

1 Tuesday, 12 May 2026

2 [Open session]

3 [The accused appeared via videolink]

4 --- Upon commencing at 9.30 a.m.

5 JUDGE GOSNELL: Madam Court Officer, please call the case.

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

9 JUDGE GOSNELL: I see that all the accused are attending via  
10 video conference, and I'm sure if they can't hear what I'm saying  
11 right now, they will signal accordingly.

12 Prosecution, I see there may be some changes in appearances from  
13 yesterday?

14 MR. HAFETZ: Good morning, Your Honour. Yes. Josh Hafetz for  
15 the SPO, and we are the same as yesterday other than Ms. Pedersen has  
16 been replaced by our colleague Sebastian van Hooydonk. Thank you.

17 JUDGE GOSNELL: Defence, I believe there are changes from the  
18 Thaci Defence.

19 MS. MENEGON: Good morning, Your Honour. On our side, it's the  
20 same composition as yesterday except that Mr. Greicevci has left us  
21 today.

22 MR. GOODEN: [Microphone not activated]. For Mr. Smakaj,  
23 Mr. Huw Bowden is appearing via the live link. My name is  
24 Derrick Gooden, and I'm joined by Ms. Matilda Falchetta.

25 JUDGE GOSNELL: Yes, welcome, Mr. Gooden.

1 MR. GOODEN: Thank you.

2 MR. EDWARDS: Good morning, Your Honour. Same appearances as  
3 yesterday. Mr. Holmes, though, may be joining us a bit later.

4 MR. YOUNG: Your Honour, good morning. For Mr. Fazliu, I'm  
5 assisted today remotely by Ms. Vjose Beqiri. Thank you.

6 MR. ADMIRAAL: Good morning, Your Honour. Same appearances as  
7 always. Thank you.

8 JUDGE GOSNELL: Court Clerk, would you please bring in the  
9 witness.

10 Mr. Hafetz, do you wish to add a document to your queue?

11 MR. HAFETZ: Thank you, Your Honour. Yes, for potential use  
12 with the witness so that she's able to see yesterday's transcript in  
13 the form that it's in now, which I believe has just been distributed  
14 to all parties, we would, if possible, ask to have that added to the  
15 presentation queue so, if necessary, we can actually look at the  
16 document together.

17 JUDGE GOSNELL: Any objection from the Defence?

18 MS. MENEGON: No objection.

19 JUDGE GOSNELL: That's fine, then. Thank you, Mr. Hafetz.

20 [The witness takes the stand]

21 JUDGE GOSNELL: Good morning and welcome back, Professor Fraser.  
22 I hope you've had a good rest overnight.

23 THE WITNESS: I did, thank you.

24 JUDGE GOSNELL: And we'll be continuing this morning with your  
25 questioning by the Prosecution, Mr. Hafetz.

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 891

1 Mr. Hafetz.

2 MR. HAFETZ: Thank you, Your Honour.

3 WITNESS: HELEN FRASER [Resumed]

4 Cross-examination by Mr. Hafetz: [Continued]

5 Q. Good morning --

6 A. Good morning.

7 Q. -- again, Professor Fraser.

8 I want to go back to one of the subjects briefly that we were  
9 discussing yesterday, and I don't want to dwell on this but it's for  
10 clarity of the record.

11 At page 45 and 46 of the draft transcript yesterday, you had an  
12 exchange with Ms. Menegon about various concerns you had about SPO  
13 transcripts in this case. Ms. Menegon asked you:

14 "In your report, you also mention as an issue the interpretation  
15 of various sounds, like page turning, which go far beyond what is  
16 objectively derivable from the audio itself."

17 And your answer was:

18 "Yes. There were quite a lot of examples of what you could call  
19 sound effects being described in ways that -- exactly that. It goes  
20 beyond what you can hear. Perhaps you hear something that sounds  
21 like paper rustling or paper moving. Is it a page being turned?  
22 Same, you might hear what seems to be a like door moving. Is it  
23 somebody entering or leaving? These, I would say, go beyond what is  
24 in the audio itself."

25 Now, later in the day, starting at page 95 and continuing

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 892

1 through around page 100 of that draft transcript, after you and I had  
2 discussed your own review of audio recordings and transcription  
3 material in different phases of the Eastman and Clark cases, you  
4 agree that in those cases you had found, among others, observed or  
5 perceived various sounds in recorded audio that you reviewed,  
6 including background sport commentary or other television -- on the  
7 television or radio, a good deal of shuffling and other sounds  
8 interfering with speech, and episodes of whispering plausibly  
9 interpretable of a complaining style about the bureaucratic process.

10 Do you remember our discussion of that yesterday?

11 A. Yes.

12 Q. And there was also your observation in one case, in the Pact  
13 case, of one person whispering, apparently in an urgent secretive  
14 manner, and the other person, closer to the microphone, responding.  
15 Do you remember that?

16 A. Yes.

17 Q. And ultimately you agreed that it is possible for -- that the  
18 SPO transcriber or transcribers in this case, it was possible for  
19 them to have properly heard and written down in their transcript the  
20 sound of paper shuffling during multiple SPO recordings in this case.  
21 Do you remember that?

22 A. Yes.

23 Q. And you still agree with that; yes?

24 A. Yes.

25 Q. And just so we're not using different --

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 893

1 JUDGE GOSNELL: Mr. Hafetz, just to remind you that it's very  
2 important that there be a pause --

3 MR. HAFETZ: Thank you.

4 JUDGE GOSNELL: -- after the witness's answer before you start  
5 your next question.

6 And likewise, Dr. Fraser, please do try to observe a pause  
7 before you start answering.

8 THE WITNESS: Thank you.

9 MR. HAFETZ: My apologies, Your Honour, and thank you.

10 Q. And so there's no miscommunication, when I say "paper  
11 shuffling," it's another phrase for paper rustling; right?

12 A. Yes.

13 Q. The sound of paper moving is what we're talking about; yes?

14 A. Yes.

15 Q. Now, at a certain point in the discussion, you said you really  
16 don't like the term "objectively derivable," at least as applied to  
17 the sounds of paper shuffling or other sounds. Do you remember that?

18 A. Yes.

19 MR. HAFETZ: Madam Court Officer, I'd ask you to please pull up  
20 1D136 and go to page 19. And if we can go to the very bottom of  
21 page 19.

22 Q. Professor, do you have a copy of your report with you?

23 A. Yes.

24 Q. Okay. Turning your attention to the bottom of that page, you  
25 write in your report that:

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 894

1           "The transcripts also include a good deal of contextual  
2           commentary regarding who is entering and leaving rooms,  
3           interpretation of various sounds like paper rustling or pages turning  
4           - all of which goes far beyond what is objectively derivable from the  
5           audio itself."

6           So first, we would agree now that at least as applied to paper  
7           rustling or paper moving, this part of the report is incorrect; is  
8           that right?

9           A.    Incorrect. Oh, I see what you mean. You're suggesting that  
10           because I've said it goes far beyond what is objectively derivable.

11           Q.    I'm not suggesting, I'm saying it. You said yesterday --

12           A.    Mm-hm.

13           Q.    -- that the SPO interpreters could have heard and objectively  
14           derived - your words - of paper moving. That's what we discussed  
15           yesterday; right?

16           A.    Yes.

17           Q.    And I believe we agreed that it was objectively derivable;  
18           right? It was possible for the SPO interpreters and transcribers to  
19           have objectively derived the sound of paper moving in one or more  
20           recordings; right?

21           A.    Yes.

22           Q.    Okay. So this part of the report is now not accurate; right?

23           A.    I'm afraid I don't see that, sorry. I may be misunderstanding  
24           you, but I'm not disagreeing with what I've written in that last  
25           paragraph.

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 895

1 Q. Okay. Let's just take it in small pieces.

2 A. Okay. Thank you.

3 Q. You say that the transcripts also include a good deal of  
4 contextual commentary regarding, among other things, paper rustling;  
5 yes?

6 A. I think I understand the misunderstanding. I think what I was  
7 referring to there was that perhaps there was paper rustling or pages  
8 turning, but it wasn't clear how -- how it was possible to know that  
9 it was pages turning so ...

10 Q. So it's only pages turning that may not be objectively  
11 derivable?

12 A. Well, as I was trying to say yesterday, I think this term that  
13 some things are objectively derivable and others are not is not very  
14 helpful, and it's a difficult concept of what is objectively  
15 derivable from audio. But I'm not particularly disagreeing with what  
16 I've written there.

17 Q. Well, doctor, that brings up the other question, which is you're  
18 the one who wrote the words "objectively derivable"; right?

19 A. Yes.

20 Q. And you're taking issue with your own use of those words in your  
21 own report?

22 A. I'm saying it goes beyond what is objectively derivable. I  
23 don't think I've said what is objectively derivable.

24 Q. Do you have an objection to the use of the phrase "objectively  
25 derivable" in your own report?

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 896

1 A. Not really, no. I'm not disagreeing with what I've written  
2 there.

3 Q. So do you believe now, sitting here today, that an SPO  
4 transcriber noting down the sound of paper rustling in one or more  
5 transcripts "goes far beyond what is objectively derivable from the  
6 audio itself"?

7 A. I think the interpretation of those sounds. That's what I was  
8 trying to say. I don't disagree with what I've written there. I do  
9 believe that some of the commentary about entering and leaving rooms  
10 and interpretation of various sounds does go beyond what is  
11 objectively derivable from the audio itself. That's right.

12 Q. Not as applied to paper rustling, though; right?

13 A. Well, I suppose if you really think it through, if you hear a  
14 rustling sound, how can you be confident that it's paper rather than  
15 something else? It's -- these things are interpretations. They  
16 might be correct interpretations, but they are interpretations.

17 Q. But the question is, doctor, is that type of sound objectively  
18 derivable, just like you wrote it down in the Pact and Eastman cases  
19 for other sounds, including the intent of the speaker?

20 A. I'm not sure that what I wrote in the brief quotes that you read  
21 out is exactly the same as this type of circumstance. I think I -- I  
22 think I was talking about what was on television in the section that  
23 you read out. I haven't reviewed that, and I would be unwilling to  
24 go back and think about what I meant there. There might have been  
25 other -- there would have been definitely other aspects of it there.

Witness: Helen Fraser (Resumed) (Open Session)

Page 897

Cross-examination by Mr. Hafetz (Continued)

1 I think when we're transcribing, all we can do is write our best  
2 understanding of what's going on, and that's what the people have  
3 done here.

4 Q. Dr. Fraser, do you think it's possible, based on your 30-plus  
5 years of experience in this field, for an SPO transcriber to have  
6 properly noted in a transcript the sound of paper moving as they  
7 heard it in the --

8 A. Yes [overlapping speakers] ...

9 Q. As they heard it in the recording?

10 A. I'm sorry, I didn't hear the last part.

11 Q. As they heard it in the recording.

12 A. Yes, I do.

13 Q. Okay. Thank you. I'd like to talk now, Dr. Fraser, about your  
14 communications with the Defence and the materials you received in  
15 this case.

16 A. Okay.

17 Q. Now, prior to signing your report on 27 March 2026, did you  
18 provide the Defence with any draft versions of your report?

19 A. I expect so, yes.

20 Q. Well, doctor, you're testifying here as an expert and so what  
21 I'm asking you is, yes or no, did you provide it?

22 A. Yes, I did.

23 Q. How many draft versions did you provide them with?

24 A. I don't remember.

25 Q. More than one?

Witness: Helen Fraser (Resumed) (Open Session)

Page 898

Cross-examination by Mr. Hafetz (Continued)

1 A. Probably, yes.

2 Q. More than two?

3 A. I will not be able to answer with definiteness.

4 Q. Approximately at what point in time between your assignment at  
5 the end of December 2025 and the completion of your report on  
6 27 March did you provide these drafts?

7 A. I honestly do not remember the exact dates.

8 Q. Roughly?

9 A. I can't really state roughly. I'm sorry.

10 Q. Did you receive feedback from the Defence on the one or more  
11 draft reports --

12 A. Yes.

13 Q. -- you provided -- if I can finish.

14 A. Sorry.

15 Q. That you provided to them?

16 A. Yes.

17 Q. In what form did you receive that feedback? Was it via e-mail,  
18 was it via Teams or other online communication, or was it on the  
19 phone?

20 A. I'm confident it wasn't on the phone, but we did have e-mail  
21 correspondence and Zoom conversations.

22 Q. What was the flavour of those conversations?

23 A. We were just discussing the material.

24 Q. Did they ask you follow-up questions on information in your  
25 report?

Witness: Helen Fraser (Resumed) (Open Session)

Page 899

Cross-examination by Mr. Hafetz (Continued)

1 A. Yes.

2 Q. And did you provide oral or written answers to those?

3 A. Yes.

4 Q. In writing?

5 A. I think probably most of it was in conversation.

6 Q. Did you take notes on those conversations?

7 A. Yes.

8 Q. And did you adjust your report accordingly based on their  
9 questions and instructions?

10 A. I would have, but I don't remember exactly what I did.

11 Q. Do you remember any of the follow-up questions or instructions  
12 they asked in this --

13 A. Not in de --

14 Q. -- intermittent drafting process, if I can finish?

15 A. Sorry, yes. Sorry, I thought you had finished.

16 Q. Do you remember any of the substance was that they asked you  
17 about or asked you to change or alter or expand on in your report?

18 A. I think they were mainly asking clarification questions.

19 Q. You don't note anywhere in your report that there were previous  
20 drafts; right?

21 A. No, I don't note that.

22 Q. And you don't note anywhere in your report what follow-up  
23 questions the Defence asked you; right?

24 A. No, I don't note that.

25 Q. And because you don't remember it now, we're just left to guess

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 900

1 about it; right?

2 A. I didn't know it was a requirement that I should write that  
3 so ...

4 Q. But we don't know now what instructions you received or what  
5 follow-up questions you received; right?

6 A. I don't know. Perhaps you've asked them. I don't know.

7 Q. But we don't know from you; right?

8 A. You don't know from me.

9 Q. On the question of specific written correspondence, about how  
10 many e-mails did you exchange with the Defence from end of December  
11 to 27 March?

12 A. I don't know.

13 Q. More or less than ten, do you think?

14 A. Probably more than ten.

15 Q. More or less than 20, do you think?

16 A. I won't be able to answer in a very specific way.

17 Q. And is it fair to say that some of those e-mails contained  
18 further instructions?

19 A. From my memory, most of the questions were clarification from  
20 them.

21 Q. Can you give me an example of one such clarification?

22 A. I'm sorry, I can't.

23 Q. Now, according to your report - and this is in section 3 - you  
24 received six unenhanced wav files of recorded audio from the Defence;  
25 correct?

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 901

1 A. Yes.

2 Q. And each file contained approximately five minutes of audio;  
3 yes?

4 A. Yes.

5 Q. And then you received an additional two enhanced wav files;  
6 right?

7 A. Yes.

8 Q. Also about five minutes?

9 A. I've got a feeling one of them was shorter but I'd have to check  
10 my notes.

11 Q. Okay. This is the sum total of audio files you received from  
12 the Defence; correct?

13 A. I think so, yes.

14 Q. Well, if there were more --

15 A. They should be in my report.

16 Q. -- they should be in your report; right?

17 A. Mm-hm.

18 Q. Okay. So then it's fair for us to assume that the sum total of  
19 audio files you received are the eight I just described; yes?

20 A. It's possible that I received others and didn't refer to them,  
21 but I -- I did try to write down the files, audio files and other  
22 files, other materials that I received that were relevant to the  
23 report. I don't remember that, but I'm just saying it's -- it's  
24 possible there were others that I didn't refer to that I did receive.

25 Q. And when we say "received," you mean received from the Defence;

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 902

1     yes?

2     A.    Yes.

3     Q.    So you're saying it's possible that they sent you more audio  
4     files that are not in your -- noted in your report?

5     A.    There was a download with a lot of material.  I honestly don't  
6     remember exactly.  I haven't reviewed all that.  I thought I would be  
7     asked questions about what's in my report.  I haven't reviewed all  
8     the previous material.

9     Q.    But you would agree for purposes of writing a report where  
10    you're commenting on the entire scope of recordings and  
11    transcriptions in this case, it would be important for you to note  
12    which material exactly that you received from the Defence; right?

13    A.    Yes.

14    Q.    Okay.  But you may not have done that.

15    A.    Possibly not.

16    Q.    Of the 348 audio files admitted in evidence in this case,  
17    covering more than 28 hours of recorded audio, your report notes that  
18    you received a total of eight; yes?

19    A.    Yes.

20    Q.    You know that's less than 3 per cent; right?

21    A.    Yes.  I haven't done the calculation but it sounds reasonable.

22    Q.    It sounds about right; yeah?

23    A.    Yes.

24    Q.    So unless there are other audio files that you received and  
25    listened to and did not note in your report, it means you know

Witness: Helen Fraser (Resumed) (Open Session)

Page 903

Cross-examination by Mr. Hafetz (Continued)

1 nothing about approximately 97 per cent of the audio files in this  
2 case; is that fair?

3 A. Yes.

4 Q. Did you ever ask the Thaci Defence in your multiple  
5 communications between December and March, '25 to '26, did you ever  
6 ask them to be provided with more audio than the eight files noted in  
7 your report?

8 A. No, I didn't.

9 Q. Now, at the bottom of page 3 and top of page 4 of your report,  
10 which again is 1D136, you indicate that you received audio  
11 segments --

12 A. Sorry, it's not on the screen. I'll just have to find it here.

13 Q. Please take a look. And if it's useful to you, just let me know  
14 and I will put it on the screen.

15 A. Bottom of page 3 and top of page 4, did you say?

16 Q. Correct.

17 A. Yes.

18 Q. You indicate that you received audio segments only from the  
19 3 September and 6 October 2023 visits; correct?

20 A. Yes.

21 Q. And when I say that, I refer to section 3.1, on page 3, the (a)  
22 through (f), small letters, wav files. You see that; yeah?

