

U) The KLA

When asked about the reports of KLA violence meted out to ethnic Albanians who didn't toe the line Mr Ball replied, "I've heard plenty of **rumours** about lots of violence in the region." What Doctor Ball calls "rumours" were in fact very well documented. 100's of loyalist Albanians and their families who were tortured and murdered for crimes as heinous as being on good terms with Serb neighbours, having a Serb boyfriend or working as a forest ranger. What kind of effect would this intimidation and violence have on ethnic Albanians?



Hundreds of loyalist Albanians, Serbs and Rom civilians were murdered by the KLA in 1998 and 1999
Here, a victim is found in Lake Radonjic after being tortured

How about the honesty of the accounts given? In 2000 there was a conference for journalists sponsored by the "Crimes of War Project" and journalist Nancy Durham spilled the beans about KLA influencing the stories of the refugees. The KLA were already acting as the interpreters so they were right in the thick of the dissembling of accounts.

V) Wag the Dog

Why didn't Doctor Ball regard the KLA and NATO as being a single force? They certainly coordinated their actions together. Doctor Ball said that his colleagues considered it but "the statistical data does not support the claim that there was an interaction between the two." That NATO and KLA activity went hand in hand is beyond dispute. NATO funded the KLA for many years (Germany, the UK and the US) and many KLA commanders have talked and written about this KLA/NATO alliance. The German

officer/journalist, Major Hutsch, who was embedded with the KLA during 1998 and 1999, testified

Mr Hutsch: "MPRI who recruited these officers from the Mujahideen brigades of the Bosnian army as mercenaries, and they offered them a great deal of money. These officers were then trained in Turkey, and from spring 1998, from February in particular, they were sent to the KLA in Kosovo as forward air control officers to plan and carry out. They were officers who had been recruited. They had a very good training in English, and they were trained to organise air operations, air raids."

If indeed you do regard the KLA as the infantry and NATO as the air force you'll find that for killings, NATO bombing and/or KLA action preceded, by four days or less, the peak of ethnic Albanian in twelve municipalities. For migration, we have an even higher 15 municipalities where NATO and/or KLA activity preceded the municipality peak.

That's not all.

In Kosovo, five municipalities, Zvecan, Leposavic, Strpce, Zubin Potok and Novo Brdo, are almost completely ethnic Serb and one municipality, Gora in the south, is almost totally Gorani. There are essentially zero ethnic Albanians in these municipalities. So six municipalities should be discounted from the 29.

Almost half of the municipality's killing peak coincided with NATO and/or KLA activity and slightly over two thirds of the municipality's migration peak coincided with NATO and/or KLA activity. Furthermore, for the most populous municipality by far, Pristina which has a quarter of Kosovo's population, killing and migration coincided with NATO/ KLA activity.



Former President Musharraf of Pakistan wrote that Mujahideen were recruited by NATO to fight alongside the KLA

W) Operation Horse Manure

Of course, If there had been a Yugoslav policy to expel the ethnic Albanian population, then where is the plan? On the 7th of April, 1999, Rudolf Scharping, the German minister for Defence claimed that the Yugoslav military had in fact drawn up a plan to expel the ethnic Albanian population, "Operation Horseshoe." In fact, it was a feeble hoax, where the forgers hamfistedly used Croat words instead of Serbian. Louise Arbor called it a "bedtime story" and the OTP refused to touch it.

A prosecution witness, Colonel Ciaglinski of the KVM, claimed that a Yugoslav officer had told him of a plan to expel the ethnic Albanian. However, his senior at the KVM, General "DZ" Drewienkiewicz, claimed under oath, that he was not told of this. So why did Colonel Ciaglinski not say a single word to his next in command? Either the General has a bad case of Alzheimers or Colonel Ciaglinski is a particularly inept officer in not bothering to relay such a valuable piece of information up the chain of command. Or, perhaps, the incident never happened at all.

X) Ceasefire? What Ceasefire?

The unilateral Yugoslav Ceasefire. Well, for starters, the UNHCR Geneva October for the 15th, 1999 document said that there was no interruption of the refugee flow from the 6th of April onwards until the 10th. If you don't accept this, then how about the following:

Defence Counsel: "Now, Dr. Ball, may I suggest to you that an alternative reason for the drastic decline in refugee flow is that immediately after the announced cease-fire at 3.00 a.m. on 7 April 1999, the Yugoslav authorities shut Morina border point and the daily number of refugees entering Albania fell from tens of thousands to under 2.000 until the border re-opened on the morning of 10 April 1999. I suggest to you that that's another -- at least another alternative reason why the refugee-flow declined to almost zero."

Doctor Ball: "Coincidentally enough, the number of refugees and the number of people being killed falls to zero, bang. Right to zero like the door was closed."

Well, he essentially answers it. The border was closed so the refugees couldn't cross. "Like the door was closed." The door was indeed closed.

Hardly rocket science.

About the ceasefire itself. it's common sense that if the Yugoslav forces, whilst adhering to the ceasefire, were attacked by either NATO or the KLA, would of course have returned fire. No one is seriously suggesting that for almost a week the Yugoslav forces locked their guns away in the armory and didn't bother defending themselves when the KLA attacked. So, in reality, because neither NATO nor the KLA recognised the ceasefire and instead redoubled their attacks, the fighting just carried on as usual, with the Yugoslav forces trading blows with the KLA and NATO.

Doctor Ball: "Nowhere in my report do I say that the Serbs did not fire their weapons."

So the Yugoslav force ceasefire "coincidence" is easy to deal with. You can choose to believe UNHCR in Geneva who said the exodus continued "unchecked." If you don't buy their figures then the border crossing was shut, which was reported in the many media outlets, explaining the "shut door" effect that Dr. Ball mentioned. And of course in reality there was no ceasefire. It was normal service throughout that entire period.

There was no ceasefire "coincidence" because there was no ceasefire

Y) Dr. Vaguelove

The judges remarked about the overall vagueness of the

whole research. Judge Robinson rightly pointed out that analysis was "broad" yet the court was interested in "specific" crimes allegedly committed by Yugoslav forces and added that while it may be useful with understanding "broad patterns of conduct", questioned whether it was "particularly helpful in relation to that specific issue which is particular and specific to a particular area and in relation to which there may or may not be evidence." That is a good point and here's an example of what the judge was articulating.

Dr Ball: "We know something from the counts kept by the Albanian border guards at two other primary crossing points. We know something -- although, in my opinion, with quite a bit of error, we know something about refugees who crossed into Macedonia, and we do know something about refugees who crossed into Bosnia, and we know a little bit with less certainty about those who crossed into Montenegro." He added "So knowing those other things, I think we can narrow the claim I've made from an assumption to, I think, a reasonable estimate."

Dr Ball effortlessly jumps from a bunch of assumptions and turns it into a reasonable estimate.

Z) And Last And Definitely Least

Perhaps these flaws in Doctor Ball's research explain why his testimony in the Milutinovic trial was far more low key than in the Milosevic case.

Defense counsel: "Now, the Prosecution's case is dependent upon the assumption that persons did not leave Kosovo and Metohija for reasons other than criminal reasons, that is to say the criminal plans or actions of Yugoslav and Serbian forces. This is the basis of the expert report by Mr. Patrick Ball and until recently this was the mantra of the Prosecution. But in the closing statements it is not any longer said that the crimes themselves made them leave but simply that the "actions" of forces was "mainly" the reasons persons left."

One final note.

Doctor Ball made the following statement.

Doctor Ball: "When we realised that NATO was going to intervene, we had to radically restructure what it was we were doing. We weren't going to be interviewing people in camps, because the camps were going to be empty".

An Interesting remark.

He "**radically altered his work**" because he'd heard NATO's latest announcement. He tailored his actions accordingly. Yet his analysis worked on the assumption that ethnic Albanians were completely incapable of similar behaviour: were incapable of basing their decisions on the stated intentions of the warring parties.

NOTES and REFERENCES

TITLE

Doctor Ball's book about his experiences on the Yugoslav-Albanian border was called "POLICY or PANIC", inferring, I imagine, that either the ethnic Albanian refugees left because of a "policy" or through "panic". My title underneath, "An A to Z guide to making Sausages" comes from Doctor Ball's reply under cross, that statistics isn't about sausages. The defence counsel had questioned the quality of the data used and suggested that putting rubbish into a system means you can only get rubbish out of the system.

(Page 10348 Milutinovic)

Question: Well, statistical analysis doesn't work at all if you put garbage into the computer you can't expect to get anything but garbage out. Your data has to have some integrity, doesn't it.

