D9412

United Nations
Nations Unies

International Criminal Tribunal for the Former Yugoslavia

Court Management and Support Services Section

Tribunal Pénal International pour l'ex-Yougoslavie

Section des Services d'administration et d'appui judiciaire

CASE/*AFFAIRE* NO.	**IT-05-87-T**	**DATE**	**12 December 2006**

FROM/*DE* **SYED RIAZ HAIDER, COURT OFFICER** SAM

TO/*A*

X President/*Président*	X Prosecutor/*Procureur*	X Defense Counsel/*Conseil de la Défense*	cc
0 Appeals Chamber/ *Chambre d'appel*	X Case Manager/ *Commis aux affaires*	**Mr. Fila/Mr. Petrović** **Mr.Visnjić/Mr. Sepenuk** **Mr. O'Sullivan/Mr. Zecević**	
0 Trial Chamber I/ *Chambre de 1ère instance I*	0 Chief of Investigations/ *Chef des enquêtes*	**Mr. Ackerman / Mr. Aleksić** **Mr. Bakrač / Mr. Čepić** **Mr. B. Lukic/Mr Ivetic**	
0 Trial Chamber II/ *Chambre de 1ère instance II*	.....		
X Trial Chamber III/ (4) *Chambre de 1ère instance III*	.....		

0 Embassy/*Ambassade*

X Other/*Autre* **E-copy**

X Registrar/Deputy Registrar/*Greffier/Greffier adjoint* **MR. A. DE WITT**	X VWS Coordinator/*Coordinateur de la SVT* **MS. W. LOBWEIN**
X Senior Legal Officer/*Juriste hors-classe* **MS. L. MURNANE/ MR. G. DAWSON**	0 UNDU Commanding Officer/*Commandant du QPNU*
X PTV/~~MOW~~	X OLAD

PLEASE FIND ATTACHED/*VEUILLEZ TROUVER CI-JOINT*

X ~~Order/Warrant/~~decision issued by ~~Appeals Chamber or~~ Trial Chamber ~~or a Judge~~ on/
Ordonnance/Mandat/Décision émis(e) par la Chambre d'appel ou les Chambres de 1ère instance ou un Juge le 12/12/2006

0 Order/Decision issued by the President on/*Ordonnance/Décision émise par le Président le* ____/____/____

0 Motion/Request/Application submitted by Prosecution/Defence Counsel on/
Motion/Requête/Demande présentée par l'Accusation/le Conseil de la défense le ____/____/____

0 Response/reply/brief submitted by Prosecution/Defence Counsel on/
Réponse/Réplique/Mémoire présenté(e) par l'Accusation/le Conseil de la défense le ____/____/____

0 Decision of the Registrar on/*Décision du Greffier le* ____/____/____

0 Other/*Autre*

RECEIVED/RECU	**FILED/ENREGISTRE**
X Office hours/*heures ouvrables* Date: **12/12/06 13 :00**	X Office hours/*heures ouvrables* Date: **12/12/2006**
0 Outside Office hours/*en dehors des heures ouvrables* Date: ____/____/____. Time/*Heure*: ____h____.	0 Outside Office hours/*en dehors des heures ouvrables* Date: ____/____/____. Time/*Heure*: ____h____.

Article 27.2- Directive for the Registry: A party anticipating a late filing will call the Registry during office hours to request permission of the Registrar and instruction for after hour filing.
Article 27.2-Directive pour le Greffe: une partie prévoyant un dépôt hors des heures ouvrables se mettra en rapport avec le personnel du Greffe durant les heures de bureau pour solliciter l'autorisation du Greffier et les instructions nécessaires.

Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 EW The Hague. Netherlands
Churchillplein 1, 2517 JW La Haye. B.P. 13888, 2501 La Haye. Pays-Bas
Tel.: 31-70-416 5000 Fax: 31-70-416 8637

IT-05-87-T
D9411-D9403
12 DECEMBER 2006
9411 AT

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991

Case No.: IT-05-87-T

Date: 12 December 2006

Original: English

IN THE TRIAL CHAMBER

Before: **Judge Iain Bonomy, Presiding**
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: **Mr. Hans Holthuis**

Decision of: **12 December 2006**

PROSECUTOR

v.

MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ

DECISION ON OJDANIĆ MOTION TO PROHIBIT WITNESS PROOFING

Office of the Prosecutor
Mr. Thomas Hannis
Mr. Chester Stamp

Counsel for the Accused
Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 ("Tribunal") is seised of the Ojdanić Defence's "Motion to Prohibit Witness Proofing," filed 15 November 2006 ("Motion"), and hereby renders its decision thereon.

I. PROCEDURAL HISTORY

1. In its Motion, the Ojdanić Defence moves the Chamber "for an order, with immediate effect, prohibiting the Prosecution from 'proofing' its witnesses before they testify." In support of its argument, the Defence relies exclusively on *Prosecutor v. Dyilo*,[1] a recent pre-trial decision issued by the International Criminal Court ("ICC"). It may even be that the Motion was prompted by that decision. The Defence argues that the "International Criminal Court has now decreed that witness proofing has no place in international criminal law."[2] Moreover, as asserted by the Defence, "the prosecution's practice of proofing its witnesses ... has created numerous problems of late disclosure and has disrupted the defence preparation on several occasions."[3]

2. The Prosecution, in response, filed its "Prosecution Response to General Ojdanić's Motion to Prohibit Witness Proofing" on 29 November 2006 ("Response"), objecting to the Motion and alleging that its "case preparation has been based on the Prosecution's ability to proof witnesses," and thus a change would "prejudice the Prosecution unfairly."[4] In sum, the Prosecution submits that the Motion should be dismissed on the following grounds:[5]

> (a) Witness proofing has been an accepted practice at the ICTY since the beginning of its work and is a standard practice at both the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL);
>
> (b) Given the particularities of investigations and the length of cases before this Tribunal, the *Limaj* Trial Chamber has found witness proofing to be an appropriate and useful practice, which ensures efficient use of court time and ensures a fair determination of the cases before the court;

---

[1] No. ICC-0/04-01/06, Decision on the Practices of Witness Familiarisation and Witness Proofing, 8 November 2006 ("*Dyilo* Decision").

[2] Motion, para. 6.

[3] *Ibid.*, para. 5.

[4] Response, para. 25.

[5] *Ibid.*, para. 2 (citations omitted).

(c) General Ojdanić has not presented any arguments as to why this Trial Chamber is bound by the decision of the Pre-Trial Chamber of the International Criminal Court (ICC) in the *Dyilo* Case;

(d) The ICC Decision has not given due consideration to the differences between civil and common legal systems and has not reviewed relevant practice of national jurisdictions which allow witness proofing;

(e) General Ojdanić has failed to show why the Prosecution should change its practice to proof witnesses at this stage of the Prosecution case; and

(f) General Ojdanić has failed to show any prejudice arising from the practice of witness proofing that requires the Trial Chamber's intervention.

3. In addition, in its "Request for Leave to File a Supplemental Authority in Support of the Prosecution Response to General Ojdanić's Motion to Prohibit Witness Proofing," filed on 30 November 2006, the Prosecution directs the Chamber's attention to *Prosecutor v. Sesay, Kallon, and Gbao*,[6] a decision issued by a trial chamber of the Special Court for Sierra Leone. Although this case is not binding upon the Chamber, it does contain, as persuasive authority, some instructive *obiter dicta* regarding the practice of witness proofing. Therefore, under these circumstances, the Chamber grants leave to the Prosecution to file the supplemental authority.

II. DISCUSSION

4. In its discussion below, the Chamber first examines the permissibility of "witness proofing" in proceedings before the Tribunal. The practice of witness familiarisation and then the practice of a party reviewing a witness' evidence prior to his/her testimony are considered. In respect of the latter, the Chamber addresses the reasoning of the *Dyilo* Decision and the question of whether *per se* undue prejudice results from the general practice of witness proofing.

(A) Permissibility of the Practice of Witness Proofing

5. At the outset, the Chamber notes that the Tribunal's Rules of Procedure and Evidence are silent on the issue of witness proofing. To date, the matter has only been formally addressed[7] by the trial chamber in *Prosecutor v. Limaj, Bala, and Musliu*.[8]

---

[6] Case No. SCSL-04-15-T, Decision on the Gbao and Sesay Joint Application for the Exclusion of the Testimony of Witness TF-1-141, 26 October 2005 ("*Sesay* Decision").

