

1 International Criminal Court

2 Trial Chamber I - Courtroom 1

3 Presiding Judge Adrian Fulford,

4 Judge Elizabeth Odio Benito and Judge René Blattmann

5 Situation in the Democratic Republic of the Congo -

6 ICC-01/04-01/06

7 In the case of The Prosecutor v. Thomas Lubanga Dyilo

8 Thursday, 3 June 2010

9 (The hearing starts at 9.31 a.m.)

10 (Open session)

11 (In the absence of the accused)

12 THE COURT USHER: All rise. The International

13 Criminal Court is now in session. Please be seated.

14 PRESIDING JUDGE FULFORD: Good morning. Ms Samson,

15 would it be convenient to begin with your enquiries overnight as

16 to the position as regards the investigators?

17 MS SAMSON: Certainly, Mr President. Should the

18 Chamber require the Prosecution to provide names I would have to

19 seek the Chamber's indulgence to mention names in private

20 session at the moment, but if I can describe the individuals by

21 their position, or category, the Chamber may understand to whom

22 I'm referring.

23 PRESIDING JUDGE FULFORD: For the time being, that

24 will be satisfactory.

25 MS SAMSON: Thank you. We were able to establish

1 contact and obtain the necessary information in relation to
2 three individuals that the Prosecution proposes are the
3 appropriate persons to deal with the issues that the Chamber has
4 raised and that have arisen in the course of the trial.

5 The first is the former team leader, the second is an
6 investigator who handled intermediary 316 and the third is an
7 OTP representative in the field who was the primary handler or
8 person who communicated with intermediary 321. And, if I can
9 start in somewhat reverse order, the first person who would be
10 available to come is indeed the third person I mentioned; the
11 person currently employed with the Office of the Prosecutor in
12 the Democratic Republic of the Congo. He can arrive in The
13 Hague early next week. The Office of the Prosecutor proposes
14 taking a statement from him and proposes that he then testify
15 the week of 14 June. He likely could be ready on Monday, 14
16 June.

17 The team leader and investigator both have
18 professional and personal commitments in the month of June, but
19 are available as of the very end of June or beginning of July.
20 They, too, would travel to The Hague and we would like to meet
21 with them and take some form of statement that could be
22 distributed to the parties, participants and the Court in
23 advance of their testimony, but we do not anticipate that that
24 will take more than one day.

25 Both the investigator and the team leader have

1 requested time to review their files when they arrive. Having
2 not been employed by the Court for -- since 2007, they would
3 like to refresh their memory from the materials that they used
4 to have access to here.

5 And that's the update currently that the Prosecution
6 can provide, subject to any questions that the Chamber may have
7 now.

8 PRESIDING JUDGE FULFORD: Thank you very much,
9 Ms Samson. I'm not going to rehearse the history that we set
10 out yesterday. It's on the record and it's unnecessary to do
11 so. The effect of having only started to make contact with
12 these individuals over the last few days, within the last week,
13 is that on the timetable that you've just indicated for the
14 former team leader and the investigator for 316, they are not
15 going to be available until the beginning of the Court recess.
16 I'm sorry, that is incorrect actually. It is an ICC holiday,
17 rather than the ICC holiday, so we can in fact address them
18 before the Court recess. Nonetheless, we are going to lose
19 therefore next week and we are probably going to lose the week
20 of 21 June, possibly the week of 28 June, unless some other
21 evidence relevant to these issues can be found to fill those
22 gaps.

23 Now, do the Prosecution have any proposals for those
24 periods that will otherwise be wasted?

25 MS SAMSON: We do, your Honour, have certain

1 proposals. The timing of those proposals will need to be worked
2 out with the Victims and Witnesses Unit. Certainly intermediary
3 321, on the last correspondence from the Victims and Witnesses
4 Unit, is scheduled to arrive in The Hague I believe the weekend
5 of June 20. I understand that there may be a familiarisation
6 period, but that he may be available to testify the week of 21
7 June.

8 The situation with 316 will likely fall in or around
9 the same period. He has indicated his willingness to testify
10 and to be interviewed in advance by the parties. We await final
11 confirmation, but he is in a location slightly more convenient
12 to arriving in The Hague and his passport situation is slightly
13 better, so there may be fewer delays. This needs to be
14 confirmed with the Victims and Witnesses Unit, but there is a
15 possibility that he also could come towards the end of June,
16 either the week of the 20th or the 28th.