23 A. Yes.

24 Q. And to clarify so the record is clear, from yesterday - and I  
25 believe this was an error and I'm going to ask you -- it was an

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 904

1     inadvertent error and I just want to make sure it's clear, and if I'm  
2     wrong, please tell me. At page 46 of the transcript, draft  
3     transcript, Ms. Menegon asked you - and this is lines 20 through 23  
4     of the draft transcript - with regard to the reliability of the  
5     audio, the Kuci visit, which is the 3 September 2023 visit, and the  
6     Smakaj visit, you said you do not speak Albanian, but you used tools  
7     to identify the quality. And then she asked you, is it fair to say  
8     these parts of the audio are indistinct.

9             Now, the Smakaj visit that she's referring to could be either  
10     from September 9 of 2023 or 7 October 2023. I believe this was an  
11     inadvertent misstatement because you didn't receive any audio,  
12     according to this, from Mr. Smakaj's September or October visits;  
13     right?

14     A.    No.

15     Q.    So where this asks you about the indistinct aspect of any part  
16     of a Smakaj visit, you actually know nothing about that; right?

17     A.    That sounds right. I'll just say what is right is that I had  
18     the -- I think it was the 3rd of September and the 6th of October.  
19     I'm afraid I didn't pay attention to the names of the visitors and  
20     all that sort of thing. And I have tried to be clear that I have  
21     only had access to those files from those dates that I've just  
22     mentioned. So if I made a mistake in relation to one of the names of  
23     the people who visited, I'm sorry, that was a mistake.

24     Q.    No need to apologise, Professor. Honestly, I am just trying to  
25     correct the record from yesterday and make sure that, in fact, you

1 didn't, as far as you know, receive or comment on any audio related  
2 to Mr. Smakaj's visits, and that appears to be correct.

3 A. I had the audio that's referred to there, which, from memory,  
4 was the 3rd of September and the 6th of October.

5 Q. Yes, and that's reflected in the dates at the beginning of the  
6 audio files (a) to (f) with exactly the dates you just said; right?

7 A. Yes.

8 Q. Now, if you turn the page to page 4 of your report, you also  
9 note that you received multiple versions of two different visits,  
10 again the 3 September and 6 October 2023 visits; is that right?

11 A. Yes.

12 Q. Okay. And you spent some time with Ms. Menegon discussing  
13 yesterday the different revised versions; right?

14 A. Yes.

15 Q. And I believe you actually said yesterday that it would be best  
16 practice for the Court to attempt to rely on one version, not four  
17 different versions; right?

18 A. From my memory of the discussion yesterday, and from my belief,  
19 I think it is difficult for the Court to evaluate the different  
20 versions, so I think I was questioning the value of having multiple  
21 different versions.

22 Q. Exactly. Okay. Now, did you receive any other parts of any  
23 other transcripts other than the ones noted here from the Defence?

24 A. I don't think so.

25 Q. Is that a definite no or we're not sure?

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 906

1 A. I would like to say no, but it's possible that something came to  
2 me that I didn't use. I've written here what I was -- the material  
3 that I was using in writing the report.

4 Q. And so assuming you didn't receive them or didn't read them and  
5 rely on them --

6 A. Yes.

7 Q. -- you then have no knowledge of the transcripts for seven of  
8 the nine recorded visits in this case; right?

9 A. I don't know how many visits there were in total, but I had  
10 material for those two visits. The rest of them I have no knowledge  
11 of, except the opinion that I was given, as we discussed the other  
12 day or yesterday, that these were considered to be representative.

13 Q. Considered by the Defence; yes?

14 A. Yes.

15 Q. But you have no independent knowledge of any transcript --

16 A. No.

17 Q. -- if I can finish, of any transcript that you didn't lay eyes  
18 on; right?

19 A. That's right.

20 Q. And the same for the translations; yes?

21 A. Yes.

22 Q. Now, if you look at section 3.4 on page 4 of your report, you  
23 note four different case filings that you received from the Defence  
24 in this case. Do you see those?

25 A. Yes.

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 907

1 MS. MENEGON: I apologise, my colleague. It has just been  
2 brought to my attention, and I am bringing it up because you have  
3 raised the question, about what I put to the witness with regard to  
4 the -- her listening to [indiscernible] with regard to the Kilaj --  
5 sorry, Kuci and Smakaj visit. And we have -- it has just been  
6 brought to my attention that indeed the temporary provisional  
7 transcript referred to them, but the official version released this  
8 morning do refer only to Kuci and Kilaj visits, just for the record.  
9 Thank you.

10 MR. HAFETZ: Thank you. And I'm glad. That's why we clarified  
11 it. You were correct, doctor.

12 Now, if we can please call up, Madam Court Officer,  
13 SPOE00411742, ending 411747.

14 Q. Professor Fraser, on the 15th of April, as you see from this  
15 e-mail, of this year, the SPO received -- my office received from the  
16 Thaci Defence a response to a request for some more information about  
17 material that might have been provided to you.

18 MR. HAFETZ: If we can turn to page 3 of the document, which is  
19 ending 745, you see -- if we can go down a little bit, if you don't  
20 mind. Thank you. Now -- thank you. Now if we go just up just a  
21 little bit. Okay. Now -- exactly.

22 Q. On 15 February 2026 and 15 March 2026, there was some more  
23 material provided to you. Do you see that?

24 A. Yes.

25 Q. Okay. And these were in the form of web links to the KSC policy

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 908

1 and some Registry instructions and the Decision on Working Language  
2 we discussed yesterday.

3 A. Yes.

4 Q. Did you review those materials?

5 A. I reviewed the Decision on Working Languages. And what was the  
6 other one? Yes, I think I reviewed that one as well.

7 Q. But you didn't note that you reviewed the Decision on Working  
8 Languages, which is 76, F76, in your report, did you?

9 A. No.

10 Q. No. What about the other materials in this February 15, 2026,  
11 communication?

12 A. I'm sorry, I'm not sure what you're referring to.

13 Q. Did you review those?

14 A. The ones in the first dot point there?

15 Q. The one that's, exactly, in the bullet for 15 February 2026.  
16 Correct.

17 A. That's the KSC Policy on Translation and Interpretation; the KSC  
18 Registry Instruction on Requesting Translation, Interpretation, and  
19 Verification Services; and the Decision on Working Languages. I  
20 definitely remember reading the Decision on Working Languages -- on  
21 Working Language, sorry. I may not have looked at the others. I'm  
22 not sure.

23 Q. If you had, you would have wanted to note them in your report;  
24 yes?

25 A. Not necessarily. I think we possibly even had some discussion

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 909

1 about that, whether I should note the Decision on Working Languages,  
2 but it -- I think the -- I think the advice was that it wasn't  
3 necessary to write that. I gave this note to Ms. Menegon, and I  
4 didn't -- I didn't study the Decision on Working Languages in detail  
5 and refer to it here, so it wasn't something I wrote down.

6 Q. When you say you gave this note to Ms. Menegon, which note is  
7 that?

8 A. This was part of the draft, with the materials.

9 Q. So one of the draft reports you drafted actually included  
10 reference to the working language decision?

11 A. Oh, no, no.

12 Q. No?

13 A. It was this, and I think I may have asked should I put these. I  
14 honestly do not remember. I haven't reviewed all this. I wasn't  
15 expecting questions about the background like this.

16 Q. But just so I'm clear --

17 A. Yeah.

18 Q. -- what exactly did you put in this or how did you reference  
19 this in a draft report such that you had a conversation about it that  
20 ultimately you did not include it in the report?

21 A. I think I may have said, should I include the decision on  
22 working languages.

23 Q. Which you did review you said; yes?

24 A. I did review it, yes, briefly. I just had a look at it.

25 Q. And you were told you don't need to or shouldn't include it?

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 910

1 A. I don't remember, to be honest. I don't remember.

2 Q. All right. And what about the other documents in that -- or  
3 materials in that first bullet? So specifically the KSC Policy on  
4 Translation and Interpretation, did you review that one?

5 A. I'm not sure. I didn't study them in a lot of detail.

6 Q. And what about the KSC Registry Instruction on Requesting  
7 Translation, Interpretation, and Verification Services?

8 A. I'd have to look at it to remember if I looked at it.

9 Q. Professor, at page 21 of your report, in a section on the  
10 evaluation process, you called the verification process here  
11 "woefully inadequate." Do you remember that?

12 A. Yes. I think I was referring to the use of the LSU reviewing  
13 with the -- reviewing the audio with the transcript.

14 Q. And before making that woefully inadequate evaluation, you may  
15 or may not have reviewed several of the policies related to  
16 translation, interpretation, and interpretation and verification; is  
17 that right?

18 A. I definitely looked at the Decision on Working Language, and I  
19 definitely had an understanding of the verification process that was  
20 to be used with the audio that I had looked at.

21 Q. Well, what you note in your report is that you have four legal  
22 filings, two of which are decisions from the Judge and two of which  
23 are legal filings, advocacy filings, by the Prosecution, right, which  
24 you criticise --

25 MS. MENEGON: Sorry -- sorry to interrupt. I just wanted to

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 911

1 correct. She didn't say "woefully inadequate" but "wholly  
2 inadequate." Just for the record.

3 MR. HAFETZ: I'm sorry, "wholly inadequate." Excuse me. That  
4 is my mistake.

5 Q. You said "wholly inadequate." So not an adjective, but "wholly"  
6 meaning entirely; yes?

7 MR. HAFETZ: Thank you for the correction.

8 Q. Dr. Fraser, do you recall a discussion with Defence counsel,  
9 whether it be via e-mail or phone conversation or other form of  
10 communication, where you were asked, prior to your preparation  
11 session, about any other support you could provide to answer  
12 questions from the Judge's decision in this case on the verification  
13 process and your report in general?

14 A. I'm not sure what you're referring to specifically.

15 Q. Do you recall the Defence asking you to comment on the Judge's  
16 observation that, in his view in the decision, your material did not  
17 seem to have any legal support behind it? Do you recall that?

18 A. Would you say exactly what you're asking me to recall? The  
19 Judge's decision -- you asked me to -- was I asked to comment on the  
20 Judge's decision that there was no legal support? Would you just say  
21 it again?

22 Q. Let's just look at page 3 of this document, if that's okay.

23 A. All right.

24 Q. We'll look at ERN 744, bottom of the page.

25 A. Excuse me, can I just clarify, this one that's on the screen

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 912

1 just now, I don't believe I've ever seen this before. Is that  
2 correct?

3 Q. That's correct, ma'am.

4 A. Okay.

5 Q. This is a summary of the Defence's communications with you --

6 A. Okay, mm-hm.

7 Q. Some of their communications with you, in response to a request  
8 from us for more information.

9 A. All right. So it's page 3 of this document.

10 Q. Bottom of page 3.

11 A. Mm-hm, okay. I think I'm with you now. Yeah.

12 Q. "On 14 February 2025," which should be 2026; correct?

13 A. I suppose so. And I notice also 2 February 2025 should be  
14 presumably 2026.

15 Q. Exactly. Both of those appear to be just typographical errors;  
16 yes?

17 A. As far as I would guess, yes. I didn't have any communication  
18 with them in February 2025.

19 Q. You weren't working on the case in February --

20 A. No.

21 Q. -- of 2025; right?

22 A. Certainly not, no.

23 Q. Now, this e-mail from the Thaci Defence reads that:

24 "On 14 February 2025, Professor Fraser was provided with  
25 Decision F00737 which admitted the SPO transcripts" and that you were

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 913

1 told the following. And then below that is what they say you were  
2 told.

3 A. Can I read it?

4 Q. Please do.

5 A. Thank you. I see. Yes.

6 Q. And for purposes of clarity because I understand you have not  
7 seen this before --

8 MR. HAFETZ: Can we show the witness the next page, because it  
9 does continue on to the next page.

10 THE WITNESS: Yes.

11 MR. HAFETZ:

12 Q. First, do you recall the exchange or exchanges with the  
13 Thaci Defence regarding the bullets summarised at the bottom of  
14 page 3 and continuing onto the top of page 4?

15 A. Yes.

16 Q. And --

17 A. Not in detail, but I'm reminded by seeing that that we did  
18 discuss that, yes.

19 Q. And when it says in the bullet for February 14, 2026, that you  
20 were told the following, how were you told that?

21 A. Would you mind going back? I think that came in an e-mail.

22 Q. Did you respond in e-mail?

23 A. Possibly -- probably not. I think we probably had a discussion  
24 over Zoom.

25 Q. And do you know roughly when that discussion on Zoom would have

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 914

1 taken place after February 14, 2026?

2 A. I don't know the exact date.

3 Q. Do you remember what you told the Defence in response to  
4 specifically the questions related to paragraphs 35 and 36 of  
5 Decision 737?

6 A. I do not remember exactly what I said at the time, and I'm  
7 trying to remember what those paragraphs were. I think I may  
8 remember, but I'm not a hundred per cent confident that I've got the  
9 right memory.

10 MR. HAFETZ: Can we call up F00737, and I'd ask to show  
11 paragraphs 35 and 36. Thank you, Madam Court Officer.

12 Q. Professor Fraser, if you wouldn't mind reading that and letting  
13 me know when you're finished, and we'll turn to paragraph 36 after  
14 that.

15 A. Would you mind going down, please, onto the next page. Thank  
16 you. I think I've finished that now. It's just one paragraph in 36;  
17 correct?

18 Q. That's correct.

19 A. Yes. Thank you.

20 Q. Do you remember reading these when they were provided to you?

21 A. Yes, I do.

22 Q. And you had some discussion with the Thaci Defence in response  
23 to this question; yes?

24 A. Yes.

25 Q. And do you remember what that conversation was now, having read

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 915

1 this?

2 A. I don't remember in detail, but I remember the content.

3 Q. And was this something that was addressed in different drafts of  
4 your reports, draft or drafts?

5 A. I would not think so. No, I don't think so.

6 Q. Okay. Dr. Fraser, I want to ask you a few questions about the  
7 scope of your conclusions in this case --

8 A. Okay.

9 Q. -- so that we're all clear about them. If you have your report  
10 in front of you, your conclusions in the case are detailed at  
11 pages 21 and 22 of your report; right?

12 MR. HAFETZ: And that's 1D136.

13 THE WITNESS: Yes.

14 MR. HAFETZ: Madam Court Officer, if I could see that at page 21  
15 to begin, and if we can look at the bottom half of the page.

16 Q. Now, I believe this came up yesterday, but there are actually  
17 two different conclusions referenced on this bottom half of this  
18 page 21; right?

19 A. Yes.

20 Q. Yes.

21 A. Sorry, I'm just confirming that. Yes.

22 Q. And the first conclusion regards section 7 itself; right?

23 A. Yes, that's right. That's the conclusion -- 7.8 is the  
24 conclusion to section 7. 8 is the conclusion to the whole report.

25 Q. Exactly. And section 7, if you look at page 17 - we don't need

1 to go to it, Madam Court Officer - is entitled "The present case."

2 Yes?

3 A. I'll just confirm because we did have a mistake before.

4 Q. Yeah.

5 A. Yes.

6 Q. Okay. And then section 8 is the conclusion, the ultimate  
7 conclusion of the report; right?

8 A. Yes.

9 Q. That's what ultimately you're asking this Court to pay most  
10 attention to; right?

11 A. Yes. I think I tried to summarise the main arguments in the  
12 conclusion.

13 Q. Understood. And that section 8 begins:

14 "I am unable to assess the reliability of these translations  
15 based on the information provided to me."

16 When you say "these translations," which translations are you  
17 referring to exactly?

18 A. I suppose that's the translations of those two visits that we've  
19 been discussing, 3rd of September and 6th of October.

20 Q. Translations for which you received a total of eight audio  
21 segments, two of them contextually duplicative of the other; yes?

22 A. Two of them contextually?

23 Q. Two of them enhanced versions of the same audio; yes?

24 A. Okay, yes.

25 Q. So this does not apply, this conclusion does not apply to the

1 translations that you did not receive in the case; correct?

2 A. Only to the extent that they -- the ones I did receive are  
3 representative of the whole.

4 Q. But you don't know anything about whether they're representative  
5 or not; right?

6 A. As we've said, I wouldn't say I know nothing about it because I  
7 did have the Defence's comment on that. But I think I've been very  
8 clear that I did not have access to more, and that I was relying on  
9 their assurance to me or their information to me that they were  
10 representative.

11 Q. And can I take it, then, that every reference to translations  
12 and transcripts in section 8 of your report, the conclusion section,  
13 is meant to refer only to the transcripts and translations of the  
14 3 September 2023 and the 6 October 2023 visits?

15 A. I think I've been very clear about that. I think that's the  
16 material that I had and that I was told that they were  
17 representative. I did not see the others, so I'm basing my  
18 conclusion on those -- those two visits.

19 Q. Well, doctor, first of all, we're not sure now which material  
20 you actually received; right? So I need to be precise about which  
21 ones you are referring to when you use the words "them," "they,"  
22 "they," "these," "their reliability" and "the translations."

23 So to be clear, I understand it may be clear to you, but for me  
24 and for the Court, you mean to refer in all of those words - "them,"  
25 "they," "they," "these," "their reliability" - in section 8 --

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 918

1 A. Yes.

2 Q. -- refers only to the 3 September and the 6 October transcripts  
3 and translations.

4 A. Yes.

5 Q. So when you say, "I would especially caution against resorting  
6 to a sense that the translations seem, in whole or in part, to be  
7 internally consistent or plausible in light of available external  
8 evidence," at page 22, you refer only to those two transcripts I just  
9 mentioned, 3 September and 6 October; right?

10 A. I think I can only repeat what I've already said. Those are the  
11 ones that I based it on. To the extent the others are similar, it  
12 would refer also to them. If they're not -- if the ones I saw were  
13 not representative, then it wouldn't refer to the others. If they  
14 were representative, then it would refer to the others. But I  
15 certainly based my analysis on those two visits that you've  
16 mentioned.

17 Q. I'm asking you a different question, Professor.

18 A. Okay.

19 Q. When you are writing and cautioning the Court on how they should  
20 interpret and handle and evaluate this evidence and using words  
21 "they," "them," "their," right, it's important, you would agree, to  
22 have clarity about what we're talking about; right?

