Friday, 11 September 2026
[Open session]
[Closing Statements]
[The accused appeared via videolink]
--- Upon commencing at 9.30 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. Thank you.

JUDGE GOSNELL: I see that the appearances are mostly as yesterday.

Any changes from the Prosecution?

MR. HAFETZ: You're exactly right, Your Honour. They're mostly the same. The only difference is that we are not joined today by Ella Palsenberg.

JUDGE GOSNELL: Any changes on the Defence side?

MR. YOUNG: Your Honour, yes. In relation to Fazliu, we now are assisted by Ms. Daphne Yuqing Liu. Thank you.

MR. EDWARDS: And for Mr. Kilaj, Your Honour, in addition to those that were with me yesterday is Mr. Omar Soliman. And Mr. Berisha, Admir Berisha is not here at the moment but will probably attend later on in the morning.

JUDGE GOSNELL: Thank you very much.

MR. REES: As far as the Smakaj team is concerned, we are the

same, less Ms. Matilda Falchetta Hainsworth.

JUDGE GOSNELL: Thank you, Mr. Rees.

And I do see on the video monitors that we are joined by video conference by all of the accused, Mr. Thaci from the Detention Centre, and Mr. Kilaj, Mr. Smakaj, Mr. Fazliu, and Mr. Kuci from Kosovo.

Mr. Rees, the floor is yours.

MR. REES: So, Your Honour, having dealt with the issues of presence and participation, I'm going to move to make some submissions as to the essence of the Prosecution case itself, the words that are alleged, attributed to Mr. Smakaj. The height of the Prosecution case as opened against Mr. Smakaj was that he was present when the words "tell him, simplify it, don't get mixed up" were uttered. That's how they opened the case. Yesterday, the Prosecution attributed the words "don't theorise" or "yes, theory" to him.

Even at its highest, this allegation does not amount to an improper instruction to interfere with the testimony of a witness. Does the Prosecution suggest that witnesses should give mixed-up testimony? The allegation that is made that there is something inherently inappropriate about the words "tell him, simplify it, don't get mixed up," uttered allegedly in Mr. Smakaj's presence, or uttering the words "don't theorise," it is consistent with the SPO's proposition in opening that those words were in some way intended to compromise the KSC and the SPO's ability to effectively investigate

and prosecute crimes, securing relevant and truthful witnesses. Inconsistent because, actually, such instructions to keep answers short, to keep things simple, to speak clearly, they are precisely the instructions that are given routinely around the world to all witnesses by judges, by lawyers, and by friends and family the world over. They are instructions consistent with the KSC and the SPO's ability to effectively investigate and prosecute crimes, securing relevant and truthful witnesses.

Moreover, there is no evidence that Mr. Smakaj did tell any witness to simplify it, don't get mixed up, or, for that matter, make any other attempt to discuss testimony in any terms with a witness. On the contrary, the evidence, unchallenged, non-controversial evidence, is that the accused, Mr. Smakaj, did not do any such thing.

Witness 2, Mr. Zyrapi, repeatedly stated to the SPO that whereas he did have contact with the accused in circumstances where there was nothing in law or in fact that prohibited Mr. Smakaj and Mr. Zyrapi, long-time friends and colleagues, from having any contact, that whereas they did meet, they never discussed his testimony and the accused, Mr. Smakaj, never showed him any document relating to it.

In addition to the failure of the Prosecution to prove to the criminal standard that Mr. Smakaj participated in the relevant parts of conversations within the recordings P00108 and P00110, the Defence submit that the Prosecution has adduced no evidence in relation to Count 12 - that's the count of attempted obstruction - which can amount to more than agreeing, planning, or organising with another

person the commission of the offence, contrary to Article 401(2) of the KCC.

Article 401(2) provides that whoever participates in a group of persons which by common action obstructs or attempts to obstruct an official person in performing official duties shall be punishable.

The indictment that the Prosecution has brought does not allege liability for attempt under Article 28 in Count 12. It does allege liability under Article 35 for agreement.

Article 35(1) of the Kosovo Criminal Code provides that:

"Whoever agrees with one or more other persons to commit a criminal offence and one or more of such persons does any substantial act towards the commission of the criminal offence, shall be punished as provided for the criminal offence."

For the purposes of Article 35, it is stated that "the term 'substantial act towards the commission of a crime', need not be a criminal act" - just pausing there, it follows that it may be a criminal act - "but shall be a substantial preparatory step towards the commission of the crime which the persons have agreed to commit."

THE INTERPRETER: The interpreters kindly ask the speaker to slow down when quoting. Thank you very much.

MR. REES: That's Article 35(2).

JUDGE GOSNELL: Mr. Rees, could you slow down for the interpreters, please.

MR. REES: Yes, indeed, Your Honour. Thank you for the reminder.

So just pausing there, what is required under Article 35 is a substantial act towards the commission of the criminal offence. At a minimum, it shall be a substantial preparatory step, but that does not mean that acts, for example, criminal acts, in themselves will not suffice. They will because they will be more than the minimum substantial preparatory step. I'll come back to that in a moment.

Article 35(2), which provides that, for agreement, a substantial preparatory step may suffice in addition to the agreement itself, must be read, in our submission, alongside Article 27(1) of the Kosovo Criminal Code. Why? Because Article 27(1) of the Criminal Code is clear and excludes preparation of a criminal offence, including agreeing, planning, or organising with another person the commission of a criminal offence as a basis for criminal liability unless the criminal offence expressly provides for preparation as a mode of liability.

"Whoever intentionally prepares a criminal offence shall be punished only if expressly provided for by law."

Pausing there, that applies to whether you are looking at somebody alone preparing a criminal offence or together with at least another agreeing to prepare a criminal offence.

Article 401 of the KCC under which Mr. Smakaj is charged on Count 12 does not - and I think this is not controversial - does not expressly provide for preparation as a basis of criminal liability. Our submission, therefore, is that Article 27(1) of the Kosovo Criminal Code excludes criminal liability for agreeing, planning, or

organising with another person the commission of the offence contrary to Article 401(2) of the KCC.

In short, preparation is a standalone basis for liability for a single person. It may also be the basis for liability together with another under Article 35. But in both cases, where the evidence goes no further than a preparatory step and does not, for example, reach a criminal act by itself, then Article 35 and Article 27 have no applicability where the allegation is agreement unless preparation is specifically provided for in the criminal offence alleged itself. Otherwise, Article 27 is effectively avoided by Article 35, and that cannot be right.

In this case, and I do not think it is alleged to the contrary, the Prosecution has adduced no evidence which can amount to more than agreement, planning, or organising with another person the commission of the offence contrary to Article 401(2) of the KCC, whoever was participating and present in the relevant conversations.

As agreeing, planning or organising with another is excluded as a criminal basis for criminal liability unless - and this is not the case - it is specifically provided for in the offence itself, then Mr. Smakaj ought to be acquitted of Count 12 on that basis alone.

A further point arises in relation to the way the Prosecution approach the concept of agreement and the steps that are required in addition to the fact of agreement. The Prosecution asserts that it is sufficient to engage in action that has the capacity to obstruct official persons - the capacity to obstruct official persons. It is

not required that official persons are obstructed under Article 401, and I do not disagree with that.

But what is actually alleged in this case? It does not have the capacity, without anything further, to obstruct official persons. Simply receiving confidential information, without anything further, does not have the capacity to obstruct official persons. It cannot do. Before there is a capacity to obstruct official persons, something further must be done.

Simply engaging in discussions with a detained person, alleged in this case to be Mr. Thaci, in whispering tones, without anything further, does not have the capacity to obstruct official persons.

Simply being in contact with Mr. Zyrapi between visits to Mr. Thaci, without anything further, does not have the capacity to obstruct official persons.

Simply discussing a document with Mr. Thaci, if that happened, which may have been on Mr. Thaci's cell computer, without anything further, does not have the capacity to obstruct official persons.

Indeed, simply taking a document from the Detention Unit and leaving it in a private vehicle, if that is what happened, without anything further, does not have the capacity to obstruct official persons.

No one is suggesting that all steps have to be exhausted to try to complete the obstruction, but the steps that the Prosecution have identified as forming the basis for their case, the *actus reus* of the offence of attempted obstruction in the case of Mr. Smakaj, do not,

without anything further, have the capacity to obstruct official persons.

Turning to Count 13, the second count that Mr. Smakaj faces, he is judged with assisting an offence contrary to Article 393(1) of the Kosovo Criminal Code. That article provides that whoever fails to obey any final order, ruling, decision, or judgement of any Court in the Republic of Kosovo shall be punished.

It follows, Article 393(1), on its face, could not be clearer, is specifically limited to disobedience to an order or a ruling or a decision or a judgement. And it does not apply to any wider restriction, such as breach of an agreement between parties, or legislation, or a policy, or a practice direction, such as a practice direction in relation to a Detention Unit.

The indictment, recognising the specific requirement for disobedience under Article 393(2) relates to an order, ruling, decision, or judgement, specifically, therefore, particularised the orders to which Count 13 was said to relate. The indictment specifically particularised that Mr. Thaci was alleged to have disobeyed the court orders in decision KSC-BC-2020-06/F00854 and that Mr. Smakaj assisted him to disobey the orders in KSC-BC-2020-06/F00854.

It follows that the Prosecution were required to prove intentional assistance, whether direct or eventual, and thus prove at a minimum that the accused was aware of the existence of the court orders in KSC-BC-2020-06/F00854, even if the detail of the text --

whether or not he knew the detail of the text.

I know that Mr. Fazliu will make submissions in relation to the question of the content, and I'll adopt those. But for my purposes, it's enough for me to submit, because this is, again, I think, non-controversial, there's no evidence that Mr. Smakaj was aware of any court orders in KSC-BC-2020-06/F00854, let alone the content of them.

The accused, Mr. Smakaj in particular, cannot be convicted of intentionally assisting another to disobey something that he was entirely unaware of the existence.

It is insufficient, therefore, to establish guilt on Count 13 that the accused was aware that, in the words of the Prosecution final trial brief, in their first attempt to reencapsulate their case, that he was aware of the receipt of confidential information divulged by Mr. Thaci was not allowed by the KSC framework, referring to the practice direction, instructions for detainees attending at the Detention Unit, because the offence of contempt of court relates to disobedience of any final order, ruling, decision, or judgement of any court and does not extend to the KSC framework.

It follows that it is also not sufficient to establish that an accused was aware that, as a result of their acts, a failure to obey final KSC decisions could occur, and they acceded to the occurrence of that result. Why? Because the indictment faced by the accused allege was disobedience within the specific orders contained within the decision KSC-BC-2020-06/F00854. It is implicit in this

last-ditch and desperate attempt to impermissibly widen the scope of their case after the evidentiary proceedings have closed that the Prosecution concede that they did not adduce any evidence that the Court -- sorry, to the Court that Mr. Smakaj was aware of the existence of the court orders in KSC-BC-2020-06/F00854 as they alleged in their indictment.

In their final consolidated response to the Defence final trial briefs, the Prosecution assert that assisting contempt does not require that the judicial order violated be notified to or directly known by the person assisting. I do not take issue with that. But it does require that the person assisting does know about the judicial order violated, whether it was notified to them or not, at least indirectly, whether it was directly known by them or indirectly they learnt about the existence of it.

What must be proved, the Prosecution put in paragraph 50 of their consolidated response, what must be proved is awareness that the assisted conduct could constitute a breach, not familiarity with the text of the order. Now, again, I'm going to leave the issue about familiarity with the text to others, but I agree that what must be proved is awareness that the assisted conduct could constitute a breach of the order, the order in this case, KSC-BC-2020-06/F00854. So it seems that the Prosecution is finally on the same page as us. And given that they have, at least implicitly, conceded that they are required to prove that the accused was aware of the judicial order violated and that there has been no evidence called that Mr. Smakaj

was aware even of the existence of KSC-BC-2020-06/F00854 at all, leaving aside the issue of familiarity with the text, the Prosecution have clearly failed in that regard to prove assisting contempt of court on Count 13.

The prohibited consequence that is particularised in the indictment by the SPO is a violation of the orders in KSC-BC-2020-06/F00854 specifically.

Thank you. I'll repeat that.

The prohibited consequence that is particularised in the indictment is a violation of the orders in KSC-BC-2020-06/F00854 specifically. Whether or not the bar is set by the law with knowledge of the specific orders in each and every case charged under KCC Article 393, an issue that the Prosecution raises in their consolidated response but no one else has raised, whether or not the bar is set by the law with knowledge of the specific orders in each and every case charged under Article 393 - and, as it happens, I didn't raise it, but I do maintain that that is precisely what the law states - in any event, the bar has been set there in this case by the Prosecution itself with the terms of its own indictment. To that extent, the Prosecution is hoisted by their own petard.

Your Honour should acquit Mr. Smakaj for each and all of the reasons, individually and cumulatively, that I have just given.

Finally, Your Honour, and can I say this without meaning any discourtesy, I turn to the issue of sentence with the greatest of reluctance because I maintain that to ask defendants to address the

issue of sentence when the question of their guilt or innocence remains at large is inappropriate. Saying that, because I know that Your Honour has ruled upon it, I therefore make submissions, as I must do on behalf of my client, maintaining his innocence entirely.

And I also feel it inappropriate because it causes me to have to touch upon other defendants' cases, and I recognise that the question of their innocence and guilt remains at large. And nothing that I say now should imply or infer that I agree in any sense with the Prosecution's case against those defendants. But disparity of sentence is an important principle in a sentencing exercise, and in a multi-defendant case such as this, it is an issue that cannot be ignored.

Let me deal briefly, then, with some specific submissions before turning to the issue of disparity.

Mr. Smakaj has no previous convictions, as the Prosecution have told the Court in their final trial brief. They claim that the absence of previous convictions is of no relevance. In so claiming, they fly in the face of established jurisprudence in all jurisdictions, domestic and international. What the SPO do is they conflate the issue of lack of relevant previous convictions with the additional issue of positive good character. They are not the same thing. The lack of previous convictions is acknowledged worldwide as a factor that is to be taken into account in mitigation. The weight to be applied thereto is, of course, a matter for the sentencing judge, but it must be taken into account.

And I have referred to the Crown Court -- sorry, the sentencing guidelines council in England and Wales, their explanation as to why the lack of previous conviction is always to be regarded as a mitigating feature, the weight of which to be applied being a matter for a sentencing judge.

The question as to whether a defendant is entitled to additional credit for being of positive good character is not the same question one can be entitled to credit for having -- and one is entitled to credit for having no previous convictions, but not entitled to additional credit for being of positive good character. One can be entitled to have credit for being of positive good character even though one is not entitled to having credit for a lack of relevant previous convictions because the defendant has relevant previous convictions. The defendant can establish that notwithstanding their relevant previous convictions, they have other aspects to their character which are positive and of merit, such as charitable works and so on, that require additional merit.

In Mr. Smakaj's case, I advance both. He is entitled, at the very least, to credit for his lack of previous convictions. There is also nothing to -- for Your Honour to reject the submission that he's entitled to merit for his positive good character. Your Honour knows of his background.

Your Honour must also take into account that there has been no actual obstruction. It is not alleged. It is not alleged that there has been any actual effect upon the administration of justice. That

is a material and significant factor to take into account, requiring a downward adjustment of any sentence that may be imposed.

Even on the Prosecution case, this cannot be said to be an allegation where an accused is said to have exhausted all steps open to him to attempt obstruction. Even on the Prosecution case, the allegation amounts to having a conversation, to having discussions, then taking a document from the Detention Centre and leaving it in a car for over a month, having never spoken of the either content of the discussion or of the document to a relevant witness, even though on the Prosecution's case, he had plenty of opportunity to do so.

Even if the Prosecution can make out agreement such that criminal liability is established - and for all the reasons I have set out, I say they cannot - but even if they could, then it is obvious that the accused quickly withdrew from it. That is another significant mitigating factor requiring a downward adjustment, a further downward adjustment, of any sentence.

In relation to the issue of contempt, he is charged with assisting only, and Your Honour knows that by law, Your Honour is required to treat assistance only as a mitigating feature, requiring a lesser sentence than the perpetrator of the completed offence.

Let me deal, then, further with some significant alleged aggravating features which the Prosecution have identified in relation to another defendant which are definitely not present, nor alleged to be present, in the case of Mr. Smakaj.

I say this because Your Honour knows -- and I will not refer to

the defendant in particular because I do not think it's appropriate at this stage for me to be placed in the position to have to do so, but Your Honour has the written submissions in the Smakaj reply to the Prosecution trial brief from paragraph 31 onwards. But as criminal justice is a matter where the principle of open justice is important, there are some matters I need to deal with so that the public can understand how the Prosecution approach this matter.

The Prosecution have identified that in relation to one of the defendants there are a number of alleged aggravating features that make his conduct especially grave. Whether or not that's right, they are definitely not present, nor alleged to be, in the case of the accused, for example. Mr. Smakaj was not a member of any Defence team. He was, it is alleged, an ordinary visitor. He certainly was not, it is alleged -- not alleged, not an ordinary visitor.

Mr. Smakaj, it is not alleged, had access to confidential materials and full knowledge of the applicable legal framework. Mr. Smakaj is not alleged to have agreed to contact multiple witnesses regarding their testimony outside of the Case 06 protocol. Mr. Smakaj is not alleged to have had direct knowledge of the Case 06 protocol for the reasons I've already said. There's no evidence that he was aware of it at all. Mr. Smakaj is not allegedly admitted -- has not allegedly admitted that he had been in contact with one of those witnesses to discuss his forthcoming testimony on at least one prior occasion. Mr. Smakaj is not alleged to have exploited his privileged access to confidential materials and professional trust as

tools for the violation of court orders. And he is not alleged to have specifically contacted another witness in KSC proceedings on his own initiative and in direct violation of the Case 06 protocol.

I refer to those alleged aggravating features being present in another defendant's case, not saying whether I agree with them or not, because they are, the Prosecution say, features that make his case especially grave, and yet the Prosecution concludes that by suggesting that a sentence in total of nine months is appropriate for that defendant and three years for Mr. Smakaj whose conduct, unlike that defendant, is not especially grave, according to the Prosecution.

It is not the Prosecution's case that Mr. Smakaj exploited his status as a lawyer and Defence team member for another case accused, or that he showed a willingness to target at least three witnesses, or made an alleged direct breach of the Case 06 protocol. His conduct, according to the Prosecution, is not especially brazen and grave, in contrast to the other defendant.

The Prosecution's request for a single sentence for Mr. Smakaj, if convicted, of three years' imprisonment, therefore, compared to a single sentence of nine months' imprisonment for the defendant who they say their conduct was especially grave, would create a disparity which is wholly unjust on the Prosecution's case.

It is our submission that that would be wrong and that any disparity in sentence for the conduct of Mr. Smakaj, if one is to be imposed, compared to any sentence for the conduct of the named

co-accused who the Prosecution alleges their conduct was especially grave in light of the identified aggravating features, must be as minimal as the statutory regime allows.

