

1 International Criminal Court
2 Trial Chamber I - Courtroom 2
3 *Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito
4 and Judge René Blattmann.
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/06
6 In the case of the Prosecutor versus Thomas Lubanga Dyilo
7 Trial Hearing
8 Monday, 22 November 2010.
9 The hearing starts at 9.32 a.m.
10 (Open session)

11 COURT USHER: All rise. The International Criminal Court is now
12 in session. Please be seated.

13 PRESIDING JUDGE FULFORD: Mr. Sachdeva, if I could address the
14 bar through you, good morning, we understand that the parties have agreed
15 that the written statement of the witness should be received in evidence,
16 and that questioning should then proceed on the basis of the contents of
17 that statement in the usual way. Is that right?

18 MR. SACHDEVA: Yes, that's the agreement that the statement would
19 go in as the examination-in-chief in lieu of substantially more
20 questioning in the interests of efficiency and therefore we made that
21 application to the Court.

22 PRESIDING JUDGE FULFORD: The bench has considered this before
23 coming in. We are happy with that course of action. I think strictly
24 speaking, the witness needs to give his consent. We have asked the Court
25 Officer to raise the issue with him and he is happy for that to happen.

1 You should know that he's asked for a copy of his statement, that this is
2 entirely a matter for the parties as to whether it's necessary during the
3 course of the questioning to give it to him. We assume, of course, that
4 the usual familiarisation process has taken place. So on that basis we
5 admit the witness's written statement. And is there anything else we
6 need to resolve, Mr. Sachdeva, before he comes in?

7 MR. SACHDEVA: Not that I'm aware of, Mr. President. I just
8 imagine that I will show him the statement and he would confirm that
9 after he's taken the oath.

10 PRESIDING JUDGE FULFORD: I think that would be sensible. If --
11 once he's been identified, once he's taken the oath, if you could show
12 him a copy of his statement and ask him to confirm that his signature
13 appears on each of the pages.

14 MR. SACHDEVA: Certainly.

15 PRESIDING JUDGE FULFORD: Good. Thank you very much.

16 Anything from the Defence before we start?

17 MR. BIJU-DUVAL: (Interpretation) Yes, Mr. President, I just
18 wanted to draw the attention of the Chamber with regards to disclosure
19 problems associated with the testimony of Witness 0583. The Defence
20 addressed on the 19th of November in the evening to the Chamber a
21 submission or filing on the subject of the disclosure. Now, virtually
22 all the issues at hand are those concerning or potentially concerning
23 Witness 0583. We would like to specifically draw the attention of the
24 Trial Chamber to points 1, 2, 3, 4, 5, and 11 of our e-mail, because they
25 are particularly important with regard the examination of Witness 0583.

1 I believe that we can start the examination-in-chief of this witness, but
2 the Defence would like these issues of disclosure to be addressed and
3 solved as rapidly as possible so that the cross-examination may be
4 conducted in as complete a manner as possible.

5 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Biju-Duval, we
6 shall address those issues later in the morning. Thank you.

7 Witness, please.

8 (The witness entered court)

9 PRESIDING JUDGE FULFORD: Sir, could I ask you to identify
10 yourself, please?

11 THE INTERPRETER: Microphone, please, for the witness.

12 PRESIDING JUDGE FULFORD: Usher, could you please provide the
13 witness with -- you've got it.

14 Sir, you'll find written in front of you the solemn undertaking.
15 Could you please read out its contents out loud, and Usher can you make
16 sure -- good. Please.

17 THE WITNESS: (Interpretation) Thank you. I solemnly undertake to
18 speak the truth, the whole truth, and nothing but the truth.

19 THE INTERPRETER: Message from the English booth: The witness
20 will be requested to slow down with speaking, and his identity is Nicolas
21 Sebire but we did not hear because the microphone was not turned on.
22 Thank you.

23 PRESIDING JUDGE FULFORD: Sir, I've just had a fairly lengthy
24 message from the interpreters. When you originally identified yourself
25 the microphone was off, so could I ask you, please, to give your name

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1 again?

2 THE WITNESS: (Interpretation) Nicolas Sebire.

3 PRESIDING JUDGE FULFORD: Thank you very much.

4 WITNESS: WITNESS DRC-OTP-WWWW-0583

5 (Witness answers through interpreter)

6 PRESIDING JUDGE FULFORD: The interpreters have anticipated that
7 I may need to ask you now, possibly again during the course of your
8 evidence, to make sure that you speak reasonably slowly, certainly no
9 faster than I'm speaking now. If any of us speak too quickly, I'm afraid
10 the consequence is that we have to repeat evidence because it's simply
11 impossible for the interpreters and the transcribers to keep up. So,
12 please, keep the pace moderate, and when counsel asks you a question,
13 could you please try to build in a short pause before you answer so as to
14 give the interpreters and the transcribers an opportunity to catch up?

15 THE WITNESS: (Interpretation) I have understood you.

16 PRESIDING JUDGE FULFORD: Thank you very much. If at any stage
17 you see me do that, it's to indicate to please pause, slow down;
18 generally, stop speaking too quickly.

19 Mr. Sachdeva.

20 QUESTIONED BY MR. SACHDEVA:

21 MR. SACHDEVA: Thank you, Mr. President.

22 Q. Good morning, sir.

23 A. Good morning.

24 PRESIDING JUDGE FULFORD: Final thing, Mr. Sebire, could you
25 leave the microphone on, please? There is no need for you to keep

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1 turning it on and off. Excellent. Thank you very much.

2 MR. SACHDEVA:

3 I am going to start by showing you a document.

4 I have copies for the Court and for the parties

5 and participants and, of course, for the witness. Please, can they be
6 distributed?

7 Q. Sir, if you could look at the first document, and confirm whether
8 this is your statement?

9 A. Yes, indeed.

10 Q. And at page 8, the last page, is that your signature?

11 A. Yes, that is indeed my signature.

12 Q. And do you confirm that the content of this statement reflects
13 the truth and it is accurate to the best of your recollection?

14 A. I can confirm that.

15 MR. SACHDEVA: Mr. President, if that could be given an EVD
16 number, with your leave.

17 PRESIDING JUDGE FULFORD: Please, EVD for the entire statement.

18 COURT OFFICER: The statement shall receive the
19 evidence number EVD-OTP-00629.

20 MR. SACHDEVA: And just a point of administration, there is an
21 English translation in the second tab. Perhaps that can also be entered
22 into evidence.

23 PRESIDING JUDGE FULFORD: Just thinking about this, Mr. Sachdeva,
24 the English translation is really just a working document for the
25 assistance of the parties and the Chamber, isn't it, rather than

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1 evidence? Shouldn't we stick with the original French as the evidence?

2 MR. SACHDEVA: Yes, of course. The French version would be the
3 primary version but -- just for administration purposes, it is required,
4 but otherwise there is no issue with that one, yes.

5 PRESIDING JUDGE FULFORD: Let's see how we get on. Good. Please
6 continue.

7 THE INTERPRETER: Apologies for interrupting, we do not have
8 these documents. Could the interpreters please have them? Thank you.