23 A. Yes.

24 Q. And so your caution is limited, to the extent it has validity at  
25 all, your caution is limited to the transcripts 3 September and

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 919

1 6 October; right?

2 A. I don't want to repeat myself again, but yes, and to others  
3 insofar as those two are representative of the others, which I can't  
4 personally judge. But to the extent that they are -- that the two I  
5 had were representative, then that comment would refer to those as  
6 well.

7 Q. Understood.

8 MR. HAFETZ: Your Honour, if now is a good time to break, I can  
9 stop or we can continue.

10 JUDGE GOSNELL: Ordinarily, Mr. Hafetz, we go until 11.

11 MR. HAFETZ: Oh, I'm sorry. Thank you very much.

12 Q. Doctor, I'd like to ask you a few questions about your  
13 categories of audio, quality and intelligibility. That's the clear,  
14 unclear, indistinct; yes?

15 A. Yes.

16 Q. Your report defines clear audio as easy for any competent  
17 speaker of the language to understand; right?

18 A. Yes.

19 Q. And unclear audio is audio that requires careful attentive  
20 listening, but can be understood by professional transcribers on the  
21 basis of internal context alone; right?

22 A. Yes.

23 Q. And then indistinct audio is audio that's open to different  
24 distinctions to such an extent that, even for skilled listeners,  
25 priming with different external expectations is liable to result in

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 920

1 different hearing; right?

2 A. Yes.

3 Q. And those definitions outlined in your report were then expanded  
4 on by you during your preparation session with the Defence; yes?

5 A. Yes.

6 Q. We touched on this yesterday, but to be clear, these three  
7 categories are central to your ultimate conclusion that we just  
8 discussed in the report; yes?

9 A. Yes.

10 Q. And specifically, your assessment as to which category applies  
11 to the segments of audio in the case is essential to your conclusion  
12 about the reliability of the Prosecution transcripts and  
13 translations; right?

14 A. Yes.

15 Q. And that's as outlined at pages 21 and 22; correct?

16 A. Yes.

17 Q. And specifically at the bottom of page 21 and the top of 22, you  
18 conclude that since -- this is top of 22:

19 "Since that external evidence must have influenced the  
20 transcripts, there is a serious risk of circular reasoning of the  
21 kind that has created injustice via multiple kinds of forensic  
22 evidence in the past, including speech evidence."

23 Right?

24 A. Yes.

25 Q. That "since," meaning "because"; right?

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 921

1 A. Yes.

2 Q. Turns on and relies on the categorisation of the audio as, in  
3 your view, indistinct; right?

4 A. Unclear and indistinct, I think, both of them.

5 Q. But unclear wouldn't necessitate necessarily external  
6 information; right?

7 A. Not necessarily.

8 Q. Right. And it's that "since" that turns on your use of  
9 ChatGPT's Whisper; yes?

10 A. Yes.

11 Q. In fact, without the assessment, the proper assessment of the  
12 clarity/intelligibility category, your conclusions don't hold at all;  
13 right?

14 A. Would you mind repeating that? Without the assessment?

15 Q. Without the assessment, the audibility and intelligibility  
16 assessment that we just discussed, your conclusions don't hold;  
17 correct?

18 A. Yes. If it was a clear recording, that would be a different  
19 situation altogether.

20 Q. Well, if it was assessed by you; right? Your assessment of it  
21 is the critical part; right?

22 A. Yes.

23 Q. And that's the assessment you relied on an -- one or more AI  
24 tools for; yes?

25 A. This is why I wanted you to clarify. I don't believe that I

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 922

1     relied wholly on those. I relied on my observation of the material  
2     as well. And the AI transcription was part of that but it wasn't all  
3     of it.

4     Q. The other part was, as you noted in paragraph 27 of your prep  
5     session, your impressions as a non-Albanian speaker; right?

6     A. As a non-Albanian expert in forensic transcription and forensic  
7     audio, yes.

8     Q. Yes, your impressions; right?

9     A. Yes.

10    Q. So together, it's your impressions as a non-speaker of Albanian  
11    and the ChatGPT experiment; yes?

12    A. Okay.

13    Q. It's not an okay. It's a yes or no.

14    A. Many questions are not really yes or no in that way, but I'm  
15    accepting what you say.

16    Q. It's not about accepting what I say, Professor. It's about  
17    answering my question, and I can read it back to you if you want.

18            Together, it's your impressions as a non-speaker of Albanian and  
19    your use of ChatGPT; correct?

20    A. I'm hesitating because "impression" sounds very lightweight. I  
21    think it was a more detailed assessment than that. What I'm trying  
22    to do is make clear that I didn't rely wholly on ChatGPT, and I also  
23    reviewed the audio with my expertise in forensic audio and forensic  
24    transcription.

25            MR. HAFETZ: Madam Court Officer, I'd ask you to call up

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 923

1 DHT1201728, and if we can go to page 6 of the document, which is ERN  
2 ending 1733.

3 Q. I'd like to go to the bottom half of that page and focus,  
4 Professor, at paragraphs 27 and 28.

5 A. Would you mind telling me what this is?

6 Q. This is -- absolutely. This is the Defence memo of your meeting  
7 with them on the 5th of May, 2026, your preparation session. And I  
8 understand --

9 A. On the date, would you say, please?

10 Q. 5 May --

11 A. Okay.

12 Q. -- of 2026.

13 A. Yes, just the recent one. Yes, mm-hm.

14 Q. Did you have another prep session?

15 A. No, no, I'm just trying to figure out what this is. It's the  
16 first time I've seen it.

17 Q. If you wouldn't mind reading paragraphs 27 and 28 and let me  
18 know when you've finished.

19 MS. MENEGON: Your Honour, sorry to interrupt, but I just want  
20 to notice that this item is not in the presentation queue of the  
21 Prosecution. I have no objection because it is in our presentation  
22 queue, but it should have been in their queue.

23 JUDGE GOSNELL: Was this on your queue, Ms. Menegon?

24 MS. MENEGON: Yes, it was. I understand your ruling to be that  
25 each party has to include any items they want to use, whether or not

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 924

1 they are in the presentation queue of another party. That's what we  
2 have done so far.

3 JUDGE GOSNELL: That's less an issue of a ruling and more an  
4 issue of logistics, and of course this came up in respect of  
5 different Defence teams using one another's queues. In any event, I  
6 don't think there's any substantive issue here, so we can proceed.

7 MR. HAFETZ: Thank you, Your Honour.

8 THE WITNESS: I've read those paragraphs now.

9 MR. HAFETZ:

10 Q. Are they accurate as written down by the Defence, because I  
11 understand, ma'am, you did not write them?

12 A. No, the -- I've read them and they seem very clear. And they  
13 seem -- obviously I can't remember the exact words that I used, but  
14 they seem like a very reasonable summary of what I would have said,  
15 and very similar to what exactly we've just been talking about.

16 Q. And what these paragraphs say, in sum and substance, correct, is  
17 that your assessment of the audio quality of the eight segments we're  
18 talking about was limited because of your lack of Albanian; right?

19 A. Yes.

20 Q. Ideally, the audio quality would be assessed with the assistance  
21 of an Albanian speaker or speakers; right? That's in paragraph 28;  
22 right?

23 A. Yes, who would listen independently of each other to the audios.  
24 Yes, that's right.

25 Q. And as you know --

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 925

1 A. I'm just hesitating because it does say "speakers" there, and I  
2 probably did say speakers, but ideally it would be speakers of  
3 Albanian who had experience in listening to indistinct audio.

4 Q. And that part of paragraph 28 is consistent with your testimony  
5 yesterday to the Defence, when you indicated that -- when asked by  
6 Ms. Menegon, that you actually asked for the assistance of one or  
7 more Albanian speakers to assist you with this very task; right?

8 A. Yeah -- well, I asked would it be possible for me to have access  
9 to such people, yes.

10 Q. Because it would have been useful to you, as you're suggesting  
11 here; yeah?

12 A. It would indeed, yes.

13 Q. Just for the overlap, it's important I finish; yeah?

14 A. Thank you. It's hard to remember, but I try.

15 Q. It's understood. Hard for me as well.

16 But what this is talking about is the assessment of the audio  
17 quality; right?

18 THE INTERPRETER: Interpreter's note: The speakers are kindly  
19 requested to pause between question and answer. Thank you.

20 JUDGE GOSNELL: Mr. Hafetz, we -- it was in the course of your  
21 colloquy with the witness about observing pauses that the  
22 interpreters correctly noted that there were not pauses being  
23 observed.

24 So, Dr. Fraser, if I could just please ask you to again observe  
25 a pause before you start answering so that you can be absolutely sure

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 926

1 that Mr. Hafetz has finished with his question, and once you're sure  
2 that he's finished with his question, then you can proceed.

3 And, Mr. Hafetz, since you're here very familiar, I'm sure  
4 you'll know to observe the pause when you ask your question. Thank  
5 you.

6 MR. HAFETZ: Thank you, Your Honour.

7 Q. The whole meaning of paragraphs 27 and 28 is to discuss your  
8 assessment of the audio quality that we're discussing now; right?

9 A. Yes.

10 Q. And it was because of this limitation of yours and lack of  
11 access to one or more Albanian speakers that you then turned to the  
12 AI tool; yes?

13 A. Yes.

14 Q. And to go back to my question that brought us to this note, the  
15 sum total of the assessment done on the quality of the audio in this  
16 case was your impression described here as a non-speaker and your use  
17 of the AI program; yes?

18 A. As a non-speaker of Albanian but as an expert in forensic audio  
19 and forensic transcription.

20 Q. But that expertise was not sufficient to complete the report;  
21 correct?

22 A. I think it would have been sufficient. I could have easily done  
23 it without doing the ChatGPT analysis. Not analysis, sorry, the  
24 ChatGPT transcription.

25 MR. HAFETZ: I'd ask to go to DH -- excuse me, 1D136, which is

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 927

1 your report. Bottom of 17.

2 Q. 7.2 reads:

3 "Since I do not speak the language and have no access to skilled  
4 Albanian [interpreters], I assessed the intelligibility of the audio  
5 by running it through an AI transcription tool."

6 You're saying now that you didn't need to do that? It wasn't  
7 necessary for your report?

8 A. It was not necessary. I think it was helpful.

9 MR. HAFETZ: Could we go to the -- please go the next page, top  
10 of the page.

11 Q. The next three paragraphs are about your use of ChatGPT's  
12 Whisper in the one or more models you used or versions you used to  
13 conduct this experiment; yes?

14 A. Yes.

15 Q. And the sum total of that is captured in the middle of the page,  
16 if we go a little further down to the next paragraph, with the  
17 sentence beginning "This means ...". That's based on what happened  
18 above; right?

19 A. Yes.

20 Q. Okay. Based on your experiment with the AI models which you're  
21 now saying wasn't necessary for your report. You, as a non-Albanian  
22 speaker --

23 A. Yes.

24 Q. -- could have assessed the audio in this case sufficient to  
25 reach your conclusion. Is that what you're saying?

Witness: Helen Fraser (Resumed) (Open Session)

Page 928

Cross-examination by Mr. Hafetz (Continued)

1 A. Yes.

2 Q. And so why did you run it through an AI model and describe half  
3 a page of your doing that?

4 A. Because I thought it would be helpful.

5 Q. To whom?

6 A. To the Court. To me, in the first place.

7 Q. So in your prep note when you say that you were limited in your  
8 assessment, even your limited assessment without the language is  
9 sufficient for you to reach the conclusion. That's what you're  
10 saying now?

11 A. Well, a year or two ago we wouldn't have had ChatGPT  
12 transcription, so it's a new tool and I thought it would be helpful.

13 Q. Ma'am, that wasn't my question. My question was: So in your  
14 prep note, when you say you were limited in your assessment, even  
15 your limited assessment without any ability to even recognise the  
16 language of Albanian, that was enough for you to reach the conclusion  
17 you reached?

18 A. Yes.

19 Q. All right. These categories, doctor, that you rely on, the  
20 clear, unclear, indistinct, are made up by you; correct?

21 A. The terms are, but they -- yes.

22 Q. There's no linguistic organisation that promulgates those terms;  
23 right?

24 A. Not as such, no.

25 Q. Well, not at all; right?

Witness: Helen Fraser (Resumed) (Private Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 929

1 A. No.

2 Q. Okay. Let's talk a little bit more about the use of the AI tool  
3 for your report. At the end of yesterday you explained that you used  
4 three programs associated with ChatGPT, one of them online and two  
5 offline; yes?

6 A. Yes.

7 MR. HAFETZ: And, Your Honour, given the colloquy yesterday, I  
8 leave it to the Defence, I'm just going to flag it now, that I am  
9 going to name the software used, and yesterday we were in private  
10 session when that was discussed.

11 JUDGE GOSNELL: I think, Mr. Hafetz, to be fair to the witness,  
12 especially in light of the end of yesterday's session, it would be  
13 best if we do that in private session as well.

14 MR. HAFETZ: There's no objection from us, Your Honour.

15 JUDGE GOSNELL: Should we do that now, Mr. Hafetz?

16 MR. HAFETZ: Yes, let's do that now.

17 JUDGE GOSNELL: Could we go into private session, please.

18 [Private session]

19 [Private session text removed]

20

21

22

23

24

25

Witness: Helen Fraser (Resumed) (Private Session)

Page 930

Cross-examination by Mr. Hafetz (Continued)

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Helen Fraser (Resumed) (Private Session)

Page 931

Cross-examination by Mr. Hafetz (Continued)

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Helen Fraser (Resumed) (Private Session)

Page 932

Cross-examination by Mr. Hafetz (Continued)

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Helen Fraser (Resumed) (Private Session)

Page 933

Cross-examination by Mr. Hafetz (Continued)

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Helen Fraser (Resumed) (Private Session)

Page 934

Cross-examination by Mr. Hafetz (Continued)

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Helen Fraser (Resumed) (Private Session)

Page 935

Cross-examination by Mr. Hafetz (Continued)

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Helen Fraser (Resumed) (Private Session)

Page 936

Cross-examination by Mr. Hafetz (Continued)

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Helen Fraser (Resumed) (Private Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 937

1 [Private session text removed]

2

3

4

5

6 [Open session]

7 THE COURT OFFICER: Your Honour, we are now in public session.

8 JUDGE GOSNELL: We're adjourned until 11.30. Thank you.

9 --- Recess taken at 11.01 a.m.

10 --- On resuming at 11.30 a.m.

11 JUDGE GOSNELL: May the witness be brought in, please.

12 MR. HAFETZ: Your Honour, if I just may address one housekeeping  
13 matter with you.

14 JUDGE GOSNELL: Before the witness arrives?

15 MR. HAFETZ: Yes.

16 JUDGE GOSNELL: Then, Madam Court Usher, please just wait until  
17 we finish with this matter.

18 MR. HAFETZ: Thank you, Your Honour.

19 JUDGE GOSNELL: Mr. Hafetz, just one moment --

20 MR. HAFETZ: Thank you.

21 JUDGE GOSNELL: -- while we ensure that Mr. Thaci is present.

22 And I see Mr. Bowden has left us. Is that right, Mr. Gooden?

23 MR. GOODEN: Yes, Your Honour.

24 JUDGE GOSNELL: Thank you. And I see Mr. Thaci is there, so you  
25 may proceed, Mr. Hafetz.

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 938

1 MR. HAFETZ: Thank you, Judge. Just very briefly. I just  
2 wanted to give you an update on the timing for everyone's schedules.  
3 I know I had originally forecast with a reservation three hours. I  
4 do anticipate going into the afternoon. I will certainly finish by  
5 today, and I would expect before the end of the day, but -- and I can  
6 explain why, if necessary, but that is what I anticipate.

7 JUDGE GOSNELL: That's fine, Mr. Hafetz. I do think that the  
8 testimony has been certainly useful to the Court, and that some of  
9 the matters are technical and require more time to proceed through.  
10 I do hope we can proceed efficiently through this session so that  
11 we're as close to the end as possible by the time we get to the end  
12 of this session.

13 MR. HAFETZ: I will endeavour to do so, Judge. Thank you.

14 JUDGE GOSNELL: Court Usher, could we please bring in the  
15 witness.

16 [The witness takes the stand]

17 JUDGE GOSNELL: Mr. Hafetz, please proceed.

18 MR. HAFETZ: Thank you, Your Honour.

19 Q. Welcome back, Professor. When we left off, we were talking  
20 about your knowledge of different dialects, to the extent they exist,  
21 in Albanian.

22 A. Okay. I thought we were talking about word error rate.

23 Q. Oh, excuse me. That's right. I'm going to get to that. We  
24 were.

25 MR. HAFETZ: And I think we may want to move back into private

Witness: Helen Fraser (Resumed) (Private Session)

Page 939

Cross-examination by Mr. Hafetz (Continued)

1 session for this, Your Honour.

2 JUDGE GOSNELL: Private session, please.

3 [Private session]

4 [Private session text removed]

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Helen Fraser (Resumed) (Private Session)

Page 940

Cross-examination by Mr. Hafetz (Continued)

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Helen Fraser (Resumed) (Private Session)

Page 941

Cross-examination by Mr. Hafetz (Continued)

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Helen Fraser (Resumed) (Private Session)

Page 942

Cross-examination by Mr. Hafetz (Continued)

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Helen Fraser (Resumed) (Private Session)

Page 943

Cross-examination by Mr. Hafetz (Continued)

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Helen Fraser (Resumed) (Private Session)

Page 944

Cross-examination by Mr. Hafetz (Continued)

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Helen Fraser (Resumed) (Private Session)

Page 945

Cross-examination by Mr. Hafetz (Continued)

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Helen Fraser (Resumed) (Private Session)

Page 946

Cross-examination by Mr. Hafetz (Continued)

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Helen Fraser (Resumed) (Private Session)

Page 947

Cross-examination by Mr. Hafetz (Continued)

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Helen Fraser (Resumed) (Private Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 948

1 [Private session text removed]

2

3

4

5

6

7

8

9

10

11 [Open session]

12 THE COURT OFFICER: Your Honour, we are now in public session.

13 MR. HAFETZ:

14 Q. Professor, it's possible for a covert audio recording to contain  
15 intrinsic information that can be used by a listener to assist in  
16 identifying speakers on the recording; right?