17 In addition, Mr Sachdeva will address the Chamber on a
18 request that perhaps certain witnesses be heard in rebuttal,
19 some of whom, should the request be granted, may be able to
20 slotted in during some of these periods, but certainly before
21 the Court recess, which may alleviate some of the concerns of
22 the Chamber.

23 PRESIDING JUDGE FULFORD: Thank you, Ms Samson. And
24 I'm sorry about the mistake about the ICC holiday which is --
25 there is an ICC holiday, in fact, on Thursday, 1 July.

1 As regards the position of the former team leader and
2 the investigator for 316, there may be some work that can be
3 done prior to their arrival in The Hague, and I have two things
4 in mind: If they wish to have the opportunity of reviewing some
5 of the relevant material, it may be possible to have some or all
6 of the materials sent to them in a secure form so that they can
7 read them wherever they currently now are.

8 Secondly, given the position of these people, once the
9 issues have been identified for them by the Office of the
10 Prosecutor, they could commence the process of writing their own
11 statement themselves. I mean, very often professionals, in
12 fact, provide their own statement, rather than sitting down with
13 an official of whichever department or bodies wanting evidence
14 from them, and simply provide the statement. Now, those two
15 things could all be done in advance, couldn't they?

16 MS SAMSON: Absolutely, your Honour. And the
17 suggestion is -- finds great favour with the Prosecution.

18 PRESIDING JUDGE FULFORD: Excellent. That's good.
19 Now, that's -- that's three individuals. Do we take it, then,
20 that the, as it were, the overarching figure who was identified
21 in the Prosecution's proposals for dealing with intermediaries
22 has really fallen by the side of the way, given that you're now
23 focussing on these particular three people?

24 MS SAMSON: It may be the case, your Honour, from the
25 Prosecution's perspective, we will be -- we are proposing and

1 recommending three people who have particular knowledge. The
2 team leader also has some overarching knowledge because he was
3 in charge of the investigation as well, so he can discuss
4 general matters.

5 The Prosecution also provides for the Chamber's
6 consideration that a person we had considered at the time the
7 Deputy Prosecutor of investigations, Serge Brametz, could also
8 be a possibility if the Chamber finds, after having heard the
9 specific evidence and the general information the team leader
10 can provide, that somebody at that level would be -- would be
11 preferred, and that's also a possibility.

12 PRESIDING JUDGE FULFORD: Instinctively only, I would
13 imagine that the main focus of attention is going to be on what
14 actually happened with the particular intermediaries we're
15 concerned with, rather than the more theoretical and abstract
16 issues that may arise out of the use of intermediaries, but this
17 will undoubtedly be a developing situation and we will see.

18 If the Office of the Prosecutor does see it as being a
19 real possibility that an overarching figure may be required,
20 could you make sure that he or she is ready, available and has
21 provided at least the outline of a witness statement so that
22 we're not going to have further delays because their presence
23 has to be secured and their evidence has to be reduced to
24 writing.

25 MS SAMSON: Certainly. And for the benefit of the

1 Chamber, the team leader certainly can address a number of
2 general issues related to the office's policies and practices
3 related to the use of intermediaries generally should that, as I
4 have understood it, perhaps be a focus of attention as well.

5 PRESIDING JUDGE FULFORD: Is this the former team
6 leader that you've referred to as one of the three?

7 MS SAMSON: Yes.

8 PRESIDING JUDGE FULFORD: That may, then, very well
9 cover the position.

10 Ms Samson, finally from me, we recognise, of course,
11 that the two who've left the employ of the Court are obviously
12 now serving other masters and other mistresses. Could you
13 nonetheless convey to them from the Judges of this Chamber that
14 we are under very considerable pressures of time and we would be
15 personally grateful if they are able to make themselves
16 available at the earliest possible opportunity. We recognise
17 their other commitments, but we would ask them to bear in mind
18 the very real time pressures that are now exercising on this
19 Court.

