អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de première instance

ឯកសារដើម
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ថ្ងៃ ខែ ឆ្នាំ (Date): 02-Sep-2011, 13:48
CMS/CFO: Uch Arun

TRANSCRIPT OF PRELIMINARY HEARING ON FITNESS TO STAND TRIAL PUBLIC

Case File Nº 002/19-09-2007-ECCC/TC

29 August 2011, 0900H

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

Trial Chamber Greffiers/Legal Officers:

SE Kolvuthy
Matteo CRIPPA
DUCH Phary

For the Office of the Co-Prosecutors:

SENG Bunkheang
Tarik ABDULHAK
PAK Chanlino
Sarah ANDREWS

For Court Management Section:

UCH Arun

The Accused: NUON Chea
IENG Sary
IENG Thirith

For the Accused: SON Arun
Michiel PESTMAN
PHAT Pouv Seang
Diana ELLIS
ANG Udom
Jasper PAUW

For Civil Parties: PICH Ang
Élisabeth SIMONNEAU-FORT
SAM Sokong
Philippine SUTZ

I N D E X

WITNESS: Pr. JOHN P. CAMPBELL

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ABDULHAK	English
MR. CAMPBELL	English
JUDGE CARTWRIGHT	English
MS. ELLIS	English
JUDGE LAVERGNE	French
MR. NUON CHEA	Khmer
MR. PAUW	English
MR. PESTMAN	English
MR. PHAT POUV SEANG	Khmer
THE PRESIDENT (Nil Nonn, Presiding)	Khmer
MR. SENG BUKHEANG	Khmer
MS. SIMONNEAU-FORT	French
MR. SON ARUN	Khmer

PROCEEDINGS

(Judges enter courtroom)

MR. PRESIDENT:

Please be seated.

A warm welcome to all parties present today. In my capacity as the President of the Trial Chamber and on behalf of my fellow judges, I would like to welcome the Co-Prosecutors, the co-lawyers for the Accused, the Civil Party Lead Co-Lawyers to this hearing.

The purpose of this hearing is to allow consideration of all issues arising, specifically, from expert report completed recently by Trial Chamber expert, Professor John Campbell, in response to challenges by several Accused to their fitness to stand trial and their ability to sit for lengthy periods during the trial proceedings. May I now declare the hearing open?

Ms. Se Kolvuthy, please report the attendance of parties during this hearing.

THE GREFFIER:

Mr. President, parties invited in these proceedings today are as follows: prosecutors in attendance now and the defence for Ieng Thirith and Ieng Thirith is also present. The defence for Nuon Chea, Mr. Son Arun and Mr. Michiel Pestman, are present and defence for Ms. Ieng Thirith, Mr. Phat Pouv Seang and Ms. Diana Ellis, is present. Ms. Diana Ellis is present today and a representative for civil parties are present as follows and our

expert, Professor Campbell, is also here. He is waiting for -- to be invited by the Chamber. And experts will have to take an oath before the Chamber.

In today's hearing, there are -- there is also the Accused, Ieng Sary, and his defence lawyer, Mr. Ang Udom, as an observer to the hearing.

MR. PRESIDENT:

Thank you very much, Ms. Se Kolvuthy.

[09.03.29]

The Chamber would like to check for recognition of foreign lawyers if not previously recognized by the Chamber in Case 002. In accordance with Rule 22.2(a), the Chamber would like to ask the national defence lawyer for Ieng Thirith to seek recognition of foreign lawyers whose recognition has not been granted by the Chamber.

MR. PHAT POUV SEANG:

President, Your Honours, Members of the Bench, prosecution and everyone around the room, my name is Phat Pouv Seang. I am a national lawyer for the Accused, Ieng Thirith. I would like to ask the Trial Chamber to recognize my learned colleagues to represent my client in -- during this hearing.

Thank you.

MR. PRESIDENT:

Ms. Diana Ellis, please rise. Ms. Diana Ellis, you are now recognized by this Trial Chamber as a defence lawyer for the

purposes of the trial proceedings before this Chamber. Pursuant to this recognition, you enjoy the same rights and privileges as a national lawyer. Please be seated.

MS. ELLIS:

Thank you very much, Your Honours.

MR. PRESIDENT:

Having completed all formalities concerning the recognition of foreign lawyers, the hearing will now proceed.

[09.06.18]

On the 19th of January and the 2nd of February and the 21st of February 2011, respectively, the defence for the Accused, Ieng Sary, Nuon Chea and Ieng Thirith, filed motions before the Chamber challenging their fitness to stand trial and their ability to sit for lengthy periods during trial proceedings.

In response, the Trial Chamber, in an Order dated the 4th of April 2011, appointed Professor John Campbell, a geriatrician, as an expert and requested him to conduct a medical assessment of all Accused who challenged their fitness to stand trial and their ability to sit for lengthy periods during trial.

The fourth Accused, Khieu Samphan, chose not to avail himself of this assessment and has confirmed the Trial Chamber -- that he is currently fit to stand trial.

Professor Campbell was requested to prepare a written report in respect of each individual Accused and to indicate whether expert medical or psychiatric examination and report, other than in the

expert field of geriatrics, may be required to enable the Trial Chamber to reach a determination of their fitness to stand trial. Professor Campbell completed his reports in relation to all three Accused in June 2011. The expert reports of Professor Campbell concerning the Accused, Ieng Sary, concluded that this Accused was fit to stand trial and that no modifications to the Chamber's trial schedule are presently required in relation to him.

And the Ieng Sary defence has since indicated to the Chamber that they do not intend to contest this assessment or otherwise challenge Professor Campbell's report in relation to the Accused, Ieng Sary. The Ieng Sary defence are accordingly present today in the capacity as observers only, and they may remain for any part of the hearing that is conducted in public.

[09.09.26]

The expert's reports in relation to the Accused, Nuon Chea and Ieng Thirith, were distributed on a confidential basis to the relevant parties on the 13th of June 2011 and the 23rd of June 2011, respectively.

In his report concerning the Accused, Nuon Chea, Professor Campbell concluded that the Accused, Nuon Chea, is not presently unfit to stand trial. In July 2011, the Nuon Chea defence filed a number of objections to this report and the Co-Prosecutors, their response within the deadlines set by the Chamber.

In his report concerning the Accused, Ieng Thirith, Professor Campbell concluded that the Accused suffers cognitive impairment

compromising her ability to participate fully in her trial and to exercise her fair trial rights. The Ieng Thirith defence teams have filed observations in relation to this report and the Co-Prosecutors, their response also within the deadlines set by the Chamber.

In relation to the Accused, Ieng Thirith, Professor Campbell made a number of consequential recommendations; the most significant of which was an authorization of her long "drug" regime in order to assess whether or not this would have any impact on the expert's earlier assessment.

Professor Campbell returned to Phnom Penh last week to reassess the Accused, Ieng Thirith, following implementation of this recommendation in advance and in advance of this hearing. And then, he conducted assessment on Nuon Chea, and then he will submit his written report in due course.

[09.11.57]

In consequence of Professor Campbell's report, the Trial Chamber has since appointed supplemental psychiatric expertise to examine the Accused, Ieng Thirith, pursuant to Internal Rules 31 and 32. Assessment of her by specialist psychiatrist will commence shortly.

The purpose of the present hearing is limited to consideration of all issues raised by the reports produced by Professor Campbell in relation to both Accused, Nuon Chea and Ieng Thirith.

To assist in preparation for this hearing, the Chamber compiled

for the parties a list of relevant documents cited by the expert in his reports pertaining to Accused, Ieng Thirith and Nuon Chea, as well as a number of clarifications. Additional clarification, if required, may be sought by the parties from the expert during the hearing.

A few remarks regarding the structure and modalities for the conduct of this hearing: the Chamber is aware that while the expert reports pertaining to the Accused, Ieng Thirith and Nuon Chea, raise different issues and require consideration by the Chamber in separate hearings, many of the observations made by both teams in relation to their respective expert reports are similar or overlapping; for example, concerning for the experts methodology.

To avoid repetitious questioning of the expert, the Chamber will, therefore, commence this hearing as a joint hearing involving both defence teams. The Nuon Chea and Ieng Thirith defence teams were requested by the Chamber to collaborate and ensure that all questions common to both teams are put to the expert in a coordinated manner during this initial joint session.

[09.14.30]

At the conclusion of this joint session, the Chamber will then proceed to individualized hearings in relation to the expert reports concerning Accused, Ieng Thirith and Nuon Chea. The Chamber will commence with a consideration of the expert's report concerning Accused, Ieng Thirith, in the presence of her defence,

the Co-Prosecutors and the Civil Party Lead Co-Lawyers; followed by a hearing on the issue raised by the expert report for Accused, Nuon Chea, in the presence of his defence, the Co-Prosecutors and the Civil Party Lead Co-Lawyers.

At all stages, the Chamber will commence the questioning of the expert. The floor will then be given to the defence teams, Ieng Thirith and followed by Nuon Chea, and then followed by the Co-Prosecutors and the Lead Co-Lawyers may then speak.

In the interest of efficiency, the Lead Co-Lawyers should limit their intervention only to areas where they differ from the Co-Prosecutors.

Finally, the defence teams will be given the last response.

The Chamber has been seized of several motions requesting confidentiality in relation to the expert reports. In accordance with Internal Rule 79.6, the Chamber advises that these hearings will be presumptively public and conducted to the maximum extent possible in open session. The Chamber has, however, indicated a need to balance the rights of the Accused to privacy concerning medical information against the public's right to know the basis on which an application on fitness to stand trial will be determined.

[09.17.01]

It has, therefore, agreed on the following modalities for the conduct of this hearing: all hearings will commence in open session; where any party considers there to be a need to proceed

only in closed session, an oral motion may be made to the Chamber; these applications will be heard in open session and granted by the Chamber where the Chamber considers the interest of justice to so require.

Should the Chamber permit any hearing to proceed in closed session, the parties are requested to consolidate all matters for consideration in camera within a single, non-public session in order to ensure efficiency and minimize disruption to the public.

During any in camera session, which may be granted by the Chamber, the civil parties actually in the courtroom may remain. They are, however, reminded that the information they will hear is confidential and must not be shared with anyone outside these proceedings.

[09.18.40]

Professor Campbell, you are invited to come to the seat that has been reserved for the expert before the Chamber, please.

MR. PRESIDENT:

Good morning, Professor Campbell. Your name is John Campbell. Is that correct?

MR. JOHN CAMPBELL:

That's correct.

MR. PRESIDENT:

How old are you, Professor Campbell, now?

MR. JOHN CAMPBELL:

I'm 65 years old.

MR. PRESIDENT:

What is your nationality, Mr. Campbell?

MR. JOHN CAMPBELL:

I'm a New Zealand citizen.

MR. PRESIDENT:

Do you have any relation with any party in these proceedings?

MR. JOHN CAMPBELL:

(Recording malfunction) with any party in these proceedings.

MR. PRESIDENT:

Thank you, Professor Campbell. In accordance with Rule 31.2 of the Internal Rules, you are required to swear an oath before providing testimony before the Chamber.

[09.21.18]

MR. JOHN CAMPBELL:

I solemnly swear that I will assist the Trial Chamber honestly, confidentially and to the best of my ability.

QUESTIONING BY THE BENCH:

BY MR. PRESIDENT:

Q. Thank you. Thank you, Professor Campbell. Professor Campbell, could you please state your qualifications -- the relevant qualifications and experience in geriatric expertise and your practice in this field of expertise? If you can do it, please, you may now proceed.

MR. JOHN CAMPBELL:

A. I qualified in medicine in 1969. I then entered into

post-graduate training as a physician specializing in internal medicine. In my training, I specialized in internal medicine with a particular interest in the care of older people -- in geriatric medicine. I undertook training in New Zealand and in the United Kingdom and in Canada before returning to a consultant post in New Zealand.

I then became a senior lecturer in geriatric medicine at the University of Otago Medical School in Dunedin and in 1984 was appointed as Professor of Geriatric Medicine.

I undertook post-graduate research in conditions affecting older people and gained my doctorate through thesis.

I'm a Fellow of the Royal Australasian College of Physicians and a Fellow of the Royal College of Physicians of London.

[09.23.25]

I've practiced in geriatric medicine now as a consultant since 1976. Currently, I spend half my time in consultant clinical practice and half my time in teaching and research in geriatric medicine.

Q. Thank you, Professor Campbell.

MR. PRESIDENT:

I will now hand over to Judge Cartwright to further the questioning in relation to the expert reports. Your Honour, you may now proceed.

JUDGE CARTWRIGHT:

Thank you, President.

Professor Campbell, thank you for answering to the Expertise Order and also for coming to Court today for examination by the parties and by the Court.

As the President has said, this first part of the hearing on the fitness of Ieng Thirith and Nuon Chea to stand trial will be a general one. The defence teams for the two Accused have been asked to use this part to examine general issues, such as the methodology you used, the types of testing and the like. And they've also been asked to coordinate their questioning.

After the Judges have questioned you, the relevant parties will then put questions to you. So this -- in this part, we will be concerned primarily with the tests, assessments and the types of examinations that you conducted, and when we come to each individual Accused, we will look more closely -- we will look at your findings and examine them in more detail.

[09.25.32]

So, the purpose of this part of the hearing is to gain a general overview of the actions you've taken, and I'm going to focus on your first report in relation to each Accused and then go to your most recent report.

Now, I'm sure you understand the microphone system, but when you answer a question, could you wait until you see the red light on your microphone and speak slowly enough for the interpreters to translate into Khmer and French?

QUESTIONING BY THE BENCH:

BY JUDGE CARTWRIGHT:

Q. First, dealing with the order appointing you as an expert; in that order, is it correct that you were asked to examine each Accused and to provide a report that would enable the Trial Chamber to determine if each was fit to stand trial?

Could we have the microphone? Thank you.

MR. JOHN CAMPBELL:

A. That is correct.

Q. Were you also asked to comment on the suitability of the physical conditions provided for the Accused and on the provision of audio-visual facilities or limits on sitting hours that might be appropriate to ensure that specific significant medical problems might be accommodated?

[09.27.06]

A. I was.

Q. And were you given authority to examine the Accused and to examine relevant medical reports, to conduct any tests that you deemed necessary and, if appropriate, to advise the Trial Chamber of any additional expert medical or psychiatric examination that might be appropriate to enable you to fulfil your mandate?

A. I was.

Q. Now, before we start this part, could you first explain in lay terms the specialized medical field of geriatrics?

A. Specialized field of geriatric medicine is to do with the health of older people. Almost all of the conditions that affect

younger people also affect older people, and there are also specific conditions which become very much more common in older people

The key issues in geriatric medicine which distinguish it are that many of the conditions affecting older people have multiple causes, and there are very often multiple causes affecting the older person; whereas, in younger people, there is usually one cause of a particular condition and often only one condition. [09.28.31]

The second key issue that is important -- slow down -- the second important condition with older people is that the conditions affect their function – that is, their mobility, their ability to care for themselves – so that change in function is very important to assess.

The third factor which is very important with older people is that their social circumstances also influence the presentation and the effect of their underlying medical conditions.

The complexity of cause, the influence on function and the importance of psycho-social factors all add to the complexity of assessing older people.

Q. Yes, thank you very much. Now, turning first to the methods that you used to examine Ieng Thirith – first, you examined her personally on the 11th and 12th of May of this year. Is that correct?

And did you have access to the following documents, and I'll read

through the list? This is the list that you said in your report that you relied on before completing your first report. So the list goes like this: regular, written reports from Calmette Hospital from 20 December 2007; medical reports from Calmette Hospital on hospital admissions, appointments and investigations, including: CT head scans, CT scan of the thorax and of the lumbar spine and blood tests. So perhaps, you could acknowledge whether you reviewed those particular reports?

A. I had access to all those documents and also access to the CT scans themselves. I was able to review the films.

[09.30.53]

Q. Thank you. You also had the opportunity to discuss Ieng Thirith's medical care with the doctors from Calmette Hospital who have been treating her since her detention. Is that correct?

A. That is correct.

Q. You also reviewed medical expert reports from Dr. Sok Buntha and Dr. Patrick Keenan from June of 2009 and Professor Ka Sunbaunat and Dr. Philip Brinded November 2009. Is that correct?

A. That is correct.

Q. Now, you've already said you specifically reviewed the CT scans themselves, and I understand that you also reviewed those scans with a neuroradiologist. Is that correct?

A. I was given a CD of the scans and was able to take that and review it with a neuroradiologist in Dunedin.

Q. Now, you also looked at the video footage of Ieng Thirith's

appeals against the Co-Investigating Judges' orders for extension of provisional detention. Those orders were made on the 24th of February 2009 and the 15th of February 2010. Is that correct?

A. That is correct. And I was also given a transcript of that hearing.

[09.32.33]

Q. Can you just pause there and explain why you thought it was useful to review the video footage of Ieng Thirith on those two occasions?

A. I thought it would be useful because it would be an indication of her demeanour and also of her memory and I -- there were problems with recall during that particular hearing, and it was useful for me to be able to see that.

Q. Now, since physically examining Ieng Thirith in May, did you then have access to Professor Ka's report dated the 9th of June 2011, which was given in response to the Chamber's order for further assessment of Ieng Thirith and also a later report dated the 4th of August, in which Professor Ka clarified certain matters arising from his earlier report?

A. Yes, I have had those documents.

Q. And, finally, in relation to this first report - did you also examine the medical report which summarized Ieng Thirith's admission and treatment during her time at Calmette Hospital between the 24th of May and the 2nd of June this year?

A. Yes, I have had the summary of that admission.

Q. Now, in relation to your first report - first, a very general question. Can you define for the Chamber and for the parties what you mean when you use the term "cognitive" in relation to your assessment of the Accused Ieng Thirith?

