Monday, 14 March 2022

[Open session]

[Closing Statements]

[The accused entered court]

--- Upon commencing at 9.30 a.m.

PRESIDING JUDGE SMITH: Good morning and welcome, everyone.

Madam Court Officer, please call the case.

THE COURT OFFICER: Good morning, Your Honours. This is KSC-BC-2020-07, The Specialist Prosecutor versus Hysni Gucati and Nasim Haradinaj.

PRESIDING JUDGE SMITH: Thank you. We'll take the appearances now.

Ms. Bolici.

MS. BOLICI: Good morning, Your Honour. For the SPO are present today Mr. Alex Whiting, Deputy Specialist Prosecutor; Mr. Matthew Halling, Prosecutor; Mr. James Pace, Associate Prosecutor; Ms. Line Pedersen, Case and Evidence Manager; Ms. Marie-Cecilia Grudzinski, legal intern; and I am Valeria Bolici, Prosecutor with the SPO.

PRESIDING JUDGE SMITH: Thank you, Ms. Bolici.

Mr. Rees.

MR. REES: Your Honour, I appear for Mr. Hysni Gucati. I am assisted by co-counsel Mr. Huw Bowden and also by Ms. Faye Wigmore, Mr. Vladimir Dashi, and Mr. Remi Halilaj.

PRESIDING JUDGE SMITH: Thank you very much.

Mr. Cadman.

MR. CADMAN: Good morning, Your Honour. I appear on behalf of Mr. Nasim Haradinaj. I'm joined by Ms. Bernabeau, Mr. Worboys, Mr. Soliman, Ms. Frivet, Ms. Rodio, and Mr. Berisha.

PRESIDING JUDGE SMITH: Thank you, Mr. Cadman.

I also note for the record that Mr. Gucati and Mr. Haradinaj are present in the courtroom.

Today we start the closing statements in the Prosecutor versus Gucati and Haradinaj case.

As indicated in the Panel's order of February 3rd, the closing statements will be heard as follows.

Today, March 14th, the closing statement of the Specialist Prosecutor and any questions from the Panel at the end of the statement. This statement should not address sentencing.

The SPO should take into consideration that the Panel's questions should last 30 to 45 minutes, so it should endeavour to finalise its statement approximately 45 minutes before the end of the hearing today.

On March 15th and 16th, we will hear the closing statements of the Gucati Defence and the Haradinaj Defence and any questions from the Panel. These statements should not address sentencing.

The Defence should taking into consideration that the Panel's questions should last 30 to 45 minutes after each statement and should also endeavour to finalise their statements approximately 45 minutes before their allotted time is up.

Mr. Rees and Mr. Cadman, in our order we asked you to inform us today how you divided up or will divide up the two days among yourselves.

Mr. Rees.

MR. REES: Your Honour, I anticipate going into Wednesday. I've discussed it with Mr. Cadman. We understand there will be plenty of time for Mr. Cadman's closing statement and questions from the Trial Panel, accordingly.

PRESIDING JUDGE SMITH: Anything to add to that, Mr. Cadman.

MR. CADMAN: Nothing, Your Honour.

PRESIDING JUDGE SMITH: All right, thank you.

On March 17th, the first session, the Panel will hear the response by the Specialist Prosecutor and any questions from the Panel.

On March 17th, the second session, the Panel will hear submissions in reply to the SPO response by the Gucati Defence and the Haradinaj Defence and any questions from the Panel.

On the same day, the third session, the SPO will make submissions on sentencing, including submissions on the additional evidence and information to be disclosed today. The Panel may ask questions.

On March 18th, first and second sessions, the Panel will hear submissions of the Gucati Defence and of the Haradinaj Defence on sentencing, including submissions on the additional evidence and information to be disclosed today. Any SPO response will also be

heard in these two sessions. The Panel may ask questions as well.

And, finally, on March 18th, in the third session, the Panel will ask any last questions from the parties and will hear the statements of the accused; 30 minutes each.

The Panel will endeavour to ask questions at the end of each party's statement or response. However, if need be, the Panel members may also ask questions during the oral submissions. Where a particular section of the schedule I described is finalised earlier than planned, the Panel expects the parties to move on to the next section of the schedule.

The Panel reminds the parties that pursuant to Rule 135(2) of the rules, closing statements may refer to admitted evidence and its reliability, the credibility of the witnesses, the record of the proceedings, and the applicable law.

Illustrative material and summaries of evidence, if they are based on admitted evidence, may be used. The parties should refer to evidence only by using exhibit numbers.

The Panel further reminds the parties that closing statements should avoid repeating statements already made in the final trial briefs and focus instead on issues not yet addressed by the party and addressing the opposing party's arguments.

Political statements, references to crimes committed during the Kosovo conflict, or the justness of the war shall be avoided. The parties are also reminded to refrain from mentioning confidential information in public sessions.

Ms. Bolici, the floor is yours.

MS. BOLICI: Thank you, Your Honour.

At the conclusion of the trial against Hysni Gucati and Nasim Haradinaj, I would like to recall that this case is both very typical and very unique. It's very typical because the conduct of witness intimidation and obstruction of justice have been affecting investigation and trials against members of the KLA for over 20 years, tailing each proceedings as the darkest of shadows.

This case is also very unique, because in this case those responsible for intimidation and obstruction have been brought to answer before a court of law readily. And also because the evidence against an accused can hardly be more compelling than in the present case.

From the very outset of this trial, the Specialist Prosecutor's Office has asserted and showed in this Court that the criminal conduct of the accused is recorded on a number of publicly broadcasted videos. In this audio-visual evidence, the accused can be seen executing the criminal conduct alleged in the indictment. Hysni Gucati and Nasim Haradinaj can also be seen and heard verbalising their criminal intent, explicitly, fiercely, and repeatedly.

At the conclusion of this trial, we are here to acknowledge that the conduct of the accused remains uncontested. It remains uncontested that Hysni Gucati and Nasim Haradinaj convened three press conferences on the 7th, 16th, and 22nd September 2020. It is

uncontested that they announced to possess confidential documents pertaining to SITF and SPO investigations, containing names and personal data of protected witnesses, as well as witness evidence. It's uncontested that they were delivering such confidential materials to those in attendance for everybody in the public to know. It is recorded that, while they disseminated confidential materials, including witness names, they acknowledged that publishing witness names was strictly prohibited by law. It's recorded that they addressed witnesses and everybody else cooperating with this Court as traitors of Kosovo, liars, spies, and collaborators; that they asserted that witnesses could now no longer be protected. In over 15 recorded public appearances and on statements on social networks, the accused confessed that they were carrying out every such action in order to disband this Court.

And this is only the starting pointing of the evidence before this Trial Panel, overwhelming as it is.

The remaining of the evidence presented in the course of this trial complements and seals the proof of the accused's responsibility for all crimes charged in the indictment. It does so beyond reasonable doubt. Additional evidence came not only from the witnesses presented by the SPO but, quite unexpectedly, and very significantly, from the witnesses presented by the Defence. Whenever Defence witnesses were confronted with any of the facts relevant to the charges, they adduced incriminating evidence one after another, starting most notably with the accused themselves.

In its pre-trial brief, opening statement, in the course of witness testimonies, and in its final briefs, the SPO delved deeply into the facts underlying the charges. The Defence, on the other hand, attempted to stay away from the facts of this case throughout the proceedings. And this is because the evidence is so eloquently incriminating, that in order to keep arguing that the accused are not guilty as charged, the Defence needs to ignore the facts, needs to keep disregarding the evidence, including their own.

All the Defence is left to argue at the end of this case is that the accused did carry out all actions charged in the indictment, but that the accused's conducts - not withstanding their overwhelming seriousness - are not criminalised under the relevant provision of the Kosovo criminal code. The Defence attempts this venue by distorting the statutory framework. They propose mutilating the scope of criminal provisions in such way that, if the Defence position is accepted, the most seriousness violations of secrecy of proceedings, the most serious conducts of intimidation, retaliation, and obstruction could not ever be punished under Kosovo law, including by this Court.

The SPO respectfully submits that if the facts of this case are not ignored, and if the applicable law is not misstated, the recognition of the accused's responsibility shall follow as in the plainest of syllogisms.

And that the Defence is very well aware of that. That is why it also argues that the accused should, nevertheless, be exonerated of

criminal responsibility based on a variety of tailor-made Defences that are not rooted in any sound legal provisions.

Throughout this trial, the accused disingenuously attempted to present themselves as the paladins of a higher justice - a modern version of Antigone. They should not be punished, they say, because by violating the law they allegedly pursued their own self-defined justice goals. We will not engage here in asserting why the laws protecting the secrecy of investigations, the privacy, safety, dignity, and well-being of witnesses are indispensable and just. Also, we will not engage in discussing whether the accused, in fact, intended to pursue the interests of a small powerful group of individuals against the general interests of a society founded on the rule of law. We will maintain, however, and with no hesitation, that the accused are not above the law. Their repeated and intentional actions violated the criminal law of Kosovo. Their conduct is not justified by any other legal provisions. The accused are criminals.

In today's closing statements, the SPO will submit that the evidence presented at trial proves the accused's responsibility beyond reasonable doubt. In this first part, I will address the facts and law under each count of the indictment. In the second part, Mr. Halling will address the Trial Panel on responses to various issues raised by the Defence in their final briefs.

Next Thursday, according to the schedule defined by the Trial Panel, the Specialist Prosecutor will give an initial address on the requested sentence, and Mr. Pace will then address the Court

on further sentencing matters, including responses to the Defence sentencing arguments.

I will start, at first, with Counts 5 and 6 of the indictment, the two criminal offences of violation of the secrecy of proceedings.

And I am forced to start by stating the obvious, because both accused have repeatedly argued the contrary in the course of this trial. I will play a brief excerpt of Mr. Gucati's testimony to exemplify and then address the accused's position. The record will be played in the English language, and the Albanian interpretation will be available in the Albanian channel.

[Video-clip played]

THE INTERPRETER: [voiceover] "First and foremost, I'm sorry that you say 'distributed.' We have not distributed anything. We've placed the documents on the table. Whoever wanted to take it was free to do so. That's one.

"Secondly, I've told the media and everyone else that names should not be made public, which is what I've been abiding by throughout my life, that you need to protect the privacy of anyone, be it a Serb, an Albanian, a Roma, an Ashkali, and that has been a standard I've been abiding by throughout."

MS. BOLICI: Mr. Gucati makes two points in the brief excerpt that was played, and, in fact, both accused defended themselves in this way throughout their testimonies. First they say: We did not distribute documents, we only placed them on a table. Second they say: We told to the attendees of the three press conferences not to

publish witness names.

The first issue. Both accused in their testimony convene that, yes, they did bring multiple copies, thousands of pages of confidential documents to the first, second, and third press conference; and that, yes, they did invite those in attendance to take as many documents as they wanted; and that, yes, the attendees indeed did take multiple copies of these documents on every single occasion.

The accused suggest, nevertheless, that they cannot be convicted for distributing confidential documents at these gatherings of people because they did not place these documents in anybody's hands. The accused seem to consider that they have identified a crack, a lacuna, in the criminal code, and they try to make use of it. They argue that their conduct is not criminally relevant.

The accused's argument, however, is clearly unsustainable. Bringing multiple copies of confidential documents at a gathering of numerous people for everybody to read the documents, take pictures of them, and take them away is a way of revealing confidential information within the meaning of Article 392(1) and (2) of the criminal code.

As recalled in the confirmation decision, these provisions do not limit the manner in which information is revealed. Revelation may include displaying, broadcasting, distributing materials, citing or referring to the content of the material, as well as allowing others to read, copy, or record the material or its content. The

accused's hope to hide behind the lack of a delivery hand-to-hand is bound to fail.

The evidence in this case hopes to prove beyond reasonable doubt that the accused revealed confidential information by distributing confidential documents at the three press conferences and publicly mentioning the contents of the confidential documents in the course of TV appearances and on social networks. In addition, the accused further disseminated contents of the confidential information once it was published by the media.

The accused's position that these actions are incapable of fulfilling the *actus reus* under Article 392(1) and (2) of the criminal code are based on a blatant misstatement of the applicable law.

The second issue. The accused argue that they are not criminally responsible because they stated, at times, that witness names should not be published by the press and that this was prohibited - strictly prohibited - according to the law. The argument is a fallacy on multiple levels.

First, if the perpetrator warns the receiver that the receiver would commit a criminal offence by disseminating the confidential material further, that's evidence that the perpetrator knows that his own conduct is criminal in itself. This is because the perpetrator's action is specular, identical, to what he says should not be done by the receiver. He does what he says is prohibited. The perpetrator cannot possibly be less guilty based on the fact that he made so

clear that he understands that the conduct like his own is prohibited.

Second, the accused's argument is based on a sophistry. The Defence repeatedly argued that they are not responsible as they did not pronounce witness names out loud in public. They only delivered confidential documents containing witness names to responsible members of the press.

Let's leave aside the fact that the evidence clearly establishes that the accused did, in fact, mention witness names at the press conferences and on TV appearances, as detailed in the SPO final brief. The point here is that even by merely delivering confidential documents, including identities of protected persons, the accused revealed that particular privileged information. Article 392 contains no requirement that the confidential information be conveyed orally. It can be very well communicated in writing as long as the communication occurs.

When thinking about how to best explain the frivolousness of the Defence argument, a good example seems to be a moment that was shared by all persons in this courtroom in the course of the trial. At a certain point a Defence witness, Rashit Qalaj, was asked by the Haradinaj Defence to write three names on a piece of paper instead of stating them loud in open court.

Later on in the course of the Defence examination, the Defence counsel looked at the paper only to realise, to his great surprise, that the paper did not contain the names of SPO officials that he

hoped to see in there. But the point is not, now, that the Defence made a blind bet with his own witness and lost and that the credibility of any entrapment argument, once again, simply dissolved in open court. The point is that the Defence counsel, and later the SPO and the Honourable Trial Panel, we all read those names. Did Rashit Qalaj pronounce them out loud? He did not. Did he, nevertheless, convey the information? He certainly did. We received it. We know it now.

In the very same way, the accused conveyed the confidential names of protected persons to the numerous attendees of the press conference, in writing, by delivering a hard copy support, the confidential documents themselves.

Furthermore, arguing that the accused only delivered confidential documents to responsible members of the press is also a baseless attempt to exclude the criminal responsibility of the accused. Firstly, as a matter of fact. The accused made clear that whoever could enter and exit the premises of the KLA War Veterans Association without control - anyone could have attended the three press conferences and taken the documents, be it a journalist or not. Second, as a matter of law. Members of the press are not persons authorised to receive confidential information pertaining to criminal investigations. There is no legal basis whatsoever to say otherwise. Third, as a matter of common sense. Can the counsel for Defence really imagine a legal system where records of criminal investigation cannot be revealed by anyone with the exception that they can be

legitimately revealed to members of the press? The mere idea is ludicrous, as there is hardly any better way to make an information public. The Kosovo legal system does not embrace such idea.

And, finally, let me recall, to avoid any misrepresentation of the facts, that while the accused stated at times that publishing names of witnesses was prohibited by law, they did repeatedly incite members of the press to publish those documents and those names. Two brief examples for all.

During the course of the third press conference, this is P35 at page 13 to 14, Hysni Gucati recalled that media had previously published names of the so-called "fake veterans" and stated that, in the same way, they should publish the names contained in the batches, adding that "they are Albanians too. 80 per cent of the people who have given evidence are Albanians."

Gucati further exhorted the press to take the same courage as they did with the fake veterans. And the accused, in fact, did not hide their repeated requests to the press that confidential documents, including witness names, be publicised as much as possible.

In the course of an animated debate, TV debate, Nasim Haradinaj reproached journalists for not having published enough confidential materials; and this is P30. When he was asked by a journalist what did you want the media to do, since they were having that debate, Haradinaj answered that he wanted the media to publish it as much as they dared.

