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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

TRANSCRIPT OF TRIAL PROCEEDINGS
Hearing on accused Ieng Sary's fitness to stand trial
PUBLIC
Case File Nº 002/19-09-2007-ECCC/TC

8 November 2012
Trial Day 129

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

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I N D E X

MR. JOHN CAMPBELL

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. AUBOIN	French
MR. CAMPBELL	English
JUDGE CARTWRIGHT	English
MR. CHAN DARARASMEY	Khmer
MR. CHET VANLY	Khmer
MR. IANUZZI	English
MR. KARNAVAS	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MS. SIMONNEAU-FORT	French
MR. SMITH	English

P R O C E E D I N G S

(Court opens at 0909H)

MR. PRESIDENT:

Please be seated. Good morning.

In the name of the President of the Trial Chamber, I would like to warmly welcome Co-Prosecutors, counsels for the accused persons, Lead Co-Lawyer and lawyers for the civil parties, and the parties to the proceedings.

Today's hearing is scheduled to hear the expert, Professor John Campbell, who has examined the accused person and who has - who has submitted the medical report on the medical status of Mr. Ieng Sary.

Mr. Ieng Sary had been admitted to the Khmer-Soviet Friendship Hospital from the 7th of September until yesterday, the 7th of November 2012. It is hoped that today's hearing will be the opportunity for the Chamber, the Judges of the Bench, and the parties concerned to examine this report.

[09.12.18]

I would like to declare the hearing open.

Before I proceed to present - the presentation of the medical report and questions will be put to the expert, the Chamber wishes to also remind the parties to the proceedings that the Chamber has noted that Mr. Ieng Sary has some health concerns and he kept asking the Chamber to allow him to observe the proceedings from his holding cell almost during the entire time

during the proceedings.

In light of that, on the 24th of August 2012, the Trial Chamber made a request to Mr. John Campbell and Dr. Seena Fazel, and Dr. Huot Lina, who were present in Cambodia at that time, when they were examining the fitness to stand trial of Ms. Ieng Thirith, to preliminarily examine medical condition of Mr. Ieng Sary and submit such a report to the Trial Chamber accordingly - document E222.

The three experts submitted their preliminary report to the Trial Chamber on the 3rd of September 2012 - document E222/1. In that first report, the three experts concluded that Mr. Ieng Sary was mentally and physically fit to plead and stand trial.

[09.14.29]

On the 7th of September 2012, the accused person Ieng Sary was admitted to the Emergency Section of the Khmer-Soviet Friendship Hospital, where he remained hospitalized until yesterday, the 7th of November 2012, when the Trial Chamber made a request to the Office of Administration to make an arrangement so that Mr. Ieng Sary could be returned to the detention facility of the ECCC so that he could also participate in today's hearing when the Chamber hears the expert's opinion on his medical status.

The Chamber also received medical reports from the experts while Mr. Ieng Sary remained hospitalized. To date, there has not been any confirmation as to the future development of Mr. Ieng Sary's medical condition. It is not known when he will be well enough to

participate in the trial proceedings.

[09.16.08]

To that effect, after having listened to the treating doctors on the 21st of September 2012 and that, on the 24th of September 2012, the Trial Chamber indicated to the parties that the Chamber would submit all the relevant medical reports concerning Ieng Sary's medical treatment at the Khmer-Soviet Friendship Hospital to Professor Campbell, along with the transcript of the Court proceedings of the 7th of September 2012, in which these doctors took the stand, giving their testimonies before the Chamber concerning the relevant medical issues of Mr. Ieng Sary.

Upon having received and examined all the reports, the relevant medical reports, Dr. – rather, Professor Campbell indicated to the Trial Chamber that, according to the medical related documents he received, he found it difficult to be persuaded as to the changes in Ieng Sary's diagnosis since the last time he examined the accused person.

Therefore, on the 8th of October 2012, the Trial Chamber issued the reappointment doctor – rather, order, appointing Professor John Campbell to re-examine Mr. Ieng Sary. The next examination was done in – with the assistance of another Cambodian medical doctor – document E238.

[09.18.19]

On the 23rd of October 2012, after having reviewed the brief biography submitted to the Trial Chamber by the WESU unit, the

Trial Chamber ordered the appointment of Cambodian doctor, Dr. Lor Vann Thary<v> to work with Professor Campbell – document E239 – to examine Mr. Ieng Sary on the 4th of November 2012. The assignments to these two doctors include: first--

a) Examine Ieng Sary and review all recent medical information and tests conducted on him since Professor Campbell last reported;

b) Conduct or have conducted any additional testing that he considers appropriate to assist in reaching a diagnosis;

c) Consult with any other qualified person such as a radiologist, whose assistance might be helpful in interpreting or confirming his conclusions on test results or on the local availability of specific medical tests he considers essential for a diagnosis of Ieng Sary's current health status;

d) Advise the Trial Chamber if any such medical tests are not available in Phnom Penh and/or whether there is a sufficient medical or technological skill based in Phnom Penh to administer those tests adequately;

[09.20.34]

e) Report to the Trial Chamber on where and under what conditions medical tests that he considers are essential for confirming a diagnosis of Ieng Sary's current health status might be carried out;

f) Report to the Trial Chamber his expert opinion on the current state of Ieng Sary's health and on when he might reasonably be

discharged from hospital-based care;
g) Advise the Trial Chamber of any changes he would recommend on Ieng Sary's medical care.
In response to the Appointment Order by the Trial Chamber, the prosecutors, the civil party lawyers had submitted some additional questions concerning the health status of Mr. Ieng Sary so that the doctors could incorporate their questions in the examination.
The civil - rather, the counsels for Mr. Ieng Sary also voiced their concerns with regard to the lack of qualification of the doctors assigned to examine Mr. Ieng Sary. Counsel for Mr. Ieng Sary is also concerned with regard to the timing of the submission of the medical report because the timing itself is not friendly enough for counsels to be able to have enough time to review the medical report, let alone prepare their questionings. [09.22.41]
On the 1st of November 2012, the WESU unit confirmed to the Chamber that Mr. Lor Vann Thary was not able to take part in examining the health condition of Mr. Ieng Sary, due to his very busy schedule at his workplace - please look at document E239/1.1. Furthermore, the WESU unit also indicated to the Trial Chamber it was not able to locate another Cambodian doctor for such assignment. For that, the Trial Chamber consulted with the Judges of the Bench, and the Chamber decided to preliminarily work with Professor Campbell, who has already appointed on the

medical condition of Mr. Ieng Sary, so that the Chamber has the ground for our future deliberation.

After having reviewed the medical reports and the recent report submitted by the hospital and having contacted Mr. Ieng Sary on two occasions - once on the 4th of November, and the second one on the 5th of November 2012 - the expert also consulted with treating doctors to obtain some information concerning the health condition of Mr. Ieng Sary. These doctors include Dr. Chea Lahoeun, Kem Samsan, Chak Thida, Vann Mich, and Ky Bousuor.

[09.25.11]

The reports have already been submitted in English to the Trial Chamber and placed in the case file on the 6th of November 2012 - document 238/4. This report was also translated into Khmer and placed onto the case file on the 7th of November 2012. The expert concluded that Mr. Ieng Sary's physical condition is weak, but he is able to concentrate when remain sitting in the courtroom during the Court proceedings. And the expert also includes by saying that he would be well assisted if there is any change to the facilities in the holding cell, and also he needs better personal care, as opposed to the current care he receives.

The Chamber has already informed to parties concerning the matters that are going to be discussed during today's session.

Ms. Se Kolvuthy, you are now instructed to report to the Chamber on the attendance status of the parties to the proceedings.

THE GREFFIER:

Mr. President and Your Honours, the parties to the proceedings today are all present except Mr. Ieng Sary, who is present, but in his holding cell due to his health concerns.

[09.27.15]

The expert that has already been appointed by the Trial Chamber is ready and waiting in the waiting room. The expert has already taken an oath.

MR. PRESIDENT:

Thank you.

First, the Chamber would like to rule on the request by Mr. Ieng Sary.

The Chamber received the medical report by Mr. Campbell, E238/4, concerning the medical condition of Mr. Ieng Sary, and the Chamber also received a medical report concerning Mr. Ieng Sary's health condition by a treating doctor who indicated to the Chamber that Mr. Ieng Sary is very fatigued, he feels dizzy, and he has some lower-back pain, and his vision is not very good, and he cannot walk or climb the stairs. However, the doctor indicates also that Mr. Ieng Sary is mentally and physically fit to observe the proceedings from his holding cell. Doctor indicates that Ieng Sary, in his holding cell, can consult with his counsels from there.

[09.29.09]

Therefore, the Chamber allows Mr. Ieng Sary to observe the proceedings from his holding cell for the whole day.

AV booth officers are now instructed to ensure that the AV equipments are well connected to Mr. Ieng Sary's holding cell so that he can observe the proceedings from there for the whole day.

(Short pause)

[09.30.01]

Before we proceed to the session where the testimony of the expert will be heard, the Chamber wishes to also inform the parties to the proceedings that the hearing today is conducted in public.

The Chamber wishes to ask counsels for the Ieng Sary team whether they consent to the fact that medical reports of Mr. Ieng Sary would be examined during the session. The Chamber has already obtained the documents, but the Chamber just wishes to make sure that this matter is well confirmed.

MR. KARNAVAS:

Good morning, Mr. President. Good morning, Your Honours, and good morning to everyone in and around the courtroom.

We did consult with Mr. Ieng Sary. We did receive a waiver from him, that his medical reports and his medical condition can be discussed in public here today.

Thank you.

[09.31.24]

MR. PRESIDENT:

Thank you, Counsel, for confirmation.

The Chamber wishes to advise the parties and members of the

public, as well, that in the examination of the report by Professor John Campbell, the Judges of the Bench will put the questions to the expert, and then we will hand over the floor to the defence team for Mr. Ieng Sary first to put some questions to the expert in relation to the health status of the Accused who is their own client. Then we will hand it over to the Prosecution to put the questions to the expert. And the Chamber wishes to advise the Lead Co-Lawyer for the civil parties that the lawyers for the civil parties should intervene in the examination of report only when they disagree in any point with the Prosecution or you feel that there is something to add to what the Prosecution has asked, in order to avoid repetition.

And we will hand over the floor, last, to other defence teams if they so wish to put the questions to the expert.

Court officer is now instructed to bring the expert in the courtroom.

(Mr. Campbell enters courtroom)

[09.33.33]

QUESTIONING BY THE PRESIDENT:

Very good morning, Mr. Expert. Before we proceed to the examination of your report, the Chamber wishes to put a few preliminary questions to you in relation to your personal biography.

Q. Your name is Professor John Campbell; is that correct?

MR. CAMPBELL:

A. Yes, that is correct.

MR. PRESIDENT:

Thank you. Thank you, Professor John Campbell.

The Chamber wishes to inform you that in response to the questions posed by either Judges of the Bench or parties, we have asked the AV assistant to monitor the sound system here, so I would like to ask you to observe the red light on your microphone before you speak so that your voice can get through the sound systems and it is rendered by the interpreters, because we have three working languages here – Khmer, English, and French – so we have to have a pause in between so that the language is rendered.

[09.35.07]

BY THE PRESIDENT:

Q. Professor, how old are you now?

MR. CAMPBELL:

A. I'm 66.

Q. Thank you. What is your nationality?

A. I'm a New Zealander.

Q. Thank you. Where are you currently residing.

A. In Dunedin, New Zealand.

Q. Thank you

[09.35.54]

Professor John Campbell, you have provided expert testimony before this Chamber so far. Has they – has there been any changes in your qualification, whether it be professional or personal

occupation, from your last examination of the Accused in question, in August 2012?

A. No, there's been no change.

[09.36.38]

Q. Thank you.

Just now, the Chamber heard the report by the greffier of the Chamber that you have already taken an oath; is that correct?

A. That is correct.

Q. Professor, since you're an expert in – geriatrician, can you enlighten the Court whether or not you have any expertise in relation to a vascular or cardiac medicine?

A. Yes. I'm qualified as a specialist in internal medicine, and many of my patients have problems – cardiac and vascular problems.

Q. Thank you. In late August 2012, the Chamber appointed you and the other two experts, Dr. Huot Lina and Dr. Seena Fazel, to examine the health status of Mr. Ieng Sary when you were conducting the fitness to stand trial of Madam Ieng Thirith. Is that correct?

A. That is correct.

Q. Then your team submitted the preliminary report concerning the health status of Mr. Ieng Sary in August 2012. Did you prepare this report?

[09.39.02]

A. Yes, I was -- one of the three of us who prepared that report.

Q. And on the 8th of October 2012, the Chamber appointed you to examine the health status of Mr. Ieng Sary again, and then, from the 4th to the 6th of November, you re-examined the health status of Mr. Ieng Sary in consultation with the treating doctors, while Mr. Ieng Sary at Khmer-Soviet Hospital. Did you re-examine him during this period?

A. Yes, I re-examined him during that period.

Q. And on the 6th of November 2012, you submitted a report – examination report on the health of Mr. Ieng Sary in response to the request by the Chamber. Did you prepare this report?

A. Yes, I did.

Q. Can you tell the Court in brief the health status of Mr. Ieng Sary at the moment? And can you also, in light of that report, provide a recommendation to the Court as to the care to be taken for Mr. Ieng Sary so that he is well enough to participate in the proceedings?

[09.40.51]

A. Yes, I shall enlighten you on part of my report. I will do it in two parts.

First, his cognitive function, his mental state; his mental state is unchanged from what I and the other doctors saw and reported on in our September report. On testing his memory, there was no significant change.

His physical state, though, is that he is more frail than he was before. He has spent the last two months in hospital. He has had

very little physical activity during that time, and as a consequence his weakness is greater.

If I could deal individually with his physical problems? First problem is his heart disease. Currently, that is stable on the treatment that he is receiving. He is not short of breath at rest, when he is lying. He does become short of breath with activity, but that is primarily because, with his additional muscular weakness, any physical activity demands more of him and leaves him more breathless. He is however quite able to converse normally when he is lying on his bed.

The second problem is his neck pain and lower-back pain. His lower-back pain is unchanged. It is due primarily to wear-and-tear, to osteoarthritis involving the vertebral bodies, and that also causes him some neck pain as well. That is best treated with pain relief, which he is receiving, with a back brace, and with a cervical collar.

[09.43.02]

His other physical problem is the dizziness that he complains of. And, as I've outlined in my report, I fell this comes from three causes.

First is a condition called benign paroxysmal positional vertigo, and this is a disorder of the semi-circular canals, which are one of the essential balance mechanisms of the body. And debris accumulates in those canals so that, when the head moves, this debris gives a sensation of movement. And it classically occurs

when the person, for example, rolls over in bed, bends down or stands up. It gives a spinning sensation, or vertigo, and that is what he describes.

That can be - diagnosis of this can be assisted by what's called the Dix-Hallpike manoeuver, which we do by turning the person's head to 45 degrees and then lying them back with the head down 20 degrees of extension. And what we see when that occurs is some beats of nystagmus, which are rapid eye movements to one side. Now, that was difficult to do with Ieng Sary because of his back pain and because he closed his eyes tightly because of that pain when I lay him back. However, when I did get him to open his eyes, there were some beats of nystagmus, which helps confirm that diagnosis.

[09.44.48]

The second cause of his dizziness is, I suspect, that his blood pressure is low at times because of his heart disease and because of his medications, and that is something that will need to be watched if he is sitting for any length of time. His blood pressure did drop when he stood.

The third cause of his dizziness is that he has now become weaker because of his inactivity, and as a consequence he feels unsteady when he is standing, and this gives him a sense of dizziness or poor balance.

[09.45.27]

Now, it's important to note that when I examined him I found no

evidence of damage to the brainstem or the cerebellum. I know the question of a vertebrobasilar ischemia has been raised. The brain is supplied by four main arteries: two carotid arteries which go up the front of the neck, and two vertebral arteries which come up the back. And they link up at the base of the brain in what's called the Circle of Willis -- a bit like a roundabout. So, if there's obstruction to one of the arteries, the other artery blood flow can flow through to that area. A vertebrobasilar ischemia affects particularly the hind part of the brain - not the thinking part, not the reasoning part, not the memory part, but two parts of the brain: the cerebellum, which has to do with balance; and the brain stem, which is where the fibres from the front part of the brain pass down to the spinal cord, and it also has the nuclei for the cranial nerves, the nerves that move the eyes, gives the sensation in the face, move the facial muscles, have to do with swallowing and with talking.

[09.46.55]

Now, when I examined Ieng Sary, I found no evidence of any damage to the fibres passing from the front part of the brain down through the brain stem and I found no evidence of damage - and I found no evidence of damage to the cranial nerves. So, on examining the nervous system, there is no evidence of damage to the hind part of the brain supplied by the vertebral arteries which join together to form the basilar artery. So, the issue of impaired blood supply to the brain was raised earlier; I could

find no evidence for that on examination.
So, in summary, we have a man now 87 who is frail, physically frail; he is weaker than he was before, and that's because he's had no physical activity for the last two months or so; and his dizziness, as is very common in people of his age who complain of dizziness, is due to a number of causes, not just one.
So my recommendations, from that, are that he is more comfortable lying flat, and the holding cell is very appropriate for that. I examined him for an hour to an hour and a half and did some informal testing of memory at the end of that period, and he was still very alert, following, and there was no evidence of impairment of concentration.
[09.48.57]
Currently, he's in the hospital, but his medications have not been changed for a number of weeks. I do not feel that he is gaining anything by continuing in hospital.
The doctors indicated that, in part, he was there in case there was an emergency. Main emergency would be if his heart would have stopped and he would need resuscitation, but I do not feel he would be a fit candidate for resuscitation anyway, and it would not be a reason for keeping him in hospital.
He is requiring more physical than previously, and obviously that would need to be provided at the detention centre.
So, my recommendations are: that he return to the detention centre; that, during the trial, he use the holding cell, where he

can lie flat; that he use a soft collar; and he also complained that he was having more difficulty reading, not focusing so well, and now I think a review of his glasses would be worthwhile.

[09.50.24]

Q. Thank you, Professor.

How about the treatment? According to you, how much care to be taken for him when they – he is following the proceedings before the Extraordinary Chambers in the Courts of Cambodia?

