

1 Tuesday, 10 February 2026

2 [Open session]

3 [Closing Statements]

4 [The accused entered the courtroom]

5 --- Upon commencing at 9.00 a.m.

6 PRESIDING JUDGE SMITH: Mr. Court Officer, please call the case.

7 THE COURT OFFICER: Good morning, Your Honours. This is the  
8 file number KSC-BC-2020-06, The Specialist Prosecutor versus  
9 Hashim Thaci, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi. Thank  
10 you, Your Honours.

11 PRESIDING JUDGE SMITH: Good morning and welcome, everyone. I  
12 note that the accused are all present in court.

13 Today we will continue hearing the closing statements in this  
14 case. First, we will continue with the Specialist Prosecutor's  
15 Office closing statements, which should be finished at about the  
16 lunch break. After lunch, we will hear from Victims' Counsel. We  
17 will follow the agenda set out in the Panel's order on the closing  
18 statement, which is filing F03639.

19 As a reminder, today's hearing is scheduled to conclude at 1645,  
20 and breaks are scheduled for half an hour at 10.30, resuming at  
21 11.00; one and a half hours for lunch at 12.00, resuming at 1.30; and  
22 15 minutes at 1500, resuming at 1515.

23 Lastly, since the closing statements are being interpreted, the  
24 Panel reminds the parties and participants to speak at a slow pace to  
25 allow for the interpreters to catch up.

1           This concludes the remarks from the Panel. We will continue  
2 with the closing statements of the Specialist Prosecutor's Office.

3           SPO, you've been allocated eight hours and have two and a half  
4 hours left, which means you are scheduled to finish by noon today.  
5 Please proceed.

6           MR. HALLING: Thank you. Good morning, Your Honours.

7           We've been talking about individual criminal responsibility  
8 already. The accused's contributions have to be understood through  
9 their powerful collective role as key members of the General Staff.  
10 They combined their individual statures into something that was even  
11 greater than the sum of its parts. And in those roles, they were  
12 able to disseminate the common criminal purpose, appoint JCE members  
13 and tools, coordinate their efforts, and deny crimes in an effort to  
14 blunt the international community's response.

15           The common purpose submissions we've made already demonstrate  
16 the intent and knowledge of the accused. The crimes they are a part  
17 of are important JCE contributions. And the structures through which  
18 they operate evince each's effective control. What has been said to  
19 now goes to their individual responsibility, too.

20           I'm not going to rehash our briefs or the earlier speakers.  
21 What follows is best understood as remaining aspects of the evidence  
22 concerning the accused's responsibility. I'm going to focus on  
23 select evidence concerning each accused and the arguments made in the  
24 Defence final briefs. Because the same conduct establishing  
25 responsibility under JCE I or JCE III also alternatively establishes

1 their responsibility under aiding and abetting and superior  
2 responsibility, my presentation will address evidence submissions  
3 concerning those alternative modes of liability as well.

4 Let's start with Hashim Thaci.

5 Unless otherwise indicated, all slides can be publicly  
6 broadcast.

7 The Thaci Defence argues in paragraphs 124 to 127 of its brief  
8 that the SPO has failed to prove beyond reasonable doubt that Thaci  
9 was a founding member of the KLA or a member of the GS, or  
10 Central Staff, prior to 1998.

11 Mr. Tieger touched upon aspects of this already, but the Thaci  
12 Defence arguments do not withstand scrutiny. The Thaci Defence is  
13 misleading in suggesting that Azem Sylja, a named JCE member who would  
14 be in a position to know the initial membership of the General Staff,  
15 was inconsistent on Hashim Thaci's credentials as a KLA founder. In  
16 P847, Sylja is talking about the composition of the first KLA  
17 General Staff. He's identifying Thaci as well as Kadri Veseli and  
18 Rexhep Selimi as founding members.

19 In P1875, Sylja's talking about something different; namely, what  
20 he considers a founding meeting of the KLA in December 1993. He  
21 deliberately does not name all the attendees at that meeting nor is  
22 he claiming to be fully listing the KLA's founders. Other evidence,  
23 like P186, shows that the KLA's founding was understood at an earlier  
24 moment in April 1993, in a different meeting not attended by  
25 Azem Sylja, but was attended by Adem Jashari, Hashim Thaci,

1 Kadri Veseli, Jakup Krasniqi, and others.

2 The evidence is only showing differences in classifying the  
3 founding moment of the KLA not a discrepancy as to whether Thaci was  
4 one of its founders. As mentioned by Mr. Tieger, when Thaci was  
5 asked by the SPO when he became a member of the General Staff, his  
6 response was that it was well known that he's one of the KLA's  
7 founders.

8 The "first-hand" evidence the Thaci Defence relies on at  
9 paragraph 127 to show that Hashim Thaci only joined the General Staff  
10 in November 1998 is from Sokol Bashota and him alone. And his  
11 testimony is contradicted by a wall of evidence, including  
12 Hashim Thaci's description of the inner workings of the KLA  
13 General Staff before then in P771 and the additional evidence cited  
14 in paragraphs 101 and 482 of our brief. It's not even clear that the  
15 Thaci Defence itself believes Bashota on this point. As they argued  
16 in their opening statement that Thaci was invited to join this  
17 General Staff "by spring 1998" before describing his logistics and  
18 media responsibilities; and that's at T2303 to 304.

19 Sokol Bashota's evidence is incapable of belief on this  
20 particular point, underscoring the caution required when evaluating  
21 his credibility on matters which feed into his biases in favour of  
22 the accused.

23 From Thaci's positions within the KLA, he contributed to the  
24 crimes charged in the myriad ways spelled out across paragraphs 482  
25 to 507 of our brief. They are not mere contributions to the KLA's

1 broader political goals or neutral contributions as discussed across  
2 paragraphs 112 to 118 of the Thaci brief. The Thaci Defence places  
3 particular reliance on the ICC's Mbarushimana case, quoting that  
4 case's Confirmation Decision at length as an example of how  
5 contributions to a broader political effort were found not to be  
6 contributions to crimes.

7 That case does not aid in understanding the issues currently  
8 before this Panel. The ICC doesn't use joint criminal enterprise.  
9 Joint commission there is defined as co-perpetration or indirect  
10 co-perpetration, and they have different elements to JCE. The Thaci  
11 Defence says that Mbarushimana was charged with indirect  
12 co-perception under Article 25(3)(d) of the ICC Statute. That's not  
13 true. Article 25 (3)(d) is not the indirect co-perpetration  
14 provision at the ICC. What Mbarushimana was actually charged with is  
15 a form of residual accessorial liability which has no clear  
16 equivalent at this Court. The ICC's more recent case law does not  
17 even look at the significance of contributions anymore in Article  
18 25(3)(d) liability as can be seen in paragraphs 1242 to 1244 of the  
19 Al Hassan trial judgment.

20 A more apt citation in the present context would be to  
21 paragraph 1876 of the Case 002/02 appeals judgment before the ECCC,  
22 which does concern JCE and considers that even activities that are on  
23 their face unrelated to the commission of crimes may be taken into  
24 account when determining a significant contribution.

25 More importantly, Hashim Thaci is a direct proponent of the

1 common criminal purpose. You can see this particularly clearly in  
2 how he talks about the LDK, one of the groups targeted by the  
3 opponent policy.

4 Here's a Liria regional staff report discussed across T7799 to  
5 7800. Thaci's intervention couldn't be clearer. He declares that  
6 those "who do not recognise the General Staff are criminals and we  
7 will not leave the weapons in the hands of the criminals, we shall  
8 fight against them."

9 Here P486, where, in a heated moment with Tahir Zmaj, Thaci  
10 confronts him and says, "I will fight you Tahir Zmaj like the  
11 Serbians, you and your units!"

12 And that is the same message you see shortly afterwards in  
13 Communiqué No. 53, where on 18 September 1998 the General Staff  
14 declared that:

15 "Only in Sferke, Prapaqan and Baran, where the deserters, former  
16 ... and UDB members, currently 'institutionalists' such as  
17 Tahir Zmaj had influence, the enemy did not encounter resistance,  
18 despite the fact that these villages were not spared from being burnt  
19 down and destroyed. These people will one day be held accountable  
20 for the damages they are causing to the people and the homeland."

21 That is intentional staining of those who stand in the way of  
22 the KLA's control over Kosovo. Thaci's words to Zmaj become  
23 General Staff words in a communiqué, and then become reality when the  
24 Qirez delegation is detained two days later, culminating with Thaci  
25 threatening W03825 that "we could kill you in Pristina."

1 Describing Thaci's contributions as neutral is farcical on the  
2 admitted evidence. It's not a neutral contribution to say these  
3 things from someone in Thaci's position. It's not a neutral  
4 contribution to interrogate and threaten detained, beaten people at  
5 Qirez.

6 You can also a clear connection between Thaci's words, the  
7 General Staff's words, and the charged crimes with his first public  
8 appearance at P1256. Nuhi Bytyqi testified that he filmed  
9 Hashim Thaci saying this on 30 October 1998, as he discussed across  
10 T16722 to 16728.

11 [Video-clip played]

12 MR. HALLING: Special war. Autonomous elements. First  
13 appearance.

14 The Thaci Defence argues in paragraphs 244 to 247 of its brief  
15 that this speech shouldn't be relied upon for the proposition that  
16 Hashim Thaci publicly made such attacks because Bytyqi removed the  
17 reference to special war and autonomous elements before it was  
18 broadcast in his documentary. But that argument misapprehends the  
19 true significance of this piece of evidence.

20 First, that Thaci said these words at all is meaningful. They  
21 are a personal recitation of core tenets of the opponent policy, said  
22 in the expectation they would be publicly broadcast. Nuhi Bytyqi  
23 admitted when testifying that he cut them deliberately, citing the  
24 need for the KLA to enjoy greater support from all strata. The  
25 witness knew the inflammatory nature of these words, which is all the

1 more remarkable when you consider that Nuhi Bytyqi encouraged Thaci  
2 to make his original speech more diplomatic, and he confirmed when  
3 testifying that this exhibit is the more diplomatic version. The  
4 original was even worse.

5 As the witness described in page 381 of P1264\_ET, when seeing  
6 the draft before this one:

7 "When I read the first sentence I did not like it, because at  
8 the start of his public appearance he was using extreme expressions;  
9 in a way he was calling traitors all those who had not committed  
10 themselves to the KLA and those who did not support it."

11 But second, and more fundamentally, Thaci's message against  
12 special warfare and autonomous elements is publicised by the  
13 General Staff in other guises. To focus on just one example, on  
14 1 November 1998, the military police directorate of the GS issues its  
15 Press Release Number 4, discussed many times in the trial and seen  
16 here. It's the press release detailing the arrest of Cen Desku and  
17 Jakup Kastrati who were accused of cooperating with executed  
18 collaborators Ramiz Hoxha and Selman Binici. And Mr. Tieger  
19 mentioned this earlier, but the military police directorate justified  
20 Desku and Kastrati's arrest on the grounds that they were in  
21 continuous coordination with Agim Krasniqi, a member of the LDK  
22 presidency, who is known to the KLA intelligence service as an  
23 inspirer of the special war against the KLA and an initiator of a  
24 kind of autonomous police of Kosovo. Special war. Autonomists.  
25 Again. This is two days after Thaci says the same things on tape now

1 in direct relation to crimes committed pursuant to the opponent  
2 policy.

