, International Civil Party Lead Co-Lawyer Elisabeth Simonneau Fort addressed the Court, "He did not say that those meetings occurred twice a year, he said they occurred *sometimes* twice a year. ... I believe a clarification is required."

"What do you respond to that?" Mr. Vercken asked to the witness. "I agree with what counsel for the civil parties just stated. Sometimes the meetings took place twice a year, sometimes more," Mr. Tan asserted.

Mr. Vercken Discusses Possible Unrecorded, Undocumented OCIJ Interview

Changing subjects, Mr. Vercken asked the witness if he could recall the duration of his 2008 OCIJ interview. Mr. Tan said he believed the interview took an entire day; however, he advised Mr. Vercken, “You may refer to the record of the exact interview.”

“It was only four years ago, Mr. Witness. It was not long ago!” Mr. Vercken countered.

Mr. Abdulhak objected once again, informing the Court that the witness already stated he could not recollect, and the answer was clearly indicated in the interview transcript.

Mr. Vercken moved on, informing the witness that he was concerned about a series of statements in his OCIJ interview.

“I find them quite astonishing and I will tell you why,” Mr. Vercken continued, “The investigators wrote, and I quote, ‘You told us that there was a meeting at the Olympic Stadium. Did you know what the agenda of those meetings were?’ And yet at the time, on this particular record, you had not stated anything about meetings at the Olympic Stadium.” Mr. Vercken also informed the witness that later on in the same OCIJ interview transcript, “this rather strange occurrence materializes once again. ... The investigators ask you, and I quote, ‘You said you accompanied Pol Pot in 1975 and 1976.’ ... However you had not yet provided any specific dates.”

Mr. Vercken continued his explanation, stating that he had listened to the audio recording of Mr. Tan’s interview on October 9, 2008, during which he noticed the witness and the investigators making references to a previous discussion held on October 8, 2008.

President Nonn interrupted, “Counsel, could you advise the chamber whether you are putting questions to the witness or making any kind of statement? ... Are you making a closing statement?”

Mr. Vercken replied, “Mr. President, with respect, I am not making a closing argument.”

“Then you should shorten your question,” President Nonn interjected, “If it is long like that, then no one understands! The questions should be specific and straightforward. ... And I think, again, if the question is not understood by the parties to the proceedings, ... this will not lead us to ascertaining the truth. ... I already informed you of this yesterday.” President Nonn, furiously flipping papers on the bench before him, then proceeded to read to Mr. Vercken ECCC Internal Rule 92.

Thanking the president, Mr. Vercken responded, “I believed you understood my purpose of this questioning, which is to test the credibility of the witness.” Mr. Vercken then proceeded with his examination.

Mr. Vercken clarified his question and continued to put to the witness a number of questions regarding the number and duration of Mr. Tan’s OCIJ interviews. The witness, however,

continued to inform Mr. Vercken that his memory was poor, that he was uneducated, and that the counsel should refer to the OCIJ transcript to ascertain the answer.

After Continued Questioning, Witness Recalls Meeting with OCIJ More than Once

Mr. Vercken resumed his discussion of the witness's OCIJ interviews when proceedings resumed after the morning break. "Do you only remember meeting with tribunal investigators in October 2008, or did you meet with them on any other occasions?" he asked again.

"I would like to clarify this issue," Mr. Tan responded, "The investigators only interviewed me once. As I indicated previously, I may forget how many times I was interviewed."

When the witness asked to consult with his duty counsel for a sixth time that morning, International Co-Lawyer for Ieng Sary Michael Karnavas stood and addressed the Court, "We don't know what the lawyer may advise him. He may give him the answer! I object!"

After briefly consulting his fellow judges, President Nonn responded, "I would like to mind the witness and his duty counsel once again that the role of the duty counsel is to pay attention only to questions that may require the witness to give self-incriminating answers." President Nonn did not mention why Mr. Tan had been allowed to consult the duty counsel the previous five times, however.

