Thursday, 10 September 2026

[Open session]

[Closing Statements]

[The accused appeared via videolink]

[The Accused Thaci entered the court]

--- Upon commencing at 9.33 a.m.

JUDGE GOSNELL: Court Officer, please call the case.

THE COURT OFFICER: Good morning, Your Honour. This is file KSC-BC-2023-12, The Specialist Prosecutor versus Hashim Thaci, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuci.

JUDGE GOSNELL: Good morning, everyone. May we have the appearances, please, starting with the Prosecution.

MR. HAFETZ: Good morning, Your Honour. Josh Hafetz on behalf of the Specialist Prosecutor's Office, and I'm joined today by my colleagues, the Specialist Prosecutor Kimberly West, behind me, Matt Halling, Ella Palsenbarg, Julie Mann, Brent Hicks, and Earl Sullivan.

JUDGE GOSNELL: Thank you, Mr. Hafetz.

Defence, starting, please, with Mr. Thaci.

MS. MENEGON: Good morning, Your Honour. Today I am joined, on behalf of Mr. Hashim Thaci, by Megan Hirst, Mischa Gureghian Hall, Lirim Greicevci, Michaela Todd, and Colin Barra. Thank you.

JUDGE GOSNELL: Thank you, Ms. Menegon.

Mr. Rees.

MR. REES: Yes, Your Honour. My name is Jonathan Elystan Rees,

King's Counsel. I'm assisted today by co-counsel Mr. Huw Bowden and Mr. Derrick Gooden, and also further assisted by Matilda Falchetta Hainsworth, Mr. Muharremi Halilaj, and last, but definitely not least, Mr. Daniel Bowden.

JUDGE GOSNELL: Thank you.

Mr. Edwards.

MR. EDWARDS: Good morning, Your Honours. Representing Mr. Kilaj, who is appearing remotely. To my immediate right, Alexandra Baer; co-counsel Joe Holmes; to the far right, Eva Kalb; and behind us, our intern, Alex Cumming.

JUDGE GOSNELL: Thank you.

Mr. Young.

MR. YOUNG: Your Honour, good morning. I appear again for Mr. Fazliu. I'm assisted today in court by Ms. Livia Veliu who is the case manager. Thank you.

JUDGE GOSNELL: Mr. Admiraal.

MR. ADMIRAAL: Good morning, Your Honour. Representing Mr. Kuci.

JUDGE GOSNELL: Thank you. And I see that we are joined remotely by Mr. Smakaj, Mr. Kilaj, Mr. Fazliu, and Mr. Kuci, and that Mr. Thaci is present in the courtroom.

Can I just check from the remote location that there is anyone present from the Registry, please.

THE COURT OFFICER: Your Honour, I can confirm there is a court officer present at the location. He's in an adjacent room, and he

can step into -- on the screen if necessary.

JUDGE GOSNELL: Thank you very much for that confirmation.

There are two matters that I must address before we begin, the first of which is an order.

On Monday of this week, in anticipation of closing arguments, the Prosecution requested that an exhibit number be assigned to SPOE00410059 through 65 RED, which was a document conditionally admitted during Witness 8's testimony. Due to an oversight, this document was not admitted as an exhibit in the remand decision of 8 July 2026. Noting the absence of objection from the Defence, I hereby order the Registry to assign an exhibit number in due course to SPOE00410059 through 65 RED. This concludes the order.

The second matter is an objection from the Smakaj Defence by e-mail from yesterday to the use by the Prosecution during its closing statements of excerpts of transcriptions and translations that contain speaker attribution, citing Rule 135(2), which reads in relative part that "illustrative material and summaries of evidence, if they are based on admitted evidence, may be used."

The Chamber has been very clear in its previous rulings that speaker attribution and descriptions of non-verbal sounds on the admitted audio recordings are matters that will be determined based on the Single Trial Judge's direct observation of the audio recording and not descriptions thereof in the transcriptions prepared by the SPO. That was set out, in particular, at paragraph 9 of the Decision on Smakaj Request for Redaction of Admitted Material of

12th March 2026. I also made clear that, in these circumstances, there was no need to redact the attributions and other notations contained in the SPO-prepared transcripts, and I consider that the same reasoning applies to their use during closing statements.

So we will now proceed with the parties' closing statements following the agenda set out in the Scheduling Order of Closing Statements of 7 September 2026. We will have a 30-minute break at 11 a.m., a one-hour break for lunch at 1 p.m., and then a 15-minute break at 3:45 p.m.

Prosecution, the floor is yours for three hours.

MR. HAFETZ: Thank you, Your Honour. I'm going to turn it over to the Specialist Prosecutor.

MS. WEST: Good morning, Your Honour, and to all in and around the courtroom.

This is a case both simple and profound.

On the one hand, it is the case about someone who was facing serious charges and the prospect of a long sentence. With his associates, he tried to obstruct that process by interfering with witness testimony and got caught by many hours of recordings and documents corroborating those recordings.

On the other hand, it is a profound reminder of the constant vigilance necessary to protect the integrity of the proceedings against those who would seek to subvert it, and the important provisions of law that protect against such corruption.

Facing charges including crimes against humanity and war crimes,

and held in detention in part because of a risk of obstruction, Hashim Thaci directed his co-accused - dutiful friends, steadfast loyalists and former subordinates - in an effort to target witnesses whose evidence he considered decisive to the outcome of his war crimes case.

Disregarding judicial orders and legal safeguards intended to protect the integrity of witnesses and their evidence, Thaci formed small groups with his co-accused who had access to particular witnesses. Their aim was to shape witness testimony to conform to Thaci's wishes and preferred narrative.

And over the course of months, Thaci, over and over and over again, instructed his co-accused during their visits to the detention facility. He told them what witnesses should say, or not say, in order to minimise or eliminate his own culpability. He issued detailed instructions about KLA hierarchy, in particular who should be attributed authority instead of Thaci; KLA structure, to weaken the notion that the KLA was an organised body with the General Staff, and Thaci, a commanding figure. Thaci also issued instructions about his presence or non-presence at various places and times, including his identification in the context of crimes, and instructions in many other matters that directly or indirectly implicated Thaci in crimes charged in Case 06.

The instructions could be narrow and specific, as they were in regard to a prior statement of a witness who had identified Thaci as being present for the witness's arrest. Thaci instructed co-accused

Kilaj that the witness had to correct the statement, specifically "correct Part 6," and then specifically "Page 7," and finally "Line 9" so that Thaci was not implicated.

Or, in another example, Thaci's instructions could be broader, like when he instructed Kuci that "we need to have the whole summer period removed."

But one way or another, witnesses were to understand Thaci's main directive which was "do not cause any harm there." The "harm" being testimony that could potentially implicate Thaci in crimes and the "there" of course being this very court.

Thaci also instructed his co-accused how witnesses should explain or rationalise the changes needed to conform previous statements to Thaci's preferred narrative. For example, by the witness saying that the original statement was a mistranslation or a lapse, or the witness should say that he had been tired and mixed things up, or that it was just a rumour, or perhaps the witness said it erroneously.

And Thaci also gave clear instructions how to make witnesses understand why or the reason they should conform to the Thaci script. As Thaci said to Fazliu in regard to the witness: "Tell him, 'Since you are coming here, make sure you return as a hero rather than in disgrace.'" And if you don't know how to handle it, "coming here will end it. There is no point returning." And as Thaci said to Kilaj in regard to the witness, "Tell him, 'because it is not in his interest.'" "Tell him, 'This is for your own good.'"

Smakaj, Kilaj, Fazliu and Kuci, Thaci's chosen liaisons for reaching witnesses outside his detention, were committed partners, constantly assuring Thaci that his instructions would be followed.

For example, from Fazliu, in response to Thaci, said this will "get done well, without a problem." From Kuci, "No, it is no problem for me at all, not at all." From Kuci, agreeing with Thaci, "Yes. He has to change it." And at another point in the same visit, Kuci reminded Thaci of an "important" instruction Kuci should convey to the witness that Thaci himself had momentarily omitted.

The scope of the instructions and their importance to Thaci meant that he repeatedly deemed it necessary for them, his visiting co-accused, to write down the instructions, which was dutifully done.

For example, Thaci to Fazliu: "Are you writing this down?" Fazliu: "Yes. Yes." Thaci: "Because you will forget." Fazliu: "No, no, I will not forget it all."

Or to Kuci, Thaci instructed: "Urgently meet up with him, tell him these things straight away. Are you writing it properly?" And in response, Kuci affirmed that he had.

Statements of witnesses were printed out in the detention unit and marked and annotated during whispered discussions. To Kilaj, Thaci said: "These are the answers and these are questions, these are the answers." And then a bit later he said: "This is where it needs to be corrected."

To Kilaj again: "You just this for him to correct it. You take this one because we also have more."

Documents discussed during these meetings, clearly identifiable by their contents, were later recovered from Kilaj's residence and Smakaj's car.

Over the course of months, the accused, again and again and again, wilfully, and sometimes mockingly, trampled on the rulings, orders, and criminal provisions intended to protect the secrecy and integrity of the process.

Your Honour, every legal system requires provisions to protect its functioning and integrity. The multiple protective provisions and orders for the KSC reflect not only that universal imperative, but also reflect a pervasive background of fear and intimidation against those witnesses providing evidence of crimes within our mandate, and reflect on the importance of ensuring the integrity of cases addressing violations of international humanitarian law.

Attacks on the secure operations of legal systems are assaults on the barriers between right and might. Those who would consider conducting such attacks should never be in doubt that law enforcement and justice bodies, and certainly this office, will be relentless in fulfilling its obligation to enforce the laws that protect witnesses from interference and, most importantly, safeguard the integrity of the judicial system.

Thank you, Your Honour. Mr. Hafetz will continue our remarks.

MR. HAFETZ: Good morning again, Your Honour.

When the Prosecution stood before you in February and opened this case, we said we would present evidence that proves each charge

beyond a reasonable doubt.

We have, and it does.

The Specialist Prosecutor is correct. While the significance of the accused's offences is profound for the rule of law and the integrity of the proceedings, the facts of those offences are not profound.

The facts are simple and straightforward, and they are overwhelming.

For four months, Hashim Thaci used his Detention Centre visits to attempt to obstruct the proceedings in his trial for war crimes and crimes against humanity, and in the process, he repeatedly revealed confidential witness information and violated clear court orders.

His co-accused, each one of them a long-time loyal friend, joined Thaci in this endeavour. And each co-accused had access to the witness he agreed to target.

The purpose of the attempted obstruction was also simple: Tell witnesses what to say when they came to court in order to help Thaci's case. The instructions were to say and to not say specific things, to not remember and to not know certain things, and above all, to tell Thaci's narrative for Thaci's benefit, that is, his version of events, all aimed at minimising or eliminating his culpability for crimes charged in Case 06.

And when that meant telling a witness to change or "correct" or "remove" his prior evidence, or to not cause harm to Thaci, or how to

answer a Judge's question, or what to say about a particular piece of evidence, then that is what Thaci instructed. Each example I just referenced is just one of many from the admitted recordings in this case, and each one tells you exactly what this case is about and how simple it really is.

What mattered to Thaci and his co-accused is that the witnesses Thaci selected for interference had to be told to do and to say what Thaci wanted them to do and to say.

The entire Defence case from the start has been designed to avoid this basic reality, to turn the Court's attention away from the mutually reinforcing and corroborated facts before it. In other words, to distract, distract, distract.

The Defence would like this Court to put its head in the sand and ignore that which is blindingly obvious. But there is no hiding from the facts in this case because the criminal conduct was recorded. It was recorded inside a closed detention centre where Thaci was detained specifically because judicial decision after decision found him to pose a risk of witness interference and obstruction in his trial.

To be more specific, there are admitted in evidence in this case approximately 28 recorded hours of Thaci talking. These 28 hours are spread across nine separate visits across four months, including the five visits in which Thaci was talking to his co-accused in this case.

The content of the recordings is devastating for Thaci and his

co-accused. The reason it is devastating, because, in visit after visit, Thaci talked in a normal voice about everyday topics and then lowered his voice to a whisper to whisper specific detailed instructions for his visitors to convey to witnesses. He did it for months, and his instructions followed a clear and recognisable pattern aimed squarely at the charges in Case 06.

When it came to certain victim witnesses whose prior evidence could link Thaci to a specific alleged act of mistreatment, his pattern of instruction was even simpler: The witness must erase any trace of Thaci's involvement.

Your Honour, the reliability and full weight this Court should give to the admitted transcripts of the recordings has been fully and exhaustively litigated, and is detailed in our final trial brief, in our reply, and I'm not going to rehash them all here.

But let me say this. The transcriptions and the translations are in evidence. They bear full weight as the reliable and accurate written record of what was said during each visit.

First, to argue, as the Defence has, that Your Honour is unable to assess and determine when Thaci and his visitors are speaking in the recordings based on the totality of evidence before the Court is desperate and it is not the law.

Second, as to what Thaci and his visitors said during the visits, the recordings have been fully transcribed and translated. The Defence had the ability, under the Conduct of Proceedings and the specific orders of this Trial Panel, to challenge the accuracy of

specific portions of any transcription and translation they believed to be inaccurate.

Instead, the Defence claimed entire blocks of recordings, sometimes as long as 50 minutes - 5-0 - were entirely indistinct. The broad, sweeping challenges the Defence made were reviewed and assessed by the independent Language Services Unit of the Kosovo Specialist Chambers. Pursuant to the KSC Practice Direction on Translation and Interpretation, the Language Services Unit, or LSU, is comprised of language professionals who are duty-bound to conduct their work faithfully, independently, and conscientiously, and consistent with the KSC Code of Ethics for Interpreters and Translators.

The LSU took extensive time to complete its verification work. The LSU completed its review and verification for each and every challenge maintained by the Defence. The LSU also completed language verification requests for certain transcript sections that Your Honour requested be verified.

The results of all of the LSU verifications are in evidence.

And where the SPO quotes in its final brief or here today from material that was subjected to LSU verification, the SPO relies only on the LSU-verified version. In sum, the verified transcription segments must be given their full weight.

Where the Defence made no challenge, or made a challenge and then withdrew it, the accuracy of that transcript material should also be given full weight.

This is not complex. It is the procedure of this Court, followed to the letter.

And yet the Defence suggests that Your Honour cannot rely on any part of any transcription, that the whole 28 hours of recordings should be cast aside, ignored entirely.

And for this point, the Defence rests its entire case on a single witness, a witness who listened an unknown number of times to an unknown number and selection of less than 30 minutes of 28 hours of recordings and who is able only to obtain some "impression"; a witness unable to answer even the most basic questions about her sources and methodology; a witness who does not speak or understand Albanian, does not know the difference between or even the existence of the Tosk and Gheg dialects, let alone which one was used in the recordings she was asked to assess; a witness who asked the Defence to provide her with Albanian language assistance to help her complete the task the Defence assigned to her and was then denied that assistance; a witness who then, because she had no Albanian language skill or assistance, turned to an AI system as the single benchmark for the central conclusion in her report; a witness who has received no training on how AI models work and who used AI for this purpose despite the Defence's own Albanian translator, DHT-1, stating that he is not aware of any reliable AI Albanian transcription tool. A witness whose work in this case appears in conflict with two different codes of responsibility applicable to her work. A witness who repeatedly, in her report, her preparation note, and her

testimony here, suggested that this Court and its procedures and practice of the LSU are benighted and backward. And a witness who acknowledged that no court or legislative body has ever - ever - required the procedures she demands this Court impose.

This witness, Dr. Fraser, is indeed an expert in linguistics, and, as one of the courts who has critiqued her work has noted, her field is indeed "interesting." Her work on priming may indeed have some measure of applicability in certain cases, for example, where the case turns on the meaning of a single uncorroborated recorded word or phrase that is unclear or subject to dispute.

But that is not this case.

The extremity of her position here cannot bear the weight of the facts, many of which she simply ignored. Thaci's whispered instructions for witnesses across nine different visits provide the kind of large volume of recorded evidence which even Dr. Fraser acknowledges is an "advantage," providing the listener with greater internal context to assist in deciphering what was said.

In multiple instances on a core issue, Thaci's specific instructions targeting a specific witness using a specific document, independent evidence corroborates and reinforces the accuracy of the transcripts. A phenomenon that Dr. Fraser herself acknowledges is relevant to assessing transcript reliability.

More to the point, Thaci's hours of recorded discussions reflect his common pattern of consistent themes, spoken across visits over months. And many of his words and those of his visitors are readable

audible. Where Thaci or his visitor's whispered words or phrases were truly indistinct and could not be transcribed, the transcribers of both the SPO and the independent LSU did not transcribe them. They wrote down "indiscernible."

Faced with this reality, the Defence provides an alternative path to distract from the evidence, one that does not depend on Dr. Fraser. And specifically, they claim that even if the words are as they are transcribed, well, then the words don't really mean what they appear to.

In this alternative reality, Thaci's whispered instructions to tell witnesses what to say and Thaci's co-accused's agreeing to implement those instructions are something else. For the Defence, those whispered words are just old friends reminiscing, talking about the past, or Thaci blowing off steam. Or, in yet another of the alternative realities, as several of Thaci's co-accused seem to argue, the words actually are instructions from Thaci to interfere with witness testimony, but the co-accused's agreement to those interactions was just them taking pity on Thaci, or being polite, or agreeing for the sake of agreeing. Just placating the boss.

Your Honour, none of these shifting explanations is supported by the actual evidence. Thaci's and his co-accused's conduct was not just recorded; it is corroborated by fact after fact collected independently of the visit recordings. This evidence even includes confidential witness-related documents disclosed to Thaci in Case 06 which were printed at the Detention Centre, used by Thaci during the

visit to target a specific witness, and then seized from a co-accused shortly after the visit. And the corroboration includes evidence tendered by the Defence itself.

Again, the case is simple.

So let's talk about what the evidence actually shows, and how it proves the charged offences under Articles 401, 392, and 393 of the Kosovo Code.

Let's start with Fadil Fazliu's visit to Thaci on July 2nd, 2023. The facts of this visit and the corroborating evidence around it are a microcosm of this case and how Thaci operated as the leader and organiser to obstruct Case 06 proceedings.

The recorded visit also demonstrates the Defence attempts to distract and to confuse what is plain and simple, and that is this: Thaci and Fazliu sat in a room together and planned, agreed, and took concrete steps, including through the use of Fahri Fazliu, to interfere with witness testimony and obstruct Case 06 proceedings. And the very next day after Thaci repeatedly dictated his instructions to Fazliu, Fazliu flew back to Kosovo, and he and his son did exactly as Thaci and Fazliu agreed. They set up a meeting and met with SPO Case 06 witness Rrustem Mustafa.

So let's look at that evidence. Fazliu's visit to Thaci on July 2nd lasted three hours. The visit was audio-recorded pursuant to judicial order.

Your Honour, at this point, I'm going to ask for the screen from the Court Management Unit, and I'm going to note that we are going to

show some slides which have been shared with the Court and with the parties, and all are intended to be displayed to the public. Where redactions are necessary, we have made them.

Just three days before the visit, Fazliu used his son Fahri as an intermediary to contact Remi Mustafa to set up an in-person meeting. We know this happened because text messages seized from Mustafa's mobile phone, shown here from Exhibit 180, prove that it happened. Specifically, the messages seen here show Fahri directly contacting Mustafa to request a meeting on behalf of him and his father on the 26th of June.

And more seized text messages show that Fahri Fazliu succeeded in setting up the meeting between himself, Fadil, and Mustafa, on June 29th.

At the time of their June 29th meeting in Kosovo, Mustafa was scheduled to travel to The Hague to testify in Case 06 within days, and we know much of what was discussed at this June 29 meeting in Kosovo because Fazliu reported on the meeting to Thaci just three days later at the Detention Centre here in The Hague.

Specifically, Fazliu reported to Thaci the following: That Mustafa had told Fazliu at their June 29 meeting that Mustafa was ready to receive any messages from Thaci before his testimony and had vowed to "get it done." Fazliu stood ready to deliver any messages from Thaci back to Mustafa; and Fadil knew precisely when Mustafa planned to leave Kosovo for his witness preparation in The Hague.

We also know that during that 2 July visit between Fazliu and

Thaci, Thaci then zeroed in on his main objective: interfering with these proceedings by directing Fazliu to deliver to Mustafa a series of specific, word-by-word instructions on how to testify to help Thaci.

We will now play a brief representative clip of the recorded visit. The transcription of the entire recorded portion was challenged by the Defence. Their claim was not that a specific word or phrase or sentence was misheard or mistranscribed or mistranslated. Instead, the Defence claimed that all of the recording segments were indistinct and were not properly transcribed, even the parts where neither man was whispering.

The transcription of this entire clip has been fully verified by the LSU through the verification procedure of this Court.

The clip is just about two and a half minutes long and we'll play it now, and I'll stop along the way.

[Video-clip played]

MR. HAFETZ: What you just saw is as clear as day.

First, speaker attribution in the SPO transcripts has been exhaustively demonstrated and is clear from the recorded evidence itself and is an issue that Your Honour will ultimately resolve. But there can be no serious question as to when Thaci and Fazliu are speaking throughout this visit. This is particularly so given that Fazliu repeatedly described participating in events outside of the Detention Centre.

Second, there is no doubt that Thaci and Fazliu were talking

about SPO witness Remi Mustafa. And specifically, there is no doubt that they were talking about when Mustafa would travel to The Hague for his testimony in Case 06.

And third, in the clip, Fazliu just confirmed to Thaci, just as the text messages we just saw show, that Fazliu had just met with Mustafa before coming to see Thaci. And you see here, Thaci emphasised how important, how decisive Mustafa was for his case. And then Fazliu reported Mustafa's words for Thaci: Whatever the message, Mustafa will get it done. Not a problem.

This does not sound like two old friends just reminiscing about old events, because it is not two old friends just reminiscing about old events. Thaci and Fazliu were speaking about the future and how to shape that future to benefit Thaci.

We will continue playing the clip now.

[Video-clip played]

MR. HAFETZ: After they discussed exactly when Mustafa would leave Kosovo and travel to The Hague for his testimony, Thaci and Fazliu got to the real point: What, precisely "getting it done" meant for Thaci.

