

1 Wednesday, 1 October 2025

2 [Open session]

3 [The accused entered the courtroom]

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

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

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

10 PRESIDING JUDGE SMITH: I know you have a matter you want to
11 correct, and we'll do that in just a minute. Let me finish the
12 preliminary matters first, and then we'll give you the floor.

13 First of all, the accused are all present in court.

14 Before we start, as indicated yesterday, the Panel would like to
15 hear from the Thaci Defence regarding any updates in terms of
16 witnesses for the next block, and from the other Defence teams and
17 the SPO and Victims' Counsel regarding their time estimates for
18 cross-examination.

19 So let me start with the Thaci Defence.

20 MR. MISETIC: Yes, Mr. President. If I could just have one
21 minute.

22 PRESIDING JUDGE SMITH: Yes.

23 MR. MISETIC: I just need to look up the witness codes.

24 Yes, Your Honour. We can announce that we have received
25 clearance for 1DW-008 and 1DW-010 have been cleared. We anticipate

1 filing and disclosing summaries of their evidence this week,
2 hopefully by tomorrow.

3 PRESIDING JUDGE SMITH: [Microphone not activated].

4 MR. MISETIC: I can't --

5 PRESIDING JUDGE SMITH: As to the rest of the witnesses?

6 MR. MISETIC: We have one witness left for whom we are seeking
7 clearance, and that witness is 1DW-007, and I am told that clearance
8 for that witness is imminent.

9 PRESIDING JUDGE SMITH: My question is do you intend to call all
10 of them?

11 MR. MISETIC: Yes.

12 PRESIDING JUDGE SMITH: And do you think you still have time to
13 finish those by the end of October?

14 MR. MISETIC: Well, I think we have until --

15 PRESIDING JUDGE SMITH: [Microphone not activated].

16 MR. MISETIC: Right. We do believe so, but, obviously, there
17 are some factors there. You know we have a pending motion with
18 respect to one witness, whether he complies or whether that's able to
19 be effectuated will effect how we schedule things. There's now a
20 second witness that we discussed yesterday. Depending on how that
21 resolves itself, that may leave also some additional time. So we
22 will notify all of our remaining witnesses for that block with the
23 intention of finishing them in that block.

24 PRESIDING JUDGE SMITH: Thank you.

25 Let me just ask the rest of the Defence teams concerning their

1 cross-examination --

2 MR. DIXON: Yes, thank you, Your Honours. I can say that in
3 relation to the witnesses who we are aware of, in other words, we
4 have disclosure so far, that the estimates remain as is. But
5 Your Honours will know that as the prep notes come in, we have
6 diligently then re-looked at what the issues are to reduce, and we'll
7 do that as soon as we're able to, if we're able to.

8 PRESIDING JUDGE SMITH: As for all of you, please do that as
9 quickly as you can because it has a huge impact on the Thaci Defence,
10 who's leading witnesses at this time, on getting backup witnesses,
11 and we'll deal with that in just a minute.

12 MR. DIXON: Yes.

13 PRESIDING JUDGE SMITH: So please be as efficient as possible in
14 amending your estimates as soon as you know of what you're going to
15 do.

16 MR. DIXON: Yes. Your Honours, we will do so. Much, as I'm
17 sure you can appreciate, does depend on the final proofing and
18 documents that come through and the evidence that is going to be led
19 in that way, but we will be as efficient as possible.

20 With regard to the remaining three new witnesses, we have to
21 wait to see what the evidence is, but we'll look to streamline it as
22 far as we can and as quickly as possible as soon as that does get
23 disclosed.

24 PRESIDING JUDGE SMITH: Thank you.

25 MR. DIXON: Thank you, Your Honours.

1 PRESIDING JUDGE SMITH: Mr. Tully.

2 MR. TULLY: Thank you, Your Honour. We are of the same
3 position. And as soon as we get the statements from the new
4 witnesses, we'll update the Panel accordingly. Thank you.

5 PRESIDING JUDGE SMITH: Fine.

6 Mr. Ellis.

7 MR. ELLIS: Yes, I think we're in the same position as well,
8 Your Honour.

9 PRESIDING JUDGE SMITH: And you still intend to call the same
10 witnesses that you have previously noted?

11 MR. ELLIS: We're keeping it under review as the evidence comes
12 in, but yes.

13 PRESIDING JUDGE SMITH: [Microphone not activated].

14 MR. ELLIS: At this time, yes.

15 PRESIDING JUDGE SMITH: Thank you very much.

16 SPO?

17 MS. IODICE: Yes, Your Honour. Just one clarification. There
18 was one more witness, W04174, for which a clearance was expected. Is
19 there an update on that?

20 MR. MISETIC: Yes, we are still awaiting clearance on that one.
21 So that one is under consideration by our team, and we will get back
22 to the Panel on that one.

23 PRESIDING JUDGE SMITH: Thank you. Two additional points -- no,
24 you've cleared one already. Well, thank you for your answers,
25 everybody. As I said, please try to keep us up to date on this

1 because we have some fairly fast-approaching deadlines that we would
2 like to keep in order to have the evidence portion wrapped up on
3 November 14th as planned.

4 And I know that it's challenging, but it's going to take
5 everybody's cooperation.

6 MR. MISETIC: Mr. President, if I may, just --

7 PRESIDING JUDGE SMITH: Just a second. Let me finish up first.

8 I would also remind the Defence that there should be no gaps in
9 court schedule for the remaining weeks for this reason. The Krasniqi
10 Defence, as I just said, should be ready to start with its case as
11 soon as the Thaci Defence is finished, and that should be fairly easy
12 to figure out when it's going to happen.

13 Now, Mr. Misetic.

14 MR. MISETIC: You've raised a point about the schedule or the
15 timeline the Panel has indicated, I think, at least as a preliminary
16 matter, and I think all four Defence teams would like to be heard on
17 that at some point if we have time this week.

18 PRESIDING JUDGE SMITH: All right. Thank you.

19 MR. MISETIC: Thank you.

20 PRESIDING JUDGE SMITH: Madam Court Officer, you can bring the
21 witness in.

22 Oh, you had your correction too. I'm sorry. I forgot about it.

23 MR. MISETIC: No problem. Thank you, Mr. President.

24 Just as a housekeeping matter, and we've sent an e-mail to all
25 parties and participants and the Panel, with respect to now admitted

1 Exhibit 1D00398, due to an oversight in our Rule 154 motion, F03410,
2 associated Exhibit 14 was erroneously listed as including page
3 numbers DHT05110 to DHT05110 instead of DHT05110 to DHT05112. We
4 would like to add the missing two pages of that panel, and we
5 understand the SPO has no objection.

6 PRESIDING JUDGE SMITH: Correct statement?

7 MS. IODICE: Yes, Your Honour.

8 PRESIDING JUDGE SMITH: All right. It will be added then.

9 MR. MISETIC: Thank you, Mr. President.

10 PRESIDING JUDGE SMITH: Now, Madam Court Officer, you can bring
11 the witness in.

12 [The witness takes the stand]

13 PRESIDING JUDGE SMITH: Good morning, Mr. Covey.

14 THE WITNESS: Good morning, Your Honour.

15 PRESIDING JUDGE SMITH: Today we're going to continue your
16 testimony. We're to the point that the SPO will be beginning a
17 cross-examination of you.

18 I remind you to please try to answer the questions clearly, with
19 short sentences. If you don't understand a question, feel free to
20 ask counsel to repeat the question or tell them you don't understand
21 and they will attempt to clarify. Also, please remember to try to
22 indicate the basis of your knowledge of the facts and circumstances
23 upon which you will be questioned.

24 I remind you that you are still under an obligation to tell the
25 truth as stated by you in your solemn declaration.

Witness: James Covey (Resumed) (Open Session)

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Cross-examination by Ms. Iodice

1 Please also remember to speak into the microphone, and please
2 wait five seconds before answering a question and then speak at a
3 slow pace so the interpreters can catch up.

4 If you feel the need to take a break at any time, please let us
5 know and we will accommodate you.

6 We begin now with the questions from the SPO. Please give them
7 your attention.

8 Ms. Iodice.

9 WITNESS: JAMES COVEY [Resumed]

10 Cross-examination by Ms. Iodice:

11 Q. Good morning, Mr. Covey.

12 A. Good morning, counsel.

13 Q. My name is Vega Iodice, and I will be asking you questions on
14 behalf of the SPO. I will be asking you mostly yes-or-no questions,
15 and I kindly ask you to please keep your answer focused.

16 So, first of all, I would like to start with some preliminary
17 questions about your role as PDSRSG. You were appointed in June
18 1999. Do you recall the exact date?

19 A. No.

20 Q. Thank you. And, of course, whenever you don't remember
21 something, it's completely fine to say so.

22 And you arrived in Kosovo on 15 July 1999; yes?

23 A. Yes, that I do remember.

24 Q. Thank you. And as a principal deputy to the SRSG, did you
25 receive briefings from the other pillars of the mission?

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1 A. At that moment, the pillars did not really exist.

2 Q. Right. Throughout your time as PDSRSG?

3 A. Yes.

4 Q. Thank you. And did you normally review reports issued by other
5 international organisations working there such as the OSCE?

6 A. Well, the OSCE was intended to be one of the pillars of UNMIK,
7 so we wouldn't have thought of it as a separate organisation.

8 Q. Thank you. And did you stand in for the SRSG when he was
9 absent?

10 A. Yes.

11 Q. And as you noted yesterday, you regularly reviewed
12 correspondence issued by the SRSG office; right?

13 A. I regularly saw correspondence, yes.

14 Q. Yes. And you also approved cables issued by the SRSG office
15 when the SRSG was not available; right?

16 A. Yes.

17 Q. And those cables that you approved would bear your initials; is
18 that correct?

19 A. Yes.

20 Q. And in minutes and cables, you were always referred as PDSRSG;
21 right?

22 A. Generally, yes.

23 Q. And the acronym DSRSG would be designating the other deputies;
24 right?

25 A. Yes, correct.

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1 Q. Thank you. In your statement, you mentioned that the SRSG had
2 an excellent relationship -- that you and the SRSG had an excellent
3 relationship, and that you would quickly brief each other when one of
4 you wasn't present at the meeting. That's correct; right?

5 A. Generally correct, yes.

6 Q. Yes. In paragraph 11 of your statement, you mentioned a book
7 that you co-authored which was also shown to you during your
8 preparation session.

9 MS. IODICE: Can we please bring up ERN SPOE00397775 to
10 00397846.

11 THE INTERPRETER: The interpreters kindly ask the counsel to
12 slow down.

13 MS. IODICE: Thank you.

14 Q. This is the book you co-authored; right?

15 A. Yes.

16 MS. IODICE: And if we can please go to PDF page 3.

17 Q. This was published -- it shows here that it was published in
18 2005; right?

19 A. Yes.

20 Q. And you authored two chapters, but you were also one of the
21 editors?

22 A. To a much more limited extent.

23 Q. Okay.

24 A. And it depended which chapter we're talking about and which
25 author.

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Cross-examination by Ms. Iodice

1 Q. Thank you. And you have been using this book as a textbook for
2 the past 15 years while you've been teaching?

3 A. Yes, that's correct.

4 Q. Thank you.

5 MS. IODICE: Your Honour, I will be using several pages of this
6 book throughout the examination. I was wondering if I could make --
7 and I intend to tender each page that I show to the witness at the
8 end. I was wondering if it's best for books like this if I do the
9 tender at the end of the cross-examination so that I do it at once
10 rather than each time.

11 PRESIDING JUDGE SMITH: If you're finished with a page, I'd
12 rather you tendered it at that time.

13 MS. IODICE: Okay. So I would like to tender the first -- the
14 cover page and the first three pages of the book.

15 PRESIDING JUDGE SMITH: Any objection?

16 MR. MISETIC: No objection.

17 PRESIDING JUDGE SMITH: No objection is shown. First three
18 pages?

19 MS. IODICE: Yes.

20 PRESIDING JUDGE SMITH: The first three pages of SPOE00397775 to
21 397846 are admitted.

22 THE COURT OFFICER: And they will be assigned Exhibit P04496,
23 and it's currently classified as confidential.

24 MS. IODICE: It can be public.

25 PRESIDING JUDGE SMITH: Reclassified as public.

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1 And I would suggest that additional pages you use a .1, .2, .3,
2 so it would be under one heading.

3 MS. IODICE: Perfect, Your Honour. Thank you. And we can leave
4 the book up for a second.

5 Q. You described KFOR Commander Jackson, the KFOR commander at the
6 time you arrived, as "seasoned and savvy" in your statement, and
7 yesterday you said that both you and Kouchner had regular meetings
8 with Jackson; correct?

9 A. Yes. I would add to that that I already knew Jackson quite well
10 from my experience in Bosnia when he was at the headquarters in
11 Banja Luka.

12 Q. Thank you.

13 MS. IODICE: So if we could please go to PDF pages 26 and 27 of
14 the book. These are ERN SPOE00397800 and 7801.

15 Q. Here you have described how Kouchner and General Jackson had a
16 good personal chemistry and how that was a major asset.

17 MS. IODICE: Now, if we can focus on the last paragraph of the
18 book page 81, which is the second page on the screen, the -- yes.
19 Thank you.

20 Q. Here you stated:

21 "The good personal chemistry between SRSG Bernard Kouchner and
22 General Michael Jackson was a major asset ..."

23 And then further down you said:

24 "They also understood, however, that KFOR could not succeed in
25 its overall mission without the political process succeeding over the

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1 longer term. The military commander had to contribute unstintingly
2 to the political effort to achieve the common goals of the mission."

3 MR. MISETIC: Is that on the screen, Mr. President?

4 THE WITNESS: It is not.

5 MR. MISETIC: If the witness could be shown it on the screen.

6 THE WITNESS: It's the next page, I think.

7 PRESIDING JUDGE SMITH: [Microphone not activated].

8 MS. IODICE: Yes, if we can go to the next page. Sorry. Yeah,
9 it's at the top of that page.

10 Q. "Collaboration was both in the mandate and in the mind-set of
11 the mission's civilian and military leadership."

12 This was your description of the relationship; correct?

13 A. Yes, I -- can I elaborate a little?

14 Q. Yes. I might be asking you more questions about this later, so
15 maybe we can go back to it later if I haven't addressed it.

16 A. I want to emphasize that it was not an accident that the
17 relationship between the civil and the military arms of the mission
18 were very different in Kosovo than in Bosnia. And this will only
19 take a moment. General Jackson, upon Kouchner's arrival, I believe
20 it's a matter of public record, said something -- this is not quite a
21 quote but it's very close, he said, "Now KFOR can assume its rightful
22 role in this mission in support of the political process."

23 Q. Thank you.

24 MS. IODICE: I would like to tender pages SPOE00397800 and 7801
25 into evidence.

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1 PRESIDING JUDGE SMITH: Those two pages will be admitted and
2 they will be marked as an exhibit with the decimal .1.

3 THE COURT OFFICER: Thank you, Your Honours. In that case, it
4 will be P04496.1, classified as public, if my understanding is
5 well -- is correct, that we should keep. Thank you.

6 MS. IODICE:

7 Q. Jackson stopped being KFOR commander in October 1999, and he was
8 replaced by General Klaus Reinhardt; correct?

9 A. Yes.

10 Q. And General --

11 A. I'm taking those dates as given. I don't have the dates.

12 Q. That's fine. Do you recall if General Reinhardt stayed as
13 commander for about six months until mid-April 2000?

14 A. That would be my -- approximately, yes.

15 Q. Thank you. And the excellent working relationship that you and
16 Kouchner had with Jackson continued with General Reinhardt; correct?

17 A. I would -- yes. Yeah.

18 Q. Thank you.

19 MS. IODICE: Now if we could please have SPOE40015904 to
20 40016230, and its English translation with the ending Revised Partial
21 Combined. Could we please go to the second PDF page on the original
22 and stay on this same page with --

23 PRESIDING JUDGE SMITH: Ms. Iodice, is this still part of the
24 book?

25 MS. IODICE: It's a different book.

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Cross-examination by Ms. Iodice

1 PRESIDING JUDGE SMITH: [Microphone not activated].

2 MS. IODICE:

3 Q. So this a book published by General Reinhardt, "KFOR Troops for
4 Peace, Diary notes of a German commander in Kosovo." Are you
5 familiar with this book?

6 A. No.

7 MS. IODICE: If we could please go to page 5 of the PDF, and
8 that's SPOE40015929, and this, in the original, will be PDF page 26.
9 So if you can focus on the bottom part of the first book page in
10 English -- yes.

11 Q. Here General Reinhardt is describing his first visit with you.
12 He writes:

13 "We paid our first official visit to Bernard Kouchner and his
14 deputy" --

15 MR. MISETIC: I'm sorry, could we get the right part of the page
16 to the witness?

17 MS. IODICE: Ah, sorry. The English part is on the other side,
18 the bottom of the -- yeah. Thank you.

19 Q. "We paid our first official visit to Bernard Kouchner and his
20 deputy, Jock Covey. Covey would prove to be a calming influence in
21 all difficult situations and a savvy expert in negotiations with the
22 UN in New York, and also with politicians in Pristina. He had gained
23 experience in Sarajevo and previously as US envoy in Berlin, so
24 nothing could easily throw him off balance."

25 And then if we can scroll down to the last paragraph on this

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1 page, yes, where it says "I told Kouchner," here he notes how he
2 subordinated KFOR to Kouchner's wishes, how important it was to have
3 a common position to achieve the goals of the international
4 community, and how they never allowed themselves to be divided.

5 I presume you agree with this; correct?

6 A. Generally, yes.

7 Q. Thank you.

8 MS. IODICE: If we could now go to PDF page 101 of the original
9 and PDF page 27 of the English, and that is SPOE40016004.

10 Q. Do you recognise -- I'll wait until the English is up.

11 MS. IODICE: Yeah, for the English, it's just the caption of
12 that.

13 Q. Do you recognise Kouchner and Reinhardt --

14 A. Yes.

15 Q. -- in this photo?

16 A. Yes. And he calls him his twin brother.

17 Q. Exactly. Thank you.

18 MS. IODICE: I'd like to tender these pages into evidence.

19 These are SPOE40015905, 40016004, 40015929.

20 PRESIDING JUDGE SMITH: Any objection?

21 MR. MISETIC: No objection.

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 THE COURT OFFICER: Thank you, Your Honours. Those pages will
24 be assigned Exhibit P04497, and its current classification is public.
25 Thank you.

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1 MS. IODICE: Thank you.

2 Now, could we please bring up SPOE00403545 to 00403566 and its
3 English translation.

4 Q. This is a book written by Dr. Kouchner called "The Warriors of
5 Peace." Are you familiar with it?

6 A. Yes. In fact, I recently purchased a copy, but it seems to be
7 available to me only in French, so I've not read it at all. I'm
8 impressed that you have a translation.

9 Q. Thank you.

10 MS. IODICE: If we can please go to PDF page 3 of the original,
11 and that is SPOE00403547. If we can please zoom in on the editorial
12 details on the bottom.

13 Q. This shows that it was published in 2004. It's only in the
14 French version. Do you see that? On the --

15 A. Do I -- do I see the publication date?

16 Q. Yes.

17 A. Yes.

18 Q. Thank you.

19 MS. IODICE: And if we can please move to PDF page 11 in both
20 languages, that is SPOE00403555. Here, if we can zoom in on the
21 English.

22 Q. Here, at the second paragraph in English, Kouchner writes about
23 his cooperation with General Reinhardt, saying:

24 "We always reacted together, civilians and soldiers mixed; there
25 was no question of shifting the blame onto one another."

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1 And then he says:

2 "We were presented as the twin brothers of this mission: not a
3 single important decision was made without the consent of both
4 leaders."

5 I presume you generally agree also with this assessment by
6 Mr. Kouchner; correct?

7 A. Please, you're a little soft in your microphone. If you
8 could --

9 Q. Yes, I'll try to speak up. I'm sorry.

10 A. Yes.

11 MS. IODICE: Maybe we could put his volume up? Or no?

12 THE WITNESS: I'm sorry, please go ahead.

13 MS. IODICE: Thank you.

14 Q. Did you hear the passages that I read out?

15 A. No. Could you do that again --

16 Q. Thank you.

17 A. -- please.

18 Q. So here it says:

19 "We always reacted together, civilians and soldiers mixed; there
20 was no question of shifting ... blame onto one another."