9 PRESIDING JUDGE FULFORD: Copies for the interpreters, please.

10 COURT OFFICER: Just a question. Is the witness
11 statement confidential or public?

12 MR. SACHDEVA: It's public.

13 COURT OFFICER: Public, thank you.

14 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

15 MR. SACHDEVA: Thank you.

16 Q. Sir, I'm going to start by asking you some supplementary
17 questions regarding your background and your career. You stated in
18 paragraph 1 that you joined the national police, the French national
19 police, in 1988, and my question is: What types of cases were you
20 dealing with at that time?

21 A. Do you mean since 1989? In active service? Because, of course,
22 in 1988 I joined the services of the national police but I joined the
23 police academy.

24 Q. Yes, since 1989.

25 A. From 1989 until approximately 1999 I was working at the regional

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1 directorate of the criminal investigations police in Paris, where I dealt
2 with cases, crimes, which fell under the scope of the penal code in
3 France, so these are offences, crimes, et cetera.

4 Q. What were the most serious offences or crimes that you dealt
5 with?

6 A. From 1995, I was working for the criminal squad in Paris, and
7 I was working in an anti-terrorist sector -- section. I worked on
8 attacks, on terrorist groups, and political murders.

9 Q. And in 1999, when you completed your time with the regional
10 directorate, what rank did you hold?

11 A. I was police captain.

12 Q. And approximately in that role -- well, let me ask you this way:
13 Did you have other police officers and staff that reported to you as
14 captain of the police?

15 A. The criminal squad worked in a particular manner. I was part of
16 a group and all of the members of that group were lieutenants, they were
17 captains and commanders, so there was an internal hierarchy but we were not
18 particularly reporting to each other. We were under the chef de groupe, the
19 group chief. Now, as for the team itself, there was nobody working under the
20 orders of anybody else, as such.

21 Q. You say there was an internal hierarchy. Can you say where you
22 were in terms of that internal hierarchy in the team?

23 A. Over the years, well, when I arrived in the criminal squad,
24 within the group I was working in, there were six people approximately,
25 and I was number 6, I was the last in, and when I left, I was number 3 in

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1 the team.

2 Q. You've said that you worked on terrorist cases, cases involving
3 terrorism. Did that work require you to deal with, how shall we say,
4 informants or intelligence sources?

5 A. I shall give you a general answer to that question. It is common
6 to use in the context of investigations informants, yes. Whether it be
7 within this kind of service or in any other, when I started working in
8 the 5th arrondissement then people would furnish us with information that
9 could prove useful for investigations, indeed.

10 Q. Now in September 1999 you moved to the International Criminal
11 Tribunal for the former Yugoslavia in The Hague, and you worked there
12 until 2004. What cases or what case were you working on at the ICTY?

13 A. When I started working for the ICTY I was working on a number
14 of case files. There was the Milomir Stakic case ... the person in charge
15 of the Prijedor administration. I also worked on the case to do with the
16 Omarska camp, Keraterm and more specifically the Brdjanin case, and that's in the
17 Krajina region within the north east of Bosnia.

18 Q. And during your time there did you undertake missions in the
19 field?

20 A. Yes, I did.

21 Q. Did you conduct -- excuse me, did you conduct suspect interviews?

22 A. Yes. I did interview a number of witnesses.

23 Q. You said that you interviewed a number of witnesses. Did you
24 also interview persons suspected of committing crimes within the ICTY
25 jurisdiction? In other words, suspect interviews.

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1 A. Yes, indeed.

2 Q. And perhaps you mentioned it earlier but also at your time at the
3 ICTY, did you deal with persons who could be termed as informants or
4 sensitive intelligence sources?

5 A. Yes.

6 Q. It's right, isn't it, that during your time at the ICTY, you also
7 testified in a case?

8 A. I testified in two cases.

9 Q. And I don't need the details but roughly what was the subject
10 matter of your testimony in both those cases?

11 A. The main aim of my testimony on both occasions was to do with
12 describing exhumation.

13 Q. Now, we'll come to obviously your time at the ICC in more detail
14 in a moment; that is, from August 2004 up until September 2007. But just
15 a question from your work with Europol from 2007 until June 2009. You
16 say in paragraph 4 that you were a liaison officer in the French liaison
17 office at Europol, just very briefly what were your duties in that post?

18 A. The duties to be expected of a liaison officer are the relations
19 between the various services of the national police and the services of
20 Europol and other member states; that is to say, the exchange of
21 information, whether it be on an operational level or on a strategic
22 level.

23 Q. And the same question in relation to your work for the Council of
24 Europe as commissioner for human rights in the southern Caucasus, what
25 type of work did that involve?

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1 A. This was an investigative mission on the subject of the
2 disappearances that took place during the conflict of August 2008 and just after that
3 conflict; that is to say, the search for those who had disappeared.

4 Q. And I imagine that in that role you also had to undertake
5 missions to the region; is that right?

6 A. I was based out in the field. I spent two months in Georgia and
7 I was going between south Ossetia and Georgia. I was going to and fro.

8 Q. Now, in paragraph 6 of your statement, you say that from June
9 2010 you have been assigned to the international criminal police
10 organisation Interpol and you work there as a specialised officer. And
11 again without going into details, just describe the role that you have
12 there, what type of work do you undertake?

13 A. Once again, this is principally a liaison work with the people in
14 New York, the office of the UN in New York, whether it to be with law
15 enforcement or the police in general.

16 Q. I'm now going to ask you some questions about your time with the
17 ICC. You joined in mid-August 2004 as an investigator. At the time that
18 you joined, you say that the team leader of the investigation team was
19 Mr. Lavigne. Were you the only investigator in that team or were there
20 other investigators?

21 A. There were two investigators. There were two of us, with the
22 exception of Mr. Lavigne, that is, apart from Mr. Lavigne.

23 Q. And at that time, in August 2004, when you first joined the
24 office, what were your functions?

25 A. I was an investigator, quite simply.

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1 Q. And in the early period specifically what type of work did you
2 undertake?

3 A. Are you asking me about the period from 2004 to 2005?

4 Q. I'm trying to restrict it to the initial months that you joined,
5 so from August 2004, the first three or four months that you were at the
6 ICC?

7 A. Very well. Well, as I said, I joined the ICC mid-August 2004.
8 I joined a team of five individuals in total, and upon joining the team,
9 in -- the only information that we had was the analysis that had been
10 conducted by the OTP on the DRC, we had a list of potential incidents and
11 the objective of the team at the outset was to research those incidents
12 and ascertain the information or evidence that we might be able to gather
13 out in the field, and ascertain how we could go out to the field and
14 conduct investigations.

15 Q. And this information that you've described on the DRC, it's
16 related to specifically the region of Ituri, did it not?

17 A. Yes, indeed.

18 Q. And in paragraph 17 you indicate that eventually the
19 investigation focused on two sets of alleged perpetrators, I could say,
20 the UPC and the FNI-FRPI. When was the first time that you were able to
21 go to Ituri focusing on those two investigations?