Dr Ball: It's not obvious. Let me explain to you why. **Statistical analysis is not about making sausage.**

Introduction and Dr Ball's case

Mahmut Bakalli was the first witness and was a very senior Communist party official. Children could study using Albanian language, Page 549 Mr Milosevic trial, Albanian language could be used in court, Page 550 Mr Milosevic trial, On the same page he admitted that many of Kosovo's politicians were ethnic Albanian too.

Hasan Pruthi admitted that nearly all the workforce in his hometown in every business were ethnic Albanian - Page 1498 etc.

About Agim not answering any questions under cross. That's not completely true. He answered about three questions then claimed

he was ill and left the courtroom to return, Page 782

How Dr Ball got to Albania and what he saw

(Page 10262 Milosevic)

Question: So as I understand it, you went to Kosovo in mid-April 1999 to gather data for a potential report.

Dr Ball: I went to Albania originally to figure out if there was a report that could be done. We found one, but at the time it was pretty up in the air. We weren't sure what we would find.

Question: Okay. Fair enough. And how long did you stay in Albania in the early stages?

Dr Ball: In the first visit about two weeks, about two weeks or a day or two.

Question: And you went back when?

Dr Ball: I went back to the US in early May.

Question: And then back to Albania?

Dr Ball: About two and a half weeks later.

(Page 10400 Milutinovic)

Dr Ball: At the border post we asked people only where they came from, when they left, when they crossed the border. We did not ask them why they crossed.

(Page 2145 Milosevic)

Doctor Ball: The first were registries prepared by the Albanian border guards. They had developed a form on which they attempted to register the name, or the surname, the year of birth, the place of residence or location, and the quantity of each party or group that crossed the border from Kosovo into Albania. That was the first method. The second were teams of observers from UNHCR and the OSCE, or former OSCE mission in Kosovo, who maintained head counts with mechanical hand-held counters that they reported to UNHCR, I believe in Kukes, the Albanian town some distance from the border, a few kilometres, and then those were recorded in daily press reports in Tirana.

(Page 2147 Milosevic)

Dr Ball: Yes. When I returned to the border in early June 1999, the border post had been fired upon a few days previously. A journalist had been seriously hurt and the border guards decided to withdraw several hundred metres into Albania, to a point where they believed they would be safe.

(Page 2239 Milosevic) **Dr Ball:** The border post had been damaged. Local Albanian officials told me there had been some sort of an explosion which they believed to have come from the Kosovar side

of the border. There was some broken glass and some broken wood inside the border post. I did collect the documents there from among the broken glass, and I took them back to Kukes in Northern Albania. We did -- I did have an assistant, the local Albanian assistant, the 17-year-old to whom you refer, and he helped us scan the documents, but I scanned most of them myself. I was also assisted by my Albanian translator, a Kosovar Albanian translator.

Analysis of Data

Doctor Ball (2157 Milosevic) : Having seen this graph and others with this characteristic pattern of peaks and troughs, we concluded that there must be some cause. Accordingly, we considered three possible causes that might account for this peak and trough pattern. Those were, first, that KLA activity, in particular clashes with Serb forces, could be a cause; second, that NATO airstrikes might have been a cause; and third, that Yugoslav force activity might have been a cause.

Dr. Ball (2158 Milosevic) : We learned about killings from interviews conducted by the American Bar Association, Central and East European Law Initiative, and their partners, interviews that they conducted, as well as interviews conducted by Human Rights Watch and interviews conducted by the Organisation for Security and Cooperation in Europe. And then (we) had a fourth record or fourth source, those were the exhumation records of the exhumations conducted by international teams on behalf of the Tribunal.

(**Page 2220 Milosevic**) **Dr Ball**: There are distinct systems of data. Each examines one of the kinds of information we are looking for. The Albanian government data is used only in the migration analysis. The lists to which you refer are used in the analysis of killing. The discussion to which I just referred, the 45 per cent sources contributed by the Office of the Prosecutor's internal sources and the corresponding 55 per cent of the sources which were primarily from the Yugoslav government, these data were on KLA activities only. The fourth series of information on NATO activity comes exclusively from Yugoslav government sources. In order to understand how the analysis is done, I think it is quite important to be clear about each source.

Dr. Ball (Page 2204 Milosevic) : First, we rejected the hypothesis that NATO involvement caused either killing or the migration. In both of the methods, NATO showed inadequate correlations to be considered a plausible cause. Therefore, we

rejected the hypothesis that NATO was a cause of either killing or migration patterns. Second, we reject the hypothesis that KLA activity caused the patterns, the statistical patterns, of killing. Thus KLA activity is not a plausible cause for more than a small fraction of the killing, a cause directly or indirectly of more than a small fraction of the killings. The fourth sub-piece of it is a bit more complex, as we were discussing earlier. There does seem to be some correlation at certain times and certain regions between KLA activity and refugee flow."

And

"Turning to that third hypothesis, you say in your report that: "Yugoslav forces organised and implemented a systematic campaign of violence resulting in killings and refugee flow: the statistical analysis of correlations cannot prove that the Yugoslav forces were the external influence responsible for the observed patterns. However, the findings of this study are consistent with the hypothesis that action by Yugoslav forces was the cause of the killings and refugee flow."

And

(Page 2206 Milosevic) **Dr Ball:**"On the evening of April 6th, Yugoslav official sources announced a unilateral ceasefire by Yugoslav forces to honour Orthodox Easter, which that year fell on April 11th, Sunday. The 6th of April was a Tuesday, and the announcement was made that evening. On the following day, what is very interesting is that using these widely differing statistical techniques and completely different data, we find a consistent and drastic decline in both refugee movement and people being killed. That decline is exactly coincidental in time with the Yugoslav government declaration of a ceasefire. Both people leaving their homes and people killed declined drastically on the 7th and remained at low levels for several days. I don't know if the Yugoslav government rescinded the ceasefire, but it seems that it -- that hostilities began again sometime during the weekend, approximately at the time of Orthodox Easter. Both people leaving their homes and people killed increase again at that point. That circumstantial link, which is, I think, quite dramatic in light of the very high levels of killing and refugee flow a few days prior to the ceasefire announcement, leads my co-authors and I to confirm - or, excuse me - to state that the evidence that we have found, the statistical evidence, is consistent with the hypothesis that Yugoslav forces are the cause of the observed patterns."

And

(Page 2207 Milosevic)

Dr Ball: We conducted the analysis, and the hypothesis there would be that if the two series are closely related, then we would find the presence of killings before the peak refugee flow for each municipality, there would be a high level of coincidence there. Similarly, we would expect that the peak in killings would coincide with or occur just before a very high - or, excuse me - a recorded refugee flow. We found that in both cases, the number of municipalities which satisfy the hypothesis was quite high, 69 and 83 per cent respectively.

a) Tomorrow's Fish And Chips

(Page 10256 Milutinovic)

Dr Ball: There is no indication of a causal link. Let me be quite clear that observational statistics do not permit an affirmation of cause. Observational statistics are at their limit disconfirming hypotheses or rejecting hypotheses

(Page 10391 Milutinovic)

Question: At page 15 in the English, paragraph 2, you say: "The statistical analysis of correlation cannot prove that the Yugoslav forces were the external factor responsible for the patterns observed." It is item 5.4, Yugoslav forces, the first paragraph. Do you abide by that?

Dr Ball: That's correct. We are clear throughout the report that we do not make affirmative proofs in this report or in any of the various addenda.

b) War For Idiots

(Page 32952 Milutinovic)

Hutsch: "For example, the location of the village of Malusha, close to Malisevo, were one of the first to be asked to leave the village in the direction of Macedonia. The population of Gajre, here, was also asked to leave the village. The military objective was to have an area around Malisevo which could be used by their own operations command, and there were very hard and bloody battles in this town, so that the civil -- the civilian population were taken out of the combat area, but also this provided a possibility of using these towns and villages for the purposes of the KLA. The same happened with the KLA between Orahovac and Suva Reka. This is on page 11, in this area. These were on the list of priorities of the villages which were to be

evacuated, where the population was asked to leave.

(Page 10382 Milutinovic)

Question: This panic spreads among these municipalities. Now, did you take into account that effect? You know, the bombing is an ongoing process. The document that the Prosecutor did not give you, I am so sorry about that, because there is this review of when who left but they didn't want to give you the document so there. You see people are leaving all the time at different points at time. You only looked at Albanians; we looked at others as well. So in the question of intrigue, this is called the hallow effect, but I mean here it is panic that spreads especially in such a community like Kosovo is. Now what am I trying to say. It is not that the three hypotheses are the only causes, the one that you mentioned, it's panic, too, fear.