That said as to the actions of the accused, all other elements of the crimes of violation of secrecy of proceedings have been addressed in details in the SPO written submissions.

I will address a few discrete issues here, and the SPO will gladly answer any residual questions, should there be a need for further clarification.

First, the documents distributed by the accused were certainly confidential within the meaning of Article 392. The Trial Panel has heard irrefutable evidence from the SPO investigator that all materials disclosed by the accused pertain to SPO confidential investigations and that they were treated as confidential by the SPO, exactly as any other record of investigative activities.

All disclosed pages of the batches further confirm, on their face, that these materials consisted of confidential records of investigation or internal analysis of investigative materials and that they were marked as such. The accused themselves stated that the materials were confidential, top secret, at the very moment when they distributed them to the press.

The entirety of the Defence argument, that the confidentiality requirement is not met, is based on a misstatement of the applicable law. The Defence asserts that, in order to be protected under Article 392(1), information should have been declared a secret under Law 03/L-178. This is a law concerning security interests of Kosovo and has nothing to do with the confidentiality of criminal proceedings.

Furthermore, there is no trace of such requirement in the plain language of Article 392.

At the same time, the Defence continues to ignore in its final brief that Article 392(1) primarily criminalised disseminating any information that shall not be revealed, according to the law. Records of SITF and SPO investigations are protected under the statutory framework of the KSC. At the very minimum, under Articles 62, 35(2)(f), 54(8), 61(4) of the law, as recalled both in the indictment, for example, paragraph 33, among others, and affirmed in the Confirmation Decision.

As to the requirement that the accused disclosed confidential documents without authorisation, none of the accused ever claim to have been authorised. They stated that they were not authorised. They were proud to act without the authorisation of the SPO and against the judicial orders that were served to them.

This is further no requirement that the information was disclosed to the perpetrators in an official proceedings in the sense of a formal disclosure during a trial. Such an interpretation would allow for easy circumvention of the protected interest. For example, when a third person outside of any proceedings reveals protected information obtained through an accused who received it through formal disclosure, that conduct would have to go unpunished. The information, in fact, needs only to have been disclosed in any official proceedings and not to any particular person or in any particular form. Official proceedings clearly include prosecutorial

investigation under the statutory framework. An information exchanged during a criminal investigation is also disclosed in an official proceedings within the meaning of the Kosovo criminal code.

The accused acted with the required intent. The Panel has received evidence of the accused's own repeated statements regarding the confidential, secret, or sensitive nature of the information. For example, at P1-ET, page 3, Haradinaj refers to the documents as confidential and top secret. At P19, page 2, Haradinaj states that the documents have their original seal and that they read "top secret." At P59, on 21 September 2020, Gucati referred to the documents as "very confidential and sensitive."

Against this evidence, it's immaterial whether the accused considered the classification of the batches to be justified. At various points during this trial, the Defence or the accused have suggested that information in the batches was not confidential because the documents arrived to the accused. The argument is clearly ill-founded.

The SPO and/or SITF classify the record of its criminal investigations as confidential, and the KSC statutory framework confirm that such materials should not be considered as public. This classification can be amended by the SPO or judicially at the Kosovo Specialist Chambers, not by the arrival of the batches at the KLA War Veterans Association or by the unilateral decision of the accused. Were this otherwise, then the confidentiality of critical information would lose protection whenever someone subjectively decided it was

not worthy of classification. This is precisely the paradox that the accused tried to assert.

For example, in P6-ET, at page 19-20, when told by a journalist that he should not have disseminated the documents, Haradinaj replies -- the journalist argued that he should not have disseminated sensitive documents, Haradinaj replies:

"Who are they sensitive to? They are sensitive documents for The Hague tribunal, which cooperates with Serbia, but not for me ... they are not at all sensitive for me."

There is obviously not such a thing as documents that are confidential for this institution and are not confidential for the accused. Haradinaj certainly did not have any authority to variate the classification of those documents based on his personal wish. When he states that the documents of The Hague are not at all sensitive to him, the accused expresses patent disregard for the confidential nature of the documents. He verbalises his intent to disseminate them because of their confidential nature, or at least with full awareness of their confidential nature, within the meaning of Article 21 of the criminal code.

In relation to the specific requirements of Count 6, the violation of secrecy of proceedings by revealing the identity and personal data of protected persons. As early as the first press conference, the accused could not have been clearer that they knew that names of protected witnesses were in the batches. This is what Nasim Haradinaj states:

"... here are the names of all ... witnesses who they say are under their protection. All of them."

He then refers to "all the secrete data" about witnesses and to the fact that the material also contains witness statements.

That the batches included protected people was readily apparent. What's safer source of evidence can the Defence possibly require, if not the words of the accused themselves? In addition to that, the SPO investigator testified that Batch 3 alone contains references to approximately 150 SPO witnesses. Batch 1 and 2 included witness information as well, protected data of hundreds of witnesses.

The Defence attempts to make a legal argument, suggesting that contrary to what the accused stated, contrary to what the SPO investigator testified, and contrary to what the press understood and reported at the time, the individuals named in the batches were not protected persons within the meaning of Article 392(2) of the criminal code.

In this respect, let me assert that the mere fact that witness names and evidence were contained in confidential or internal SITF or SPO materials pertaining to criminal investigation is sufficient in itself to confer this person a protective status under the law. This is based, at the very least, on Article 62 of the law, as also found in the Confirmation Decision. But in addition, the Panel heard ample evidence that the SPO did adopt measures of protection by its own motion under Article 35(2)(f) of the law and 32(a) of the rules. Documents containing witness names were unmistakably marked as

confidential and, in the case of Batch 3, as internal work product. The SPO officials regarded witness information as confidential. Not a single name had been publicly disclosed by the SPO prior to the conduct of the accused, and SPO had requested non-disclosure orders in connection with indictments that were filed at the time. This basis alone is sufficient to recognise the status of protected persons of the individuals' names in the batches.

Contrary to what the Defence argues, Article 392(2) does not require that specific formal measures of protection exist for a person to be granted a protected status in criminal investigation.

There is a fundamental consideration that the Defence ignores when it attempts to introduce the requirement of special measures of protections. If this were a requirement, then Article 392(2) would not offer any protection at the investigation stage.

Special measures of protections regarding specific witnesses typically intervene at the stage of the proceedings when the Prosecution has an obligation to disclose its evidence. This is also the case under the KSC statutory framework. When a disclosure obligation arises, then special measures of protection can be granted to preserve certain evidence concerning specific witnesses from being disclosed to the defendants first and to the public later, while the rest of the evidence needs to be disclosed instead. But at the investigative stage, when there is no disclosure obligation on the Prosecution's side, when all investigative records are necessarily confidential, all the witnesses enjoy the same level of protection.

The rule is confidentiality, with no exceptions. All those who cooperated have a protected status under the law.

In this framework, the SPO has offered additional, more articulated evidence about the particularly qualified status of some of the protected persons named in Batch 3. But let me be very clear: Count 6 is proven with or without this additional evidence.

For example, the SPO investigator testified that for some of the witnesses mentioned in Batch 3, the Single Judge of the KSC had issued orders for non-disclosure in relation to indictments that had been confirmed. The order of the Single Judge is in evidence and its meaning is very clear: The information on the identity of certain witnesses was not even to be disclosed to accused persons in other criminal proceedings upon their Initial Appearance, let alone to the general public.

The first KSC accused to appear before this Court was arrested after the disclosure of the third batch on 22 September. This is the kind of order that would satisfy the special measures of protection element that the Defence speaks about, and that, once again, is not a requirement under Article 392(2) of the criminal code. It is not a requirement, but it has been proven, nevertheless.

In relation to the sentence announcement of paragraph (3) of Article 392 of the Kosovo criminal code. The basic form of this offence, the offence provided for at Article 392(2) of the criminal code, does not require that the unauthorised revelation of protected information result in any harm or any other prohibited consequences.

Article (3) penalises a -- paragraph (3) penalises an aggravated form of this offence, where the unauthorised revelation results in serious consequences for the protected persons, or where the criminal proceedings have been severely hindered or made impossible. The SPO has addressed in details in its final brief that both these prohibited consequences occurred.

Let me just recall today that tens of the witnesses with whom the SPO was in contact after confidential documents were distributed by the accused noted that they felt worried, stressed, unsafe, threatened, or intimidated in the wake of the publication. The SPO had to undertake several security measures, including emergency risk plans, and relocation outside of Kosovo. Security or protective measures, other than relocation, were undertaken in relation to between 20 and 30 witnesses. The two relocations undertaken by the SPO concerned persons who were scared and did not want to stay in their homes anymore following the publication of the documents by the KLA War Veterans Association. Relocation is an exceptional measure of last resort and only undertaken when the SPO does not have any other options to protect someone in Kosovo. Some persons were dissuaded from further engagement with the SPO as, for example, testified by the SPO investigators as well.

Mr. Halling will devote some time later on to specifically respond to all ungrounded challenges raised by the Defence in their final briefs on the reliability of the evidence adduced by the SPO. But let me just provide a source of corroboration of the evidence

presented by the SPO, which should be probably considered safely reliable also by the Defence.

This is the testimony of Mr. Gucati in the course of this trial. At page 2308 and 2309 of the transcript, Mr. Gucati stated:

"... if a name was released by myself, by the presidency of the KLA War Veterans Association, of course then we would have harmed in a way the witnesses."

He continued by stating:

"If we released any names, we might probably put in danger someone."

MR. REES: Sorry to interrupt, but that passage has actually been corrected by the Translation Unit.

MS. BOLICI: And I will refer to the corrected version of the transcript, Your Honour.

PRESIDING JUDGE SMITH: If we could please get that. Are you going to present it today?

MS. BOLICI: I will present it as soon as I manage to put it on screen.

PRESIDING JUDGE SMITH: All right, thank you.

MS. BOLICI: Haradinaj similarly confirmed at trial that he did say that the release of witness names might have caused someone dead or might have scared someone to death. The accused stated in the course of this trial, and repeatedly during the indictment period, that releasing witness names would endanger their safety. This is entirely accurate, indeed, and witnesses knew it as well as the

accused. It's only realistic that the witness security risk dramatically increased and that they felt scared, exactly as the SPO witness security officer testified.

The accused in their testimonies attempt to construe the following reason. We knew that releasing witness names would harm witnesses. We did not release witness names. As you can see, we did not want to harm witnesses. If not, Your Honour, that the second proposition of this reasoning is patently false. The accused did release witness names. They knew that releasing witness names would harm witnesses, but they [indiscernible]... witness names, nevertheless. The only reasonable conclusion is that they intended to cause the serious consequences that their actions produced.

Conclusively, all elements of Counts 5 and 6 of the indictment are proven beyond reasonable doubt, included in the aggravated form of the criminal offence provided under Article 392(3) of the criminal code.

Moving now to the criminal offence of intimidation under Count 3 of the indictment, which is at the core of the accused's responsibility. Let me note that even the sole evidence we just went through, a very limited selection, would be sufficient to prove beyond reasonable doubt that the accused used serious threats to induce or attempt to induce persons to refrain from making a statement or to make a false statement to the SPO and/or the KSC.

But there is much more.

Not only the accused disseminated confidential information on

protected persons, they did so in the loudest possible way. They announced the release of information on protected witnesses in the course of press conferences that were broadcasted live. They attended a significant number of TV programmes in a short period of time to ensure that the same message would be repeated over and over again, that the pressure on witnesses would remain high.

And what was the message that they kept sending to the general public and to any witnesses among the public? The very message that Haradinaj articulated right at the first press conference. This is P1-ET, page 3, that all SPO witnesses must now know that their names and surnames are known, that nobody's unknown, and that witness statements were being distributed.

The accused's unmistakable message to witnesses was that their identity was being left to the public domain, that they could no longer be protected. Were such words capable of inducing witnesses to refrain from making statements or to make a false statement? The Trial Panel heard the Haradinaj Defence's own investigative expert acknowledging that such words could create an intimidating effect on witnesses.

The accused avert that they did not approach any specific individual to convey their threats. The indictment, indeed, does not allege otherwise. The accused's threats were addressed not simply to one individual, two, or ten. Their threats were directed to all witnesses, to everyone who ever interacted with the SITF or the SPO, those mentioned in the batches as much as those who are not mentioned

in there.

Based on what has been retrieved at the time of the seizure, Batch 2 contains in proportion way less witness information than the other batches, but the resonance of the second press conference reinforced the intimidating message of the accused not less than in the other two occasions. The fact that the accused stated that additional witness information was being released was as effective as the release of the information itself.

If it is true that a picture is worth a thousand words, how great is the power of multiple video statements that circulate from person to person, from device to device, from house to house, and that keep repeating: We know who you are. Don't think anyone will protect you now.

The evidence further shows that the accused did not just tell witnesses that their identity was known. At the same time as they stated the witness identities were being made public, Haradinaj and Gucati accused witnesses of being spies, traitors, collaborators, criminals, Albanian speakers, and bloodsuckers.

In various moments in the course of these proceedings, the accused tried to downplay the meaning of these accusations. However, the threatening power of their words, the authenticate interpretation of their meaning, is explained in a number of revealing moments by the accused themselves. For example, at the same time as he addressed witnesses as Albanian speakers, Gucati clarified on camera, and this is P90-ET, page 10 to 12, that by Albanian speakers he meant

"traitors of our country," those who did not have the best interest of Kosovo in mind. On the same occasion, he accused witnesses of cooperating with this Court in order to obtain documents for asylum purposes.

As to the meaning of accusing witnesses of being Serbian spies, this was clarified very neatly by Haradinaj himself in the course of his testimony. I will play the relevant excerpt in English with the Albanian interpretation on the Albanian channel.

[Video-clip played]

THE INTERPRETER: [voiceover] "They accused us of having cooperating with the Serbs and brought documents here. Accusing people of taking part in the law, that you're a collaborator of the secret Serbian services, that is the -- the -- the ultimate accusation you could level."

MS. BOLICI: "Accusing people of taking part in the law, that you're a collaborator of the secret Serbian services, that is the ... ultimate accusation you could level."

That's how Haradinaj himself defines the terminology that he used to threaten witnesses.

And words of the accused must be also understood in light of the climate of witness intimidation which pervaded trials against KLA members in Kosovo. Court judgements document it. Both SPO and Defence witnesses alike described this reality.

The Defence expert compared being a witness in trials against KLA members to being perceived as a traitor to the cause. He

affirmed to have never seen anything as witness intimidation in trials for Kosovo. Not even in organised crimes. He stated the climate of witness intimidation was frightening.

Gucati, who was rather unwilling to declare at trial that there is a climate of witness intimidation in Kosovo, acknowledged, nevertheless, in the course of his testimony that it was impossible for someone living in Kosovo to be unaware of the trials against KLA members. He stated "... if you live in Kosovo and are unaware of the trials against KLA members, that would be an impossible situation."

He added that:

"Every trial against members of the KLA is known to everyone. Not only to the people ... in their 50s like me, but every single child in Kosovo is equally aware of the trials held against KLA members."

And, in fact, in the course of the indictment period, the accused did refer to this history of intimidation to enforce their threats. This is, for example, what Haradinaj does when he stated, at P8-ET, page 26, that "the first batch was only intended to tell us: You poor morons, you fools, you born spies, you spies, do not think that someone will protect you, they will only exploit you, because no one in the world has ever protected a spy after exploiting him. On the contrary, he has been either killed, discredited, or derided. How can you have such expectations, betray your people, your army, lie, concoct with the evidence provided by the enemy?"

As made crystal clear by Haradinaj's words, the accused intended

to send the message to witnesses that, as happened in the past, persons who cooperated with judicial authorities will now be killed, discredited, or derided.

