

1 Tuesday, 20 June 2023

2 [Open session]

3 [The accused entered the courtroom]

4 [The Accused Krasniqi appeared via videolink]

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

6 PRESIDING JUDGE SMITH: Madam Court Officer, you may call the  
7 case.

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

11 PRESIDING JUDGE SMITH: Thank you.

12 Good morning, everyone.

13 I note for the record that all of the accused are present in  
14 court except Mr. Krasniqi, who appears by videolink.

15 Before we continue with the testimony of Witness 03811, the  
16 Panel will rule on the admission of one item tendered yesterday.

17 Following up on yesterday's discussion, the Panel orders that  
18 ERN 113511-113522 be admitted on the record into evidence.

19 Madam Court Officer, please assign an exhibit number to this  
20 item.

21 THE COURT OFFICER: Your Honours, this number already received  
22 P196 yesterday, but now the status will be changed to admitted.

23 PRESIDING JUDGE SMITH: Thank you.

24 Mr. Court Usher, could you please bring the witness into the  
25 room.

1 THE COURT OFFICER: [via videolink] Your Honours, Witness W03811  
2 is coming into the remote location.

3 PRESIDING JUDGE SMITH: Thank you, Court Officer.

4 [The witness takes the stand via videolink]

5 PRESIDING JUDGE SMITH: Good morning, Witness. Can you hear me  
6 well?

7 THE WITNESS: [via videolink][Microphone not activated]

8 PRESIDING JUDGE SMITH: The sound is not on on your end. Can  
9 you hear me well?

10 THE WITNESS: [via videolink][Interpretation] Yes.

11 PRESIDING JUDGE SMITH: Thank you.

12 Before starting, I want to inform you that the Defence reduced  
13 its time estimate for questioning you to a bit less than two hours.  
14 As a result, we anticipate that we will conclude your testimony today  
15 before lunch.

16 I remind you to please try to answer the questions clearly with  
17 short sentences.

18 If you don't understand a question, feel free to ask the counsel  
19 to repeat the question or tell them that you don't understand and  
20 they will clarify it.

21 Also, please remember to try to indicate the basis of your  
22 knowledge of the facts and circumstances upon which you will be  
23 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.

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

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

6           Mr. Pace, do you intend to go into private session at this time?

7           MR. PACE: Yes, Your Honour.

8           PRESIDING JUDGE SMITH: All right.

9           Court Officer, please take us into private session.

10                               [Private session]

11                               [Private session text removed]

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Witness: W03811 (Resumed) (Private Session)

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[Open session]

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

18 PRESIDING JUDGE SMITH: All right. We'll adjourn until 11.30.

19 But when you come back, I had asked yesterday to have Defence  
20 update their estimates of time for cross-examination. So maybe right  
21 when we get back, I'll ask you to do that on the record and we'll let  
22 it go with that.

23 We're adjourned until 11.30.

24 --- Recess taken at 11.03 a.m.

25 --- On resuming at 11.31 a.m.

1           PRESIDING JUDGE SMITH: So beginning with the Thaci Defence. Do  
2 you have an update?

3           MR. KEHOE: [Microphone not activated]. My apologies again.

4           Those witnesses that are coming up are significant witnesses in  
5 this case, so we're just going to stay with the time estimates that  
6 we have at this juncture for those witnesses that you have outlined  
7 for us. And I consulted with Mr. Misetic who is going to take  
8 several of these, and he said that he is going to continue with that  
9 particular timeframe.

10          PRESIDING JUDGE SMITH: [Microphone not activated]

11          MR. EMMERSON: For Witness 4746, three hours. For Witness 4290,  
12 three hours. Both of whom are witnesses of some significance. And  
13 for Witness 4337, 0.5, so half an hour.

14          And whilst I'm on my feet, may I indicate that, with Your  
15 Honours' permission, Mr. Veseli would prefer tomorrow to follow the  
16 Status Conference remotely, if that's acceptable.

17          PRESIDING JUDGE SMITH: If we do it tomorrow. It's possible, I  
18 suppose, we could even do this this afternoon, if things come along.  
19 But, yes, he could appear. But I would not expect them to feel like  
20 they have to come to that Status Conference.

21          MR. EMMERSON: Very well. If it's this afternoon, I'm sure  
22 we'll all remain.

23          MR. TULLY: Thank you, Your Honour. I've consulted with  
24 Mr. Roberts who will be taking these witnesses, and our time  
25 estimates remain the same. And just for the record, that's W4337,

1 three hours; W4746, eight hours; W4290, seven hours; and W2161, four  
2 hours.

3 We continue the preparation and we'll update in good time if any  
4 of those hours come down, Your Honour. Thank you.

5 MR. ELLIS: Your Honour, in relation to Witness 4337, we reduce  
6 our time estimate from two hours to one hour. In relation to the  
7 other two witnesses, that's 4290 and 4746, the time estimates remain  
8 the same, taking into account the scope of the evidence of those  
9 witnesses.

10 MR. PACE: Your Honour.

11 PRESIDING JUDGE SMITH: Thank you.

12 MR. PACE: Your Honour, may I just ask if Your Honour deems it  
13 appropriate, so that this could potentially be helpful for everyone,  
14 if the Defence could clarify whether the estimates they gave take  
15 account of the estimates from the other Defence teams for the same  
16 witness. If you think it's appropriate. Because we believe that  
17 perhaps one of the causes for the overestimation thus far has been  
18 that estimates are given as though the particular Defence team will  
19 be the only one cross-examining the witness. Only if you think that  
20 that would be helpful, Your Honour.

21 PRESIDING JUDGE SMITH: [Microphone not activated].

22 I assume you've taken that into consideration, but I will ask  
23 the question. I assume -- is there anybody who did not take into  
24 consideration the other examining parties? All right. Thank you.

25 All right. Thank you for your cooperation and for giving us

1 this estimate. And please keep us updated. Please update us on a  
2 daily basis. It will help everything.

3 We are in public session at this time. We need to go back to  
4 private session, unless Mr. Kehoe wants to change that.

5 MR. KEHOE: No, I think we're going to kind of get into some  
6 very personal things here.

7 PRESIDING JUDGE SMITH: All right. Thank you.

8 [Private session]

9 [Private session text removed]

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Ms. Alagendra

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Ms. Alagendra

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Witness: W03811 (Resumed) (Private Session)

Page 5191

Cross-examination by Ms. Alagendra

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Witness: W03811 (Resumed) (Private Session)

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Cross-examination by Ms. Alagenda

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Witness: W03811 (Resumed) (Private Session)

Page 5193

Cross-examination by Ms. Alagenda

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Witness: W03811 (Resumed) (Private Session)

Page 5194

Cross-examination by Ms. Alagenda

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Witness: W03811 (Resumed) (Private Session)

Page 5195

Cross-examination by Ms. Alagenda

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Witness: W03811 (Resumed) (Private Session)

Page 5196

Cross-examination by Ms. Alagenda

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Witness: W03811 (Resumed) (Private Session)

Page 5197

Cross-examination by Ms. Alagenda

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Witness: W03811 (Resumed) (Private Session)

Page 5198

Cross-examination by Ms. Alagendra

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Witness: W03811 (Resumed) (Private Session)

Page 5199

Cross-examination by Ms. Alagendra

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21 [Open session]

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

23 PRESIDING JUDGE SMITH: Thank you.

24 Over the noon hour, I will see to it that we e-mail to you some  
25 discussion points. And if we have any opportunity this afternoon,

1 which it sounds like we will, we'll have this discussion today and  
2 maybe we won't have to go in tomorrow.

3 And if any of the accused want to go back to the detention  
4 centre rather than sitting through this, that's perfectly all right  
5 as long as we know that's going to happen and they do a waiver.

6 We are adjourned.

7 --- Luncheon recess taken at 1.07 p.m.

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

9 PRESIDING JUDGE SMITH: Madam Usher, you can bring the witness  
10 in. I'm sorry, I said "Madam Usher." Mr. Usher.

11 [The witness takes the stand via videolink]

12 PRESIDING JUDGE SMITH: And we should be in private session.

13 [Private session]

14 [Private session text removed]

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Witness: W03811 (Resumed) (Private Session)

Page 5201

Questioned by the Trial Panel

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Witness: W03811 (Resumed) (Private Session)

Page 5202

Questioned by the Trial Panel

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Witness: W03811 (Resumed) (Private Session)

Page 5203

Questioned by the Trial Panel

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Witness: W03811 (Resumed) (Private Session)

Page 5204

Questioned by the Trial Panel

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Witness: W03811 (Resumed) (Private Session)

Page 5205

Questioned by the Trial Panel

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Witness: W03811 (Resumed) (Private Session)

Page 5206

Questioned by the Trial Panel

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Witness: W03811 (Resumed) (Private Session)

Page 5207

Questioned by the Trial Panel

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Witness: W03811 (Resumed) (Private Session)

Page 5208

Questioned by the Trial Panel

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Witness: W03811 (Resumed) (Private Session)

Page 5209

Questioned by the Trial Panel

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12 [Open session]

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

14 PRESIDING JUDGE SMITH: Thank you to the remote court officers,  
15 and you may disconnect the facial distortion system.