To start, Thaci repeated over and over again that he wanted Mustafa to keep his answers brief and short, to answer "yes," "no," "yes," "no."

This isn't telling a witness to just tell the truth. And Thaci himself gave meaning to instructions to be brief later in the visit, as he did in other recorded visits when he gave similar instructions

for other witnesses. And the point was to keep the witness's answers short to avoid saying something harmful to Thaci, to avoid the witness telling too much, to avoid the witness "slipping" as Thaci himself described it.

We will now continue playing the video.

[Video-clip played]

MR. HAFETZ: Again, this is not reminiscing or bravado or agreeing just to agree. This is Thaci telling Fazliu that when he goes back to give Mustafa his message, the message is this: Disconnect the General Staff, including Thaci, from the zone commanders. "And these ones did not tell me anything at all."

Fazliu then offered his own clarifying instruction for Mustafa to say: "I did everything myself. That's right."

We'll continue playing the video now.

[Video-clip played]

MR. HAFETZ: After at the start of that section, they again confirmed they were talking about the testimony of Mustafa, they then confirmed the importance of Fazliu not contacting Mustafa directly. Instead, Fazliu would use his son Fahri to set up the meeting. Thaci agreed and dictated, "Not you," further emphasising the importance of creating a buffer between Fazliu and Mustafa.

And Thaci then immediately issued his next instruction for Mustafa, this one regarding his upcoming witness preparation session and what Mustafa should do during the session.

We'll continue playing now until the end.

[Video-clip played]

MR. HAFETZ: In just this two-and-a-half-minute clip, Thaci has made his instructions crystal clear. He told Fazliu to use his son to set up an immediate follow-up with Mustafa to tell Mustafa what needed to be done, including: Keep his testimony brief, to answer yes and no, yes/no; shorten things, do not leave them open ended; use the witness preparation session to "get it done then" and avoid "slipping."

Thaci also there revealed confidential fact of Mustafa's estimated examination time for the specific purpose of emphasising the importance of Mustafa keeping his answers short.

And Thaci repeatedly issued his interference instructions in a whisper, in contrast to how he spoke when not attempting to interfere with witness testimony.

And for his part, Fazliu offered his own words for Mustafa to say.

Now, just minutes later, Thaci continued dictating specific content instructions for more of Mustafa's testimony. Fazliu, fully engaged, offered his own addition to Thaci's instructions and assured Thaci it is a "done deal."

You see this clearly in the next clip, also from P105, which is just over a minute long. And we'll play it now.

[Video-clip played]

MR. HAFETZ: I'm going to pause here, Your Honour, and skip to the next clip because I think this is the one we just saw. Thank

you.

[Video-clip played]

MR. HAFETZ: Reminiscing between old friends is not one friend ordering the other friend to write down his instructions for how a third person should testify. This is what it is on its face. Thaci is drilling home that Mustafa should testify about the importance of Adem Demaci and the lack of connection between Mustafa and Thaci. And Thaci is so concerned about his message being delivered to Mustafa that he not only repeats it, he insists that Fazliu write it down. And for his part, Fazliu not only assured Thaci that he was writing it down, he assured Thaci he would not forget his orders, not at all.

We'll continue playing.

[Video-clip played]

MR. HAFETZ: Thaci has now further clarified the importance - his words, "this is important" - of the direction for Mustafa. He must sever the tie between Mustafa and the General Staff, including Thaci himself. He must say that no direct orders were given by Thaci.

The last clip I will play from this visit occurred just about a minute later, where Thaci focused on the importance of Fazliu covering up their conduct to prevent detection by the SPO or the Court. And Fazliu responded by, again, making clear he understood the need for stealth, and that he planned to again use his son Fahri to contact Mustafa.

We'll play the clip now.

[Video-clip played]

MR. HAFETZ: Thaci and Fazliu are not talking about a reconciliation in Prishtine. Thaci is whispering precise instructions to Fazliu about how to contact Mustafa without the contact leading back to Thaci because both men know what they are doing is unlawful.

And critically, Fazliu told Thaci here, "We spoke to him and we told him," making it even more clear that Fahri knew what was going on and why he and his father met Mustafa right before and then right after Fazliu's visit to Thaci.

Your Honour, if there is a technical difficulty, I'll ask for a two-minute recess, but let's see if we can play this.

If Your Honour pause one moment, we can try to fix the cable. Okay.

The next segment of this clip eviscerates any claim that all of this extensive discussion about Mustafa's testimony, his witness preparation, when he's travelling, what he should say in court, had anything at all to do with a mediation or reconciliation after a recent shooting in Kosovo.

We'll continue playing now.

[Video-clip played]

MR. HAFETZ: Just seconds after the reconciliation was brought up as part of the pretextual reason for Fazliu to contact Mustafa again, Thaci and Fazliu immediately focused back on the purpose of

their extended discussion: Instructions for Mustafa's testimony.

Indeed, Thaci's instruction and Fazliu's knowing response cut to the core of the case: "Tell him the aim is to connect you, to connect them, from the top down."

Fazliu: "If they connect him, it will be bad for you."

This visit is not about reconciliation. It is about Mustafa's testimony and how to shape it. And the goal is clear: Thaci wanted his connection to Mustafa broken because if not, as Fazliu summarised it, it would be bad for Thaci.

We'll now play the remainder of the clip.

[Video-clip played]

MR. HAFETZ: Again, there is no subtext or ambiguity. Thaci just repeated the need for Mustafa to be brief, and this time added several reasons why Mustafa should be told to do what Thaci wanted, including that all eyes are on Mustafa, and that if Mustafa did as Thaci wanted, it would help with future witnesses.

In the next two short transcript excerpts, both from page 56 of the admitted transcript, which come just a few minutes later in the recording, Thaci again made his purpose explicit.

Here he issued an instruction for Mustafa that he repeated in various forms across other recorded visits in the case: When "cornered," the witness should say "I don't know, I have no comment, I do not remember."

This is not some honest request to tell the truth. It is a direction aimed squarely at preventing answers that are bad for

Thaci.

Fazliu did not ignore the comment or try to move on from it. He amplified it by stating: "Don't talk, yes, that's right."

Immediately after this, Thaci issued another instruction for Mustafa.

You see here that when Fazliu mentioned the reconciliation issue as the pretextual reason he had reached out to Mustafa, Thaci again made clear exactly what the Detention Centre visit with Fazliu was really all about, and it had nothing at all to do with the recent shooting in Kosovo.

It was about undermining the joint criminal enterprise as charged in Case 06. The aim is the joint criminal enterprise. This was the entire big-picture target of Thaci's instructions for Mustafa throughout the visit. Break the connection, exactly as Thaci and Fazliu had just discussed in the clip we watched a minute ago.

Thaci also used the visit to reveal to Fazliu confidential information in order to preview questions Mustafa would be asked in court, to shape his instructions for him, and you see that here.

Thaci identified a specific exhibit, a book that Mustafa would be asked about and then dictated what Mustafa was permitted and not permitted to say about it. Thaci knew that this was a book that Mustafa would be asked about because the exhibit list was disclosed to him in Case 06, and the specifics of those exhibits and what would be used with the witness were confidential.

Then immediately after that, Fazliu provided his own suggested

instruction for Mustafa consistent with Thaci's as seen here. Not bravado, not humouring his friend. This is affirmative contribution to Thaci's instructions which Fazliu has already agreed to convey to Mustafa.

After Thaci completed his full instructions for Mustafa, and after Fazliu repeatedly agreed to convey them using his son Fahri, after already having agreed to write down the instructions during the visit, Thaci returned to talking in normal tones about everyday issues for most of the rest of the visit.

That same night, just hours after the visit, Fazliu was in contact again with his son Fahri. That communication is at Exhibit P194.

The next day, the 3rd of July, Fazliu did exactly what he promised Thaci he would do. He flew back to Kosovo, and within hours of landing, he and Fahri and Mustafa met at Route 66, just as they had the week before. And just as Fazliu had agreed with Thaci, it was Fahri who set up the group meeting with Mustafa. You see that here in Exhibit P199.

Fazliu had his son Fahri contact Mustafa despite the fact that the evidence shows Fazliu had his own phone and it worked and he could have done it himself. He used his son to do it because Thaci had told him to approach Mustafa indirectly.

We also know that Fahri Fazliu deleted all of his messages setting up these meetings with Mustafa in June and July. And you see that here in P199, which is also explained in Witness 9's testimony.

And what you see is on 26 June for the initial contact, 29 June for the consummation of the first meeting, and then again on 3 July, the messages that are missing there are the messages between Fahri and Mustafa setting up the meetings that you saw before because they were obtained from Mustafa's seized phone.

Finally, we know that when the SPO later attempted to ask Remi Mustafa questions about the subject, he refused to answer any questions, instead referring generally to his friends and claiming, before the SPO could even ask him a question, that no one interfered with him and that he is not a person who could be influenced. The same witness who Thaci told Fazliu to tell: "Tell him, 'Since you are coming here, make sure you return as a hero, rather than in disgrace.'"

Two months after Fazliu's visit, Hajredin Kuci visited Thaci at the Detention Centre. At the time, Mr. Kuci was a member of Kadri Veseli's Defence team in Case 06.

Kuci is a lawyer. He is a professor. He is the former minister of justice in Kosovo. And as a member of Veseli's Defence team, any suggestion that he did not know what the Case 06 Contact Protocol did and did not allow is fantasy.

But Kuci was also Thaci's long-time friend and loyal subordinate. And on 3 September 2023, Kuci proved himself to be another eager and willing recipient for Thaci's instructions to violate court orders and to tell witnesses exactly how to testify to help his case. Kuci chose to put the selfish desires of his old boss

above the law he was duty-bound to follow.

Before we get to the visit, it's important to understand a bit more about a specific action Kuci took just a few months before he visited Thaci.

On 12 April 2023, Kuci sent a text message to SPO witness Remi Mustafa, the same Mustafa we just spoke about. The message, which is found at P115, as amended by the LSU verification, reads:

"Friend, I congratulate you for your professionalism, for your clear ideas about the country and the war, and for your courage. Bravo."

Mustafa responded immediately by thanking Kuci for the message.

Kuci sent Mustafa this congratulations text just nine days after the Case 06 trial started. And he sent the message on the same day, 12 April 2023, that Mustafa appeared on a TV interview programme. During that programme, Mustafa stated, among other things, that the regulations of the Llap Operational Zone were not coordinated with those of the General Staff, and he denied that the General Staff was informed about the details of what happened in the Operational Zones. These were presumably some of the "clear ideas about the war" that Kuci was congratulating Mustafa for.

Mustafa would be called to testify in Case 06 less than three months later, as the first KLA insider witness. And, as we just saw, Mustafa and his testimony were the target of Thaci's interference instructions which were aimed, in significant part, at ensuring that Mustafa created distance between the General Staff and the

operational zone commanders.

Indeed, Mustafa is the same witness Thaci identified during the 2 July visit as critical to his case because if Mustafa's testimony went for Thaci, it would, as Thaci put it at the end of the clip we watched a moment ago, "stop the rest of them." The "them" being other SPO witnesses.

Your Honour, there is no dispute Kuci sent Mustafa the text message on 12 April 2023. There is no dispute Mustafa was an SPO witness at the time and that Kuci knew this fact. There is no dispute that at the time he sent the message, Kuci was a member of the Veseli Defence team. And it cannot reasonably be disputed that the Contact Protocol in Case 06 prevented Defence contact with SPO witnesses absent judicial authorisation.

There was no such judicial authorisation for Kuci's contact with Mustafa. It was prohibited.

Kuci's act violated the Case 06 protocol, which was a final order he was bound to obey.

Again, Mr. Kuci is an attorney, a professor, and a former minister of justice. He knew the rules and he broke them anyway. This was contempt of court.

And to suggest that he did not know he was subject to a clear court order, or that he somehow inadvertently texted a crucial upcoming insider witness in a major war crimes and crimes against humanity trial that started just days before he sent the message is not remotely credible.

This act is, in and of itself, worthy of the punishment the SPO has requested for it.

As Kuci surely knew, the recognised climate of intimidation in Kosovo makes every violation of the Contact Protocol significant. It is why the protocol exists in the first place.

The inability to predict or truly know the impact that a message like this to a witness is precisely why the Contact Protocol prohibits them and provides the calling party the general right to be present for defence contacts. And neither the length of the message, nor its content changes the fact that this was a direct breach of a court order for a significant witness in a major trial.

This is who Kuci was when he walked into the Detention Centre to visit Thaci on 3 September 2023. A highly educated, former high-ranking subordinate and long-time close friend of Thaci, with access to large amounts of confidential witness information working for another Defence team in Case 06, a man who had already committed contempt of court.

His visit to Thaci was recorded. So at the outset, let's talk briefly about the admitted transcript of that visit recording.

Throughout, the relationship the men and who is speaking is clear. Kuci called Thaci "boss" more than 90 times in the visit. And Kuci, for his part, is called by his short name "Hajro" more than 50 times.

SPO relies in its Final Trial Brief on 66 pages of the 3 September transcript to prove the substantive indictment charges

against Thaci and Kuci. 61 of those pages, meaning 92 per cent of them, were challenged by the Defence as "indistinct." Once again, no Defence team ever pointed to a specific word, phrase, or sentence that it claimed was mis-transcribed or mistranslated in the transcript.

Instead, as they did throughout, the Defence again claimed that all of the recording segments of these challenged pages were indistinct. They made this claim despite the fact that the recordings themselves clearly disprove it.

And the SPO again invites Your Honour to examine the audio segments for yourself where you will hear passages where both men are speaking in totally audible, discernible voices, and then other parts where they are indeed speaking in a whisper, which both the SPO and the independent LSU transcribers noted and were able to discern. And where short bits of Thaci's and Kuci's persistent whispering proved too low to discern, the transcripts reflect that reality with the word "indiscernible."

The reason that the Defence has tried to make the entire content of this recording go away is simple: The evidence is damning.

After dispensing with personal matters and political talk in regular voices, Thaci, whispering at length, detailed instructions for how three different Case 06 witnesses must be told to testify. Two were insider witnesses, and one was an alleged victim of mistreatment. Thaci's targeting of all three was designed to advance his preferred narrative where he had no responsibility for offences

charged in Case 06.

The first witness Thaci targeted --

[Single Judge and Court Officer confers]

JUDGE GOSNELL: Just one moment, Mr. Hafetz. We need to restore the connection with Mr. Fazliu, I believe.

MR. HAFETZ: Certainly, Judge.

MR. EDWARDS: I think it's Mr. Kilaj, Your Honour.

JUDGE GOSNELL: Yes, it's Mr. Kilaj.

MR. REES: Perhaps we could take the morning break at this stage.

JUDGE GOSNELL: That's just what I was contemplating, Mr. Rees.

Apologies, Mr. Hafetz. We do have to break a bit early to restore the connection. So We will resume at 11.25, by which time I hope that the issue will be resolved.

For purposes of appearances, I apologise, Mr. Nilsson, I overlooked your presence in the courtroom. So Mr. Jonas Nilsson is present on behalf of the Registrar.

We'll adjourn until 11.25. Thank you.

MR. HAFETZ: Thank you, Your Honour.

--- Recess taken at 10.54 a.m.

--- On resuming at 11.27 a.m.

JUDGE GOSNELL: I see we have Mr. Kilaj back with us, so thank you to the Registry for that. And I'll just mention that the Registrar is also present in the courtroom.

Mr. Hafetz.

MR. HAFETZ: Thank you, Your Honour.

We were talking about Mr. Kuci's 3 September visit to Mr. Thaci, and as I said before the break, he targeted three different witnesses.

The first witness that Thaci targeted, and whom Kuci agreed to contact and deliver his messages, was insider witness Sylejman Selimi, known as Witness 5 in this case.

I'm going to play a clip from the visit now, and it starts about 56 minutes into the visit, and it's from P106. The clip begins with Thaci discussing Witness 5's prior evidence and then shifts to his more precise instructions.

And we'll play part of the clip now.

[Video-clip played]

MR. HAFETZ: Thaci has just reviewed with Kuci information specifically related to Witness 5 and then started to issue his instructions, including he should be told both of these.

We'll continue playing.

[Video-clip played]

MR. HAFETZ: What you just saw for the second time in just this short excerpt is Thaci stopping to make sure Kuci understood him before moving on to his next instruction about what Witness 5 "should not" do or say. "Got it?" he made sure.

And as you will see, immediately after this, Thaci issued another specific instruction, one which he repeated in several other recorded visits. It's about a specific phrase about Thaci that Thaci

wanted Witness 5 to change.

And the laughter you hear when Thaci and Kuci discuss this is then immediately followed by Thaci getting right back to business.

Within a second, Thaci makes clear the change the witness needs to make for him and even how the witness should explain the change when asked about it.

Kuci then added his own clarification for exactly what Witness 5 should say, with Thaci agreeing. Thaci then returned to whispering to Kuci that he should "work with" the witness.

That's all here in the remainder of this clip, which we'll play now.

[Video-clip played]

MR. HAFETZ: Thaci's whispered instructions and Kuci's agreement to ensure that Witness 5 would receive them go on like this for multiple pages of the transcript. For example, Thaci focused repeatedly, as he did in other recorded visits, on instructions for what Witness 5 must say about the Case 06-related individual referred to as Qopa, as seen here in this slide.

This is unambiguous. After first underscoring the importance of the issue to his case by saying "this narrative is very important for us," Thaci ordered that Witness 5 had to say what Thaci wanted about Qopa or it would harm both Thaci and Witness 5. "'If you put him on his feet, you will fuck both yourself and the others, that is if you put him on his feet.' Tell him, 'Leave him lying down there.'" That is an instruction.

Then a few minutes later, another whispered instruction. In this example, also from P106, you'll see that Thaci instructed that Witness 5 be told what material he would be shown and how Thaci wanted him to deal with it, what Witness 5 should and should not say, and that he should "simplify" it like Remi Mustafa.

You'll note this is the same tactic employed in the Fazliu visit where Thaci specifically described to Fazliu the book that Remi Mustafa would be asked about.

This is not reminiscing between old friends. It's not asking someone to simply tell the truth. It's Thaci ordering that a witness be told to say exactly what Thaci wants them to say. And he was just getting started.

Shortly after completing his instructions for Witness 5, Thaci turned to testimony instructions for another witness. This time it was Bislim Zyrapi, known as Witness 2 in this case. The same man who Thaci told Kuci was "the most important one," a theme Thaci repeated across multiple recorded visits.

And again, Thaci issued extensive detailed instructions consistent with his pattern of instructions delivered across multiple visits.

We see that, for example, in this next audio-clip from his visit with Mr. Kuci. We'll play that clip now.

[Video-clip played]

MR. HAFETZ: There it is again. There's no question about who Thaci is issuing instructions for because he says his name

repeatedly, "Bisa, Bisa, Bisa, he, Bisa." With the sound of paper and writing audible and as verified by the LSU, Thaci, in a whisper, is clearly dictating to Kuci precise instructions for how he wants Zyrapi to testify.

And notably, Thaci made clear that what mattered to him, to his case, is not what Zyrapi himself remembered or how Zyrapi himself had previously described something. Not at all. What mattered to Thaci now is what Thaci needed Zyrapi's word to be, what he can say. How Thaci needed Zyrapi to describe the past to benefit Thaci.

And in this instance, what Thaci needed is for Zyrapi to provide to particular answers about the structure of the General Staff and the responsibilities of individuals, including Thaci, that would minimise Thaci's criminal responsibility before November 1998. It's in there repeatedly.

Thaci said it explicitly. He needs to have the whole summer period removed. This is a theme Thaci repeated across multiple visits.

And after this, his instructions for Zyrapi kept coming.

[Video-clip played]

MR. HAFETZ: After continuing to sketch on paper the structure of the General Staff and instructing that Zyrapi be told to draw it, Thaci got to the core point on the specific topic. Zyrapi, in his previous evidence, had put Thaci above the General Staff, and now Thaci needed that positioning to change. After ensuring that Kuci "got it," Thaci then hammered home the instruction.

We'll play the rest of the clip now.

[Video-clip played]

MR. HAFETZ: Kuci was not passive. He agreed that this witness must change his evidence to suit Thaci's demand after Thaci again confirmed that he "got it."

Thaci's instructions for what Zyrapi must say in court are extensive and they go on for pages of the visit transcript.

Once he finished with Zyrapi, Thaci focused on a Case 06 victim witness known in this case as Witness 6.

Given the sensitivity around the witness, I'm not going to detail the specific instructions here. They are detailed in our final brief and in the evidence itself.

But to generally summarise, what Thaci's instructions to Kuci about this witness made clear is that Thaci was deeply concerned about the witness potentially implicating Thaci directly in charged Case 06 conduct. And for Thaci, it was essential that the witness not implicate him.

What is also clear from the recording is that Thaci wanted Kuci to deal with this problem immediately because of the witness's upcoming testimony. And, as he did in other visits, Thaci made sure that Kuci wrote down his instructions.

When you listen to this recording, you can hear the urgency in Thaci's voice as he whispers through what each of these three witnesses must say and do to help his case. And Thaci's repeated demands to make sure Kuci understood and got it, and that his

instructions were being written down in realtime, make this even more clear. This was two men agreeing on a plan to violate explicit court orders barring contact with witnesses that both men knew applied to those witnesses, and it's why they were whispering about the plans and it's why they spoke in normal voices when not talking about them.

By the time he visited Thaci at the Detention Centre on 6 October 2023, Isni Kilaj had already demonstrated his intent to obstruct proceedings and interfere with Case 06 witness testimony, as well as his total disregard for the Kosovo Specialist Chambers.

We know this because Kilaj had previously visited Thaci on February 2nd, 2023. That time, he visited Thaci with Kushtrim Krasniqi and Jakup Gashi, all long-time friends of Thaci.

The February visit took place just three days after Thaci and the other Case 06 accused received the identities of protected witnesses in Case 06. Those witness identities had been withheld from Thaci and the Case 06 co-accused until then pursuant to judicial orders in Case 06. And the reason the identities were withheld for so long was, in part, to protect the witnesses from identified risks, including intimidation and influence, and to protect the integrity of proceedings.