3 Thaci's messaging is a contribution to the crimes charged, and  
4 his first appearance is part of the evidence establishing this.

5 These efforts must also be understood in tandem with Thaci's  
6 denial of crimes, such as the incident referred to by Ms. Lawson  
7 yesterday of Thaci lying to Frederick Abraham's face about the two  
8 detained, mistreated Serbian journalists having received due process.

9 Our brief has more on that incident at paragraphs 950 to 955,  
10 but the way that Hashim Thaci attempts to manipulate in that moment  
11 shows why caution is required in accepting international witness  
12 evidence about Thaci's role or command and control in the KLA PGoK  
13 more generally. The internationals didn't know he could demand two  
14 prisoners and take them from Drenoc. They didn't know that he  
15 re-installed Ramush Haradinaj as Dukagjin zone commander over  
16 Tahir Zemaj. They didn't know he could make military appointments,  
17 like this one of W04744.

18 [Video-clip played]

19 "On that day, on 6 October 1998, he communicated my appointment  
20 to me. As I explained, the appointments of commanders at brigade  
21 level were carried out by the General Staff and by the chief of  
22 staff, Bislime Zyrapi. So Hashim Thaci communicated the appointment  
23 to me and said that I had the right to form the brigade without the  
24 need for verification for the commanding staff."

25 MR. HALLING: The witness then clarified what that last point

1 meant.

2 [Video-clip played]

3 "One last question on this. Hashim Thaci also said you had the  
4 right to form the brigade without the need for verification for the  
5 commanding staff. I was just wondering if you could explain further  
6 what that means.

7 "We were in a war situation and for -- every formality, can this  
8 be done or that be done, made our work more difficult. So my  
9 conviction is that on this occasion Hashim Thaci fully trusted me and  
10 he wanted to put the most merited persons on a commanding position."

11 MR. HALLING: When Thaci is asked about this appointment by the  
12 SPO, he lies again, denying that it happened, and going so far as to  
13 claim he doesn't even know who W04744 is. And that's at pages 4 to 5  
14 of P739.5\_ET.

15 What James Rubin, Wesley Clark, and some of the other  
16 internationals don't understand is that Thaci's willingness to shroud  
17 what was happening affected their ability to truly understand how the  
18 KLA works. Rubin and Clark in particular showed themselves to have  
19 no interest in truly understanding, trusting their work was on the  
20 right side of history without grappling with what this Panel is now  
21 asked to decide.

22 Their conclusions were also not indexed to the international  
23 legal standard of effective control. The KLA's identified  
24 commander-in-chief may not have been able to exercise command like  
25 the armies of the United States or NATO, but he also doesn't need to.

1 Paragraph 613 of our brief goes through a variety of hierarchies  
2 which are found to be sufficient for superior responsibility under  
3 customary international law, citing convictions for a provincial  
4 administrator, a civilian warden of a prison camp with no formal  
5 appointment, a media executive, and the director of a tea factory.  
6 Subsequent paragraphs of our brief go through the indicators of  
7 effective control, citing and cross-referencing to the evidence that  
8 shows a sufficiently working hierarchy to meet the legal standard for  
9 each accused.

10 The Thaci Defence relies at length on the impressions of its  
11 witnesses. They lacked basic information upon which to give them,  
12 and their conclusions go to ultimate issues. Those opinions should  
13 be given no weight accordingly.

14 Finally, at paragraph 621 of their brief, the Thaci Defence  
15 claims that Mr. Thaci did not have any obligation to refer crimes to  
16 internationals of which they were already aware.

17 Even putting aside the concession in there that that means  
18 internationals can be competent authorities, the submission itself is  
19 groundless. Referring to the competent authorities is a necessary  
20 and reasonable measure when it is capable of contributing to  
21 investigating or punishing the crimes in the circumstances which  
22 prevailed at the time. And that is from paragraph 1933 of the  
23 Popovic et al. appeals judgment. Such a referral would undoubtedly  
24 so contribute. US KFOR officer Steven Russell testified at T18772 to  
25 18773 that they did try to investigate crimes committed prior to

1 KFOR's arrival when they received relevant information.

2 The accused had an obligation to refer the crimes of their  
3 subordinates to any reasonably available competent authority.  
4 Competent authorities like KFOR, UNMIK, and the ICTY were all  
5 available and referral would evidently been of value. That some  
6 information on some charged crimes may be broadly known cannot excuse  
7 the commander's personal responsibility to refer crimes to the  
8 competent authorities.

9 Now Kadri Veseli, who had the nickname Luli. Before getting to  
10 this accused, we note at the outset that caution is necessary when  
11 evaluating the arguments of the Veseli Defence, and, frankly, all the  
12 Defence teams, with what they say about untested evidence.

13 Rule 140(4) (a) of the Rules governs this notion at this Court.  
14 It provides that:

15 "A conviction may not be based solely or to a decisive extent  
16 on:

17 "(a) the statement of a witness whom the Defence had no  
18 opportunity to examine."

19 Rule 139(3) is equally clear: a Panel shall not impose  
20 corroboration requirements subject to those in Rule 140(4).

21 But the Veseli Defence argues across paragraphs 37 to 42 of its  
22 brief that a conviction cannot be based solely or decisively on  
23 hearsay, which is a much broader category of evidence than statements  
24 of witnesses. A "witness statement" is a term of art in the  
25 statutory scheme that has been discussed too often in this trial.

1 They have special disclosure obligations, special admissibility  
2 requirements, and special considerations during deliberations.

3 When a witness comes and testifies about hearsay from others,  
4 this rule does not generally apply because those aren't witness  
5 statements and the reliability of the hearsay can be tested. The  
6 Veseli Defence argues against this, with reliance on paragraph 69 of  
7 the Haraqija and Morina appeals judgment. Just seven paragraphs  
8 prior to the cited portion, ICTY appeals chamber considered at  
9 paragraph 62 that:

10 "... not all evidence characterised as hearsay can be considered  
11 untested or unreliable. Indeed, as a matter of law, it is  
12 permissible to base a conviction on hearsay or circumstantial  
13 evidence, but caution is warranted in such circumstances."

14 That is consistent with Rule 139(3) and the Appeals Panel's  
15 findings at paragraphs 329 and 330 of the Shala appeals judgment.

16 Hearsay provided by a testifying witness does not as such fall  
17 under Rule 140(4)(a). Neither does evidence tabled through the bar  
18 table. Neither do admissions of an accused relied upon against that  
19 accused. And neither, for that matter, do adjudicated facts. Those  
20 can be relied upon in a sole and decisive manner as held specifically  
21 in paragraph 452 of the Karadzic appeal judgment.

22 Our case does not require reliance to a sole or decisive extent  
23 on any statement of a witness who the accused had no opportunity to  
24 examine. The Defence teams are overextending this notion beyond  
25 previous cases and the rules of the KSC.

1           As with all the accused, many aspects of Kadri Veseli's  
2 individual responsibility have been discussed already. His  
3 intelligence responsibilities, what intelligence members do during  
4 the war under his authority, and his direct involvement in crimes.  
5 We've made reference to this quote of Mr. Veseli's before as well. I  
6 want to focus on a different aspect of it:

7           "In fact, we have had our responsibilities during the entire  
8 wartime, in the period 92-98. We had our General Staff and the  
9 Operational Staff of the UCK. We did not have separate duties, but  
10 all did whatever we could. We were engaged in leadership, logistics  
11 and intelligence, because the circumstances were such."

12           As noted yesterday by Mr. Tieger, that's as clear an  
13 acknowledgement of collective decision-making as you'll find. But  
14 let's now focus on the timing in these remarks. Veseli is talking  
15 about engaging in leadership, logistics, and intelligence from all  
16 the way back in 1992. Even before the 1993 KLA founding meetings  
17 discussed previously, Veseli is engaged in leadership and  
18 intelligence.

19           The Veseli Defence argues at paragraphs 16 and 116 to 117 of  
20 their brief that Kadri Veseli was never in the LPK, but that doesn't  
21 square with the evidence. In addition to those confirming Veseli's  
22 LPK membership, like W04748 at T3512, Xhavit Haliti at page 32 of  
23 P1857\_ET, and Rexhep Selimi, page 3 of P761.7\_ET, you can see here an  
24 LPK history document prepared by Emrush Xhemajli, who was the former  
25 general secretary of the LPK and was positioned to know how it

1 worked. Xhemajli identifies Kadri Veseli, Thaci, Fatmir Limaj,  
2 Shukri Buja, and others, as part of a list of persons recognised by  
3 mid-1998 as being LPK experienced activists in the diaspora.

4 So what are the LPK's methods on intelligence that Veseli was  
5 engaging in from 1992? In the words of W04748 at T4177:

6 "That the operational method of the People's Movement from  
7 Kosovo at the time, those who took over the KLA, their method was  
8 that before removing someone from the scene, they would -- they would  
9 slander them and accuse them of being a collaborator, and so on and  
10 so forth."

11 The witness added that "those who did not obey the People's  
12 Movement of Kosovo people suffered consequences, and that's what it  
13 was."

14 In P2863\_ET, Emrush Xhemajli explained that the LPK also made a  
15 four-volume work on its strategy and tactics. The cover pages of  
16 those four volumes known as *Liridon Kosova* are in evidence, and  
17 Volume 1 covers what LPK intelligence was supposed to do:

18 "At the appropriate time it should be made clear to the entire  
19 population that no one should think that the criminals will be spared  
20 or that they would remain undiscovered."

21 "Investigations are also conducted into those elements suspected  
22 of having collaborated with the reaction, in order to discover the  
23 camouflaged traitors and spies."

24 "The clandestine squads can carry out various actions such as  
25 the killing of spies and traitors."

1           *Liridon Kosova* is just another example of the same methods you  
2 see in the communiqués, the materials on intelligence duties, like  
3 P74 and P890, and from witnesses like W04748, W04747, and what  
4 Sokol Bashota tells the ICTY.

5           The Veseli Defence focuses on a discrepancy in the 1993  
6 *Liridon Kosova* publication date, but that does not change  
7 Emrush Xhemajli's statements and evidence on the document's existence  
8 and the fact that its exposé on intelligence duties aligns with other  
9 evidence. The argument in footnote 215 of the Veseli brief that  
10 Emrush Xhemajli denied the authenticity of *Liridon Kosova* is improper  
11 and misleading because it is based exclusively on unadmitted  
12 evidence. The cited pages are to counsel's submissions, which are  
13 not evidence and cannot be relied upon.

14           Let's now look at Kadri Veseli's authority over JCE members and  
15 tools in the General Staff. Sabit Geci and his connection to Veseli  
16 has been addressed by previous speakers. Let's go back to an even  
17 earlier example where you can see Veseli's role and appointments.

18           P67 discusses Xheme Gashi and Mahir Hasani were installed by the  
19 General Staff as the commander and deputy commander at Drenoc in the  
20 spring of 1998. The Veseli Defence describes this report as "wholly  
21 unreliable" in paragraph 554 of its brief, despite them also saying  
22 it was "clearly a report from the Drenoc ... HQ" at T4054. In any  
23 event, this exhibit is corroborated by this authorisation placing  
24 Mahir Hasani at Drenoc, which was found at Jakup Krasniqi's  
25 residence.

