

1 International Criminal Court

2 Trial Chamber I - Courtroom 2

3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio

4 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 Wednesday, July 7, 2010

9 (The hearing starts at 2.30 p.m.)

10 (Open session)

11 THE COURT USHER: All rise. Please be seated.

12 PRESIDING JUDGE FULFORD: This morning the Chamber

13 made a clear order for disclosure. At 12.45 we received an

14 email from the Defence informing us that, notwithstanding the

15 fact that we rose at about 10.30, the order had not been

16 implemented. Following that email, which was copied to the

17 Prosecution, we received an email from Mr Sachdeva indicating

18 that the Prosecution wishes to make an oral application for

19 reconsideration and that the Prosecution coordinator is going to

20 be present for this purpose.

21 At the commencement of the Prosecution's submissions

22 this afternoon, we would be grateful for assistance on what is

23 said to be the legal basis for this application to us to

24 reconsider an order that we have made.

25 MS CRISCITELLI: Thank you, your Honour. The

1 Prosecution would submit that it is always within the power of a
2 court to reconsider its findings. There's no provision, to be
3 sure, in the Statute expressly providing for motions for
4 reconsideration, but it has occurred. This Court reconsidered
5 -- I'm trying to remember which one. There was an application
6 -- damn, I was not prepared for this. There was an application
7 for appeal done by the Defence in some instance - and I can
8 certainly get back to the Court - in which the Court denied it,
9 but realised that its order had been erroneous and reconsidered
10 its order, and in the context of denying the application for
11 leave said, "It's no longer an issue and we deny that
12 application because in fact we are reconsidering what we
13 proposed and amending it."

14 PRESIDING JUDGE FULFORD: If I can help you --

15 MS CRISCITELLI: That would be great. Thank you.

16 PRESIDING JUDGE FULFORD: -- Ms Criscitelli, I think,
17 without being able to cite the exact instance, from memory I
18 think you're right that on at least one earlier -- that on at
19 least one earlier occasion we have varied an order that we have
20 made. This is slightly different. This is an application by a
21 party immediately following oral submissions and a ruling asking
22 us immediately thereafter to undo what we have just done.

23 Now, I think, putting it shortly, you are saying this
24 isn't to be found in the Rome Statute framework, but it has to
25 be based on an inherent power of the Court to revisit the issue

1 if we wish to.

2 MS CRISCITELLI: That's correct. We believe every
3 court has that inherent power and certainly it serves the
4 interests and the efficiency of justice to allow that, rather
5 than to say we're locked in -- however erroneous we may be, we
6 are locked in and a party may not come back and seek
7 reconsideration.

8 Now, I grant you it is always within the power of the
9 Court to say, "No, we don't wish to entertain arguments on any
10 issue." We think this issue is sufficiently important that we
11 have departed from our traditional practice of not seeking
12 reconsideration, and that's why we are here because this really
13 is a fundamentally important issue for the Prosecution. So, by
14 allowing a party to make a pitch for reconsideration, you are
15 not saying you're obligated in all instances to entertain
16 repeated applications. We're saying you have the authority to
17 do so.

18 PRESIDING JUDGE FULFORD: Right. Now, inherent power
19 then is what's argued. We're not going to say at the moment,
20 Ms Criscitelli, whether you're right or wrong on that.

21 MS CRISCITELLI: Okay.

22 PRESIDING JUDGE FULFORD: But de bene esse we will
23 hear your submissions on the substance.

24 MS CRISCITELLI: Okay, thank you.

25 PRESIDING JUDGE FULFORD: Now, what is it you want to

1 say on the substance?

2 MS CRISCITELLI: What we want to say on the substance
3 is that it is -- and I realise this has been said previously,
4 but to a certain extent we just want to emphasise it because it
5 is of such significance to the Prosecution, is to remind the
6 Court first in this framework of the Rome Statute and of the
7 rules of procedure that it is the duty of the OTP, as well as
8 the Court, to protect persons who may be at risk because of
9 interaction with the Court, and that is a fundamental absolute
10 duty of protection. It's not flexible. It's not one that can
11 be weighed against other factors. This is an absolute
12 obligation up front.

13 The interests about timing and expedition of the
14 proceedings, those go more into the discretion of the Court, but
15 the Court doesn't have the discretion to leave a person
16 unprotected if that were to serve other convenient interests of
17 the Court. That's a fundamental absolute unmutable duty.