17 A. I'm not sure what you mean by "intrinsic information."

18 Q. Let me give you an example. If you and I were being recorded  
19 now, and I said, "Good morning, Professor Helen Fraser. How are you  
20 this morning?" And you responded, "Good morning, Mr. Josh Hafetz.  
21 I'm well. How are you?" And then I responded, "I'm well, thank  
22 you," such information in the recording itself would be useful to  
23 identifying you and I as the speakers; right?

24 A. Yes. I'd call that internal information.

25 Q. So "internal" instead of "intrinsic"?

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 949

1 A. Yeah.

2 Q. Okay. And if accurately transcribed, that internal information  
3 would be useful to anyone reading the transcription of our  
4 conversation for purposes of identifying us; correct?

5 A. With limitations, yes.

6 Q. Okay. And the more times such internal naming occurred, the  
7 more useful that naming would be for a listener to identify the  
8 voices --

9 A. With limitations, yes.

10 Q. It's important just to let me finish for the --

11 A. I'm sorry.

12 Q. And your answer is the same, it's with limitations; yes?

13 A. With limitations.

14 Q. Okay. Let's take a more specific example. If during a recorded  
15 visit to Mr. Thaci, Isni Kilaj and Vllaznim Kryeziu were present, and  
16 one of the men says, "Isni, how are you," and a voice answers, "I am  
17 very well," that information would be useful to identify a man named  
18 Isni as the person who responded to the question; right?

19 A. Yes.

20 Q. And if after a back and forth between these two individuals and  
21 how they're doing, one of the men then says, "And Vllaznim, how are  
22 you," and another voice responds, "I'm fine," this information would  
23 be useful to identifying who answered the question to Vllaznim;  
24 right?

25 A. Yes.

Witness: Helen Fraser (Resumed) (Open Session)

Page 950

Cross-examination by Mr. Hafetz (Continued)

1 Q. Unless they were playing some organised role-playing game  
2 beforehand, it would be useful; right?

3 A. With limitations, there is numerous ways that it could be  
4 limited, but on the face of it, it would be definitely useful.

5 Q. And if during that same recording a voice answered to being  
6 called Vllaznim at least ten separate times, that would be useful for  
7 identifying that voice as belonging to Vllaznim; right?

8 A. Potentially, with limitations, yes.

9 Q. Similarly, if one of those voices during the recording told a  
10 story in which he referred to himself as "Isni," that would be useful  
11 in identifying that individual as Isni; right?

12 A. Yes.

13 Q. Let's just take one more example. If during the  
14 3 September 2023 visit that you received the transcription and parts  
15 of the recording of, if one of the men repeatedly addresses the other  
16 as "Hajro," which is a short name for Hajredin, that fact would be  
17 useful in identifying Mr. Thaci as the speaker; right?

18 A. I'm sorry, would you repeat that?

19 Q. It's a meeting on September 23rd, 2023, between Mr. Thaci and  
20 Hajredin Kuci.

21 A. Mm-hm.

22 Q. And if one of the voices addresses another person in the room --  
23 the other person in the room as "Hajro," that would be useful  
24 identifying both men; right?

25 A. In the -- you mean in the sense of eliminating himself as being

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 951

1 that one and there's only two in the room.

2 Q. I mean it as eliminating himself -- I mean it as identifying  
3 Mr. Thaci as the speaker and Mr. Hajro as the person who is answering  
4 when addressed as "Hajro."

5 A. Potentially, with limitations, if there were only two people in  
6 the room, yes.

7 Q. Like in a detention centre, right, where they're strictly  
8 modulated in a visit between two people; right?

9 A. I'm not sure if that's true in this case, but it -- that would  
10 be one of the limitations you'd need to be sure.

11 Q. And if that addressing as "Hajro" happened more than 50 times in  
12 that visit, those 50 times would be useful to identifying the  
13 individuals; right?

14 A. Potentially with a lot of other contextual information. So if  
15 -- may I clarify what I mean?

16 Q. Please.

17 A. So when I have done speaker attribution work on material like  
18 this with multiple conversations with individuals, so this would be  
19 an example of one of the types of things that I would have expected  
20 to see here if you're doing speaker attribution on difficult  
21 material, what I've done in the past is make a spreadsheet with the  
22 utterances, including things like the -- the names used to refer to  
23 people and other contextual information that might be part of that  
24 internal context, along with whatever voice-quality aspects you might  
25 note, and so on, and set that out clearly, differentiating between

Witness: Helen Fraser (Resumed) (Open Session)

Page 952

Cross-examination by Mr. Hafetz (Continued)

1 utterances that are more or less confidently attributed to particular  
2 speakers. That's a -- everything you're asking me now are examples  
3 of the sorts of things that I would expect in a speaker attribution  
4 case to be documented in a way that enables the Court to see what  
5 information has been used in attributing the voices and with what  
6 confidence and with what reliability.

7 When I say "with what reliability," as an example, you said  
8 yourself if it was transcribed accurately. Names are often difficult  
9 to transcribe. And just from my limited encounter with this  
10 material, I think the names and the speakers would be -- I think  
11 there would be some variation in the level of confidence and  
12 reliability that could be given to the various speaker attributions.  
13 I don't know what those are, but what you're talking now is a perfect  
14 example of the sorts of things that I would have expected to see in  
15 doing this kind of work.

16 Q. And in terms of these references being present and satisfactory  
17 to you, you don't know about 90 per cent of the -- 97 per cent of the  
18 recordings; right?

19 A. You're referring to the percentages you gave me earlier about  
20 I've just got this 3rd of September and 6th of October, yes, I've  
21 already agreed to that.

22 Q. So specifically for the September 3rd visit for which you  
23 received four or six, depending on original/enhanced, but total of  
24 six audio files, you don't know how audible or not audible any of the  
25 50 or more times the word "Hajro" was said; right?

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 953

1 A. No. I assume you're counting that 50 times from the transcript,  
2 not from the audio itself.

3 Q. But my question is what you know; right?

4 A. What I have is the impression or the assessment that the audio  
5 is indistinct, and that would include the names. Some of the  
6 audio -- some of the audio is indistinct. And that speaker  
7 attribution would be an important aspect of the case, as I understand  
8 what the case is, which again is very limited. And my expectation  
9 would be that in a case where speaker attribution was important, that  
10 there would be some evidence of the weighing up all of the different  
11 types of evidence for which speaker versus another speaker it might  
12 have been that was making particular utterances.

13 Q. And that's something ultimately the fact-finder does; right?

14 A. I personally would think that the fact-finder would need some  
15 assistance in doing that. Of the -- of the type that I'm mentioning.  
16 It would be difficult especially in a language that's not familiar to  
17 the finder of fact. Even if it is a language that is familiar, it's  
18 difficult for the finder of fact to go through and tabulate all the  
19 various sources of information about which speaker is uttering which  
20 utterance in a systematic way. I would personally expect that the  
21 finder of fact would like some assistance in doing that, of the kind  
22 that I've described.

23 Q. Assistance from, for example, a dedicated Language Services Unit  
24 of the Court; right?

25 A. Yes.

Witness: Helen Fraser (Resumed) (Open Session)

Page 954

Cross-examination by Mr. Hafetz (Continued)

1 Q. Okay. Now, audio recordings can also contain external or  
2 extrinsic information that can be used to substantiate the  
3 transcripts; correct?

4 A. Well, if you don't mind me specifying what you've just said  
5 slightly differently, I don't think the audio would contain the  
6 external information. The listeners would have external information.  
7 So that would count as being top-down information in the terms that I  
8 was using the other day -- yesterday.

9 Q. Yeah, understood. For a fact-finder, though, using an  
10 accurately transcribed transcript, yes, that fact-finder could look  
11 to the transcript and see information supported by external  
12 information; right? I'll give you an example.

13 A. Yes, that would be helpful because what you've just said doesn't  
14 quite make sense.

15 Q. So if a transcript accurately described a recording wherein one  
16 of the two individuals in the room was referred to as "President"  
17 tens of times and the fact-finder knows that one of the two people in  
18 the room was, in fact, the former president of a country, that's  
19 useful information, is it not?

20 A. It could potentially be useful information. I still think that  
21 a finder of fact would benefit from some expert evaluation of that  
22 information in relation to other information that may or may not be  
23 available within the audio or within the external information,  
24 external context.

25 Q. The fact that there are 28 hours, approximately, of Mr. Thaci

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 955

1 being recorded in a contained environment in a detention centre, with  
2 a series of different isolated visitors at different times, is a  
3 useful fact for the fact-finder to make identifications; is it not?

4 A. It could be, yes.

5 Q. Are you aware of any precedential case law from your home  
6 jurisdiction of Australia that prohibits a professional judge from  
7 reviewing audio records admitted into evidence in criminal cases for  
8 the purpose of identifying and attributing voices?

9 A. No, I'm not. It's the opposite. I think that's the expected  
10 scenario.

11 Q. And I expect the same is with international law; yes?

12 A. To my knowledge, yes.

13 Q. And one of the filings you received from the Defence, which is  
14 F737 - it's noted in your report on page 34 --

15 A. Would you mind naming it so that I know which one you're  
16 referring to?

17 Q. Absolutely. The short name for it is the decision on a bar  
18 table motion.

19 A. Yes.

20 Q. You remember that?

21 A. Yes, I do.

22 Q. Okay. Paragraph 29 of that decision contained a footnote to a  
23 case called Bemba. When you received the decision, did you look that  
24 case up?

25 A. I believe I did, yes.

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 956

1 Q. Do you remember what you saw when you looked it up?

2 A. It was hard for me to understand, and I didn't follow it in  
3 detail. But I made a note that I should look it up sometime because  
4 it was obviously important to this court.

5 Q. Doctor, your report indicates that you're a member of several  
6 different linguistic and forensic associations; is that right?

7 A. Yes, that's true.

8 Q. One of those is the IAFPA; right?

9 A. Yes.

10 Q. And that's the International Association for Forensic  
11 Phonetics & Acoustics; right?

12 A. Yes.

13 Q. Approximately how long have you been a member of the IAFPA?

14 A. Maybe 30 years.

15 Q. And you're still a member today; yes?

16 A. Yes.

17 Q. And as a member, are you familiar with the Code of Practice?

18 A. Yes, I am.

19 Q. And you've read it?

20 A. Yes, I have.

21 Q. And the Code of Practice is publicly available online; right?

22 A. Yes, it is.

23 Q. And as a member you're bound by the code; right?

24 A. Yes.

25 MR. HAFETZ: I'd ask the Court Officer to please call up 412767.

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 957

1 THE COURT OFFICER: I'm sorry, what is the ERN of this number?

2 MR. HAFETZ: SPOE00412767. My colleague sees it in the queue,  
3 but I'm happy to move on to another code of conduct and return to  
4 that -- and come back to this.

5 THE COURT OFFICER: 412767?

6 MR. HAFETZ: Correct. In the meantime, I'm happy to call up the  
7 other code of conduct and we can come back to that. That's  
8 SPOE412777.

9 Q. Do you see that, professor?

10 A. I do.

11 Q. And this is the Code of Ethical and Professional Conduct, dated  
12 October 2025, for the IAFL, which is the International Association  
13 for Forensic and Legal Linguistics; right?

14 A. Yes.

15 Q. Also a member; yes?

16 A. Yes.

17 Q. And about how long have you been a member?

18 A. Somewhat less, but still many years.

19 Q. Okay. And you're familiar with this code of conduct, which is  
20 publicly available; yes?

21 A. Yes.

22 Q. Now, this code of conduct provides a set of standards or  
23 principles for members to follow including performing their work as  
24 an expert; right?

25 A. Yes.

Witness: Helen Fraser (Resumed) (Open Session)

Page 958

Cross-examination by Mr. Hafetz (Continued)

1 Q. Okay. And so as a member, you're bound by this code; yes?

2 A. Yes.

3 Q. And the code is applicable to your case in this work -- your  
4 work in this case; yes?

5 A. I'm not sure which part you're referring to but --

6 Q. Well, when it says this code of conduct governs the work you  
7 performed in this case -- excuse me. When it says you are bound by  
8 the IFL's professional responsibilities as a member, you are bound by  
9 those professional responsibilities; right?

10 A. Yes.

11 Q. Would your work in this case be subject to the code, do you  
12 think, your expert report?

13 A. Yes.

14 Q. Okay.

15 MR. HAFETZ: If we can go to the second page of the report,  
16 which is the ERN ending 778.

17 Q. And if we can go down to the -- the bottom of the page concerns  
18 objectivity; yes? And if we can continue once you've signalled that  
19 you've read the bottom of the page 2, I'd move on to bottom of  
20 page 3.

21 A. Yes, I have.

22 Q. Now, the code refers to a self bias check. Are you familiar  
23 with that?

24 A. Yes.

25 Q. Do you perform that in every case?

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 959

1 A. Yes.

2 Q. Did you -- did you perform it in this case?

3 A. Yes.

4 Q. And you're also required under the code to ensure that you  
5 accept -- you only accept cases that fall within your area of  
6 expertise and professional qualifications. You're familiar with  
7 that?

8 A. Yes.

9 Q. In this case, as you've noted in your prep note and in your  
10 testimony here, your ability to accurately assess the audio quality  
11 in the case was limited by your lack of any knowledge or even  
12 recognition of the Albanian language; right?

13 A. I think I was able to assess the audio quality. The speech  
14 quality might have been harder to assess. But, yes, my lack of  
15 knowledge of Albanian is an acknowledged limitation throughout.

16 Q. And, again, it's because of that limitation that you turned to  
17 an AI tool; yes?

18 A. I used the AI tool, I think I explained it in the report and  
19 here very -- as an indication. I did not base my findings fully on  
20 that -- the results of that test.

21 Q. Yesterday you said, I believe several times, that the use of the  
22 AI model was foundational to your report; right?

23 A. You said that, and I think I attempted to qualify it. I don't  
24 think it was foundational. I've said that again today. I think it  
25 was an illustration to assist in the assessment.

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 960

1 Q. Are you saying now you didn't testify yesterday that it was  
2 foundational?

3 A. I think you used that term and you pressed me to say yes or no  
4 and I said yes.

5 Q. So were you lying then?

6 A. No, of course I wasn't lying then.

7 Q. You're under oath, ma'am, and I asked you a question yesterday  
8 and -- I think multiple times, and I'll read it back to you now.

9 A. Yeah, you can if you like, but I remember it.

10 MR. HAFETZ: Can we please pull up page 882 from the transcript  
11 yesterday.

12 THE WITNESS: I'm not denying that I agreed with that yesterday.

13 MR. HAFETZ:

14 Q. Well, multiple times; right?

15 A. Yes.

16 Q. And you're saying you agreed -- you didn't actually agree?

17 A. I think this has come up with several of your questions that  
18 you've used words and I've commented on the wording, and then you've  
19 said it's a yes-or-no question, and I've said something along the  
20 lines of some questions aren't really yes or no, and then you've  
21 pressed me to say either yes or no, and then I've said yes.

22 Q. And those were then not accurate or truthful answers?

23 A. I think they were truthful.

24 MS. MENEGON: Your Honour, I think I need to interject. The SPO  
25 has asked this question numerous times. The witness has answered to

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 961

1 the best of her knowledge. He has asked again this question today.  
2 The witness has answered again. She says she wants to clarify it.  
3 She's entitled to. It doesn't mean that she's breaching any  
4 [indiscernible]. I think we should move on. We have been on our  
5 side quite pressed with case about the expeditious about this  
6 proceeding. I think the SPO should do the same in the course of his  
7 cross-examination for the benefit of everyone, including the witness.  
8 Thank you.

9 MR. HAFETZ: May I respond?

10 JUDGE GOSNELL: Yes, please, Mr. Hafetz.

11 MR. HAFETZ: Your Honour, we spent some time yesterday  
12 establishing the fact, under oath, multiple times, that the use of an  
13 AI tool was foundational to the conclusion in the report that you're  
14 being asked to consider and apply to a vast quantum of evidence in  
15 this case. The witness is now saying today, having earlier this  
16 morning begun to back off of that admission, is now saying and  
17 calling into question that portion of her testimony from yesterday  
18 and I believe now multiple other portions where she claims she was  
19 "pushed" into giving an answer and gave one that now she says may be  
20 inaccurate.

21 So it's actually essential for the record in this case that we  
22 understand exactly what she meant yesterday and what she meant today,  
23 and whether and how other answers may need to be changed.

24 JUDGE GOSNELL: Mr. Hafetz, I do think it's fair, now that we  
25 have the text in front of the witness, for her to be able to comment

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 962

1 or explain.

2 Dr. Fraser, of course, you are always entitled to clarify or  
3 explain an answer as -- if you disagree with a particular term being  
4 used. But if you don't signal that you disagree with a term that's  
5 being used, then when you say yes, it is taken that you agree to the  
6 terms that are being put to you, and that's how we proceed in this  
7 courtroom.

8 So, Mr. Hafetz, let's put the transcript to the witness, let's  
9 proceed with your question accordingly, and we'll see where we  
10 arrive.

11 MR. HAFETZ:

12 Q. Starting at line 9 of the transcript:

13 "That assessment, the need for external context, is foundational  
14 to the conclusion you made in your report; correct?"

15 "A. Yes, that's right."

16 Do you dispute that now?

17 A. Certainly not. The assessment of the need for external context  
18 is foundational to the conclusion in my report. I'm talking about  
19 your -- you seem to be claiming that the AI test was foundational to  
20 my assessment of the need for external context. I've clarified that  
21 already this morning. If this had all happened a couple years ago  
22 before that was available, I would have still reached a conclusion  
23 that parts of that audio was unclear and parts was indistinct. As I  
24 spoke this morning at length from my expertise in forensic audio and  
25 forensic transcription, I used the AI example as an illustration and

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 963

1 I stand by that. I think it was a good illustration. It think it  
2 was useful. It helped me. I hope it helps the Court. The key  
3 thing, as is stated there, is that this audio cannot be transcribed  
4 without external context.