20 MS SAMSON: Certainly. I will do so.

21 PRESIDING JUDGE FULFORD: Thank you very much.

22 Now, Mr Sachdeva, what about rebuttal?

23 MR SACHDEVA: Thank you, Mr President. Before I do
24 move into some specifics, as Ms Samson has alluded to, may I
25 just point out that of course the trial team has been having

1 ongoing discussions as to the need to call rebuttal witnesses
2 and to a large extent we had to wait for the end of this phase
3 of the Defence case. Of course, Defence Witness 29, for
4 example, came here to authenticate records, but those records
5 may have had an impact on witnesses earlier on in this stage of
6 the case.

7 So, therefore, the process of assessment has been
8 ongoing and at this stage we do have four potential suggestions,
9 and may I just also add that these are taken from the pool of
10 witnesses that we have interviewed in preparation for the
11 Defence case and in preparation for cross-examination.
12 Therefore, the majority of the statements have been disclosed to
13 the Defence. In fact, the Chamber has also received I believe
14 one or two statements.

15 There is no issue with respect to further time needed
16 to call the witnesses, take a statement and so on and so forth.
17 It's simply a matter of identifying whether they are willing and
18 able to come back, or to come and give testimony.

19 The first witness is former child witness 38. You may
20 recall, Mr President, that he was the first witness that
21 testified in the Prosecution case and his evidence, in our
22 submission, is relevant to the allegations against Witness 316.
23 He was a witness that was introduced to us by 316 and a
24 statement was taken by this witness. The Defence were present
25 and the statement very clearly states that there was nothing

1 untoward taking place between Witness 316 and Witness 38, and he
2 has denied -- or not denied, he has categorically stated that he
3 was never asked to lie and what he told the Court and what he
4 told the Prosecution in the statements was the truth. And, in
5 our submission, this evidence is relevant to the rebuttal of
6 allegations against 316.

7 One other option is to tender the statement pursuant
8 to Rule 68 of the Rules of Procedure and Evidence. The Defence
9 were present, as I said, during the interview. There, in our
10 submission, should be no issue with respect to further questions
11 for cross-examination and this would undoubtedly save time.

12 PRESIDING JUDGE FULFORD: Just remind me, Mr Sachdeva,
13 38 and the position of 316 were mostly addressed by which
14 Defence witnesses? So which witnesses should we be looking to
15 in relation to whom rebuttal evidence is sought?

16 MR SACHDEVA: There are no allegations directly
17 against Witness 38. The reason why we are --

18 PRESIDING JUDGE FULFORD: Plus 316, isn't it? All
19 right.

20 MR SACHDEVA: Precisely, Mr President.

21 PRESIDING JUDGE FULFORD: Exactly. So just remind me
22 of the principal Defence witnesses who you would say have given
23 evidence which requires the presence of 38 so that he can deal
24 with the allegations against 36.

25 THE INTERPRETER: Mr President, message from the

1 English booth. Could counsel please be requested to slow down.

2 Thank you.

3 MR SACHDEVA: Defence Witness 16, and, as I say, there
4 were no allegations against Witness 38, but the allegations
5 emanating from their evidence related to the activities of 316.

6 PRESIDING JUDGE FULFORD: Very helpful. Now, just
7 looking -- we've been asked to slow down, Mr Sachdeva.

8 Defence Witness 16 gave evidence back on 8, 9 and 10
9 March, so those allegations, clearly a long time ago, and I'm
10 trying to remember when 15 gave evidence. I'm afraid I don't
11 have that on the schedule before me, but it was a little while
12 ago.

13 Now, if 38 is recalled - and that's underlining the
14 word "if" - he clearly has travel documents, you say a statement
15 is in existence and so it's simply a matter of bringing him
16 here.

17 MR SACHDEVA: Indeed, Mr President, as long as the
18 witness consents. But, yes, I understand that travel documents
19 are in order and that, as the Chamber knows, the statement has
20 been disclosed and in fact the Chamber does have the statement
21 as well. So, in our submission, he could be brought rapidly to
22 the Court.

23 PRESIDING JUDGE FULFORD: Good, that's number one.

24 MR SACHDEVA: The second witness is Witness 551. He
25 was interviewed by the DRC 1 trial team on 6 May 2010 and he was

1 interviewed in preparation for the cross-examination of Defence
2 Witness 29, and now that Defence Witness 29 has completed his
3 evidence the Prosecution is in the position of assessing whether
4 we would need to call this witness to rebut specific evidence in
5 relation to one or two documents that Defence Witness 29
6 authenticated. And, again, the statement of this witness has
7 been disclosed to the Defence, and I understand that he has
8 expressed initial willingness to come and testify if the
9 Prosecution decides to call him.