In one particularly evasive part of Haradinaj's testimony, he tried to distance himself from these words by claiming he pronounced them on a humorous television show and was talking about the collaborators from a historical perspective. Such an interpretation is unacceptable. First, because he was expressly referring to individuals named in Batch 1. But above all, because the video recording of these words is in evidence for the Trial Panel to assess whether there was any trace of satirical lightness in what Haradinaj said. It was not a joke, as Haradinaj tried to argue in court. It was very serious and it was a threat.

The criminal offence of intimidation under Article 387 of the Kosovo criminal code is a conduct crime, meaning that no specific consequence needs to be established by virtue of the actions of the accused.

The evidence shows that serious threats of the accused had the power of inducing and were carried out with the intent to induce or attempting to induce persons to refrain from making a statement or to make a false statement to the SPO or the KSC. Evidence provided in this trial that witnesses did feel intimidated and that certain persons were dissuaded from further engagement with the SPO is only yet another confirmation that the accused's actions had the potential of doing so.

The accused's responsibility for Count 3 of the indictment has been proven beyond reasonable doubt.

In relation to Count 4, retaliation. It became clear in the course of the trial that with their actions, the accused wanted not only to discourage witnesses from providing evidence to the KSC or the SPO. They also wanted to punish all those who were already cooperating, who had provided already a statement.

In a Facebook post that predates the indictment period, at P83, on 4 July 2020, Gucati described the judicial process before this Court as a battle between Kosovo traitors, Serbian spies, willing to cooperate with the Court, and supporters of KLA members. And he warned that in this battle, people will be named and shamed.

The actions of the accused between the 7th and 25th September 2020 fulfilled this promise. The accused published the identities of those who had cooperated with the investigative authorities for the person to be shamed, exposed, marginalised, harmed. This is what Gucati does, for example, in a TV interview on 7 September, right after the first press conference at P9, when he observed that he saw in Batch 1 that "there were lots of people in whom we trusted ... that we trusted, we welcomed them in our houses, meetings ... respected them ... and the likes."

And when he adds in the course of the same occasions that these persons were Serbian collaborators, when he addressed them as a contrivance, a collaboration of a ring of Albanian-speaking people, in Serbia ... always pretending and attempting to find someone guilty

and present them to court.

Your Honour, what is required for retaliation under Article 388(1) of the criminal code is a harmful action. That the action, in fact, causes harm is not an element of this offence, as otherwise the criminal code would have specified so. The code does so in relation to other offences against the administration of justice. Article 388(1) exemplifies the relevant action by referring "to any action harmful to any person, including interference with lawful employment or livelihood." This clarifies, first, that contrary to what is argued by the Defence, the harm intended is not to be one of violence, but it also clarifies that no causation is required. The wording of the offence does not refer to lawful jobs being lost or livelihood being diminished. It's the action that matters in itself. The interference with these named protected interests, regardless of the consequences.

This said, witnesses were harmed by the conduct of the accused. If their privacy rights alone were violated, that would be a harm unjustly caused already. But there is much more. As we recalled earlier, the accused created risks to witness securities and well-being. Witnesses were afraid and lost confidence that they and their families would be protected. Some witnesses were exposed to so much danger that they required relocation.

For retaliation, the perpetrator is required to act with the specific intent of retaliating against witnesses for providing truthful information relating to the commission or possible

commission of a criminal offence.

Proof that the information provided by the witnesses was objectively true is not required. The truthful information is only referenced in the context of the crime's subjective element. A contrary interpretation would lead to a disproportionate inquiry, because for every retaliation trail in Kosovo there should be a collateral trial on the credibility and reliability of the information provided by the witnesses. On the other hand, the perpetrators need to act with the knowledge that the information provided by the witness he retaliated against might be true, in accordance with Article 21 of the criminal code.

The accused attempted to defend themselves during trial by asserting that the witnesses in the materials they reviewed were nothing but liars who provided fabrications. However, when asked how they knew, how did they establish that the information contained in the witness statements they reviewed were lies and fabrications, the accused were unable to provide any reasonable explanation.

For example, in his testimony, at page 2369 to 2370 of the transcripts, Gucati stated that he concluded that witnesses who provided statements against KLA members lied without even having read the statements. He concluded so because no KLA member could possibly have ever committed any crime. He then lamented that the Prosecution was trying to infringe his right to think whatever he wanted.

But is it really acceptable, as the Defence argues, that to escape responsibility for retaliation it is enough for an accused to

state: I believe that all possible suspects are innocent and, therefore, any possible witness is a liar? The fact is that there is no requirement that the accused need to agree with the criminal offences having been committed. The point is whether the accused had knowledge or any reasonable ground to believe that all witnesses they retaliated against were slanderers. Every single victim who testified about -- provided a statement about the mistreatment he or she was subject to, did the accused know that these persons were slanderers? Every single family member would tell a story of how a loved one who went missing and was never seen again, how did the accused could know, could reasonably know, that these persons were slanderers?

The fact is that by attacking anyone who cooperated with the SITF or the SPO, the accused, by definition, attacked every truthful account given. The accused did not, nor were they possibly in the position, to discern between persons who had provided truthful or untruthful information to the SITF or the SPO, amongst the hundred of identities and personal data they disseminated. The accused refer to these witnesses as liars only to discredit and smear witnesses providing evidence about alleged crimes committed by members of the KLA.

Conclusively, the accused were fully aware that the information in their possession, including information formally provided by witnesses to prosecuting authorities, might have been true, and intended to retaliate any witnesses who provided such truthful

information. As such, not only the criminal conduct but also the accused's *mens rea* for the crime of retaliation had been proven beyond reasonable doubt in the course of this trial.

In relation to the obstruction charges under Count 1 of the indictment. Let me first recall how powerful is the evidence in this case that the ultimate intent underlying every single conduct of the accused was to obstruct the SPO and the KSC from discharging its mandate.

The accused could not have been more explicit that they are opposed to the KSC and the SPO mandate. The KSC is mono-ethnic and racist, they say. It practices selective justice because it does not prosecute Serbian crimes. It is supported by every traitor and spy. It relies on witnesses that are collaborators of the enemies. Its justice is picked up from the Milosevic apparatus.

The accused were and are willing to do anything to stop the KSC and the SPO from fulfilling its mandate.

When legal means to amend this institution failed and the batches present the dream opportunity, in Gucati's words, the accused took the law into their hands to obstruct the SPO and the KSC.

For example, when confronted by a journalist on 17 September 2020, who argued that the conduct of the accused could be seen as an attempt to undermine the administration of justice, Gucati answered the following:

"Every document that I receive that is from the Special Court, if somebody brings them to me and drops them at my door, we will make

it public ... If we could, we would get rid of this Special Court in five minutes. We will disband this Special Court, because it is a court ... find me a country, anywhere in the world, where there has been a war, where there has been such a one-sided court."

This is P28-ET, page 11.

But also in the course of the third press conference, for example, at P35-ET, page 3, Haradinaj stated that the KLA War Veterans Association would publish "everything they received that exposes this indictment and these indictments that they want to file."

On another occasion, Haradinaj and Tome Gashi asserted at the unison that the KSC should now think twice before confirming indictments. And this is P7-ET, at page 12.

The words of Haradinaj, if possible, are even clearer. The following excerpt, it's from Exhibit P18, a public appearance dated 16 September.

[Video-clip played]

THE INTERPRETER: [voiceover] "[No interpretation]."

MS. BOLICI: Haradinaj was asked whether he was aware that what he was doing would damage the court process, and he replied that this is exactly what he likes.

In another appearance, this is P8, dated 20 September, this is what Haradinaj states.

[Video-clip played]

THE INTERPRETER: [voiceover] "[No interpretation]."

MS. BOLICI: In Haradinaj's own words, "the court will totally collapse because the witnesses too now know that others know who they are."

Your Honour, every single action of the accused throughout the indictment period was done with the intent to obstruct the SPO and the KSC. The evidence is overwhelming, and other examples are referenced in the SPO final brief.

The Defence contests, however, that the conduct of the accused does not fulfil the *actus reus* of the criminal offence of obstruction by serious threat under Article 401(1) and (5) of the code because the accused did not make a serious threat of force and because the threat was not directly addressed to the official persons.

On the serious threat as a threat of force. Attempts to read an additional requirement that the serious threat be one of force into the clear language of the provision has no legal basis. The ordinary meaning of "serious threats" without more connotes no such limitation. As such, for example, the crime of threat under Article 181 of the criminal code refers to "whoever seriously threatens by words, acts, or gestures to harm another person in order to frighten or cause anxiety to such person" without further qualifying the nature of the harm to be inflicted.

When such qualification is required, it is set out in the relevant provisions, such as, for example, Article 181(2) of the criminal code, Article 114, or Article 227(3).

The Defence argument that the offence falls under offence

against public order in the code is also entirely inconclusive. The sections of offences against public order includes several offences that clearly do not connote force or violence. For example, it includes, at Article 411, the crime of unlawful provision of legal assistance, which is certainly not a crime of violence.

In conclusion, the nature of the harm to be inflicted does not qualify the offence of obstruction under Article 401(1), as long as the threat reaches the threshold of seriousness. For example, threatening someone to irreversibly compromise his reputation or to make him lose his job might qualify, under the relevant circumstances, as a serious threat.

On the second point, in light of the plain language of Article 401(1), serious threats need not to be directed to official persons themselves. They can be very well directed to third persons, as long as such threats are conveyed to the official persons and that the effect of obstructing or attempting to obstruct the official persons from performing official duties.

There is nothing ambiguous in the formulation of the criminal code on this point, nor it is a violation of the principle of strict construction to not read words into a statutory provision if these words are not written in there. Had the legislature intended to circumscribe who could be threatened, it would have specifically done so as it specifically does so in relation to other crimes.

I would like to highlight the Panel's attention, in particular, to Article 402 of the criminal code, which can only be committed if

the perpetrator seriously threatens to attack directly an official person or a person who assists in performing official duties, but not third persons.

In relation to the offence under Article 401(1), if, for example, a perpetrator were to threaten a family member of an official person in order to obstruct the official person, the threat would certainly, without doubt, fulfil the relevant element of the offence. But even outside the circle of the personal interests of the official person. Imagine, for example, if a perpetrator were to take hostage someone completely unknown to the official person and threaten to harm this individual. That case would also satisfy the statutory requirement, as long as the official person is put in a situation when he must choose between the alternative of not performing his official duties or having someone else unjustly harmed.

In the present case, consideration should be given to the following: First, the necessity of witness testimonies to carry out investigations and criminal trials; second, the interest of the SPO and the KSC and the statutory duty to protect the security and well-being of witnesses; third, the far-reaching scope of the threats made by the accused affecting everyone whoever cooperated with the investigative authorities; fourth, the public nature of the threat which, as such, was conveyed to the official persons within the SPO and KSC as well. Such threats were directed to prevent KSC and SPO officials from continuing to carrying out investigations and criminal

proceedings by threatening that, otherwise, witness security and well-being would be seriously endangered, that witnesses would be harmed.

The evidence of all of the above, together with the evidence of the accused's declared purpose, proved beyond reasonable doubt the responsibility of Hysni Gucati and Nasim Haradinaj under Count 1 of the indictment.

In relation to Count 2, the evidence also shows that in the indictment period the accused did not act alone. They participated in a group of persons composed of the accused, Klinaku, Tome Gashi, and others, including other members and representatives of the KLA War Veterans Association, whose common action obstructed or attempted to obstruct the official duties of this court.

Both accused and Defence witnesses have confirmed, for example, that the number of KLA War Veterans Association senior members participated in a review of the batches as soon as they were delivered. The decision to call the three press conferences were taken collectively on each of the three occasions. Faton Klinaku, Cele Gashi, and other KLA War Veterans Association members appeared at the speaker table of the three press conferences next to the accused.

After the first press conference, a resolution of the presidency of the KLA War Veterans Association intervened, establishing that if other confidential documents were to be delivered at the KLA War Veterans Association premises, they will be published with no

hesitation. Faton Klinaku and Tome Gashi provided public statements that echoed and reinforced the threats made by the accused and mirrored their criminal intents.

The KLA leadership acted as a coordinated group throughout the indictment period. But the evidence shows that, in their capacities as chairman and deputy chairman, respectively, of the KLA War Veterans Association, Gucati and Haradinaj coordinated and organised the group in taking these actions.

One prominent example is 8 September 2020, when neither Gucati and Haradinaj were present in Prishtine, and other KLA War Veterans Association members agreed to give execution to the KSC order for seizure only after Gucati provided a verbal authorisation to Klinaku over the phone. Haradinaj was informed immediately after. Haradinaj, on the other hand, played a prominent role as the spokesperson of the KLA War Veterans Association in channelling the accused's intimidating message through the media.

The term "common action" in Article 401(2) of the Kosovo criminal code has no qualifier and does not require one. The provision is not limited only to situations of common action to use force or serious threat of force. Not even a serious threat itself is required by the provision. Nonetheless, in the framework of the present case, for the reasons considered earlier today, the evidence establishes that the actions jointly carried out by the accused and their associates did amount to a serious threat obstructing or attempting to obstruct official persons in performing official

duties. The evidence establishes that the accused were aware of and desired to participate in a group to obstruct official persons in performing official duties.

One of the occasions when Nasim Haradinaj publicly encouraged the delivery of further confidential documents and threatened to continue publishing such materials, in one of these occasions Haradinaj observed that, if not him, Faton Klinaku -- or, actually, even the lowest ranking member of the KLA would be ready to carry out the same task. The accused were fully aware that by carrying out their criminal actions as a group, the likelihood of being successful in obstructing the work of the Court would exponentially increase.

The campaign of intimidation unleashed by the accused involved way more than three people and was a powerful and calculated attempt to silence all those who cooperated or intended to cooperate with this institution in order for official persons within this Court to be prevented from fulfilling their mandate.

Your Honour, I'm told that we'll be ready with the revised version of the slide that I've shown after the break.

And I will just conclude now by observing that the evidence presented at trial proves the accused's responsibility beyond reasonable doubt. It warrants a conviction on all counts. As it will be recalled by my colleague in the second part of the SPO closing statement, any Defence attempt to argue the contrary in the course of this trial has inexorably failed.

Thank you.

PRESIDING JUDGE SMITH: Thank you, Ms. Bolici.

We will break now for the mid-morning break, and we will take up the second session at 11.30.

So we are adjourned.

--- Recess taken at 10.57 a.m.

--- On resuming at 11.30 a.m.

PRESIDING JUDGE SMITH: Mr. Halling, just a point of inquiry. Do you intend to have your section completed by the end of this session, or will we go into another session?

MR. HALLING: We're endeavouring to complete it this session, Your Honour.

PRESIDING JUDGE SMITH: Okay, all right. Fine. Then what we'll do is when they're finished, we'll break, we'll come back and do our questions afterwards. And it doesn't seem to be -- it would not be fair to you two to just start out late in the day, so we'll, if it's all right -- if you want to, we can, but I envision coming back tomorrow to start with your presentation.

MR. REES: No, I would be grateful if we could only start tomorrow. A fresh start would be --

PRESIDING JUDGE SMITH: That seems to be a decent way to do it, so we'll do that.

Mr. Halling, you have the floor.

MR. HALLING: Thank you, Your Honour.

For the remainder of our time, I'll be presenting the SPO's responses to the final briefs of the Defence teams. This is filings

F00567 and 566 in the case record. I'm going to be focusing on a number of evidentiary legal procedural matters that are arising from these briefs, trying to stay away from things that were already addressed this morning or in our written final brief. I mean, ultimately at the end, this entire presentation is intended for the Judges of the Trial Panel, so I understand that you would like to ask questions at the end. If you would prefer to ask questions as I go, we would welcome that as well.