There is no audio recording of Kilaj's February visit to Thaci. But the evidence shows that just three weeks after their February visit to Thaci, Kilaj exchanged text messages with Kushtrim Krasniqi, who was saved under the abbreviation "KIK" in Kilaj's phone.

And specifically, Krasniqi sent Kilaj a WhatsApp message

explicitly asking Kilaj to "please, make a photo of what that person needs to do," and then immediately after that, "I believe I will meet them tomorrow." To which Kilaj responded, "Ok!"

You see this all here in P208.

Just three hours later, Kilaj responded to Krasniqi using a different encrypted messaging application, and he sent him two photos of handwritten instructions, which are displayed here. The instructions were numbered 1 through 8. And you see them first here in Albanian, as they were recovered from Kilaj's phone. And then you see them here in the SPO English translation of those same instructions.

This evidence seized from Kilaj's phone is precisely what it appears to be on its face; namely, a set of clear, unambiguous instructions sent by Kilaj to his fellow Thaci visitor to then be delivered to a Case 06 witness for what to say and how to say it. The list of instructions reflects Thaci's preferred narrative, including specific formulations echoing, if not matching, Thaci's whispered instructions in multiple recorded visits. For example, Instructions 4 and 5 overlap with Thaci's instructions across multiple visits aimed at minimising the KLA structure and the responsibilities of the General Staff.

The instructions Kilaj sent to Krasniqi also match Thaci's repeated instruction to Detention Centre visitors, including his co-accused here, to tell witnesses to give brief answers - this is Instruction 8 - and that "it is recommended to speak a little,

answers like I don't remember, I don't know, I did not see them, et cetera."

Another one of the instructions Kilaj sent, Instruction 2, the "KLA was a volunteer force," also matches a torn handwritten note seized from Kilaj's jacket seized by the SPO.

The numbered instructions that Kilaj sent were not a mere friendly reminder to simply tell the truth. They are detailed instructions specifically tailored to be delivered to a specific witness identified as "that person" to tell the witness what he "needs to do."

The Kilaj Defence's reply that nobody has proven that the handwritten instruction notes Kilaj sent from his own mobile phone are in Kilaj's handwriting does not help Mr. Kilaj.

That Mr. Kilaj may not himself written down the instructions on the notes that he sent to Mr. Krasniqi does not change the undisputed fact that Kilaj sent the interference instructions with the knowledge that they were intended to be conveyed to a witness the next day.

We also know that by the time Mr. Kilaj walked into the Detention Centre to visit Thaci on 6 October, he already had in his possession a trove of confidential SPO material, material which he had no authorisation or defensible reason to possess. And these were not random documents; they were some of the most sensitive documents filed by the SPO and shared with the accused in Case 06 confidentially.

Some of these documents contained detailed summaries of what a

Prosecution witness was expected to testify. He had multiples of those. In other words, in the wrong hands, a road map for targeting witnesses for interference.

We also know that Kilaj took at least five confidential witness summaries from this confidential SPO material and pasted them into a translation programme on his laptop. And we know that he translated the SPO witness summaries from English - as they were disclosed to Thaci by the SPO -- into Albanian. We know that Kilaj did all this because the records recovered from his seized laptop show that he did it.

You can see this just one example from P200. I note that the material is blurred for this Court's purposes, but it is in evidence and Your Honour can read it. The material is blurred here today because it's confidential.

Kilaj knew the information he was copying into his translation programme on his computer was confidential and that it was confidential witness information because the text that he cut and paste into the application included the SPO's confidential marking in the middle of the document. It was right in front of his face.

We also know that Kilaj copied, by hand, parts of each one of these confidential summaries into notebooks he kept in his house.

Again, the information is blurred here for court purposes because it is sensitive and confidential, but Your Honour has it in evidence.

And again, there was no legitimate reason for Kilaj to possess

any of this confidential witness information.

And, again, this was not random. Each summary contained information about the mistreatment of the same Case 06 witnesses.

One of these witnesses was the Case 06 witness referred to as Witness 4 in this case. And importantly, Witness 4's anticipated testimony in Case 06 was expected to cover questions about Thaci's involvement in his alleged mistreatment by members of the KLA. And as we shall see in a moment, Thaci targeted Witness 4 for interference with Kilaj and Vllaznim Kryeziu precisely because Thaci feared Witness 4 could implicate Thaci in what happened to him.

So what the evidence shows is that when he returned to the Detention Centre to visit Mr. Thaci again on 6 October 2023, Kilaj was steeped in confidential Case 06 witness information, and that Kilaj had multiple witness summaries related to the witness that Kilaj would now be tasked by Thaci with conveying testimony instructions to.

Kilaj's prior conduct is relevant to show his intent to commit the crimes charged in this case and to demonstrate his deliberate pattern of conduct. And the law is clear that Your Honour may rely on evidence of such conduct for these purposes, even where the conduct occurred outside the charged period.

So knowing his intent, let's talk about what happened during the 6th October visit.

The visit began with Thaci addressing Kilaj and Kryeziu by name. You can hear that. As he did across all nine admitted visits in this

case, Thaci revealed confidential information about multiple protected Case 06 witnesses, and he dos o by often mocking and insulting the witnesses in the process.

Because discussing the details of this confidential evidence would necessarily require going into private session, I will let the final trial brief and the evidence underpinning it speak for itself.

But the main purpose of the 6 October visit was Witness 4. And as I mentioned a moment ago, Thaci targeted this witness because he had previously implicated Thaci in his alleged mistreatment. Indeed, Thaci made clear throughout the visit with Kilaj and Kryeziu that he feared Witness 4's testimony could damage his case.

Witness 4 was originally scheduled to testify in November 2023, and so when Kilaj and Kryeziu visited in October, Thaci had reason to be concerned.

The evidence shows that Thaci prepared in advance for Kilaj's and Kryeziu's visit by printing multiple documents related to Witness 4. Two of the documents Thaci printed were prior statements of Witness 4. Both prior statements were disclosed to Thaci by the SPO in Case 06. Both prior statements were disclosed as confidential. And both related to Witness 4's prior identification of Thaci as personally involved in his alleged mistreatment.

As seen here in Exhibit P133, printer records collected from the only printer inside the Detention Centre that was used for detainee printing show that the two Witness 4 prior statements were printed on 4 and 5 October 2023, just days before Kilaj and Kryeziu came to

visit Thaci.

And remember that Part 6.

About 45 minutes into the visit, Thaci began speaking in detail about the two Witness 4 confidential statements he had printed. As the recording and the LSU-verified transcript make clear, the Kilaj Group - Thaci, Kilaj, Kryeziu - then coordinated together on the witness interference.

You see the start of it here in the part of the recording where Thaci first began discussing Witness 4's 2016 statement. With the sound of paper clearly audible, which Your Honour can hear for himself, Thaci whispered to Kilaj to "read this one here." And then Thaci told Kryeziu in a normal voice, "you just sit here," as Kilaj read the document Thaci presented to him. Thaci identified the specific document he was talking about in this moment which he was using to "orientate" Kilaj as Witness 4's prior statement from 2016, with Kilaj confirming that he understood.

The three men then worked as a coordinated group to interfere with Witness 4. Specifically, Thaci held two conversations in parallel. He and Kryeziu talked in normal voices about an unrelated innocuous matter to provide cover while Thaci whispered to Kilaj about Witness 4's prior statements and the part of his prior evidence that Thaci demanded be changed.

Your Honour can hear for himself the different tones of voice and parallel conversation dynamic that continues from this point. It's clear in the recording. It is obvious, and nobody speaks this

way.

Thaci then provided the key passages of Witness 4's confidential 2018 SPO interview to Kilaj. Again, Thaci was explicit. He whispered, "This is his that he gave in 2018."

Thaci and the Kilaj Group went on this way, dissecting Witness 4's information and statements for about 15 minutes. There is no ambiguity about what they discussed, what Thaci's purpose was, and what Kilaj agreed to do with the Witness 4 statements that Thaci gave him. You see that throughout the transcript itself, including in the portions cited in the final trial brief, and you see it in this short representative clip, which is from the recording P109, as verified by the Language Services Unit.

We will play the clip now.

[Video-clip played]

MR. HAFETZ: At this point in the visit, Thaci has been whispering his instructions for Witness 4 for nearly ten minutes, and what you hear now is Thaci dictating what the witness must say about Thaci being involved in the witness's mistreatment. "The witness should say 'I am sure that he was not.'"

We will resume playing.

[Video-clip played]

MR. HAFETZ: As he did across visits, Thaci is detailing the Case 6 witness preparation process. He identified the statements, which are right in front of them, that Witness 4 would be given to review before his testimony. And after Kilaj volunteered to take the

full pages from Thaci, Thaci momentarily took the pages back, and he did so for the specific purpose of making his instructions even more clear.

We'll resume playing.

[Video-clip played]

MR. HAFETZ: Thaci's whispered words were explicit. The witness must "correct" Part 6 of his 2018 statement by removing Thaci from the incident, the Part 6 you saw a moment ago that was printed right before the visit.

With the sound of paper and pen audible, Thaci then made sure there was no misunderstanding.

We'll resume playing.

[Video-clip played]

MR. HAFETZ: Thaci just got more specific, down to the page, page 7, and this has actually been amended since the first time we were here and played this clip by the LSU who heard additional words. "You take just this for him to correct it."

Kilaj only needed to take from the Detention Centre this specific part of Witness 4's statement that he just handed back to Thaci because that is all Thaci cared about, the part about Thaci, the part that could hurt his case. "You take just this for him to correct it."

As the recording shows, Thaci then got even more specific. He told Kilaj the precise line of Part 6, page 7, that Witness 4 had to be told to change. And when Kilaj asked where he should write down

Thaci's precise instruction, Thaci told him exactly where to do it.

We'll resume playing.

[Video-clip played]

MR. HAFETZ: This was not just friends reminiscing. It wasn't Mr. Kilaj agreeing just to agree or being polite. It was precise witness instruction dictated by Thaci down to the line for explicit delivery to a witness, and it's Mr. Kilaj taking the direction and executing. "Shall I write it down here?"

For the rest of the clip, which I'll play now, Thaci continued to instruct Kilaj on precisely what Witness 4 must change.

And as the record shows, Your Honour, each reference that Thaci made is to the part of Witness 4's prior evidence related directly to the questions about Thaci's involvement in Witness 4's mistreatment.

We will resume.

[Video-clip played]

MR. HAFETZ: As you just saw, Thaci even gave instructions for how Witness 4 should answer questions from Judges about Thaci's potential involvement in the witness's mistreatment, and that he should be told to do it convincingly.

Thaci's instructions for the witness then continued on for several more minutes, with Kilaj repeatedly agreeing to do as instructed to complete the task and offering his own concrete input for what the witness should say.

For example, you see in this excerpt from pages 61 and 62 of the visit transcript that Thaci and Kilaj are collaborating to target the

right time for Witness 4 to change or "correct" his prior statement.

Then, in this next excerpt, Thaci instructed Kilaj not to leave the document or documents with the witness. Kilaj, who knew better than to leave evidence with a witness, exclaimed, "Of course not."

In the same excerpt, Thaci also added the pressure to tell the witness it was for the witness's own good, before again repeating the date of the witness statement over and over again to make sure Kilaj knew exactly what Thaci was talking about.

And then in this next excerpt, Thaci returned to re-emphasise the specific part and page of the witness's 2018 statement that the witness needed to change for Thaci's benefit. And in this exchange, Kilaj made clear that he would take the Witness 4 statements as instructed by Thaci and he would do what Thaci told him to do. He assured Thaci that he would not leave the pages with Witness 4 and that he would "work on it at home."

And it is inside Kilaj's home where the statements were found. They were seized just a few weeks later, the 2018 statement and the 2016 statement, just as we discussed. This is the trash bag where the SPO seized the torn statements right by Kilaj's door. And you see here the torn-up witness statement papers inside Kilaj's trash bag.

Out of that trash bag came the specific part and page of Witness 4's 2018 prior statement, as seen here after the Netherlands Forensic Institute reconstructed it. This is from Exhibit P3. You can see the precise 2018 statement date, which is blurred here for

confidentiality, and the Part 6, page 7, and line 9 that Thaci relentlessly targeted during the visit.

And now here, on the left side of your screen, you see again Part 6, page 7, of that 2018 statement as seized from Kilaj. And on the right, you see side by side Thaci's instructions during the recorded visit identifying that same page and same part that the witness needs to "correct."

Each detail of Thaci's precise instructions about that part, page, and line number that he dictated to Kilaj are reflected on the paper as seized from Kilaj's residence. Kilaj's handwriting around line 9, which he confirmed is his writing, and which he confirmed during the recording that he was writing, is right there. And line 9 and the hand-drawn box around it is the exact portion of Witness 4's statement that relates to Thaci's involvement in Witness 4's alleged mistreatment.

Notably, even in the limited time they had with only a small portion of the full audio recording, even the Defence's own Eurideas transcriber transcribed the references to Part 6, page 7, as seen here from Annex 4 of the SPO's final trial brief.

"The 6th part. The sixth part. The sixth part needs to be corrected."

Same speaker: "Let him take this one. Just to sign this and there is no need for others."

The Detention Centre printer records and the expert analysis of Witness 8 from the Netherlands Forensic Institute prove,

conclusively, the 2016 and 2018 statements of Witness 4 seized in torn pieces from Kilaj's trash were printed from the single printer available to Thaci and other detainees inside the Detention Centre.

When the SPO asked Kilaj about the torn pages of Witness 4's prior statements seized from his trash, Kilaj admitted to possessing them. He also admitted that it is his handwriting on the paper. And when asked where he obtained the torn confidential Witness 4 statements, he lied.

Kilaj's claim now that he was just "showing agreement" throughout Thaci's witness interference instructions out of politeness and respect to Thaci is contrary to Kilaj's own recorded words, contrary to Kilaj's own actions, and contrary to common sense.

On 9 September 2023, Bashkim Smakaj visited Thaci at the Detention Centre. He came with the other group members of the Smakaj Group, Artan Behrami, Blerim Shala, and Ismail Syla. Together, they visited Thaci for about three hours. The visit was recorded.

Thaci began the visit, as he often did, speaking in normal tones and exchanging greetings and discussing regular life.

He then started discussing his trial in Case 06. Some of Thaci's comments were innocuous recitations of his opinions of the proceedings. Nothing wrong with that.

Other comments were not innocent.

Specifically, after expressing satisfaction with Remi Mustafa's testimony, the same testimony he had directed Fadil Fazliu to influence on July 2nd, Thaci then revealed multiple pieces of

confidential witness information, including again mocking the private session testimony of several victim witnesses.

He also identified a different Case 06 protected witness by full name before then discussing parts of that witness's private testimony.

The revelation of confidential Case 06 information in this visit is fully detailed in the SPO's brief. And again, I'm not going to discuss it further here because it would require going into private session, and I'll let the brief and the evidence speak for itself.

Approximately two hours into the visit, Thaci focused on the anticipated testimony of Bislim Zyrapi, again, Witness 2 in this case. The same witness who Thaci identified to Kuci as "the most important one" during their visit just six days earlier on September 3rd, before then giving Kuci a series of detailed instructions for Zyrapi.

Now, with the Smakaj Group, referring to Zyrapi repeatedly by his short name "Bisa," Thaci lowered his voice and again emphasised Zyrapi's central importance to his case, alongside other insider witnesses as seen here. This is from transcript P108.

You see that Thaci repeatedly emphasised Zyrapi's importance.

Thaci then started making more general statements about how Zyrapi should testify. As you can see, Thaci emphasised the importance of Zyrapi not saying too much, with both Smakaj and Shala agreeing. These instructions to keep the testimony short and not "let it loose" echo those Thaci instructions he issued for other

witnesses in other visits. We saw that earlier today. Like his instructions for Remi Mustafa to "be brief, be brief." Thaci issued similar instructions for other witnesses on the 4th of August, the 22nd of September, and then again on 6 October with Kilaj, as we just saw.

Thaci's concern was the same: The more the witness spoke and answered questions, the greater the risk the witness could say something bad about Thaci. The greater the chance the witness might "slip" as Thaci described it.

Thaci then recited multiple points from his preferred narrative before providing more specific instructions for how Zyrapi should testify. One example is seen here, again from P108.

You see that, as he did multiple times across his recorded visits, Thaci gave the instruction that not remembering, meaning "I don't remember," and not knowing are answers that witnesses should use when answering certain questions. And he even says here: "The most emblematic sentence is 'I don't know,' 'I don't remember.'"

Thaci then started whispering even more specific instructions about the content of Zyrapi's testimony, including his demand for Zyrapi to "remove" certain information that he had provided in his prior evidence. The same demand he had made when issuing instructions for Zyrapi to Kuci six days earlier.

You see that, for example, in this brief clip, also from P108. We'll play it now.

[Video-clip played]

MR. HAFETZ: This was a plan to tell Zyrapi how to testify for Thaci's benefit, and specifically to advance Thaci's preferred narrative, including about the KLA structure and the role of the General Staff.

Near the end of the 9 September visit, Thaci told Smakaj he should return in the first week of October. Smakaj did as he was told, and on 7 October he returned to see Thaci, this time joined only by Artan Behrami. But between the two visits, Smakaj was in contact with Zyrapi. Phone records show these brief phone contacts between the men on the 2nd and the 3rd of October, 2023. Those records are found at Exhibit P183.

And while Zyrapi made a blanket denial to the SPO that he had discussed his testimony with his friend Smakaj, we know that Smakaj and Zyrapi did discuss Thaci between Smakaj's two Detention Centre visits. We know this because Smakaj told Thaci about it on 7 October, and we find that here in this brief clip from early in the 7 October Detention Centre recording, which is P110.

It is about one minute long and we'll play it now.

[Video-clip played]

MR. HAFETZ: First, Thaci's direction to Behrami to "speak louder" at the beginning of the clip is part of Thaci's repeated tactic of using one visitor to speak in a normal voice -- tone so Thaci can then whisper instructions to another visitor. Thaci used a different version of this tactic just one day earlier as we saw with the parallel conversations with Kilaj and Kryeziu.

And because it's short, I want to replay the video from the beginning.

[Video-clip played]

MR. HAFETZ: Thaci is obviously speaking about Zyrapi, who he identified as Bislim. More specifically, he's talking about Zyrapi's expected time of testimony in Case 06 and the fact that Zyrapi "needs time" and "work."

Most importantly in this brief clip, Smakaj confirmed his contact with Zyrapi between visits to Thaci and after Thaci had already issued instructions on how Zyrapi should testify during their 9 September visit. Not only did Smakaj tell Thaci that Zyrapi sent him greetings, Smakaj told Thaci that they had spoken one more time.

Aware that Smakaj had made contact with Zyrapi after receiving Thaci's initial instructions, Thaci then expanded on those instructions during the 7 October visit. Specifically, Thaci's instructions for how Zyrapi should testify included: That the General Staff was composed of only six individuals, excluding Thaci, until November 1998; that the KLA organisation was limited and "an aspiration"; and that the operational zones were disconnected from the General Staff.

Each of these instructions is one that Thaci also issued in other recorded visits.

And as he did in other visits, Thaci used a document to make sure his instructions were clear. That document is Exhibit P125, referred to in this case as the "Smakaj document." It is referred to

as the Smakaj document because it was seized from Smakaj's personal vehicle during the SPO's judicially authorised search of Smakaj's residence on 30 October 2023.

The first two pages of the full 10-page document as it was seized are seen here from P125. The handwritten letter B, in multiple parts of the document, is B for Bislim, meaning Bislim Zyrapi.

The SPO's final trial brief contains several examples illustrating the overlap between the instructions Thaci issued for Zyrapi's testimony during the visit and the content of the Smakaj document. I will show one here.

On the left side of the screen, you see an excerpt from the English translation of the 7 October visit. On the right side, you see an excerpt from the English translation of pages 1 and 2 of the Smakaj document, parts of the pages. The coloured highlights show the overlap between Thaci's instructions for Zyrapi during the visit and the document he printed and gave to Thaci. You see, for example, that Thaci's instruction in the transcript on the left side referred to six General Staff members at the relevant time. The same six individuals are discussed in the Smakaj document as seen on the right side of the slide. Thaci used similar details to describe the people in both the visit and the document.

The Smakaj document also more broadly reflects Thaci's preferred narrative, consistent with his interference instructions for multiple witnesses during the recorded visits, including Smakaj's 7 October

visit.

In broad strokes, the document aims to diminish the level of KLA organisation, Thaci's leadership role in the KLA, and the importance of the General Staff and the provisional government, while shifting responsibility to others. The purpose of the document is to minimise or eliminate Thaci's responsibility for the crimes charged in Case 06.

To cite just one more example, as seen here in this slide, also from the transcript P110, at another point in this same October 7 visit, Thaci again repeated an instruction for Zyrapi related to General Staff membership consistent with the instructions in the Smakaj document.

The Defence reply that the Smakaj document should really be understood as just a compilation of Thaci's Case 06 defence narrative as it developed over time is exactly the Prosecution's point. Thaci, during the visit, used that Smakaj document to instruct Thaci's preferred version of events of Case 06 and have it be communicated to Zyrapi to shape his testimony. That's the point.

The evidence proves beyond a reasonable doubt that Thaci gave the document to Smakaj and that Smakaj took it with him from the Detention Centre.

The Smakaj Defence's counter-hypothesis about the provenance of the document have no basis in evidence or common sense.

So let's review. The document was seized from Smakaj's personal car on 30 October 2023, weeks after Smakaj's visit. Detention Centre

printer records show that the only printer available for detainee printing at the Detention Centre printed the file named "*per avokatet*," which is confirmed to contain the exact content of the Smakaj document and that it was printed 10.02 a.m. on the morning of 7 October 2023. This was just three hours before Smakaj and Behrami visited Thaci at the Detention Centre that day.

This was also the same Detention Centre printer that printed Part 6 of Witness 4's interview that Thaci used to target Witness 4 during his visit with Kilaj and Kryeziu just one day earlier and which Thaci gave to Kilaj and was seized from Kilaj's home.

Thaci's Detention Centre cell computer contained a working copy of the document with the exact file name of the file printed on 7 October. The creation date of that working copy file was 5 October 2023, just two days earlier.