Continuing, Mr. Vercken repeated his question twice and received the same response – that the witness only met with OCIJ interviewers once.

When Mr. Vercken asked, "Do you remember meeting them in 2009, six months after the first interview?" Mr. Tan appeared to suddenly change his answer. He responded, "I do not remember the date, but there was another interview." He could not recall the details but remembered having questions put to him that were subsequently recorded.

As his final statement, Mr. Vercken referred the Court to certain passages from the audio recordings of the witness's OCIJ interview taken on October 8, 2008.

Witness Says Villagers Were Happy When They Heard about Phnom Penh Liberation

National Co-Lawyer for Nuon Chea Son Arun informed the Court that he had a few questions.



Looking down at a small notebook, Mr. Arun proceeded to ask the witness about his duties between 1970 and 1975. "Was your job easy, difficult, or dangerous?" he asked.

"When I was a messenger," Mr. Tan responded, "the job was not difficult."

"When you carried letters long distances," Mr. Arun continued, "Did you ever feel like you would be arrested?" The witness responded, "I had no fear." Asked if he was trained to become a messenger, the witness replied, "As I stated, Pai instructed me how to carry letters."

Switching topics, Mr. Arun asked the witness, “What was your general impression of Trapaing Toeng in Kampong Cham after Phnom Penh was liberated?” Mr. Tan explained, “The people were happy. They were joyful because the country was liberated. We did not have any bad feeling about this.”

Regarding his impression of Trapaing Toeng when he left for Phnom Penh, Mr. Tan explained, “When I left for Phnom Penh, I noted the situation was normal. People went about their lives as usual.”

Mr. Arun inquired whether the witness observed anything odd while he travelled. Mr. Tan replied, “I saw people coming from Phnom Penh. I saw people with children walking on the road near Prek Kdam, ... which was very crowded.” Upon his arrival in Phnom Penh, he continued, “The city was quiet; ... I was suspicious. I was thinking ‘Where could these people have gone to?’”

The witness confirmed that his superior was Pong, who was in charge of Office 870. “What was he like?” Mr. Arun asked. “Pong was a gentle, friendly person. He was very kind to every combatant. He was not a mean person,” Mr. Tan replied. Pong, he added, had been with Pol Pot in Trapaing Toeng before moving to Phnom Penh.

Witness Says Nuon Chea Was a “Gentle Person”

Given the witness had testified to knowing Nuon Chea, Mr. Arun asked the witness to describe “Mr. Chea’s character.” Mr. Tan elaborated, “According to my interactions with him, being close to him, Mr. Nuon Chea is a gentle person, an educated person, a good advice giver. He educated people to be good.”

With that amiable response, Mr. Arun moved on to inquire again about the meetings at Olympic Stadium. “Nuon Chea, Ieng Sary, and Khieu Samphan did not attend the meetings because they were attached to other sections,” Mr. Tan explained, “Where the military was concerned, Son Sen attended the meetings.”

“Did you know Son Sen?” Mr. Arun followed. Mr. Tan responded, “I just heard Son Sen attended the meetings. I never saw him in person.” He was not aware of Son Sen’s role within the party.

Mr. Arun proceeded to inform the witness of Nuon Chea’s, Khieu Samphan’s, and Ieng Sary’s respective roles within the Communist Party of Kampuchea (CPK). Having been given that information, Mr. Arun asked the witness if he could explain why the three were not at the Olympic Stadium meetings. “I do not know. I just did not see them there,” Mr. Tan responded.

Witness Describes Revolutionary Flag, Pong’s Disappearance, and Pol Pot’s Telegrams

Changing topics, Mr. Arun asked the witness to describe the CPK publication *Revolutionary Flag*. “The magazines were of women carrying bundles of rice grains and a sickle and a hammer as a logo,” Mr. Tan explained.

“Did you open or read these magazines?” Mr. Arun inquired. “I just looked at the pictures. I looked at the pictures. I noted the women carrying the rice. I saw the sickle and the hammer, but I couldn’t read anything,” Mr. Tan replied, adding, “The writings were typed, and on some pages there were colors.”