21 And then he says:

22 "We were presented as the twin brothers of this mission: not a
23 single important decision was made without the consent of both
24 leaders."

25 This is while he's speaking about his relationship with

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1 General Reinhardt.

2 A. Yes.

3 Q. And I presume you agree with this?

4 A. In the main, yes.

5 Q. Thank you.

6 MS. IODICE: I would like to tender these pages into evidence.
7 These are SPOE00403545 to 3547, and then SPOE00403555. That's the
8 cover page plus this page.

9 PRESIDING JUDGE SMITH: Any objection?

10 MR. MISETIC: No objection.

11 PRESIDING JUDGE SMITH: SPOE00403545 to 00403547 together with
12 PDF page 3 and -- I'm sorry, and page 11, which --

13 MS. IODICE: I can read again the ERN, Your Honour, if that
14 helps.

15 PRESIDING JUDGE SMITH: [Microphone not activated].

16 MS. IODICE: Yes.

17 THE COURT OFFICER: Your Honours, I will repeat the last number
18 because it was missed from the record. It is 00403555, together with
19 SPOE00403545 to 47, will be assigned Exhibit P04498, currently
20 classified as confidential.

21 PRESIDING JUDGE SMITH: It can be public, I take it, Ms. Iodice?

22 MS. IODICE: Yes. I also tendered page ending 403555, which is
23 this page.

24 PRESIDING JUDGE SMITH: He said 40 --

25 MS. IODICE: It's admitted?

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1 PRESIDING JUDGE SMITH: He said that.

2 MS. IODICE: Okay. Thank you. Sorry.

3 PRESIDING JUDGE SMITH: So this will be reclassified as public.

4 MS. IODICE:

5 Q. Now, in your statement at paragraph 17, you briefly mentioned
6 the mandate of the Security Council Resolution 1244, and I just want
7 to quickly go through it with you.

8 MS. IODICE: So if we can please bring up 1D00078.

9 Q. So this is the resolution that I'm sure you know very well.

10 MS. IODICE: If we can please go to PDF page 2, and focus on the
11 paragraph right above point 1. Yeah.

12 Q. This paragraph states that the Security Council is acting under
13 Chapter VII of the UN Charter, and this is the charter that allows
14 for enforcement action in case of threats to peace; correct?

15 A. Yes.

16 MS. IODICE: And now if we can please go to the next page, and
17 focus on, yes, paragraph 9 and the subparagraphs. Thank you.

18 Q. This section defines KFOR mandate; right?

19 A. Yes.

20 Q. Including:

21 "Ensuring public safety and order until the international civil
22 presence can take responsibility for this task."

23 That's in (c) and (d); yes?

24 A. Yes.

25 Q. And now if we can go to -- at the bottom of the page, we can see

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1 paragraph 11, and that sets out the duties of the civil presence;
2 right?

3 A. Yes.

4 Q. Okay. Thank you. Now I'd like to talk about your knowledge of
5 the KLA. You touched upon this in your statement and yesterday.

6 A. I'm sorry, my knowledge of?

7 Q. The KLA, UCK.

8 A. Yes.

9 Q. Do you know when the KLA came out publicly?

10 A. No.

11 Q. And I take it you're also not familiar with the contents of KLA
12 regulations, are you?

13 A. No.

14 Q. Are you familiar with the contents of any KLA order?

15 A. I don't believe so.

16 Q. Thank you. Are you familiar with the roles of Azem Sylja and
17 Sokol Bashota?

18 A. No.

19 Q. Did you ever hear about a prisoner exchange that took place in
20 January 1999?

21 A. I -- it's not -- I'm not familiar, no.

22 Q. Thank you. And --

23 A. I hasten to add, at the time I was not directly involved in -- I
24 was at the time at the National Defense University working on a
25 project that eventually became the book that is something of a -- a

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1 book for future practitioners, not specific to Kosovo. I was not
2 following events in Kosovo as I had been when I was previously at the
3 National Security Council.

4 So, no, I was not familiar with those things.

5 Q. Thank you. And you also said during your preparation session
6 that you don't know what PU stands for; correct?

7 A. I assumed that it meant paramilitary unit, but I'm not familiar
8 with it.

9 Q. Thank you. And now, you described Hashim Thaci in your
10 statement as a non-combatant and his relationship with the KLA as
11 "tenuous" or "thread-like." So I want to ask you a few questions
12 about your knowledge of Hashim Thaci.

13 You did know that he was heading -- that he had headed the
14 entire Albanian delegation at Rambouillet; right?

15 A. I know that he -- I know from the historical record that at the
16 conclusion of Rambouillet, he had been designated the prime minister
17 of the provisional government. I was not involved. As I said, I was
18 at the university working on a different project, so I don't know
19 under what auspices he was invited or what his role was in the
20 internal discussions at Rambouillet.

21 Q. Thank you. And you also knew that he had signed the
22 undertaking?

23 A. Yes.

24 Q. Did you know who the founders of the KLA were?

25 A. No.

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1 Q. And did you know about the role of the LPK in the creation of
2 the KLA?

3 A. I can't say I'm familiar with that, no.

4 Q. Thank you. Did you know who was designated by the LPK to create
5 and build the KLA?

6 A. No.

7 Q. Now, were you aware that the KLA had launched a synchronised
8 attack using RPGs on several Serbian police stations in September
9 1997?

10 A. I'm trying to remember where I was at the time. I think -- I
11 may have been aware of that.

12 Q. Okay. I'll refresh your memory and see if you remember.

13 MS. IODICE: Could we please bring up SPOE00131751 to 00131857
14 and its English translation, and the English translation ERN is
15 SPOE00131824 to SPOE00131857-ET.

16 Q. While we wait, did you know - if you remember - who brought into
17 Kosovo those -- part of those RPGs just a month before those
18 coordinated attacks?

19 A. No.

20 Q. Thank you.

21 MS. IODICE: If we can please go to page PDF 9 of the English,
22 and that's PDF page 82 in the Albanian version. And if we can focus
23 on the last question on that page at the bottom. Yes.

24 Q. Here they're asking -- this is an interview with Rexhep Selimi
25 published in 2003. He was being asked about logistics for --

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1 logistics and supplies for the KLA. And here he stated, at the very
2 end of the page, the last three lines:

3 "After those first three ones, seven more RPGs were brought by
4 Hashim Thaci and Kadri Veseli in Jabllanica/Jablanice in August 1997.
5 So, in terms of RPGs ..."

6 And if we can please go to the next page:

7 "... we had eleven of them. Three additional ones came in other
8 forms, and then we had fourteen to prepare for the fourteen actions
9 of September 11, 1997. Until that day we did not use any of them,
10 even though we did have a need for using them, but we did not want
11 the Serbs to take action since at the time we considered them to be a
12 large weapon and wanted to take the Serbs by surprise, as we indeed
13 did, when we organised a very powerful and synchronised action in
14 September 1997. We had 14 RPGs and we carried out 14 actions. Had
15 we had 20 RPGs we would have done 20 actions."

16 Do you recall this event?

17 A. No.

18 Q. Thank you.

19 MS. IODICE: Your Honour, I would like to tender these two pages
20 into evidence, and these are SPOE00131832 and SPOE00131833.

21 PRESIDING JUDGE SMITH: Any objection?

22 MR. TULLY: Yes, Your Honour. We have an objection to this
23 being tendered. On Monday of this week, the Prosecution sent an
24 e-mail, they copied the Chamber, stating incorrectly that -- seeking
25 the admission of these documents, incorrectly stating that they had

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1 been authorised by the Panel. Mr. Roberts responded to that e-mail
2 the same day.

3 And we remind the Chamber that the SPO's case is closed at this
4 point, and they had many weeks after the end of their case to tender
5 documents that they felt were relevant to their case. And this is an
6 attempt to reopen the case and improperly tender these documents
7 through a witness who has said nothing about it, who says he does not
8 know the incident and can add nothing to the document itself.

9 Thank you.

10 MR. MISETIC: We --

11 MS. IODICE: May I respond, Your Honour?

12 MR. MISETIC: If I can just put on the record, we join the
13 objection, and the witness provided no comment on it.

14 MR. DIXON: Your Honour, we do as well. I mean, this goes back
15 to 1997. It's got nothing to do with his evidence-in-chief
16 whatsoever, so we raise the question of relevance in respect of this
17 witness's evidence as well.

18 MS. IODICE: Yes, Your Honour.

19 The reason why we addressed this e-mail *inter partes* was because
20 while preparing for this witness, we realised that these two pages
21 had not been admitted. When we tendered the document in -- we used
22 this document with 4401. We tendered -- at the end, we tendered all
23 the pages shown -- we actually tendered the document in its entirety.
24 Your Honours ruled, on 4 December, that the portions of the
25 interviews which were put to the witness should meet the requirement

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1 for admissions.

2 We, in good faith, believed that these pages had been admitted
3 at the time, which is why we sent an e-mail this week. We thought it
4 was an error that they hadn't been admitted. However, we are now
5 tendering them separately anyway. And the basis for admission in
6 terms to relevance, it goes directly to the evidence of this witness.
7 This witness talked about the tenuous connection that Hashim Thaci
8 has with the KLA. Here, we talk about a connection in 1997. He has
9 talked about Hashim Thaci not being a combatant. This shows that he
10 was taking actively part in supplying logistics and arms to the KLA.

11 MR. MISETIC: May I respond, Mr. President?

12 PRESIDING JUDGE SMITH: [Microphone not activated].

13 MR. MISETIC: The witness is only talking about, in his
14 evidence-in-chief, from the time he arrived, so we're talking about
15 July 1999, and this has no relevance to what he's talking about in
16 terms of Mr. Thaci's connection to the KLA. The witness did not say
17 that he had any basis of knowledge of Mr. Thaci's relationship to the
18 KLA prior to his arrival and certainly not in 1997.

19 MS. IODICE: With all due respect, Your Honour, this is
20 Mr. Misetic testifying, because this part was never in the witness
21 statement or led live, so I have a duty to fully explore what the
22 witness has stated in his statement.

23 MR. MISETIC: Sorry. Again, and I wanted to make an additional
24 point, this all has to do with the fact that the Panel's ruling
25 earlier was actually quite clear that you were admitting one page,

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1 and that's why all four Defence teams objected.

2 Secondly, I don't think I've misstated anything. The witness
3 was quite clear he wasn't commenting on things that he never saw
4 himself, so I don't know what the misrepresentation is.

5 And, finally, I'd reiterate he knows nothing about this, so
6 there's nothing he's added to this. And if they wanted it in, it
7 should have been bar tabled or something else.

8 [Trial Panel confers]

9 PRESIDING JUDGE SMITH: The two pages will be admitted. It is
10 clearly relevant. It deals with the issue of his knowledge of
11 Mr. Thaci and his role, and it was raised by the direct examination
12 by the Defence. So we will admit it.

13 Please assign a number to it.

14 THE COURT OFFICER: Your Honours, if I may seek clarification.
15 Should we add these two pages to previously admitted document, which
16 is P01883, or we should assign a new exhibit number?

17 MS. IODICE: Your Honour, our preference would be that they
18 would be added to that exhibit.

19 PRESIDING JUDGE SMITH: [Microphone not activated].

20 Please add it to 1883.

21 THE COURT OFFICER: Thank you, Your Honours. In that case,
22 pages SPOE00131832 and 833 will be added to the P01883, and it's
23 classified as public. Thank you.

24 MR. MISETIC: Mr. President, if I may just ask for some time
25 around the next break, either before or after, to put an objection on

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1 the record.

2 PRESIDING JUDGE SMITH: [Microphone not activated].

3 MR. MISETIC: A more general objection than the one I made, and
4 I don't want to do it in front of the witness.

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 MS. IODICE: Thank you.

7 Q. Sorry for this break. Now going back to your knowledge about
8 Mr. Hashim Thaci. You did know about the attack on the Adem Jashari
9 compound; right?

10 A. Yes.

11 Q. And did you know that it triggered an influx of people into
12 Kosovo to serve in the KLA?

13 A. I was not yet following those developments closely. My role at
14 the time at the NSC was focused on the implementation of the
15 Dayton Accords, but -- so the short answer is yes, aware, but the
16 level of detail to which I was aware was limited.

17 Q. Do you know of any professional soldiers who joined the KLA in
18 the spring and summer of 1998?

19 A. No.

20 Q. So you wouldn't know if they had to be authorised by anyone in
21 the KLA before becoming part of it?

22 A. I don't think so, no.

23 Q. Thank you. And did you know -- have you ever heard about the
24 takeover of Bardh i Madh/Belacevac mine by the KLA?

25 A. Not as you describe it. No, I'm not aware.

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1 Q. Have you ever heard if Hashim Thaci was at that location,
2 Belacevac/Bardh i Madh, while it was in KLA's hands?

3 A. No.

4 Q. Thank you. I'll show you a short video before our break.

5 MS. IODICE: Could we please bring up P01273 with the English
6 transcript. We can just play the video. The transcript won't be
7 needed. And if we can play it until 00:34 timestamp.

8 [Video-clip played]

9 MS. IODICE: Thank you.

10 Q. The person who took the footage, he identified those armed KLA
11 soldiers as Hashim Thaci and Kadri Veseli.

12 MS. IODICE: And this is transcript page 16650 of 4 June 2024.

13 Q. I take it you have never seen this video; correct?

14 A. I have not.

15 MS. IODICE: Your Honour, this might be a good time for a break.

16 PRESIDING JUDGE SMITH: We'll give you a ten-minute break now,
17 Witness.

18 THE WITNESS: Thank you, Your Honour.

19 [The witness stands down]

20 PRESIDING JUDGE SMITH: We're adjourned for ten minutes.

21 --- Break taken at 9.58 a.m.

22 --- On resuming at 10.10 a.m.

23 PRESIDING JUDGE SMITH: Please bring the witness in.

24 [The witness takes the stand]

25 PRESIDING JUDGE SMITH: All right. Mr. Covey, we'll continue

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1 with questions from the Specialist Prosecutor's Office.

2 Go ahead, Ms. Iodice.

3 MS. IODICE: Thank you, Your Honour.

4 Q. Just a couple of more questions about your general knowledge.

5 Have you ever heard about the takeover of the town of Rahovec by the
6 KLA?

7 A. I think I may have heard, but I could not provide any detail.

8 Q. Okay. Have you ever heard about the Llapushnik battle?

9 A. I don't believe so.

10 Q. Thank you.

11 MS. IODICE: Now could we please call up P02841 and its
12 transcript ET.

13 And if we could please play the video.

14 [Video-clip played]

15 "... gathered in the town of Orahovac to greet Hashim Thaci.
16 The KLA's political leader, and currently the most popular ethnic
17 Albanian leader in Kosovo, Thaci was led into town by 300 uniformed
18 KLA fighters in a show of strength that drew enthusiastic approval
19 from the crowd. On a day of commemoration for KLA soldiers who fell
20 during fighting with Serb soldiers and police around Orahovac, this
21 was a triumphant return.

22 "'Our job is not yet done,' Thaci told the jubilant crowd. 'We
23 have to be united more than ever for the independence of Kosovo, and
24 the world must recognise our rights.' Basking in the applause were
25 KLA soldiers allowed by the local KFOR commander to wear uniform and

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1 arm badges in honour of their fallen comrades. In a town bitterly
2 divided between Albanians and Serbs, such open reminders of the war
3 will not help to ease the wounds. Thaci called for tolerance between
4 the ethnic groups, a call this crowd may not yet be ready to hear."

5 MS. IODICE: Thank you.

6 Q. This was in July 1999, on the 17th. You had just arrived. And
7 this is how Hashim Thaci was welcomed in Rahovec at a KLA
8 commemoration. Did you know about this?

9 A. I note that he was described as the political leader. If we
10 were aware, it would have been dimly as this -- you say it was the
11 17th? This was two days after we had arrived.

12 Q. Yes.

13 A. So it does not stand out clearly in my memory.

14 Q. That's fine. Thank you.

15 MS. IODICE: Now can we please bring up SPOE00397775 to
16 00397846.

17 Q. And this is your book again.

18 MS. IODICE: If we can please go to PDF page 36, that is
19 SPOE00397810. And this is at the bottom of book page 100, so the
20 first page on the screen. And then we'll go into the next page.

21 Q. Here, the last paragraph, you wrote:

22 "During Milosevic's decade-long oppression of the Albanian
23 community, the LDK had maintained a remarkably sophisticated parallel
24 apparatus that had run schools and hospitals and provided basic
25 public services for the Albanian community. In the early 1990s,

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1 however, some Albanian nationalists and student leaders began to see
2 the LDK as a part of the Serb regime--and Rugova as its tool. Many
3 of those angry student leaders (including young Hashim Thaci)
4 eventually became key figures in the KLA. For them, the fact that
5 Rugova met with Milosevic just before the war confirmed his role as a
6 collaborator."

7 These were your words in 2005; correct?

8 A. I note, if I may be precise, that I said "became key figures in
9 the KLA" --

10 Q. Yes.

11 A. -- without describing their roles.

12 Q. Absolutely.

13 A. Okay.

14 Q. Thank you.

15 MS. IODICE: Could I please tender this page into evidence?

16 PRESIDING JUDGE SMITH: Any objection?

17 MR. MISETIC: No objection.

18 PRESIDING JUDGE SMITH: SPOE00397810 is admitted.

19 THE COURT OFFICER: That will be assigned Exhibit P04496.2,
20 classified as public. Thank you, Your Honours.

21 MS. IODICE:

22 Q. In your statement to the Defence, you confirmed that the first
23 time you and Mr. Kouchner saw Hashim Thaci together in the same space
24 with the regional commanders was at the final session of the JIC
25 meeting in mid-September 1999; correct?

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1 A. Correct.

2 Q. Thank you. Did you know about the KLA parade that was organised
3 in Prishtine on 18 September 1999?

4 A. I'm not bringing it clearly to mind.

5 Q. Okay. I'll show you a video and see if you can remember.

6 MS. IODICE: If we could please bring up 129412-08, and the
7 transcript which ends TR-GT-ET.

8 And if we could please play the video from 03:55 to 04:27. The
9 relevant part of the transcript is on the screen.

10 [Video-clip played]

11 MS. IODICE: Sorry, if you can please go back to 04:27 and stop
12 there.

13 Q. Do you recognise Hashim Thaci in this frame?

14 A. Yeah, it looks like Mr. Thaci in civvies, and it looks like it
15 might be General Ceku next to him.

16 Q. And can you describe what Hashim Thaci is wearing so that we all
17 know who you're describing?

18 A. He's wearing a dark civilian suit.

19 Q. And he's the one in the middle of two --

20 A. Just --

21 Q. -- men --

22 A. Yes.

23 Q. -- in uniform?

24 A. Just to the left of the flag pole.

25 Q. Thank you.

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1 MS. IODICE: If now we could play until 04:52 and stop there.

2 [Video-clip played]

3 MS. IODICE: Thank you.

4 Q. Do you recall whether you attended this ceremony?

5 A. No, we did not attend.

6 Q. Do you recall that it took place now? Does this refresh your
7 memory?

8 A. I don't specifically recall it, but it's very plausible,
9 especially since the deadline was about to run.

10 Q. Thank you.

11 MS. IODICE: I would like to tender this video into evidence.

12 PRESIDING JUDGE SMITH: Any objection?

13 MR. MISETIC: It's the same objection that I'd like to be heard
14 on later, so yes, we object. The witness hasn't provided any colour
15 to this.

16 MS. IODICE: Your Honour, the witness spoke about Hashim Thaci's
17 role in the KLA, and this goes to continuity of Hashim Thaci's role
18 in the KLA.

19 PRESIDING JUDGE SMITH: 129412-08 at 03:55 to 04:27 and then on
20 to 04:52 is admitted.

21 THE COURT OFFICER: Thank you, Your Honours. This portion will
22 be assigned Exhibit P04499, and it is currently classified as
23 confidential.

24 MS. IODICE: Could we please move -- sorry, the video can be
25 public.

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1 PRESIDING JUDGE SMITH: It's reclassified as public.