16 So that concludes today's session. We will commence again on --  
17 I think it's 10 July. And now we will take up the matter that we  
18 discussed this morning briefly.

19 As mentioned yesterday, the Panel wants to have a discussion on  
20 concrete steps that could be taken by the parties and Panel to ensure  
21 a greater degree of publicity. We reviewed the written submissions  
22 you've all sent to us and taken them into consideration. We've  
23 thought of things ourselves and discussed them.

24 It's important to note that it's -- I think we all agree that it  
25 needs to be as public as possible. It's very difficult to take those

1 steps. I mean, it just is. Sometimes maybe the redactions are  
2 overaggressive. I mean, there are certain sentences that are very  
3 difficult to read for anybody that says that: Blank went to blank at  
4 blank o'clock p.m. and arrived at blank and met blank there. You  
5 don't really get much out of that.

6 So, for me, the number one thing is before a new witness gets on  
7 the stand and starts to testify, all of those redactions should be  
8 reviewed and the question of whether or not -- of how much can be in  
9 private session or public session needs to be dealt with.

10 So we're going to go through this thing I sent to you during the  
11 noon hour. We'll ask you to please feel free to say whatever you  
12 think. And we will take notes and ultimately we'll have to make a  
13 decision.

14 So number one has to do with the fact that we do all agree that  
15 publicity should be promoted in these proceedings. We need to  
16 maximise portions of the evidence being heard in public session. We  
17 need to facilitate portions of evidence that need to be heard in  
18 private session being grouped together.

19 We've said that, and we've done it a few times, and then other  
20 times we haven't done it at all. And I don't understand why we can't  
21 manage to group some parts of a person's testimony, almost regardless  
22 of who the witness is, into some coherent structure where we have  
23 some private and necessarily protected material in one place and  
24 other material in others. And part of that has to do with the  
25 redactions and the degree of them.



1           So I'm going to ask you all to make comments about your  
2           experience in doing that and problems you've encountered, and  
3           possibly what a solution might be. And we'll start with the  
4           Prosecution.

5           Mr. Quick.

6           MR. QUICK: Thank you, Your Honour. And your concerns are  
7           understood. When structuring questioning, the difficulties  
8           encountered by the Prosecution so far have been inherent in the  
9           process, and they are some of the concerns that you just mentioned.  
10          So these include protection. As demonstrated by the number of  
11          redaction requests and rulings that have been required during the  
12          testimony -- open session testimony of a number of witnesses, there  
13          are risks that the witness will -- always risks that the witness will  
14          provide testimony that is revealing. And these risks arise despite  
15          the best efforts and good intentions of the calling party or the  
16          questioning party and the careful manner in which questions are  
17          asked.

18          Some other risks and issues that have arisen include efficiency  
19          and quality of the evidence, and that includes the use of codes and  
20          structuring of questions necessarily impacts on the quality, the  
21          spontaneity of the evidence and results in duplicative testimony at  
22          certain points in time due to the need to double-back or to address  
23          evidence more than once.

24          So these are issues that have arisen. And the SPO will continue  
25          to abide by the Order on the Conduct of Proceedings and your

1 instructions and continue to structure its examinations in a manner  
2 that ensures the greatest amounts of information will be public.

3 The measures proposed, including the continued use of code, may  
4 be appropriate with certain witnesses. But grouping questions  
5 together, the use of codes, these measures are also, in certain  
6 cases, witness dependent.

7 PRESIDING JUDGE SMITH: [Microphone not activated]

8 MR. QUICK: Understood, Your Honour.

9 PRESIDING JUDGE SMITH: [Microphone not activated].

10 Part of the reason we have this delay in broadcasting is so that  
11 if somebody does slip during a public session and say a word that  
12 they weren't supposed to say or a person's name or a place, we can  
13 still redact it. We can still get rid of it. I think that should  
14 remove some of the fear in presenting these witnesses, but I don't  
15 know that it is removing that fear.

16 MR. QUICK: Right. So that is, indeed, a measure that addresses  
17 some of the risk, but it doesn't completely address the risk because  
18 there are people in the public gallery, for example.

19 PRESIDING JUDGE SMITH: Very seldom.

20 MR. QUICK: Not at the moment, but occasionally. So it's not  
21 something that completely addresses the risk. There was a proposal  
22 raised in the joint Defence submissions to delay the public broadcast  
23 further by another hour or two hours. That potentially could be  
24 useful to ensure that the parties and the Panel have an opportunity  
25 to fully consider and review redaction requests, and then enable the

1 public to get the better -- a fuller, more complete [Overlapping  
2 speakers] ...

3 PRESIDING JUDGE SMITH: To be clear, the Prosecution doesn't  
4 resist having a longer delay?

5 MR. QUICK: We do not resist, Your Honour.

6 PRESIDING JUDGE SMITH: And, Ralph, from the Registry, if you  
7 have a feeling that something needs to be discussed in connection  
8 with these, feel free to join us at any time.

9 MR. ROCHE: Thank you, Your Honour.

10 PRESIDING JUDGE SMITH: What about over here. Any comment about  
11 these first little issues that we've talked about?

12 MR. KEHOE: And remind me, Judge, those little issues being? I  
13 mean, I look at them as larger issues, frankly.

14 PRESIDING JUDGE SMITH: Grouping, grouping of our questions, and  
15 things that are standing in the way of doing it better. And I  
16 notice, like today, I'm not picking on you, but basically your whole  
17 cross-examination was in private session.

18 MR. KEHOE: True.

19 PRESIDING JUDGE SMITH: So my question, my theoretical question  
20 is: Could that have been rearranged in some way to gather some  
21 information for the public domain?

22 MR. KEHOE: I mean, I'll be very frank, Judge, I look at my  
23 presentations in that vein, and very little of it is not  
24 witness-related, not personally related to that witness, as opposed  
25 to larger issues.

1           Now, if you have somebody that's different than the witnesses  
2           that we've been having here, we may be able to do that. I don't  
3           discard that idea.

4           PRESIDING JUDGE SMITH: Using codes with the last witness might  
5           have been a difficulty for him, especially being remote. And I  
6           understand that.

7           MR. KEHOE: And codes, I think, you know -- I will tell you, and  
8           I mentioned this, if it wasn't Monday, it was last week, about codes  
9           being difficult for the clients to follow, and certainly for those  
10          who have heard it in the public domain, they find it impossible to  
11          follow.

12          So there is an inherent difficulty there.

13          But I have a larger issue, Judge, with regard to all of these  
14          protected witnesses. And I understand the need for protection, and  
15          we've all been in tribunals where that has come in play. But we're  
16          talking about an enormous amount of people. And the question I think  
17          that has to be raised is: Should there not be a review of all of  
18          these protected witnesses to see if they really want or need these  
19          protections?

20          For instance, if a witness no longer -- and I don't know if this  
21          is the case. If a witness no longer lives in Kosovo, does he or she  
22          need protection? Certainly the international witnesses do not need  
23          protection. Is that person not really -- ever really asked this?  
24          And I will tell you, I know from personal knowledge that several of  
25          the witnesses that are on this protected list never asked for it and

1 got it anyway.

2 So without pre-judging that issue, I think it is imperative to  
3 look through all these protected witnesses and see who we can take  
4 out of the equation. I know at least one of them - and I know we are  
5 in public session and I won't mention it - who has talked publicly  
6 about him coming to testify, and he is -- he/she is still a public  
7 witness -- excuse me, is still a protected witness.

8 So cutting down on that, Judge, would immensely assist the  
9 public proceedings, which, of course, we urge greatly, because we  
10 want all of this in public. This is not supposed to be a session to  
11 only have public displays of evidence that's, you know, in  
12 furtherance of the Prosecution's case without a cross-examination or  
13 examination of the Prosecution's case by the Defence which undercuts  
14 the witness they have.

15 So it is a serious problem when we look at the number of these  
16 witnesses that come into play here. We're open to the ideas of  
17 codes, et cetera, Judge. And I --

18 PRESIDING JUDGE SMITH: So something you're suggesting is that  
19 there be some way of reviewing the witnesses prior to their testimony  
20 to see if they still -- I assume somebody is asking them that.

21 MR. KEHOE: Judge, with all due respect, you shouldn't assume  
22 that. And I don't mean that -- [Overlapping speakers] ...

23 PRESIDING JUDGE SMITH: We shouldn't assume anything, probably.

24 MR. KEHOE: No, I'm not trying to be too smart by half with that  
25 comment. I am just saying to you that --

1           PRESIDING JUDGE SMITH: Let's ask the Prosecution. Is that  
2 question asked to every witness?

3           MR. QUICK: Your Honour, we're actually required by the Order on  
4 the Conduct of Proceedings to contact witnesses sufficiently in  
5 advance of their testimony and to confirm whether they'd still  
6 require or would like existing protective measures. And the SPO does  
7 abide by the Order on the Conduct of Proceedings.

8           There also is another provision that requires the SPO to make  
9 applications and to inform the Panel and the Registry, the Witness  
10 Protection and Support Office when witnesses indicate that they no  
11 longer require protective measures. So this issue is already  
12 addressed in the Order on the Conduct of Proceedings.