A. When I speak of cognitive function, I'm referring to the function -- a number of functions including: memory, reasoning, initiative, concentration; higher functions of the brain which have to do with our interaction with people and our memory and judgement of events.

[09.34.58]

Q. Thank you. Now, specifically, during your period when you've assist Ieng Thirith for your first report, you conducted some formal tests of cognitive function: the Folstein Mini-Mental State Examination and the Montreal Cognitive Assessment. Can you first explain briefly the structure and the purpose of these two tests?

A. These are formal, validated tests of cognitive function. I use them as a supplement. Most of my assessment of Ieng Thirith's cognitive function had to do with her history and my examination of her and her examination of her history. The tests that I used were used to supplement that. I did not use the full tests because of the circumstances under which I was seeing her.

Q. And on what did you base your decision -- on what factors did you base your decision -- to conduct these tests?

A. I decided that those were the most appropriate tests to use

in these circumstances. As I said, I used them as a supplement to the history which I was able to obtain from her notes and from her, herself.

Q. Can you tell us a little bit about these two tests? Were they developed in a European country, English-speaking, French-speaking, German-speaking country?

A. That's a very important question because the -- and it's -- that is behind the reason why I did not use them in full. They were developed in English-speaking countries; the Montreal test, obviously, in Canada and the Folstein in United States. So, there may well be problems in the validation in a different country using a different language.

[09.37.16]

The other reservation about using them in full is that they are normally used when one is testing a person who wants to show that they are as good as they possibly can be. This may not be the circumstances when one is testing in this situation.

Q. And how far did you have to adapt these tests in a situation where it is clear that Ieng Thirith does not use English as her first language?

A. Yes, they needed to be administered through the interpreter and, therefore, there was always the question as to how fully the instructions are being understood.

Q. Are you aware of any comparable tests for Khmer speakers from the Cambodian cultural context?

A. No, I could find any tests that had been translated into Khmer for use. The Montreal test had been converted to Vietnamese, but not to Khmer.

Q. Now, you sent a letter to the Trial Chamber dated the 13th of May. That letter was completed before you proffered your written report. And in the letter, you recommended further assessment of Ieng Thirith by Professor Ka Sunbaunat.

[09.38.55]

Can you explain why you asked for that further assessment from Professor Ka Sunbaunat, please?

A. I had two reasons for asking for that additional assessment. The first was that Professor Ka Sunbaunat had already seen Ieng Thirith and I was interested in any change he may have noticed in her condition.

[09.39.13]

The second reason is, as I explained earlier, I was working across a different culture -- with a different culture -- and I felt there would be value in a person, an expert from that same culture, to also assess Ieng Thirith.

Q. Now, you received Professor Ka Sunbaunat's further assessment, which was dated the 8th of June, and the clarification that he later provided dated the 4th of August.

[09.39.48]

Did you amend any aspect of your methodology or your assessment of Ieng Thirith as a consequence?

A. No, I did not. I thought that his conclusions were consistent with mine.

Q. Now, there was some comment in Professor Ka Sunbaunat's further assessments about the Mini-Mental Status Examination. [09.40.20]

Did you reconsider its usefulness as a tool for assessing Ieng Thirith's cognitive ability when you read that -- those comments from Professor Ka Sunbaunat?

A. I already had some reservations, as I've indicated. Professor Ka Sunbaunat's comments were consistent with that and influenced the weight I put on that formal testing.

Q. Well, that leads me to my next question. What weight did you put on that particular test relative to the other methods or tests used by you?

A. It was consistent with what I had already found in the history, so it did not change my judgement in any significant way.

Q. As part of your first report, you commented on the observations of other people who are close to Ieng Thirith, living or working near her. [09.41.33]

Is that a usual part of an assessment of an older person's level of cognitive ability?

A. It is a very important part of the assessment because it is often in activities of daily living that problems with cognition

first become evident; for example, failure in the activities of cooking, of ordering groceries, of doing work about the place. [09.42.01]

It is very often that other people working with the person observe this and the person is less aware of those problems him or herself. So, external observation is absolutely critical. It also gives a time course to the deterioration.

One of the difficulties has been that the environment over the last few years has been so undemanding that Ieng Thirith has not been tested in terms of daily living activity to any great degree. I was, however, able to obtain useful information from those who were in daily contact with her.

Q. Now, a feature of your first report was the emphasis that you placed on the reduction of certain medications then prescribed to Ieng Thirith. We're going to examine that aspect of your report in more detail when we come to the individual parts of the hearing.

[09.43.02]

So without going into any detail of the recommendations that you made at this point, can you just confirm that you discussed your recommendations with the treating doctors from Calmette Hospital?

A. Yes, we had an audio conference that was very useful and we were able to explore these issues at that time.

Q. And have certain modifications, in fact, been made to Ieng Thirith's medication regime more or less in line with your

recommendations?
A. Yes, they have. Ieng Thirith was on three medications which may affect cognitive function. Two of those have now been stopped, and she has been off those two drugs for a week, just over a week now.
[09.43.52]
The third drug, we have just started the reduction in dose.
Q. Now, I've been focusing mostly on your tests and assessments in relation to Ieng Thirith's cognitive function.
[09.44.10]
Can you just confirm that you conducted a full range of physical examinations to clarify her physical status?
A. I did. I examined Ieng Thirith to determine if there were any other physical problems that may affect both her cognition or her ability to participate.
Q. Did you find anything of any major significance?
A. No. The only other factor that may be important is that she has frequent pain in the knees and in the ankles. And that can, of course, lead to agitation, impaired sleep. And I've made recommendations on treatment for that.
Q. Now, last week you returned to Phnom Penh to assist Ieng Thirith again prior to this hearing, is that correct?
A. That is correct.
Q. And did you conduct any further formal tests – either for her cognitive or her physical status – or re-evaluate or evaluate

any materials that you had not seen previously?

A. I discussed change with the doctors who are looking after Ieng Thirith. I reviewed her CT scan of June and also some blood tests that had been suggested. I then saw Ieng Thirith and again discussed with her her condition and repeated some of the formal tests that I had done on the first occasion to see if there had been any change.

[09.45.51]

I also spoke with those caring for her to see if they had noticed any change in her mood or behaviour.

Q. What specific tests did you conduct again on her, Professor Campbell?

A. I conducted the tests of orientation in time and place. I repeated the trail-following test, which she had trouble with last time and trouble with again this time, and also the clock face drawing.

Q. Perhaps you could explain briefly to the Chamber how these tests operate?

[09.46.30]

I can understand a clock face test, but a trail test is a bit of a mystery for me.

A. Okay. The trail test is a test of the person's ability to sequence and of an assessment of the front part of the brain. And it requires the person to trail from 1 to A, from A to 2, from 2 to B, and so one breaks the usual pattern of following 1, 2, 3, 4

and A, B, C, D.

[09.46.58]

And Ieng Thirith could not sequence in that way.

Q. And the clock face test – is that what it seems, that you asked her to show the time on a clock face?

A. Yes, it is a test of cognition and also the person's structural ability to organize things in space. And so the person is asked to draw a clock face and then to put the time on the clock.

[09.47.26]

And on this occasion, Ieng Thirith was able to draw the clock face using her own watch as a guide, but was unable to put the hands to indicate a particular time.

Q. Thank you.

Now we're going to turn to Nuon Chea and the tests, assessments that you conducted before completing your first report; and then, later, your second report, which was after your reassessment of him last week.

You examined Nuon Chea on the 9th of May this year, and you completed a written report dated the 13th of June, 2011; is that correct?

A. That is correct.

[09.48.15]

Q. And before completing your first report, did you have access to the regular written reports of the staff of Calmette

Hospital from 8 July, 2008 and the medical reports from Calmette Hospital on hospital admissions, appointments and investigations, including: reports on chest and lumbar spine x-rays; CT head scans completed on 21 September, 2007; 8th of June, 2010 and 22 February, 2011; echocardiograms; ECGs and blood tests?

A. I had full access to all that material.

Q. And as with Ieng Thirith, did you also take the opportunity to discuss Nuon Chea's medical status with the doctors from Calmette Hospital who have been responsible for treating him since he was admitted to the detention centre?

A. I did.

Q. And there were a number of ECGs, x-rays and medical expertise reports completed by Professor Antoine Lafont and Dr. Sok Chour dated June and December of 2009 and July 2010; Dr. Nopparat and Dr. Liv Chhinh, a report dated October 2007; and Dr. Ka Sunbaunat and Dr. Philip Brinded, a report dated December 2009.

[09.50.03]

Did you examine all of those reports and have full access to them?

A. I had examined all those reports.

Q. Can you summarize what tests, examinations and consultations you have personally undertaken from the time that you examined Nuon Chea until the time of your first report?

[09.50.31]

A. I examined Nuon Chea by taking a history of his physical problems and all his health problems, and then I conducted a physical examination of him on my first occasion.

Q. Now, so far as his physical status is concerned, are you satisfied that all relevant tests and examinations have been undertaken and they are sufficient to enable you to assist Nuon Chea's current physical status?

A. Yes. I do not feel there is a need for any further testing. I feel the testing has been complete, and certainly sufficient for me to make my judgement.

[09.51.22]

Q. So far as these tests, examinations and assessments are concerned, are you satisfied from your own examination of Nuon Chea and the documentation provided to you that they have been applied appropriately by you and by other experts on whose reports of tests you have relied?

A. Yes, I am.

Q. After reading the initial objection to geriatric expert report and requests for disclosure filed by Nuon Chea's defence team, do you have any further general comment to add at this stage, bearing in mind that, of course, his defence team may have specific questions to ask you at a later stage?

A. Yes. I felt the standards were set out in my order assigning expert in paragraphs 5 and 6 and the footnote there, and that is the standard against which I judged his fitness.

Q. Turning to Nuon Chea's cognitive status, in your first report you note that you assessed his cognitive function throughout the taking of the medical history and examination. [09.52.43]
Did any aspect of this assessment cause you to consider applying any of the cognitive tests that you've described in relation to Ieng Thirith?
A. No, it didn't. He was able to give a good history and account of himself, and I did not feel there was a need to use the more formal tests because of the reservations which I indicated earlier: the need for the person to wish to score as highly as possible to demonstrate their cognitive function.
Q. As a geriatrician, when you're asked to assess a man of Nuon Chea's age, would you routinely conduct any specific cognitive testing?
[09.53.30]
A. It would be -- depend very much on the particular reasons for conducting the review. These are often used routinely, but not always.
Q. In the course of your examination of Nuon Chea, you noted that he had suffered a stroke in 1995. Did you assess any resulting cognitive impairment as a result of this event?
A. No. There was no cognitive problem as a result of that stroke, as far as I could detect.
[09.54.05]

The particular stroke that he had is what's called a lacuna infarct. It's a very small stroke affecting the white matter of the brain and not the cortical area, which has to do with cognitive function.

Q. And was there any other aspect of his physical condition that might have led you to consider applying cognitive testing?

A. No, there was no other problem other than his prior history of a stroke.

Q. Now, you returned last week to examine Nuon Chea again in preparation for today's hearing and you were able to examine some further documentation: some laboratory tests, a CT scan and some reports – a medical report and a neurological report prepared by Calmette Hospital dated 22 February, 2011.

[09.55.13]

Is that correct?

A. That is correct.

Q. And although some of those reports had pre-dated your first report, they had not been physically available to you at that earlier stage. Is that right?

A. That is correct.

Q. But I believe you've now seen everything that can be located in relation to Nuon Chea, whether held by the Court or whether held by Calmette Hospital, so far as you are aware.

[09.55.48]

Is that correct?

A. As far as I'm aware, that's correct.

Q. Was there anything arising out of those reports that made you think you should conduct some more examinations yourself? [09.56.06]

A. No. In fact, those reports were useful in confirming my prior actions in that the CT scan had shown no change from earlier CT scans and the neurologist's assessment on the 22nd of February - the neurologist had used the Mini-Mental State Examination and found that Nuon Chea scored 30 out of 30, which is normal function.

JUDGE CARTWRIGHT:

Mr. President, that concludes the very general questions that I wanted to put to Professor Campbell, so I will now hand back to you.

Thank you, Professor Campbell.

MR. PRESIDENT:

Thank you, Judge Cartwright. I would like to know whether any other Judges of the bench would wish to put some questions to the expert.

09.57.04

Judge Lavergne, you may now proceed.

JUDGE LAVERGNE:

Thank you very much, Mr. President. I have a few questions to ask the expert.

QUESTIONING BY THE BENCH:

BY JUDGE LAVERGNE:

Q. The first concerns the tests that we are discussing. I believe that MMSE signifies Mini-Mental State Examination, and that test and the Montreal test, on those, could you give us a little bit more of an idea what they involve?

[09.57.50]

We have heard talk about clock faces, sequencing tests, trial testing and so forth. Are these more or less the same thing, or are they completely different tests? A little bit of clarification on that would be welcome.

Thank you, sir.

MR. CAMPBELL:

A. The tests within the MMSE and the Montreal test test different functions of the brain. They test memory, and that's particularly tested in the Mini-Mental State Examination. They test the person's ability to structure and sequence events. And they also test frontal lobe function. They also test language.

Q. If I understood correctly what you were saying just before is that the use of such tests is reserved for people who want to demonstrate that they are in a state of adequate capacity and that there has not been any deterioration of their cognition.

[09.59.14]

Could you confirm that, and then I'll ask another question.

Is it possible to envisage the possibility of the tests being, in some way, distorted by a person wishing to use them for the

purposes of simulation? Thank you.

A. They are normally used in the usual clinical circumstance where one is seeing a patient where the question of their cognitive function has been queried. And in that situation, the person normally wishes to score as well as possible and to do as well as possible with the tests.

[09.59.58]

As I indicated, one of the reservations about using them in this situation is the concern - you've indicated - that the person may not wish to demonstrate how good their cognition is.

I was aware of that and felt there was not any deliberate attempt to score lower on the tests that I used than the person was capable of doing. I agree that that is a clinical judgement, and it really requires assessing the person at the time they're doing the test.

[10.00.30]

In my report, I gave an indication of that in the number subtraction, for example. One of the tests in the Mini-Mental State Examination is to subtract 7 from 100 and 7 from the answer, and 7 from the answer. And Ieng Thirith was able to subtract where the number 7 did not cross into 80 down to 70, for example. Could subtract 79 -- 7 from that, but not across a particular number 10.

I did not feel that one would simulate that if one wished to demonstrate problems.

Q. Thank you.

[10.01.26]

Can these tests be influenced by the education level of the person going through them or by their social or cultural environment?

A. Yes, they can.

Q. The principal purpose of the test is, first and foremost, to assess any possible deficiency in cognitive functions. Beyond that simple assessment, are these tests also a diagnosis method seeking to diagnose any form of disease of the person who's been through the tests?

A. No, they're not, and impaired testing may be due to a number of causes. Important is the time sequence and whether there is change over time, and that may well give an indication of the underlying diagnosis.

[10.02.35]

The diagnosis relies much more on the history of the deterioration, the findings on physical examination and the investigations which are conducted. These are more a measure of degree, not really indication of diagnosis.

Q. So your diagnosis was based on the personal medical history of the Accused springing from your own assessment, plus the medical reports that you received.

A. That is correct. The change over time gathered from both my history-taking and also the records which I had access to, my

physical examination and the additional tests.

JUDGE LAVERGNE:

Thank you very much. I have no further questions of a general nature to ask the expert at this stage.

[10.03.48]

Thank you.

MR. PRESIDENT:

Thank you, Judge Lavergne.

We would like now to proceed to defence for Ieng Thirith to put questions to the expert concerning the reports he produced so far. The floor is theirs.

[10.04.30]

QUESTIONING BY DEFENCE COUNSEL:

BY MS. ELLIS:

Q. Professor Campbell, from what you've told us as to your qualifications, you've been in medical practice for now 42 years. And it sounds as if you have devoted yourself almost entirely to the care of the elderly.

MR. CAMPBELL:

A. That has been my primary professional interest.

Q. The discipline of geriatrics is often something that doctors come to later, but you started from a relatively early stage in your professional career.

A. That is correct. For most of my career, I have practised both geriatric medicine and acute internal medicine; more lately,

just geriatric medicine.
Q. Can you assess at what age does a patient become defined as "geriatric?"
A. I'm not sure I'd ever define a patient as geriatric.
[10.05.44]
Various services take different ages for their service provision. 65 is very commonly the age taken. I think that's far too young. I think, by and large, people who are involved with the care of older people look after those age 75 or 80 years and over.
Q. In any event, from what you say, the people with whom you have had a clinical involvement for so many years have been of an age comparable to Ieng Thirith, or somewhat younger.
[10.06.27]
A. Yes, that is correct. And I think it's also important to point out that many of the patients that we deal with in older persons' service have both physical problems and cognitive impairment.
Q. Before coming on to your report, I just want to ask you a little more about your qualifications because you've told us you're a professor of geriatric medicine at the University of Otago.
[10.06.58]
You were also Dean of the Faculty of Medicine there for a time, were you not?
A. That is correct.

Q. And not to embarrass you – that, in fact, is a position of -- showing a measure of -- both seniority and the respect with which you are held by your other professional colleagues.

A. That is correct.

[10.07.36]

Q. You have published widely in the field of geriatric medicine, is that right?

A. That's correct.

Q. You've also been involved in advisory work for a number of prestigious bodies; for example, the World Health Organization.

A. Correct.

Q. And you've been called upon to advise in a number of countries across the world, and I don't mean only in the United Kingdom and Canada where you were also trained.

