



Nuon Chea's international counsel, Michiel Pestman, cross-examines Duch at the ECCC on Wednesday.

Under Cross-Examination, Duch Proves an Uncooperative Witness By Heather N. Goldsmith, J.D., Northwestern University School of Law

On Wednesday, April 4, 2012 the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) continued trial proceedings in Case 002 against accused Nuon Chea, Ieng Sary, and Khieu Samphan. The day was consumed by Mr. Pestman, counsel for Nuon Chea, trying to cross-examine prosecution witness Kaing Guek Eav, *alias* Duch, who, despite an irrevocable conviction in Case 001 and a verbal promise to help the people in Cambodia learn the truth behind the Khmer Rouge regime, proved to be an uncooperative witness.

The viewing room was mostly empty on Wednesday, with the proceedings attended only by a group of about 500 Khmer high school students and around a dozen national and international observers.

Duch's Right to Remain Silent

Trial Chamber President Nil Nonn began the day by reminding the involved parties of Tuesday's oral decision on Duch's right not to incriminate himself. He cited Internal Rule 28, which states that a witness may object to making any statement that might incriminate him. He clarified that the rule extends to all facts that have not been "finally adjudicated." Further, regarding the current witness, he ruled that Duch may object to answering any question relating to facts not adjudicated in Case 001 that might incriminate him but that the witness must clearly state when he wishes to exercise this right. He went on to say that the witness is obligated to respond to questions that are relevant to the events that he has seen, experienced, or noted.

A Request from Nuon Chea

Mr. Pestman then brought forward a request from Nuon Chea to comment on Duch's testimony. International co-prosecutor William Smith objected to the request, arguing that Mr. Chea's

comments should be regarded as testimony. He requested that the prosecution be permitted to ask questions to the accused, either now or at a later time. He clarified that he had previously asserted in his pleadings that if an accused offers testimony, he must also be compelled to answer questions. Further, if the accused refuses to answer questions, the Chamber should give that testimony little weight and draw an adverse inference from the refusal to answer questions.

Barnabe Nekui, civil party co-lawyer, then joined the conversation, reminding the Chamber of the fundamental principle that the proceedings must be “fair and adversarial.” He argued that the principle would be violated if the accused were permitted to waive his right to silence and then allowed to reinstate this right after making his statement. In addition, he reminded the court that according to the rules, the only possibilities an accused has to express his views are through a) a statement as a witness or b) a question to witness.

The President, finding Mr. Nekui’s points to be repetitive, interrupted his commentary. He remarked that the Chamber had previously noted that each accused had different positions on invoking their right to remain silent. He then invited Mr. Nekui to resume his comments but warned him to “please be brief or you are only talking to yourself because of the time needed for translation to Khmer.”

Mr. Nekui took the opportunity to recap his prior argument that a statement from Nuon Chea should be considered a witness statement according to Internal Rule 90 and that then the civil parties should be able to “interrogate” him. He expressed his main concern as the millions of Cambodian citizens who still suffer and want the truth. He thought it was “abnormal” for the defense not to take these people into account when they try to “de-humanize” this trial.



Civil Party Lawyer Barnabe Nekui

The President then invited Mr. Pestman to respond to the counsel for the civil party, but Mr. Pestman declined. The President then commented that he thought a statement from Nuon Chea was not yet appropriate but may be allowed at a later date.

Can Duch be Compelled to Answer Questions?

Mr. Pestman then began to question Duch, asking him whether he remembered the name Nab Son Bond. After Duch confirmed that he did, Mr. Pestman read a previous statement from Duch about the interrogation and torture of this person, stating, “It took me nearly a month to complete the torture, beating and interrogation. I tried to do my best to complete it.” He then asked what was meant by the phrase – “I tried to do my best.” Duch responded that this issue is relevant to M-13 and then expressed his desire to exercise his right not to incriminate himself.