2 MS. IODICE: Could we please move into private session for the
3 next document due to provider's conditions.

4 PRESIDING JUDGE SMITH: Private session, please.

5 MS. IODICE: Could we please have ERN -- oh, sorry.

6 [Private session]

7 [Private session text removed]

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Witness: James Covey (Resumed) (Private Session)

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1 [Private session text removed]

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Witness: James Covey (Resumed) (Private Session)

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1 [Private session text removed]

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Witness: James Covey (Resumed) (Private Session)

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Witness: James Covey (Resumed) (Private Session)

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1 [Private session text removed]

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12 [Open session]

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

14 Thank you.

15 MS. IODICE:

16 Q. Mr. Covey, in your statement at paragraphs 59 and 65, you have

17 talked about the relationship between Hashim Thaci and Agim Ceku.

18 And during your preparation session, you said that you weren't sure

19 how you learned about Ceku's appointment.

20 MS. IODICE: And that is in 1D391, paragraph 10(e).

21 Q. Do you recall ever seeing the decree appointing Agim Ceku?

22 A. Let me say as a general comment, I'm not sure I agree with what

23 seems to be the premise of this line of questioning.

24 PRESIDING JUDGE SMITH: Witness [Microphone not activated].

25 THE WITNESS: All right. Can you restate the question, please?

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1 MS. IODICE:

2 Q. Have you ever seen the decree appointing Agim Ceku?

3 A. I don't believe I have.

4 Q. Okay. So you wouldn't have known who issued it?

5 A. I would not have known.

6 Q. Have you ever heard or do you know whether Agim Ceku ever stated
7 that the provisional government decisions were to be treated as
8 orders?

9 A. I am not aware of such a statement. But, again, I have to say I
10 am growing quite uncomfortable with the -- what seems to be the
11 premise underlying this line of questioning since it appears that
12 counsel would like to establish as fact things that somehow undermine
13 the judgments that I express in the statement and in the book. I
14 think that misunderstands what the role of a diplomat is and how we
15 arrive at our judgments. Perhaps we can discuss that in a different
16 setting.

17 Q. I wish we could. Right now, all I'm asking for is for your
18 truthful answers to my questions, that's all. And don't worry about
19 any underlying assumption. That's all I'm asking.

20 A. Well, I'm very jealous of my credibility.

21 Q. Absolutely. So in the same section of your statement, you also
22 discussed at paragraph 61 the agreement of September 1999. And this
23 is in paragraph 6 -- sorry, I already said that, paragraph 61. There
24 you stated that, by mid-September, Jackson and Ceku brought the
25 regional commanders to the brink of an agreement, and Clark flew in

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1 to help persuade them. And this was also discussed with you
2 yesterday at pages 21 and 22 of the transcript.

3 Is it correct that it was KFOR that held these talks?

4 A. Yes.

5 Q. And specifically, it was General Jackson; right?

6 A. General Jackson was in the chair, yes.

7 Q. Thank you. Do you know if Hashim Thaci had a role in these
8 negotiations?

9 A. As I think I said yesterday, in the sessions that I attended, I
10 had not seen Hashim Thaci. I was told that he had, on one or more
11 occasions, sought a separate meeting with General Jackson directly,
12 not in this kind of plenary session, but I'm not familiar with the
13 details of those meetings and certainly not the content.

14 Q. Okay. And I want to focus just on the last few days before the
15 September signing of the agreement, so we're talking about the 18th,
16 19th of September, during those two days.

17 Do you recall that at some point on the last day the
18 negotiations stalled?

19 A. Yes. We were aware that somehow General Jackson and his team
20 sensed that the zone commanders were not yet ready to commit.

21 Q. Right. And so I take that you weren't there with
22 General Jackson during those hours?

23 A. No. I -- I'll remind you that we were involved only for, let us
24 say, informational purposes because, after all, the end result of all
25 this work would be to create an entity that would fall under UNMIK,

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1 but arriving there was entirely the work of KFOR.

2 Q. Right. So I want you to have a look at General Jackson's
3 recollection of those events.

4 MS. IODICE: Can we please have ERN SPOE00212586 to 00212692.
5 These are excerpts from a book written by General Jackson. And if we
6 could go to PDF page 93, which is SPOE00212678. And can you focus on
7 the last paragraph, "As the eleventh hour arrived ..."

8 Q. I will read out some portions. And as you look at it, I will
9 also summarise, because I'm going through quite a large part of it.
10 So here it says:

11 "As the eleventh hour arrived, the negotiations became extremely
12 tense. Up until now we had been bouncing ideas around, but now the
13 time had come to settle. Ceku was going through hell. His brain was
14 telling him, 'I've got to play ball, for the long-term future of
15 Kosovo, I've got to,' but his heart was working in the other
16 direction. I kept saying to him, 'Don't be emotional,' 'You must
17 comply with UNSCR 1244,' 'the world is watching' - banging on,
18 repeating the same points again and again."

19 MS. IODICE: If we can please go to the next page. And -- yes.
20 Here -- if we can scroll down a little bit. Yeah, "The following
21 day ..."

22 Q. Here he adds that on --

23 MS. IODICE: Can we please, sorry, go up again. Yes. A little
24 bit -- to the beginning of the page. Yes.

25 Q. Here he mentions that on day 89:

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1 "... Thaqi turned nasty. 'Nobody plays games with the KLA,' he
2 shouted at me. 'If you think you can issue directions to us, then
3 you are mistaken and you will regret it.'"

4 And then one paragraph down, "The following day, Sunday
5 19 September ..." he says:

6 "The press were speculating that the talks had collapsed."

7 In the evening, "Thaqi sent a message that I should go downtown
8 to meet him. 'Bollocks to that,' was the universal reaction up at
9 the Film Factory."

10 Then he explains that eventually Jackson tracks down Thaci and
11 Thaci agrees to go to KFOR HQ, where he arrives after 10.00 p.m.
12 Jackson then writes that, as the night wore on, it was clear that
13 they were not near to closing the deal. And at 6.00 a.m., he went
14 out and gave a press conference, reminding the KLA that the
15 undertaking had expired and that officially it no longer existed as
16 an organisation.

17 So according to General Jackson, who conducted the negotiations,
18 it was Mr. Hashim Thaci who stalled the negotiations; right?

19 A. I'm sorry, according to General Jackson -- just say that again,
20 please.

21 Q. According to General Jackson, in the passage that we just read,
22 he described the break in the negotiations, and he mentioned that it
23 was Hashim Thaci who stalled the negotiations in the end. Do you
24 agree with that?

25 A. I have not read General Jackson's book. This is new, this

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1 passage is new to me. And it was clear there were a lot of forces at
2 work, and one of those voices was clearly Mr. Thaci.

3 Q. Thank you.

4 MS. IODICE: I would like to tender these two pages. It's
5 SPOE00212678 to SPOE -- three pages, sorry, 00212680. Sorry, can I
6 see the ERN of this at the end? Apologies. No, sorry, then the
7 second page would be 79.

8 PRESIDING JUDGE SMITH: So just 78 and 79?

9 MS. IODICE: Yes.

10 PRESIDING JUDGE SMITH: [Microphone not activated].

11 MR. MISETIC: No objection.

12 PRESIDING JUDGE SMITH: So SPOE00212678 to 212679 is admitted.

13 THE COURT OFFICER: And will be assigned Exhibit P04501,
14 classified as confidential.

15 MS. IODICE: Thank you.

16 Q. Yesterday you talked about the security situation when you
17 arrived, and you said that no clashes or frictions were brought to
18 your attention. That's at page 34 of the provisional transcript.

19 A. No hostilities --

20 Q. No --

21 A. No combat had been brought to our attention.

22 Q. Thank you.

23 MS. IODICE: Can we please have P02533, and can we please not
24 broadcast it. If we can please go to the second page.

25 Q. So I'm not going to describe it for confidentiality reasons, but

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1 you can look at it and see what it is. I can note that the date is
2 12 August 1999.

3 MS. IODICE: And if we can scroll to point 3.

4 THE WITNESS: I --

5 MS. IODICE: Yes, please?

6 THE WITNESS: I'm confused about the origin, whose document this
7 is.

8 MS. IODICE: I would need to go into private session to mention
9 that.

10 PRESIDING JUDGE SMITH: [Microphone not activated]. I'm sorry.
11 Into private session.

12 [Private session]

13 [Private session text removed]

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Witness: James Covey (Resumed) (Private Session)

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Cross-examination by Ms. Iodice

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16 [Open session]

17 THE COURT OFFICER: Your Honours, we are back in public session.

18 Thank you.

19 MS. IODICE:

20 Q. So now I'll show you one more document and then we'll have a
21 break.

22 MS. IODICE: Could we please have P04128. The next document is
23 an OSCE report for the period of 14 to 20 September 1999. And if we
24 could please go to the next page.

25 Q. If you focus on "Restriction of freedom of movement," the first

Witness: James Covey (Resumed) (Open Session)

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Cross-examination by Ms. Iodice

1 paragraph reports about the blockade of Orahovac, and it reports how
2 both uniformed and plain-clothed KLA were observed controlling
3 checkpoints. Does this refresh your memory about some of the events
4 at that time?

5 A. Please point again to which paragraph you're talking about.

6 Q. Yes, I'm sorry. So if you look under the header "Restriction of
7 freedom of movement" --

8 A. Yes.

9 Q. -- and the first paragraph there, it says:

10 "The human rights team in Prizren reported that the blockade of
11 Orahovac continues."

12 And then it describes it. And then at the end, it says:

13 "Both uniformed and plain-clothed KLA have been observed
14 controlling checkpoints."

15 A. And your question is am I familiar with this particular report?

16 Q. Whether this refreshes your memory of some of the events at the
17 time.

18 A. Events such as these were occurring.

19 Q. Yes, the KLA controlling checkpoints in the -- in Orahovac?

20 A. We are -- I am aware that reports were being made, allegations
21 were being made of this kind of activity.

22 Q. Thank you.

23 MS. IODICE: Your Honour, I know it's early for the 11.00 break.
24 I have a longer topic I'll enter. I can start now or, if
25 appropriate, we can take the break now.

Witness: James Covey (Resumed) (Open Session)
Cross-examination by Ms. Iodice

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1 PRESIDING JUDGE SMITH: Go ahead and start now. You've got
2 almost ten minutes.

3 MS. IODICE: All right.

4 Q. Now, I want to talk about some of the crimes that you observed
5 while you were in Kosovo. And you talked about this in various parts
6 of your statement where you state that crimes were the result of
7 lawlessness and revenge.

8 Have you read the indictment in this case?

9 A. I have not.

10 Q. Okay. So you do not know what crimes are charged here; right?

11 A. That's correct. But I believe I'm here to speak to the
12 responsibility for those crimes.

13 Q. Absolutely. I just wanted to know what your knowledge is at the
14 moment. So now what I want to focus on is crimes against
15 collaborators. And during the preparation session with the Defence,
16 you were shown a portion of your book about this and were provided
17 the opportunity to comment.

18 MS. IODICE: So if we can please have ERN SPOE00397775 again up
19 on the screen, and if we can please go to PDF page 36. That is
20 SPOE00397810. I'm sorry, I realise that this page was already
21 admitted.

22 THE COURT OFFICER: Yes, it was admitted as P04496.2. Thank
23 you.

24 MS. IODICE: If we can focus on the first paragraph, "The
25 Political Context," under the header "Political Context." Those

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1 first two paragraphs. Yeah.

2 Q. And here, starting in the second paragraph, you wrote:

3 "As NATO troops began arriving in early June 1999, nearly one
4 hundred civilians were being killed each week, mostly Serbs. The KLA
5 hunted down Serbs who had been involved in the war, as well as
6 collaborators among the other ethnic communities, especially the
7 Turkish and the Roma, and even ethnic Albanians they regarded as
8 simply too cooperative with their former Serb oppressors. KLA
9 extremists were determined to chase the Serbs out of Kosovo, using
10 violence and terror when necessary."

11 And during the prep session, you were shown exactly this
12 passage, and you stated that the first sentence should be read in the
13 context of the following sentence referring to KLA extremists;
14 correct?

15 A. That's correct.

16 Q. Thank you. But you do know that some crimes in 1998 and 1999
17 appear to be the result of organised efforts by the KLA; right?

18 A. That was the -- that was the near-universal impression.

19 Q. Thank you. Do you recall reading reports about it at the time?

20 A. We would have seen mention in a variety of documents reports of
21 or allegations of activities like this, yes.

22 Q. I'm going to show you one example, and you can tell me if you
23 can comment on it or not.

24 MS. IODICE: Can we please have SPOE00397688 to 00397704.

25 Q. So this is a "US Department of State, Serbia-Montenegro Country

Witness: James Covey (Resumed) (Open Session)

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Cross-examination by Ms. Iodice

1 Report on Human Rights Practices for 1998," and this was released in
2 February 1999.

3 MS. IODICE: If we can please go to PDF page 2, which is 397689,
4 and the third paragraph.

5 Q. Here, it notes that elements of the KLA:

6 "... committed killings, were responsible for disappearances,
7 abducted and detained Serbian police, as well as Serb and Albanian
8 civilians (those suspected of loyalty to the Serbian Government), and
9 in a few isolated cases [they] 'tried' suspects without due process.
10 There are also credible reports of instances of torture by the KLA."

11 Would this be the kind of reporting that you knew of?

12 A. I will say I've never seen this particular document nor would I
13 have. What -- the practices described in that paragraph were, I put
14 it in quotes, "common knowledge." That is, somehow everyone knew,
15 but I'm not -- I was not in the process of documenting individual
16 instances.

17 Q. Of course.

18 MS. IODICE: And, Your Honours, I'd like to show two more
19 extracts from here and then break.

20 So if we can go to page 5 of the PDF, that's the page ending
21 397692, the penultimate paragraph.

22 Q. The second half of that paragraph mentions - thank you - that:

23 "In October the KLA detained 13 Albanian politicians, including
24 members of the Kosovo Albanian Shadow Parliament, in Cirez for 2
25 days."

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1 And then it notes how they reportedly tortured those detained.

2 Is this the kind of reporting that you would have --

3 A. As I said --

4 Q. -- heard of?

5 A. -- this kind of reporting was widespread.

6 Q. Right.

7 A. But I still am concerned that -- about whether any of this is
8 particularly relevant to the conclusions I offered in the statement.

9 Q. I don't think that's something you should be concerned about.
10 Just provide your truthful answers --

11 A. As I said, a diplomat has only integrity and credibility to
12 offer, and I feel it's being challenged on a basis I don't
13 understand.

14 Q. I'll show you one more portion.

15 A. Thank you.

16 MS. IODICE: If we can please go to PDF page 8. The last
17 paragraph.

18 Q. The last paragraph here notes how collaborators were killed,
19 some ethnic Albanians employed by the state-owned enterprise were
20 threatened. So this is again one example of those common knowledge
21 reporting that you mentioned earlier; correct?

22 A. Without the -- again, I cannot say I am familiar with this
23 particular document, but the kinds of things that are being narrated
24 here were common.

25 Q. Thank you.

Witness: James Covey (Resumed) (Open Session)

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1 MS. IODICE: Your Honour, I would like to tender this document
2 into evidence.

3 PRESIDING JUDGE SMITH: Objection?

4 MR. MISETIC: No objection.

5 PRESIDING JUDGE SMITH: SPOE00397688 to 397704 at pages 397689,
6 397692, and the last one you just referred to is page 8. You didn't
7 give an ERN.

8 MS. IODICE: I'm sorry, Your Honour. That's SPOE00397695. The
9 entire range is 397688 to 397704.

10 PRESIDING JUDGE SMITH: [Microphone not activated].

11 That will be admitted.

12 THE COURT OFFICER: Thank you, Your Honours. If I may seek a
13 further clarification if we are tendering three or four pages.
14 Therefore, do we tender the first page, which is ending with 688,
15 because that was shown initially, and then we showed 689, 692 and
16 695.

17 MS. IODICE: I was tendering the entire document.

18 PRESIDING JUDGE SMITH: The entire document as stated in the ERN
19 full range.

20 THE COURT OFFICER: Thank you, Your Honours. In that case,
21 SPOE00397688 to 00397704 will be assigned Exhibit P04502, and it's
22 classified as confidential. Thank you, Your Honours.

23 PRESIDING JUDGE SMITH: We'll give you a half-hour break now,
24 Mr. Covey.

25 THE WITNESS: Thank you.

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1 PRESIDING JUDGE SMITH: Please --

2 THE WITNESS: Thank you, Your Honour.

3 PRESIDING JUDGE SMITH: -- do not speak with anyone about your
4 testimony outside of the courtroom, as you've been reminded.

5 THE WITNESS: Yes, Your Honour.

6 PRESIDING JUDGE SMITH: So we'll see you back here at
7 approximately 11.35.

8 THE WITNESS: Thank you.

9 [The witness stands down]

10 [Trial Panel confers]

11 PRESIDING JUDGE SMITH: We'll be adjourned until 11.35.

12 --- Recess taken at 11.05 a.m.

13 --- On resuming at 11.35 a.m.

14 PRESIDING JUDGE SMITH: Madam Court Officer, you may bring the
15 witness in.

16 [The witness takes the stand]

17 PRESIDING JUDGE SMITH: We continue, Mr. Covey, with the
18 cross-examination by the SPO.

19 Go ahead, Ms. Iodice.

20 THE WITNESS: Thank you.

21 MS. IODICE: Thank you, Your Honour. For the next questions,
22 could we please go into private session.

23 PRESIDING JUDGE SMITH: Private session, please,
24 Mr. Court Officer.

25 [Private session]

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Cross-examination by Ms. Iodice

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Witness: James Covey (Resumed) (Open Session)

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Cross-examination by Ms. Iodice

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Witness: James Covey (Resumed) (Private Session)

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Cross-examination by Ms. Iodice

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24 [Open session]

25 THE COURT OFFICER: Your Honours, we are back in public session.

Witness: James Covey (Resumed) (Open Session)

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Cross-examination by Ms. Iodice

1 Thank you.

2 MR. MISETIC: Mr. President.

3 PRESIDING JUDGE SMITH: Yes.

4 MR. MISETIC: I do want to now put another objection on the
5 record. I had made an objection last week about the SPO putting its
6 case to the witness, which was something the Defence was required to
7 do over 30 times in the Prosecution case in chief. The witness has
8 now several times requested that the case be put to him so he can
9 comment on it, and we would ask that the Prosecution put its case to
10 the witness to give him a fair opportunity to comment.

11 PRESIDING JUDGE SMITH: [Microphone not activated] ... state your
12 case to the witness --

13 MS. IODICE: Your Honour, I believe I --

14 PRESIDING JUDGE SMITH: -- on the line of these questions.

15 MS. IODICE: I didn't hear you.

16 PRESIDING JUDGE SMITH: On the line of these questions --

17 MS. IODICE: Right.

18 PRESIDING JUDGE SMITH: -- state your case to the witness.

19 MS. IODICE: I understand. Thank you. The next -- we are in
20 public session?

21 PRESIDING JUDGE SMITH: No, state your case to the witness.

22 MS. IODICE: Yes.

23 Q. Mr. Covey, whenever I start a new topic, I introduce the topic
24 to you with what you have said before. The reason why I've been
25 asking you these questions was because you said that there were --

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1 that you were aware of reports from people who claimed that they were
2 detained by people who claimed to be the KLA. That's why I asked you
3 these questions.

4 I hope that clarifies.

5 A. It doesn't, because my testimony, and particularly my statement,
6 concerns primarily our judgments about Mr. Thaci's role, putative or
7 real, in any of these incidents. So my statement primarily concerns
8 our judgments concerning his actual authority over the individuals
9 who may or may not have been proven to have perpetrated these crimes.

10 None of this seems to connect, in my mind, Mr. Thaci to these
11 incidents or to challenge the way we arrived at our judgments
12 concerning that, so I don't believe you've illuminated your case for
13 repeatedly reviewing the reports of these incidents.

14 Q. As I stated, every time I will put a new document to you, I will
15 orient you with the relevant part of your statement or of your
16 evidence that I'm trying to address. This is not about generally
17 what you said in your statement. It's about specific assertions in
18 your statement that we are going to address, and through these
19 documents I want to elicit your memory.

20 A. I think you are methodically taking things out of context from
21 my statement then.

22 PRESIDING JUDGE SMITH: Mr. Covey, Mr. Covey.

23 THE WITNESS: Yes.

24 PRESIDING JUDGE SMITH: You're entitled to have her state her
25 case, which she has done, but you don't have to necessarily agree

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1 with it.