I repeat it because in relation to Mr. Smakaj, the Prosecution have, in their final trial brief in sentencing submissions, rolled Mr. Smakaj in together with others, alleging that each of the defendants was involved in participating in a scheme to influence the testimony of multiple SPO witnesses, including victim witnesses. Well, that is not the case. That is not the case that they have brought against Mr. Smakaj, who faces two counts alone, Count 13 and Count -- Count 12 and Count 13, and the such -- a scheme such as the Prosecution allege occurred to influence a witness relates solely to the allegation of attempted obstruction concerning Witness 2, a non-victim witness, and is a distinction that the Prosecution draw. They say it's an important distinction between a victim witness and a non-victim witness. Well, in Mr. Smakaj's case, it's a single witness, a non-victim witness.

There is no evidence, as I've already submitted, that the accused knowingly disregarded court orders. The height of the Prosecution case is that the accused knew the applicable DC rules and violated them. That's how they put it in their Prosecution final trial brief. And I submit that that, of course, means that he should be acquitted. But if, contrary to my submissions, Mr. Smakaj was to be sentenced in relation to Count 13, it must nevertheless be a significant mitigating factor that he had no knowledge of any court

orders. The height was that he was violating knowingly Detention Centre rules.

It is also the case -- and again I need to point this out because the Prosecution roll up Mr. Smakaj's case together with all the other defendants, an approach which is not merely inappropriate for Mr. Smakaj but also for all other defendants because they're each charged separately, their cases are separate, and they must be considered separately. The case against Mr. Smakaj is not one which continues over a significant period of time. It is, on the indictment dates of Count 12 and 13, a short period of time limited to, at a maximum, approximately six weeks. Although, in reality, the factual basis of their case is a much shorter period, that is, between the 9th of September and the 7th of the October, so less than a month.

Nor is Mr. Smakaj -- and again I need to state this because the Prosecution have boldly asserted this in their Prosecution trial brief. The accused Mr. Smakaj is not charged with participating in a coordinated plan to influence the evidence of multiple SPO witnesses over a period of months. It is a single count of attempted obstruction relating to a single witness over a period of weeks.

The effect of the submissions that I make are these, Your Honour, and they take into account the submissions in relation to the lack of previous convictions and character, no actual obstruction. That this is a case where, if agreement was made out, then Mr. Smakaj quickly withdrew from it. That it's assistance only.

And reflecting the disparity argument that I've raised based on the Prosecution's submission, our submission is that any sentence for Mr. Smakaj, if one is to be imposed, should not exceed the statutory minimum sentence on Count 12 of 12 months' imprisonment. Any other sentence would amount to a gross and unjust disparity with sentences requested for the other named defendant whose alleged offending is said to be especially grave and features a number of significant alleged aggravating features that are not present in the case against the accused.

The accused, Mr. Smakaj, has been detained in accordance with chapter 4 of the rules for, we calculate, 400 days, in excess of a year. Rule 163(6) requires that that time be deducted from any sentence of imprisonment to be imposed. The net result, thereof, should be, in our submission, that if Mr. Smakaj, if convicted - and we say he shouldn't be - but if convicted, whether of one or both of the counts he faces, should be, to use the phrase, "time served."

For the reasons I have set out now - and I'm grateful for the Court's indulgence in terms of the time - the Court, Your Honour, should acquit Mr. Smakaj of both counts that he faces. Thank you.

JUDGE GOSNELL: Thank you, Mr. Rees.

Mr. Edwards.

MR. EDWARDS: Good morning, Your Honour.

Six and a half months ago this case opened, on the 27th of February, and on behalf of Mr. Kilaj, I gave a brief opening statement. Nothing has changed since that date in terms of the

evidence against Mr. Kilaj. Everything that I said on the 27th of February about the insubstantial nature of the evidence against Mr. Kilaj holds true today.

The Prosecution's case against Mr. Kilaj might have a modicum of a chance of resulting in a conviction if it weren't for one inconvenient truth, and that is that after the meeting at the Detention Centre on the 6th of October, 2023, Mr. Kilaj travelled back to Kosovo, to his family home, and quietly got on with his life.

As we've said time and time again, orally and in our numerous written submissions and, indeed, in my opening from February of this year, we concede nothing - concede nothing - about the reliability of the covert recordings or the accuracy of their transcripts for the reasons already explained by my learned friend for Mr. Thaci and Mr. Smakaj. But whatever factual findings Your Honour may ultimately make concerning the words that were allegedly spoken to and by Mr. Kilaj during that visit, after he walked out of that Detention Unit, he did precisely nothing as a result of that meeting.

He contacted no witnesses. He e-mailed no witnesses. He texted no witnesses. He spoke to no witnesses. He met with no witnesses.

And yet Count 14 charges Mr. Kilaj with a smorgasbord of ways in which he is said to have attempted obstruction.

The Prosecution argued yesterday that whether or not an accused actually succeeded in obstruction, or even made contact with a witness, is irrelevant, and essentially that Defence's attempts to make a big deal of this was shadow boxing. We don't accept that.

Our position is nothing could be further from the truth. The fact that Mr. Kilaj did not even contact any witness after the 6th of October meeting is highly relevant, and it is highly relevant because it demonstrates his lack of intent to commit obstruction.

Whatever conclusions you may reach regarding the exchanges between Mr. Kilaj and Mr. Thaci, this case boils down to one thing and one thing only, and it's a phrase that I'm going to ask you, Your Honour, to bear in mind when you come to deliberate on the evidence in this case. Actions - or in this case, lack of action - speaks louder than words.

Mr. Kilaj contacted no witnesses because he clearly had no intention of contacting witnesses. And he had no intention of contacting witnesses because he never had any intention to obstruct official persons in performing their official duties as alleged in Count 14.

There is one thing that we agree with the Prosecution about, and that is that factually this case is simple. It's straightforward. We said as much in our opening statement. Factually, the case is uncomplicated. Legally, on the other hand, it is not without its complications, and that is why I'm grateful that Mr. Holmes, the lawyer's lawyer on my team, will be dealing with matters of law after these few introductory words.

Your Honour also heard the Prosecution make a great deal of Mr. Kilaj's visit to the Detention Unit on the 2nd of February of 2013, so some eight months before the charge in the indictment. And

the Prosecution will have you think that that visit strengthens their hand insomuch as it relates to Mr. Kilaj's intention back then in February. We say it doesn't. We say the evidence relating to that February visit can be summed up in one word, and that word is "speculation." Once you strip the speculation and the innuendo out of the equation, Your Honour may conclude that the February visit does not take the Prosecution's case any further at all.

And Ms. Baer will address you on the evidence of the February visit shortly and will expertly explain just how insubstantial that evidence is.

Mr. Kilaj has spent a total, or at the time that he was released, spent a total of 565 days in pre-trial detention. That's between his first arrest on the 2nd of November, 2023, until the date of his actual release for the first time on the 15th of May, 2024, and then again between his arrest on the 5th of December 2024, and his release on the 10th of December, 2025, pursuant to Your Honour's decision.

In our final trial brief at paragraph 231, we calculated 546 days, but let me take this opportunity to correct that because that time didn't include the 19 days in total Mr. Kilaj remained in detention between the orders authorising his release and when he actually walked out of the DU and returned to Kosovo.

So 565 days in total of Mr. Kilaj's life, kept apart from his family, his friends, his home, and his loved ones.

We say that he remained locked up over those 18 and a half

months on the strength of nothing more than suspicion and speculation. Now, the Prosecution, it would be easy for them to say that this was suspicion that Mr. Kilaj brought upon himself. But suspicion is not enough, and the Prosecution has utterly failed to pull its case up to any level higher than mere suspicion.

Suspicion is not the same as Your Honour being sure, of being satisfied beyond reasonable doubt. Being satisfied that Mr. Kilaj may have had the requisite intention is not the same as Your Honour being sure. Even concluding that Mr. Kilaj probably had the requisite intention is not the same as being sure.

Mr. Rees addressed Your Honour on the burden and standard of proof yesterday. I addressed you on the burden of standard of proof in my opening submissions back in February, and I make zero apology for repeating the point myself on Mr. Kilaj's behalf because it's such an important point. It's worth repeating.

It's the Prosecution who bring this case and it's the Prosecution to prove its case beyond reasonable doubt. Mr. Kilaj has to prove nothing.

And if the SPO ultimately succeeds in showing that Mr. Kilaj's behaviour in February 2023, or his possession of material to which he was not entitled, or that he had made private notes about potential SPO witnesses, if that gives rise to suspicion, it nevertheless amounts to nothing more than peripheral fluff when compared with the evidence that really matters in this case. And the evidence that really matters in this case is evidence that goes to the issue of

Mr. Kilaj's lack of criminal intent during and after the 6 October visit, because that is what he's charged with. Everything else is mud that the Prosecution has thrown at Mr. Kilaj in the hope that some of it might stick.

Now, before I pass on to Mr. Holmes, it's worth taking a step back and examining this case, just for a few moments, from a broader perspective.

Your Honour will recall that the SPO had their covert recording of the 6th of October visit, that they will have had that within minutes of Mr. Kilaj leaving the Detention Unit, and within ten days, the SPO had requested from the then Single Judge search and seizure orders. This is all in the public domain. None of this is confidential. And four days later, the Single Judge granted that request on the 20th of October.

The door had been opened for the Prosecution to execute the search and seizure order at Mr. Kilaj's address and, if the Prosecution decided to, to then arrest him for any offences under Article 15(2) of the KSC Law, including contempt of court and other obstruction-related offences.

And I take these submissions from the public redacted version of filing F00035 of the INV, the investigation subfolder in this case, paragraph 19, and from F00037 of the INV subfolder, paragraph 30.

The Single Judge's order, in its public version, noted that the SPO planned to execute the searches and seizures within a month. He, the Single Judge, in fact authorised the Prosecution to execute their

search and seizures within a period of three months, to the 20th of January, 2024.

And so Your Honour may feel that it's valid to ask if the SPO availed themselves of those three months to carry out any surveillance of Mr. Kilaj, to collect evidence of what those suspicions may amount to, to see if Mr. Kilaj ever actually acted upon whatever it is they think they heard in those covert recordings.

But that's not what the SPO did. They executed search and seizure orders within less than two weeks, on the 2nd of November. And of course during those two weeks, just as in the two-week period between the 6th and 20th of October, there is no evidence at all that Mr. Kilaj in fact contacted or met with Witness 4, or, indeed, any witness at all.

And it's worth making this point: Not only is there no evidence of contact, there is positive evidence of no contact. Witness 4, most notably, positively confirms that Mr. Kilaj, that in fact no one contacted him at any time about his evidence in Case 06. And that positive evidence can be found in one of the very many agreed facts between the Defence and the Prosecution relating to contact, or lack of contact, with Prosecution witnesses.

Now, the SPO is staffed, of course, by experienced investigators and lawyers, and Your Honour is entitled to assume that the SPO knows what they're doing, that they carry out their tactical and operational decisions for good reason. And Your Honour would be entitled to conclude that the Prosecution moved when they did on the

2nd of November because they knew that Mr. Kilaj had not contacted Witness 4. He had made no attempt to contact Witness 4. That they figured, reasonably, that if he was going to, he would have done in the time following the October visit. And that by the 2nd of November, the evidential picture wasn't going to get any better. There was no strategic advantage in waiting any longer, and so they moved.

They arrested Mr. Kilaj on the 2nd of November, perhaps hoping -- and I accept that there's a degree of speculation here but nevertheless. Perhaps the SPO hoped that the noise and the publicity around his arrest - and there was plenty of it - might have some sort of deterrent effect.

The Prosecution, we know, seized Mr. Kilaj's phone. When they managed to get into the phone, they saw that it confirmed no contact using that medium with Witness 4, no attempted contact. The evidence from the phone confirms that when Witness 4 states that no one had ever contacted him about his evidence, as is contained in the agreed facts, that he tells the truth about that.

But did the Prosecution then reevaluate its case against Mr. Kilaj? Did they, with clear eyes and a modicum of humility, look again and realise that beyond vague suspicion, beyond speculation, they had no real evidence against Mr. Kilaj?

Well, no, they did not. They ploughed on regardless. The train had left the station and it was steaming ahead at full speed to trial. Perhaps in the Prosecution's eyes, the train had to steam

ahead in the circumstances. Perhaps they felt that there was some deterrent effect in Mr. Kilaj having been arrested and detained and heading to trial.

The Prosecution spoke about Mr. Kilaj's trove of Case 06 information to which he was not entitled, that he was steeped in confidential Case 06 information. But we say that what you really need to keep at the forefront of your mind, Your Honour, we say that the real question is what did he do with that information, how did he use that information. And the answer is he did absolutely nothing with it. And that nothing is all you need to know to understand what his intention was.

This is not shadow boxing, Your Honour. This is a showing that whatever suspicions there may be relating to Mr. Kilaj and his possession of material to which he is not entitled, and whatever suspicions Your Honour may once have had, the Prosecution has at this stage of the case failed to meet its burden.

So those are my introductory marks. I'm going to hand over now to Mr. Holmes who will address you on the law.

JUDGE GOSNELL: Just a reminder to you, Mr. Holmes, that we will be breaking at 11 a.m.

MR. HOLMES: Thank you, Your Honour.

I will address Your Honour on the law and I will focus on three key issues. All three of those issues concern Count 14, the attempted obstruction count.

Can I just check with Your Honour that you received cases that

were sent around last night? Thank you for that.

The first of the three issues is the requirement that the attempt was made as part of a common action of a group. That group, the Prosecution have stipulated, is the so-called Kilaj Group - Messrs Thaci, Kilaj, and Kryeziu.

Second is the *actus reus* of attempt. It's common ground that it must exceed mere preparation, but at what point does mere preparation become an attempt?

And the third and final issue will be the agreement theory of liability.

Your Honour, we have set out what we see as extensive and in many cases insurmountable problems with both Counts 14 and 15. We did so first in our pre-trial brief on 25 February 2026. We referred to them again in our opening statement. We articulated them fully, in detail, in our final trial brief, and we did so again in our reply brief. But we've had nothing back of substance from the Prosecution. We on this side of the room feel as though we're playing tennis without a partner here.

The SPO final trial brief as it concerns the legal mechanics of Counts 14 and 15 amounted to no more than a collection of excerpts of past decisions, taken out of context and purporting to support their case. There's no analysis of the applicable legal thresholds. There's no explanation of how their various theories fit together. In short, there's no particularisation of the most basic facets of their case. No answers provided to the multitude of issues raised by

us and by other Defence teams in relation to their indictment.

What is it that they have not particularised?

Well, first, when was the attempted obstruction completed? Did the 6th of October visit amount to an attempt, or was it actions taken following the 6th of October that the Prosecution say amounted to an attempt?

If the SPO relies on actions following the 6th of October, how do they say that the requirement of a common action is achieved, given that one of the group, Mr. Thaci, was in the custody of this court?

When was the agreement to attempt the obstruction reached? How does the agreement to attempt to obstruct differ legally and factually from the agreement to obstruct which was refused confirmation in terms?

Your Honour, it is through a process of deduction, rather than the SPO clearly and confidently stating their case, that we say that the attempt must have been on the 6th of October, if it happened at all, since after that date there is no evidence of common action taken by the Kilaj Group and no evidence of anything done in furtherance of that meeting.

Your Honour, I'm asked to slow down so I'll do so.

It's in that context, Your Honour, that the 6th of October can be taken as the high-water mark of the SPO's case. It is the only conceivable opportunity for the perpetration of an attempted obstruction. But - and it's a very significant but - the Prosecution

must, as we have set out in our written submissions, prove concurrently that the actions taken by Mr. Kilaj amounted to more than mere preparation - and we'll come to exactly what that means - and at the same time that Mr. Kilaj intended to obstruct the administration of justice, the *mens rea* of an attempt.

As Mr. Edwards has set out, what followed the October 6th meeting was nothing. No evidence of any meetings with the Case 06 witnesses allegedly concerned, no phone calls, no messages. No evidence has been presented of anything whatsoever. Mr. Kilaj had the opportunity for at least a month to take action but he did not do so, before the SPO arrested him on the 2nd of November.

And our case on the law is essentially this: That there is no conception of attempt liability that can tolerate such a lengthy period of inactivity. Thus, the SPO invites Your Honour to create legal novelty, but having declined to acknowledge any of the legal issues that beset their case, has failed to provide Your Honour with the analysis, the precedent, or the principle to do so.

Your Honour may feel that this is because the case they have presented is so at odds with any accepted conception of an attempt and so wholly unsustainable by reference to the general principles of criminal law.

Your Honour, I'll turn first to the common action of the group.

Can I refer Your Honour to paragraph 30 of the SPO reply and just clarify, if I may, the Kilaj Defence position in relation to that.

Your Honour, we say what is important is the common action of the group. That's plain from the language of Article 401(2) itself.

In practice, this has involved the co-location of members of the group. We do not ask, however, Your Honour, to find that co-location is legally essential. We say that is not required. What is required is that the action of the group is taken in common. As a matter of evidence, however, this will often require co-location and the practice of the Kosovo courts, as my learned friend Ms. Menegon has identified, suggests that this is always the case. So there may, in fact, be no difference in practice between what is required in a matter of law and a matter of evidence. But we do not ask, for our part, Your Honour to make a finding that co-location is legally essential. We say that's not required.

Importance to this case, the relevance to this case, is that as mentioned, the only conceivable time that common action could have been taken was at the Detention Centre on the 6th of October. Although there was no evidence of it, any action taken subsequently cannot have been the common action of the Kilaj Group because one of their members was in this Court's custody.

Your Honour, I'll move now to Issue 2 which relates to the *actus reus* of attempt, and I'll begin, if I may, with areas of common grounds, just to frame the issue for Your Honour, which is that, as the SPO accepts, Mr. Kilaj's actions in furtherance of the obstruction of the SPO's official duties must exceed mere preparation. This, Your Honour, is an acknowledgement of the way in

which Article 27 of the Kosovo Criminal Code must operate, which is to differentiate mere preparation of a crime from an attempt, criminal liability arising automatically in respect of an attempt, but only if explicitly provided for in respect of preparation.

This distinction is, of course, consonant with the criminal law in most jurisdictions around the world, including international criminal law.

Just pausing there, if I may, to reflect on the facts of this case. Mr. Edwards and Ms. Baer will develop these submissions, but essentially it's this: Discussions in hushed tones around a table in the Detention Centre. The handing over of a witness statement. To take the Prosecution case at its highest, Your Honour may think if it is anything, it's the very essence of mere preparation.

Legally, they must exceed mere preparation. As mentioned, this is not explicitly in the language of Article 28, but is rather inherent within the interplay between Articles 27 and 28.

And we say essentially that whether or not the actions taken by Mr. Kilaj amount to the *actus reus* of an attempt is fundamentally a question of fact for Your Honour. Actions taken prior to the commission of the offence sits, Your Honour may think, on a continuum. At the beginning is perhaps the idea. Various actions are then taken to plan, to equip, to procure whatever items are required for the commission of the offence.