Dr Ball: If the question is, did we take into account panic, I repeat my earlier answer that this is not a study of psychology of war or rumour. We took into account simply the movements of people and the actions of the KLA and NATO and killings.

(Page 25964 Milutinovic)

Dr Fruits: There are some other hypotheses, for example, the announcement of NATO air-strikes; for example, warning that air-strikes were going to occur may have prompted migration. Similarly, I understand from the testimony in Dr. Ball's -- Dr. Ball's testimony that there was some indication that the KLA may have either made announcements or threats or urgings for people to leave an area, and those sorts of announcements are another hypothesis of causes of migration. In economics, there's a theory or a principle called rational expectations. A gentleman by the name of Robert Lucas received the Nobel prize for developing this theory, and it's a relatively straightforward theory. It simply says that people take into consideration expectations, and those expectations can be formed by announcements, threats, or promises.

(Page 10362 Milutinovic)

Question: Did you, just for instance, did you look at the Kosovo media, television, radio, newspapers, to see what kind of information was being transmitted to the people in the villages regarding what might happen next in their lives? Did you look at that to see if you could see if that had any effect on whether or not they might have left their villages?

Dr Ball: **This analysis is neither an analysis of the psychology of rumour or of propaganda, sir.**

Question: Well, if you want to refer to it as rumour and propaganda, you can. But what if NATO or what if KLA or what if

Yugoslav forces were actually warning villagers that there was going to be a battle in their village and based on that warning, they appropriately left that village. I mean, we have some information in this case that that was the case. That's not rumour; that's reality. And you're ignoring reality, it seems to me, in your report.

(Page 10288 Milutinovic)

Question: Did you consider whether -- whether there were advanced warnings by NATO to the KLA to -- of bombing so civilians could be evacuated from the area?

Dr Ball: As is clear from my report, we considered only violent clashes between KLA and Yugoslav authorities. We did not consider any kind of verbal warnings by anyone to anyone else about any activity.

Question: Did you consider data that indicated that ethnic Albanians sometimes left their villages on orders or instructions of the KLA?

Dr Ball: No.

(Page 10397 Milutinovic)

Question: Thank you, Doctor. Therefore, the essence or the gist of your analysis is precisely this part and the conclusion that the KLA did not have any impact on migration. You probably are unfamiliar with some testimony by Albanians before this Chamber inter alia the chief of the general -- the main staff of the KLA, who stated something to the contrary. He stated that the KLA ordered civilians to withdraw alongside troops. Had you had those testimonies before you and had you been able to see what was the extent of the KLA's orders for civilians to move together with them, would that have had any impact on the results of your findings?

And

Mr Milosevic (page 2273): Why are you simplifying matters? Why are you reducing it to propaganda only? I'm also talking about threats that were not empty threats only, because the KLA killed many Albanians as well in order to discipline them. I'm talking about orders issued to the population to leave --

Judge: Let's deal with it one by one. The next question is threats. Did you consider threats made by the KLA?

Dr Ball: No. We considered it unlikely on the same basis.

Mr Milosevic : So this has no effect, propaganda, calls, threats, orders issued by the KLA to the population to leave the territory. Is that the way it is in your opinion? Or the media war either

that was part of this war as well?

Dr Ball: As I said and I think as is clear from the report, we did not

consider these hypothesised causes presented by the question in a direct way. However, given what we have considered, it seems to me that they are unlikely causes.

c) Dr EyeBall

(Page 25967 Milutinovic)

Question: You've used the expression eyeballing a few times in your report. What do you mean by eyeballing?

Dr Fruits: Well, eyeballing is an ad hoc or a subjective look-see at the -- at two series, and rather than any sort of rigorous test of whether or not the two series are correlated. So just like we can look at -- we can look at the same cloud formation and I might see a castle and you might see a bunny rabbit, two people can look at the same picture, and same graph, and one person can see correlation and other people can see no correlation.

Dr Fruits: They're to show that whereas in the first case you might eyeball that graph and say that the two series are correlated or very similar, that when you look at them a little closer by drawing these lines, you see that there are some substantial differences between the two graphs. For example, on the left-hand side, you could see that the peaks in the people leaving their homes and the peaks in the number of deaths actually don't coincide, that they're separated by several days.

Also you could see right here in the middle that there's a small peak in the number of people leaving their homes, but there's a -- there's a sizeable decline in the number of reported deaths. You could see that there's a relatively high number of deaths on two different dates, but relatively flat or no refugee flows. And, again, the point of this is, to just illustrate, a quick glance at the graphs may lead one to conclude that they're correlated, but, indeed, some more sophisticated analysis is required to actually come to a conclusion that they are statistically correlated.

d) Play It Again Sam

(Page 2238 Milosevic) **Question:** If I understood your explanation correctly, your study's mainly based on data obtained at one border crossing to Albania. **Dr Ball:** The migration study is based on one border crossing. The killing

analysis is based on a much wider selection of information.

e) Ethnic Minorities Anybody?

(Page 2213 Milosevic)

Mr Milosevic: Were you asked to look at the movements of Serb refugees during the NATO aggression?

Dr Ball: No.

Mr Milosevic: Since you were not asked to study the flows of Serb refugees from Kosovo and Metohija, was it perhaps in your interest to compare in your statistical analysis, to do this at your own initiative?

Dr Ball: No.

Mr Milosevic: Have you ever heard of any figure related to the number of Serb refugees who left the area of Kosovo and Metohija during the bombing?

Dr Ball: I saw a paper presented at an international conference by a Serb statistician in September 2000 on this topic.

Mr Milosevic: And do you know that this figure is about 100.000 Serbs who fled due to the intensive bombing of Kosovo?

Dr Ball: I do not know that. I do not recall the specifics from his presentation.

f) Loyalist Albanians Anybody?

Many ethnic Albanians were turned away from going to Albania and instead sent to Montenegro instead. Take the case of prosecution witness Ms Aferdita Hajrizi - testified on the 26th April 2002 - left her house on the 24th of March 1999 and hid for a few days in Mitrovica. She joined a column of refugees on the 28th March and stay for three days in the village of Zhabar. She then returned to Mitrovica. Several days later she got on a bus and was transported to Montenegro.

g) Off By A Cool 50%

(Page 2148)

Dr Ball: The total figures that there were 272.000 people registered by the border guards, and four hundred, four thousand [sic] people registered in the UNHCR daily counts reported in their daily press reports.

(Page 2146 Milosevic)

Doctor Ball: "Yes. When I returned to the border in early June 1999, the border post had been fired upon a few days previously. A journalist had been seriously hurt and the border guards decided to withdraw several hundred metres into Albania, to a

point where they believed they would be safe."

(Page 26001 Milutinovic)

Question: Are you saying that because the border crossing records, which you admit would necessarily in a disaster environment be very incomplete, do not record anyone from these two municipalities have -- as having crossed the border, that it means that no one did? Is that what you're saying?

h) Off By A Cool 150%

(Page 10321)

Question: Now, if the number 4200 just, hypothetically, is an accurate number, then the statistical analysis you did that put that number at 10.000 was off by 150 per cent, wasn't it?

(Page 10373 Milutinovic)

Question: Last year there was a committee of the National Assembly formed and some people were sent down to Kosovo. Together with Albanian representatives they compiled a report, an overview, of all those missing and killed. The figure is about 9.700, out of which some 4.000 are Albanians and some 3.000 Serbs as well as others. I have their findings here, although untranslated. I intended to use it later. In total it was less than 10.000 of all groups. They counted every single head. Later on when I will be allowed to use that, if I were able to show it to you now, would it change your views that the total figure is not the one you estimated? And there were only slightly over 4.000 Albanians killed or missing. Even Ms. Natasa Kandic who cooperates with the Prosecutor's office agrees with the figures. Would that have an impact on your findings or thoughts on that?