2 THE WITNESS: Okay.

3 PRESIDING JUDGE SMITH: And you're asking her to agree with you,
4 and I don't know that she has to do that either. She has a --

5 THE WITNESS: Thank you.

6 PRESIDING JUDGE SMITH: -- job to ask you questions, and so far
7 she's been doing that, and you've been doing a good job of answering
8 them. So we just want to continue.

9 THE WITNESS: Thank you, Your Honour. I guess we'll get to that
10 later.

11 MS. IODICE:

12 Q. So now I want to move on to the part of your evidence where you
13 discussed UNMIK and KFOR mandate on preventing and combatting crime.
14 In your statement at paragraph 36, you said that KFOR did not have
15 the training or mandate to take on police functions, and that some
16 countries were expressly prohibited, and you mentioned the US.

17 Yesterday in court, you also expanded on that and you explained
18 the KFOR workaround that you found as a possible solution to that.
19 Do you recall that?

20 A. A very limited solution.

21 Q. Yes.

22 A. Yes.

23 Q. Thank you. So now we talked about -- we also talked about --
24 earlier about the mandate in general, so I want to show you some
25 portions of your book where you explain your mandate in your own

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1 words or your -- your application of the mandate in your own words.

2 MS. IODICE: If we could please call up SPOE00397775. And if we
3 could please go to PDF page 25, which is ERN SPOE00397799. And can
4 we please focus on the bottom of the book page 78, so the first page
5 at the bottom. Yeah.

6 Q. Here, you see the last paragraph, where it says, "Two years
7 after this policy shift ..."? I'll read out some parts for you:

8 "Two years after this policy shift, as the international
9 community went into Kosovo, most military commanders and civilian
10 officials understood their roles under [the] UN Security Council
11 Resolution 1244: the mission would be evenhanded with those who
12 basically cooperated ..."

13 PRESIDING JUDGE SMITH: [Microphone not activated].

14 THE WITNESS: Thank you.

15 MS. IODICE: Sorry. Apologies.

16 Q. "... the mission would be evenhanded with those who basically
17 cooperated with the peace implementation process and would actively
18 oppose those who obstructed it. The concept became a guiding
19 principle for planning and performing daily business. UNMIK
20 officials and commanders simply needed to ask, Does this situation
21 advance or impede the peace process? If it was the latter, the
22 default position was to act."

23 And now -- these were your words; correct?

24 A. Yes.

25 MS. IODICE: And now if we can go to two paragraphs down,

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1 starting with "It was fortunate ..."

2 THE WITNESS: I think it's --

3 MS. IODICE: Yeah.

4 THE WITNESS: -- the paragraph immediately after the one you
5 were looking at.

6 MS. IODICE: Yeah. Thank you.

7 Q. It says here -- you're talking about General Jackson's approach,
8 and you say that:

9 "Nearly every British officer over the rank of captain had
10 served in Northern Ireland and understood without NATO guidance the
11 need to 'support those who support the peace process.'"

12 Now if we can go down to the paragraph starting "In Kosovo ..."

13 "In Kosovo, in contrast, the Security Council empowered the SRSG
14 to exercise executive authority under Chapter VII of the UN Charter.
15 The mandate ensured the mission's fundamental legitimacy and provided
16 ample [opportunity] to pursue our responsibilities in transforming
17 Kosovo's conflict. While UNMIK could in no way insert itself between
18 KFOR and NATO, Resolution 1244 was all a shrewd custodian needed to
19 shape military and police activities to create consequences for those
20 obstructing the process leading to a viable peace.

21 "Second, the custodian needs a robust political strategy ...
22 which calls for active engagement with all parties to the conflict.
23 This involves encouraging them to rethink their interests in ways
24 that could be compatible with the peace process. Influential faction
25 leaders who are willing to take risks to support the process need to

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1 be protected. The custodian should make his expectations for proper
2 behaviour known at the outset, and then continually urge faction
3 leaders to meet these expectations. None can be permitted to opt out
4 or exercise a *de facto* veto.

5 "Finally, any peace process requires popular support. In Kosovo
6 we learned to work through faction leaders to encourage their
7 followers to support the mission in an open manner and to renounce
8 obstructionists' actions that were aimed at thwarting the peace
9 process."

10 MS. IODICE: If we can just scroll down one line.

11 Q. This reflects your words in 2005 and your approach; correct?

12 A. Yes.

13 Q. Thank you.

14 MS. IODICE: Can we please move to page 29, which is ERN
15 SPOE00397803, and focus on page 87 of the book. No, the other one.
16 Yeah, "In Kosovo ..." Yes.

17 Q. That paragraph, the second part of that paragraph, here you
18 stated how this was applied on the ground. You said:

19 "KFOR units, chiefly British, used a mix of roving patrols,
20 checkpoints, crowd control, surveillance, and quick reaction to buy
21 time for the UN team to initiate a political process and deploy an
22 international police force. UNMIK Police and KFOR planners jointly
23 mapped a deployment sequence that would link military and police
24 activities and transfer responsibility for conventional policing
25 incrementally as UN capabilities grew. KFOR progressively shifted to

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1 backup positions and usual military-style duties in support of the
2 police. This set the stage for joint operations as the mission
3 progressed."

4 And, again, these were your words in 2005 and how you applied
5 your theory on the ground?

6 A. Yes.

7 Q. Thank you.

8 MS. IODICE: Now, I would like to tender these two pages into
9 evidence, Your Honour.

10 PRESIDING JUDGE SMITH: Any objection?

11 MR. MISETIC: Again, and just in terms of putting the case, I
12 don't know what this addresses specifically in the statement.

13 MS. IODICE: I made it very clear, Your Honour, at the beginning
14 of the questioning.

15 MR. MISETIC: Well, can we have the witness have an opportunity
16 then to say what about his statement this addresses?

17 MS. IODICE: He will at the end of these questions.

18 MR. MISETIC: Well, I would prefer that it be put before I have
19 to make a position on whether to admit it or not. So can we reserve
20 it then and tender it after you put the question to him?

21 PRESIDING JUDGE SMITH: Yes, that would be fine.

22 Go ahead.

23 MS. IODICE: Okay.

24 Q. Were you aware that KFOR contingents specifically set out
25 procedures to implement the police functions?

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1 A. KFOR did not implement police functions.

2 Q. Okay.

3 A. They were forbidden to do so.

4 Q. Okay.

5 A. Both by NATO doctrine and in many cases by national law.

6 Q. Okay. And my question to you is that it is our position that
7 KFOR was doing exactly that, and I would like to show you with the
8 next document.

9 A. I would like to preface that by saying that KFOR was permitted
10 to provide area security to protect international personnel, to try
11 to maintain public order. Ordinary police duties such as arresting,
12 investigating, and other law enforcement-type activities were
13 expressly forbidden. So they had only the, call it, powers of
14 detainment, which is not a law enforcement function. It's a military
15 function.

16 Q. Mr. Covey --

17 A. So I say that in preface --

18 Q. Thank you.

19 A. -- so go ahead with what you have.

20 Q. And just to be clear, we looked at the mandate before, and you
21 do agree with me that paragraph 9 gave the possibility to KFOR to
22 implement those functions until the time --

23 A. I'm --

24 Q. -- UNMIK was ready to --

25 A. I'm sorry. Then we need to discuss that more precisely, because

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1 it was an important distinction of which we were reminded almost
2 daily that KFOR could not function as police. It could augment. If
3 it were challenged or threatened, it could detain. But there was
4 then a bit of a quandary about what to do with anyone detained, which
5 was never fully resolved.

6 So if you took from something I said earlier that, in fact, KFOR
7 was actually performing police functions, that was an error.

8 Q. Mr. Covey, I'm just trying to clarify some parts of your
9 statement, and I think you have clarified it, so let's look at an
10 example of what they did.

11 A. Okay.

12 MR. MISETIC: Mr. President, I'm sorry to rise again. If
13 there's something that counsel says the book contradicts what he just
14 said, then since he's the author of the book, I would ask that that
15 portion of the book be put to him so he can explain it.

16 PRESIDING JUDGE SMITH: We'll have to see how the questioning
17 goes, and perhaps you're right, but right now she can continue with
18 her questions.

19 MR. MISETIC: I'm just saying -- I understood she's taking this
20 down and putting a different document up now. And if that's not
21 correct, then I apologise. But if it is then --

22 MS. IODICE: Yes, it's all related.

23 MR. MISETIC: I understand. But if you're moving on from the
24 book, that's why I rose now. But if you're going to get back to the
25 book, then that's fine.

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1 PRESIDING JUDGE SMITH: Are you going back to the book or are
2 you just --

3 MS. IODICE: No, I'm not going back to the book. But this is
4 all related to the same --

5 PRESIDING JUDGE SMITH: Okay. So you're finished with the book
6 for -- with this --

7 MS. IODICE: For this page --

8 PRESIDING JUDGE SMITH: -- person's testimony?

9 MS. IODICE: No. No, no, I'm -- for this page. But I will go
10 back to the book.

11 PRESIDING JUDGE SMITH: Proceed with your questions.

12 MS. IODICE: Thank you. Can we please have --

13 PRESIDING JUDGE SMITH: No, did you tender those two pages?

14 MS. IODICE: I did before, but there was no decision.

15 PRESIDING JUDGE SMITH: Are you objecting to the two pages?

16 MR. MISETIC: Yes, because she hasn't said how these pages
17 relate to what he just said.

18 PRESIDING JUDGE SMITH: Well, she doesn't have to say. She's
19 going to ask him some questions about it.

20 MR. MISETIC: [Overlapping speakers] ...

21 PRESIDING JUDGE SMITH: That's what cross-examination is.

22 MR. MISETIC: So forgive me if I'm misunderstanding counsel.
23 I'm understanding that she's going now to a different page. But if
24 she's saying that she's going to now at some point ask him or
25 confront him and say that what he just said is contradicted by the

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1 book, then I have no objection. But if that's not going to happen,
2 then I object.

3 MS. IODICE: Your Honour, I think I've been very clear in my
4 questions, opening with what the witness said about UNMIK and KFOR
5 capabilities and KFOR mandate. So I showed the relevant part where
6 the witness has discussed --

7 PRESIDING JUDGE SMITH: And why are you offering that? What is
8 the point?

9 MS. IODICE: The point is that here he explains that -- that
10 expands on the witness -- what the witness said in his statement,
11 where he said that there was no -- that KFOR was forbidden from
12 policing. I think that point has been explained in terms of what the
13 witness means now with the witness, meaning that it doesn't mean that
14 there was no policing at all. The issue is that if I don't show
15 additional documents, all we have is what he said in the statement.

16 PRESIDING JUDGE SMITH: The two documents will be admitted,
17 SPOE00397775 at 397799 and at 397803. Those are the two that you
18 mentioned.

19 MS. IODICE: Thank you, Your Honour.

20 Q. So I want to show you one more --

21 THE COURT OFFICER: Sorry, if I may. Those two pages of the
22 book will be assigned Exhibit P04496 .3. And just like the previous
23 pages were admitted as public, is it going to be the case with this
24 one?

25 MS. IODICE: Yes, thank you.

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1 PRESIDING JUDGE SMITH: Reclassified as public.

2 MS. IODICE:

3 Q. So now I'd like to show you a document to see whether it matches
4 your understanding of what KFOR could do.

5 MS. IODICE: Could we please call up SITF00228388 to
6 SITF00228391-ET, and the German original is at SITF00228077 to
7 00228466. And for the German original, we'll have to go to PDF page
8 312, that is ERN SITF00228388.

9 Q. Mr. Covey, could you please have a look at this report. This is
10 an operational directive from German KFOR. This is dated 22 June
11 1999, so before you arrived. And it states --

12 MS. IODICE: If we can please scroll down a little bit. The
13 paragraph under "Task."

14 Q. It says that: "The German KFOR ..."

15 MS. IODICE: If we can zoom out a little bit so that the
16 entire -- yeah.

17 Q. The German KFOR is mandated, among -- is tasked, amongst other
18 things, with taking criminals into custody, with the exception of
19 members of the international contingents, as part of maintaining
20 public security and order in order to prevent further crimes and, if
21 necessary, to facilitate the prosecution of the perpetrators.

22 MS. IODICE: If we can please move to the next page.

23 Q. And then under "For the arrest of persons," it says:

24 "The German KFOR troops shall arrest persons who are strongly
25 suspected of having committed a serious offence (a crime or offence

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1 of a particular gravity), or who are caught in the act of committing
2 such an offence or were being pursued. They may be detained without
3 a court order until a court is designated by the civilian security
4 presence."

5 And then it lists a series of offences including murder,
6 abduction, and others.

7 This was part of what KFOR was doing at the time; correct?

8 A. I have several comments.

9 Q. Can you please answer my question first?

10 A. Only by elucidating.

11 Q. Absolutely.

12 PRESIDING JUDGE SMITH: Just answer the question, please, and
13 then you will have a chance to elucidate.

14 THE WITNESS: All right. State the question, please?

15 MS. IODICE:

16 Q. Do you recall that this was part of what KFOR was doing?

17 A. No.

18 Q. Okay.

19 A. I don't think this is a correct description of it.

20 Q. Okay.

21 A. And I say that for several reasons. Number one, I'm a little
22 rusty in my German, but I'm not convinced that "*festnehmen*"
23 translates as "arrest." It may be more "detention." Second, this
24 appears to be a document prepared by the German contingent, not by
25 NATO headquarters, not by Jackson's central command. And each of the

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1 contingents exercised a bit of autonomy. Some more than others. The
2 French famously were quite autonomous in many ways, the Americans in
3 their own way. The Germans did not resist the central authority but
4 nor were all of their actions and documents reviewed centrally.

5 So I find this a bit over-describes the obligations of the
6 military forces with regard to criminal activities.

7 Q. Thank you for the clarification.

8 MS. IODICE: I would like to tender this document into evidence.

9 PRESIDING JUDGE SMITH: Any objection?

10 MS. IODICE: And I'm only tendering these pages, so from
11 pages --

12 PRESIDING JUDGE SMITH: [Microphone not activated].

13 MS. IODICE: I'm only tendering the pages in English, that is
14 228388 to 228391, because the German original is longer.

15 PRESIDING JUDGE SMITH: No objection?

16 MR. MISETIC: No objection.

17 PRESIDING JUDGE SMITH: SITF00228388 to 00228391 is admitted,
18 both in the English and the German version.

19 THE COURT OFFICER: Apologies, Your Honours. And it will be
20 assigned Exhibit P04503, currently classified as confidential. Thank
21 you, Your Honours.

22 MS. IODICE: It can be public. And --

23 PRESIDING JUDGE SMITH: It's reclassified as public.

24 MS. IODICE: The German ERN pages are -- I will provide that
25 later, Your Honour.

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1 Q. Now I want to bring you to some concrete examples of what KFOR
2 was doing.

3 JUDGE GAYNOR: Ms. Iodice, just for my own understanding of the
4 evidence. Are all of these questions intended to establish that KFOR
5 did have the ability in practice to detain persons suspected of
6 serious crimes?

7 MS. IODICE: No, Your Honours. It's broader than that. It's
8 about how they applied the mandate. So I will come to the civilian
9 component of it in a moment.

10 JUDGE GAYNOR: All right. So in brief, are you testing the
11 witness's credibility or are you eliciting evidence in support of the
12 Prosecution's case on a particular subject?

13 MS. IODICE: I am clarifying what the witness said in his
14 statement.

15 JUDGE GAYNOR: It all seems to me, speaking for myself, to
16 concern a rather marginal aspect of the Prosecution's case; that is
17 to say, KFOR's ability to detain persons suspected of serious crimes.

18 MS. IODICE: I'm not focusing on the KFOR mandate. I'm focusing
19 on how it was applied.

20 JUDGE GAYNOR: All right. Thank you.

21 JUDGE BARTHE: Ms. Iodice, excuse me for interrupting, but could
22 you please make sure or double-check whether the German original can
23 also be reclassified as public?

24 MS. IODICE: I checked. It can be.

25 JUDGE BARTHE: Thank you very much.

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1 MS. IODICE: Yes. Thank you.

2 PRESIDING JUDGE SMITH: So just for clarity, the German version
3 is public as well?

4 MS. IODICE: It's public as well. Yes, I was told it can be
5 made public.

6 JUDGE BARTHE: Okay.

7 PRESIDING JUDGE SMITH: That's good.

8 MS. IODICE: I will double-check, of course.

9 [Trial Panel and Court Officer confers]

10 PRESIDING JUDGE SMITH: [Microphone not activated].

11 Go ahead.

12 MS. IODICE: So for the next questions, I'd like to go into
13 private session, Your Honour.

14 PRESIDING JUDGE SMITH: [Microphone not activated].

15 [Private session]

16 [Private session text removed]

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1 [Private session text removed]

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1 [Private session text removed]

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12 [Open session]

13 THE COURT OFFICER: Your Honours, we are back in public session.

14 Thank you.

15 MS. IODICE: Could we please bring back up the book,

16 SPOE00397775. And can we please go to page PDF 38, which is

17 SPOE00397812.

18 Q. So, Mr. Covey, in your statement you stated that:

19 "... UNMIK's approach had to be suasive."

20 You said:

21 "Some carrots, not much stick, and lots of jawbone."

22 Is that correct?

23 A. Yeah, that is a correct quotation, yes.

24 Q. And you have described this approach and the dynamic between

25 UNMIK and KFOR and the KLA in great detail in your book. I will read

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1 some excerpts.

2 MS. IODICE: If we can focus on the part that starts with

3 "Coercion," on page 105. Other side. Thank you.

4 Q. Here you wrote:

5 "Parties to a conflict in failed states have generally been
6 hammered far more mercilessly than the international community could
7 ever contemplate. That certainly was the case in Kosovo. KFOR had
8 neither the troops nor the stomach to control the population by
9 force. KLA leaders could easily rally their local communities in any
10 confrontation with KFOR."

11 MS. IODICE: Now, if you can scroll down to "The Evolving
12 Political Strategy."

13 Q. Here you said:

14 "The political strategy recognised Kosovo's hard realities.
15 Battle-scarred rivals were still deeply committed to their war aims
16 and ready to use violence to achieve them. Achieving UNMIK's
17 objectives would require a transformation of the parties' wartime
18 objectives. Key rivals would have to see their interests better
19 served by moving ahead with UNMIK. Kosovo's peace would become
20 viable only when rivals embraced political aims consistent with the
21 peace process."

22 MS. IODICE: And if we go to the next paragraph.

23 Q. "Resolution 1244 did not take the KLA into account. Although
24 KLA commanders acknowledged that NATO had 'helped' them defeat the
25 Serbs, they felt KFOR was now preventing them from finishing the job

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1 (of driving the Serbs out). KFOR was also perceived as supporting
2 UNMIK's efforts to avoid a KLA-led administration. While the KLA was
3 never a particularly coherent organisation, there was a consensus
4 among its militant leaders that they should now be calling the shots.

5 "There was no practical option to confront the KLA militarily.
6 Angry, tough, and well armed, they had a very real capacity for
7 melting back into the hills, where they had extensive stockpiles and
8 supportive clan members."

9 Are these your words?

10 A. Would you read the next couple of sentences, please?

11 Q. "Milosevic's army and special [forces] had failed utterly in
12 that terrain, and there was no reason to believe that KFOR would do
13 better ..."

14 I'm just --

15 A. Yes, those are my words.

16 Q. Thank you.

17 MS. IODICE: Now if we can go to the next page. Second
18 paragraph, "In almost every other ..."

19 Q. "In almost every other aspect of Kosovo's transformation, KFOR
20 provided military support for UNMIK's political strategy. In this
21 specific area, however, UNMIK provided political support to deal with
22 an otherwise unmanageable military threat. Because there was no
23 military option for defeating the KLA, it was critical to develop a
24 political framework within which the KLA could be contained and
25 ultimately disarmed. Thus, the novel idea emerged for transforming

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1 the KLA into the Kosovo Protection Corps ..."

2 Then if we go down to the next --

3 A. I can confirm that those are my words with one comment. The
4 novelty was not the general strategy of transforming since that is
5 standard DDR practice.