For the purposes of attempt liability, at the beginning of this continuum therefore is mere preparation. It's characterised by

mature, sober contemplation, by the opportunity for reflection, for reconsideration. Proximity to the substantive offence is not required. It's a flexible period. A perpetrator may reside in the mere preparation phase for an indefinite period of time or, by contrast, there may be no mere preparation at all. Each timeline is different and depends on the facts of the case.

The timeline in this case involves a lengthy "mere preparation" phase.

And can I just pause there to observe that the substantial preparatory step is, of course, the *actus reus* of an agreement. These two concepts are not to be conflated, Your Honour. As Your Honour will have appreciated, the substantiality of the step is the point of difference. And it is possible, indeed, to have a lengthy period of mere preparation in which no substantial step was taken, and we submit that this is precisely the case here.

But the point at which the continuum moves into the attempt phase is not amenable to precise and a globally accepted definition. This is because every timeline is different, and consequently, it's a matter of fact, a question of fact, for Your Honour.

However, there is a common thread in each formulation which is proximity between the act of the perpetrator and the uncommissioned crime. Proximity, urgency, inevitability, and these are expressed through a variety of different means, reflecting the fact-sensitive nature of the question.

Your Honour, I'm going to now refer to a number of authorities

to demonstrate that point.

I'd start with the position in Kosovo and the Salihu commentary, which Your Honour can find at Annex 8 of the SPO final trial brief.

At page 132 is the page number I have, Mr. Salihu provides his commentary on the inchoate offence of an attempt, and specifically he deals with the distinction between preparatory acts and attempt, the point which I'm trying to elaborate before Your Honour now. And he says this:

"The distinction between preparatory acts and the attempt of a criminal offence lies in the fact that with preparatory acts only, the conditions for the efficient criminal -- commission of the criminal offence are created, whereas with attempt, the commission of the offence begins when the act of execution is undertaken."

So reference there to an act of execution, the commencement of that process.

Paragraph 4:

"As typical preparatory acts are considered, providing or enabling means for the commission of the criminal offence, removing obstacles to the commission of the offence, agreement, planning, or organising for the commission of the criminal offence, as well as other acts which create conditions for the direct commission of the criminal offence but which do not constitute the act of execution."

So contrasting there the act of execution for a number of other acts taken in furtherance of the commission of a criminal offence, but which, according to Mr. Salihu, under the practice of Kosovan

law, do not amount to the *actus reus* of attempt.

Paragraph 5:

"In most cases, the distinction between attempt on the one hand and preparatory acts on the other, in practice, does not present great difficulty."

And I'll just read the example that he provides later because Your Honour may feel it does deal -- it is a similar fact pattern to the one which Your Honour is being asked to consider today.

"Thus, for example, if a group of persons form a criminal organisation with the aim of committing criminal offences for drug trafficking, for example, or for committing criminal offences of terrorism, then it is clearly a matter of preparatory acts and not an attempt of such criminal offences."

Of course, the substantive crimes there being discussed are very different, but the point is that creating -- coming together in a group with an intention to do something but without actually taking any substantive action in furtherance of it cannot be the *actus reus* for an attempt. It must reside in the mere preparation phase of the continuum.

Your Honour, I commend all of this section of Mr. Salihu's commentary to Your Honour's deliberations, paragraph 6 in particular, where it talks about the definitions of preparatory acts, page 7, I'm told, of Annex 8, and paragraphs 8 and 9 also. And we rely on all of those.

In practice at this Court, in Case 07, we also had charges of --

under 401(2) of attempt. Indeed, the Prosecution places great reliance on the trial and appeal judgements. But when placed in context, it's difficult to see how these two cases actually support their case. We deal with this at our reply brief, paragraphs 44 to 50.

Now, Case 07, of course, involved allegations of a very different quality to the allegations in this case. There, the accused had revealed the identity and personal data of hundreds of witnesses and potential witnesses. The reference for that is paragraph 559 of the trial judgement.

The Trial Panel concluded that the revelation combined with the statements by the accused posed a serious threat to those witnesses - paragraphs 582 and 585 - and thus a threat to the SPO in the execution of their official duties - paragraph 640 for that conclusion - applying those findings to the 401(2) charged.

So that's the background to Case 07 and the relevant Trial Panel findings, and it's in that context that the Case 07 appeal judgement of the 2nd of February 2023, at paragraph 282 says:

"What is important for the establishment of the *actus reus*, in the Majority's view, is that the accused's act must have had the capacity to obstruct official persons. In the circumstances of the present case, the threat against (potential) witnesses had the capacity to do so."

The key word here, Your Honour, is "capacity." What is meant by capacity? In that context, it must mean that the accused had taken

all action necessary to bring about the underlying crime. Capacity clearly refers, therefore, to the sufficiency of the accused's actions in relation to the commission of the underlying offence.

Your Honour, I see the time -- I appreciate we're five minutes early, but I wonder if that would be a good place to break.

JUDGE GOSNELL: Certainly, Mr. Holmes.

Let's adjourn until 11.25. Thank you.

--- Recess taken at 10.55 a.m.

--- On resuming at 11.26 a.m.

JUDGE GOSNELL: Mr. Holmes.

MR. HOLMES: Thank you, Your Honour.

Before the break, I was explaining our submissions on what the position at the KSC, at this court, is in relation to the *actus reus* of attempt and summarising that in context, what the Case 07 appeals judgement does is to focus the minds of the tribunal of fact on the sufficiency of the attempted acts. Were those acts sufficient to bring about the underlying crime.

I'll move now, Your Honour, to the position more generally under international criminal law referring to the position at the International Criminal Court. There is now a settled definition now there, at the ICC, where what is used is a "but for" test essentially. To all intents and purposes, we suggest that is the same test as the one at the KSC. The Banda case, this is taken from a Confirmation Decision but I'll refer to other citations as well, we refer to this case, this decision, at paragraph 53 of our final trial

brief and it says that -- it articulates the test in the following terms, that "the perpetrator's conduct will have resulted in the crime being completed had circumstances outside the perpetrator's control not intervened." And so but for the intervention of external circumstances, the crime would have been completed.

That's how the ICC puts it. It's not just the Banda case, Your Honour.

In the -- paragraph 96 of the Confirmation Decision in the Banda case.

We also have the Abd-Al-Rahman case, the trial judgement of 6 October 2025, at paragraph 773; the trial judgement in the Ongwen case, the 4th of February, 2021, at paragraph 2696; and the trial judgement in the Ntaganda case, the 8th of July, 2019, 877. Each of those cases adopt the same "but for" approach in relation to attempt.

Moving away from the international sphere, Your Honour, in England and Wales, there were multiple attempts to define the *actus reus* of attempt under the common law until the intervention of statute by the Criminal Law Act in 1977. Applying that provision, the Courts of Appeal in the case of *Geddes* laid down the following test. Lord Bingham stated:

"An accurate paraphrase of the test ... is to ask whether the defendant had actually tried to commit the act in question or whether he had only got ready, or put himself in a position, or equipped himself to do so."

There, Your Honour, the court's deploying the word "trying" as a

word, Your Honour may think, laden with natural meaning. Not enough that you intended to commit the crime, not enough that you prepared the crime. What is required is that you embark on a course of conduct that involves trying to commit the crime in question.

In France, the attempter must have entered the execution phase of the substantive offence. And you have the citations for that, Your Honour, at page 61 of our final trial brief. It gives a sense, in our submission, of temporal proximity - entering a "phase" of activity which was intended to involve, and would have involved, the execution of the underlying crime.

In Canada, the *actus reus* is completed where the intent to obstruct or adversely interfere with the proper administration of justice -- I beg your pardon. I'll take that one again.

In Canada, the *actus reus* is completed where there is an intent to obstruct or adversely interfere with the proper administration of justice, and an act is committed which was objectively capable of doing so. The references for that are at paragraph 62 of our final trial brief. Adopting, we say, a legal definition that equates in every practical sense with the legal test of the Appeals Panel of this Court in Case 07.

And so considering all of those authorities, we accept, as we must do, that there is no universally accepted definition of when an act surpasses mere preparation. For this reason, it is a question of fact which must be left to the tribunal of fact to be assessed in all the relevant circumstances.

But whilst definitions may vary, the meaning is the same. It requires a high degree of proximity of space, of time, of intention, of purpose, and of action. It implies urgency, a frustrated inevitability.

What it is not is a month of sitting on one's hands. Having a meeting, exchanging a witness statement, then taking no action, and throwing the statement in the bin.

There is no conceptualisation which would support such a construction, and the SPO have not identified one. In fact, Your Honour, the authorities point in the opposite direction.

I'll refer Your Honour, if I may, to the case of *Bowles and Bowles.* It's one of the cases that was sent around last night and it is referred to in our final trial brief. That was a case in England and Wales, in the United Kingdom, where substantial activity was proven to have taken place in order to falsify a will. In fact, it was complete except for the signature on the document. So every action had been taken, in fact.

But what then happened was that the will was left in a drawer for several months, unsigned. The charge that was brought was an attempt to falsify the will, relying on the acts of the defendant, which the prosecution had evidence of, to show that he had taken substantial steps in the direction of preparing this falsified document.

And the Criminal Division of the Court of Appeal had this to say:

"We are satisfied that [the submission of the appellant] is well-founded. The document was found in July 2001: it had seemingly lain fallow since the preceding November and there was no evidence of any interim steps to have executed it, whether by Mrs. Grew or by someone else" - Mrs. Grew was one of the third parties in this case - "nor was there any evidence of the use of it, actual or potential, save for some equivocal intimation to Mr. Paul Bowles (the Appellant's son) that he was going to inherit" the property that was set to be bequeathed under the will. "The Crown's evidence," the Court of Appeal concluded, "disclosed no more than preparatory acts."

And so, in effect, what the SPO does, whether it realises it or not, is to invite Your Honour into a legal novelty in which the proximity, the imminence and the urgency, is supplanted by a month-long cooling off period which confirms that there was never any intention on Mr. Kilaj's part to contact witnesses or at the very worst shows a change of heart. Neither are consistent with any known conception of attempt.

Your Honour, I'll finish on this point, if I may, with the role of the SPO.

It's true - it's true - that these were not the charges that the SPO wanted, but they did proffer these charges. They could have chosen not to. Mr. Hafetz, yesterday morning, asked Your Honour to return guilty verdicts based upon the evidence and the law, but he has not once sought to explain how the mechanics of the law works in this case.

Your Honour will require no reminder that the SPO should not be at an advantage by failing to do so. They are either supremely confident in the simplicity of their charges or, alternatively, Your Honour may feel, they have no answer.

With that, I'll move to the third and final issue that I want to cover which relates to agreement, Your Honour.

Mr. Kilaj is, of course, charged with agreement. It's an agreement to attempt to obstruct, as one of three alternative theories of liability under Count 14. And our case is essentially this: Agreement to attempt to commit an offence is legally unsustainable. In the simplest of terms, you cannot agree to attempt something. It's not logical.

First, the only way to make sense of this charge is to construe it as an agreement to obstruct, where the goal of obstruction was not achieved. And it may well be that in their silence this is the construction that the SPO wants Your Honour to reach. But that charge, Your Honour, was refused confirmation by the Pre-Trial Judge, and consequently, the SPO did not and could not charge it.

Agreement to attempt to obstruct is necessarily the charge - and I'll come to the Confirmation Decision and the passages from that where we draw this conclusion - and the question is therefore whether that construction is legally sustainable.

Secondly, we submit that an agreement to attempt cannot satisfy the requirements of a criminal agreement which require that the agreement is formed with intent or knowledge. The authority for that

is Article 21 of the Kosovo Criminal Code which creates a presumption that acts criminalised under the code must be perpetrated with direct or eventual intent.

We say it makes no sense to allege an agreement or an intention to attempt something. You can't agree to attempt to do something. Agreement to attempt is, in fact, an impossibility.

And thirdly, and finally, is a point of remoteness. Both attempt and agreement are inchoate forms of liability. The policy behind inchoate liability is to enable the law to intervene prior to the commission of a substantive harm. Inchoate crimes are not themselves inherently harmful. They therefore involve a degree of remoteness from that harm which is justified by the objective of the prevention of harm. However, to charge two forms of inchoate liability wrapped up into a single charge, as Count 14 does, involves unacceptable remoteness. And for that proposition, we rely on the Canadian Supreme Court case of the Crown against *Dery*.

I'll deal first, Your Honour, with the Confirmation Decision. The agreement, as set out, the agreement is to attempt to obstruct. That is clear from the plain wording of the indictment, but the indictment of course flows from the Confirmation Decision.

At the disposition in the Confirmation Decision, the Pre-Trial Judge confirmed Count 14 in its current formulation, charging the attempted form of Article 401(2) only. This is at the bottom of page 36 of the Confirmation Decision. 136, I beg your pardon.

Not only that, but critically the Pre-Trial Judge went on to say

at small paragraph (f) that she "rejects the remainder of the legal and factual allegations contained in the Further Amended Indictment, as set forth in the present decision."

And just for completeness, the Further Amended Indictment, at Count 15 then as it was, charged obstructing official persons in performing official duties, which is of course the actual obstruction variant of Article 401(2). And we say that that part of the disposition, rejecting the remainder of the legal and factual allegations, applies squarely to that part of the further amended indictment. So there it is in black and white: Actual obstruction rejected, refused confirmation.

The current indictment was duly submitted charging agreement to attempt to obstruct.

Can I please just make a few points about the consequences of the Confirmation Decision?

The legal basis for a charge of agreement is in Article 33 of the KCC. Article 33, agreement creates an inchoate offence, and we say the authority for that is the decision of the Appeals Panel in an interlocutory appeal in this case of the 3rd of April, 2025, at paragraph 36.

Second, in light of the Confirmation Decision, it is not open to the SPO to pursue a case on agreement that is legally indistinct from the charge which was refused confirmation.

Third, in order to give effect to the Confirmation Decision, and to distinguish the agreement charge from that which was refused

confirmation, one must look at the object of the agreement. That must be attempted obstruction, not actual obstruction. This is the only way, in our submission, to respect the Confirmation Decision. In other words, the parties agreed to attempt to obstruct, not to obstruct. Any other construction of the object of the agreement threatens to violate the terms of the Confirmation Decision and, in our submission, would lack jurisdiction.

Number 4, it makes no difference that the SPO have not articulated what their case is. They have not set out a case before Your Honour, with notice to the Defence so we can answer it, that involves proof of the elements of an agreement and is legally and materially distinct from an agreement to obstruct. That, as we have already submitted, cannot be to their advantage. The SPO should not be in a position -- in a better position for failure to articulate their case, and leaving their options open, than they would be had they had properly done so.

I'm just reminded that, to the extent I've referred to Article 33 as the legal basis for agreement, it's, in fact, 35 of the KCC. Thank you.

Can I deal with the second and third points together. So that is the impact, we say, of the Confirmation Decision. That is the case. Those are the charges, the only possible construction of the charges before Your Honour.

Can I deal, then, with points 2 and 3, impossibility, the impossibility of an agreement to attempt to do something and the

remoteness that that -- such a conception would involve if it were a legal possibility.

Essentially we say that an agreement to attempt to obstruct makes no practical sense. It's inimical to the ICC's conception of attempt liability which excludes from its scope situations in which the defendant voluntarily withdraws from the commission of the crime. The ICC test, as Your Honour will remember, is, to all intents and purposes, a "but for" test. So the defendant had -- the crime would have been completed but for the intervention of an external circumstance. If the defendant voluntarily withdraws from that course of conduct, then the defendant cannot be said to have placed the course of conduct in that position. They have not done all that was necessary to bring the commission of the underlying offence into actualisation.

So we say that a form -- an agreement to attempt involves an element of voluntary withdrawal, and that is inconsistent with the definitions of attempt at the ICC and, indeed, at the KSC.

An agreement to attempt to obstruct implies an understanding and indeed an intention in a premeditated sense between the parties that the obstruction will not materialise. We say that this is incompatible with the *mens rea* for attempt, namely that the defendant intends the underlying offence of obstruction - how can the defendant intend to construct when the agreement is not to obstruct but to attempt to obstruct, it does not make any sense - and also it is inconsistent with multiple conceptions of the *actus reus* of attempt

which we have set out above.

Your Honour, I'm going to refer now, if I may, to the case of *Dery*, it's a case from 2006, the Canadian Supreme Court. It's one that was sent around last night.

There the charge was attempted conspiracy. Conspiracy in that sense is legally indistinguishable from -- well, is similar in every material respect to the inchoate offence of agreement under the KCC.

The charge was attempted conspiracy. In this case, we've got an agreement to attempt. I'd accept that those are different sets of charges, but the -- in the sense that the formulation is almost in reverse here. But the rationale for finding that no such crime exists in the criminal law by the Supreme Court of Canada applies equally for the reasons we will show here.

That's because the decision of the Supreme Court relied on -- principally on remoteness. I'll just read a number of passages to assist Your Honour in orientating.

It says this in the headnote on the first page, so that's page 669 on the printed version:

"Criminal liability does not attach to fruitless discussions in contemplation of a substantive crime that is never committed, nor even attempted, by any of the parties to the commissions -- to the discussions."

"Here, though [the defendant] discussed a crime hoping eventually to commit it with S, neither D nor S committed, or agreed to commit, the crimes they had discussed. The criminal law does not

punish bad thoughts of this sort that were abandoned before an agreement was reached, or an attempt made, to act upon them.

"Furthermore, acts that precede a conspiracy are not sufficiently proximate to a substantive offence to warrant criminal sanction. Given that conspiracy is essentially a crime of intention, it is difficult to reach further than the law of conspiracy already allows. Even if it were possible, it has never been the goal of the criminal law to catch all crime 'in the egg'. In this sense, conspiracies are criminalised when hatched. And they can only be hatched by agreement."

It then talks about overt steps being necessary to give rise to liability, and then says:

"Early intervention through the criminalisation of conspiracy is therefore both principled and practical. Likewise, the criminalisation of attempt is warranted because its purpose is to prevent harm by punishing behaviour that demonstrates a substantial risk of harm. However," the Supreme Court says, "when applied to conspiracy, the justification for criminalising attempt is lost, since an attempt to conspire amounts, at best, to a risk that a risk will materialise."

That's in the headnotes, Your Honour.

Paragraph 2 of the substantive judgment, Mr. Justice Fish, giving the judgment of the court, refers to the unusual position in which those charges had placed the court.

"Never before has anyone been convicted in Canada of an attempt

to conspire to commit a substantive offence of any sort. That should come as no surprise: Attempting to conspire to commit a substantive offence has never previously been recognised as a crime under Canadian law," and he says he would decline to do so now.

And whilst the formulation in this case is different, it is equally rare - in fact, we have found no authority at all - for an agreement to attempt.

At paragraph 11, it says equally:

"The alleged crime of attempting to conspire has received sparse judicial consideration in Canada."