A. The doctors looking after him have made some alterations to his heart medications. His heart failure, at present, is stable. I do not feel that further change would improve the situation. He is on a large number of medications. As I've said in my report, some of them can contribute to dizziness, and it would be worthwhile considering reducing those, although the dizziness preceded their use. With his medications, one of the side effects is that they can lower – they do lower blood pressure, and that's why monitoring of his blood pressure when he's sitting for a length of time is necessary.

MR. PRESIDENT:

Thank you very much, Professor.

I would now like – turn to fellow Judges on the Bench, if you have any questions to put to the expert.

I now hand over to Judge Silvia Cartwright.

[09.52.11]

QUESTIONING BY JUDGE CARTWRIGHT:

Thank you, President. And good morning, Professor Campbell. Welcome back to Phnom Penh.

Q. Professor Campbell, in fact, you have examined Ieng Sary now on a number of occasions and you have also had the benefit of examinations -- of earlier examinations, notably by urologists, conducted in 2008. They were Dr. Koutch Hach and Professor Philippe Mangin – I'll get my pronunciation corrected very soon. So you recall that particular report?

MR. CAMPBELL:

A. Yes, I do. And there has been no change in his urological symptoms.

Q. Thank you. So, they are, in short, well controlled at the present time; is that correct?

A. (Microphone not activated) – he needs to pass urine frequently, but in the holding cell he can manage that with a bottle and assistance.

[09.53.34]

Q. And then, in November of 2009, a Professor Brinded, who is a professor – associate professor of forensic psychiatry, also submitted a report. And you have had an opportunity to read that report as well?

A. (Microphone not activated) – so, yes.

Q. Then, there was the first of your reports, prepared in June of 2011, in which you examined Mr. Ieng Sary and some of the other Accused and provided separate reports for each of them; is that

correct?
A. That is correct.
Q. Now, let me go back briefly to your qualifications and experience.
It seems there might be some misunderstanding on the part of the – well, at least one of the parties, that other experts might be required to examine Ieng Sary. Is it correct to say that, in your field of geriatrics, you provide the first level of expert examination of an older person – I think you once said someone over 65 years of age – and that your specialist field of geriatrics – in that field, you must be able to examine a number of complex and of often interrelated physical and mental difficulties that these older patients are having. Now, I know I use lay terminology, but is that an acceptable way to describe your expertise in lay terms?
[09.55.54]
A. Yes, that is so.
And I might comment on that report that you've alluded to. When I saw Ieng Sary this – on this occasion, I determined whether there'd been any change in his cognitive function – because a full assessment had been done by a forensic psychiatrist, Seena Fazel, on the last visit – I could find no change in his mental state.
Q. Well, again, going back to your qualifications to be able to recommend to the Trial Chamber if other expertise is needed, is

this a part of your usual specialist duties in the course of your clinical work?

A. Yes, that is so. We see patients with multiple medical and mental problems and we refer, if necessary, for additional opinion. But I do not feel additional referral is needed in this situation.

Q. So, of the various specialist reports, we have covered Ieng Sary's urological status, his heart disease status, and of course his more general physical health, as well as his mental status, down to the report of the 3rd of September, which was the last time you examined Mr. Ieng Sary; is that correct?

A. Yes, that is correct. I feel he has been comprehensibly assessed, and he was very well assessed by Seena Fazel and Lina Huot on the last occasion. And, as I said, I don't feel there's been any change in his mental state since then.

[09.57.48]

Q. Now, it has also been suggested by one of the parties – now, I just want to make sure that you feel you've had ample opportunity to examine Ieng Sary. And both in the past and the present, the current examination, it's been suggested that you took a very short in your examination.

Can I just ask you to comment, please? If you were face with a patient such as Ieng Sary in a normal course of your clinical duties, is the time you have spent with him too little? Have you been given inadequate time to examine and to prepare a report?

A. No, I've been given adequate time, I was able to see him over two days and had two sessions with him on the first day. Normally, when I'm assessing a patient, with that patient, I have an hour appointment – and I've had more than that. And I know a lot of Ieng Sary's background – medical background anyway, so I did not need additional time.

Q. Have you had clinical experience of patients such as Ieng Sary in the course of your clinical duties over the years, presenting with a number of physical and, prospectively, mental health symptoms?

[09.59.21]

A. Yes. It is in the nature of our work, seeing all the people, that they have multiple problems and they span the spectrum of physical – multiple physical problems, often mental, cognitive problems, and also social problems. So it is one of the areas of expertise for those in geriatric medicine, that they assess multiple problems.

Q. And as you have already indicated in consultation with Associate Professor Lina Huot and Dr. Fazel, both of whom are experts in the field of psychiatry, you examined Mr. Ieng Sary and reported on the 3rd of September. Now, would it be fair to say that a psychiatrist might approach a patient of this type slightly differently from the way that you approach him, insofar as the actual testing is concerned, or do you both follow the same approach?

A. In terms of testing cognitive function – that is, memory and judgement – we would approach it in the same way. A psychiatrist would dig deeper into the areas of depression, for example, and in the other psychoses. There has not been any evidence for that with Ieng Sary.

And, given that we do, in geriatric medicine, see a lot of patients with underlying mental illness, we are attuned to it. [10.01.04]

Q. And would you, as a geriatrician, look also for physiological factors that might lead to mental illness, involving for example – and, again, I'm speaking as a lay person – examining a brain scan or material of that nature?

A. Yes, we do. And we regularly order CT scans of head, neck, and are used to reviewing those with radiologists.

Q. And throughout the many and varied examinations Mr. Ieng Sary has had, has any specialist or treating doctor expressed a concern about his mental status?

A. No. The reports have consistently been that he is not cognitively impaired, that he is able to follow reasoning and understand the processes. And, certainly, I have not found any evidence that he does not have that ability.

Q. Returning to the jointly prepared report of the 3rd of September, which you, and Lina Huot, and Seena Fazel prepared, in that report, you jointly came to this conclusion concerning Ieng Sary's mental health status – and that is in document E222/1, at

English ERN 00846194, paragraph 41.

[10.03.07]

You said this:

"It is our opinion that Ieng Sary does not suffer from any mental illness or cognitive impairment beyond what would be expected for someone of his age and background, and therefore we have no recommendations to make in relation to mental state or cognitive function."

Now, that, Professor Campbell, I assume, was your starting point for the most recent examination during this week, when it came to mental health status. And you have already indicated to the Court that you saw no change between the 3rd of September and this week, when you re-examined him; is that correct?

A. That is correct. That's on both, general discussion about his symptoms and problems and also more formal testing of his memory - both formal and informal testing of his memory. I found no change, and there's no history of change, either.

Q. Can you just elaborate on what the formal and informal testing was that you conducted in the current examination, please?

[10.04.27]

A. The informal arises in two ways.

Firstly, when you're taking a history from a person, you can get a feel to how well they're recalling events, how well they describe them, and I've found no problems with Ieng Sary in doing that.

Secondly, at the end of my first session with him, which was after an hour or so, I began to converse with him about his family, his grand-children, where they were, what they were doing, to get a feeling as to whether he had any difficulty with recall there, and there was no evidence of that. Often, informal testing in that way is useful because the person does not know they're actually being – having their memory assessed.

And then, thirdly – thirdly, I repeated the mini-mental state examination and found really no significant change in that from the scores previously. He scores above the level where one would consider cognitive impairment.

Q. Now, Professor Campbell, the Trial Chamber permitted the parties to discuss your report with other consultants, and that has been done by Ieng Sary's defence team and by the prosecutors. Of course, the Court did not authorize the introduction of any other material purporting to be based on expert qualifications and examination of the patient, and nor would the latter have been possible in the time available.

[10.06.15]

But it's clear from the material that has emerged from Ieng Sary's consultation that the person who apparently is a forensic psychiatrist has not seen the report of the 3rd of September prepared by you and the other two psychiatrists whom I've already mentioned; is that the situation?

A. It would appear so from the report, and therefore his comments

are based on inadequate information and therefore are, I feel, of little or no value.

Q. I'll come back to a couple of matters arising from that letter that we have received, but I want to look at Ieng Sary's ability to concentrate.

Now, it's been suggested that he cannot concentrate for long periods of time and that, of course, has an impact on his ability to participate fully in the trial, to consult with his lawyers, to listen to what's – the evidence, and so on. In your view, if he suffers from a lower degree of concentration than, say, 10 years ago, is that related to his physical condition or to some aspect of his mental health status?

[10.07.58]

A. I've found, in my assessments with Sary – Ieng Sary, which have lasted more for an hour – for example, our first session the other day was an hour to an hour and a half – there was no flagging in his ability to concentrate. I feel if he is physically comfortable, for example in the holding cell, he will be able to maintain concentration. I've found no evidence of lack of concentration.

And the Court sessions, from my understanding, are usually only an hour and a half, and then there's a break, and I feel that is well within his capacity.

Q. Do I infer from this that you consider it more appropriate for Ieng Sary to remain in the holding cell than to come into the

courtroom unless he elects to do that on any occasion?
A. Yes. I think that is the best arrangement. He is more uncomfortable sitting than he was, and when he's lying flat, he is comfortable. And the holding cell is well set up, and I feel it is most appropriate for him.
[10.09.10]
Q. There has been a suggestion that a better bed be provided to him, and I think the suggestion is one that's similar to a hospital bed, which has the ability to raise and lower the head-piece. Is that something that you think is essential, or do you feel that his current bed is adequate for the purposes of participating through the audio-visual methods?
A. I think if he had a bed that could elevated at the head, that would make him – make it easier for him to look at the monitor. And he was comfortable lying flat when I saw him, but it may make him – may make it easier for him.
I also made a recommendation last time on the mattress on the bed, as well, which he'd found a bit difficult.
Q. Now, returning to more general topics, you are well aware that Ieng Sary has been hospitalized in the Khmer-Soviet Friendship Hospital for about seven weeks now and that the treating doctors came to Court to give us their assessment of his condition. Amongst other things that they mentioned, they said they were exploring other treatment options.
[10.10.43]

Now, have you seen any different treatment being administered at the Khmer-Soviet Hospital as a result of their examinations of him during this almost-two-month period?

A. No, there has been no change. The issue of surgery was raised, but there is no lesion that would be amenable to surgery. And even there were, his general state is such that it would not be appropriate.

[10.11.20]

Q. And, overall, you've made it very clear that for his general physical benefit, it would be preferable if he were discharged from hospital and resume some modest amount of exercise to the degree that he can tolerate; is that correct?

A. That is correct. And I feel the prolonged period of lack of physical activity has added to his weakness. He has had massage there, which may have made things more comfortable for him, but no actual physical activity to try and maintain muscle strength. Now, I'm not sure how willing he will be to participate in a program, but it should at least be offered. I think, when one looks at function and disability, function can gradually deteriorate without a defecting ability -- ability required at a certain threshold. So, to stand from a seat, we need a certain amount of muscle strength, which is fixed, depending on our weight. And people in their eighties are often using a hundred per cent of their strength to rise slowly. And a few weeks in bed is often sufficient to drop that person below the threshold, and

that's what we've seen with Ieng Sary. So he has not lost a lot more strength, but he has lost sufficient additional strength to impact on his ability to do basic tasks.

[10.13.03]

Q. You did suggest consideration be given to a reduction in some of Ieng Sary's medication. And from what I understand, you have said today, this is medication that has been given to him since he was hospitalized, or am I confusing two different sorts of medication?

A. Yes, certainly, one of his medications used for back spasm has been given recently. I'm not sure how effective that's been, and I would have suggested a cautious reduction to see if it improves the situation. I think that is unlikely, though, that it will improve the situation.

Q. Now, in the same letter that was sought from a consultant by the Ieng Sary team – the consultant who, as I said before, is presumably a forensic psychiatrist – he mentions that "a blanket dismissal of potential medication side effects based on the […] assumption that since the defendant's medications have not been changed, a gradual emergence of subtle yet significant medication related neurotoxicity can simply be pulled out or would be noticed by his treating [physicians -- treating] clinicians". And that is in the context of your failure to consider this particular matter.

Can you comment on that comment?

A. Yes. It's a somewhat strange comment. He is on the--

[10.15.01]

JUDGE CARTWRIGHT:

Just one moment; I think that I was speaking too fast. Was I - I'm very sorry.

MS. SIMONNEAU-FORT:

I believe that if we had the document reference, it would also help with the French interpretation. Thank you.

JUDGE CARTWRIGHT:

I'm sorry, this is not a document that has been admitted; it is a letter received yesterday. And I will quote again from it - the passage that I want Professor Campbell to comment on, and I will do it really slowly; and I do apologize.

BY JUDGE CARTWRIGHT:

Q. In the context of a critique of your findings and recommendations, Professor Campbell, this gentleman refers to "a blanket dismissal of potential medication side effects based on the ipse dixit assumption that since the defendant's medications have not been changed, a gradual emergence of subtle yet significant medication related neurotoxicity can simply be pulled out or would be noticed by his treating clinicians" - that's the end of the quote.

First of all, could you just tell us what that means?

[10.16.45]

MR. CAMPBELL:

A. I'm struggling myself a little to understand what that means exactly.

Ieng Sary is on one medication, for example bromazepam, which may have an effect on drowsiness, cognitive function, but he's been on that for a long time. There is no evidence that it is actually causing side effects. So I do not feel any of his medications are affecting his cognitive function.

Q. Thank you.

Now, you also mentioned in your report some other tests that might be attempted, and that's at paragraph 17 of your most recent report, where you suggest that he have some additional test: quantitative immunoglobulins, light chain quantitation – now, I know the interpreters are not going to get this down; they'll have to go back to the report. And these would be intended to exclude multiple myeloma and myopathy, and those are tests that you have suggested.

[10.18.35]

However, you go on to say this: "These tests may evidently be difficult to obtain in Cambodia."

Am I to assume that you covered the possibility of those tests being conducted with the treating doctors at the Khmer-Soviet Friendship Hospital?

A. Yes, I did.

The multiple myeloma, I had asked previously for a test called serum protein electrophoresis, and that was normal, it didn't

show any evidence of multiple myeloma.
The additional tests are to exclude a very remote possibility; sometimes with myeloma -- don't get a change in the electrophoretic pattern. I think that is very unlikely. So, if there is difficulty, I don't think a lot will be gained by chasing it further.
[10.19.38]
The other test is a test of specific damage to muscle. He is on a tablet called atorvastatin, which can cause this problem, that he has been on for many years, and I think it's very unlikely that this is causing problems. As I said before, I fear most of his weakness is due to his inactivity.
Q. In your report, you suggest that he will require more personal care in the detention centre than he was receiving down to the time he was admitted to hospital, nearly two months ago. Could you expand on the type of physical care – quite specifically, please – that might be required? I have inferred from that, medical care the same as usual, but there are some other additional – there's some other additional assistance that might be useful.
[10.20.55]
A. Now, with his greater weakness, he is requiring more assistance to stand, for example. He's not able to walk in the same way as he was previously, so he will require assistance with dressing, and with showering, and with personal care.

Q. And is – given your experience with a number of Accused and your familiarity with the detention centre facilities and with the holding cell facilities as well, of course, of the courtroom, what – would he be provided with enough such practical care with the assistance of his guards, or do you envisage something more specialized than that?

A. (Microphone not activated) – think he needs more specialized care. Ieng Thirith, for example, was receiving quite a lot of personal care previously, and that was provided within the detention centre. The detention centre would need to review its staffing to ensure that it had adequate staffing to help him stand safely and to move safely.

[10.22.20]

Q. Now, physical therapy is another issue, perhaps, to improve his physical condition. You have already noted that his physical condition has deteriorated and that he may or may not be enthusiastic about embarking on a very moderate exercise program. You mentioned massage, which you said would have made him more comfortable. By "physical therapies", is this a suggestion about physiotherapists, for example?

A. Yes. I think that would need to be discussed with him to determine whether he was willing or not. And if he were willing, then a program to try and build leg strength might be of value, but it would need to be under the guidance of someone with the expertise, such as a physiotherapist.

Q. And, again, you've had a lot of experience of the facilities, medical and other, that are available for people in the situation of the Accused. Is such physical therapy program available for Ieng Sary? And if so, is it appropriately offered in the detention centre, or does this require some form of hospital-based treatment or therapy?

A. No, it could be offered in the detention centre because it requires Ieng Sary to carry that out. The program needs to be established by a physiotherapist, but then it could be done under the guidance of the guards, for example. It would need, for example, some ankle-cuff weights to try and build strength in the lower limbs.

[10.24.31]

Q. And from an earlier examination of the fitness of another Accused, Ieng Thirith, we are aware that trained physiotherapists here, in Cambodia -- if there are any at all, there are very few, indeed. Is that still the situation?

A. I'm not sure if that's the situation; it would need to be explored. It does not have to be a sophisticated program; it just needs someone to start it and then to increase the, for example, weights as he improves. But as I said before, it would need to have his willingness to participate before being - before being tried.

Q. When we heard from the treating doctors, following Ieng Sary's admission to hospital, they referred to other enquiries that they

might make, and they had consulted with various specialists within their hospital system. Any of those – are any of those additional referrals required, in your view?

[10.26.04]

A. No, I don't feel they are. I feel, in someone of Ieng Sary's age and frailty, one has to be very careful about what tests, investigations he is subjected to. And there would have to be good evidence that there would be benefit from the testing before embarking on that, and that's why I feel no additional tests, at this stage, are required. As I mentioned, he could have angiography, involving looking at the blood vessels at the base of the brain, but that would not add to his management.

Q. So, let me attempt to summarize my understanding to see if I have it right.

You disagree with the diagnosis by his treating doctors, that he has vertebrobasilar disease, and therefore there is no need to consider surgery or any other treatment related to modifying that condition; is that correct?

[10.27.28]

A. That is correct. As I've indicated, vertebrobasilar ischemia was a diagnosis that used to be used very commonly and a lot of symptoms could be attributed to it. But in Ieng Sary's case, there are alternative explanations for the dizziness, and I've found no evidence of vertebrobasilar ischemia.

Q. And, again, to summarize the other aspects of his physical

condition, you find nothing – no significant changes in his urological status or his heart status?