6 Q. Yes.

7 A. The novelty was to the particular form it took of the Kosovo
8 Protection Corps.

9 Q. Thank you.

10 MS. IODICE: And if we scroll down. Just stop there. Yes,
11 thank you.

12 Q. In the next paragraph, middle of the paragraph, you say:

13 "The political wing of the KLA - represented by Thaci - was
14 interested primarily in how to use the threat of an ungovernable KLA
15 to strengthen its political hand."

16 Those are your words; correct?

17 A. That is correct.

18 Q. Thank you.

19 A. And with the emphasis on "threat."

20 Q. Thank you.

21 A. Not the application.

22 Q. Right.

23 MS. IODICE: And if we scroll down to the bottom of the page.

24 Q. At the very end, the last sentence, you wrote:

25 "Although formation of the KPC did not eliminate the capacity of

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1 individual KLA leaders to make mischief with the political process,
2 it delivered Thaci and the political arm of the KLA to the threshold
3 of a new political framework."

4 And then you continue:

5 "It had never" --

6 A. Could you read the next sentence, please?

7 Q. Yes:

8 "It had never been easy for Thaci to work with the KLA field
9 commanders. Now he was no longer responsible for their performance,
10 nor did he need to produce jobs for ex-combatants. [They] were ...
11 free to focus on personal ambitions, as politicians do, within a
12 framework that UNMIK and others could begin to shape for the peaceful
13 competition for power."

14 A. Thank you.

15 Q. And then you note how in September 1999 the KLA began its
16 conversion to KPC, and three weeks later the PDK was announced as --
17 and with Thaci as its president. And then most of the regional
18 groupings that had served as the KLA political network were
19 consolidated into the PDK.

20 Now, this was how you applied that suasive theory we discussed
21 before; correct?

22 A. Yes.

23 Q. Thank you. Now, you also give a concrete example at page 30 of
24 the book, that is ERN SPOE00397804. Here you described the incident
25 involving Sami Lushtaku. It's the second paragraph of the first

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1 page:

2 "Some notorious thugs had held command positions in the KLA
3 during the conflict and emerged afterwards as virtual warlords ...
4 One such figure, Sami Lustaku, was believed to be responsible not
5 only for terrorising Serbs but also for murdering Albanians who were
6 thought to have collaborated with the Serb regime before the
7 conflict."

8 And then you note how the police was intent on jailing Lushtaku,
9 but no witnesses were likely to come forward.

10 "In some cases of this nature we had exercised UNMIK's
11 administrative authority of 'executive detention' to arrest a suspect
12 considered especially dangerous so that investigations could be
13 conducted without intimidation of potential witnesses.

14 "In this case, however, we made a considered decision - in
15 consultation with KFOR - not to go forward until we had built a
16 rock-solid case and had also built up a robust civil, military, and
17 police infrastructure in Lustaku's district."

18 These were your words?

19 A. I would welcome an opportunity -- yes --

20 Q. Yes.

21 A. -- these were my words. I would welcome an opportunity to go
22 into much more detail in this case.

23 Q. Yes, I will ask you a few more questions about this.

24 MS. IODICE: Before we do so, I would like to tender pages
25 SPOE00397804 and SPOE00397812 and 7813.

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1 PRESIDING JUDGE SMITH: Objection?

2 MR. MISETIC: No objection.

3 PRESIDING JUDGE SMITH: SPOE00397812 and 7813 and also 00397804
4 are all admitted.

5 THE COURT OFFICER: And they will be assigned Exhibit P04496.4.
6 If we can clarify the classification, please.

7 MS. IODICE: It can be public.

8 PRESIDING JUDGE SMITH: Reclassified as public, please.

9 We're still in private session, Ms. Iodice.

10 MS. IODICE: I apologise, Your Honour. We should go into public
11 session.

12 PRESIDING JUDGE SMITH: Back to public session as well. Or no?

13 [Trial Panel and Court Officer confers]

14 PRESIDING JUDGE SMITH: I didn't know we changed back. My
15 fault. You were right.

16 MS. IODICE: Thank you.

17 Q. So you have discussed this portion of the book during your
18 preparation session with the Defence, and you stated that Lushtaku
19 was an important person "and his arrest could have created havoc that
20 would need to be dealt with by KFOR"; is that correct?

21 A. Sami Lushtaku was reputedly the zone commander for the Drenica
22 zone and by reputation was an out-and-out thug. How deeply do you
23 want to go into this?

24 Q. I just want to know whether what you said -- what I stated you
25 said during the preparation session is correct. Would his arrest

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1 have created havoc that would need to be dealt by KFOR, and is that
2 why you decided not to arrest him?

3 A. The decision was to arrest him when there was sufficient
4 evidence and a well-enough-prepared case to resolve it rapidly. So
5 was -- it would not be correct to say the decision was not to arrest
6 him. The decision was: Get your act together before you arrest him.
7 Because our prosecutor, an American, a good prosecutor, professional,
8 was thinking more like a RICO prosecutor in the States, where you
9 could take a leading figure in the racket into custody in order to
10 get witnesses to open up about the case. This is not New York. This
11 was a post-conflict setting on the home ground of someone known to
12 resort to any measure to keep his influence with lots of local
13 support. He was genuinely popular in his area. We knew this.

14 Q. Thank you.

15 A. Even thugs are very popular. So the decision was: You take him
16 down when you're ready to resolve it really quickly.

17 Q. Thank you. This incident was also described by Dr. --

18 A. I want to add, just for the record, it does say that we did this
19 in consultation with KFOR. I largely made this decision at 11.00 or
20 midnight one night with the prosecutor and the police deputy. I did
21 not involve Kouchner because I didn't want him responsible for it,
22 and we carefully informed KFOR of it afterwards. So it's on my head,
23 but that's the reasoning behind it.

24 Q. Thank you. Dr. Kouchner described this incident in his book.

25 MS. IODICE: So could we please have ERN SPOE00403545 and its

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1 English translation. Can we please go to page 13 of the PDF in both
2 languages. That is page SPOE00403557. So at the top of the second
3 page of the book, 251. If we zoom in a little more? Yes, thank you.

4 Q. Here Dr. Kouchner wrote:

5 "On another occasion, Commander Sami Lushtaku, a 'hero' of the
6 war, manhandled a doctor on a football field. Should he be put in
7 prison? I thought not. A year after the elections had been
8 successfully held, I was still being blamed for it. What was better:
9 democratic elections or a heroic arrest of Lushtaku over a trivial
10 matter?

11 "Lushtaku was arrested subsequently.

12 "These stories, which were all failures in their own way, stuck
13 to us. Having shown a basic sense of politics, having partially
14 succeeded in a mission deemed impossible by the same journalists did
15 not, in their own view, justify these slight breaches of our Western
16 rules."

17 Is it fair to say that the decision to delay his arrest was the
18 pragmatic choice in those circumstances?

19 A. I -- pragmatic, practical. I admire Bernard's phrasing here
20 since he had been protected from the decision knowing that it might
21 become controversial. But -- so your question is: Is this an
22 accurate description?

23 Q. My question is whether the decision you made to delay his arrest
24 was the pragmatic choice given the circumstances at the time?

25 A. Yes, it was a practical choice. It was -- not a -- I don't

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1 understand how that's different from what I've already said.

2 Q. And --

3 A. Is there something about the word "pragmatic"?

4 Q. No, there's nothing. There is no second meaning to --

5 A. Okay.

6 Q. -- my questions.

7 A. All right.

8 Q. Rest assured.

9 A. Okay. Thank you.

10 Q. Is it correct to say that both you and Dr. Kouchner were
11 concerned that arresting Lushtaku could destabilise the province?

12 A. I took the responsibility for that. We discussed it the
13 following day. We discussed it at the 5.00 with General Jackson.
14 I -- and he was in complete accord, but I was intent on taking the
15 responsibility for it in case it turned into a mess.

16 Q. Thank you.

17 MS. IODICE: Your Honour, I would like to tender these excerpts
18 both from Mr. Covey's book and Mr. Kouchner's book.

19 MR. MISETIC: Mr. President, I apologise again, but I've asked
20 all my colleagues and we don't understand the point of the line of
21 questioning, and it hasn't been put to the witness, as to whether he
22 acted in a pragmatic manner. So we would again ask that the case be
23 put to the witness so he can comment on what point is actually being
24 put to him.

25 PRESIDING JUDGE SMITH: [Microphone not activated].

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1 MS. IODICE:

2 Q. Mr. Covey, what I've been asking you about, the pragmatic
3 choice, is do you agree that at the time you had to take a pragmatic
4 decision which might mean that justice would come second because
5 peace was the most important?

6 A. There are two issues involved here. One is that the first
7 responsibility of the peacekeeper is to stop the practice. Justice
8 can follow, but it is not assumed that justice always will follow.
9 You must stop -- that is your duty, is to stop the practice.

10 The second was, as I think we've explained elsewhere, both UNMIK
11 and KFOR had enormous authority. They appeared to be very powerful.
12 But their ability to apply that authority was, in fact, quite
13 limited. We used the metaphor of a sports car on ice. So we were
14 careful in applying that authority in ways that would not be defied
15 or defeated.

16 So this was a case in which it appeared that we might get out
17 ahead of our own ability to manage the situation. So in that sense,
18 yes, a practical situation, a pragmatic decision.

19 I'd note that my understanding is that Sami Lushtaku was
20 arrested again -- no, I'm sorry, not again. He was arrested for the
21 first time after our service in Kosovo and was not convicted, and
22 there may have been a second episode. So he had a long record, and I
23 am not sorry for the decision.

24 Q. Absolutely. That's not what I was implying.

25 A. Okay.

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1 Q. Thank you.

2 MS. IODICE: Your Honour, I would like to tender pages -- for
3 Mr. Covey's book, I would like to tender pages SPOE00397804 and --
4 ah, sorry. I apologise. That's only Kouchner's book. Kouchner's
5 book, it's page SPOE00403557.

6 PRESIDING JUDGE SMITH: Any objection?

7 MR. MISETIC: I maintain my objection. The point still hasn't
8 been put to him, but I won't object to the admission of the document.

9 PRESIDING JUDGE SMITH: I think she put it to him, and he
10 indicated a very good understanding.

11 MR. MISETIC: Well, I'll deal with it in redirect, but I think
12 the point is that someone else should have been doing it, and that
13 hasn't been put to him.

14 PRESIDING JUDGE SMITH: I don't believe -- I think you're
15 imagining that but ...

16 00403545 is the general -- no, that's -- I'm sorry, that's the
17 wrong one. Dr. Kouchner's book is SPOE00403557 and it's admitted.

18 THE COURT OFFICER: Thank you, Your Honours. We have previously
19 already admitted a couple of pages from that book, and I would ask
20 for clarification if this page should be also added to already
21 admitted P04498.

22 MS. IODICE: Yes, thank you. And it can be public.

23 PRESIDING JUDGE SMITH: [Microphone not activated].

24 00397804 -- that's already been admitted.

25 MS. IODICE: No, other pages of the book has been admitted, so

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1 this is an additional page that I'm asking.

2 PRESIDING JUDGE SMITH: Which page?

3 MS. IODICE: I'm asking for page SPOE00403557.

4 PRESIDING JUDGE SMITH: [Microphone not activated].

5 MS. IODICE: Yes.

6 PRESIDING JUDGE SMITH: [Microphone not activated].

7 MS. IODICE: Those were admitted before.

8 PRESIDING JUDGE SMITH: We have admitted the Kouchner book right
9 now. It is admitted.

10 MS. IODICE: The entire -- I've been tendering pages --

11 PRESIDING JUDGE SMITH: No, what you asked for was 0403557, and
12 I said it was admitted.

13 MS. IODICE: Yes.

14 PRESIDING JUDGE SMITH: Yes.

15 MS. IODICE: Yes, the --

16 PRESIDING JUDGE SMITH: Is there something else?

17 MS. IODICE: No, no.

18 PRESIDING JUDGE SMITH: All right. Go ahead then.

19 MS. IODICE: Thank you.

20 Q. Mr. Covey, I'll go to a related subject that you raised
21 yesterday in -- when you were shown the part of the report that is
22 called "As Seen, As Told" -- a part of the report that's called "As
23 Seen, As Told." You discuss this at page 43 of yesterday's
24 transcript, the foreword of Bernard Kouchner.

25 And you confirmed in your preparation session with the Defence

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1 that what is written in the foreword is consistent with your
2 recollection of the situation in Kosovo in the summer and fall of
3 1999; is that correct?

4 A. Yes.

5 Q. Thank you. Do you recall that the first draft of the foreword
6 was prepared by senior human rights adviser William Bill O'Neill?

7 A. I don't know who drafted it.

8 Q. Okay.

9 A. I was not aware of the process.

10 Q. Thank you. I want to show you the final draft and the original
11 draft.

12 MS. IODICE: Can we please bring up SITF00001529 to 00001871.
13 This is the full report "As Seen, As Told." These pages are not in
14 the exhibit that's already admitted with extracts of "As Seen, As
15 Told." Can we please go to PDF page 3, which is SITF00001531.

16 Q. So the foreword starts with the statement:

17 "This report makes sobering reading."

18 Do you see that?

19 A. Yes.

20 MS. IODICE: And now if we can please move to PDF page 7, that's
21 ERN ending 1535.

22 Q. And here you can see the paragraph starts with:

23 "The best way forward is for Kosovo ..."

24 And then the date is 6 December 1999.

25 A. I see it.

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1 Q. And I'll ask for your patience because we'll go through some
2 passages and then I'll ask you --

3 A. Okay.

4 Q. -- a question at the end.

5 MS. IODICE: So can we please bring side by side 068429. And
6 can we please go to -- sorry.

7 Q. So this is the draft foreword, and you can see at the top it's
8 dated 25 November.

9 MS. IODICE: So can we please go back to page 3 of the PDF of
10 the first document, the big report. Yes. Yes. And can we move to
11 page 2 of 0684 -- yes.

12 Q. Now, you can see that paragraph circled in red there, starting
13 with "In many cases ..." Yeah. You can see that paragraph and read
14 it.

15 A. I am looking at it.

16 Q. Thank you. And now if we look at the paragraph of the public
17 version, "In many" --

18 MS. IODICE: If we can scroll down. Sorry, the large report.
19 If we can scroll down the page of the large report. This is on --
20 yeah, can you please keep scrolling down --

21 THE COURT OFFICER: If you would be specific in what is "large
22 report" --

23 MS. IODICE: The "As Seen, As Told," SITF0001531, if you can
24 scroll all the way down. Yes. "In many of the cases ..." that
25 paragraph.

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1 Q. Those are the two same paragraphs. And you can see that they
2 are practically identical. So apart from -- you can see one ends
3 with "show tolerance and respect for all."

4 MS. IODICE: And if you can please go to the next page of
5 SITF00001531, at the top. Yes.

6 Q. You can see here that this paragraph ends with the previous
7 sentence in the draft, the sentence:

8 "The time is long past for religious, political and cultural
9 leaders in Kosovo to assume responsibility demanded of true leaders
10 and to insist that the communities they lead show tolerance and
11 respect for all."

12 This sentence was removed from the final version of the report.
13 Do you see that?

14 A. Time for Kosovo's communities? Is it possible to display that
15 sole paragraph that ends with "perpetrator"?

16 MS. IODICE: If we can go back to the previous page.

17 THE WITNESS: Just go half back. Oh. Okay. So the last
18 sentence has been changed. I'm not sure that the meaning of it has
19 been weakened. In fact, it's insisting that the leaders actually do
20 something other than just generally "insist."

21 MS. IODICE:

22 Q. I'm going to ask you to please just listen to my questions.

23 A. Okay.

24 Q. You don't need to speculate as to the meaning of it. I'm just
25 asking you to confirm that the last sentence has been removed.

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1 A. I'm going to object to the word "speculate." I try not to
2 speculate.

3 Q. Thank you.

4 MS. IODICE: If we can please scroll on both documents page by
5 page and stop at PDF page 6 of each report. So here -- if we can
6 please, yeah, move to page 6, PDF page 6 of each.

7 Q. So this -- up until "Kosovo will not be changed overnight,"
8 these documents are identical. And then after the paragraph ending
9 with "hurdles to overcome," the published version has five additional
10 paragraphs. It starts with "We are deeply concerned ..." See those
11 paragraphs --

12 A. Yes.

13 Q. -- are added there? And in these five paragraphs, there's
14 references to the decades of oppression that preceded the war in
15 Kosovo and to the 40 years of communism that preceded that time. Do
16 you remember whether you or someone in your office added these
17 paragraphs --

18 A. I was --

19 Q. -- to the report?

20 A. I was not involved in the drafting of it.

21 Q. Thank you.

22 MS. IODICE: Now, can we please bring up ERN 052690.

23 Q. This is a book, "An Unfinished Peace," by William O'Neill.

24 MS. IODICE: And if we can please move to page PDF 57. Here --
25 and this is ERN 052747. In the second paragraph, he wrote -- sorry,

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1 under the heading -- if we can scroll down, please. Yes, the header
2 is "Human Rights Abuses: Patterns and Responses." Can we please go
3 to the next page.

4 Q. Now, in the second paragraph here he wrote:

5 "By the end of September 1999, key leaders in OSCE Human Rights,
6 UNHCR, CIVPOL, and KFOR joined me in concluding that much more was
7 involved than mere revenge attacks, violence engendered by some wrong
8 suffered in the past, or common crime. There was clearly an
9 organised campaign - premeditated, structured, equipped, and directed
10 to attacking Serbs and Roma and other minorities simply because of
11 their ethnicity. No proof or even indication of prior participation
12 in the persecution of Albanians was necessary; simply belonging to
13 the targeted ethnic group was enough. Turks and Muslim Slavs were
14 also at risk, though the degree of threat varied."

15 MS. IODICE: Now, if we can please go to the next page, 59 in
16 the PDF.

17 Q. So at the top, it describes UNMIK's senior leadership position.
18 Here it says --

19 THE INTERPRETER: Interpreter's note: The counsel is kindly
20 asked to read a bit slower for the purposes of interpretation. Thank
21 you.

22 MS. IODICE: Apologies.

23 Q. Here it says:

24 "UNMIK senior leadership, including the SRSG, expressed disgust
25 in private at the ongoing violence documented in the OSCE's report.

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1 Public condemnations were also forthcoming, but usually with several
2 qualifiers. UNMIK leadership would not mention the current
3 violations without referring to the past, especially the recent
4 attempt at ethnic cleansing by the Serbian authorities and the 'ten
5 years of apartheid' before that. UNMIK press releases and official
6 statements usually included references to Northern Ireland and
7 South Africa and the difficult nature of reconciliation following a
8 conflict."

9 MS. IODICE: Now, if we can please go to page 50 of this book.

10 THE WITNESS: We're not going to discuss the content of this
11 paragraph?

12 MS. IODICE: I will in a second. There's a part that's related
13 that I would like to show you before. That's ERN 052749. And if you
14 can focus on, yes, "A summary ..." So if you scroll down. There.
15 Q. "A summary of the more egregious cases found in the OSCE report
16 released in December 1999, and later cases, shows both the planned,
17 organised nature of the violence and the involvement of UCK personnel
18 (military and PU/UCK police). In the case of Serb-controlled
19 northern Kosovo, the OSCE analyses the role and responsibility of
20 highly organised groups of Serb police and paramilitaries."

21 Do you agree with what is written in this book about the
22 systematic nature of the crimes that you observed up until September
23 1999?

24 A. What I disagree with is the opinion ventilated at the end of the
25 paragraph you previously showed us.

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1 Q. Okay. But staying on the --

2 A. Yeah, can you go back to that?

3 MS. IODICE: Can we please go back to page 59.

4 Q. So, first of all, do you agree that UNMIK senior leadership,
5 including the SRSG, expressed disgust in private at the ongoing
6 violence?

7 A. Yes.

8 Q. Okay. And do you agree that the SRSG office decided not to
9 mention the current violations without comparing them with the past
10 violations?

11 A. That's evidenced by the content of this foreword, the foreword
12 that we had been looking for.

13 Q. Yes.

14 A. It accurately describes the wording of that paragraph.

15 Q. Thank you. I think that were all of my questions.

16 A. Okay, but I want to comment if I may.

17 Q. Yes.

18 A. That -- that last sentence says:

19 "This constant reminder to 'understand the context' and 'to
20 realise what they have been through' was interpreted by the Albanian
21 hard-liners as ... a yellow light to continue ..."