Overall, the Gucati and Haradinaj Defence's final briefs, they do not reflect the level of care and attention that the first final briefs of its kind in the history of the KSC deserved.

The Gucati Defence seems to be reserving its discussion of the evidence to this week's hearing, because the brief does little more than recite the same cramped and specious legal understandings that were being advanced before the Rule 130 decision. Indeed, before the trial had even started. There is no meaningful engagement with the evidence, most conspicuously as regards the testimony of their client and the other five Defence witnesses that they called.

The Haradinaj Defence brief makes numerous outlandish claims and significant misstatements of the record in the course of its final brief. To say something at the beginning, this is not a comment about zealous advocacy. Zealous advocacy of Defence lawyers is critical to ensuring that the fairness of trials is preserved and that justice is done. The Haradinaj Defence should not be faulted for aggressively defending their client. That's not what I'm saying.

But aggressive submissions, especially aggressive submissions, need to have substance behind them in order to be meaningful. And here's what we see.

From paragraph 432 of the Haradinaj Defence final brief, the entire proceedings are fundamentally flawed. They've not been undertaken in accordance with Article 6 of the European Court of Human Rights.

From paragraph 489 of the Haradinaj brief, that the SPO's approach in this case is "a threat to the rule of law, it is a threat to the faith people have in criminal justice institutions, and is a threat to democracy."

If you're going to talk like this, if you're going to say that these proceedings were fundamentally unfair, that the Judges' control of them nevertheless breached the European Court of Human Rights, and that the SPO is threatening democracy, you need to be able to back that up. And they don't. And they can't. And I intend to spend the next hour and a half showing just how much they can't.

Starting with disclosure. The disclosure issues in this case were fully litigated under the control of the Trial Panel. Decisions were taken, it led to some things being disclosed and other things not. All of these decisions were taken in furtherance of the fairness of the proceedings not to, as argued in paragraph 31 of the Haradinaj brief, to entrench opacity with the overt approval of the Trial Panel.

That the Defence did not get adequate disclosure, as they allege

in many places in the Haradinaj brief, paragraphs 39 and 40 among them, is without basis, and it ignores the many rulings that were clearly in their favour in the course of the trial - most notably, the Rule 102(3) decision for which leave to appeal was sought by the SPO and not by the Defence. And that decision, for the record, is F00413RED.

Relatedly, the Trial Panel has not received all pages only of Batch 3, and that's because it's internal work product. All information related to the delivery of the batches or to entrapment was reviewed in the course of the Trial Panel's disclosure orders. To say that the Trial Panel did not do a careful or otherwise examination, as alleged by the Haradinaj Defence at paragraph 431, misrepresents the disclosure litigation in this case, and it's simply an error, as they say at paragraph 439, to say that a Trial Panel review was refused.

The right to confront the evidence of the accused informed the procedural decisions taken throughout this trial, contrary to what's alleged at paragraph 212 of the Haradinaj brief. The Trial Panel set a framework where the documentary evidence, in particular, was subjected to scrutiny on this point, and a good number of items were declared inadmissible on grounds that their admission would lead to a lack of meaningful confrontation.

But now we are here. The evidence has now been admitted, and the evidence admitted in this case was admitted in full conformity with the accused's rights. To keep arguing in their final briefs

that the Defence could not confront the evidence effectively ignores what happened in this trial, and it amounts to disguised and unsubstantiated reconsideration requests.

This doesn't just happen in the disclosure context, Your Honours. Evidentiary rulings are affected as well. The SPO was allowed to adduce "blatantly irrelevant" evidence about the climate of intimidation in a witness intimidation case, mind you. But the accused could not adduce evidence concerning EULEX corruption and political interference. This is argued in paragraphs 256 to 257 of the Haradinaj brief, and it's characterised as yet another example of how the principle of equality of arms has been violated throughout these proceedings.

To again take a step back and remember what actually happened in relation to those witnesses, there are two Haradinaj Defence witnesses that they were presenting for this EULEX corruption part of the case. They were struck by the Trial Panel in a fully reasoned decision. Leave to appeal was granted *proprio motu*, and the decision to strike those two witnesses was confirmed on appeal. That is the sequence of events that is being alleged as violating the European Court of Human Rights.

On that climate of intimidation, there was an objection raised, in particular, during the SPO's cross-examination of Robert Reid, and there was an objection specifically based on 143(3) of the rules. You can see it on the screen here. Counsel was focusing on the part of the rule that limited cross-examination to the scope of direct.

And on page 3311 of the transcript, the Presiding Judge correctly brought to the Haradinaj Defence's attention that there is a second sentence in that rule that actually does allow for questions beyond the scope of direct in certain circumstances.

How is this exchange framed in the final brief? Well, you can see at paragraph 7 of the Haradinaj final brief that "the line of questioning *prima facie* was prevented by Rule 143(3)," and they selectively quote the rule again. Again, the second sentence isn't there. It's a commitment to an alternate reality. It's pretending that this trial didn't happen, because what happened during this trial conclusively proved the guilt of the accused.

And so the Defence teams are arguing about something else that didn't happen, and you see this perhaps most prominently with the way the accused in the Defence briefs, they're relying on non-admitted evidence.

As Your Honours well know, Rule 139(1) of the rules requires that only admissible evidence be considered by the Trial Panel in its Judgement. In paragraph 98 of the Haradinaj Defence final brief, the Haradinaj Defence says that the defendant has been clear in his position that people should cooperate with the KSC and the SPO. There's a single document cited in support for that entire paragraph. It's a statement from 2019. It's a year before the charged timeframe. It's a statement of Gucati, the co-accused. And, most importantly, it was never tendered for admission into evidence. An X should be drawn through that paragraph of the Haradinaj final brief.

The same with paragraph 385. The SPO staff member who wrote that Haradinaj said he warned journalists not to mention names, this was in an Official Note that was tendered but was declared inadmissible at trial. It's relied upon anyway.

You see this also with the way counsel's questions are used in the final brief. Counsel's questions are not evidence. Only the witness's answers to those questions are evidence. There is no evidence, for instance, that 25 SPO staff members were ever dismissed because of the delivery of the batches or for any other reason beyond counsel's questions. But that doesn't stop the Haradinaj Defence from relying on that being put to a witness in paragraph 27 of its final brief.

Another example of counsel's submissions masquerading as evidence is in the list of names that Mr. Rees read out to Ms. Pumper during her testimony. This is framed at paragraph 322 of the Haradinaj brief as "publicly known witnesses or potential witnesses." That characterisation of "publicly known" is not accepted. The proof of that is not in evidence. There is no way that that can be derived from the evidence before the Trial Panel.

In paragraph 319 of the Haradinaj brief, an Albanian witness is alleged to have been publicly engaged on matters within the SITF mandate. This is based on a single media article which was tendered by the Gucati Defence, and it was declared inadmissible by the Trial Panel. And this is in decision F00502 at paragraphs 36 to 39.

The SPO officer wrongly alleged to be implicated in the batches

was the subject of questioning when Ms. Pumper and Mr. Jukic were re-called, and this questioning was in relation to an Official Note that was disclosed to the Defence. From the questioning, there was nothing known about this topic other than what was read in that note, which means that it is the note and the interview corresponding with that Official Note, which is the only basis for which that allegation against the SPO staff member exists, wrong and unsubstantiated though it may be. Neither the note nor the interview corresponding with it were tendered in this trial, but that didn't stop the Gucati Defence from relying on it anyway in their indicia of entrapment at paragraph 134 of its final brief.

There are times when the Defence does not even make an attempt to stay within the evidence record, such as when it descends into conspiracy theories at paragraphs 22 and 26 of the Haradinaj brief, about foreign intelligence services being involved in the acquisition of the batches. It's an interesting read, but inferences into how the batches were leaked, they go beyond the scope of the case. As we have been saying since the beginning, it's a developing investigation; it's unknown and uncertain. What the SPO has done in this case is taken the part of this broader investigation that was certain and premised the charges against the accused on that.

The false reality being advanced repeatedly across these briefs requires extra scrutiny to be applied when reviewing the arguments of the Defence and the information that they cite. You see this also with the way Miro Jukic's credibility is discussed in the course of

the Haradinaj brief.

There are many aspects of Mr. Jukic's testimony that are attacked across the Haradinaj brief. I'm going to focus on a few of them and would welcome questions from the Panel if there are other aspects of the examination that you would like our position on.

Starting at no office in Prishtine. This is alleged at paragraph 136 of the Haradinaj Defence. Mr. Jukic said there was no SPO office in Prishtine, and this is a credibility problem for him, noting Mr. Moberg's evidence about returning to an office after Batch 1 was taken.

As would be true from any of these, the context of the answer needs to be considered when evaluating the Defence argument. Here the context comes from pages 1776 and 1777 of the transcript. And it shows that Jukic is saying there is no permanent SPO office in Prishtine. The response comes in the context of discussing SPO officers coming in a rotation and about there being no permanent SPO representative there.

This is consistent with Daniel Moberg's evidence. There is no allegation that the SPO never had office space on any occasion in Mr. Jukic's testimony. Whatever discrepancy there is seems to be something that is more technical than meaningful.

By the way, the presence or absence of an office of the SPO in Prishtine is not a fact of interest in this case. And, frankly, it's kind of a strange thing to lie about. Why would the SPO's witness security team leader have told a falsehood on this kind of a point?

It doesn't make sense.

On the number of concerned witnesses. This is discussed at paragraphs 146 to 150 of the Haradinaj brief; paragraph 241 as well. Mr. Jukic did not go from a majority of witnesses, to very few, to two. He's talking about different things each time, and what the Defence are actually exposing in their argument is a distinction with the quality of the questioning of the witness, rather than a point of credibility.

Mr. Jukic is asked about this twice in the course of his testimony. The first time it's on pages 1761 to 1762 of the transcript, when Judge Barthe is questioning the witness. And the questions are asked in sequence: How many witnesses had security concerns, how many witnesses were threatened, and then how many witnesses are relocated. And the answers were: A majority had security concerns, very few were threatened directly, and two were relocated. The answers moved along with the sequencing of the questions, and the group gets smaller in a way that would be completely logical.

This questioning is revisited by Mr. Rees at page 1834 of the transcript, and the questions are not sequenced in the same way, and all three numbers come out. It is jumbled in the second exchange, but the only way to read the first and the second exchanges together is that Mr. Jukic is talking about the same three categories in the second extract as the first.

Again, this is a comment about the precision of the questioning.

It is not a deliberate attempt of the witness to present the SPO position as being much worse than it actually was, as alleged at paragraph 150 of the Haradinaj brief.

All witnesses were scared or upset. This is argued at paragraph 222 of the Haradinaj brief. Obviously not all witnesses were scared or upset. Your Honours have seen contact notes of witnesses who were not.

Again, the context of the answer matters. When Jukic is talking about all of the persons being scared or upset, this is about the witnesses who contacted him. And this is clear from pages 1881 to 1882 of the transcript. Contact notes where the SPO called or met with witnesses, such as those reflected in the admitted contact notes, were not what he was referring to.

Unsupported statistics. The Gucati Defence put it to Jukic in the course of his examination that 37 witnesses expressed concerns and 77 did not, and Mr. Jukic said he didn't know that. Not only are these numbers framed awkwardly at paragraph 145 of the Haradinaj brief, suggesting that the 37 and the 77 numbers are both sets witnesses that didn't have concerns, the more important take away is that those numbers are an invention of the Defence. Agreed facts were proposed along these lines. They were not agreed to. The SPO doesn't accept that these statistics are a meaningful characterisation of the notes. And an overwhelming majority of these notes are not admitted in evidence, such that any statistics of this kind can be derived from them. This doesn't reflect a position of

not knowing being maintained by Jukic. These numbers are Defence calculations that aren't in evidence that the witness didn't know.

The indictment does not require specific quantitative thresholds on the witnesses. Jukic never claimed to be able to provide precise statistics on the contacted witnesses, nor is it a clear ploy that he did not do so as argued at paragraph 372 of the Haradinaj brief. He was able to provide an overall picture of what the witness community experienced following the conduct of the accused, and he provided a factual basis for that overall picture differentiating between things that he learned first-hand and things that he learned from others. And, in a case where one affected witness is enough for a conviction on all counts with all sentencing enhancements, the evidence of Mr. Jukic is more than sufficient to establish the propositions for which it was tendered.

The hearsay reported by Mr. Jukic is attacked at paragraph 142 of the Haradinaj brief. The hearsay Mr. Jukic testified to is reliable. It is reflecting the witness's state of mind shortly after the time of the charges. What Jukic is reporting in his testimony is consistent with the contact notes that have been admitted, from Ms. Pumper's testimony, the climate of intimidation in Kosovo, and a common sense understanding as to how a witness in that climate would react to having their protected information revealed. It's actually an understanding shared by the accused themselves.

You may remember this exchange of Mr. Haradinaj's testimony about his preliminary summary, where he said that if the information

was released it could cause their death or scare them to death because they were acting on the basis they were protected witnesses. When I first asked Mr. Haradinaj about that, he acknowledged that he had said it. So the fact that he said it, that's in evidence. But he said initially that this was something that he heard about being in the media. But he's later questioned, and he acknowledges that he thinks it's true also.

Let's watch the relevant part of the testimony.

[Video-clip played]

"MR. HALLING:

"Q. So in your preliminary summary when you talked about the public opinion of witnesses being scared to death, this is a public opinion that you agree with; is that correct?

"A. [Interpretation] Who wouldn't agree if it was true? If something is true, there is nothing to agree to. There's nothing to -- not to agree with if people are being -- being an obstacle to -- to the justice, Mr. Prosecutor. I am all in favour of justice."

MR. HALLING: Indeed, who wouldn't agree if it was true. He's acknowledging that this is true.

The Gucati Defence. Mr. Gucati, when he testifies, says similar things.

Your Honours asked for a corrected slide of the slide from the first session. It's relevant on this topic. And you can see the language:

"I'm telling you again, if a name was released by myself, by the presidency of the KLA WVA, of course then we would have harmed in a way the witnesses. ... we have not disclosed any such thing."

And then:

"If we had released names, it is true that perhaps they could have felt scared, but we did not release names."

There is nothing, Your Honours, in these final briefs which would justify not relying on Mr. Jukic's testimony in full in Your Honours' deliberations.

The distortions continue into discussions of the law and the procedure and evidentiary principles in the final briefs. Specifically, we'll start with the misapplication of principles of statutory interpretation.

Ms. Bolici talked about the principle of strict construction briefly this morning. To focus a little bit more on that, the principle of strict construction's resolution of ambiguities in favour of the defendant is something that applies when standard principles of statutory interpretation fail to revolve the matter. You have to apply the standard methods first before resolving ambiguity in favour of the defendant. And that makes sense, because otherwise any dispute about legal elements would devolve into a kind of lowest common denominator proposition where the Defence's interpretation of the law would always be correct, because that's the one that they prefer.

And you can see the correct application of this principle as an

example in the ICTY's appeals decision in Milutinovic *et al*. I'll give the citation. It's decision on Dragoljub Ojdanic's motion, challenging jurisdiction under joint criminal enterprise; 21 May 2003, paragraphs 27 and 28.

Judge Eboe-Osuji also argues, in reference to the rule of Lenity, which is another way of describing this part of the principle of strict construction, that the old rule of Lenity has been held to be only a rule of construction which applies when there is real ambiguity following the application of other rules of construction. And that's from paragraph 433 from the Decision on Defence Applications for Judgements of Acquittal, and it's Judge Eboe-Osuji's reasons. It's in the Ruto and Sang case, ICC-01/09-01/11-2027-Red.