Duch was then asked about François Bizot, who wrote a book about his personal experiences at M-13 and his discussions with Duch. In the book Duch was said to have “beat the prisoners until he was out of breath.” Mr. Pestman asked if this is what he meant when he said, “Strive to do [my] best.” Duch responded that the content of the book was already reported to Judge

Lavergne. He further asserted that the book was written as a novel and a lot of facts have been fabricated. Mr. Pestman then asked Duch whether he did in fact beat prisoners until he was out of breath, prompting the President to interrupt and instructed the witness not to respond because the question was not relevant to the facts and is self-incriminating in nature.

President Nonn then instructed Mr. Pestman to explain how his questions to the witness were relevant to the current trial. Mr. Pestman responded that he had the right to ask questions about M-13. He agreed with the Chamber that the witness may invoke the right to remain silent but asserted he still has the right to ask questions. In addition, he again expressed the contention of the Nuon Chea defense that whatever happened before 1975 should be considered part of the historical context and therefore relevant to this trial. He asserted that he is “here to test the reliability and credibility of the witness” and that in order to do so, he must be able to “ask questions broadly to test reliability.”

The President allowed Mr. Pestman to continue with his questions but required that it be a different inquiry as the Chamber had already told the witness he did not have to answer the previous question. Mr. Pestman then expressly stated for the record, “Only answers can be incriminating, not questions.”

Moving forward, Mr. Pestman asked Duch to recall a paper he recently wrote in which he stated that he wished to contribute to the “national unification and reconciliation in Cambodia” by providing closure for the victims. He asked Duch to explain to the Chamber how this ideal relates to his “wish” to remain silent when asked about his role at M-13. Duch responded, “National unification and reconciliation is different from destroying the nation itself.” Mr. Pestman noted he did not understand the answer but would move on.

Duch then recalled knowing Witness KW-30, named Uch Sorn, who was a prisoner at M-13 and testified at his trial. Duch first stated that Uch Sorn was not interrogated. Mr. Pestman attempted to respond to this statement by providing testimony by Duch from his trial but was interrupted by Judge Lavergne who asked whether the defense was tendering a new document into evidence. Mr. Pestman stated that he did not wish to enter the quote into evidence but wants to confront the witness with that information. The judge said that he needed to tender the document into evidence because it is not on the list of documents. Mr. Pestman appeared visibly frustrated and took his seat.

Mr. Smith was then allowed to speak and stated that the transcripts of Case 001 are in the current case file, but remarked that the question still remains whether the defense had put it forward to the Chamber. Mr. Pestman then thanked the prosecutor but clarified his position that he should be able to use any document he wants to impeach a witness. Further, he noted that the senior legal officer said that documents used for the cross-examination of the witness did not need to be on the list. Elisabeth Simonneu-Fort, the international civil party lead co-lawyer, then raised her objection to the use of any new documents without abiding by the rules.

After the court had taken a moment to confer on the issue, Judge Lavergne questioned Mr. Pestman about the documents he intends to use to question the witness and their relevance. Mr. Pestman responded that this document was a transcript from Case 001 that had been transferred



*International Deputy Co-Prosecutor
William Smith*

to the case file for Case 002. He asserted that the statement at issue showed that Duch was involved in, and enjoyed, torture, and therefore he wished to use the document to confront the witness. He again stressed that his questions for impeaching a witness should not be limited. The President responded that the Chamber would not allow questions that could lead the witness to incriminate himself, such as questions about M-13, as this matter has not yet been adjudicated. In response, Mr. Pestman then pointed out that all of his questions are aimed at testing the credibility and reliability of the witness, noting that if he cannot, there is no need for him to continue.

Mr. Smith then supported Mr. Pestman's position, arguing that it is appropriate to test the credibility of a witness with information that might exceed the scope of the trial. He proceeded to request that the court adopt a consistent means for admitting, further specifying that documents needed to test the reliability and credibility of the witness should be provided to the Chambers and the other parties at least 24 hours before they are discussed in court. Further, he requested it be clarified that particulars of document cannot be put before the witness unless he is familiar with the document. Ms. Simonneau-Fort then took the floor again, voicing her concern that defense counsel was, in essence, overlooking the rights of the accused.