10 PRESIDING JUDGE FULFORD: What's the position in
11 relation to him and travel documents, Mr Sachdeva?

12 MR SACHDEVA: Mr President, I believe he does not have
13 a travel document.

14 PRESIDING JUDGE FULFORD: So on current form that is
15 probably going to take, what, four to six weeks to arrange?

16 MR SACHDEVA: Perhaps three weeks, but there is also a
17 possibility of a potential video link testimony.

18 PRESIDING JUDGE FULFORD: So just so it's clear, he
19 would then, certainly as far as the Prosecution are concerned,
20 be focussing principally on specific documents produced by
21 Witness 29?

22 MR SACHDEVA: Yes, and in addition some general
23 evidence as to the way schooling was conducted in Ituri and
24 generally about the reliability of school records during the
25 periods of combat in Bunia and in Ituri.

1 PRESIDING JUDGE FULFORD: Thank you. That's number
2 two.

3 MR SACHDEVA: The next witness is Witness 496. He was
4 interviewed in November 2009 and again in January 2010, and he
5 was interviewed in preparation for the cross-examination of
6 Defence Witness 12 and in respect of the allegations against
7 Prosecution witnesses 7 and 8.

8 If the Prosecution makes a final decision to call this
9 witness, if permitted, he will give evidence regarding the age
10 of his two sons, he will give evidence about intimidation and
11 possible threats by Hema supporters and indeed a member of the
12 -- a resource person of the Defence in terms of him being asked
13 to come and testify, and also he will give evidence regarding
14 the participation of the children in the UPC.

15 PRESIDING JUDGE FULFORD: An obvious point is that
16 Witness 12 gave evidence on 17 and 18 February, making those
17 specific allegations against Witness 7 and 8 then, so it could
18 be said, Mr Sachdeva, that arrangements should have been put in
19 place and serious consideration given to calling him some months
20 ago.

21 MR SACHDEVA: Mr President, indeed. We have,
22 obviously, been considering whether we need to call this
23 witness. He has given a statement -- two statements which have
24 been disclosed. I understand he has expressed willingness to
25 come and testify. We have to clarify that with the witness.

1 PRESIDING JUDGE FULFORD: Travel documents?

2 MR SACHDEVA: I believe he does not have travel
3 documents.

4 PRESIDING JUDGE FULFORD: Right.

5 MR SACHDEVA: But if I may say so, in my submission,
6 since there is going to be a period of June where witnesses will
7 be heard, possibly 321 and the intermediaries thereafter - other
8 intermediaries thereafter - we could hopefully slot this witness
9 in in that period if we decide to call him.

10 PRESIDING JUDGE FULFORD: Number four?

11 MR SACHDEVA: The last witness is Witness 555. This
12 is a witness that we have interviewed in April this year, and
13 his evidence will be relevant to the climate of fear and
14 intimidation amongst persons in Bunia in relation to UPC and
15 Hema supporters, specifically if they are alleged to have
16 cooperated with the ICC, and in our submission that evidence is
17 relevant to the Defence case and for rebuttal purposes.

18 PRESIDING JUDGE FULFORD: Does it go to the specific
19 issues on abuse?

20 MR SACHDEVA: Mr President, as we understand it, this
21 phase of the Defence case relates to the allegations against the
22 intermediaries and, more generally, that witnesses have been
23 asked to lie and in fact, if they have lied, if there are no
24 allegations against them, this is all part of that same process.
25 And the Prosecution's position has been, as demonstrated through

1 cross-examination of witnesses, that there is this climate of
2 fear and there has been intimidation for witnesses - Defence
3 witnesses - to come and lie to the Court. And, in our
4 submission, this evidence would be relevant to rebut the Defence
5 allegations.

6 PRESIDING JUDGE FULFORD: Travel documents?

7 MR SACHDEVA: This witness, Mr President, is perhaps
8 probably more problematic. The statement has not yet been
9 disclosed. If we decide to call him, of course, it will be
10 disclosed forthwith. I understand he does not have travel
11 documents and we have to obtain willingness on his part to
12 testify. I also understand that there are security concerns.