But that's not how the principle is applied in the Gucati Defence's final brief. In paragraph 15, when they are talking about reading a requirement of force into Count 1 on obstruction, there is reference to the legislature in Kosovo removing threat of force from the code, and they argue at paragraph 15 that whether the legislature intentionally removed this qualification is a moot point, because the KCC requires that any ambiguity be resolved in favour of the Defence.

You can't do that. That is applying it at the first point of call. Standard principles of statutory interpretation would clearly require no force element to be read into Count 1. There are many statutory interpretation canons. They have different names. I'm going to use the names from Scalia and Garner's book *Reading Law: The Interpretation of Legal Text* from 2012.

But there is something called the omitted case canon, which says that nothing is to be added to what the text states or reasonably implies. That is, a matter not covered is to be treated as not covered.

This is a classic example of failing to respect that principle. The word "force" is read into the provision where it doesn't exist, and it looks particularly glaring given the fact that that word is used earlier in the provision and is not repeated. That word is used elsewhere in the code. And it was, in fact, removed from an earlier version of the criminal code.

The same thing happens with Count 2. In paragraph 27 of the Gucati brief. And you see it actually with Count 6 as well. If you look at paragraphs 81 and 82 of the Gucati Defence brief, they are talking about how Count 6 has a requirement that there is no evidence that any relevant material was disclosed to the accused in criminal proceedings.

That language is clearly tracking statutory language, but they're tracking the statutory language of Count 5. The disclosure in an official proceeding, those terms do not appear in Count 6. Whatever those words mean, they can't just be transposed into a provision where they don't appear.

The inverse also happens in the briefs, where language in the statutory provisions is ignored; in the Haradinaj Defence arguments, at paragraph 81, for example. They are talking about obstruction. And they're saying that there is no evidence that there was any

obstruction resulting -- of an official person performing official duties and resulted in there being obstruction is in the statutory provision. But the provision continues. It results in obstruction or attempted obstruction. Both alternatives satisfy that element of the offence, and the Haradinaj Defence mentions the first one and not the second. The rule against surplusage is a canon of interpretation that, if possible, every word of every provision is to be given effect and none can be ignored.

Finally, the presumption against ineffectiveness is a statutory interpretation canon that says that a textually permissible interpretation that furthers rather than obstructs the document's purpose should be favoured. And this is where we need to talk about the Gucati Defence's interpretation of intimidation in Count 3.

At paragraph 51 of the Gucati Defence brief, they talk about intimidation being properly restricted only to those proceedings where there is an antecedent offence of obstruction in Article 386 of the Kosovo criminal code. That reading is illogically narrow.

The title of Article 387 of the Kosovo criminal code is "intimidation during criminal proceedings." Why that provision would be focused on only the smallest of subsets of criminal proceedings doesn't make any sense.

As we have argued in our final brief and elsewhere during this trial, there's a way of interpreting Article 387 that gives effect to the provision for all criminal proceedings, which is a far more natural understanding of what this purpose of this provision would

be.

Article 386 of the code talks about obstruction of evidence or official proceedings. It governs a variety of proceedings that aren't necessarily criminal proceedings. It talks about court proceedings, minor offences, administrative proceedings, proceedings before a notary public. So that covers the broad constellation of proceedings where you could have this kind of conduct, but in the specific context of criminal proceedings, they have heightened the protected interest. You see it in the language, talking about force or serious threats. You see it in the higher sentence. That is a far more logical understanding of how these provisions relate to each other. If the Gucati Defence's interpretation was correct, then it would be impossible to find cases in Kosovo where people were convicted for intimidating witnesses with an underlying main case of anything other than obstruction under Article 386 of the criminal code now.

But there are cases like that. I'll give you two of them now. In the Basic Court of Ferizaj, the case of KS and RB, this is Pkr 36-19, case number 2019:080214, 10 June 2020. It's a conviction for intimidation using the numbering of the identically worded 2012 code, which was Article 395, which was what was intimidation. Obstruction was -- now 386, was 394. And this was intimidation in relation to a shooting incident -- a witness in a shooting incident in a restaurant that was being pursued under the charge of the use of a weapon or dangerous instrument under Article 375 of the 2012 Kosovo

criminal code.

In the Basic Court of Gnjilan, the case of LT, P number 873/2020, case number 2021:013216 of 12 February 2021. This is again a conviction for intimidation, for intimidating a person in the context of an underlying harassment case. Harassment would have fallen under Article 186 of the 2012 Kosovo criminal code.

So the Gucati Defence has adopted an unduly narrow interpretation of this provision. A more natural interpretation of this provision exists, and that more natural provision is the way Kosovo courts seem to be behaving when interpreting the provision. Their legal interpretation on Count 3 does not work.

On principles of evidence. In specifically heightening a requirement of corroboration that doesn't actually exist. The SPO's most important evidence in this case is audio-visual. I said this at the Trial Preparation Conference. It's still true.

Counting how many SPO witnesses there are for a given proposition, as done often in the Haradinaj Defence brief, paragraph 15 amongst them, can easily misstate the nature of this particular case, and such arguments also ignore, as Ms. Bolici said earlier this morning, the array of Defence witnesses, including the accused, who gave further incriminating evidence.

As is clear from Rule 139(3) of the rules, there is no general requirement of corroboration, such that every fact needs to have some combination of testimonial and documentary evidence in order to be valid. Our primary evidence is not hearsay, as alleged at

paragraph 518 of the Haradinaj brief. It is party admissions on video to which no complaint about the right of confrontation could reasonably be made.

The Haradinaj Defence, in a related argument, the batches can't be relied upon because there was no chain of custody produced to the kind that the Haradinaj Defence wanted. This is at paragraph 262 of the Haradinaj brief. But there is myriad evidence establishing the authenticity of the batches in this case, from Ms. Pumper's evidence, to the delivery documents, to the evidence of the accused, and the other Defence witnesses, to the media articles, to the pages of the batches themselves. There are even itemised charts from Ms. Pumper that are far more descriptive of the items than any inventory being prepared at the KLA War Veterans Association on the day of the seizure ever would have been.

The Haradinaj Defence can't privilege a certain kind of evidence over another in this context. The totality of the evidence has to be considered to see how it all fits together.

THE INTERPRETER: The interpreters kindly ask the speaker to slow down for the benefit of the interpretation. Thank you very much.

MR. HALLING: Yes, I'm guided.

It's clear from the arguments of the Haradinaj Defence that there is no amount of chain of custody that would ever be good enough for them. You can actually see something like this, most prominently, perhaps, in their brief where they argue that the

Batch 1 doesn't have an adequate amount of chain of custody, even though with Batch 1 the SPO investigator who took it did appear. Did appear and answered all questions about how that batch was prepared.

On a procedural point and about disguised reconsideration requests of the indictment in this case, the entire point of having a preliminary motions framework is that certain procedural matters which have the potential to linger across the trial are resolved before it begins. Defects in the form of an indictment are one such motion, and they were raised in this case. They were responded to. They were resolved by the Pre-Trial Judge, and they were settled in an interlocutory appeal decision.

The Defence arguments relating to pleading specificity all should have been raised at that earlier point. Noting that there is no arguments in the final briefs that the conduct of the trial proceedings has somehow created any latent ambiguity.

We'll draw Your Honours' attention to an ICTY decision in the Karadzic case. This is the decision on the accused's motion for relief from defects in the indictment on 30 September 2014. It was in the context of dismissing a defective indictment challenge where the Defence argued that it had found defects in the indictment in the course of preparing its final trial brief. The Trial Chamber rejected that challenge, and they said that if indictment defect challenges are not made in a timely fashion, the burden shifts to the accused to show that the ability to defend himself has been materially impaired.

And that is from paragraphs 18 to 19 of that Karadzic decision.

The Defence make no such showing in their briefs.

So when the Haradinaj Defence argues in Count 5 that the witnesses needed to be identified, which is what they say at paragraph 316, this was challenged as an indictment defect. The Pre-Trial Judge rejected that challenge, leaving it for trial. And although the Defence sought leave to appeal on the identification of co-perpetrators, accomplices, and assisted insider persons, they did not seek to appeal on the identification of witnesses in the indictment.

In paragraph 67 of the Gucati brief, Count 5, contrary to what's argued there, or suggested at least, has never been particularised, only to secret information, such that the words must not be revealed, according to the law in Article 392 of the criminal code don't apply.

There are two parts to Count 5, focusing on that in particular, that it must not be revealed according to the law or has been declared to be secret by a decision of the Court. When the SPO talks about secret information in Count 5 of the indictment, it's referring to both of those alternatives. This was clearly understood in the Confirmation Decision, which made reference to both of those alternatives. And if the Gucati Defence considers it to have been vague or imprecise, it was incumbent upon them to challenge the indictment on that point, and they haven't done that.

The accused is also not charged with intimidating the media in the indictment, as suggested at paragraph 133 of the Haradinaj brief.

They're charged with using serious threats to induce or to attempt to induce witnesses, as is clear from reading paragraphs 4 and 29 of the indictment together. The Haradinaj Defence talks repeatedly about the way that uncharged common plan members are pled by the SPO; paragraphs 103 and 111 of their brief amongst them.

This practice is quite common. It's in full conformity with the European Court of Human Rights. And the fact that certain other people are named but are not charged does not reveal anything about the accused's individual criminal responsibility. And if a European Court of Human Rights case would assist Your Honours, I would suggest Karaman v. Germany; 17103/10 is the application number, 27 February 2014, paragraph 64, about the permissibility of charging on this point.

A final point. Cumulative and alternative convictions. The Gucati Defence is confused on this point. I will try and straighten it out.

First, contrary to what's argued at paragraph 142 of the Gucati brief, the SPO is not and has never asked for alternative convictions in this case. Ever. We are seeking cumulative convictions for the charged crimes in accordance with the materially distinct elements test, and the Gucati Defence agrees that that's the proper test to apply at paragraph 147 of its final brief.

We asked for findings on all alternative modes of liability, but any conviction for a given conduct would only be for one of those alternatives. What matters, ultimately, is that the full scope of

culpability is expressed.

So when the Gucati Defence argues that Count 2 is an aggravated version of Count 1, or that it is subsidiary to Count 1, as they do in paragraphs 30 and 146 of its final brief, they are misapplying their own materially distinct elements test. Counts 1 and 2 do have materially distinct elements, and the Trial Panel can enter convictions on both.

And now for the Defence case and entrapment. Entrapment is no longer framed as an affirmative defence, per se, in these final briefs. It's now framed as a fair trial rights violation which would prevent the trial from continuing. Permanently staying these proceedings for an abuse of process, as is asked for at paragraph 141 of the Gucati brief and paragraph 390 of the Haradinaj brief, is an extreme remedy. It's to be imposed where violations of the rights of the accused make it impossible for a fair trial to take place. And the Defence teams don't give Your Honours any authority about stay of proceedings in general, but there are two cases at the ICC Appeals Chamber, two Judgements that we will flag for Your Honours' attention. It's from the Lubanga case, both of them, and they are Judgements ICC-01/04-01/06-772, and ICC-01/04-01/06-1486.

There is no violation of the accused's rights in this trial, never mind a violation of such severity that an abuse of process warranting a stay of proceedings could be triggered. It also needs to be mentioned that even applications alleging fundamental human rights still need to be raised in a timely fashion, and these are

not.

This is the first time this relief has been formally sought, in their final briefs. As a reference point, in the ICC case of Katanga and Ngudjolo, there's an interlocutory Appeals Chamber Judgement. It's a 3-2 decision. And the majority citation would be ICC-01/04-01/07-2259. And in that decision, the ICC Appeals Chamber majority upheld a Trial Chamber decision to dismiss, on timeliness alone, Defence request for a finding of abuse of process on grounds that the accused's fundamental human rights were violated by domestic authorities prior to surrender. That was at a much earlier point in the Katanga proceedings - around the commencement of the trial - compared to this one.

You can't just file an abuse of process motion whenever you want. Diligence is still necessary, and diligence is missing. The facts purportedly blocking the Defence from presenting entrapment have been known for sometime, but it is only framed as procedural relief now.

Saying it is inappropriate to rule that the Defence has not established entrapment in the absence of disclosure alleged by the Haradinaj Defence at paragraph 416 of its brief is a conflation that happens over and over again, by the way, of procedural entrapment issues which, at this point in the trial, have been resolved in its course and substantive entrapment.

The Defence's emphasis on procedural entrapment betrays some sort of awareness that the substantive entrapment part of its case

isn't very good. The *prima facie* indicia of entrapment raised by the Gucati Defence prior to trial and responded to in our final brief, they are no more ridiculous then than they are with the indicia of entrapment framed in the final brief.

And I'll just point out, we're going to go through quickly each of these points in paragraph 134 of the Gucati brief, but this is actually one aspect where the course of the trial does seem to have changed the argumentation. This list is a little different from the list prior to trial.

Remember the evidence about how the SPO said Batch 1 could be kept for one month? That was in the earlier list. Not in this one.

But let's look at what they do say in their list. Paragraph 134(a):

"Batches 1, 2, and 3 were said to be under the sole control of the SPO."

That's not true. Ms. Pumper said that not all pages of Batches 1 and 2 could be found in the SPO's databases.

To the related objection by the Haradinaj Defence, there is no evidence to the effect that the SPO's evidence management is insecure or subject to penetration. They argue this at paragraph 19 of their brief.

And as will be seen for a number of these indicia, even if that were true, it wouldn't give license to the accused to obstruct the proceedings, violated secrecy, and intimidate and retaliate against witnesses.

134(b):

"The coordination of the investigation was conducted by the Specialist Prosecutor and the Deputy Specialist Prosecutor."

That is normal and non-criminal.

134(c):

"No attempts were made to physically prevent the further delivery of the batches."

There is a lot of evidence that the SPO turned -- urgent action to seize these batches and stop what was happening. All three batches were seized the day after they arrived at the War Veterans Association or the same day. The SPO urgently secured judicial authorisation for the first and second seizures and issued the third order on its own initiative. It had the accused under arrest within three days of Batch 3 where they are now being prosecuted in what is going to become the first trial Judgement in the history of the KSC.

We cared about this one. There is no argument to the contrary that can be sustained.

134(d):

"Batches 1 and 2 were deliberately left in the hands of the KLA WVA overnight."

I would ask Your Honours to please consult the evidence on this one. You can see it on the slide. This is the top of P52 and the top of P53. Look at the notification times on these judicial orders that the SPO was waiting for to go seize the batches. The first one comes at 8.16 at night on 7 September; the second one comes on the

morning of 17 September 2020. The SPO was acting with all possible speed to get these materials, and nothing was just left overnight.

134(e):

"There is evidence that officers at the KLA WVA were placed under surveillance between the deliveries."

No, there isn't. The surveillance evidence ended up being complete speculation of the accused and the Defence. There is no reliable evidence that anyone from the SPO was surveilling people from the War Veterans Association in this period. Again, even if it were accepted to be true, it would be a logical investigative step to put the people that were receiving these materials under surveillance in order to find out what's happening. This isn't an indicia of entrapment, and it's completely unsupported on the facts of the case.

134(f):

"The alleged internal work product was foreseen by the SPO 13 days before delivery."

We talked about this prominently in our final brief. It's obviously a typo, and it is a conspiracy theory grade unreasonable inference to suggest it's anything else.

"There is no check on the number plate," 134(g)," until the end of November."

The Gucati Defence actually doesn't cite for any evidence of this proposition. They just cite to an exchange in the transcript with Ms. Pumper where she says she knows nothing about it. I will say on this occasion that the Gucati Defence actually did get

evidence in on this point. I'll help them. It's 1D31 and 1D32.

But again, and as is the case with others of these, this is going to the SPO's broader investigation. The investigative opportunities available to the SPO are a function of priorities and resource constraints and opportunity cost and matters that go well beyond the case and evidence record. The repeated insistence that investigative opportunities beyond this case remain unexplored is almost a tacit acknowledgement that the investigation into this case is immune from attack.