(Page 25977 Milutinovic)

Dr Fruits: Dr. Ball has a number of recorded deaths which total 4.400, 4.400 deaths. Out of those 4.400 deaths, 200 of them do not have a definite date of death; in other words, it's not known when they died. For those people, Dr. Ball randomly assigns them a date of death. The result of that is that in some cases, there are some municipalities that have no recorded deaths; but after Dr. Ball's what he calls hotdecking or I would call a shuffling procedure, he assigns deaths to municipalities that may not have had a death on a certain date. From that 4.400 number, he uses another technique that inflates that number to 10.356 deaths. He indicates in his report that that number is consistent with three other studies. I reviewed those studies. Two of them actually covered a much longer time-period than Dr. Ball's study; and if you adjust for those -- for the differences in

time-periods, I found that Dr. Ball's estimates were actually significantly higher than those two other independent studies. The third study was conducted by Dr. Ball himself, so it's unsurprising that the results would be consistent with the study that he presented here. The last issue is that Dr. Ball takes some of the numbers -- creates a third series of deaths that he uses for his linear regression analysis, and that third series is created out of some of the deaths on a given day from the 10.356 series and some deaths from the 4.400 series. He puts the two together and then creates what I call a mish-mash series, which really is a meaningless count. It's impossible to determine from that any sort of impact on -- of any other explanatory variables on the number of deaths.

i) Bought And Paid For

(Page 2213 Milosevic)

Mr Milosevic: You said that this work of yours was financed by US government resources.

Dr Ball: In part.

(Page 10260 Milutinovic)

Question: And in your acknowledgement to the report, you state: "US government support was essential to the project and support was provided among others by the United States Department of State and the US Agency for International Development." Is that true?

Dr. Ball: That support was provided to ABA/CEELI, that's correct.

About Mr Abrahams:

(Page 10261 Milutinovic)

Dr Ball: They (**Mr. Abrahams** and Eric Stover) invited me considerably earlier and independently of each other, but, yes, I ended up there in early April.

Question: And in "Policy and Panic" in your acknowledgements in "Policy and Panic" you state, "**Fred Abrahams** from Human Rights Watch and Eric Stover of the Human Rights Centre of the University of California Berkeley originally invited me go to Albania in mid-April 1999. Subsequently, they introduced me to the project's co-director Fron Nazi, East-West Management Institute for the Policy on Legal Studies. **Fred**, Eric and Fron oriented me to the region, told me what I needed to read provided many feedbacks, helpful feedbacks on many drafts and gave me access to their interviews for confirmatory qualitative evidence."

(Page 10335 Milutinovic)

Question: In the Milosevic trial at page 2178, you -- you told the Chamber that 45 per cent of the material that you considered regarding KLA activity was provided to you by the OTP and that 55 per cent of it came from open sources.

(Page 10336 Milutinovic)

Question: As to the OTP information, you were asked in the same part of the Milosevic transcript if that was provided to you in the form of statements or in statistical or summarised form, and your answer to that question by Mr. Nice was: "It was provided in highly summarised form." Now, what do you mean when you character the information as being "highly summarised"?

Dr Ball: I was given a spreadsheet. The spreadsheet contained fields which described the very brief summary of the event in text as well as date and place information. There were several other fields that were redacted.

Question: So like the material that came from open sources, with this material from the OTP, you also had an opportunity to independently verify the validity of that information?

Dr Ball: No, sir. I'm not an investigator. I did not go to Kosovo and investigate cases.

(Page 10274 Milutinovic)

Question: And at that conference you said as follows: "Of course now on the basis of crimes of war we have tribunals. Tribunals which try people who have violated international humanitarian law and send them to prison. It would be very nice if we had a round of applause for the extradition of Slobodan Milosevic to The Hague last week." And then the record indicates applause. "And I hope you're all excited as I am by the prospect of his very pleasant and drawn-out trial which will begin in about six months." You said that, didn't you?

Dr Ball: I did indeed.

Question: And you said later on in that conference, and I quote directly, you're talking about human rights, and you said: "Let's work with those rights and then push them. If you want more, let's keep pushing, absolutely, keep going, no reason to stop now, we've got some momentum. We've got one of the worst bad guys ever in jail, at least in my lifetime."

You said that, correct?

Dr Ball: Mm-hmm.

(Page 10277 Milutinovic)

Question: "Ball spoke about hacktivism at a hacker conference in the summer of 2001 and during his talk made a disparaging comment about Slobodan Milosevic, former president of Serbia and

of the Federal Republic of Yugoslavia. Ball later testified against Milosevic at the war crimes trial in The Hague. When Milosevic cross-examined Ball, one of the first questions he asked him was, "Who was This Dead Cow Cult?" And you said: "My under oath spin to Sloba," Sloba, I take it meaning Mr. Milosevic, correct?

Dr Ball: Yes.

Question: "My under oath spin to Sloba was that hacktivism is an opportunity for engaged, young programmers to do cool and socially beneficial stuff with their technical skill and curiosity instead of getting in trouble, said Ball, and I actually believe that." My question to you, Dr. Ball, is what did you mean by "your under oath spin"?

(Page 10338 Milutinovic)

Question: At page 9624 yesterday you said this in how you weigh certain evidence: "Evidence that goes against the interest is much more weighty than evidence that goes in favour of interest." Now, if that's your approach, since a great deal of your data came from the OTP, did you consider that it might have less weight than other data?

Dr Ball: No, I did not.

(Page 10388 Milutinovic)

Question: We'll get to that soon. Do you know, since foreigners did not speak Albanian, that the interpreters who were interpreting for the foreigners there were primarily from the Council for the Protection of Human Rights and Freedoms, who were Albanians themselves? Do you know that members of this council were at the same time members of the KLA, often very highly positioned in the ranks of the KLA?

Dr Ball: I have no such knowledge.

j) Guessing Game

Dr Fruits: A very brief summary would say that Dr. Ball's migration estimates do not accurately reflect where people came from or the dates that they left their homes. Dr. Ball only has - well, not only has - but he has information regarding when they crossed the Morina border. For everyone who crossed the Morina border, Dr. Ball does not have any information regarding when they left their homes.

For approximately half the people who crossed the Morina border, Dr. Ball doesn't have any information on where they came from.

So, Dr. Ball must guess or estimate or what he calls impute where they came from and when they left their homes. This imputation process

introduces substantial errors that creates some very unusual results, and those unusual results are highlighted in Exhibit 4, 5, and 6 of my report. They suggest that his imputation process generates unreliable estimates of migration, and those unreliable estimates really can't be used to generate any sort of meaningful conclusions regarding the effects of anything on migration.

k) Stealth Bombers

(Page 2181 Milosevic)

Dr. Ball: The data on NATO air strikes came exclusively from Yugoslav press and government sources that were publicly available in the period approximately June to August 1999.

Question: You restricted yourself to that source for what reason?

Dr Ball: There were two reasons: One, because my **two phone calls** to the US Department of Defence went unanswered and unreturned, so I did not get data from the US side.

He was told by US Air Force officers that the US would never release such sensitive data. But the US did in fact release such sensitive data

(Page 10284 Milutinovic)

Dr Ball: Well, it's interesting you should ask that, because several years later I ended up at a conference with a couple of guys from I think it was the Air Force War College on bomb damage assessment in Kosovo, and when I told them this, they laughed at me. . We would never **They said, of course they didn't call you back, they were never going to give you that data** release information like that, not even years after the event. So I think that while it may be an interesting point to debate here now seven years after the fact, **I think that my initial assessment has been borne out by discussions with people who told me that I was never going to get that data, no matter how hard I tried for it.**

Question: And by the way, did you compare NATO's publicly available information during this period with the data prepared by Dr. Ball?

Dr Fruits: A. Yes, I did.

Question: And when, to your knowledge, did NATO make this information publicly available?

Dr Fruits: **Approximately March of 2000.**

(Page 10347 Milutinovic)

Question: If NATO had been willing to cooperate with you, if

you had even made an effort to get NATO to cooperate with you, and the OTP, they could have told you exactly where they struck, what they struck with, what date, what time, in great detail. They would have that information, and that could be helpful, couldn't it?

Dr Ball: It probably could be if it weren't classified.

(Page 25962 Milutinovic)

Dr Fruits: He mismeasures or miscounts the number of air-strikes that occurred on given days. Exhibit 8 to my report shows that there were six dates in which Dr. Ball's data indicates or Dr. Ball's data reports that there were no NATO air-strikes.

Question: In his report Dr. Ball states as follows, this is P1506, again 3 January 2002 report, page 13, he says, and I quote: "One other noteworthy fact regarding NATO air-strikes was that during 2-4 April attacks were greatly reduced due to bad weather, yet this period during which there were relatively few NATO air-strikes included substantial peaks in Kosovo-wide killings and refugee flows." Do you agree with that observation of Dr. Ball, Dr. Fruits; and if not, why not?

Dr Fruits: Well, I disagree with that statement because, in the main, what Dr. Ball says were greatly reduced air-strikes were actually much higher than were in his own data. NATO over that same period reported approximately ten air-strikes. Dr. Ball's data reported only two.

1) A Planet Unto Itself

(Page 2183)

JUDGE KWON: So if a nearby village was bombed yesterday and the villagers left on today and it was bombed tomorrow, so that was -- you mean that it is not -- the NATO bombing was not preceded in that case?