Thaci discussed the content of the Smakaj document during the visit, the same visit where Thaci repeatedly issued Smakaj instructions for Zyrapi's testimony, a document that had handwritten B's for Bislim on multiple spaces. The audio recording of the 7 October visit, in a passage specifically challenged by the Smakaj Defence and amended and verified by the LSU, confirms that Thaci and Smakaj discussed exchanging a document. You see that in this brief audio clip from P110.

With the sound of paper rustling and writing audible, Smakaj whispers to Thaci, "Can I bring the" or "the[se] papers?" After which Thaci states, "Yes, you do that," and "Yes, yes, yes. You keep

these." Smakaj then responds in a whisper, "Put them in the pocket [indiscernible]."

We'll play the clip now.

[Video-clip played]

MR. HAFETZ: "Yes, yes, yes."

Phone record evidence shows that just six days later, on 13 October, Zyrapi called Smakaj. The call lasted approximately one minute. Then on 20 October, Smakaj returned another call from Zyrapi. And then on the morning of 24 October, Smakaj and Zyrapi exchanged brief calls and then met at a restaurant in Prishtine.

Again, this is not complicated.

So to sum it up, on 9 September 2023, Thaci met with full Smakaj Group and repeatedly discussed how he wanted Zyrapi to testify. This was six days after Thaci met with Kuci and issued similar repeated instructions for Zyrapi's testimony.

Thaci told Smakaj to return for another visit in early October. Smakaj did, but before he did, he was in contact with his friend Zyrapi.

On the morning of 7 October, Thaci prepared for Smakaj's return visit by printing a document related to Zyrapi, the Smakaj document. Just like he had prepared for his meeting with Isni Kilaj one day earlier by printing multiple confidential statements of Witness 4.

Prepared with the paper he needed, Thaci met with Smakaj and Behrami on 7 October. Smakaj reported to Thaci that he had met with Zyrapi, who had sent Thaci greetings.

Thaci provided Smakaj with detailed instructions for what he wanted Zyrapi to say in court. His instructions were consistent and overlapping with the Smakaj document printed that morning, including those handwritten B's, for Bislim Zyrapi. Thaci and Smakaj discussed exchanging paper. The SPO seized the document from Smakaj's vehicle three weeks after his visit to Thaci.

Records from the -- from Thaci's Detention Centre cell computer and the Detention Centre printer records, as well as the expert analysis of Witness 8 from the Netherlands Forensic Institute, prove conclusively that this document seized from Smakaj was printed from the single printer available to Thaci and other detainees inside the Detention Centre, and the same printer that was used to print the Kilaj statement, which there is no dispute about being seized from Mr. Kilaj.

Again, this is what it is on its face.

Your Honour, the Prosecution bears the burden of proof for each and every charge in the indictment, and the evidence now before this Court - and we summarised only a small fraction of it here today - meets that burden and proves that each accused is guilty beyond a reasonable doubt of each and every charge against him.

Taken individually, the conduct captured in each of Thaci's Detention Centre visits we just discussed is criminal. In each, Thaci instructed his visitors to tell witnesses what to say to help himself.

Taken together, the visits demonstrate not just the individual

crimes charged, but Thaci's consistent overarching pattern of obstructive conduct, his organisation and leadership of a campaign to undermine the Case 06 proceedings and the work of the Prosecution Office responsible for eliciting its witnesses' testimony in court, and his total disregard for the rule of law.

You see this also in the four additional recorded visits admitted in this case, which are detailed extensively in our filing, where Thaci demonstrated the same pattern of obstruction and interference, including in the use of printed witness-related documents to provide his instructions.

And the co-accused here willingly played their parts in it, each one of them, by adding to and writing down Thaci's interference instructions, contacting witnesses after they received their instructions, carrying documents out of the Detention Centre, and covering up their actions. What Thaci's pattern of instructions -- that his pattern of instructions is found across transcripts of four months of recorded visits is not a coincidence. It is the reality of Thaci's determination to control the narrative and prevent witnesses from testifying in a manner harmful to him.

We have addressed the gravity of Thaci's and his co-accused's crimes in our written submissions, and the multiple reasons that these crimes merit the sentences requested. I will not repeat those all here. But I will underline to Your Honour that the crimes of the accused threaten critically important rights and interests, the right to truth, access to justice and the rule of law that is essential for

conflict-burden societies to progress beyond conflict.

That the SPO has not alleged and has not sought to prove in this case that Thaci's and his co-accused's attempts to interfere with witness testimony actually succeeded in impacting their testimony has no salience here. The Defence arguments on this subject are another distraction aimed at a case the SPO did not bring and at charges it has not sought to prove in this trial. They are shadow boxing. More importantly, the charges the SPO did bring and the charges which the SPO has proven beyond a reasonable doubt here are crimes, and they are crimes for good reason.

The attempt to interfere with and obstruct judicial proceedings before this tribunal, which exists here in The Hague specifically because of the depths of prior witness intimidation and interference in Kosovo, poses a threat to the free and fair administration of justice and to the integrity of all proceedings here.

And so based on all of the evidence, the facts, the Prosecution asks Your Honour to return the only verdict consistent with the law and that evidence and those facts: guilty on all counts.

Based on the seriousness of the offences and the totality of the sentencing factors applicable to this case and these accused, the Prosecution asks Your Honour to impose the total sentences requested, specifically for Mr. Kuci, nine months in prison; for Mr. Fazliu, three years' imprisonment; for Mr. Kilaj, three years' imprisonment; for Mr. Smakaj, three years' imprisonment; and for Mr. Thaci, six years' imprisonment, to run consecutive to any other sentence in

Case 06, should one be imposed.

I thank you for the time.

JUDGE GOSNELL: Thank you, Mr. Hafetz.

We're about 10 minutes before the break. I would assume that, Ms. Menegon, you would wish to start after lunch?

MS. MENEGON: Indeed, Your Honour.

JUDGE GOSNELL: In that case, we will take the lunch break now, and we will return at 1:50, please.

Thank you very much.

--- Luncheon recess taken at 12.49 p.m.

-- On resuming at 1.52 p.m.

JUDGE GOSNELL: Good afternoon. Since we started a little earlier than scheduled and foreseen, we'll take the break, Ms. Menegon, at 3.35, just for your information. And the floor is yours.

MR. EDWARDS: Forgive me, Your Honour, can I just say for the record that our investigator -- our investigator is appearing by videolink.

JUDGE GOSNELL: Thank you, Mr. Edwards.

Ms. Menegon.

MS. MENEGON: Thank you, Your Honour.

Your Honour, learned friends, stripped of the Prosecution's lengthy submissions from this morning, this case fundamentally comes down to one truth: Mr. Thaci is on trial for having a conversation in the Detention Unit.

There is no allegation of a bribe, compulsion, or threat against any witnesses.

There is no allegation of actual interference with witnesses. Indeed, no witnesses were interfered with, and there is no identified harm or obstruction of the Case 06 proceedings. The witnesses mentioned in the indictment, such as Witness 1, Mr. Rrustem Mustafa, Witness 2, Mr. Bislim Zyrapi, or Witness 4, when questioned by the SPO, asserted that they had not been interfered with.

Even if some information allegedly mentioned by Mr. Thaci during the visits was classified as confidential in Case 06, in practice, most of it was already in the public domain and/or already known to Mr. Thaci's visitors, who were familiar with the events of the war and the role played by several key players.

Thus, in practice, there is not any victim in this case. The best claim that the SPO could come up with to show some harm is a claim that they had to reschedule the testimony of one witness, Mr. Zyrapi. But even that is wrong. His testimony was postponed for unrelated, private reasons.

The Prosecution asks you to send Mr. Thaci to prison for six years over conversations inside a detention unit that resulted in zero real-world impacts. We ask for a verdict rooted in evidence, not speculation, and a full acquittal.

Mr. Thaci is charged with attempted obstruction against official persons in performing official duties, by common action in a group. Yet, I would like to stress that attempted crimes are almost never

prosecuted in international criminal law. The SPO does it because they have to cover and justify very intrusive measures taken against Mr. Thaci during several months, the covert recording of all his non-privileged visits and calls, including with his wife and son.

The Defence submits that the Prosecution case is weak both in law and in fact, which justifies the acquittal of Mr. Thaci on all counts.

The SPO case rests on an incorrect interpretation of the provisions of the KCC related to the offences charged and the modes of liability charged.

The SPO further relies on unreliable transcripts of the detention visits created by in-house SPO personnel, without any separation between the persons in charge of transcription and those in charge of investigations, in violation of basic principles of forensic transcription.

The SPO further relies on a few documents allegedly printed from the detention unit, but the SPO has not been able to prove that it is Mr. Thaci himself who printed those documents. The SPO in this regard relies on the evidence of an expert witness, Witness 8, Mr. Koen Herlaar, whose field of expertise, microdots analysis, is so secret that it is not recognised anywhere and cannot be given any weight.

The SPO's case rests on inferences regarding a few alleged contacts between Mr. Fazliu and Mr. Mustafa, Mr. Smakaj and Mr. Zyrapi, asserting, without any evidence, that they necessarily

concerned Case 06 proceeding or evidence, while ignoring the prior personal and professional relationships between these individuals which explains why they may have met to discuss matters other than Case 06.

Indeed, the SPO maintains that we have to look at the totality of the evidence to understand its case. Yet, if we do, the SPO must concede, and Your Honour must observe, that no obstruction ever occurred. Your Honour might ask whether the SPO's narrative really makes sense. If so much energy was really put in planning witness interferences, why is it that none ever occurred? The SPO has not explained it. Your Honour might be inclined to conclude that no witness interference occurred precisely because the accused never intended it to occur.

The SPO ultimately requests a sentence of six years because of words Mr. Thaci is alleged to have spoken in the Detention Centre, despite the fact that nothing happened thereafter. This is wholly disproportionate to the alleged facts -- to the alleged acts and to the sentencing practice both from Kosovo courts and in international criminal tribunals in contempt cases.

I will thus address successively the applicable law, the Prosecution evidence, and the sentence requested.

The substantive criminal law with which Mr. Thaci is charged is Kosovo law. Your Honour, to determine Mr. Thaci's criminal responsibility, or otherwise, you need to first identify the contents of this applicable law, taking into account, in particular: The

Kosovo legislation, including the KCC itself, and its prior versions; the Kosovo case law; and relevant academic sources like the commentary from Salihu et al.

Indeed, fair trial principles require that this court adopts an interpretation of the offences and modes of liability under the KCC that conforms with established practice in Kosovo. This is required by the principle of *nullem crimen sine lege*, and the related principles of certainty and foreseeability, of *lex stricta* and *in dubio pro reo*. This is further required by the principle of equality before the law. Thus, although no single Kosovo decision is strictly binding on Your Honour, the KSC should not depart from the well-established practice of Kosovo courts. To do so would violate the principles I just mentioned and create an unfair double standard of treatment between KSC accused and other persons subject to Kosovo basic courts.

In the instant case, in the absence of any bribe, compulsion or threat, required for witness interference under Articles 386 and 387 of the Kosovo Criminal Code, the SPO has distorted the meaning of obstruction against official persons under Article 401(2) in order to try to make it fit the alleged conduct. This is impermissible.

Indeed, the SPO interpretation of this provision is inconsistent with the Kosovo case law and the Salihu et al. commentary, the Defence having analysed 90 cases of individual and group obstructions from Kosovo courts.

Pursuant to this case law, first, the expression "official

person" refers to an natural, individual person who carries out an official function in a public institution or similar body, but it cannot be an institution or organisation as such.

Second, the meaning given to "official duties" by Kosovo courts and the Salihu commentary is a specific task. I note that this issue has not been litigated in Case 07 or 10, where the Panels considered that official duties "relate to any responsibility or work within the context of official proceedings of the Specialist Chambers, including SPO investigation," without referring to any case law.

Your Honour, you must reassess the findings of these Panels in light of the new argument raised by the Defence and the case law provided to you. Cases involving this offence in Kosovo uniformly concern instances in which the obstruction concerned is specific, concrete action which the official person was seeking to undertake, such as carrying out an arrest, issuing a parking ticket, conducting a search.

Third, "obstruct" means, according to Kosovo courts and the Salihu commentary, prevent an official person from performing officially duties. This issue has not been raised or litigated in Case 07 or 10, where the Panels considered, without reference to any case law or any Kosovar sources, that "obstruct" means "to prevent, impede, hinder, or delay the motion, passage, or progress of something." Yet, the Kosovo cases analysed by the Defence all focus on whether or not the official duties were rendered impossible. It is therefore clear that under Kosovo law, obstruction is not

constituted where the official duties are merely rendered more difficult or time-consuming or expensive. Obstruction requires that the official duty is halted or prevented, at least temporarily.

Fourth, "common action" by a "group" means action which is taken together by a physical group - that is, a group that acts together in a single location. The definition of common action has never been meaningfully interrogated by the KSC Panels, which considered, again without reference to any authority, that common action may include any activity jointly undertaken by the group members. Yet, this would equate common action by a group with coordinated action or co-perpetration, and would thus render the reference to common action redundant. Both the Kosovo case law that we reviewed and the Salihu commentary repeatedly described the common action by a group as instances in which the group members took physical action together and simultaneously, such as in a crowd.

Accordingly, the meaning given to Article 401 of the KCC in Kosovo is dramatically different from that presented by the SPO. Article 401 addresses the physical obstruction of specific public officials from carrying out an immediate task as part of their work. A review of Kosovo criminal cases has not revealed a single instance where an individual would have been charged for interference with the witnesses under Article 401. Such cases are charged under Articles 386, 387 or 388.

I note that pursuant to a Panel of the Supreme Court Chamber in Case 07, while Article 401 protects the officials called upon to

exercise official duties, Articles 386 and 387 protect the truthful ascertainment of facts through the protection of witnesses and evidence. So while a single course of action may fall under two different offences, in the current case, the SPO has asserted that the interest at stake is the witnesses' ability to "testify freely, without fear or influence." Such interest is protected by Articles 386 and 387 and not Article 401.

The SPO has further failed to identify with sufficient precision the elements of Article 401(2). Namely, they have not specified, except by a general reference to the SPO or the Judges, which official persons individually were targeted for obstruction; which particular official duties were to be obstructed; or how such duties would possibly have been obstructed by the conduct which was allegedly planned. This is because their case has nothing to do with the obstruction of official persons in performing official duties. The SPO is running a case concerning the obstruction of evidence, punished by Article 386 and 387 of the Kosovo Criminal Code. Since such a case would fail, in the absence of any compulsion, bribe, or promise, the SPO should acknowledge it and cease presenting a false picture of coercive witness interference.

It is thus clear that the SPO has wrongly distorted the meaning of Article 401, which has no connection with the allegations made by the SPO, or with the protected interest which the SPO claims has been violated.

Mr. Thaci is further charged with the offence of violation of

secrecy of proceeding pursuant to Article 392 of the KCC, which concerns the unauthorised revelation of confidential information disclosed in official proceedings. The meaning of "reveal" has not been litigated yet in previous cases before this Court.

In the current case, it is necessary to determine whether revealing occurs when a person discusses matters with another individual who is already aware of those matters. In the case of M.Z., the Basic Court of Mitrovica and the Kosovo Court of Appeals ruled that a defendant had not revealed the identity of a witness when showing to this witness, who had denied being one, a document from court proceedings indicating his status as a witness. This case illustrates the fact that you cannot reveal information when the recipient is already aware of such information. To satisfy the element of "revealing" information, the SPO must thus prove that the purported recipient of that information was not previously aware of it.

What is more, in the current case, the indictment is wholly incoherent on the subject of the modes of liability. It is first necessary to define -- to clarify their definition before analysing how the SPO has charged them.

With regard to the offence of obstruction, Mr. Thaci is charged with attempt, agreement, or incitement.

Several decisions of this Court have recognised that to constitute an attempt, the action must amount to more than preparatory acts. The key question is how to differentiate a

preparatory act from an act sufficient to amount to an attempt.

Conduct which is specifically identified in Article 27 of the KCC as mere "preparation" cannot amount to such an attempt under Article 28. This includes "supplying with means or making available the means to commit a criminal offense; agreeing, planning, or organising with another person the commission of a criminal offence."

Accordingly, we submit that a mere agreement among a group of persons to act, without more, cannot constitute an attempt.

Article 35 creates a mode of liability for "agreement to commit criminal offences." It is distinct from a mere preparation under Article 27 or an attempt under 28. It only creates responsibility where one or more of those who agreed does a "substantial act" towards the complete commission of the offence. While this act can be preparatory in nature - that is, less than what is required for an attempt - it nonetheless must be something separate from and additional to the forming of the agreement itself. If the act of reaching an agreement itself was sufficient for liability, the words one or two or more persons need to do any substantial act toward the commission would be rendered meaningless. Accordingly, the SPO must prove that some "substantial act" was undertaken beyond the discussion which constitutes the reaching of an agreement.

Article 32 relates to incitement. It establishes criminal liability for incitement when the accused exerted psychological influence on another person.

Article 32(1) applies only "if the criminal offence is

committed." This concerns the complete commission.

Article 32(2) applies only "if the criminal offence is attempted but not committed." This concerns attempt.

And Article 32(3) occurs when the offence was not even attempted but it applies only in respect of "a criminal offence punishable by imprisonment of at least five years."

In the current case, Mr. Thaci is charged under both Article 32(1) and (3).

We submit that Article 32(1) does not apply since Mr. Thaci is charged for attempted obstruction and not completed obstruction.

Similarly, we submit that Article 32(3) does not apply neither because obstruction under Article 401(2), (3), or (5) is punished by imprisonment of one to five years. Thus the minimum imprisonment is one year and not at least five years. We invite you to adopt the interpretation of this provision as endorsed by Trial Panel II in Case 07, the Pre-Trial Judge in our case, in accordance with prior ruling of the Kosovo Supreme Court which have considered that the expression "criminal offence for which a penalty of at least two (2) years' imprisonment is prescribed" means criminal offences "for which the minimum sentence ... must be 2 years' imprisonment."

We further submit that the aggravating circumstances of being the leader of a group which obstructs an official person under Article 401(3), and incitement under Article 32, cannot be charged concurrently. Article 401 cases from Kosovo courts include situation where, for instance, an accused exhorted a crowd to take action,

which is similar to incitement. Therefore, to apply the mode of liability of incitement together with Article 401(3) would be redundant and is not permitted.

Your Honour, the SPO's case has never been clear about the modes of liability that it alleges. Only limited details were provided in the pre-trial brief or final brief. I think they were not even discussed this morning.

The Pre-Trial Judge found that allegations of interference with witnesses could not be sustained on the evidence. There was no obstruction. So the SPO was forced to fall back on inchoate forms of liability. But it never took the time to understand what those forms of liability means under Kosovo law. And it never explained how it alleges they are made out of the evidence.

In fact, the SPO has misunderstood the mode of liabilities it argues and it has failed to prove them on the facts.

First, the SPO's case is premised on a wrong theory of how inchoate forms of liability operate.

The SPO appears to accept that attempts only apply to some offences in the Kosovo Criminal Code. But it seeks to argue that doing less than an attempt, such as entering an agreement, can create liability for any offence of the KCC. This is absurd and reflects how little thought was given to the modes of liability by the SPO.

The SPO's approach to incitement under Article 32(3) is flawed for the same reason. The SPO asks Your Honour to conclude that this form of incitement could be used with - we have made the calculation

- more than half of the offences in the KCC. This is clearly not what this Court intended.

Regarding attempts, the SPO is even more confused. It tries to argue that "attempt" is not a form of participation in a crime, but instead constitutes an element of Article 401.

This ignores the broader context of the Kosovo Criminal Code and its drafting history, which make clear that the reference to "attempt" in Article 401 is there to resolve any doubt that this provision is one of those which can be used in combination with Article 28 to charge an attempt.

The SPO approach also ignores the decisions of Kosovo courts. When they have dealt with attempt to obstruct official persons, they have treated "attempt" as a form of liability arising under Article 28 and not as an element of the offence.

The SPO approach also simply makes no sense. If "attempt" is an element of the offence, it must be reflected in a perpetrator's intent. But what would it mean? To intend to attempt obstruction as distinct from intending to obstruct?

And why would the SPO want to argue that "attempt" is an element of Article 401? This is so it can avoid the clear words of Article 28(3) which indicate that attempts should receive lower sentences than fully realised crimes. But this would defeat the well-established principles of sentencing that take into effect the extent of the suspect's actions, and the extent of any resulting harm. The SPO clearly asks Your Honour to treat attempt - and indeed

agreement - as equivalent to a fully realised crime. This is not supported in Kosovo law and makes no sense in criminal law in general.

The SPO's theory of attempt is even more confusing when combined with the other modes of liability. The SPO argues that it is possible for the accused to be charged with agreeing to attempt something or inciting to attempt. This is a legal nonsense. To be convicted for an offence, the accused must necessarily mean the end result of the offence. It is telling that the SPO has not been able to produce a single case from anywhere in the world where such concept would have been sustained.

The SPO argument regarding mode of liability also failed to explain how this can be established on the available evidence. Aside from the third form of incitement, any inchoate form of liability requires some action, some substantial steps towards commission. A mere discussion cannot suffice.

And what the SPO's case fundamentally lacks is evidence of any such action.

The SPO tries to get around this by pointing to conduct which occurred before the DC visits, but it does not explain how such conduct could be relevant to the constitutive elements which must be proven. How could a conduct before one of the visits constitute common action of a group which did not yet exist? How could it amount to a substantial act towards implementation of an agreement which had not yet been made?

The SPO also tries to point out some conduct after the visits, and especially to messages exchanged and meetings which might have occurred between the accused and some witnesses. But it has no evidence to link those communications or meetings to its theory of an alleged plot to interfere with witnesses. There is no evidence that these steps had anything to do with Thaci's alleged instructions in the DU.

The SPO asks the Single Judge to draw an inference that they were. But this inference is not the only one available, in light of the preexisting personal or professional relationship between the accused and certain witnesses.

Your Honour, I am now going to highlight some weaknesses in the Prosecution evidence.

The first one is the unreliability of the SPO transcripts, which are the main evidence relied upon by the SPO against Mr. Thaci.