A. That is correct.

Q. You were asked, as we've heard, to assist the Trial Chamber in determining whether Ieng Thirith is fit to stand trial, to use your expertise in that area.

[10.08.44]

Have you provided court reports elsewhere on the mental capacity and competency of individuals?

A. I have. This commonly arises in respect to testamentary capacity.

Q. And in that capacity of providing court reports, are you essentially again judging whether there is cognitive impairment,

which prevents the patient properly understanding the documents that are in existence and may require their signatures?

A. That is correct. And the assessment is always related to the particular task involved.

Q. Have you also provided in the past expert reports for courts in the criminal field concerning whether an accused is fit to stand trial?

A. No, I have not.

[10.10.02]

Q. So your experience comes from, really, analogous work you've done in relation to testamentary capacity.

A. That is correct.

Q. When you were invited by the Trial Chamber to provide your expertise, did you feel that in any way you were not in a position from your professional experience to provide that kind of expert assessment?

A. No, I did not. Had I, I would not have taken on the task.

Q. As a geriatrician, you've told us that you spend 50 per cent of your time in clinical work and the remainder of the time teaching and undertaking research.

[10.11.16]

Do you see both in-patients and out-patients?

A. Yes, I see both in-patients and out-patients.

Q. In finding Ieng Thirith to be cognitively impaired, you consider it very likely that she's suffering from Alzheimer's

disease.
Is that right?
A. I think there are a number of factors that may be contributing, and I think Alzheimer's is certainly one of those.
Q. It's always difficult to be precise, is it not? But she appears to present with a dementing condition?
[10.12.10]
MR. ABDULHAK:
Mr. President, I'm very reluctant to intervene. And if I may.
MR. PRESIDENT:
You may proceed.
MR. ABDULHAK:
And with the greatest reluctance, I just note that we might be entering an area that may well be involving confidential matters, such as specific medical disorders. And I just wanted to not so much object, but to seek Chamber's direction as to whether or not you wish to proceed with these matters in open Court.
(Short pause)
[10.13.20]
MR. PRESIDENT:
Thank you, Mr. Co-Prosecutor.
Just now, we observed your objection. However, the position by the defence does not really affect the public session. However, the defence should also be advised that any statement, oral statement being made right now in the public hearing shall be

considered as the statement that -- appropriately used in the public session. Otherwise, we should really refrain from -- these joint session any issues that shall be considered to be addressed during another individualized or separate session -- or closed -- session.

JUDGE CARTWRIGHT:

Yes, thank you, President. And may I add to that, that this part of the session is concerned with the qualifications, methodology and the like. It is not concerned with diagnoses. We will come to that later.

[10.14.49]

I don't want to muddle the hearing at this stage, and as the President has indicated, it's really nothing to do with confidentiality at this point. It's the question that we are at a preliminary stage, so if you wouldn't mind confining your questions.

Thank you.

MS. ELLIS:

Mr. President, if I can just say, we have fully understood the need for confidentiality and the Court will understand that from the documents that we have filed. And we will deal with general matters and then proceed to the specifics on application in a closed session.

[10.15.38]

I hope that it is, nevertheless, possible as part of the

qualifications to explore with Professor Campbell, in general terms, the type of conditions that are encountered frequently in the elderly. And it is for that reason that I have sought to ask about dementia in the way that I did.

I'd be grateful if I am allowed to simply ask one or two questions about the prevalence of that condition in the elderly. That is the purpose for this line of questioning.

[10.16.30]

May I be permitted to do that?

MR. PRESIDENT:

Indeed, the Chamber allows you to proceed with your statement, but as the Chamber has already indicated that it is now the general issue session and that if matters specifically dealt with your client, then they shall be preserved to that particular session.

Thank you.

MS. ELLIS:

Thank you very much.

[10.17.28]

Q. Professor Campbell, cognitive impairments -- dementia is a type of cognitive impairment, is it?

MR. CAMPBELL:

A. Yes. By dementia, we're implying that this is a chronic, progressive problem which spans a number of areas of brain function.

Q. Now, when you are dealing clinically with elderly patients, is it common or uncommon to see people with cognitive impairment?

A. It is common. The overall prevalence of dementia in people 80 years and over is around 20 per cent.

Q. A problem that is perceived more at a time people live longer. Would that be right to say?

A. That is correct. The prevalence increases quite steeply with increasing age.

[10.18.28]

Q. And in your clinical work, are you having to assess, on a frequent and regular basis, whether your patients are cognitively impaired?

A. That is correct. Because of the overall high prevalence - and of course, it is higher in a hospital population or in a population referred to out-patients - we commonly see people referred to out-patients because there is concern about their cognition.

Q. So when you were invited to provide your expertise in this case, in making an assessment of Ieng Thirith, the processes you followed were those that you are very familiar with and have followed day in, day out in your professional life.

A. That is correct. Although, clearly modified to suit the particular circumstances.

[10.19.31]

Q. Of course. But you were, from what you've said, aware of

the need to take account of the slightly unusual circumstances prevailing in this case.

A. That is correct.

Q. So that anything -- any view you formed takes that fully into account.

A. Yes, that is so.

Q. Thank you.

Now, if I could just move on to the process and -- of assessment. You've indicated the manner in which you performed your task and that you were assisted, as you've said, by the provision of a number of documents.

[10.20.22]

One of those documents you've referred to was the 22nd of November of 2009 report that was prepared by Professor Ka and Dr. Brinded. And therefore, you've had an opportunity to read the contents of that report.

A. I have.

Q. As you've told us, your assessment was that there was cognitive impairment in the case of Ieng Thirith. According to the report of 22nd of November, 2009 - at that time, she was also suffering from cognitive impairment.

A. That was the conclusion at that time, two years previously.

Q. Yes, thank you.

[10.21.30]

In the body of that report, there was reference to an admission

to hospital in Bangkok in early 2006. Do you recall that?

A. That admission was at the time of her femoral leg fracture.

Q. That's right.

Now, you've told us that you reviewed the CT scans, both yourself and with the assistance of a neuroradiologist.

[10.22.16]

Did you ever include in your review the report of the CT scan that was undertaken by the Bumrungrad Hospital in Bangkok on the 6th of January of 2006?

A. I've seen a summary of that report, but I have not viewed the films themselves.

Q. Thank you.

[10.22.48]

MR. PRESIDENT:

Ms. Diana Ellis, could you please be reminded again that the Chamber has observed that the questions you are putting to the expert are considered as specific questions dedicated for an individualized session for Ieng Thirith. But now, we are in the midst of the session concerning the general aspects of the work of the expert. The Chamber wishes to make it clear that you should now be refrained from raising these specific issues concerning the health of Ieng Thirith because these matters can finally be raised in the appropriate session.

[10.23.58]

Without any further general questions to be put to the expert,

the Chamber may ask you to stop putting such questions at this moment.

MS. ELLIS:

With respect, Mr. President, the question was simply, I hope, a follow-on to the question that was posed by the Court about the scans. I have not gone into any of the detail of what was noted or reported. It was, I hope, simply a factual question to clarify an earlier question asked by the Court.

Q. If I can then ask you a little more about the tests that you've done told us you undertook.

[10.24.55]

You've said that you carried out the MMSE test. You've told us your views that from your assessment, you felt the results, in fact, were a reliable indicator.

MR. CAMPBELL:

A. As far as I could judge.

Q. And then you carried out the Montreal test.

[10.25.26]

Did you consider that there were any other tests that you should have carried out in order to complete the assessment in the terms you were requested by the Trial Chamber?

A. No. As I indicated, I used selected questions from both those tests, and they're a supplement. They're not the basis of my conclusions.

Q. You were able to obtain a history, either through records

or by other means, and that formed part of your assessment; as, indeed, you've told us you were assisted by the views of those that have spent much of each and every day with Ieng Thirith.

A. Not so much their views, as their observations.

Q. I'm grateful for that correction.

[10.25.48]

Their observations are, from what you've said, a very significant and helpful addition to the other means by which you're making your assessment.

A. They are useful, yes.

Q. Does family history form any part of your assessment? And again, I'm not asking for details. This is just a general question.

A. In some situations, family history is important, but much less important when there is cognitive impairment in people who are in the older age group.

MS. ELLIS:

Thank you very much. That completes my questioning at this stage.

MR. PRESIDENT:

Since it is an appropriate time for an adjournment, the Court will take the adjournment for 20 minutes. We will resume accordingly.

I have noted that the defence team for Nuon Chea is on his way. You may proceed.

MR. PESTMAN:

Thank you, Mr. President.

[10.28.52]

I have -- one or two requests. My client would like to give a short -- a very short statement about his health in a public session and would like you to think about the right moment to do that. And I would like to add that my client would like to go back to his cell. He's not feeling very well. He could maybe give the statement before he goes back.

I would like to add that my client is willing to waive his right to be present during this hearing. So, there's no obstruction -- there's no impediment to continue with the hearing, whether in public or in closed session.

[10:30:52]

MR. PRESIDENT:

Since there is a small alteration to the proceedings, in light of the request made by the defence team for Nuon Chea just now, the request is considered, and in particular the request concerning the waiver of the right of Nuon Chea to attend the proceedings. The Chamber will now proceed to hear the statement by Nuon Chea as requested.

[10.31.40]

Counsel for Nuon Chea, could you please make it clear to the Chamber now what particular request you would like the Chamber to entertain before we take the adjournment then?

MR. PESTMAN:
Well, the request is to allow my client to speak, and if now, I think that's a very appropriate time. And the request is to continue with the trial in my client's absence, and he agrees to that.
[10.32.18]
And I refer you to Rule 81, Section 5 -- which provides for the possibility to continue in the absence of my client. And as I said, he expressly waives his right to be present during this hearing.
MR. PRESIDENT:
Thank you, Counsel.
The Chamber will now hand over to Nuon Chea to proceed with his statement. Nuon Chea?
MR. SON ARUN:
Mr. President, Your Honours, may I request that my client make his statement while "remain" seated. Or in other words, may he be allowed to make such statement while sitting? And I apologize for not asking for such permission earlier.
MR. PRESIDENT:
Thank you for reminding the Chamber. Actually, it is a general rule already that the person of this advanced age can be allowed to do so without even asking for permission.
[10.33.52]
Nuon Chea, you may now proceed.

MR. NUON CHEA:

Thank you, Mr. President.

Respected Monks and the President and Your Honours and my fellow Cambodian citizens and everyone in and around this courtroom: first, I would like to inform the Court that I would like to be present during the proceedings at all stages so that all the proceeding is fair and proper.

Number two, if my health condition is good, I will definitely participate in all the proceedings during the hearings for the interest of justice and fairness as required and wanted by everyone.

[10.34.55]

Number three, it is my health condition, it is deteriorating, but the most important thing is that I have problem concentrating and I wish to make this clear to the Court as follows:

I can remain seated for about one hour and a half only. After that, remaining -- seated for long will affect my eyesight and also my head will become very heavy. And it also affect the heartbeats of my heart and my blood pressure -- increases and my back is aching. And this problem stops me from sitting for longer than one hour and a half, as I indicated.

[10.36.07]

Even I try my best to concentrate or remain seated more than that period of time, I cannot do that. And I will have problem understanding or reading any material after this period of time.

And I can see that the holding cell designed for me is "no" useful anyway, because if I have a problem concentrating after that specific period of time, it is pointless to hold me in that holding cell.

Mr. John Campbell examined my health condition -- assessed my health condition on the 9th of May, 2011, but he failed to assess this issue concerning my concentration. And later on, he came back for an hour to conduct another assessment. I asked him to help examine the issue -- my issue concerning my concentration.

Point number six, to make sure this point is clear to everyone, I would like to request that another doctor or expert is assigned on top of Professor Campbell to conduct an assessment on the concentration -- my concentration.

[10.38.00]

That concludes my statement.

THE PRESIDENT:

Judge Lavergne, you may now proceed.

JUDGE LAVERGNE:

Thank you, Mr. President.

I wonder whether at this stage, we shouldn't put a question to the Accused, Nuon Chea, who says he has problems sitting for more than an hour and a half. May I ask him whether his situation will change if it was possible for him to lie down or to be in a position which he is half lying down in the courtroom or in the holding cell?

THE PRESIDENT:
The defence for Nuon Chea, I would like to ask for clarification in relation to your request. Your first request was granted, and we have heard the statement by Nuon Chea and the second request on the voluntary waiving of the right to participate due to his ailing health and his inability to concentrate over one hour and a half time period.
[10.39.32]
So I would like to ask: do you want to waive this right, the entire right for the entire proceeding, or you want to waive the right only for the participation of today's hearing? So I would like to ask for your clarification so that the Chamber will have the basis for its decision.
MR. PESTMAN:
If you allow me to answer that question for my client. It's only for today's hearing, and we will assess the situation tomorrow again. But his intention is, as he made clear, to attend all hearings.
[10.40.11]
Thank you.
MR. PRESIDENT:
Thank you, the defence.
Once again, the Court will take a short recess -- until fifteen to 11:00.
And the Chamber instructs the security guard to bring the

Accused, Nuon Chea and Ieng Thirith to -- Nuon Chea to the detention facility and please bring him to the courtroom tomorrow morning.

(Judges exit courtroom)

(Court recesses from 10:41H to 11:07 H)

(Judges enter the courtroom)

[11.07.27]

MR. PRESIDENT:

Please be seated. The Chamber is now back in session. We will now proceed to counsel Phat Pouv Seang.

MR. PHAT POUV SEANG:

Mr. President, since my client cannot tolerate the "conditioning" in the courtroom and due to her deteriorating health condition, can he -- be excused and allowed to be observing the proceeding from the holding cell because she indicated that the air conditioning really affects her health condition.

MR. PRESIDENT:

We have taken note of your request, and of course, it is the right of the accused person to do so.

[11.08.30]

Counsel Ang Udom, you may proceed.

MR. ANG UDOM:

Mr. President, Your Honours, I am on my feet only to report on the absence of Mr. Ieng Sary in the second session. He is not able to remain seated for longer periods. That's why he asked

that he be allowed to observe the proceeding from the holding cell.

[11.08.56]

If condition changes in the afternoon, we will inform the Chamber accordingly.

Thank you, Your Honour.

MR. PRESIDENT:

Thank you, counsel.

Since Mr. Ieng Sary is participating -- these proceedings as an observer, we take your note. To preserve the rights of the Accused in participating in the proceedings, the AV unit is now instructed to connect the audio-visual recording and equipment to the holding cell so that the Accused person can observe the proceedings through remote participation.

[11.09.55]

Next, we proceed to the defence counsel for Nuon Chea to put questions, should they wish, to the expert concerning his reports.

MR. SON ARUN:

I am Counsel Son Arun, the lawyer for Nuon Chea. Before we begin by putting the questions to Professor Campbell, may I be allowed to make submissions -- the statement by Nuon Chea?

[11.10.50]

It is rather long, but are we allowed to do so or are we allowed to only put mainly questions?

MR. PRESIDENT:

The Chamber already made this clear to the parties to the proceeding that this session is dedicated for general questions to be put to expert Professor Campbell concerning the fitness to stand trial. In particular, the reports he has already prepared and which have been challenged by the defence. Any other observation outside of this particular topic will not be entertained during this session.

[11.11.35]

Of course, you will be allowed to do so during the individualized session where each individual accused person will be heard respectively.

MR. SON ARUN:

Then I would like to hand over to my colleague to put questions to the expert.

MR. PRESIDENT:

Counsel, you may proceed.

MR. PAUW:

Thank you, Your Honours.

QUESTIONING BY DEFENCE COUNSEL:

BY MR. PAUW:

Q. Professor Campbell, good morning. Thanks for being here today with us. Thank you for providing the reports. We've read them with great interest. Am I clearly audible to the translators? I assume so.

[11.12.34]
Okay -- my first question relates immediately to a question that was put to you by my colleague for the Ieng Thirith team, and she asked you whether you had ever provided an assessment for fitness to stand trial before. And I understood your answer to be that you had not.
I have trouble hearing the answer. I can see what you're saying, but I ---
MR. CAMPBELL:
A. That is correct.
Q. Thank you.
[11.13.08]
This leaves me a little bit confused because the Trial Chamber has provided us with a document, E-62.1, in which it is stated that he - and they're referring to you - Professor Campbell: "He has also provided an assessment for the Court to enable it to determine if a person who had both physical and cognitive impairments was fit to stand trial."
End of quote. So, could you provide the clarification - have you done one assessment for fitness to stand trial or none?
A. I've not done assessments for fitness to stand trial in criminal cases.
Q. Then this -- I guess we will leave the question as to the problems of this document and this information to a later date.
[11.13.53]

Then let's move on to your medical publications. I know you're an established academic and you have a long career also in academic publications. And I was wondering how many publications have you authored or co-authored? Could you give an indication?

A. Original publications and peer-reviewed literature - over 100.

Q. Over 100. Okay.

And how many of those publications were on the topic of either concentration span or attention deficit or whatever the medical terms may be for that type of concern?

A. Some of the publications were related to dementia, but not specifically on the issues of concentration.

Q. How many of those publications were on forensic medical topics and then specifically related to criminal cases?

A. None were.

Q. I'd like to ask a few questions about your professional background, or at least the backgrounds that you have been practising medicine in, and I'm referring about -- I'm referring to New Zealand.

[11.15.16]

Is it correct that you've spent most of your professional career practising in New Zealand?

A. That is correct.

Q. And to your knowledge, is it up to the medical specialist in New Zealand to determine whether someone is fit to stand

trial, or would that be an assessment to be made by the Trial Chamber or whatever the equivalent may be called in New Zealand?