1 W04753 confirmed Xheme Gashi and Mahir Hasani were in charge at  
2 Drenoc. And both W04748 and Bislim Zyrapi, who confirmed he's the  
3 person named "Bis" here, made it clear that it was the General Staff  
4 who put these two outsiders on top of the local Drenoc unit. And not  
5 just anyone in the General Staff, because you can see here at P607 a  
6 November 1999 interview from Bislim Zyrapi on these appointments:

7 "As I said, Mahir Hasani was with me, and he was listening  
8 attentively to my proposals, in which he was being given tasks to  
9 carry out later, because I had started the posting or appointments of  
10 the officers to various zones in Kosovo. After this I proposed to  
11 Hashim, Luli and Sokol that Mahir Hasani should remain as an officer  
12 in this zone."

13 Kadri Veseli and Hashim Thaci are personally involved in these  
14 commander appointments. Appointments for a Drenoc unit whose  
15 activities were so notorious that the Veseli Defence's former lead  
16 counsel referred to it as a torture operation at T11602 to 11603.  
17 Veseli's not out of the country here. He's not disconnected from  
18 these events. He's part of the decision installing the men who  
19 oversee the torture operation, and one which, as Mr. Tieger pointed  
20 out in documents he showed earlier, shows signs of Vrrin local staff  
21 intelligence cooperating with Drenoc military police.

22 What happened after these appointments can be found in the  
23 Drenoc and Malisheve sections of our final trial brief.

24 But I now want to turn to two Drenoc victims that were discussed  
25 earlier. But in order to be more specific now, we would request

1 private session for about five to ten minutes.

2 PRESIDING JUDGE SMITH: Without objection. Please, into private  
3 session.

4 [Private session]

5 [Private session text removed]

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24 [Open session]

25 THE COURT OFFICER: Your Honours, we're in public session.

1 Thank you.

2 PRESIDING JUDGE SMITH: Go ahead.

3 MR. HALLING: Thank you.

4 You can also see Kadri Veseli's direct involvement in the  
5 charged crimes with detainee Milan Mitrovic. Paragraphs 515 and 998  
6 of our brief discuss how Veseli personally transferred this  
7 mistreated person to Klecke. KVM report P4052 relays that KLA  
8 interlocutors confirmed to the KVM shortly after Mitrovic's capture  
9 that they were holding him and told the KVM they were awaiting  
10 direction from their higher command regarding his disposition. This  
11 report discusses how Mitrovic was detained in Klecke with the note of  
12 "Main HQ Luli" next to it.

13 Veseli gave a prior statement which put himself near the area of  
14 Klecke around when Mitrovic would have been transferred. That's P787  
15 paragraphs 4 to 7 and 13. A testifying witness gave evidence on  
16 being held in Klecke with Mitrovic, stating in pages 4 to 5 of P1134  
17 that he and his cellmates had been badly beaten. The Defence had an  
18 opportunity to examine that witness and Naser Krasniqi about  
19 Milan Mitrovic, and this is all before getting to the evidence of  
20 W04839, W04747, W03875, and the broader pattern of detentions in  
21 Klecke.

22 The Veseli Defence is simply wrong when asserting in  
23 paragraph 600 of its brief that W04839 is the sole or decisive  
24 evidence against Veseli for this incident.

25 And Kadri Veseli had still more information on crimes being

1 committed, even beyond those for which he was personally involved.

2 In July 1998, Mr. Tieger mentioned this yesterday, W02144 met  
3 with Kadri Veseli and Hashim Thaci. The witness warned about alleged  
4 KLA abductions and detentions from ICRC contacts in Malisheve, only  
5 for Thaci to deflect and say that the KLA was a regular army  
6 respecting the Geneva Conventions.

7 I want to focus now -- here's exactly what that witness said:

8 "I do not remember specifically what I said to Thaci, but I  
9 would not have raised specific allegations about particular crimes  
10 because I did not have evidence, and I did not trust the propaganda  
11 from either side. However, I would have raised the issue in general  
12 terms of these widely reported allegations of detentions and  
13 abductions ... in the context of ICRC access."

14 Veseli is in this conversation. The Veseli Defence challenges  
15 the specificity of the information provided at paragraph 641 of its  
16 brief, but the witness is raising the issue of KLA detentions and  
17 abductions that were widely reported at the time and raising them  
18 with a view towards ICRC access for the detainees. As the ICTY  
19 appeals chamber ruled in the Hadzihasanovic and Kubura appeals  
20 judgment at paragraph 28, the information putting the accused on  
21 notice need only be sufficiently alarming to justify further inquiry.  
22 It need not "contain [extensive or] specific details about the  
23 unlawful acts committed or about to be committed."

24 Kadri Veseli's failure to prevent and punish the crimes in his  
25 General Staff intelligence roles is both a contribution to the

1 charged JCE and a failure of his duties as a responsible superior.  
2 And his absences from Kosovo don't change that. Veseli could still  
3 exercise his authority in Kosovo whenever he wanted.

4 In P1449, Pal Refsdal writes about a dinner he is having in  
5 Brussels with Thaci (Gjarpri) and Veseli (Luli) in January 1999.  
6 Refsdal recalls telling them about an upcoming visit of Norway's  
7 foreign minister Knut Vollebaek to Kosovo. Here's what Refsdal  
8 writes:

9 "'The two of you know that Norway chairs the OSCE this year,' I  
10 said in a didactic tone. 'Foreign Minister Vollebaek is in Albania  
11 today and is going to Kosovo in three days.'

12 "I stopped for two or three seconds, as if to emphasize an  
13 important point was coming.

14 "'Wouldn't it have been good for him to meet the KLA there?'

15 "They looked at each other and exchanged a few words in  
16 Albanian. Then Gjarpri got up, took out his mobile phone and turned  
17 his back to call.

18 "'He can go to Likofs. We will ensure that he gets to meet  
19 someone from the leadership,' he said and sat down at the table  
20 again."

21 We know this account is accurate because this meeting in Likoc  
22 with Vollebaek occurs. Refsdal mentions that the eight VJ soldiers  
23 incident discussed yesterday becomes an international issue between  
24 that meal and Vollebaek's visit. When Vollebaek gets there, the  
25 meeting that he has with the KLA is recorded in the initial pages of

1 P182, a notebook found in Rexhep Selimi's residence and which we'll  
2 turn to again a little bit later. The notes show a conversation with  
3 Vollebaek about the eight VJ soldiers.

4 Veseli and Thaci could communicate from abroad whenever they  
5 needed to. They were able to do it on a moment's notice from a  
6 restaurant. They maintain their control while abroad and their  
7 ability to prevent and punish but fail to do so.

8 Rexhep Selimi. You've already heard -- ah, would you like to  
9 take a break now?

10 PRESIDING JUDGE SMITH: We'll take our half hour break at this  
11 time. We'll reconvene at -- wait a second, I think I'm wrong.

12 MR. HALLING: It's 10.00 now, Your Honour. We had planned for a  
13 break at --

14 PRESIDING JUDGE SMITH: We're going to 10.30. I'm sorry, my  
15 mistake.

16 MR. HALLING: No problem.

17 PRESIDING JUDGE SMITH: Go ahead.

18 MR. HALLING: You've already heard from yesterday about  
19 Rexhep Selimi's work all over Kosovo to monitor, enforce, amongst  
20 other things, the opponent policy. But let's start now with  
21 Rexhep Selimi's statements and media interviews.

22 You rarely see a final brief more dismissive of what their own  
23 client said than that of the Selimi Defence. Rexhep Selimi was  
24 presenting a romanticised version of the KLA at paragraph 57. They  
25 speak of the exaggeration inherent in his public comments at

1 paragraph 327. His interview to *Zeri* in October 1999 is explained  
2 away at paragraph 59 as little more than uncorroborated hearsay.

3 What the Selimi Defence recognises is that the things  
4 Rexhep Selimi says about the KLA illustrate his ability to contribute  
5 to the crimes charged. While we recognise that Rexhep Selimi's  
6 statements to the SPO and the media must be assessed with caution,  
7 there's no ground to summarily dismiss them. On the contrary, a  
8 cautious assessment shows significant corroboration for numerous  
9 relevant points.

10 Let's start with a straightforward example. The September 1997  
11 coordinated police stations attack reflected in Communiqué 36. The  
12 Selimi Defence describes this communiqué as "a classic example of  
13 propaganda" at paragraph 304 of its brief. But why? Rexhep Selimi  
14 couldn't have been clearer that he planned this attack. As you can  
15 see here from his *Zeri* interview:

16 "... we decided to coordinate our attacks, as was the case with  
17 the 14 attacks on 11 September 1997. I was in charge of coordinating  
18 these attacks. I was in charge of this operation on Kosovo level,  
19 jointly with other comrades, but I played a leading role in the  
20 coordination of these attacks."

21 Sylejman Selimi confirmed his participation in this same attack  
22 at T24927 to 24928, and the Selimi Defence asked no questions of that  
23 witness. The only thing exaggerated here is the claim of  
24 exaggeration. Rexhep Selimi was put in charge of the biggest  
25 coordinated strike the KLA had ever attempted to that point, and

1     Communiqué 36 memorialised that attack. He's then the one speaking  
2     at the KLA's first public appearance later in 1997. The indicators  
3     from the pre-indictment timeframe confirm Selimi's importance.

4             Selimi is acting through these positions during the indictment  
5     timeframe to share the common criminal purpose and contribute to it.  
6     You can see this in his language even before you can see it in him  
7     beating a detainee with a plastic pipe and participating in other  
8     charged crimes.

9             We talked earlier about what Thaci said to the LDK and FARK in  
10    the Liria regional staff report. Selimi is also crystal clear about  
11    how he feels about this group, saying that "the GS has never  
12    recognised and shall never recognise this institutional line, the  
13    parliament, the President ..."

14            At T17261 to 17262 and T17289, an SPO witness recounts how  
15    Selimi told him, "I will kill with my own hand all those who are with  
16    Rugova."

17            When Ekrem Rexha, Commander Drini, reports to internationals  
18    that charged victim Ymer Xhafiqi had been taken, a KLA commander asks  
19    Rexhep Selimi about this man. Selimi's reaction was to say "he's not  
20    here," "we're not connected with this case," and then, "He will have  
21    to deal with me. I will personally kill Ekrem Rexha, Drini." And  
22    you can see this exchange at T8768 and page 18 of P492.3\_ET. These  
23    are the threats if you get in the way of Rexhep Selimi, if you oppose  
24    or expose what is going on.

25            That Selimi can exercise his effective control over people like

1 Drini can be seen in his direct involvement in removing him as the  
2 Pashtrik zone commander in early 1999. As we explain in  
3 paragraphs 405 and 407 of our brief, this decision was not made in a  
4 vacuum but against a backdrop of increasing General Staff distrust of  
5 professional soldiers like Drini and those with perceived LDK or FARK  
6 affiliations.

7 Bislim Zyrapi, W04769, W04737, and other witnesses implicate  
8 Rexhep Selimi in this decision. The Selimi Defence arguments in  
9 response across paragraphs 446 and 451 of their brief focus on  
10 technicalities and motives that change nothing about Selimi's  
11 involvement.

12 For example, the Selimi Defence tries to explain away  
13 Bislim Zyrapi's evidence on grounds that he did not know the exact  
14 procedure the personnel commission followed when replacing Drini.  
15 But we know that Rexhep Selimi is in that personnel commission by  
16 virtue of P1109. And Zyrapi is clear in the very transcript portion  
17 cited that he "was replaced because at the time there were consistent  
18 requests for Commander Drini to be removed from that position," with  
19 Zyrapi then adding that it was Rexhep Selimi who was consistently  
20 asking for the removal.