Mr. Arun asked how often the magazines were published. “*Revolutionary Flags* were published in 1975, 1976, and the following years, and there were frequent issues,” the witness responded. However, he explained, he never knew of nor was ever informed of the content of the magazines.

Mr. Arun moved to the subject of Pong’s disappearance. “I would like to also talk about the disappearance of Pong,” Mr. Tan informed the Court, “Personally I was suspicious because I didn’t see him on several consecutive days, and I was doubtful because normally he would come to the place [Office K-7] and he did not turn up. I kept asking people for information, but no one could tell me about his whereabouts. And I was worried and afraid.” Continuing, he recalled, “Pol Pot told me he had no idea where Pong could have been. And he asked me to work hard. I was asked not to be worried or afraid and I was asked to continue working.”

“Why were you afraid?” Mr. Arun inquired. “I was afraid not because I knew he was arrested or tied up – I did not know anything about that – but because Pong disappeared for several days,” Mr. Tan explained, “I felt within me afraid, but as time passed by I no longer thought of that. I received instructions from Pol Pot not to be worried.”

Regarding message or telegram deliveries, Mr. Arun asked the witness, “Yesterday, Judge Lavergne asked you about the messages Pol Pot asked you to deliver to Nuon Chea. Were you the one who personally delivered those messages? Or did you hand those messages to someone else to deliver to Nuon Chea?” The witness responded, “I asked my subordinates to deliver those messages to Nuon Chea.”

Mr. Arun concluded his examination.

Mr. Karnavas Questions Witness on OCIJ Interview That Was Not Recorded

Mr. Karnavas took control of floor as the last member of the defense to put questions to the witness; he informed the Court he had few very questions, mostly for “clarification purposes.”

Mr. Karnavas began by inquiring whether the witness had an opportunity to listen to the audio recordings of his OCIJ interview. Mr. Tan responded that he had not listened to the recordings but recalled someone reading him his OCIJ statements before testifying before the Chamber.

“Do you have an independent memory of being questioned before being tape recorded?” “Yes,” the witness replied, “It was once.” Mr. Tan then confirmed that co-investigators had questioned him on both October 8, 2008, and October 9, 2008. However, he added, the interview on October 8 was



not tape-recorded. “This is not reflected in the summary prepared by the office of the co-investigating judges,” Mr. Karnavas informed the Court.

“Do you recall what questions were posed to you during that entire day, that is the day before you were tape recorded?” Mr. Karnavas inquired. “It is hard to answer this questions because I have a poor memory,” Mr. Tan responded.

Mr. Karnavas followed, “Were any documents shown to you or read to you?” The witness replied that he was read his statements after the interview had concluded. Mr. Karnavas clarified his question, “Were the investigators reading documents or contents from documents to refresh your memory?” Mr. Tan could not remember. “So it would be fruitless for me to ask you the topics being discussed on that particular day, or do you recall?” Mr. Karnavas asked again.

“At the time, as I said, I did not remember everything,” Mr. Tan responded, “I was confused as well when I was answering the questions.”

“Were you refused and forgetful when you met with the officers of the co-investigative judges on the 8th of October 2008 when those answers were *not* tape recorded?” the counsel challenged. “As I said,” the witness replied, “I am forgetful.”

Mr. Karnavas questioned, “Did they assist you – that is giving you information that would be helpful – for the following day, that is the day when your answers were tape recorded?” Mr. Tan responded, “It is hard for me to answer.”

“Sir, I want to thank you,” Mr. Karnavas concluded and informed President Nonn he had no further questions.

President Nonn, informing the witness that his testimony had come to an end, also Mr. Tan for his effort in “ascertaining the truth.”

Given the witness’s testimony had concluded earlier than expected and there was no reserve witness waiting to be called, President Nonn adjourned proceedings for the day, informing the Chamber that testimony for witness TCW321 would begin Tuesday, June 19, 2012, at 9:00 a.m.