A. I suspect that it would be determined by the circumstances of the case.

Q. And what do you base that conclusion on?

A. I think both the person's own doctor would give an opinion, and also there may be someone appointed by the Court to give an opinion.

Q. Do you know how many health assessors need to provide a report on an accused in New Zealand before finding an unfitness to stand trial in New Zealand?

A. I do not.

Q. And I'm not an expert on New Zealand law, so I'm -- kind of threading (sic) on thin ice here, but I believe to understand the New Zealand Code that you need the assessment of at least two independent medical specialists.

[11.16.42]

You're not familiar with that number?

A. I would defer that question to Dame Silvia Cartwright.

Q. Yes, I'm sure that she would be the most appropriate person in this courtroom to ask, but I'm asking you.

[11.17.04]

It's my understanding, and I will be gladly corrected by Dame Cartwright if I am wrong, that at least two medical specialists need to be consulted for a fitness to stand trial report.

Anyway, then let's proceed.

Do you think there's a rationale behind having two independent medical experts assessing an accused?

MR. ABDULHAK:

Your Honours, I must object.

[11.17.35]

I don't see how -- Professor Campbell's knowledge of the New Zealand legal system is relevant to the issues that he's testifying on today. Certainly, our understanding is that questions were to relate to method which he adopted and accepted methods of assessment of cognitive function.

Professor Campbell's knowledge of New Zealand or any other country's legal system is not relevant.

MR. PRESIDENT:

Thank you, Mr. Co-Prosecutor, for your observation.

The counsel for Nuon Chea is now advised -- reminded to concentrate your questions on the expertise of Professor Campbell and of a general nature concerning his reports at issue.

[11:18:32]

MR. PAUW:

Thank you, Your Honour, Mr. President.

I will, of course, limit my questioning to the medical expertise and the background of Professor Campbell.

But I beg to differ with the Prosecution that -- the status of these issues in New Zealand is irrelevant because Professor

Campbell has been practicing in New Zealand for decades and -- his experience in that system will be brought into this courtroom today. We have already established that he has not done any actual assessment to stand trial -- assessment of fitness to stand trial, but I would like to know if he can provide a medical reason for the fact that in New Zealand, one needs two medical opinions.

I'm saying this -- I can hint to the reason for this; it is my understanding that in many jurisdictions across the world, the medical assessments of more than one person will be required.

MR. ABDULHAK:

Again, Your Honours, I don't think this is the appropriate time for these matters to be canvassed. Counsel will have ample opportunity to make submissions. The matter's been ruled on and I think counsel should be invited to proceed with further questions.

MR. PAUW:

I will proceed with further questions.

I do think that the following question, even though it relates to New Zealand law, it is directly relevant to establish the expertise of Professor Campbell.

[11:20:07]

MR. PAUW:

Q. In the biography that was provided, it states that you have made assessments under the New Zealand's Protection of Personal

and Property Rights Act, 1988. Is that correct?

MR. CAMPBELL:

A. That is correct.

Q. What exactly do you assess under that law?

A. Most of the assessments relate to cognitive function and one assesses the person in relationship to their ability to make their own decisions, to understand proceedings and to participate in those proceedings.

Q. Is there a certain legal presumption of fitness, if you want to use that word?

A. One assesses each individual according to the particular issue that is being assessed and uses the methods appropriate for that.

Q. Then let me rephrase the question in a slightly other way: is there a legal assumption that a person has the capacity to act in those assessments under the New Zealand Protection --

[11:21:09]

MR. ABDULHAK:

Again, I'll object to this questioning, Your Honours. It's a legal question, Professor Campbell cannot be expected to opine on whether or not New Zealand has a presumption of fitness.

MR. PRESIDENT:

Once again, thank you, International Co-Prosecutor for your observation.

And once again, the Defence Counsel is advised to frame their

questions in order to be "straight" to the general matters regarding the reports prepared by Professor Campbell involving the accused person and also concerning the final report he made on the 26th of August 2011.

Counsel is only allowed to put questions in the general context. Any specific questions relating to a particular client or accused person, for example, Nuon Chea, will be allowed to make -- during the individual session. I believe that this message is clear.

MR. PAUW:

Thank you, Your President, your message is totally clear.

I will record for the record that I do think that these questions are relevant as they relate specifically to the expertise of Doctor - of Professor Campbell. According to his biography, he has provided many expert reports under this law and he, in that sense, is a) should be considered to be familiar with the medical issues that come up under that law and b) he will, in the process of preparing all these medical reports, have taken notice of the legal requirements. So, I will reserve the right to make further submissions -- on this issue in writing at a later stage.

[11:23:19]

But I've understood your message, so we will move on to other aspects of methodology.

Professor Campbell, when you assess the physical and mental fitness of a patient, how long would you normally speak with him? Can you give an average?

MR. CAMPBELL:

A. Normal -- consultations would take an hour, but they can be extended if necessary and can be repeated.

Q. Are they usually repeated?

A. Not usually repeated if the conclusions are quite clear.

Q. And does it make a difference whether you assess patients in your normal practice as a clinician or whether you make applications, such as under the New Zealand Protection of Personal and Property Rights Acts (sic)?

A. There will be differences in the approach.

Q. Could you elaborate?

A. When one is assessing competence, one is assessing with a specific objective in mind.

[11:24:29]

Q. Could you elaborate on that objective?

A. That is to determine competence in relationship to a particular task.

Q. And am I correct in assuming that usually, when you prepare assessments, "that" will be tasks related to this issue of capacity to act as a normal person?

A. It would relate often to the person's competence, cognitively, but also to their physical capacity.

Q. Am I correct in assuming that it relates to their capacity to act in a normal -- in a normal setting of society, to act as a normal citizen of New Zealand, in this case?

A. Yes, most commonly.

Q. Do you normally test your patients to see whether they can understand complex court proceedings?

A. We would normally test patients to determine what their overall cognitive function is. And in terms of understanding complex court proceedings – would depend, as I said, very much on the task for which we're assessing them, the particular competence for which we're assessing them.

Q. Have you assessed patients in order to establish whether they can understand complex court proceedings?

[11:25:58]

A. Having relationship to the personal property issues that we outlined -- you outlined earlier.

Q. Thank you.

Are you aware of which standardized cognitive tests are usually applied in assessing fitness to stand trial; or if not usually, in general, which tests could be applied in order to assess fitness to stand trial?

A. I have been aware of those. I have used the ones that I most commonly use myself.

Q. And which ones are those?

A. The ones that we discussed earlier. The assessment of cognitive function depends less on the use of tests as one taking a comprehensive history and in determining history from other people as well.

Q. Could you, for the record, repeat which are the tests that you use when, in this case, assessment of fitness to stand trial or which are used when assessing fitness to stand trial?

I'm sorry. This was a convoluted question.

[11:27:10]

You -- refer to the tests you mentioned earlier. Could you repeat the names of those tests, just for the record?

A. The test that I used earlier in processing: the Mini-Mental State Examination and the Montreal Cognitive Assessment.

Q. Could you give some names of other standardized tests that are used specifically for assessments of fitness to stand trial in jurisdictions all over the world?

A. Outlined in some of the documents, but I could not name them here now.

Q. Have you ever applied them?

A. I have not had the need to apply them.

Q. Moving on through my methodology questions, there's some general issues that came up when I was reading your report. A very straightforward question: did you discuss the outcome of the examination with Nuon Chea before preparing the report - the first report I'm referring to.

A. I did not discuss my physical findings with him.

Q. Before sending the report to the Trial Chamber, did you let Nuon Chea read the report for possible comments or corrections?

A. No, I was never asked to do.

[11:28:49]

I might say that I did check a number of findings with him as I went to ensure that I had the correct answer. For example, his comment -- in my report on the length of time that he could remain sitting - and I did check that with him to ensure that that time of two to three hours, as he indicated, was correct.

Q. I'm sorry, I was -- what was this? You checked this during the second examination or was that part of the first examination, at least the afternoon session?

A. That would have been during that consultation, I would have verified it in the afternoon session as I indicated in my report.

Q. And how long did you -- say -- the assessment took, just to make clear, in the morning session? How long did you examine Nuon Chea for?

A. The morning session would have been an hour to an hour and a half, from memory.

Q. And how much -- can you give an estimation as to how much time would be lost during that morning examination by translating and possible confusion?

A. Very little time, actually. It was very efficient translation.

Q. Can -- you give an assessment in -- percentage?

[11:30:21]

A. That's very difficult to do. I would think probably

about 10 per cent of time, probably not much -- anymore than that.

Q. Can you -- from memory -- can you assess how much time of the examination was reserved exclusively for a physical examination and how much time was reserved exclusively for a cognitive examination?

A. Physical examination would have taken around 20 minutes.

Q. And the cognitive part of the assessments?

A. The rest of the assessment would have been on history-taking and determining the symptoms that he had, particular problems that he had, and how they affected him.

Q. And if we turn to the basis of your examination: you've indicated to the Trial Chamber earlier this morning that you studied the medical documents that exist on the case file and with Calmette's Hospital. Can you give an estimate as to how long you spent on studying those documents?

A. I had those documents before -- a number of those documents before I arrived in Phnom Penh and I would have spent a number of hours studying them then. And then when here, I was able to study them on the day that I saw him, along with the time spent with the Calmette Hospital doctors. And then I reviewed them when I reviewed all the case files of the Defendants later. Difficult to determine the number of hours, but it would have been probably -- at least three hours.

[11:32:08]
Q. -- Can you read and understand French?
A. I read the documents in English.
Q. Am I correct in assuming then that you did not read any documents in the French language?
A. I read some of the documents in French language and the most recent documents are in French and their meaning is quite clear.
Q. So then to repeat the question: do you read and understand French?
A. I was able to read the documents and understand the documents that I had been provided, the most recent ones that we've indicated.
Q. Let's say the cognitive aspect of the examination - during the examination, did you test Nuon Chea's attention span and if so, how?
A. Attention span -- throughout the examination, my discussion with him, he was focused on this discussion, I never felt that his concentration was lapsing. I felt that I was getting accurate answers from him.
In terms of his own concern about his concentration, very difficult to assess that objectively; it is very much a subject of feeling and is not something that I could assess objectively.
[11:33:39]
Q. You say you cannot assess this objectively. Is that

impossible for you or is that impossible for any qualified medically trained specialist?

A. It's really impossible to assess objectively, accurately. I mean, a person could complain of failure to concentrate, could make mistakes indicating a failure to concentrate; but that doesn't necessarily mean that the person could not concentrate.

Q. Then maybe you misunderstood my question. But my question is: are there medically trained specialists that can test attention span?

A. There are if the person is wishing to demonstrate that their attention span is as good as it is possible to be.

Q. So there are -- let me rephrase that. Are there standardized tests, again, to -- test the attention span of a certain patient?

A. A neuropsychologist doing a psychometric testing may well find that there's a deterioration in performance with the person and attribute that to their difficulty concentrating.

[11:34:51]

Q. Could you name any of the standardized tests that could be used to test attention span or concentration issues?

A. A neuropsychologist will use the standard tests of cognitive function and will examine performance during the time of the testing.

Q. Would you know of any names of specific tests that a neurophysiologist would use to assess this?

A. Not that I can name here.
Q. Moving on to memory, rather than attention and concentration – did you test Nuon Chea's memory?
A. I did not myself because I did not have concerns, having taken his history from him and tested his accuracy of recall. As you will see in my second report, he did have a formal test of memory done earlier -- in which he scored normally.
Q. This is the MMSE that -- was referred to in the files, am I correct?
A. That's correct.
Q. Do you know in which language this MMSE was conducted?
A. It was done by a Cambodian neurologist, so I presume it was conducted in that language.
[11:36:29]
Q. Do you know this or do you assume it?
A. I'm assuming it.
Q. Have you looked at the actual test results?
A. No, I've seen the report from it.
Q. What does the report consist of?
A. The report provides the score.
Q. So am I correct in assuming that the only thing we know about this MMSE is the score as reported by the Cambodian hospital?
A. That is correct. And as there were no errors in it, the detail is less important.

Q. You mentioned earlier that you could not find any tests that relate to cognition in -- Khmer. This was during the morning session. Were these actually your words? I'm not sure that I -- I don't want to misrepresent your position.

A. Yes, that is correct. I searched to see if there were any specific tests that had been translated into Khmer and could be used and could find none.

Q. Did you ask the Calmette Hospital to see if they had any Khmer-language MMSE?

A. The Calmette Hospital has used the MMSE. And as I indicated, that is probably a better test than if I was doing it because it's being done in the language of the person administering the test and in a situation in which it is not an obvious test, as it were, the person is impaired to the point that they cannot -- are not fit to stand trial.

[11:38:08]

Q. But if I understand you correctly, you assume that the Calmette Hospital has Khmer-language MMSE because that's the language the MMSE would have been conducted in. But you did not ask the Calmette Hospital for a copy of -- a Khmer language copy of the MMSE?

A. No, I did not; and it would not have been particularly useful because any test that I used would have been through a translator.

Q. As indicated of Ieng Thirith (inaudible).

Okay, you say that you have assessed his memory throughout the assessments by interacting with Nuon Chea and looking at his files, his medical files, I would say. Could you differentiate with that method of assessment between his short and long-term memory capacity?

A. Yes, we could. And in both short and long-term memory there was no evidence of any significant impairment.

[11:39:21]

Q. Okay. You visited Nuon Chea your first day with a colleague from, I believe, the Calmette Hospital and a translator. Is this correct?

A. That is correct.

Q. And was -- the Cambodian doctor, the Deputy Director, was he present during the assessment of Nuon Chea?

A. He was present during the assessment -- throughout the assessment.

Q. With the permission of my client, I -- will reveal something from the confidential discussions we've had with Nuon Chea. And when we spoke with Nuon Chea last week, he had no recollection whatsoever about a third person being present during the examination.

Clearly, there could be an assumption that he is trying to trick us or it's some devious plan to misinform either his defence counsel. But I think that the defence counsel present had the genuine impression that he clearly did not remember that this

third person had been present.
Can you give any medical explanation for such a loss of memory?
A. The accompanying doctor was in the background, kept very much in the background. It was -- me who conducted the interview. So, he did not take an active part.
[11:40:49]
My feeling would be that Nuon Chea's attention would have been very much on what I was doing, not on the other people -- any other person in the room.
Q. That's a very sensible answer I would say. Did the Cambodian doctor introduce himself at the beginning of the assessment?
A. I introduced everyone at the start of the discussion.
Q. In your medical assessments, putting it bluntly, do you -- are you of the opinion that Nuon Chea could concentrate effectively for full court days?
A. As I've indicated in my second report, Nuon Chea has a number of physical conditions which will affect his ability to concentrate, and I can enlarge on those if you wish. An hour and a half he indicated that he could concentrate for and that seems very reasonable.
MR. ABDULHAK:
If I may, Mr. President, I think we're definitely entering in the area that deals very specifically with the assessment of the Accused, Nuon Chea. And in the scheduling order, the Chamber

indicated that the first session would deal with common matters of method of assessment and expertise.
And so some direction from the Chamber may be appropriate at this stage as I find that we're veering off-course with these last few questions.
[11:42:23]
MR. PRESIDENT:
Thank you, Co-Prosecutor, for your observation.
The defence counsel is once again advised to stick to -- focus to the issues being discussed now during the session. And again, reserve any specific issues in relation to Nuon Chea at a separate court session.
MR. PAUW:
Mr. President, I apologize. Actually, while asking the questions, I realized the same thing that my learned colleague on the other side was mentioning. So, I will stay away from referring to the personal condition of Nuon Chea.
I do want to move on to a more legal section, and before we get any interventions from the OCP, I would like to say that this is clearly relevant when assessing the expertise of Professor Campbell, but also his methodology because there simply is a legal definition that we need to work with today. And that legal definition influences the medical assessment of Professor Campbell, so if I may proceed
MR. PAUW:

Q. Professor Campbell, you have indicated earlier this morning that you understood the Trial Chamber's instructions as given to you in the Order by which you were assigned as an expert.

MR. CAMPBELL:

A. That is correct.

Q. Could you repeat those instructions here today?

[11:44:09]

A. Those instructions are given in paragraph 5 and 6 of the Order, and there's a footnote there that details the requirements.

Q. Do you happen to know that that footnote is a -- relates to the Strugar decision? Do you realize this?

A. Yes.

Q. In the original Strugar case, there is a -- what is called a non-exhaustive list of questions that is used by the Strugar Trial Chamber to assess the fitness of an accused to stand trial. I wonder if you are aware of that non-exhaustive list of questions because it's not -- cannot be found in the Trial Chamber's Order.

A. No, I'm not.

Q. Did you get to read our urgent application for the assignment of an expert to examine Nuon Chea?

A. I did.

Q. In that urgent application, we raise a number of both legal and medical concerns relating to, in general, the assessment of

fitness to stand trial. And I was wondering if you incorporated those comments and concerns in your -- either your examination or your report?

[11:45:47]

A. Yes, I was aware of those issues in my assessment of Nuon Chea.

Q. And did you incorporate them in your examination and/or your report?

A. I looked at the particular health issues that had been raised.

Q. Did you look at the specific concerns that the Nuon Chea defence raised in connection with -- with assessments for fitness to stand trial?

A. I was aware of those.

Q. And did you incorporate those in -- either your examination or your report?

A. I incorporated the concerns about his general physical health in my assessment.

Q. And did you incorporate our concerns with regard to medical assessments for fitness to stand trial in your report?

A. Could you be more specific?

Q. Yeah, excuse me. I realize I'm not being very clear.

[11:46:45]

We have -- in our urgent application, we have listed a number of issues that come up world-wide when assessments for fitness to

stand trial are done, are performed by medical experts, and those are both legal concerns and medical concerns. And we -- our urgent application is quite broad on these issues, and I was wondering if you have addressed these issues in your -- either your examination or in your report.