22 In fact, and I say this without a great deal of heat, because
23 this is the normal give and take within a committed -- a
24 mission-committed bureaucracy. But there is a little bit of score
25 settling here. The OSCE human rights unit believed strongly that we

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1 had to go immediately to justice, where the mission was to reconcile
2 and to move an entire society towards a very complex difficult social
3 goal. And the OSCE specialists were very impatient with those
4 considerations. But that's life in a complex mission.

5 So as I say, without a great deal of heat, he attributes this --
6 he presents this as if it gave the hardliners a yellow light. No, it
7 gave heartburn to the specialists.

8 PRESIDING JUDGE SMITH: Thank you, Mr. Covey. It's time for the
9 lunch break. We'll take an hour and a half as we did yesterday.
10 We'll see you back here at 2.30.

11 THE WITNESS: Thank you.

12 PRESIDING JUDGE SMITH: Thank you. Please don't speak with
13 anyone about your testimony outside the courtroom. I know I've --

14 THE WITNESS: Yes, Your Honour.

15 PRESIDING JUDGE SMITH: -- told you that several times.

16 THE WITNESS: It never hurts to remind.

17 PRESIDING JUDGE SMITH: Okay. Thank you.

18 [The witness stands down]

19 PRESIDING JUDGE SMITH: We're adjourned until 2.30.

20 --- Luncheon recess taken at 1.02 p.m.

21 --- On resuming at 2.30 p.m.

22 PRESIDING JUDGE SMITH: You may bring the witness in.

23 Ms. Iodice, can you give us an update on your time usage?

24 MS. IODICE: I've used about three hours, a little bit over
25 three hours, and I expect to take the full -- the rest of the time,

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1 so another two hours.

2 PRESIDING JUDGE SMITH: Thank you.

3 [The witness takes the stand]

4 PRESIDING JUDGE SMITH: Ready to go?

5 THE WITNESS: Yes, sir.

6 PRESIDING JUDGE SMITH: All right. We continue now with the
7 Prosecution's questions. Please give her your attention.

8 MS. IODICE: Your Honour, may I tender the documents that I used
9 at the end of the session, and these are pages SITF00001531, 1532,
10 1533, and 1535 from ERN SITF00001529, that was the larger "As Seen,
11 As Told" report. Then the draft foreword that was shown, that is
12 068429 to 068434. And then the pages from the book that I read, the
13 pages are 052690, 052694, 052746 to 052749, from 052690 to 052841.
14 That's the whole range.

15 PRESIDING JUDGE SMITH: All right. You're going to have to do
16 this in writing. That was way too many.

17 MS. IODICE: Okay. Thank you.

18 PRESIDING JUDGE SMITH: Any objection, or do you want to wait
19 until you see the list?

20 MR. MISETIC: We'll wait, Mr. President.

21 PRESIDING JUDGE SMITH: All right.

22 MS. IODICE:

23 Q. So, Mr. Covey, I want to now move on to another part of your
24 statement where you discussed UNMIK cooperation with Hashim Thaci.
25 You described it in your statement in paragraph 44, and you noted

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1 that the PGoK, led by Thaci, "existed, at least in theory," but
2 wasn't set up to deliver at local level.

3 In your preparation note, you stated that it "was more of a
4 fiction than reality."

5 JUDGE GAYNOR: Sorry, what paragraph of the preparation note is
6 that, Ms. Iodice?

7 MS. IODICE: It's paragraph 10(1).

8 JUDGE GAYNOR: Of the first note?

9 MS. IODICE: Of, yes, sorry, Prep Note 1.

10 JUDGE GAYNOR: Thank you very much.

11 MS. IODICE: So now I'd like to show you a document from
12 September 1999. Could we please have Exhibit P04127.

13 Q. So this is a weekly report from a regional administrator to the
14 DSRSG for civil administration, and it is dated 20 September 1999.

15 First of all, do you recall whether the DSRSG for civil
16 administration would report regularly to you and to Dr. Kouchner?

17 A. We would -- he would be in our regular morning meeting every
18 day.

19 Q. Thank you.

20 MS. IODICE: So now if we can please go to PDF page 2. And if
21 we go to point (4).

22 Q. Here, under "Struggle for Power," it's reported:

23 "The impasse between the UNMIK-appointed Provisional Municipal
24 Council and the Municipal Council of the 'Interim Government'
25 continued."

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1 And then a few lines later, it says:

2 "... we cancelled the session scheduled for 18 September to
3 'explore,'" and if we can go to the next page, "'the institutional
4 evolution of the Council.' Forces associated with hard-line, local
5 'Interim Government leaders' Kadri Kryeziu and Masar Shala continued
6 to challenge UN authority."

7 MS. IODICE: Now, if we can please go -- if we can zoom out a
8 little bit.

9 Q. Then they proceed to list a number of actions taken by the PGoK
10 mayor, including illegal decisions that Kryeziu issued on
11 13 September for the demolition of buildings; threats, one of whom --
12 two young men visited another member of the Provisional Council, one
13 of whom Kryeziu objected after his appointment, and told him --

14 PRESIDING JUDGE SMITH: Ms. Iodice, for the record, would you
15 indicate what paragraph you're reading from?

16 MS. IODICE: It's (b), "Threats."

17 PRESIDING JUDGE SMITH: Go ahead.

18 MS. IODICE:

19 Q. "... in his place of employment to tell him that they knew where
20 his children attended school."

21 Then (c):

22 "Forced Personnel Changes," where it's noted that "Kryeziu
23 replaced the director of the bakery ... with a veteran ..."

24 "(d): Forced evictions have been issued to non-UCK Albanians in
25 Prizren and Suhareka."

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1 And (e) extortion.

2 MS. IODICE: Now, if we can please go to the next page, at the
3 end of the next page.

4 Q. In the "Comment," here it starts, and it says:

5 "First, local hard-liners associated with the 'Interim
6 Government' have begun to act increasingly boldly - with apparent
7 support by Hashim Thaci's press statements from the" --

8 A. I'm sorry, I'm lost.

9 Q. Sorry.

10 A. Where are you reading from?

11 PRESIDING JUDGE SMITH: [Microphone not activated].

12 MS. IODICE: Yes.

13 PRESIDING JUDGE SMITH: Please indicate the paragraph.

14 MS. IODICE: All right. Thank you.

15 So if we can go back to the previous page, please. At the end
16 of the -- yes.

17 Q. Now I'm reading at the comment, the last line:

18 "First, local hardliners associated with the 'Interim
19 Government' have begun to act increasingly boldly ..."

20 Now we're going to move to the next page, the top of the next
21 page:

22 "... with apparent support by Hashim Thaci's comments -- by
23 Hashim Thaci's press statements from the UN [headquarter] in
24 New York."

25 And then in a couple of lines later, starting "On the other

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1 hand ..."

2 "... few people in Prizren seem prepared to stand up publicly in
3 opposition to their efforts to narrow the political community with
4 repression and" --

5 THE INTERPRETER: Could the speaker kindly be asked to slow down
6 when reading. Thank you.

7 MS. IODICE: Apologies.

8 Q. "... with repression and terror against 'former collaborators'
9 (always accused, but never proven) with the Yugoslav regime. Many
10 decent liberals tell us of fears of being publicly labelled as
11 traitors and other unpleasant consequences."

12 Do you remember at the time whether you were briefed about such
13 developments in the municipalities?

14 A. I believe that around this time there were numerous reports
15 similar to this. I can't speak to this specific document, but it was
16 a concern. Again, I hope we can speak to the context.

17 Q. Yes. So I'll show you one more document.

18 MS. IODICE: And that is -- if we could please go to P04131.

19 THE WITNESS: I should say I don't understand the reference in
20 that document to statements made by Hashim Thaci from UN New York. I
21 find that a non sequitur.

22 MS. IODICE:

23 Q. I will show you that statement in a little bit. So this is from
24 October 1999, and this is the report from the Gjilan administrator to
25 the DSRSG for civil administration.

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1 MS. IODICE: If we can please scroll down on this document and
2 go to page 2. If we can scroll down a little bit more. So it's --
3 just one second. If you can -- yes, thank you.

4 Q. It's reporting here on the preparation of unauthorised
5 documentation, as you can see in the subject line. And it is listing
6 a number of materials that the Vitina municipality had prepared. You
7 can see they list the provisional statute, decree, decision for the
8 protection of state-owned and private property, certificate of
9 temporary occupancy. And then if you look at the fourth bullet
10 point, it states:

11 "this document is based on the 'Decree for organisation of local
12 government' issued on 31 July, 1999 by Hashim Tachi; the statute is
13 specific to the Municipality of Vitina."

14 MS. IODICE: And then if we can please go to the next page, PDF
15 3, at the top. Yes.

16 Q. And then it notes that:

17 "attached to the statute is a Decision which demonstrates a
18 total lack of recognition of UNMIK's authority under Resolution 1244
19 and placing 'veto' rights in the hands of the President."

20 Now, I want to show some of those underlying documents that are
21 listed here.

22 MS. IODICE: If we can please go to PDF page 20 and zoom out.
23 Yes.

24 Q. So this is a decree issued by the provisional government.

25 MS. IODICE: And if we can please go to the next page and zoom

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1 out. And to the next page again. And to the next page again. And
2 scroll down.

3 Q. And you can see here that it contains the signature block, "The
4 President Hashim Thaci," and the date 31 July 1999. Do you agree
5 with me that this is an example of the PGoK authorities applying
6 regulations issued by Hashim Thaci?

7 A. What is your question?

8 Q. Whether you agree that this is an example of --

9 A. I'm not specifically familiar with this piece of paper. I had
10 not seen it. I note that it is dated two weeks after we arrived in
11 country, at the very, very beginning of our efforts. We had barely
12 begun our dialogue with Mr. Thaci.

13 Q. Okay. And this would be against UNMIK's mandate; right?

14 A. Yes.

15 Q. Thank you. You also in your statement specifically mention that
16 when you arrived in Kosovo, Mr. Thaci, with relative grace, turned
17 his attention away from the PGoK and cooperated with UNMIK.

18 A. Over time.

19 Q. Thank you.

20 MS. IODICE: Now can we please have P01977.

21 Q. So this is a cable initialled by you and it's entitled "Talks
22 with Thaci." It's dated 7 August.

23 MS. IODICE: Can we go to the next page, please.

24 Q. So this memorialises a meeting that the SRSG had with Thaci.

25 MS. IODICE: And if we can please go to the bottom of the page,

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1 under heading 4, "Civil Administration." If you can zoom in a little
2 bit.

3 Q. I'll read it for you because it's hard to read. Under "Civil
4 Administration," it states:

5 "Thaci said that the communal organisations they had set up were
6 functioning well. UNMIK should recognise them. The PDSRSG replied
7 that UNMIK wanted to involve local Kosovo political forces and
8 structures closely in their executive work. But it had to be clear
9 that UNMIK would retain ultimate control."

10 And then at the end, it states:

11 "Thaci made an indication that it was not necessary to
12 superimpose an international structure on functioning local ones."

13 MS. IODICE: Now, if we can please go to the next page and focus
14 on point 6, "Property."

15 Q. Here Thaci is recorded saying that:

16 "... it was a mistake that UNMIK take over all public property.
17 It would be better if such properties would be managed by
18 'representative Kosovar forces' with UNMIK retaining ... supervisory
19 role."

20 And you responded:

21 "... that would be a difficult thing to do not least because
22 there was no agreement between the different Albanian parties on how
23 to cooperate."

24 MS. IODICE: And if we focus on the "Comment," if we can scroll
25 down and focus on the "Comment." Thank you.

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1 Q. Here, after the redaction, it's noted:

2 "... Thaci is still trying to consolidate the power base and
3 executive role of the UCK on the ground. In this respect it is
4 important that UNMIK quickly deploys itself in the field ..."

5 This was UNMIK's assessment of Thaci's actions at the --

6 PRESIDING JUDGE SMITH: You might want to rephrase your
7 question.

8 MS. IODICE:

9 Q. This is UNMIK's assessment of Thaci's actions at the time;
10 correct?

11 A. My assessment at the time was this is, of course, what he would
12 say. This is very early in our process. This is a kind of sparring
13 back and forth, with UNMIK bearing firmly in mind that you can't beat
14 something with nothing. And we had very little administrative
15 apparatus or resource to deploy, so we were, in effect, buying time
16 in order to whittle down, wear down, and set aside the fantasy of a
17 provisional government.

18 So we were not in any way surprised to hear him say these
19 things.

20 Q. Okay.

21 A. How could he not?

22 Q. Absolutely. Your assessment at the time was that he was trying
23 to consolidate the power base; is that correct?

24 A. Yes, but I would not dwell on the exact phraseology of that. In
25 fact, he's testing, as are we. It is a process. It is part of a

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1 process. This is one small snapshot in an evolving process with
2 UNMIK determined to prevail but not coercively.

3 Q. Absolutely.

4 A. We needed to deliver resources and convince people that they
5 were better off, long-term and short-term, by cooperating with UNMIK.
6 So I would not put great weight on the precise phraseology in that
7 comment.

8 Q. Thank you. Now, looking at the press briefing mentioned before.
9 First of all, do you recall the statement that Hashim Thaci gave in
10 September 1999 at the UN headquarters?

11 A. I didn't. I stumbled on that. I don't recall it clearly, no.

12 Q. Okay.

13 MS. IODICE: Can we please have P04198.

14 Q. So this is a record of the press briefing that Mr. Thaci gave at
15 the UN in New York on 17 September 1999. So here --

16 MS. IODICE: PDF page 1. We can scroll to the second paragraph.
17 And focus on the third paragraph, "He said that many of those
18 negative ..." yeah.

19 Q. Here, as you can see, he's saying that many negative phenomena
20 had been caused by the fact that the indigenous Kosovar factor had
21 been disregarded by the international presence, specifically UNMIK,
22 and by Bernard Kouchner, and they had not been allowed to make a
23 contribution to the resolution of the many problems facing Kosovo.

24 MS. IODICE: Now, if we can please go to PDF page 3.

25 Q. He was asked during the press conference about the problems that

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1 he allegedly experienced with the SRSG.

2 MS. IODICE: If we can zoom out, please. If you can scroll
3 down. If we can -- sorry, PDF page 3, not 2. If we can -- that last
4 paragraph that's displayed here.

5 Q. When Mr. Thaci was asked whether he was planning to ask the
6 removal of Mr. Kouchner, he said "that he was not here to request
7 Mr. Kouchner's dismissal," and "the negative positions taken by
8 Mr. Kouchner could be improved." Then he added:

9 "The people of Kosovo were asking for cooperation, not for a
10 king."

11 Do you remember this press conference now?

12 A. As I said, I don't remember it specifically. But reading it
13 now, it's what he would say at this stage of the evolving process.

14 Q. Thank you.

15 A. I think it's worth noting that this is a few days before the KPC
16 agreement had to be finalised, so there was a great tension.

17 Q. Yes, thank you. And in paragraph 71 of your statement, you
18 describe in greater detail Thaci's cooperation with UNMIK, and you
19 explain how he engaged in the political process and participated
20 responsibly in the JIAS.

21 A. Which was established substantially later than this.

22 Q. Yes.

23 A. Yes.

24 MS. IODICE: Now can we please have ERN SPOE40015904.

25 Q. So earlier today I showed you this book. This is

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1 General Reinhardt's diary.

2 MS. IODICE: And I would like to go to PDF page 29 in the
3 English, and 108 in the original version, and that is SPOE40016011.
4 And this is an entry for 15 November. So if we can please go to the
5 next page in both languages.

6 Q. Here General Reinhardt is reporting that during their evening
7 discussions --

8 MS. IODICE: If you can zoom on the left part of the screen in
9 the English. Thank you.

10 Q. You can see the paragraph starting:

11 "Bernard Kouchner also informs us that Hashim Thaci has
12 'declared war' on him and UNMIK today. He says Thaci told him that
13 he was tired of UNMIK's ineffectiveness. He threatened that he had
14 the support of the most important capitals, especially Washington,
15 and that he would boycott UNMIK and KFOR from now on until they
16 complied with his wishes."

17 MS. IODICE: Can we please go to the next page -- to the other
18 half of this page. Top part in the English. Can you go up? Can you
19 scroll all the way up? Thank you.

20 Q. And then he notes:

21 "I must speak to Thaci immediately, as none of this makes sense
22 anymore and I am not willing to continue working with him on [that]
23 basis."

24 A. Who is the "I" in this case? Is that Reinhardt or --

25 Q. Yes, this is his diary so he's --

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1 A. Yes, okay.

2 Q. It's all in first person.

3 And then we have the entry for 16 November where he says that
4 Thaci is boycotting the KTC meeting:

5 "His refusal to cooperate shows his contempt for the institution
6 and the other members of the KTC. He is behaving like a child who
7 sulks when it does not get its favourite toy. The 'toy' he wants is
8 the presidency of Kosovo and the sole political leadership under the
9 umbrella of Kouchner's administration."

10 Reinhardt is correct, isn't he, that what Thaci wanted was the
11 presidency and the sole political leadership under UNMIK's umbrella?

12 A. With great admiration for General Reinhardt, I think this
13 greatly overstates the case and helps to make the point that he was a
14 great military figure and not one to lead a diplomatic social
15 political process. We all had our good days and our very bad days.
16 But I will note that this was a tactic. Thaci returned to the KTC
17 not long after, and I think it was not the only time that he
18 withdrew, and he definitely was not the only KTC participant to
19 withdraw on one occasion or another when frustrated.

20 And it is not -- I think the characterisation of sulking and
21 childishness vastly understates the seriousness of the participants
22 in the KTC. They would do this for effect, either to remind their
23 own followers of their seriousness or in hopes of extracting some
24 small advantage with UNMIK. These events were not surprising and
25 they did not last long.

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1 Q. Okay. So let's see how Thaci behaved when he came back to the
2 KTC --

3 A. Okay.

4 Q. -- meeting.

5 MS. IODICE: So if we can please go to -- the original is PDF
6 page 130, and the English translation is PDF page 35. And this is
7 ERN SPOE40016033. And this is the entry for 8 December 1999. So if
8 we could now go to the next page in both languages. If we can zoom
9 in the -- yes, the first half of the English. Thank you.

10 Q. Here it notes:

11 "This round of civilised argumentation is followed by an
12 incredibly bizarre meeting of the Kosovo Transitional Council, during
13 which Thaci mutates into an actor. It is the first time since
14 27 October 1999 that he has appeared at the KTC. He does not even
15 take off his coat, but launches into a shrill, aggressive tirade
16 against UNMIK and KFOR. His anger escalates with every sentence ..."

17 And then he lists a series of accusations. And then at the
18 bottom of the page, he continues:

19 "He won't let anyone interrupt him, rages on ... at the end of
20 his tirade, offers to resume cooperation exclusively on 'his terms',
21 in other words, under his 'presidency'. If his," and if we can look
22 at the top of the other page. "If his demand is not met, he will
23 refuse any further cooperation. After this statement: exit. He
24 storms out of the room like a prima donna in a slapstick comedy. One
25 would have to laugh if it were not so sad. Thaci does not even give

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1 us the slightest opportunity to discuss his accusations."

2 And then he continues.

3 Were you aware that General Reinhardt contemporaneously recorded
4 these accusations and this event?

5 A. That he kept a *Tagebuch*? No, I wasn't aware.

6 Q. Do you have any reason to dispute this detailed and contemporary
7 account?

8 A. I have no reason to dispute that he wrote these things. I would
9 certainly differ with his interpretation and the sort of snap
10 predictions he made on the basis of them. But he is in this respect
11 an observer. It was Bernard who had to be the shock absorber and the
12 one to redirect everybody's individual passions.

13 Q. Thank you. And then Bernard Kouchner's reaction is recorded
14 immediately after. He notes in the next paragraph:

15 "... Kouchner explains that he is determined this week to
16 introduce the final version of the [International Administrative]
17 Council ..."

18 And then:

19 "Thaci was supposed to go first. After today's performance, it
20 will probably go ahead without him."

21 A. Which is not how it worked out.

22 Q. Thank you. And then it continues:

23 "I also believe that this is the only way to deal with Thaci.
24 He has delayed political cooperation for weeks by insisting on being
25 Number One."