Early on in this case, and before Professor Fraser testified, you made a series of rulings about how the SPO transcripts should be dealt with, including how they should be verified by LSU. Those rulings appear to have been based on the assumption that all transcription process are more or less equivalent; and that therefore the processes we are familiar with for transcribing court hearings should also be applied in the same way to the covert Detention Centre recordings.

That was an understandable premise to work from at the time because it could be said to reflect the common knowledge approach

about how we hear and understand sounds.

However, this is not the evidence in this case. The only expert evidence tendered into this case about forensic transcription explains that these assumptions are wrong.

Professor Fraser explained that covertly recorded forensic audio, which is very frequently of a very poor quality, cannot be treated in the same way as what she calls "bureaucratic" audio. Bureaucratic audio, like that being recorded in the courtroom today, is consciously made so as to be very clear. Microphones are close to the mouth. One speaker speaks at a time. The speakers speak slowly. The resulting audio is "clear." It means that the audio itself contains enough bottom-up information that different listeners can understand with minimal need for any top-down information. That means that multiple listeners will hear the same words in the audio.

The audio recordings secretly made by the SPO in the Detention Centre are the opposite of this. The speakers did not know they were being recorded, so they spoke one after the other or together at the same time. They were far from the hidden microphones. There was background noise. The result is poor quality audio. In Professor Fraser's assessment, some parts of the audio are "indistinct"; and some are slightly better and could be called as merely "unclear."

Fraser explained what she meant by those terms. The audio signal, the so-called bottom-up information in the DC recording, is not sufficient for a listener to understand them. That means that a

listener will unconsciously supplement that bottom-up information with top-down information. They will use other information known to them, without realising it, to try to make sense of what they hear.

The SPO appears to contest this characterisation of Professor Fraser. That submission is absurd. Professor Fraser is one of the leading experts in the world on this subject. The SPO has produced no alternative evidence to her expertise and her position. In any event, there is a multitude of other evidence in this case which supports the conclusion that a significant portion of the audio recordings are indistinct.

The transcript produced by the SPO includes thousands of uses of the word "[Indiscernible]." The SPO itself took more than two years to transcribe some of this audio. It repeatedly revised its own work. This in itself shows that the SPO could not be confident in the words it had written in the transcripts.

This is particularly clear from the 3 September visit where it even sent the audio for enhancement.

When the Defence took a segment of this visit and sent it to LSU for transcription in December 2025, the LSU responded that it could not transcribe anything because the audio was so unclear because of its quality. The Defence had the same response with another transcriber, Hysni Recica, in November 2025.

So can the SPO seriously ask you now to conclude that significant portions of the audio are not indistinct? You must conclude that at least part of the audio are indistinct.

I want to emphasise that the SPO has mischaracterised the Defence submission on this issue. We do not suggest, and it was not Fraser's evidence, that the entire recordings are indistinct. We accept that some parts of the audio may have better quality - what Fraser calls "unclear."

However, the difficulty is that it is impossible for Your Honour, or anybody else, to determine from the SPO transcripts themselves which parts of the audio are "unclear" and which are "indistinct." That's because the SPO did not create the transcript through the process which Fraser recommended. An assessment of which part of the audio are indistinct and which parts are unclear cannot be made by persons who've been exposed in an uncontrolled way to contextual information, the so-called top-down information. The SPO transcriber may have believed that they were simply hearing what is in the audio signal, but they were also relying, even unconsciously, on their own expectation and biases to interpret the audio.

The expert evidence in this case is very clear about how a reliable transcript should have been made from that type of audio. This process should have been taken seriously as an exercise in forensic analysis. The transcribers should have been properly qualified. They should have worked totally independently from the SPO investigators, and they should have followed a documented process. None of those things were done by the SPO. And actually, the SPO has even refused to disclose precisely how they were done.

The expert evidence in this case is clear that this approach could not result in reliable transcripts. This evidence is uncontroversial. It is consistent with a vast body of scientific knowledge concerning cognitive bias. It is a basic principle of forensics that analysts must be independent from investigators.

The SPO's submissions appear to question those principles, but they could not identify a single expert who would give evidence to this effect.

THE INTERPRETER: The interpreters kindly ask the speaker to slow down while reading. Thank you.

MS. MENEGON: The SPO's arguments is that these transcripts are reliable because they are corroborated --

JUDGE GOSNELL: Ms. Menegon.

MS. MENEGON: Yes.

JUDGE GOSNELL: There's a note from the interpreters to please slow down a little bit.

MS. MENEGON: Okay. Thank you. Sorry for the interpreters.

The SPO tries to argue that the transcripts corroborate themselves through internal corroboration. If the SPO transcribers believe they heard the same word over and over in the transcript, the SPO says this makes it more likely to be what was really said. This theory was rejected by Professor Fraser and she explained why. If the SPO transcribers were influenced by unreliable top-down information from the start when they believe they heard the word the first time, this would necessarily also influence them to keep

hearing the same words. That would be the case whether or not those words were actually spoken. Therefore, the SPO submissions this morning that Fraser's work on priming may have some measures of applicability only in certain cases, for example, where the case turns on a single uncorroborated recorded word or phrase was explicitly rejected by Fraser during her testimony, and the SPO offers nothing to support its claim.

The SPO also tries to argue that external material corroborates what the transcribers heard in the transcript. This argument is also flawed.

First, the SPO transcripts are undated. Changes were made to them over a period of up to two years and a half, and the SPO did not record its edits. So this made it impossible to determine which words were put in the transcript on which dates. Therefore, it cannot be systematically ruled out which words were put in the transcripts before other developments or evidence were obtained in the investigations and which were found afterwards.

Additionally, the SPO recorded more than 35 hours of audio, and now it points to two or three separate piece of evidence that it found during its searches in an attempt to argue that every detail in the transcript should be treated as reliable. There are far more parts of the transcripts which are not -- which are not matched by the evidence tendered by the SPO.

And even if the SPO's finding of a document during a search could somehow be taken as a reason to conclude that this document was

discussed during a visit, it would not tell us what specific words were used during the visit.

Finally, we submit that the LSU verification of the transcript adds nothing to their reliability. Professor Fraser's evidence made it clear: Reading a transcript while listening to the audio results in textual priming. The listener is influenced to hear the words in the script, whether or not they are in the audio. This evidence is uncontroversial, and the SPO has produced nothing to counter it.

The SPO submits again today that where the Defence made no challenge or made a challenge and then withdrew it, the accuracy of the transcript material should be given full weight. That is wrong. The SPO bears the burden of proof, and the Defence has explained already why it withdrew some of its challenges, precisely because of the textual priming which operates through the LSU verification process and renders this verification unreliable.

The transcripts are the central evidence in this case. For that reason, you might be reluctant, Your Honour, to give them no weight. But this is exactly for that reason that you must give them no weight. Just as a person should not be convicted on the basis of a visual identification obtained through suggestion, a conviction should also not rest on evidence obtained through audio suggestion. It is incumbent on the Prosecution to act professionally and to use approved forensic practice. If the Single Judge endorses poor forensic practice from the SPO, that will have consequences, not only in this case but also in others. You will be sending a message to

the Prosecution that they can create their own evidence and create no record of how they do it, and then insist on convictions based on it. This is not a fair trial.

Ultimately, beyond the SPO transcripts, it's interesting to note that the SPO has decided not to call any fact witnesses but only what could be qualified as professional witnesses, that is, two members of the SPO staff and one expert witness. Indeed, none of the Case 06 witnesses quoted in the indictment or the SPO briefs have been called to testify. Why? Because none have been interfered with.

The SPO thus decided to call a member of its team, Witness 7, to testify about its investigations, but this witness was not able to provide any detail as to any purported additional resources expanded for the protection of witnesses because of Case 12. This is because the accused's conduct had no impact on the work of the SPO.

Witness 7 confirmed that none of the witnesses discussed in Case 12 were relocated as a result of the alleged conduct of the accused. He could not name any witness whose court appearances were rescheduled specifically because of the Detention Centre recordings, noting that the schedule of witnesses relies upon a large number of competing factors.

With regard to Mr. Zyrapi, for instance, he confirmed that his health issues had an impact on the schedule of his testimony.

Therefore, he was not in a position to identify any resources which were spent specifically because of the allegations which are the subject of this case, which is notably different from what

happened in Case 07.

Ultimately, when cross-examined, Witness 7 confirmed that with regard to the witnesses listed in the indictment, the content of their evidence was already in the public domain to a considerable extent, since media articles had discussed what happened to them during the war, and that for at least five of them, the fact that they had been interviewed by the SPO was also public prior to the charged visits.

More precisely, Witness 7 confirmed that for Witness 1, 2, 3, 4, and 5, their names had been disclosed as part of the leak from the KLA Veteran Association in 2020, and/or that their SPO interviews had been discussed in the media or on social networks, so their collaboration with the SPO was already known well before the charged visits. In particular, he acknowledged that Mr. Mustafa even made public on 1 July 2023 that he was going to testify in Case 06, the day before Mr. Fazliu visits, and that this was widely broadcasted in the Kosovo through several media outlets.

With regard to the content of their evidence, he acknowledged that Mr. Mustafa, Mr. Zyrapi, Mr. Sylejman Selimi had testified publically previously and that for the six witnesses listed in the indictment, various media supports discussed the events which occurred to them during the war.

Witness 7 also qualified Mr. Mustafa, Mr. Zyrapi, Witness 3, and Witness 5, namely Mr. Sylejman Selimi, as public figures.

Accordingly, we submit that even if Mr. Thaci had discussed the

witness status or the evidence of some of these witnesses with his visitor, and even if this information was itself classified as confidential in Case 06, such discussion did not have any impact on the said witness and cannot be qualified as a violation of secrecy of proceedings, since their collaboration with the SPO and their background, their story, were already public and known to Mr. Thaci's visitors.

The SPO also decided to call an expert witness, Witness 8, Mr. Koen Herlaar, to compare certain documents printed at the Detention Unit with certain documents allegedly seized from Mr. Smakaj and Mr. Kilaj in an attempt to establish that they were provided by Mr. Thaci.

Yet, the Defence submits that Mr. Herlaar's evidence cannot be given any weight for the following reasons: First, comparative microdot analysis is not a sufficiently recognised field of expertise.

The Appeals Panel's decision and Your Honour's remand decision on the admissibility of his evidence only concerned whether comparative microdot analysis was an expertise for the purpose of the low *prima facie* reliability standard applicable at the stage of admissibility.

But to assess the weight to be given to his evidence, you must take into account the absence of any academic publications on this field, the absence of judicial recognition of this field, and the absence of any other publicly available validation of comparative

microdot analysis as an expertise.

We submit that in the absence of sufficient recognition or validation of this field of expertise, any evidence purportedly derived from it must be afforded little weight, if any.

Secondly, we submit that through the hearing, the transparency of Mr. Herlaar's methodology appeared to be very deficient. Again, the Appeals Panel's decision and Your Honour's decision on remand only found that the transparency issues concerning his methodology do not weigh against admission according to the *prima facie* standard of reliability applicable at the stage of admissibility.

Yet, there is still serious deficiencies in the transparency of his methodology, which, we submit, gravely diminish any probative value his evidence may have. And these issues warrant affording his evidence very little weight, if any.

Third, Mr. Herlaar's evidence was also insufficiently transparent as to the purported confidentiality restrictions he alleged. Mr. Herlaar's invocation of confidentiality as a basis to withhold details about his methodology and refuse to answer Defence questions on cross-examination have themselves been untransparent.

The representations of his body of origin, of the SPO, and of Mr. Herlaar as to the scope of confidentiality applicable to microdot analysis have been inconsistent. Yet, we have noted that information on microdot analysis revealed by other individuals in similar professional positions suggest that either Mr. Herlaar did not properly interpret the scope of the relevant confidentiality

restrictions or that -- sorry. The fact that other reports from individuals on microdot analysis revealed further information about the methodology and the technology behind microdot analysis reveals that Mr. Herlaar did not properly interpret the scope of the applicable restrictions. This diminished Mr. Herlaar's credibility and significantly undermined the probative value of his evidence.

The Defence has been deprived of the possibility to meaningfully challenge his evidence. To give any significant weight to his evidence would be unfair to the Defence.

Last, we submit that the weight afforded to his evidence cannot be affected by its supposed corroboration by other evidence concerning printed documents. Mr. Herlaar's conclusions rest solely on his first-hand scientific analysis. They do not involve the interdependence of facts to be proven and interpretive opinion.

Accordingly, any potential corroboration provided by evidence of other types cannot assist you in coming to a view as to the probative value to be assigned to his report and testimony.

I would like now to move for a few minutes in closed session.

JUDGE GOSNELL: Yes. Private session, please.

[Private session]

[Private session text removed]

[Private session text removed]

[Private session text removed]

[Open session]

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

MS. MENEGON: Thank you.

I would like to now raise a few points common to the charged visits.

The Defence submits that the SPO has failed to prove beyond reasonable doubt the offences of obstruction, violation of secrecy of proceedings and contempt. We recall that it is the SPO which bears the burden of proof. Your Honour must be satisfied that there is no reasonable explanation of the evidence other than the guilt of the accused. Accordingly, it is well established that in order for trial judges to draw an inference from circumstantial or indirect evidence, that inference must be the only reasonable inference.

In the current case, we submit that the SPO has failed to prove beyond reasonable doubt that the members of the alleged group intended to obstruct, and that they undertook any substantial acts toward the commission of the offence of obstruction after the charged visits.

The SPO's case rests on a series of assumptions about the contacts between Mr. Thaci, his visitors, and others, and about the matters they discussed. The SPO invites you to assume that such contacts and discussions were always concerned with the KSC and Case 06, and, even more specifically, must have been directed at interfering with Case 06 witnesses, and that any knowledge about the events contested in Case 06 could only have arisen from Case 06 SPO disclosure. Both assumptions are flawed, given that the actors in this case had preexisting relationships and preexisting knowledge about the matters in question, which were also largely in the public

domain.

Similarly, the SPO asks you to assume that when Mr. Thaci's co-accused allegedly approved verbally his purported instructions, pursuant to the SPO transcripts, then this necessarily means that they intended to implement them. The evidence tendered by the SPO shows the contrary. Whatever Mr. Thaci's co-accused may have agreed to do in the DU, in the end no obstruction occurred because they did not implement nor attempted to implement his alleged instructions. Indeed, these conversations have to be put in their context. Mr. Thaci is detained since several years in a foreign country several -- thousands of kilometres away from his family and friends, with limited visits and distraction. Visitors usually come to visit detainees to support them, not to antagonise them. Therefore, another reasonable inference is that Mr. Thaci's co-accused may have punctually verbally approved some of his statements simply to please him, to support him morally, without any intent to act thereafter. And indeed, the SPO has not tendered any evidence of any substantial acts towards the commission of the offence of obstruction.

With regard to the charged visits, the SPO's primary evidence is the SPO transcripts. Yet, as discussed earlier, they cannot be relied upon to prove anything beyond reasonable doubt given their unreliability.

Even if you were to consider such transcripts as reliable, we submit that any instructions that Thaci may have given were not, even in principle, capable of obstructing KSC or SPO officials. For

instance, many of his alleged instructions were innocuous, such as to tell the truth, be brief, correct the testimony if you made a mistake. He further discussed matters which were in the public domain, known to his visitors. Indeed, his discussions were mostly "war talk," about memories and common histories.

Even if Mr. Thaci's instructions were, in principle, capable of obstructing KSC or SPO officials, there was no intention by anyone to undertake a common action by a group understood pursuant to the Kosovo case law as three or more physically co-located persons acting together. And even if you were to consider that a group does not require physical co-location, we submit that there isn't sufficient evidence that Mr. Thaci and his co-accused possessed the relevant intent to obstruct by common action.

I'm now going to raise a few points regarding each charged visit.

With regard to the Fazliu visit of 2 July 2023, we submit that there was no Fazliu group since no physical co-location of the alleged members of the group occurred, and there was no materialisation of any common action by the group. There is not even any evidence of any contact between Mr. Thaci and Mr. Fahri Fazliu. And no evidence that Mr. Fahri Fazliu was ever informed or agreed with Mr. Thaci's alleged instructions.

We submit that the SPO has not proved that the alleged members of the group intended to take common action to obstruct the work of the KSC or SPO official. In particular, the SPO has not demonstrated

that they intended to influence Mr. Mustafa's testimony.

The SPO criticised Mr. Thaci for having said that Mr. Mustafa should be brief. But even if that was accurate, this could not obstruct the proceedings. Judges repeatedly invite witnesses to make short sentences in order to facilitate the interpretation and understanding of their evidence.

Significant portions of the transcript of these visits, including portions which the SPO seeks to frame as provision of the illicit instructions, are better understood as conversations recalling the war.

Beyond the SPO transcripts, the SPO relies on a few alleged contacts between Mr. Mustafa and Mr. Fadil Fazliu and Fahri Fazliu before and after the visit to allege that Mr. Fazliu acted on behalf of Mr. Thaci. But the SPO fails to take into account another reasonable inference presented by the Defence which is that Messrs Fazliu, father and son, met with Mr. Mustafa in order to try to resolve a gunshot incident in Prishtine between a friend of Fahri Fazliu and a friend of Mustafa's brother, who was injured, and which happened shortly before the Fazliu visit. The SPO has not denied the existence of this shooting, which was reported in the media on 23 June 2023, only three days before the alleged contact between Mr. Mustafa and Mr. Fazliu on 26 June. Besides, we submit that it cannot be maintained that contacts which occurred before the charged visit would amount to a substantial act towards commission of an agreement -- sorry, towards implementation of an agreement when

this agreement had not been made yet.

We stress again that there is no evidence at all regarding the alleged intent of Mr. Fahri Fazliu. The only conduct attributed to Mr. Fahri Fazliu is his alleged contacts with Mr. Mustafa, and that his intent could be inferred from a few messages he exchanged with Mr. Mustafa to meet for a coffee. But this ignores the preexisting relationship between them, the two having often been in contact before or after for purposes unrelated to Case 06, such as the inauguration of a statue.

Even if you were -- if the SPO were able to demonstrate that the alleged members of the group intended to influence the testimony of Mr. Mustafa in Case 06, we submit that it would not amount to an intent to obstruct an official person within the meaning of Article 401 as interpreted by Kosovo courts. Mr. Mustafa is not an official person and has no official duties. And the SPO has not identified namely which official person or duties were targeted for obstruction.

The SPO claims that the conduct threatened the ability of the KSC or the SPO to obtain accurate and truthful testimony of witnesses. Yet, we submit this is not an official duty as understood as a specific task by Kosovo case law.

It is also a baseless assertion in factual terms. Even if certain parts of the discussion were considered to be instructions, Mr. Thaci did not request that Mr. Mustafa lie or withhold his testimony from the SPO. And as indicated earlier, instructions that

the witness be brief cannot obstruct the proceedings.

Ultimately, the SPO inferences are disputed by Mr. Mustafa himself who denied being interfered when questioned by the SPO. And the Defence has demonstrated in its final brief that his testimony remained consistent both before and after his contacts with the Fazliu family, in particular on the issue of communiqués and appointment within the operational zone.

Therefore, the SPO has never explained why the concerted and coordinated efforts it alleged were made to influence Mr. Mustafa's testimony all failed completely. The Defence submits that the obvious explanation is that no such efforts were ever made.

Therefore, the counts related to the Fazliu visit must be dismissed.

I'm now going to raise a few points regarding the Smakaj visit of 9 September and 7 October 2023.

We submit again that there was no Smakaj Group as such. Its alleged members varied between the visits, and they were never all located in the same place. Besides, the Defence stress that the SPO relies only the alleged conduct of Mr. Smakaj and Mr. Thaci to argue that the common action of this group was initiated. This means that to the extent a group is defined not only by the physical presence and intent of its members, but also by its common action, that no group of three persons existed, even on the SPO's own evidence.

In any event, we submit that the SPO has failed to prove that the alleged members of the group intended to obstruct. Again, most

of the interactions between the members of the group described in the SPO transcript are merely a discussion about Kosovo, the war, and the KLA.

In addition, it cannot be reasonably argued that this visitor activity engaged with Thaci, even if some of them formally agreed verbally with some of his statements, pursuant to the SPO transcript, this may have been just to please him, without any actual intent to undertake anything. And indeed, the SPO has not proven that the members of the alleged group undertook any substantial act toward commission after the visit.

The SPO relies on contacts between Mr. Smakaj and Mr. Zyrapi before or after the visit, yet there is no evidence that such contacts concerned Case 06 proceedings in Mr. Zyrapi's testimony.

The SPO asserted this morning that Mr. Smakaj and Mr. Zyrapi discussed about Thaci's instructions between Mr. Smakaj's two Detention Centre visits because Mr. Smakaj would have told Mr. Thaci about it on 7 October, relying on the short excerpt of P110 played this morning at page 50. Yet, having followed this conversation, even if the SPO transcript was accurate, there was not any reference to a discussion about Thaci's alleged instructions.

While on the SPO transcript Mr. Smakaj may appear to say that he talked to Mr. Zyrapi, the transcript does not specify what they talked about. Accordingly, there is no evidence that Mr. Smakaj and Mr. Zyrapi ever discussed his evidence together.

On the contrary, Mr. Zyrapi himself confirmed to the SPO that

they never discussed his testimony, and if the SPO was so certain they did, why didn't he call -- why didn't they call Mr. Zyrapi to testify.

Last, the SPO relies on a document allegedly seized from Mr. Smakaj's car. Yet, we submit that the SPO has failed to prove beyond reasonable doubt that this document was seized from his vehicle in the absence in particular of any proper chain of custody or evidence regarding the conduct of the search.

The counts related to Mr. Smakaj's visit must be dismissed.

With regard to the Kilaj visit of 6 October 2023, we submit that the SPO has once more failed to prove a shared intent to obstruct from its alleged members and any substantial act or commission of obstruction after the charged visit. In particular, the SPO has not proved that all the members of the group intended to influence Witness 4's testimony.

I note that the SPO alleges the existence of a group composed of Mr. Thaci, Mr. Kilaj, and Mr. Kryeziu, but in his submission, they consistently referred to exchanges between Mr. Kilaj and Mr. Thaci. The few words said by Mr. Kryeziu do not demonstrate any intent on his part to influence Witness 4's evidence.