I could -- get our urgent application and read them to you, but I think that would be very tedious for everyone involved.

A. Yes, I consider that I have reviewed the medical matters that were raised.

Q. But the general concerns that we've raised with assessments for fitness to stand trial in criminal court settings, have you incorporated those in your report?

A. I've incorporated my review of the medical matters against his fitness to represent himself adequately.

Q. Okay, I'll leave this issue lay then for now.

Have you read our later objections to your report?

A. I have.

Q. Have you incorporated the comments and the -- I would say, criticisms that we raised in that report -- in your second report or have you taken it into account in your second examination?

[11:48:24]

A. I have. I've considered each of his conditions and his condition overall with respect to his requirements during the trial.

Q. Then let me repeat the question in a slightly different

form. One of our main objections to your initial report was -- that there was lack of objectified standards to assess his condition to stand trial. Have you incorporated an objective standard as to the fitness to stand trial in your second report?

A. The objective standard that I have used is that he -- in determining his physical and cognitive ability to participate in the procedures, to instruct counsel and to be present during the court time and to concentrate during that time.

Q. Now that's maybe just a question for clarification because in the original Order, the Trial Chamber asked you to include in your reports limits on sitting hours that might -- appropriately be put in place, and we see it in your second report. And I think they're sensible, but we do not find it in the first report. Can you explain why that is we're lacking?

A. In the first time I saw Nuon Chea, he had not raised the issues specifically in relation to the length of time he could concentrate. It did come up, as I've indicated, in the length of time he felt he could sit and participate in the proceedings, and I've indicated that on page 6 of my report.

Q. Is lack of concentration something that is -- common in people over, let's say, 80? Is that an issue that you see more often in your patients?

[11:50:20]

A. I wouldn't put the concentration down specifically to age; I think it is more in the physical conditions that the person has

in this situation, and that means because of his cardiac disease and other problems, he would tire more easily.

Q. Does age affect concentration, from a medical perspective?

A. Age is one of the factors, coupled with physical problems, as I indicated in my second report.

Q. And somebody aged 85 – would you expect someone to have possibly mild problems of concentration?

A. It's very much an individual thing, and there are certainly a large number of 85 year-olds who would not; there are others who would have problems. It's very much an individual assessment, in which age may be a factor.

Q. Okay. I'm very much a layperson in medical issues, and -- I wonder if you can give me the names of certain medical specializations that focus exclusively or predominantly on cognitive functions -- I mean, we can all come up with the psychologist and the psychiatrist, but beyond that, many of us would be at a loss. Could you provide us with the names of some medical experts in those fields?

A. The other areas, particularly in the older age group -- in geriatric medicine of course, and the other area with an internal medicine would be neurology, neurologists.

[11:52:06]

Q. And it's not -- I think, technically maybe not considered a doctor, but a neuropsychologist would also be able to comment on these issues?

A. Yes, certainly, but it must be recognized that when one is dealing with someone in their mid-eighties, there are often many problems contributing. And the difficulty with people with areas of single expertise is that they may not be so aware and take into consideration the other factors that are contributing to the overall picture.

Q. Are there geriatricians that you are aware of that specialize in cognitive functions, impairments, concerns, disorders in the elderly?

A. Certainly within geriatric medicine, there are people who take a particular interest in specific areas, and there are people who take specific clinical and research interest in cognitive function.

Q. Do those types of specializations have any names that I should be aware of, which I could not find without your help?

A. No, not that I'm aware of.

MR. PAUW:

With your permission, Mr. President, I'm browsing through my questions because your initial round of questioning already addressed quite a few of the issues that we wanted to raise.

[11:53:46]

Q. I have some follow-up questions in response to some of the comments you made this morning. Again, I was listening and thinking at the same time, so if I misrepresent your words, please do correct me.

You mentioned that you looked at video footage of Ieng Thirith during some of her court sessions and you -- I think you indicated you obtained some useful information from looking at those tapes. Have you looked at video footage of Nuon Chea during his court sessions?

MR. CAMPBELL:

A. No, I have not.

Q. Can you explain why not?

A. The problems of Nuon Chea have been primarily physical problems, and so I did not feel I would gain useful information from viewing that – the videotapes.

Q. But in the case file, in the medical documents that you have also studied, Nuon Chea has been complaining about memory loss and sometimes concentration issues. Was that -- not a concern for you --you would not have found anything -- you thought you would not find anything relevant in that video footage?

A. That's correct, and I've not found -- any evidence for that in my assessment of him.

[11:55:43]

Q. Some of those court sessions related specifically to his detention procedures and were specifically focused on Nuon Chea's assessment of his own detention condition and on his own health. Should that have changed your determination to not look at those videos?

A. I did ask Nuon Chea about the preliminary hearing and how he'd found that -- any difficulties with it. His main concern had been the temperature of the room and concerns there. He had not raised other concerns.

Q. Let me clarify. I'm referring to numerous court sessions that were held throughout Nuon Chea's detention in which he was brought before the Co-Investigating Judges to establish how he was feeling in detention, whether there were any issues with the way he was detained, with his -- health, both physically and mentally. So these court sessions were specifically focused on Nuon Chea's wellbeing.

And so from that perspective, do you think it might have been useful to look at those videos in order to assess the physical and mental health of Nuon Chea?

A. Well, no particular concerns from those had been brought to my attention.

Q. Okay. You mentioned a concern, which is a straightforward concern, that accused in conditions like this, when they are detained and when they are being examined for fitness to stand trial are trying -- may not be trying to do their best; they may try to have more cognitive issues, or they may try to have more somatic symptoms than normal patients that you might see in your day-to-day practice. Is that a clear reflection of your words this morning?

[11:57:49]

A. It is a concern.
Q. Do you know if there is any testing or any precautions that one could take to avoid such influencing by the subject, by the patient?
A I think the crucial thing is to look at performance outside that particular setting, when the person is not being specifically examined with a view to determine whether they're fit to stand trial, and that's why the previous records are important and (inaudible) specific concern raised that I was aware of.
Q. Do you know any medical approach in testing or otherwise that would preclude or at least detect patients, or in this case the Accused, that wants to fool the system so to speak?
A. There are certainly issues on physical examination which can be used to determine if the person is not cooperating fully, more difficult with cognitive function.
Q. Are you aware of any tests or medical approaches with regard to cognitive functions that might help to detect patients that act in that way?
A. I think in the testing, what would be looked for is any inconsistency in the testing.
[11:59:20]
Q. Let me repeat the question once more because -- I'm not sure that I'm making myself clear. Can doctors, when they are assessing a patient like this, take precautions in the way they

test or in the type of test they administer to make it at least likely that somebody who fakes -- to use a very non-medical term -- whether that would be exposed?

A. There are no specific tests that I'm aware of. Again, as I said before, the more inconsistencies that were not -- that indicated that the person was not performing at a consistent level or if the tests were -- or if the tests were inconsistent with a person's overall performance and activities.

Q. All right. When discussing Ieng Thirith this morning, you mentioned that you wanted to have another expert assess her after you had seen her. And you gave some -- a few reasons for those. Could you repeat them because I don't want to -- again, I don't want to put words in your mouth? What were the reasons for seeing this particular expert?

A. This is Professor Ka Sunbaunat. I asked for the examination there because I had found impairment, and I wanted to know whether there had been change in time with that impairment, he having assessed her previously. And I also wished to know whether any impairment I found was due to problems of translation or cultural differences.

Q. In general, would you say that it would have been desirable to have also Nuon Chea be examined by somebody who comes from his own culture, in his own language?

A. He had already been examined by people from his own culture and from my reports from their examination, there had been no

concerns raised.

[12:01:46]

Q. Had he already been examined by people from his own culture as part of an assessment for fitness to stand trial?

A. No, and that was one of the advantages of the previous assessments.

Q. I'm not sure I follow. I'm sorry.

A. The advantage was that these assessments can be done in a normal clinical setting.

Q. Would there have been a benefit to have Nuon Chea assessed also by somebody from his own culture in the context of an assessment for fitness to stand trial?

A. I did not think so, and that's why I did not suggest it.

Q. Also in speaking about Ieng Thirith, you mentioned that you have spoken to people outside her direct -- let us say, within our direct surroundings -- people that deal with her on a day-to-day basis and you -- and I have written it down here, but again, correct me if I'm wrong -- I've written down that you said that external observation is critical when assessing cognitive impairments like that. Are those the words you used?

A. Yes, outside observations are very important.

Q. Did you get any outside information from people in the direct environment of Nuon Chea?

[12:03:19]

A. I did, but it's very difficult to obtain and there was a

reluctance to provide information from those who are looking after the defendants on a daily basis. I obtained -- I obtained most of the information from the -- written records and also from the doctors who've -- seen Nuon Chea on a regular basis.

Q. Did you talk to his wife, by any chance, regarding Nuon Chea's condition?

A. No, I did not.

Q. One question before I will ask the Trial Chamber to possibly adjourn to confer with my colleagues to see if there's any additional questions, but one last question that I would like to ask you in this -- open court session; you mentioned that you've studied the underlying medical reports of Nuon Chea as they are on the case file. Is there anything you can say about the quality of those reports and then specifically, in the context of the cognitive assessment?

MR. ABDULHAK:

I might object, Your Honours.

Again, I believe -- we're starting to deal with very specific questions. We've refrained from objecting. There were a series of questions, some on method, some specific to Nuon Chea and we felt -- we didn't want to break our colleague's rhythm. But again, Your Honours, we're back on very specific aspects of Nuon Chea's conditions and the assessment.

[12:05:22]

The Order is clear. Any -- questions arising from the challenge

to the assessment are only appropriate in the third session, and we invite Your Honours to remind counsel that they need to focus on general matters on method and general assessments, as opposed to specific to Nuon Chea.

MR. PRESIDENT:

Thank you, Mr. International Co-Prosecutor.

I think your observation is consistent, and this happens time again during the time when defence counsel for Nuon Chea is having the floor. May the counsel be advised again to distinguish the general matters, as opposed to the specific issues, concerning Nuon Chea.

I would like to know for now, how many more questions would you like to put to the expert before the adjournment, or would you wish to proceed until you have completed all the questions and that -- we then should adjourn?

MR. PAUW:

Thank you, Mr. President.

As I indicated earlier, I think this would be the last question before we adjourn, also to reorganize our -- questions based on the answers that Professor Campbell has provided.

But I do wish also, in general, I would like to say for the future of these proceedings, whenever the prosecution objects, they're totally entitled to an objection, but I do feel that the defence should be given the chance to at least answer the position by the OCP before the Trial Chamber takes a stand on

this issue. Otherwise not -- both sides are heard, and specifically in this case, this is a question about underlying methodology of reports on which Professor Campbell has based himself.

[12:07:24]

So, it is totally on point, and it relates specifically to methodology. So, I disagree with the intervention of the OCP, and I would respectfully ask Your Trial Chamber to be able to pose this question in this open court session at this point.

MR. PRESIDENT:

Is that your last question, or would you proceed further, or would you like to hand over to your colleague to put some more questions because it's now already six past 12 and it is, of course, appropriate to take a lunch adjournment.

MR. PAUW

It was my last question, and I'm happy for Professor Campbell to answer it after lunch. I understand everyone is tired and hungry. And my colleagues will have further questions depending on our assessment during the break.

MR. PRESIDENT:

Thank you. Please be seated.

[12.09.22]

Mr. Phat Pouv Seang, we have just now received a request from your team that your client is not able to attend the proceedings personally, and that she asked to be excused and observe the

proceeding from the holding cell through remote participation, and such equipment has already been installed. But the Chamber would like to know whether this afternoon session shall proceed with the status quo, or if you wish to ask that the accused person be returned to the courtroom. Your position at this moment will be very important for our determination concerning her attendance during this afternoon session and the remainder of the session.

[12.10.58]

MR. PHAT POUV SEANG:

Mr. President, I think our team is not very certain yet. We will communicate this message to you, definitely, after the lunch adjournment.

MR. PRESIDENT:

Thank you.

The Chamber will now take the adjournment from now until 1:30, when the afternoon session will be resumed. The detention facility officials are now instructed to take Ieng Thirith back to the courtroom by 1:30.

(Judges exit courtroom)

(Court recesses from 1212H to 1340H)

(Judges enter the courtroom)

MR. PRESIDENT:

Please be seated

[13.40.47]

The Court is now in session. Counsel for Ieng Thirith, you may now proceed.

THE INTERPRETER:

Counsel mic is not activated.

MR. PHAT POUV SEANG:

Since my client's health is not good, she cannot attend this session, and she would like to waive her right to attend this proceeding and that we still can proceed with "both" of us.

MR. PRESIDENT:

Thank you, counsel, for your clarification on this. And, of course, according to our Internal Rule, she can fully exercise her right to do so, and that request is granted. And that the accused person can follow the proceedings through remote participation, the audio visual equipment "installed" to her. The AV officials are now instructed to make sure that the equipment is connected to her cell, so that she can follow the proceedings.

Before we commence, the Chamber would like to remind counsels that from now on, if you are making any application concerning the waive of the rights of your client, could you please make it very clear at each particular session, so that the Chamber has appropriate ground for determination. For example, like during today's session, if the Chamber had received any clear indication of such exercise of the right to waive the right to participate in the proceeding, we would handle it before the commencement of

these sessions. So, we hope the counsels are well-advised on this.

MS. ELLIS:

Mr. President, I'm sorry to have to raise this matter further, but could I just clarify the position regarding Ieng Thirith? Her request, when we actually adjourned for a short period at 11 o'clock, was to be returned to the detention centre. She was suffering general pain in her legs, but she also had, specifically, a very bad headache. She has, since 11 o'clock, been downstairs in the holding cell as directed. She is, in fact, unable to take advantage of the facilities that have been provided there and follow the proceedings on the screen. And her request over the lunch adjournment was, again, to be allowed to go back to what she sees as her home, namely, the detention center. So that, in fact, is the request that we make on her behalf

[13.45.02]

That she has, of course, by virtue of that request, accepted that she waives her right to be present for the current proceedings today.

MR. PRESIDENT:

It is the same issue. This morning, we already heard the request by counsel Phat Pouv Seang concerning the waiver of the right to participate in the proceeding, and that she would -- it was a request that she would follow the proceedings through remote

participation at the holding cell. But counsel Phat Pouv Seang failed to indicate this during the time when he was on his feet to state that position.

The Chamber, therefore, would like to advise the counsels to really include this as well in their requests, for example. And we would like to also seek clarification from the counsel – where is Ieng Thirith now, and how can you really proceed to request Chamber with your application?

MR. PHAT POUV SEANG:

Your Honours, Ieng Thirith is now at the holding cell. As my colleague already indicated, she requests that she be returned to the detention facility because she was unable to take the advantage of the facilities equipped at the holding cell.

[13.47.12]

(Microphone not activated)

[13.47.31]

JUDGE CARTWRIGHT:

Yes, thank you, President.

When you say she is unable to take advantage of the facilities in the holding cell, I'm a little unclear. She has a bed; she has a table. She can watch the proceedings. She does not need to sit up. Is there a specific reason -- and she can also have medical attention there. Is there a specific reason for returning her to her cell in the detention centre that we are unaware of?

MS. ELLIS:

Firstly, what we convey is her request that she is in discomfort. Perhaps, the Court noted that she was dozing off this morning. She is in pain. Being within more familiar surroundings is, therefore, more comfortable. When she is downstairs, as best we can ascertain – although, it's right to say she is lying down on a bed – she doesn't follow what is actually happening in the courtroom. The screen is on; she sees it, but from all the information that we have gleaned from our own observations and from others, it appears that there is no benefit to her from being there and watching the screen because she is not able to take in, in fact, who the personalities are that she's observing and what is happening in this courtroom. And therefore, as she is suffering discomfort and pain and wishes to be returned to the place she's familiar with, our application is that that is allowed.

JUDGE CARTWRIGHT:

And what would -- one of the main reason for having the holding cells in close proximity to the courtroom is to enable the Trial Chamber to have particular accused back in court quickly should the need arise or, rather, more quickly than it would be the case is she was in the detention centre. So, there's got to be some thought given to the other side of the coin as well, Ms. Ellis.

MS. ELLIS:

Your Honour, I certainly understand the comments that are made by the Court in that respect. The reality of the situation is that

her presence here, it may be understood, will not significantly affect anything that is happening in this courtroom at the moment. I certainly appreciate it takes longer were she to be required to come here, but I personally have difficulty in envisaging any situation where her attendance would be necessary here for her participation in anything that is going on at the present time.

[13.51.02]

(Judges deliberate)

[13.52.38]

MR. PRESIDENT:

Regarding Ieng Thirith's case, the Chamber has already decided, in light of the request by the defence counsel, that she be excused from attending this courtroom and, at the same time, observe "that" the proceeding from the holding cell where the audio-visual facilities are provided properly. The Chamber, therefore, maintains the Bench position.

Next, the Chamber would like to proceed to the defence counsel for Nuon Chea to proceed with questions, the general questions that the counsel would wish to put to the expert. Some of the questions that are not related to the topic have already been rejected, so the expert can refrain from addressing those questions.

MR. SON ARUN:

Mr. President, Your Honours, I have just a few questions - five

in total to Professor Campbell. My colleague has already put several questions to him.

QUESTIONING BY DEFENCE COUNSEL:

BY SON ARUN:

Q. First, I would like to know the profession -- the different skills Mr. Campbell possess and the skill Dr. Ka Sunbaunat possesses because you are specializing in geriatrics, while Mr. Ka Sunbaunat specializes in psychiatry. So, could you please elaborate on the difference between these professions please?