21 Selimi had the ability and information to address the behaviour  
22 of his subordinates, and he took steps to remove someone like  
23 Commander Drini but not someone like Sylejman Selimi, who was  
24 appointed by Rexhep Selimi and the General Staff only to perpetrate  
25 crimes with his men at Likoc. Rexhep Selimi does nothing to stop his

1 cousin Sylejman, and the evidence of Rexhep's presence amongst  
2 mistreated detainees at Likoc gave him more than enough notice to  
3 intervene. But Drini is removed and Sylejman becomes the general  
4 commander. The accountability mechanism is completely backwards.  
5 And that's by design.

6 Look at the so-called Krojmir case in early May 1999. The case  
7 concerned four KLA military police under Haxhi Shala who were  
8 involved in detentions and the mistreatment of persons. Haxhi Shala  
9 was himself directly involved in earlier charged crimes, as can be  
10 seen in paragraphs 800 to 801 of our brief. Selimi shows up at  
11 Klecke, asks for the file, and then releases the military police  
12 officers. W04743, intelligence member that he was, then reports  
13 these developments to Kadri Veseli. The evidence for these events is  
14 collected at paragraph 252 of our brief. But Rexhep Selimi being  
15 able to release KLA military police suspected of crimes illustrates  
16 both his authority in the KLA and his failure to exercise it to  
17 release wrongly detained victims or to punish the perpetrators and  
18 how that contributed to the JCE.

19 That Rexhep Selimi is much more than a man fighting in the war  
20 can even be seen by the way his subordinates complain about him.

21 Let's look at the notes of the meetings Selimi attended that the  
22 Defence attempts to brand as a coup by the zone commanders. If you  
23 look through these notes at P182, you see the zone commanders  
24 complaining about Sokol Bashota, not up to the job; and  
25 Jakup Krasniqi, respected but not the right person; how their deputy

1 commanders are a matter of concern to them; and how the General Staff  
2 has been ignoring their requests about this. We should have been  
3 consulted, they're complaining. And who's to blame for ignoring  
4 their requests and failing to consult them? Sami Lushtaku makes it  
5 clear:

6 "Rexhep Selimi, Hashim Thaci, and Kadri Veseli are responsible  
7 for this situation we are in at the moment."

8 Across these same pages, Sylejman Selimi is so upset about  
9 requests being ignored and not being consulted that he tells the  
10 General Staff that if something isn't done, he won't report, which  
11 only makes sense if he'd been reporting previously. These are the  
12 same notes where Sylejman Selimi adds that "Hashim, Kadri, and the  
13 '10' have contributed to the war from the beginning. The '10' is one  
14 of those who has risked [the] most during the war." The "10," as we  
15 know, is Rexhep Selimi.

16 The Selimi Defence argues in paragraphs 441 and 445 of its brief  
17 that no evidence of the authorship of this notebook was produced, and  
18 it was not shown to any witnesses during trial. Of the many  
19 witnesses who were shown this notebook during trial are W04739,  
20 W04744, W04752, W04401, and W04290.

21 With W02144, we also used this video of Rexhep Selimi writing  
22 his notes of the March 1999 Terstenik meeting in this same book. The  
23 relevant testimony is at T16094 to 16097. The rings of the notebook  
24 in the video match what can be seen in P182, and the content of the  
25 notes match the content of the meeting.

1 Rexhep Selimi's commitment to the joint criminal enterprise can  
2 finally be seen in his conduct as minister of public order. Selimi  
3 is confronted directly with illegal police activities by  
4 General Mike Jackson. In P2525, Jackson stresses in relation to  
5 KFOR's lawful authority that there can be no unlawful challenge to  
6 this lawful force. Mr. Selimi was asked to ensure that the PU's  
7 illegal activities ceased.

8 The Selimi Defence challenges at paragraphs 471 and 472 of its  
9 brief that that exhibit is an inaccurate record because no such  
10 police force was created. And that's false, contradicted by, amongst  
11 other evidence, this Ministry of Public Order communiqué setting out  
12 its police mandate in total contravention of UN Security Council  
13 Resolution 1244.

14 MPO police officer identification cards signed by Rexhep Selimi  
15 and seized from his residence, including this one, a former  
16 General Staff special unit commander Ajvaz Berisha. Other cards were  
17 also found at Selim's residence, like this one, a former Drenoc  
18 deputy military police commander Selim Krasniqi. The holders of  
19 these cards had permission to carry firearms and to identify persons  
20 and bring them to the police. Selimi, in his ICTY testimony and SPO  
21 interview, cited in footnote 2210 of our brief, confirmed that he and  
22 the MPO issued these cards and then, in August 1999, withdrew them as  
23 demanded by KFOR. But the MPO continued to issue them, as you can  
24 see here from a September 1999 ID card from Milaim Latifi, a former  
25 military policeman connected to the detention and mistreatment of

1     opponents.

2             And, of course, there's P1539, a report, seized once again from  
3     Rexhep Selimi's residence, from Karadak military police commander  
4     Fatmir Mehmeti, complaining about KFOR's raid of the charged Gjilan  
5     detention site, which Steven Russell testified, as including the  
6     discovery of a torture room.

7             Rexhep Selimi cannot escape the materials in his possession and  
8     the words he's spoken in the past, all of which show him to be a full  
9     and willing participant in the joint criminal enterprise.

10            And finally Jakup Krasniqi. Before we get to Krasniqi himself,  
11     we preliminarily wanted to address the submissions on aiding and  
12     abetting in Section 6 of the Krasniqi Defence brief. What is argued  
13     there is materially in error.

14            The Krasniqi Defence argues at paragraph 771 that the  
15     Prosecution cannot invoke the same alleged acts and omissions it  
16     relied on as significant contribution to an alleged JCE and treat  
17     them as proof of aiding and abetting. The authority for this  
18     proposition is paragraph 91 of the ICTY's Kvočka et al. appeals  
19     judgment, and the attempted reliance on that case shows that there's  
20     a need to distinguish alternative charging from alternative  
21     convictions.

22            All the modes of liability charged in this case - JCE I,  
23     JCE III, aiding and abetting, and superior responsibility - they're  
24     all charged in the alternative. We have asked for findings to be  
25     made on all of them, but only one can be the basis for a conviction

1 on the same set of facts. The error in Kvocka was essentially  
2 convicting for aiding and abetting a joint criminal enterprise, which  
3 was reversed on appeal on grounds that chambers cannot stack  
4 alternative modes of liability in this manner. But that's at the  
5 conviction stage.

6 In paragraphs 101 to 102 of the Naletilic and Martinovic appeals  
7 judgment, the ICTY appeals chamber considered a defence argument that  
8 alternative charging based on the same conduct was prejudicial. The  
9 court there held that alternative charging on the basis of the same  
10 conduct was generally permissible before finding it to be permissible  
11 in the circumstances of that case. We absolutely are allowed to  
12 invoke the same acts in both JCE and aiding and abetting context.  
13 That is basic alternative charging.

14 Your Honour, I'm at the point where I'm now going to go into a  
15 new section. We could take the break here and still comfortably  
16 finish by 12.00, but I'm in Your Honours' hands if you'd like me to  
17 continue to the break.

18 PRESIDING JUDGE SMITH: We'll break now so you don't have to  
19 interrupt your discussion.

20 We'll come back at ten minutes until the hour, ten till 11.00.

21 --- Recess taken at 10.20 a.m.

22 --- On resuming at 10.55 a.m.

23 PRESIDING JUDGE SMITH: All right. Mr. Halling, you may go  
24 ahead.

25 MR. HALLING: Thank you, Your Honour.

1           When it comes to the evidence against Jakup Krasniqi, the record  
2           is replete with his inflammatory statements, decisions he takes in  
3           his General Staff roles, and the abundant materials found at his  
4           house which confirm that what he was writing in his books and saying  
5           to the ICTY was what he was really doing.

6           And what he was really doing was far more than being just a  
7           spokesperson, going both to his JCE contributions and his effective  
8           control.

9           As mentioned earlier by Mr. Pace, Jakup Krasniqi admits in his  
10          book to writing those provisional regulations of the army, complete  
11          with the military police being tasked to be merciless to all those  
12          who oppose and sabotage the liberation war. As set out in  
13          paragraph 126 of our brief, different versions of these and other  
14          regulations were found at Krasniqi's house, just as you would expect  
15          from the drafter.

16          Krasniqi is involved with formal appointments, including his  
17          admission in P189\_ET.1 that Ahmet Isufi was appointed as the Karadak  
18          zone commander on his proposal. And the page for that is U015-8876.  
19          That's the same Ahmet Isufi who could only react in silence as  
20          US KFOR was showing him that torture room in Gjilan.

21          Krasniqi oversaw the KLA legal sector, conveying Sokol Dobruna's  
22          appointment, informing him about KLA prisons in Klecke, Kervasari,  
23          and Lladrovc, and later advising Dobruna about how to speak with  
24          internationals about five captured elderly Serb civilians. The  
25          evidence on these points can be found at paragraphs 250, 553, and 567

1 of our brief. But despite his authority over Dobruna, Krasniqi does  
2 nothing to ensure that the military court can proceed against any of  
3 the crimes charged.

4 The Krasniqi Defence attempts to explain away the decisions and  
5 orders Krasniqi makes by claiming them to be merely formalisations of  
6 earlier decisions or collective decisions that he was just conveying.  
7 But such arguments don't change that he is part of the group making  
8 the collective decisions. He's not just a messenger.

9 In paragraph 727 of their brief in particular, the Krasniqi  
10 Defence dismisses some of Krasniqi's signatures as "bureaucratic  
11 processing, not command authority." This is the same Defence team  
12 which at paragraph 120 relied on James Rubin's evidence that the  
13 General Staff was just a hut with a bunch of couches. So the  
14 General Staff is too primitive to do anything, except it also has a  
15 bureaucracy so entrenched that Jakup Krasniqi's signatures are needed  
16 to keep it moving.

17 The Krasniqi Defence also argues at length that the SPO has  
18 cherry-picked Krasniqi's statements, not providing necessary context  
19 to understanding them.

20 Some of this is just refusing to see reality. There is no  
21 contextual argument that can save Jakup Krasniqi when he says that,  
22 "Those we have kidnapped are either announced in a list or reported  
23 to be executed." There is to ambiguity in publicly warning  
24 collaborators that they would be killed if "they continue to follow  
25 the wrong path." At paragraph 419 of its brief, the Krasniqi Defence

1 resists any attempt to contextualise this statement as an admission  
2 of past killings. But the question that Krasniqi is actually  
3 answering about killing collaborators who continue on the wrong path  
4 is this: The KLA is frequently assessed as a terrorist movement.  
5 Why does it kill peaceful Albanians?

6 The Krasniqi Defence's interpretation of their client's remarks  
7 in the wake of the detention of the Savelic brothers in early 1999,  
8 discussed across paragraphs 384 to 388 of their brief, is an even  
9 more glaring example of not putting words into proper context. If  
10 you look at the entirety of Jakup Krasniqi's conversations about  
11 these detained brothers, Krasniqi's claim that they shouldn't have  
12 been abducted is made in the course of a longer dialogue about how to  
13 explain themselves to the international community.