13          MR. KEHOE: With all due respect to my learned friend, that is,  
14 unfortunately, not factually accurate. And I'm not saying he's not  
15 telling the truth. I'm saying he's not informed as to what is  
16 happening with witnesses.

17          Before the protocol came in, we were doing investigations of any  
18 number of people, and these witnesses did not know that they were, A,  
19 witnesses, nor that they had asked for -- that protective measures  
20 were in play.

21          Now, with all due respect, Judge, as an officer of the Court, we  
22 didn't make that up. I mean, that was something that these witnesses  
23 put forth. So while I'm sure that what counsel is saying, their  
24 intentions may be for the best, but that's not actually taking place  
25 across the board.

1           PRESIDING JUDGE SMITH: [Microphone not activated]

2           MR. EMMERSON: It may be that I'm to some extent echoing the way  
3 that Mr. Kehoe has just responded, but may I, perhaps, put it in my  
4 own words.

5           It's certainly the case that efforts have been made to group  
6 questions together to mitigate to some extent the consequences of so  
7 much of the evidence being heard in private session, but there were  
8 two consequential difficulties with that.

9           The first is there's always, I think, a tendency, in order to  
10 avoid transgressing the orders, protective measures orders, for  
11 counsel to err on the side of caution. That's one thing.

12           But, secondly, there is an inevitability about the inadequacies  
13 of any of these measures to redress the fundamental question that  
14 Mr. Kehoe has outlined, which is if one looks at it this way, with  
15 the number of the witnesses that we've heard, they've already  
16 testified in public, in court, in their own name, without protective  
17 measures in domestic proceedings. And yet it becomes the case that  
18 for that very reason the Prosecution then bases an application to the  
19 Court to say: Well, if they give that testimony here in a way in  
20 which it's communicable to the public, then they will be identifiable  
21 by the testimony they've previously given without protective  
22 measures, as a result of which the core of the story cannot be made  
23 public.

24           Now, it's very difficult to see how one can get around a problem  
25 like that with tinkering. I mean, I see that one of the -- I'm sure

1 it was intentional, one of the question, I think it's number 4(c),  
2 asks the related and perhaps prophetic question: How on earth are  
3 the Tribunal going to explain any decision that they make by  
4 reference to the facts of the evidence alleged if they're not allowed  
5 to mention the facts of the evidence they allege as a result of the  
6 orders for protective measures when you simply won't be able to tell  
7 the story any more than the witnesses can than we can in a manner  
8 that is intelligible to the public.

9 Now, I mean, obviously, we can look at this from the point of  
10 view of the rights to the accused to a fair and public hearing, or  
11 the rights of the public to know what is being done in the exercise  
12 of judicial authority in their name, and recognising that in  
13 exceptional cases it's going to be necessary -- absolutely necessary  
14 for the protection of witnesses to derogate from that.

15 But once you have a situation such as has been gradually  
16 introduced in these proceedings where the very fact that somebody has  
17 been public either in evidence or in giving interviews is then used  
18 as a basis for making their testimony in this trial private,  
19 without -- I don't want to be in any way make any kind of hyperbolic  
20 statement, but it inverts the notion of a fair and public hearing on  
21 its head. It means that the witnesses that have given evidence  
22 without any difficulty in the past in public, without any reprisals,  
23 so that there's no concrete risk being demonstrated at any time, are  
24 for that very reason having their evidence kept from the public, even  
25 the substance of it. So not names, places, and addresses, which one



1 might understand, except to the extent that they're talking about an  
2 issue that's already been litigated, but critically litigated without  
3 difficulty or risk to the witness even though they had no protective  
4 measures.

5 So we have allowed this trial -- and I -- and it's nobody's  
6 responsibility specifically except that we've only raised blanket  
7 objections, but we have allowed this trial to get into an absolute  
8 mess as far as publicity is concerned. And the normal rule -- and,  
9 obviously, courts deal with these kinds of issues all the time. I  
10 mean, we've tried Kosovo trials at the ICTY, Serbia trials. Every  
11 war crimes case has some of those kinds of issues, particularly as  
12 regards crime base evidence, which is usually perhaps not the core of  
13 the issues that the Tribunal, in the end, has to decide.

14 But nonetheless, what we have here is no requirement for that  
15 there to be any identifiable or concrete risk to the witness. That  
16 has been taken as a given in these proceedings on the basis of  
17 statements of generality about threats to witnesses in Kosovo.

18 But since we've got manifest examples where those witnesses have  
19 gone public and those threats have never materialised - and, indeed,  
20 there have been no threats against the witness - what we end up with  
21 is a situation where witnesses are being asked by the Prosecution on  
22 the basis that they'll get pretty much whatever they want because  
23 there is a general risk: Would you like this? Would you prefer that  
24 you give evidence in private session, which is what it comes to, the  
25 guts of your evidence in private session? And, unsurprisingly,

1 people whose duty it is to come to court and testify, if they're  
2 given a choice, would like secrecy.

3 But that is now the deciding factor: Does the witness choose  
4 it, or does the witness positively want to come out in public with  
5 their name and face and own their evidence? Well, it shouldn't be  
6 like that. That is the tail wagging the dog. The firm principle  
7 should be those witnesses come to court, give evidence in public,  
8 with the details necessary, including identifying details, save to  
9 the extent that those identifying details might expose them to an  
10 identifiable risk.

11 But we are really at the opposite end of the telescope. And so  
12 I don't wish to, in any sense, as I say, cast blame. But if one  
13 thinks about how on earth you're going to write a judgment that's  
14 meaningful about the evidence that's been heard in closed session, or  
15 whatever inferences there are to be drawn from that, it's a pretty  
16 clear acid test that we've -- we've ended up in the precise inverse  
17 of the position we should be in.

18 So to summarise, the entire regime for witness protection needs  
19 a -- not just a question to the witness before they come, would you  
20 like it or not. That's completely irrelevant whether they want it or  
21 not. The issue is, is it strictly necessary. And that's the test,  
22 of course, under the convention, which is part of the law we're  
23 applying here. It's a fair and public hearing as the right of the  
24 accused, and it's only to be derogated from where it is strictly  
25 necessary. In other words, where there is a legitimate public

1 interest in having a protective measure and it is proportionate to  
2 the risk to the individual accused -- individual witness.

3 And I'm afraid we have just so far departed from that that I  
4 don't think we can support anything that looks at tinkering as a  
5 solution. So, of course, we will take whatever improvements we can,  
6 but I make it absolutely clear, we shall be arguing that the trial  
7 thus far violates the right to a fair and open, public hearing. And  
8 if it continues like that, that will be our position on appeal at any  
9 stage if that were to become necessary.

10 We would suggest a radical rethink means every single witness  
11 for whom protective measures are claimed now, there should be, for  
12 protective measures to effect the presentation of their evidence, a  
13 separate, identifiable, concrete risk that by giving testimony in  
14 open session that person would more likely expose themselves to a  
15 real risk of reprisal. That a proper analysis is being done.

16 And, with the greatest of respect, it's never been done. These  
17 were done in great lots in front of the Pre-Trial Judge, with him  
18 essentially saying: I'm just going to err on the side of caution.  
19 It's for the Trial Judges to do that. But it's never been done with  
20 any of these witnesses that we have had a proper witness statement  
21 addressing the criteria or a submission by the SPO for each witness  
22 addressing the proper criteria in the proper order.

23 So a ruling from the Court, a legal ruling on what is required  
24 to justify a legal, proportionate, and strictly necessary departure  
25 from open justice with criteria for each witness which could then be

1 applied by the Prosecution criterion by criterion so that the matter  
2 can be considered with greater care. But as it's happening, we have  
3 drifted into a situation which can't be remedied with anything other  
4 than a completely radical rethink.

5 PRESIDING JUDGE SMITH: [Microphone not activated]

6 JUDGE METTRAUX: Thank you, Judge Smith.

7 And it's not a question for you, Mr. Emmerson, but it's a  
8 question inspired by you.

9 It's a question for you, Mr. Quick. I share, in part, the  
10 concern of Mr. Emmerson about what he correctly identified under  
11 point 4(c) about the public nature of the judgment, and the concern  
12 is this. At some stage, we will be asked and expected to render a  
13 public and hopefully comprehensible judgment in this case. And the  
14 concern that I have, at least, is one that is linked in particular -  
15 but not only but in particular - in the way you are policing your  
16 approach to redactions.

17 And the question that I have for you, and I'll give you an  
18 example that maybe can help you answer my question, but it's really  
19 how do you imagine this Panel rendering a public and comprehensible  
20 judgment if we were to follow the way you interpret your redactions  
21 obligation by, as pointed out by Mr. Emmerson, I mean, effectively  
22 protection by knock-on effect: Any facts that could lead to an  
23 identification of an added fact which could in turn identify the  
24 brother of a cousin who in turn would identify the witness is,  
25 according to you, to be redacted.

1           And the example I will give you, and it's only one of many, I  
2           suppose, we have -- this Panel has taken judicial notice of a number  
3           of adjudicated facts or facts that were adjudicated in a public  
4           manner, which, I suspect, will lay some foundation to the case, to  
5           which you then add, we expect, evidence that you have led from  
6           witnesses, including protected witnesses.