And then the court refers to the case of *Dungey* from 1979, in which the court of appeal said the following:

"If the offence of conspiracy is an auxiliary to the law which creates the crime agreed to be committed, and if the object of making such agreements punishable is to prevent the commission of the substantive offence before it has even reached the stage of an attempt, there appears to be little justification in attaching penal sanction to an act which falls short of a conspiracy to commit the substantive offence.

"In the instant case, the substantive offence was fraud. To hold that there is an offence of attempting to conspire to defraud is tantamount to convicting a person of an attempt to attempt to defraud."

We say that rationale and that conclusion applies equally to a charge of an agreement to attempt to interfere with justice. It

amounts to nothing more than an attempt to attempt to interfere with -- to obstruct the course of the administration of justice.

I'll read on, Your Honour, because this case is absolutely on point. Paragraph 21:

"In support of its conclusion, the majority of the Court of Appeal referred as well to [the case of *May* from 1984]. The conviction in *May* was for conspiracy to obstruct justice."

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

MR. HOLMES: I'm told to slow down and I'm happy to do so. I apologise to the interpreters.

The substantive offence there under consideration was obstruction of justice, just as this case. It's framed in the language of attempt.

"Everyone who wilfully attempts in any manner to obstruct, pervert or defeat the course of justice ... It was argued on the basis that the charge of conspiracy to obstruct justice impermissibly combined two forms of inchoate liability. [And] this was said to violate the policy considerations underlying *Dungey*."

And that's precisely the case here. Two distinct forms of inchoate liability stacked upon one another.

Just turning ahead to paragraph 37, Your Honour, halfway through that paragraph it says:

"[This] appeal turns entirely on whether criminal liability

attaches to fruitless discussions in contemplation of a substantive crime that is never committed, nor even attempted, by any of the parties to the discussions." And the court concludes, "I am satisfied that it does not."

It may well be that that is a conclusion that will assist Your Honour, referring to the discussions that are alleged to have taken place at the Detention Centre.

Paragraph 43 discusses a test for proximity in section 24 of the Criminal Code:

"The intent of the legislator in [section 24(2)] is to fix the threshold of criminal responsibility. Applying the test provided, courts must situate on a continuum from anti-social contemplation to criminal conduct - or bad thought to substantive crime," as the court summarises, "the point where the criminal law intervenes. This continuum was aptly a half-century ago by" Mr. Justice Laidlaw in the case of *Cline* from 1956.

Your Honour, I mention that paragraph because that was the point that I sought to make before Your Honour about a continuum and the appropriate point at which the criminal law sees fit to intervene.

And I'll just finish on this case at paragraph 45, discussing the case of *Chan* from 2003, where the Court of Appeal from Ontario said:

"Strictly inchoate crimes are a unique class of criminal offences in the sense that they criminalise acts that precede harmful conduct but do not necessarily inflict harmful consequences in and of

themselves. It can thus be appreciated that it could extend the criminal law too far to reach behind those acts and criminalise behaviour that precedes those acts."

And that's precisely what you have in this case. You have an attempted obstruction, and what the Prosecution seeks to do with their agreement theory is to ask Your Honour to criminalise an act which precedes the act necessary for an inchoate offence.

And finally:

"Given that conspiracy" - paragraph 47 - "is essentially a crime of intention, [the] criminal law should not patrol people's thoughts ... it is difficult to reach further than the law of [criminal] conspiracy already allows. Even if it were possible, it has never been the goal of the criminal law to catch all crime 'in the egg,' as the Attorney General for Canada has put it in this case ... In this sense, conspiracies are criminalised when hatched. And they can only be hatched by agreement."

That is the part from the main judgement which Your Honour has seen repeated in the headnote.

Your Honour, I've also sent around the case of *Saik*. I won't take Your Honour to that case specifically. I commend it to Your Honour. We rely on it. We rely on it for the proposition that it is necessary when putting separate legal concepts together to understand the material elements that give rise to each of those legal concepts, that create those legal concepts, and to assess whether they are, in fact, compatible.

And in that case, the House of Lords in the United Kingdom essentially held that one cannot conspire to be reckless. The charge was a conspiracy where the underlying offence was one of recklessness, and the House of Lords says it makes no logical sense to conspire to be reckless. And we say that in exactly the same vein, one cannot conspire to attempt. So we rely on that case for that proposition.

Your Honour, in conclusion, I make -- we make other points on the law in our written submissions, all of which of course are maintained.

Under Count 15, for example, acts of assistance, we say, must have been rendered before the substantive offence, i.e., the contempt in that case was committed, there being no accessorial liability available for assistance after the fact. But, Your Honour, I leave that as a matter for our written submissions, and I commend those to Your Honour.

And with that, I'll hand back over to Mr. Edwards or Ms. Baer. Thank you.

MS. BAER: Good afternoon, Your Honour, and good afternoon to everyone in the courtroom.

As foreshadowed by Mr. Edwards, I'll be addressing evidence which the SPO presents as being connected to a visit from Mr. Kilaj to Mr. Thaci on 2nd of February, 2023, at the Detention Centre, and this is eight months before the charged October visit.

The SPO claims that this evidence supports an inference of

Mr. Kilaj's intent in relation to Count 14. The essence of my submissions today can be distilled into three points.

First, the evidence relied upon by the SPO amounts to nothing more than mere speculation.

Second, even if the February material is used to draw an inference of Mr. Kilaj's intent in February 2023, that inference cannot safely be extended to his intent in October 2023, eight months later.

And third, and in any event, the February visit material cannot be considered as an indicator of Mr. Kilaj's intent to participate in the group, in the Kilaj Group, the only group that matters in relation to Count 14.

And I'd like to begin with just one preliminary point which is that it has not escaped our attention, and it won't have escaped Your Honour's attention, that the SPO is positively alleging criminality on the part of Mr. Kilaj in respect of the February visit. And I'm referring here to paragraph 255 of the SPO final trial brief where it refers to Mr. Kilaj's "deliberately obstructive conduct" in February 2023.

We think it is important to highlight, if not for Your Honour's benefit but for Mr. Kilaj's benefit, that Mr. Kilaj is not charged in the indictment with any conduct occurring in February 2023, and he therefore cannot be convicted of anything arising out of that visit. And it's wrong for the SPO to suggest otherwise.

I'm arriving at my first point now, which is that the

conclusions that the SPO is asking Your Honour to draw from the February evidence are entirely speculative, and we ask that Your Honour accord them no weight.

What is so striking about the SPO's final trial brief is its vagueness about precisely how the February visit material is indicative of Mr. Kilaj's intent.

At paragraphs 254 to 267, the SPO sets out its case and it refers to various exhibits, and I'll get to those in just a moment. But when we arrive at its individual criminal responsibility section, and this is where the SPO --

THE INTERPRETER: Interpreters kindly ask the speaker to slow down when reading. Thank you.

MS. BAER: Sorry. I'll slow down.

So when it arrives at its individual criminal responsibility section, and this is where the SPO is meant to connect the dots, the SPO appears to rely on just one piece of that evidence, which is P208. And this is at paragraph 472(xi).

Nowhere does the SPO clearly articulate how the evidence gets it to the conclusion it asks Your Honour to reach. The SPO leaves it to Your Honour to do the work for them.

Your Honour may think that there is a reason for that. The SPO's dots cannot be connected without a heavy dose of speculation, conjecture, and innuendo. And Your Honour cannot fill the gaps of the SPO's case by assuming what that evidence might mean.

So let me turn to the evidence itself now. I would like to show

Your Honour what remains of these dots when all the speculation and innuendo is stripped away. And to recall, this is the visit -- this is the evidence which, according to the SPO, is linked to Mr. Kilaj's visit to Mr. Thaci at the Detention Centre in February 2023, a visit which was not recorded, a visit for which there is no evidence establishing what was said or discussed.

The only recorded communication between Mr. Kilaj and Mr. Thaci that we do have is a phone call a little over a month before the February visit. This is Exhibit P85. During this call, the pair exchange New Year's wishes. They discuss their health, common acquaintances. They discuss practical arrangements like Mr. Kilaj's visa ahead of his upcoming visit. That's all. A completely innocent and unremarkable call. This is the evidence that concretely exists.

Now, the SPO cannot take the contents -- an unrecorded meeting, the contents of which are unknown, and then use it to infer that particular messages subsequently found on Mr. Kilaj's phone must have resulted from that meeting.

One of these messages extracted from Mr. Kilaj's phone that the SPO relies on is P203. This is a single unanswered text message in which Mr. Kilaj asks his interlocutor for coffee. This person is an old friend and a KLA comrade. And we discuss this exhibit in our final trial brief from paragraphs 172 to 174, and in our reply from paragraphs 5 to 7.

And I'd just ask the court officer to please put the visual aid that we've prepared on the screen. I won't name the interlocutor,

but I'm referring to the person in row 1 in the table on your screen. And we ask that this please not be broadcasted to the public.

The SPO makes much of the fact that it appears as though this is the first contact between Mr. Kilaj and this person based on the way that Mr. Kilaj signed the text message. But all this evidence really shows is that this is the first contact between -- by Mr. Kilaj to that particular phone number. Your Honour understands that people change phone numbers for various reasons. And the SPO fails to show that Mr. Kilaj and this interlocutor did not more regularly communicate by other means.

And regardless of whether this was the first contact between the two or not, there is not a shred of evidence suggesting that this isolated contact had anything to do with this person's status as a Case 06 witness or was the result of the February visit.

So just to recap here, there is no evidence of why Mr. Kilaj reached out to this person, and there's no evidence of Mr. Kilaj contacting this person as a result of the February visit because there is no evidence of what was discussed that day.

All we really do know is that Mr. Kilaj sent a text message to this particular person on this particular phone number asking for a cup of coffee. And there's nothing criminal about writing to an old friend.

The SPO uses another extracted conversation, and this was shown yesterday. This is P208, and it contains messages exchanged between Mr. Kilaj and Mr. Krasniqi, a fellow visitor to Mr. Thaci at the

Detention Centre during the February visit.

According to the SPO, Mr. Kilaj transmitted written notes intended as instructions for a Case 06 witness to testify, and this Case 06 witness is identified at row 3 on the table on your screens. And we discussed this exhibit, and I refer Your Honour to paragraphs 8 to 10 of our reply, and 186-187 of our final trial brief.

Your Honour has heard the SPO striving to convince Your Honour that it has identified this Case 06 witness based on two highly speculative indicators.

The first indicator. The SPO rely on a reference to a country which purports to create a link between these two persons. This is pure conjecture. And regardless, the SPO has not demonstrated that the connection to this country was unique to this witness.

Second indicator. The SPO relies on the fact that the notes contain references to the person being a former soldier and involved in the KLA as identifying this witness. But in the context of a trial involving KLA members, that is hardly an individualising feature.

So we ask, if the SPO thought its case could hold up to any scrutiny, then why didn't it call the interlocutor in P203, or the alleged case witness targeted in P208, or Mr. Krasniqi?

The first two individuals are the SPO's own witnesses. They had every opportunity to call them.

Nor did the SPO give any credible explanation as to why it did

not call them. And we respectfully ask Your Honour to take that failure into account when assessing the weight to be attached to this evidence.

I'd like to move on now from evidence that we do not have to the evidence which, most importantly, we do have. And that is that both Mr. Kilaj's interlocutor in P203 and the alleged individual discussed in P208 - so, again, these are the persons on rows 1 and 3 on your screens - were asked by the SPO whether anyone had contacted them in relation to their status as Case 06 witnesses. They were asked this after those text messages were sent.

They both said no. The interlocutor in P203 said no on four separate occasions. And these are part of the agreed facts, filing 762, Annex 1, lines 19 to 23.

And, again, this isn't shadow boxing, as my counterparts suggested yesterday. This goes to the very heart of Mr. Kilaj's intent.

It is also of relevance that none of the individuals involved in these text messages were mentioned by Mr. Kilaj or any of his interlocutors during the October visit. If these witnesses had in fact been contacted, Your Honour might expect to have that surfaced somewhere in the evidence concerning the October visit, but it didn't.

I'll move on to the last bit of evidence used by the SPO on that matter, and these are the loose notes found in Mr. Kilaj's jacket pocket when it was seized on 2 November. This is Exhibit P4.

The SPO wants Your Honour to infer that these notes date back to the February visit. So what evidence does it have of this? It has a single photograph of Mr. Kilaj on the day of the February visit wearing what looks like a similar jacket. Nothing else. There is no evidence that these notes weren't written before the February visit, nor has the SPO adduced any evidence that these notes were written during or immediately following that visit.

And even if they did originate from that visit, the fact that they would have remained in his pocket, untouched, for a period of eight months, actually makes it harder to draw any inference that they were retained with the intent to interfere with Case 06 witnesses.

And none of my submissions are changed by the fact that Mr. Kilaj's computer may have indicated that he was in possession of certain material in Case 06.

Again, the evidence isn't as clear-cut here as the SPO makes it out to be.

The text blocks of the Case 06 material which may have been translated - and contrary to what my counterpart stated yesterday, this concerns at most four witnesses, not five - but in any event, that translated material did not reveal the status of the Case 06 witnesses that I refer to today. The most the SPO can prove is that there is a trace of certain pages of Case 06 documents that were stored on his computer at one time. And that same argument can be extended to the notebooks that were found in Mr. Kilaj's residence.

So we don't know and must not assume that Mr. Kilaj would have been aware of the status of these witnesses in February 2023.

And while I'm on this topic, I would like to address another assumption the SPO makes, which is that because Mr. Kilaj had confidential information -- or Case 06 material on his computer, he must have had criminal intent.

Why does the SPO dismiss out of hand the explanation Mr. Kilaj gave repeatedly in his SPO interview that he was simply curious and interested in what his friends and former colleagues had to say? Why does the SPO dismiss other reasonable inferences and focus only on the most nefarious one, that he must have had the documents with the intent to obstruct?

Moving on to my second point now, and assuming purely for the sake of argument that the SPO's evidence in relation to the February visit is accepted at face value. And I emphasise that we make absolutely no concession whatsoever here.

But if Your Honour were minded to accept that the February material potentially shows intent, then it would show just that: potentially, Mr. Kilaj's state of mind in February. It is not evidence of his state of mind eight months later, in October.

It would be wholly unsafe to allege that Mr. Kilaj's intent in February continued, unchanged, until October.

Intent can shift over time. It is not set in stone. And this is especially so given there's no similar evidence between February and October 2023.

More importantly, what happened - or what did not happen - contemporaneously with the October visit is far more probative of Mr. Kilaj's actual state of mind at that time.

Between 6 October and his arrest on 2 November, Mr. Kilaj had every opportunity to take concrete steps to obstruct if that is what he genuinely intended to do. He had almost an entire month to do so, but he did nothing of the sort. Now, this speaks volumes about his genuine intentions.

Whatever Your Honour may make of the February material, Mr. Kilaj's conduct during the period with which he is actually charged - and therefore the only period of actual relevance - points in the opposite direction. And it is the evidence surrounding that period, from October to November, that we're asking Your Honour to rely on.

Turning to my third point now, which is that the February -- the material relating to the February visit is, in any event, incapable of supporting an inference or a finding as to Mr. Kilaj's intent in respect of Count 14.

Throughout these proceedings, the SPO has always squarely put its case against Mr. Kilaj by adopting the formulation of requisite intent as set out by the Pre-Trial Judge in these proceedings, herself referring to similar iterations in Case 07, Case 10 and Case 11. This is at paragraphs 57 and 58 of the Confirmation Decision.

Mr. Holmes touched upon this a little bit earlier, but I think

it's important to repeat it. For direct intent, she confirmed that this requires the perpetrator to have acted with awareness of, or desire for "participating in a group in order to obstruct by common action an official person in performing official duties."

For eventual intent, the perpetrator must be aware that they were part of the group obstructing, by common action, official persons and acceded to the occurrence of that result.

Now, Mr. Kilaj is charged with participation in the Kilaj Group in the context of the October visit, and this is the only visit with which he's charged in this indictment.

The February material has nothing to do with participation in the Kilaj Group as defined in this case, nor to any action -- common action of the Kilaj Group. The Kilaj Group was not even formed in February, and therefore it does not establish the requisite intent to participate in such a group in order to obstruct by common action.

And for this reason, we ask Your Honour not to place any reliance on any of the February visit material to infer intent.

So to conclude, first, the SPO's case depends on filling significant gaps in the evidence with assumptions about what this evidence means. The evidence itself does not establish the conclusions that the SPO is asking Your Honour to draw.

Second, the February visit does not inform Your Honour about Mr. Kilaj's intent in October because of the eight months and the passage of time between that visit and the October visit.

And third, in any event, the February material has no connection

with the Kilaj Group, which was defined in this case in the context of the October visit only.

This concludes my submissions. Thank you.

JUDGE GOSNELL: Mr. Edwards, just to let you know that we'll have to finish five minutes earlier than anticipated. So just for your planning purposes, that would be 12:55.

MR. EDWARDS: Thank you, Your Honour. I'll bear that in mind, and I'm reasonably confident that we will be able to finish by then. It will take us a little beyond the two hours that I had initially estimated, but I'm afraid my time estimates are notoriously bad anyway.

From February 2023 we fast-forward to the 6th of October visit, eight months.

Your Honour has heard the audio, Your Honour has read the transcripts, and Your Honour has heard what the Defence for both Mr. Thaci and Mr. Smakaj say, very ably, very compellingly, about the reliability of both.

We adopt those submissions about audibility, about reliability, about priming, about voice attribution. I do not attempt to do better by putting those submissions in my own words.

And while I'm on the subject, can I just make it very clear, as did Mr. Rees yesterday, that where there's any crossover between my arguments and those of counsel for any of Mr. Kilaj's co-accused, I endorse and adopt those arguments in their entirety.

Your Honour, I will necessarily have to say a word or two about

what the transcripts purport to show what Messrs Thaci and Kilaj said during that visit. And in so doing, I reiterate, possibly for more than the first or second time, but nothing that I say should be taken as a concession of the accuracy of the transcripts.

My point is that even for the sake -- even if, for the sake of argument, the speakers on the 6th of October said what it is transcribed that they did, the evidence as a whole does not help the Prosecution even begin to come close to proving its case beyond reasonable doubt on the two counts faced by Mr. Kilaj.

Even if early on in the visit, the men talk about the evidence of an SPO witness - and that is -- if we can just bring up that table again, please, the one that Ms. Baer was referring to. I think it's at line 4 of that table. Okay. It's coming.

Even if it's the case that the visitors on the 6th of October talk about this individual, and the transcript does suggest that Mr. Kilaj told Mr. Thaci that he had met with that individual "a week before coming here" - yes - that must have been in the last few days of September of 2023.

Now, there is no evidence from Mr. Kilaj's phone that he had contacted that individual --

JUDGE GOSNELL: Sorry, Mr. Edwards, I just want to make sure this document is not being broadcast.

MR. EDWARDS: No, it absolutely should not be broadcast. It's confidential, please.