[13.55.23]

MR. CAMPBELL:

A. My specialty area is in the physical health of patients, but also, as I indicated earlier, I see a large number of patients with cognitive impairment also. The majority of patients with cognitive impairment will be looked after by a physician, such as myself, when they are seeking secondary care. Psychiatrists are more likely to be involved if there are significant behavioural problems associated with a dementia or if the person has a clear psychiatric illness, such as schizophrenia or depression.

Q. Question number two: according to your statement to the Court, you indicated that you practised your skills, for example, in teaching mainly and researching -- you said you spent most of the time teaching and researching. Can I ask whether you already exercised your skills in assessing clients like -- or patients

like (inaudible) clients in your practice, or it's only part of your research and lecturing?

A. No, you're incorrect. I spent the majority of my time in clinical care of patients. The majority of the teaching I do is around patients and on my own patients, and my research is also clinically based.

[13.57.10]

Q. I just wish to know exactly by asking this question because, for example, when it comes to people of advanced age at the level of this particular hybrid nature (sic), have you ever conducted such practices in your career, or it's only part of your teaching, lecturing or research?

A. The assessment of patients with problems similar to Nuon Chea constitutes the great majority of my work.

Q. So far as I know, you have met Nuon Chea on three occasions. First, you met him -- you met him twice on one particular day -- a few minutes in the morning and in the afternoon about 15 minutes. And later on, you met him for an hour. During such meetings with Nuon Chea, who is of very old age, do you think that such brief meetings with him could give you significant objective observation regarding your assessment concerning this person in your report?

A. I met with Nuon Chea for longer than you indicate in your question. I met him both in the morning and in the afternoon, and then I met him again this Thursday. As well as my meeting

with him, I also had considerable amount of preliminary information from other doctors' reports. Had I felt that additional time was required to complete my assessment, it had always been made clear to me that I could seek such time. I felt that I had adequate time to make a full assessment.

Q. After meeting Nuon Chea, and as I am the counsel for Nuon Chea, I have met him on several occasions -- and according to these observations, I can tell you that such brief meetings you had with him is not really significant to assess his situation. It is his observation -- I mean -- Nuon Chea's observation, as he told me. The question that I was putting to you is also to see whether you also have -- will have an opportunity to see him again?

[14.00.29]

A. I do not -- feel the need to see him again at this stage. I have completed my assessment of him and, as I indicated, did not feel that I required further time.

Q. Another question, please. You indicated that you met the doctors who are on duty at the court, and you have consulted with them. Have you had an opportunity to consult with these doctors on several occasions, or you only rely heavily on the documents obtained from the Calmette Hospital instead?

A. No, I had ample opportunity to discuss Nuon Chea's health with them, both at the time of my initial assessment and also on my reassessment on this visit.

Q. I would like to just -- seek clarification, and I stand to be corrected if I am straying outside this topic. I have observed closely "regarding" the reports, medical reports, by the doctors who regularly supervise the accused person. Every week, there would be regular medical report, and in the reports, there are some shortcomings or inaccuracies. For example, on the 8th of August - in the report, my client is of good health, but at the same time, in the same morning, Nuon Chea experienced hypertension.

MR. PRESIDENT:

Counsel for Nuon Chea, could you please hold on, since the International Co-Prosecutor is on his feet.

You may proceed.

[14.02.46]

MR. ABDULHAK

Thank you, Mr. President. We're again compelled to object on the same basis. I think Your Honours' instructions are very clear that we're not to deal with the specific assessment of Nuon Chea. An entire session has been set aside for that purpose. And I think it assists everyone if we keep with the orders of the Chamber, and we follow Your Honours' instructions and deal with matters to do with Professor Campbell's qualifications and general matters dealing with assessment of cognitive impairments. I'll just ask again that counsel be instructed to refrain from putting further questions in relation to the assessment of Nuon

Chea.

MR. PRESIDENT:

Thank you, Co-Prosecutor, for your observation.

The Chamber would like to remind counsel that questions at this moment shall be framed to any matters of general aspects, and that any specific questions concerning your client should be reserved to be asked or put to the expert during the scheduled session allocated mainly for this purpose.

[14.04.23]

Also, it is observed that there should not be any subjective observation concerning these matters, and we should allow the expert to express his -- make his own statement concerning his expertise that we can use as ground for our decision in the future. I hope the counsel is now properly advised before putting questions to the expert.

MR. SON ARUN:

Thank you, Mr. President and the Co-Prosecutor. I have the final question.

Q. My colleague put a question to Doctor -- Professor Campbell rather, and we also observe that question put from Ieng Sary's team. And you responded by saying that you also consulted people who supervised the accused persons, and that you said outside source of information -- also vital to this work. However, you also indicated that you have not had an opportunity to consult with any close person to the accused person, Nuon Chea. Can you

elaborate on this?

MR. CAMPBELL:

A. Throughout the reports on Nuon Chea's health, there has been no concern raised about his cognitive function, his memory. It has been reported in all the medical records that his memory has been intact, and there were no visual-spatial problems or problems particularly with concentration. That was consistent with my findings when I saw him, and therefore, I did not see that there was a need to consult any of his family or other people.

MR. SON ARUN:

I have no further question. I am grateful.

MR. PRESIDENT:

Next, we would like to proceed to the Co-Prosecutors to put questions to the expert Professor Campbell.

MR. SENG BUNKHEANG:

Thank you, Mr. President.

[14.07.39]

QUESTIONING BY THE CO-PROSECUTORS:

MR. SENG BUNKHEANG:

Q. Good afternoon, Professor Campbell.

I would like to seek some clarification concerning your profession. Before you graduated, you wrote a thesis. And could you please elaborate on the topic in your thesis, whether it is also related to the current position you're holding?

MR. CAMPBELL:

A. The topic of my thesis was an epidemiological study of the major conditions affecting older people in a particular community and included both physical problems, as well as determining the prevalence and associated factors with dementia.

Q. Thank you. Apart from your general geriatric profession, have you also -- rather, beyond your general training in medicine and specialization in geriatrics, have you undertaken any specialized study in the diagnosis and treatment of psychiatric conditions?

A. Clearly, patients with psychiatric conditions do have medical problems, and I am involved on occasions in their physical care.

[14:09:30]

Q. Given that you do not specialize in psychiatric conditions, per say, what types of psychiatric or behavioural disorder would you normally treat with referral to psychiatrist?

A. I think one of the issues here is whether or not one regards dementia as a psychiatric illness, and I do not. It is a physical illness associated with brain changes. And the majority of patients with dementia would be looked after in secondary care by a physician such as myself.

If the person with dementia has behavioural problems, for example: anger, unable to control, hallucinations – problems such as that – then they would be referred often to a psychiatrist for

his or her opinion.

Q. Thank you. How much time have you spent learning these skills that you're "having"?

A. The whole of my professional life and formal training -- formal training after graduation is around seven to eight years before gaining post-graduate qualifications, and then the rest of one's career is spent learning as well.

Q. You indicated that you conducted research regarding this "skill" for how many years; could you please elaborate on this?

A. I graduated in 1969 and began my first research project in the early 1970s. I completed my doctorate between 1976 and 1980, and I have been involved in on-going research since then as part of my academic position.

Q. Thank you. When did you start using your skill?

[14:12:17]

A. Which particular skills were you referring to?

Q. The skills you have already indicated (inaudible) in particular, the skill that is not related to the treatment of the old age people.

A. Well, I already began practicing as soon as I graduated, but that was clearly under supervision. And it was in 1976 that I was appointed as a consultant physician. So, I was then in a position where I took primary responsibility for patients, and I have been practicing as a consultant physician since then.

Q. Thank you. You indicated you have treated "for" patients.

What kind of medicine -- or have you ever prescribed any kind of medicine to the patients? Or can I ask that how many patients have you treated during the last three years, and what kind of medicine regime have you provided to them?

A. That's a hard question to actually provide the number. I have in-patient -- a number of in-patients, and I also have regular out-patient sessions each week. So it would be well into the thousands.

MR. BUNKHEANG: Thank you, Professor Campbell. I would like now to hand over to my colleague to proceed with further questions. Thank you.

[14:14:41]

QUESTIONING BY THE CO-PROSECUTORS:

MR. ABDULHAK:

Q. Good afternoon, Professor. I feel as though your qualifications, as extensive as they are, have been dealt with in great detail, so my questions will be only a few.

And if I may, during the break, I asked the court officers to prepare for us Document E62.1. And perhaps, just before that is shown, I'll just explain. This is the document to which counsel referred -- counsel for the Accused, Nuon Chea -- and it's a document which contains a brief summary of Professor Campbell's qualifications. And so, with the President's leave, I would like to show that document to the professor. Would that be appropriate?

MR. PRESIDENT:

Your request is granted.

And the court officer is now instructed to make sure the document can be projected.

MR. ABDULHAK:

Q. And this is that document. Of course, it is here in the English language so I may -- just refer to a section and perhaps paraphrase the relevant part for the benefit of the Khmer speakers, and perhaps you can comment on that for us. If we just may scroll down to the second last paragraph on this page. Thank you.

Professor Campbell, are you familiar with this document?

MR. CAMPBELL:

A. It would have been some time ago I saw it if I did see it.

Q. Is it something you prepared or was it prepared -- do you know if it was prepared on your behalf?

[14:17:22]

JUDGE CARTWRIGHT:

It was prepared on his behalf, just to clarify.

MR. ABDULHAK:

Q. Very grateful. In that case, we'll just focus in on one sentence, which was the subject of some questions by the Nuon Chea team. It essentially indicates that -- the very last sentence of that paragraph -- of the larger paragraph on the screen ---

MR. CAMPBELL:

A. Yes.

Q. It states:

"He has also provided an assessment for the Court to enable it to determine if a person who had both physical and cognitive impairments was fit to stand trial."

And of course, this is at the end of a paragraph which deals with the expert testimony that you explained in more detail this morning.

A. Yes.

Q. Can you comment on that last sentence?

A. Yes. I cannot recall where I've assessed a patient in a similar way to what we are here.

Q. Okay. Thank you very much.

[14:18:18]

And if I just may return very briefly to your academic work, you stated this morning that you've written more than 100 articles over the course of your career, and you said that some of those dealt with issues of dementia. Are you able to give it a general estimate as to how many -- how often that would come up in academic research?

A. No, a small number directly to do with dementia - early papers on the prevalence of dementia, some related to the use of psychotropic drugs, but not detailed work otherwise on dementia.

Q. Thank you. And thank you court officer, we won't require

that document anymore.
In your practice, you've explained that over the last three years, you may have seen thousands of patients. But more specifically, how often might you make an assessment as to a patient's cognitive functioning? Is that something that you do on a weekly basis or is it less frequent than that?
A. In a clinical setting - really on a daily basis.
Q. So, it would be -- correct to say that you encounter cases of different stages of dementia on a fairly regular basis?
A. Yes, that is so.
Q. And, Professor, you've explained a little bit earlier some of the differences between the types of treatment that a geriatrician might provide and the types of treatment that a psychiatrist might focus on. In your practice, when would you consider it fit to refer your patient to a psychiatrist?
[14:20:07]
A. I would refer if there were significant behavioural problems that required management; if there was concern about depression playing a major role in the person's cognitive function, particularly in those circumstances.
Q. Thank you. Now, I don't want to get into the specific assessments of the two Accused, and of course, we've objected to questions along those lines earlier, but I do wish to ask you one question simply by way of clarifying the record. I think you indicated, and please correct me if I'm wrong, that you felt that

your assessment was consistent with the assessment of Dr. Ka -- this is in the case of Ieng Thirith.

A. Yes, that is so.

Q. And that relates to his assessment that was provided upon request in June of this year?

A. That's correct. I mean, one of the issues is around whether one describes this as a mild or moderate impairment, and he described it as mild. There isn't any firm standard by which one says it is either mild or moderate.

Q. And that's -- you've half answered my question already. I just wanted to bring out the differences in the terminology used. I think you referred -- in your report, you describe it as moderately severe dementia, and I think Dr. Ka described it as a cognitive function impairment within the extreme limit of mild. Is it your evidence that essentially there's no material difference between those two descriptions?

A. Yes, I feel that is so.

[14:22:01]

Q. Thank you very much. And we might leave the matter of individual assessments there and come back to it in later sessions.

MR. ADULHAK:

Mr. President, I'd like to also show one more document, with your permission, to Professor Campbell, and I should just point out, this is Document E62/2. It is a confidential document. However,

the section which I propose to show is the very bottom of page 2. This was a request by the Ieng Thirith lawyers for listing a number of questions which they asked to be put to Professor Campbell or to be considered by him. And the very specific passage which I refer to does not contain any confidential information. It is Item 5 on page 2. It simply lists a number of matters in relation to the ability of an accused to appreciate the proceedings, whether or not such ability was present.

I do have a copy if that will be of assistance. I'll just hand that up. It's essentially the bottom part of that page, and it is below the text that has been redacted.

MR. PRESIDENT:

Your request is granted.

So, please court officer is instructed to display the document that shows the part that is requested to be shown.

MR. ABDULHAK:

I'm very grateful, Mr. President.

[14:25:34]

So, if we may just scroll down to the bottom of this page. Thank you.

Q. Professor Campbell, this contains a number of questions which you were asked to consider by the Ieng Thirith defence team. First of all, have you read this document?

MR. CAMPBELL:

A. Yes, I have.

Q. And again, without going into great detail on the assessments – in your assessments, did you take these questions into account in relation to one or both of the Accused?

A. Yes, I did.

Q. And I'll just note for the record, and because we have the English version of this document on the screen, this is paragraph 65 of Document E62/2 and it specifically refers to the elements set out in the ICTY Strugar case. And I think, the court officer, we won't need that document anymore.

And just following on from that question, you testified earlier today that a cognitive assessment necessarily relates to a task which a person may be required to undertake. Is that -- am I correct in summarizing your evidence?

A. Yes, that is so. When one is assessing a person, one assesses them with respect to the particular task that they may be called upon.

Q. And considering this document and in light of your mission, as indicated in the Trial Chamber's Order, did you understand that a particular task for which you were assessing the cognitive functioning of the Accused, had to do with participation in a trial?

A. Yes, I did

.[14:27:45]

Q. Did you in any way feel that your experience may be lacking in this respect?

A. I think the instructions there are reasonably specific, and I felt that I could meet those requirements, assess the patient -- the person appropriately.

Q. Thank you very much. And just a couple more questions. There's been great discussion of the Mini-Mental State Exam. In your experience, is it possible for an individual to achieve a score of 30 out of 30 and yet be cognitively impaired?

A. A score of 30 out of 30 is taken as being normal intellectual function. There are some aspects of the Mini-Mental State -- some aspects of intellectual function that the Mini-Mental State does not examine particularly closely or well. But otherwise, it is a good test of memory.

Q. And just to recap, is it correct to say that -- this test was one of a number of matters in which you relied on, in any event?

A. That is correct.

Q. And the very last question, Professor; you did this morning also refer briefly to the potential causes of dementia, and I think that you stated that among those causes were psycho-social conditions. Is that correct?

[14:29:25]

A. Whenever there's impaired cognitive function and -- there are a number of different factors that are likely to impinge on that, and psycho-social factors are clearly very important. I mean, there is evidence that people who are kept intellectually

active do actually preserve function better.
Q. And just following on from that, would it be fair to say that cognitive impairment - or correct me if I'm wrong, and perhaps this is really where we need to rely on your expertise - can it be alleviated through addressing some of those psycho-social conditions?
A. Yes, it can. I mean, there can be both treatable causes of impaired function and untreatable causes, and very important to identify the treatable causes and deal with those, which is why I recommended a decrease in the psychotropic drugs, for example, that Ieng Thirith has been taking.
Q. And I apologize, I said that was my last question, but you've just invited me just to confirm essentially, then it is your evidence that your opinion as to -- would it be correct to say that your view as to the current state of affairs -- that it is an interim situation given that those reductions are still continuing?
A. Yes, that is correct. And also there are some agents that can be effective in Alzheimer's disease. They're effective in only a small majority. And as I suggested in my second report, if there is no improvement with the ceasing of the psychotropic drugs, then consideration should be given to trying those to see if they do have any benefit.
MR. ABDULHAK:
Thank you very much.

And thank you, Your Honours.

[14:31:09]

THE PRESIDENT:

Thank you, Mr. Co-Prosecutor.

Next, the Chamber would like to give the floor to the Lead Co-Lawyers for Civil Parties if they wish to put questions to Professor Campbell in accordance to the guidelines provided by the Chamber this morning. Thank you.

MS. SIMONNEAU-FORT:

Thank you, Mr. President. We have prepared some questions after looking at the documents.

Sorry, sir. Yes, we have prepared some questions.

MR. PRESIDENT:

There is an -- audio problem. Can court officers fix the problem and report to us once the problem is solved?

(Recording malfunction)

The problem is now fixed. Lead Co-Lawyers, you can now proceed.

MS. SIMONNEAU-FORT:

Thank you very much, Mr. President.

As I was saying, we have prepared some questions after we had only had a chance to look at the documents on Friday. Now, in fact, all of those questions have already been asked and like everybody here, we do not wish to become repetitious or pose redundant questions. We, therefore, do not have any questions to put at this stage in the hearing.

Thank you, President.

[14:34:14]

MR. PRESIDENT:

Thank you.

Now that we do not have any further questions to be put to the expert for our joint hearing, it seems that we come to an end to this joint hearing today. And as planned, we will have separate hearings concerning Ieng Thirith followed by an individualized hearing concerning Nuon Chea. Participants will be determined later as to who can participate in those hearings and in order to --.