A. That is correct. I mean, his cardiac status is stable; it is very precarious – he has significant heart disease, and life at the age of 87 is pretty unpredictable, and especially with significant underlying heart disease.

Q. And as we've already covered, but just to summarize, you feel he has been – in your opinion, rather, you consider he has been adequately tested and thoroughly tested for his mental health status and that there is no issue arising from that status that might give rise to concern about his ability to participate in his trial?

[10.29.10]

A. That is correct. I have assessed him on a number of occasions, and he was very fully assessed by Seena Fazel and Lina Huot two months ago. There has been no change since then that I could demonstrate, and therefore I feel that has been fully assessed. I do not feel there would be any advantage, for example, in bringing Seena Fazel back to repeat the examinations.

Q. And his orthopaedic condition is gradually deteriorating, causing more back pain and neck pain, for which you have made some recommendations; is that the situation?

[10.29.54]

A. That is correct. I mean – he has a back brace, and I have suggested he use the neck brace, primarily to stop sudden head

movements and that vertigo, especially during the day.
Q. So, in a sense, you have covered every aspect of his physical and mental health, and you've acted as a sort of clearing-house, and you recommend no other specialist examination or intervention?
A. I do not feel that there are any further investigations that would lead to treatment that would improve his overall situation. I feel he is stable at present, although the condition will be inevitable deterioration.
Q. And, finally, the symptom that had him admitted to hospital in the first place, his dizziness, you have found three possible causes of that and have made the recommendations that we've already traversed to assist him in coping with those symptoms; is that correct?
A. That is correct.
JUDGE CARTWRIGHT:
Thank you, President, I have no other questions.
[10.31.30]
MR. PRESIDENT:
Thank you very much, Judge Cartwright.
Since it is now appropriate moment for the adjournment, the Chamber will adjourn for 20 minutes.
Court officer is now instructed to assist Professor Campbell during the recess and that – have him returned to the courtroom by 10 to 11.00.

THE GREFFIER:

(No interpretation)

(Court recesses from 1032H to 1051H)

MR. PRESIDENT:

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

Next, we would like to hand over to counsels for Mr. Ieng Sary to pose questions to the witness. You may now proceed.

QUESTIONING BY MR. KARNAVAS:

Thank you, Mr. President, and good morning to everyone again, and good morning especially to you, Dr. Campbell.

[10.52.42]

Q. Let me pick up where Judge Cartwright left off, because apparently you were shown the one-page letter that was dated November 7th -- we received it this morning, in light of the time change -- time difference -- and you dismissed it as being little or no value. That was what you said, that it has little or no value; that was his assessment of your medical report.

Now, picking up from that, I take it that you might change your opinion if, for instance, this particular doctor were to have access to the entire file as you did, the medical records, your previous reports, reports by other doctors, perhaps you might be willing to review your position, would you not?

MR. SMITH:

Objection, Your Honour. I--

MR. PRESIDENT:

International Prosecutor, you may proceed.

[10.54.02]

MR. SMITH:

My apologies; I don't really want to interject on our learned counsel's first question, but I would submit that this question is objectionable because it relates to speculation.

The question assumes that if this expert received the documentation and had access to the same material that this professor has, he would have the same opinion. And I think that's the point that Judge Cartwright made, was that if that material was made available, perhaps his opinion would be more informed and different.

So I would ask that that question be rephrased or a different approach, because it is based on speculation that the opinion would be exactly the same when he's better informed, and clearly that may not be the case.

[10.54.53]

BY MR. KARNAVAS:

I welcome the objection because that's my point.

Q. Would you have any objections, Doctor, to having this particular doctor review, all of the material that you reviewed, to review your reports and to provide the Trial Chamber with an opinion?

MR. SMITH:

Objection, Your Honour.

MR. PRESIDENT:

You may proceed, Mr. Co Prosecutor.

MR. SMITH:

Again, I apologize again, but I think the question is probably not really appropriate for this witness to say whether or not it's okay for another expert to review the material. That's really a question for Your Honours, and it's not really up to the witness to say that's appropriate or not appropriate.

BY MR. KARNAVAS:

[10.55.50]

Q. Doctor, were this particular doctor who Judge Cartwright indicated that he is a supposed forensic psychiatrist -- and we're going to get to that -- if he were to review all of the material that you reviewed in your reports, would he be in a better position to give a more informed opinion and assessment about your particular report?

MR. PRESIDENT:

The Co Lawyer for the civil parties, you may proceed.

MS. SIMMONEAU-FORT:

Good morning, Mr. President, and good morning to all. I do have the feel that this question is absolutely identical to the first one asked by my colleague from the Ieng Sary defence. Not only repetitious; it is also inappropriate.

[10.56.57]

MR. KARNAVAS:

If I may respond, the thrust of Judge Cartwright's question was that this letter here is meaningless because the gentleman, the doctor, the professor who reviewed it, only looked at one report and one report only. Of course, we weren't at liberty to give the entire file, and based on that, Dr. Campbell indicated that he saw little or no value in this assessment because, obviously, our expert that we consulted, pro bono on a last minute basis, had very little to review.

Q. Now, I'm asking this doctor as a -- as an expert. Were another expert to have all of the material that you reviewed, would that expert be in a better position to provide an assessment than the one that was provided overnight? It's a yes or a no.

I'm sure the doctor can answer the question. He may disagree with the assessment but he certainly can answer my question.

MR. CAMPBELL:

A. Well, I would consider it totally unnecessary--

[10.58.15]

MR. PRESIDENT:

Professor Campbell, could you please hold on?

Counsel for the -- Mr. Ieng Sary, Mr. Karnavas, please rephrase your question and try your best not to allow Professor Campbell speculate when responding to your question.

Rephrase your question, please.

And the Chamber has already reminded the parties that the documents issued by the Chamber are allowed to be submitted to

people concerned, but then we've been informed that some of the documents should not be placed in these proceedings. However, please be reminded that the question is rephrased and try to avoid any question that is speculative.

[10.59.35]

BY MR. KARNAVAS:

Thank you, Mr. President.

Q. Now, Doctor, I care not to hear your opinion as to whether you think it's relative or not relative, or necessary or not necessary. What I want to know is -- because you dismissed this letter -- were this particular expert to have access to your previous report, the other reports by the other doctors, the entire medical history, would such an expert be in a better position to provide perhaps a more informed assessment based on your medical experience, now?

Now, if you're unable to -- I don't want you to speculate.

MR. SMITH:

Again, Your Honours, I apologize, but I think -- just in relation to the question, so that the Court record is accurate -- I believe the transcript doesn't say that Professor Campbell has dismissed the letter outright.

Particular propositions were put to Professor Campbell and he responded on those propositions, and for one or two of them he dismissed them. But to say that Professor Campbell has dismissed the letter outright, I don't think is an accurate account of

today's proceedings, and I think it's a little bit misleading to the professor.

[11.01.03]

MR. KARNAVAS:

Mr. President, I understand the need to obstruct. I'm perfectly willing to go through the letter and see what parts of the letter Dr. Campbell would accept, such as where he is criticized for applying unacceptable methodology -- do you agree with what this doctor has said about your report. He indicated to Judge Cartwright's question that he saw "little or no value" -- that was a quote, "little or no value".

So, my question now is: If this particular doctor, this expert, this professor, were to have access of your previous reports, the previous medical records, would this doctor be in a better position to give a more informed assessment of your last -- your current evaluation?

(Judges deliberate)

[11.05.23]

MR. PRESIDENT:

Counsel Karnavas, the Chamber has received your request concerning the submission -- the sending of documents of the documents regard to the reports compiled by Dr. Campbell, and according to your request, the document concerning the consultant opinion would not be put into the case file or into these -- today's session, but now we note that the document is being

debated.

And also we note that the questions posed to the expert are in the form of speculative natures, using the terms like "if" or "were" like that, so it is the discretion of the trial Chamber to make a decision concerning this matter. It is not the expert. In light of this, the Chamber wish not -- wishes -- or does not allow Dr. or Professor Campbell to respond to such question. You may rephrase.

[11.07.11]

MR. KARNAVAS:

Thank you, Mr. President. Let me just address one point.

First of all, the door was opened by Judge Cartwright. I apologize, but she did open the door by making reference to it. And the email that we received yesterday from Chambers was that "the Chamber does not envisage…"

Now, "envisage" -- at least how Americans understand that word -- means that -- not expected. We were not forbidden to get something such as this, nor was there a prohibition about trying to get an assessment and even provide the assessment.

Secondly, obviously not only Judge Cartwright opened the door by going directly into the substance of the letter, but it would appear that the doctor saw the letter himself, because, otherwise, how could he be so cavalier in saying it has little or no value? He obviously answered that question based on what he saw, and it was an informed -- I suspect it was an informed

opinion.

Doctor, you will get a chance to respond.

[11.08.22]

Now, I don't see how the Trial Chamber can go into a particular document, ask questions, elicit answers from the doctor who then says it has little or no value, because you only looked at one report and not the entire medical history, and then when defence asks this very same doctor whether a more informed opinion could emerge from an expert if they had the entire file, which is not speculative, because obviously he's here as an expert, I don't see how that's objectionable.

But I move on. I take it that we are not allowed to confront the doctor on this issue; however, because Judge Cartwright impugned in some ways the reputation of this doctor by saying "supposedly", I would like to present to this witness document E115.2.2, which is the résumé of Dr. Harold J. Bursztajn. It is a 30 - 29-page curriculum vitae. He's from Harvard University, it has all his qualifications, and there is nothing supposed about this individual being a qualified expert in the field in which he's representing himself to be. And I think by using the word "supposed", it does give the impression, it does give the impression, regrettably, that this guy may be a hoax, and I'm sure this gentleman, if he looks at the c.v., he can at least tell us whether he has recognized or heard of the institution called Harvard University Medical School.

MR. SMITH:

Your Honour--

MR. PRESIDENT:

International Co Prosecutor, you may now proceed.

[11.10.14]

MR. SMITH:

The first point, Your Honour, I object to the counsel's characterizing of the witness's evidence as cavalier. I don't think it's appropriate that counsel puts these types of terms on a witness who's giving factual evidence. He's giving his opinion. There was nothing cavalier about his opinion this morning, and I think it's quite disrespectful to speak about witnesses in that manner unless there is a reasonable basis to do so.

[11.10.49]

Secondly, Your Honour, the Defence have exactly contravened the rule that you put in place through your legal officer yesterday. It's quite clear from the email that, as an exceptional measure, which I thought was quite appropriate to allow the parties at least to consult a medical expert to at least understand the reports, I thought that was an appropriate request, but it was very clear from this Chamber through your Senior Legal Officer that it was -- such an approach was just to use to assist in the understanding of those reports.

Now, what counsel is trying to do is they're trying to introduce evidence into the Court which is not subject to the admissibility

rules of this Court, Rule 87.4, not put it through those procedures, and then, at the same time, ask specific questions, detailed questions asking to show the c.v. in the courtroom when no application has been made under 87.4.

[11.11.56]

And as Your Honours are aware, your ruling in this Court, that where particular documents are to be put to an accused, Rule 87.4 -- sorry, an accused or a witness, Rule 87.4 applications must be made. And certainly we would be objecting to that application this morning certainly on the same basis that the Defence have said that their time to prepare for this hearing this morning was too short, and obviously it follows the time for the expert that they consulted to prepare for today was clearly too short. And so that's why we'd be objecting to that letter and the c.v. being placed on the case file, because he hasn't been given a proper opportunity to provide a reliable opinion.

So I would ask that the showing of c.v.'s, the showing of documents, and the putting specific questions based on the document cease and the ruling be followed that the understanding of that ruling being that parties could seek consultants to help them put proper questions to the witnesses that relate to his findings in the report.

[11.13.10]

MR. KARNAVAS:

If I may briefly respond, Mr. President, perhaps the word

"cavalier" was too strong and I withdraw that. What I meant, actually, to say, that perhaps it was the -- Professor's view that this report here, this letter, this assessment was more or less cavalier in a sense that it was very short in nature and not based on having been reviewed the entire medical history, so, to that extent, I offer my apologies to the doctor if I had offended him.

But with respect to the rest of the objection, and here is where my learned colleague is absolutely, 100 per cent wrong, I did not come into court today, prepared to use this letter, although I had it with me. I circulated it as a matter of transparency. I thought it was my obligation to do so. Judge Cartwright, introduced it, or in a sense, made reference to it. I was not prepared to share it with this doctor, the c.v. who I'm sure he knows the c.v. from a previous hearing, but once the word "supposed" came into play, then I felt compelled to have an extra copy brought and to have my copy available, because I thought this would be necessary. So I'm only reacting to what is happening in court. Now, I apologize for being prepared for the eventuality that something like this may happen, but I certainly did not ask that the letter be introduced. I could have done so, early this morning when we circulated the email. I thought I was being forthright, I thought I was being conscientious, I thought I was doing my job because I certainly could have, if I wanted to, try to spring it on the doctor, from here and claiming

somehow that I didn't know what the procedure was.

[11.15.05]

Now, I'm perfectly willing to move on, but I don't wish the record to reflect that somehow we intentionally go out of our way to violate these rules. I react based on what is happening in the courtroom, and so I'm willing to move on, but I do think that the record should reflect that we have acted properly throughout these proceedings.

Thank you.

(Judges deliberate)

[11.18.06]

MR. PRESIDENT:

The Chamber would like to hand over to Judge Cartwright, to address this issue.

Judge Cartwright, you may now proceed.

JUDGE CARTWRIGHT:

Thank you, President.

The Prosecutor was correct in his summary of the purpose of which the Trial Chamber had in mind in allowing counsel to consult appropriately qualified medical personnel to enable them to prepare for the hearing today, and to make sure that any technical aspects of Professor Campbell's report, were clearly understood by the parties.

The difficulty with this particular letter is that, it has been filed by the Ieng Sary team, and I certainly accept that, that

was for purposes of utmost transparency. It cannot, however, be treated as an expert opinion, for all the obvious reasons, and I see Mr. Karnavas, agrees with that.

What Mr. Karnavas can do, and it's entirely appropriate for him to do, is to put to the expert, information from that letter to enable the Court to understand, fully, Professor Campbell's expert opinion and that is the basis on which the questions were put, earlier today.

[11.20.04]

Now, no one's reputation is being impugned; the fact of the matter is, we do not - we are unable to make any determination as to whether this consultant is, in fact, an expert. It's as simple as that. So, Mr. Karnavas, you are quite at liberty to put propositions to the expert, and in case it's not been made abundantly clear -- because the letter came in and was filed this morning -- Professor Campbell was given a copy of it. So it's all out there in the open. It simply cannot be treated as an expert opinion.

Is that sufficient for your purposes, Mr. Karnavas?

[11.20.48]

MR. KARNAVAS:

It is. And we were never submitting it as an expert report or an expert assessment, nor did I think that it would generate this much controversy. Let's put that aside for a while and see if we can move onto something more pleasant, and then we'll return to

that.

BY MR. KARNAVAS:

Q. Dr. Campbell, I've noticed that throughout this morning, when questions are being posed to you, you are looking at the Judges or the lawyers, you're having to hear the questions, process the information, and then you provide informed answers. Would you agree with me that a certain amount of concentration is required for you to do that?

MR. CAMPBELL:

A. Yes, of course.

Q. And I take it, when the questions are coming, say from the Cambodian Judges, through a different language, you have to pause, wait, listen very carefully, and sometimes maybe even adjust your thinking, depending on the quality of the translation so that -- or the interpretation so you understand fully the thrust of the question being asked; would that be correct?

[11.22.15]

A. That is correct. It's the same process I go through when I talk with Ieng Sary, because I have to go through an interpreter and then his answers are given back to me through the interpreter.

Q. Right. Now, would you say -- and here is where you might be able to help me out a little -- is it the same level of concentration that one would need as the one we just discussed with, say, participating in following the proceedings, or would

you say less or more is required?
A. No, the concentration is the same whether listening to the proceedings or whether I am interviewing Ieng Sary. In fact, having the interpreter makes it easier because it gives additional time while it goes through the interpreter. So it does not have a significant effect on the concentration.
[11.23.13]
Q. Well, maybe I wasn't articulate in the way I phrased my question. I guess what I'm trying to decide, you know, to figure out here is: Would an individual require the same level of concentration as you require in listening and answering questions to say, sitting in court or in the holding cell, in following the proceedings? Are we talking about the same quality of concentration required over a sustained period of time, from 9 o'clock to 4.00, in between with the breaks – so, are we talking about the same quality, in your opinion?
A. Yes, we're talking about the same quality of concentration be it or albeit in the court, or when I am interviewing Ieng Sary, as a clinician.
Q. All right. I'm just going through the general. We're going to get to Ieng Sary, but I'm just going to the general. I just want to make sure that what you're saying is, when you are determining whether Ieng Sary or another accused is fully capable of following the proceedings, concentrating for the entire day, assisting their lawyers, we're talking about the same level of

concentration whether it's you, as the witness, or him, as the Accused?

A. Yes, I presume so.

[11.24.44]

Q. Okay.

Now, with that in mind, prior to the proceedings, I visited my client. He was in bed, downstairs, with the oxygen, and he's on his side, and he's barely coherent. Now, would you say that that is the same -- someone in that condition is fully capable of concentrating to the level you've just described -- is necessary for one to assist in his own defence? What do you think?

MR. PRESIDENT:

Dr. Campbell, could you please hold on and Co-Prosecutor, you may now proceed.

MR. SMITH:

Your Honour, I have no objection -- of course, the line of questioning is appropriate -- but counsel is giving evidence from the Bar table as to his assessment of the mental and physical condition of his client this morning, and that's not appropriate to put that question.

He can rephrase the question to put, perhaps, different situations, but to make a premise of the question a fact that's not proved or not really before the Court, apart from the counsel's own observations, that's not appropriate. And so I would ask that he, if he changes the question in a different way,

then it will be less objectionable because it places on record something that is not evidence.

[11.26.33]

BY MR. KARNAVAS:

I have no problems rephrasing.

Q. Doctor, before coming here today, did you happen to see Mr. Ieng Sary, to visit him in his holding cell to see in what condition he was in?