[7] Although only formally addressed once, the issue of witness proofing seems to be informally appreciated by a number of ICTY trial chambers. *See, e.g., Prosecutor v. Sikirica, Došen, and Kolundžija*, Case No. IT-95-8-PT, T. 446 (8 February 2001) (JUDGE MAY: I don't know, Mr. Ryneveld, if you've given any thought to the way in which the evidence should be given. Our experience in the last case which we did was that the Prosecution adopted

6. The Ojdanić Defence, in support of its Motion, directs the Chamber's attention to the recent *Dyilo* Decision from the ICC. In that case, the chamber was considering the practice with respect to "the only witness currently scheduled to testify at the confirmation hearing."[9] Examining a detailed description of proofing provided by the ICC prosecution, the chamber bifurcated this practice into components. The first component, labelled "witness familiarisation" by the chamber, "consists basically of a series of arrangements to familiarise the witnesses with the layout of the Court, the sequence of events that is likely to take place when the witness is giving testimony, and the different responsibilities of the various participants at the hearing."[10] The second component consists of measures to review the witness' evidence, including "(i) allowing the witness to read his or her statement, (ii) refreshing his or her memory in respect of the evidence that he or she will give at the confirmation hearing, and (iii) putting to the witness the very same questions and in the very same order as they will be asked during the testimony of the witness."[11]

7. The Chamber finds it helpful to analyse the practice along the same lines as the *Dyilo* Decision by breaking the practice down into two components—namely (1) witness familiarisation and (2) review of a witness' evidence. Indeed, the Chamber notes that the present Motion appears to be an objection to the second component rather than the first.

(1) The Practice of Witness Familiarisation

8. The ICC chamber found that "witness familiarisation" is a useful practice and is supported by its governing statute—the Rome Statute—and its Rules of Procedure and Evidence.[12] Specifically, the chamber focused on the provisions that provide for the protection of victims and witnesses[13] and agreed that "[w]itnesses should not be disadvantaged by ignorance of the process,

---

a system of producing summaries or abbreviated witness statements of what the witnesses were going to say. Our experience here is that the statements often are taken from witnesses a long time ago, they often deal with a great deal of irrelevant evidence, and therefore it's helpful, first of all for the Prosecution, to know what the witness is going to say, although it means extra work of proofing the witness before he gives evidence after he's arrived here or she's arrived here, but it's helpful for the Prosecution, it's helpful clearly for the Defence to know the issues which you're going to cover, and it's helpful for the Trial Chamber. Now, I don't know whether you've given any consideration to that, but we would encourage you to follow a similar course.); *Prosecutor v. Stakić*, Case No. IT-97-24-T, T. 3568 (27 May 2002) (JUDGE SCHOMBURG: So let's proceed directly with Witness Number 35. Thank you for the proofing notes. They are available also for the Defence?).

[8] Case No. IT-03-66-T, Decision on Defence Motion on Prosecution Practice of "Proofing" Witnesses, 10 December 2004 ("*Limaj* Decision").

[9] *Dyilo* Decision, p.2.

[10] *Ibid.*, paras. 15, 23.

[11] *Ibid.*, para. 40.

[12] *Ibid.*, paras. 18–27.

[13] *Ibid.*, para. 21 ("[T]he Chamber is particularly mindful of: (i) article 57(3)(c) of the Statute, which imposes on the Chamber the duty to provide, where necessary, for the protection of victims and witnesses; (ii) article 68(1) of the Statute which imposes upon the different organs of the Court within the scope of their competency, including the Chamber, the duty to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses; [and] (iii) rules 87 and 88 of the Rules, which provide for a series of measures for the protection of the safety, physical and psychological well-being, dignity and privacy of the witnesses, including measures to facilitate their testimony.").

nor when they come to give evidence, taken by surprise at the way it works."[14] Most importantly, the chamber found that "the [Victims and Witnesses Unit], in consultation with the party that proposes the relevant witness, is the organ of the Court competent to carry out the practice of witness familiarisation from the moment the witness arrives at the seat of the Court to give oral testimony."[15]