I was saying that there's no evidence from Mr. Kilaj's phone

that there was any contact between him and this individual. Well, it may be said that perhaps they had bumped into each other by chance, some words had been exchanged, that the contact had nothing to do with the telephone.

But, firstly, the individual at line 4 has never mentioned to SPO investigators that any such contact occurred, and more importantly, he has never said that any contact involved any discussion about his status as a witness or his evidence in Case 06.

Secondly, even if there was contact in the last few days in September, it could not possibly have been with a view to influencing that individual's testimony in Case 06 because it had already taken place.

So either Mr. Kilaj was right in saying, during the 6th of October visit, that there had been no contact and that contact was entirely innocent, or Mr. Kilaj was not right in saying that there had been contact. It will be a matter for Your Honour what conclusion you may draw from that.

One final point I will make is that this witness was asked in terms during his testimony if anyone had tried to tell him what to say during his testimony, and he clearly and unambiguously said no. And I refer Your Honour to the judicially noticed item JN.00039 at page 3074.

Moving on from this individual at line 4 and going to the heart of this case, the discussions about Witness 4. And frankly, there is not a great deal to say. If Your Honour concludes that the

transcript accurately reflects what was said, then there we are. What, perhaps, is more important is do those words amount to the crime of attempted obstruction of official persons performing official duties as charged in Count 14.

And we say that, in much the same way that the Prosecution press, we say that the transcript speaks for itself. Speaking the words that appear on the transcript in no way go to anything beyond the merely preparatory. And we know this because Article 27(2) of the Criminal Code defines and gives illustrative -- a list of examples, an illustrative list of examples of what does amount to preparatory but nothing more. So agreeing, planning or organising with another person, other activities that create conditions for the direct commission of a criminal offence.

We would go further and we would say that even if the transcript demonstrates a degree of engagement amongst the speakers on the 6th of October, even if, as the Prosecution argue, Mr. Kilaj follows up with Mr. Thaci's alleged instructions or gives feedback, that does not even reach the level of mere preparation.

The SPO also points to the discussions about and the use of Witness 4's statements, and the fact that Mr. Kilaj, they say, walked out of the Detention Centre with those statements.

Well, what of it? Even if there is evidence of highlighting and annotation on that statement, and Mr. Kilaj, of course, frankly admits that it's handwriting, and even if that annotation took place at the Detention Centre on the 6th of October, which we don't

concede, nevertheless it cannot amount to anything more than going beyond supplying with means or making available the means to commit a criminal offence or any other example of acts of preparation.

Taking the transcripts at face value, then, the words and actions fall short, very far short, we say, of anything going beyond merely preparatory, and entering into the realm of attempt as defined in Article 28.

Mr. Holmes addressed you on assistance and agreement, and I don't intend to repeat any of what he says. But assistance under Article 33 can only be antecedent assistance and not *ex post facto*, we say. In this case, it simply cannot sensibly be said that Mr. Kilaj did anything to assist Mr. Thaci in committing the crime of attempted obstruction.

The Prosecution, of course, don't suggest that Mr. Kilaj arrived at the Detention Centre with the witness statements himself in preparation for or antecedent to the meeting. Of course not. Quite the opposite. And nor is there any evidence that Mr. Kilaj created any conditions or removed any impediments. The evidence, if it is to be accepted, indicates, if anything, a more passive and reactive role on the part of Mr. Kilaj.

Similarly, it can't sensibly be suggested that Mr. Kilaj provided advice or instruction to anyone about how to attempt to obstruct. Quite the opposite, we say, on the evidence. And, of course, there are no promises to conceal anything within the meaning of Article 33(2).

To the extent that the transcript might suggest that Mr. Kilaj spoke words to the effect that he would get this done at home, and to the extent that the transcript suggests that he, Mr. Kilaj, accepted that he would remove Witness 4's documents from the Detention Centre, we submit that there is no evidence whatsoever that this acted as any impetus or encouragement for Mr. Thaci to do anything that would not otherwise have been done.

As far as agreement is concerned, Your Honour will recall that under Article 35(2), well, that does not require anything beyond a preparatory step, as with attempt, but any preparatory step must be a substantial preparatory step. And I underscore the word "substantial." There is nothing in the transcripts that indicate the taking of a substantial preparatory step.

And a substantial preparatory act that does not reach the level of attempt would be - and I just give by way of some examples - perhaps meeting with a witness, provided that meeting was with the requisite intent. A substantial preparatory act might be making arrangements to meet with a witness, but again only with the requisite intent. But merely talking about making arrangements to meet with a witness cannot, in any universe, we submit, amount to even a preparatory step, let alone a substantial preparatory step.

So much for the *actus reus* of Count 14. Even if you were prepared to find that the *actus reus* of Count 14, in its various iterations, was made out, the *mens rea*, the intention has not been proved by the Prosecution.

And here what we do is we ask Your Honour to look beyond merely the words allegedly spoken by Mr. Kilaj that are recorded in the transcript, because the SPO say that's all you need to do. You just have to look at the words and stop there. We say that would be an overly two-dimensional approach. What is required is more. You need to take, we submit, a holistic view of the whole of the evidence.

Taking that two-dimensional approach would be wrong, it would be dangerous, and it really risks an injustice in this case because, to pick up on a phrase I said earlier, actions speak louder than words.

You have to peer behind the all-too-easy-to-pronounce words, even if Your Honour were to be prepared to accept the accuracy of the transcripts. You have to peer behind the words and examine the evidence of what was actually done.

I hope I'm not admitting something embarrassing, but it may be that we have all had the experience of bumping into someone that we haven't seen in a long time, and after a short chat say something along the lines, Well, we must go for a drink, we must get a coffee. I'll give you a call, I'll text you. We say the words but we don't necessarily mean them at the time. It's not perhaps the kindest thing in the world to do, but I suspect everyone in this courtroom has had that experience. I'll text you. I'll call you. I'll get that done.

It's the action that counts, not so much the words.

And I'm reluctance to use an English idiom that may be difficult to render into Albanian, so I apologise to the interpreters, but the

proof of the pudding is in the eating. Here, we ask where is the evidence of the eating that proves the pudding? There is none.

The Prosecution rely on the fact that the Witness 4 statements were torn up. And they say that the evidence that these were torn up and thrown away was some form of an attempt to dispose of incriminating evidence, and that that is an intent of a guilty mind. We say that that is ludicrous.

Firstly, it presupposes, doesn't it, that there's some prior knowledge on Mr. Kilaj's part that there's a risk that the evidence might be found. There is no evidence of such prior knowledge. There's no evidence of him being on notice that SPO investigators would be coming and knocking on the door.

And, of course, it doesn't make sense. There was other evidence in Mr. Kilaj's home, evidence that the Prosecution relies on, potentially incriminating material, material that Mr. Kilaj was not entitled to have, as the Prosecution remind us again and again, material that Mr. Kilaj did not dispose of. And here I'm talking about the notebooks. I'm talking about the loose notes found in his jacket pocket.

Why would he be looking to dispose of some incriminating material and not others, if the Prosecution's case held any water? It does not make any sense.

If you really were trying to dispose of incriminating evidence that, in one's mind, was truly at risk of being found, and imminently, who would tear it up into pieces and throw it away in the

bin in such pieces that any reasonably bright 4-year-old would be able to reconstruct? Anyone truly wanting to conceal possession of such incriminating material, you may think, would shred it, or flush it down the toilet, or burn it, or walk a few metres up the road and throw it away in someone else's bin. The SPO's theory in this regard is just, as I say, ludicrous.

We fully accept that the information contained in Mr. Kilaj's notebooks and the information on the loose scraps of paper or, indeed, found on his laptop, we accept that that was information that he should not have had. It was confidential material. But simple possession of that material is not in and of itself a crime.

And as Ms. Baer said a few moments ago, why does the Prosecution leap to the inference that mere possession was with a nefarious intention rather than it being in his possession for more innocent reasons, such as the reasons that he provided in his 2nd of November interview.

The SPO's difficulty, of course, when they talk about Mr. Kilaj being in possession of all of this information to which he had no right, when they describe that as being information as a roadmap for targeting SPO witnesses, well, the difficulty is that there is no evidence that after the 6th of October he did contact any SPO witnesses or had any intention of contacting any SPO witnesses.

And this is the reason why so many agreed facts were placed before Your Honour in this case. I repeat: There is not simply a lack of evidence of contact by Mr. Kilaj and any of the Case 06

witnesses, the witnesses in his loose notes, in his notebooks, or most notably Witness 4; the agreed facts amount to positive evidence of no actual content, which goes to the very heart of this case.

I'm conscious of time. I was going to speak about the 2nd of November interview itself. I simply make the point that Mr. Kilaj agreed to be interviewed; he didn't have to. He agreed to be interviewed without a lawyer; he didn't have to. He had the right to refuse the questions but he didn't. He answered all of the questions that were put to him.

Even if you conclude that there were things said by Mr. Kilaj in that interview that were not true, there was plenty that was true, and plenty that is demonstrably and verifiably true.

And when you look through the 2nd of November interview with the SPO, Your Honour will note that on a number of occasions, Mr. Kilaj makes admissions against his own interest; for example, in his acknowledgement that it's his handwriting on the loose notes and in the diaries and on the Witness 4 documents. And those admissions, against his own interests, we say, bolster the credibility of some, even many, of the explanations that he gives.

Count 15. Well, we submit, and really for the reasons that Mr. Holmes addressed you on a moment ago and for the reasons that are set out in our brief, we submit that the Prosecution has adduced absolutely no evidence that can satisfy you beyond reasonable doubt that Mr. Kilaj is guilty of Count 15. And questions of the *actus reus* of Count 15 aside, there is absolutely no evidence of the

requisite *mens rea* to allow you to find him guilty of Count 15. And I endorse the submissions that were made earlier by Mr. Rees in respect of the equivalent count against him.

Very briefly, Your Honour, in our final trial brief, we deal at paragraphs 188 to 191 with Article 11 of the Code of Conduct, acts of minor significance. Kosovo law provides that even if an act has the characteristics of a criminal offence, if it is of minor significance, the act shall not constitute a criminal offence. In other words, it amounts to a full defence in law. And for the reasons that we set out in our final trial brief, we say that there is insignificance in terms of intended consequences, there is even an absence of intended consequences, such that Your Honour should give -- ah, the Criminal Code of Kosovo, I'm reminded, rather than the Code of Conduct. Thank you.

We submit that the case against Mr. Kilaj, if found to be made out, is a perfect example where the provisions of Article 11 could and should bite.

I'm now going to turn very briefly to the question of sentencing, and I will finish in the next five or ten minutes.

I certainly adopt the submissions made by Mr. Rees earlier this morning about disparity. And the submissions that I do make, I have to say, for the same reasons, I make with some reluctance. But really it's in the Prosecution's proposal that Mr. Kilaj deserves three years' imprisonment, that that is the sort of sentence that meets the justice in this case, that is where the fevered imagination

of the SPS is truly exposed.

It is a wild, unmoderate and excessive suggestion, a proposal from an office that has lost all sense of proportion. It brings to mind the doomed attempts of an optimistic market trader, opening negotiations with a credulous tourist at a price that is five times the real value of the thing.

The Prosecution has opened with three years, hoping perhaps, Your Honour, that you might settle at a sentence that is higher than what really meets the justice of the situation. That is not the behaviour of a minister of justice, we would say. And Your Honour should give short shrift to this unworthy attempt at opening high and hoping for something that is a little higher than what is warranted.

Mr. Kilaj deserves credit for his previous good character. And on top of that, he deserves credit for his positive good character, the good character that was attested to by the four character witnesses that the Defence has placed before you.

Your Honours read our submissions on sentencing in the final trial brief. Even time served would be 50 per cent too high a sentence given the complete absence of any harm. There is no reason whatsoever, in all the circumstances, why, even if convicted, Mr. Kilaj should receive a day longer than the statutory minimum.

But we submit, Your Honour will not, should not even be troubled by any considerations of sentencing in this case. Neither the facts in this case, nor the law in this case permit you to get anywhere close to thinking about sentencing. The Prosecution has adduced no

evidence that could safely lead you to conclude that guilty verdicts are in any way safe.

And the only safe verdict in this case is one of not guilty on both counts.

Thank you.

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

I do have a series of questions that I will now read out, and I will invite the parties to -- either in their main submissions, which are still to come for Mr. Young and Mr. Admiraal, to address them, or, as in respect of all the others, to please address them in the course of what is called here responses or comments, which essentially are the opportunity for reply and surreplies, if you wish.

So I'll read out these questions so that you have an opportunity over the break to consider them in preparing your oral submissions in relation to these questions.

The first question is: Is the Defence's position that the absence of Defence challenge to a particular transcription or translation proffered by the SPO cannot be taken into consideration in assessing the reliability of that portion of transcription and translation? Is this position based in any way on the burden of proof, which rests on the Prosecution, or on the privilege against self-incrimination? If so, how is this consistent with the position set out by the ICC appeals judgement in *Bemba et al.*, paragraph 1339, indicating that it was incumbent upon the Defence to make such

challenges? How would such a position, if that is the position adopted by the Defence, be consistent more generally with the obligation, albeit in a very different context, which some of you may know as the rule in *Browne and Dunn*, requiring that a party, including the Defence, has certain positive obligations when cross-examining a witness?

Second question, which may be primarily of interest to the Prosecution but on which, of course, any party may comment: What does the Prosecution say is the *actus reus* threshold required for a person to engage in a common action under Article 401(2) of the Kosovo Criminal Code? Is that threshold the same as for co-perpetration under Kosovo law? And is that *actus reus* threshold the same, or how is it applied, when the form of the 401(2) offence is attempt? How does the Prosecution say, and I'm mindful of the submission that's been made in its final trial brief at paragraph 472, but how does the Prosecution say that Vllaznim Kryeziu participated in the common action alleged specifically in respect of Witness 4?

Does the Prosecution accept - and this is Question 3. Does the Prosecution accept that even though Article 11 of the Kosovo Criminal Code is not expressly incorporated by way of Articles 15 and 16 of the Law on Specialist Chambers, that it is nevertheless applicable to the application of 401(2), Article 401(2) of the Kosovo Criminal Code, in the same way that it acknowledges Article 113 of the Kosovo Criminal Code is applicable? I do take into account the submissions

in the reply at paragraph 82, but a clear statement on this would be helpful.

Question 4, which actually is related to Question 5 as well: The Prosecution cites at paragraph 53 of its final trial brief to INV F55, which is a filing before the Single Judge at the investigative stage of this case describing the search of Mr. Smakaj's residence. Does the Prosecution seek to rely on this filing to establish that P125 was seized from Mr. Smakaj's car and that the photographs in P126 were taken on the day of the search? How do you respond to the Smakaj argument, which was made yesterday, that this filing is not evidence and cannot be so relied upon?

And the fifth and last question, at least for now, is: The Prosecution relies, at paragraph 73 of its reply brief, on P240, which was the photographs, as providing evidence that P125 was found during the search of Mr. Smakaj's residence, and in particular there is -- I'm sorry, P240 is the photograph of the evidence bag, and on the outside of the evidence bag is a notation, and this notation is what is cited at paragraph 73 of the reply brief. The question is: Is the weight that can be placed on this document undermined at all by the redaction of the name of the person who appears to have signed the notation? And, of course, I'll be happy to hear any comments on that from the Defence, in particular the Smakaj Defence, as well.

So we will now break for lunch and we will return at 1 p.m., and then it will be you, Mr. Young, who is up for your submissions at that point.

Thank you very much.

--- Luncheon recess taken at 12.56 p.m.

--- On resuming at 2.01 p.m.

JUDGE GOSNELL: Yes, Mr. Young, please proceed.

MR. YOUNG: Your Honour, thank you.

Your Honour, it's my pleasure to address you now on behalf of Mr. Fazliu in this case. Your Honour, if I may, can I now commence my closing arguments. And as far as the questions you've given the parties, I'd be very grateful if we could have a little time to reflect upon that with my team and then respond later in indictment order. So I'll start my closing arguments, and I hope, if it helps for timing purposes, to inform the Court that I will endeavour to be nearer to one hour, not two. All right?

First let me say this. It's my privilege to address you now on behalf of Mr. Fadil Fazliu, who is Kosovan man of 66 years of age who has no previous convictions. He has been accused, as Your Honour knows, of attempted obstruction in relation to the evidence affecting commander Mr. Remi Mustafa, Witness 1, and also he's accused of contempt of court.

Of course, Your Honour, it would be remiss of me at this stage, this week, not to mention that I address you now, the week before this Court makes another very important decision on the accused in Case 06. And Your Honour may take the view next week will be a colossal week for the Kosovo and the Albanian community at large.

By contrast, while these are relatively simple allegations,

Your Honour may think, these are extremely important allegations to Mr. Fazliu. As you're aware, his reputation is very much under attack by the Prosecution.

While these proceedings are clearly complex, I'll endeavour to try and summarise the issues in Mr. Fazliu's case in some five to ten minutes, and then we'll aim to make my closing arguments near to the one hour, as I've just mentioned. And, Your Honour, if I may, I will focus on the attempted obstruction count, and of course you have our detailed submissions on the contempt count in the Fazliu final brief which are set out from paragraphs 145.

Your Honour, the Prosecution, in short, appears to be suggesting that on his visit on the 2nd of July, 2023, to the Detention Unit in The Hague, when Mr. Fazliu went to visit Mr. Thaci, the Prosecution allege that he received instructions from Mr. Thaci in an attempt to obstruct the course of justice. And it seems to be alleged that Mr. Fazliu sought or attempted to convey said instructions to Remi Mustafa. It seems they're alleging that occurred on the 3rd of July, 2023, in a meeting in Route 66, a cafe in Prishtine.

So, obviously, the two important meetings with Remi Mustafa are said to be on the 29th of June, before the second charged visit, and on the 3rd of July, the day after the visit. So these are the two key visits I can identify.

Your Honour, in short, we submit that the Prosecutor appear to take it as read almost that whatever happened on the 2nd of July visit would necessarily have been actioned the next day, on the 3rd

of July. So they appear to be relying heavily on inferences from what occurred on the 3rd of July, 2023.

Your Honour may think that timing can be relevant for a number of reasons. And indeed it is apparent from the 2nd July transcripts that Mr. Thaci, we submit, clearly had not known that Mr. Fazliu, when he had met on the 2nd of July, had actually been to see him on the Thursday before, on the 29th of June. Indeed, neither, it seems, was Mr. Thaci even aware that he was due to see him the next day in Kosovo. And Your Honour may take the view that's rather important given the allegation that the Prosecution make about a so-called Fazliu Group, which we respectively submit does not exist, and there was no common action by such a group because it simply did not exist. There was no coordination at all that is significant to this charge.

If, with respect, there had been a group, you may well have expected some planning, some coordination, some basic level of coordination between the parties. And for Mr. Thaci not to know that Mr. Fazliu had met Remi Mustafa a few days earlier and the intention was to meet him the next day, you may think suggests a lack of coordination. There was no common action. And I do support and adopt what Ms. Menegon has rightly said to Your Honour this morning, and we submit that the proving conduct cannot be said to have the capacity to obstruct official persons. There simply was no common action and no group.