18 PRESIDING JUDGE FULFORD: Forgive me interrupting. I
19 think you'll find in the jurisprudence of this Chamber that we
20 have accepted that proposition.

21 MS CRISCITELLI: Yes.

22 PRESIDING JUDGE FULFORD: Indeed, we've said it
23 explicitly --

24 MS CRISCITELLI: Yes.

25 PRESIDING JUDGE FULFORD: -- that protective measures

1 where someone's life or well-being is seriously at risk - I
2 paraphrase, rather than quote it exactly - is not to be weighed
3 against other considerations.

4 MS CRISCITELLI: That's correct.

5 PRESIDING JUDGE FULFORD: It is effectively absolute.
6 Well, I think on this point in a sense you're teaching your
7 grandmother to suck eggs, I think. We have the point --

8 MS CRISCITELLI: Okay.

9 PRESIDING JUDGE FULFORD: -- that this is a
10 fundamental --

11 MS CRISCITELLI: Right.

12 PRESIDING JUDGE FULFORD: -- right for the person on
13 the receiving end and an obligation for the Court to implement.
14 We accept that.

15 MS CRISCITELLI: Well, and we know you accept it.
16 This is sort of groundwork for our argument. It's not -- I am
17 not here to tutor the Court on something that I think the Court
18 doesn't understand. I think that everybody here understands. I
19 think that the evidence that has come out -- and I will confess
20 that I have not been here in court. I read some on Livenote, or
21 Transcend, and I read some transcripts, but I am nowhere near as
22 familiar as everybody else in this courtroom with the evidence,
23 but my understanding is that the evidence that has come out
24 demonstrates that there is a risk in Bunia that you can be
25 killed, or one can be killed if the Hema community considers you

1 to be a traitor, and the persons who are witnesses against
2 Lubanga or who assist witnesses against Lubanga are regarded as
3 traitors.

4 So, we're not talking about any sort of hypothetical
5 or potential situation. This is real life on the ground and
6 that's the concern. We know -- we appreciate that the Court has
7 recognised it, but that is the Prosecution's fundamental concern
8 here because the OTP takes as almost its primary or perhaps --
9 it is its primary obligation and its primary view that we will
10 not put any person at risk on account of cooperating with the
11 Court.

12 We've had this in other instances where incriminating
13 witnesses who felt that they were at risk and who could not be
14 protected were -- essentially, we dropped them from the case.
15 We sacrificed part of our case because of concern about the risk
16 to the person, and this really is -- it's an overriding moral
17 duty that compels us and it's an overriding legal duty. So it's
18 our duty as well as the Court, and it's a duty that actually
19 brings me here this afternoon because this isn't to the OTP an
20 abstract issue. It's not -- we're not here to make a point.
21 We're here because we're concerned about the safety of a person.

22 And the safety of a person is also of concern to the
23 VWU, which has stated that the person needs to be relocated and
24 needs to have protective measures in place, and all of this was
25 established and the Court recognised it in its decision on

1 intermediaries and in its decision denying the application for
2 leave to appeal.

3 The Court said very specifically that disclosure would
4 not take place until there was an assessment by the VWU - that
5 has occurred - and any protective measures that are necessary
6 have been put in place and have been implemented, and the Court
7 reiterated that in the denial of the application for leave,
8 saying the Chamber's insistence that necessary protective
9 measures are implemented prior to disclosure of intermediary
10 143's identity.

11 So this is the situation in which we all have been
12 operating. This is the primary concern of all parties, the
13 Prosecution and the Court, and this is the concern that we're
14 here again asking the Court to take into account against the
15 claim by the Defence and the legitimate concerns by the Court
16 that delaying disclosure for another week, or another eight
17 days, will in effect push back some of the evidence for another
18 week. So we're asking for postponement of disclosure until the
19 protective measures are in place and then the evidence will --
20 the examination and the use of this information can be used.

21 We don't particularly also - and this is a practical
22 issue - see where the overriding value is in disclosing this if
23 the Defence cannot use it for investigative purposes if there is
24 an embargo on investigation, so that there is in effect
25 disclosure but for very limited purposes, and broader disclosure

1 will be allowed once the protection is in place. Then the Court
2 is going to be in the position where the Defence will
3 investigate and will say, "We want to call this witness back.
4 We want to call other witnesses back. We now have more
5 information with which to question the witness."