22 A. The first mission took place in September of 2004 to the city of
23 Bunia.

24 Q. And I understand that you have given some details in your
25 statement, but can you tell the Court generally what was the security

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1 situation at the time in Bunia when you first went there?

2 A. The security conditions were particularly difficult, I would say.

3 The city was fairly distant from the airport therefore you needed

4 vehicles to get around, there were also restrictions on travel, and there was a zone

5 defined around the city where we were allowed to travel but certain areas were

6 forbidden, and after certain hours we were not allowed to go out on foot, and

7 therefore the security conditions were particularly difficult.

8 Q. When you were allowed to travel in certain areas, were you

9 travelling with -- let me put it this way: When you did travel was there

10 a particular organisation that provided security for members of the ICC

11 when they undertook their work?

12 A. I could give you the example of the first mission in 2004 in

13 Bunia. We were able to go to the village of Nyankunde which is some 50,

14 60 kilometres south, south-west of Bunia. To go there we had to be part

15 of a MONUC military convoy, that is the UN forces, and the only way we

16 could get to that village would be to go with a military convoy, with armoured

17 vehicles, armed soldiers, and we had to wear bullet-proof jackets and helmets.

18 Q. You say in paragraph 19 the first sentence that the UPC and FRPI

19 groups were still active in Ituri in 2004 and incidents were occurring

20 regularly. Can you provide just a bit more information about that?

21 A. Those two militia forces, that is according to the intelligence

22 that we received from the security forces of the MONUC who confirmed the

23 existence of armed groups in the area around Bunia, and indeed, there

24 were violent incidents which occurred at the beginning of 2005, that

25 showed indeed that those militia groups were active and violent.

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1 Q. Just in terms of the ability of the office, or in fact your
2 ability to conduct investigations to interview witnesses, just explain
3 briefly, if you can, the impact that the security situation had on the
4 office's ability to undertake its work?

5 A. The impact was tremendous because it was absolutely impossible
6 for us to go to the villages and to come into contact with potential
7 witnesses. In addition, the meeting places with witnesses were limited
8 in 2004/2005. The office did not have any premises that would enable us
9 to take witness depositions, and therefore, the only solution was to call
10 upon intermediaries who would enable us to come into contact with the
11 witnesses that we wanted to reach.

12 PRESIDING JUDGE FULFORD: Mr. Sachdeva, forgive me interrupting,
13 you will undoubtedly be aware that there has been a request emanating
14 from Trial Chamber II that two documents ending with the numbers 00181
15 and 00183, used by the Defence in this case, should be disclosed to
16 counsel representing Mr. Katanga for use in the trial before Trial
17 Chamber II. The Defence have kindly indicated that they have no
18 objection to disclosure of those documents. I assume that you don't
19 object, as counsel in this trial, rather than as counsel in the Katanga
20 case to the disclosure of those documents to Mr. Hooper.

21 MR. SACHDEVA: That's right. We do not object, Mr. President.

22 PRESIDING JUDGE FULFORD: Thank you.

23 Give me a moment.

24 (Trial Chamber confers)

25 THE INTERPRETER: Message from the English booth to the Usher:

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1 Could the microphone please be moved nearer or closer to the witness and
2 at the right angle? Thank you.

3 PRESIDING JUDGE FULFORD: Thank you very much. We approve that
4 course of action. Those documents can be disclosed. Since they are in
5 your possession, Mr. Sachdeva, it may be easiest, I don't know, if
6 somebody from your team simply transmits them on to Mr. Hooper, please.

7 MR. SACHDEVA: Indeed, Mr. President, we will make sure that that
8 material is divulged as soon as possible.

9 PRESIDING JUDGE FULFORD: Thank you very much, please continue.

10 MR. SACHDEVA: Thank you.

11 Q. Sir, you have spoken about the -- only solution was to call upon
12 intermediaries, and of course I'm going to delve into that topic in more
13 detail in a moment. But could you provide the Court with a comparison
14 with the ability of your -- the ability for you to do investigations in
15 Bosnia, for example, with the ICTY and your ability to conduct
16 investigations in Ituri in 2004/2005, in terms of access, in terms of
17 ability to meet witnesses? What was the difference?

18 A. The main difference was that when I started working for ICTY,
19 there was a team that was already used to working on site, they had
20 security mechanisms, logistics, which made it possible to do the task,
21 and which made it possible to organise depositions in relatively secure
22 situations. The early months with ICC there was nothing, in fact, by way
23 of these logistics for organising investigations and therefore, we had to
24 set up a system whereby we would be able to contact the witnesses and bring them
25 to places where the witnesses could be heard.

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1 Q. Now, in relation to the necessity to rely on intermediaries in
2 light of the security situation in Ituri and in Bunia specifically, can
3 you elaborate a bit more as to how and why that decision was taken?

4 A. The initial answer is simply that we did not have access to the
5 villages, we could not get out of Bunia to try to find people. So
6 given that the individuals we were interested in were not living in Bunia
7 themselves, we had to find a way of contacting them. That was the main
8 reason.

9 Q. And generally, without referring to specific intermediaries, what
10 were the criteria employed to identify suitable persons to act as
11 intermediaries?

12 A. In some cases, well, how shall I put it? It depended on the
13 opportunities, the occasions, that arose. Individuals who had information and the
14 means to find the witnesses and in other cases we had to target particular
15 individuals. Of course, it had to be individuals who had been -- who had
16 not been involved, if you will, in the fighting, and mainly -- how shall
17 I say? We had to find individuals who had not been perpetrators of
18 crimes.

19 THE INTERPRETER: The interpreters would like to suggest that the
20 witness is speaking a little bit too quickly for quality interpretation,
21 and I believe also court reporting.

22 MR. SACHDEVA:

23 Q. Sir, we've just been told that perhaps you're speaking a little
24 bit too fast and it's very important that what you say is properly
25 recorded, so if I could ask you to try and observe pauses, as will I, and

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1 to speak a bit slower, if you can.

2 A. I shall try to be careful.

3 MR. SACHDEVA: Mr. President, may we move into private session
4 for one question?

5 PRESIDING JUDGE FULFORD: Certainly, Mr. Sachdeva.

6 *(Private session at 10.13 a.m.) Reclassified as open session

7 COURT OFFICER: We are in private session.

8 JUDGE FULFORD: Yes.

9 MR. SACHDEVA:

10 Q. Sir, I'm going to ask you some questions about Witness 0316,
11 intermediary 0316 that you identified in paragraph 31, and that is
12 (Redacted). For the purposes of conducting the questioning in
13 open session, I will refer to him as Mr. X (Witness 0316). Is that
14 understood?

15 A. Yes, indeed, of course.

16 PRESIDING JUDGE FULFORD: Public session.

17 (Open session at 10.13 a.m.)

18 COURT OFFICER: We are back in open session.

19 MR. SACHDEVA:

20 Q. You said that, in relation to identifying the intermediaries,
21 that it was important that such an individual would not be a member of
22 any of the major ethnic groups within the UPC or the FNI. Was
23 Mr. X (Witness 0316) such an individual?