134(h):

"The documentation continues to be published by the press."

Again, it goes to the broader steps in the SPO's investigation. It says nothing about the guilt or innocence of the accused.

134(i):

"The report could not exclude the possibility that someone at the SPO deliberately leaked it to an external party."

I would point Your Honours' attention to this quote, from that same report, which is 1D33, which says:

"There is also no evidence that a member of the SPO staff intentionally leaked the documents."

"No evidence ..."

134(j), that the investigation in the report appears to be limited. Again, going to broader investigation.

And 134(k) is this unsubstantiated story of the serving SPO officer we previously discussed.

The SPO conducting a sting operation to obstruct its own operations and to intimidate its own witnesses in war crimes and crimes against humanity trials to get evidence against these two accused is wholly improbable. The European Court of Human Rights test is written for arguments like paragraph 134 of the Gucati Defence's final brief.

The SPO has proven that there is no entrapment. The accused have made it clear that they had no interaction with the SPO, and they were not influenced by anyone as concerns their conduct. There is no evidence of the privatisation of police incitement or the SPO somehow liaising with a third party to provide the batches. There is no evidence to that effect.

These accused were going to be unimpeded and were going to do what they wanted to do, no matter what, and Gucati told you that himself in the course of his testimony.

We can see on the video here.

[Video-clip played]

"MS. BOLICI:

"Q. ... forced you into calling the press conferences and sharing the documents with the media; is this correct?

"A. [Interpretation] Only God can force me to do something. I am the chairman of that organisation, and not a single person can force me to hold a press conference on certain issue. Only God can order me to do that, if you believe in God."

MR. HALLING: "Only God can order me to do that ..."

The notion that the SPO was somehow acting to discredit or silence the KLA War Veterans Association's legitimate activities is simply laughable.

The Defence -- the accused, rather, knew that that's not what was happening, and they knew that they weren't being put in danger by the people delivering the batches to them. And you can see it. I use the word "laughable proposition" intentionally with Haradinaj's reaction to when a journalist puts it to him that they might be in danger at the third press conference.

[Video-clip played]

MR. HALLING: They're not being entrapped and they know they're not.

Mistake of law. This is addressed briefly in the Gucati Defence brief. We respond to this in our final brief.

But just to say quickly, the accused is not acting under legal advice in why they do what they do, contrary to what is alleged at paragraph 117 of the Gucati Defence final brief. In particular, the evidence has shown that Tome Gashi was only appointed to assist the KLA WVA after the second press conference, and whatever advice was given then was just continuing or ratifying the conduct that was already well under way at that point.

It is interesting that there are two authorities cited in paragraph 117 of the Gucati brief on this mistake of law proposition. One of them is P2. P2 is the second press conference. How P2 shows that there is a mistake of law going on doesn't make any sense. By

Mr. Gucati's own evidence, that moment happens before any lawyer is appointed.

The accused's statements, taken as a whole, make it clear that they did not care if what they did was against the law.

And now public interest. Public interest changed in the course of the Defence's previous explanations, and it now diverges between the Defence teams. Public interest informs the application of authorised disclosure in Counts 5 and 6 only in the Gucati Defence brief. It is no longer presented as a defence to Counts 1 to 4, and it is framed more as a full -- affirmative defence across all counts in the Haradinaj brief.

Article 392(1) and (2) of the Kosovo criminal code talk about revealing information without authorisation. To focus on Article 392(1), even if it were assumed that revealing something in the public interest would be revealed according to the law in that provision, you would never say that the public interest was also authorised, as is also required at the beginning of that provision. It's without authorisation even on the face of what they are claiming.

Article 200 of the Kosovo criminal code is discussed a lot in the final brief. Some points about that. Article 200 of the Kosovo criminal code does not apply before this Court. It needed to be expressly incorporated through Article 32(c) of the law, and it isn't.

Article 200 of the criminal code is not framed as a defence to

Article 392 of the code. They don't cross-reference each other, and the very existence of Article 200(2), which talks about carving a public interest exception out for the unauthorised revealing of information in that provision, makes it conspicuously absent that that same language does not appear in the crime that we have charged in Article 392 of the code.

Even on its own terms, Article 200(4) of the criminal code is not met, noting that it talks about the disclosure of confidential information is in the public interest if it involves plans, preparation, or the commission of crimes against the constitutional order or territorial integrity of the Republic of Kosovo or other criminal offences that will cause great bodily injury or death to another person.

How they're going to be able to draw that kind of evidence out of our evidence record is currently beyond me. They can't do it. Even on its own terms.

Kosovo's classification law, Law 030178, mentioned by Ms. Bolici this morning, it has some of the same problems. It does not apply before the KSC by virtue of Article 32(c) of the law, and it's made especially clear by virtue of Article 62 of the law.

All evidence in this case points to the information at issue concerning criminal investigations of serious crimes undertaken by a court created by Kosovo so as to comply with its international obligations. If that isn't validly classified information, I don't know what is.

There is no evidence to the contrary, and the accused cannot take illegal actions because they are not satisfied with how information is being classified.

The accused also are not on trial for exercising free speech, as alleged at paragraph 58 of the Haradinaj brief. They're on trial for obstructing the proceedings, intimidating and retaliating against witnesses, and violating the secrecy of proceedings. This is not an attack on them for being detractors and critics of the KSC. The KSC has many detractors and critics. They don't all end up arrested.

It is what the accused did in conjunction with what they said that informs why they are here.

A lot of discussion of Halil Berisha on this particular part of the Defence briefs. Halil Berisha appeared before you, he told his story. His situation is not remotely comparable to the accused, contrary to what's argued at paragraph 127 of the Haradinaj brief.

From the extent of what was revealed, to the redactions, to the intentions, to the reporting of the information to the SPO, if the accused did what Halil Berisha did, they wouldn't be here. They wouldn't be here. Halil Berisha's public interest is not a public interest that can exonerate the accused, and this is discussed at length in the Haradinaj brief at paragraphs 142, 447-60 among them.

There is no doubt that this information was publicly interesting in Kosovo. The commission of crimes on videotape is publicly interesting, but it doesn't mean that the accused have a public interest defence. It is not even remotely comparable.

And if you need any other authority for this proposition, you can see it from Mr. Haradinaj himself when he is asked, in the context of a *Gazeta* interview, about *inFokus*, which is Halil Berisha's media outlet, taking this material and giving it back.

[Video-clip played]

MR. HALLING: Now he wants to stand by the others so let him suffer for that.

This kind of argument from the Haradinaj Defence for equivalence or double-standards is not meaningful. It has the same kind of flaws as a *tu quoque* argument, which is widely recognised as not being a defence in international crimes cases.

We charged these accused. They are responsible.

At the end of the day, all of these arguments about public interest, it's just another of the many distractions in this final brief. The accused's view of the KSC SPO as practicing selective justice is itself selective. Any willingness of the accused to acknowledge that war crimes allegations could be made against the KLA in the course of their testimony, one example being at 2903 to 15 with Mr. Haradinaj, it's all insincere. And you can see the insincerity from the way they react when confronted with their past public statements that the KLA did not or could not have committed any crimes.

Mr. Gucati actually says it himself at page 2369 of his testimony, and you can see further examples, P39-ET, page 4; P25-ET,

page 10; P49-ET, page 16; P42-ET, page 1.

It is clear that the accused believe that a proper investigation into the Kosovo war would lead to prosecutions against only Serbian perpetrators and no one from the KLA. When the accused criticise the SPO for selective justice, what they really mean is that the Court is not endorsing their selective justice. This isn't about legitimate comment or concern, and it never was.

Your Honours, the accused committed these crimes brazenly. They committed them on video. They wanted to obstruct the proceedings. They wanted to violate its secrecy, and they wanted to intimidate and retaliate against those who were cooperating with this Court. That's what really happened. That's what really happened. And the SPO has discharged its burden of proof in relation to every element of every offence charged. These Defence briefs show nothing otherwise. They don't and they can't.

At paragraph 510 of the Haradinaj Defence brief, they say this:

"When it comes to assessing the balance that must be struck between the administration of justice and exposing information in the public interest, there are often borderline cases. This is not one."

We agree. And we're asking for a conviction on all crimes charged.

Thank you.

PRESIDING JUDGE SMITH: Thank you, Mr. Halling. We will break for lunch. And everyone be back at 2.00, and the Bench will take up their questions.

We're adjourned.

--- Luncheon recess taken at 12.38 p.m.

--- On resuming at 2.00 p.m.

PRESIDING JUDGE SMITH: As I said, we will begin with questions from the Panel at this time.

And, Judge Barthe, I believe, you're first.

JUDGE BARTHE: Thank you very much, Judge Smith.

My first question, Madam Prosecutor, or Mr. Prosecutor, pertains to the crime of obstruction under Article 401 of the Kosovo criminal code. In paragraph 173 of your final trial brief, it is said, and I quote:

"The revelations in the Batches forced the SPO to divert resources to contact them," meaning witnesses, "and protect them. In the words of Jukic, after the Third Press Conference contacting the affected witnesses became the 'highest priority for our office' and that he did not do any other planned work during this period. The SPO had to provide witnesses with new phone numbers or new phone devices for safe communication. Emergency risk management plans needed to be prepared. Twenty to thirty witnesses had security or protective measures taken to assist them following the actions of the Accused. Two witnesses were relocated out of Kosovo, a measure of last resort in the SPO's efforts to protect witnesses in the face of a high level or threat."

Mr. Prosecutor, one could argue, and this is my first question, that this shows that the SPO had to make efforts to guarantee the

security of witnesses, but how does it show that the work of the SPO or of any employee of the SPO was actually obstructed?

In other words, are you submitting that the mere fact that members of the SPO, like Mr. Jukic, whose job was exactly what he did - namely, to protect witnesses - had to work more proves that the SPO couldn't fulfil its mandate to investigate and prosecute crimes?

MR. HALLING: Thank you for that question, Your Honour.

The SPO is alleging that its work was obstructed in multiple aspects following the serious threats of the accused. The diversion of resources is one of them, which is being discussed in the paragraph Your Honour mentions. But the serious consequences that witnesses suffered also obstructed the SPO's work.

The SPO's mandate is dependent on being able to conduct criminal investigations, to being able to secure the cooperation of witnesses, and what the accused did fundamentally compromised that, and we would ask that that also be considered as to how the SPO was obstructed.

JUDGE BARTHE: Thank you, Mr. Prosecutor.

My next question is also, or again, on the crime of obstruction under Article 401 of the Kosovo criminal code. Assuming that this Panel is only convinced that there was an attempted as opposed to an actual obstruction, what would be the legal consequence? Would that mean that the accused had to be found guilty of attempting an offence under Article 401 KCC, or would they lead to a conviction of obstructing official persons in performing official duties as a completed offence, given that Article 401 explicitly includes an

attempt to obstruct?

And, last question, in this regard, in your view, is it necessary to apply the general provision on attempt in Article 28 of the Kosovo criminal code in one or the other constellation?

MR. HALLING: Of the two alternatives that Your Honour gave, we would say it would be the latter. It would be the completed offence of obstruction. The way the element is created, it has an alternative within it. An attempt is sufficient to satisfy the elements of the completed offence.

In terms of using the word the way "attempt" is defined in the Kosovo criminal code to inform that latter constellation, we would submit that that makes sense. The word "attempt" is defined in the Kosovo criminal code, and it makes sense to apply it whenever it appears.

JUDGE BARTHE: And in this situation, Article 28 of the KCC is not applicable, if I understand you correctly?

MR. HALLING: We are charging attempt as one of our alternative modes of liability, but it would be using the language, perhaps, of Article 28 almost sort of by extension in order to sort of understand Article 401. So it would be interpreting Article 401 of the code and you would use as inspiration the way that term is defined in another provision in the code.

JUDGE BARTHE: Thank you.

We come to sentencing on Thursday, so there's no need to ask more questions on this.

The next questions concern the crime or the offence of intimidation pursuant to Article 387 of the Kosovo criminal code. In paragraph 219 of your final trial brief, it is said, and I quote:

"The evidence establishes that the accused were aware of and desired to induce witnesses to refrain from making a statement or to make a false statement or otherwise fail to state true information to the SPO and/or the Kosovo Specialist Chambers (KSC). The accused themselves expressly acknowledged the motivations behind their actions, including their will to damage the KSC/SPO judicial process. Alternatively, the accused were aware that as a result of their actions this prohibited consequence might ensue and they acceded to the occurrence of this prohibited consequence."

In paragraph 214, however, you stated that the accused were, and I quote, "fully aware that their conduct would lead to witnesses being intimidated. Awareness of this virtual certainty falls well within the alternative requirement that the accused act with direct or eventual intent under the KCC."

And finally, in paragraph 218, it is said that the accused, and I quote:

"The accused's conduct amounts to a serious threat capable of inducing persons to refrain from making a statement or to make a false statement or otherwise fail to state true information to the SPO and/or KSC as required by Article 387 of the Kosovo criminal code."

Mr. Prosecutor, you said today, if I remember correctly, that

the accused wanted to intimidate witnesses. My question is, or my questions are, could you clarify what your case theory is as regards the *mens rea* of Article 387 of the Kosovo criminal code? Are you saying that the evidence proves beyond reasonable doubt that the accused had the desire or aim, at least as an intermediate aim, to intimidate witnesses; and, if so, could you briefly explain why do you think so? Or, are you saying that Panel should apply eventual intent or maybe a different -- a third form of intent, namely, virtual certainty or knowledge based on the evidence before us?

And, lastly, from your perspective, would the form of intent generally make a difference for sentencing, just in general; and if so, how?

MR. HALLING: Thank you, Your Honour. The answer to the first part of Your Honour's question involves a distinction between the case theory sections of our final brief and the analysis section. The analysis section, which includes paragraph 214, isn't necessarily tracking the statutory language. It is argument, effectively, in relation to the evidence.

So when we're talking about virtual certainty at paragraph 214, we're not applying the language of the code. Truth be told, those words actually are closer to ICC interpretive language than the KCC. But the KCC interpretive language is what needs to be applied here, and this is what's discussed in our case theory section at paragraph 219 in particular. That's what's really governing the *mens rea*.

Article 21 of the KCC governs direct or eventual intent. Whenever we charge the crimes in this case, and that alternative is available, we are always charging both alternatively. So we believe that there is evidence for direct intent and eventual intent.

You asked where is our evidence of direct intent. The cross references in our case theory section are linked to the statement of facts. And you can see, for instance, in the sentence, "The accused themselves acknowledge the motivations behind their actions, including the will to damage the KSC judicial process," the footnotes at footnote 638 are cross-references that direct Your Honours to the evidence that we consider establishes that intention.

As to what Your Honour was saying in terms of the degree of intent mattering for sentencing, lots of things matter for sentencing, the degree of intent being one of them. But we would argue that the intent of the accused in this case is so aggravated and severe that it needs to be heavily weighted in the sentence of these accused.

JUDGE BARTHE: So in other words, Mr. Prosecutor, you plead eventual intent only in the alternative, right, if this Panel is not convinced beyond reasonable doubt that the accused acted with direct intent to intimidate witnesses?

MR. HALLING: Correct, Your Honour. And to go back to your earlier question, it would still be the completed offence of intimidation even if that finding were to be made. As we've explained, we think that the direct intent is established on the

evidence.

JUDGE BARTHE: Thank you. My next questions relate to the modes of liability, in particular, incitement.

According to paragraph 41 of the indictment Mr. Gucati and Mr. Haradinaj incited one another, Associates, and others, namely, one of the persons who, remotely or in person, attended, observed, or were otherwise informed of the three press conferences and other public statements; two, certain members of the press; and, three, persons in possession of or with access to confidential and non-public information relating to SC proceedings to commit crimes. This is what the indictment says in paragraph 41.