14 Without broadcasting this slide, we can quote part of what was  
15 said in public session.

16 Krasniqi is talking with Sokol Bashota. Bashota asks:

17 "What should we do, what should I tell them? That they were  
18 civilians, or what?"

19 "J - Believe me, I don't know what you should tell them."

20 Bashota then comments on Drini informing the internationals  
21 about the woodcutters, saying that "Drini screwed us when he released  
22 one of them." It's only in response to that that Krasniqi says:

23 "They shouldn't have abducted them in the first place, but we'll  
24 see what we can do."

25 This isn't a lament on criminal acts. This is a discussion

1 about damage control after they got caught.

2 Context is also required at looking how Krasniqi defends the  
3 killing of Ramiz Hoxha and Selman Binici to the ICTY.

4 This and all remaining slides can be broadcast as public.

5 Here's what he says in relation to their execution:

6 "I think the word 'execution' here has been used in another  
7 sense of the word. They must have been killed according to the  
8 information I had, but they were -- they were giving information to  
9 the force -- to the Serbian forces in Malisheve."

10 These two men are linked to the detention of Cen Desku and  
11 Jakup Kastrati, as mentioned earlier in relation to P303. And what's  
12 on the screen now has to be read with what Krasniqi tells the ICTY  
13 about collaborators in P794, where he adds that:

14 "Such people, collaborators, who were numerous, they have  
15 received little punishment for what they were. They were in the  
16 service in the violent Serb regime. Such people did not deserve a  
17 better fate for serving the most criminal regime that has been known  
18 by the peoples of Europe after Second World War."

19 There is no evidence on the record that Hoxha and Binici were  
20 actually engaged in such activities. W03165 and W04278 couldn't have  
21 been clearer they were not. But they are killed all the same, with  
22 that execution warrant found next to their bodies mentioned earlier  
23 by Mr. Tieger.

24 The Krasniqi Defence argues at paragraph 53 of its brief that  
25 Jakup Krasniqi's ICTY evidence must be given reduced weight because

1 it was compelled. They neglect to mention that they made that same  
2 argument already when his ICTY statements were first tendered. In  
3 decision F01917, Your Honours rejected those arguments. There was  
4 then an interlocutory appeal, which found harmless errors before  
5 finding that no violation of self-incrimination was established and  
6 upholding the decision to admit the statements.

7 The Krasniqi Defence trying to argue that admissions of their  
8 client cannot be relied upon for fair trial rights reasons cannot be  
9 countenanced.

10 Krasniqi's assertions about his hierarchy, his authority before  
11 the ICTY, and in P189, they align with the evidence. Krasniqi had a  
12 handwritten annotation on a draft KLA statement at his house, said at  
13 P1447\_ET that "we should respect the hierarchy with fanaticism."  
14 P3765 are meeting notes found at Selimi's residence which record  
15 Krasniqi as saying that "nothing should be signed without the GS  
16 consent."

17 These aren't idle statements. Look at how he takes control of  
18 the eight VJ soldier negotiations. Look at his involvement in  
19 Blerim Kuqi's arrest.

20 The Krasniqi Defence attempts to resist the level of authority  
21 that their client had cannot withstand the totality of the evidence.  
22 The Krasniqi Defence argues at paragraph 719 of its brief, for  
23 instance, that "Mr. Krasniqi's presence at Flag Day on 28 November  
24 1998 does not suggest authority."

25 Let's pull up that video now.

1 [Video-clip played]

2 MR. HALLING: Now let's play Jakup Krasniqi's transparent  
3 reference to special warfare at that same event.

4 [Video-clip played]

5 MR. HALLING: The KLA hierarchy is hardly perfect, but the  
6 indicators of effective control are there for all to see.

7 Your Honours, the JCE charged in this case involved a  
8 combination of public dissemination, execution, in particular by  
9 intelligence and military police personnel, and policy monitoring and  
10 enforcement. Each of the accused assume portfolios in one or more of  
11 these areas in the GS and PGoK to advance their shared objectives.  
12 The decisions furthering the criminal purpose which fall under those  
13 portfolios are attributable to each of them. Some decisions they  
14 sign, some they admit to taking, but all are ratified by each accused  
15 through their continued participation in what is being done in their  
16 name. Communiqués calling for the killing of collaborators,  
17 regulations that codified merciless treatment, appointments of those  
18 advancing the criminal objectives to higher echelons of  
19 responsibility, decisions to take and execute Serb civilians. The  
20 list goes on.

21 It is in full conformity with individual criminal liability to  
22 hold individuals responsible for their part in collective structures  
23 which are abused to commit crimes. The accused created a collective  
24 decision-making structure, then spoke the words, made the  
25 appointments, participated in the crimes, and enabled the continued

1 pursuit of criminal means by which to seize control over Kosovo.  
2 This isn't guilt by association. This is guilt by purposive  
3 affiliation. Their acts and conduct establish that each made a  
4 significant contribution to the joint criminal enterprise charged.

5 Thank you, Your Honours. I will now turn to  
6 Specialist Prosecutor West for some concluding remarks.

7 PRESIDING JUDGE SMITH: Madam Prosecutor, you may proceed when  
8 ready.

9 MS. WEST: Good morning, Your Honours, Madam Registrar, everyone  
10 in and around the courtroom.

11 With over 5.000 exhibits admitted and over 28.000 pages of  
12 transcripts, the record of evidence in this case is voluminous. It  
13 includes the live testimony of 130-plus witnesses, taking place over  
14 the course of 227 trial days. Moreover, the Court will consider the  
15 written statements of an additional 130-plus witnesses.

16 It has been the privilege of my office to meet so many people  
17 who have lived through and witnessed the events described in this  
18 evidence. People, including the accused, who fought for their  
19 country, against great odds. People who contributed in other ways,  
20 providing local leadership or distributing aid. People who strove to  
21 support and protect families in times of war. And people who have  
22 had to live for more than 20 years with the consequences of crimes  
23 senselessly inflicted upon them, including the victims of crimes  
24 charged in this case.

25 It has been the work of my office to bring justice to them and

1 bring accountability to the individuals responsible.

2 These efforts and this prosecution concern the most sacrosanct  
3 principle of justice: the rule of law. Indeed, upholding the rule of  
4 law during the most dire of times: wartime.

5 Many years have now passed and justice has seemed unlikely to  
6 those who have lost their loved ones, but the rule of law comes in to  
7 ensure that no one is above the law. This means that even those who  
8 are most powerful are held to account. We request, based on the  
9 evidence presented, which establishes their responsibility beyond a  
10 reasonable doubt, that the accused be held to account and sentenced  
11 accordingly.

12 Your Honours, thank you for the opportunity to address you  
13 today. This concludes the SPO's closing statement.

14 [Trial Panel confers]

15 PRESIDING JUDGE SMITH: Mr. Laws, we could wait until after  
16 lunch if you wish, or we could start now. I'll leave that to you.

17 MR. LAWS: Well, I'm very happy to start now if I'm given the  
18 choice.

19 PRESIDING JUDGE SMITH: You're given the choice.

20 MR. LAWS: That's the choice I'll make then. Thank you.

21 PRESIDING JUDGE SMITH: Okay.

22 MR. LAWS: In Kosovo, in Serbia, and in the diaspora around the  
23 world, there are people waking up today with pain in their bodies,  
24 with sorrow and loss on their minds, and without people that they  
25 loved. They are victims of crimes committed by members of the KLA in

1 1998 and 1999. There are 155 of them admitted to participate as  
2 victims in this case: Albanians, Serbs, and Roma. And it is on them  
3 that I want to focus in the course of these submissions that I make  
4 on their behalf.

5 It is no exaggeration to say that these crimes have left deep  
6 and ugly scars right across the world. One could well say that it  
7 was inevitable that the KLA's struggle for independence would lead to  
8 people losing their lives. That is a consequence of conflict, and  
9 nothing that I say involves any judgment at all on the rights or  
10 wrongs of that struggle, nor any judgment on the KLA as a whole.  
11 Many victims supported the KLA, a number were members of the KLA.  
12 This is not about denigrating that institution. It is about the  
13 conduct of some of its members and the repercussions on the lives of  
14 those that I represent.

15 So it was inevitable that life would be lost. But was it  
16 inevitable that this struggle would lead to the cruelties and to the  
17 deaths that this Panel has heard so much about? Was it inevitable  
18 that a liberation war would involve so many people losing their  
19 liberty, or civilians from all communities being tortured and some  
20 losing their lives while in the custody of the KLA?

21 You will have to decide why it was that these things happened.  
22 Did these events have their origin in the minds of men intent on  
23 power, or did they occur spontaneously and in a manner simply beyond  
24 the control of the KLA's leadership? Of course, it's a decision of  
25 great importance to the victims. Many of them are baffled to this

1 day about what happened to them.

2 I've some slides which with the help of the Court Officer we're  
3 going to be looking at. And if we could have the second one, please.  
4 All of the slides in this presentation can be broadcast to the  
5 public.

6 Three victims separately asked effectively the same question in  
7 this courtroom in the course of their testimony: Why did this happen  
8 to me? You may think that it's a natural question for a victim to  
9 ask, and that many other victims will have asked themselves the same  
10 question in the years that have passed since they were harmed. Why  
11 don't I have a father, a brother, a husband, or a son anymore? Why  
12 must I live in a state of anxiety, startled by noises, troubled by  
13 bad dreams and flashbacks, beset by a general sense that the world is  
14 not as it should be? Why don't my arms or my legs or my hands or my  
15 eyes or my ears work as they should? Why can't I speak openly about  
16 what happened to me? Why did I have to move to a foreign country and  
17 leave everything I owned and cared for behind?

18 Well, why did it happen to them? It's a question that has an  
19 obvious relevance for every victim in this case, and it also goes to  
20 the very heart of the case. Why, in 1998 and 1999, in Kosovo, were  
21 people being taken away from their homes at gunpoint or stopped at a  
22 checkpoint or at an office or going about their daily business and  
23 being put in cars by armed men? Why were they being taken? And once  
24 taken, why were they beaten, tortured? Why were they held in filthy  
25 and degrading conditions? Why would so many of them not see their

1 homes or those that they loved again? Why would they end up in  
2 graves that were unmarked and unrecorded, adding an extra torment to  
3 the lives of those left behind?

4 The answer can come in a number of forms. The immediate cause  
5 of it happening was the willingness of some soldiers within the KLA  
6 to behave with great cruelty and with a disregard for the lives and  
7 well-being of others. And we suggest that that can only be because  
8 at some level they saw the allegation that a detainee was a  
9 collaborator or the fact that a detainee was a Serb or a Roma as  
10 sufficient to justify and excuse their conduct.

11 Seeing oneself as beating up an enemy of the people in a  
12 patriotic fervor is, one imagines, more palatable to the conscience  
13 than seeing yourself as tormenting a farmer or a teacher or a  
14 firewood seller or a student for no reason other than the enjoyment  
15 of violence.

16 What those who commit these crimes either don't understand or  
17 just don't care about is their lasting impact on their victims and  
18 the way that the effects of such crimes spread and affect the lives  
19 of their innocent loved ones too. This context is provided by the  
20 victims, and it is a necessary one. Why do we do these cases at all  
21 if not out of regard to the suffering of the victims.