24 A. Yes, indeed.

25 Q. Also in paragraph 31 you say that Mr. X (Witness 0316) had a good

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1 knowledge of the various parties to the conflict. Can you elaborate on
2 that, please?

3 A. On the basis of intelligence or information I was given when that
4 individual was introduced to me for the first time, I was told that he
5 had knowledge of the events as well as of the individuals involved in the
6 events. During the initial period, the questions and requests that I put
7 to him were to identify and provide the names and addresses or locations
8 of the individuals who had belonged to each of these militias, and the numbers and
9 means in general they corresponded to the truth.

10 Q. And during that period when you were asking Mr. X (Witness 0316)
11 to provide you with the names and addresses and locations of individuals,
12 are you able to say how reliable the information was that was provided to
13 you?

14 A. Yes, indeed. The information was reliable. The numbers did
15 exist. The contacts were able to be established thanks to the
16 information given to us by that person.

17 Q. Mr. X (Witness 0316) worked for the Congolese intelligence
18 services, the ANR, isn't that right?

19 A. Yes, indeed. That's what I -- that's what he told me.

20 Q. And was that association or was that work in the Congolese
21 intelligence services, was that useful in terms of the ability of
22 Mr. X (Witness 0316) to provide you with the information that was
23 required?

24 A. I saw that as an advantage, as a sort of trump card because he
25 was familiar with his job, he was familiar with the problems related to

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1 the collection of intelligence, and it was someone who was familiar with
2 things like confidentiality and security, so I felt that the fact that he
3 belonged to that organisation was an advantage.

4 Q. Did -- in terms of locations, access to certain areas that the
5 office was interested in, what type of -- what role did
6 Mr. X (Witness 0316) play in that, in the ability to access certain
7 areas?

8 A. On several occasions, he went to villages or to zones of the city
9 of Bunia where we were not allowed to go, in order to find individuals.
10 So he actually physically went on site in order to come into contact with
11 individuals we were interested in.

12 Q. And when he did that, was it on the basis of instructions
13 provided to him by yourself, by the Office of the Prosecutor, or was it
14 on his own volition?

15 A. In general, it was myself or other individuals in the team who
16 asked him to facilitate our access to a particular individual, and -- or
17 to find the location of someone, contact details, perhaps, rather.

18 Q. What about the location of mass graves? Did he play any role in
19 that?

20 A. Indeed. In the case of certain villages, he was able to have
21 access to locations where there could potentially be mass graves. If
22 I remember correctly, he prepared sketches in order to indicate where
23 those mass graves might be situated, and also took photographs.

24 Q. In that period when the office first worked with
25 Mr. X (Witness 0316), which investigator dealt with Mr. X (Witness 0316)?

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1 Who was the primary investigator that dealt with Mr. X (Witness 0316)?

2 A. At the time where we began working with him, I was the main
3 investigator, and then there was the group chief and the other
4 investigators who were part of the team. I was basically the focus
5 point, if you will. I was the one who was the most often in contact with
6 him.

7 MR. SACHDEVA: Mr. President, may I have one moment?

8 PRESIDING JUDGE FULFORD: Certainly, Mr. Sachdeva.

9 (Prosecution counsel confer)

10 MR. SACHDEVA:

11 Q. You have told us earlier that in your work with the French police
12 and, indeed, with the ICTY, that you regularly worked with informants.
13 Was that experience that you had -- was that -- did it play an important
14 factor in you being identified as someone to deal with
15 Mr. X (Witness 0316) or not?

16 A. It was useful from a certain point of view, but it was necessary
17 to adapt my prior knowledge and procedures to the Congo, and to Ituri in
18 particular. Of course, it was useful but there were adaptations that
19 were necessary.

20 Q. During that time Mr. X (Witness 0316) was providing access to
21 various locations, taking photographs of mass graves, was he paid by the
22 office?

23 A. Well, indeed, he was mainly reimbursed for expenses that he had
24 incurred, and when he helped as an assistant, if you will, for the
25 travelling of certain witnesses, his expenses were reimbursed, and in

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1 addition he was paid a certain amount, a small amount.

2 PRESIDING JUDGE FULFORD: Mr. Sachdeva, if this is a convenient
3 moment for you, we've got to have a short discussion about the disclosure
4 request that was made on Friday. I propose we interrupt the witness's
5 evidence now and resume with him at 11.00, if that's convenient to you.

6 MR. SACHDEVA: It is, Mr. President, in fact, it's going much
7 quicker than I had anticipated.

8 PRESIDING JUDGE FULFORD: Well, that's always music to our ears,
9 Mr. Sachdeva, thank you very much.

10 Sir, thank you very much for your assistance so far this morning.
11 We've got an administrative matter we have to deal with now as well as
12 giving the interpreters and the transcribers a break, so we will break
13 off in your evidence now and we look forward to seeing you again at
14 11.00.

15 Mr. Usher could you escort the witness back to the witness
16 waiting room, please?

17 (The witness stands down)

18 PRESIDING JUDGE FULFORD: Mr. Sachdeva, the disclosure request in
19 relation to 0583, I think it is comprised of some 12 items, formulated
20 certainly most recently in an e-mail on Friday at around 6.00 in the
21 evening. Have you had an opportunity, as yet, to reflect on it and to
22 make decisions as to whether or not there is additional material that
23 should be furnished to Maître Mabilille and her team?

24 MR. SACHDEVA: Mr. President, I'm just trying to identify - of
25 course, the Prosecution is aware of the request - some of the requests

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1 the Defence have made, and indeed we are undertaking internal discussions
2 and in fact have divulged some information to the Defence. I'm just
3 trying to find out exactly which items the Defence are requesting. I
4 know certainly one of them is the internal communications that the
5 Prosecution has had with 0583 in relation to what he has mentioned
6 himself in paragraph 10, sorry, excuse me, paragraph 9, excuse me,
7 paragraph 10 of his statement.

8 PRESIDING JUDGE FULFORD: I think it's paragraph 9, in fact,
9 isn't it, a list of documents to which he had access in order to prepare
10 his statement, and I think the reference is to paragraph 9 of the witness
11 statement; is that right?

12 MR. SACHDEVA: Indeed, there are two requests in relation to
13 paragraph 9 and paragraph 10.

14 PRESIDING JUDGE FULFORD: We are both right, Mr. Sachdeva.

15 MR. SACHDEVA: And in relation to paragraph 9, the Prosecution
16 has answered the Defence, and in our submission, the witness has quite
17 clearly stated that he did not use them for the preparation of his
18 statement, and therefore in our submission, the material, I don't recall
19 they've actually asked for disclosure, but the material is not relevant.

20 PRESIDING JUDGE FULFORD: Just before we descend into the detail,
21 in fact I hope we won't do so now, what I was referring to was an e-mail
22 sent by Mr. Desalliers to Ms. Guhr just after 6 p.m. on Friday last week.
23 Now, I've assumed that this has been copied to the Prosecution, but
24 looking at those on the cc list, in fact, I don't see any prosecutorial
25 names.