A. I have not seen Ieng Sary today. As I've said, I've seen him in his hospital; I've seen him in his holding cells, in the holding cell and in his detention centre, previously. And always on those occasions, he has been fully able to concentrate and to respond. I imagine if he has been seen just after moving to the holding cell, for example, he may well be more breathless for a time, but once that settles, I see no reason why he shouldn't be able to concentrate and respond.

[11.27.13]

Q. Of course, now, you're speculating aren't you, Doctor, because you haven't seen him, you haven't witnessed him, you're not there for the entire day; so, are you not speculating, somewhat, that he's able to concentrate for the entire time? Thank you.

A. I'm giving an opinion based on my examination of him and the time I have spent with him.

Q. All right. Now -- and we're going to get to your examination, but I just have one more question and this shall be general and

it will fit within the parameter set by the Prosecutor:
If an accused is in his holding cell, and is dozing in and out while the proceedings are going, is feeling dizzy, or is even asleep; in your medical opinion, is that person cognizant enough to be assisting in his or her own defence?
[11.28.20]
A. Well, in my examination of Ieng Sary, I have no evidence that he would be asleep or dozing off during his period in the holding cell. I'm not sure of any evidence that that actually occurs.
Q. Doctor, I understand the need for you to constantly talk about Ieng Sary; I'm asking you a general question. We're going to get to your examination. So, if you could kindly answer my question, and if you don't understand my question, please tell me.
Now, can you answer my question; would you consider that person to be assisting in his own defence, concentrating, of being able to process the information then being able to give instructions to their counsel?
MR. SMITH:
Your Honour, I--
MR. PRESIDENT:
You may proceed. Co-Prosecutor and Dr. Campbell, could you please hold on?
[11.29.26]
MR. SMITH:
I object on the basis that it's a vague question. It's one in

which he talks- -- the factual basis is that, this factual situation is that the person's dozing, they're asleep; he's putting a lot of factual propositions, which are really quite vague. Unless he's more specific to the professor so he can give a reasoned opinion, we've got no objections to asking the professor's expert opinion on if my client was asleep, is he following the proceedings, and clearly he's not. But counsel is asking for a very specific legal opinion to an extremely vague factual situation, so if that was refined more, then it would, perhaps, give the professor more of an opportunity to give a valued opinion, rather than sort of a general discussion if my client's asleep, is he following the proceedings. Of course, the answer is obviously not, he's asleep so, but if perhaps if he's more specific, it would be more helpful to Your Honours.

[11.30.47]

MR. KARNAVAS:

Mr. President, I understand the problem that the Prosecution has and I can understand their strategy and tactics, but generally, the way I've been trained and the way it is normally done, you can go from the general to the specific.

The way the question was asked is rather simple; there's nothing vague about it, there's nothing complex about it. And we have this doctor, who's a professor, who was here before, he has testified, and we're speaking the same language. Clearly -- clearly -- the doctor is capable of answering that question

without going into any specifics.
BY MR. KARNAVAS:
Q. Now, we will go to the specifics. So, can he answer the question or does he find it vague? I will leave it up to the doctor.
MR. CAMPBELL:
A. Well, there are two issues here, is the person capable of concentrating and are they concentrating at the time. Now, I have dozed through a good few lectures, it doesn't mean I'm not capable of concentrating on them. And so, from my examination of Ieng Sary, I have not found any evidence that he is not capable of concentrating. That doesn't meant that he may not doze off at times, as I've said, many of us do, if there's not much that's actually maintaining our interest at the time.
[11.32.14]
Q. So, in your opinion--
MR. PRESIDENT:
Counsel Karnavas, please observe some pauses because, without doing so, your message is not properly rendered through the interpreting channel. So please be less objective in this.
[11.32.48]
MR. KARNAVAS:
Thank you, Mr. President. Sometimes my exuberance takes the better of me.
Q. Now, so I take it, based on your answer, dozing off is just a

natural process and, therefore, if someone like Mr. Ieng Sary is dozing in and out for the proceedings, he's nonetheless following them, in your opinion; is that what you're telling us, or did I get it wrong?

MR. CAMPBELL:

A. You got it wrong. What I'm saying is he's capable of concentrating.

Q. Okay. Now, let's -- we'll get back to that perhaps later, but let's go to your examination.

Now, I realize that you have met with him before and so you were familiar with his medical history, and we note that you were provided with a series of documents in preparation for your examination. May I ask whether you reviewed all of those documents prior to meeting with Ieng Sary?

A. Yes, I did. I reviewed all the documents dating from the time when I had last seen him, and I had reviewed all previous documents in my previous assessment.

Q. Now, pause -- now, it would appear that you were also provided with the transcripts of the testimony from the previous hearing -- unless I'm incorrect -- and, of course, letters, correspondence that the Ieng Sary defence team had with the Trial Chamber, concerning Mr. Ieng Sary's health care?

[11.34.44]

A. Yes, that is correct. I've read the transcript and some of the statements in the transcripts attributed to the doctors are very

difficult to understand. I'm not sure if that is due to problems with the translation. Some of the conclusions they draw are clearly not correct.

Q. All right. And so – well, then, one of our letters where we make reference to the transcript and this is a letter of the 24th of October, 2012; we noted that on the transcript page, Dr. Lim Sivutha indicated that more than 15 minutes, they were unable to really carry on -- interview Mr. Ieng Sary; the maximum period was about 15 minutes. That wasn't the case that you found when you met Mr. Ieng Sary?

A. No, not at all. I saw him for an hour to an hour and a half and there were no problems during that time. What page of the transcript is that?

[11.36.08]

Q. It's on page 62 to 63.

Now, obviously, from your testimony today and from your report, you disagree with the doctors' -- the Khmer doctors' assessment -- medical assessment; is that correct?

A. (Microphone not activated)

Q. Well, you were provided the transcript and you were provided the letter, Doctor, and you indicated that you reviewed all this material prior to that. Surely, if we had misstated the facts, you would have caught that.

A. (Microphone not activated)

MR. PRESIDENT:

Co-Prosecutor, you may now proceed.

MR. SMITH:

Your Honour, I have no objection, but I'm just wondering whether the passage from the letter could be read to the expert so he understand the basis of the question and answer more concretely? [11.37.32]

Because the passage is not so general, in a sense, that was put forward by counsel. They refer to one interview -- had to be limited -- and then after that they state that, I think, so far, the maximum time we spent interviewing him was about 15 minutes, but the limiting of the interview related to one incident. So it' not quite clear whether all interviews could only extend for 15 minutes because of the limitations, or it was just that one interview that was limited, and the other interviews just happened to be for 15 minutes. So perhaps if that passage could be put, at least the doctor would be able to answer more clearly. [11.38.17]

MR. KARNAVAS:

Again, Mr. President, the purpose of submitting this letter, which obviously the letter was to provide information to Dr. Campbell, was to highlight areas that we saw concerned with the testimony by Dr. Lim Sivutha.

BY MR. KARNAVAS:

Q. Now, on page 2, or over a three-page letter, under section 4C, we point out exactly what was said. Now, let me read the passage

of the letter because I don't want to spend the entire day going through the transcript, although I'm perfectly willing to do that.

Sir, if you get the letter out of 24 October 2012 -- and if you don't have a copy one can be provided for you. Okay, right. I'm told it's on the screen. It says:

"Dr. Lim Sivutha statement concerning Mr. Ieng Sary's concentration" -- quote: "To me, I do not see any concern regarding this aspect, but of course, I am not the expert in this area". Transcript page 32, and -- quote: "I don't think that there was any issue in relation to his concentration"; transcript page 52: even though Dr. Lim Sivutha recognized that -- quote: "Mr. Ieng Sary had fatigue once he had to respond to a question. Self-fatigue was the main problem facing him. And if we raise our voice, for example, then he attempted to respond in a louder voice, as well. Then he was rather exhausted. So we had to limit the time for the interview. I think so far, the maximum time we spent interviewing him, was about 15 minutes"; transcript page 62 to 63.

[11.40.27]

Now, keeping these passages in mind, let me ask you this question, Dr. Campbell: Assuming that Dr. Lim Sivutha is correct, assuming that he's telling us exactly what he was able to observe -- so we have to accept him at his word -- would you say that someone in this condition, where they are fatigued after

approximately 15 minutes, are they capable of following the proceedings and concentrating to the level necessary to assist in their own defence?

And I'm not asking you to tell me what you observed when you met Mr. Ieng Sary; I'm just asking you based on this. We're going to get there, step by step.

[11.41.26]

MR. CAMPBELL:

A. The transcript, page 62, indicates that the interviews would normally take 10 to 15 minutes and that would be the normal time for someone reviewing a person's condition. There's no indication in the transcript that it was fatigue limiting that; that was just the normal time, as I've said, that one would interview someone when one is doing a routine review.

Q. All right. So you disagree with what he's saying over here, with the part that I quoted, "had fatigue, once he had to respond to a question, self-fatigue was the main problem facing him". You're saying that's not in the transcript or that's not what he observed? Which of the two? I take it, neither.

A. Certainly, as I have said, not my experience with him.

Q. Well, I'm not asking you for your experience. And that's what I'm trying to get at. We're going to talk about your experience. I'm asking you, based on what this doctor saw, based on his description, would you say, based on your definition of being able to concentrate, someone who is so fatigued, based on the

description given by the doctor, would this person be able to concentrate for an entire session?

[11.42.53]

MR. SMITH:

Your Honour, I would object to the – to the question because as the professor said, I think counsel is mischaracterizing the transcript. What the doctor states is that, on one occasion he was fatigued and he got quite exhausted. So he had to limit the time for the interview, not all the interviews, "for the interview", and then the doctor goes on and says: "I think so far the maximum time we spent interviewing him was for about 15 minutes." And as the professor has said, the interpretation of this transcript – we're not – the only interpretation – the interpretation is not that all those other interviews only lasted 15 minutes because of the fatigue. It just so happens that the doctor has said, look the interviews were for 15 minutes, all of them. But there was one occasion where they specifically state that he was fatigued and he was exhausted. So to characterize that all of the interviews could have only proceeded for 15 minutes, misrepresents the transcript.

[11.44.08]

MR. KARNAVAS:

Mr. President, again, this is a clever way of obstructing because he's mischaracterizing the thrust of my question. I'm trying to draw out the doctor to see whether, based on the testimony that

we have from - that we have on the record so far, whether based on those conditions, as described, someone would meet the level of concentration as he's told us earlier when I asked him what is the level of concentration needed to assist in one's defence. If someone is so fatigued that after 10 or 15 minutes can no longer answer questions, is that person capable. Now, I understand the doctor did not see that, I'm just going from the general and then we're going to get to the specifics. So can he answer that question?

I know replies are normally allowed, Mr. President.

MR. PRESIDENT:

Co-Prosecutor, you may now proceed.

[11.45.15]

MR. SMITH:

Thank you. I don't think it's the first time that counsel has had a - tried to attempt a reply. In any event, Your Honours, what counsel is doing, he's mixing questions of fact and speculation. If - if he wants to put a hypothetical situation to the doctor, we have no objections, if it's specific enough and not vague. But what he can't do is speculate and mix fact with that - and mix fact incorrectly. He either has to do one or the other -- put the exact factual situation which, we say, was a misinterpretation of how he put it, or he puts a hypothetical situation. But once he starts to mix hypothetical with fact, then the answer becomes virtually worthless because it's not based on any solid grounds.

That's - that's all we ask. So the two techniques are fine, but we - we'd ask that he doesn't mix them in the same sentence.

[11.46.16]

MR. KARNAVAS:

Mr. President, that's why I gave him the transcript, that's why - that's why we--

MR. PRESIDENT:

The objection is sustained. Mr. Expert is directed not to respond to that question.

BY MR. KARNAVAS:

Q. I take it, Doctor, that you did not spend an entire day with Mr. Ieng Sary -- say from 9 o'clock to 10.30, take a 20 minute break, go until 12.00, take another one hour and a half break, then go until about 3.30, 3.40, take another short break, and then go until 4 o'clock -- you did not do that on any of your examinations, did you?

MR. CAMPBELL:

A. No, I did not. I saw him for an hour to an hour and a half -- he was showing no fatigue at the end of that session -- then had a break, and he was fully alert when we came back.

[11.47.32]

Q. Thank you. Now - so the answer is that you never conducted a test replicating the actual times that he would be sitting in court to see whether, say at 3 o'clock, or at 3.30, he would be alert and able to concentrate to follow the proceedings -- not

dozing in and out, not falling asleep. You did not conduct or try to replicate the actual hours of the Court?

A. No, that was not done either by me or by Dr. Seena Fazel, for example, when he saw him previously, because we saw no need for that; he had concentrated fully, there was no evidence of cognitive impairment when we've assessed him.

[11.48.33]

Q. All right. So you're – so, based on your--

MR. PRESIDENT:

Counsel, we know you understand my gesture -- you went too fast. You may proceed, but slower, please. Because when the right light is still on when Professor Campbell still had the floor, then you proceeded, it would bring a lot of difficulty to the rendition.

BY MR. KARNAVAS:

Q. All right. Now, so I take it, Dr. Campbell, that it is your medical opinion that if you test somebody in the morning -- as you did -- hour and half and then have a little break and then – and then you determine that that person is able to concentrate, based on that test, you can conclude to a medical degree of certainty that, in the afternoon, a – that same person, given the constraints that they may have: physical and mental, would have the same capacity to concentrate as they did in the morning session when you met them?

[11.49.44]

MR. PRESIDENT:

Professor Campbell, please hold on.

And, International Co-Prosecutor, you may now proceed.

MR. SMITH:

Again, the question is mixing fact and a hypothetical.

For this to be useful, I think it should be put that given that - he mentioned that given a situation for a person that has physical and mental constraints.

The professor has been testifying all morning that Mr. Ieng Sary has got no mental constraints. It would be different if he said assuming someone has a heath condition, some health problems like Mr. Ieng Sary but still of having the full mental facilities, which is his evidence, would he get tired in the afternoon. But what he's premising the question on is that, this person has physical and mental constraints and then would be get tired in the afternoon. And that's certainly not the professor's evidence, particularly if they're trying to use an example that will assist the Court. That's misleading the witness, that he - Ieng Sary has got mental constraints as the basis of the question.

[11.51.15]

BY MR. KARNAVAS:

I'll rephrase, Mr. President.

Q. Let me be specific, all right? It is your medical opinion that, since you've tested him in the morning -- hour and half -- break, then, again, you saw him, given his state, physical, mental, whatever it may be -- we are taking about the same

person, so there should be no confusion from the Prosecution – so, it's your medical opinion that, because you tested in the morning, obviously it must follow, as day follows night, that in the afternoon he would have the same alertness, the same abilities to concentrate; that is your medical opinion?

MR. CAMPBELL:

A. Yes. Both I and the others who saw him earlier consider that he would be able to concentrate. Clearly people's ability to concentrate does vary during the day; we're more likely to have a snooze after lunch for example. But that doesn't mean the person is not capable of concentrating.

[11.52.30]

Q. And in your – and in your examination, of course, this time, you did examine him in the afternoon to see whether, in fact, this was the case with this particular individual, Mr. Ieng Sary, in light of the conditions that he – that he was in?

A. We examined him in the afternoon because by the time we'd finished in the morning it was the natural lunch break and so we saw him after lunch. And that time, again, went through memory testing which he performed well in.

Q. All right. So give us the exact hour. When did you test him in the morning, and then when in the afternoon?

A. I think we must have tested him in the morning from about half past 10.00, quarter to 11.00 through to 12.00, and then in the afternoon, I think, from 1 o'clock.

Q. Well, what was his mental condition – sorry. Well, what was his mental – how was he feeling? How was he able to concentrate that morning – say, around 9 o'clock? Do you know?

[11.54.02]

A. Well, no, I didn't see him at 9 o'clock, but I have no reason to suspect that he would not be able to concentrate at that time.

Q. All right. And, of course, you didn't see him around 3.30 or 4 o'clock, but nonetheless it is your opinion that he would have the same level of concentration.

A. It's my opinion that he would be capable of the same level of concentration.

Q. Okay. Now you're going to have to help me out here on that one, because you use the word "capable"; what does that mean? What do you mean by that? Help us out here.

[11.54.55]

A. It means that, should he have wanted to concentrate, he would have been able to. I mean, there are some things that -- I mean, we concentrate to a greater degree; other things, if the material is not so relevant to us, we may not concentrate to the same degree. But what I'm saying is that I see no reason why he should not be capable of concentrating should he consider it in his interest to do so.

Q. All right. Now, I think I understand what you're saying, but – so let me get this straight. If – if he's fatigued, if he's tired, if he's dozing in and out, you are saying, nonetheless,

despite of being in that state, he is capable, he can force himself, will himself to concentrate. Is that what you're saying?

MR. PRESIDENT:

Co-Prosecutor, you may proceed, while Professor Campbell is instructed to hold on, please.

[11.55.55]

MR. SMITH:

Of course, I don't want to continually object, but the – obviously, the issue is, this expert's testimony is important and it's important that the questions are clear.

In this question, there was two propositions put that made the question confusing. The first proposition was no – in this state, in this state in the afternoon when a person is dozing in and out, are you still saying that they would have the ability to concentrate. What – what the professor -- what the professor has said – it's clear that he's of the view that during the day Ieng Sary would – has a choice whether he decides to stay alert or not stay alert. And so that's – to me that's the question, whereas learned counsel is putting forward this factual situation that the accused or person is dozing in and out. The import of the professor's evidence is that there is some degree of volition of whether or not in fact one decides to doze in or out. And so, I think that should be the focus of the question; otherwise, I think it's misleading.

[11.57.31]

MR. KARNAVAS:

Mr. President, first, we started the objection was, that it was confusing, now it's misleading.

Dr. Campbell used the word "capable" -- "capable".

BY MR. KARNAVAS:

Q. Now, the question is rather simple: we have a gentleman who is 87, 88 years old. He has these physical conditions, at times he's on oxygen so he can breathe. He's in pain. So that's – that we all know.

And now my question is: If Ieng Sary is dozing off, is it his opinion that it's because of a lack of – this is a choice – that he is exercising a choice, he means to doze off, he doesn't really want to concentrate, or is it that, perhaps because of his physical condition, he is unable to stay alert and, therefore, unable to concentrate?