9. The Chamber agrees with the observation in the *Dyilo* Decision that "[w]itnesses should not be disadvantaged by ignorance of the process, nor when they come to give evidence, taken by surprise at the way it works....[Witness familiarisation] may improve the manner in which the witness gives evidence by, for example, reducing the nervous tension arsing from inexperience of the process."[16]

10. With regard to the finding in the *Dyilo* Decision that the Victims and Witnesses Unit ("VWU") "is the organ of the Court competent to carry out the practice of witness familiarisation,"[17] the Chamber notes the ICC provisions enumerating the functions of the VWU.[18] These provisions ensure the broad discretion "to provide protective measures and security arrangements, counselling and other appropriate assistance for witnesses...[and] assist[] witnesses when they are called to testify before the Court."[19] The Tribunal also contains provisions in the Statute and the Rules[20] permitting the Tribunal's Victims and Witnesses Section ("VWS") to familiarise witnesses with courtroom proceedings.[21] The Chamber concludes that the practice of witness familiarisation not only poses no undue prejudice to an accused, but is also a useful and permissible practice. The Chamber can discern no reason in the present circumstances for limiting witness familiarisation to VWS.

(2) The Practice of Reviewing a Witness' Evidence

(a) Distinguishing the *Dyilo* Decision

11. Turning to the practice of reviewing a witness' evidence prior to testifying, the issue at the heart of the Motion, the Chamber notes that the Defence's reliance on ICC jurisprudence may be misguided in a number of respects.

---

[14] *Dyilo* Decision, para. 19 (citing R. v. Momodou [2005] EWCACrim 177 (England and Wales), para. 62).
[15] *Ibid.*, para. 24.
[16] *Ibid.*, para. 19.
[17] *Ibid.*, para. 24.
[18] *Ibid.*, para. 22.
[19] *Ibid.*
[20] *See* Articles 20, 22; Rules 34, 75.
[21] *Cf. Limaj* Decision, p. 3 (stating that "preparing a witness to cope adequately with the stress of the proceedings...[is a matter] properly [within] the realm of proofing, and [is] not to be left to the different form of support provided by the Victims and Witnesses Section").

12. Under its governing Statute, the ICC, unlike the ICTY, must apply, in the first instance, its Statute, Elements of Crimes, and its Rules of Procedure and Evidence; in the second instance, principles of international law; and finally, national law, including the national law of the States that would normally exercise jurisdiction over the crime—in the *Dyilo* case, the Democratic Republic of Congo ("DRC").[22] The ICC chamber found that the practice was not supported by the applicable law governing the ICC. Looking at national law, the chamber noted that the prosecution did not submit that the practice was consistent with the criminal procedure of the DRC; the chamber also noted that "the approach of different national jurisdictions to this second component varies widely."[23] In the end, the chamber found that this second component of witness proofing would be a "direct breach of the very same standards, included in article 705 of the Code of Conduct of the Bar Council of England and Wales, that the Prosecution has expressly undertaken to be bound by."[24]

13. First, as pointed out above, the *Dyilo* Chamber was bound to consider national law, some of which admittedly prohibit witness proofing.[25] To the contrary, the ICTY Statute does not specifically enumerate the sources of law to which a Chamber should have resort. Thus, although the Chamber may consider national law, it is not bound by it in the present circumstances. Therefore, not only is the *Dyilo* Decision itself not binding authority upon the Chamber, the process by which the *Dyilo* Chamber came to its decision is not applicable to this Chamber's determination of the issue. In addition, and for the same reasons, the Defence assertion that the "practice of witness proofing is not an accepted practice in any of the countries of the former Yugoslavia,"[26] is not determinative.

14. Second, in *Dyilo*, the decision to ban the practice of reviewing a witness' evidence prior to testimony was firmly grounded on the chamber's view that the practice is prohibited under the Code of Conduct of the Bar Council of England and Wales,[27] which the prosecution had expressly undertaken to comply with. The ICTY Prosecution has not made any similar undertakings.

---

[22] *Dyilo* Decision, paras. 7–10.

[23] *Ibid.*, paras. 35–37.

[24] *Ibid.*, paras. 38–41.