(Judges deliberate)

MR. PRESIDENT:

I notice that Ms. Ellis is on her feet. So, you can now proceed.

MS. ELLIS:

Mr. President, I understood that the defence was to have a chance to ask a few questions finally before we close the public part of the session from what was said at the outset, and I wondered if we might be permitted to do that.

MR. PRESIDENT:

Yes, you are allowed to do that. But before that, I would like to remind that you need to confine yourself to different questions, rather than repeating the questions, and I'm sure you understand this issue.

[14:37:01]

MS. ELLIS: Thank you very much.

QUESTIONING BY DEFENCE COUNSEL:

BY MS. ELLIS:

Q. Professor Campbell, you've been directed to the document that sets out the capacities that are considered when the matter of cognitive impairment is being assessed. And as we saw, those were in criminal proceedings, non-exhaustive, but involve: understanding the proceedings, instructing counsel, testifying of choice - if that's the case - understanding the consequences, and of course, before all that, understanding the charges.

Now, from what you've said, your experience in court work has been outside of the criminal justice system and to do with testamentary capacity, for example. But when you are assessing the cognitive impairment for those kinds of court cases, are you not considering the same kinds of capacities?

MR. CAMPBELL:

A. Yes, both persons' general capacity and also in relationship to the particular questions around their ability to instruct the person representing them.

Q. Although this happens to be your first experience of a report for a criminal trial, essentially, the assessment on cognitive impairment is the same whatever the actual situation?

A. Yes, clearly I need to get an understanding of the actual process and did my best to do that. By the way, the assessment, as you indicate, requires the same tools to be used.

[14:39:27]

Q. You've already told us that in order to make your assessment of Ieng Thirith, you saw her on several occasions. On the first day you saw her, you saw her both in the morning and in the afternoon?

A. That is correct.

Q. And that, therefore, covered a period of several hours. Is that right?

A. Yes, that is so.

Q. You then made, back in May when you first met her, a return visit to see her the following morning?

A. Yes, I did.

Q. And you then told us that on your return last week, you had an opportunity to see her again?

A. Yes, I saw her in both the morning and in the afternoon last week.

Q. And can you just give us some idea of the period of time, therefore, in total you have had in order to carry out your assessment?

A. The time with Ieng Thirith would probably be around four hours in total.

[14:40:47]

Q. Thank you. Now, you've told us quite a bit about the two tests that you felt it appropriate to conduct in this case: the MMSE and the Montreal Cognitive Assessment. Just so that we're

clear, in addition to those tests involving - as you've told us - the ability, for example, to deal with numbers and subtract simple numbers, the patient is also shown a series of pictures to identify objects. Is that right?

A. That is correct, yes.

Q. And just to be clear, those objects, for example, animals - they're all very familiar objects, aren't they?

A. They are.

Q. And the tests require the patient to try and recall the objects that they have seen once they've shown whether they can identify what they are?

A. Yes, the main memory test in the MMSE is to name three objects, get the person to repeat them and then to check again after some additional questions have been asked.

Q. And do you also state a sentence and see how well that sentence can be repeated by the person who's being tested?

A. When one is doing the full MMSE - yes, one does. But given the problems with translation, I didn't use that particular test. As I said, I selected questions from both the MMSE and the Montreal test.

[14:42:40]

Q. From the Montreal test, one of the aspects of that was dealing with the clock and the ability to tell the time?

A. Yes, to draw the clock, which is a test of constructional - spatial-constructional problems

Q. Yes.
A. -- and also the time, in order to test the person's, again, constructional problems and conceptual thinking.
Q. And would you expect a child, of perhaps over seven or eight, to be able to perform that particular task?
A. Yes, most children would be able to do that.
Q. It's a fairly simple basic test, in other words?
A. It is.
Q. Thank you. In order to carry out these two tests, you had the benefit of an interpreter. And as I understand your evidence, that can, in some situations, slightly alter your ability to make judgements on how reliable the testing might be?
A. Yes, it does because one is not getting the direct answers oneself. And also, as indicated earlier, there may well be cultural issues in some of the questions.
[14:44:06]
Q. But would it be fair to say that were the tests, in essence, dealing with quite simple issues or questions, that should present less of a problem where there is an interpreter?
A. Yes, with the questions I asked, I would have expected the person to be able to handle those, given that the questions were provided through an interpreter.
Q. Because you - from what you've said - will have taken into account that there is an intermediary and, therefore, will want to ensure that what is posed can be easily translated and,

therefore, there is less scope for there to be any unreliability in the response?

A. Yes, that is so. For example, the phrase that is repeated in the MMSE has particular significance that the person may pick up. Now, I'm not sure whether that is maintained if it's translated and, therefore, did not use that question.

Q. From what you've said, if the results of those two tests show cognitive impairment, to some extent, that is the icing on the cake because your main assessment comes from all those other areas, as you've described: taking the history, looking at the medical background, looking at any scans, looking at any medical records, looking at the social environment -- all of that and the behaviour - as observed by others over a period of time - is, to some extent, the critical aspect of assessments. Would that be fair?

A. Yes, that is so, especially in this situation where one does have the problem of translator and the cultural issues. These are used, really, just to confirm the initial assessment.

[14:46:25]

Q. And with all your many, many years' experience, one of the other features - would you agree - that you will always be alert to, in assessments of this kind, is whether the patient is in any way trying to avoid, consciously, answering questions or feigning inabilities. Is that something you will be familiar with and you will be alert to?

A. Yes, it's not a situation that's likely to arise very commonly in -- general clinical practice, but one does have to be aware of other circumstances, which may influence the person's ability to answer. For example, if there's a member of the family present who may be observing, that may influence their ability and may influence their willingness to actually participate in the test.

Q. That was not the situation here, though?

A. That was not the situation here.

Q. When you'd compiled your report - just to be clear - you didn't show it, did you, to Ieng Thirith for her comments?

A. No, I did not.

Q. And it would not be usual, would it, when a report is prepared to assist the judges in their ultimate assessment of the issue, for you to show that report in advance of providing it to the Court, to the patient.

A. No, I would expect that that would be the court's decision and the person representing the person.

Often, when one is taking a history, one goes back over it with the person to ensure that it's correct, but it doesn't mean showing them the written summary.

Q. You've told us that dementia is, in your opinion, a physical illness. Would it be right to describe it as an illness in which the brain's structure becomes altered, and then there is a death of certain nerve cells?

A. Yes, dementia is a chronic and progressive impairment of cognitive function, intellectual function, brain function which has a number of causes. The most common is Alzheimer's in which there is loss of nerves, nerve function. Commonly, there is a vascular component to it, a vascular dementia, and very often a mix. And there are other dementing illnesses – less frequent, less common.

[14.49.19]

Q. And you, as a physician – you're a geriatrician, but you are a physician, are you not – are very well equipped and do deal with the illness of dementia, as you've said, on a daily basis?

A. That is correct.

Q. The referral to a specialist, such as a neuropsychiatrist, is if there is a particular – I think the word is, perhaps, significant that you used – management problem in respect of the functioning or the behaviour of the patient?

A. Yes, that is so. For example, if the patient was wandering or particularly aggressive, for example, one may well call in a psychiatrist.

Q. And other disciplines have been mentioned. For example, the neurologists, they have very specific roles in some instances, but by no means always, in cases of dementia, do they?

A. Now, normally a neurologist would be involved if the person was very much younger. For example, if dementia first became manifest in someone in their forties or fifties, a neurologist

might well be involved at that stage.
[14.50.42]
Q. So, then you're talking about early onset dementia, which is less common than as an individual ages. And radiologists are brought in sometimes to simply review the scans and – I think from what you said – you had the assistance, did you, of somebody in looking at the scans?
A. Yes, that is so. The radiologist will always report on scans and there were reports on the scans that Ieng Thirith had had. I looked at them myself also because, of course, as a clinician, I review them and also discussed them with another radiologist.
Q. Thank you. And then, there are neuropsychologists who do certain tests if they're felt to be necessary in the circumstances. Would that be right?
A. Yes. Early on in a dementia, whether this is an actually dementing illness, whether the person has significant cognitive impairment, or whether they are simply worried that they might, we might well do some basic testing at that – some neuropsychological testing at that stage as a base for further assessment later on.
Q. But it would be right to say, wouldn't it, that none of these specialists in their disciplines have the overall responsibility for the care and treatment of a patient suffering from dementia or cognitive impairment?

[14.52.11]

A. No, often the care of such a patient is by a number of people involved; a physician, neuropsychologist may well be involved and then other staff providing support.

Q. And do you have the overall advantage of also being able to assess the physical condition of the individual?

A. Yes, that is so.

Q. When you came to provide your opinion, your assessment of Ieng Thirith – which as we've heard was that she was cognitively impaired and, as a result, compromised in exercising her fair trial rights – that, of course, was on the basis of all the examinations and assessments carried out?

A. Yes, it was.

[14.53.18]

Q. And it's already been referred to, but there was a letter that you wrote to the Trial Chamber on the 13th of May of this year in which you described the cognitive impairment as being significant.

A. Significant in the terms of the task that she was face with, yes.

Q. Yes, it was as you stated; it's E62/3/3.1. It's been referred to that you said you found a significant cognitive impairment. I simply raise that because the other two descriptive terms have been put as to "moderate" – "moderately-severe," which is in your report of the 23rd of June

and Professor Carr having described it as "mild." You would not suggest, would you, that it wasn't a significant impairment that you assessed Ieng Thirith was suffering from?

A. At this stage, I feel she has a significant impairment.

Q. And it was for that reason that you recommended, as we've heard, that there should be a reduction in two of the drugs that she was taking in order to then assess whether that, in any way, improved the situation?

A. Yes, I suggested a reduction of the bromazepam and clonazepam and...

Q. Could I -- I was not going to go into details of what those drugs were, just the general principle.

A. Yes, a general reduction in the psychotropic drugs.

Q. And that general reduction, we understand from your follow-up, has not had any significant difference at all in her cognitive impairment. Hence, you've moved on to suggest something else?

[14.55.29]

That is correct.

Q. And of course, we'll be going into these details later. But the position, as it stands at the moment, is that your assessment is that Ieng Thirith cannot meaningfully participate in the trial process?

MR. PRESIDENT:

Ms. Ellis, you have touched upon the details which should be

"discussing" during the closed sessions. We have reminded you several times concerning the general questions that you should "be" put to the expert. We are concerned that you may ask the same questions at a later stage. Otherwise, these questions will not be permitted to be put to the expert when the time comes. So once again, the Chamber reminds that you put -- the right questions concerning the general issues and emit or refrain yourself from asking specific questions, which may be asked at a later stage, to the expert concerning specific accused person, "which" we will begin with Ieng Thirith followed by Nuon Chea. And there, we will also limit the participants to the sessions. Once again, we hope you understand the issue at hand and that you should also consult with your colleagues, as well as your other counsels to avoid asking repetitive questions so that the proceeding can go smoothly.

[14.57.47]

MS. ELLIS:

Mr. President, I'm sorry if you consider the questions were inappropriate. It was re-examination, and I hope that every question asked was based on questions others had asked in order to clarify or expand on that. And the purpose for which I asked - what was, indeed, my final question as to the current fitness - was simply on the basis that Professor Campbell had been invited by the Court to give his views on Nuon Chea. And therefore, it seemed to us that is was fair and appropriate not to leave

hanging in the air the conclusion of his assessment of our client. But I've asked the question. If you do not permit Professor Campbell to answer, so be it. That was my last question. Thank you very much.

MR. PRESIDENT:

Professor, you don't have to answer this last question. Is there any other questions?

[14.59.15]

QUESTIONING BY DEFENCE COUNSEL:

BY MR. PAUW:

Q. Mr. President, Professor Campbell, just very briefly, the prosecution mentioned your thesis and stated the relevance of that thesis. I've been doing some research on your publications online as well. And I'm sure that that's a very limited approach to medical publications, but would it be fair to say that you are an expert on the issue of fall prevention in an elderly population?

MR. CAMPBELL:

A. It's in that field the majority of my research has been done.

MR. PAUW:

No further questions, Your Honours.

MR. PRESIDENT:

Thank you. I'm observing that the joint hearing has now come to an end. What continues is the Chamber's determination as to how

we are going to proceed with the hearings concerning specific accused. During those hearings we -- the next hearing will be the one that concerns the Accused, Ieng Thirith; and so, the participants will be the counsel for Ieng Thirith and the prosecutors, as well as the co-lawyers for civil parties. And then the hearing concerning Nuon Chea will follow after this hearing. And during these latter hearings…

[15.01.36]

JUDGE LAVERGNE:

Maybe it would be a good idea to specify.

(Judges deliberate)

MR. PRESIDENT:

After our consultations, there is a small amendment to the proceedings. After the break, we will resume with a separate hearing concerning Ieng Thirith pursuant to the -- pertaining to the expert report. Therefore, the presence of Nuon Chea's co-lawyers can be "observed" here as long as the session is in public. And after our consultation just now, we decided that co-lawyers for Nuon Chea can also be present if the hearing is conducted in public, so that they can observe. And this also applies to other parties and the public unless parties are informed otherwise that they cannot "be" participate in any particular portion of the hearing -- when it comes to our determination regarding the balance between the rights of the public to know information and the rights of the accused persons

-- not to disclose their private information.

The Trial Chamber, as indicated this morning, intends to conduct this hearing in public at the most extent possible

[15.06.00]

Now it is appropriate for us to take a 20-minute break, and we will resume at 3:25. Thank you.

(Judges exit courtroom)

(Court recesses from 1506H to 1527H)

(Judges enter the courtroom)

MR. PRESIDENT:

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

In a moment, the Court will proceed to examine the reports prepared by -- Professor Campbell concerning the accused person, Ieng Thirith.

[15.27.38]

I will now hand over to Judge Cartwright to continue the questioning of the expert in relation to his report concerning the Accused, Ieng Thirith.

JUDGE CARTWRIGHT:

Yes. Thank you, President.

QUESTIONING BY THE BENCH:

BY JUDGE CARTWRIGHT:

Q. Now, we're going to focus specifically on the reports that you have prepared in relation to Ieng Thirith, and I will begin the questioning as previously, Professor Campbell.

[15.28.18]
Now, in your first report completed in June of this year, you came to certain medical and cognitive conclusions. Could you summarize those conclusions, please, for the Court?
MR. CAMPBELL:
A. My conclusions were that: Ieng Thirith did have significant cognitive impairment, and there were a number of possible causes for that, "included" an underlying dementing illness, which may have been due to either Alzheimer's or vascular dementia, but most likely, a component of Alzheimer's disease; that her cognitive function would also possibly have been influenced by the medications that she was on and also by the stress that she had been under for a number of years and also her current social circumstances.
Q. Thank you.
[15.29.18]
Now, can we turn in more detail first, please, to any physical findings that you made in relation to Ieng Thirith before going on to the more extended analysis of her cognitive status? Did you come to any conclusions about her physical status?
A. She was generally frail, but otherwise, there were no specific physical problems that I felt would influence her ability to participate in the trial. She did have a number of chronic problems, but they were being managed appropriately. Her blood pressure, for example, was being managed appropriately.

She had had some renal problems, but that has been quite stable over some time.

Q. Now, you specifically spoke of -- or reported on her musculoskeletal disease in your report. In the English, it's page 13. And in that, you noted the concerns that she had expressed, some of which have been repeated by her lawyers in Court today.

[15.30.38]

Could you expand a little on that, please?

A. Ieng Thirith does complain frequently of pain in her knees, her ankles, her legs and did so on my reassessment, also. I re-examined her joints again on this visit. I could find no signs of inflammation in her knees or her ankles. I had found a small effusion in the knee the first time I examined, but not on this occasion.

On review of the assessment of her musculoskeletal system previously, she had had an orthopaedic review and, again, no particular problem had been found, and that had included an x-ray of her knees.

Q. And in fact, since you examined her most recently, you have recommended some further measures with her medication for the pain that she is concerned with. Is that correct?

A. That is correct. She was on a very low dose of paracetamol, which is a simple analgesic without significant side effects. I felt that she may well be more comfortable if this

was used in a slightly larger dose and more regularly.
[15.31.52]
There is some evidence from the literature quite recently indicating that if there are concerns about pain, then simple analgesics can decrease that pain and decrease the level of agitation.
Q. In the section on musculoskeletal disease, you spoke of Ieng Thirith being on vitamin D replacement.
[15.32.22]
Could you just explain what that measure is for and what your conclusions are concerning that?
A. When a person is in a situation as she is, their sunlight exposure may be significantly reduced -- importantly reduced. In that situation, they can develop a vitamin D deficiency, which can manifest itself as muscular aches and pains, bone pain; and so, it's important in that situation to ensure that the person is getting adequate vitamin D. The easiest way to do that is to use a tablet of vitamin D to replace, and that's used very commonly in practice now.
Q. And when you spoke a moment ago about people in her situation, can I infer from that you mean people who are confined, as Ieng Thirith is, in a detention facility or other like facility where there is less access to everyday outside activity?
A. Yes, that is so. For example, now in people in rest home

care, we would use vitamin D, a tablet a month, almost as a routine.

Q. Arising from your review of her physical condition, was there anything that caused you any concern in relation to her attendance during hearings, the facilities that are provided for her – anything of that nature?

A. As I indicated, she is physically frail. I feel she will be able to attend most of the Court sessions, but she may wish to use the holding cells for periods to enable her to use the bed there.

[15.34.26]

Q. But no special chairs, anything of that nature that you thought would be appropriate for her?

A. No, I didn't feel any particular equipment or furniture was required.

Q. Well, it's obvious to everyone now that you have concerns about her cognitive ability; and I'd appreciate it, please, if you could help me go through your first report, and then we'll return to the second report at a later stage.