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1 And then if we scroll down a little bit:

2 "I support Bernard's decision to take a hard line, because
3 otherwise we will never get his UNMIK administration off the ground.
4 I only hope that Bernard Kouchner does not cave in, in the hope of
5 getting Thaci to cooperate."

6 Did you know about this? Did you discuss it with
7 General Reinhardt?

8 A. We certainly would have discussed all this with him in our
9 regular -- the regular 5.00 meetings continued, the ones that
10 General Mike had started. So we obviously would have discussed these
11 things.

12 Q. Thank you.

13 MS. IODICE: And then if we can please move to page 136 of the
14 original, and 40 in English. That is ERN SPOE40016039. So this is
15 the entry for 12 December. So if we can please go to the next page
16 in both languages and focus on this one paragraph.

17 Q. Here he describes:

18 "Incidentally, Hashim Thaci has called on Bernard Kouchner once
19 again to explain to him that he was now 'out' again. This man is
20 totally unreliable, a man with whom it is actually no longer possible
21 to work; but we cannot ignore him. He knows this and is therefore
22 playing this card. Kouchner is now considering changing his
23 organisational approach once again in order to get Thaci on board
24 after all. I strongly advise him against this, as in this way Thaci
25 will exert increasing political pressure on him. I think that

Witness: James Covey (Resumed) (Open Session)

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1 Bernard Kouchner's constant soft-touch approach, understandably
2 seeking a compromise and a way out of the deadlock, is a big
3 mistake."

4 And then he continues:

5 "Thaci has been blocking everything for far too long."

6 Do you recall that Reinhardt strongly discouraged Kouchner from
7 changing approach?

8 A. No, I think he overstates Kouchner's frustration, and it's
9 fascinating that -- but I'm not surprised that he felt that Bernard
10 had a soft touch. In fact, I would have described -- I think I have
11 described Bernard's approach in a different way. Whenever possible,
12 he did not table a flat, aggressive no. He would simply block and
13 offer other options that would work more in keeping with UNMIK's
14 goals.

15 We are at risk of getting too much into classroom theory about
16 peacekeeping, but I want to keep reminding all that we were keenly
17 aware that this is a kind of a -- almost a psychological process,
18 with the emphasis both on psychology and on process. It is not
19 something transactional. It is not something that runs to schedule.
20 And it proceeds by fits and starts and not always by logic.

21 So I'm not surprised that Reinhardt was feeling very frustrated
22 at this point. We certainly were. And we had been at this kind of
23 work, one way or another, for decades by that time, dealing now with
24 someone who was very young, very young, and who was trying to
25 build -- trying to seize an opportunity that he thought he saw. Why

Witness: James Covey (Resumed) (Open Session)

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1 would we be surprised that he would act this way initially?

2 So, I'm sorry, I'll stop there, but I'm happy to get further
3 into that.

4 Q. Thank you.

5 MS. IODICE: Your Honour, I'd like to tender the pages I used,
6 and these are SPOE40016011, 16012, SPOE4016033 and 034, and 16039 and
7 16040.

8 PRESIDING JUDGE SMITH: Any objection to the book pages?

9 MR. MISETIC: No objection.

10 PRESIDING JUDGE SMITH: They will all be admitted as recited.
11 Please assign a number.

12 THE COURT OFFICER: Your Honours, excerpts from this same book
13 were already used and admitted as P04497. Can I seek clarification
14 if we should add these portions as well to already admitted portion
15 or we should assign a new number?

16 PRESIDING JUDGE SMITH: Do you wish to be heard?

17 MS. IODICE: My preference would be if they go under P04497.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 THE COURT OFFICER: In that case, Your Honours, we're going to
20 add them to P04497. Thank you, Your Honours.

21 PRESIDING JUDGE SMITH: Thank you.

22 Go ahead, Ms. Iodice.

23 MS. IODICE: Yes, Your Honour.

24 Should we take the ten-minute break now?

25 PRESIDING JUDGE SMITH: [Microphone not activated].

Witness: James Covey (Resumed) (Open Session)

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Cross-examination by Ms. Iodice

1 MS. IODICE: Okay.

2 Q. In your statement, you also talked about Hashim Thaci and how he
3 called for tolerance and supported the democratic multiparty Kosovo.
4 Do you remember that in fall 1999 crimes committed by KLA and KPC
5 members became a significant issue for you?

6 A. There -- it was the primary concern of UNMIK to stop the
7 violence.

8 Q. Okay.

9 A. Yes.

10 Q. And as you said in Prep Note 1, 1D00391, paragraph 10(t), the UN
11 headquarters instructed you to démarche both Ceku and Thaci; right?

12 A. Yes.

13 Q. Thank you. And do you remember that the reasoning of the UN
14 headquarters was specifically that such crimes would engage UNMIK's
15 responsibility?

16 A. There is a backstory to this.

17 Q. Do you remember this?

18 A. Do I remember the --

19 Q. Yes.

20 A. -- instruction?

21 Q. Yes.

22 A. Yes.

23 Q. Thank you. And do you also remember that you were asked to
24 undertake a thorough investigation?

25 A. I'm sorry, to undertake?

Witness: James Covey (Resumed) (Open Session)

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Cross-examination by Ms. Iodice

1 Q. A thorough investigation.

2 A. Yeah.

3 Q. In the Preparation Note 2, at page DHT12105, you stated that you
4 were aware of allegations that the KLA was involved in criminal
5 activity; is that correct?

6 A. Sorry, that's?

7 Q. During your --

8 A. I'm sorry, please just repeat it.

9 Q. Yes, sorry, I'll make it simpler. Do you remember ever saying
10 that you were aware of allegations that the KLA was involved in
11 criminal activities?

12 A. I was certainly aware of allegations.

13 Q. Yes.

14 A. Yes.

15 Q. Thank you.

16 MS. IODICE: Now could we please have ERN SPOE00212721 to
17 00212737. And we would need to go to page 5, PDF.

18 Q. So you have seen this document before, but this is the version
19 that we're authorised to use in court, so I'll ask you to please not
20 provide details that are covered by redactions.

21 Do you remember that this was specifically prepared to follow up
22 to that UN headquarter request?

23 A. It was prepared by staff --

24 Q. Yes.

25 A. -- to respond to the instruction, yes.

Witness: James Covey (Resumed) (Open Session)

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1 Q. It contained the draft démarches; right?

2 A. Yes.

3 Q. And it also contained some specific incidents involving KLA and
4 KPC members?

5 A. Can you refresh?

6 Q. I will, yes.

7 MS. IODICE: Can we please go first to PDF page 7. And so these
8 are notes that were prepared for a potential meeting between the SRSG
9 and Thaci containing what the SRSG would have told Thaci.

10 Q. And you can see at the fifth line, it notes:

11 "The criminal activities of former [KLA members] and your
12 supporters are rapidly eroding international support.

13 "We have allegations of executions of Albanians from other
14 political parties carried out by people linked to the KLA, as well as
15 numerous threats against Albanians and attacks on Serbs."

16 And then one point down:

17 "It is ... widely believed that the absence of strong leadership
18 on this issue proves that the ex-KLA leadership tolerates or even
19 approves of revenge and intimidation."

20 MS. IODICE: Now if we can go to PDF page 9.

21 Q. These are the incidents that were listed, including, as you can
22 see, five ex-KLA threatened to evict families; 26 September, four
23 ex-KLA threaten an Albanian; then an attack on two men, and so on.

24 Do you remember whether Kouchner ever delivered these démarche?

25 A. Wrong question.

Witness: James Covey (Resumed) (Open Session)

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1 Q. But can you please answer it anyway.

2 A. He did not deliver this démarche as it was drafted by the staff.

3 Q. Right. So --

4 A. Because I did not pass it along in this form.

5 Q. Right. So --

6 A. Because it was not useful as an UNMIK strategy. In the first
7 place, it had Kouchner addressing Thaci as if he were somehow
8 responsible for the KPC, and it simply did not comport with the
9 general strategy we were trying to take. And I worked quite
10 diligently on these talking points, and ultimately we drafted
11 different talking points for Ceku, much more direct, and different
12 points for Thaci which were more in keeping with the political role.
13 Specifically, we did not want to in any way suggest that Mr. Thaci
14 had any responsibility for the KPC.

15 Q. Thank you.

16 MS. IODICE: I would like to tender the extract from this
17 document into evidence, and this is SPOE00212725 to 212729.

18 PRESIDING JUDGE SMITH: Any objection?

19 MR. MISETIC: No objection.

20 PRESIDING JUDGE SMITH: SPOE00212725 to 2729 or and 729?

21 MS. IODICE: It can be public.

22 PRESIDING JUDGE SMITH: No.

23 MS. IODICE: Sorry.

24 PRESIDING JUDGE SMITH: Are you asking it to be 725 to 729 or
25 725 and 729?

Witness: James Covey (Resumed) (Open Session)

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1 MS. IODICE: 725 to 729.

2 PRESIDING JUDGE SMITH: Okay. 725 to 729 is admitted.

3 THE COURT OFFICER: It will be assigned Exhibit P04504. It's
4 currently classified as confidential.

5 MS. IODICE: It can be public.

6 PRESIDING JUDGE SMITH: Reclassified as public, please.

7 MS. IODICE:

8 Q. Do you remember that you set up a task force specifically for
9 KPC, KLA crimes?

10 A. I'm sorry. Please repeat that.

11 Q. I'm sorry. Do you recall that you set up a task force
12 specifically for looking into crimes committed by KPC, KLA members?

13 A. A task force within UNMIK?

14 Q. Yes.

15 A. I don't have a very clear recollection of that now.

16 Q. Okay. I'll show you a document to see --

17 A. Please.

18 Q. -- if it refreshes.

19 A. I welcome that.

20 MS. IODICE: Can we have P04133.

21 Q. So this is a memorandum, interoffice memorandum from UNMIK. The
22 subject is "Activities and information obtained by the task force in
23 the last three weeks." It's dated 6 November 1999.

24 MS. IODICE: If we can please scroll down a little bit. A
25 little bit up so that first paragraph -- yes.

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1 Q. And here it notes that they had obtained 7.500 names of former
2 and current --

3 A. I'm sorry, what is the date of this document?

4 Q. 6 November 1999.

5 A. Okay.

6 Q. And it's noting that they obtained names of former and current
7 UCK and KPC members.

8 "... as a result of this investigation links were established
9 that illegal activities are being conducted by the KPC and high
10 ranking members of the KPC."

11 And then it lists some of the examples, including kidnapping,
12 kidnappings, assaults, extortion, against ethnic Serbs but also
13 Albanians.

14 MS. IODICE: If we can move to the PDF page 4. This is the list
15 of some examples of the crimes that they are investigating.

16 Q. Does this refresh your memory about this task force?

17 A. No, as a matter of fact. I suspect -- I speculate. I said I
18 don't speculate. But I guess this was a task force within Pillar II,
19 perhaps within the police department, and not something that was
20 within UNMIK central, so to speak. So, no, I don't recall this
21 specifically.

22 Now, the kinds of incidents that are reported here, it's a bit
23 later in the process than I expected to see these, but the -- we can
24 talk when we get to the right point about the process of beginning to
25 sponge up all those people who claimed to have been in the KLA and

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1 finding other reintegration places for them and how this kind of
2 thing tailed off in time. But that's -- okay.

3 Q. Okay.

4 A. Does that answer your question?

5 Q. Yes, thank you.

6 MS. IODICE: Your Honours, is this a convenient time for the
7 break?

8 THE WITNESS: I note with some concern that we skipped very
9 quickly over the talking points that I did deliver to General Ceku.

10 MS. IODICE: Those are in evidence, so they are before the
11 Judges.

12 THE WITNESS: Okay.

13 MS. IODICE: Thank you.

14 PRESIDING JUDGE SMITH: We can take a ten-minute break, Witness,
15 and then we will have 50 minutes left today.

16 THE WITNESS: I'm sorry, sir?

17 PRESIDING JUDGE SMITH: After the break, we will have 50
18 minutes, 5-0.

19 THE WITNESS: Yes, sir. Thank you. Thank you.

20 [The witness stands down]

21 PRESIDING JUDGE SMITH: We're adjourned until 3.40.

22 --- Break taken at 3.27 p.m.

23 --- On resuming at 3.40 p.m.

24 PRESIDING JUDGE SMITH: Madam Court Officer, you can bring the
25 witness in.

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1 [The witness takes the stand]

2 PRESIDING JUDGE SMITH: All right. Mr. Covey, we will continue
3 with the questions from the Special Prosecutor's Office.

4 THE WITNESS: Thank you.

5 MS. IODICE: Thank you, Your Honour.

6 Q. Mr. Covey, in your statement, and yesterday in court as well,
7 you talked about the fact that leaders who call for tolerance put
8 themselves at risk. During your preparation session, you discussed
9 this topic and you stated that you have no direct knowledge of
10 attacks on Hashim Thaci because of his calls for tolerance; is that
11 correct?

12 A. I do not have knowledge of attacks on him directly linked to his
13 statements, but I think I was discussing that in the larger context,
14 that such statements not only in the case of Kosovo but in peace
15 processes generally put people severely at risk --

16 Q. Yes.

17 A. -- politically and often personally.

18 Q. Thank you. And you discussed this yesterday. I'm sorry, I'm a
19 little bit pressed with time, so --

20 A. Please.

21 Q. -- I will try to keep you a little bit more focused. And you
22 also talked about -- yesterday, at page 37, you also talked about
23 Thaci's animosity towards Rugova. Do you remember that after the
24 first meeting that the SRSG managed to set up between Rugova and
25 Thaci, Dr. Kouchner told you that Thaci was harsh, even savage, in

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1 his verbal attacks on Rugova?

2 A. In that meeting, yes.

3 Q. Yes. Thank you. And you also knew that the KLA was targeting
4 or it targeted the LDK and FARK; right?

5 A. That the KLA had targeted FARK?

6 Q. And the LDK.

7 A. Yeah, I'm -- I'm less familiar with targeting of LDK. But, yes,
8 I'm well aware that they were -- that there were reports of them
9 targeting FARK.

10 Q. Thank you. The SRSG also wrote about this issue.

11 MS. IODICE: Could we please have SPOE00403545 to 403566 and its
12 English translation.

13 And if we can please go to PDF page 7 in both languages, which
14 is SPOE00403551.

15 Q. Here, regarding his discussion with Rugova, he wrote --

16 MS. IODICE: If we can focus, please, on the first half of the
17 page, the paragraph "With pleasantries ..." The second half of this
18 paragraph, where he states "The Resisters ..." that's what I'm going
19 to read.

20 Q. "The Resisters, Thaci's KLA, who had taken the risk of going
21 underground and taking up arms, intended to occupy all the key
22 positions in the country and the 'collaborators,' even in this case
23 they were the ones who had launched a peaceful war of liberation,
24 began to tremble. War was open between these two main factions and
25 implied the risk of violent death, a constant threat to oneself and

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1 one's family. I was absolutely determined to avoid such a
2 confrontation."

3 MS. IODICE: And then if we go to the page next to this, zooming
4 out a little bit. No, not the next page. It's just the same page
5 but the book page next to it. So we should still be on PDF page 7.
6 The second part of the screen -- yes, if you can focus on the second
7 paragraph.

8 Q. Here he says --

9 MS. IODICE: No, up. Thank you.

10 Q. "I had to convince Thaci, the man of the armed resistance."

11 And then he continues:

12 "His generation was one of intransigence. He had not
13 participated in peaceful combats and considered Rugova's activities
14 as complicity with Milosevic's regime."

15 And a few lines after:

16 "Hashim Thaci emerged from the war believing it was his victory,
17 not that of NATO's air strikes. He benefitted from American support
18 and suffered from European mistrust and French mistrust, fuelled by
19 the impunity for the crimes attributed to the KLA and various
20 trafficking, particularly that of weapons, in which certain guerrilla
21 members were allegedly involved."

22 Do you agree with this description of the relationship between
23 the KLA and the LDK?

24 A. Yes, with Bernard's occasional poetic license in describing it.

25 Yes.

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1 Q. Thank you.

2 MS. IODICE: I would like to tender this page, SPOE00403551,
3 into evidence.

4 PRESIDING JUDGE SMITH: Any objection to that page?

5 MR. MISETIC: As long as -- can we just scroll down to the
6 bottom of the page, please. No, I have no objection. Thank you.

7 MS. IODICE: And if it can be attached to the main exhibit.

8 PRESIDING JUDGE SMITH: SPOE00403551 is admitted.

9 THE COURT OFFICER: Thank you, Your Honours. And it will be
10 assigned -- actually, it will be added to already assigned
11 Exhibit P04488, classified as confidential as previous pages.
12 Apologies, I just realised that I misread the number. It's P04498.
13 Thank you, Your Honours.

14 MS. IODICE:

15 Q. Do you recall writing something similar in your book?

16 MS. IODICE: So could we please have again SPOE00397775. And if
17 we can please go to PDF page 36. And focus on the bottom of the book
18 page 100, so that's the page on the left side of the screen,
19 penultimate paragraph.

20 Q. Here you wrote:

21 "At the same time, a less obvious bitter struggle inside Kosovo
22 was going on within the majority ethnic Albanian community, between
23 the emergent KLA and supporters of Ibrahim Rugova's LDK."

24 These were your words in 2005; correct?

25 A. Yes.

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1 MS. IODICE: And if we can go to the same PDF page but on the
2 other side. Up to the third paragraph. The paragraph starting "Over
3 time ..."

4 Q. Here you wrote:

5 "Over time, it became more and more apparent that this was not
6 simply a heated political argument. KLA extremists would use any
7 necessary means to displace Rugova and his LDK party apparatus - as
8 well as to be acknowledged as heroes and the guarantors of Kosovo's
9 future independence. KLA fighters saw the LDK's military arm, the
10 Armed Forces of the Republic of Kosovo (FARK), as nearly as much of
11 an enemy as the dreaded Serb special [forces]. Even during the war,
12 the KLA had attacked the FARK. In the vacuum that followed, the
13 KLA's ruthless campaign against the LDK continued."

14 Were these your words?

15 A. Yes, bearing in mind that, as described elsewhere, the KLA was a
16 diffuse and -- organisation -- actually, not an organisation. It was
17 a diffuse movement made up of a number of regional zone commanders.
18 But this described what was being done as we understood it by
19 personnel associated with the KLA movement.

20 Q. Thank you. Now, you provided an example of this violence.

21 MS. IODICE: So if we could go to PDF page 35. This is
22 SPOE00397809. If we can focus on the part in italics. Yes.

23 Q. Here, talking about the engagement of Kouchner with Rugova, the
24 second part or second paragraph, you noted Rugova's fears. And you
25 wrote that five of Rugova's bodyguards had been apprehended and

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1 tortured by KLA operatives under the command of Daut Haradinaj.

2 These words reflect what you learned; correct?

3 A. This is what we learned in various exchanges over time with
4 KFOR.

5 Q. Thank you.

6 MS. IODICE: Could I please tender SPOE00397809 because the rest
7 is admitted already.

8 PRESIDING JUDGE SMITH: Any objection?

9 MR. MISETIC: No objection.

10 PRESIDING JUDGE SMITH: SPOE00397809 is admitted.

11 THE COURT OFFICER: And will be added to -- actually, it will be
12 assigned Exhibit P04496.5. And as previous ones were classified as
13 public, should this --

14 MS. IODICE: Yes.

15 PRESIDING JUDGE SMITH: Reclassified as public.

16 THE WITNESS: In the interest of full disclosure, I would say
17 that my use of the term "civil war," looking back on it now, I would
18 -- that's more than I would say.

19 MS. IODICE: Thank you.

20 THE WITNESS: But open conflict, yes.

21 MS. IODICE: Thank you.

22 Q. So do you recall -- while you were in Kosovo, do you recall
23 receiving reports of KLA targeting LDK members?

24 A. We received reports of people targeting LDK people who were
25 believed to be KLA supporters or former KLA individuals.

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1 Q. Okay. Do you recall that you set up an initiative to monitor
2 politically motivated acts at that time?