13 PRESIDING JUDGE FULFORD: At the moment, we don't know
14 anything about him. It seems as though his evidence is -- is
15 more general in nature than specific. He is not, from what
16 you've said, being called to address particular allegations that
17 have been made against particular people. It's more scene
18 setting.

19 Given all of those difficulties, Mr Sachdeva, is there
20 no one less problematic who is in a position to deal with those
21 general issues? Put the question another way, is there
22 something about 555 that makes him a particularly useful witness
23 to deal with those issues?

24 MR SACHDEVA: Mr President, the unique situation with
25 respect to this witness is that he was a soldier, a child within

1 the UPC at the time, that he alleges that he was intimidated or
2 discouraged from participating with the ICC. I'm not quite sure
3 at this stage of his exact age, but he was a soldier in the UPC.

4 PRESIDING JUDGE FULFORD: Thank you very much. Now,
5 Mr Sachdeva, that -- that's very helpful information in relation
6 to the current state of thinking within the Office of the
7 Prosecutor as regards rebuttal evidence. We now need to look
8 again, partly prompted by Ms Samson, to the position as regards
9 the intermediaries who are to be called, and I think you may
10 have some more information to provide us in relation to that?

11 MR SACHDEVA: Mr President, if I may, with your leave,
12 just make two final points with respect to outstanding rebuttal
13 evidence?

14 PRESIDING JUDGE FULFORD: Absolutely, Mr Sachdeva.
15 Take your time.

16 MR SACHDEVA: As the Chamber is aware, we have asked
17 for the identity of Cordo to be revealed and that has not taken
18 place pursuant to the Chamber's decision yesterday. The
19 Prosecution would seek leave therefore, if we do manage to
20 identify who this person is, to eventually meet this person,
21 take a statement and call him as a rebuttal witness specifically
22 to corroborate the allegations that Witness 297 has made in
23 evidence and also from Defence witnesses 3 and 4. In our
24 submission, if we can secure Cordo to come and testify, we
25 submit it would advance the Chamber's understanding as to the

1 climate of fear in Ituri.

2 There are also other persons that we have tried to
3 contact, but hitherto have not been able to reach them, for
4 example friends of Witness 89, and we are making repeated
5 attempts to -- to contact this person. Of course, the reason
6 why this person is -- is relevant is that we understand he can
7 corroborate the fact that Witness 89 was in the UPC. And so,
8 while we have provided the Chamber with a list of four
9 witnesses, we would -- we would seek leave, if we can
10 demonstrate good cause, to call this person and perhaps other
11 persons if we can secure their attendance and indeed secure a
12 statement from them.

13 And lastly a more general point, Mr President. Of
14 course, the Prosecution accepts that we do have the burden of
15 proof and we would absolutely want this trial to be expedited as
16 soon as possible. However, we do make the point that it was in
17 January this year that we first took note of the positive
18 Defence case of an abuse of process and we have had to assess
19 the evidence that has been elicited, and therefore to mount a
20 successful rebuttal evidence session at this stage necessarily
21 takes time and, therefore, we would seek leave in the next month
22 or two, if we do obtain witnesses, to call them if, as I said
23 before, demonstrating good cause.

24 PRESIDING JUDGE FULFORD: Mr Sachdeva, it would be --
25 and this really takes us on to the next point, which is the

1 position of the two intermediaries who we've ordered should be
2 called. It would be very helpful a little bit later this
3 morning to be provided with a calendar with really what the
4 Prosecution anticipate - and we want realistic expectations,
5 rather than blind optimism - as to the dates when the various
6 individuals that we've been discussing this morning are likely
7 to be available to walk through the door of the Court to give
8 evidence, so that we can have a real feel as to what the minimum
9 period of time is in which this final part of the evidence on
10 abuse can be completed, and that will undoubtedly have an impact
11 on any decisions that we make as regards any additional evidence
12 that you are currently seeking at the moment but which have not
13 yet been finalised.

14 There's obviously got -- there's going to be a tension
15 between the need of course to provide both sides with maximum
16 opportunity to call relevant evidence, as against the right of
17 the accused to a trial within a reasonable period. So, I am
18 going to ask you a little bit later this morning to create on
19 your computer a schedule which puts in the likely date of
20 arrival through the Court door of each of these individuals.

21 Now, can we think about the position now of 321 and
22 316, please?

23 MR SACHDEVA: Mr President, as Ms Samson has
24 submitted, it's our understanding that 321 could be ready to
25 testify as of 20 June. Of course, there is going to be

1 familiarisation that is required.