The Prosecution are -- and I'll try and slow it down. I realise I'm speeding up here.

The Prosecution are trying to persuade you, we submit, of the Prosecution narrative as they see it. It's one interpretation and it's based on inferences which they would like to make or invite you to accept.

The Defence submit that the Prosecution's arguments, as some of us have said, are built on theories, conjecture, speculation, not upon solid evidence. And I will argue, with respect, that the Prosecution appear to ignore or fail to acknowledge the real difficulties and very real weaknesses in their own case.

For example, Your Honour, can I make this example straight away because it cuts to the chase, by ignoring, we say, or brushing off what they call or describe as a pretext or pretextual reason for Mr. Fazliu, who is maintaining, in the transcripts, that he had a reason to meet Remi Mustafa, the Prosecution brush this off as a pretextual reason in relation to the reasons for meeting Remi Mustafa, who he clearly knew.

And with respect, "pretext" is an important word, so I'd like to consider that with you. And it goes very much to an important issue, which was: Was there a genuine non-case-related, potentially, reason to meet Remi Mustafa, who he knew? Your Honour will remember the photographs of them with many others in a social setting, and Your Honour may take the view from all the evidence we know that these were people who knew each other. They may have had friendly relations. They certainly knew each other.

So I'd like to consider this word "pretext" because the way the

Prosecution would have it sold to Your Honour, if I may use that vulgar term, is that they've used very much the wrong term. I ask you please to consider the approach of the Prosecution now to taking on what I would call the gun incident, which at another stage Your Honour may have a chance to consider. And I'll try to give Your Honour today the salient references in the transcripts to make your life a little easier, because they go to about 165 pages and there may be about five pages that probably matter most. So I will try and draw these pages to your attention.

But the reality is, it seems, having failed to have taken it seriously, the gun incident which Mr. Fazliu raised in his visit to Mr. Thaci on the 2nd of July, he told Mr. Thaci all about this. It was an incident in Prishtine, a very serious incident, where one man shot another, wounded him, et cetera, then fled. So it seems having failed to take that gun incident seriously, or even failing to investigate it, it being the apparent reason Mr. Fazliu gave to Mr. Thaci for his contact with Remi Mustafa, the Prosecution now seek to brush it off as a pretext, as a pretextualisation, pretextual reason.

So what does "pretext" mean? Well, Your Honour, I've tried to define -- I'll try and define it. My definition is this, that I understand the definition is commonly is that a pretext is a false reason given to hide your true motivation or purpose for doing something, an excuse of sorts. As I understand it, they now appear to be accepting that there was, in fact, a gun incident in Prishtine,

but that was being used as a good excuse to justify making contact with Remi Mustafa where, they say, that was not the real reason for the contact. For they say the real reason for the contact was rather that Mr. Fazliu had been personally selected to help Mr. Thaci attempt to influence Remi Mustafa's evidence. That appears to be their argument.

You may think, I suggest, this is nonsense, pure nonsense, and I'll try and demonstrate why the Prosecution are talking nonsense. The Prosecution, in reality, do not want to challenge the fact that there was a serious gun incident in Prishtine just at the right time for Mr. Thaci and Mr. Fazliu. Are the Prosecution really saying that Mr. Fazliu took advantage of something, of an opportunity, that just happened to arise to use as a pretext?

So I ask you carefully, Your Honour, to consider this in due course whether or not the word "pretext" was well chosen. I suggest that if you consider whether this was a pretext or not, the Prosecution argument unravels very quickly in relation to the attempted obstruction count, and I'm going to focus on that, if I may, today.

The Prosecution argument falls apart.

Firstly, why should Mr. Fazliu, who is visiting Mr. Thaci on the 2nd of July, 2023, bother to tell Mr. Thaci of a bogus reason for visiting Remi Mustafa? Mr. Fazliu clearly did not know that they were being secretly recorded. He could have said nothing. If he was there to receive instructions, to somehow help Mr. Thaci, why was

there any need to do that, to give that account?

And secondly, if it was true that this gun incident did occur, what a almighty coincidence, Your Honour may take the view, that such an opportunity could have presented itself to Mr. Fazliu at that time.

If our Defence investigations are correct, as Your Honour knows from the cross-examination of Witness 7, I believe it was, we managed to identify a gun-shooting incident in Prishtine on - and the date's relevant - the 23rd of June, 2023, which Your Honour may understand is a significant date, if I can find the indictment. Your Honour may remember that the indictment period for Mr. Fazliu is between the 26th of June and the 18th of July.

So a few days before the indictment period, Your Honour, the Defence have introduced to the case three media articles from the Kosovo press, which I think I tendered into evidence in court, which spoke about a shooting incident at a place called the *Kafet i Vogla* bar which features in the media articles I tendered.

So was this all true but simply seized upon by Mr. Fazliu as an opportunity to justify meeting with Remi Mustafa, as if a justification was needed. It's nonsense.

The Prosecution totally unravels if we scrutinise the Prosecution attempt to brush this off as a pretext.

The reality is that the Prosecution in this case never bothered to investigate if there was a gun incident, which is clearly referred to in the covert recording tapes and transcripts. They never

bothered to investigate if there was a gun incident and whether or not there was a legitimate nexus between that gun incident and these proceedings.

Having -- sorry, having seen the questioning of Witness 7 and having seen the media articles on the shooting in Prishtine, Your Honour may well take the view that it is now being described as a pretext or pretextual reason. Well, let's consider this if we may. Some questions arise in relation to the way that they now put the case.

Firstly, what are the coincidences, I ask rhetorically, of a friend of Remi Mustafa's brother being shot in a gun incident -- because that's what Mr. Fazliu said in the covert transcripts, a friend of Remi Mustafa's brother was shot in a gun incident. What are the coincidences of that happening just before the Fazliu family make contact with the Mustafa family?

Secondly, did the Prosecution appear to have investigated if there was ever a relevant gun incident about this time? It appears not.

Did the Prosecution ask Remi Mustafa about it? It appears not.

Did the Prosecution ask one of Remi Mustafa's brothers about it? It appears not, even though it is clearly alleged on the tape that Mr. Fazliu said apparently one of Remi Mustafa's brother's friends were shot in the leg. Were they asked? No.

The trail -- the chain of investigative failures by the Prosecution is a lengthy one.

Fifth point. Did the Prosecution investigate whether or not one of Mr. Fazliu's sons knew the alleged suspect who fled the scene? It appears not. Why is that relevant? Your Honour may remember that in the 2nd July transcripts, Mr. Fazliu was also saying: One of my sons knew the alleged suspect gunman. So did they investigate that? Not at all, it appears.

What are the coincidences here, if it's true, what are the coincidences of an incident linking two families, the Fazlius and Remi Mustafa's family, with a possible link? If there is a link, was there a link to Remi Mustafa's brother, and was there a link to the Fazliu son?

Well, if you consider the media reports, and I don't ask you to do so now, and I'll try not to interrupt my submissions, but Your Honour may -- I believe the name of the victim of the gun incident is named in the media reports, and Your Honour may consider that.

Seventh point. Again, how amazingly fortunate it was that such an opportunity did happen just at the right time to explain the Fazlius reaching out to the Remi Mustafa family, for it seems to have happened on the 23rd of June, 2023, if we have correctly identified the Prishtine shooting. You may think, well, what luck, what perfect timing. Imagine if only a few days before, the Fazliu's son reached out to Remi Mustafa on the -- I believe it was, from the phone records, the 26th of June, 2023, by phone, so literally three days later. The timing, you may think, has all the hallmarks of truth.

Eighth point. Indeed, if the son did have a contact or a nexus with the alleged gunman, that you may consider might explain why certain texts may have been deleted. A matter for the Court.

The reality is there appears to be a genuine incident and that Mr. Fazliu told Mr. Thaci about it on the 2nd of July, 2023. No more, no less. It is, as you say, what it says on the tin, as they say in England, sometimes.

Tenth point. Well, to conclude on this short matter, it also appears to have happened that when I questioned Witness 7 - I think this is the only witness I questioned - the witness properly accepted that he was aware of an Albanian cultural practice known as -- I think he said the word was *Besa*, which relates to a known practice of reconciliation between families when there's a conflict situation with a view to deescalating a situation so that matters don't get worse. It's a known Albanian practice. And he conceded, I think, and properly, that that existed.

So in reality, does this argument by the Prosecution of a pretext appear to be rather not a desperate way to try to attempt to discredit or undermine the simple truth told by Mr. Fazliu? The simple truth is he had a genuine reason to reach out to the family of Remi Mustafa, which simple truth does not fit with the Prosecution's chosen narrative, which is rather different. That's why you may think, if you accept this, that the Prosecution seek to brush it off as a pretext. And I respectfully submit that even with this one word, so poorly thought through by the Prosecution, this has the

capacity, through the use of the wrong word, to unravel the Prosecution's case on that count.

If I may, I'm now going to turn to my third area I'd like to consider with Your Honour which is in relation to the two meetings. As I say, I mentioned already one was on the 29th of June and the second was the 3rd of July. And they were both said to have occurred, Your Honour, I think it's accepted, at a cafe in Prishtine called Route 66. I think it's a cafe, maybe it's a restaurant or bar, but it's something of that description.

The reality is this: While there is evidence, I accept entirely, that the two Remi Mustafa meetings took place, as clearly evidenced by -- through the phone evidence Your Honour will have seen, it's wholly unclear, we submit, what happened during the two meetings. Even if you consider Mr. Thaci's words could be seen as or amount to instructions - they were described as messages somewhere else - this is not sufficient to prove that Mr. Fazliu acted upon them, and, indeed, is not sufficient to prove that whatever was said, he had the requisite intent to act on it.

As you will know, in reality, as we know -- everyone will know in court, people do and say things and sometimes do what they say. Sometimes they don't. People may well say one thing and do another. You have to ask yourself, with respect, whether you can be satisfied so that you're sure that these acts were carried out with the intention to obstruct justice with the capacity to affect the work of the Court and official persons. We do submit that the Prosecution

are a long way from proving that, and we submit the Prosecution simply don't have the evidence.

So I do submit that the best way to test whether the acts or intention are proved is to focus on the evidence on the 3rd of July meeting, the day after the prison visit. You may consider that's a significant day and inferences on that are significant for Mr. Fazliu. I suggest the Court might be assisted by asking itself a series of questions on the evidence of the 3rd of July, the meeting with Remi Mustafa and Mr. Fazliu, or at least these are the ones we've heard most about. So these are the questions, Your Honour, I suggest might be helpful.

Firstly, have the Prosecution called Remi Mustafa as a witness in this case? No.

Secondly, could they have called him? The answer I suggest is yes. As you know, he was a witness in Case 06, and I understand he was called as a witness of the truth in Case 06. And now he was not called, although the evidence suggests he was very much involved in these proceedings, yet he didn't come anywhere near this courtroom. There wasn't any attempt to call him.

Three, is it right to say Mr. Remi Mustafa could be described by the Prosecution as a victim or a target in this case? Yes, we submit.

Fourthly, has the Prosecution investigated the venue where Mr. Fazliu is alleged to have had the two meetings with Remi Mustafa? Appears not. Certainly, Witness 7 who was in charge of witness

security wasn't aware of that.

Fifthly, have the Prosecution called any Route 66 staff, given it's the venue where the two important meetings with Remi Mustafa took place, have they actually called any Route 66 staff or any Route 66 customers who may have been witnesses to these meetings, who may have heard something, may have seen something? They may have been able to assist the Court as to who was there or possibly what was even said. Nothing has been done and none of that kind of evidence has been called.

Six, have the Prosecution produced or indeed presented any CCTV evidence from Route 66 to corroborate their case on the meetings? I'm not suggesting that there isn't evidence that there were meetings. There were meetings that -- that appears to be the case on the evidence.

Seventhly, do the Prosecution know Remi Mustafa's stated position on the allegation of interference or attempted interference? Yes, they do. While they didn't call him, Your Honour may be aware, and there's an agreed fact on this which I'll finish on, that the Prosecution did interview him in a suspect interview on the 18th of November, 2023, and Remi Mustafa denied witness interference and at no stage suggested there was any attempted interference. So these are the points I make on that matter.

If I can now turn to another area, and hopefully I'm on time. I'll go to four now.

What I'd like to do now, Your Honour, is to address some general

matters and to take Your Honour to some of what I'd say are salient references in the 2 July meeting transcripts which might assist the Court.

First of all, I'd like to state straight away our position in relation to what the Prosecution have asserted about the amount -- the quality of the evidence in this case, because on a number of occasions, the Prosecution have asserted, orally or in writing, that the accused -- the evidence against the accused is overwhelming. With respect, it is not. And they fail to acknowledge, as they failed to investigate many points in this case, they failed to acknowledge the many weaknesses in their own case and they failed to acknowledge the difficulties that they have.

The reality is what they have done is they have some circumstantial evidence and they've drawn various impermissible inferences from the evidence they do have. The Prosecution, we submit, have sought to draw the most incriminating inferences from the covert recordings, ignoring other plausible inferences, even though, and I give them credit for this, the Prosecution rightly, in their final brief, did make the point that they accept circumstantial evidence -- and this is at page 7, paragraph 12 of their final brief. They rightly accepted that circumstantial evidence shall be assessed with caution. So that's something I'm sure the Court will take note of.

Moving on to timings. In the final brief of the Prosecution, they make some submissions on the timing of events, and can I address

that. So this is found, I think, in pages 61 and 62 of the Prosecution's final brief.

Interestingly, it was only on the 8th of June, 2023, that Mr. Fazliu submitted a request to visit Mr. Thaci on the 2nd of July, 2023. That was approved from the 14th of June, 2023. There appears to be, that I'm aware of, no allegation that Mr. Thaci had communicated with Mr. Fazliu in advance of the visit that he made to Mr. Thaci on the 2nd of July, 2023. And although we see the indictment period starts at -- on the 26th of June, there's no suggestion of prior communication before the -- before the 2nd of July.

You may think that's significant, but, yeah, as I made the point earlier, I adopt, with respect, Ms. Menegon's helpful submission that there's a lack of evidence -- there's a lack of evidence that a Fazliu Group existed - we submit clearly didn't exist - given the lack of coordination, Mr. Thaci's utter ignorance of the fact that Fazliu had just been to see him a few days earlier. He didn't know. He clearly didn't know. And if Your Honour has the time to consider -- and I'm happy to give the Court the references, the 165 pages, and to make it quicker I will provide the Court with that -- these hopefully in my closing remarks.

But if Your Honour considers it, it's quite apparent from the transcripts Thaci didn't know he even met him a few days earlier, and he didn't know that he was intending to see him the next day. He only became aware of the next-day meeting because Mr. Fazliu told

him. That's how.

So some coordination, some group. It was a group, I suggest, that did not exist.

But you may think that more significant are the circumstances under which Remi Mustafa entered the conversation on the 2nd of July, 2023. I suggest there are two pieces of evidence which are significant that the Court might want to consider.

Firstly, I think this was the subject of an agreed fact between the parties that -- there's an agreed fact, and I'm sorry, I don't have the reference to it now, but that on the 1st of July, the Kosovo media, on the 1st of July, 2023, were widely reporting that Remi Mustafa would be a Prosecution witness in this court in The Hague. It was widespread. It was on the 1st of July. So on the 2nd of July, with respect, it was -- as he was a public, national figure, you may think -- or may infer it was a talking point. It was one of the biggest talking points probably in Kosovo. And that was -- and so the fact that it was being considered during a long conversation -- not over three hours, with respect to Mr. Hafetz, but it's two hours if we do the timings, 1355 to 1600, so, with respect, it's about an hour out there. So -- yes. So it's nearer two hours. But it was a long -- it was a two-hour meeting. And with respect -- with respect, it wasn't a surprise perhaps, in the hundreds of names that were mentioned - and you can see in the transcript hundreds of names mentioned, with all sorts of topics about all sorts of things, and nothing -- and gossip and rumour, hearsay and all sorts. But

during the course of that, you may take the view the fact that the name came up was not surprising. Indeed, I think Mr. Thaci said on the transcripts on the 2nd of July that the television in the Detention Unit is on all the time, so that no doubt you may take the view they're aware what's being reported in the media.

But the second point, and I should say -- I should make the point, obviously as we did, and Ms. Menegon made the point as well, that Mr. Remi Mustafa, in Kosovo, appears to be a widely regarded popular figure in the Albanian community and a former respected KLA commander who has been in the public domain or been in the public consciousness of that country for -- since the conflict, because, as you know, he was a KLA commander. And indeed, it appears he became a bit of a TV celebrity. But certainly his narrative has been in the public domain for a long time, and he's certainly someone Your Honour may infer from the evidence who has been on television and in the media quite a lot.

The second point I ask you to consider is more complex and nuanced, but I ask you to consider this: That when you're considering the two July transcripts, I'd like you to try and put them in perspective in relation to any conversation with Remi Mustafa, because it may well be that the perspective and context isn't clear.

Firstly, the transcripts run -- as we don't have time stamps, but the transcripts -- certainly not that I've seen, run some 165 pages. Remi Mustafa's name does not appear in the transcript until

-- I think it's about page 32. Then on page 33, Your Honour may see that the name appears as Mr. Thaci apparently comments upon Mr. Remi Mustafa's own criminal case in Kosovo.

But can I put forward some statistics in relation to that 165 pages and look at how representative this sample was that Mr. Hafetz played in the six minutes or so of a two-hour meeting, and he played six minutes. I think Mr. Hafetz said "the clips played are representative clips of the recorded visit." Now, that's page 18, line 5 of the transcript for Your Honour's reference.

Let's see how representative they really are. And in these clips, there's not -- it was clear that there was conversation of Remi Mustafa and what amounts, they say, to instructions about Remi Mustafa.

Your Honour, in my respectful submissions, if one does the maths, and I'm not very good at maths, but the references to Remi Mustafa appear from page 33 to page 58, so some 25 out of 165 pages. So the vast majority of the 2nd July visit transcripts do not feature Remi Mustafa at all, not at all. Indeed, if one actually looks at the 25 pages where his name does crop up, I would suggest, if my maths is right, only some nine of the 25 pages allegedly concern some arguably instructions. And of the nine, five of these pages relate to suggestions that his evidence should be briefer.

So when you're looking at what's left, four or five pages -- or nine pages out of 165, Your Honour can do the maths and consider whether that recording that Your Honour was shown was truly

representative, because, in my respectful submission, it was not. It was not truly representative at all. And the reality is, in my respectful submission, the Court has to consider the references and the facts and figures in perspective and in the right context.

Another matter that Your Honour may consider is important - again this point is more nuanced and difficult, I accept - is as to whether the conversation on the 2nd of July was deliberately directed by Mr. Thaci or not towards Remi Mustafa, or whether possibly, in fact, when you read the 2nd July transcript carefully, it appears that the conversation of Remi Mustafa arguably arose somewhat as an afterthought when his name came up.