Dr Ball: If the nearby village was across a municipal border --

Judge: Yes.

Dr Ball: that would be correct.

m) Tomorrow Never Comes

(Page 10361 Milutinovic)

Question: So if people live in a village, for instance, just as a for instance, if people live in a village that has a Yugoslavia army barracks in that village and the information that's

communicated to them is that NATO is bombing Yugoslav Army installations, it seems to me they must consider that information and one of the things they may decide to do based upon that information is leave the village. If that installation -- and they did that, they left the village. If that installation was then bombed, say, ten days later, your conclusion would be that the NATO bombing had absolutely no effect on their leaving the village, when in fact that was exactly the reason why they left the village; correct?

Dr Ball: My conclusion would be that the NATO bombing of the village had no effect on their leaving. My work is not an analysis of the psychology of rumour

Question: Well, I'm not talking about rumour, I'm talking about a hypothetical situation that I think probably has a lot of basis in reality with regard to what happened on the ground in Kosovo.

Page 10406 Milutinovic)

"The causal reasoning in the expert's report and testimony has a possibly significant flaw. He is relying on temporal relationships and making the assumption that a cause must precede its effect, thus he rules out, say, NATO strikes as being causal of refugee flow because they took place after the flow began. **However, it may be that one cannot apply this kind of logic to human beings, since we are somewhat capable of anticipating future events.** In that situation, the usual causal logic may not be applicable. **If you see rain clouds gathering overhead and move your party indoors,** is the cause the clouds or the anticipated rain storm? How can one really assign causation in such a situation? Can one really say that the rain did not cause you to move indoors?"

n) Gridlock

For example, prosecution witness Dr Gerxhaliu - testified on the 2nd April 2002 - and his family left their village on the 28th March, then returned to the village sometime at the beginning of April. They soon left again and went to hide in the neighbouring mountains, before finally leaving Kosovo sometime at the beginning of June.

Perparim Isufi - testified on May the Seond 2002 - left his village on the 27th March with his family and went to Pristina. They spent the night in a neighbouring village before returning to his village. Later, he left his village again and "a few days later" made it to the capital where they got on a train and the following morning made it out of KosMet.

Ms Aferdita Hajrizi - testified on the 26th April 2002 - left her house on the 24th of March 1999 and hid for a few days in Mitrovica. She joined a column of refugees on the 28th March and stay for three days in the village of Zhabar. She then returned to Mitrovica. Several days later she got on a bus and was transported to Montenegro.

There are countless similar stories of ethnic Albanian refugees taking many days, weeks even to get out of KosMet.

o) War? What War?

(Page 10244 Milutinovic)

Dr Ball: "How long would it be between the NATO bombing and the migration before that purported cause would have dissipated? And for the purposes of the earlier discussion, we said it would either have to coincide saying it occurred in the same two-day period or it would have occurred in the previous two-day period; that is to say, 0 to 4 days in the past. If a bombing occurred 0 to 4 days in the past, it was considered to have coincided with a peak in migration or killing. If, however, the air-strike occurred more than four days in the past, that is to say more than four days before a peak in migration or killing, it was coded as inconclusive, which is that it could have possibly been a cause but that we were skeptical. We would ask: Why didn't people leave sooner?"

(Page 10390 Milutinovic)

Question: Can we conclude that in documentation or literature from psychiatry or psychology you did not find a base for such calculations. Is that right?

Dr Ball: That is correct.

p) Early Arrivals

(Page 10390 Milutinovic)

Question: On the 20th and 21st of March, 1999, there were convoys of refugees, and we heard about them from an Albanian witness who testified here, that was prior to the bombing. How would they fit into your analyses before the fighting and during the stay of the verifiers in Kosovo? Can you somehow fit that into your own analysis?

Dr Ball: Our analysis starts later than that period, precisely because that's before the Albanian border guards began systematically recording people crossing the border, neither did OSCE or UNHCR have systematic and rigorous counting going on at that time. However, let's keep in mind that our argument

is that it is unlikely that the -- in fact, we've rejected the hypothesis that the bombing is the cause of refugee flow. So the fact that there were -- that there was extensive refugee flow before the bombing is perfectly consistent with our broader claim. If there were convoys of refugees before the bombing, clearly the bombing did not cause those convoys of refugees to be on the move. That's similar to what we see throughout the region.

Question: But can we conclude that that is not in accordance with your own conclusion, that people were leaving only because their particular region was under attack? Is this not along the lines of what my learned friend Mr. Fila said, that fear cannot be confined so narrowly? Fear can exist without direct attacks and that one has to have a broader view than you had in your own tables.

q) Houston, We Have a Problem

(Page 25956 Milutinovic)

Question: With respect to the third hypothesis, Dr. Fruits, acts of Serb forces, Dr. Ball concludes as follows, and I'm quoting now from P1506, Dr. Ball's report of 3 January 2002, on page 1. I quote from Dr. Ball: "The statistical evidence is consistent with the hypothesis that Yugoslav forces conducted a systematic campaign of killings and expulsions." I ask you, Dr. Fruits, do you agree with that conclusion; and if not, why not?

Dr Fruits: I do not agree with that conclusion. The main reason why I do not is because Dr. Ball does not analyse any data on Serb or Yugoslav forces' activities; and, indeed, I believe he indicated in his testimony that he was -- he didn't have any data on Serb or Yugoslav forces' activities, and that any data that was available was sparse or patchy and not sufficient to conduct any analysis with.

Question: And without reliable information on Serb force activities by date and time, is it possible statistically to draw any conclusions regarding the activities of Serb forces to Kosovo migration, Kosovo Albanian age 25956 migration?

Dr Fruits: No, you cannot. And I believe I mention in my report, I think it's on pages 33 and 34, that without any sort of reliable data on Serb and Yugoslav forces' activities, that one cannot draw any statistically reliable conclusions about those activities and whether or not they affected deaths and migration.

In fact, the mistake made by Dr Ball is in fact even more serious.

Question: Okay. Let's assume, Dr. Fruits, that all the other

variables we've talked about, deaths, migration, KLA and NATO activities, let us assume that these were all appropriately measured. Given that assumption, sir, without information on Serb force activities, is it statistically possible to conduct a reliable study?

Dr Fruits: No, you cannot. If the hypothesis is that Serb and Yugoslav forces' activities contributed to the deaths and migration, without the Serb forces' activities you cannot conduct a statistically reliable study. In fact, by omitting that variable, by leaving out the Serb forces' activities, you are -- you are committing an error known as an omitted variable error. And it generates biases, not just in the data that's missing, but it also causes your estimates of the impacts of the KLA and the NATO activities to also be unreliable; in other words, they may not reflect reality.

Judge Bonomy asked a couple of questions and the error made in the analysis does seem to be of the catastrophic kind.

(Page 25959 Milutinovic)

Question: Can I ask you one question about the omitted variable error. Assuming Dr. Ball carries out the exercise in exactly the way he's done it, but separately evidence is led here of activities of Serb and Yugoslav forces which turns out to be consistent with the hypothesis that he finds to be consistent with killings and expulsions, is his work equally invalid because he did not personally take into account information about the movements and activities of Serb and Yugoslav forces?

Dr Fruits: I think that would be a fair assessment. Let me try to paraphrase what you've said because I think I understand the question. Dr. Ball's analysis would still be invalid even if there was evidence here that may support his conclusions simply because that the information that may support his conclusions hasn't actually been included in his analysis.....The difficulty I have as a statistician is that you really can't come to a conclusion in a round-about way, in which Dr. Ball does, in which you simply reject two other alternative explanations and then come to a conclusion that it must be a third alternative, in this case the third alternative being the coordinated efforts of Serb or Yugoslav forces. I think your question is: Is it okay for Dr. Ball to exclude the and Yugoslav forces and activity to avoid the circularity? I didn't really investigate any of the other information in this case, including, for example, from the fact witness. My focus was narrowly on Dr. Ball's statistical analysis; and as a statistician, his statistical analysis isn't reliable simply because it doesn't have that information on the Serb and Yugoslav forces' activity.

A thoroughly damning conclusion and very tellingly, the prosecution, when cross examining Dr Fruits, made the most feeble and brief attempts at undermining this.

(Page 25019 Milutinovic)

Question: You also said, yesterday, that in omitting the variable of the activities of Serb and Yugoslav forces, you are committing an error known as omitted variable error. Are you saying that there is no point in trying to reject any number of hypotheses unless you include consideration of all possible hypotheses or all variables?