7           Now, my question for you is: How are we to make findings about  
8           these incidents if the connection we draw between that incident and a  
9           relevant witness is to be redacted? Are we to write a judgment  
10          saying: On redacted date in redacted place, redacted victim was  
11          murdered by redacted perpetrator at that redacted location? Is that  
12          what you would ask us to write as a public and comprehensible  
13          judgment in pursuit of your approach to redaction and protective  
14          measures?

15          In other words, just help us out if you can in that respect.

16          MR. QUICK: Thank you, Your Honour.

17          First, just briefly to respond to the Defence that the SPO and  
18          the Panel and the Pre-Trial Judge is respected -- have respected and  
19          continue to respect the publicity requirements in these proceedings.  
20          The protective measures that have been ordered were individually  
21          justified by the SPO and in the Pre-Trial Judge's and this  
22          Trial Panel's decisions. So I just wanted to make that clear for the  
23          record.

24          And now moving back to the point of the Status Conference, which  
25          is in relation to particular measures that can help with publicity of

1 the proceedings within the context of the strictly necessary  
2 protective measures that have been granted.

3 In relation to Your Honours' concern about the publicity of the  
4 judgment. The most effective means of achieving this is the  
5 redaction review following the eliciting of evidence in private or  
6 closed session. And I take Your Honour's example and understand the  
7 point. It's not an irregular occurrence at other courts and in the  
8 context of final judgments that the Panel will take into account the  
9 record as a whole and then reclassify additional parts of information  
10 in order to refer to private session and closed session in its  
11 judgment.

12 In relation to the adjudicated facts issue you raise in  
13 connection with witnesses who are potentially related to those  
14 adjudicated facts and who may or may not be identified in connection  
15 with them, that is a witness-specific issue that would require a  
16 case-by-case assessment.

17 JUDGE METTRAUX: I don't mean to place you in a hard spot,  
18 Mr. Quick, now, but, as I said, it's just an example of, I think, a  
19 much broader problem.

20 Another example that Mr. Emmerson, I think, mentioned in passing  
21 is a situation where you would have a witness with no or limited  
22 protective measures but who testified about an incident in relation  
23 to which a protected witness is testifying. The rippling effect of  
24 your approach is that, in effect, it would be difficult to write or  
25 to make a public finding in relation to that incident for the reasons

1 that you have been pursuing, namely, that of facts that could lead to  
2 the discovery of a fact, and so on and so forth, up to the witness  
3 would force, effectively, this Panel, if we were to follow your  
4 approach, to have a very unpublic judgment.

5 And, as I said, I don't mean to put you in a hard place, but  
6 rather to invite you to give further consideration to this matter  
7 because this is certainly a concern that we have at this point. That  
8 I have.

9 MR. QUICK: Right. That's understood, Your Honour. And we will  
10 definitely be taking that into account as we go forward in particular  
11 in applying -- in applying redactions.

12 PRESIDING JUDGE SMITH: How soon after a witness testifies are  
13 you going to propose lifting some of these redactions?

14 MR. QUICK: Your Honour, in our submissions, we indicated that I  
15 believe at least ten -- or no later than ten days after the  
16 notification of the transcripts, the SPO could submit proposals for  
17 the lifting of redactions.

18 PRESIDING JUDGE SMITH: You're talking about extensive lifting  
19 them? I mean, are we talking about -- just saying we're going to  
20 lift some redactions doesn't do it. A lot of this material, we've  
21 already told you, we find to be unusually conservative. I'm trying  
22 to be as nice as I can about it. And it shouldn't be unusually  
23 conservative.

24 So we need to know some examples. And perhaps maybe we could  
25 get you to take a witness that has already been completed and present

1 to us what you think are reasonable removals of redactions so that we  
2 can look at it and critique that.

3 MR. QUICK: Yes, Your Honour. I think that's a great idea.  
4 There actually have been submissions - I believe the briefing was  
5 completed today - in relation to the testimony for W03165. And in  
6 that context, we will definitely take into account Your Honours'  
7 guidance in relation to redactions, and going forward we will take  
8 into account this guidance.

9 PRESIDING JUDGE SMITH: Thank you, Mr. Emmerson and Mr. Kehoe,  
10 for your thoughtful presentations.

11 Mr. Emmerson wanted to say something else before you did.

12 MR. KEHOE: [Microphone not activated]

13 MR. EMMERSON: Just to add some detail. In relation to  
14 Witness 3165, just the chronology is this: 23 May the witness  
15 finished testifying. 1 June, the SPO filed its reclassification  
16 request. 14 June, the Defence responded. 20 June, the Prosecution  
17 is replying.

18 And so we've gone through, I suppose, a month of pleadings on  
19 that before it's reached even being mature for Your Honours'  
20 decision.

21 Can I just mention two other things while I'm on my feet? And  
22 I'm literally just putting these down on the agenda whilst matters  
23 are being considered because both of these factors go to the extent  
24 to which evidence needs to be heard in closed session, because a lot  
25 of -- these two factors both relate to witnesses for whom there has



1 been and likely continue to be closed session sessions, but they also  
2 relate very much to the question that Your Honours raised, I think it  
3 was yesterday, about speeding up the process as a whole.

4 Judge Mettraux mentioned a moment ago that some of the witnesses  
5 that we're dealing with are being called by the Prosecution to give  
6 evidence about events for which there is already an adjudicated fact  
7 on the key issue, which has been adjudicated by this Tribunal, on the  
8 basis of testimony that they and other witnesses have given in  
9 domestic proceedings in Kosovo.

10 Now, where that happens, we would respectfully submit that it  
11 would be appropriate for the Trial Panel to indicate to the  
12 Prosecution from this point forward that they must closely scrutinise  
13 a witness they're intending to call who gives evidence relevant to an  
14 adjudicated fact to determine whether the evidence they're --  
15 probative evidence they're seeking to elicit, in fact, goes any  
16 further than the adjudicated fact which Your Honours have already  
17 taken into consideration. Because we have seen -- and the witness  
18 before last was a very good example of it. The only, as far as I can  
19 see, probative evidence to have been elicited from that witness in  
20 chief goes to the fact which has already been adjudicated in relation  
21 to that witness.

22 So one wonders why, in a sense, that witness was necessary at  
23 all. I mean, it may be that there is some element of victim  
24 participation which, you know, is a process that needs to slow the  
25 trial down, but I would lay down the question mark: What is the

1 Prosecution doing calling a witness that takes a day and a half or  
2 two days to examine, backwards and forwards, in order to establish a  
3 fact that's already been adjudicated and accepted by this Panel which  
4 you can refer to in the judgment without the slightest difficulty?

5 And the other issue is 154 evidence. One of the points raised  
6 on the Panel -- on the schedule of questions for today relates to a  
7 summary to be prepared, so to speak, after the evidence, summarising,  
8 without transgressing protective measures, what might -- what was  
9 said by a witness in closed session so that that could be made  
10 public. But there's another way of looking at that, and it's common  
11 practice in the other tribunals, that where a witness is giving 154  
12 type evidence - in other words, their evidence is going in in written  
13 form - the Prosecution will prepare a summary, short one, in advance;  
14 in other words, this is what we expect this witness to say. This is  
15 what is contained in their 154 summary material, a short summary of  
16 what it is they were going to say if they were called to give  
17 evidence. And at that point, they are tendered for  
18 cross-examination.

19 There is no need for the Prosecution to have, as we've seen with  
20 this last witness, considerable court time taken up giving evidence  
21 orally in supplement to extensive 154 evidence which, of course,  
22 necessarily requires going into private session. I mean, in a sense  
23 there are various things that could be done to move the process  
24 forward which would obviate which -- which, I respectfully suggest,  
25 is the indulgence of endless private sessions because of a rather *pro*

1     *lex* way of presenting the case on the Prosecution side. That would  
2     be our submission.

3             PRESIDING JUDGE SMITH: Thank you.

4             Mr. Kehoe.

5             MR. KEHOE: Yes, Judge, I just wonder, with this whole concept  
6     of reviewing these redactions and going through those after the fact,  
7     it just -- it complicates the litigation process with everything else  
8     that's transpiring. I understand the goal that's in mind, but it's  
9     difficult enough to get ready for these individual witnesses without  
10    having to kind of scrutinise what the SPO thinks the redactions --  
11    what redactions they think should be lifted or not lifted. It's a  
12    time-consuming process no matter how you look at it.

13            Going back on a separate issue with regard to witnesses  
14    themselves, and this goes to the question that was raised by  
15    Judge Mettraux on writing the judgment, and the question is how are  
16    you going to issue a public judgment with all of these redactions.  
17    What do we do with witnesses who testify and then go publicly -- not  
18    saying they necessarily testify, but they then tell the story?

19            So it connects exactly with what Judge Mettraux was saying.  
20    There is a third party out there - and I can give you in closed  
21    session the name of somebody that recently just did that - is out  
22    there relaying the story, and it doesn't take much to connect those  
23    dots with any judgment that might come -- that this Court might  
24    issue. And that's a fact. That has happened very recently where  
25    those facts of what happened to somebody are out in the public domain

1 by that person.