6 So what the Court has gained from this premature
7 partial disclosure is probably very, very minimal. What it
8 loses is disclosure where the Court previously has acknowledged
9 that disclosure alone creates a risk and the risk is one that is
10 so paramount to the Prosecution that in these cases we will give
11 up witnesses, we will give up cases if necessary, if we think
12 the disclosure is going to jeopardise our persons.

13 So we are very sympathetic to the Court's concerns
14 about expedition. We are very understanding. We are all in the
15 same position. You know, we want this case to move forward, but
16 the primary goal here is to make sure that disclosure of this
17 identity is not done until the VWU implements the protective
18 measures and the relocation and it's something that drives the
19 Office of the Prosecution.

20 PRESIDING JUDGE FULFORD: Now, I want to test you if I
21 can please on two points. The Defence is in possession of a
22 name which, if not exactly the name of 143, is very close
23 thereto. Therefore, it could be said that there's a real
24 element, if you will excuse me using the expression, of the cat
25 at least partially being out of the bag.

1 But the second and more fundamental point is this. As
2 you will have seen from our decision this morning, we indicated
3 that by limiting disclosure to a very restricted group of people
4 the security concerns that we had addressed in the decision on
5 intermediaries don't arise because we are not releasing this
6 information for general or any investigative purposes.

7 Now, is the Prosecution in fact saying, because you're
8 here this afternoon, that you do not trust the Defence, because
9 I think that must be the inevitable real conclusion to be drawn
10 from what you're saying? You are founding your observations on
11 the risk of people being killed in Bunia if the Hema community
12 considers you to be a traitor. Now, you can only make that
13 submission if you are suggesting that our order limiting
14 disclosure is going to be breached and 143 is going to be
15 perceived locally as a traitor who should be killed. Are you
16 saying that?

17 MS CRISCITELLI: What we are saying is not that -- I
18 am not accusing the Defence of going out there and breaching
19 orders. What I am saying is that the possibility of inadvertent
20 disclosure, the possibility -- well, I'm certainly not saying
21 that the Defence team present in court is inclined to do that.
22 We have our reservations and concerns about members of the
23 Defence team on the ground in the DRC. We have expressed it,
24 the Court has acknowledged some concerns in a pre-trial
25 investigation of a Defence resource person --

1 PRESIDING JUDGE FULFORD: You must be very careful,
2 Ms Criscitelli, though. There may have been allegations made --
3 there may have been allegations made at an earlier stage never
4 resulting in any finding by this Chamber that there had been any
5 misbehaviour on the part of any member of this Defence team.
6 Those remain allegations which have been wholly unproven and are
7 unsubstantiated, and you should not rely on them in those
8 circumstances as somehow supporting a suggestion that there is
9 going to be deliberate or inadvertent disclosure when we have
10 ordered in terms that there should be disclosure to no one
11 outside of the limited group.

12 MS CRISCITELLI: Well, the limited -- well, we
13 recognise that the allegations were deemed to be unproven. That
14 does not mean that they have to be -- number 1, that they have
15 to be ignored and that the concerns that motivated the initial
16 investigation cannot be considered.

17 You know, part of the problem that the Prosecution is
18 operating under here is that we were not given access to the
19 final report of the Registry's investigation and so we're
20 operating a bit blindly in this, but this is what colours some
21 of our concerns here. It is not -- it is not a step -- I am not
22 standing in Court and saying that the lawyers who are sitting
23 across from me are disreputable and cannot be trusted. That is
24 not what the Prosecution is saying.

25 What we're saying is that this is an adversarial

1 proceeding and we know what we do. Our obligation is to protect
2 this witness and this information, and we are not prepared even
3 for at this stage the slightest risk that disclosure would
4 result.

5 PRESIDING JUDGE FULFORD: All right, but let's look at
6 the other side of that coin. You have your concerns which
7 you're expressing. However, extremely senior and experienced
8 counsel for the accused has retained an individual who is known
9 as "the resource person" in the DRC. They are aware that
10 allegations have been made, but they nonetheless have continued
11 to employ him.

12 Now, bearing in mind the character and the calibre of
13 those who represent this accused, surely we are entitled to
14 conclude that Maître Mabilille and her team would only continue to
15 employ that person if they are personally convinced that there
16 is no risk that he will deliberately, or otherwise, breach the
17 orders that we have made. They know him and they have employed
18 him. Now, aren't we to take solace from that?