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1 Right. First thing then that must happen, and from your
2 reaction, Mr. Sachdeva, it would appear that you haven't received it, the
3 first thing that must happen is that this request in the form that we
4 received it must be provided immediately to the Prosecution because you
5 can't be expected to address 12 specific items without having seen them.
6 So over the break that is about to take place, could Mr. Desalliers or
7 someone else from the Defence team please provide that to the
8 Prosecution, and, Mr. Sachdeva, we'll have to return to this probably at
9 mid-day.

10 MR. SACHDEVA: Certainly, Mr. President.

11 PRESIDING JUDGE FULFORD: Thank you very much. We'll break now
12 until 11.00. Thank you all very much.

13 Recess taken at 10.30 a.m.

14 On resuming at 11.04 a.m.

15 COURT USHER: All rise. Please be seated.

16 PRESIDING JUDGE FULFORD: Now, Mr. Sachdeva, how shall we deal
17 with this? Is it best for us to continue for the moment with your
18 examination of the witness and then return to disclosure later? Have
19 there been any developments over the adjournment?

20 MR. SACHDEVA: Mr. President, in my submission that would be the
21 preferred course of action, to continue. It's unfortunate that the
22 request from the Defence didn't come to the Prosecution, but at the same
23 time when the request was relayed to the Chamber, the Prosecution also
24 relayed a consolidated response to the Defence in letter form which, from
25 a first glance of the letter, covers many of the issues the Defence have

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1 raised. Of course, there may be some outstanding issues because we have
2 a particular position and it may conflict with the Defence's position.

3 But in my submission, it's best to continue and complete the
4 witness.

5 PRESIDING JUDGE FULFORD: Absolutely. For the reasons you've
6 just given we will carry on and review the disclosure position before
7 Mr. Biju-Duval commences his questions.

8 Excellent. Witness, please.

9 (The witness takes the stand)

10 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

11 MR. SACHDEVA: Thank you, Mr. President.

12 Q. Sir, before the break, I asked you about the payments made to
13 Mr. X (Witness 0316) and you talked about the fact that he was reimbursed
14 for the expenses that he incurred. You also said that, and I quote:

15 "In addition he was paid a certain amount, a small amount."

16 Can you tell the Court what was that amount for and how was that
17 amount calculated?

18 A. This remuneration was paid in order to pay for the services
19 rendered. Now, as to the amount, from memory, I do not remember
20 precisely what the amount was, but I believe that it was calculated on
21 the basis of the equivalent within the UN system of a G post, G3 or
22 something like that. As to the precise amount, I do not recall.

23 Q. You say in paragraph 37 that eventually Mr. X (Witness 0316) was
24 given a temporary contract. Now, in relation to the remuneration we have
25 just spoken about, the money given based upon the G post or a G3 salary,

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1 was that provided to Mr. X (Witness 0316) at a time when he was not on
2 contract or on a contract? Let me rephrase the question. I apologise.
3 It's probably a little bit complicated.

4 In 2005, when you first met Mr. X (Witness 0316) and during that
5 year, was the work with Mr. X (Witness 0316), was it on an informal basis
6 or a formal basis?

7 A. There was no contract between Mr. X (Witness 0316) and myself or
8 the individuals of the team. He spent days working for us and as such we
9 would make sure that we remunerated him accordingly. Documents were
10 drawn up in this respect and the money that was handed over to him --
11 well, he would sign a receipt for that money at the end of the mission as
12 to the hours or days that were worked and he was reimbursed as best
13 possible. I would not say that there was any way of saying particularly
14 what the amount was. We chose an arbitrary amount, an hourly rate, if
15 you like, for the work done, for a G post, that is.

16 Q. When you say "we chose an arbitrary amount," who was involved in
17 that decision?

18 A. The Office of the Prosecutor because we would advance the money
19 from the Office of the Prosecutor, so of course that meant that we did
20 have the agreement of the management within the Office of the Prosecutor.

21 Q. Do you recall when Mr. X (Witness 0316) signed a contract with
22 the OTP in relation to what you've said in paragraph 37?

23 A. Now, as for the precise date I do not remember when he signed the
24 contract, no. I believe that it was towards the end of 2005, maybe in
25 2006, but I'm not sure about that.

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1 Q. You have told the Court that you, in terms of the investigators
2 in the office, you primarily dealt with Mr. X (Witness 0316), and he
3 conducted various tasks for you and the office. You have also said that
4 Mr. X (Witness 0316) worked with the Congolese intelligence department.
5 Generally, did you find Mr. X (Witness 0316) to be an intelligent and
6 professional individual?

7 A. Yes, indeed, yes.

8 Q. I want to take you now to some of the specifics that you've
9 spoken about in paragraph 37.

10 And let's concentrate on the first sentence. What were the ways
11 that you were able to measure or to assess the reliability and -- well,
12 the reliability of Mr. X (Witness 0316)?

13 A. Mainly through the services rendered and with regard to the
14 questions put to him. This was the only way to establish his
15 credibility. As I said earlier on, when we asked him to seek out certain
16 individuals within the context of our investigation, generally speaking
17 he would come up with the contact details for the individual we were
18 seeking. So he was efficient from that viewpoint.

19 Q. Now, you also say in that paragraph that although you appreciated
20 his work in general, you could not fully trust him. And then you give an
21 example in relation to the fact that you found out that he was working
22 for other members of the team. Could I just ask you to explain that in a
23 bit more detail?

24 A. In fact, there were two things here. It is true that I could not
25 entirely trust him in view of the fact that he was part of the

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1 intelligence service or that's what he said. So one always has to take a
2 certain distance and make -- be aware of what he could provide in terms
3 of information. Now, without my knowing and without him informing me,
4 other investigators started using him and giving him duties to fulfil
5 without me knowing and as a result, there was a problem of reliability or
6 trust.

7 Q. Why, in your view, why was it important for Mr. X (Witness 0316)
8 to be dealt with by yourself and perhaps the team leader?

9 A. Could you please repeat your question?

10 Q. Certainly. You have spoken about the fact that other
11 investigators started using him without your knowledge, and my question
12 is: Is this -- and in fact it is related to what you say in the last
13 sentence in paragraph 38. Why was it important in your view for
14 Mr. X (Witness 0316) to be dealt with and handled by yourself and perhaps
15 the DRC team leader?

16 A. There are a number of aspects that need to be taken into
17 consideration. We are referring to Mr. X (Witness 0316) as an
18 intermediary. There is a whole intelligence part to this. There was
19 information that he would furnish us with, and then, of course, there is
20 also his role as intermediary and facilitator with the witnesses. Now, by
21 virtue of his past, he presented himself as a member of the intelligence
22 service. I'm going to slow down somewhat.

23 So we he had to get this information to him and then he would --
24 and the information that he had would then come back to a central point.
25 So it -- we are talking here about managing an intermediary or an

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1 informant.

2 MR. SACHDEVA: Mr. President, may I have one moment, with your
3 leave?

4 PRESIDING JUDGE FULFORD: Of course.

5 (Prosecution counsel confer)

6 MR. SACHDEVA: Thank you, Mr. President.

7 Q. Just a point of clarification, sir. You say that:

8 "Without my knowing and without him informing me, other
9 investigators started using him ..."