2 And what is the continuing obligation of this Court for  
3 protective measures under those circumstances? Very difficult. A  
4 concrete problem. And if Your Honour would like the individual in  
5 mind, I'll gladly do that.

6 PRESIDING JUDGE SMITH: [Microphone not activated]

7 JUDGE METTRAUX: Again, Mr. Kehoe, I'm not avoiding you, but  
8 you've inspired another question that I had for the SPO. And the  
9 question is this.

10 As you pointed out, quite rightly, these -- I mean, all of the  
11 protective measures decisions are, in fact, based on indications that  
12 there was a need for those measures and were subject to the relevant  
13 legal standard. So let's be quite clear on that.

14 However, my question is this: There might be justification for  
15 protective measures ahead of a witness's testimony because it is  
16 necessary to protect that individual from any form of pressure,  
17 intimidation, threat, and a general environment of witness  
18 intimidation, as we know exists here. The question is whether the  
19 need for protection continues to be at the same level once the person  
20 has given that evidence.

21 And it's linked to something we pointed out in our -- and you  
22 mentioned it, I think, in passing, in our Order on the Conduct of  
23 Proceedings, paragraph 67, requiring of you to determine whether -  
24 before testimony, but also after testimony - whether the need for  
25 these protective measures are still the same. And question to you is

1 simply what steps are being taken for you to ascertain whether the  
2 need for protection that might have existed all the way through and  
3 until the testimony of the witness, whether these protective measures  
4 are still necessary thereafter?

5 And the question is -- the reason for the question, I hope, is  
6 quite obvious, is that could obviate the issue we've raised before of  
7 how do we go about writing a public judgment.

8 MR. QUICK: Thank you, Your Honour.

9 The SPO continues -- as I said before, the SPO continues to  
10 review the necessity of protective measures and continues to contact  
11 witnesses after they have testified to discuss ongoing security  
12 concerns and other issues. There may be a limited case here or there  
13 where protective measures no longer continue to be necessary after a  
14 witness testifies. Where that is the circumstance, the change in  
15 circumstance that would flip the balance.

16 However, in most cases protective measures would continue to be  
17 necessary after a witness testifies, and this is foreseen in the  
18 rules. It's also taken into account in many protective measures  
19 decisions that take into account not only the risks arising from the  
20 witness's testimony itself, but also the risks arising from the  
21 witness's cooperation with the SPO or the fact that they gave  
22 evidence to the SPO on a more -- in a more general way.

23 So in that context, while the fact that a witness has testified  
24 is -- I think that is being taken into account when reviewing the  
25 ongoing necessity of the protective measures, it is not

1     determinative. The risks of interference and safety and security of  
2     witnesses does not evaporate at the time they testify, in some cases,  
3     and often they increase. And interference can happen at any point  
4     including at other key stages in the proceedings, including at the  
5     time of judgment, on appeal or, as experienced at other tribunals,  
6     even after the close of the proceedings.

7             So the need for continued -- for protective measures to continue  
8     is not dependent just on the testimony of the witness, and the SPO  
9     takes its obligation to continue to review the necessity of  
10    protective measures, including in light of changes and circumstances,  
11    seriously.

12            But what does change after a witness testifies in closed or open  
13    session is what information must remain confidential, because to some  
14    extent those private and closed sessions are preventive against the  
15    witness revealing information that is identifying. And so after the  
16    fact, when there is a full assessment of the testimony and a full  
17    assessment of those sessions, it is possible for the SPO or the  
18    calling party to determine that certain parts of those closed or  
19    private session can be listed.

20            And then, again, at the end of the proceedings, is another  
21    appropriate point at which the Panel, having assessed and considered  
22    the totality of the evidence, all the witnesses, can determine  
23    whether additional information could be revealed for purposes of its  
24    judgment.

25            PRESIDING JUDGE SMITH: Have you had any instance where a

1 witness after testifying -- I realise we have only have three months'  
2 worth of time. Have you had any instance where a witness was  
3 approached with intimidating actions after their testimony?

4 MR. QUICK: Your Honour, with intimidating actions, I --

5 PRESIDING JUDGE SMITH: Intimidation of any kind.

6 MR. QUICK: Where witnesses have felt intimidated, that is --

7 PRESIDING JUDGE SMITH: No, no, objectively. Any information  
8 where an intimidation occurred?

9 MR. QUICK: Your Honour, I don't think I think discuss  
10 individual incidents or cases.

11 PRESIDING JUDGE SMITH: You what?

12 MR. QUICK: I don't think I can discuss individual incidents or  
13 cases.

14 PRESIDING JUDGE SMITH: I'm not asking you to discuss  
15 individuals. I'm asking do you have any?

16 MR. QUICK: Your Honour, we do not.

17 PRESIDING JUDGE SMITH: Thank you.

18 We haven't heard from the guys and ladies sitting in the second  
19 row there.

20 MR. TULLY: Your Honour, perhaps the curse and the blessing of  
21 sitting on this bench, my colleagues have covered comprehensively all  
22 of the points up until now. Thank you.

23 PRESIDING JUDGE SMITH: [Microphone not activated]

24 MR. ELLIS: No, Your Honour. Not at this point.

25 PRESIDING JUDGE SMITH: [Microphone not activated]

1 MR. LAWS: Yes, if I may.

2 PRESIDING JUDGE SMITH: [Microphone not activated]

3 MR. LAWS: Not many but some, Your Honour. Starting with this:  
4 We do all want the same thing, which is a trial that is open as  
5 possible so long as it's compatible with the security of the  
6 witnesses and with their own sense of security.

7 The reason that I want to say something at all is really because  
8 we can't have the focus solely on the right to an open trial. We all  
9 understand how important that is, a public trial. But interferences  
10 with witnesses and victims continues to this day.

11 Last Friday evening, my team and I had a conversation with a  
12 person who had just received a death threat for what was believed to  
13 be their involvement with this Court, and we have reported it in the  
14 appropriate manner.

15 That's to highlight that this is an ongoing situation for people  
16 in Kosovo. That person, in fact, was not a witness, but was wrongly  
17 believed to be a witness. But it illustrates the point.

18 These witnesses are coming, many of them, from a world in which  
19 they feel threatened. Whether they've had the sort of threat that  
20 I've just described or not, they feel threatened. And when they come  
21 through that door, they believe - many of them - that they are  
22 putting themselves in harm's way, and they have chosen to do that for  
23 almost universally what they perceive to be the common good.

24 And so publicity is important, but it can't be the trump card  
25 here. Without the cooperation of the witnesses, there wouldn't be a



1 trial to be broadcast or viewed publicly at all. And we fully accept  
2 that there are challenges of a technical and procedural kind in  
3 providing better access to these proceedings, but we thought it  
4 important to stress the real sense of fear that there still is. And  
5 we know the Court will take that into account in reaching whatever  
6 decision it does.

7 May I just mention, in particular, before I sit down, the  
8 situation post-testimony that Judge Mettraux has quite rightly  
9 referred to. There may well be cases, and the SPO will have  
10 witnesses in a quite different situation to many of the people that I  
11 represent, where that's possible, and I know they'll help you with  
12 that.

13 But for many of the people that I represent - and we, as a team,  
14 have been to the communities in which they live and seen where they  
15 live - for them to go back to those communities and then for it to be  
16 announced at a later stage that they had been here would be  
17 life-changing for them. There's no other way to put it than that.

18 There are very many people in Kosovo who support the work of  
19 this Court and believe that it's a powerful tool for change, but  
20 there are many who don't. And one has to bear in mind that many of  
21 the people who we've already seen are coming from places in which  
22 they live amongst people who know them very well and who have the  
23 ability to affect their lives in ways great and small, starting at  
24 the bottom of the scale from social ostracism and working up from  
25 there.

1           And those are not irrelevant factors. We're asking a lot of  
2 these people to perform this important task of coming here to give  
3 evidence, and knowing that their lives will be altered for the worse  
4 as a result of doing so is a powerful disincentive to them.

5           So those are the submissions that I wanted to make. Thank you.

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

7           MR. KEHOE: If I can just make one comment with my learned  
8 friend's statement. Article 40 prioritises the rights of the accused  
9 over protection, and that right encompasses the right to a fair  
10 trial. Merely feeling like your threatened does not tantamount to  
11 being threatened such that you get the protective measures being  
12 employed by the SPO.

13           If we look at what has transpired here and what the SPO has  
14 advanced, it far exceeds - far exceeds - the protective measures that  
15 were employed in other tribunals that we lived with for years, such  
16 as the ICTY. There is no tribunal that has put forth the protective  
17 measures such as we see here that the SPO has advanced.

18           Witnesses come into court all the time throughout the world.  
19 Your Honours have been in courts as I have our entire lives where  
20 witnesses feel threatened, feel nervous, feel a lot of different  
21 things when they walk into a courtroom. Frankly, if they didn't feel  
22 that, I would think there would be something strange. That is a far  
23 cry from giving them protective measures, putting them behind closed  
24 doors, making this a private session, which is what counsel for the  
25 victims advances. This is simply not the case.