3 A. Not as you describe it. Maybe you have something that will
4 refresh.

5 Q. You can describe it. Was it a task force?

6 A. I'm sorry, I don't have a clear recollection of such a task
7 force, but I don't dispute that it may have existed.

8 Q. Okay. Do you also recall the assassinations of LDK members at
9 the time? Do you recall, for example, the murder of Xhemajl Mustafa?

10 A. In the run-up to the elections, yes.

11 Q. Thank you.

12 A. Yes. And I think I made it -- I put out a statement on that
13 occasion.

14 Q. Yes. Yes, you did. I will show it to you since you remember.

15 MS. IODICE: That's ERN SPOE00397223. Could we have it on the
16 screen.

17 Q. So this is a *Washington Post* article dated 24 November 2000, and
18 it's reporting about the assassination of LDK member Xhemajl Mustafa.

19 MS. IODICE: Here -- if we can please scroll down the paragraph
20 before last.

21 Q. Here it says:

22 "US diplomat Jock Covey ... said: 'This is a contemptible and
23 cowardly act by extremists who want to undermine Kosovo's move to
24 democracy.'"

25 Is that the statement that you were referring to?

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1 A. That quote is from the statement that we put out. I didn't scan
2 the rest of that article. Jeff Smith is not my favourite reporter.
3 He tended to work a thesis rather than the facts.

4 Q. Thank you.

5 MS. IODICE: I would like to tender this document into evidence.

6 PRESIDING JUDGE SMITH: Any objection?

7 MR. MISETIC: No objection.

8 PRESIDING JUDGE SMITH: SPOE00397223 is admitted.

9 MS. IODICE:

10 Q. You do remember -- sorry.

11 THE COURT OFFICER: Apologies. SPOE00397223 to 00397224 will be
12 assigned Exhibit P04505, and it's currently classified as
13 confidential.

14 MS. IODICE: It can be public.

15 PRESIDING JUDGE SMITH: [Microphone not activated].

16 MS. IODICE:

17 Q. Now, you do remember that Hashim Thaci founded the PDK; right?

18 A. Yes.

19 Q. During the preparation session - and this is at paragraph 14 of
20 Preparation Note 2 - you talked about a portion of your book where
21 you wrote that Thaci had not demonstrated a credible commitment to
22 anything like democracy. And you explained that you meant that since
23 he hadn't covered executive positions before, he had not been able to
24 demonstrate such a commitment.

25 A. The emphasis is on demonstration.

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1 Q. Thank you.

2 A. Yes.

3 Q. So I'll show you that part again.

4 MS. IODICE: So if we can take the book again, SPOE00397775, and
5 if we can please go to page SPOE00397813. It's already admitted as
6 P04496.4. No, that's not the correct ERN number. Next page. Yeah,
7 thank you. And if you can focus on "Mediating Conflict
8 Incrementally" on the other side. Yeah. Thank you.

9 Q. Here you wrote:

10 "From the outset, a key element of UNMIK's mediation effort was
11 bringing a full range of leaders into a political process that would
12 transform conflict."

13 And then next sentence:

14 "When even the most tolerant Albanian representatives were
15 unable to repudiate the murders of fourteen Serb farmers, however,
16 even the most moderate Serbs abandoned the process entirely."

17 And next paragraph:

18 "... UNMIK decided to focus on the Albanian rivals."

19 MS. IODICE: And then if we can scroll down a little bit. Yes.

20 Q. "In these first months, the Albanian factions were too concerned
21 about outflanking each other to work with UNMIK. Thaci was forceful
22 and demanding but had little experience and no apparatus, and he had
23 not demonstrated a credible commitment to anything like democracy.
24 Rugova's LDK had far more adherents, along with years of experience
25 in providing basic social services and running elections. The LDK

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1 was by nature passive, however, and Rugova was out of the country and
2 mortally afraid to return.

3 "UNMIK could not simply pick a winner. The PDK would not accept
4 being sidelined; choosing the LDK would clearly initiate a civil war.
5 Neither the majority of Albanians ..."

6 MS. IODICE: If we can go to the next page, please. Yes, then
7 I'll call up -- apologies. Can we have SPOE00397775. And can we
8 please go to page -- first to page SPOE00397813. Yeah.

9 Q. I'll re-read this last part:

10 "UNMIK could not simply pick a winner. The PDK would not accept
11 being sidelined; choosing the LDK would clearly initiate a civil
12 war."

13 Now if we can go to the next page:

14 "Neither the majority of Albanians nor the international
15 community could countenance simply anointing the PDK, so undemocratic
16 was its image."

17 Those were your words in 2005; correct?

18 A. With the emphasis on "image."

19 Q. Thank you.

20 MS. IODICE: I would like to tender this last page and have it
21 added to the rest of the book.

22 PRESIDING JUDGE SMITH: Objection?

23 MR. MISETIC: No objection.

24 PRESIDING JUDGE SMITH: The page is 00397813?

25 MS. IODICE: It's 397814. 13 is already admitted.

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Cross-examination by Ms. Iodice

1 PRESIDING JUDGE SMITH: [Microphone not activated].

2 THE COURT OFFICER: Thank you, Your Honours. It will be
3 admitted as P04496.6, and I guess it's going to be public.

4 MS. IODICE: Yes, thank you.

5 THE COURT OFFICER: Thank you.

6 MS. IODICE:

7 Q. Mr. Covey, thank you so much for your patience. I don't have
8 further questions for you today.

9 A. Thank you, counsellor.

10 PRESIDING JUDGE SMITH: Is there a redirect?

11 MR. MISETIC: Yes, Your Honour. There is redirect, but we were
12 told that they were taking the rest of the day, so I can start and --
13 but I would ask for some leave to add some documents after court
14 because we weren't anticipating having to release a queue now.

15 PRESIDING JUDGE SMITH: Okay. Go ahead.

16 MR. MISETIC: Thank you.

17 PRESIDING JUDGE SMITH: [Microphone not activated].

18 MR. MISETIC: I didn't hear that.

19 PRESIDING JUDGE SMITH: Excuse me. We might as well use the 20
20 minutes.

21 MR. MISETIC: Yes, thank you. Okay. So I'm told we'll release
22 a partial queue now, and then we'd ask for leave to add to the queue
23 later. Thank you.

24 PRESIDING JUDGE SMITH: No problem. Thank you for accommodating
25 us.

Witness: James Covey (Resumed) (Open Session)

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Re-examination by Mr. Misetic

1 MR. MISETIC: Thank you.

2 Re-examination by Mr. Misetic:

3 Q. Good afternoon, Mr. Covey.

4 A. Good afternoon.

5 Q. I have some questions for you on redirect examination, and then
6 I'll continue tomorrow. At page 39 of today's transcript, you said
7 you wanted to say something about the role of a diplomat "and how we
8 arrive at our judgments." Do you recall that?

9 A. Yes.

10 Q. You didn't have an opportunity, so I'm giving you an opportunity
11 now to say what you wanted to say.

12 A. It is the duty, the role of a court to, as much as possible,
13 gather empirical evidence, so it may come as a bit confusing that
14 that's not at all how diplomats, peacemakers proceed and how they
15 reach their conclusions. Diplomats know from the outset they will
16 almost never know the full story. They have to reach judgments, make
17 strategies, and advise their governments on the basis of necessarily
18 incomplete information.

19 Many of the documents that have been shared in the last two days
20 were not available to us, or became available at some other time, or
21 were buried in a stack of papers that someone like me would be
22 grinding through at midnight looking for trouble, not necessarily
23 building a database. "Trouble" meaning conflicts within the mission,
24 issues not being addressed, issues that were being carelessly
25 addressed, and so on.

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Re-examination by Mr. Misetic

1 So even documents that passed before my eyes may not have got
2 the attention at the time that they would have received in the last
3 few days.

4 That said, our job is not necessarily to make a purely
5 data-driven assessment. When confronting a new situation, a new
6 assignment to a country, a new political system, you're always
7 presented with a roadmap of titles and responsibilities and
8 self-aggrandizing claims to influence and so on, but it's our job to
9 try to figure out what are the real paths of authority, who really
10 influences whom, who -- without having what intelligence people would
11 call indications of intent, you can only, by indirection and what
12 some would call *Fingerspitzengefühl*, try to assess what you have in
13 front of you.

14 So this comes to the question of Mr. Thaci. There's a lot on
15 the record that he has said, but we were confronted by a bundle of
16 contradictions, a person who had almost by default ended up as the
17 head of a provisional government, which was no longer valid in the
18 face of UNMIK's mandate, but who was astonishingly young at the time,
19 inexperienced in real politics, that is, the politics of getting
20 people to vote, with no real executive experience, and whose
21 sometimes harsh rhetoric was belied by a very soft-spoken manner.

22 We assessed early on that he was still very much trying roles on
23 for size. He was very ambitious, clearly very bright, with very
24 little real world experience in these matters, and working his way by
25 feel towards an ambition that we doubted he could actually write but

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1 he hoped to achieve.

2 So our judgment from the beginning was that it seemed absolutely
3 self-evident to us that this person sitting in front of us was not a
4 fighter, and I don't think the record shows that this was a man who
5 ever fired a shot in anger, but even that would be irrelevant. This
6 was not the nature of the person we were confronting in our
7 experience. And Bernard and I were not neophytes at this. We spent
8 half a lifetime with people trying to tell us what they think we want
9 to know. So we assessed very early on that not a fighter, and
10 probably not the person who would have the deep respect of the people
11 who actually fought and bled and lost their comrades.

12 So that's where I am very uncomfortable with this long
13 recitation of documents that say this and say that and say the other
14 thing. They don't deal with the person we found in front of us, and
15 they don't deal with the process in which we were engaged, which
16 was -- as we say, the analyst, and perhaps the jurist, tells things
17 as they are, but it is the job of the statesman to change the things
18 that are, and that was what we felt was our duty, without regard to
19 adjudicating past history.

20 Q. Thank you. On that line of thought, if we could please go to
21 your book, which you discussed in cross-examination.

22 MR. MISETIC: P04496.4, please. And if we go to page
23 SPOE00397813, please. And to the top of the page, please.

24 Q. And you asked that that sentence, that first full sentence at
25 the top of page 107:

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1 "It had never been easy for Thaci to work with the KLA field
2 commanders."

3 Now, you wrote that in 2005 --

4 A. Yes.

5 Q. -- correct? And tell us again -- I guess, let me rephrase the
6 question. You were obviously aware that -- again, let me rephrase.
7 What is the basis of that conclusion? And you don't need to repeat
8 your evidence, but is it what you've testified here today and over
9 the course of your testimony?

10 A. It was the sum total of our impressions both -- it starts with
11 comments by KFOR personnel about the disregard with which some KLA
12 zone commanders held Mr. Thaci. It continues with our assessment of
13 his personality and theirs. And it came very forcefully to a point
14 in the meeting we described which vividly confirmed for us what we
15 had come to believe all along, that his relationship with the driving
16 members of the KLA movement did not regard him as commander and would
17 not have sought his guidance or reported their activities to him.

18 Q. Thank you. I'd like to ask you a few questions before we
19 finish, we have about ten minutes left, about one of those field
20 commanders, and you were asked several questions about him,
21 Sami Lushtaku.

22 Now, you were asked a whole series of questions about the
23 process of arresting or not arresting Mr. Lushtaku. My first
24 question to you is: Did you and Mr. Kouchner turn a blind eye to
25 crimes?

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1 A. No.

2 Q. Did you, and I'll use the word "coddle," or did you not approach
3 Mr. Thaci for fear of violent reaction in Kosovo?

4 A. No. The -- that whole -- the discussions of Mr. Thaci and the
5 discussions of Mr. Lushtaku are totally different. It -- vastly
6 oversimplifying it, we had no illusion that Mr. Lushtaku was
7 reformable. And we had every expectation that if we were careful and
8 thoughtful in our work, that Mr. Thaci could be brought to see that
9 his interests lay in working with UNMIK, in fostering a tolerant
10 environment which would be safe for minorities and so on, that he
11 could be brought around, even though it was not clear at the very
12 outset that he had any real regard for UNMIK at all.

13 Q. Mr. Covey, just for the transcript, you said:

14 "It -- vastly oversimplifying it, we had no," and then there's a
15 word missing, "reformable."

16 A. Oh, we had no illusions that Sami Lushtaku was reformable.

17 Q. Understood.

18 A. That was in terms of the process we're describing, he would not
19 be a target.

20 Q. Did Mr. Thaci have the *de facto* ability to punish someone like
21 Sami Lushtaku in your assessment?

22 A. No. No. That would have required much more support from the
23 other -- from the rest of the KLA movement, the other zone
24 commanders, and he did not have that kind of relationship or support.
25 I doubt -- okay. You didn't ask the question, so -- I don't know who

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1 could have.

2 Q. Thank you.

3 MR. MISETIC: I'd like to call up a document from our just
4 released queue, DHT12157 to DHT12157.

5 Q. This is a news report from 25 August 1999 from *Koha Ditore*, and
6 it reports about the creation of a new party, which I discussed with
7 you yesterday. You'll recall that I talked about the party created
8 by Bardhyl Mahmuti and several political parties splintering from
9 what was the KLA. And it says:

10 "The commander of the National Guard, Sylejman Selimi - Sultani,
11 and the commander of the Operational Zone of Drenica, Sami Lushtaku,
12 visited the headquarters of the Democratic Union Party (PBD) in
13 Prishtina on Monday, August 23. They were received by the leader of
14 the PBD, Bardhyl Mahmuti, Pleurat Sejdiu, and Halil Selimi, as well
15 as by members of the presidency, according to the press -- to a press
16 release from the PBD."

17 And it talks about how Sylejman Selimi and Sami Lushtaku were
18 visiting this new political party.

19 Now, I'll ask you: Were you aware that the former zone
20 commanders were engaged with a political party in August 1999 that
21 was not Mr. Thaci's political party?

22 A. I think we must have at some level been aware but it was not in
23 the -- what was clear was that Mr. Thaci had not yet really fully
24 consolidated the support of former KLA who were ready to turn towards
25 democracy --

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1 Q. Thank you.

2 A. -- towards a political approach, that he had not really pulled
3 that together.

4 Q. Thank you.

5 MR. MISETIC: Mr. President, I tender DHT12157 to DHT12157.

6 PRESIDING JUDGE SMITH: Any objection?

7 MS. IODICE: No, Your Honour.

8 PRESIDING JUDGE SMITH: DHT12157 to 12157 is admitted. Please
9 assign a number.

10 THE COURT OFFICER: It will be assigned Exhibit 1D00421, and
11 it's currently classified as public. Thank you, Your Honours.

12 PRESIDING JUDGE SMITH: Can this be reclassified?

13 MR. MISETIC: Yes, as public. Yes.

14 PRESIDING JUDGE SMITH: Reclassified as public.

15 MR. MISETIC: Thank you. I will end the day -- if I can just
16 have a moment to find the admitted exhibit number of the O'Neill
17 book.

18 MS. IODICE: I can provide the ERN, but I don't have the
19 P number because it wasn't -- I have to tender it --

20 MR. MISETIC: Oh, I thought it was tendered.

21 MS. IODICE: -- by e-mail.

22 MR. MISETIC: Oh, that's right. Okay. Then let me -- if you
23 could please provide the ERN. I'm sorry. I have the page ERN but
24 not full range.

25 MS. IODICE: The full range is 052690 to 052841.

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1 MR. MISETIC: Thank you, counsel.

2 THE COURT OFFICER: Apologies. Is it the document that we
3 should be showing?

4 MR. MISETIC: It should be, yes. And if we could please go to
5 page 052748, please.

6 Q. You'll recall the author is William O'Neill from the OSCE
7 mission.

8 A. I recall the name. I don't --

9 Q. I'm just orienting you --

10 A. Yes.

11 Q. -- as to who he is. You were shown the top of this page, but
12 I'd like to show you the bottom of the page and give you a fair
13 opportunity to comment.

14 MR. MISETIC: If we could scroll down, please. A little bit
15 higher so we can start with that other paragraph. That's it.

16 Q. It says:

17 "Some in UNMIK even questioned whether the violence was indeed
18 planned; they asserted that these incidents were random, spontaneous
19 outbursts of an aggrieved people against their former oppressors.
20 The SRSG's foreword to the OSCE report reflected the debate within
21 UNMIK on this question. The initial draft by the SRSG's Human Rights
22 Office stated that 'armed groups seemed to operate in an organised
23 fashion and have some form of hierarchy, command and control.' A
24 paragraph drafted by others in the SRSG's office several pages later
25 contradicts this assertion, saying, 'The crimes we see are acts of

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1 individuals.'

2 "Excuses were made for the UCK and its leaders, especially
3 Hasim Thaci and Agim Ceku, when case after case documented by the
4 OSCE, CIVPOL, and KFOR showed that UCK [and] former UCK members were
5 implicated in most of the serious incidents. The response was" - and
6 I'll slow down for a minute - "Even if it is the UCK ... we don't
7 know if it is, it could be just people wearing UCK uniforms; it's not
8 Thaci's or Ceku's fault because they can't control these guys. The
9 alleged lack of control over rogue elements is a frequent alibi for
10 insurgents, commonly known as 'plausible deniability', and begs a
11 larger question. If Thaci, Haradinaj, Ceku, and others could not
12 control their people, then why was anyone wasting any time talking to
13 them?"

14 And then it's something about the Serb community.

15 MR. MISETIC: If we could scroll down, please.

16 Q. "While regional loyalties and clan identification made the UCK
17 less of a well-oiled and totally disciplined" - and if we can go to
18 the top of the next page, please - "machine than the German
19 Wehrmacht, neither was it the loose amalgam of uncontrollable bands
20 that its now former leaders or apologists would like people to
21 believe."

22 I believe you should have a full opportunity, Mr. Covey, to
23 comment on what was admitted into evidence. So do you have any
24 thoughts on Mr. O'Neill's assertions?

25 A. I'm glad that we had passionately committed people to pursue

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1 human rights issues within the UNMIK family, but these kinds of
2 tensions, moral and intellectual, within the organisation are
3 absolutely typical. Both sides tend to see it as binary. It's
4 either individual or it's part of a larger conspiracy. And the truth
5 is often that it's both. But the truth is also that what we're
6 trying to do is eliminate the acts. And our primary focus was
7 basically to depopulate that segment that might be committing such
8 acts both by providing an outlet in the form of the KPC, positions in
9 the police, positions in private industry, whatever, that is, future
10 employment for people who at that point knew little more than farming
11 and fighting, and at the same time squeezing to deter, to detain, to
12 capture, and it did not go smoothly.

13 Q. What about his assertions that Mr. Ceku and Mr. Thaci had
14 control over these crimes?

15 A. That's -- Mr. Ceku certainly was respected, and on certain
16 issues at certain times at certain places he had a lot of influence.
17 But our take at the time was there's some pretty tough guys out
18 there, and they had their own issues to -- their own interests to
19 serve. Some of them were basically rackets of one kind or another as
20 we understood it, and that was hard to give up. And others believed
21 passionately in independence and thought it hadn't been properly
22 served.

23 Q. And what about Mr. Thaci?

24 A. Mr. Thaci had no control.

25 Q. Thank you.

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1 A. He simply -- I mean, that was our assessment that -- okay.

2 Q. We're ending the day, so I just have my last question. What
3 about any implication that you and/or Mr. Kouchner were whitewashing
4 the KLA or the leadership of the KLA?

5 A. It was very frustrating for people who were this committed to
6 justice to see that we were being pragmatic about events and a larger
7 process. I realise we're running out of time. I hope we can also
8 address some of the instances in which Mr. Thaci appeared to advocate
9 on behalf of, though, we would say carry water for, the KLA --

10 Q. We are getting into that in the morning.

11 A. -- but that's for a later discussion.

12 Q. We will get into that in the morning. Thank you. And I'll see
13 you in the morning.

14 A. Okay.

15 MR. MISETIC: Thank you, Mr. President.

16 PRESIDING JUDGE SMITH: [Microphone not activated] ... didn't
17 have my mic on.

18 Thank you for being with us today. We'll see you tomorrow
19 morning at 9.00 and proceed accordingly. Thank you. Do not speak
20 with anyone outside the courtroom.

21 THE WITNESS: Thank you, Your Honour.

22 [The witness stands down]

23 PRESIDING JUDGE SMITH: We're adjourned until 9.00 a.m.
24 tomorrow.

25 --- Whereupon the hearing adjourned at 4.34 p.m.