[15.35.08]

First of all, before you completed your report, amongst the many medical reports and assessments you considered, you reviewed the psychiatric report completed by Professor Ka and Dr. Brinded in 2009. Is that correct?

A. That's correct.

Q. In lay terms, could you repeat – I think we've heard most of it already, but could you state again, please – what the conclusions -- what conclusions were reached by those two experts now almost two years ago?

A. They felt that she had early memory changes, which they described as an early dementing process, but also described it as being consistent with age.

[15.35.58]

Now, that is not entirely consistent in that one would not expect a dementing process to be part of what one would expect with age. There are certain memory changes that occur with age, but they are not indicative of a dementing process.

Q. So, it's like the familiar comments you hear from older people: "I must be getting Alzheimer's because my memory is starting to fade."

A. That's correct.

Q. Right. Well, you saw also in your summary of the materials that in -- the beginning of 2006, Ieng Thirith suffered a fracture of the left neck of the femur, and that required surgical intervention.

[15.36.50]

First of all, where is the left neck of the femur, bearing in mind that all this is being translated into Khmer and into French?

A. The femur consists of the shaft, which is the main thigh

bone, which then angles across and ends in a head – a rounded area which fits into the joint in the pelvis. And the neck of the femur is that small portion of bone between the head and the shaft, and it is a very common site of fracture for older people.

[15.37.40]

Q. Now, there was a connection drawn between that trauma and the diagnosis indicated by the two experts in 2009. Can you explain that connection to the Court, please?

A. She did have disturbed behaviour after that accident and the surgery. There were two possibilities raised: that this was a manifestation of a psychiatric illness; although, more likely is that she suffered a delirium. That is, whenever anyone has an acute illness – be it trauma, surgery, a febrile illness – they can become acutely confused with the delirium. That is, that becomes more common as one gets older and becomes even more common if there is an underlying cognitive impairment at the time of the stress.

[15:38:35]

Q. Are there -- in the report that Professor Ka and Dr. Brinded completed, they identified mild cognitive impairment, especially in the area of recent memory. They -- as you've already indicated, they associated that with her age, but also noted some indications from their review of a CT head scan. Did you review that head scan in particular, and do you differ in any way from the conclusions that they reached in 2009 from the same

head scan?

A. I've reviewed all the head scans apart from the one that was done in Thailand, and my findings are consistent with the reports that there is a generalized atrophy. The difficulty with CT head scans is that there is not a good correlation between the extent of the atrophy and the extent of the cognitive impairment. One can see people with quite significant cognitive impairment, but little change in the CT scan and vice versa.

The main value of a CT scan, in this situation, is to exclude other causes that may -- be responsible for the cognitive impairment. For example, an underlying brain tumour or a collection of blood between the skull and the brain.

Q. And, of course, you reviewed -- examined Ieng Thirith almost two years after the completion of this expert report. Are your current findings consistent with the diagnosis that they made?

A. I felt from my findings that her condition had progressed since they saw her. They had a reasonable degree of cooperation from her; I found it difficult to maintain her focus on the questions that I was asking and to get a good account of her past, which would have indicated an intact memory for previous events.

[15:41:00]

Q. You went into some detail, in paragraph 32 of your report, in summarizing your findings after you'd conducted a history and

an examination and reviewed the various scans and tests et cetera. Could you outline for the Court, please, your findings in that part of your report?

A. In my report there, I indicate that I feel the most likely underlying problem is an Alzheimer's-type dementia. There were not many changes consistent with a vascular dementia on the CT scan and no history of small strokes; although, she had been hypertensive.

I felt though it would very likely -- more factors contributing to the cognitive impairment than just Alzheimer 's disease, as I've indicated there.

Q. Well, those particular factors that you mention there have already been touched on, but they are: her personal stress, her exposure to trauma and her restricted environment and stimulation - meaning she lives a very simple life in the detention centre, I presume.

A. Yes, that is correct, with little additional stimulation to try to maintain -- help her maintain her function, intellectual function.

Q. Now, a feature of your examination was the recommendations that you made concerning adjustment of Ieng Thirith's medication. And you had in mind particular psychotropic drugs which could be reduced; and also, you recommended a period over which they could be reduced.

[15:43:08]

Now, what were your reasons for making those recommendations, first, before we look at them in more detail?

A. Ieng Thirith was on three psychotropic mediations, two of one type - so-called benzodiazepines and the other was quetiapine. Now, psychotropic medications can affect cognitive function. She had been on those for a considerable time, and the justification for them was no longer evident. As far as I could gather, no previous attempt had been made to reduce those medications.

I felt that they may be adding to her problems, rather than assisting, and that it would be important to try a reduction of that, carefully, under supervision. It would need to be a gradual reduction, as I outlined, because of the length of time that she had been on them and because of the issue of withdrawal effects.

Q. So, there were two basic reasons for making this recommendation: first, therapeutic - that is, in her own interests to improve her treatment, perhaps I could say in summary; and secondly, it might improve her ability to understand what is going on around her, to talk to her lawyers and matters of that nature. Is that a correct summary?

A. That is correct. Were she a patient of mine, then I would be taking -- making similar moves, and as you indicate also, in the hope that this would improve her mental condition such that she was able to participate in her own defence.

[15:44:57]

Q. Now, between your report in June and most recently when you return to Phnom Penh to reassess Ieng Thirith, did you engage in discussions with her doctor -- the doctors who treat her to discuss and resolve the program over which medications should be reduced?

A. Yes, we held an audio conference, which was successful, and agreed on a continuation of the plan. The doctors had already started to reduce her medications. So, that plan continued; so, as I indicated earlier, she has now been off the benzodiazepines for a week. And when I met with her doctors last week, we discussed the reduction of the quetiapine, and that has now been started.

Q. So, you have now reassessed her after she's concluded the benzodiazepines -- but there's still another regime to be reduced -- until it is reduced to the level you think appropriate. Is that right?

A. Yes, that is correct. The quetiapine is now being reduced about -- at a quarter of its dose a week, so that will take four weeks to complete.

I think the other issue which is important, which I indicate in my recent report, is that as there has been no improvement, really, with the decrease in the benzodiazepines, an underlying Alzheimer's disease becomes more likely. There are agents that can be used for this, and it is possible, although not likely,

that she may benefit from that.

Q. When you talk about the possibility of an underlying Alzheimer's disease, is this a condition that is difficult to detect clinically by CT scans, or is it simply that it's too early to be able to confirm it, so far as Ieng Thirith is concerned?

[15:47:12]

A. It is difficult to make the diagnosis on imaging alone because as I said earlier, there is a poor correlation between the degree of atrophy and the degree of cognitive impairment. It is really a clinical diagnosis based primarily on the history and examination findings in which one excludes other possible causes of the cognitive impairment.

Q. Turning now then to the medication again, you returned last week and you reviewed some further reports and also had discussions with her doctors, as you have indicated. You mention in your latest report, at page 1, that you reviewed some laboratory tests, and you have annexed those tests to the back of your report. Can I just turn first to those, these are the blood tests.

[15:48:28]

In two places - the one called T3 libre and the second, T4 libre - they are slightly below what appears to be the normal range. Is that a matter of concern for you; is it significant?

A. Not at all. These are the two hormones produced by the

thyroid gland, and the thyroid gland is under stimulation from the pituitary gland which produces TSH.

Whenever one looks at normal ranges, they are population norms; that is, if one took a whole group of people, 95 per cent would fall within this range. The body, through the pituitary gland, though, has set its own levels so that if one's own thyroid is producing insufficient thyroid hormone, the pituitary will increase the amount of TSH and stimulate the thyroid gland. The fact that the TSH, there, is in the normal range indicates that the thyroid gland is functioning normally.

Q. Now, just a brief question about the CT head scan of the 2nd of June 2011; was that one that you hadn't seen when you completed your first report, or were you just simply looking at it again on this occasion?

A. That was the -- date of that was June, and I don't think I'd seen that in my first assessment.

Q. And was there anything of significance that you -- that arose out of your review of that CT scan?

[15:50:17]

A. It was entirely consistent with the previous scans.

Q. So then, last week, you interviewed Ieng Thirith again in the presence of her doctors from Calmette who actually treat her and with an interpreter; and then you arranged a second interview directly by Professor Chak Thida, while you observed in the background. Can you explain why you conducted two interviews,

please?
A. In my first interview, I conducted that through the interpreter, with Ieng Thirith responding to my questions. And she recognized, I think, that this was a test situation, and I felt that that may have affected her response.
Reviewed that with her doctors after that morning interview and suggested that if I took a less prominent role and sat on the background -- we had fewer people present, so there was just Professor Chuck discussing with Ieng Thirith, and the interpreter sat next to me and conveyed the conversation to me. That would be a less obvious test situation, and we may get a difference in the response.
Q. Did you, in fact, perceive any difference in the responses between the two interviews?
A. I think she was a little more relaxed in the second interview. She was on the couch in that second interview and that was useful, but in terms of the impairment of memory, that was still evident.
Q. And you again asked those who supervise Ieng Thirith day-by-day if they'd seen any changes in her behaviour or memory. What was their response? Did you talk to more than one person or just one?
[15:52:24]
A. Just two people, I think it was, who are mostly involved with her care. The main purpose of that was firstly, to see if

they'd witnessed any change in behaviour with the reduction of the medications, and there was no significant change as far as I could determine. But also to determine if she still got lost and still manifested the confusion that had been evident previously, and that is so.

Q. And that led you to your conclusion that after the stopping of the medication that's concluded thus far, there's been no improvement in her cognitive function. Is that correct?

A. That is correct. I felt she was a little more alert this time, but in terms of her underlying memory, there was no real improvement.

Q. When you say that you consider her memory as moderately impaired, the details of her past are vague and often inaccurate. Can you summarize what you mean in coming to that conclusion?

A. I asked her about various aspects of her past. I mean, clearly there are some areas in which it would be difficult for her to reply and her memory may be -- her replies might be influenced by other than memory. But for example, reviewing her time in France and her education there, she had trouble recalling any detail of that time, and only after prompting was she able to respond and indicate that she remembered.

[15:54:08]

Similarly, when we discussed her family, again, she had difficulty actually providing any details of the family, where they were, when they visited.

Q. Now, I'm sure that many observers will be thinking: she might be fooling you. Do you think there's any possibility that this could be the case, Professor Campbell?

A. I have been concerned about that and watching very closely to see if I could detect anything that might indicate that. And in my assessments, I have not really detected any indication that she may be deliberately trying to deceive me.

Q. Now, there's one further medication that is yet to be reduced to the level that you and her treating doctors consider appropriate. Do you think that she requires a further assessment after that has been concluded? Do you think it's going to make a significant difference to her cognitive function?

A. I think it is unlikely that either the quetiapine reduction or the use of the agent specifically for Alzheimer's will make an improvement, an important clinical improvement. I do feel though, that that needs to be tried; and if there is any indication that there has been an improvement, then clearly, a re-assessment would be justified.

Q. Before we turn to the recommendations that you have made concerning a different type of medication, you said in your most recent report that your conclusions about Ieng Thirith's ability to participate in her defence are unchanged from your first report; and I think that they are primarily found at paragraph 41 of your first report.

Could you summarize those, please? I know we've covered

them, but just to make sure we've covered everything.
[15:56:29]
A. Yes, my conclusions were that she would have difficulty recalling the events which are under question; that she would have difficulty instructing her defence and also have trouble concentrating during the process and responding during the court proceedings.
Q. Thank you.
Now, you did make some recommendations concerning new medication. Could you outline, first, your reasons for making those recommendations, and then tell us a little bit about what you might -- what changes you might expect to see if she responds to that medication?
A. There were two changes; one was to increase the dose of paracetamol to try and improve pain relief and see if that decreased the agitation. And one would expect to see a decrease in complaints of pain as a consequence of that, and the affect of that would be immediate.
The other is the use of a drug which is now being used in people with Alzheimer's after they -- have discussed with them and their family. It's not a drug that is used universally. For example, with patients I always discuss with them the possible merits and potential side effects to determine if they wish to try it or not.
[15.58.15]

The drug only works in around a third of people. It does not affect the underlying progression of the disorder, but it can take the person back a time in terms of improving their memory, improving their cognition.

Q. Would that improvement gradually deteriorate over time itself?

A. Yes, that is correct. I mean, with Alzheimer's disease, there is a gradual deterioration. This drug may pick them up a wee bit, but the decline continues.

Q. Now, just some final general questions from me, Professor Campbell.

[15.59.02]

Is there any other aspect of Ieng Thirith's medical treatment that you consider has any significant impact on her cognitive ability, something you haven't mentioned thus far?

A. No, there is nothing else. I have reviewed the medications and her physical problems as they affect her cognition.

Q. When you were here last week talking to Ieng Thirith, did you discuss with her the hearing that is taking place today?

A. No, I did not.

Q. Can you, in summary, outline the level of care that Ieng Thirith currently requires in relation to her medical and personal care, please?

A. She is under regular medical supervision by the doctors of Calmette Hospital, and they have managed her physical problems.

[16.00.15]
She is also under the supervision of the staff at the detention centre, who provide for her basic physical needs.
Q. And am I right in inferring that you consider she is having adequate medical attention and adequate personal care for her personal circumstances?
A. Yes, that is correct.
Q. Yes. Thank you, Professor Campbell.
JUDGE CARTWRIGHT:
President, I have no further questions.
MR. PRESIDENT:
Thank you, Judge Cartwright.
[16.00.55]
Judge Lavergne, you may now proceed.
JUDGE LAVERGNE:
Thank you, President.
QUESTION BY THE BENCH:
BY JUDGE LAVERGNE:
Q. Professor Campbell, I have -- a few quick questions in order to revisit the different diagnoses between the diagnosis that was realized by Professor Brinded and Professor Ka and the one that you completed yourself.
[16.01.28]
In the 1999 report, you said that she was suffering from slight degradation of cognitive ability. You spoke about a moderately

severe state of dementia. Can you illustrate this a bit by telling us if -- telling us to which level of disorientation this corresponds to?

[16.02.08]

When you met with her, did -- was Ieng Thirith able to understand what was the aim of your diagnosis? According to you, when Ieng Thirith was here this morning, do you believe that she was able to understand what she was doing here, what was the reason for her presence here, and who were the different people sitting in this courtroom?

Maybe this is a bit too complicated because it speaks to other questions relating to her knowledge of the judicial process, but could you tell us, however -- give us more specific indications so that we may have a little idea about what this condition really is?

And according to you, what is the difference between -- Professor Brinded's observations and your own observations?

MR. CAMPBELL:

A. I've viewed the day's procedures without actually speaking to her about it.

[16.03.23]

I can give you a clear indication of how she viewed my seeing her and her understanding of that visit. On my first visit, I explained my situation, why I was there, very clearly on the first day. When I asked her again on the second day, she could

not recall, really, what the purpose of my visit had been. She'd just -- that I'd come, and I wanted her to sign something. So that there was difficulty in actually -- she was having difficulty grasping the purpose of my visit.

In terms of the difference between Professor Carr and Dr. Brinded's assessment and mine, there is a two-year gap. And one would expect, with an underlying dementing illness, for the degree of impairment to have progressed over that time course. And so, I think the changes that I saw were consistent with the assessment that had been done at that time.

Q. If I remember correctly what was mentioned in Professor Brinded's report, he was saying that Ieng Thirith eventually would use written notes to be able to complement or to remedy for a certain number of cognitive problems she is facing.

[16.05.06]

For example, do you believe that this kind of a statement is still relevant today -- this kind of observation? Do you believe it's still relevant today?

A. No, I found no evidence of that. When I saw Ieng Thirith on my second visit on the second day -- my first assessment, second day, she brought a number of papers along with her and leafed through those papers when I asked questions, although those papers were not particularly related to the questions I was asking. So I do not feel that she was using in a constructive way, any written material that she had.

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

MR. PRESIDENT:

Thank you, Judge Lavergne. Thank you, Professor Campbell.

[16.06.15]

Since it is already five past 4:00, it is an appropriate time to adjourn this session. The Trial Chamber will take the adjournment right now, and the session will be resumed tomorrow starting from 9 o'clock.

Dame Ellis, you may now proceed.

MS. ELLIS:

Mr. President, having spoken to Ieng Thirith during the brief break we had this afternoon when she again was anxious to return to the detention centre, we anticipate there is likely to be a similar request on her behalf tomorrow morning.

[16.07.20]

In the circumstances, we really seek your guidance as to whether the application can be heard now for her to waive her right to be in the court or in the holding cell and to allow her to remain in the detention centre or whether you'd prefer that we make that application, if it's relevant, formally first thing tomorrow morning.

(Short pause)

MR. PRESIDENT:

Having advised the application by Ieng Thirith's defence team

with regard to the schedule for tomorrow's session and having consulted among the Judges of the bench and also relying on the rule, sub-paragraph (5) of Rule 81, the Trial Chamber still maintains our position that the security personnel are instructed to bring Ieng Thirith back to the courtroom by 9 o'clock.

The defence counsel, however, can exercise their right to make such application again early in the morning when the court session commences after they have consulted with Ieng Thirith. [16.10.52]

So to summarize this position, the defence counsel is, indeed, allowed to make such application tomorrow morning when she is brought to the courtroom.

The security officers are now instructed to take the accused person back to the detention facility and return them to the courtroom by 9:00 a.m.

Regarding Ieng Sary, the situation remains the same as stated in the order by the court as he attending the court as an observer. If he would like to participate in the proceeding as an observer, then he also will be returned to the courtroom as we did this morning.

The Court now is adjourned.

(Court adjourns at 1612H)