5 MR. HAFETZ: With Your Honour's permission, I'd like to continue  
6 for this page and the next page to get the clarity I'm seeking.

7 JUDGE GOSNELL: Sure, but before we do that, Mr. Hafetz, could  
8 we just scroll up a little bit to see the full context for the  
9 quotation. Thank you.

10 Thank you. Please proceed, Mr. Hafetz.

11 MR. HAFETZ:

12 Q. The next question reads:

13 "Okay. And the very first paragraph in that section says,  
14 because you do not speak the language and have no access to skilled  
15 Albanian listeners --"

16 You interject: "Mm-hm."

17 And I continue:

18 "-- you assessed the intelligibility of the audio by running it  
19 through an AI transcription tool. The first sentence of the section  
20 on your assessment which is foundational to your report begins with  
21 your use of ChatGPT-5; correct?"

22 Do you want to read to the end of the page and I'll go on to the  
23 next page?

24 A. I've read to the end of the page.

25 MR. HAFETZ: Okay. If we can go to the next page.

1 THE INTERPRETER: Interpreter's note: The speakers are kindly  
2 requested to pause between question and answer. Thank you.

3 MR. HAFETZ: Go down about -- further down the page.

4 JUDGE GOSNELL: Mr. Hafetz.

5 MR. HAFETZ: Yes.

6 JUDGE GOSNELL: I see you don't have your headphones on so you  
7 did not hear the interpreter's note, which is - and this goes for you  
8 too, Dr. Fraser - please do observe a pause between question and  
9 answer. Thank you.

10 MR. HAFETZ:

11 Q. "My question is, if you turn to the top of page 18 --

12 "A. Yes.

13 "Q. Is, again, your use of ChatGPT-5 for this assessment --

14 "A. Yes.

15 "Q. -- which you yourself were limited in making --

16 "A. Yes.

17 "Q. -- was essential to your report; right?

18 "A. Yes."

19 A. Is that a question? You -- I agree that that's what's written  
20 there, yes.

21 Q. Okay.

22 MR. HAFETZ: Can we go to the next page. The next part is going  
23 to be private session, Judge, and I'm going to move on for the moment  
24 and I'm going to revisit this when I have a physical copy of the  
25 transcript.

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 965

1 JUDGE GOSNELL: Thank you.

2 Private session, please.

3 MR. HAFETZ: Oh, I'd ask to stay in public session, and I'll  
4 come back to this at a different time.

5 JUDGE GOSNELL: Certainly. But just to say, Mr. Hafetz, that  
6 the Court is very capable of taking onboard the point that you're  
7 making and the inconsistencies that you're raising, and I'm not sure  
8 that seeking to adduce an explanation from the witness, given the  
9 extent to which you've gone into it already, will much advance the  
10 matter. So that's just guidance from the Court.

11 MR. HAFETZ: Thank you, Your Honour.

12 Q. Professor, according to the code of conduct we were discussing a  
13 moment ago, you're supposed to remain neutral; right?

14 A. Yes.

15 MR. HAFETZ: If we can turn to 2780 of the prior document we  
16 were looking at, which is the code of conduct. And the full ERN  
17 SPOE00412777. And if we can go down -- a little further down the  
18 page.

19 Q. This part of the code, page 4, relates to collection and  
20 handling of data; right?

21 A. Yes.

22 Q. Were you aware of this part of the code when you worked on the  
23 case from December 2025 to March '26?

24 A. I didn't refer back to it during that period, but I'm aware of  
25 the code of conduct.

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 966

1 Q. Do you know if any of the material in the audio recordings you  
2 contained [sic] contained any witness names or information?

3 A. I'm sorry, I didn't hear the -- contained?

4 Q. The names of witnesses.

5 A. Am I aware that the audio contained the names of witnesses?

6 Q. Do you know, yes or no, whether the --

7 A. I'm just clarifying the question.

8 Q. I understand. Do you know -- I'm clarifying it for you. Do you  
9 know whether any of the recordings you received contained witness  
10 information and names?

11 A. I certainly know that the audio recordings contained people's  
12 names. Whether they're witnesses or not, I'm not sure.

13 Q. Okay. And do you know whether the ones you put into the AI  
14 models contained any names? Because you put different pieces in.

15 A. Yes, I'm sure they did contain names.

16 MR. HAFETZ: And then if we can turn to page 5, which is ERN  
17 ending 781, and go a little further down. That's it.

18 Q. This section deals specifically with the use of large language  
19 models; right?

20 A. Yes, I've read that.

21 Q. Were you aware of this section of the code when you performed  
22 your work in this case?

23 A. Again, I did not refer back to it directly, but I am aware of it  
24 in general.

25 Q. And is it fair to say that this section of the code urges

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 967

1 members of the IAFLI like yourself to be cautious with the use of  
2 large language models like ChatGPT in forensic audio analysis?

3 A. Yes.

4 Q. And one of those cautions relates to the fact that "any model is  
5 only as good as the data it has been trained on, which means the  
6 choice of data can bias the outcomes"; right?

7 A. Yes.

8 Q. And the code goes on to caution that:

9 "In many popular LLMs, these training data are practically  
10 unknown."

11 Right?

12 A. Yes.

13 Q. Okay. And as we discussed earlier, you don't know anything  
14 about the Albanian training data for the model or models you used for  
15 your experiment with the recordings in this case; right?

16 A. Yes.

17 Q. The caution regarding LLM use also states that:

18 "Professionals should be transparent if and when they use LLMs  
19 in their work, including noting which algorithms [they use] and,  
20 ideally, which data were used."

21 Right?

22 A. Yes.

23 Q. Your report doesn't note which of the three - and I'm not going  
24 to name them in this moment - which of the three programs you used  
25 for what purpose; right?

Witness: Helen Fraser (Resumed) (Open Session)

Page 968

Cross-examination by Mr. Hafetz (Continued)

1 A. No, because each of those uses ChatGPT, and I put that there.

2 Whisper -- Whisper specifically.

3 Q. You understand that a company like the one you used online has  
4 its own relationship with ChatGPT; right?

5 A. Yes.

6 Q. And you understand that that company may have used -- may  
7 operate with different versions of it and may modify it; correct?

8 A. May modify ChatGPT?

9 Q. Yeah.

10 A. I don't know that they modify ChatGPT. They certainly have  
11 various models of AI available. We can choose which one we use.

12 Q. Right. And you don't specify which one you used; right?

13 A. Yes, I did specify.

14 Q. In that you put down "ChatGPT-5 Whisper"?

15 A. Whisper, yes.

16 Q. The code also states that members "must be aware that input  
17 given to these models is usually passed on to the companies providing  
18 these models, potentially breaching confidentiality and impacting  
19 research integrity."

20 You're familiar with that; yes?

21 A. Yes.

22 Q. And then finally, the IAFLL's code of conduct's section on LLMs  
23 concludes that:

24 "General language models cannot replace human expertise."

25 Right?

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 969

1 A. Yes.

2 Q. And were you aware of this part of the code when you elected to  
3 rely on Whisper for your assessment of the intelligibility of the  
4 audio recordings rather than engaging an Albanian speaker to assist  
5 you as you requested of the Defence?

6 A. I, again, did not review this code of conduct specifically  
7 during that period, but I am aware of it and I completely agree with  
8 it and I believe that I followed it. I did not rely on ChatGPT  
9 itself. I used it as part of an overall assessment. And I've been  
10 very clear that I do not speak Albanian and that I did not have  
11 access to Albanian speakers.

12 Q. Okay. Now, Dr. Fraser, you didn't include in your report any  
13 references to case law; right?

14 A. No, I don't think so.

15 Q. And specifically there are no references to any authority that  
16 requires the procedures or process that you say must be applied in  
17 this case; right?

18 A. Yes, that's right.

19 Q. Because none exists; right?

20 A. That's right.

21 Q. And, in fact, there is no agreement, even among your own  
22 community, about what those procedures must be; right?

23 A. Well, we discussed that at length yesterday. I don't think it's  
24 fair to say there's no agreement. I think we discussed that quite a  
25 lot. There's good agreement that -- what's not acceptable.

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 970

1 Q. But my question wasn't is there agreement about what's not  
2 acceptable. My question, and I can read it back to you, was: Is  
3 there agreement on what procedures must be mandated? That's the  
4 question.

5 A. Well, I'd like to clarify my answer, if that's okay,  
6 Your Honour. I think it does matter, the difference between what  
7 procedures must be followed versus should not be followed. One of  
8 the procedures that must be followed is that there should be distance  
9 between the transcribers and the Prosecution in this case, which  
10 could be seen as a must not, but it's also a must. I think we  
11 discussed that quite a lot yesterday.

12 Q. Now, we spoke a bit earlier about the February 14, 2026,  
13 communication from -- between you and the Defence, yes, about  
14 specifically the question you were asked about the bar table motion  
15 decision, 737.

16 A. Yes.

17 Q. When you were asked -- and I'm speaking from the bottom third of  
18 SPOE00411744.

19 A. Would you mind reminding me which --

20 JUDGE GOSNELL: Mr. Hafetz, could we just put that on the screen  
21 to make it easier for every --

22 MR. HAFETZ: That's absolutely fine. The ERN is SPOE00411742 to  
23 747. Page 3 of the PDF --

24 THE COURT OFFICER: [Microphone not activated].

25 MR. HAFETZ: Yes. SPOE00411742 to 747. And if we go to page 3

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 971

1 of the document, the bottom of the page. Okay.

2 Q. Have you had a chance to look at that?

3 A. May I just ask? I can see that this is what we spoke about  
4 before and that it's saying what material that I was provided with  
5 and that this is about the paragraphs in the decision reasons. If  
6 possible, would you just tell me what this document is? It seems to  
7 be asking the SPO for something, but I'm not sure I know what it is  
8 that the SPO is being asked for. Maybe you don't want to tell me.  
9 That's fine. But if you can.

10 Q. No, I'm happy to tell you.

11 MR. HAFETZ: And for the record, I actually would like to MFI  
12 this document, conditional upon the admission of the witness's  
13 testimony.

14 Q. It contains a back and forth, as I explained earlier, between  
15 the Prosecution and the Thaci Defence, with the Prosecution asking  
16 for information from the Defence about more instructions that may  
17 have been given to you.

18 A. Oh, I see. So it came from you to them asking them about what  
19 instructions they had given me.

20 Q. That's correct.

21 A. Okay.

22 Q. And what other materials, which we discussed before, that are  
23 not noted in your report.

24 A. Okay. That helps me to contextualise what this is.

25 JUDGE GOSNELL: Mr. Hafetz, I'm under the impression that the

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 972

1 witness is now confused as to who is the author of this document.

2 Could we have --

3 MR. HAFETZ: I'm happy to explain that.

4 JUDGE GOSNELL: Yes, please do.

5 MR. HAFETZ: Certainly.

6 Q. Professor, you are not the author of this document.

7 A. No, I certainly am not the author of it.

8 Q. This is a series of e-mail exchanges between the  
9 Prosecution Office and the Thaci Defence, wherein the Prosecution is  
10 requesting additional information related to the production of your  
11 report, including any further instructions you were given outside of  
12 the letter we received containing your instructions, and what, if  
13 any, other materials were provided to you that are not listed in your  
14 report, which we've established there are several of.

15 Are you with me?

16 A. Yes, thank you.

17 JUDGE GOSNELL: Mr. Hafetz, just to be clear, and perhaps I need  
18 to be -- I need the matter to be clarified, this was written by the  
19 Thaci Defence; is that right?

20 MR. HAFETZ: Well, it's an actual e-mail correspondence between  
21 the parties.

22 Q. But the portion we're referring to now, to get to your question,  
23 is in fact written by the Thaci Defence explaining to the Prosecution  
24 service some interactions with you.

25 JUDGE GOSNELL: And I'm sorry to interject again, Mr. Hafetz,

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 973

1 but I do want to be clear about this. Is it the portion in italics  
2 that was written by the Thaci Defence?

3 MR. HAFETZ: Your Honour, the entire e-mail is written by the  
4 Thaci Defence. Now, whether they cut and paste from something else,  
5 I don't know.

6 JUDGE GOSNELL: Okay. Thank you.

7 MR. HAFETZ:

8 Q. So it looks like, at the bottom of page 2, just so we're all  
9 clear, the Defence in italics is writing to the Prosecution:

10 "To complete the information already provided for your report,  
11 we have gathered" -- excuse me, they are writing to -- possibly to  
12 her. I don't know. Looks like to her, right?

13 And then they list a series of questions, 1, in response to an  
14 e-mail; 2, a Prosecution filing. Those italics look like they were  
15 written to you. Do you remember them?

16 A. I -- they do seem familiar, yes. I believe I received that  
17 [Overlapping speakers] ...

18 Q. And that covers -- that covers number 3, for example, with the  
19 material we discussed earlier today on page 3. We can go to page 3.

20 And at the bottom, addressed to you is the question I want to  
21 discuss now.

22 A. Yes.

23 Q. "You may identify some issues in the judge's reasoning that  
24 warrant addressing in your report. For our part, we wondered whether  
25 you might be able to include something on the following points."

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 974

1           And then they point you to the paragraph 35 and 36 we discussed  
2 earlier; yes?

3           A.    Yes.

4           Q.    And you read those paragraphs again today.

5           A.    Yes.

6           Q.    Okay.  At the very bottom of the page in reference to  
7 paragraph 36, it reads:

8           "Paragraph 36 highlights the lack of court decisions adopting  
9 the scientific analysis that we sought to rely on.  Are you," meaning  
10 you, Dr. Fraser, "able to point to any examples in your report where  
11 courts have adopted the approach that you've advocated for?  [And]  
12 can you address why some courts have opted not to [adopt] this  
13 approach?"

14           Now, we've talked about the subsequent -- some of the subsequent  
15 correspondence that may have resulted from this.  This inquiry itself  
16 is not in your report; correct?

17           A.    This inquiry?

18           Q.    The inquiry from the Thaci Defence --

19           A.    No, it is not.  No.

20           Q.    -- asking -- just to be mindful of the interpreters.

21           A.    Sorry.  I'm sorry.  It's just very difficult for me to remember.  
22 I do try.

23           Q.    Did you separately provide the Defence with any such material in  
24 response to this question?

25           A.    No.

Witness: Helen Fraser (Resumed) (Open Session)

Page 975

Cross-examination by Mr. Hafetz (Continued)

1 Q. Now, during your preparation session on May 5th, the Defence  
2 returned to the general subject and asked you how your evidence has  
3 been received. Do you remember that?

4 A. Yes.

5 Q. Okay. Do you remember what you told them?

6 A. I think we went back to the early days when linguistics was not  
7 seen as a science. I think -- I don't remember if we discussed this  
8 yesterday, but I did speak with them at some point that in -- it's  
9 often the case that I don't really know exactly how my evidence is  
10 received in court, and I don't always know what has been accepted and  
11 what hasn't been accepted. I can certainly say that my evidence has  
12 been accepted in some courts. And I can also say that, in general,  
13 the courts -- as we said a little while before, the courts do  
14 commonly allow transcripts and translations, especially transcripts,  
15 which is my main area of expertise, the courts generally do accept  
16 transcripts of indistinct audio that have been produced in ways that  
17 the science -- the sciences that deal with indistinct audio would not  
18 necessarily find the transcripts were reliable.

19 Q. And understanding that you're not always aware of the results or  
20 how -- what weight your evidence is given or the results in a  
21 particular case, are you aware of any?

22 A. Any what?

23 Q. Are you aware of any examples of how your -- answer to their  
24 question, how your evidence has been treated?

25 A. Yeah, I am aware of some, but I'm not sure I have a summary in

Witness: Helen Fraser (Resumed) (Open Session)

Page 976

Cross-examination by Mr. Hafetz (Continued)

1 my head of that -- a detailed answer to that question.

2 Q. Well, when they asked you on May 5th, during your preparation  
3 session for your testimony here, about the report you're asking the  
4 Court to accept, did you say, "Can I have a few moments, I have an  
5 answer, and I'll think about it"?

6 A. I believe I was speaking along the lines of I'd rather speak  
7 about the scientific issues than the legal issues, and that's what  
8 I've tried to do.

9 Q. But you understand, Dr. Fraser, particularly as an advocate for  
10 change, that other courts' prior examination weighing treatment of  
11 your evidence might be important and relevant to this Court's right?

12 A. Yes.

13 Q. And it certainly might be relevant, for example, to the  
14 Prosecution's ability to understand your evidence and assess it;  
15 right?

16 A. I'm not so sure I agree with that second point, but yes.

17 Q. But the first part you agree with?

18 A. I understand that the courts often have regard to how other  
19 courts have dealt with similar evidence in the past. I certainly  
20 understand that. And I also understand that in this particular area  
21 of forensic transcription, there is some disparity between how the  
22 courts handle this kind of evidence and how the scientific approach  
23 to understanding and transcribing indistinct audio would put it  
24 forward. That's a main topic of my work --

25 Q. But you --

Witness: Helen Fraser (Resumed) (Open Session)

Page 977

Cross-examination by Mr. Hafetz (Continued)

1 A. -- as you've said.

2 Q. My apologies. But you understand that we're here to discuss  
3 your evidence; right? And if I can finish, the question that you  
4 were asked by the Thaci Defence was how your evidence has been  
5 treated; right?

6 A. Shall I -- shall I answer?

7 Q. Please.

8 A. Yes, that's right. So I say a couple of things. First of all,  
9 I am not always aware of how my evidence has been treated in court.  
10 I am aware - I think you've given some examples earlier today or  
11 perhaps yesterday afternoon - where judicial rulings have commented  
12 perhaps negatively on some of the things that I have said in my  
13 reports. And I'm choosing my -- trying to choose my words because I  
14 obviously want to be respectful to the courts, but in some cases I  
15 think those judicial rulings were not correct, factually not correct  
16 about the scientific evidence.