10 Do you mean other investigators in the DRC team or do you mean
11 something else?

12 A. Yes. Other investigators from the team but not solely. For example
13 , individuals from the Registry used him with out my being aware of it personally
14 and I would learn about it subsequently. Now, the problems that we were up against
15 here is somebody who was being used by all and sundry, and to my mind, this
16 creates a risk. That is not really the way in which you should work with this type of
17 individual. So by virtue of the fact that he did not tell me about this type of situation,
18 then of course in terms of trust, things had to be reviewed.

19 THE INTERPRETER: Message from the English booth, could the
20 witness please be requested to enunciate and speak more clearly? Thank
21 you.

22 PRESIDING JUDGE FULFORD: Sir, I'm sorry, sometimes I feel that
23 we almost end up harassing witnesses in terms of speed, volume,
24 enunciation, pauses, but they are all necessary. Can I ask you kindly to
25 remember slowly, clearly, with pauses before you answer.

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1 Mr. Sachdeva, just before we continue, it's been brought to my
2 attention that in relation to the two documents that we a little bit
3 earlier this morning indicated could go to Trial Chamber II, could you
4 kindly ensure that Mr. MacDonald brings to the attention of the judges at
5 Trial Chamber II the need, if they deem it appropriate, for those
6 documents to be treated confidentially?

7 MR. SACHDEVA: I will certainly do so, Mr. President.

8 PRESIDING JUDGE FULFORD: Thank you. Please continue.

9 MR. SACHDEVA:

10 Q. And so when you say that it created a risk when dealing with this
11 type of individual, did that then necessitate the institution of a focal
12 point that would be responsible for handling Mr. X (Witness 0316)?

13 A. Yes. There was a need for a focal point in addition to the
14 security issues because of course the management of the information
15 required this, especially when he was asked to fulfil a specific task.

16 Now, when a number of people would give him different tasks at
17 the same time, without everybody knowing, of course then this could
18 create confusion. Now, from a practical view point you do need to have a
19 focal point, and an incident which occurred in 2006 was -- well, this was
20 the direction we were attempting to go in in this regard.

21 Q. And this incident in 2006, is this the one that is explained in
22 paragraph 38?

23 A. Yes, indeed.

24 Q. In dealing with this incident, you say that you believed the
25 problem lay in the fact that he had claimed to have personally looked

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1 after the witness when he actually had tasked a third party with this.

2 From what you can recall, can you provide a bit more information about

3 that?

4 A. Unfortunately not because I did not directly manage this

5 incident. It was experienced by other investigators whom I believe would

6 be in a better position to describe the circumstances.

7 Q. And again I apologise, perhaps you have already answered this

8 question but specifically why was it that after this incident, it was

9 deemed appropriate for yourself or Mr. Lavigne to have -- to only have

10 contact with Mr. X (Witness 0316)?

11 A. In view of the fact that with regard to other members of the

12 investigation team, certain people had expressed discontent in this

13 regard, after the incident. By adopting such an approach, it would be

14 possible to manage the information going to him and coming from him.

15 This avoided any dispersal of information, and also the risk of

16 confusion.

17 Q. In relation to what you've said about not fully trusting

18 Mr. X (Witness 0316), I want to ask you the following question: In your

19 dealings with him, and through your knowledge of him, did you ever

20 suspect that Mr. X (Witness 0316) was preparing witnesses to provide

21 untruths, or fabricating the evidence of witnesses?

22 A. No. And this is a piece of information that has just come to my

23 knowledge. This is something that I'm hearing from you now. There was

24 no information that led me to believe, the relations that I had with him,

25 that he would undertake such things.

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1 Q. Just to be clear I'm just asking you a question about your
2 knowledge.

3 A. No.

4 Q. You say in paragraph 39 that Mr. X (Witness 0316) never played
5 any part in meetings or in interviews, and even less so in the final
6 selection of witnesses. And my question is this: During all the --
7 during the interviews that you undertook with witnesses, do you recall
8 was Mr. X (Witness 0316) ever present during the substantive questioning
9 and answering?

10 A. I would just like to specify that in paragraph 39 I'm not talking
11 about meetings. I just mentioned the fact that he was absent during the
12 interviewing of witnesses. He was present on the occasion of the
13 introduction of certain witnesses, and I mentioned this with regard to
14 Witness 0035. Now as for the interviews themselves, he was never
15 present. Well, that's what I recall anyway.

16 MR. SACHDEVA: Mr. President, may we move into private session
17 for one question, with your leave.

18 PRESIDING JUDGE FULFORD: Certainly, private session, please.

19 *(Private session at 11.27 a.m.) Reclassified as open session

20 COURT OFFICER: We are in private session.

21 MR. SACHDEVA:

22 Q. Sir, I'm now going to ask you some questions about, as you have
23 indicated, Witness 0035, (Redacted). And for the
24 purposes of conducting the questioning in open session, I'm going to
25 refer to him as Mr. Y. Is that understood?

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1 PRESIDING JUDGE FULFORD: Yes, Mr. Biju-Duval?

2 MR. BIJU-DUVAL: (Interpretation) For the clarity of the
3 transcript, it might be preferable for the witness to use the witness's
4 actual number, that is to say number 0035. The witness knows this code
5 and I think it would be easier for us to read the transcript after the
6 hearing as a result.

7 MR. SACHDEVA: That is certainly fine, Mr. President. I just
8 didn't want to use an identification that could perhaps lead to the
9 witness's identification but I suspect that should be fine.

10 PRESIDING JUDGE FULFORD: Thank you very much. We will use the
11 number 0035, sir, rather than referring to him by way of a letter of the
12 alphabet.

13 Good. Public session, please.

14 (Open session at 11.29 a.m.)

15 COURT OFFICER: We are back in open session.

16 MR. SACHDEVA:

17 Q. Now, sir, in relation to witness 0035, and you have given us your
18 evidence about him in paragraphs 40 to 45, the first question I want to
19 ask you is: When you, and this is in relation to paragraph 41, when you
20 initially met him, how -- you say that -- you say that
21 Mr. X (Witness 0316) acted as an interpreter and he told Witness 0035 who
22 you were. How were you introduced to Witness 0035?

23 A. The introduction took place in Bunia, in the evening, in order to
24 avoid being seen with him. I thought that that person would have spoken
25 French, that is Witness 0035, and I rapidly discovered that it was

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1 impossible to communicate in French, and therefore I asked Mr. X
2 (Witness 0316) to serve as an interpreter and to explain to Witness 0035
3 who I was and what I was attempting to do. As I said in my statement,
4 even that in fact Witness 0035 didn't understand. I therefore asked
5 Mr. X (Witness 0316) to explain or, rather, to ask that person if he
6 would mind meeting with me at some other point in the future, when we
7 would have more time, in a secure place, so that I could indeed explain
8 to him why I wanted to discuss with him.