19 MS CRISCITELLI: If the Court would take solace from
20 the fact that our employees and our intermediaries are also
21 presumptively honourable simply because the Office of the
22 Prosecution has employed them, but that is --

23 PRESIDING JUDGE FULFORD: I think that's really -- I
24 think that's really not a responsible or helpful response.

25 Now, so the position therefore is this. You are

1 suggesting (a) we should exercise an inherent power that in this
2 instance would appropriately be used because, notwithstanding
3 the restricted number of people who are to receive this
4 information, you believe nonetheless there may be inadvertent
5 and possibly malicious onward dissemination of this information;
6 is that right?

7 MS CRISCITELLI: Our belief is that there is a risk of
8 that, yes, and we cannot take such a risk, the Court cannot take
9 such a risk and particularly cannot or should not take such a
10 risk (a) after it has acknowledged previously that the risk
11 exists and made no exception and (b) where the benefit to this
12 disclosure, limited as the Court desires to limit it so that
13 investigative use cannot be made of it -- the benefit to the
14 disclosure is insubstantial at best, because it really isn't
15 going to push the proceedings further along if once the
16 investigative embargo is lifted the witnesses have to be
17 recalled and more information has to be elicited.

18 So our concerns are that there is, as a matter of
19 first principle -- our first principle is that we don't disclose
20 where there's a risk. We don't disclose until the witness has
21 been safely relocated, until the VWU assures us that the
22 protection measures are in place.

23 The second point is that the interest being proposed
24 in favour of disclosure significantly underweighs the concerns
25 that the Prosecution and the Court have and the duty that the

1 Prosecution and the Court has to maintain protection.

2 And if I may just sort of address the concept raised
3 earlier that maybe the cat is partially out of the bag and
4 therefore that somehow gets into the mix, to use the metaphor --
5 I am not very good at metaphors, so I apologise for this, but
6 perhaps part of the cat is out of the bag, but the Defence
7 doesn't know what part of that cat is.

8 It doesn't -- if there is anything in the name that
9 was disclosed that is similar or close, it's still not the name.
10 The name was not disclosed and the Defence does not know how
11 close or how different the name is. If the Defence knew the
12 name, we would know. I mean, their claim is they don't know,
13 not that it has been inadvertently disclosed and therefore they
14 can use it.

15 They don't know the identity and we don't want to
16 disclose it until the witness is protected and until the VWU has
17 relocated him and has gotten the protective measures in place,
18 and if that's two weeks then that delays this two weeks, but
19 probably not even two weeks because of the proposed partial
20 disclosure with embargo on investigation. So the gain is
21 minimal. The principle is huge for the Office of the
22 Prosecution. The risk is perhaps minimal, but not completely
23 nonexistent, and the obligation of the Prosecution and the Court
24 under the Statute is paramount and inflexible.

25 So those are our concerns here and that's why we are

1 resisting so vigorously the disclosure. This really isn't a
2 clash between organs. This is a fundamental principle for us.

3 PRESIDING JUDGE FULFORD: Thank you very much.

4 Anything, Mr Biju-Duval?

5 MR BIJU-DUVAL: (Interpretation) Could I have a
6 moment, please, Mr President?

7 (Counsel confer)

8 Mr President, the Defence deems by way or by dint of
9 your observations that you have said what we would have liked to
10 have said in respect of the alleged risks that the Defence team
11 could have Witness 143 run. We have nothing further to add to
12 your observations and the Defence would like to thank you very
13 much for that.

14 With regard to the need for the Defence to obtain an
15 official disclosure not only of the name but also the
16 information - associated information - it is of course obvious
17 that the Office of the Prosecutor has within its immediate
18 office certain information at its disposal in addition to
19 documentation relative to intermediary 143, and this information
20 and this documentation which is available within the offices of
21 the OTP are necessary for the Defence to be able to continue
22 with our questioning of this intermediary. The limitation to
23 the scope of investigation is of course important, but it does
24 not exclude all usage of the information disclosed with regard
25 to the identity of 143 and the documentation in the possession

1 of the Office of the Prosecutor.