The President then addressed Mr. Pestman, informing him that while he has the full right to put questions to the witness, the questions should be guided by the internal rules. Further, he clarified that the documents that the defense puts before the chamber must be ones already placed in the Case 002 file. Similarly, any document the defense wishes to be put before the chamber must be given to the chamber at least 24 hours before it is discussed in court. He reminded Mr. Pestman that his questions should be relevant to the facts in this case. Judge Silvia Cartwright then took the floor and reiterated the ruling of the President in English.

Mr. Pestman then agreed to distribute a list of documents at least 24 hours prior to their use, noting that he respects the witness's right to remain silent, and moved on to a different topic. The President interrupted him, stating he wanted to make sure that they were all "on the same page," clarifying that new documents not on the case file cannot be put on the case file "here." He also again clarified that new documents are not allowed.

Mr. Pestman then returned to questioning Duch, stating that in 2007 Duch told the co-investigating judges that he did not know the terms "hot group, cold group, and chewing group" until he saw a film on S-21. Duch asked to be shown the document to which Mr. Pestman referred in order to assist his memory. Mr. Pestman commented that there will be several documents discussed today and that having to show each document on the screen will slow him down greatly, likely inhibiting him from being able to finish his examination that day.

Mr. Smith then stepped in, stating that while he understood Mr. Pestman was not prepared, he wanted to make sure the Chambers had a “full and comprehensible answer” to the over 500 documents presented in the case, which would require allowing Duch to look at a statement before commenting. He added that the prosecution has been required to make the documents available, and the defense should be as well.

In response, Mr. Pestman said that there must be a distinction between a document and a sentence quoted from a co-investigating judge. Mr. Pestman offered to repeat the question if the issue was that Duch did not understand the question but asserted that putting the document on the screen was nothing more than a technique to delay the response. The President asked the witness whether he would prefer to read the document in hard copy, and Duch agreed that he would. The President instructed that a hard copy be given to the witness, noting that it was previously agreed that Duch should be allowed to refresh his memory before being questioned. Mr. Pestman then stated the document was already on the screen and asked if he would really be asked to provide a hard copy of the document.

The issue did not appear to be resolved, but Mr. Pestman returned to the question at hand on why Duch told the co-investigating judges he did not know the terms “hot group, cold group, and chewing group” until he saw a film on S-21. Duch stated that to be more “genuine,” counsel should ask about other accounts of the statement to “test my credibility and to see how honest I am.” He stated that when he gave the testimony, he recalled statements from 30 years ago, and “it is not proper” to quote just two lines from the entire thing. He added he was being asked to self-incriminate.

Mr. Pestman then again asked Duch when he first heard the terms “hot group, cold group, and chewing group.” Duch responded that he wanted all the documents to be brought before him, otherwise he is just being questioned on a “piece of the iceberg.” Mr. Pestman again requested that Duch answer the question. Duch told the President that he did not want to respond because it was only a small part of the entire account of all the events that happened. He noted he could have been “confused” when he gave the testimony. He added, “I am not really telling a lie and I am very honest, and your line of questioning is rather dishonest to me.”

Mr. Pestman then asked the President to instruct the witness to answer the question. The President stated he had already informed the witness of his duty to respond to counsel based on witness accounts, meaning what he has witnessed, seen, and experienced. The President added that Duch may choose not to answer because it is outside the scope of the trial or would incriminate himself and that the Chamber might also instruct Duch not to respond if he believes that the questions are repetitious, are not meant for the purpose of finding the truth, or are used as a delay tactic. Duch was then requested to respond to counsel but was told he was allowed to say that he had no knowledge.

Mr. Pestman then repeated the question, and Duch stated he wished to specify that these terms were put before him by the co-investigating judges thirty years after their occurrence. He mentioned that he was trying to forget the “past bitter memories” and later learned the terms from the film. He admitted to teaching these interrogation techniques.

Mr. Pestman then told Duch, “The dishonest person is not me, but you. Why did you lie to the investigating judges?” Mr. Smith objected that the lie being referred to is not clear. Mr. Pestman responded that the witness had just admitted to teaching staff at S-21 about these various modes of investigation, despite testifying he was not aware of the terms until later.