I hope my question is sufficiently clear. And I see the Prosecution shaking their head, so I think we're not going to get an objection, Doctor.

MR. CAMPBELL:

A. Well, two things: Firstly, he is physically frail and that means he will tire more easily than other people. But the length of time of the Court sessions are not such that they are to – would be too long for him.

Secondly, the fact that he dozes off is not an indication that he's not capable of concentrating -- not necessarily a reflection

on his physical state. We all doze off on occasions.

[11.59.22]

MR. KARNAVAS:

All right. I see that we're coming up to the hour of the - of the lunch break. I'm about to go into something else, Mr. President; perhaps we may break at this moment.

MR. PRESIDENT:

International Co-Prosecutor, you may now proceed.

MR. SMITH:

Your Honour, this is not an objection.

In relation to planning this afternoon, I'm aware - I believe that we have the professor just here for the day. Defence counsel have examined for the last hour and five minutes. Just for planning purposes for the Prosecution and civil parties, I'm just wondering how much extra time the Defence will be given for examination and then, obviously, that the same amount of time should be available for the Prosecution and the civil parties. So, I am just wondering -- just for planning purposes -- particularly with the questions, so that we are as focused and efficient as possible. If we could have some indication before lunch, that would be extremely helpful, Your Honours.

[12.00.40]

MR. KARNAVAS:

Mr. President, I would have been much further ahead had it not been for some - some of these objections, which, in my opinion,

are gratuitous and unfounded. So that has taken up approximately 20 or 30 minutes of my time.

Be that as it may, I think I need another hour with the doctor. Of course, I'm in your – I'm in your hands, so I will do as instructed. I do wish to go into some of the aspects of the testing that the doctor conducted. I don't intend to go into any technical matters, so that won't be too long. I think there's just some very basic questions and I think one additional hour in light of what is – the importance of this is not too much, and I think that should give the Prosecution sufficient time, with the civil parties -- in light of your instruction that there be no repetitiveness -- to ask whatever questions, particularly when, in fact, many of the questions that the Prosecution wanted to ask were already asked by the Bench. Thank you.

[12.02.02]

MR. PRESIDENT:

May the Prosecution advise the Chamber as to how much time they would need to proceed when putting questions to the expert, please?

MR. SMITH:

Your Honours, I think – obviously, it depends on if what is raised by the Defence. If the Defence gets – say, if the Defence stopped now, I would – I would suggest that 45 minutes would achieve what we would like to do -- 45 minutes of less. And as – as the defence counsel -- a lot of ground has been covered, but

if the Defence continues for another hour, they may raise a lot of new issues of which we would like the opportunity to have more time to address those issues. But as of now, I would suggest that the Prosecution would be 45 minutes or less.

[12.03.07]

MR. PRESIDENT:

What about counsels for the Lead – for the civil parties?

MS. SIMONNEAU-FORT:

Mr. President, given the state of affairs, I don't believe that we should exceed 15 minutes.

Thank you.

(Judges Deliberate)

[12.06.25]

MR. PRESIDENT:

With regard to the time allocation, and having heard from parties to the proceeding, the Chamber notes that it is appropriate to allow counsel for Ieng Sary to continue putting questions to the expert for another 45 minutes after the break. And the remaining time would be allocated to both the Prosecution and the civil party lawyers.

And, indeed, we will observe some time also by the end of the day when parties – all party would then be given the opportunity to have a few final words.

The Chamber would like to adjourn for the time being, and the next session will be resumed by 1.30 pm.

Court officer is now instructed to assist Mr. Expert during the adjournment and have him returned to the courtroom by 1.30 pm.

(Court recesses from 1207H to 1330H)

MR. PRESIDENT:

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

We continue giving the floor to counsel for Mr. Ieng Sary to continue posing questions to the expert. You may proceed.

BY MR. KARNAVAS:

Thank you, Mr. President, and good afternoon to everyone in and around the courtroom and good afternoon, Doctor.

[13.33.08]

Q. Before we go into your report a little bit, may I ask, when you examined Mr. Ieng Sary, was he able to get out of bed?

MR. CAMPBELL:

A. He was able to get out of bed -- excuse me -- with assistance.

Q. Well, anyone can get out of bed with assistance. Was he able to get out of bed without assistance -- on his own accord, that is?

A. No, he was not.

Q. Was he able to sit up on his own accord?

A. When he was sitting up, I arranged for him to have some support as well. I mean, he would be able to sit on a chair with -- with a back on it, but not sit on the side of the bed without support.

[13.34.16]

Q. Well, maybe I was -- I inartfully put the question to you. Was he able to -- if he's lying down on a bed -- on his own accord, get himself up into a sitting position on the bed?

A. No, he had assistance when he was doing that.

Q. Was he able to move from one side to the other on the bed without assistance, you know, to roll on the side?

A. Yes, he was.

Q. This is -- this is unassisted?

A. That's right.

Q. Okay. And -- or was he able to -- did he have full range of motion of his neck? This -- you seem, in your report, to indicate that he's able to move his neck rather freely.

[13.35.20]

A. Yes, I tested his neck movement and he had full movement of his neck.

Q. Did he complain of numbness?

A. As I indicate in my report, he complained of numbness from just above the wrist and the hands and in the lower part of the shins, down on the feet.

Q. Well, what about his legs, did he complain that his legs were numb at times?

A. As I said, he complained of some numbness from the distal end of the shin on to his feet.

Q. And in your medical opinion, was that -- what was the -- what caused that numbness?

A. He may well have a peripheral neuropathy -- that is, a disorder of the peripheral nerves where the full sensation is not coming back from the peripheral nerves, but he did have preserved position sense when I moved his wrist and his ankle.

[13.36.30]

Q. Could it also be because he's just lying there in bed unable, on his own accord, to move and adjust himself periodically so that his limbs are not becoming numb?

A. No, that would not cause those problems.

Q. Now, did you check his back to see whether he had any bedsores?

A. I looked at his back -- lower back; didn't examine his buttocks, but there were no sign of any bedsores.

Q. All right. And in your opinion, is he able, on his own accord, for instance, to -- to assist himself in order to relieve himself?

A. Yes, once he had a bottle, he was able to manage that.

Q. When you say "once he had a bottle", somebody has to bring the bottle to him; right?

A. Well, there was not a bottle right next to him. If he had a bottle right next to him, I think he probably would be able to use that, but I didn't test that.

[13.37.58]

Q. So, it is your -- it is your opinion, from your examination, that he's able to reach over, if it's within reaching distance --

on his own accord, reach over, grab the bottle, lift himself up, and urinate?

A. If he was urinating lying down, then he probably would need assistance with the whole process.

Q. Now, in your report, you use the word "giddiness" and I think, at one other point, you use "dizziness". I'm not a doctor, so I don't know, you know, the difference. Is there a difference? Is one inclusive in the other, or are you using these words interchangeably? And forgive me if I'm -- if I'm being simple.

A. I'm using it interchangeably. They're both non-specific terms and as I said, they can indicate a number of different problems; either a spinning sensation, vertigo , or a light-headed, faint feeling if the blood pressure is low, or a sense of instability if the person's balance or strength is such that they don't feel secure when they're standing.

Q. All right. So, just to make sure -- I'm not being critical, just to make sure, when I read your report and I see "giddiness", because I'm not used to that word -- at least in our context or my context, this might be different - "giddiness" and "dizziness" is basically the same thing?

A. That's correct.

[13.39.45]

Q. Now, when somebody is dizzy or is experiencing this feeling of dizziness, would that in any way impair their ability to concentrate to the level that you are concentrating now? And I

see I have your full concentration. What do you think?
A. As I said, his dizziness is arising from three main causes. Firstly, a vertigo feeling when he turns his head and that is brief, and with a neck collar that should be prevented; a faint feeling if he's sitting for prolonged periods and his blood pressure is low, but again, if he's lying in his bed on the holding cell that won't be a problem and then, of course, if he tries to stand and feels unsteady, but again, that's not going to be a problem when he's listening to the court proceedings.
[13.40.45]
Q. Doctor, I've heard your testimony on direct examination this morning; you were very clear. But my question was -- and if you could answer my question – is: Would dizziness, albeit however brief or however extended, would that affect an individual's ability to concentrate to the level that you're concentrating, which is the standard that we set this morning, based on your testimony?
A. Well, it's impossible to speculate across the whole range of dizziness. When we talk about Ieng Sary, no, his dizziness would not interfere with his ability to concentrate.
Q. All right. So you -- but -- so your answer is limited to my client, but you're not willing to go so far as to say, with any degree of medical certainty, that dizziness would not affect or impact one's ability to concentrate; is that what I'm hearing from you?

A. What I've said in my report is that dizziness arises from multiple different causes and certain causes that may impair the person's ability, so one can't speculate across the whole range of dizziness. It's important to specify in relationship to the particular person and the particular cause of his dizziness.

[13.42.18]

Q. So the answer to my question, Doctor, is yes?

A. Well, the answer to your question is that it is of no relevance because we're not speculating about everyone who has dizziness; we're talking about one specific person.

Q. All right, very well. Now, can you please tell us how you measured the level of dizziness -- what exact test did you perform, at which time -- so that we know the range of dizziness that Mr. Ieng Sary was feeling at any particular time -- what specific tests -- name them -- so then we could probably have either a discussion or have someone else look into those tests?

A. The two tests I used to determine the cause of the dizziness was the Dix-Hallpike manoeuver which is where the person is taken, their head's turned, and they're lie -- lay backwards to see if there's any spinning sensation and any nystagmus and there was. And the second test was his lying and standing blood pressure. There's no -- dizziness is a subjective sensation, so there's no test you can actually use to measure it.

[13.43.43]

Q. Well, Doctor, that was exactly what I was getting at. That was

the thrust of my question, because my question was the degree. How were you able to measure? Because now you're saying his dizziness, in your medical expertise, would not affect his ability to concentrate. He can concentrate as well as you are concentrating right now.

And so my question is: What exact test did you perform that would give you the range of dizziness that he's experiencing? And so, if I understand you, there is no test. It's a subjective matter; right?

A. Well, let me clarify again. It depends very much on the cause of the dizziness and I undertook tests to see if he had benign positional vertigo which is a dizziness or a vertigo that only lasts a few seconds, and with a neck collar to prevent head movement, won't interfere with his ability to concentrate. Secondly, if he had persistent low blood pressure, that may well interfere with his ability to concentrate, but he's not going to be in a situation where that is an issue.

[13.45.03]

Q. Now, I think we got that right. I think we -- you know, we understand each other or I think I do. Now, it seems to me that the Cambodian doctors -- and there's a board of them -- they had reached a different conclusion as to why Mr. Ieng Sary may experience some dizziness; is that correct? And I know that you've discounted it, but I just want to get a confirmation on that.

A. Yes, they felt that he had vertebrobasilar ischemia; that is, an impairment of the blood supply from the vertebral arteries. Now, if I can clarify that, Ieng Sary has long-standing high blood pressure and he also has heart disease, so a narrowing of the coronary arteries. He almost certainly has atherosclerosis involving the blood supply to the head, as do most people, especially in Western society, of his age. But none of his symptoms, currently, can be attributed to that. As I've said, giddiness, in the form that he has it, is not a single isolated symptom of vertebrobasilar ischemia and I've given you a reference to that. And there are no other symptoms or signs, on examination, to indicate that he has brain stem or cerebellar strokes or ischemia. That doesn't mean that he's not at risk of that in the future, but there's no sign of that -- damage from that at present.

[13.46.50]

Q. All right. And forgive me if I'm not going to go too much into the technical aspects of it, but based on what you just indicated to us, with all his particular ailments, you don't -- it is not your medical opinion that any -- any one of those or a combination; in other words, the way he is now, that that would not, in any way, impact his ability to concentrate the way you're concentrating here today?

A. He will tire easily, obviously, because he lacks physical ability. All his movements require his full strength, but given

that he has been largely inactive and he will be lying down, I don't think that will be a problem.

[13.47.51]

Q. All right. Thank you, Doctor. Now -- but the bottom line is these doctors -- and in particular Dr. Lim Sivutha, who came and testified -- based on your medical expertise, just got it wrong. Maybe I'm being too blunt, but sometimes bluntness cuts to the -- the chase as they say.

MR. SMITH:

I think -- I think perhaps counsel was being a bit blunt. The other doctor testified to a lot of things and there was some -- some agreement and some difference in opinion. To say that this other doctor came to Court and just got it wrong just leads to a very misleading answer if he's to answer that yes or no. I think the difference of opinion has been put and the professor has answered it. I don't think it helps to say that the previous doctor just got it wrong because it's really unclear as to what he's talking about. I think he should be specific as to what aspect he got wrong.

[13.49.07]

BY MR. KARNAVAS:

Q. Doctor, did you not tell us earlier -- and in your report you seemed to indicate that you disagree -- you disagree with the findings of the previous doctors who came and testified? That's in your report, so I'm not asking you to speculate, I'm not

asking you to conjecture. It's very, very clear there's no need for objections.

So, in your report, do you not find that they have it wrong, at least that aspect of their evaluation?

MR. CAMPBELL:

A. What I'm saying is that there are no signs or symptoms at present that would indicate that Ieng Sary is suffering from lack of blood supply to his brain. And that's not to say, as I said, that he may not have a stroke in the future, but currently, there are no indications that impaired blood supply to his head is contributing to his symptoms and there were no signs, on examination, of impaired blood supply; previous strokes, for example.

[13.50.15]

Q. And that was the -- but that was the testimony of the Cambodian doctors; wasn't it?

A. They thought he had vertebrobasilar ischemia. As I said, that's been a diagnosis which many symptoms were attributed to, but current evidence would indicate that those symptoms are often -- more often due to other causes and I've outlined the causes in my report.

Q. And could we say that you provided a second opinion; would that be one way of putting it?

A. Well, I provided my opinion, yes.

Q. All right. And in fact, you go on to say that he's on certain

medication and in your opinion, that medication should be reduced, if not at some point be eliminated, because that also may be contributing to or, in fact, is contributing to his dizziness.

A. It may be contributing to his dizziness. In the studies of dizziness -- population studies, around 23, 25 per cent of patients have medications that are contributing to dizziness. Now, I'm not sure that it will make very much difference to Ieng Sary because he's had this vertigo, the spinning sensation, for some time and that was before these medications were used.

[13.52.02]

Q. But nonetheless, this is also a second opinion, your opinion. You differ with what the Cambodian doctors are treating him with; could we call it that? And I'm not saying one is better than the other; I'm just simply pointing out the obvious.

A. Yes, you could. If he were a patient of mine, I would gradually reduce those medications.

Q. In other words, you disagree with the Cambodian doctors.

A. My approach to his management may well be different. I commonly reduce medications because often in older people, especially older people on a number of medications, as he is, do suffer adverse effects from medication and they do need to be reduced.

[13.52.57]

Q. Thank you.

Now, I looked at your report and it doesn't appear -- and I -- maybe this is an oversight in typing out the report, but it would appear, at least, in paragraph 4 of your report, that you did not consult with or have an opportunity to discuss Mr. Ieng Sary's medical condition with Dr. Lim Sivutha; is that correct? It's not in the report; at least, I don't see it.

A. If his name's not listed there, then he would not have been--

Q. Consulted.

A. --consulted.

Q. Okay, so was it--

A. I -- the arrangement was that all the doctors treating Ieng Sary would meet with me, both before and after I had spent time with Ieng Sary, and I've listed their names there.

[13.53.56]

Q. Right. Okay. And I'm not being critical; I just wanted to make sure that it wasn't some oversight and then I jumped to conclusions. So now that we know that you didn't meet with him, but we do know that you had access to his testimony and that you had access to my letters which describe his testimony, and it would also stand to reason that you knew that he was one of the treating physicians; may I ask -- may I ask, why was it that you were unable to meet with Dr. Lim Sivutha?

A. I couldn't answer that. I didn't make the arrangements for the meeting. It was my understanding that all those treating Ieng Sary would be at the preparatory meeting with me and then we'd

meet again after I had assessed him. So whether he's been on holiday or away, I don't know.

Q. Thank you. And I take it from your answer, you never asked to meet with the doctor. I mean, I'm not being critical, but the bottom line is you knew he was one of the treating physicians; when all the doctors showed up, he was not there. You didn't ask the question like, "Oh, by the way, what about Dr., you know, Lim Sivutha, who testified? Has been the treating physician? Where is he? May I speak to him?"

[13.55.31]

A. No, I didn't, because I wasn't aware that he was not there. I just asked each of the doctors to note their names down on my record of the meeting so that I would know who had attended. There was the neurologist there who had been involved with Ieng Sary's treatment, and as you've said, there was considerable discussion amongst the doctors as to the diagnosis and the treatment.

Q. So I take it -- I take it from your answer you are confident that it would not have been necessary or perhaps superfluous to meet with Dr. Lim Sivutha, since you had the rest of the doctors -- the board -- available to you to discuss his condition?

A. Yes, I felt I've got a full account from the doctors -- from both the general doctors looking after him, also from the specialist neurologist and the specialist cardiologist.

Q. Now, can you tell us which one of the doctors or collection of

doctors or was it the entire board that determined that Mr. Ieng Sary was suffering dizziness because his brain wasn't getting enough blood? I'm putting it, sort of, in the vernacular, so we can all follow along.

[13.57.05]

A. I'm not sure who decided that or who had that particular opinion. I indicated quite clearly to the doctors that I did not feel that was the cause of his problems.

Q. And did you have access to their medical reports, the actual examinations, themselves, the test results, in a language which you could follow along and interpret?

A. Yes, I did. I had copies of all their medical reports. I also had the CT scan of the cervical region, which as I indicate in my report, I have discussed with a professor of radiology in Dunedin and we're both of the conclusion that the changes within the cervical spine were no greater than one would expect in a man of Ieng Sary's age and that there was no indication of encroachment on the vertebral arteries. As I've said, you can do additional tests of the vertebral arteries through either CT angiography or MRI angiography, but they are not the symptoms or the signs that would justify those additional tests.