1           And, again, going back to how are we going to write a judgment  
2 without this information. And, again, if we're looking for concrete  
3 examples where the SPO can do something about these protective  
4 measures, I have a witness to tell the Court about it. Because if  
5 the facts that this person testifies about are put in a protective  
6 measure, giving his public proclamations, it's not going to be too  
7 difficult to figure out who that person is. And that just happened.  
8 And that's one of the SPO's witnesses. Putting aside the witnesses  
9 that have never been told that they're witnesses or had protective  
10 measures. That's a very concrete example.

11           That's step number one: Take a look at this witness and remove  
12 his protective measures so we're not running into the problem that  
13 Judge Mettraux outlined.

14           But the bottom line is feeling threatened and merely feeling  
15 threatened being the basis for a protective measure is uncalled for,  
16 it is incorrect, and it violates the rights of the accused.

17           PRESIDING JUDGE SMITH: [Microphone not activated]

18           JUDGE GAYNOR: Thanks very much, Judge Smith.

19           Mr. Quick, I'm afraid you're in the firing line again. I've  
20 read your submissions with great care, and I've noticed that you've  
21 said that:

22           "At this stage, in-court protective measures have not been  
23 requested and not currently considered necessary for more than 150  
24 witnesses."

25           And you explain in a footnote that they're not all *viva voce*,

1 but I assume many are. Now, is it not quite important given the  
2 overall nature of this trial to hear more of those? And I want to  
3 put three propositions to you if I may.

4 Would you accept that there is a connection between the  
5 publicity of a trial of this nature and the perception by the  
6 affected communities that the proceedings are fair?

7 Second, would you accept that any reconciliation that might be  
8 brought about depends to a large extent on the trial being public?

9 And, third, would you accept that in a trial of high  
10 significance to the affected communities there is a special  
11 responsibility on the Prosecution in particular to ensure that the  
12 public are able to follow the proceedings?

13 MR. QUICK: Thank you, Your Honour. The SPO definitely agrees  
14 with all of those suggestions.

15 Just one quick thing that I wanted to correct from before in  
16 relation to the Presiding Judge's question. I should have qualified  
17 that with "to my knowledge" in relation to the question about people  
18 being intimidated after the fact. So just for the record.

19 PRESIDING JUDGE SMITH: [Microphone not activated].

20 That's understood. I don't expect you to be omniscient. Do the  
21 best you can. Give us the answers that you have.

22 MR. QUICK: Right.

23 Now, in relation to Judge Gaynor's questions on -- these are all  
24 issues and principles of definite importance to the SPO, and  
25 importance in a trial like this, particularly being tried away

1 from -- away from the community that's most affected.

2 So the SPO definitely does accept that there is a connection  
3 between the publicity of a trial and the perception by the affected  
4 communities that the proceedings are, in fact, fair. It's not  
5 necessary that a -- in that regard there are measures short of a  
6 witness -- of all witnesses testifying publicly or a majority of  
7 witnesses testifying publicly that can guarantee a degree of  
8 publicity that would respect the requirement of publicity and the  
9 requirement of fairness, and many of those measures are being  
10 discussed here today.

11 I believe in our filing we referred to some European Court of  
12 Human Rights jurisprudence, granted in very different circumstances  
13 and very different cases, where the public can be excluded where  
14 strictly required and strictly necessary from even an entire trial.  
15 And that is subject to -- to the standards that everyone in this  
16 courtroom agrees upon, that restrictions on the principle of  
17 publicity must be strictly required and proportionate.

18 In relation to your second question about reconciliation, that  
19 is also, indeed, a principle and an issue that is impacted by  
20 protective measures and holding hearings in closed session and the  
21 resulting impact, including, as Judge Mettraux raised, in the  
22 judgment or other submissions down the line. But I would emphasise  
23 again that even in that case, that is again subject to protective  
24 measures that are strictly required in the particular and individual  
25 circumstances of witnesses. We are dealing with serious security

1 risks in a prevailing climate of witness interference and  
2 intimidation.

3 And in that context, where the SPO -- where, as here, the SPO  
4 has justified, and the Chambers has on a case-by-case basis reviewed  
5 the necessity of protective measures, that would be a justified  
6 exception to the principle of publicity.

7 I would also note, Your Honours, that as we noted in our  
8 submissions, there is a number of information -- there is a number of  
9 means for the public to access information about the proceedings.  
10 There are the parties' pre-trial briefs, there are the filings on the  
11 web site, there is the publication of the Confirmation Decision,  
12 there are the public portions of the hearings. So the public is able  
13 to follow and be aware of what the parties' respective cases are and  
14 are able to follow developments in the proceedings and how the  
15 proceedings are unfolding.

16 JUDGE GAYNOR: Could I suggest that a lot of the interests of  
17 all the relevant parties would be addressed better by hearing some  
18 more of these 150 witnesses who don't, it appears from your filing,  
19 need any protective measures. So they could testify in public, if I  
20 understand your filing correctly, and give the entire trial a greater  
21 flavour of publicity.

22 MR. QUICK: Yes, that suggestion will definitely be taken into  
23 account. One of the factors that is relevant in a protective  
24 measures assessment, as Your Honours know, is also the subject matter  
25 of the witness's testimony as well. So that does impact as well on

1 what protective measures have been requested and what protective  
2 measures have been granted. But the SPO will definitely take into  
3 account your suggestion.

4 MR. EMMERSON: Might I just respond both to Mr. Quick and to  
5 Mr. Laws, and I'll do it very, very briefly.

6 First of all, Mr. Laws' submissions, compelling and contextual,  
7 but, unfortunately, he created the impression that you're balancing  
8 two factors in an equation, so to speak. That you, on one hand,  
9 this; and the other hand, the interests of the witness community, if  
10 I can put it that way.

11 It's very important to emphasise this is not a balance of that  
12 kind. This is a situation where the law requires a very strong  
13 presumption in favour of open justice for reasons that are not just  
14 linked only to the rights of the accused but to the rights of the  
15 public. And what is required to overwhelm that is a consideration of  
16 comparable compelling weight.

17 So it's not what is more convenient or what might be difficult  
18 for the witnesses. They have a public duty to attend. It's all part  
19 of the duties we have. There are special considerations here which,  
20 obviously, need to be taken into consideration. But whilst, if I may  
21 respectfully say so, the Prosecution - and, indeed, all of us, I  
22 suppose, in this court - pay lip service to that basic role of a  
23 presumption of openness, the reality is protective measures which  
24 have resulted ultimately in closed hearings so far of almost  
25 everything in this case have been granted on the test that it is

1 necessary to exclude any possible risk, however theoretical,  
2 evidenced by nothing more than the possibility of a sense of  
3 discomfort on the part of the witness.

4 That is the test that's being applied. It's the test the  
5 Prosecution asserts. It is the test that Mr. Quick stood up a moment  
6 ago and asserted in relation to the theoretical risk somebody might  
7 be in the public gallery watching or hearing closed session, which,  
8 as I understand it, is not technically possible. But be that as it  
9 may.

10 At the end of the day, it is not a balance. It's a strong legal  
11 presumption. There has to be a compelling, similarly weighted  
12 consideration in the other side, and there just hasn't been. And  
13 whilst it's true -- I mean, none of these witnesses have been able to  
14 advance anything like a compelling justification of the kind that  
15 recognises the importance of the presumption, and we are drifting  
16 into a secret trial.

17 And the reality of the situation is 50 per cent of the  
18 witnesses, more or less, are secret witnesses. Roughly half the  
19 witness list. And as I say, no minor amendments can alter the fact  
20 that that spells a secret trial. And, you know, at the end of the  
21 day, it's a question of the depth and penetration and breadth of  
22 secrecy in a case that deprives it of its public character.

23 As in addition to questions of confidence in the -- if I can put  
24 it this way, the remote public of interest in this case, as  
25 Judge Gaynor has pointed out, there is another factor which is



1 fundamental to the publicity of justice which is that the community  
2 in whose name it is being exercised can see the quality of the  
3 justice that's being administered. And sometimes that results in new  
4 witnesses coming forward for the Prosecution because they can see the  
5 evidence and there are people who realise what's being -- and  
6 sometimes it can result in new information coming to the Defence  
7 which can be used to contradict the Prosecution.

8 But if we are driving through force of not really, in substance,  
9 applying the legal test that's required, if we're going to allow this  
10 trial to drift into that sort of a territory, then I regret to say  
11 when looking at it in hindsight, a fair appellate tribunal would  
12 regard it as a trial that failed to meet the minimum standards and,  
13 therefore, the entire trial is at risk of being overturned.

14 MR. KEHOE: If I can just make one comment on that, Judge, and  
15 this goes to what Judge Gaynor was talking about, about the  
16 perception in the individual country.

17 I mean, it's extremely important for the individual country.  
18 People -- the daily life of the people is infused with what's  
19 happening. Without going into the details, I lived in one of those  
20 worlds where it was very important that when you walked into the  
21 barbershop -- now, I know that Judge Smith and I don't go there  
22 often. But when you walk into a barbershop, you see it, it was on  
23 the screen. People were sitting in the barber chair watching the  
24 trial and what was going on. Not going back to some library and  
25 looking for documents that are online. The normal human being is not

1 going to do that. They want to see what is going on because they  
2 want to perceive that justice is being done. It's very important.