In any event, any verbal agreement from them during the visit, pursuant to the SPO transcript, does not necessarily mean that they intended to implement Mr. Thaci's instructions thereafter. On the contrary, the SPO evidence showed that there was no such contact between Mr. Kilaj and Witness 4 thereafter.

The counts related to the Kilaj visit must be dismissed.

Last, with regard to the Kuci visit of 3 September 2023, Mr. Thaci is charged with agreement to commit a contempt. Yet, the SPO has proven neither an agreement between Mr. Thaci and Mr. Kuci, nor that Mr. Kuci undertook any substantial act or preparatory act toward the commission of this offence. The SPO transcript essentially show Mr. Thaci recalling his memory from Kosovo, from the war and the KLA, repeatedly emphasising that he is telling the truth.

And, again, while the SPO transcript may present Mr. Kuci as assenting to certain statements of Mr. Thaci, this is insufficient to prove his actual agreement, since, as submitted earlier, he may have simply been responding politely.

The inference that there were, in fact, no agreement is reinforced by the fact that Mr. Kuci took no steps to contact any Case 06 witnesses. Indeed, the SPO does not even allege that Mr. Kuci made contact after the visit with Mr. Selimi, Mr. Zyrapi, or Witness 6, or that he made any other arrangement towards contact with Case 06 witnesses. And indeed the evidence establishes that none of Mr. Selimi, Zyrapi, or Witness 6 experienced any unlawful contact or attempted interference, pursuant to what they reported to the SPO.

The SPO asserts that Mr. Thaci and Mr. Kuci undertook substantial acts towards the commission of the offence by relying only on what was said during the visit. This would, at most, constitute the purported agreement between Mr. Thaci and Mr. Kuci, but it could not be qualified as distinct, substantial act towards

the completed commission of the offence of contempt, as required by Article 35(2).

This count must be dismissed.

Your Honour, I would like to now discuss about the sentence requested by the Prosecution.

SPO requests an aggregated sentence of six years because of words which Mr. Thaci is alleged to have spoken at the Detention Centre while nothing happened thereafter. This is wholly disproportionate when the totality of the evidence presented by the SPO shows that whatever may have been said or agreed or initiated, it had no impact on witnesses, on the SPO, or on KSC proceedings. There is no allegation that any witness was interfered with, intimidated, or changed his testimony.

I stress again that Mr. Thaci is charged only with attempted obstruction and not the complete commission of the offence of obstruction. Article 28(3) explicitly provides that punishment for attempt may be reduced, and yet the SPO requests the maximum sentenced by Article 401, five years, for each counts of attempted obstruction. We submit that this is totally unreasonable.

Besides Mr. Thaci, while Mr. Thaci is accused of having revealed some information classified as confidential in Case 06, most of it was already public and known to Mr. Thaci's visitors, who were already familiar with the KLA history and the role played by many Case 06 witnesses. Therefore, any such disclosure, if it occurred, would clearly have had no impact on any witnesses discussed.

The SPO has produced no evidence of any harm to any witness. To the contrary, the evidence is that no witness was relocated, contrary to what happened in Case 07, for instance.

The sentence requested by the Prosecution is clearly excessive, especially when compared with the sentencing range applied by international criminal tribunals and Kosovo domestic courts.

In previous international cases with far more serious offences, where witnesses were bribed or threatened and their identity disclosed, the sentencing range was significantly lower. For instance, in the Bemba et al. case, the trial chamber imposed sentences of 11 to 12 months, as well as fines, while the conduct involved actual interference, including payments to 14 witnesses.

In the case of Nzabonimpa et al., heard as Fatuma et al. on appeal, the Accused Ngirabatware was accused of a highly organised campaign aimed at obtaining the recantation of four witnesses. He was found to have, through his co-accused, paid or offered money to witnesses to facilitate their recantation. This included having recanting witnesses sign false recantation letters and training this with them, on the basis of material prepared by the accused himself, to give false accounts of how the recantation came about. He was also convicted for having deliberately and repeatedly disclosed confidential information identifying a protected witness to his co-accused over an extended period of time. For these offences, these accused were sentenced to only two years of imprisonment. His sentence was upheld by majority on appeal, with one judge considering

that such a sentence was even disproportionately high. This represents, given a review of the international cases on contempt, the highest custodial sentence imposed by any other international or hybrid criminal tribunal for contempt cases.

Before the KSC, in Case 07, Mr. Gucati and Mr. Haradinaj received an aggregate sentence of four years and three month of imprisonment and a fine of 100 Euros for intimidation and obstruction by serious threat and violation of secrecy of proceeding with serious consequences for the person under their protection, some witnesses being relocated. They had repeatedly revealed hundreds of confidential documents containing protected information, including the identifying details of hundreds of witnesses. They did so through press conferences, media appearances, reaching a large audience, and they did so despite judicial orders and SPO requests to decease. Their conduct was thus far more serious than the conduct alleged in the present case against Mr. Thaci, and yet the SPO wrongly requests a more severe sentence against Mr. Thaci.

The Defence has further identified and reviewed 81 Kosovar cases where the accused were convicted for obstruction under Article 401 or its predecessors. In most of these cases, non-custodial sentences were used, suspended sentences. Again, the highest sentence given was two years maximum for the complete commission of obstruction, including in cases involving aggravating forms of obstruction. This was the case even when the conduct included physical aggression, force, and verbal threats.

Furthermore, in the very few cases where defendants were convicted for attempted obstruction, the sentence imposed was no more than one year.

There is thus, we submit, absolutely no justification for the sentencing range requested by the SPO, which has no connection with any prior practice, be it at the national or international level.

In its final brief, the SPO tries to minimise the relevance of the sentence practice in Kosovo and other international courts regarding contempt cases. Yet there is no basis for their arguments that the KSC should be different from these courts with regard to the sentencing range.

The Defence stresses that the KSC is part of the Kosovo legal system and that this case is only about offences defined by the KCC, that is to say, Kosovo law, and not international criminal law. There is no reason in the instant case to depart from the sentencing range issued by Kosovo courts for this type of offence. This would clearly violate the principle of equality before the law.

In light of the prior practice of Kosovo courts, we submit that a suspended sentence would be appropriate in the current case, in accordance with Article 44(4) of the KSC Law and Articles 48-49 of the KCC. As I said, it is commonly used for Article 401 offence by the Kosovo courts and it is appropriate in light of the nature of this case, particularly given that the conduct charged is limited to discussions, and no harm resulted, and Mr. Thaci has already faced a lengthy period of detention.

In the alternative, if you were to consider that a custodial sentence appropriate, we submit that Mr. Thaci should be sentenced to no more than time served.

Thank you.

JUDGE GOSNELL: Thank you, Ms. Menegon.

Mr. Rees, would you like to start now, or shall we take the break now and start after the break?

MR. REES: I'm grateful. Your Honour, I would suggest we take the break now, and then that will allow me to try to proceed in one go to complete my closing statement, without further interruption.

JUDGE GOSNELL: Thank you very much, Mr. Rees.

So we will take a break now for 15 minutes and we will return at 3.30. Thank you.

--- Recess taken at 3.16 p.m.

--- On resuming at 3.30 p.m.

JUDGE GOSNELL: Mr. Rees, the floor is yours.

MR. REES: Thank you, Your Honour.

On the 15th of October, 1660, at the Old Bailey in London, Captain William Hewlett was sentenced to be hung, drawn and quartered, having been convicted of regicide, specifically on the following count: Conspiring not only to deprive his late Majesty Charles I of his Crown and Dignity, but also to bring him to death and final destruction, and did repair on the 30th of January, 1649, to the palace of Whitewall in the parish of St. Martin-in-the-Fields, with a visor upon his face, clad in a

frock, for the purpose of murdering the said king.

The jury were told by the Prosecution that they had records that showed that Captain William Hewlett had served in Parliament's New Model Army, that he was a mortal enemy of Charles I and his supporters, that he was a sergeant in the unit that was tasked with guarding the execution and ensuring order as it took place, that he was definitely present at Whitehall Palace at the time, and that he was the person who had been ordered to be on the scaffold at the time of execution.

Defence counsel, back in 1660, attacked the Prosecution case. It was circumstantial only and, to a large degree, based on hearsay. A-ha, the Prosecution said. They countered this by calling a witness, Sergeant Richard Gittins. He had also served in the New Model Army. In fact, he had served with Captain Hewlett. He knew him. And He said that he recognised the axeman's voice as he spoke to the late king on the scaffold. It was Captain Hewlett, said Gittins.

For the jury, the voice attribution evidence, no doubt urged by the Prosecution to use their common sense and to look at the totality of the evidence, they took that voice attribution evidence and it was enough. The witness, however, was wrong. He was not the hooded axeman. It turned out subsequently that though Captain William Hewlett was at Whitehall Palace at the time of the execution and he was due be serving on the scaffold, he was not on the scaffold at that relevant moment when the axe fell. Instead, it turned out, he

was at that very moment detained, having been -- having refused at the last minute the demand of Colonel John Hewson to serve on the scaffold at the time of the execution itself. Unfortunately, it came too late for Captain William Hewlett, who was never heard of again.

That is, as far as I can tell, the first recorded case of a miscarriage of justice relating to voice identification evidence, but it is merely the first of very many.

The concern about voice attribution in the criminal justice system has a very, very long lineage, dating back way before even the birth of the United States of America.

At least in the case of Captain Hewlett, the Prosecution called a witness who knew the defendant to give evidence as to voice attribution, even if he was wrong.

In this case, the Prosecution wants you, Your Honour, the trial judge, to be their Gittins. They want you to say that you recognise the voice of Bashkim Smakaj when and where it appears on their tapes, when they have deliberately absolved themselves of the responsibility to call their own evidence to that effect if they could.

I say, on behalf of Mr. Smakaj, do not put yourself, or indeed the dignity of this Court, in that position.

Now, let me go on to expand upon my submissions.

At the outset can I say this, that I adopt the submissions on both the law and the evidence that Ms. Menegon has eloquently made where those submissions apply to Mr. Smakaj. And I will not repeat them, as far as I'm able to do, but I do ask Your Honour to take them

into account on Mr. Smakaj's behalf where there are obvious areas of overlap.

I will try not to repeat Ms. Menegon, but I am going to begin by repeating something I said at the outset of the trial when I made an opening statement. I reminded the Court, as indeed the Court has been reminded by Ms. Menegon and by the Prosecution, that the burden of proving guilt falls upon the Prosecution. The defendant does not have to prove his innocence. The Prosecution only proves guilt by making the Court sure of guilt, that is, beyond reasonable doubt, on evidence that is presented by the Prosecution after opening statements and during the trial itself, and only on such evidence.

The evidence for each defendant in this case is different, and Your Honour should consider the position of each defendant and the evidence in relation to them, both for and against, separately. And, of course Your Honour will understand that verdicts that Your Honour returns, whatever they are, do not have to be the same for any or all defendant.

I told Your Honour in the opening statement to set aside any assumptions that might be brought into the courtroom, that they're to be left aside once the trial begins. The only presumption that is appropriate - and it is the only presumption - is the presumption of innocence, which applies under Article 21(3) of the Law of the Specialist Chambers.

I reminded Your Honour that no suspect or accused is required to answer any questions. If questioned, he has the right to remain

silent, without such silence being considered in the determination of guilt or innocence. And that the defendant is entitled to remain silent during the course of the trial itself, is not required to testify, without such silence being a consideration in the determination of guilt or innocence.

I reminded the Court and the Prosecution of the case on behalf of Mr. Smakaj. In particular, we reminded the Prosecution that we were to put them to proof in relation to both the transcripts and their identification of persons on them and the provenance of the document that they presumptively labelled as the "Smakaj document." Mr. Smakaj's case being that he had never seen that before it was raised with him by the SPO in this investigation.

We told Your Honour that we did not expect any fingerprint or DNA analysis to be produced by the Prosecution, and that in fact the SPO had told the Netherlands Forensic Institute not to undertake any such work. And we were right.

We told Your Honour that, despite giving the Prosecution notice about Mr. Smakaj's position on the so-called Smakaj document, that you would not hear any evidence that the document was seized by an SPO officer from his car. And we were right.

And we told Your Honour that any assumption to be made about how the SPO came into possession of that document would not only be inappropriate and improper but also downright misleading. And we maintain that that is right.

We made no bones about it. We said that the Defence case was,

in relation to the so-called Smakaj document, that an alternative explanation - and it may not be the only one that we would raise as to how that document ended up in the hands of the SPO - is that it reached them through a detention officer, that such an alternative explanation would form part of the trial. We gave the Prosecution notice, we did not have to, and yet they spurned the chance to call, for example, any detention officer or search officer to deal with that aspect of the trial. We were right about those things.

I repeat at this stage, because it is so important, that guilt must be proved beyond reasonable doubt, that proof can only be by way of such material as is admitted as evidence or agreed fact during the course of the evidentiary proceedings. Statements, assertions made by counsel for the Prosecution are not evidence, nor are descriptions given to exhibits by the Prosecution or the Registrar, for that matter, on bar table motions or in submissions or on exhibit lists or on surrogate sheets or on bags, none of that amounts to evidence either. The evidence is the exhibit itself, not the label or prescription that the SPO give to it.

The standard of proof beyond reasonable doubt is to be applied to all the facts upon which the conviction depends. That's Rule 140(2) of the rules.

And Rule 139(4) of the rules requires the court to determine the weight to be given to assess credibility and reliability of any evidence. The Panel is required - this is mandatory under Rule 139(7) - to take into account the manner in which the evidence was

collected - that's assuming that there is such evidence - and the effect that this might have on the course and fairness of the proceedings. As I say, it follows that Rule 139(7) applies where there is no evidence as to the manner in which it was collected. That, too, must be considered. And the course of it, the fairness of the proceedings flowing from the fact that there is no evidence as to how evidence was collected, must be considered.

Ms. Menegon has already said this, but I'll repeat it because it is so important. "In respect of circumstantial evidence, the standard of proof beyond reasonable doubt is only satisfied if the inference from that evidence is the only reasonable one that could be drawn from the evidence presented. If the evidence allows for other reasonable conclusion(s) to be drawn, the [criminal standard] is not satisfied." That's Rule 140(3) of the rules.

Rule 139(5) goes further. "Circumstantial evidence shall be assessed with caution" - that's the common sense position, caution - "and reasoned findings shall be provided, in particular regarding the consistency and intrinsic coherence of such evidence, where the Panel bases a conviction solely or to a decisive extent on such evidence."

Rule 140 of the rules goes further in its warnings. Subrule (A) and (B) provides that the conviction may not be based solely or to a decisive extent on: (a) the statement of a witness whom the Defence had no opportunity to cross-examine; or (b) the evidence of a witness whose identity was not revealed to the Defence.

Mr. Smakaj faces two counts only, Count 12, attempted

obstruction of official persons performing official duties by participating in the common action of a group between the period 9 September and 30 October 2023; and Count 13, contempt of court in relation to the same.

I've set out at paragraphs 7 through to paragraph 15 the relevant positions in relation to the statutory framework for those counts, and I'll refer to some submissions in due course to them without quoting here those provisions.

Both of the counts faced by Mr. Smakaj rely wholly on the Prosecution proving that Mr. Smakaj participated, not just at some point on the 9th of September, 2023, and the 7th of October, 2023, in a visit with Mr. Smakaj, but that he specifically participated in those parts of conversations allegedly recorded on those dates which the Prosecution say are incriminating. There is much that's not. There are many people recorded on those tapes that are not alleged to have engaged and participated in anything incriminating. So it is not whether the Prosecution can prove Mr. Smakaj was there at some point but only at the relevant parts.

And the Prosecution have failed, we say, to prove to the criminal standard of proof, or at all, those matters, that Mr. Smakaj participated in those parts of the conversations allegedly recorded on the 9th of September, 2023, and the 7th of October, 2023, which the Prosecution allege are incriminating. And it follows, in our submission, that Mr. Smakaj should be acquitted of both counts accordingly.

Your Honour has already ruled that the Prosecution's attribution of speaker identities in the transcripts and translations thereof, as well as the descriptions of speaker tone or non-verbal sounds heard on the audio, have no evidential value as such, and that Your Honour will place no weight on those attributions or descriptions.

Your Honour has them on the transcripts and translations, but I am confident that Your Honour will address in Your Honour's own mind the danger of priming, as Dr. Fraser put it, that those attributions and description of tone or non-verbal sounds Your Honour will put out of Your Honour's mind and concentrate on the content of the words spoken, as seen on the transcription, and nothing else, because therein lies the evidential weight, such that it is.

The evidential worth of those transcripts only exists in the transcription and interpretation of the words uttered, as can be heard on the audio recordings. There is no other probative value in the exhibited transcripts.

This morning, Mr. Hafetz says - and I do not disagree with this - that the transcripts are a record of what was said. Now, there is dispute about parts of it, but at its highest, he is right. The transcripts are a record of what was said, but they are not a record of who said it or what, and no witnesses being produced by the Prosecution to explain who said what.

There is no agreed fact as to when and where the audio recordings were made, as it happens. There is no witness evidence, whether experts or from a lay witness who purports to recognise any

of the defendants, particularly you understand I'm concentrating on Mr. Smakaj, no lay recognition or expert recognition identifying Mr. Smakaj's voice on the transcripts or other persons, for that matter.

There is no agreed repetitive sample of the accused's speech or the speech of other persons from which you, Your Honour, might properly and safely compare and reach your own untrained conclusions as to voice identification, or even, we submit, as to the number of distinct voices heard at any one time, not least because the voices recorded on the Exhibits P00108, 108, and P00110 are speaking in a language other than Your Honour's own.

Even if it was established by the Prosecution that at some point during the entire durations of P00108 and P00110, respectively, the voice of the accused Mr. Smakaj must have been recorded, the Single Trial Judge, Your Honour, is not simply, we submit, in a position to properly and safely compare and reach your own untrained conclusions as to voice identification throughout those exhibits.

The Prosecution, in their consolidated response to the Defence pre-trial briefs, suggested that Your Honour does have in the evidence an additional clear voice exemplar. They put it in the plural, in fact. Additional clear voices exemplars for the accused. They are, in our submission, we say this is non-controversial, wrong about that. There is no clear voice exemplar on the evidential record, the record received during the evidential proceedings before Your Honour. The 48-second youtube.com video referred to by the SPO

in their response, at footnote 652, as the sole clear voice exemplar related to the accused was never exhibited in the admitted evidence before you, not subject to any agreed fact as to whether it's authentic or reliable. And it is clear even on its face that it would be wholly deficient to be used by Your Honour as the basis for an untrained voice attribution exercise in which the audio -- a minimal number of words is recorded with the English transcription or translation, rather, speaking over the words in Albanian in what was a highly unusual setting, in a language other than Your Honour's.

The weaknesses with voice identification are well recognised. As I say, the dangers have been known to criminal justice systems throughout the world for hundreds of years. And we have referred to the Crown Court Compendium from England and Wales which sets out a list of those commonly recognised weaknesses, and I refer to them now. They won't be of any surprise to Your Honour.

The potential weaknesses of such identification or recognition include the following factors: The audibility of speech heard; environmental factors affecting the hearing of speech; the duration for which speech is heard; the number of voices heard; whether there was an attempted -- identified attempt to disguise voice; the variety of speech heard; the degree of familiarity with the speaker; the distinctiveness of accent; whether the speaker -- whether the speech is heard in the hearer's native tongue; the lapse of time between the occasion on which the hearer became familiar with the defendant's speech, that assumes the hearer is, and the occasion on which the

questioned speech was heard in any subsequent identification process.

That list, when one goes through them, all in this case point in a very stark way away from any reliability of recognition by the lay untrained person.

The Crown Court Compendium recognises at paragraph 8, page 15-30 of the October 2025 version as updated in March of this year, where the jury, the tribunal of fact, are permitted to consider voice identification themselves, then they must be reminded of that checklist of potential weaknesses. They must be "told to bear in mind the evidence of the voice recognition witnesses (if any)" - and there isn't in this case - "and warned of the dangers of relying on their own untrained ears." And I sound that warning.

You have, Your Honour, a quantity of evidence as to the circumstances in which the recordings were made. There is no evidence, in fact, on the record, at least as far as I could find - I've heard Mr. Hafetz say it many times - but no evidence I could find from a witness or exhibit on the record demonstrating when and where the audio recordings P00108 and 110 were made. The SPO has not adduced any oral evidence to that effect.

The only SPO officer who gave oral evidence, Witness 7, confessed -- tried to do his best, I suppose, when I asked him questions, but he had to confess that he knew absolutely nothing about how the recordings were made, when they were made, the circumstances in which they were made. The audio recordings themselves say nothing about the date. They say nothing about where

they were made.

There is an exhibited visitor log, which is P00036. That log does show that Mr. Smakaj visited what's described on the log as "Unit 4," without any other explanation as to what that is, on the dates of the 9th of September, 2023, and the 7th of October, 2023. But that in itself does not say anything about recordings. It does not prove that the recordings were made on that date or that they were made in what is described as Unit 4. If they were made within the Detention Unit, which is what Mr. Hafetz tells us, the audio recordings themselves say nothing about where within the Detention Unit they were made. And again, we tried to explore this with Witness 7, he tried to do his best to assess, but said "I have absolutely no idea."

Nor does the visitor log, that Exhibit P00036, demonstrate where Mr. Smakaj went within Unit 4 on those dates, nor what times he was in different parts Of unit 4 on those dates.

P00047 merely records Smakaj's a visitor to Unit 4 between a total period of 0905 and 1215 on the 9th of September, 2023. Again, nothing to explain the relevance of Unit 4, what it is, or indeed where it is.

So the audio recordings themselves. This is the evidence. This is the exhibit. I've produced some samples. It's only four. It won't take very long to listen to, but I'm going to play them shortly. I'm going to ask, please, if the translators remain silent during the course of the playing of these four clips. And,

Your Honour, I'm going to invite Your Honour to close down anything that might be a transcript with the Prosecution's priming as to who and what can be heard on the clips.

So I'll just get them ready, and then when I give Madam Court Officer the okay, I'd ask if we can switch over, but if you just wait for a moment. Thank you.

Madam Court Officer, when you're ready.

THE COURT OFFICER: [Microphone not activated].

MR. REES: It's a clip. You don't need to.