[13.58.26]

Q. Thank you. Now, I take it, Doctor, that -- from your answers that you feel that you had a sufficient amount of time to prepare the report that you did prepare and of course, if you needed more

time, you would not have hesitated to ask for more time?
A. No, I had plenty of time. I had time to prepare before coming here by reading the doctors' reports and also reviewing the literature myself. I had the two occasions to see Ieng Sary and ample opportunity to take a history from him and to do the necessary examination.
Q. All right. Now, going back to what I -- to something I mentioned this morning, and help me out here; I don't mean to push on this issue, but again, we've established that you didn't -- you did not examine him under simulated conditions as a court proceeding, but would it be fair to say that you did not test him in the afternoon to see what he might have remembered in the morning? And I'm not talking about who his children are; I'm talking about something that he would have been concentrating on, assuming that he was capable of doing it, and then to test him later on to see whether he was able to recall and to discuss those matters.
[14.00.25]
A. No, but we -- when we met in the afternoon and again the next day, it was quite clear that he didn't have any problems with recall as to what had been done previously. He was aware when we did the Dix-Hallpike manoeuver again what was involved.
Q. I thank you.
Now, have you been asked, at any point in your career, to provide a second opinion, aside from what you did here today, but back

home?
A. My whole professional life involves giving a second opinion. I see patients on referral from their general practitioners, at outpatients, and of course, when I'm looking at my patients in the ward, they've already been seen by the house physician and registrar. So I spend my whole professional time, when I'm involved in clinical practice, giving second opinions if not tertiary opinions quite commonly.
[14.01.33]
Q. So I take it, within the medical profession, that's sort of a common thing for doctors to, sort of, you know, give second opinions or third opinions to examine -- to make sure that -- that whatever the diagnosis is, is accurately or as best is accurately discovered?
A. It depends very much on the expertise of the doctor. If the person is involved in primary care -- that is a general practitioner, he or she will be giving a primary opinion. If one is a consultant, then one is asked to give a second opinion by the primary care physician and often in hospital, for example, if a patient has been admitted in under cardiology or neurology, then we may well get called in to give a further opinion.
Q. Thank you. So from that, I think what I -- if I understand you correctly, there may come occasions where someone with a different specialty may be called in to question -- be called in to give a further opinion; in other words, look at it from a

different context, a different angle, different perspective?
A. Yes, that is so.
[14.03.15]
Q. Okay, thank you. And I take it -- now, you told us that you've been asked to give a second opinion. To your knowledge, do you know whether another doctor has ever been asked to give -- to give a second or third opinion to your opinion?
A. If I wanted a further opinion, then I would ask for it. For example, if I have a patient with cancer, I would ask the oncologist, the cancer specialist, to come and give his or her opinion. Ultimately, especially in geriatric medicine, it's very important that the physician such as myself, remain in overall control of what's happening.
Q. All right. But certainly, it's not uncommon in your profession for the patient also, on their own, to ask for a second or third opinion especially when the news sometimes is -- is not so optimistic?
A. Yes, they may and we would discuss it with the -- with the patient and if there was a good reason for a further opinion, then we would ask for that.
[14.04.40]
Q. Now, getting back to how we started this morning -- and perhaps we got off on the wrong foot, I might have been overly exuberant, you know, first thing in the morning and all that -- I know you were discussing the letter that we received from our

Harvard professor who had an opportunity to -- to look at your report. If you have it handy, let me just read one part of it. It says: "It is clear that his methodology is unacceptable by any generally accepted as reliable standard for forensic, psychiatric evaluation of competency to stand trial." And then he lists three reasons.

Now, do you see that, Doctor?

A. I've read that and I'll make comment on it. Firstly--

[14.05.46]

Q. If I may -- if I may, I'm not -- I don't want to go into the specifics of this yet. I just want to make sure -- we're going to go step by step and I will give you an opportunity to -- to provide your comment on this, but I just want to go step by step on this if you -- if you'll permit me.

MR. PRESIDENT:

Co-Prosecutor, you may now proceed.

MR. SMITH:

Your Honour, I object to the line of questioning. In terms of the -- the ruling that we had this morning, the purpose of this document was to -- or seeking medical assistance or consultants was to assist the parties in understanding the professor's report. Judge Cartwright has said this morning that's -- that was the reason why that was allowed.

Now, we're going into the -- the realm of putting statements from people that are not experts before this Court and it's giving

them a level of importance in these proceedings which there hasn't been a proper opportunity for this person that they have consulted to even review the medical documentation which he's discussed and even, sort of, take time to prepare an informed report.

[14.07.05]

Normally, the rules are that before a document is specifically put and specifically quoted, it needs to pass the Rule 87.4 test as admissible evidence and we would certainly object to that and -- but we don't object to the -- the underlying basis of this opinion to be put directly to the professor in relation to his work. But to put these statements to the professor, we would object to because we believe the quality of the report, the time taken to prepare for it is certainly not sufficient.

MR. KARNAVAS:

Mr. President, if I may respond to this five-minute objection, I thought I was following exactly the guidance provided to me by Judge Cartwright who also went into this -- this letter. I don't call it a report because I don't want to mislead anyone that this is an actual report. I specifically stopped the doctor from going on into this area because I don't want to get into a lengthy debate on this particular document, but merely to get him to acknowledge that that's what this letter says from a doctor from the Harvard University Medical School who is a professor, like himself, and who has some 30 years experience in the area of

forensic psychiatry.

[14.08.40]

My next set of questions were going to be because we just covered -- we just discussed how this particular doctor gives seconds and third opinions and sometimes bring in others from other areas to look into the opinions of doctors. I wanted to give the gentleman an opportunity to tell us whether it would, in his opinion, you know, or to express -- to express his opinion why he thinks his report, his work, should not go -- undergo any scrutiny. So that's -- that was the thrust. Now, doctors disagree all the time, but that's the -- that's the purpose of my -- of my questioning.

And I raise this, Mr. President, because earlier the doctor seemed to flag and telegraph to the Judges -- to you -- that it's unnecessary and I take that as a way of saying, "I don't want my work being scrutinized by an expert".

MR. PRESIDENT:

Professor Campbell, you may now respond.

[14.10.06]

MR. CAMPBELL:

A. Thank you for the opportunity to respond.

Firstly, no expert is an expert when he's basing an opinion on very little information and not the full story.

Secondly, it's important to recognize that we had a very well qualified forensic psychiatrist who examined Ieng Sary in August

and his opinion was that he was fit to stand trial and that's clearly outlined, the reasons for that, in that report of the 3rd of September. What I have said is that I have not been aware of any change in Ieng Sary's cognitive function from the time that report was written until the current time, so I do not see that there's a need to invite, for example, Dr. Seena Fazel, back to repeat that assessment.

[14.11.01]

BY MR. KARNAVAS:

Q. All right. But I thought -- earlier, you had given us the impression that it was unnecessary to have this particular professor be engaged to give a second opinion or a third opinion or to examine Mr. Ieng Sary, and as I take it from your answer, you're saying no, you're not of that opinion at this moment.

MR. CAMPBELL:

A. You're referring to the Harvard professor?

Q. Yes, precisely.

A. Yes. No, I feel there was no need at all. Ieng Sary has been fully assessed by Dr. Seena Fazel who is very well qualified, a very experienced forensic psychiatrist from Oxford and his opinion is clearly expressed in the report of the 3rd of September. As I've said, there has been no significant change in the situation since then.

Q. Now, you have looked at--

MR. PRESIDENT:

Counsel, please be reminded that you have five more minutes to proceed.

[14.12.15]

BY MR. KARNAVAS:

Thank you, Mr. President. Thank you.

Q. Now, obviously, you've seen the c.v. from the Harvard professor?

It's a simple question; it's a yes or no. He's seen the c.v. It's on the record, Mr. President. I don't see the reasons why Mr. Smith deliberately wants to obstruct the proceedings.

MR. SMITH:

I take offence to those remarks. That's absolutely not what I'm trying to do.

I'm -- what I'm trying to do is to make sure that counsel follows the ruling of the Trial Chamber and the ruling of the Trial Chamber was that this report or this letter was to assist in their understanding of the professor's report. Reading out c.v.'s of people at Harvard or whatever university, it doesn't do that. I'm not sure why he's actually doing this, but it's certainly not relevant to the exercise and certainly not what -- what Your Honours have endorsed.

[14.13.25]

MR. KARNAVAS:

Mr. President, since my learned colleague has an inability to follow what I'm trying to do, the doctor here just said that this

individual, a professor from Harvard, is not an expert. That's exactly what he said. He said, "He's no expert."

Now, we have not tendered an expert report, but I would like this doctor to, first, confirm whether he's seen the c.v. and, second of all, whether he can confirm or deny this doctor, this professor, being an expert. Maybe he doesn't have an opinion, but certainly, if he's seen the c.v. – or, rather, impressive 29-page c.v., he should be in a position to tell us whether this person would at least meet the criteria of being an expert.

[14.14.22]

MR. SMITH:

Your Honour, the professor didn't say or the context of what he said was not that the professor could not be an expert. That's not the context of what he said. What he said was that he couldn't provide an expert report on Ieng Sary's health condition or mental condition. That was the context of what he said. To actually put words in the professor's mouth that this person is not an expert in some particular capacity is not appropriate to do and that's certainly what -- the professor did not say that.

MR. PRESIDENT:

Counsel Karnavas, you are advised to rephrase what you are talking about and I'm afraid that you are now talking about something which is not within the scope of the hearing today. You have already been informed that today we are examining the report submitted by the expert; the report on his examination of Mr.

Ieng Sary during the time Mr. Ieng Sary had been admitted to the hospital, and that the topic being discussed today is more about whether Mr. Ieng Sary is able to participate in the proceedings or not. But the Chamber notes that you have used some inappropriate words that are not relevant and for that, we would like to say that you have no more time left to put questions to the expert.

[14.16.24]

MR. KARNAVAS;

Well, Mr. President, I do intend to make my record because the mentioning of the professor from Harvard came from the Bench. It did not come from the Defence. This doctor was chosen by you; it wasn't selected by the Defence or the parties. Obviously, the doctor has every reason to be very guarded about his own expertise. He has no compunction saying that the Cambodian doctors are wrong and that he is right, but he does not wish to have others look at his reports and examine and give a second opinion or a third opinion. This is not the first time that the professor from Harvard has been exceedingly critical of Dr. Campbell's work and the whole purpose of this discussion now, in light of his own admissions, the--

MR. PRESIDENT:

Again, Counsel, you had been given the floor to examine the report compiled by the expert, not an opportunity to verbally attack the expert or anyone here, so many of your questions did

not fall within the scope of the hearing today.

[14.17.57]

MR. CAMPBELL:

Thank you. I would just like to clarify a couple of points. Firstly, I did not call into question the expertise of the professor from Harvard. I did call into question his opinion because it was not based on all the facts and the files. And thirdly, the reason I do not feel we need another forensic psychiatrist's examination is that we have had Ieng Sary, very recently, examined by a very competent, experienced forensic psychiatrist, Seena Fazel.

BY MR. KARNAVAS:

Q. And that's your opinion?

[14.18.46]

MR. CAMPBELL:

A. No, those are the facts. Seena Fazel is a very well qualified forensic psychiatrist. He has examined Ieng Sary recently, as you will see from the report of the 3rd of September, and there is no evidence of change in Ieng Sary's cognitive or mental state since then.

Q. Doctor, it's your opinion that another expert should not be called in -- that's what I meant -- and in particular this one, who is critical of the manner in which you conducted the tests and prepared this report?

MR. PRESIDENT:

Mr. Campbell, you should not respond to this question anyway. Since it is now appropriate time for adjournment, the Chamber will adjourn for 20 minutes.

Court officer is now instructed to assist Doctor Campbell during the break and have him returned to the courtroom by 20 to 3.00 -- 25 to 3.00, rather.

(Court recesses from 1420H to 1439H)

MR. PRESIDENT:

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

Next, we would like to hand over to the Prosecution to put some questions to the expert. You may now proceed.

[14.40.11]

QUESTIONING BY MR. SMITH:

Thank you, Mr. President. Thank you, Your Honours. Good afternoon, Professor.

Q. The last session of the Court day is arguably the most difficult time for all of to us concentrate no matter what our age is. So I ask that you persevere with the questions that I'll ask.

As we all know, a lot of ground has been covered this morning, initially by your summary of your opinion and then by Judge Cartwright and then by my learned friend, counsel for Ieng Sary. So I will go through some particular points that perhaps if you could cast some extra light on and then we'll just move across a few of the different areas to focus -- just a bit of detail on

some specific points, if you can.

[14.41.06]

I will first ask you a few questions about his mental health, then a few questions about his physical health, and then my colleague, Mr. Dararasmey, Chan, will ask you some final questions as to the standard of care that you believe can be provided at the detention facility of the ECCC.

So, if I can start firstly with your experience in relation to assessing people with cognitive impairments, alleged cognitive impairments, and people that may be faced with a situation that they may not -- there may be an argument about whether they're fit to plead before a Court or fit to make decisions as a result of certain legislative rights that people may have in any one country.

[14.42.04]

And if I can point to your curriculum vitae, which is E62.1, if I can just quote part of that curriculum vitae as to what appears to be your experience in this area -- if I can quote:

"The Patients under his Clinical Care, he has filed many expert reports in the court concerning applications under the New Zealand Protection of Personal and Property Rights Act […], legislation which enables a court to make orders for the personal care and welfare of those who lack the capacity to communicate decisions as well as for the administration of personal property where a person lacks the capacity to manage his or her own

affairs. The majority of these reports concern patients with cognitive impairment. And in addition he has provided reports to the High Court of New Zealand concerning the testamentary capacity of people whose wills have been challenged. And he has also provided an assessment for the court to enable it to determine if a person who had both physical and cognitive impairment was fit to stand trial."

[14.43.22]

So, in that – in that context, can you provide – provide the Court with some – just a bit of further information about how many cases or how many reports over the years that you believe you may have written in each of these combined, but certainly on this particular issue of whether someone has the proper mental capacity to carry out their rights and obligations, just briefly?

MR. KARNAVAS:

Mr. President, may I be heard?

MR. PRESIDENT:

Dr. Campbell, could you please hold on?

Counsel Karnavas, you may proceed.

[14.44.03]

MR. KARNAVAS:

The question, as posed, is vague and irrelevant.

It would appear from the doctor's c.v., the part that was quoted, deal with somebody's ability to understand what's going on around them. Whether they have the mental capacity to execute a will or

whether they're – they're mentally fit. That is not at issue, it is also a general question. Right now we are talking about with respect to Mr. Ieng Sary whether he is capable of assisting in his own defence and following the proceedings -- is able to concentrate.

Now, if my learned colleague would like to narrow the scope of his question so that it reflects what we're really at – you know, what is really at issue here. Then I have no objection. But to simple say that the doctor has testified as to whether somebody is competent to execute a will when that is not the issue here, is wholly inappropriate and unrelated, and irrelevant. Thank you.

MR. SMITH:

Your Honour, all I can say – I don't see how the question could be any more point in terms of this Professor's expertise to be able to provide an opinion as to cognitive ability in relation to – in relation to Ieng Sary. It couldn't be any more on point, Your Honour.

(Judges Deliberate)

[14.45.48]

MR. PRESIDENT:

The question put by the prosecutor is relevant. Therefore, the objection by the counsel for the accused person is not sustained. Professor Campbell, you are now directed to respond to the question.

MR. CAMPBELL:

A. Thank you.
I assess people with cognitive impairment very frequently and often have to provide a report to the court if the person does not have an appointed person as power of attorney. And often have to comment no their capabilities when they are looking to appoint someone. Very hard to put a number on that but it would certainly arise every month or two of my practice that I have to make a judgement in that area.
[14.46.45]
BY MR. SMITH:
Q. Thank you.
Professor, I'd like – now like to turn to two of your reports -- that's the 3rd of September report and the 6th of November report. And I'd particularly like to look at the tests that were conducted in relation to determining that Ieng Sary had the cognisant ability to be able to proceed in this trial.
In terms of determining if whether someone is fit to stand trial, is it the case that there's two – two areas that are looked at: One, at the cognitive ability; and two, at whether or not they understand the court process and can follow the court process and participate it – participate in it, as you've noted in the 3rd of September report in relation to the steps or the tests given by the case in Strugar.
Are they the general two approaches that are taken to determine whether someone is fit to plead and stand trial?

[14.48.00]

MR. CAMPBELL:

A. Yes, that is correct. I have spent most of my time assessing Ieng Sary looking at his cognitive function. That's both in the early reports and, more recently, Seena Fazel and Lina Huot spent more time going over ensuring that he knew the court processes, his ability to plead, the consequences of the action. And, as I've said, I found when I saw him this time that there was no reason to believe that there been any change in his ability to comprehend what the process was.

[14.48.35]

Q. Thank you. And when we look at the 3rd of September report, as you've stated already, it was prepared by three - three professors. It was yourself, Professor Huot, and Dr. Fazel. In terms of your involvement in determining his cognitive ability, were you involved in that - in the 3rd of September -- particularly in relation to the MMSE test that was done, or was your focus more on his physical health? Can you tell us how the work was divided up and, perhaps, how you collaborated?

A. In my earlier reports prior to the one -- 3rd of September -- I had assessed both his physical capability and his cognitive function. Given that we had Seena Fazel and Lina Huot on the August assessment, I concentrated primarily on the physical, but we did discuss the report and the findings - their findings and my findings -- before completing that report.

[14.49.49]

Q. And when your – if your concentration was more on the physical in – in diagnosing and working out a prognosis and treatment for Mr. Ieng Sary, did you have to have significant discussions with him to discover what his complaints were and other aspects to diagnose him properly?

A. Yes, that is correct. I mean, obviously, when one is assessing a person, even if it is primarily a physical assessment, one is very conscious of their ability to give a history, give an account of what's been happening, the consistency of their response. And if there is any cause for concern, one follows that with more detailed questioning around memory and understanding. And in my dealings with Ieng Sary, I have not, at any stage, been concerned about his ability to comprehend, to remember his history, and to give me an adequate account.

Q. Thank you. And perhaps if we could just turn to the mini-mental state examination, can you briefly describe to the Court what that entails? And what it's designed to achieve?