The heading, Mr. Prosecutor, to paragraph 268 of your final trial brief, reads:

"The Accused incited the media to commit the offences."

And the following paragraph, which is paragraph 268, reads:

"It is to the credit of the Kosovo media that the damage the Accused inflicted did not spread even further. The Accused wanted the media to publicise the batches to the fullest. According to the Accused, media outlets who published the material were brave."

In addition to that, in paragraph 270 of your final trial brief it is said that this, and I quote:

"This said, to the extent the Accused exerted psychological influence to prompt each other, Associates and others to commit criminal acts with the Batches, they are guilty for inciting the crimes charged."

Here I have, Mr. Prosecutor, a few questions, brief questions. My first question is do you agree that mutual incitement of the accused or, as you said in paragraph 270 of your final trial brief, the exertion of psychological influence to prompt each other is usually absorbed by co-perpetration that requires a mutual agreement; or are you saying that a co-perpetrator, any co-perpetrator, can or must always be held responsible for mutual incitement?

MR. HALLING: And, Your Honour, I can take that question first, and then whatever further questions you have.

Yes, I would think that that usually would be the case. We have charged it in this way in case Your Honours make a finding that the accused somehow have wildly differential levels of responsibility. But the reason why co-perpetration is the main, principal form of liability charged, along with direct perpetration, is that in a co-perpetration framework what you said is the case is what's normally the case.

JUDGE BARTHE: Thank you. My second question is can you tell us, Mr. Prosecutor, how the Panel can conclude that the individual or individuals who are responsible for the delivery of the material to the KLA WVA on three different occasions in September 2020 were, in fact, incited or psychologically influenced to commit crimes by the accused? How can it be established that the actions of the accused had any effect on the persons who leaked and/or brought the documents to the KLA WVA, given that we still don't know who these persons are?

MR. HALLING: Your Honour, we would say because it's charged as

a stream of conduct. There is evidence in this case, it's cited in our final brief, that the accused welcomed these deliveries expressly and publicly, that they would not tell on them even if they were unmasked. You remember these quotations from the evidence that's in the record. And these entreaties to whoever those people would be, we were arguing in our incitements, mode of liability, that that was prompting further offences.

JUDGE BARTHE: If I remember correctly, Mr. Halling, it was you who said during the trial, I think it was on 26 October 2021, last year, and at least implicitly you repeated that today in your presentation in your closing arguments, that Mr. Berisha did not commit a crime when he publicised or published or his employer published, Gazeta inFokus, the information or parts of the information contained in the batches; is that correct?

MR. HALLING: It is, Your Honour.

JUDGE BARTHE: I wonder why didn't he commit -- Mr. Berisha didn't commit a crime? To be more precise, which element, for example, of Article 392(1) of the Kosovo criminal code was not fulfilled by Mr. Berisha, and would that not preclude a conviction of the accused for incitement, in relation to Mr. Berisha at least, under Article 31(1) of the Kosovo criminal code?

MR. HALLING: To focus on the first part of Your Honour's question, Mr. Berisha's conduct is distinguishable on both *actus reus* and *mens rea* levels as I said in my closing statements.

So in our case theory, the accused are responsible and

Mr. Berisha is not. We are aware that there are other ways of categorising this conduct, which is why incitement is one of our alternative modes of liability, including incitement if the crime was never actually committed or attempted. And I know that this isn't relevant to Count 5 specifically, but just in general, this is how we are pleading it.

So we are acknowledging that Your Honours may have a different understanding than we do, but this is our understanding, that Mr. Berisha is not responsible and that the conduct of the accused is meaningfully different on both an *actus reus* and *mens rea* level.

JUDGE BARTHE: And, finally, Mr. Halling, my last question in relation to incitement. I would like to know who are the journalists who were incited by the accused and who did not commit but attempted to commit one of the charged crimes pursuant to Article 32(2) of the Kosovo criminal code.

MR. HALLING: The journalists in question are everyone who had the batches in the course of these press conferences. In terms of how these crimes could be attempted by those extra people, other than the accused, is admittedly a function of what Your Honours conclude is the applicable law.

If, for instance, Your Honours conclude that certain crimes have consequence elements instead of conduct elements, then it may be possible that reporters might be -- have the requisite *mens rea* but not the *actus reus*, and then it would be an attempt. This again all goes to alternatives from our main case theory.

Our main case theory is that the accused are responsible for perpetrating these crimes. And if Your Honours agree with that assessment, then you actually wouldn't even reach these incitement questions.

JUDGE BARTHE: Thank you very much for the clarification, Mr. Halling. No further questions.

PRESIDING JUDGE SMITH: Judge Mettraux.

JUDGE METTRAUX: Thank you, Judge Smith.

And, Mr. Halling, I'd like to take you back to Count 1, obstruction, and more specifically, if that assists, to paragraph 173, 174, and 190 of your brief.

I understand you to be making two different suggestions. One is that the conduct of the accused forced the SPO to divert resources to contact witnesses and protect them, you say. And the second one is that the accused's actions substantially compromised the SPO's ability to investigate and prosecute effectively.

Now, I understand from the answer you gave to Judge Barthe that your case theory is that that second part, or the second submission you make about your investigation and prosecution being compromised, is about your ability to secure the cooperation of witnesses. Is that a correct understanding of your case?

MR. HALLING: It is, Your Honour. Paragraph 191 of our brief on our case theory is related to Your Honour's question.

JUDGE METTRAUX: And what do you say is the evidence on which this Panel should rely for the second proposition that you make,

namely that of being able to secure the cooperation of witnesses?

MR. HALLING: We have the evidence from Mr. Jukic and Ms. Pumper about the witnesses who said they didn't want to cooperate with the Court anymore following the revelations in the batches. We have the evidence on the climate of intimidation, including Mr. Reid's testimony, in fact, where he talks about the climate of intimidation and that talking about witnesses in the way the accused were doing would have an impact on the fulfilment of the mandate. That was in relation to the "no one is unknown" quote from Mr. Haradinaj.

And just the statutory provisions governing the SPO's mandate are relevant in this regard because the SPO's cases have to be premised on witness testimony. And when the witnesses are -- to use the language at paragraph 191 of our brief, there's anger, concern, fear, people feeling threatened and intimidated as a result of the actions, that is necessarily going to have the kinds of obstruction consequences that we're alleging happened.

JUDGE METTRAUX: I'm grateful.

If you can turn to Count 3 now or Count 3 and Count 4, I should say, can you explain what, in your case theory, is the relationship between these two counts? In particular, are you saying that they relate, at least in part, to different people or to different factual circumstances, or is it about their legal elements? And maybe I can turn my question in a different way, but what conduct do you say would be captured by Count 4, retaliation, that is not also captured by Count 3?

MR. HALLING: The conduct is overlapping, Your Honour. And it is really the distinction in the legal elements that is driving why both of these crimes are charged.

They reflect different protected interests. You can see it from the way that they're different in the Kosovo criminal code. The way the intimidation provision is worded, it almost sounds like it's future oriented, intimidating people from speaking; and retaliation is almost backward looking, where people are being retaliated against for having provided truthful information.

But the conduct of the accused affects both forward and backward-looking prisms, which is why you need to charge both and you need convictions on both, in our assessment, in order to fully reflect the culpability of the accused.

JUDGE METTRAUX: Count 4. Something you said in paragraph 221 of your brief, if you want a second to get to it. You say -- I'll read the relevant part here for you. It says:

"The witnesses retaliated against within the meaning of this count include," and then under (iii) it says:

"Government authorities who provided documentation establishing relevant crimes/perpetrators or facilitated contact with those having such information."

Now, the first thing I want to ask you is whether this submission you make we must understand to relate to two categories of state officials. If I may summarise, one is those that you sought out to interview and those who "merely" provided professional

assistance to your investigation. Are you asking this Panel to consider the fate of both of these categories of officials within the scope of Count 4?

MR. HALLING: We are, Your Honour, and the last bullet point in that paragraph reflects that. Incidentally, this paragraph is the one that was inspired by the direction Your Honours gave in the no case to answer decision that we needed to address. So this is where that's been addressed.

JUDGE METTRAUX: And if you were asked to identify where in your indictment you have made that allegation not simply in relation to witnesses but in relation to state officials who have provided cooperation, what would be your response? What's the paragraph of the indictment you rely on for that suggestion?

MR. HALLING: It's a combination of paragraph 4 of the indictment read together with paragraph -- for the retaliation contact those would be paragraphs 31 and 32. I could also direct Your Honours to our submission on the definition of the term "witness" before the trial where government officials were included in the definition and they have always been within that definition, and paragraph 4 of the indictment was crafted in such a way such as to capture these people under the definition of witnesses.

JUDGE METTRAUX: Then on to Count 5 and 6, if you may. Paragraph 239 of your brief. I'll briefly read the relevant part. It says:

"The accused need not be aware of the specific law or Court

Order conferring protection to the witness in question. This is not an element of the offences under Count 5 and 6."

It goes on and it says:

"The accused need only be aware that the witness information in question is protected or might be."

What would you say to the suggestion that the test that is being proposed here would fall short of the requirements of legality in the sense that there is a requirement implicit in the principle of legality, of accessibility and foreseeability? Are you saying here that it's not a requirement that, at least in theory, the basis on which someone or something was subject to confidentiality or secrecy must have been accessible to the accused? What would you say to such a suggestion?

MR. HALLING: Whatever concerns there would be, Your Honour, with the principle of legality, in relation to this count, would be concerns with the way the Kosovo criminal code is constructed.

Article 21 of the code has direct or eventual intent sufficing for criminal offences. What we're arguing, at the paragraph of our brief that you identified, is the direct or eventual intense application to the context of knowledge of the protected status of the information in question. So we would say that that would be eminently accessible and foreseeable. It appears in the Kosovo criminal code, the accused are Kosovo nationals, and they had to know that when they were acting, that direct or eventual intent would apply to their conduct.

JUDGE METTRAUX: So maybe I should have been more specific in my question, but you also rely, for instance, on the fact that protective orders were granted in relation to a number of witnesses.

Now, what would you say to the suggestion that a conviction for disclosing information solely, I should say, on the basis of those order would be or would constitute a violation of the principle of legality to the extent that there's been no demonstration that the accused could or were aware of these specific orders? What would you say to that?

MR. HALLING: It's a difficult question to answer, Your Honour, because our evidence is only including that as part of a constellation of facts that would avoid the issue that Your Honour is identifying.

So we have the protected status of the information. We have the authority of the SPO under the law to classify that information. We have protective measures decisions or protective orders from cases of this Court. We have protective measures from cases in Kosovo, and we have a letter from an international organisation. In our assessment, all of that evidence needs to be understood together in order to understand that the information was protected.

And so focusing on the legality of one subset of the evidence to the exclusion of the rest isn't how this particular case is charged.

JUDGE METTRAUX: Modes of liability. Paragraph 272 of your brief. You say, and I will read it:

"The SPO has not charged any associates or other persons with

committing crimes in relation to the batches."

Then it goes on to say:

"To the extent the Panel consider that such crimes may have been committed by these persons, the accused could then be further convicted for assisting their crimes."

Now, are you asking the Panel to enter a conviction of the accused for assisting uncharged third parties? And if so, how do you say this is in compliance with the presumption of innocence of these other individuals?

MR. HALLING: It is inherent, with the modes of liability that we have charged, that there are going to be other people beyond the indictment that would be committing crimes for some of these accessorial modes of liability. In our assessment, they have been sufficiently identified. These people are identified by class. There are specific names that are provided. There was a preliminary motion about these names. And the assistance part of the case, the indictment has now -- whatever challenges there were, it's now settled on an interlocutory appeal.

So we would say that there isn't a problem of applying the assistance mode of liability should Your Honours get to that point in our alternatives.

JUDGE METTRAUX: But pressing, maybe, the second point a little further, wouldn't that mean, in practice, that the Panel would be asked to make findings of guilt in relation, to use an Anglo-Saxon expression, the principals of the offence. There could only be

liability by the accused for assisting if the Panel is satisfied that the principals are, in fact, guilty of the crime and that, in turn, would put the Panel in a position of having to find that they are guilty, wouldn't it?

MR. HALLING: Your Honour would need to make a finding of responsibility such that the elements of assisting the crimes are met for the accused. This happens -- it goes back to the question of uncharged other people in common plans in the European Court of Human Rights reference I gave Your Honours this morning.

This is inherent in trial judgements based on accessorial modes of liability, and there is case law saying that should that assisting -- should that perpetrator who these accused would be convicted of assisting ever appear before the Court, their presumption of innocence would be preserved, they would get a fresh trial with their evidence. It wouldn't just be a finding against them that would be permanent. It would be a finding only in the context of the responsibility of Mr. Gucati and Mr. Haradinaj.

JUDGE METTRAUX: Paragraph 278(i) of your brief, if you want to take a second to find it. The sentence is:

"The accused substantially contributed to and undertook substantial acts toward the commission of crimes in furtherance of their common purpose and agreement including by," and your (i) says "reviewing confidential information."

Can you explain to us how the mere fact, in your submission, of reviewing of that material would itself constitute a substantial

contribution to the common purpose?

MR. HALLING: Your Honour, the substantial contribution part of our co-perpetration count is all of those points in the list strung together.

So we're not asking about the review of the information being assessed in isolation as a substantial contribution. What we're arguing is that all of the items in that list, derived from the indictment, in fact, put together establish the contribution threshold in the provision.

JUDGE METTRAUX: I see. Then to the defence. And I'll start maybe with something you've said earlier today, and that has to do with entrapment. And it's at page 62 to 64 of today's transcript, where you refer to the submissions by both Defence teams in relation to what you call abuse of process.

In fact, abuse of process is used by Mr. Cadman on behalf of Mr. Haradinaj. Mr. Rees, for Mr. Gucati, refers to a stay of proceedings, which in some legal systems is the relief granted under the abuse of process theory.

Now, what I want to ask you is whether you accept, as a general proposition, that this relief, whether you call it abuse of process or stay of proceedings, forms part of our legal order? In other words, that this Panel would have the legal authority to grant such a relief? And I should also indicate to you that in a footnote to his submission, Mr. Rees refers to Rule 110 of our rules, which pertains to the ability of the Panel to order a stay of proceedings in case of

a disclosure violation.

So my question is: Do you accept that this Panel has the authority to grant such a relief or are you taking issue with it?

MR. HALLING: We accept that the Trial Panel could grant such a relief were the criteria we were discussing today to be met. Indeed, Your Honour, we do understand that the way that the Gucati and the Haradinaj Defence are arguing, and maybe this will be clarified in the next two days, that the stay of proceedings is the remedy sought and that the abuse of process is the justification for it.

And so it's described slightly differently, but that's how we understand what's being alleged. We acknowledge that just with an application of human rights principles, that such a relief might be warranted or theoretically possible, but it is not something that is applicable in this case on the facts at all.

JUDGE METTRAUX: [Microphone not activated].

MR. HALLING: Sorry, Your Honour, the microphone.

JUDGE METTRAUX: I have followed the tradition of the Presiding Judge on that one.

Paragraph 284 and 285 and also 287. Maybe I will try to wrap both of my questions into one. But you take issue, as I understand, with the suggestion of the Defence that a number of defences are available to them - entrapment, public interest, mistake of law, mistake of fact - and we've heard your submissions today.

What I want to ask you is whether you accept that in the interpretation of our normative system, we must ensure that this

interpretation is consistent with relevant standards of human rights law? Do you accept that?

MR. HALLING: I'll say yes. But just to clarify what I mean when I say "yes." We agree that if, again, theoretically, entrapment existed, that there would be relief available under the European Court of Human Rights. That doesn't necessarily mean it would be an affirmative defence against the crimes charged.

JUDGE METTRAUX: I take the point.