[Audio-clip played]

MR. REES: That's the longest. Three more. Who did Your Honour hear on that? How many voices did Your Honour hear on that? How many persons are in the vicinity of that microphone?

There's another clip.

[Audio-clip played]

MR. REES: Again, Your Honour, who did Your Honour hear on that? How many? One, two, three, four, five? How many persons did Your Honour hear?

Play the third clip.

[Audio-clip played]

MR. REES: Again, who did Your Honour hear? How many people? How many people who were speaking were also on the other clip, the first clip, or the second clip?

Final sample. I could go on, as Your Honour will appreciate, but one final sample.

[Audio-clip played]

MR. REES: Your Honour has the point. You take away the attribution from the SPO and their nice pictures where they put on their slides pictures of defendants, and you take that top-down information away, and it's not just listening to and transcribing the words but attribution is a completely different exercise. And that's the exercise that remarkably, frankly, the SPO are asking Your Honour to do?

If the recording P00108 was made on the 9th of September, 2023, at the KSC Detention Unit, as Mr. Hafetz tells us, though no evidence of that, that recording and, indeed, P0047, the visitor log, both demonstrate that there were a number of other persons present.

P0047 itself demonstrates that on the 9th of September, 2023 -- and there's no distinction on the log as to when this is, no times included, so it stands to reason that they were all present. But there were a number of visitors to Unit 4. Approximately, if you count the rows, although they've all been redacted, but the number of redacted rows indicates that there is at least 14 others, with all but of three of those names being redacted. So there's three names that are referred to on there, but there's another 11 people in Unit 4 at the same time as Mr. Smakaj is said to be visiting. We've got no idea with they are. You've got no idea who they are, Your Honour, because the Prosecution hasn't told you.

And On top of that, in addition to the 11 other guests whose identity we don't know, there's also other detainees whose names have

also been redacted.

Now, because we don't know who they are, Your Honour's heard no evidence, Your Honour can't draw any sort of inferences as to whether, for example, any of those 11 anonymous visitors or other detainees were associates of Witness 2, Mr. Zyrapi, whether they were in contact with Mr. Zyrapi during September, October, between 9 September and 7 October 2023. And we couldn't explore those questions because we've never been told who they are. You have no idea who those other people that were in Unit 4, if that's where the recording was made, who they are, who they know, whether they've been in contact with Mr. Zyrapi or not.

It is the SPO's own case that at least 11 different voices are heard on the recording P00108. It is their own case that the noises are heard on the recording suggest that persons are frequently entering and leaving the area, wherever that is, where the recording is taking place. If you count up on their transcripts, they suggest, whether it's -- this is their case, at least 29 times during the duration of P00108, people coming and going, people coming and going, 29 times at least.

It is right, I acknowledge this, that the transcripts and translations record the name, or the word at least, "Bashkim" 18 times being uttered on the 9th of September, 2023. The name "Smakaj" is not ever mentioned during the course of the recording, and I raise that because the word "Bashkim" is both a name, it's also a word, and it means a union or reunion. If it's used at any of those 18 times

as a name, it cannot be determined whether it relates to a single individual or to different individuals. And we've referred to one part of the transcript that the SPO have produced for P00108 where it talks -- it's plainly not - it's plainly not - in the sense that they attribute it to somebody called Bashkim talking about somebody else called Bashkim.

There is nothing about any of the references to "Bashkim" on the 9th of September, or indeed anywhere else on the transcript, that contain any particular knowledge, any specific or peculiar knowledge, that could be used to indicate that the reference must relate to Bashkim Smakaj.

At different times during the long recording, with people coming and going, people coming and going, at different times the reference to "Bashkim" does appear to be direct, that is, addressing a person, perhaps, by the name of Bashkim. But there are at least seven mentions of the name, when you look through the transcription, where they're referring to the word "Bashkim" or a person "Bashkim" indirectly, as if the person is not present at that time.

But the key passages in recording P00108, and we've seen from the Prosecution's slides clips from those key passages, both of those passages - and they're some distance apart - by reference to the English translation, it's pages 189 to 216, and then pages 293 to 294, that both of those passages in the recording, they're bookended, that is, at both the start and end of those passages, there are noises that the Prosecution say, part of their case, indicate people

coming into the area where the recording is taking place or going out of the area. So there is no continuity of the persons, of the voices, the names, the people involved in Unit 4 that could assist.

And in particular, there is no direct reference to "Bashkim," that is, a reference suggesting that there is an address to a person named Bashkim who is present. There is no such direct reference - Your Honour can see it when you look at the translation - heard on the recording after the time which corresponds to page 94 of the English translation. Nearly a hundred pages before the beginning of the first key passage in P00108, at page 189, during which time those hundred pages, more people coming back and fore, back and fore, without any way of identifying who they are during that time.

That is why we say that being faithful to the principle that this is a trial based on the evidence, a criminal adversarial trial, the Court cannot, given the number of people heard at different times on the recording and the apparent frequency with which people were coming and going from the area where the recording was made, conclude that the accused Mr. Smakaj must have been present and participating in those key moments of the recording on P00108. It is simply a call from the SPO for Your Honour to take their word for it without any evidence.

P00110, similarly, if that recording was made on the 7th of October, 2023, at the KSC Detention Unit - and Mr. Hafetz says that it was even though there's no evidence on the record, as far as I can ascertain, to demonstrate that - that log, P0073, the relevant page,

also demonstrates that again there were a number of other visitors to Unit 4 present on that date also, approximately 13 others, with all but one of the name -- so 12 persons present with their names redacted. We have no idea who they were. Plus other detainees, again, their names redacted.

And again, in relation to those 12 anonymous visitors on the date of the 7th of October, according to the log for Unit 4, again there's no evidence that Your Honour has whether any of those individuals, or all of them, knew Witness 2 or had any association with Witness 2, whether they'd been in contact with him, for example, between the 9th of September, 2023, and the 7th of October, 2023. There's simply no evidence upon which you can draw any inferences one way or the other. It is left open-ended. It is left entirely reasonable that one or more of those visitors, as on the 9th of September, were people who knew Mr. Zyrapi and had contact with him during the period concerned.

We don't know whether any of them were also present on the 9th of September, whether any of those persons were recorded on, for example, the clips of large numbers of people that Your Honour has just heard played. We simply have no idea.

It is the SPO's own case, although one wouldn't have realised it from listening to the closing statement given to the public today, that at least 11 different voices can be heard on the recording P00110. It's the SPO's own case that the noises heard on the recording suggest again, just as on the 9th of September, people

frequently entering and leaving, and entering and leaving, and entering and leaving, the area where the recording is taking place, at least 15 times during the duration of the recording, according to the Prosecution, without on any occasion, because there's no visual record of what was taking place, who was coming in and out of the area, to say who was doing that. One? More persons? We have simply no idea.

Again, it is right that the word "Bashkim" is, according to the translation and transcription, heard uttered on the recording for P00110, but only 22 times, and the name "Smakaj" is never mentioned at all. As I've already said, the word "Bashkim" is both a name and a word. It means a union or a reunion, a meeting up. And where it's used as a name, it cannot be determined at all on P00110 whether it relates to one individual or to different individuals.

There is a reference, and I can see this, there are references in the case of the transcript on the 7th of October, 2023, from a person talking about a son studying at Bonn university, and there is some evidence that Your Honour has that can link Mr. Smakaj to having a son at Bonn university. I acknowledge that. It's there from the evidence on his phone.

But I repeat the submission I made earlier on: The task for Your Honour is not whether Your Honour is satisfied that at some point during the recordings on the 9th of September or the 7th of October, 2023, Mr. Smakaj was present and participating. The task for Your Honour is to be satisfied beyond reasonable doubt that he

was at the relevant times, at the key passages. We've had them played to us today. Key passages in which there is no information in any of the words uttered that are attributed to Mr. Smakaj, that gives any indication as to who is speaking them.

I don't have the slides digitally, and I'm not going to ask for them to be pulled up because they're the Prosecution's slides, and they're full of the priming and the prejudice that comes from priming that I know Your Honour will guard very carefully against falling victim to.

But I have the slides in front of me. I can't profess that I kept track of the order in which they were played because they didn't seem to be played in the same order as they are in the PDF version of the slides. But at slide 39, as it were, we were shown a slide of the 9th of September, 2023, visit in which the only words upon which the Prosecution say they attribute to Mr. Smakaj were the words "don't theorise." Nothing particular that could be said suggests that that must have been Mr. Smakaj saying the words "don't theorise."

There was a slide, I have it as number 40 of the PDF version that was distributed by the Prosecution to the Defence and to Your Honour. Again, it's a slide from the 9th of September, 2023. It refers to the words "emblematic sentence," so that is perhaps a marker so that you can identify the slide. But Mr. Smakaj, according to the Prosecution, does not appear at all. There are no words attributed to him at all at that -- in that slide. So that does not

help in saying, well, there's some particular information there that must have come -- it must be from Mr. Smakaj, and therefore he must have been present and participating.

What about the clip that involves the words "we achieved peace"? From that slide, I make it slide 42 of the PDF version distributed by the Prosecution. Again, there were no words at all there that are attributed to Mr. Smakaj by the Prosecution. It's not even their case that he appears there. Nothing that could be said to tie Mr. Smakaj to that passage.

And indeed, we have a further clip talking about Bisa and Koli [phoen] Sokol, slide number 43, for Your Honour's reference, and again there is nothing -- there are no words there attributed to Mr. Smakaj by the Prosecution at all.

So the words "don't theorise" or "yes, yes, theory," or "yes." That's it. How does anything in those words identify that the speaker is Mr. Smakaj as opposed to any of the other 13 visitors present at the time, plus the unspecified number of other detainees present. At least 12 people whose identities we have no idea who they are.

The passage in relation to the son studying at Bonn university, that is a short passage which is followed by further sounds on the recording which the Prosecution says indicate frequent movement to and from the area of the recording, again, before any of the relevant passages occur.

Again, such references as there are to the word "Bashkim" appear

to be both direct and indirect. There is that key passage in P00110 which use in the -- the English translation as a reference point, it begins at page 44. It is, the Prosecution concedes, describes, as involving overlapping conversations, so that there are people talking over each other. Overlapping conversations which, if that's taking place, there must be at least four persons in the area, at a minimum. Person 1 speaking with person 2, and at the same time person 3 speaking with person 4, as a minimum. And it's also characterised with plenty of sounds of movement to and from the area where the recording is taking place again. We make exactly the same submission in relation to P00110. Being faithful to this court as a tribunal, an adversarial trial arena, based on the evidence, given the number of people heard at different times on that recording, and the apparent frequency with which people were coming and going from the area where the recording was made, the Prosecution simply cannot assert, and Your Honour, as the tribunal of fact, simply cannot assert or be satisfied beyond reasonable doubt that Mr. Smakaj must have been present and participated in the relevant conversations at the relevant times. Not just whether he was there at some point but at the relevant times.

Just two points as an aside, but that does not mean they are in any way minor. The Prosecution opened their case on the basis that Your Honour would hear evidence that the recordings heard a person who they attributed as Mr. Smakaj asking Mr. Thaci, they said, if he could take away a document. They obviously were suggesting that that

was the -- what they call the Smakaj document, and that Mr. Thaci, they alleged, told the person who they allege was Mr. Smakaj to put the papers in their pocket. Well, that is one thing that they do concede they were wrong about, albeit curiously enough they knew that at the time they opened it, but they just ignored it and opened it never the less.

There is no such account recorded on the tapes of anybody asking to take a piece of paper or a document or pages or papers off Mr. Thaci or Mr. Thaci telling anybody to put such papers in their pocket. They're wrong.

So in relation to P00108 and P00110, we submit that there is no established continuity of persons. Continuity, obviously, is a concept that we'll all be more familiar with in terms of the passage of exhibits, but here we're dealing with people moving in and out of the area, all of which, as far as we're concerned, effectively have hoods over their heads so we can't visually identify who they are. There is no continuity of persons and their voices present that might be able to prove voice attribution to the criminal standard of proof. And that really ought to be the end of the matter. Why? Because the only corroboration the Prosecution seeks to rely upon is the document which they presumptively label the "Smakaj document."

Before I turn, then, away from the audio recordings entirely, just one final point, and it is, of course - and I acknowledge this - easy when making a speech for slips of the tongue to occur, and I assume that that is what happened with the Prosecution here because

this morning, it was suggested that there was some support for the Prosecution case that -- of their attribution of a voice to Mr. Smakaj, that, and I quote, "while Zyrapi," Witness 2, "made a blanket denial to the SPO that he had discussed his testimony with his friend Smakaj, we know that Smakaj and Zyrapi did discuss Thaci between Smakaj's two Detention Centre visits. We know that because Smakaj told Thaci about it on 7 October, and we find that here in this brief clip from early in the 7 October Detention Centre recording ..."

Pausing there. The slip of the tongue was undoubtedly the suggestion from Mr. Hafetz, and I'm sure inadvertently, that the audio clip which we then went on to hear would be of a voice telling a person that they attribute to Mr. Thaci that he had discussed Mr. Thaci with Bislim Zyrapi. Of course, the clip does not show that, neither does the transcription of it. At its highest, it only says that the person speaking had spoken with the person they say is Zyrapi. It does not say about Thaci.

But in any event, it begs the question, this approach by the Prosecution, we know that Mr. Smakaj told Thaci -- we know that Mr. Smakaj discussed Mr. Thaci with Mr. Zyrapi between the two Detention Centre visits because we know that Mr. Smakaj told Mr. Thaci about it on the 7th of October. Well, that begs the question whether it was Mr. Smakaj speaking to Mr. Thaci on the 7th of October about how he had spoken with Mr. Zyrapi. It's entirely circular. One does not support the other.

It may be different if Your Honour had the evidence to say that there is only one person present on the 7th of October who we know had any contact with Mr. Zyrapi during that period, but we don't, because we know, as I've already said, that there is at least 11 people whose identity we simply do not know were present on the 7th of October, 2023, in Unit 4. We have no evidence whatsoever as to whether any of them have been in contact with Mr. Zyrapi or not, no way to exclude them from being -- from having such contact.

The so-called Smakaj document, then, it does not assist, in our submission, the Prosecution in establishing Mr. Smakaj's presence and participation in the relevant parts of P00108 and P00110. That is for a number of reasons.

The first is that the evidence that's before Your Honour on the evidential record is insufficient to prove that Mr. Smakaj was associated with that document, had possession of that document. There is no DNA evidence that connects him to it. There is no fingerprint evidence connecting him to it. There is no witness evidence of Mr. Smakaj ever having been seen with it in his hands. The Prosecution deliberately elected not to carry out DNA or fingerprint examinations. It did so after they had spoken to Witness 2 and Witness 2 confirmed that Mr. Smakaj had not shown him that document. No fingerprint or DNA examinations, therefore, were to be done.

Your Honour has the additional agreed fact which sets out the chronology, the 6th of December, 2023, and that was the day upon

which the SPO spoke to Witness 2. He was repeatedly asked about whether Mr. Smakaj had spoken to him, whether he discussed testimony, showed him the document. And it is agreed that, despite being repeatedly asked, he firmly denied ever speaking to Mr. Smakaj about his testimony. Effectively said, Mr. Smakaj knows I'm not going to talk about it. And although they were friends, no suggestion that he was ever pushed about it and that he'd never seen a document. So nothing to tie Mr. Smakaj directly to it.

As far as the documents that are visible in pages 5 and 6 of P00126, these are photographs that Your Honour was shown during the course of the trial and are on the evidential record. There is no evidence as to the identity of the person who took those photographs. There is no evidence, Mr. Hafetz tells us, but no evidence of the date on which those documents were photographed or the time on which they were photographed.

It is right that the first and the last pages of that bundle of photographs do appear to be a car -- the front of a car registered to Mr. Smakaj. You can see that because we can see the number plates, and Your Honour has some evidence as to the registration of that number plate. We concede that. But there's no evidence on the record to establish the address where the car is photographed. The Prosecution tells us where it was, but no evidence as to where the car was when it was photographed. And beyond that, there's only two pages that are visible in those photographs, only two pages, and yet Your Honour is told to make the assumption that it is the 10-page

document that they presumptively now call the "Smakaj document."

You can see, if you look carefully in the photographs, that in fact there does appear to be one other person, in addition to the photographer, present in the first and the eighth photograph, although you can't identify that person from the images, save to say it does not appear to be - and no one's suggesting it was - Mr. Smakaj present at that stage. And there is no other evidence as to who that person was or why they were there.

Although it is an agreed fact that on the 30th of October, 2023, the SPO conducted a search and seizure operation at Bashkim Smakaj's residence in Prishtine, Kosovo, the agreed fact does not extend to and there is no other evidence on the record to confirm that the photographs P00126 were obtained during the course of that search.

Belatedly, the Prosecution refer to the bag in their consolidated response to the Defence final trial briefs. They say but what about the exhibit bag marked AAOR4213NL. That is the label given to the document by the NFI when they receive it and photograph it. The bag does have that number on it, but the -- printed on it, but there is no printed description as to where the document came from. There is no evidence as to when the exhibit was placed in the exhibit bag. There is a handwritten description written on it, but there is no evidence as to when that handwritten description was written on it. There is no evidence as to who wrote the description on it. There is no evidence as to where whoever and whenever that description was written on it they had received their information

from. It is as worthwhile evidentially as Mr. Hafetz, Prosecution counsel, telling us where it came from, and that is not an adversarial criminal trial based on evidence.

The Prosecution cannot - and I've said that at the outset and I repeat it - they cannot simply properly rely upon their own mere assertions as to what an exhibit is or where it came from. Their descriptions given to exhibits on the bar table motions, submissions, exhibit lists, surrogate sheets or bags, is merely their case. To allow them to rely on what the Prosecution says is simply to allow them to avoid an adversarial trial based on criminal evidence. It moves this process away from being an adversarial trial based on criminal evidence, and turns it instead merely to an opportunity for the SPO to pronounce their own judgement on the law and facts.

The reference by the Prosecution in their consolidated response to the Defence final trial brief contains another last-ditch, desperate, and, we say, impermissible attempt to breach the gap left by their failure to call any evidence to demonstrate the provenance of the so-called Smakaj document. They claim that they can rely upon the sixth notification of agreed facts. That's the agreed fact that confirms that after they spoke to Witness 2, they told NFI, no fingerprints, no DNA, please, on that document. We don't want to know who has touched it or who hasn't. Instead, they take that agreed fact and they claim that Your Honour can rely upon it because their prohibition to the NFI not to undertake fingerprint or DNA work on the so-called Smakaj document, in the words of the agreed fact,

related to an order authorised in Smakaj's search and seizure.

Well, the order itself has not been exhibited in evidence. The agreed fact says nothing about whether the item related to the outcome of the order authorising Smakaj's search and seizure, nor does it say anything about how it relates to the order authorising the search.

We all know that the Prosecution says that it was found in Mr. Smakaj's car on the date of the search of his home address, but where is the evidence to prove that? Where is the evidence of the search officer? If the SPO had nothing to hide -- and they were given plenty of notice about this, they cannot complain of any sort of forensic ambush. If the SPO had nothing to hide, why did they not call the search officer who allegedly found the document?

I referred to the two pages that are visible in the photographs P00126, not ten pages but two. There is no evidence to establish that the two pages that are visible in those photographs, P00126, are in fact the same two pages which correspond to the pages in the so-called Smakaj document as opposed to being copies, facsimiles of the same.

In any event, the evidence does not establish the origin and the journey of that so-called Smakaj document, call it 213NL, if you will, to the criminal standard, such as would be required if you, Your Honour, were to safely draw a trail from origin to destination. No continuity or chain of custody.

In the first instance, we say that minimal weight, if any,

should be accorded to the evidence of Witness 8, Mr. Herlaar, as to the origins of the document that he examines, document ending 213NL, for the reasons that you yourself set out, Your Honour, persuasively in F00825. Your Honour has already properly recognised the deficiencies to the transparency of sources and of methodology of Mr. Herlaar, which seriously impair Your Honour's assessment of the probative value of his opinion evidence such that the weight to be afforded to any such opinion, even if admissible, Your Honour said, was diminished.

Your Honour was quite right. As Your Honour said, in Witness 8, he did not describe systematically in his report or his direct examination what actions he took in order to reach his conclusions. None of the *[REDACTED] Pursuant to Post Session Redaction Order F01007.* by Witness 8 were reproduced in his report or otherwise disclosed. The *[REDACTED] Pursuant to Post Session Redaction Order F01007.* *[REDACTED] Pursuant to Post Session Redaction Order F01007.* *[REDACTED] Pursuant to Post Session Redaction Order F01007.* *[REDACTED] Pursuant to Post Session Redaction Order F01007.* were not produced or shown to Your Honour during his testimony. Those omissions, Your Honour found - and it still remains sound - constitute serious deficiencies in the transparency of Witness 8's methodology. They directly concern the *[REDACTED] Pursuant to Post Session Redaction Order F01007.* that he performed to reach his conclusions about the document that he had seen and the sample document.

The undisclosed items were created by and formed an essential part of his analysis which led to his conclusion. Your Honour

referred to Witness 8's own analogy of *[REDACTED] Pursuant to Post Session Redaction Order F01007.*, and Your Honour pointed out to the fact that even on that basis, the analogy would follow that this was a case in which *[REDACTED] Pursuant to Post Session Redaction Order F01007.* *[REDACTED] Pursuant to Post Session Redaction Order F01007.* themselves had never been provided, that the *[REDACTED] Pursuant to Post Session Redaction Order F01007.* *[REDACTED] Pursuant to Post Session Redaction Order F01007.* were never revealed, that any meaningful examination, explanation, or description of how the *[REDACTED] Pursuant to Post Session Redaction Order F01007.* were created had not been put before Your Honour.

THE INTERPRETER: Interpreter's note: The counsel is kindly asked to slow down for the purposes of interpretation. We do not have the text.

MR. REES: And that the nature of *[REDACTED] Pursuant to Post Session Redaction Order F01007.* in general, including the basis --

JUDGE GOSNELL: Mr. Rees.

MR. REES: [Overlapping speakers] ... they're always unique.

JUDGE GOSNELL: Could you slow down for the interpreters. They're asking, please.