[14.51.11]

A. It's a standardized test which is designed as a test of memory. And it covers areas of orientation both in time and place, short term memory, ability to calculate, and spatial ability as well. And as I've said, he scored when I repeated the test above that level where one is concerned about cognitive function.

Q. I believe in the – the 3rd of September assessment, he scored 28 out of 30; is that correct?
And when you conducted the test on the 6th of November, do you remember the score?
A. Because of a numbness with his fingers he had difficulty with a pen, so he had difficulty doing the pentagons and the sentence. But he dropped two points, so he scored 26 out of 28.
[14.52.17]
Q. And so he was able to pick up a pencil – at least attempt the test. He had enough movement to attempt?
A. Yes, that is so; he just had difficulty constructing it and sufficient power on it to be able to use it. But in testing the sentence – writing a sentence, there was no concern at all about his speech, the fluency of it, his use of language, so we didn't have any concerns in that area.
Q. And just if you can clarify again, when you – when you spoke to Mr. Ieng Sary on the 6th of November, just recently, did he complain of numbness in the hands and feet? And when – when he – well, first, perhaps if you can answer the last question and I'll follow.
[14.53.14]
A. Yes, he did.
Q. And so he complained about some numbness and yet at the same time he could pick up a pencil and at least attempt – he could sort of move his arms and legs but it was a feeling of numbness,

as opposed to the idea that my limbs are numb I can't move; is that correct?
A. That is so. I mean, the numbness is peripheral – distal, and not proximal. He also has marked weakness now, and as I've said, I think, that is primarily because of lack of physical activity over a number of years coupled with his age.
Q. And when we talk about peripheral numbness, are we talking about damaged nerve endings at the exterior of our body?
[14.54.16]
A. Yes, that is so, particularly in the areas he complained of light touch. But, as I've said, his position sense -- that is a sense as to whether I was moving his foot up or down was preserved and his reflexes, distally, were also preserved.
Q. Is the term "numbness" and the idea of pins and needles, a tingly sensation perhaps in the – the exterior parts of someone's body? Is that – are you viewing in the same way that, basically that's the condition we're talking about of pins and needles? Or is it something different again?
A. Numbness is more an altered sensation as if you feeling it through cotton wool, for example, not as firmly. So that when I brought (unintelligible) down his legs to his feet, he felt there was a change in sensation from just above the ankle.
[14.55.19]
Q. So, it's not a question of a loss of feeling, it's a – it's a diminished extent of someone's feelings?

A. You can lose sensation entirely but his was a subjective loss.
Q. In relation to determining Ieng Sary's cognitive ability, in addition to this diagnostic test, the MMSE, as part of that process to determine whether they've got good reasoning ability, cognisance ability, do you also part – as part of that discuss with the client or in this case with Ieng Sary, to confirm that that sort of reasoning ability, that awareness is there? So it's not simply just do the test, but there's another component?
[14.56.16]
A. Yes, that is so, determining if he knew what the process was, why we were seeing him. His abilities, as I've said, to be able to give an account of himself and the symptoms and how accurate that is. And also involving in the discussion questions about family as to get an idea of how accurate he is, and whether he's aware we are there. We discussed Ieng Thirith and what had happened to her, and how often he'd seen her. So, just going back over issues like that to determine what his recall was. And there was no evidence of any impairment there.
Q. And is it also the case that you're getting that reasoning ability as well when you're examining Ieng Sary or someone about their physical health as much as their ability to remember short and long term? So is it a combined assessment that you make from your two different lines of inquiry?
[14.57.16]
A. Yes, that's so. And also one is relying also on other people

and whether they've noticed any change, and again, there was no indication from the doctors who had been looking after him. And on our earlier discussion, there had been no indication that there had been impairment of his memory or reasoning from those who were looking after him.

Q. And in your – in your discussions with Ieng Sary just recently in relation to his cognisant ability, I think you've explained a little already what that discussion was and the types of things you talked about. Can you sort of wrap that up for us and – and – and tell us the topics that the content and – and sort of the length of time and you discussed those particular areas?

[14.58.17]

A. We discussed his current situation, his history, as I've said, and taking an accurate account, as we could, of his sense of dizziness, what that actually meant, when it occurred, and he's been quite consistent in his discussion there. In terms of talking around his family and background, we did that at the end of the session to ensure that it was at a time when he'd been interacting, concentrating with us for some time. And there was no impairment there.

Q. Thank you.

Some questions were asked earlier about the qualifications perhaps of the – of the – of the doctor, Dr. Fazel and Assistant Professor Huot; as to their qualifications to be conducting assessments in relation to fitness to plead. And as you've said,

back in August, they conducted assessments and they asked him some - some specific questions that focused more - well, on the fitness to plead or the ability to participate in the trial aspect, aside from the - the purpose of determining the level of cognisance generally. I would like perhaps if we can move to that report, the 3rd of September. And I know you have obviously from today a very good memory. But perhaps if we could look at the fifth page, it's ERN 00846191 of that report which is E11/86/1 and that's seems to be just after the beginning of a recording of their assessment of Ieng Sary's ability to understand the trial process. And in that report it appears that the two professors have used the Strugar test which highlights the factors - the legal factors that courts seem to want psychiatrists or people doing these tests to consider to be able to help them understand whether or not an accused is fit to stand Trial.

[15.00.55]

If we look at, if we move to page 6, could you just advise us again of the seven criteria that the Court have asked and you applied in this report to determine whether he has fitness to stand Trial -- those seven criteria.

MR. KARNAVAS:

If I may briefly--

MR. PRESIDENT:

Professor Campbell, could you please hold on?

And, Counsel Karnavas, you may proceed.

[15.01.21]

MR. KARNAVAS:

Thank you, Mr. President. I would object to any specific questioning to the September report because that's not the purpose of the – of the hearing here today. The gentleman, the professor indicated that he knows what the standards are. So he can – so the Prosecution can simply ask what criteria are in the Strugar test and whether he looked for those particular criteria. But to anchor the question based on a report that was written by others who are outside the expertise of this particular doctor, I would object to. Especially since we are here for this particular report that this professor has – has conducted based on his most recent tests and since September, Mr. Ieng Sary has spent almost two months in hospital. Thank you.

[15.02.19]

MR. SMITH:

Your Honour, counsel has just said that this professor doesn't have any expertise in this area of determining whether someone is fit to stand Trial and assuming also that he hasn't sort of got any expertise to deal with cognisant ability of old people. That is his expertise; he's a geriatrician, that's his specialty. And we've heard, just a moment ago, him outline the amount of work and experience he's done in this process and in New Zealand in dealing with this very issue. So for counsel to say he doesn't have any expertise in this area is dumbfounding at the least.

That said – that said he also – counsel also stated that this report was not written by him. This report was written by him in collaboration with the other two. We've just heard testimony from the professor talking about how they worked together. How they divided work and how they collaborated and how their opinions on these issues reinforced each other. So it's wrong to say that he actually didn't write the report. He signed the report and perhaps – you know I could ask the question, would you have signed the report if you didn't believe in its contents. The fact of an expert being able to refer to his own report is – that's obvious, and that's how we've been proceeding. And the fact that whether or not this professor was actually in the room when these questions were asked is not the issue. The issue is, what information can he assist the Chamber with.

[15.04.07]

This issue was raised by defence counsel about the qualifications and ability for the assessment to be correct on the 3rd of September. It's clearly a relevant issue. This test was done so closely to the test that was done only a few days ago. It's absolutely relevant and I would ask that the professor be able to answer questions on this.

[15.04.40]

MR. KARNAVAS:

Mr. President, the Prosecution has just mischaracterized my objection.

First of all, we are here for his - to take testimony from the doctor concerning his most recent examination. Second of all, I am unaware of the doctor's specialty in forensic psychiatry. Now, if he is, he can tell us that, but that's what I was alluding to. No one has suggested that the doctor is - this doctor - this professor is not qualified in the profession in which he's told us he is. Nor have we called into question those doctors from September 3, but we have made it a point of saying that - we have - we have shown the report to our expert who seems to indicate that there are reasons to believe that the - the test that were performed were inadequate. So I have no problem with the gentlemen speaking about what he observed on September 3, but we are here for what he did in his most recent evaluation. I think that's what is at thrust. These other two doctors had not come back, and he's not in a position to comment on what they would be saying here today because they weren't here. They haven't tested him. Now he may have an opinion that, were they to appear they would testify the same way as they have in the past. That would be pure speculation and I don't think the doctor is prepared to do so. But he can certainly talk about what his findings were and compare his findings to the findings from September 3. That, I have no objection to.

(Judges Deliberate)

[15.08.01]

MR. PRESIDENT:

The Chamber would like now to hand over to Judge Silvia Cartwright to address this issue. You may proceed.

JUDGE CARTWRIGHT:

Thank you, President. The Chamber has deliberated and decided that this is a relevant line of examination by the Prosecutor and that it may, within the time limits available, continue.

The Chamber also notes that there was no challenge to the 3rd of September report, and therefore it is part of the context of – and the relevant material that the Court is considering today.

Thank you.

[15.08.56]

BY MR. SMITH:

Thank you, Mr. President.

Q. Perhaps if I can just remind you of the question, the criteria that you were required to look at certainly as a group to prepare this report under the Strugar test to determine fitness to plead. Could you make that clear to the Court, please?

MR. CAMPBELL:

A. Criteria were the ability to plead, to understand the nature of the charges, the course of the proceeding, and the function of the people involved in the proceedings, the details of the evidence, to be able to instruct his counsel, and to understand the consequences of the proceedings, and if required, to testify.

Q. Thank you. And in – in determining, say perhaps if go through each one in order. In determining whether he had the ability to

plead, how was that done?
[15.10.04]
A. That's outlined in the 3rd of September report that was done by Seena Fazel and Lina Huot, they've outlined their methods there. As I've indicated, I did not go through those again on this occasion because they had been done recently and with no evidence either on history or examination that his cognitive function had changed, his ability to understand had changed at all since the report in August.
Q. And we talked earlier about you being able to sort of determine a person's cognitive ability in the way they talk about their physical state, their physical health, perhaps as much as their mental health. And so, certainly, in that process, that examination on the 3rd of September - the health, and looking at Mr. Ieng Sary's mental health and physical health -- were the answers that you were receiving from Mr. Ieng Sary and your view on his cognitive ability, and being able to give those answers, were they consistent with the answers that seemed to have been given in relation to these seven criteria on the fitness to plead in terms of cognisant ability and ability to reason and respond?
[15.11.42]
A. Yes, that was the conclusion of the three of us involved in his assessment at that time.
Q. And if I can briefly ask you in relation to his capacity to plead, in relation to that issue, what information did the two

professors record to satisfy them and ultimately you of that – of that criteria? If -- you can review the report if you need.

A. They looked at his understanding of the nature of the crimes of which he was accused, the process by which he would be tried, the consequences if he was found guilty, and his ability to instruct his own counsel in terms of his own defence. And he indicated the methods in which he would do that.

Q. And if we look at paragraph 32, how did they record their view as to his – their view that he appeared to have the capacity to plea. What information did they deem relevant in relation to that? Perhaps if you can that information out so it becomes clearer. Yes.

A. Paragraph 32: "Ieng Sary appeared to have the capacity to plead and stated that he believed that he was not guilty. He explained that 'If I were the one who had knowledge and made decisions, it's a different story', but that he was 'not involved with that'.

[15.13.15]

"He explained that to be guilty 'I have to know. I had to have been involved in decision-making', but he believed there was 'no evidence' to prove his guilt."

Q. And then in relation to him appearing to have a basic understanding of the crimes with which he had been charged, how did he respond to that?

A. Again, to quote from the report:

"He explained that he'd been accused of 'Crimes against Humanity' which he understood included 'Evacuation of people forced to move out of the country, acts of omission that allowed people to starve to death. As leaders we are accused of forced labour and not providing treatment for patients and crimes against Buddhism, the monks, the Catholics, the prohibition of religious practice including demolition of monasteries and pagodas'."

[15.14.12]

Q. And in relation to the criteria of understanding the course of the proceedings as including an understanding of court procedures, the speeches of witnesses and lawyers to the Judge and the ability to communicate intelligibly on anything that is said by a witness and counsel, they've recorded his views on that.

I'm just wondering if you can explain that to the Court, if you can read that out, please.

A. "Microphone not activated) -- the role of the Judge and explained that he would ask his lawyer to challenge anything that a witness said that he thought was not true. We felt that, on the basis of this and related capacities that we tested, Ieng Sary did have the ability to understand the course of proceedings, and I gather that has been occurring; Ieng Sary has challenged or advised his counsel."

[15.15.08]

Q. And if we move to paragraph 35, they state -- the professors

state that they:
"Have taken the criteria of understanding the details of the evidence as including the ability to point out statements to which he disagrees and the ability to inform counsel of his version of events and any factors that should be brought forward in defence."
And then they record their observations of Ieng Sary to this issue.
If you can read that out, please?
A. What they say is:
"On these factors, Ieng Sary appeared to have some capacity. He brought forward consistent defences when we discussed the charges and appeared to have a good memory of the Khmer Rouge period and decisions made by the regime."
Q. And if we move on, the professors have stated:
"We have taken the related capacity of instructing counsel to include the ability to cooperate with counsel, informing counsel of the facts of the case, and assisting in the preparation of one's own defence."
And can you relate their impression of his ability to do that, please?
A. "Our impression was that Ieng Sary was able to cooperate with his lawyers and he named his foreign counsel and explained that he had helped him and how he came to choose him from a recommendation from his Cambodian defence counsel."

[15.16.39]
And, again, when I saw him earlier this week asked him about his defence counsel, and he had no difficulty remembering there.
Q. And if we move to the second-to-last one, it's recorded that Ieng Sary hardly appeared to have a good understanding of the consequences of any conviction. How was that finding found?
A. To quote from the report: "He explained that he would be 'imprisoned for life, maybe 10 years or longer'. If he was not convicted he said that he would be free and would go and live with his family."
[15.17.20]
Q. And dealing with the last criteria now. The professors have stated that: "Our assessment suggested that Ieng Sary did have the ability to testify."
Can you just provide the basis for that in relation to that topic? Thanks.
A. "He seemed to have a good understanding of Court procedures. He stated that he expected that all the Judges would ask him questions and then he would be posed more questions from the prosecutors, followed by the civil parties, and maybe the defence counsel of the co-accused. And he named the two co-accused. He explained that he would try to answer all these questions."
[15.18.02]
Q. And in that 3 September report, and it's been discussed already in Court, it was your opinion, along with the two other

professors, that:

"Ieng Sary did not suffer from any mental illness or cognitive impairment beyond what would be expected for someone of his age and background and, therefore, have no recommendations to make in relation to mental state or cognitive function."

That was your opinion on 3 September; is that correct?

A. That is the correct, and there has been nothing in my assessment of him on this occasion that would make me change that opinion.

Q. Thank you.

Perhaps, now, if I move to perhaps two question -- two last questions on this topic generally and the ability to concentrate.

You were asked questions by my learned friend in relation to what, you know, is it possible that Ieng Sary could doze off in the afternoon and not be able to follow the proceedings.

And your answer to that scenario was that Ieng Sary would have the capability, the ability to concentrate and follow the proceedings for a whole day, bearing in mind the breaks and the lunches etc.

[15.19.48]

Can you just explain that a little bit more and the idea that any -- you said that people could doze off but he's got the capability?

What I want, perhaps, to get some clarity on is: Are you saying that he has the capability to do it for a day with the breaks,

but if he wanted to, he could concentrate at a certain level for that whole day? Is that what you're saying?

A. Yes, that is what I'm saying. I mean, he is obviously more physically frail now, but in the right circumstances that would not be an issue. The Court sitting sessions are not long and there are certainly adequate breaks in between.

[15.20.38]

As I've said before, I mean, often people doze off in circumstances. That doesn't mean they haven't the ability to concentrate, it just means that if things aren't very exciting for a time we have that tendency to nod-off.

Q. So, ultimately, for you, it's more of a question of willingness to concentrate and participate as opposed to the ability to concentrate or participate?

A. Yes, that is so. And, I mean, when there are particular issues which he feels strongly about, I'm sure he'll maintain his concentration. There may be other times during the Court hearings when it doesn't seem particularly relevant to him and at that time his concentration may lapse, but that is something that would happen to any of us.