2 Those are the observations of the Defence team that we
3 wanted to have you know, Mr President.

4 PRESIDING JUDGE FULFORD: I want to make sure I
5 understand this, Mr Biju-Duval. The order that we made earlier
6 was that disclosure should be effected in full to you, but that
7 none of the material provided was to be used for any purpose,
8 apart from questioning within this Court, until further leave of
9 the Chamber. Now, I see a series of heads nodding. I just
10 wanted to make sure that you are not in any way seeking to
11 dilute that position in the last submission that you've made.
12 No, right. Mr Desalliers says you haven't, Mr Biju-Duval.

13 MR BIJU-DUVAL: (Interpretation) There might have
14 been an ambiguity in terms of interpretation, but this is
15 entirely clear to the Defence.

16 PRESIDING JUDGE FULFORD: We will rise.

17 (Recess taken at 3.00 p.m.)

18 (Upon resuming at 3.19 p.m.)

19 (Open session)

20 THE COURT USHER: All rise. Please be seated.

21 PRESIDING JUDGE FULFORD: Earlier this morning, the
22 Chamber revisited the issue of disclosure of the relevant
23 identifying information for intermediary 143. We ordered that
24 the material that discloses his identity was to be provided to
25 the Defence. That order was made some time before half-past-10.

1 At 12.45 the Chamber was informed, because we were
2 copied on an email, that disclosure had not been effected. That
3 led to an email from the Prosecution indicating that the
4 Prosecutor wished for this issue to be re-ventilated and an
5 application was to be made for us to reconsider our decision.

6 Counsel for the Prosecution has appeared before us
7 this afternoon. In essence, the points that are made are as
8 follows. On the procedural underpinnings of this application,
9 it is argued that the Chamber has an inherent power to revisit
10 its decisions and we are reminded that on one occasion at least
11 the Chamber has varied an earlier order.

12 Addressing the substance, counsel has underlined the
13 obligation of the Court generally and the Office of the
14 Prosecutor in particular to protect those who are affected by
15 their interaction with the Court. We interpolate to observe
16 that, in a very large number of decisions that have been issued
17 by this Chamber, that obligation has been recognised in full and
18 the Chamber has taken a very large number of steps to try to
19 ensure that all of those who have had dealings with the Court
20 are protected to the extent necessary.

21 Counsel argues that, because of the present state of
22 play in Bunia, an individual is at risk of being killed if the
23 Hema community considers him or her to be a traitor. Building
24 on that submission, it is argued that the order the Court made
25 earlier today places 143 at risk.

1 Given that submission, it is of importance to
2 underline the history to the determination that we arrived at.
3 The original application from the Defence was for 143 to be
4 called as a witness. In our view, some significance is to be
5 attached to that position on the part of the accused. It is
6 said on his behalf by counsel that it is positively necessary in
7 order to develop his Defence for 143 to be brought to this Court
8 to give evidence and to be cross-examined.

9 In our decision on intermediaries we concluded that,
10 although the threshold had been crossed for disclosure of his
11 identity to be effected, the circumstances did not, certainly at
12 this stage, justify him being called as a witness. However,
13 because we ordered disclosure so that meaningful investigations
14 in the DRC could take place, we ordered at paragraph 150 of our
15 decision of 12 May 2010 that all necessary protective measures
16 should be implemented prior to the disclosure of his identity.

17 As a result of that order, the Victims and Witnesses
18 Unit investigated his present circumstances. Without descending
19 into the detail of the matter, a comprehensive plan or package
20 was put together which, in the view of the relevant organ of
21 this Court, satisfactorily met all of the known security
22 concerns.

23 That proposal was communicated to intermediary 143.
24 He accepted them, but asked - again for reasons which we need
25 not explore - that their implementation was delayed. The

1 Victims and Witnesses Unit consulted with the Court, and we
2 agreed to a significant delay in implementation to match the
3 request that 143 had made. Accordingly, these are security
4 measures approved by the relevant organ of this Court, whose
5 very job it is to make assessments of this kind, and accepted by
6 both the intermediary and the Judges of this Chamber.

7 The date for implementation was the week immediately
8 following 2 July. At the very last moment, 143 indicated that
9 he now wished to question the arrangements that had been put in
10 place. It isn't clear, as we indicated this morning, whether he
11 will reject the proposals outright, or whether additional
12 requests are being made. Either way, it means that at the
13 earliest any measures will not be implemented until the end of
14 next week and, given the attitude now demonstrated by 143, there
15 is an appreciable risk that implementation will be delayed
16 significantly beyond then.