Dr Fruits: No, you can't. You can't do an analysis where you include every single variable, but the omitted variable bias relates to omitting what's known as a relevant explanatory variable. As I understand it, Dr. Ball, and maybe even the Prosecution, believes that the activities of Serb or Yugoslav forces is an important, if not the most important, explanatory variable. If you exclude that variable, you've committed what's known as an omitted variable bias.

Question: No. But are you saying, therefore, that you cannot statistically seek to reject these two variables if one of them -- if the third variable is not considered?

Dr Fruits: If you have a hypothesis that three variables possibly explain the deaths or the migration, you can't statistically come to a conclusion by only looking at two of those three because not only are you omitting the variable that you're interested in, but you're also biasing. In other words, your estimates aren't going to reflect reality on the impacts of those other variables.

Question: No. I understand what you have said. So, basically, what you are saying is, in seeking to reject the two variables, statistically speaking you must include analysis of the third? You cannot statistically seek to reject the two variables without

Dr Fruits: That's correct. And as I state in my report, that it, in fact, by excluding the Serb and Yugoslav forces' activities, you are more likely to reject the hypothesis that KLA and NATO activities contributed to it.

r) Yugoslav Activity

Hutsch: (Page 33001) "According to information I received from the KLA General Staff, we would name between 18 and 20.000 permanently deployed fighters."

(Page 10293 Milutinovic)

Question: Sir, isn't it a fact that the reason you didn't get any information on Yugoslav force deployments was that you were unable to do that because you couldn't find any action of Yugoslav forces independent of interactions with the KLA. Isn't that a fact?

Dr Ball: No, in fact, that strikes me as absurd.

Question: Well, then let me refer to your article "Statistics and Slobodan." What you just said was absurd, Dr. Ball is exactly word for word what you said in this article. **"We were unable, however, to obtain data on Yugoslav Army activity independent of interactions with the KLA."** Care to reconsider your testimony?

And

Question: Isn't it a fact, sir, that the actions by forces of the KLA and Yugoslav forces was so closely related in both time and place that it's virtually impossible to separate them. Isn't that a fact, Dr. Ball? And given the dynamic that we've been talking about, isn't it fair to conclude that the most that can be said is that ethnic Albanians fled the area where combat was occurring between the army or between Serb forces and the KLA?

(Page 10355 Milutinovic)

Question: Well, I think doing so interferes with your assumption that Yugoslav activity might have had some role, although you have no data to indicate it at all. And I think it's extremely fair, since you are relying on clashes between KLA and Yugoslav forces, that you can use either term in the conclusion you get to the same place because you're using the same data. How does that not take sense? You didn't take into account that there were police stations in Kosovo --

(Page 10295 Milutinovic)

Dr Ball: The way a statistician would consider this problem is to think about the relative sizes of the two forces. If the two forces were in some way similar in size, then the proposition just made might be reasonable. However, all the evidence suggests that the two sizes, the size of the Yugoslav forces and the size of the KLA were radically different --

Question: Can I just interrupt you there for a moment. Have you ever heard of a gentleman named Bislime Zyrapi, who was the commander of the KLA, who testified in this courtroom that the KLA numbered about 18,000 people and had turned from a guerilla army into a regular army or more or less regular army with a guerilla capacity and supported by a good percentage of the Albanian population. Would that change the dynamic, as far as you were concerned?

s) Bar Brawl = Battle Of The Bulge

(Page 25961 Milutinovic)

Dr Fruits: Dr. Ball has two measures of KLA activities: One is what he calls KLA battles and another one is what he calls KLA killings. KLA battles he provides a variety of definitions of: One is simply a battle which is, according to the dictionary I consulted, a sustained fight between two armies. Another definition of a battle that Dr. Ball uses is he calls an exchange of fire. And those two definitions really highlight some of the difficulties in the KLA battle data that Dr. Ball relies on, in that there's no measure of the intensity of the battles, in that an exchange of fire between two people is given the same weight as a sustained battle that may have a number of casualties. The other problem is in what he calls the KLA killing data, which really isn't -- it's more than just killings. It includes kidnappings, also injuries, and I believe what he calls disappearances of Serbs in what he describes as isolated incidents. It's not entirely clear what an isolated incident is, and it's not entirely -- and, again, as with KLA battle data, there's no measure of the intensity or the scale of these -- of these variables. Well, you can think of, if you're trying to study, say, crop yields and you want to see the effect of rainfall on crop yields, it's not just enough to know whether it rained on a given day. You really need to know how much it rained. Dr. Ball's approach gives the same weight to a raindrop as it would to a downpour.

And the data for the KLA activity that came from the OTP is flawed too.

Question: Where did Dr. Ball get his data on KLA activities?

Dr Fruits: In my report, I note that Dr. Ball's report states that he received the data from the OTP; however, he doesn't really provide a description of how he converts that data from the OTP or the information from the OTP into quantifiable data with which he can do his analysis.

Question: So from the data presented by Dr. Ball, is it possible for you to verify the reliability and accuracy of the KLA data?

Dr Fruits: No.

t) Bi Plane = B 52 Bomber

The same problem when analysing NATO activity

Question: Let's turn now to the hypotheses of Dr. Ball that NATO activity was inconsistent with the observed patterns of refugee

flow and killings. Do you agree with this conclusion of Dr. Ball's, sir; and if not, why not?

Dr Fruits: I disagree with that conclusion of Dr. Ball's; and one reason is, again, as with the KLA data, he has no measure of the intensity of the NATO air-strikes,

u) **The KLA.**

To say the ethnic Albanians were hesitant to implicate the KLA in violence would be a great understatement. Remember too that the translators used were often senior KLA officers. Dr Ball never even thought about this fear.

(Page 10285 Milutinovic)

Question: Did your interview -- did your research and the general knowledge you gained about the area ever indicate to you that ethnic Albanians generally are hesitant, to say the least, to implicate the KLA in activities for fear of reprisals?

Dr Ball: I'm sorry. That's outside of my competence.

An Example. A notorious place was Lake Radonjic which was in the KLA controlled Dukagjin Zone, where many of the victims were found. Ekonomija farm was the local KLA HQ where many of the tortures of loyalist Kosovo Albanians (as well as of ethnic Serbs and Roma) took place.

(From the opening statement in Mr Haradinaj's case)

"The Jablanica detention centre was in operation from April till -- from April 1998 onwards. The KLA, under the control and direction of the three accused, established and operated this particular prison to detain, mistreat, and terrorise their perceived enemies; people who they perceived to be collaborators with the Serbian regime and opponents of the KLA. These were people such as Roma Kosovar, Catholic Kosovar Albanians, people who were particularly vulnerable to being labeled as a collaborator, a spy, or an enemy of the KLA. They were treated accordingly. For example, in August 1998, the KLA actually declared in a public communique that "preventive measures are also being taken against certain collaborationist elements."

1) Counts 21 and 22, is Nurije and Istref Krasniqi. They were an Albanian couple living in Turjak. A witness will testify that on about the 12th of July, 1998, KLA soldiers came to their home, and that a KLA commander ordered them to be taken to the KLA's headquarters in Glodjane. That was the accused Haradinaj's headquarters. The possible reason for this is that the couple

had a good relationship with their Montenegrin neighbour -- with a Montenegrin neighbour which may have made them a collaborator in the eyes of the KLA. Now, their bodies were found together on the 12th of September, 1998, near the wall which -- near the execution wall. Their bodies were found together on the 12th of September, the day the video was taken, right next to the wall containing the bullet-holes. Nurija's skull had fractures consistent with gun-shot wounds and his wife's body -- sorry, Istref's body was found close to his wife's. International forensic experts later determined the cause of death to be multiple gun-shot wounds to his chest.

2) (page 407 of Haradinaj's trial at the ICTY) Counts 17 and 18. **Illira Frrokaj was a Kosovar Albanian Catholic.** She was stopped at a KLA check-point in Glodjane by Balaj himself and other KLA members in August 1998. Her body was found near her car, a red Opel, which the KLA had taken. **The body was found burnt out and floating upside down in the canal. Her husband, Tush Frrokaj, who was with her when she was stopped at the check-point, has never been seen again.** His body has not been recovered. Her body was found in the water a little way downstream from the KLA execution site. The body could only have been put there by the KLA in the area it controlled. Another unidentified body labeled R18I was found with her body in that canal.