22 These cases and this case, they're not case studies. This  
23 indictment is not just a dry legal description of criminal acts.  
24 It's about times and places where people have come to serious harm,  
25 harm that has changed them and their families forever. By

1 acknowledging that harm, a court is able to say that it has listened,  
2 that the suffering of the victims has not gone unnoticed, even amidst  
3 the world of a very large case like this. In the end, what we hope  
4 for is that the victims have been given a voice here and that it will  
5 have been heard.

6 And that is perhaps a good point at which to move on to look at  
7 their experiences and at some of the evidence.

8 And if I could have the next slide, please, Mr. Court Officer.  
9 Thank you.

10 I'm going to deal with the different types of harm under four  
11 headings, and then finally make some concluding remarks. We're going  
12 to look at detention and mistreatment. We're going to look at the  
13 indirect victims of detention crimes, at the loss of loved ones, at  
14 exile and the loss of home, and then some words at the end about the  
15 importance of this trial and something about the future.

16 So I'm going to turn to the first of those topics, which is  
17 detention and mistreatment.

18 For an Albanian, much the most common route into a KLA detention  
19 camp was to find oneself labelled a collaborator or for some other  
20 reason to be seen as an opponent. For a Serb or a Roma, it seems to  
21 be the case that one's ethnicity alone could be a sufficient basis to  
22 be taken. For some it was a one-way journey, a journey from which  
23 they would never return. But for others, it was an experience of  
24 disappearing, some just for hours, some for months, into an  
25 unfamiliar world in which violence and cruelty were constant

1 companions.

2 I want to emphasise, first of all, certain aspects of the  
3 experience of the Albanian victims who were labelled as  
4 collaborators, because their harm and the harm suffered by their  
5 families is quite specific, and it is enduring, and it needs to be  
6 seen in its full context. I'm going to deal with the headline topic  
7 of detention and mistreatment under four subheadings, and this is the  
8 first of them: The basis of the accusation of collaboration.

9 Viewed from the perspective of its victims, the policy of  
10 detaining collaborators had, from its very inception, one serious  
11 flaw: How do you know who's a collaborator? How do you determine  
12 that issue in the absence of any meaningful legal process? In truth,  
13 no serious effort went into the task of identifying whether a person  
14 was a collaborator. People were snatched on a basis that was often  
15 no more than rumour.

16 It's very hard to believe, isn't it, that someone could lose  
17 first their liberty and then their life on such a flimsy basis, but  
18 they did. This network of KLA camps was being operated with a  
19 presumption of guilt. People were detained for reasons that were  
20 utterly opaque and in a manner which was guaranteed to produce  
21 injustice. More than one Albanian victim spoke about how they had to  
22 deal with Serbs in their community in order simply to get by, whether  
23 it was in business or whatever, and how that became twisted into an  
24 allegation that they were collaborators. It was as if the apparatus  
25 that was making these decisions was actively looking for ways to

1     accuse and detain people. As the saying goes, give some people a  
2     hammer and they'll think everything's a nail.

3             Suspicion fell far and wide. And so a whirlwind of detentions  
4     swept across this corner of the world with terrible and fatal  
5     consequences for many.

6             My second heading under this topic of detention and mistreatment  
7     is the failure to investigate allegations against detainees. It's a  
8     feature that seems very remarkable in this context, and it's the way  
9     in which once people have been brought into detention that there was  
10    hardly ever any real effort put in to trying to establish if a person  
11    was a collaborator or not, or was guilty of other crimes or not.  
12    Guilt had been presumed. The focus was on beating and mistreating  
13    people and insisting that they confess to crimes. They were very  
14    rarely presented with the basis for the accusation and given a  
15    meaningful chance to respond to it.

16            Where there was some gesture towards finding out the truth, it  
17    was just ignored if the answer wasn't the one that was wanted. Take,  
18    for example, Witness 2018 who was accused of a specific crime. When  
19    the supposed victim of the crime exonerated him, it made no  
20    difference. He was simply beaten again.

21            My third subheading under this topic is this: It's the  
22    exceptional cruelty shown by some KLA soldiers in charge of prisoners  
23    of all ethnicities.

24            The cruelty that has been evidenced in this case was extreme.  
25    It wasn't enough to punish people by imprisoning them. In nearly all

1 cases, the detainees, the victims that I represent, faced disgraceful  
2 and horrifying treatment. An almost complete absence of due process  
3 is really just the start of it. And the Prosecution touched on this  
4 topic yesterday, but I want to return to it with some examples that  
5 are all drawn from the experiences of the victims in this case.

6 We have heard of people being shackled in a barn, surrounded by  
7 animal waste, of rooms that were freezing in winter and boiling in  
8 summer, of detainees being deprived of food and water and of any  
9 information about how long their ordeal would last or whether they  
10 would survive it. We have heard of victims being electrocuted,  
11 struck with hot irons, urinated upon, having salt thrown in their  
12 eyes and on their wounds, being beaten on their genitals with such  
13 ferocity that they became infertile, being the subject of mock  
14 executions as well as real ones. And we have heard about beatings,  
15 about an endless number of beatings.

16 The detainees were beaten by soldiers who were young, but even  
17 then should have known better, all the way up to senior figures like  
18 Sabit Geci, Xhemshit Krasniqi, and even, if the SPO are right,  
19 Rexhep Selimi. They were beaten by women, by other prisoners  
20 compelled to beat them, by passers-by press-ganged into beating them.  
21 They were beaten with rods and with sticks, and with batons and  
22 pipes, with rifle butts and baseball bats, and with pretty much  
23 anything else that came to hand. Many were beaten until they were  
24 unconscious. Some were beaten several times in a day, and some for  
25 day after day.

1 Why were they treated with such cruelty?

2 Witness 778 was treated for injuries to his hand at a KFOR base.  
3 Pliers had been used on it in Verban. The doctor who examined his  
4 injuries expressed his disbelief that something of this kind would be  
5 done in the 20th century. That's P2511.5 at 9.

6 It's not uncommon to hear victims say that they thought they  
7 might die. They knew that others were dying in detention. Some  
8 actively wished for it to happen so that their suffering would come  
9 to an end. And who can blame them? I'm not sure there's any  
10 advocacy can do justice to the ordeal of captivity as it was  
11 experienced by the victims in this case. As the Panel will recall,  
12 we called some expert evidence on this topic.

13 And if I could have the next slide, please, too, slide 4.

14 We called experts from -- two mental health experts with careers  
15 that are focused on torture and dealing with issues of captivity and  
16 of the victims of crimes of this kind. And what they said is that  
17 captivity is one of the most challenging human experiences, and  
18 captivity is something which we have heard many, many victims  
19 endured.

20 And the next slide, please.

21 They endured it in circumstances which this slide has a  
22 particular relevance to:

23 "... the treatment of prisoners by prison staff during captivity  
24 is the most important predictor of the development and persistence of  
25 [post-traumatic stress disorder]."

1           And they added to that that it's the complete loss of control  
2           and the complete dependence on one's captors that makes captivity  
3           uniquely traumatising. And that's at T26224 and 223.

4           The personal nature of that violence from one's captors is a key  
5           feature distinguishing captivity from other life events.

6           And if we could have the next slide, please.

7           The experts went on:

8           "... we know that trauma caused by one person to another has a  
9           more profound effect than, for example, a traumatic experience caused  
10          by a natural disaster."

11          By our count, it's 50 victims in the case who were detained in  
12          KLA detention sites. Their accounts of their ordeals and of the  
13          violence and mistreatment meted out to them must be read in the light  
14          of this expert evidence. Captivity, a uniquely difficult experience.  
15          The personal violence of the prison staff towards the detainees  
16          bringing into play that additional factor of the person-to-person  
17          element that is so debilitating in the long run.

18          Their first-hand experiences are too numerous for me to deal  
19          with here. They're set out, as Your Honours know, in great detail in  
20          our impact statement, and I'm going to just touch on a few.

21          W2652 learnt what it is to be mistreated as part of a group.  
22          "When one of you is beaten, it's like you're all being beaten," and  
23          that's T3027. So it's that very personal violence again.

24          W3879, he learned about what it is to be tied up whilst captive  
25          so that anything can be done to you by your captors, an extreme

1 experience of the helplessness that the mental health experts  
2 referred to, the loss of control, and that's at T6395.

3 Or W4419's description of being electrocuted, lying face down on  
4 the floor, and how his body shook as the current passed through it.

5 Or 4305 describing how when he saw his body after his release,  
6 the sight of it, bruised and swollen, made him scared.

7 These are not experiences that anyone should have, and it should  
8 come as no surprise that they can leave a permanent mark on the mind  
9 as well as the body.

10 And that brings me to the fourth and last topic within the  
11 heading of detention and mistreatment, which is the consequences for  
12 the victims.

13 Some people have never been free from the effects of these  
14 crimes from the time that they were committed until now. And the  
15 mental health experts told us that the idea that time heals all  
16 wounds is, unfortunately, not supported by research. And it has not  
17 proved accurate for many, many of the victims in this case. Of  
18 course, there were the immediate consequences - the bruising and the  
19 pain. And for some it took time for that to heal and for the shock  
20 to subside. Sometimes this required a period of turning away from  
21 the world.

22 W1679 spent months at home recovering from his injuries and  
23 living, in his phrase, like a shadow of a man. And that's V35 at  
24 V18.

25 But many of the victims required medical treatment over the

1 years, and many live with the physical consequences to this day.

2 For others, the physical recovery was really the least of their  
3 worries. It's the psychological harm that has really changed their  
4 lives. It's the flashbacks and the anxiety. It's the inability to  
5 sleep. It's being easily startled. It's the fear that you're being  
6 followed or watched. It's the sense that the world is no longer a  
7 place in which you fit easily. And for some, sadly, it has meant  
8 in-patient care in psychiatric facilities. For others, it has meant  
9 thoughts of suicide. It has led to extensive counselling and to  
10 long-term medication.

11 But it's the individual stories that show the consequences most  
12 clearly. Take 344 as an example. He told us that his personality  
13 had been killed. He can't bear to be alone but nor can he stand to  
14 be with other people. He's too aware that they are well and he is  
15 not. He is irritable, sleeps badly, still receives psychiatric care,  
16 still takes medication.

17 4305 is also not free despite having been released from  
18 detention 25 years ago.

19 If I could have the next slide, please, slide 7.

20 "For no reason, I have these sudden episodes when I relive what  
21 I went through. It just comes back to my mind. And at that moment,  
22 I lose my sound reason and I become upset or irritated, and so I step  
23 aside from people if I'm in a social gathering or if I'm at work ...  
24 So I need to step aside and recover my senses and calm down."

25 And he's by no means alone. We deal with individuals in the

1 impact statement who suffer flashbacks, and the evidence makes clear  
2 what an impact this condition can have on a person's life. But that  
3 description of it is an individual and obviously heartfelt one, and  
4 it illustrates how, suddenly, and for no reason, what was done to him  
5 is now in charge of a person's mind and thoughts, and he loses, as he  
6 says, his sound reason.

7 The mental health experts helped us a bit with what that's like.  
8 And if I could have the next slide, please, on the topic of  
9 flashbacks. Thank you.

10 It is not thinking about or remembering the experience. It's  
11 actually experiencing it as if it was happening again, with all the  
12 sensory elements of that. So people will smell the smells they  
13 smelt. They'll also feel pain sometimes they felt in parts of their  
14 body that were in pain at the time of the actual event. So that  
15 makes it hugely emotionally distressing. And if someone has  
16 experienced a flashback and is, say, coming back out of it, you see  
17 the level of emotional distress can be very high, time needed to  
18 recover from it, to realise that the someone is in the here and now  
19 and not in the memory that they were reliving.