MR. REES: Thank you for the reminder, Your Honour, and I apologise to the interpreters.

Your Honour basically took the *[REDACTED] Pursuant to Post Session Redaction Order F01007.* analogy used by Mr. Herlaar and used it to demonstrate the flaws in his evidence. Those deficiencies were not remedied, Your Honour found, by the disclosure of the *[REDACTED] Pursuant to Post Session Redaction Order F01007.* used by Witness 8 to the Defence because they did not in any way reveal the actions that he had performed to *[REDACTED] Pursuant to Post Session Redaction Order F01007.* of the microdot patterns. They weren't *[REDACTED] Pursuant to Post Session Redaction Order F01007.*, and Your Honour noted,

heartedly, that the Defence do not bear the burden of disproving or, for that matter, confirming an expert opinion adduced by the Prosecution that is facially deficient in its exposition of its sources or methods. Presumably, any Defence expert would be met by the SPO with the assertion that they did not have access to the same secret and confidential information as Witness 8, Your Honour said, and was thus in some way inferior, or they would be bound by the same confidentiality restrictions and thus unable to be any more transparent as to methodology. And Your Honour was right to so comment.

Witness 8, Mr. Herlaar, repeatedly refused to answer questions based on confidentiality obligations that he claimed without any real support. He confirmed that he relied upon that purportedly confidential information as part of his analysis, Your Honour found. Your Honour noted that he was unable or refused to provide information about the origin, nature, and scope of these confidentiality obligations, and that he himself had testified that he had only ever been informed of such confidentiality obligations, as he claimed, orally. He was never shown anything in writing. He did not know the *[REDACTED] Pursuant to Post Session Redaction Order F01007.* or whether it existed somewhere else in the form of a written document.

Your Honour observed that both the Court and the Defence have no way of ascertaining whether Witness 8 has properly interpreted the scope of his confidentiality obligations and that there are several indications that he has not, which only increases the possibility

that he declined to answer at least some of the questions that he refused to answer without any proper, lawful basis. A witness's refusal to answer questions on cross-examination in the absence of a proper, lawful basis is, of course, as Your Honour observed, prejudicial to the cross-examining party. Put it another way, if the Defence don't have any opportunity to seek to challenge or get further information from a witness, that is clearly prejudicial.

Your Honour referred to the duty of witnesses to answer questions by all parties under the control of the Judge. That principle goes to the basis of any judicial institution, goes right to the heart of the notion of justice; that is, that a defendant is entitled to have the opportunity to examine witnesses whose evidence is otherwise prejudicial to them.

Your Honour observed that Witness 8's refusal to answer questions was not limited to unimportant or clearly irrelevant matters. He refused to answer questions about his methodology. He had not reproduced the patterns that were the basis of his report or the overlay image. He could not confirm any official source for his claim that *[REDACTED] Pursuant to Post Session Redaction Order F01007.*, or for the exercise of a more robust *[REDACTED] Pursuant to Post Session Redaction Order F01007.*, which could have provided more information.

In relation to *[REDACTED] Pursuant to Post Session Redaction Order F01007.*, Your Honour said you did not have sufficient information based precisely on Mr. Herlaar's refusal to answer questions to reject it as the SPO asks you to do as irrelevant. On the contrary, Your Honour said, and Your Honour is

quite right, the failure of an expert to perform another available method of analysis within the same expertise and which would purportedly produced more information is a matter that meets the threshold of relevance. These serious deficiencies diminish the weight that Witness 8's report should be accorded, Your Honour has already found.

The elements that Witness 8 had failed to reproduce in his evidence or otherwise disclose Your Honour said were essential before the Court could give any real weight to Witness 8's evidence, whether it's admissible or not. Any suggestion now that the weight to be given to Witness 8's evidence could be assessed with reference to other evidence in the case is misplaced. As Your Honour observed previously, Witness 8's conclusion is based purely and solely on a visual analysis of the sheets that he examined. He relied on no other evidence in the case, and as such, any potential corroboration provided by evidence of other types does not assist you, Your Honour held, in coming to a view as to the probative value, the weight that you should assign to the evidence of Witness 8, and we could not agree more.

The technique of comparative microdot analysis, as Ms. Menegon has already said, does not appear to have been the object of significant academic publication or validation, Your Honour has observed. Indeed, when Witness 8 was asked about that, he said that the fact that there were no significant academic publications or validation on microdots was itself as a result of the confidentiality

obligations that he said limited the scope of his testimony. Be that as it may, it neither helps the Prosecution, nor Mr. Herlaar, if that is the case.

Witness 8 himself, Your Honour observed, could not recall that he'd ever appeared before an investigating judge to give evidence about microdots. He was not sure how his previous reports on microdot analysis had ever been used or treated in any other previous criminal investigations, and he did not know whether they had been relied upon, let alone accepted, admitted, that is, as expert opinions in any Dutch proceedings.

Those, Your Honour found, were serious deficiencies individually and cumulatively. They diminish the weight that Witness 8's evidence could possibly be accorded. In the circumstances, as Your Honour has already found, Witness 8's evidence, even if admissible, should be given minimal, if any, weight.

Even if the so-called Smakaj document, or at least the document that was examined by Mr. Herlaar, had been printed within the Detention Unit, the *per avokatet*.doc file, which the Prosecution seeks to prove to be the digital origin thereof, was printed, according to the records produced by the Prosecution, from the printer that was accessible to all detainees and members of staff in the Detention Unit, not just on one occasion, on the 7th of October, but on seven different occasions in October and November 2023, including being printed twice on the 27th of October, 2023, just three days before the Prosecution conducted a search and seizure

operation at the accused's residence in Pristina.

Each time, according to the report prepared by independent counsel, each time it was printed, the hard copy produced contained - and this is a quote - "exact, identical copy of the relevant document."

The Prosecution draw the Court's attention to some other passages which perhaps are not as clear. If there's any inconsistency in her report, it's not an inconsistency that the Prosecution can take advantage of. We, the Defence, had no opportunity to cross-examine independent counsel to seek any clarification. What is absolutely clear is that she asserts that each time the document was printed on those seven occasions, the hard copy produced contained "an exact, identical copy of the relevant document."

If those two pages that can be seen in the photographs, P00126, are pages that have been printed from the *per avokatet*.doc file, and if they were printed from the colour laser-jet printer accessible to all detainees and staff within the Detention Unit, there is no evidence on the record which can prove on which of the multiple days during October and November 2023 those two pages visible in P00126 were printed. They might have been printed on the 27th of October, 2023, just three days before the SPO conducted the search at the accused's residence in Pristina, but it may be on one of the six other occasions.

Likewise, if the pages in the document examined by the NFI, the

document that was received by them from the SPO on the 14th of November, 2023, so some time after, if those ten pages were printed pages from the *per avokatet*.doc file and if they were printed from that colour laser-jet printer available to all the detainees and all members of staff in an unlocked room in the Detention Unit, there is no evidence on the record which can establish on which of those seven days during October and November 2023 they were printed. The Prosecution can't do it.

If that document examined by Mr. Herlaar was printed within the Detention Unit, the evidence does not establish the criminal standard of proof, who printed it. All Your Honour has in terms of evidence in relation to the process of the printer is that which was provided by the Registrar. P00102 is the exhibited record, and within that the Registrar states:

"The DMU confirms that there was only one printer, 'subject printer,' in the detention facilities for detainee printing connected to one stand-alone laptop, 'printed laptop,' both located in cell A115, in unit 4 of the detention facilities during the relevant period. The manufacturer of that laptop is Toshiba, and the model of the laptop is Tecra R940-1NZ" and then there's a serial number, further details about the model and serial number of the printer.

The Registrar continues:

"The DMU confirmed that the subject printer was installed in the detention facilities on the 14th of July, 2022. On the 24th of November, 2023" - so at least a month after the indictment period as

far as Mr. Smakaj is concerned - "the cell in which it was located was locked to prevent any further access to the subject printer."

So at the relevant time, it's just in an unlocked cell in unit 4.

P00102, the report from the Registrar, continues:

"The DMU wishes to clarify that both detainees and detention officers could operate the printing laptop to print during the relevant period following the process explained below.

"During the relevant period and at present, detainees could print data from a CDR or DVD. Detainees can obtain CDRs or DVDs from their Defence team or request empty CDR/DVDs from the DMU. Detainees can copy relevant data, documents, on a CDR/DVD using the desktop computer available in their cell. There is no other option for detainees to burn CDRs or DVDs.

"The detainee would then take the CDR/DVD containing the data one wishes to print with them and request a detention officer's assistance to print. The detention officer would then accompany the detainee to the cell the printer is located in, unlock it, and remain with the detainee until the printing is finalised.

"To print a document, either the detention officer or the detainee would log onto the printing laptop using a local account. There is only one local account both detention officers and detainees use to log onto the printing laptop. One would thereafter select the relevant data, documents, and send to print, after which the detainee would pick up the CDR/DVD from the printing laptop and the printed

papers from the subject printer which is located in the same cell.

"Finally, the detention officer would escort the detainee out of the printing cell and lock it," although presumably that means after the 24th of November, 2023.

"The procedure is for the detention officers to then mark the occurrence in the Wing Journal.

It follows from that account, and because this is an account that's come from the Registrar and not come from the Prosecution and no witness called to it, we have that general account of the procedure without any specific evidence as to how it occurred on the relevant seven occasions when *per avokatet*.doc was printed.

What we can see from that procedure is that no printing of the *per avokatet*.doc file can ever have taken place without the digital version of it being placed on a CDR or DVD and placed under the control of a detention officer, and at that moment, outside the control of the detainee. That must follow, that does follow from the general procedure.

As the Registrar notes in the exhibit, there is a Wing Journal that is used to identify or to keep a record of activity in and around the printing cell. Your Honour has a copy of such parts that the Prosecution have put before you, which says, P00103 -- and I say it's the Wing Journal. I'm presuming it's the Wing Journal. It doesn't specifically say that, but what it does say is, under the name "Thaci," there is an entry which says "used printer cell" at 1945 hours on the 23rd of September, 2023. It doesn't say "used the

printer"; it's "used printer cell." Then it says: "Printing cell" - in quotes, "printing cell" - on the 7th of October, 2023, but that's untimed. So there's no assistance there as to who was doing the printing, whether it was Thaci or the detention officer, and we don't know what time the printing cell was being engaged.

The only time we get an entry for Mr. Thaci actually using the printing machine himself is a single time on the 5th of November, 2023, at 1600, where what is recorded is "used the printing cell."

So as far as this record goes, Your Honour has evidence only of one specific occasion where Mr. Thaci is recorded as using the printing machine itself. There is no specific record as to who used the printing machine at 10:02:40 on the 7th of October, 2023, to print the *per avokatet*.doc file, that time, the time that the SPO wishes Your Honour to concentrate on.

And intriguingly - intriguingly - in light of what we know about the recording of people using the printing cell, the need for it to be done, which we can all readily understand care and attention is given to, there is no record at all as to who used the printing machine or was even in the vicinity of the printing cell when the *per avokatet*.doc file was printed containing, according to independent counsel, an exact, identical copy of the relevant document on each of the following days before the NFI were provided with the so-called Smakaj document on the 14th of November, 2023. No record at all in the Wing Journal of who printed it at 18:19:34 hours on the 25th of October, 2023; or at 7:45, twice -- well, 7:45 and then 7:48, on the

27th of October, only three days before the search; or, for that matter, on the 31st of October, 2023, at 10:59; or the 7th of November, 2023, at 06:25; or again on the 7th of November, 2023, at 06:30.

There is, just as with the voices, no continuity of persons in unit 4 on those recordings. There is, similarly, no continuity of control, no custody chain of the *per avokatet*.doc file such that the Prosecution can assert and that you could safely find on the criminal standard of proof, Your Honour, that it can only have been printed by Mr. Thaci and no one else and that it could only have reached the car of Mr. Smakaj, if indeed it did, by passing from Mr. Thaci to Mr. Smakaj.

The Prosecution, during the course of the trial at least - not in their closing statement but during the course of the trial - referred to the docs1.docx file allegedly recovered from a laptop belonging to Mr. Smakaj. That is of no assistance to the Prosecution either. The evidence establishes that file was created nearly two years before the indictment period on the 21st of December, 2021, although there was a last access date in 2023, the 24th of February. That in itself is eight months, over eight months before the indictment period. And the last accessed date, changes to it do not require any user input from a human. Last access dates, Your Honour heard in the evidence, can simply be a record of when the operating system last examined a file.

So what relevance, then, is there of a two-year-old electronic

document on a laptop which had not been accessed by either user or, indeed, operating system in the alternative for at least eight months?

The effect of these submissions, Your Honour, is that in this case, a case which is wholly circumstantial, it cannot be asserted that the only reasonable inferences that can be drawn are those that the Prosecution ask the Court to draw.

For example, we have raised in our final trial brief, as we raised in the outset of the trial, in the opening statement, that the evidence in relation to the, presumptively called, Smakaj document or the document which the NFI examined with the label 4213NL, the evidence clearly allows for the possibility that it travelled from its digital origin in the *per avokatet*.doc file from a detention officer when it was passed to him or her on a CDR or a DVDR, and then onwards, either directly or indirectly, to the hands of the SPO, and from them to the NFI, without ever passing through the possession of Mr. Smakaj at all, as he says.

At paragraph 70 of the Prosecution consolidated reply to the Defence trial briefs, the Prosecution clearly are able to otherwise address that submission, despite having been given notes of it, despite having every opportunity to try to deal with that during the course of the evidence, claims that instead it just relies upon Your Honour, they say, well, just apply common sense; just reject outright our requirement to prove the continuity of the passage of an important, they would say, decisive exhibit. And they invite you

instead to refuse simply to consider the possibility of a third party, such as a detention officer or an SPO officer or, as we opened, during the opening of the case, others - not the only explanation, the detention officer to the SPO to the NFI - we made that clear - refuse, they say, just refuse to consider the possibility of a third party maliciously or otherwise intervening.

Well, common sense, common knowledge, however you want to put it, in our submission, says nothing of the sort.

On the contrary, common sense would tell you, Your Honour and the Court, to take great care.

Common sense would recall that in 2022, it was widely and publicly reported that the Swiss Intelligence Services, the Federal Office of Police in Switzerland, and the Office of the Attorney General of Switzerland had credible reports of a scheme organised by the Serbian intelligence services to falsely implicate those awaiting trial in this court and their friends, family, and associates, in a witness interference plot, reports that, unlike the SPO, the Swiss did not just wave away as fanciful but instead took very seriously, imposing serious countermeasures.

Common sense would reflect that as recently as last week, the Serbian president was publicly boasting about how his intelligence services had penetrated this court, the KSC, and had obtained information as to the outcome of these proceedings and the other outstanding case before the judgements have been made public, and indeed in this case even before the closing statements had been

heard.

[REDACTED] Pursuant to Post Session Redaction Order F01003.
[REDACTED] Pursuant to Post Session Redaction Order F01003.
[REDACTED] Pursuant to Post Session Redaction Order F01003.
[REDACTED] Pursuant to Post Session Redaction Order F01003.

Common sense would also remember that in 2020, hard copy confidential documents to which only officials of the SPO had access were released by someone or from somewhere within their organisation without any explanation. As the SPO has observed in their final trial brief, at their paragraph 606, the accused in Case 07 were not charged with delivering the batches of documents, for getting hold of the documents in the first instance; they weren't charged with that at all. They were charged instead with disseminating it after it had been leaked from the SPO offices and dropped on their doorstep.

Common sense would reflect on all those things and look instead at what the evidence shows, proves, in this case and what it doesn't.

Common sense would note that Mr. Smakaj, as I've already observed, gave the SPO plenty of advance notice that he denies ever having seen the document they label the Smakaj document before being shown it whilst it was in the hands of the SPO during the course of this investigation, whilst remembering that the law is that the accused, Mr. Smakaj and his co-accused, do not have to prove anything.

In light of the febrile background to these proceedings, common sense dictates, in our respectful submission, that the greatest care,

not a lackadaisical approach, but the greatest care ought to have been taken by the Prosecution to exclude all possibilities and ought to be taken by Your Honour when considering the evidence before you could find the accused guilty. And instead of that, the Prosecution has taken little or no care at all, and instead pleads for the Court to endorse their forensic laziness.

Such possibilities that the SPO are required to rule out are not limited to the possibility that the so-called Smakaj document, or the document that the NFI examined and they gave the label ending 213NL, travelled from its original in the *per avokatet*.doc file from a detention officer to the hands of the SPO and then the NFI without passing through the hands of the accused at all, though it is implicit in the Prosecution's consolidated response to the Defence final trial briefs that they cannot exclude that possibility on the evidence. It's not the only alternative possibility. That was given as an example.

Another possibility is that the document travelled from its digital origin into the hands of another hostile third party, with or without the assistance of a detention officer, such as the Serbian intelligence services, before subsequently entering the SPO's possession. These are all possibilities that the Prosecution has failed to exclude.

The accused, the Court will remember, is not required to prove anything.

The unfairness inherent in otherwise drawing an adverse

inference against Mr. Smakaj in these circumstances, as the Prosecution invites the Court to do, is highlighted by Rule 140 of the rules and the fact that the SPO's case relies decisively on the action, both in terms of reliability and credibility, of the following unnamed persons who feature only in shadow form but, nevertheless, it is implicit from what the Prosecution tells us, if they are right, ought to exist, persons who the Defence have had no opportunity to cross-examine. Any detention officer present during visits at the detention unit who might be able to give evidence about who was coming and going or who was present at any particular time. The alleged finder of the document, two pages that are photographed in P126. The alleged photographer, if he or she is different. Any alleged person who it may be suggested prepared a record of the search, though no search record has been exhibited.

JUDGE GOSNELL: Mr. Rees, I don't want to interrupt you, but we are over time, and I was wondering whether you'd wish to conclude tomorrow or today.

MR. REES: I will do, but I will just conclude a short passage, and then I will finish with a relatively discrete part of the submissions tomorrow.

We have had no opportunity to cross-examine, and Your Honours heard no evidence from, any custody officer, any detention officer who was involved in the use of the printer in the Detention Unit on the 7th of October or any other date in 2023.

We don't know and have had no opportunity to ask questions of

the members of the Detention Management Unit who provided to the Registrar the general account as to the printing process which has been exhibited.

We've had no opportunity to ask any questions of any of the interpreters or translators involved in the preparation of P00108 or P00110, or of any other NFI employee that the Prosecution relies upon as support for Mr. Herlaar, or indeed of independent counsel who reviewed the data extracted from her printers and whose inconsistencies the Prosecution now seek to rely upon.

And the unfairness is further compounded by the additional fact that the identities of the majority of those persons that I've just gone through, who presumably do exist - I say "presumably," we don't know, but presumably exist - that the identities of the majority of them have simply been withheld from the Defence. We have absolutely no idea whether they do exist; if they do, who they are.

Those are good reasons, additional reasons, applying Rules 139 and 140, to reject the Prosecution's case. They are further reasons as to the unfairness implicit in the way in which the Prosecution has brought and conducted this prosecution.

I'll now ask Your Honour to be the Gittins.

I'll finish, then, tomorrow with a discrete area. Thank you.

JUDGE GOSNELL: Thank you, Mr. Rees.

We will adjourn until tomorrow at 9.30 a.m. Thank you.

MS. MENEGON: Your Honour, excuse me.

JUDGE GOSNELL: Yes, Ms. Menegon.

MS. MENEGON: Sorry to interrupt. I'm not sure if you've been able to see it, but I have submitted by e-mail a request for Mr. Thaci's attendance via remote access or video-conference for tomorrow and on Monday. So it would be appreciated if we could have a decision today. Thank you.

JUDGE GOSNELL: That's well received, Ms. Menegon. Thank you very much for pointing it out, and we will advise of a decision shortly by e-mail.

MS. MENEGON: Thank you.

JUDGE GOSNELL: Mr. Rees.

MR. REES: Your Honour, there's one matter I'd like to raise just briefly. During the course of tomorrow, can I ask that the condition of interim release that prevents those who are currently sat very close together in *[REDACTED] Pursuant to Post Session Redaction Order F01003.* are not to have contact to be released. It's causing some concern that they might inadvertently breach that when they are brought together in the location during the course of tomorrow's proceeding.

JUDGE GOSNELL: Well, I think we have the same issue, don't we, Mr. Rees, when the accused are also all present here and there are guidelines that apply. And my understanding is that those same guidelines and rules apply while the accused are present in the premises of *[REDACTED] Pursuant to Post Session Redaction Order F01003.* So I'm not sure why there needs to be a variation of those conditions.

MR. REES: Well, we are in a situation where evidential proceedings have closed. We're coming towards the end of closing

statements. We may well finish that tomorrow. Given that they are present together with a risk of inadvertent contact, I'd ask the Court to consider lifting it, if only for the practical reason that there's a short period of time for them to be together, and then the condition can resume thereafter.

JUDGE GOSNELL: Mr. Edwards, did you want to contribute?

MR. EDWARDS: Well, I support Mr. Rees' application on behalf of Mr. Kilaj. And it's my recollection that at an earlier point in these proceedings, there was a time when the defendants were present in the building that they were allowed to -- I may be wrong, but I have a vague recollection that there was some latitude in terms of their ability to communicate and spend a bit of time together whilst in the building. And if that holds true if they were in this building, I would submit that the same principle should hold true whilst their in the controlled environs of the *[REDACTED] Pursuant to Post Session Redaction Order F01003.*

JUDGE GOSNELL: Mr. Edwards, I do believe you're -- Mr. Young, do you wish to add something?

MR. YOUNG: Sorry, briefly. I don't wish to add, Your Honour. If I could simply say that we adopt what's being said. And if it helps Your Honour, in relation to timing tomorrow, I've revised my time estimate and I aim to be nearer to one rather than two hours. I hope that helps.

JUDGE GOSNELL: Well, our time is very short, given the ten minutes that we've already run over. May I request that any such request be made by e-mail and that will be reviewed this evening and

there'll be a response very promptly. So no variation as of right now, but certainly we'll deal with that this evening, and of course the Prosecution will have an opportunity to comment as well.

With that, we stand adjourned until tomorrow at 9.30. Thank you.

--- Whereupon the proceedings adjourned at 5.25 p.m.