3) Skender Kuqi, counts 31 and 32, was a person whose body was not found at the execution site, nor at any location near the Lake Radonjic. He was a person who was murdered in KLA custody and died in hospital. **He was a Kosovar Albanian from Zahac.** Like many others, he was abducted by KLA soldiers. He was abducted around the 11th of July, 1998, and taken to the KLA headquarters in Jablanica. While in Jablanica detention, Skender Kuqi was beaten so severely by Brahimaj and other KLA soldiers that his body became swollen and he was unable to breathe because of his rib injuries. His kidney was exposed through his wound and his tongue began lolling from his mouth. He appeared dead, but Haradinaj, who was present, ordered that he be taken to hospital. This was in about July -- July the 16th, 1998. He died in hospital.

4) Pal Krasniqi was last seen in the Jablanica KLA prison. **Krasniqi was a Catholic Kosovar Albanian.** On the 10th of July, 1998, he went to KLA headquarters in Jablanica - that's the headquarters run by the accused Brahimaj - to join up. Within days, however, a familiar accusation was made against him. **He was denounced as a Serb spy for allegedly having a relationship with either a Serb or a Roma woman.** There he was beaten daily

and brutalised with a baseball bat. His body, which was found in the picture which is shown on the screen now, contained **multiple fractures to his arms** which is consistent with the story of the beating with the baseball bat. Fluoroscopy examination in 2003 revealed a bullet core and its remains, **there were gun-shot wounds on his head, trunk, and upper limbs**. The cause of death was determined by international experts in 2003 to be multiple gun-shot wounds. **The Defence, likewise, does not dispute that that is his body.** The significance of my including him now is that he was a person last seen in custody of the KLA in Brahimaj's prison, was found next to the body of Radunovic, also said to have been kidnapped by the KLA, next to the body co-mingled of two people -- of another person who just disappeared.

Mr Emerson, Mr Haradinaj's counsel, didn't deny that these murders occurred, but claimed the accused wasn't in control of the KLA rank and file. "The important point is that its structure was essentially horizontal and not vertical" and "Most of those who fought with the KLA were villagers who would return to their daily lives when they were not actively involved in the fighting. And Mr. Haradinaj was in reality the commander of those who chose to follow him on any particular day." Even the defence admitted that these so called "collaborators" were tortured and murdered.

(Page 10325 Milutinovic)

Question: And don't you remember that journalists there were expressing their concern that Kosovo refugees were relating stories that had been planted by the KLA?

v) Wag The Dog

Dr Ball didn't seriously consider that the KLA and NATO could have been cooperating.

(Page 10287 Milutinovic)

Question: All right. Now, as I understand it, you didn't -- you also didn't consider in your analysis, data on whether NATO and the KLA were working together in various combat operations, did you?

Dr Ball: We did not consider qualitative evidence of that kind.

And

(Page 2271 Milosevic)

Mr Milsevic: So then these first two hypotheses, that is to say NATO and the KLA, is it clear to you that, in this war, NATO and

the KLA were acting with the same objective in mind? Did you give any thought to that?

Dr Ball: I did not give any thought to that idea.

Mr Milosevic: And now, now can you look at this idea, this concept that NATO and the KLA worked with the same objective in mind, that is, a single hypothesis, the concerted activity of NATO and the KLA?

Judge: He did not consider that. Therefore, he cannot give evidence about it.

However

Hutsch (Page 32916 Milosevic trial) : "Yes. In particular, there were officers of Arab origin. These officers were -- I wrote about later in a report. The forward air control officers, they were from -- I think the term -- there was an American from the MPRI who recruited these officers from the Mujahedin brigades of the Bosnian army as mercenaries, and they offered them a great deal of money. These officers were then trained in Turkey, and from spring 1998, from February in particular, they were sent to the KLA in Kosovo as forward air control officers to plan and carry out. They were officers who had been recruited. They had a very good training in English, and they were trained to organise air operations, air raids. And in terms of quantity, each brigade had one of these officers who was particularly well-protected. And during the war, these officers, the more became -- there were more available and so they were able to delegate further down the hierarchy of the battalion. And there's one particular example that I have published in the Netherlands: There is an asylum procedure where one of these men -- his name is Almedin, his family name is Almic. At the moment he is in the -- going through an asylum-seeking process in Amsterdam, and he is applying for asylum in the Netherlands. This man, in 1998, he deserted, and he then came through a circuitous route to the Netherlands. He has documents with him which clearly prove that he was trained in Turkey. These documents all are signed by Clark Campbell. I would say the total number (Mujihadeen officers) , at least my impression is that it's between 80 and 120.

Hutsch: (page 32999 Milosevic trial) And I mentioned yesterday the MPRI story back in 1996. Already in Bosnia people had been recruited which were then trained specifically in Turkey for a -- job capabilities the KLA did not have at the time and could not have, namely the capability for raging their own air war.

President Musharraf: "It is believed in some quarters that while Omar Sheikh was at the LSE (London School of Economics) he was recruited by the British intelligence agency MI6," Musharraf writes in his book, *In the Line of Fire: A Memoir*. "It is said," Musharraf notes, "that MI6 persuaded him to take an active part in demonstrations against Serbian aggression in Bosnia and even sent him to Kosovo to join the jihad."

(Page 10376 Milutinovic)

Question: When we are discussing migration I'm telling you that in ten municipalities migration coincided with KLA activity; that's what you put into the table. And in nine municipalities, migration coincided with NATO bombardment. Since in the municipalities of Orahovac, Pec, and Pristina, as well as Prizren, migration coincided with both KLA and NATO activity, may we conclude therefore that in 15 municipalities migration coincided with either KLA or NATO activity or both? This is simply what I'm reading out of the table. Do you agree with me that out of the total of 29 municipalities, the killings and migration coincide to a large degree with the total of 29 municipalities, and we come up with the number of 15 more or less, 15 out of 29. If we know that the municipalities of Zvecan, Leposavic, Strpce and Novo Brdo (and Zubin Potok) are almost purely Serb ethnically as well as the municipality of Gora (where the Gorani live), where there are Albanians who speak Serbian, then the importance or the weight of the conclusion is even greater because those municipalities need to be extracted out of the group. And for Pristina there is a coincidence in all four categories, which means that killings and migration coincided with the activity of both KLA and NATO, and you confirmed that in your text at page 4 and of the second paragraph in the English. Is that correct? Do you stand by what you put in that text?

Judge: You see, there are six municipalities where it's suggested that there's no significant Albanian population to be affected by this. Now, is that of some importance in analysing your statistics?

w) Operation Horse Manure

Hutsch: (Page 32955) "This term Horseshoe Plan I heard for the first time in the publications of the international press after a press conference of the German minister of defence, Rudolf Scharping, on the 7th of April. And first of all, I thought the entire thing was implausible, because the movements of the Serbian security forces that I could see didn't follow a system

or military plan. Later, research from October 1999 to March 2000 showed that this operation plan described by Minister Scharping on the 7th of April and presented by him didn't arise from Belgrade but was originated in the German Ministry of Defence. The Horseshoe Plan, and this was crucial for me, that was also my story, the one I published which is probably available to you, was that a head of department Colonel von Kajdacsy, head of department,

I spoke to Colonel von Kajdacsy. However, before that, several people of the German Defence Ministry had said he had invented the name Horseshoe Plan and were even told he had created it. What this means is that apparently on instructions of the minister himself, he did what he did. And by the way, the German intelligence service, BND, on 5 April 2000 -- sorry, I have to correct myself; 1999, actually warned against using this plan. I spoke with Kajdacsy, and he indirectly confirmed in this talk

with him that what I said was true, and I also published that in my articles.

When I asked him whether he was the originator of said operation, Kajdacsy told me he did not speak Serbian nor did he speak Croat. You know that the question is, "Is the name for this Operation Potkova," Serbian, or "Potkovica," Croat. And I then said to him again, Mr. Kajdacsy, did you write this plan? Are you, as it were, the forger of Mr. Scharping's plan? And he said again he spoke neither Serb nor Croat. And I said, then I will write what my sources have confirmed, namely that you came up with this. And then he said with a sigh, "Well, then you need to do what your conscience tells you." The name was published at the press conference and used throughout by Minister Scharping as "potkova." **"Potkova" is a Croat name for a horseshoe whereas the Serbian name would be "potkovica."**

I spoke with General Naumann about this. I quoted him in one of my articles, too, and he said unequivocally that NATO had not taken this material when Minister Scharping had offered it, because A, no second NATO partner was willing to confirm its validity; and B, because I quote General Naumann, it was more analytical material, in inverted commas. I also had a telephone interview with Ms. Del Ponte's predecessor in office, Louise Arbour, also gave material to Minister Scharping and I published a quote where Louise Arbour told me that she would have taken this had it been a proper operation with a cover page and a stamp and a signature. That would have been a smoking gun for her. But as it was, **it was nothing but a nice bedtime story.**

Dr Ball, it seems, had fallen for the rather pathetic Operation Horsemanure hoax.