Mr. Karnavas then interjected, claiming he did not know why the prosecution was objecting. According to him, the lawyer simply “put it to the witness,” and there was “nothing improper or unfair” about the question. He also voiced his concern about setting precedent where this kind of defense was not allowed. Mr. Smith interjected that he was not protecting the witness, just making sure the questions were proper because there was no lie.

Mr. Pestman was again given the floor, and he rephrased the question, asking whether Duch knew the terms “hot, cold, and chewing groups” while he was working at S-21. Duch responded that it is now 2012, five years after 2007, and his memory now is different from his memory then. Mr. Pestman then reminded the President that it was time for the morning recess.

Court Takes Morning Recess

At this point, the Chamber adjourned for the morning break. Ang Udom, counsel for Ieng Sary, made his usual request that his client be permitted, due to back and leg pain, to waive his right to be present in the courtroom and retire to the holding cell to observe the remainder of the day’s proceedings via audio-visual link. As per usual, the President granted the request but required that a waiver be submitted to the court with Ieng Sary’s signature or thumbprint.

Mr. Pestman Continues His Attempt at Question Duch

Mr. Pestman then resumed his questioning, inquiring about what Duch knew about Prak Khan. Duch responded that Prak Khan was an interrogator. Mr. Pestman then asserted that in 2007, Prak Khan told the co-investigating judges that Duch personally interrogated and kicked one of the four westerners who were discussed in court yesterday. Mr. Smith objected, stating that particular details of a statement should not be placed before the witness, rather only general subject matter should be allowed. Mr. Pestman argued that Duch was familiar with this statement as it was presented in his own case. He again stressed his right to present evidence that contradicts the witness’s current testimony. The President then made it clear that Mr. Pestman was not allowed to ask the witness to comment on specific statements made by other witnesses but could question about the general subject matter in the document.

Mr. Pestman rephrased the question, asking whether Duch interrogated prisoners while at S-21. Duch stated that he went in once to check the quality of the translator whom he had “hand-picked.” He was asked whether he kicked one of the foreign prisoners at S-21, to which he replied that he did not have the time to kick prisoners. Mr. Pestman then asked if Duch interrogated and tortured a woman at S-21 using electric shocks. Duch denied that this happened at S-21 and reiterated that he never interrogated anyone with the exception of the man whom he previously testified to slapping.

Mr. Pestman then attempted to refresh Duch’s memory with a statement from Prak Khan. The President would not allow the question because Prak Khan was not on the witness list, causing Mr. Pestman to explain that he needs to be able to challenge the credibility of the witness and

cannot ask Prak Khan to testify directly. Mr. Smith interjected that requiring a witness to testify about specific details from another witness's statement puts the witness in a position where he has to comment on the reliability of the other witness. He suggested that the matters be phrased in terms of substance.

Mr. Karnavas was then given the floor and admitted to agreeing, in part, with the prosecution. He asserted, however, that the witness can be confronted with what the other witness observed, further noting, "This was the technique the investigative judges used in their investigation, it is classic confrontation, and there is nothing wrong with it as long as a foundation is laid." The President then stated that his ruling stands -- the Chamber has clearly indicated that counsel is only allowed to phrase general questions concerning the statement of the witness. Mr. Pestman, dissatisfied with the President's explanation, asked for more guidance on this ruling.



*Jeng Sary's international counsel
Michael Karnavas*

Duch was then instructed by the President to answer the question of whether he tortured prisoners while chairman at S-21, noting that counsel referred to a statement that said he tortured a prisoner. In response, Duch repeated his prior statement that he had interrogated only one person while at S-21. The President disallowed further questions on the issue, causing Mr. Pestman to voice his regret that he could not pursue this line of questioning to establish the truth.