But let's look at, for example, your submission on mistake of law and mistake of fact. You correctly, and quite properly, point out that Rule 95(5) is non-exhaustive, and you say so in your brief.

Now, if we were to try to determine where that non-exhaustiveness stops, would you agree that one of the places we might have to look is, in fact, in human rights law? And perhaps to put the argument bluntly to you, what would you say to the complaint, if your submissions were admitted, that we are treating the defendant differently and to their prejudice in this court than they would be entitled to be treated in other Kosovo courts where the defences of mistake of law and mistake of fact would be available to them, and, therefore, their complaint would be one of inequality of treatment, of denial, unfair denial of a right to a natural judge?

Would that be relevant as a consideration, according to you?

MR. HALLING: I would say only for mistake of law, because entrapment and public interest, they don't have corresponding Kosovo code provisions that would apply to the crimes charged. It would

only be mistake of law, under Article 26 of the Kosovo criminal code, that would be a disparate treatment between the domestic jurisdiction they were from and the KSC.

We have made an argument, in the paragraph of the brief that you identified, that if this is considered as part of the substantive law, it needed to be expressly incorporated. We acknowledged Rule 95(5) in case Your Honours reached a different conclusion. Regardless of whether it applies at the court or not, a mistake of law under any definition is not satisfied, Kosovo's included.

JUDGE METTRAUX: And I have a last, last question for you. This one will be the last. But you proceed in your brief to then give a definition of what you understand to be mistake of law and mistake of fact. And to make the summary simple, you effectively say that these would only be valid defences if and when they do negate the *mens rea* of the accused. And for that submission, you refer to case law from ICTY, ICTR, and ICC.

Now, can you explain to us why you relied on that test and on that jurisprudence which might be said to be different than the test of mistake of law and mistake of fact that we would find in the Kosovo criminal code.

MR. HALLING: Your Honour, we made reference to it because we consider those authorities could give guidance for Your Honours' decision. We talk about the code provision on mistake of law. And if you look at footnote 790, we mention that, though not applicable, Article 26(1) of the KCC only permits a mistake of law if the

accused, for justifiable reasons, did not know or could not have known that an act was prohibited.

And the evidence does not sustain that inference from Article 26(1) of the code. And in particular, I direct Your Honours' attention to part of our final brief where we discuss at length the number of occasions where they are on video having the illegality of their actions discussed. There is no way they could argue and sustain a mistake of law under the Kosovo code provision.

JUDGE METTRAUX: I'm grateful. Thank you.

PRESIDING JUDGE SMITH: Judge Gaynor.

JUDGE GAYNOR: Thank you, Judge Smith.

Mr. Halling, I'll start with a question or two on Batch 2.

Earlier, your colleague, Ms. Bolici, made a statement which to me seemed slightly inconsistent with your brief, so I just want to put it to you and see what you have to say.

Ms. Bolici said today at page 15:

"All disclosed pages of the batches further confirm, on their face, that these materials consisted of confidential records of investigation or internal analysis of investigative materials and that they were marked as such."

Now, in the SPO brief, when you're talking about the evidence of Witness Pumper, you state that:

"Witness Pumper confirmed that Batch 2 consisted of public court materials other than six pages of confidential correspondence."

So I'd just like to ask you, really, whether the oral submission

you made earlier, that all disclosed pages of the batches confirm, on their face, et cetera? Would you like to clarify that?

MR. HALLING: Maybe just to say that the pages taken as a whole have these characteristics. So, indeed, Batch 2, our charges are only in relation to the six pages of the batches that are not public, but the entirety of Batch 2 would have a confidential classification because of those six pages.

This is the way that even court filings are classified at the KSC. Our final brief was 157 pages, confidentially. It's 156 pages of public content, and one page of confidential. But we had to file it confidentially.

And so our evidence on what Batch 2 is is in relation to those six pages, but the batch as a whole is protected because of them.

JUDGE GAYNOR: I'm going to have to press you a bit on that.

In respect of the public court material in Batch 2, are you suggesting that any crime has been committed?

MR. HALLING: No, we are not.

JUDGE GAYNOR: Thank you.

My next question concerns the standards of direct and eventual intent which are set out in Article 21 of the KCC. And earlier on, Judge Barthe put a question to you about the assertion you make at paragraph 214 of the SPO brief. And there you do appear to be inviting the Chamber to adopt a standard of awareness of a virtual certainty that a prohibited consequence will occur.

Now, do I understand from your response to Judge Barthe that you

are not asking us to apply that standard? That you are only asking us to apply the two standards set out in Article 21?

MR. HALLING: Correct, Your Honour. Paragraph 214 is argument. Truth be told, the accused meet any *mens rea* standard however you define it, in our submissions. So we are talking about it in that paragraph as argument. But it's the case theory sections of the brief where we're applying the law to the facts, which clearly set out what the law actually is that needs to be applied. And it's what Your Honour said.

JUDGE GAYNOR: Very well. We'll move now to Batch 3.

At paragraph 257, you state that:

"Batch 3 includes references to the names, pseudonyms, and evidence of witnesses whose identities were subject to prior Kosovo court-ordered protective measures, including the non-disclosure of the witness identities, the assignment of pseudonyms, and the non-disclosure of witness records."

And you go on to say that:

"Batch 3 further includes references to the statements of witnesses and other documents and information provided to the SPO by international organisations and other entities subject to confidentiality and use restrictions."

Now, the Panel is not in a position to verify any of those assertions for itself, and the Defence has not been able - by "the Defence," I mean the Defence lawyers - have not been able to contest those assertions due to the choice made by the SPO not to put in

evidence Batch 3 apart from the extracts which you have put in evidence. Now, the Defence has made what appears to be a fair trial argument, which is to say that the choice of the SPO to withhold the majority of Batch 3 from the record deprives the Defence - by which I mean the Defence lawyers - an opportunity to contest the assertions that the SPO has made.

So I'd like to know what is your position on that fair trial argument?

MR. HALLING: We would say that the evidence presented did ensure them a fair opportunity to confront the evidence. The way in which we argued the law in relation to Count 6, which is what Your Honour is pointing at in this part, is relevant in this regard.

The SPO is itself a classification authority, and the fact that this was internal work product and that it was classified as internal work product by the SPO is sufficient in and of itself to confer protected status to the witnesses within it. And there can be no reasonable dispute that they weren't able to contest the protected status using that part. Nor is there any opportunity for them to say so in relation to the KSC decisions on non-disclosure and our request for non-disclosure, because it is apparent at this point in time that there were no public KSC proceedings. So everything that was included in Batch 3 at the time it was revealed was protected.

And these additional items of evidence that Your Honour is addressing at paragraph 257 are also part of the calculus here, but we've never charged the case like an individual witness needs to be

linked to an individual protective order. There are witnesses within the meaning of the indictment and they are protected by virtue of the totality of the evidence we've presented.

JUDGE GAYNOR: But I think -- I'm not contesting that what the SPO says is accurate. What I am seeking from you is clarity as to how the Defence is able to contest what the SPO has asserted. How has the Defence been able to contest those assertions during this trial?

MR. HALLING: In term of practically how they've done it, Your Honour, the most obvious example would be the cross-examination of Ms. Pumper.

Mr. Rees asked many questions of Ms. Pumper about whether she checked about the variation or the recision of these protective measures orders. There were questions that were asked. There was some evidence that was elicited in the course of trial that could be considered.

But in terms of Your Honours -- the kind of overarching point of Your Honours' questions, Rule 140 talks about not using evidence to a sole or to a decisive extent -- to quote the exact language of the provision, Rule 140(4): The statement of a witness whom the defendant had no opportunity to examine, the evidence of a witness whose identity was not disclosed to the Defence, or the evidence of a person under age 18.

We would argue that none of those situations qualify in this instance, and there is no general requirement of corroboration or

additional disclosure that would be needed in order to rely on these pieces of evidence.

JUDGE GAYNOR: Thank you. I'll move now to an expression that appears at paragraph 275 of the SPO brief, where the SPO states:

"When applicable for certain modes of liability, these same intentions were shared by ..."

And then you listed a few categories of people, including:

"... the persons who, remotely or in person, attended, observed, or were otherwise informed of the Three Press Conferences and other public statements of the Accused."

I'm puzzled as to why you included those words in there. Does the SPO consider that criminal liability can attach to persons who merely attended or observed or were otherwise informed of the three press conferences and other public statements of the accused?

MR. HALLING: Not in and of itself, Your Honour. This paragraph, the language is derived from the indictment, and this part is really in reference to the accessorial modes of liability that are charged in the case.

We are trying to define the class of people that would be committing the crimes charged if something like assistance was selected like a mode of liability, but we're not saying that mere presence at the press conferences can be equated with criminal liability.

JUDGE GAYNOR: And I'd like to ask you about alternative findings. And you've dealt with the question of alternative findings

on different modes of liability. And at paragraph 322 of your brief, you've asked the Panel to make findings on all charged modes of liability to ensure that the record is clear for the purposes of any appellate proceedings, and then to enter a conviction on whatever form of principal liability you consider best reflects the individual responsibility of the accused.

Now, my question doesn't concern modes of liability but direct and eventual intent. If the Panel is convinced beyond reasonable doubt that the evidence establishes both direct and eventual intent for a particular crime, can and should the Panel enter a conviction both for a direct and eventual intent for that crime?

MR. HALLING: That's a very interesting question. This is what I would say in response.

At the first level, we would ask for findings on both limbs of direct or eventual intent for the same reasons that we asked for findings on all the alternative modes of liability.

The reason why I said the question is interesting is that if you index the conviction to the counts, the conviction on the count would have a specific mode of liability and so only one needs to be picked. It would be a conviction for intimidation on a theory of co-perpetration.

But if you convict on intimidation, direct or eventual intent doesn't necessarily need to be addressed in pronouncing judgement on the count. So if Your Honours were to circumscribe yourselves to only one limb of direct or eventual intent for the conviction, I

guess it would be the Trial Panel's prerogative if they wished to do that, but the alternative modes of liability are indexed to the statement of crimes in a way that this part of the criminal code is not.

JUDGE GAYNOR: But the Gucati Defence team have quoted at paragraph 142 of their brief a judgement which notes the principle that a judgement has to express unambiguously the scope of the convicted person's criminal responsibility, which appears to be a fairly sensible statement.

So could I ask does that not mean that the Panel certainly has to elect at least whether direct or eventual intent has been established?

MR. HALLING: In our submission, the finding actually could be made that direct or eventual intent is established --

JUDGE GAYNOR: Either?

MR. HALLING: Either as the finding of the Trial Panel, that it was one of these two things. If Your Honours feels that only one limb or the other is -- it needs to be expressed in order to ensure that the full expression of the accused's full culpability is expressed, again, it's the prerogative of the Trial Panel to do that.

JUDGE GAYNOR: The final question concerns an aspect of chain of custody, and that aspect concerns the requirement in Rule 39(4) that reads:

"The Specialist Prosecutor shall prepare an inventory with a detailed description of and information regarding each item seized."

Now, at paragraph 514 of its brief, the Haradinaj Defence states there is no inventory. And at paragraph 297 of its brief, the Haradinaj Defence cites Witness Robert Reid who states, in part, "you know, absent an inventory," and he goes on.

Now I believe the position, and correct me if I'm wrong, is that the Panel has not received evidence that the SPO prepared an inventory, and the Panel has not received evidence that the SPO did not prepare an inventory. That's my understanding.

But in any event, we do note that the Rules of Procedure and Evidence require the Specialist Prosecutor to prepare an inventory but not necessarily to submit that inventory to the Trial Panel. And I would like to ask you if you agree with the Haradinaj Defence's statement that there is no inventory; and if you do not agree, elaborate why, and also elaborate on how this fits into the entire argument regarding chain of custody, generally.

MR. HALLING: As far as I understand, the only Rule 39(4) inventory that was taken was in relation to the 25 September search and seizure operation that was incident to the arrest of the accused. There is no inventory as such in evidence.

In terms of what the consequences of this are, this was not a Rule 39(4) issue at the level of the admissibility of the pages of the batches or anything else. The batches themselves were tendered, objections were raised, they've now been admitted. If the Haradinaj Defence is now claiming a Rule 39(4) violation, and they don't expressly, it's Your Honours that are drawing attention to the

proposition channelling their argument, then we would say that that is an improper reconsideration request or a baseless reconsideration request because all of the facts about the inventory were known at the time that the original objection to the evidence could have been given.

The evidence of the batches is reliable, probative. There is no undue prejudice and it is authentic. And that is proven by an abundance of evidence in the case, most notably the detailed charts of Zdenka Pumper which, as I said in my closing statement, are more detailed that this kind of an inventory would have been.

JUDGE GAYNOR: On that, the Haradinaj Defence is attacking the issue on a number of fronts, but they do seem to consider it to be a fatal evidential flaw, generally speaking.

Could you just explain to me your position on the legal requirement the Specialist Prosecutor shall prepare an inventory? Do you consider that the absence of an inventory in the evidential record is not fatal, as the Haradinaj Defence might say, to the chain of custody?

MR. HALLING: No, it's not fatal, Your Honour. And the way that we've presented the evidence makes it manifest that that's how we've felt all along. There is no element of chain of custody in any of the charges such as that we needed to prove it with reference to specific inventories.

We need to prove that the pages of the batches are authentic so that Your Honours can use them in evidence, and there are many

indicators that can establish that authenticity, chain of custody just being one of them. When the accused, for instance, talk and wave pages of the batches at the camera and pages just like those end up being admitted into evidence, and Ms. Pumper confirms that those are the pages, this is also relevant to Your Honours' assessment of the authenticity.

The Haradinaj Defence is trying to make this case about chain of custody, but that's actually a collateral issue to the real question, which is whether these items of evidence are sufficiently authentic to be relied upon by Your Honours.

JUDGE GAYNOR: I've no further questions. Thank you, Mr. Halling.

Thank you, Judge Smith.

PRESIDING JUDGE SMITH: Mr. Halling, is it SPO's position that in regards to the intimidation count under Article 387 and Count 1 of the obstruction charge that there is direct evidence of a serious threat or is it circumstantial evidence creating the inference of a serious threat?

MR. HALLING: We would say both, Your Honour. We would direct Your Honour to paragraph 189 of our final brief. This is the case theory on obstruction where the serious threat is kind of parsed out into individual factors. And you can see that some of these things are direct evidence stating the identities of those who cooperated with the SITF and SPO. And other of these things would be maybe more circumstantial. As is argued elsewhere in the brief, the climate of

intimidation happening in the context of this is a circumstance that informs the seriousness of the threat.

PRESIDING JUDGE SMITH: Assuming that circumstantial evidence is in play, then, and we have to deal with it, or if we make a finding that it is all circumstantial evidence, I'll ask you, in accordance with Rule 140(3), is it your position that the only reasonable inference that could be drawn from the statements attributed to the accused is a serious threat to the witnesses to induce them to refrain from making a statement, or et cetera? Is that your position?

MR. HALLING: In respect to the circumstantial evidence in the case, it is, Your Honour. And we talked a little in the closing statement today about how the typo in the entrapment allegations is an example of this. The SPO says it's a typo. The Defence say it's precognition of the batches.

We would say that that second inference is totally unreasonable and that only the first one is legitimate. And so for whenever circumstantial evidence is to be applied, of course, the Rules of Procedure need to be applied.

PRESIDING JUDGE SMITH: That's all. Thank you.

MR. HALLING: Thank you, Your Honours.

PRESIDING JUDGE SMITH: That will be all of the questions today. We will reconvene tomorrow at 9.30.

Thank you to the Prosecution for your candour in your closing statements and your answers, and we look forward to the Defence

presentation tomorrow.

We'll see you at 9.30.

--- Whereupon the hearing adjourned at 2.59 p.m.