9 Q. And when Mr. X (Witness 0316) explained to Witness 0035 who you
10 were, what did he say about you?

11 A. Well, I don't know what he said because I spoke in French to
12 Mr. X (Witness 0316), who translated into the language spoken by Witness
13 0035, and since I am not familiar with that language, I cannot say
14 whether or not what I said was translated faithfully or not.
15 Therefore, I know what I myself said to Mr. X (Witness 0316), but I don't know what
16 was said to Witness 0035.

17 Q. Very well. How did you tell Mr. X (Witness 0316) to introduce
18 you? What did you tell Mr. X (Witness 0316) to say about you to Witness
19 0035?

20 A. The first thing was to give him my own identity, the job I had,
21 and who my employer was. In other words, an investigator of the OTP of
22 the International Criminal Court.

23 Q. When the interview was eventually conducted and held in Kampala
24 in early October 2005, you've already mentioned generally but
25 specifically in relation to Witness 0035, during the interview, was Mr. X

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1 (Witness 0316) present?

2 A. No.

3 Q. Did you provide Mr. X (Witness 0316) with a list of questions or
4 areas that you wanted to cover with Witness 0035 in advance of the
5 interview?

6 A. No.

7 MR. SACHDEVA: Mr. President, may I have one moment?

8 I apologise. Thank you.

9 Q. The interview with Mr. -- with Witness 0035, if you can recall,
10 took place over a period of five days. Does that seem right to you?

11 A. I don't remember the precise number of days, but I do remember it
12 was several days.

13 Q. And you mention in your statement that -- you talk about article
14 55(2). I take it that when Witness 0035 was interviewed, he was
15 interviewed as a suspect?

16 A. Yes, indeed.

17 Q. In those days that you sat and interviewed
18 Mr. X (Witness 0316) -- well, before I ask you this question, I'm going
19 to ask another question. And for that, Mr. President, may we move into
20 private session?

21 PRESIDING JUDGE FULFORD: Private session, please.

22 *(Private session at 11.36 a.m.) Reclassified as open session

23 COURT OFFICER: We are in private session.

24 PRESIDING JUDGE FULFORD: Yes.

25 MR. SACHDEVA:

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1 Q. Do you recall who else was present during the interview of Mr. --
2 of Witness 0035 in Kampala?

3 A. Yes. I remember that there was someone from the OTP, a Madam
4 Lyne Decarie. There was an interpreter from Belgium, if I'm not
5 mistaken, and a third individual --

6 THE INTERPRETER: That the interpreter did not catch,
7 unfortunately.

8 MR. SACHDEVA:

9 Q. Did you name the third individual who was present? It just
10 hasn't been recorded in the transcript.

11 A. I don't remember the name of the interpreter.

12 THE INTERPRETER: The interpreter corrects: The name was Sabina
13 Zanetta.

14 MR. SACHDEVA:

15 Q. And Sabina Zanetta was an investigator, that's right?

16 A. Yes, exactly.

17 MR. SACHDEVA: Mr. President, with your leave we can move back
18 into open session.

19 PRESIDING JUDGE FULFORD: Thank you.

20 (Open session at 11.38 a.m.)

21 COURT OFFICER: We are back in open session.

22 PRESIDING JUDGE FULFORD: Yes.

23 MR. SACHDEVA:

24 Q. During that interview, and during the time that you spent with
25 Witness 0035, and taking into account your experience as an investigator,

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1 did you ever suspect that Witness 0035 had been prepped or prepared when
2 he gave his account and when he responded to questions from the Office of
3 the Prosecutor during that interview?

4 A. That's not the impression that I had, no.

5 Q. I'll try and be a bit clearer, if I may. Did you have the
6 impression that Witness 0035 had been coached by anyone?

7 A. I didn't have that impression at all. The interview was
8 particularly difficult. It was not easy to do that interview, but the
9 flow of the interview, the questions and the answers, were such that
10 there were -- there was no hesitation in his answers, so, no, I did not
11 have that impression.

12 MR. SACHDEVA: Mr. President, may we move into private session
13 for one question?

14 PRESIDING JUDGE FULFORD: Of course.

15 *(Private session at 11.40 a.m.) Reclassified as open session

16 COURT OFFICER: Private session.

17 PRESIDING JUDGE FULFORD: Yes.

18 MR. SACHDEVA:

19 Q. I'm now going to -- well, perhaps I can ask you this question:
20 Do you remember interviewing somebody called (Redacted)

21 A. Yes.

22 Q. And the code that the Office of the Prosecutor assigned to him
23 was Witness 0015? Is that right?

24 A. Yes, indeed.

25 Q. Therefore, in line with what we have done in relation to

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1 Witness 0035, I'm going to ask you questions about (Redacted) and
2 I'll refer to him as Witness 0015. You understand that?

3 A. Yes.

4 PRESIDING JUDGE FULFORD: Open session, please.

5 (Open session at 11.42 a.m.)

6 COURT OFFICER: We are in open session.

7 MR. SACHDEVA:

8 Q. In paragraph 47, you say that Witness 0015 was introduced to you
9 by Mr. X (Witness 0316). Are you able to tell us how that introduction
10 came about?

11 A. I believe that it took place in Kampala, but most likely toward
12 the end of the year 2005. As regards the details, I am not able to
13 remember, but I do remember it was at the end of 2005 in Kampala, most
14 likely during the same mission when I interviewed Witness 0035. I think
15 that is indeed the case.

16 Q. When -- well, after that meeting in Kampala in 2005, when was it
17 that the -- or that yourself, the Office of the Prosecutor, conducted an
18 interview, a proper interview, with Witness 0015? Do you recall that?

19 A. Unfortunately I'm not certain about the dates, but I think it was
20 about a month or at most two months after our first meeting.

21 Q. Where did that take place?

22 A. I am afraid I really can't tell you. I don't want to say
23 something that's wrong. I do remember I -- I don't remember exactly
24 where that took place, that is the first interview.

25 Q. If I suggest Bunia for the first interview, does that refresh

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1 your memory?

2 A. I did carry out a number of interviews in Bunia, so that could be
3 the case.

4 Q. If you look at paragraph 49, I would like you to explain what you
5 are saying in this paragraph. Just elaborate a bit further, if you can,
6 please.

7 A. I was told by your services that Witness 0015 had stated before
8 this Court that he had lied about his identity, and in that paragraph
9 I simply state that that surprised me, when I heard about that, when
10 I heard that information, all the more so that this lie, in fact, when
11 I carried out the interview, he had given me a lot of details about the
12 events that he had witnessed himself, and I had the impression he was
13 credible. Another aspect that surprised me was that through his
14 intermediary I was able to come into contact with an individual in
15 another city in the Congo who had information about a militia leader we
16 were interested in at the time, and when I contacted that individual, he
17 systematically referred to Witness 15 using the very same name that
18 Witness 0015 had given me, so this seemed to corroborate his identity and
19 that it was his true identity. So when I learned later on that he had
20 said he had lied about his identity, I must say I was very surprised.