[25] *Ibid.*, para. 9.

[26] Motion, para. 4.

[27] *See* Article 705 of the Code of Conduct of the Bar Council of England and Wales ("A barrister must not: (a) rehearse, practise, or coach a witness in relation to his evidence; (b) encourage a witness to give evidence which is untruthful or which is not the whole truth; and (c) except with the consent of the representative for the opposing side or of the Court, communicate directly or indirectly about a case with any witness whether or not the witness is his lay client, once that witness has begun to give evidence until the evidence of that witness has been concluded."). The chamber also cited a UK case discussing the danger of witness coaching in criminal proceedings. *Dyilo* Decision, para. 39 (citing R. v. Momodou [2005] EWCA Crim 177, para. 61).

15. Third, and as discussed above, the Chamber considers it to be significant that the *Dyilo* Decision was not based on a general renunciation of the practice of witness proofing and that the *Dyilo* Chamber was dealing with a radically different situation than that confronted by ICTY on a daily basis for the last thirteen years. The *Dyilo* Chamber was addressing the practice of witness proofing in the context of a single witness who was set to testify at the pre-trial confirmation hearing of the first accused before the Court.[28] In contrast, the Chamber here must consider the practice in the context of numerous witnesses who have or will testify in an actual trial.

16. Fourth, the Chamber views the practice of witness proofing differently than the ICC Chamber. The *Dyilo* Chamber found that the ICC prosecutor's practice of reviewing a witness' evidence prior to testimony was inconsistent with the Bar Council's prohibition against "rehears[ing,] practis[ing,] or coach[ing] a witness in relation to his evidence." This Chamber is of the view that discussions between a party and a potential witness regarding his/her evidence can, in fact, enhance the fairness and expeditiousness of the trial,[29] provided that these discussions are a genuine attempt to clarify a witness' evidence. This is what the Chamber considers to be the essence of proofing conducted by the parties before the Tribunal and considers that this practice does not amount to "rehears[ing,] practis[ing,] or coach[ing] a witness."[30]

17. For the foregoing reasons, the *Dyilo* Decision is distinguishable in material respects from the circumstances facing the Chamber in connection with the Motion.

(b) Undue Prejudice to the Accused

18. Although not bound by the *Limaj* Decision, the Chamber finds it instructive in determining the Motion and the general permissibility of reviewing a witness' evidence prior to testimony.

19. In the *Limaj* Decision, the chamber was faced with a motion by the defence, similar to the instant Motion, requesting an order to prevent the prosecution from proofing its witnesses prior to their testimony. The chamber, in dismissing the motion, came down in favour of witness proofing for several reasons.[31] Observing that witness proofing is a "widespread practice in jurisdictions where there is an adversary procedure," the chamber noted the benefits bestowed by proofing on the "due functioning of the judicial process."[32] Moreover, the *Limaj* chamber found no prejudice to

[28] *Dyilo* Decision, p. 2.

[29] *See Limaj* Decision, p. 2.

[30] The distinctive roles of Solicitors and Barristers in the legal system of England and Wales are not a feature of the ICTY and do not appear to be considered in the ICC Decision.

[31] *See also Sesay* Decision, para. 33 ("The Chamber finds that proofing witnesses prior to their testimony in court is a legitimate practice that serves the interests of justice. This is especially so given the particular circumstances of many of the witnesses in this trial who are testifying about traumatic events in an environment that can be entirely foreign and intimidating for them.").

[32] *Limaj* Decision, p. 2.

the accused. The chamber was not persuaded that the prosecution had or would violate the "clear standards of professional conduct which apply…when proofing witnesses."[33] In fact, the defence did not contend that any impropriety had occurred during the proofing sessions, only that the danger for impropriety existed.[34] Additionally, the chamber noted that, for those proofing sessions that had resulted in late notice of new material, measures were available "to overcome resulting difficulties to the defence."[35]

20. Similarly, in the present case, the Chamber is of the view that reviewing a witness' evidence prior to testimony can be a useful practice. The Chamber agrees that, given that the crimes charged in the indictment occurred many years ago and, in many cases, witness interviews took place long ago, witness proofing assists (a) in providing a "detailed review [of relevant and irrelevant facts] in light of the precise charges to be tried";[36] (b) in aiding "the process of human recollection";[37] (c) in "enabling the more accurate, complete, orderly and efficient presentation of the evidence of a witness in the trial";[38] and (d) in identifying and putting the Defence on notice of differences in recollection thereby preventing undue surprise[39]—as noted in the *Limaj* Decision.