20 And perhaps just one other example of time not healing wounds.

21 Witness 4781 can fairly be described as a big, strong man. He  
22 told you that he was scared of the dark, and he slept facing the door  
23 in case the men should come again, the men who came before and took  
24 away people that he loved.

25 These are serious and very debilitating conditions, and it does

1 mean for some victims that they are never free from what happened to  
2 them. And in summary, we say that the KLA detention centres were a  
3 prolific breeding ground for mental illnesses, just as they were for  
4 physical ailments and conditions.

5 That's the end of my first topic, and I'm going to deal next  
6 with the topic of indirect victims of detention crimes, and this one  
7 will just take a few moments.

8 The harm inflicted on individuals as a result of their detention  
9 inevitably spread to their relations. Witness 4870 was present when  
10 her family member was taken. She suffers to this day from a range of  
11 life-changing symptoms, including flashbacks of which she gave a  
12 vivid description when she came to testify here. She had a flashback  
13 coming into this courtroom, the black gowns triggering a memory of  
14 the men who had come in the night, wearing black and carrying guns.

15 Two other examples. Both the victims who provide agonising  
16 accounts of what it was like to visit a relative held in one of the  
17 KLA's camps. Witness 4371 remembers seeing his father in detention.  
18 He looked sad and shocked. And his son could see in his eyes that he  
19 was asking for help, but there was nothing that the family could do.  
20 And to this day, 4371 is haunted by that image of his father's face  
21 as he goes to sleep, and that's at T15277.

22 Witness 4811 also saw her father in detention. He was tired,  
23 hungry, weak, crying, unclear what he was supposed to have done  
24 wrong. Both their fathers were going to be murdered. Their  
25 children's lives contain these last memories of them and will do so

1 until they too are dead.

2 For the prisoners who survived, their families had to live with  
3 different consequences. In the case of Witness 4733, for example,  
4 that meant for his family welcoming home a broken man, a man who  
5 would never work again nor know peace of mind after the horrors of  
6 his detention. A different father, a different husband, damaged,  
7 needing care instead of giving it.

8 My next topic is the loss of loved ones. This category of harm  
9 is perhaps the easiest for all of us to feel empathy for. We can all  
10 imagine, and perhaps some have experienced, what it is to lose  
11 someone we love, but it has its complexities to. First of all, first  
12 and foremost in this case, the absolute injustice of it. We've  
13 already looked at the arbitrary nature of the detentions, and the  
14 murders were no less arbitrary but obviously even less excusable.

15 There are 84 victims who are relatives of murder victims  
16 participating in this case. Within that group, 20 victims have  
17 family members who were subjected to acts of enforced disappearance  
18 as charged by the Prosecution. Another 66 have loved ones who were  
19 imprisoned and never seen again or were eventually killed but in  
20 relation to whom there isn't a charge of enforced disappearance.

21 What connects all these victims, regardless of whether they are  
22 Serbs or Kosovo Albanians, or whether they are victims of enforced  
23 disappearance or simply of murder or imprisonment, what connects them  
24 all is that they suffer a particular form of harm: not knowing  
25 exactly what happened to their loved ones, why it happened, and who

1 was responsible for it.

2 A joint statement last year by the Council of Europe and other  
3 human rights bodies emphasised the nature of this harm.

4 And if we could have slide 9, please, the next slide.

5 "Enforced disappearances entail a serious violation of multiple  
6 human rights, inflicting profound suffering, experienced not only by  
7 those who are forcibly disappeared, but also by their families, their  
8 communities, and by society as a whole. They are often practiced as  
9 a deliberate strategy of control through terror intended to cause  
10 suffering, instill fear, suppress dissent, and punish entire  
11 communities."

12 And we'll return to one community in particular, one Serb  
13 community in particular, in just a few moments.

14 Many of these victims are still searching for answers.

15 If we could have slide 10, please.

16 Witness 72 is reconciled to searching until she dies. She said  
17 this:

18 "And to be strong still 25 years later and to keep searching for  
19 my son and my husband and everyone else who perished in this way is  
20 really very hard. It's not easy, and I would not wish any other  
21 parent to live through what I have been through. When they took my  
22 son away from me, snatched him from my arms, so to speak, it's as if  
23 you lost one half of your heart, and the other half I still have left  
24 for the other part of my family. And this is how I live on, and I  
25 shall die with this. And I will take these thoughts with me when I

1 expire my last breath, I will be thinking about my son and my  
2 husband."

3 And as the Court knows, many of the families involved spent  
4 years hoping to find some remains. Some were fortunate enough to do  
5 so, some never found anything, others just a part of a body. Being  
6 unable to bury their loved ones for years on end, or permanently, is  
7 a particular way of being harmed. It means not having a grave to  
8 visit or knowing that the grave that you do have contains an  
9 incomplete set of remains.

10 A number of victims encountered nothing but obstruction when  
11 seeking to find out what had happened to their family members. And  
12 in this context, I want to make special mention of the families  
13 affected by the murders following the KLA's attack in the Rahovec  
14 area in 1998. And we've heard a little about the facts of this from  
15 the Prosecution, and the facts are well known, that the communities  
16 were attacked, a lot of people were taken prisoner - men, women, and  
17 children. They were held against their will. They were terrified  
18 out of their minds. The men and women were separated. A 16-year-old  
19 boy was put together with the men. They were mainly people who  
20 worked the land, also a teacher. They were driven away. And at some  
21 uncertain point afterwards, they were shot. And then their remains  
22 were concealed in a cave, with efforts being made to disguise their  
23 identities, possibly by the use of fire or explosives.

24 This was a crime against an entire community which was destroyed  
25 by the actions of the KLA as if it were of no more value than an

1 inconvenient weed to be torn up at the root and cast aside.

2 This was a tight-knit community with strong ties between the  
3 various families. As a result, many of the victims lost multiple  
4 family members as well as a wider kinship group. And for years  
5 afterwards, they lived with uncertainty as rumours circulated about  
6 what had happened to their menfolk. They were never able to get the  
7 slightest clarity until the grim discovery of some of the remains in  
8 2004 and 2005. They all also lost their homes, the physical  
9 buildings and the place that they called home. None of this group  
10 has ever felt able to return.

11 They are, however, still a community and still support one  
12 another through their awful shared experience of murder and of loss.  
13 And there simply has never been a proper reckoning in relation to  
14 these terrible crimes. The families regard their involvement in this  
15 case as a way of continuing to do right by the ones they have lost.  
16 It is the last and perhaps most touching of ways to show their  
17 enduring love.

18 To have that loss acknowledged is a way to provide some measure  
19 of consolation. I will be returning to that this afternoon. It's  
20 very important that I emphasise to you the significance of  
21 acknowledgement of that kind for the victims.

22 Your Honour, if that's a convenient moment.

23 PRESIDING JUDGE SMITH: Thank you. We'll be adjourned until  
24 1.30.

25 We're adjourned.

1 --- Luncheon recess taken at 12.00 p.m.

2 --- On resuming at 1.30 p.m.

3 PRESIDING JUDGE SMITH: Mr. Laws, just for scheduling, what's  
4 your timeframe on this, the rest of your presentation?

5 MR. LAWS: Somewhere between 20 minutes and half an hour.

6 PRESIDING JUDGE SMITH: I take it you want to start tomorrow  
7 morning; is that correct?

8 MS. TAVAKOLI: Yes, please, Your Honour.

9 PRESIDING JUDGE SMITH: All right. I think we sort of  
10 anticipated that.

11 All right. Then you may proceed.

12 MR. LAWS: Thank you, Your Honour. We had been looking at the  
13 topic of the loss of loved ones and dealing specifically with the  
14 Serb families from Rahovec.

15 These families, but also many other families who lost a loved  
16 one to a murder, were exposed to what the mental health experts  
17 called ambiguous loss. Ambiguous loss is when all the circumstances  
18 suggest that your family member is dead but there's no confirmation;  
19 for example, no body has been recovered. And as the experts  
20 explained, the uncertainty implicit in ambiguous loss is traumatic in  
21 its own right. The lack of clarity gives family members hope, and  
22 that makes it difficult to find closure. And we see this observation  
23 from the experts also reflected in the experiences of the victims.

24 Witness 4489, who lost her husband but never had proof of his  
25 death, spoke of how 25 years of living in uncertainty amounted to

1 torture. That was her word. And that's at T11377.

2 We have heard and read about in the evidence family members of  
3 the missing going from pillar to post, knocking on whatever doors  
4 they could find, even placing adverts in the press, pushing on  
5 against all odds because, as 4566 said, it's hope that dies last.  
6 That was at T6959.

7 And if we turn to look at killings by the KLA more generally,  
8 not just those that have involved this ambiguous loss, what we find  
9 is that they were ignored, they were covered up, and they were  
10 concealed, when, of course, they should have been investigated,  
11 documented, and prosecuted. Even to talk of them was taboo in  
12 Kosovan society, and some victims learnt to be silent.

13 Witness 4712 said that the family didn't talk about the death of  
14 their loved one. They were silent through fear, fear that the same  
15 thing could happen to them. But keeping silent made the grief even  
16 harder to bear. And that's V17 at 2549.

17 The hidden nature of these crimes contributed to further  
18 stigmatisation of the survivors within their communities. The fear  
19 and sense of stigma is particularly strong even today among the  
20 Kosovo Albanian victims who still live in Kosovo but also among other  
21 victims who have left the country out of fear for their safety. And  
22 it goes without saying that many of these families lost not just a  
23 loved one but a breadwinner and found themselves, on top of  
24 everything else, having to find a way to make ends meet.

25 The next topic that I'm going to deal with within the heading

1 loss of loved ones is transgenerational harm, focusing on the  
2 children who are VPPs in this case, victims participating in these  
3 proceedings, because when we speak of victims bringing to the  
4 proceedings a fuller understanding of the effects of grave crimes,  
5 the children of the direct victims are an important case in point.

6 If we could have, please, Mr. Court Officer, slide 11 on the  
7 screen. Thank you.

8 Slide 11 gives an overview of them. 28 of the 155 victims in  
9 this case were 18 or younger at the time of the events we are  
10 concerned with. In that group, seven were six years old or less when  
11 they lost their fathers to the KLA; four were not even born or were  
12 less than one year old when their family members were arrested,  
13 detained, and eventually killed. It's only natural, it's inevitable,  
14 isn't it, that these children suffered mental harm from such a loss.

15 The youngest victims lost a parent before even being able to  
16 consciously have one. These children spent the early years of their  
17 lives in an environment filled with grief, with adults grieving, and  
18 with questions marks about their fathers' whereabouts and fate. As  
19 noted by the mental health experts in their evidence in this case -  
20 if we could have slide 12, please - "The trauma in families affects  
21 children both at the time of the events and generations still to be  
22 born."

23 One witness provided evidence of how her son used to ask her why  
24 the other children had fathers and who had killed his. These victims  
25 have found themselves in the adult world of harm through no fault of

1 their own, and some still search for the truth about what happened to  
2 their fathers until this day.