2 With respect to 316 we also hope it will be at
3 approximately the same time or soon thereafter, but certainly
4 before June has been completed, but as we obtain further direct
5 information - final information - we can provide that to the
6 Court.

7 PRESIDING JUDGE FULFORD: Two things immediately occur
8 in relation to 321 and 316. If statements are to be taken,
9 clearly that process doesn't have to wait for them to arrive in
10 the Netherlands. That can begin immediately in the DRC.

11 And, secondly, at the moment the Judges are
12 unpersuaded that there needs to be the extended familiarisation
13 process that's been indicated by the VWU. We are at the moment
14 unable to understand why these two individuals should require a
15 particularly lengthy period of familiarisation.

16 As we understand it, what is going to happen is that a
17 statement is going to be taken from each of them in the near
18 future. Given that that statement will be very close to the
19 time when they give evidence, they are not going to need any
20 lengthy period to read through the statement. And, secondly,
21 all that needs to happen when they arrive at the Court is that
22 they are introduced to the courtroom, they are given a
23 description of what's going to happen, they meet counsel and
24 they then give evidence.

25 MR SACHDEVA: Mr President, if I may just point out

1 that of course 321 and 316 have been interviewed beforehand and,
2 therefore, that would also be required to be in the
3 familiarisation package, in our submission.

4 The other point is that, at least with respect to 316,
5 there are various receipts and various documents that he may be
6 shown during an interview, or he may have to comment upon, and
7 pursuant to the Chamber's decision on familiarisation, since he
8 authored possibly those documents, or they were contained within
9 -- would have been contained within the statement, in our
10 submission he would be permitted to review those documents
11 during familiarisation and that's why it may take slightly more
12 time.

13 PRESIDING JUDGE FULFORD: That's right, Mr Sachdeva.
14 One has to remember, really, what's behind familiarisation, and
15 it is that if people made statements years ago in relation to
16 events that took place years ago, it's clearly critical that
17 they are given an opportunity of reading those statements,
18 refreshing their memories before they come into Court.

19 That's to be set against people who've been
20 interviewed relatively recently about events which they are now
21 expected to give evidence on and, in those circumstances, there
22 is arguably less of a need for them to spend hours looking
23 through the transcripts of earlier interviews because they have
24 happened, if not contemporaneously, in the very recent past.

25 But, yes, we'll have to look at this in more detail at

1 the time, but I am simply observing that we may be able to
2 complete the familiarisation process rather speedier than has
3 been indicated so far I think by the Victims and Witnesses Unit.
4 It's no more than that.

5 Now, 143 --

6 THE INTERPRETER: Message from the English booth. If
7 the participants could slow down we would be most grateful,
8 Thank you.

9 PRESIDING JUDGE FULFORD: What's your understanding,
10 Mr Sachdeva, in terms of the length of time it's going to take
11 to put in place the security and protective measures for 143
12 before his identity is revealed?

13 MR SACHDEVA: Mr President, my understanding - our
14 understanding - is in respect of 143 that it can be done
15 relatively rapidly, in the next ten days perhaps. That's the
16 latest information we have from the Victims and Witnesses Unit.

17 PRESIDING JUDGE FULFORD: But there has been some
18 indication this morning that he may not be in the best of health
19 which may -- may affect that process, but we're going to have to
20 await further and more detailed information in relation to that.

21 Mr Sachdeva, would you be able to have a -- obviously
22 we have got to hear from Maître Mabilie in a moment, but if we
23 are able to rise between half-past-10 and quarter-to-11 would
24 you be able to have a schedule with the timetable by, say,
25 midday? An hour-and-a-half/hour-and-a-quarter?

1 MR SACHDEVA: We will certainly endeavour for that,
2 Mr President.

3 PRESIDING JUDGE FULFORD: Thank you very much.
4 Anything else, Mr Sachdeva?

5 MR SACHDEVA: Mr President, just to make one final
6 point. Of course, the application was to seek leave to provide
7 a final answer by tomorrow in respect of which witnesses we want
8 to call. Against that background, the Prosecution -- it may be
9 that upon further assessment we don't need to call the witnesses
10 that I've just detailed, and of course we would seek leave, as
11 we sought leave during the Prosecution case, to withdraw
12 witnesses if we need to.