Mr. Pestman then moved on to Duch's prior statement that Koy Thuon was the only prisoner Duch ever interrogated. He then, through a document previously admitted into evidence, refreshed Duch's memory that on June 9, 1999, he testified before a military judge that, while following orders from Son Sen, he personally interrogated Koy Thuon and Seat Chhae. Duch admitted that he remembers making the statement but stated that he might have forgotten Seat Chhae. Mr. Pestman pressed Duch on whether the prior statement was correct -- did he in fact interrogate Seat Chhae? Duch eventually responded "only very briefly" and went on to explain that all he did was deliver a letter from Son Sen to Seat Chhae urging him to confess.

Mr. Pestman then inquired about a long interview Duch gave to journalist Christophe Peschoux. Duch responded that he rejected this line of questioning yesterday, but Mr. Pestman responded that he only rejected the line of questioning relating to reporters Nick Dunlop and Nate Thayer. Mr. Pestman then presented him with the transcript of the taped interview. After a long process to determine whether the document had in fact been entered into evidence, Duch again refused to answer on the grounds that the document submitted to him was only a photocopy and was based on a very confusing tape. Mr. Pestman again asked him to read the text. Duch appealed to the President. Mr. Pestman reminded the President that Duch was a witness, not an accused, and asked that he be instructed to answer the question without arguments.

Judge Cartwright, noting that this document was discussed in Case 001, educated the Chamber that there was no ruling on the document's authenticity or probative value. She added that the

witness is allowed to challenge the document in any way he would like. Mr. Pestman stated that Judge Cartwright's guidance was consistent with his line of questioning and again asked Duch to read the lines in the text. Duch again appealed to the Chamber and asked to exercise his right not to read it. Mr. Pestman informed him he had "no right not to read a document." Duch responded, "I am here to listen to the judges, not you." Mr. Pestman responded, "I am afraid I am the one asking the questions. Please read those lines."

Judge Cartwright then told Duch he should answer the questions but could also comment on the authenticity of the document. She suggested that he first comment on the authenticity and then answer counsel's questions.

Duch, understanding that he was entitled to express his concerns over the authenticity of the document, called the Chamber's attention to the facts that a) the document was not in its original form and b) the date of the document was different from the date of the actual interview. He also stated that he found inconsistencies in the tapes and noted that his counsel challenged the authenticity of the document in Case 001. The President then interjected, stating the Chamber will first need to decide on the authenticity and reliability of the document before Mr. Pestman can proceed with the questioning. The parties were then invited to present their views.

Mr. Pestman stressed that it is not up to the witness to challenge the authenticity of a document, it is up to the parties. Mr. Smith then commented that this document was declared inadmissible in Case 001 because Duch was not given his rights prior to the interview. He admitted, however, that this might no longer apply because Duch is a witness and not the accused. He went on to clarify that the prosecution had no issue with the witness reading from the document. Ms. Simonneau-Fort then took the floor, suggesting the witness be allowed to read the document. Mr. Karnavas was allowed to speak next, and he pointed out that when determining authenticity there is a huge difference between a document that has been tampered with and a document where the witness does not agree with the substance. Mr. Smith then took the floor again, offering that although the document had not been admitted, he thought it was reasonable to have the witness comment on the statement while he is before the court. He added that the authenticity can be addressed later. The President then adjourned the proceedings for lunch, commenting the judges would rule on the issue when the court resumed.

Court Breaks for Lunch

Before the judges exited the courtroom for lunch, Mr. Pestman made his usual request that his client be permitted to waive his right to be present in the courtroom and retire to his holding cell to observe the remainder of the day's proceedings via audio-visual link. As per usual, the President granted the request, requiring that a waiver be submitted to the court with the accused's signature or thumb print.

Ruling on Admission of Christophe Peschoux Article

President Nonn resumed the session by reading the court's written decision on whether to admit the article written by Christophe Peschoux. The President's statement was not translated clearly, requiring Judge Lavergne to clarify that the interview would be placed in the case file and Mr. Pestman could continue with questions as long as they are relevant. He added that Chamber would assess the probative value of the article when the trial decision is handed down.