17 Against that background, we next need to investigate
18 the current position before the Chamber. Mr Biju-Duval, on
19 behalf of the accused, has begun his questioning of intermediary
20 321. It has always been clear to the Bench and to the parties
21 and the participants that one essential ingredient of his
22 examination will include the relationship, if any, between 143
23 and 321 and other intermediaries.

24 Mr Biju-Duval has indicated two things. The first is
25 that, as a result of the current position of 143, he is prepared

1 to continue his questioning of 321, notwithstanding the fact
2 that the Defence as yet have made no investigations into the
3 position of 143, but second he asks that he is given full
4 disclosure of 143's identity limited to those who are in this
5 courtroom and the long-term resource person employed by the
6 Defence who works for the team in the DRC.

7 It is his position that he cannot split his
8 questioning so as to deal with non-143 issues now, reserving the
9 other parts of his questioning that do involve that individual
10 to a later date. He submits that course would be artificial and
11 it would have too great a tendency to render the examination
12 ineffective.

13 Counsel for the Prosecution suggests that the order we
14 have made is premature, that it will lead to partial disclosure
15 and that it will gain little, if anything, in terms of the
16 progression of this trial. We do not accept that submission.
17 Given the position just rehearsed on the part of the Defence, it
18 is quite clear that if our decision of earlier today is
19 implemented, then the questioning of 321 can proceed, of course
20 always with the understanding that there may be some
21 post-investigative issues that may need to be dealt with
22 discretely, for instance, by way of a video link in due course.
23 Critically, the Defence position is that the substantive
24 examination of 321 can continue immediately.

25 What, then, are the risks? The question is posed

1 because that is the principal - indeed, the only - reason for
2 counsel asking us today to revisit our decision of this morning.
3 Protective measures in full have been offered to the
4 intermediary. For a significant period of time, he accepted
5 them and the Court proceeded towards their implementation. For
6 no reason that has been explained to us he now has decided to
7 question them and to ask for a variation, but the fundamental
8 position still remains. Protective measures have been offered,
9 which are deemed by the relevant body of this Court to be
10 satisfactory, and that offer has not in any way been withdrawn.

11 Furthermore, the limited disclosure that we have
12 ordered, in our judgment, has the result of ensuring that there
13 is no deterioration in the security position of that individual.
14 Disclosure will be to counsel and to their assistants. It will
15 include the accused and one individual in the DRC, who has now
16 worked for a substantial period of time with senior and
17 responsible members of the Bar and whose position is trusted by
18 them.

19 Although questions have been raised by the Prosecution
20 in the past as regards his practices and his integrity, there
21 has been no conclusion adverse to that individual that has been
22 drawn by anyone in a responsible position in this Court that has
23 been brought to our attention.

24 It is not unimportant to observe that the position of
25 the accused is that he positively wishes 143 to be called in

1 order to support his case. We feel that somewhat tends to
2 undermine the suggestion by the Prosecution this afternoon that
3 he is likely to be killed because he is thought to be a traitor,
4 presumably by Mr Lubanga.

5 We are entirely satisfied that the order that we made
6 this morning was appropriate and fully satisfies the protective
7 requirements in relation to this individual. The Court, as we
8 stressed this morning, does not in any way water down the
9 requirement that we should ensure that all those who are
10 affected by their interaction with the Court should receive
11 appropriate protection. We consider that in ample measure that
12 has happened in relation to 143 and, notwithstanding his present
13 disinclination to accept the offer that has been made, we have
14 secured his position by limiting disclosure to those present in
15 this Court and to the resource person in the DRC, and with the
16 clearest and firmest instruction that the information that is to
17 be disclosed to the Defence should not be revealed or used for
18 any purposes other than questioning inside this courtroom,
19 absent a further order from this Chamber.

20 We have not dealt with the procedural issue. It seems
21 to us that the importance of this matter in terms of timing is
22 such that it would be an arid and unnecessary exercise to
23 consider, perhaps somewhat pedantically, whether or not,
24 strictly, we have authority in this situation to revisit this
25 morning's decision.

1 We, therefore, order disclosure of this information by
2 half-past-4 this afternoon. We hope that we are not going to be
3 called upon to revisit this issue again.

4 We will sit at half-past-9 tomorrow morning, when
5 Mr Biju-Duval will continue with his examination. Thank you all
6 for your attendance.

7 THE COURT USHER: All rise.

8 (The hearing ends at 3.40 p.m.)