13 PRESIDING JUDGE FULFORD: So what you're saying is you
14 don't want us to make a final decision today because you may, in
15 fact, given another 24 hours or slightly longer, decide not to
16 rely on one or more of the four that you've just identified?

17 MR SACHDEVA: It's just that that was the original
18 application but, yes, Mr President.

19 PRESIDING JUDGE FULFORD: Well, Mr Sachdeva, can we
20 just look at the realities of this. You've been able overnight
21 to put together some what seem to be substantial submissions in
22 relation to these four individuals. Do you really expect that
23 the position may change between now and 4 p.m. tomorrow?

24 MR SACHDEVA: I do not, but there is always a
25 possibility.

1 PRESIDING JUDGE FULFORD: Right, thank you,
2 Mr Sachdeva.

3 Maître Mabilie, do you want a little time to think
4 about this, or do you want to respond straightaway?

5 MS MABILLE: (Interpretation) No, I think we will
6 have to have some time to think about this, your Honour. In any
7 event, regarding the witnesses that the OTP would like to recall
8 I think we do have a number of observations to make, but not
9 immediately. I'd like to think for a few moments. However, the
10 first witness who would be coming to give testimony, I would
11 like to reiterate that we would like to receive his statement as
12 soon as it is taken, as quickly as possible.

13 Now, if I've understood correctly, the first witness
14 who would come would be a team leader, or someone in responsible
15 (sic) of investigations, and a statement would be taken. Now,
16 if a statement is taken, we would like to have disclosure of
17 that statement as quickly as possible so that we can study it.
18 That is my first concern.

19 My second concern is that the identity of 143 is
20 important, because we only will be able to ask questions of him
21 about 143, if we have his identity; if we are given his identity
22 as quickly as possible. As for the rest, I'd like to have some
23 time to mull things over, particularly these witnesses to be
24 recalled.

25 One specific detail for the Chamber regarding the

1 suggestion having to do with Witness 400 -- 47. Now, we have
2 asked that his statement be tabled in our submission so that the
3 Chamber will accept the statement as an element of evidence.
4 497.

5 THE INTERPRETER: 496, correction. Witness 496.

6 MS MABILLE: (Interpretation) And this -- we have
7 asked that that statement be accepted as an element of evidence.
8 I wanted to make that point clear, because my learned friend did
9 not make that clear.

10 PRESIDING JUDGE FULFORD: Mr Sachdeva, I think that
11 would tend to indicate, therefore, that there's one way or
12 another joint interest in 496. It may be in slightly different
13 forms in that, if I understand Maître Mabilie correctly, she
14 wants the statement introduced, whereas you would wish for live
15 testimony, but one way or another there seems to be agreement
16 that 496 is relevant.

17 MR SACHDEVA: Mr President, if indeed it is the
18 position of the Defence that the entire statement is sought to
19 be admitted into evidence, then of course the Prosecution would
20 positively consider that. Our understanding was that it --
21 excuse me, Mr President. Our understanding was that that was
22 not the position of the Defence.

23 PRESIDING JUDGE FULFORD: This would be -- and it may
24 be this requires further reflection but, if the Defence position
25 is that the statement can be introduced, then you would want to

1 reflect on whether or not there's any need to call 496 if his
2 written testimony is to go before the Chamber as unchallenged
3 evidence?

4 MR SACHDEVA: Yes, Mr President.

5 PRESIDING JUDGE FULFORD: Thank you very much.

6 (Trial Chamber confers)

7 PRESIDING JUDGE FULFORD: I've been told to slow down,
8 Mr Sachdeva. Was there something else you wanted to say?

9 MR SACHDEVA: No, Mr President.

10 PRESIDING JUDGE FULFORD: No, it's just you were
11 politely rising to your feet, rather than because you wished to
12 make further submissions.

13 Our inclination is not to rush into making decisions
14 today. Mr Sachdeva, we're going to ask you, please, to complete
15 the schedule that I identified early by 4 p.m. this afternoon,
16 and if you could send that, please, to Ms Alexandra Guhr for
17 transmission to the Judges, but of course copied to Maître
18 Mabilille and the legal representatives of victims.

19 Generally, during the course of submissions today, we
20 have indicated yet again the need for all of this to progress as
21 speedily as it possibly can and I'm not going to repeat the
22 specifics again now.