Resuming the Cross-Examination of Duch

Mr. Pestman then asked Duch to read the underlined section of the testimony to the co-investigating judges again on “hot, cold, and chewing methods,” asking also in what case were hot methods used. Duch told him that it was “when they did not answer or the answers were unsatisfactory.” He went further to say that in the case of Koy Thuon, torture had been used “because he reacted.” Duch then stopped testifying, and Mr. Pestman asked him to continue. Duch then agreed to testify that Koy Thuon was kept on the fourth floor guarded by a security guard so that he could not react. He also mentioned that after Koy Thuon was told to confess he reacted again and broke the pen given to him to make the confession.

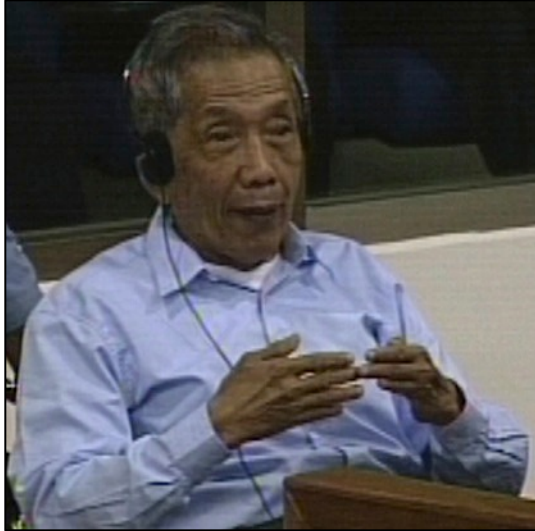
Mr. Pestman then asked Duch again why he used the hot method. Duch responded that if he cannot elaborate on this document, he does not want to respond. He further stated, “It is important to know who is a real liar and who is telling the truth.” Mr. Pestman agreed with him and then asked his question again. This prompted Mr. Smith to interject that the witness wants to explain what was said in the interview, adding that he thinks the witness should be allowed to do so. The President sustained the objection.

Mr. Pestman then asked what Duch meant when he said the prisoner Koy Thuon “reacted back.” The chamber then took a moment to discuss, and Duch was asked by the President whether he said that “Koy Thuon reacted back.” Duch said that “he reacted back three times, and every time he did, I would do something to control the situation.”

Duch then began to dive into what appeared to be a long story on his relationship with Koy Thuon, starting with the time Koy Thuon served as Duch’s supervisor in 1967. Mr. Pestman interrupted because he was concerned that the story was going to take valuable time out of his examination.

Mr. Smith then interjected that he thought the premise of the question was that the witness made the statement, and he thinks the witness should be able to say whether he made the statement. Mr. Pestman agreed with the prosecutor, and the President asked Duch to limit his testimony. Mr. Pestman was also advised only to put forward questions “allowed by the law.”

Mr. Pestman then asked Duch to recall his question from this morning about when he knew about the terms “hot, cold, and chewing.” The answer was not clear, prompting Mr. Pestman to ask, “Can you tell me now whether you knew at the time you knew about these terms?” Duch thought the question was repetitious and sought guidance from the President on whether to respond. The President told him to reply, and Duch requested that the question be rephrased. Duch never fully answered the question, stating “hot and cold were used interchangeably to extract confessions.” Mr. Pestman asked for clarity on why Duch told the co-investigating judges he had never heard of these terms before he saw the film on S-21. Duch stated that thirty years had passed from when he was at S-21 and when he spoke to the judges so he was “confused.”



Dear Brother Sen or Dear Brother Nuon?

Mr. Pestman then moved to a different topic and asked permission to show some documented confessions to the witness. He started with one confession that the witness had already seen, dated November 10, 1977. Duch testified that the confession included an annotation written to his “beloved brother,” which he first said referred to either Son Sen and Nuon Chea, and after some cajoling, stated that at this time it was Nuon Chea. Mr. Pestman pointed out that the date of the document was after August 15, 1977, the date to which Duch testified Nuon Chea took over Son Sen’s responsibilities as his supervisor.