17 Q. Which ones specifically?

18 A. Well, I think you mentioned two of them yesterday.

19 Q. Is that the Eastman case?

20 A. One I think -- again, I don't remember the exact words of the  
21 ruling there. You might have it there. And the Clark case also.

22 Q. Besides the ones I've mentioned in a different context  
23 yesterday, what other cases, if any, of the hundreds you've worked  
24 on, more than a hundred --

25 A. I've --

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 978

1 Q. -- are you aware of how your evidence was treated?

2 A. I've written reports for approximately a hundred over that time.  
3 The vast majority of those have not been discussed in court.

4 Q. Do you know how many have been discussed in court?

5 A. I know -- I think I said I've appeared in court in roughly a  
6 dozen cases.

7 Q. So we have two now. Do you know of the other, roughly, 10, how  
8 your evidence has been treated?

9 A. I think it varies. I honestly do not remember and keep tabs of  
10 that. I am a researcher and a scientist. I am interested in the  
11 topic of how can we ensure reliable transcription of indistinct audio  
12 used as evidence in criminal trials.

13 Q. But, doctor, you're a self-professed advocate for change for  
14 this exact subject; right?

15 A. Yes.

16 Q. But you're not --

17 JUDGE GOSNELL: Mr. Hafetz, maybe we can move this along a  
18 little by moving to the actual materials that I assume you wish to  
19 put to the witness.

20 MR. HAFETZ: I am trying to get an understanding, Your Honour,  
21 of other materials, besides which the ones we've been able to locate  
22 in the short time we've had the answer to this question. And I do  
23 think it's important to understand whether an individual who is a  
24 self-professed advocate for change is aware, and why they aren't  
25 aware of, if not, the subsequent treatment in court decisions, but I

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 979

1 take the point, Your Honour.

2 Q. Professor, how was your evidence treated in the Eastman case, to  
3 the extent you recall?

4 A. I would much prefer to answer this question with notice to be  
5 able to refresh my mind. I'm not at all prepared or expecting to be  
6 answering questions about other cases. If you're asking me, I will  
7 attempt to remember, but I will not have a very good confidence that  
8 everything I say would be exactly right.

9 Q. You gave evidence in the Eastman case in approximately 2018;  
10 right?

11 A. Yes.

12 Q. Okay. And do you remember what stage of the proceedings that  
13 was?

14 A. Which proceedings? The proceedings, I believe, were a retrial  
15 from a 1995 --

16 Q. That's what I mean.

17 A. -- trial. Yes.

18 Q. You've written about the Eastman case multiple times; yes?

19 A. Yes.

20 Q. And you're saying now you're not familiar with the facts of the  
21 case and you need to refresh yourself?

22 A. I'm very familiar with the facts of the case. I'm not familiar  
23 in detail right now, with a recent memory having looked at it or  
24 having it in front of me, with the judicial ruling on my evidence or  
25 the -- the case in general.

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 980

1 MS. MENEGON: Your Honour, I would like to make the following  
2 observation in light of what the witness has just said. In fairness  
3 to the witness, if the Prosecution wants to ask questions about the  
4 ruling related to her expertise, I would invite him to put the ruling  
5 to the witness. Thank you. And to show it on the screen for the  
6 benefit of all the parties.

7 JUDGE GOSNELL: Well, before we have a back and forth, I imagine  
8 that that is exactly where Mr. Hafetz is going, and I'm sure he'll do  
9 it soon.

10 Is that right, Mr. Hafetz?

11 MR. HAFETZ: It is, Your Honour, and I'm going to ask just a  
12 couple more questions before I get to the actual decision because I  
13 actually think it's quite important that the witness's knowledge of  
14 the case and ability to describe it here is related to her report and  
15 the answer she gave during her prep session.

16 JUDGE GOSNELL: Fair enough, Mr. Hafetz. Please proceed.

17 MR. HAFETZ:

18 Q. Do you know approximately how many times you've referred to the  
19 Eastman case in your more than 20 articles?

20 A. No.

21 Q. Okay. More than five, would you accept?

22 A. I don't know.

23 Q. To be clear, the Eastman case involved a miscarriage of justice;  
24 right?

25 A. Yes.

Witness: Helen Fraser (Resumed) (Open Session)

Page 981

Cross-examination by Mr. Hafetz (Continued)

1 Q. Or what's referred to as a miscarriage of justice; right?

2 A. Yes.

3 Q. And that miscarriage of justice had nothing to do with the audio  
4 evidence in the case; right?

5 A. I'm not sure that's completely true.

6 Q. How is it not completely true?

7 A. Again, I'm just saying that I -- I would have preferred to have  
8 a little notice on this question. I suspect that what you might be  
9 referring to is the role of the gunshot revenue -- sorry, the gunshot  
10 residue evidence and the other evidence that was discussed in the  
11 2014 inquiry into the case that's -- that triggered the 2018 retrial.

12 I'm not sure what you're referring to. You're asking me  
13 questions that, to me, are in a vacuum. And I do -- I know the case  
14 very well. I've always been much more interested in the way the  
15 audio was handled throughout the case, and I do not remember exactly  
16 how my particular comments -- my evidence was reacted to by the judge  
17 in detail. I do believe that my evidence was correct in the trial,  
18 and I think that it had some effect on the outcome of the trial.

19 More importantly, I believe that the audio evidence in the first  
20 trial was important in the verdict, which was subsequently overruled  
21 in 2018 retrial, when he was found not guilty and given compensation.

22 Q. There was another expert who offered evidence in that case;  
23 right?

24 A. There were several experts in the 1995 case. I was not one of  
25 them. And there was one other in the 2018 case, yes.

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 982

1 Q. And do you recall who that was?

2 A. Yes.

3 Q. Who was that?

4 A. Professor Peter French.

5 Q. And he's a renowned expert in the field, is he not?

6 A. Yes.

7 MR. HAFETZ: If we could call up SPOE00410930 to 961. And start  
8 on the first page for context.

9 Q. This is the published Supreme Court of the Australian Capital  
10 Territory decision in the Eastman case in 2018, is it not?

11 A. Yes.

12 Q. Have you read this before?

13 A. Yes.

14 Q. And you've written about it; right?

15 A. Have I written about this?

16 Q. Well, this --

17 A. About the ruling?

18 Q. What was decided in the case?

19 A. This is -- I'm -- honestly, I can't tell just by looking at that  
20 front page exactly which one this is.

21 MR. HAFETZ: If we can go down, Madam Court Officer, a little  
22 further into the decision, and go to the next page.

23 THE WITNESS: Yes.

24 MR. HAFETZ:

25 Q. Yes, you've read it before?

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 983

1 A. I definitely have read it before --

2 Q. Okay.

3 A. -- but not recently and not in expectation of being questioned  
4 about it today.

5 Q. Okay. And you've written about parts of this decision, have you  
6 not?

7 A. Yes, but I'm not sure exactly -- I can't remember exactly what's  
8 in this one.

9 Q. But this proceeding that resulted in this decision that we're  
10 looking at, you were a part of; yes?

11 A. Yes.

12 Q. And you gave evidence with Dr. French; right?

13 A. Yes.

14 MR. HAFETZ: If we can look to paragraph 128, which is on PDF  
15 page 29 of the document, ERN ending 958.

16 Q. Now, this is where the court is summing up its conclusions;  
17 right?

18 A. Oh, yes.

19 Q. Have you read this before?

20 A. Yes, I have.

21 Q. At paragraph 128 it says:

22 "I accept that Dr. Fraser is qualified to give expert evidence  
23 as to phonetics and as to issues relating to enhancement, although I  
24 suspect that her firmly held, and to a degree evangelistic, views  
25 about what she perceives to be a failure of the High Court in Butera,

1 with its consequential deleterious effect upon the decisions of  
2 numerous Courts of Appeal and other courts in Australia over the last  
3 thirty years, did tend to somewhat colour her evidence."

4 A. I accept that's what's written there.

5 Q. But you don't accept the court's conclusion?

6 A. I don't think I'm evangelistic, and I don't think that I say  
7 there's a failure by the High Court in Butera. I believe that there  
8 is a failure in the way that that High Court ruling, that's the  
9 High Court of Australia, has been applied in later cases, and I've  
10 written about that.

11 Q. But you testified in this case; right?

12 A. I did.

13 Q. And you provided a report?

14 A. I did.

15 Q. And the judge presumably read that; right?

16 A. I assume so, yes.

17 Q. The judge also found that:

18 "There were occasions in the course of cross-examination of  
19 Dr. Fraser where her answers appeared obtuse, if not evasive."

20 Have you read that before?

21 A. I have.

22 Q. The judge then goes on - if we can go a little further down the  
23 page, but keeping part of paragraph 128 - to cite just two examples  
24 of that. Have you read those before?

25 A. Yes, I have.

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 985

1 Q. Just above the beginning of paragraph 129, the second half of  
2 your answer is:

3 "I suppose partly because I don't know where you're going with -  
4 you seem to be asking me to agree with things and I'm hedging all the  
5 time, wondering where this is leading me ..."

6 That's similar to an answer you gave to me today and yesterday;  
7 right?

8 A. Yes, indeed.

9 Q. Okay. Which this court found evasive and obtuse; yeah?

10 A. This court?

11 Q. This court that we're reading from.

12 A. Evidently.

13 Q. You didn't mention a word about this 28 [sic] decision which you  
14 have written about in your discussions when the Thaci asked -- Thaci  
15 team asked how your defence -- your --

16 A. Oh, I certainly --

17 Q. Excuse me.

18 A. No --

19 Q. Asked you --

20 A. Sorry.

21 Q. -- how your prior evidence had been treated; correct?

22 A. Yes, I certainly told them that there was negative reviews on  
23 the court -- on the record. I may not have -- not have written about  
24 that.

25 MR. HAFETZ: Can we please call up, Madam Court Officer,

Witness: Helen Fraser (Resumed) (Open Session)

Page 986

Cross-examination by Mr. Hafetz (Continued)

1 DHT1201728. I would like to go to ERN 1729, paragraph 7.

2 Q. Now, what we're looking at, Dr. Fraser, for your context, is the  
3 preparation note the Defence prepared of your May 5th meeting. This  
4 is the summary of their meeting.

5 A. This is the one we looked at previously?

6 Q. We looked at parts of it previously. Exactly.

7 Now, can you read the beginning of paragraph 7?

8 A. Yes, I'm reading it.

9 Q. Okay.

10 A. Yes.

11 Q. Now, nowhere in here is mention -- any mention of this Eastman  
12 decision; right?

13 A. I don't think my evidence was rejected there. My evidence was  
14 used and was important in the outcome of the trial.

15 Q. Well, the question, as summarised by the Thaci team in the first  
16 sentence, is how your evidence has been received; yeah?

17 A. Yes.

18 Q. This decision relates to how your evidence was received; no?

19 A. Yes.

20 Q. And you didn't mention a word of it, back to my question; right?

21 A. I have mentioned this case to them. I have mentioned that there  
22 are negative reviews of my evidence online.

23 Q. When did you do that?

24 A. Earlier in our discussions. I don't remember exactly when.

25 Q. Was that via e-mail or phone conversation or elsewhere?

1 A. Zoom meetings, probably.

2 JUDGE GOSNELL: Mr. Hafetz, we're at the break now.

3 MR. HAFETZ: Understood, Your Honour. I have, I would say, less  
4 than 40 minutes left.

5 JUDGE GOSNELL: Well, first of all, may the witness be ushered  
6 out, please.

7 Dr. Fraser -- Dr. Fraser, just before you take your headphones  
8 off, we'll be back at 2.30.

9 THE WITNESS: Thank you, Your Honour.

10 [The witness stands down]

11 JUDGE GOSNELL: Well, first of all, I want to say in response to  
12 a comment that arose from an objection earlier from Ms. Menegon about  
13 the amount of time being accorded to the Prosecution's  
14 cross-examination, I recall that rather significant latitude was  
15 accorded to the Defence to cross-examine Witness 8, and of course  
16 that's, in part, based on the technical subject matter which, as I'm  
17 sure you appreciate, requires perhaps additional time than might be  
18 the case with an ordinary witness.

19 Having said that, Mr. Hafetz, I would hope we could make the  
20 last session very efficient, that perhaps we can get to the  
21 punchline, so to speak, a bit more directly. I've now observed this  
22 witness over the course of the last two sessions, and I'm perfectly  
23 aware of the points that you're attempting to make by showing prior  
24 inconsistent statements, for example, during her testimony. I do  
25 think now, given the amount of time that has been spent on that, we

1 can perhaps go, as I say, to the punchline a little bit more quickly.

2 MR. HAFETZ: Your Honour, in this case, I'm actually going to  
3 say I think it is really important. But I take your point and I will  
4 move it as efficiently as possible, number 1, noting the latitude for  
5 the other witness. But independent of that entirely, what we're  
6 finding out, almost minute by minute, is that this witness had other  
7 conversations about her material which directly bear on her report  
8 and what she disclosed to the Court.

9 So with Your Honour's indulgence, I would appreciate being able  
10 to make my record on that. It is an important fact, for example,  
11 that she previously told the Defence about the negative treatment of  
12 her case which we had to go to Australia via public records request  
13 to get. They're not disclosed to us. They're not known to us.  
14 Right? We had to find that.

15 So I do want and I do think it's important to be able to ask  
16 these questions because we're finding out a bit more information  
17 that's relevant in realtime. I will do it as efficiently as I can,  
18 and I do believe I will be able to finish within an hour, if not  
19 significantly less.

20 And, Your Honour, just on one more point. It also bears noting  
21 that answers from yesterday are different, and while it is -- and it  
22 may be clear to the Court from observing it that these may appear  
23 inconsistent - I'm not saying you're judging that - it is important  
24 to get a clear record of what she actually means.

25 JUDGE GOSNELL: Yes, that's fair enough, Mr. Hafetz. While I

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 989

1 take onboard what you've just said - I do appreciate those points - I  
2 will expect you, Mr. Hafetz, to be able to wrap up in 45 minutes. If  
3 you're not able to finish in 45 minutes, then I will expect  
4 submissions from you on why you need more time.

5 MR. HAFETZ: That's fair enough, Judge.

6 JUDGE GOSNELL: We stand adjourned until 2.30. Thank you.

7 --- Luncheon recess taken at 1.03 p.m.

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

9 JUDGE GOSNELL: Could the witness be brought in, please.

10 Any changes to the appearances from the parties? I see none.

11 [The witness takes the stand]

12 JUDGE GOSNELL: Welcome back, Professor.

13 THE WITNESS: Thank you, Your Honour.

14 JUDGE GOSNELL: Just a reminder since we've had the lunch in the  
15 meantime, but do observe pauses after the question is asked and --

16 THE WITNESS: I'll do my absolute utmost.

17 JUDGE GOSNELL: -- I'm sure this session will go smoothly.

18 Mr. Hafetz, the floor is yours.

19 MR. HAFETZ: Thank you, Your Honour.

20 Q. And I will do my best as well, Professor.

21 MR. HAFETZ: Madam Court Officer, could we please call up again  
22 SPOE00410930, and if we can go to page ERN 959. For reference,  
23 that's the Eastman case we were just talking about; yeah?

24 A. Yes.

25 Q. The decision we were talking about.

Witness: Helen Fraser (Resumed) (Open Session)

Page 990

Cross-examination by Mr. Hafetz (Continued)

1           Now, professor, at paragraph 130, just very briefly, the judge  
2 wrote in that case also that, while he accepted Professor Braun and  
3 Professor French are qualified as -- to give expert evidence in the  
4 areas of forensic phonetics and to issues of enhancement, and where  
5 their opinions differed from yours, the court accepted their evidence  
6 over yours; right?

7           A.    It doesn't say "over yours," but I think that's the implication.

8           Q.    Okay. Where you differed from the other experts, the judge  
9 didn't -- or the court didn't go with you, they went with the other  
10 experts; right?

11          A.    Yes.

12          Q.    Just three years ago, in 2023, you wrote another article about  
13 the Eastman case, this one titled "The Eastman transcripts"; yes?

14          A.    Yes.

15          MR. HAFETZ: And if we can call up, please, ERN SPOE00411173.

16          Q.    Do you recognise this?

17          A.    I do.

18          Q.    Is this the article you wrote?

19          A.    Yes.

20          Q.    Okay. And this is one of many on the Eastman case you wrote;  
21 yes?

22          A.    I'm not sure I've written many on the Eastman case. There --  
23 yeah, it is one of the ones that I've written about Eastman.

24          MR. HAFETZ: If we could go to the last page of the document,  
25 which is 411201.

Witness: Helen Fraser (Resumed) (Open Session)

Page 991

Cross-examination by Mr. Hafetz (Continued)

1 Q. Dr. Fraser, you cite to a number of articles and publications at  
2 the appendix of this; yes? This is just one of the pages of that.

3 A. Yes.

4 Q. Okay. And at the bottom, there's a -- if we can go a little  
5 further down, there's a section, "Cases and legislation cited"; yes?

6 A. Yes.

7 Q. And there's three cases from the Eastman decision there; yeah?

8 A. Yes.

9 Q. None of those three decisions is the 2018 decision we were just  
10 talking about; right?

11 A. No. That one is about the -- this article is about the 1995  
12 case.

13 Q. I understand, ma'am.

14 A. Okay.

15 Q. But the article is also about the developments and includes  
16 discussions of the developments after 1995; right?

17 A. Correct, yes.

18 Q. Right. And cites to several things past 1995, including another  
19 Eastman case in 2019; right?

20 A. Yes.

21 Q. And 2014; right?

22 A. Yes.

23 Q. The one that's missing is the one from 2018; right?

24 A. Yes.

25 Q. Even though in the article itself, you actually reference the

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 992

1 proceedings subject -- that are the subject of the 2018 decision;  
2 right?

3 A. I'm not sure of that, but I accept it if you say it to me.

4 Q. In fact, in the article, you cite multiple times to the case  
5 citations of these three decisions and elide entirely the 2018  
6 decision that was critical of you; right?