21. Significantly, the Chamber notes that the *Limaj* Chamber explicitly separated the defence's allegations of prejudice—late notice of new material and a failure to provide signed statements of new or changed evidence—as "what are in truth distinct issues…[t]hat will depend on the circumstances…[and] [a]ny example raised will be considered on its merits."[40] Likewise, the Chamber here considers that, in respect of the prejudice complained of by the Ojdanić Defence—that "the prosecution's practice of proofing its witnesses…has created numerous problems of late disclosure and has disrupted the defence preparation on several occasions,"[41]—it appears as though it is the *late proofing* of witnesses, rather than proofing in and of itself, that may be leading to disclosure difficulties. Thus, the Chamber considers that a more appropriate remedy would be a requirement for earlier proofing of witnesses, rather than a complete ban on the practice.

22. In view of the foregoing, the Chamber is satisfied that reviewing a witness' evidence prior to testimony is a permissible practice under the law of the Tribunal and, moreover, does not *per se* prejudice the rights of the Accused.

---

[33] *Limaj* Decision, p. 3.
[34] *Ibid.*, p. 1.
[35] *Ibid.*, p. 3.
[36] *Ibid.*, p. 2.
[37] *Ibid.*
[38] *Ibid.*
[39] *Ibid.*
[40] *Ibid.*, p. 3.
[41] Motion, para. 5.

23. Finally, with respect to the timing of witness proofing, the Chamber, once again, strongly reiterates its request that the Prosecution conduct proofing sessions at the earliest possible date. Ideally, proofing should be completed during the pre-trial stage of the case.[42] However, the Chamber will continue to guard against any undue prejudice to the Accused resulting from the undesirable practice of proofing the witnesses so late.

III. DISPOSITION

24. Pursuant to Articles 20 and 22 of the Statute and Rules 54 and 75 of the Rules of Procedure and Evidence of the Tribunal, the Trial Chamber hereby **DENIES** the Motion without prejudice to the Defence making specific applications for other, appropriate measures to overcome difficulties arising from the late proofing of witnesses.

Done in English and French, the English text being authoritative.

Judge Iain Bonomy
Presiding

Dated this twelfth day of December 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

[42] *See, e.g.*, T. 1435 (10 August 2006) (JUDGE BONOMY: I've said it before, I'll say it again it seems to me a crazy system, this proofing days before a witness is supposed to give evidence when there has been a lengthy pre-trial phase in the case. I cannot, still cannot understand why the Prosecution don't have lawyers go over statements with witnesses much earlier so that the final statements are available well before the witness is due to testify. I can see that this will be an ongoing problem in the trial as long as that practice persists.); T. 2674–2475 (31 August 2006) (JUDGE BONOMY: But you see, I ask again the question: Why are these witnesses being proofed at this stage? It seems utterly ridiculous to me to wait until they're at the door of the court before a lawyer sits down with them and addresses their evidence; that's a lawyer with an understanding of the case as a whole. Because all that's going to happen is we're going to limp from witness to witness, unsure of what that witness's evidence is going to be until they come to court. Now that's not – that's not a good enough way to present an international case which is constantly in the public limelight....What's the problem about lawyers going to Kosovo and actually investigating the case properly in the pre-trial phase at the latest? What's the problem there? Is it not cheaper for a lawyer to go there than to bring witnesses and all their accompanying personnel to The Hague?); T. 5791 (2 November 2006) (JUDGE BONOMY: [T]here's going to come a time when pressure will be such – that's the pressure of the clock will be such – that we won't be able to allow this sort of thing. We'll have to do something which we find distasteful, which is take an otherwise unrealistic approach to a witness's evidence and exclude things in fairness because time will not allow us the luxury of re-call or delay of cross-examination. So we urge you again to think about how you are carrying out these proofing exercises and how much time or notice you're giving the Defence as a result of doing so at the very last minute.)