(page 10266 Milutinovic)

Question: Okay. Then let's look at a transcript of a radio programme that you had. In July 9th, 1999. It was radio talk, "Talk of the Nations Science." Remember? Iris Flatow was the moderator. And you appeared on that program?

Dr Ball: I did, and we talked about Operation Horseshoe.

Question: Well, that's what I'm trying to get at, sir. You haven't mentioned that yet. And let me go on, please. And in that programme after you had said that you hadn't yet concluded the results of your statistical analysis, you said: "**What's interesting is that the Yugoslav defence establishment made public a plan for ethnic cleansing. Well, it wasn't a plan about ethnic cleansing. It was a plan, a strategic plan, to attack the KLA, the Kosovo Liberation Army, back in October/November of last year, the defence establishment was very clear that this was what they were going to do. It was called Operation Horseshoe.**"

This failure to see through the weak as tea fraud of Operation Horseshoe probably explains why Dr Ball testified

Question: If you could follow long: " (page 10270) **The findings in this report suggest that the Yugoslav military, police, and paramilitary apparatus may have used the bombing as a broad political excuse to conduct a previously prepared operation to evict ethnic Albanians.**" That's what you said, correct?

Dr Ball: That's correct.

Question: And that previously prepared operation, was that the erroneous and non-existent horseshoe plan that you have previously testified about.

Oh dear. A certain amount of naiveté

x) Ceasefire? What Ceasefire?

(Page 10257 Milutinovic)

Doctor Ball: In the case alluded to here, in section 5.4, we note that on the evening of the 6th of April the Yugoslav government declared a unilateral cease-fire in recognition of Orthodox Easter. This cease-fire was not respected by NATO or the KLA. They increased their operations, doubling and tripling them, according to the databases published by the Yugoslav government in particular, although with -- supplemented by other sources as we discussed in our appendices. What is interesting to us and what I've mentioned several times earlier this morning is that during the period of the cease-fire, from the early morning hours

of the 7th of April until Saturday, the 10th, killing and migration in most regions declines to its lowest point throughout the conflict to that point. It declines in many places to 0, in other places to near 0. So the Yugoslav government declares a cease-fire, killing and migration go down towards 0, NATO and KLA activity go up, doubling and tripling, but no activity -- no more killing and migration. On Saturday, the Yugoslav government announces that because NATO and the KLA are ignoring the cease-fire, they will resume operations. They resume operations and we observe that killing and migration begin to increase again. Not immediately to a peak. The peak occurs a few days later sometime between the 13th and the 18th depending on which of the series we observe, but it does begin increasing on Saturday the 10th. This is a coincidence. This is not proof that the Yugoslav government was the agent of killing and migration, but it is, I believe, an important statistical coincidence which could be useful in the balance of evidence.

(Page 10302 Milutinovic)

Question: You said, "Coincidentally enough, the number of refugees and the number of people being killed falls to zero, bang. Right to zero like the door was closed."

And I simply suggest to you, Dr. Ball, that at least another reasonable explanation for the decline in refugee flow was just that, the border was closed?

Dr Ball: Mm-hmm.

Question: Thank you, sir.

Dr Ball didn't like the UNHCR data.

(Page 10242 Milutinovic)

Dr Ball: "I think one would be hard-pressed to put more credibility in data that was collected or was reported from farther away from the conflict when it shows so many anomalies as the Geneva data does, relative to the data that was captured at the border or very near to it, as was the case with the Albanian guards' data, the UNHCR Kukes data and the EMG government, not Albanian government data."

(Page 10367 Milutinovic)

Question: Some time ago in answer to my last question about media, you said something about newspapers and you used the term -- you used the phrase: It seems highly unlikely to me. It was back a page or so ago when you were answering that question about the possible effect of newspaper coverage. The term "highly unlikely" is not a statistical term of art, is it?

(Page 10372 Milutinovic)

Question: Very well. I wanted to tell you something else. In your report you mentioned a unilateral cease-fire that was put in force by Yugoslavia on the 6th of April, 1999. You said that the cease-fire was not respected by either NATO or the KLA. It was Easter, it was Orthodox Easter. Quite the contrary, they stepped-up their activity. It can be read from your report that the Serbs did not fire their weapons at that time. What I will put to you is that they did because we refused to cease protecting the Serbs because someone was opening fire at them. How would this fit in with your report? If someone's opening fire at the Army of Yugoslavia, of

course they're not going to just sit around and wait.

Dr Ball: Nowhere in my report do I say that the Serbs did not fire their weapons. Whether or not that cease-fire was respected on the ground, I don't know

(Page 25958 Milutinovic)

Dr Fruits: As I mention in my report, I don't recall which, I think the more obvious reason why the number of -- number of people crossing the Morina border declined was simply because the border was closed. Also regarding the number of deaths declining, I believe it's on page 28 of my report, I use some of Dr. Ball data to show that, in fact, deaths were higher on the 6th and 7th than they were in the two-day period prior or the two-day period after. So the conclusion that deaths actually were lower on April 6th and 7th is simply not true.

Question: Dr. Ball's testimony (showed) that during the cease-fire the number of deaths "falls towards 0 or towards 0."

Dr Fruits: My conclusion is that the number of deaths do not fall; in fact, they increase over the period April 6th and 7th. Let me make that more clear. On April 6th and 7th, the deaths are actually higher than in the two days before or the two days after.

y) Doctor Vaugelove

(Page 2199) Judge Robinson: The next matter that you can help me with is this: I can understand the utility of your method in analysing broad patterns and **broad trends**, but in this case, **we are concerned with specific allegations that relate to particular geographical areas**. There's an allegation that there was a movement of people from A to B. This was caused by a particular phenomenon. There is evidence that, prior to the movement, there was KLA activity, there was NATO activity, and there was Serb activity. The task which the Trial Chamber has is to determine what was the cause in relation to the particular

charges in the indictment. I'm not sure I understand how your statistical method, which I think is very useful for broad patterns of conduct, is particularly helpful in relation to that specific issue which is particular and specific to a particular area and in relation to which there may or may not be evidence.

(Page 10413 Milutinovic)

Question: And you say this: "We know something," talking about what went on at these other border points, "we know something from the counts kept by the Albanian border guards at two other primary crossing points. We know something -- although, in my opinion, with quite a bit of error, we know something about refugees who crossed into Macedonia, and we do know something about refugees who crossed into Bosnia, and we know a little bit with less certainty about those who crossed into Montenegro." So what you then finally say in Milosevic that you can -- you think you can take it from assumption to reasonable estimate. Here are your exact words: "So knowing those other things, I think we can narrow the claim I've made from an assumption to, I think, a reasonable estimate." Now, those are your words. I didn't make up that word "assumption." You used it in Milosevic.

(Page 10344 Milutinovic)

Question: Dr. Ball, with, you know, huge respect for your expertise and even for your political views, it seems to me that your answer to the Judge was just riddled with assumptions that may or may not be correct. Let me just give you an example. You said you would expect to see continuing migration if there were continuing bombing or activity, I think is what you said. And that assumes that if a village is completely emptied because of KLA activity or bombing, that you should see people leaving that village later. Well, they can't if they're not there, so that assumption, it seems to me, holds no water if that's the assumption you're making

(Page 10409 Milutinovic)

Question: Well, in Milosevic you went on to say this about that: "All the other evidence available from other border points in Albania as well as the border points in Macedonia and data from Bosnia suggest," emphasise 'suggest,' "that their movement patterns and departure patterns were substantially similar," emphasis 'substantially similar,' "to the patterns found among refugees who entered Albania." Now, first of all, the terms "suggest" and "substantially similar" are not terms of art in your field, are they?

z) And Last And Definitely Least

(Page 10263 Milutinovic)

Dr Ball: Because when we realised that NATO was going to intervene, we had to radically restructure what it was we were doing. We weren't going to be interviewing people in camps, because the camps were going to be empty.

(Page 27346 Milutinovic)

Defence Counsel: Now, the Prosecution's case is dependent upon the assumption that persons did not leave Kosovo and Metohija for reasons other than criminal reasons, that is to say the criminal plans or actions of Yugoslav and Serbian forces. This is the basis of the expert report by Mr. Patrick Ball and until recently this was the mantra of the Prosecution. But in the closing statements it is not any longer said that the crimes themselves made them leave but simply that the "actions" of forces was "mainly" the reasons persons left.