Duch was then asked to read another annotation on the document. It was written to Nuon Chea on November 11, 1977. Mr. Pestman noted that Duch had previously told the Trial Chamber that this was Son Sen’s handwriting, and Duch concurred. Mr. Pestman also noted that the date of that annotation is one day after the date of the previous annotation, and he asked Duch whether he was sure this document was not sent by him to Son Sen. Duch stated that he was sure the first annotation was to brother Nuon and the second one was from Son Sen. Mr. Pestman then asked for clarification on why Son Sen sent the document to Nuon Chea, since Duch testified that all of the confessions after August 15, 1977, were sent directly to Nuon Chea. Duch said that once he stopped working closely with Son Sen, his duty was to read the documents so he could report to the Upper Echelon.

Mr. Pestman then asked to show the witness another confession that he had seen earlier. Duch read an annotation on the document. Mr. Pestman reminded Duch that he had previously testified that he recognized the handwriting of the annotation and asked him to repeat to the Chamber whose handwriting it is. Duch responded that it belonged to Brother Nuon. Mr. Pestman pointed out that this was not what Duch told the co-investigating judges. Duch responded that this was because initially he was confused, but later he had the opportunity to inform the co-investigating judges of his mistake. Mr. Pestman asked if he changed his statement when he saw the date of the document was in February 1978 and therefore assumed it had to be Nuon Chea and not Son Sen. Duch asserted that his correction was not based on the date but on the handwriting. Mr. Pestman asked whether Duch ever received training on the recognition of handwriting, and Duch responded that he had not.

Mr. Pestman then showed Duch another confession, part of which had been deliberately covered by the defense. Duch was then asked whether he recognized the document. Mr. Smith objected because he did not know why the defense altered the document given to the witness, making it different from what everyone else received. Ms. Simmoneau-Fort stated she agreed with the prosecutor, asserting, “This is not a guessing game, nothing should be hidden from the witness.” Mr. Pestman assured the court he will show the document in its entirety, but first he would like to do an exercise to see whether the witness recognizes the document when only his annotations are present. Ms. Simmoneau-Fort again objected, stating that the trial should not be a game of

“cat and mouse.” Mr. Pestman claimed he was “just trying to be helpful” and wanted to reveal the annotation in chronological order to keep the witness from being confused. He assured the court the annotations will be revealed. The President sustained the objections of the prosecution and civil party counsel, and directed the defense counsel to put the document before the Chamber in its entirety if he wishes to use it.

Without revealing the blocked sections, Mr. Pestman then asked Duch whether he recognized the document. The President instructed Mr. Pestman to remove the obstacle and told him that if he did not do so, he could not ask further questions about this document. The annotations were revealed, and Duch was again asked whether he recognized the document. He was asked to read one of the annotations, which started “Dear Respected Brother.” It was dated October 15, 1977, and was written by Duch. Duch clarified that he knew “Respected Brother” meant Brother Nuon because of the date. Duch was then asked to read an annotation from October 17, 1977, written by Son Sen. Mr. Pestman pointed out that there was only two days difference in the date, and Duch agreed. Duch was then asked again if he was sure this confession was sent to Nuon Chea, and Duch asserted that he was. Duch was then asked to read a third annotation, which Duch identified to be from Pol Pot. Mr. Pestman remarked that this is consistent with his testimony to the co-investigating judges: Son Sen sent the confession to Pol Pot who sent it back to Son Sen. Duch was then asked to read a fourth annotation from November 11, 1977. At this point Duch said that he thinks he made a mistake; he now thinks it was written by brother Nuon and admitted to being “mixed up myself.” It was then clarified that Duch based his correction on the handwriting of the annotation, not the date.

Duch then agreed with Mr. Pestman that he told the co-investigating judges that the confessions sent to his superior were never sent back to S-21. Mr. Pestman further clarified that he was correct that Duch sent the confessions only with his own annotations and he never saw the other annotations until seeing the confessions in April 1999.

Mr. Karnavas then asked the chamber to require Mr. Pestman to give the ERN number for all statements used to confront the witness. The ERNs were provided, and then the court adjourned for the afternoon break.