Q. Correct.

One question in relation to specialities and expertise; we talked about you having a slightly different opinion about VBI, vertebrobasilar insufficiency syndrome or ischemic. You also said you having a different opinion to the doctor that testified, but

you also said it's not out of the realms of possibility that that could develop -- or that could occur at some future time.
[15.22.14]
So, just in terms of that possibility, why would -- how would you say that? Why would that be a possibility?
A. What I'm saying is that none of his current symptoms can be attributed to vertebrobasilar insufficiency, and he has no physical signs on examination to indicate that he's had small strokes, for example, because of insufficient blood supply from that system.
What I am saying, though, is that he's 87, he's got a history of high blood pressure and he also has a history of coronary artery disease which indicates that his coronary arteries are narrow.
[15.22.59]
Now, it is highly likely that he has some narrowing of the arteries supplying blood to the head, currently they are not causing any symptoms, but anyone of 87 with coronary artery disease who has high blood pressure is at risk of a stroke in any of the territories, vertebrobasilar territory or the interior circulation.
So, even were he to have a stroke tomorrow, again, it would not mean that his current symptoms are due to vertebrobasilar ischemia.
Q. And isn't that also the case that people of an advanced age that may be physically fit for their age, many of them end their

lives with a stroke?
A. That is correct. He is at greater risk of course because of his high blood pressure and because of his heart disease, but currently on examination there is no evidence that he has had a stroke.
Q. And I'm looking now at a report of the 19th of September, E1187/2, 00848142, and the doctors report of a paradoxical (phonetic) septum with a conserved ejection fraction of 58 per cent.
Can you just explain briefly what an ejection fraction is and the figure of 58 per cent, whether that's reasonable for someone of his age even without heart disease?
A. The ejection fraction is the proportion of blood in the left ventricle -- that's the main pumping chamber that pumps the blood out to the body -- the proportion of that that's present when the ventricle is finished filling, the proportion of that that's pumped out to the body.
[15.25.11]
And the 58 per cent is actually a reasonable preservation given that he has had heart attacks before and he has got areas of his heart muscle that are not contracting fully.
Q. So, with that ejection rate being reasonable, also with the arteries to the back of the brain not showing much constriction or thinning, would it be fair to say that although there is -- he has a heart -- history of heart problems, at the moment his heart

condition is stable?
A. His heart condition is stable but it is precarious. So it hasn't deteriorated over the time that I have been seeing him. He does have heart failure that's an inability to pump adequately and for pressure to build up behind the heart, but currently that is adequately controlled with his medications.
[15.26.13]
Q. And just in -- I think I went off topic -- but in relation to some of the other doctors that were seeing Mr. Ieng Sary, isn't it the case that you're not in debate with many of the diagnosis that has been stated, but particularly just in relation to the VBI? Is that correct?
A. That is correct, yes.
I mean, there was some issue about impairment of the blood supply returning from the brain obstructed by the clavicle or collar bone. I'm not sure whether it was a problem in the transcription, but that's not a plausible explanation; that simply doesn't happen.
Q. And just in relation to your expertise as a geriatrician, would it be fair to say that your expertise deals with all major critical functioning aspects of the body because you need to be able to see the interdependency and the interrelatedness of one condition on another because when you get older, we have -- we generate a number of different conditions as opposed to when we're younger and we have -- may have one issue and on that basis

perhaps we would go to one particular expert.
But is it the case that your expertise is different perhaps than the others because you're more familiar with the interdependency of the conditions and the cause-and-effect relationship between them?
[15.28.28]
A. Yes, that is correct, and in two aspects.
Firstly, when we're dealing with people of 87, the older age group, they have a number of comorbidities so it's not just conditions affecting their heart, it's also likely to be arthritis, lung problems, a number of different problems.
The second thing is that when one looks at a particular symptom, in a younger person that most commonly can be ascribed to a single etiological causative factor. But in older people, there are often a number of contributing factors to a particular symptom.
[15.29.02]
Q. And from the doctors that you met that have been examining Mr. Ieng Sary at the hospital here, are any of them, as far as you know, qualified geriatricians, in terms of that being their specialty?
A. No, not as far as I'm aware. I'm not sure there are geriatricians in Cambodia given the age structure of the population.
MR. SMITH:

Thank you.

Mr. President, just to give you a plan, I believe I would have another five minutes of questioning. My colleague, I think, has about 10 or 11 questions relating to the treatment at the detention facility. We've spoken to the civil parties and they advised us that they may use the 15 minutes or they may use a little bit less.

Bearing in mind the time, I would ask that we continue until, say, 10 to 4.00 and then, perhaps, if submissions are required, we would ask that perhaps on another day that we could come and organize our thoughts.

If that's acceptable to the President, can I proceed on that basis? Basically, we finish in 20 minutes.

(Judges deliberate)

[15.31.18]

MR. PRESIDENT:

Indeed, you may proceed, but then please make sure that you are straight to the point so that we can now finish on time.

Counsel for Mr. Nuon Chea, you're on your feet. What is it that you wish to address the Chamber because you are here as an observer rather than the -- and we don't know what kind of point you wish to make.

MR. IANUZZI:

Thank you, Mr. President. Good afternoon, everyone, and good afternoon, Professor Campbell.

[15.31.57]

First of all, if I may just respond to what you've just said, you said this morning that the other defence teams would be given the floor at the end of the day. That's what I heard you say. That's what everyone on this side of the room heard you say. And just before the lunch break, you said that all of the parties would be given an opportunity at the end; that's what I heard.

MR. PRESIDENT:

Perhaps that was a misunderstanding because on Tuesday we also told parties to the proceeding that we only allow the counsels for Mr. Ieng Sary to participate in the proceeding and that we allow other parties to observe the proceedings if they would wish to do so. However, we are afraid that other parties other than counsels for Mr. Ieng Sary would not be allowed to make any observation or be heard during the proceeding.

You may be seated.

MR. IANUZZI:

Thank you, Mr. President, if I could just clarify what I--

MR. PRESIDENT:

You please be seated.

[15.33.24]

MR. IANUZZI:

I would only have one general question for Professor Campbell. It would have nothing--

MR. PRESIDENT:

You are not allowed to be heard because you are here as an observer rather than the parties to the proceeding, and as an observer you are not entitled to be heard.

We hope it is clear. Please be seated and please make sure that you make the most of your time as an observer rather than the party to the proceeding.

And the Chamber would like now to proceed to the Co-Prosecutor to continue putting questions to the expert instead.

[15.34.10]

MR. IANUZZI:

My time--

MR. PRESIDENT:

No, you are not allowed. Please do not interrupt the proceedings because we're running out of time.

BY MR. SMITH:

Thank you, Mr. President. We'll take heed of your words and be as quick as possible.

Professor, I just have two questions. Then my colleague has 15 minutes. He will just ask you about whether the standard of care at the detention facility is significant -- sufficient to give Mr. Ieng Sary the best medical option.

Q. My last questions are: If we look at the three main complaints that you assessed Mr. Ieng Sary as having, is shortness of breath, the lower back and cervical pain, dizziness and unsteadiness, would you agree that one of the most, perhaps,

immediate health concerns that Ieng Sary has is that he might fall over because he's so -- the muscles are not as strong as they should be or could be?

[15.35.31]

And the most immediate thing that might happen to him is if he falls over and then if he falls over he could break a bone and have other complications and that would be extremely detrimental to his health.

Is that reasonable to say given the current situation?

MR. CAMPBELL:

A. Yes, that is a very real risk. Fortunately, he is very aware of that and so does ask for assistance when he does need to move.

Q. And my last question is: If that's the case, would you agree with me that aside from him taking the appropriate medication, aside from him having the appropriate personal care, this exercise program you talked about, within the limits that he can do it, is fairly essential in terms of his ongoing health.

[15.36.33]

And if he doesn't start a program like that to the level that he can with a walker or something similar, then his condition would likely worsen?

A. Yes, that is so. He is very weak now. He has a condition that we call sarcopenia which is loss of muscle bulk. It makes him very frail. It makes him very susceptible to falls and fracture but also means that his body reserve to counter any intercurrent

illness such as an infection, is very much compromised. So he is at risk.

And if he is able to participate in a program, this may build that up a wee bit, but it would require his cooperation.

Q. And that's my last question.

Do you get any sense from him, from your discussions with him, whether he is willing to participate in extending himself a little to exercise to give him more strength?

[15.37.48]

A. My impression is that that's unlikely. He does, for example, when moving complain a lot of his back pain and that may mean that he's reluctant to actually participate in a program. But if he could undertake one, it may be helpful.

Q. Would you say that with the appropriate physiotherapy and coaching and guidance by someone, that would be quite important to give him the confidence and the know-how how to actually begin?

A. Yes, because it has to be at a level within his capacity, both cardiac and in terms of his muscle function. It is unfortunate that he's not had any program during the time that he's been in hospital.

Q. Thank you, thank you, Professor.

I'll just hand over to my colleague who has some questions for you. Thank you.

[15.38.54]

QUESTIONING BY MR. CHAN DARARASMEY:

Good afternoon, Mr. President. Good afternoon, Your Honours, and a very good afternoon to you, Professor John Campbell. I am Chan Dararasmey, National Co-Prosecutor, and I will have a few questions concerning your recommendation you already stated in your report to the Court on 6 November 2012.

Q. In your report you -- document E238/4. ERN 0858949 in Khmer, English ERN is 00858700.

On point number 19, you indicated that Mr. Ieng Sary -- that he be discharged from hospital. He's not receiving any medical treatment that could not be provided outside hospital. So your recommendation is that he be discharged from the hospital and returned to the detention facility.

Could you please tell the Chamber how the medical -- or how the care is carried out at the detention facility to improve his condition at the Court?

MR. CAMPBELL:

A. Well, I think his condition is stable at present. As I've indicated in the report, there have been no changes to his drugs, medication, over the last two-to-three weeks. So it's not as though his medical condition is being closely monitored with a view to changing therapy.

[15.41.05]

The main issue at present is his physical dependency and that is being managed by assistance to help him with his standing and

there is no reason for a person to be in hospital for that to occur.

Q. Thank you. Is there a need to change the current system concerning the care of Mr. Ieng Sary because he has already been properly cared at the detention facility should there be a change to the same regime of care?

A. He has the doctors at the detention centre who monitor his progress. If there were any deterioration they would be able to call on additional expertise if they needed that. The main change in his condition and requirements is in his increased physical dependency.

[15.42.23]

So his medical condition can be adequately monitored in the way that it was previously.

Q. Can you also please tell the Chamber whether -- what else needed on top of what the medical service provided by the treating doctors who are on standby at the detention facility? So my question is that what should be more services offered by the doctors to him?

A. I don't think there's any need for additional medical support. I raised with the doctors at the hospital why they felt he still needed to be in hospital, and the answer I got was to deal with any emergencies.

There have not been any recent emergencies. If there were, they could be dealt with at the detention centre. If necessary, he

could be transferred back to hospital, but there is no need to maintain him in hospital in anticipation of such emergencies. And I'm not sure what emergencies they were actually referring to.

Q. Thank you, Professor. Having noted the beds for Mr. Ieng Sary, do you feel that the bed is comfortable enough for a person like Ieng Sary or should you wish to recommend that there should be some changes to the bed condition for him for his better health? [15.44.38]

A. In hospital, he's on a bed similar to that in the holding cell and he's perfectly comfortable on that. If he needs to sit slightly propped up to watch the monitor, then that could be assessed to see how comfortable he is in a bed in which the head of the bed can be elevated.

If he finds that comfortable, if it doesn't disturb his lower back, then that might well be a useful alternative to have in the holding cell.

Q. Do you believe that the food ration offered by the kitchen at the detention facility is adequate for Mr. Ieng Sary?

A. Yes, he does have additional food brought in by his family, which he enjoys, and that could certainly continue. There are dietary supplements that can be used and they could be tried to see if he did find them palatable and worth trying. [15.46.05]

Q. Thank you. Can you please advise the Chamber as to what kind of equipment be recommended for Mr. Ieng Sary to use in the

detention facility to improve his physical condition, for example, for allowing him to do exercises?

A. I think that would be -- depend very much on the program that the physiotherapist established for him. I don't think it need be sophisticated at all, the main issue is in the strength in his legs and simple ankle cuff weights are usually adequate for building up proximal leg strength which is the critical area to work upon.

I mean, it's very important that he continue the exercises when the physiotherapist is not there. So, again, we don't want a particularly sophisticated program, it needs to be a simple program that he can carry out on a daily basis.

Q. Thank you very much. Can you please tell the Chamber whether you envisage that there would be some trainings for the medical staff at the detention facility to make sure that heart condition of Mr. Ieng Sary improves?

[15.47.52]

A. I think there's a very little scope for improvement in his heart condition. They have been monitoring it adequately. If they need additional advice there is the cardiologist that they can call upon for that.

Q. Thank you. Based on the current health status of Mr. Ieng Sary, are you satisfied, according to your examination, that the current medical service received by Mr. Ieng Sary at the detention facility is the same as that provided by doctors at

Khmer-Soviet Friendship Hospital.?
A. I mean, it's a different level of service. He does not have daily access to the specialist cardiologist or neurologist, but with his condition stable at present I don't feel that's necessary anyway.
Q. I thank you very much. I have the final question to pose to you, and this final question is relevant to your recommendation. [15.49.52]
Do you believe that the current service provision at the detention facility is adequate for him to be remained – or to remain at the detention facility rather than being admitted to the hospital?
A. I feel in his current condition, which is stable, the medical services available at the detention centre are adequate.
I feel he will need additional personal support if he is in the detention centre similar to that which he's receiving in hospital, but that's at the level of nursing or personal care.
MR. CHAN DARARASMEY:
Thank you very much, Professor Campbell, for your responses to my colleague and to me. I wish you safe travels and all the best.
Thank you, Mr. President and Your Honours, for the floor.
MR. PRESIDENT:
Next, the Chamber would like to hand over to the Lead Co-Lawyers for the civil parties to put some questions to the expert. [15.51.13]

MS. SIMONNEAU-FORT:
Mr. President, on behalf of the Lead Co-Lawyers, I'm going to give the floor to my colleagues Vanly Chet and Pascal Auboin for the questions.
MS. CHET VANLY:
Good afternoon, Mr. President. Good afternoon, Your Honours. I am Chet Vanly representing the civil parties.
I have no questions to put to the expert, but I would like to cede the floor to my colleague for putting questions.
[15.51.57]
MR. AUBOIN:
Good afternoon, Mr. President. Distinguished Bench and all parties here present, good afternoon.
Good afternoon, Professor Campbell, I am Pascal Auboin, civil party lawyer.
We have heard a number of statements in this Chamber; the Defence, the Prosecution and yourself. The civil parties feel fully confident about the report that you have written and on behalf of the civil parties, I will simply take this opportunity to thank you for your contribution to this process. Thank you.
MR. PRESIDENT:
Thank you very much.
We have little time left. However, we would like -- as indicated, we would like to give opportunity to parties to make some observation but the time is too little for that already.

The Chamber wishes to inform the parties to the proceedings that the follow-up hearing on this will be conducted on the morning of Monday, 12 November. After this session, the Chamber wishes to hear the testimonies of some witnesses as well.

And we already coordinated with the Office of Administration to coordinate with the Khmer-Soviet Friendship Hospital to have Mr. Ieng Sary returned to the detention facility and the Court. And today it is his right, and based on the report by the expert, he can enjoy observing the proceedings, and momentarily the Chamber will send him to the detention facility.

[15.54.44]

By Monday, the Chamber will continue hearing testimonies of some witnesses and civil parties and at the same time we would like the security personnel to bring Mr. Ieng Sary to observe the proceedings from his holding cell.

We may take this opportunity to also seek advice from the expert who is before us today whether it is appropriate for Mr. Ieng Sary to be returned to the holding cell to observe the proceedings. Indeed, a decision on his participation in the proceeding is pending because we have just heard your opinions and report, and that only until -- we won't have any hearing until Monday, so for this time being we would like to know from you what you would say about this?

[15.55.52]

MR. CAMPBELL:

Thank you. As I've said in my report, I don't see any medical reason why he should not return to the detention centre providing that the additional personal support that is needed can be provided so that he gets adequate assistance, for example, when he's moving from bed to chair so that he does not have a fall and fracture.

(Judges deliberate)

[15.59.46]

MR. PRESIDENT:

The Chamber would like to hand over to Judge Silvia Cartwright to inform the parties and the public concerning Ieng Sary's condition and how we handle him, how whether he should be present or not during the court proceedings when we hear testimonies of some civil parties in the following week.

Mr. Ieng Sary has expressly said that he would like to waive his right to participate in the proceedings concerning the -- certain witnesses and civil parties somehow.

We would like now to hand over to Judge Silvia Cartwright.

JUDGE CARTWRIGHT:

Thank you, President.

The Trial Chamber notes that it is appropriate to make an interim determination concerning where Ieng Sary will reside pending the delivery of any decision on Ieng Sary's current health status.

The Chamber has noted Professor Campbell's opinion that Ieng Sary does not currently require hospitalization.

The Trial Chamber, therefore, decides that Ieng Sary is to return to the detention centre where he is to continue receiving full medical treatment as before and as discussed during today's hearing.

[16.01.30]

The Trial Chamber also directs the detention centre to provide additional personal assistance to ensure Ieng Sary's physical safety and to enable him to attend to his more personal requirements such as toileting.

The Trial Chamber, therefore, orders that the accused, Ieng Sary, be returned to the detention facility. It notes that the accused has waived his right to be present for the testimony of those witnesses who have been summoned to testify for the remainder of November 2012. Therefore, the Chamber does not require his presence in the holding cells during those hearings.

Any decision that the Chamber determines concerning Ieng Sary's health status will follow in due course and an order requiring his attendance in the holding cells will also be given.

The Trial Chamber intends to give the parties an opportunity to make oral submissions on Monday, 12 November before we begin the hearing of witnesses. We have not yet determined how long for each of the parties, so perhaps, President, we could briefly confer on that to give the parties an indication of the duration of such oral submissions.

(Judges deliberate)

[16.04.10]

MR. PRESIDENT:

Thank you very much, Professor John Campbell. The hearing on your testimony as an expert has now come to an end. You are now excused.

Your report and testimony will be used as the basis for our consideration and deliberation on the health status of Mr. Ieng Sary to see whether he is fit to be present in the proceedings or not.

Now, the Chamber wishes you all the best. We wish you a very safe trip home.

Court officer is now instructed to ensure that Professor Campbell is returned home safe and sound.

The hearing of today comes to an end. The Chamber will adjourn.

[16.05.14]

The next hearing will be convened on Monday, the 12th of November at 9 a.m.

On Monday the Chamber will be hearing the remarks, observations, by parties to the proceeding concerning the report and opinion by Professor Campbell.

Counsel for Mr. Ieng Sary will have 20 minutes for that and Co-Prosecutors and civil parties - rather, Co-Prosecutors will have 15 minutes when the Co-Lawyers for the civil parties will have five minutes. And the final five minutes will be offered to counsel for Ieng Sary to finally reply to this.

And on Monday the Chamber will also be hearing Witness TCW-507 after the floor is given to the parties concerned with regard to the remarks I already stated.

Counsel Karnavas, you may now proceed.

MR. KARNAVAS:

Just one moment. We didn't have an opportunity to thank Dr. Campbell for coming here. We wish to thank him for giving his testimony. He was rather spirited, but nonetheless we do thank him and we wish him a safe journey back home. Thank you very much for coming here.

MR. CAMPBELL:

Thank you very much. And thanks very much for the courtesy of the Chamber.

I might add, as an aside, that I wore today the cufflinks that my daughter gave me, my computer cufflinks, which have CTRL on one cuff - "control" -- and ESC - "escape" -- on the other. So, if things get too tough, I can press both and, woosh, I'm gone. But as you can see, I'm still here, so I haven't needed it. Thank you very much.

[16.07.16]

MR. PRESIDENT:

Security personnel are now instructed to bring Mr. Ieng Sary back to the detention centre.

The Court is adjourned.

(Court adjourns at 1607H)