23 The service of the statement that Maître Mabilille has
24 just referred to as quickly as possible is obviously of great
25 importance so that Defence preparations can begin for that first

1 witness, but that also applies to the other witnesses to come.

2 Maître Mabilie, we wish to give you a reasonable
3 opportunity of reflecting on the proposals that have been made
4 by Mr Sachdeva and for you to make a decision as to whether or
5 not you are going to seek to oppose any of the suggestions made
6 by the Prosecution as regards rebuttal evidence.

7 The Prosecution's proposals are, in fact, not finally
8 going to crystallise, we understand it, until 4 p.m. tomorrow
9 afternoon. We therefore, Mr Sachdeva, ask you, please, by
10 midday on Monday to send an email to the legal adviser to the
11 division, copied in the usual way, setting out your final
12 proposals as regards rebuttal evidence; the definite witnesses
13 in one category, but also those such as Cordo, who you are also
14 seeking to track down, but have yet been unable to bring to some
15 kind of finality.

16 We're not going to set a time now, but it is likely to
17 be necessary at some stage during the course of next week to
18 have a hearing so that there can be a final decision on the
19 Court schedule for the rest of June and July, but when that
20 hearing is held is in part going to depend on an indication from
21 the Defence as to when they have had sufficient time to
22 formulate any objections, if there are to be any, to the
23 suggested rebuttal evidence.

24 So we're not going to set a date now, but we would be
25 grateful, Maître Mabilie, if during the course of next week you

1 would communicate, please, to the legal adviser to the division
2 to indicate whether you've managed to reach a final decision as
3 to whether or not there are going to be objections advanced.

4 The net effect of all of this, Mr Sachdeva, is I think
5 that we are not going to be able to do any substantive work next
6 week, apart from addressing the Court schedule and delivering
7 outstanding decisions; is that right?

8 MR SACHDEVA: That would appear to be so,
9 Mr President.

10 PRESIDING JUDGE FULFORD: Thank you very much.

11 Now, Mr Diakiese, Mr Keta, I'm deeply conscious of the
12 fact that we have not asked for your assistance, nor indeed that
13 of Ms Pellet. Is there anything that any of the three of you
14 would wish to say on any of these issues?

15 MR DIAKIESE: (Interpretation) No, your Honour, we
16 are at the disposal of the various parties.

17 MR KETA: (Interpretation) Nothing to say, your
18 Honour.

19 MS PELLET: (Interpretation) Thank you, your Honour.
20 We have made some observations regarding the admission of
21 discussions regarding witnesses that may be called by the OTP in
22 response to the application from the Defence. Thank you.

23 PRESIDING JUDGE FULFORD: Thank you very much,
24 Ms Pellet.

25 (Trial Chamber confers)

1 PRESIDING JUDGE FULFORD: Well, thank you all very
2 much.

3 Ah, Maître Mabilles?

4 MS MABILLE: (Interpretation) Just so that things are
5 clear, once we receive the definitive schedule from the OTP, we
6 will be able to reply to the Chamber in 48 hours. I don't think
7 we'll need an additional deadline.

8 PRESIDING JUDGE FULFORD: That is extremely helpful.

9 And in fact, Mr Sachdeva, it occurs to me that it's
10 probably going to be unhelpful for me to ask you to put in a
11 schedule by 4 p.m. today, because that's not going to reflect
12 your final position, is it? It would actually make more sense
13 for you to put in the schedule by midday on Monday, wouldn't it?

14 MR SACHDEVA: Mr President, I was thinking the same.
15 Of course with your leave, if that's possible, that would be
16 more helpful, in my submission.

17 PRESIDING JUDGE FULFORD: Thank you. So schedule by
18 midday Monday, Prosecution's final position in relation to
19 rebuttal evidence midday Monday and could you make sure that for
20 any individual witness, or category of witness, there is
21 attached to it the sort of description that you've given this
22 morning so that we understand what the evidence goes to; why it
23 is that the Prosecution is seeking to introduce the material by
24 way of rebuttal evidence.

25 MR SACHDEVA: Certainly, Mr President.

1 PRESIDING JUDGE FULFORD: Thank you very much. Thank
2 you all very much.

3 THE COURT USHER: All rise.

4 (The hearing ends at 10.20 a.m.)