7 A. That may be the case, but it's not the reason that it was  
8 critical of me.

9 Q. Understood. I would like to turn your attention --

10 MR. HAFETZ: We can take this down.

11 Q. I would like to turn your attention to the Michael Clark case we  
12 were speaking of briefly yesterday.

13 A. Excuse me, Your Honour, will there be an opportunity for me to  
14 say something about the ruling that we've just put away? Because I  
15 had a look at it over lunchtime and I felt there were a couple of  
16 things that I wouldn't mind saying, if possible.

17 JUDGE GOSNELL: Professor Fraser, for the time being, we'll  
18 proceed with the questioning, but I'd ask you to just keep in mind  
19 whatever it was that you wish to say and we'll give you an  
20 opportunity at the end to make sure you can do that.

21 THE WITNESS: Thank you, Your Honour.

22 MR. HAFETZ:

23 Q. And just for clarity of the record, I intend to tender, subject  
24 to the Judge's ultimate decision on your evidence, that case with a  
25 list of other materials that I will list at the end. So it's my

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 993

1 intention that the Court has the document.

2 A. The Court has the?

3 Q. That the Court will have the decision we were referring to  
4 earlier.

5 A. Thank you.

6 JUDGE GOSNELL: Mr. Hafetz, perhaps I should ask you, would you  
7 prefer the witness express her views now that she just mentioned or  
8 would you prefer that it be something that she addresses at the end?

9 MR. HAFETZ: My preference, given the time constraints,  
10 Your Honour, is that we do that at the end and I move along.

11 JUDGE GOSNELL: Certainly.

12 MR. HAFETZ: Thank you.

13 MS. MENEGON: Your Honour, I would prefer, if possible, that my  
14 colleague indicate when he shows a document on the screen whether or  
15 not he wants to tender it. Thank you.

16 MR. HAFETZ: We can assume for the next multiple documents I  
17 intend to tender them MFI.

18 Q. You worked on the Michael Clark case; right?

19 A. Yes.

20 Q. And you've written extensively about that, which you refer to as  
21 the Pact, P-a-c-t, case; right?

22 A. Yes.

23 Q. It's cited, for example, in your article, "The power and  
24 persistence of contextual priming." Right?

25 A. Yes.

Witness: Helen Fraser (Resumed) (Open Session)

Page 994

Cross-examination by Mr. Hafetz (Continued)

1 Q. And your article, "How interpretation of indistinct covert  
2 recordings can lead to wrongful conviction"; right?

3 A. Yes.

4 Q. And your article, "Forensic transcription: How confident false  
5 beliefs about language and speech threaten the right to a fair trial  
6 in Australia"; right?

7 A. Yes.

8 Q. Those are just some of them; yes?

9 A. Yes.

10 THE INTERPRETER: The interpreters kindly ask the speakers to  
11 slow down.

12 MR. HAFETZ:

13 Q. Very basically, in that case, following a 2008 trial, Mr. Clark,  
14 Michael Clark, was convicted of the murder of his father, though it  
15 was his son who pulled the trigger; right?

16 A. Yes.

17 Q. And among the evidence at that case -- presented at that case  
18 were some covert recordings; yes?

19 A. Yes.

20 Q. And transcripts of those recordings included the phrase "at the  
21 start we made a pact." Right?

22 A. Yes.

23 Q. After a number of successful -- unsuccessful appeals, you were  
24 provided with some of those covert recordings; right?

25 A. Yes.

Witness: Helen Fraser (Resumed) (Open Session)

Page 995

Cross-examination by Mr. Hafetz (Continued)

1 Q. And that was around September 2011; right?

2 A. Yes.

3 Q. And those recordings and some transcripts were provided to you  
4 by a Mrs. Jenny Clark; right?

5 A. Yes.

6 Q. And who was she to Michael Clark?

7 A. She was his wife.

8 Q. That case was fairly well publicised in Australia?

9 A. There was -- it was in the newspapers.

10 Q. And you examined those recordings and transcripts that you were  
11 given by the defendant's wife over a period of a couple years; right?

12 A. Yes.

13 Q. And you ultimately sought the family's permission to use the  
14 recordings in a series of academic experiments; right?

15 A. Yes.

16 Q. Those experiments were the subject of one of the articles I  
17 mentioned a moment ago, "The power and persistence of contextual  
18 priming." Right?

19 A. Yes.

20 MR. HAFETZ: For the record, that's SPOE00411125-0411149.

21 Q. After all that, you wrote a report to be used in support of an  
22 application for a review of Mr. Clark's conviction; right?

23 A. Yes.

24 Q. And the core purpose of the report was to overturn the  
25 conviction based on fresh evidence; yes?

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 996

1 A. It was an application to have a review of the conviction, yes.

2 Q. And you wrote that report to the court three years after a  
3 family member of the defendant had given you the audiotapes; right?

4 A. Yes.

5 Q. And presumably, when the family -- when Mrs. Clark gave you the  
6 tapes, it was with the intention of assisting her husband; right?

7 A. Presumably.

8 Q. Well, you know why she gave them to you; right?

9 A. Yes.

10 Q. Why'd she give them to you?

11 A. I assume it was to assist her husband.

12 Q. When you say "assume," do you mean you don't know and you have  
13 to assume or you know it was to help her husband?

14 A. I think it would be better to ask her that. I assume it was to  
15 assist her husband.

16 Q. Well, did she tell you why she was giving them?

17 A. She said she -- I don't remember. It was a long time ago.

18 Q. Do you think she just gave them to you so you could listen to  
19 them --

20 A. No, she told me something.

21 Q. Let me finish my question. Did she just give them to you just  
22 for the sake of giving them to you?

23 A. No.

24 Q. So what did she tell you when she gave them to you?

25 A. I don't remember exactly her words, but the impression that I

1 got and the assumption that I made was that she was unhappy with the  
2 way her husband's trial had come out, and she would like me to look  
3 at that audio.

4 Q. To look at the audio with the intention of potentially helping  
5 him change the outcome of that trial; yes?

6 A. Yes.

7 Q. Okay. In his original trial defence, it was the defence's  
8 position that the word "pact" actually was said on the recording;  
9 right?

10 A. Yes.

11 Q. And the disagreement was about what the pact meant; right?

12 A. Yes.

13 Q. Your studies concluded, of the recordings, that in your view the  
14 word "pact" was not present; right?

15 A. It was the whole phrase, not the individual word.

16 Q. The whole phrase, "there was a pact," right, or "we had a pact."

17 A. "At the start we made a pact."

18 Q. "At the start we made a pact." Your conclusion was that was not  
19 there.

20 A. Yes.

21 Q. In contrast to the defence position at trial.

22 A. Yes.

23 MR. HAFETZ: Can we please pull up SPOE00410901.

24 Q. Professor, just for context, this is a document we looked at  
25 very briefly, I believe, yesterday. But in any event, this is the

Witness: Helen Fraser (Resumed) (Open Session)

Page 998

Cross-examination by Mr. Hafetz (Continued)

1 Supreme Court of New South Wales decision from 2015. Do you  
2 recognise this?

3 A. Yes.

4 Q. Do you recognise this by looking at the title, or do you need to  
5 see more of it to know whether this was the decision that dealt with  
6 your evidence?

7 A. This is the decision that dealt with my evidence.

8 MR. HAFETZ: Okay. If we can turn to ERN 908 and look at  
9 paragraph 25.

10 Q. Have you read this before, Dr. Fraser?

11 A. Yes, but I'm just reading it again now.

12 Q. Please do. Take your time.

13 A. Yes, I've read it.

14 Q. In this paragraph, the court discusses some of your evidence in  
15 the case; yes?

16 A. Yes.

17 Q. Regarding your views on contextual priming as applied in that  
18 case; yes?

19 A. Yes.

20 Q. Okay. And ultimately the application was denied, was it not?

21 A. Yes.

22 Q. And the court never found that the phrase that you contested was  
23 not actually present on the audio; right?

24 A. Do you mean the trial court or this --

25 Q. No --

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 999

1 A. This is a judge reviewing the application, so this isn't the  
2 court as such. I guess it's the Supreme Court, but I'm not sure what  
3 you mean. Would you just clarify?

4 Q. Did the Supreme Court of New South Wales, when it issued this  
5 decision on 28 August 2015, find that the phrase "at the start there  
6 was a pact" was not on the recording?

7 A. "At the start we made a pact."

8 Q. Excuse me, "At the start we made a pact."

9 A. No, I don't believe he accepted that.

10 Q. When you say -- again, when you say you don't believe, do you  
11 know or you have to guess?

12 A. I would have to re-read exactly what he said. He certainly  
13 rejected the application. Whether he commented specifically on that  
14 phrase, I don't recall.

15 Q. Well --

16 A. I can look at it again now if you like.

17 Q. Please take your time.

18 A. But the -- but in general, I agree that he did not accept my  
19 evidence.

20 Q. And the truth is, no fact-finder has ever agreed with your  
21 conclusion in that case; right?

22 A. I think this is the only one. I wasn't involved in the trial.  
23 So as far as I know, this is the only person who's looked at that  
24 evidence.

25 Q. I'll restate it. No fact-finder anywhere in Australia has ever

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 1000

1 found that the phrase was not said. No one has ever agreed with you  
2 about this; right?

3 A. About that particular phrase?

4 Q. Correct.

5 A. There's only one person -- fact-finder who's had the opportunity  
6 to agree with that or disagree with it, and that's this one.

7 Q. The trial court and this one; right? Those are two  
8 fact-finders; right?

9 A. But I didn't give my opinion to the court.

10 Q. Okay. No fact-finder has ever found the phrase wasn't said;  
11 right?

12 A. Correct.

13 Q. Okay. And the fact-finder -- the one fact-finder to consider  
14 your views on it rejected them; right?

15 A. Yes.

16 Q. And yet you refer to the transcription of that phrase as  
17 established as inaccurate, yes, in your writings?

18 A. I believe that that phrase is inaccurate, and I can't remember  
19 exactly if I've used that it was established that it's been  
20 inaccurate. Perhaps I have.

21 Q. None of the articles that we referred to - and I can read them  
22 again if you want me to - discussing the Pact case cite to this  
23 decision, do they?

24 A. At least one of them does.

25 Q. With the citation? Or does it refer to it by "Pact."

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 1001

1 A. I don't remember if I would have given the exact citation, but I  
2 certainly referred to this and commented on it in one of them.

3 Q. When you spoke to the Thaci Defence in response to their inquiry  
4 about how your evidence has been treated in the past, did you bring  
5 this case up along with Eastman?

6 A. I believe you had already brought up Clark and Eastman to them,  
7 and I -- they asked me about that, and I agreed that there had been  
8 negative findings about me there.

9 Q. Professor, I'm not asking you for your view of why it came up.  
10 I'm asking you, did they -- did you specifically raise this case to  
11 the Thaci Defence?

12 A. Yes.

13 Q. Okay. And when did you do that?

14 A. In the course of the discussion that you mentioned earlier. I  
15 don't remember the exact dates.

16 Q. Well, I didn't mention the discussion. So which discussion?

17 A. We had a discussion about these topics at a certain point. Yes,  
18 I think it was referred to in the -- the one you came up with the dot  
19 points where you said it was -- you and they were having an e-mail  
20 correspondence.

21 Q. And what did you tell the Thaci Defence about it when you  
22 brought it up?

23 A. My memory of it is that there had been something from you  
24 raising these two cases, and I said yes, I agree, that that is --  
25 they are negative findings about me. And I told them -- again, I

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 1002

1 don't exactly remember exactly what I told them, but I can tell you  
2 what I believe. In both of these particular cases, I actually think  
3 I was right. So it comes back to the same thing that was raised  
4 earlier, that sometimes finders of fact get it wrong, and I think  
5 they have in both of these cases about the evidence that I put  
6 forward.

7 Q. So in the two cases that I've asked you about today, it was the  
8 court that was wrong and you were right?

9 A. Correct.

10 MR. HAFETZ: If we could just pull up SPOE411150-411172.

11 Q. And for context, this is your article, "Forensic transcriptions:  
12 How confident false beliefs about language and speech threaten the  
13 right to a fair trial in Australia."

14 MR. HAFETZ: And if can we go to page 7 of the document --  
15 sorry, page 2, just to see the full scope of the doc --

16 Q. This is your article; yes?

17 A. Yes.

18 Q. And that's published in 2018; yes?

19 A. Yes.

20 MR. HAFETZ: Now if we can go to page 7 of the PDF.

21 Q. In the middle of the page, you opine first on a jury reaching  
22 its verdict and how we don't ever truly know how a verdict is reached  
23 by a jury, right, because -- unless you're inside the room; right?

24 A. Yes.

25 Q. Now, you then say:

1            "... I am personally aware of numerous cases, one of which forms  
2            the case study below, where manifestly inaccurate police transcripts  
3            have been admitted as 'assistance' in making out indistinct covert  
4            recordings, resulting in actual or potential injustice."

5            A.    Yes.

6            Q.    The case you're referring to immediately below is the Pact case,  
7            the Clark case; right?

8            A.    Yes.

9            Q.    And here you call it "manifestly inaccurate"; yes?

10          A.    Yes.

11          Q.    It's manifestly inaccurate to you; right?

12          A.    Yes.

13          Q.    Not to the court.

14          A.    No.

15          Q.    And it's manifestly inaccurate, in this case, after you were  
16          given a recording by the defendant's wife to help him with his case;  
17          right?

18          A.    Yes.

19          Q.    And that case was never overturned.

20          A.    No, it has not been overturned.

21          Q.    And just for the record, you're aware that in that case there  
22          was other evidence also that the court relied on to support the  
23          conviction; right?

24          A.    There was other evidence that would not have been considered  
25          nearly as strong as it was except for this phrase.

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 1004

1 Q. How do you know how strong or not strongly it was considered by  
2 a jury?

3 A. Well, I don't know how strongly it was considered by the jury.

4 Q. Is it fair to say that in most of your writings about this case,  
5 which are prodigious, you don't name the case?

6 A. Yes.

7 MR. HAFETZ: I'd like to now briefly return to the exhibit that  
8 I was unable to pull up this morning because we had an ERN that was  
9 outdated, and I apologise for that. This is SPOE00412795.

10 Q. And, Professor Fraser, for your reference, this is the Code of  
11 Practice from the IAFPA that I was trying to show you before.

12 A. Yes.

13 Q. And so to move things along, you are familiar with this  
14 practice, you understand it, and you've seen it before; right?

15 A. Yes.

16 Q. Okay. And you consider yourself bound by it when you write a  
17 report; yes?

18 A. Yes.

19 Q. Like the report in this case; right?

20 A. Yes.

21 Q. Just if we can go down just a little bit on the page, I want to  
22 focus you just on three segments and I will move on. 2.2, 2.3 --

23 THE INTERPRETER: The interpreters kindly ask the speakers to  
24 make a pause between and answer. Thank you.

25 MR. HAFETZ:

Witness: Helen Fraser (Resumed) (Open Session)

Page 1005

Cross-examination by Mr. Hafetz (Continued)

1 Q. 2.2, 2.3 --

2 THE COURT REPORTER: [Microphone not activated].

3 MR. HAFETZ: Oh, certainly. Absolutely.

4 THE COURT REPORTER: [Microphone not activated].

5 MR. HAFETZ:

6 Q. I'm going to go a little slower, Professor Fraser, so I don't  
7 get in trouble.

8 I just want to focus you on three provisions on the first page  
9 of the code, 2.2, 2.3, and 2.4. If you wouldn't mind just reading  
10 them and let me know when you're done.

11 A. 2.2, 2.3, and 2.4?

12 Q. And 2.5, actually, yeah.

13 A. And -- yes, I've read those.

14 Q. And were you familiar with those when you completed your report  
15 in this case?

16 A. Yes.

17 Q. I'd like to turn just to the last page, and looking specifically  
18 at 3.8 and 3.9, I'm going to read them:

19 3.8 reads:

20 "It is recommended that members have their analyses and written  
21 reports reviewed by a second analyst with relevant expertise.  
22 However, it is acknowledged that this may not be possible in all  
23 situations."

24 You're familiar with that provision; yes?

25 A. Yes.

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 1006

1 Q. And despite this recommendation, your report in this case was  
2 not subject to any peer-review; right?

3 A. Correct.

4 Q. And 3.9 reads:

5 "When carrying out forensic phonetic analysis of speech in a  
6 language in which the analyst does not have native-level competence,  
7 members should seek assistance from a trained native-level speaker of  
8 the language in question."

9 Do you recall when in the process you asked Ms. Menegon for  
10 language assistance?

11 A. Yes.

12 Q. When exactly?

13 A. Near the beginning.

14 Q. So in January?

15 A. January or February. I don't recall the exact date.

16 MR. HAFETZ: If I could pull up SPOE411150. And if we can go to  
17 the next page. If we can go to the ERN ending 153.

18 Q. Dr. Fraser, in this article, you wrote:

19 "As the saying goes, it's not what people don't know that causes  
20 trouble, but what they know for sure that's just not so."

21 Right?

22 A. Yes.

23 Q. And you remain sure and certain today that this Court should  
24 follow the conclusion of your report; right?

25 A. I would like to think that His Honour would take notice of it,

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 1007

1     yes.

2     Q.     Despite your not understanding or even recognizing the language  
3     Albanian; right?

4     A.     I think I've made the limitations of my report extremely clear  
5     throughout.

6     Q.     Despite not ever listening to or even receiving more than  
7     90 per cent of the 28 hours of audio recording; right?

8     A.     I think I've responded to that multiple times with great  
9     clarity.

10    Q.     Also not knowing exactly which materials you've received at what  
11    time; right?

12    A.     Not -- why do you say that?

13    Q.     Earlier your testimony was you weren't sure if the Thaci team  
14    had given you more materials than is noted in your report; right?

15    A.     I think the audio material that I -- is noted in there, I've  
16    spoken about that and I know the dates. I might not be able to  
17    remember them sitting here right now but ...

18    Q.     You don't remember just this morning saying that they could have  
19    given you more material that didn't make it into your report?