And so it's important to consider the actual circumstances, how the name came up, and then how it developed. How did it enter the conversation before Mr. Thaci made some comments and said what he said about the -- if he said it, about that person.

Well, I'll give Your Honour the references which we submit are relevant. On page 35 of the 165 transcripts, Mr. Fazliu talks about the name of a person in Prishtine, and I don't name the person for obvious reasons. I don't name him in public. But Mr. Fazliu talks about a name of a person, I won't describe his role, but his name is in the transcripts and Your Honour can see it. Then what appears to have prompted conversation about Remi Mustafa in the 2nd July transcripts can be found at page 39, because the name appears again that Mr. Fazliu mentioned, and he is indeed alleged to name this person again who he said spoke to him, presumably in Kosovo, about a

court case and then said "he was interested in Remi. This one, that one." And that's on lines 24 to 25 at page 39 of the 2nd of July transcripts.

And then Mr. Thaci continues the conversation on page 40 -- yes. Your Honour, in relation to this, all I say this to make these points. If it appears that Mr. Fazliu, who started a conversation about Remi Mustafa and it only -- it only became apparent that was because a third party was mentioned by Mr. Fazliu who had expressed an interest in him, that seems to be the background to the initiation of the conversation about alleged instructions. And you may think that suggests that the conversation on Remi Mustafa did not commence in a planned way but somewhat arguably as an afterthought.

And his name was not the only name. There were hundreds of names. Your Honour, in that conversation, there was tittle-tattle, gossip, talk of health, Mr. Salih Mustafa's health, Mr. Thaci's health. There was talks about politics, Rambouillet. There was even talk about who was the best lawyer in the Case 06. So it was a wide-ranging conversation. But there were at least a hundred names mentioned in the course of the 165-page transcripts.

So I submit to you if it was always Mr. Thaci's plan or intention to seek Mr. Fazliu's help to influence somehow Remi Mustafa, why did he not initiate the conversation on him? Why does it appear to enter this covert recorded conversation as an-- arguably an afterthought conversation triggered by mention of a third party who had expressed an interest in him? And I submit the detail

is quite important, so I ask Your Honour to carefully consider that when you're considering how this man is introduced into the case against Mr. Fazliu.

Continuing on the 2nd July transcripts, Your Honour, can I draw your attention to another point which I've already made but I'll just give the Court the reference, because the reference is this -- this is relevant to whether or not the Fazliu Group existed.

On the transcripts, at page 40, Your Honour will see what's written. I'll summarise it, I'll read it out to Your Honour.

FF says: [As read] "You know how Remi can behave.

"HT: How is he?

"FF: Fine. He will be here the day after tomorrow.

"When did you see him?

"Thursday.

"Prior to leaving to come here? You yourself?

"Yes. We had coffee at Route 66 and we talked."

Now, obviously I invite the Court to look at it on another occasion. But in my submission it's clear Thaci didn't know that he'd met Mustafa a few days earlier. He had no idea. How can that be consistent with the Prosecution contention that there was some coordination here? And this was Witness 1.

Why may that be relevant? Well, I do submit, again I'm repeating myself so I'll leave it, but it's clear Mr. Thaci didn't know about it, and so there is a real undermining of the theory that there was ever a group. There was no Fazliu Group. And I don't

believe the Prosecution have suggested any assertion that there was any nexus or connection between Mr. Thaci and the son of Mr. Fazliu. But there we are.

So rather, it appears, it may well be, and Your Honour will consider it carefully, I'm sure, that the -- what Your Honour reads in these 165 pages is a man detained in a foreign prison, very frustrated, facing trial on extremely serious charges which he considers to be false charges, venting his frustrations, venting his thoughts.

And in our final brief, Your Honour, Your Honour will see that we have attempted to try and contextualise what it may be like for a visitor to meet an inmate in a foreign country and have conversations, somebody who's own trial for something. Would they talk about the case? Maybe yes, maybe no. And Your Honour can consider the context to that and the way in which the inmate may behave or indeed how the visitor may behave.

But I respectfully submit, again adopting what Ms. Menegon said, that it's important to consider - this is from the Prosecution's final brief, page 233, paragraph 432 - where the Prosecution rightly note that a group in this context requires three or more persons, the connection between these persons is defined by their common action and participation within a group. So when there's a lack of coordination, that may suggest to Your Honour there was a lack of a group, because of no coordination.

In concrete terms, I submit that the Prosecution have to satisfy

you so that you're sure that in the meeting on the 3rd of July at Route 66, Mr. Fazliu sought to convey the alleged instruction of Mr. Thaci to Witness 1 in an attempt to instruct or influence his giving evidence in Case 06. The Prosecution, I submit, cannot discharge the burden of proof to the requisite standard.

As Your Honour well knows -- forgive me. As Your Honour well knows, the way in which prosecutions are normally conducted, nationally or internationally, is for the prosecution to commonly start a trial by calling the victim evidence, the victim evidence, so that the victim can give his or her evidence about what happened to them. What did they say, what happened, what did they do. That's the standard procedure. Victim evidence is normally the first evidence called in a criminal case if it involves an allegation of assault or the like. It's a standard procedure.

In relation to Mr. Fazliu, we submit the alleged victim, as Witness 7, I think, recognised, was Mr. Remi Mustafa. You could characterise him as an alleged victim, even though he said he wasn't interfered with and he seems to be suggesting -- not suggesting there was any attempt to interfere with him.

The Prosecution did call him in Case 06. Why did they not call him, I ask rhetorically, in Case 12. He, as you know, was alleged to be a witness of truth. He was alleged to have been a victim of the two meetings with Mr. Fazliu in a cafe in Prishtine, in Route 66, on both these occasions.

Well, Your Honour hasn't heard from him. Your Honour may take

the view the most relevant witness may have been Mr. Remi Mustafa as he was the person who was alleged to be the victim of the approach, if the approach was made in the way that they suggest.

Other passages I suggest are relevant to the Court. If I may, I'll just cite a few page numbers with -- paraphrasing what's said to be relevant -- they're relevant to so that assists the Court.

In relation to the gun incident, Your Honour, Mr. Fazliu, at page 53, that's where he states he called -- he asked for a gathering, for a meeting with Remi Mustafa. That's page 53.

Page 56, Mr. Fazliu tells Mr. Thaci that he had told him he was coming to visit at the gathering. And Mr. Fazliu, on page 56 said, "Remi Mustafa said, 'My brother is coming,'" suggesting that it may well be Mr. Remi Mustafa and one of his brothers who was there on the 3rd of July, but we'll never know because we haven't got any evidence about it. Because although it was the main venue of the case, is there any evidence about it? No, not at all. The Prosecution, rather arrogantly, appear to failed to investigate the case on salient matters.

Sorry. Yes.

Turning to the phone evidence -- sorry, the phone documentary evidence. With respect, as far as that's concerned, there does not seem to be any -- there's phone evidence to suggest meetings occurred. But again, there's no documentary evidence or phone evidence on the content of the meeting.

So on the 29th of June meeting, the 3rd of July meeting, we

don't have any text saying this happened or that happened, or this was said or that was said. None of that. There isn't at all.

And as far as oral evidence, there is zero oral evidence. Quite the contrary, if Your Honour accepts the agreed facts that, in fact, he denied any interference or there appears to have been no attempted interference. There is a complete absence of live oral evidence.

The Prosecution are forced, with respect, to rely upon the inferences they seek to make from the 2nd of July visit. So I do respectfully submit that the Prosecution cannot prove that whatever was said on the 2nd of July inevitably, or invariably, was in fact conveyed on the 3rd of July. It may have been, theoretically. It may not have been. It's perfectly feasible or plausible that whatever happened in Den Haag did not leave Den Haag and did not translate or transfer to Prishtine in Kosovo.

Sorry, if I may, can I just turn to -- yes, my general submission is that the Prosecution cannot prove therefore --

JUDGE GOSNELL: Mr. Young, do you see the notation from the transcriber on the transcript?

MR. YOUNG: I'm sorry, am I too fast? I'm sorry. I apologise. I'll slow down. All I can say in mitigation is that I'm close to my time estimate.

Your Honour, the simple truth is that the Prosecution, in our submission, cannot prove that the alleged instructions were actually conveyed, or the attempt was made to convey the instructions. They failed to prove this and they failed to prove their case.

In addition to the lack of evidence from the Prosecution, there are other indications, we would submit, that in fact are helpful to the Court. And in this regard, I'm going to briefly refer to one page which Your Honour can consider, perhaps on another occasion, which is capable of different inferences, I accept. It's a short point and nuanced.

But if Your Honour considers the transcript references on page 42, that may be helpful. Because on that page, on page 42 of 165 pages, immediately after Mr. Thaci speaks to Mr. Fazliu about Witness 1 being brief and other indiscernible matters, Mr. Fazliu responds, and I quote, is alleged to have said: "No, no, no, no, just to have a coffee. No, no, nothing like that. Never."

It's respectfully not clear, I concede, what's being put to him, but if Your Honour could infer it were allegedly anything arguably - arguably - and it's not clear what was said, whether it's permissible or not, Mr. Fazliu's response on page 42 is unequivocal. It's a no. In fact, in that sentence or two sentences, Mr. Fazliu says "no" on eight occasions in two sentences, or one sentence. So it's unequivocal and that was his response.

It will be a matter for the Court whether or not anything impermissible was said immediately preceding the response, but the response is unequivocal, in my respectful submission.

Turning to the gun references, if I may, that the Court might want to consider. Yes. The gun incident references. I ask the court to consider the conversations on the gun incident as they're

obviously significant because they go to whether or not there may have been a bona fide reason to meet Remi Mustafa, which I dealt with with Witness 7, I believe.

And so, on page -- Your Honour may want to consider, I do this for the transcript, the references most salient to the gun incident are - it's only a few pages - page 52, lines 19 to 24. And that's where Mr. Fazliu indicates that he -- "I called him to come to a gathering. Someone got wounded in Prishtine. A friend who was wounded. Ring him about -- yes. Why? A friend of Remi's brother." And he clearly, you may think -- or the inference clearly is that he was clearly explaining that when he referred to Remi, that he was referring to Remi Mustafa's brother. That's the Prosecution case.

Unfortunately, and very inappropriately, if I may say so with great respect to the Prosecutor who dealt with this point, the Prosecution tried to make an objection to my questioning about whether the Remi may have been a reference to Remi Mustafa, where in fact it is their case that it was reference to Remi -- they were references to Remi Mustafa. Not Remi Smith or Remi Jones. It was Remi Mustafa. And the Prosecutor, when I was trying to question -- sorry, Witness 7, basically said he objected and on grounds of relevance. And Your Honour happily, and rightly, if I may respectfully say so, allowed me to ask the question, and then the witness conceded yes, it could be a reference to Remi Mustafa.

And so the other references -- and it is, with respect, blindingly obvious that it was a reference to Remi Mustafa. So, with

respect, it is not clear why an objection made to that question.

The other references that might assist the Court are page 56 of the 2nd July transcripts where more is said, and indeed on that, Mr. Fazliu appears to be then saying to Mr. Thaci that Remi Mustafa said "my brother is coming" and "to get it done," he said.

Why would the brother have been coming? Is this the reference to the brother who Remi Mustafa said was wounded? Why, if this wasn't a reconciliation, *Besa* situation, why would the brother be coming? Perhaps because the brother knew the person who was the victim of the shooting. It makes sense. The pieces of jigsaw, they come together and they fit. And it has all the hallmarks of truth, of being a simple account about a simple incident that took place about that time.

And indeed in page 57, lines 15 to -- sorry, 5 to 18 in particular, Mr. Fazliu is alleged to have said:

[As read] "Yes, a friend of my son's had a problem [indiscernible] with a handgun, pulled out the handgun and shot him in the leg. Said something to his friend who [indiscernible] wounded the person and fled. No one will ever catch him. He is an idiot," he said.

This one said: [As read] "He was the first to point the handgun. Remi said, Get it done. When you come back over here, we can sit down and talk."

So Remi Mustafa appears to know that he is going to go on a visit to meet Mr. Thaci in The Hague, and he seems to be --

Mr. Fazliu seems to be saying that Mustafa is saying to him, "Well, get it done. When you come back here, we can sit and talk." So that one, with respect, would suggest, would it not, as a fair inference, that maybe other topics were considered, but one of the topics to be considered was the gun incident on the 3rd of July. That's an obvious and nature inference, I submit.

Yes. At the very least, we say that the content respectfully suggests that a meeting with Remi Mustafa may have been non-case-related. And we say clearly it was a serious matter and it involved the persons that I've sought to describe.

Can I move on now to another topic. Yes, sorry, I think I've already made the point. Yes, I don't have the page number for the attempted interruption of my cross-examination by the Prosecutor, but, yes, with respect, it was a spurious and inappropriate objection which Your Honour overruled. Sorry, I do have it, in fact, if that assists the Court.

For Your Honour's note, this occurred when I was questioning the witness, Witness 7, on Monday, the 2nd of March this year, and can be found in the court transcripts for that day on page 469, at line 5, to page 470, line 10, and that's where the alleged or attempted interruption was, or objection.

So if I may, I'd like to make some short final submissions in relation to Mr. Fazliu, and the next topic concerns the question of interviews. So I'm just going to address Your Honour briefly on that.

In relation to suspect interviews, Your Honour will be aware the fact is that in most jurisdictions, national or international, a prosecution authority would commonly, not always, faced with a serious set of criminal allegations, at the very least interview a suspect who was the subject of allegations and subject of some sort of investigation and allegations. From Your Honour's own considerable experience, Your Honour will know that normally allows the prosecutors and investigators the opportunity, with respect, to question a suspect over the allegations and over the evidence.

Equally, an interview also offers the suspect the opportunity to present their response to any allegations being made against them. It's sometimes, you may think, a good way to test the evidence, to test the allegations, to see how the person responds. Some respond well. Some do very badly. But it's a fair way of testing the evidence at least. See how a suspect will respond or can respond or maybe can't respond.

But after these interviews, Your Honour will understand, it's common practice for prosecutors, nationally and internationally, to then make a decision as to whether or not to proceed against a suspect, maybe to charge them or not, and that would possibly depend upon what was said in an interview, or not.

But I understand in this case, Your Honour may know that most of these men, most of these accused, were never interviewed. I believe Mr. Kilaj may have been many years ago. But most of these accused were never interviewed which by the Prosecution. So one infers, with

respect, that the Prosecution took a strategic decision not to interview them, not to interview these men about the allegations. Is that a fair way to proceed? I suggest certainly not.

So Mr. Fazliu, a Kosovan man with no criminal convictions, from a family in Prishtine, was never interviewed over these allegations. They proceeded straight to charge, straight to charge. Indeed, as a matter of natural justice and sheer common sense, I respectfully submit he should have at least been interviewed to see what difference that may have made.

But consistent with a long list, a litany of alleged investigative failures in this case, the Prosecution never even bothered to interview him, never even bothered to give him a chance to see what he wanted to say, or if he had anything to say.

Your Honour may be aware that in some jurisdictions, there is a no interview, no charge policy. Not here. These Prosecutors, as I say, proceeded straight to charge. No interview was offered. I'll be corrected if I'm wrong. But I submit it is a matter of course for the Court, but you may consider a more preferable course and the fair course may have been for all parties, be they investigators, prosecutors, or suspects, to have an interview. That was not done. And I don't -- I don't address Your Honour on the Kosovo Criminal Code as to what that says about the situation where there is no investigation, no interview, and whether the Prosecutors can proceed to charge without having interviewed. Because Your Honour will know, in some jurisdictions, no interview, no charge. That's the end of

the case.

Your Honour, these are the points I wanted to address you on today. Your Honour, in relation to the contempt matters, with respect, I hope we made the points fully in our written closing brief. But I will end by saying is I thank Your Honour for your attention on this graveyard slot of a Friday afternoon for considering the submissions that we made, or tried to make.

And in my respectful submission, there is an insufficiency of evidence. And Your Honour knows what I'm going to say. With respect, the correct verdicts in this case, commensurate with your public duty, are those of not guilty for Mr. Fazliu. Thank you.

JUDGE GOSNELL: Thank you, Mr. Young.

Mr. Admiraal, we'll be taking the break at 3.45, just for your information.

MR. ADMIRAAL: Your Honour, the Prosecution investigated Mr. Kuci for more than two years. They searched his home. They searched his phones and computers. They read his messages. They examined his call records. An independent counsel reviewed all of it. And after all that work, the case against Mr. Kuci rests on two things: One text message, 18 words in Albanian, and one recorded conversation, after which no witness was contacted and nothing was carried out.

That is the case against Mr. Kuci, and I will not repeat my written brief. Your Honour has read it.

I will speak about five points today.

First, the message of 12 April 2023; second, Mr. Kuci's intent; third, the transcript of the visit of 3 September; fourth, the alleged agreement and the lack of any substantial act; and fifth, the proper role of criminal law in this case. At each point I will also address what the Prosecution said in its reply and in its closing statement, and, just as important, what it did not say.

And I begin with the message, I begin with its translation. The Prosecution told the Pre-Trial Judge that Mr. Kuci wrote these words: "Friend, he congratulated you for your professionalism, for your clear ideas about the country and the war, and for your courage. Bravo." "He," a third person, someone else. On that one word, the Prosecution builds its theory.

In its opening statement, the Prosecution said that Mr. Kuci passed on to Mustafa the congratulations of an unnamed person, and it added that the ideas of that unnamed person notably aligned with interference instructions Thaci issued to Mr. Fazliu.

Your Honour, that was the Prosecution's theory. A member of one Defence team carrying a message from a man in detention to a witness. That theory was wrong.

The Language Service Unit has now given the correct translation. The message read: "Friend, I congratulate you." "I," first person, Mr. Kuci himself. There is no unnamed person. There never was one. There was no message from anyone. There was a man watching television, seeing an old friend give an interview, and typing 18 words.

And what does the Prosecution now say about the corrected translation. In paragraph 47 its reply, it says that the correction changes nothing about the *actus reus* being satisfied. In simple terms, the Prosecution now says only that a message was sent. The Prosecution no longer says the message carried anyone else's words. It no longer says the message aligns with anything Mr. Thaci told anyone.

The Defence accepts that the corrected translation does not change the fact that a message was sent. But it changes the meaning of that message. It removes the suggested link to Mr. Thaci or, for that matter, to any other person. It removes the claim that Mr. Kuci acted as a messenger. It also removes the basis on which the Prosecution tried to place this short message within a wider plan to interfere with witnesses. And that is not a small change. It goes to the context, the meaning, and the weight of the message.

Your Honour, before I go further, I must address something the Prosecution said yesterday. The Prosecution spoke about this message as if Mr. Kuci was charged with influencing Mr. Mustafa. It said that Mr. Kuci congratulated Mr. Mustafa about his views about the war, and it then linked those views to later discussions involving other people. But that is not the charge against Mr. Kuci. Mr. Kuci is not charged with influencing a witness. He is not charged with obstructing officials. He is not charged with witness interference. He is charged, under Count 19, with only one thing: Failing to obey a final court order.