3 And I fail to see in all of the writings that have come from the  
4 SPO, given our collectively experience in other tribunals, the ICTY,  
5 et cetera, how this is significantly more dangerous for people in  
6 Kosovo to testify than it was at the ICTY, for Croats to testify  
7 against Serbs, or Bosniaks to testify against Serbs, or how about  
8 Serbs testifying against Serbs. We all lived through that. We all  
9 lived through that, and somewhat successfully, I might add.

10 And how is the climate in Kosovo so dramatically different from  
11 the climate that was taking place in Bosnia-Herzegovina and Serbia  
12 and Croatia, for that matter, during the trials that we all were  
13 involved in? I haven't seen it and I haven't seen evidence put forth  
14 of that.

15 Yet - yet - based on that collective experience, we are treating  
16 what's going on in this Tribunal dramatically different such that we  
17 have restrictive measures on protected witnesses that I don't think a  
18 tribunal has ever seen before. And I understand that there needs to  
19 be some protective measures. I understand that. And every tribunal  
20 that we've all been in, we've had that. But the extent and how  
21 pervasive it is in this instance is a question mark for me given what  
22 we all have collectively seen in the other tribunals, not the least  
23 of which is the ICTY. Thank you.

24 PRESIDING JUDGE SMITH: [Microphone not activated]

25 JUDGE METTRAUX: Thank you, Judge Smith.

1 And I think you've put yourself in the firing line, Mr. Kehoe --

2 MR. KEHOE: Yes, sir.

3 JUDGE METTRAUX: -- with these suggestions. You've made a  
4 couple of references to other tribunals, in particular the way the  
5 ICTY approached that issue. Now I want to test that assertion with  
6 you with a proposition.

7 Isn't the ICTY exactly the wrong example insofar as it suffered  
8 - I think all of us here are quite aware of that - from pretty  
9 serious issues of witness interference in some of these cases that  
10 led to appeals, retrials, an expression of serious concerns in some  
11 of the judgments, which I'm sure all of us have read carefully.

12 So my suggestion to you: Are these examples really the good  
13 ones? In the same way that, to the extent we are discussing, of  
14 course, legitimate interest, the reason why this Court here was  
15 created was in response to very serious problems of witness  
16 interferences.

17 So, of course, it's very easy to claim, I believe, that there's  
18 no such problem, but there is, in fact, a record of such problems at  
19 the ICTY, in domestic courts. And as several judgments of these  
20 courts and decisions have now said, an ongoing problem of witness  
21 intimidation.

22 So my question to you is: Is the calibre or the approach to be  
23 taken here, if we want to avoid the problem that affected ICTY  
24 proceedings - not in Croatia, not in Bosnia, but in Kosovo - are we  
25 to look at it in the same way, or do you think we should look at it

1 slightly differently because we are now wiser, I would hope, that  
2 these problems have arisen and continue to arise?

3 MR. KEHOE: Well, Your Honour, with all due respect, I think  
4 that when we are talking about the ICTY, that you and I and others  
5 grew up in, I think we are talking about, in fact, one case against a  
6 particular witness that was interfered with, if I'm not mistaken.

7 It's certainly -- and even in any domestic jurisdictions that we  
8 come from, interference with witnesses could transpire, and oftentimes  
9 does. It does. But it can be addressed. But is it so pervasive?  
10 Was it so pervasive at the ICTY, Judge, that would render the court  
11 to provide these types of protective measures? It's all a matter of  
12 degree. All a matter of degree.

13 Plus, we look into degree, and how do you measure degree? How  
14 many witnesses have been interfered with in this case? None. None.  
15 And we have been before this Court and the pre-trial Court for  
16 several years. All we get are platitudes about the dangerous  
17 atmosphere in Kosovo and witness intimidation, and that is used as  
18 the platform to shut this trial down and turn it into an exercise in  
19 private sessions.

20 So I appreciate the point, Judge. And I'm not naïve as to the  
21 difficulties oftentimes to ensure 100 per cent non-interference. But,  
22 frankly, we've gone way too far. Yes, that's something we should be  
23 mindful of, but now we have gone so far that we have 100-plus  
24 witnesses that are in protective measures, and we are destined to  
25 spend a good majority of this trial either in closed or protective

1 session.

2 And that goes back to Judge Gaynor's comments and my barbershop  
3 reference, where people need to see not only that justice is being  
4 done but they feel it and see it being done. They have to see it  
5 being done. And, obviously, the way this is transpiring now is not  
6 going to happen or close to happen when we have this such -- such a  
7 pervasive -- so many protective measures and so pervasive across the  
8 spectrum of all of the witnesses that are coming before us.

9 I hope that answers your question, Judge. And I hope -- thank  
10 you.

11 MR. EMMERSON: Would you mind if I just had a bite at the  
12 question, because I think it specifically was a reference to two sets  
13 of proceedings in the ICTY arising out of Kosovo, two of which were  
14 the trial and retrial in the Haradinaj case. Just since  
15 Judge Mettraux specifically referred to the Kosovo context, I  
16 presumed that was the underlying -- comments being referred to arise  
17 out of those two sets of proceedings.

18 Now, it's very important to look at what those cases do say and  
19 don't say. What the first trial chamber found in acquitting  
20 Mr. Haradinaj was that there had been -- they considered there to be  
21 a general atmosphere of witness apprehension and intimidation in  
22 Kosovo evidenced quite separately from the proceedings in the case.  
23 There was no single instance at all of witness intimidation on any  
24 witness who testified in that case.

25 There were two witnesses -- well, there was one witness who died

1     shortly before trial, and there was a lot of speculation until it was  
2     properly investigated and the court and the SPO both -- sorry, in  
3     that case, the OTP, formally made it public, lest there should be  
4     misapprehension, that this was a totally ordinary running-down event  
5     in which somebody had been arrested while drunk driving. It was  
6     nothing whatsoever to do with witness intimidation.

7             Then during the trial, there were two witnesses who wouldn't  
8     testify. And that was the basis of the prosecution appeal against  
9     the acquittal. Obviously, the background evidence about Kosovo more  
10    generally was relevant, and the appeals chamber ordered a partial  
11    retrial in relation to that part of the indictment to which those two  
12    witnesses would have been relevant. In fact, they'd been given  
13    numerous opportunities to attend but had just declined to attend  
14    videolinks.

15            On the retrial, they did attend and were cross-examined, and one  
16    of them in a remote location where the entire court travelled there  
17    to do it, and they gave their evidence in full. And, again, no  
18    allegations of intimidation in relation to the trial or any of the  
19    witnesses in the trial, and, again, Mr. Haradinaj was acquitted on  
20    the second retrial by a different panel.

21            There is a lot of talk about this on a general level in relation  
22    to domestic proceedings. There is no evidence whatsoever that any  
23    witness has ever been intimidated in any international criminal case.

24            JUDGE METTRAUX: Well, we heard it in this courtroom,  
25    Mr. Emmerson.

1 MR. EMMERSON: What's that?

2 JUDGE METTRAUX: We heard the complaint of witnesses of  
3 intimidation in cases --

4 MR. EMMERSON: In the national proceedings.

5 JUDGE METTRAUX: -- in the national proceedings.

6 MR. EMMERSON: [Overlapping speakers] ... not disputing that.  
7 There's evidence of that --

8 JUDGE METTRAUX: Let's not try to pretend it's not there.

9 MR. EMMERSON: No, I'm sorry --

10 JUDGE METTRAUX: We've heard it in that room.

11 MR. EMMERSON: I'm sorry, I'm not pretending anything. There is  
12 research into the past 20 years and what has happened. Of course,  
13 people are talking about events much closer [Indiscernible]. That is  
14 in the domestic proceedings.

15 Your Honour's question was directed to what should guide this  
16 Court in the light of the apparent failure of the ICTY to convince  
17 the international community that it was able, in its way, without  
18 this kind of secret trial that we're involved in, to guarantee the  
19 safety of witnesses. And the premise of the question was it's clear  
20 from those decisions, judicial decisions, that there had been  
21 intimidation of witnesses in those proceedings and there hadn't.  
22 That is simply wrong.

23 JUDGE METTRAUX: Mr. Emmerson, just on your wording, there is no  
24 secret trial here.

25 MR. EMMERSON: Well, that's, with respect, a matter of opinion.

1 JUDGE METTRAUX: There is a trial, Mr. Emmerson, that all of us  
2 want to be more public than it has been, and this is why we're having  
3 this session. There is no secret that the information --

4 MR. EMMERSON: I appreciate the terminology is unattractive, but  
5 that is my terminology. That's what I would describe these  
6 proceedings [Overlapping speakers] ...

7 JUDGE METTRAUX: Mr. Emmerson, you know better to choose the  
8 right words when you wish to. I'm simply pointing out there is no  
9 secret trial in this place. There is a public trial which we are  
10 trying, with your assistance, to make more public for all the reasons  
11 that I have been stating here. There is no secret trial going on  
12 here.