20    A.     Not that I would have reviewed. I think you're right to say  
21    that I reviewed only a very limited number. Those two visits, that  
22    was all that I reviewed. Yes.

23    Q.     Do you not remember that we had an extensive discussion that you  
24    had received potentially additional material from the Thaci team that  
25    didn't make it into your report? As an example, the working language

Witness: Helen Fraser (Resumed) (Open Session)  
Cross-examination by Mr. Hafetz (Continued)

Page 1008

1 decision?

2 A. I'm sorry, I thought you were talking about audio recordings.

3 The working language decision is in a language that I understand very  
4 well.

5 Q. I'm asking you more broadly.

6 A. Oh, okay. In that case, I agree. I'm sorry, I thought you were  
7 talking about the audio.

8 Q. But you noted earlier today that you may have received  
9 additional audio you didn't listen to, right, or transcripts you  
10 didn't open; right?

11 A. Yes.

12 Q. So, again, the question is: You're asking the Court to rely on  
13 your report when we don't know exactly the total quantum of material  
14 you received from the Defence; is that right?

15 A. I'm hoping that the Court will take notice of my report for the  
16 reasons -- because I believe that the arguments and information I've  
17 provided are highly relevant and reliable. I think I've made very  
18 clear the limitations of what I've done, and I've also tried to be  
19 very clear about the -- what I would like to think is a positive  
20 contribution.

21 Q. And this is despite not knowing which version or versions of the  
22 artificial intelligence tool you used to complete your assessment;  
23 right?

24 A. I do know what versions I used. I told you.

25 Q. You know the names, right, but not the versions; right?

Witness: Helen Fraser (Resumed) (Open Session)

Page 1009

Cross-examination by Mr. Hafetz (Continued)

1 A. I do know the version. I wrote the version in there.

2 Q. By ChatGPT-5, you mean; yes?

3 A. Yes.

4 Q. Okay. Despite the court -- the fact that a court has found you  
5 evasive and evangelistic when testifying; right?

6 A. Well, I dispute that. I don't think I was evasive at all, and I  
7 don't think I'm evangelistic. I think I'm making reasonable points  
8 that I believe are important, and I would like to think that the  
9 courts would take notice. It's true that particularly those two  
10 cases that you've brought up, they have not accepted what I've been  
11 saying. I should note that applications to review convictions in  
12 New South Wales are vanishingly rarely accepted. I'm certainly not  
13 the only person who's had a report that's part of an application like  
14 that. I think you could count the number on one hand. We knew that  
15 right from the start. The lawyers made that very clear from the  
16 start. So I don't think a rejection of an application to review a  
17 conviction in New South Wales shows anything about my expertise.

18 Q. Thank you, Professor Fraser.

19 MR. HAFETZ: I have no further questions, Judge.

20 JUDGE GOSNELL: Thank you, Mr. Hafetz.

21 Mr. Hafetz, before we go further, is there a list of MFI  
22 documents that you wish to have MFI'd? And perhaps the most  
23 expeditious way of dealing with it is we can either read it out or,  
24 if the Registry can accommodate it, perhaps it could be sent  
25 *inter partes* to be treated accordingly.

Witness: Helen Fraser (Resumed) (Open Session)

Page 1010

Re-examination by Ms. Menegon

1 MR. HAFETZ: The latter option sounds very efficient,  
2 Your Honour. I have a list here and we'll send it out to the parties  
3 and to the Registry.

4 JUDGE GOSNELL: Let's proceed that way then. Thank you,  
5 Mr. Hafetz.

6 MR. HAFETZ: Thank you very much.

7 JUDGE GOSNELL: Ms. Menegon, any redirect?

8 MS. MENEGON: Yes, Your Honour, a short one.

9 Re-examination by Ms. Menegon:

10 Q. Good afternoon, Professor Fraser. I have only a few questions  
11 to ask you as a follow-up to the questions from the SPO.

12 A. Excuse me, Ms. Menegon, could you bring the microphone a little  
13 closer.

14 Q. Is it better now?

15 A. A little better.

16 Q. Thank you. You were asked some questions about the Clark and  
17 Eastman cases. But is it right that, for instance, in the Clark  
18 case, the judges did recognise the priming effect? And I'm referring  
19 to paragraph 26 of the judgement which was put on the screen earlier.

20 A. In both cases they recognised that.

21 Q. And in Clark as well, the judge recognised your expertise in  
22 phonetics or linguistics?

23 A. Yes.

24 Q. Thank you. You say that in your articles, you did not  
25 necessarily name the Clark case where you were referring to it. Is

1       there any particular reason for that?

2       A.     That was out of respect for the family who had suffered greatly  
3       through this process, and Mr. Clark had died in the meantime. I  
4       never hid the name, but I just didn't use the name openly and widely  
5       for that reason.

6       Q.     Understood. You were asked as well about the respect of your  
7       code of ethics with regard to the fact that you did not benefit from  
8       the assistance of an Albanian speaker to draft the report in the  
9       current case because we did not allow you to do so, in particular for  
10      time and financial reasons.

11       Can you please tell us why do you think or whether you think you  
12      did respect your code, even without the assistance of an Albanian  
13      speaker?

14      A.     I certainly believe that I respected both of those codes of  
15      conduct fully. I was actually part of the drafting of the code of  
16      conduct about that aspect. I was not analysing the language in  
17      this -- in these recordings. It has happened in the past that people  
18      have made analyses of audio recordings in languages that they don't  
19      speak, and that's the reason for that code there. I was certainly  
20      not analysing the language. I was extremely clear from the start and  
21      at every opportunity that I don't speak the language and I am limited  
22      in that respect.

23       I think my evidence has been about the nature of the audio and  
24      the possibilities for reliable transcription of that audio, and I  
25      stand by everything that I've said in my report.

Witness: Helen Fraser (Resumed) (Open Session)

Page 1012

Re-examination by Ms. Menegon

1 Q. Thank you. In this regard, you did say at some point that you  
2 would have wanted to elaborate a bit on the Eastman case because you  
3 had time to review it. So if you have anything particular to say,  
4 feel free to do so now.

5 A. Thank you. Is that all right, Your Honour?

6 So I did review this -- I do think it was -- I'm happy to hear  
7 that you will have the full judgement to read. I think you quoted  
8 rather selectively from that judgement. I think there were far more  
9 favourable things said about me there.

10 But perhaps the most important thing I would like to say is that  
11 I am the one, out of all of them, all of the experts in the case, and  
12 the judge, who all opined about -- sorry, let me break very briefly.

13 The issue in that judgement that -- was all about whether the  
14 enhancing had improved the quality of the audio and the  
15 intelligibility of the audio. That was the main thing that my part  
16 of it had been then.

17 Everyone opined that the -- there were three sets of enhancing.  
18 Everybody opined that all three sets of the enhancing were more  
19 intelligible than the original. And His Honour opined that he was  
20 able to hear the words that were in the prosecution expert's  
21 transcript.

22 I'm the one who did an empirical test to find out just how  
23 intelligible those different audio files were, the original and the  
24 three enhancements, and particularly how easy or difficult it was to  
25 hear the particular incriminating phrase that was at the heart of the

1 argument. And that empirical test completely vindicated my opinion  
2 as the one that was right, and that's why I say I think we have to  
3 make a distinction between the rulings of the courts and triers of  
4 fact as opposed to the findings of scientific studies and analysis of  
5 the audio.

6 Q. Thank you.

7 A. May I say one other thing as well?

8 Q. Yes.

9 A. In relation to Clark, I didn't re-read the Clark ruling, but I  
10 did sit and think about the importance of that case. It is true that  
11 the entire court, including the defence, accepted that the phrase "at  
12 the start we made a pact" had been spoken. And there were numerous  
13 things in the rejection ruling that I commented on in the article  
14 that you put up there.

15 But another thing that was in the article that I don't think  
16 came up - excuse me - was -- and it reminded me of an earlier case  
17 that I was involved in where the judge certainly accepted my opinion  
18 and my expertise. That's a case called Murrell, 2001. And the  
19 reason I was remembering that in relation to Pact -- I'm sorry, I  
20 don't know why I'm getting so croaky right now.

21 Q. There is some water on the side if you need to [Overlapping  
22 speakers] ...

23 A. Thank you. The reason I remembered that case, that was a case  
24 also with indistinct covert recordings. Somebody had been convicted  
25 on the basis of that. There was an appeal. And myself and another

1 lady gave evidence. I was for the prosecution. It was found that,  
2 in fact, the transcript was wrong and the conviction was quashed.  
3 And the relationship between that and the Pact case is that the  
4 detective who provided the police transcript in Murrell, 2001, was  
5 actually the same detective that provided the transcript in Clark.

6 So I think there's an important issue here, and that is the  
7 issue that I've been wanting to address, is that in some cases at  
8 least, the court's use of this kind of evidence is not ideal, and  
9 there have been miscarriages of justice because of it. Maybe that's  
10 all I need to say.

11 I would like -- I feel you've given an excessively negative  
12 account of the attitude and acceptance of the work that I've done  
13 at -- both in court and out of court.

14 Q. Thank you. You said earlier today, at page 57 of the  
15 transcript, that internal information in the audio, such as names,  
16 can be useful to identify the speakers, but you noted that there were  
17 some limitations. Can you please clarify which limitations you had  
18 in mind.

19 A. Well, the obvious one is whether the names have been transcribed  
20 correctly or incorrectly, reliably. I think I mentioned I have  
21 worked on some speaker-attribution cases where you've needed a big  
22 spreadsheet of all sorts of factors. I didn't refresh about this  
23 over lunch so I don't have it at the top of my head, but certainly  
24 part of it is where the names are used and accepted. So that is one  
25 important thing. But, of course, people can be wrong or using the

Witness: Helen Fraser (Resumed) (Open Session)  
Re-examination by Ms. Menegon

Page 1015

1 wrong names for whatever reason, and it is important to look into the  
2 other factors as well.

3 Q. Thank you. You also confirmed today, in response to the SPO,  
4 that you considered or you assessed that at least part of the audio  
5 are indistinct, of the audio we provided to you. Is it possible for  
6 you to tell us how confident are you of that conclusion about the  
7 indistinct nature of this audio?

8 A. That at least some parts of that --

9 Q. Yeah?

10 A. -- recording are indistinct? I'm very confident.

11 Q. What have been your experience in general with forensic audio  
12 recorded not from a phone tap but from a listening device in the  
13 physical environment? What is the usual quality of such audio?

14 A. It's often very low.

15 Q. And you also mentioned today that the tests we conducted with  
16 the independent interpreters, I'm referring to Hysni Recica and  
17 Eurideas, were not that well-controlled experiments. But in light of  
18 what we discussed yesterday, what do you -- what these experiments  
19 tell you about the quality of the audio as well and the different  
20 transcription on it?

21 A. I think they -- they add weight to the observation that the  
22 audio is of poor quality and is indistinct and requires external  
23 evidence to -- external contextual information to assist. And of  
24 course the importance of that is that we have to be sure that the  
25 external contextual information is reliable and that the analysts are

Witness: Helen Fraser (Resumed) (Open Session)  
Questioned by the Single Judge

Page 1016

1 independent, because we know that any misleading characteristics of  
2 the contextual information are likely to influence the transcript in  
3 such a way that it is very difficult to recover from any errors.

4 Q. And if the SPO wanted to prove to the Court that the audio is  
5 not indistinct, how would they do that or show it?

6 A. Have some samples, perhaps a certain percentage, transcribed by  
7 independent experts in indistinct audio.

8 MS. MENEGON: Thank you. I have no further questions.

9 JUDGE GOSNELL: Professor Fraser, I do have a few questions for  
10 you.

11 Questioned by the Single Judge:

12 JUDGE GOSNELL: At page 8 of your report, you say that audio  
13 falling within the unclear category, and here I quote, "requires  
14 careful attentive listening, but can be understood ... on the basis  
15 of internal context alone."

16 A. Yes.

17 JUDGE GOSNELL: And then at page 7 you define internal context  
18 as, and I quote, "other words in the recording."

19 A. Yes.

20 JUDGE GOSNELL: A general question to start with. Are there any  
21 rules or guidelines, in your opinion, concerning what other words in  
22 a recording can be used as internal context?

23 A. I think any other words -- as you hear the words, they build up  
24 internal context for the other words within it. I'm not sure if you  
25 had something specific in mind that you would like me to consider?

Witness: Helen Fraser (Resumed) (Open Session)  
Questioned by the Single Judge

Page 1017

1 JUDGE GOSNELL: So the more -- the longer that a particular  
2 forensic recording might be, the more internal context you have in  
3 order to inform the proper transcription of unclear words or unclear  
4 audio; is that correct?

5 A. It's certainly true that longer samples be -- the length -- a  
6 longer duration is an advantage. The only caveat that I'd put upon  
7 that is the same as before: If it's transcribed by somebody who's  
8 independent and has demonstrable expertise in dealing with indistinct  
9 audio, then the increasing length gives more and more confidence.  
10 The other side of that is if you have made some mistakes on some of  
11 the words, they might compound, and that can definitely happen as  
12 well.

13 JUDGE GOSNELL: And can internal context also be used -- is  
14 everything that you just said equally true in respect of indistinct  
15 audio?

16 A. Yes. As you start to hear some words, it helps you to hear  
17 additional words. And as with many things in this field, it's a  
18 double-edged sword. It helps, but then it could hinder. If it's  
19 wrong in the beginning, it can become further wrong. We've seen that  
20 many times. When people get a wrong idea of what audio is about, the  
21 errors compound and compound. So this is something really to  
22 consider, I think. Just having the duration is not a panacea for the  
23 possibility of error.

24 JUDGE GOSNELL: Not a panacea, but it does increase reliance on  
25 internal context --

1 A. Yes.

2 JUDGE GOSNELL: -- as opposed to, for example, external context;  
3 is that fair to say?

4 A. That is fair to say, but I still want to emphasise that if you  
5 start with some errors, they will compound and you may never be aware  
6 of them.

7 JUDGE GOSNELL: Thank you, Professor Fraser.  
8 Any questions arising?

9 MR. HAFETZ: [Microphone not activated]. No, Judge, thank you.

10 JUDGE GOSNELL: Professor Fraser, I want to thank you very much  
11 for coming -- having come all this way to provide your testimony to  
12 the Court.

13 You will now be escorted out of the courtroom. Thank you very  
14 much.

15 [The witness withdrew]

16 JUDGE GOSNELL: We do have a decision on additional submissions  
17 in respect of this witness, and that was the interim decision on the  
18 Thaci Defence motion for the admission of this witness's evidence.

19 And so now I want to turn principally here to the Prosecution,  
20 which would be the first party to file those submissions, and I want  
21 to ask you whether -- and I know that this was already provided for  
22 in the decision, or actually possibly in the subsequent order,  
23 setting a timeline for those submissions. But given the fact that  
24 you haven't actually challenged the witness's expertise as such, I'm  
25 wondering whether you still wish to make those submissions and what

1 those submissions might be, or whether you'd be willing to just make  
2 your submissions as and when you would wish to do so on the merits  
3 concerning the witness's testimony, in other words, in your final  
4 brief, or do you still wish to make your interim submissions?

5 MR. HAFETZ: Your Honour, I do need to read the entire  
6 transcript again, but I do believe -- right now, that we would want  
7 to make our filing now. It may be to take a partial approach. But  
8 in any event, before I speak on that, I want to think about it a bit,  
9 and I intend to file within the deadline. We're not asking for more  
10 time.

11 JUDGE GOSNELL: That's perfectly fine, Mr. Hafetz. I just  
12 wanted to receive an indication on that now, but of course you can  
13 provide an indication later. And thank you very much for indicating  
14 that you'll be able to comply with that deadline.

15 And we've already agreed that both parties will be exchanging  
16 and submitting the MFI documents for potential admission, which may,  
17 in turn, be related to the submissions that are going to be made on  
18 that as well as the decision that would follow.

19 I do note that the Thaci Defence has requested the admission of  
20 items 5 through 15 on the MFI list from the bar table. And I note,  
21 Mr. Hafetz, that you not only did not oppose that request, but you  
22 supported it. That was at yesterday's transcript, I believe at  
23 page 59.

24 So I believe we can already decide to admit those items, 5  
25 through 15, on the Thaci MFI list; is that correct?

1 MR. HAFETZ: [Microphone not activated]. It is, Your Honour.

2 JUDGE GOSNELL: All right. So then we'll proceed accordingly.

3 This is an oral order.

4 Items 5 through 15 on the Thaci MFI list, appearing to meet the  
5 criteria for admission under Rule 138, and noting the absence of  
6 opposition from the Prosecution, are admitted.

7 This concludes the oral order.

8 And I understand the Court Officer will be circulating a list  
9 accordingly.

10 I would remind the parties of the deadlines that are set out in  
11 paragraphs 21 to 23 of the Order on the Further Conduct of  
12 Proceedings. That's F890. Those are imminent, which is why I'm  
13 reminding the parties of those deadlines.

14 Are there -- and I will also indicate that we will be vacating  
15 the court days, the court hearings that were set for the next three  
16 days.

17 Are there any other matters that the parties wish to raise at  
18 this point?

19 Yes, Mr. Edwards.

20 MR. EDWARDS: Yes, just to advise Your Honour that there is a  
21 final batch of agreed facts that will be circulated in the next few  
22 days, certainly by the end of the week, I think. Yes, I see  
23 Mr. Hafetz is nodding his head. They have been the subject of  
24 significant discussions both within -- amongst the Defence teams and  
25 *inter partes* with the Prosecution. I'm not asking for any response

1 from the Court now. Just to flag that up.

2 JUDGE GOSNELL: And will that be filed by Thursday?

3 MR. HAFETZ: I believe that's entirely reasonable, Judge, yes.

4 MR. EDWARDS: Grateful.

5 JUDGE GOSNELL: Any other matters?

6 MR. HAFETZ: Not from us.

7 JUDGE GOSNELL: We stand adjourned. Thank you.

8 --- Whereupon the hearing adjourned at 3.29 p.m.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25