And this is not a technicality. It is the result of a decision of this Court earlier. The original suspicion against Mr. Kuci was obstruction of officials under Article 401(2), and that charge was not confirmed against him. The Pre-Trial Judge found that the elements were not made out, and the Court of Appeals did not disturb that finding. What remains is contempt and only contempt.

And the Prosecution knows this. It said so itself in writing. In paragraph 51 of its reply filed less than a week ago, the Prosecution wrote that for Mr. Kuci, "contempt has no further requirement that the order be violated in an attempt to frustrate KSC proceedings," and that "Kuci's charges do not depend on it."

The question before Your Honour is narrow: Did Mr. Kuci knowingly and deliberately disobey a final court order? The question is not whether the Prosecution disagreed with what Remi Mustafa said on television. The question is not whether the Prosecution disliked the fact that Mr. Kuci congratulated him on that vision. And the question is not whether another person later spoke to Mr. Mustafa.

And I say one thing more. If the test were influence, the Prosecution would face an impossible problem of its own making. Mr. Mustafa gave the interview before Mr. Kuci's message. The views the Prosecution objects to were already expressed. They were broadcast on national television to the whole country. Mr. Kuci did not shape them. He watched them and he sent two sentences of congratulation to a friend of 30 years.

You cannot influence a man to say something he has already said.

The Prosecution also cannot use Count 19 of proof of Count 18. Yesterday, the Prosecution described Mr. Kuci as a man who had already committed contempt of court when he entered the Detention Centre on the 3rd of September. But Count 19 is an accusation, it's not a proven fact. Mr. Kuci is presumed innocent on both counts. One unproven charge cannot be used to prove another unproven charge. Otherwise, the Prosecution would use Count 19 to support 18, and 18 to support 19, and that would be, Your Honour, circular. Each count must be proved on its own evidence.

The same applies to evidence concerning the other accused. Documents said to have been found with Mr. Kilaj or Mr. Smakaj may be relevant to their cases. They do not prove Mr. Kuci's intent. And contacts by Mr. Fazliu or other persons do not prove that Mr. Kuci agreed to contact anyone. A pattern attributed to Mr. Thaci may say something about Mr. Thaci's wishes. It does not prove that every visitor shared those wishes. The evidence against each accused must be assessed separately.

So what is left? Two sentences, 18 words, and this is the message: "Friend, I congratulate you for your professionalism, for your clear ideas about the country and the war, and for your courage. Bravo."

And there is no mention of Case 06. There is no mention of any testimony. There is no question. There is no instruction. There is no request for a meeting. There is no request for an interview. There is no name of any other person.

And who is the man who received it? Rrustem Mustafa. Mr. Kuci has known him since the early '90s. They sat in parliament together. They were in the same political party. Since '99, they have lived 150 metres apart. They spoke almost every day, or at least every week. A friendship of more than 30 years. And on that day, 12 April, Mr. Kuci sent 51 messages. That week he sent 43 messages a day and received 59 a day, and this was just one of those messages.

Your Honour, my brief sets out three legal arguments about this message, and I will not repeat them in full but I will briefly address each one.

First, the Case 06 protocol is not a final decision within the meaning of Article 393. The Prosecution answers that finality is judged at the moment the order is broken, but that answer misses the point. A protocol is not a judgement. It's a working framework. The Trial Judge can change it at any time. And in this case, the Trial Panel did change it. Rule 116(4) says the Panel may issue orders about contact between parties and witnesses whenever a fair trial requires it. A framework that a judge can change tomorrow is not a final decision today.

When Mr. Kuci sent the message, the case was already before the Trial Panel, and, for the avoidance of doubt, no longer before the Pre-Trial Judge.

The Prosecution says that on my argument, no order would ever be final. That is not my argument. My argument is narrower. A continuing procedural framework is a different kind of thing from a

decision that ends a dispute. And Article 393 was written for the second kind.

Second, Mr. Kuci was not an addressee of the protocol. The Prosecution relies on the Court of Appeals. That court said Article 393 applies to parties and to other participants and to individuals against whom the decision has legal effects. Three categories. And then the Prosecution simply writes: Mr. Kuci was a party to the proceedings. But he was not. Mr. Veseli was the party and Mr. Kuci was a consultant on a team. The Prosecution does not say which of the three categories he falls into or why. It just asserts it.

And the footnote in the protocol itself points to Article 2 of the Code of Professional Conduct. That code, by its own Article 1, binds counsel and prosecutors. Mr. Kuci is neither.

Third, the protocol itself dealt with contact made by mistake or without realising that the protocol applied. Section II(c) states that if a party or participant contacts a witness inadvertently, the person must not discuss the case and must not directly ask for consent to conduct an interview. And that is exactly why the content of this message matters. Mr. Kuci did not discuss Case 06. He did not ask about evidence. He did not ask about future testimony. He did not ask for a meeting or an interview. He did not give an instruction. He just sent a short reaction to a public television interview by a close friend.

And the Defence does not say that the message was sent to the

wrong person. The Defence says that Mr. Kuci sent it in the normal course of a friendship over 30 years, without realising at that moment that this ordinary social contact might fall within the protocol. And that is a reasonable reading of inadvertent contact.

If Section II(c) is to have any real meaning, it must cover normal social contact made without a person realising at that moment that the contact falls under the protocol. And Mr. Kuci then did exactly what Section II(C) required. He did not discuss the case and did not seek an interview.

The Prosecution referred to the wider climate of fear and pressure on witnesses in Kosovo. The Defence does not deny that protecting witnesses is important. That general background may explain why the protocol was made, but it does not prove Mr. Kuci's personal intent. A general concern cannot replace proof about the state of mind of the accused at that time. It cannot turn a short message of congratulations into a knowing breach of a court order. There's also no evidence whatsoever that Mr. Mustafa felt threatened, pressured, or influenced by this message.

Your Honour, the Prosecution must prove beyond reasonable doubt that when Mr. Kuci typed those 18 words, he knew he was breaking a court order. And what evidence has the Prosecution led on that question? None. Not one document. Not one witness. Not one message. Nothing.

The Prosecution never asked Mr. Kuci a single question about his intentions, not once in two years. The Prosecution instead relies on

an assumption. It says that Mr. Kuci is a lawyer, a professor, that he worked on a Defence team, and that therefore he must have known.

But professional status is not proof of actual awareness at a specific moment. General access to case material does not prove that Mr. Kuci had this protocol clearly in mind while sending a short message to an old friend.

In paragraph 52 of its reply, the Prosecution says: "Even a momentary decision to contact a witness in violation of a court order is an offence." That sentence assumes that -- the answer to the question. Of course. Of course, a quick decision can still be a decision. But the question is whether Mr. Kuci knowingly decided to break the order. And the Prosecution cannot prove intent by first assuming that intent existed.

And let me put the real situation before you. The protocol was notified in June of 2022. The message was sent in April '23, 11 months later. In Case 06, there are more than 3,000 filings. Defence teams live under an avalanche of documents, disclosures and e-mails. I just checked myself. I received over 5,000 e-mails in Case 12, so I don't -- I can only imagine how many e-mails there must have been in Case 06. Every practitioner knows this.

Mr. Kuci watched the television interview. He saw a friend of 30 years speaking. He picked up his phone. He typed two sentences. It took a few seconds. And the Prosecution says this was deliberate and purposeful. Sending the message was, of course, a physical act, but that does not prove a deliberate purpose to break a court order.

The Prosecution had the chance to test the innocent explanation directly. It could have asked Mr. Kuci what he knew, what he remembered, and what he intended when he sent the message. It did not do so.

The Prosecution asks the Court to infer intent only from Mr. Kuci's profession, his role on the Defence team, and the fact that he sent the message. And that is not enough to prove intent beyond reasonable doubt.

And there's another fact, Your Honour, that strongly supports the Defence position. Mr. Kuci worked on the Veseli Defence team for two years. He had access to everything. If he wanted to influence witnesses, he could have sat in interviews. He could have joined witness preparation. He could have spoken to them in private, lawfully. He did none of that. He deliberately kept away from every witness in Case 06. He was never present at a single witness interview. Your Honour, that is not the behaviour of a man who wanted to interfere. That is the behaviour of a man who was careful and did not want to interfere with any protocols issued by the Pre-Trial Judge or the Trial Panel.

I now turn to Count 18, and this count rests on one thing only, a transcript, a transcript of a conversation, much of it whispered, recorded in a Detention Centre. My brief sets out, at paragraphs 75 to 81, why that transcript cannot carry this case. Professor Fraser explained the problems - poor audio, whispered speech, no report on how the transcript was made, no information about who made it, no

record of how certain or uncertain the transcriber was, no time stamps.

The Prosecution's answer is procedural. It says the Defence should have pointed to specific lines. Your Honour, paragraph 79 of my brief explains why that is not possible. There are no time stamps, and you cannot follow the transcript against the audio for more than a few lines. Professor Fraser used the words "difficult bordering impossible." The Prosecution does not answer that. It simply repeats that we should have done what cannot be done.

The Prosecution also says that the verification system worked when it was properly used, and it gives an example. Its example is this Defence obtaining the corrected translation of the 12th April message. The only time, the one time, this Defence used that process, it showed that a key part of the Prosecution's theory - the only evidence regarding Count 19 - was based on a wrong translation. And that fact, Your Honour, should lead to caution and not to confidence.

But let me now take the transcript at its highest. Let me assume, only for this argument, that every word the Prosecution puts in Mr. Thaci's mouth was said, and let me assume he named three witnesses. Let me assume he said what they should say. Let me assume all of it.

Count 18 charges an agreement under Article 35. And Article 35(2) requires a substantial act towards committing the offence. So my question is simple: What did Mr. Kuci do? He did

not contact Witness 5. There is no message, no call, nothing. He did not contact Witness 2. There is no message, no call, nothing. And he did not contact Witness 6. No message, no call, no meetings, nothing.

The independent counsel reviewed the March phone and the December phone in full. She found nothing. The Prosecution asked for his call records around his arrival in Prishtine on 6 September, and those records show four numbers. Not one of those four numbers has been linked to any witness in Case 06, not one. And then more than two years passed. It those two years nothing happened. No contact, no message, no meeting, nothing.

The Prosecution also relies heavily on the claim that Mr. Kuci wrote down instructions, but no note was ever found. Mr. Kuci's home and phones were searched. The Prosecution found no notes setting out instructions for any witness. There's no document that can be linked to the visit. There's no proof of what may have been written. There's no proof that any note left the Detention Centre. And there's no proof that anything written was meant to be delivered to a witness.

Your Honour, the Prosecution filed a reply of almost 10,000 words. It answered arguments from all five Defence teams. It wrote about modes of liability, about cumulative convictions, about Article 401, about sentencing credit, about agreed facts, evidence bags. But on this point, on the complete absence of any act by Mr. Kuci, it says nothing. Not one paragraph, not one sentence.

I've looked for it. It is not there.

The closest the Prosecution comes is paragraph 66 of its reply. There it says that naming witnesses and saying what they should say and writing it down are steps in performing an agreement. But look at whose conduct that describes. That describes what Mr. Thaci is said to have done during the visit. It says nothing about what Mr. Kuci did after the visit, and what Mr. Kuci did after the visit is the whole of Count 18.

The Prosecution must identify a real act that moved that alleged agreement towards the commission of the offence. It must also keep two things separate - the words said to create the agreement and the separate substantial act to carry that agreement forward. The Prosecution has not clearly made that distinction. It relies on the same conversation to prove both the agreement and the substantial act. It says that the instructions created the agreement and then says that the same instructions were the substantial act. It says that Mr. Kuci agreed, and then treats his words of agreement as the act carrying the agreement forward. That risks turning Article 35 into an offence based on words alone.

And there's the same problem here as with Count 19, Your Honour. The Prosecution again argues influence. It says Mr. Kuci agreed to interfere with witnesses. But look at what Count 18 actually charges. It charges an agreement under Article 35 combined with a substantial act to commit contempt of court, that is, to contact witnesses outside the protocol. Not to influence them, to contact

them. And that distinction matters, and it matters most here, because whatever may be said about the other accused in this case - and I say nothing about them - the position of Mr. Kuci is different in one decisive respect. The other accused face charges under Article 401. They are said to have acted as part of a group. Evidence is said to exist of what was carried out. And that is different, a different charge, resting on different facts requiring different proof. Mr. Kuci faces none of that. The group charge was not confirmed against him. What is left is an agreement to make contact, and no contact was ever made.

So when the Prosecution stands here and describes a scheme of witness interference, Your Honour, I ask you to keep separate what the Prosecution has kept together. The question for Mr. Kuci is not whether Mr. Thaci wanted witnesses influenced; it is whether Mr. Kuci contacted them and whether he then did something substantial towards that. He contacted no one. He did nothing. And two years of investigation have produced not one message, not one call, not one meeting to suggest otherwise.

And there is one more point and it is important. The Prosecution says Mr. Kuci told Mr. Thaci that he had already spoken to a witness, and the investigation shows that it was not true. He had spoken to no one. The Prosecution's own investigation proves it.

Your Honour, think about what that means. A former president is in detention. He is facing charges that could take the rest of his life. He is distressed. An old friend visits him for three hours,

and that friend tells him what he wants to hear about something that never happened. That is not an agreement to act. That is a man calming an old friend and then doing nothing at all.

The Prosecution asks you to convict on the basis of words, words that led to no act, no contact, no consequence. My brief says in paragraph 84 says that it comes close to punishing thoughts, and I stand by that submission.

Your Honour, I come to my last point. Article 1 of the Criminal Code says that criminal offences and criminal sanctions exist only for conducted harms, protected values, and "to the extent that it's not possible to protect these values without criminal sanctions." "To the extent that it's not possible to protect these values without criminal sanctions."

The value the Prosecution says it's at stake here is the integrity of proceedings before this Court. The Prosecution said so in its opening. It said this case strikes at the very heart of the rule of law and this court itself. But that is exactly the value that the Code of Professional Conduct protects.

Article 1 of that code says so in plain words. The code exists, and I quote, "to ensure the integrity of the proceedings and the fair and proper administration of justice." The same value, word for word. And there was a route available. The Prosecution could have gone to the Registrar. The Registrar could have removed Mr. Kuci from the team. The Registrar could have withdrawn his access to this court. That would have withdrawn any risk immediately, at the

source. Nothing in this record shows that this route was ever considered. Nothing shows that anyone waited and rejected it. There is no reasoning. There is nothing.

And the Prosecution says, at paragraph 46 of its reply, that I cannot have it both ways. That I cannot say the code does not bind Mr. Kuci and also say the code was the right instrument. Your Honour, there's no contradiction, and the Prosecution's own reply admits it. In the last line of the same paragraph, the Prosecution writes that the argument "conflates two different things." Exactly. Two different things.

The first question is whether a court order creates criminal liability - criminal liability - for a consultant, and my answer is no. The second question is whether the Registry had a way to deal with the Prosecution's concern, and my answer is yes. Both can be true. The absence of a crime does not mean the absence of any remedy.

Finally, Article 11 of the Criminal Code. Article 11 says that an act is not a criminal offence, even if it has all the - this is a difficult word for me - characteristics of one, where the danger involved is insignificant. And it lists what to look at: The nature of the act, the absence of consequences, the circumstances, the degree of blame, and the personal circumstances of the person. The Prosecution says Article 11 does not apply because it is not written into the law. Your Honour, that is simply not right.

Article 16(3) of the Law brings the general part of the Criminal

Code into these proceedings. The Court, this Court, applies Article 393 of the Criminal Code, and it cannot apply the offence and leave out the limits that the same code places on it. And in the case of any ambiguity, the law must be interpreted in favour of the accused. That is the position of this Defence.

I come to my conclusion.

Progressive insight at the SPO should have led to dropping the baseless charges against Mr. Kuci.

Your Honour, I ask you to acquit Mr. Kuci on both counts. I ask that primarily because the Prosecution has not proved its case. There is no final decision. Mr. Kuci was not an addressee. There's no proof of intent. The transcript cannot be relied on. And there is no substantial act because there was no act at all.

And I also ask Your Honour to decide the case against Mr. Kuci on the charges confirmed against him, not on witness interference with which he is not charged, not on obstruction under 401 which was not confirmed against him, not on documents found with other accused, and not on Count 19 as if it were already a proven offence when considering Count 18. Each count must stand on its own evidence, and neither count does.

In the alternative, I ask you to find that this conduct is an act of minor significance under Article 11 and to acquit on that basis.

And if Your Honour should convict on either count, I ask you to impose no penalty. Article 1(2) of the Criminal Code requires that

any sanction be proportionate to the level and nature of the danger.

Here, on the Prosecution's own evidence, there was no danger at all. Nothing happened. And Your Honour, Mr. Kuci, spent his working life building the rule of law in Kosovo. He is 55 years old. He has never been convicted of anything. The evidence does not prove that he knowingly broke a court order or agreed to do so. He is not an enemy of this court, and he should be acquitted.

Thank you.

JUDGE GOSNELL: Thank you, Mr. Admiraal.

Before we take the break, I'd like to ask each party for their estimate of the time that they would wish to have in order to offer their -- what I would call a reply and a surreply, with a view to considering whether we have enough time to finish today or whether we should conduct all of these rounds of submissions on Monday so that all parties have an equal opportunity to prepare.

So with that in mind, Prosecution, what is your estimate of the time that you would require?

MR. HAFETZ: Thank you, Your Honour. I appreciate that. I think at this time we would estimate somewhere between an hour and 15 and an hour and 30 minutes. We've gone significantly over the projections on the other side, which is no -- casting aspersions on them, but we are later than we have -- so there is a bit to respond to, so we're going to be a little bit longer than the hour that Your Honour had first forecast.

So our preference would be to continue on Monday so we all do it

at once.

JUDGE GOSNELL: Can I ask for estimates from each of the Defence teams, please?

MS. MENEGON: Yes, Your Honour, I would like to keep my 30 minutes.

MR. REES: Up to half an hour.

MR. EDWARDS: Not knowing what the Prosecution is going to say about the case against Mr. Kilaj, it's kind of difficult to say, Your Honour. But with regard to Your Honour's questions just before lunch, we would want about 15 minutes to deal with one or two of those matters. But that's an absolute minimum. If the Prosecution have submissions that impact specifically on Mr. Kilaj's case, that may well be more.

MR. YOUNG: Your Honour, five minutes, if at all. Thank you.

JUDGE GOSNELL: I assume, Mr. Admiraal, it's too early to say for you.

MR. ADMIRAAL: Yes.

JUDGE GOSNELL: In light of those estimates, it's clear we're not going to be able to finish today. So I think in the interest of fairness to all parties, so that all parties have an equal opportunity to fully prepare responses to the questions that I asked and to be in a position to respond to one another, we will commence with the comments and replies on Monday at 9.30.

And we stand adjourned until then. Thank you.

--- Whereupon the proceedings adjourned

at 3.39 p.m.