3 A number of victims who were adults at the time of the events  
4 describe the process of handing down the trauma to their children.  
5 For example, W4870 explained that growing up with a mother in a state  
6 of such stress, stress brought on by the murder of a family member of  
7 hers, that stress had seriously harmed her children despite the fact  
8 that they were born after the war. 4566 described enduring family  
9 trauma stemming from the fact that her husband is missing and how  
10 this affects the children, living, as they must, with the ongoing  
11 absence of their father and the remote hope that one day he might  
12 return. And the reference for those last two quotations, T12066 and  
13 6959.

14 4371 testified how for many years he couldn't tell his children  
15 the truth about what had really happened to his father, their  
16 grandfather, how he was killed and by whom, and so his children grew  
17 up in a world where there are secrets and mysteries around the  
18 missing. And that's T15283 to 5.

19 These examples illustrate the mechanisms through which  
20 transgenerational harm acts in the families of victims. There's also  
21 a distinct aspect of harm to being a traumatised parent, seeing and  
22 knowing that your children suffer because of events they never  
23 witnessed and in relation to which they are self-evidently blameless.  
24 This is a further consequence of the loss of loved ones for these  
25 victims and an additional source of their pain.

1           And so it is that decisions taken many years ago to detain  
2 people and later to execute people play out to this day in the lives  
3 of those who were children, babies, or even unborn at the time and in  
4 the lives of their parents.

5           And that brings me to my fifth topic, the loss of home.

6           When we deal with the loss of home, we are concentrating  
7 principally on Serbian victims who were displaced not by the conflict  
8 itself but by the actions of members of the KLA. The starting point  
9 is the legal principle from the basic principles para 19: Victims  
10 have the right of restitution, including return to one's place of  
11 residence, restoration of employment, and return of property. That  
12 is a forlorn hope in this case. It's not a possibility for the  
13 overwhelming majority of Serbian victims in this case to return to  
14 their former lives, their homes, and to resume their way of life.  
15 This group have suffered a very specific harm, and it is one that we  
16 invite the Court to recognise in its judgment, applying  
17 Article 22(7).

18           There was nothing inherent to the conflict that made it  
19 inevitable that Serb civilians had to leave. Many of them lived  
20 peaceably alongside their Albanian neighbours. In many cases, they  
21 and their ancestors had lived this way in Kosovo for generations,  
22 some for hundreds of years. For many of them, it's fair to say that  
23 they belonged to the land just as much as it belonged to them, and to  
24 lose it has been a sense of enduring grief for the families affected.  
25 It's composed of two distinct elements: the bricks and mortar of a

1 home and often farmlands and farm buildings that go with them. In  
2 many cases, the Serb families forced to flee had their homes  
3 destroyed at the same time or immediately after they left. Many  
4 families fled with only what they could carry and had to start again  
5 with nothing in Serbia or elsewhere.

6 The second element of loss of home is loss of home in the sense  
7 of losing a place where they felt that they belonged. Some were  
8 clearly forced to leave.

9 If we could have slide 13, please.

10 Witness 1140 said:

11 "I didn't just leave. I was expelled. It's different. It's  
12 one thing if you just leave, and it's another matter if you get  
13 expelled by someone. So I apologise, but it's an important  
14 difference."

15 Others felt that it was simply impossible to stay. For example,  
16 Witness 2749 who told us what the loss entailed. It was the end of  
17 life in a city that he had grown up in, it was the end of his job,  
18 the end of his dreams for the future, it all went, and his life took  
19 a different course, one over which he had no control.

20 VW1 is another example. He left Kosovo after his detention by  
21 the KLA made it impossible for him to continue to live there for  
22 reasons set out in his statement. It is obvious how his exile  
23 affects him to this day. On top of the diagnosis of PTSD that he has  
24 and which requires regular treatment as a result of his detention,  
25 he's lost his community, his connections to his home country, his

1 family, and his friends. For him, it amounts to losing both his past  
2 and the future that he had seen for himself before he was kidnapped.

3 I've been calling it "loss of home" in order to encompass both  
4 the material and psychological impact of this harm, but I hope it's  
5 clear that the expression is also intended to express the sense of  
6 exile.

7 That's all I'm going to say about the different types of harm.  
8 I want to conclude my submissions today, if I may, by some  
9 observations about the importance of this trial and perhaps some  
10 words about the future.

11 We've already seen that the consequences for the victims in this  
12 case are not limited to the physical or the psychological. For some,  
13 there is the ongoing stigma of having been harmed by the KLA which,  
14 in the eyes of some in the community, indicates their disloyalty.  
15 Victims speak about this as if it was a visible marker that had been  
16 placed on them. The word "stain" is used to describe the feeling of  
17 being given this shameful label. As in many parts of the world,  
18 Kosovo is a country in which a family's reputation is a precious  
19 thing.

20 Witness 1743, speaking about the period after his father was  
21 killed, found that people were afraid to have anything to do with the  
22 family. You'll find that at P1893.2, 8 to 9.

23 On any objective view, you're a victim of a crime, but because  
24 of the identity and the nature of the perpetrators, people shun you.

25 W1978 spoke of the way people saw him as a result of having been

1     detained.

2             And if we could have slide 14, please.

3             "And did the fact you were detained by the KLA affect the way  
4     people treated you after the war?

5             "Yes. 'The KLA took you. They didn't take you for any reason.  
6     I don't want to side with you because they will take me tomorrow.  
7     People taken by the KLA were spies.' These kinds of things."

8             This stigmatisation is a particular form of injustice. A  
9     spurious allegation may have led to your family being targeted in the  
10    first place, targeted for detention, for beating, for murder. Now  
11    the fact that you were targeted is a passport to ostracism and  
12    exclusion. But not only do you face that injustice, in the case of  
13    many victims there is the compounding and overarching injustice that  
14    the original perpetrators have not been held to account. And that  
15    feeling of injustice in relation to these crimes has, we suggest,  
16    been palpable in this trial.

17            The mental health experts noted the large percentage of victims  
18    who mentioned a lack of justice as being important to them, and they  
19    also noted the adverse effect of not receiving justice on the  
20    victims.

21            And if we could have slide 15, please.

22            "... mental health issues are worsened by ongoing social and  
23    economic stress, alongside the lack of justice and institutional  
24    support."

25            And there are a significant number of victims who this Panel

1 could identify who have not only been denied justice but have the  
2 complete opposite of institutional support, and whose mental health  
3 issues are certainly worsened by the social and economic stress  
4 brought about by their initial targeting.

5 It's such a basic human response to want to see some  
6 accountability for a crime committed against us or those we care  
7 about. The initial injustice of the crime compounded by the  
8 knowledge that it has been left unacknowledged, that those who are  
9 responsible for it deny it. They don't apologise. They refuse to  
10 take responsibility for what they did. It's as if the world doesn't  
11 take what happened seriously or as if it simply doesn't care.

12 Imagine then being one of the families in this case, living for  
13 25 years not only without any resolution but without even the hope of  
14 one until this Court came into being. Witness 4781, he and his  
15 family had been the victims of terrible crimes. He spoke of how,  
16 before the KSC was established, they had given up any hope of  
17 justice, and then of how he and many others, his expression, many  
18 others, think that this Court is the last hope that they have. And  
19 that's at T8431 to 2.

20 An outcome that acknowledges the harm suffered by the victims is  
21 in itself a means of addressing that harm. Trial Panel I has  
22 recognised this obvious truth in its jurisprudence.

23 And if we could have slide 16, please, on the screen. It's an  
24 extract from a decision in Case 04:

25 "The Panel is of the view that acknowledgement of serious

1 breaches of human rights and international humanitarian law is - as  
2 are reparations for the harm suffered as a result of those breaches -  
3 an important form of remedy for victims."

4 We invite this Panel to apply that same principle here. It's  
5 consistent with the jurisprudence of the European Court of  
6 Human Rights as Trial Panel I demonstrates in that same decision from  
7 Case 04 at paras 21 to 28. It also accords with the experience of  
8 victims. There is some solace, some comfort in knowing that justice  
9 has been done.

10 This trial and Your Honours' judgment is an opportunity for  
11 these and all of the victims to find some answers and some  
12 accountability for what happened to them or to their loved ones all  
13 those years ago. It is also an opportunity for these victims to have  
14 their experience of loss and pain at the hands of the KLA heard and,  
15 in some cases, finally acknowledged, not only by this Court but also  
16 by the public in Kosovo and elsewhere. It's an opportunity for  
17 victims to be finally permitted to speak up for their rights,  
18 including the right to truth about what happened to those that they  
19 loved without fear of being called an enemy.

20 Sadly, there are still those in Kosovo who insist on claiming  
21 that no crimes were committed by the KLA and that it fought a war  
22 without moral blemish. As part of that alternative reality, efforts  
23 are made to portray the victims of the KLA who cooperate with this  
24 Court as being disloyal to Kosovo.

25 W4735, a very brave man, indeed, testified here without

1 protective measures in order that everyone would know what he had to  
2 say. He described how witnesses who testify at the KSC are falsely  
3 depicted in the Kosovo media as traitors in league with Serbia and  
4 are told they have to keep silent and have your mouth shut. That's  
5 T19415. And this contributes to the ongoing harm of the victims who,  
6 on top of all the other injustices visited upon them, are encouraged  
7 to be invisible, and shamed and defamed if they decide not to do so.  
8 They are inconvenient to those who would prefer to assert that the  
9 KLA were without blame, without victims.

10 So let's be really clear about this. The crimes and the cruelty  
11 that accompanied them, the hideous mistreatment, the brutal murder,  
12 the cynical efforts to conceal crimes, these things happened, and a  
13 denial of that fact is a cruel lie heaped upon the cruelty of the  
14 crimes themselves. The truth about what happened to them may be hard  
15 to acknowledge because it sits uncomfortably with the narrative of  
16 the KLA fighting a pure and clean war. They caused casualties to  
17 their own civilian population and to Serb non-combatants, and it's  
18 time for that to be recognised because that may in turn begin to  
19 bring a little more peace into the lives of the victims.

20 Two things can be true: The KLA can have fought a war of  
21 liberation, can have done so with the overwhelming number of their  
22 members doing so in perfectly good faith, and yet the KLA members can  
23 also have committed crimes. This was exactly the point being made by  
24 W4368 whose father was killed by the KLA for, allegedly, being a  
25 collaborator. He said that he supported the KLA who do not kill

1 Albanians, and that's at T7079.

2 The fact that these crimes were committed by members of the KLA  
3 doesn't make it a criminal organisation. It's finally time to take  
4 responsibility not only for what many Albanians see as actions that  
5 brought the KLA glory but also for the inglorious ones that have been  
6 the focus of this trial. No one is served by clinging to a version  
7 of the past that seeks to free one party from all wrong-doing. All  
8 that does is to demonise the victims.

9 And so whatever the verdicts on these four men, we hope on  
10 behalf of the victims that the judgment will make it plain, plain as  
11 day, that these 155 individuals have, indeed, been the victims of  
12 crimes and that there was no justification whatsoever for what was  
13 done to them. What happens after that, we'll have to wait and see.  
14 But in our submission, that is part of the appropriate response to  
15 these crimes, and it's a part that may offer some solace to this  
16 gravely wronged group of people.

17 Your Honour, thank you for your attention. That is all I want  
18 to say.

19 PRESIDING JUDGE SMITH: Thank you, Mr. Laws.

20 So that will finish our work for today. We will begin with the  
21 Thaci Defence final statements tomorrow morning at 9.00. We'll see  
22 you all then.

23 We're adjourned until 9.00 tomorrow.

24 --- Whereupon the hearing adjourned at 2.00 p.m.

25