*Nuon Chea at the ECCC on
Wednesday*

After returning from break, Mr. Pestman asked Duch about another annotation to a confession written by Duch on November 9, 1977, to “Respected Brother.” Duch testified that the term “Respected Brother” here meant Brother Nuon. Duch was then asked to read another annotation on the confession, which was written by brother Son Sen on November 10, 1977. Mr. Pestman noted there was only one day between the annotations, and asked why it appeared to be sent to Son Sen rather than Nuon Chea even though the date is after August 15, 1977. Duch said that Brother Nuon’s office was very close to his and that when Son Sen left, Duch continued to communicate with him once a month, but there was no need to send to Nuon Chea because he was so close.

Another document was then presented before the Chamber. It was dated October 5, 1977, and addressed “to beloved Comrade Duch.” In essence, it was a letter from Son Sen advising Duch on how to conduct interrogations. Mr. Pestman pointed out that Duch had previously testified before the investigating judges that he received a letter from Son Sen “at the end of 1977” advising him, among other things, that interrogators needed to be careful. Duch confirmed that the document before him was the letter to which he was referring during his testimony. Mr. Pestman then asked him to explain why Son Sen wrote the letter and not Nuon Chea. Duch replied that his answer would be speculation. The President told him to answer based on his memory and his experiences. Duch said that he wrote to Son Sen before he left and that is why Son Sen replied and not Nuon Chea.

Yet another document was then put before Duch and the annotation, dated October 14, 1977, was again identified by Duch to be in Nuon Chea’s handwriting. Mr. Pestman then quoted from a statement Duch gave to the co-investigating judges about the document, which stated “I wrote S in a square box, which means secret. Son Sen wrote all the rest.” He then asked Duch why he told the co-investigating judges that he thought it was Son Sen’s handwriting and today he said it was Nuon Chea’s handwriting. Duch responded that he stands by his statement to the co-investigating judges. Previously he thought it could be brother Nuon “because from the internal section I was pressed.” He then stated, “It is now up to the Chamber for the decision because this is how I understood the situation now and then.” Mr. Pestman asked Duch whether he was speculating about the handwriting. Duch responded, “Yes.” He explained further that before the co-investigating judges he speculated and is doing that again, reiterating that it is now up to the court to decide.

Duch was then asked to draw his attention to a different page of the same confession. Duch read part of the document that said “confidential” and noted it was dated October 14, 1977. He agreed with Mr. Pestman that the date here was the same as the annotation he just said was made by Nuon Chea, but then testified he is sure that the annotation on the page he just read is Son Sen’s. He also stated that he can recognize Son Sen’s writing better than Nuon Chea’s handwriting. He was then asked who was being addressed, and he responded that it was Pol Pot.

Mr. Pestman then moved on to another confession. It was addressed to “Beloved Brother,” written by Duch, and dated November 6, 1977. Duch testified that “Beloved Brother” referred to Brother Nuon. Duch then read another annotation address to Pol Pot by Son Sen, dated November 9, 1977. Mr. Smith then made a point of clarification that the witness had read out two annotations, and it is not clear whether both annotations were written by the same person. Duch clarified that the annotation on the left margin of the page could not be identified, but after looking at the first word, he thinks the same person may have annotated both but with different pens.

Mr. Pestman then pointed out that this document indicates that this confession went from Duch to Son Sen and then from Son Sen to Pol Pot. Duch said he could neither agree with nor deny the observation because he is not sure of the handwriting. He went further to say Brother Nuon usually annotated with the term “ready” at the end, and that helped him identify his signature.

Mr. Pestman then reminded the president that they had reached the normal hour of adjournment and asked whether he should show the document now or tomorrow morning. The President decided to end the day's session and ordered the court to resume with Mr. Pestman's cross-examination of Duch tomorrow morning.

Mr. Pestman then asked permission to use the entire day tomorrow for cross-examination due to the number of interruptions today. He noted that it was actually only an additional hour of time, and the President granted his request and reminded the parties to admit the documents into the court by the proper means. Judge Cartwright then added that if documents are to be used by counsel, they must notify the court and the other parties in advance. The President then officially adjourned the proceedings for the day.