13 MR. EMMERSON: I appreciate Your Honour's characterisation.  
14 Others might take a different view. That is all.

15 PRESIDING JUDGE SMITH: [Microphone not activated].

16 I don't mean to constantly put you on the spot, but I know you  
17 are capable of being put on the spot.

18 Mr. Emmerson made two somewhat modest proposals earlier just to  
19 kind of tweak the system a little bit to closely -- that you would  
20 closely scrutinise the testimony of a witness when -- we've taken  
21 notice of adjudicated facts so that we don't have to relitigate that  
22 whole issue. And, number two, using a pre-154 summary and extremely  
23 limiting your direct examination when it is a 154 witness, which,  
24 frankly, has surprised me that you were using that much time with a  
25 154 witness when that really isn't the purpose of 154.



1           So I'd like your response to those two proposals, because they  
2           seem to be -- they're not going to cure the problem, but they seem to  
3           be reasonable to adopt in my limited view. So go ahead.

4           MR. QUICK: Thank you, Your Honour.

5           I won't spend any time correcting the mischaracterisations that  
6           we just heard about ICTY proceedings --

7           PRESIDING JUDGE SMITH: Just answer my question.

8           MR. QUICK: -- as well as a climate of intimidation. But in  
9           relation to these two issues, which I had not completely prepared  
10          for, but in relation to the adjudicated facts issue, the SPO is  
11          taking into account those facts that have been judicially noticed by  
12          the Chamber.

13          In our initial motion for adjudicated facts, I believe there was  
14          a part where we indicated to the Chamber that if the facts were  
15          noticed, we would take them into account and consider switching  
16          witnesses, their modes of testimony, examination times, and similar  
17          matters, and the SPO is doing so.

18          The Chamber, in its decision, also indicated that it is within  
19          the discretion of the Chamber to admit evidence, including on  
20          adjudicated facts. And in past proceedings before the ICTY, the  
21          appeals chamber there has confirmed multiple times that it is in the  
22          interest of justice to allow the prosecution to present evidence on  
23          adjudicated facts, which in the end could actually save time since  
24          the defence has the ability to rebut those facts during its defence  
25          case. And then in that case, the prosecution might seek a rejoinder.

1           So the SPO is taking this all into account, and it is taking  
2           into consideration how the adjudicated facts can be used to  
3           facilitate and expedite the proceedings.

4           PRESIDING JUDGE SMITH: [Microphone not activated].

5           There is really no reason to take notice of adjudicated facts if  
6           we aren't going to use it for some practical purpose, and I think  
7           that should be taken into consideration and used, and we need to see  
8           it in action.

9           MR. QUICK: That's understood, Your Honour.

10          And in relation to witnesses who testify about the same  
11          adjudicated facts, witnesses not only testify about that specific  
12          incident. They also provide other evidence --

13          PRESIDING JUDGE SMITH: Not trying to --

14          MR. QUICK: -- that is not necessarily --

15          PRESIDING JUDGE SMITH: The adjudicated facts was just about  
16          that issue, not about anything else they testified.

17          MR. QUICK: Right. Okay.

18          PRESIDING JUDGE SMITH: The 154 has to do with other --

19          MR. QUICK: Right.

20          PRESIDING JUDGE SMITH: Other information.

21          MR. QUICK: And the 154 summaries, the SPO is amenable to  
22          providing those summaries. In relation to the witness, not this  
23          witness, I believe the witness before --

24          PRESIDING JUDGE SMITH: Yeah.

25          MR. QUICK: -- I believe there was a -- there was a summary that

1 was proposed --

2 PRESIDING JUDGE SMITH: Yeah, a little advance notice would have  
3 been good to know that you were going to do that. Because just to  
4 say, "This is what we're going to do," and the Defence doesn't know  
5 and we don't know -- I'm not saying you tried to hide anything, but  
6 if we're going to do that, let's do it all the time.

7 MR. QUICK: That's understood, Your Honour. And for 154  
8 witnesses, the SPO would be amenable to doing that.

9 PRESIDING JUDGE SMITH: It doesn't make sense. This morning,  
10 for example - I'm not casting aspersions - but we listened to a  
11 witness who had a 154 statement, and we ended up going through the  
12 whole thing again, you know. It doesn't make a lot of sense to do  
13 that. It's a waste of our time, it's a waste of the witness's time,  
14 and, of course, your time as well.

15 MR. QUICK: I understand, Your Honour. I'm not an expert on  
16 that witness that appeared today, but my understanding was that the  
17 testimony that was elicited live was in relation to an incident or  
18 details that were not covered in the 154 statement.

19 PRESIDING JUDGE SMITH: Well, it was also a lot of details that  
20 were covered by it.

21 MR. QUICK: [Overlapping speakers] ...

22 PRESIDING JUDGE SMITH: I am sure there were a few that were  
23 not, and I don't have any problem with that. But it just doesn't do  
24 us any good to sit and read through those things and then listen to  
25 it again in court. What we can read we tend to remember.

1 MR. QUICK: That's understood.

2 PRESIDING JUDGE SMITH: Thank you very much.

3 MR. QUICK: And also we've taken note of your -- in the 154  
4 decisions, there has been guidance provided in particular in relation  
5 to this issue. Thank you, Your Honour.

6 PRESIDING JUDGE SMITH: And I would like to see a trial run on  
7 post-testimony redactions. You know, it's always seemed to me, even  
8 when I was in domestic courts, that if the public can't read a  
9 comprehensible judgment when this thing is all over, then even all  
10 the listening to it live won't do any good. They have to know what  
11 the reasoning was. That's why I personally object to using a lot of  
12 Latin phrases in a judgment because the public doesn't know what it's  
13 about. That's what we are doing. We're producing a judgment. Not  
14 just to decide whether somebody's guilty or innocent, but to say:  
15 This is what we saw, this is what we heard, this is what we believed,  
16 this is what we did not believe. If we aren't doing that, we're  
17 wasting our time. And there is only way to do that and that is to  
18 make it all more comprehensible. We have to be able to put together  
19 a judgment that makes some sense. We desperately want you to help  
20 come up with a way to doing that.

21 And that goes for the Defence, too. And I appreciate the offer  
22 you made, Mr. Emmerson, of something that could be done. Although,  
23 you were offering that they do it, but that's all right.

24 But think about some things that the Defence can do also,  
25 because you're not -- it's not all up to these guys. I mean, they're

1 driving the boat right now, but you will also at some point.

2 Are there any other matters that we haven't got to? The use of  
3 codes we've discussed. I still think it's appropriate at times.  
4 It's helpful at times. It probably isn't helpful if you have 72  
5 codes. But if you have four, five, or six codes that can get  
6 somebody through this testimony -- what do we do with it afterwards?  
7 When do we put it on the record? When do we define that code?  
8 That's a question I'm asking. Do we do that at the end of the trial,  
9 at the end of the witness's testimony? We don't have an answer for  
10 that. We're asking for an answer.

11 MR. EMMERSON: Speaking completely off the cuff, I can't see why  
12 it wouldn't be put into the record at the very outset of the  
13 witness's testimony. But is there objection I'm overlooking --

14 PRESIDING JUDGE SMITH: [Microphone not activated]

15 MR. EMMERSON: Yes, exactly. That it shouldn't be read into  
16 the --

17 PRESIDING JUDGE SMITH: [Microphone not activated]

18 MR. KEHOE: [Microphone not activated]

19 MR. EMMERSON: No, if you do that in private session, it's on  
20 the record.

21 PRESIDING JUDGE SMITH: [Microphone not activated].

22 Anybody else? Anything else you want to cover?

23 Something else -- oh, Ralph, you have some wisdom to impart.

24 MR. ROCHE: Thank you, Your Honour. I hope not to disappoint.  
25 Just one very discrete point as regards the proposal in paragraph

1 8(iv) of the SPO's filing reference 1565.

2 They refer to the preparation of a revised public feed of the  
3 session after any amendments to the transcript have been agreed.  
4 From a Registry perspective, this would be very difficult to  
5 implement for technical reasons, which I can explain if necessary,  
6 but also because of the different languages, the three official  
7 languages. Amendments in one language may have consequent and very  
8 significant amendments to other language versions. So this would be  
9 extremely difficult to implement technically and also would  
10 potentially be of very limited utility.

11 Thank you. If you have any further questions or would like some  
12 more detail, I can, of course, try to provide it.

13 PRESIDING JUDGE SMITH: Any comments? Any questions?

14 MR. KEHOE: [Microphone not activated]

15 PRESIDING JUDGE SMITH: We will give this some thought and put  
16 together some ideas and probably meet once more with you all and go  
17 over it again, present what we've come up with, and hopefully see  
18 some action and some creative thought, maybe from the Defence as  
19 well. Some gives and some takes.

20 This isn't all one person's fault. And it came in early on in  
21 this case, I understand that, that the redaction protocol happened  
22 early on. And, as I said, it may be bit more -- it's a liberal use  
23 of a conservative viewpoint, you know, so it's hard to deal with  
24 that.

25 So thank you very much for your attendance and your common sense

1 and your good suggestions. We will take them into consideration and  
2 try to make some sort of a comprehensive decision that will improve  
3 the situation.

4 We're adjourned.

5 --- Whereupon the hearing adjourned at 4.14 p.m.

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