21 MR. SACHDEVA: Mr. President, may we move into private session
22 for one question?

23 PRESIDING JUDGE FULFORD: Certainly.

24 *(Private session at 11.47 a.m.) Reclassified as open session

25 COURT OFFICER: Private session.

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1 MR. SACHDEVA:

2 Q. You said that you had contacted another individual and he
3 systematically referred to Witness 0015 using the very same name that
4 Witness 0015 had given to you. Just so we are clear, what was that name?

5 A. I'm afraid that the -- perhaps there was a misinterpretation.
6 Well, things are a bit confused. What I was saying is that Witness 0015
7 gave me the name that you stated earlier, and this other person that I
8 was in contact with when he was asked for information about Witness 0015,
9 referred systematically to the name that Witness 0015 had given me. Have
10 I answered your question?

11 Q. Indeed. I had understood that. I just wanted confirmation of
12 the name and the name was (Redacted); is that right?

13 A. Yes, indeed.

14 MR. SACHDEVA: Mr. President, we can move back into open session.

15 PRESIDING JUDGE FULFORD: Thank you.

16 (Open session at 11.49 a.m.)

17 COURT OFFICER: We are in open session.

18 MR. SACHDEVA:

19 Q. I want to ask you the same question in relation to Witness 0015
20 as I did in relation to Witness 0035. Did you or the office provide
21 Mr. X (Witness 0316) the questions or the areas that you wanted to cover
22 with Witness 0015 in advance of the interview?

23 A. No.

24 Q. Was Mr. X (Witness 0316) present during the interview with
25 Witness 0015?

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1 A. No, he was not present during the interview but he was there at
2 the first -- the very first introduction.

3 Q. And again, in a sense following on from what you have said a
4 moment ago about your surprise in relation to what Witness 0015 has said
5 here, when you interviewed him, did you ever suspect that he had been
6 coached or prepped by somebody else when he was giving his answers to
7 your questions?

8 A. No. That's not the impression that I had, all the more so that
9 it was an interview that took place over several days, and it's difficult
10 to imagine that you can learn a story and memorise it and repeat it in
11 the same way over several days because there wasn't just one interview
12 with him but several, and therefore, I would tend to say that, indeed,
13 that would surprise me. I cannot say today -- on the basis of
14 information we had at the time to check the content of
15 the statement. Perhaps today, the investigation having advanced after I left the
16 Court, there are ways of checking the credibility of that individual, but at the time I
17 had no objective reason to believe that he was lying.

18 Q. Do you recall whether in 2005, 2006, 2007, 2008, whether
19 Witness 0015 ever asked you for the services of a lawyer?

20 A. No. Unfortunately, I have no recollection of that.

21 MR. SACHDEVA: Mr. President, I am about to complete my
22 examination. May I have one moment?

23 PRESIDING JUDGE FULFORD: Certainly.

24 (Prosecution counsel confer)

25 MR. SACHDEVA: Thank you for your indulgence, Mr. President.

1 Q. Sir, you have answered questions that I've put to you regarding
2 the intelligence and professionalism of Mr. X (Witness 0316), and in your
3 view, you found him to be intelligent and professional. That's right,
4 isn't it?

5 A. Well, yes. He behaved in a professional way, and he did seem
6 intelligent.

7 PRESIDING JUDGE FULFORD: Mr. Sachdeva, forgive me being
8 pedantic, but I think that's a direct repetition of a question and answer
9 that we've already had. So if you've got something new, could you move
10 on to it?

11 MR. SACHDEVA: Indeed, I had. It was a precursor to another
12 question but I'm deliberating as to whether to ask it.

13 PRESIDING JUDGE FULFORD: Well, take your time, Mr. Sachdeva, in
14 deciding whether you are going to ask it and do consult with your
15 colleagues, if you wish to.

16 MR. SACHDEVA: Thank you.

17 (Prosecution counsel confer)

18 MR. SACHDEVA: Thank you, sir, Mr. President, that is the
19 examination-in-chief.

20 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Sachdeva.
21 It's always a good idea to reflect.

22 On 18 November, Ms. Massidda on behalf of the OPCV at 4.22 p.m.
23 sent an e-mail to the legal adviser to the division which was copied to
24 various individuals and including the Defence. The e-mail concerned a
25 request to ask questions of the current witness and the suggested

1 justification was set out in that communication.

2 Mr. Sachdeva, looking at the list of names, have you ever seen
3 this request?

4 MR. SACHDEVA: Mr. President, to be frank, I don't recall this
5 request.

6 PRESIDING JUDGE FULFORD: I don't think you've seen it. Thank you.

7 Maître Mabilie, you have seen it. Do you object?

8 MR. BIJU-DUVAL: (Interpretation) Your Honour, our main concern
9 is the proper use of time, and that's the first point, and as regards the
10 rest, it would seem that the deposition that has been given this morning,
11 resulting from the written statement, has no direct relationship with any
12 of the participating victims. So I wonder whether this request is
13 admissible or not in view of the notion of personal interest, given that general
14 questions have already been put to Witness 0582. But, once again, our main concern
15 is the issue of organising the schedule.

16 PRESIDING JUDGE FULFORD: Thank you. (* Previous translation
17 continues)... forwarded to the Prosecution. Surely they have an
18 interest.

19 MS. PELLET: (Interpretation) Thank you, your Honour. I'm very
20 sorry. I believe that Friday had a very bad impact on communication with
21 the Prosecutor. It was neglected by mistake. I would like to apologise
22 for that.

23 PRESIDING JUDGE FULFORD: Well, you lose your place in the queue
24 as a result. Please forward the e-mail to Mr. Sachdeva now and we will
25 return to consider your application, if there is time, following the

1 Defence examination of this witness.

2 MS. PELLET: Thank you, your Honours. (Interpretation) Thank
3 you.

4 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, we will return to this
5 later. We are going to have a short break now. The proposition I put to
6 you is that at 10 past 12 you commence your examination of this witness
7 given that we have real time constraints, and I'm afraid you're going to
8 have to use lunch with Mr. Sachdeva to discuss the outstanding disclosure
9 requests, and if there are any, we are going to have to try to deal with
10 those in a way which ensures that the witness has completed his evidence
11 before we reach the moment when he has to leave the court.

12 Is that acceptable to you?

13 MR. BIJU-DUVAL: (Interpretation) Yes, indeed, Mr. President.

14 PRESIDING JUDGE FULFORD: Thank you.

15 So we are going to take a 10 minute break now.

16 Usher, could you please take the witness back to the witness
17 waiting room?

18 We will sit again at 10 past 12.00.

19 (The witness stands down)

20 PRESIDING JUDGE FULFORD: 10 past.

21 Recess taken at 12.00 a.m.

22 On resuming at 12.10 a.m.

23 COURT USHER: All rise. Please be seated.

24 PRESIDING JUDGE FULFORD: Witness, please.

25 (The witness takes the stand)

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1 PRESIDING JUDGE FULFORD: Yes, Mr. Biju-Duval.

2 QUESTIONED BY MR. BIJU-DUVAL:

3 Q. (Interpretation) Good morning, Witness. We introduced ourselves
4 this morning. I shall now be putting a number of questions to you for
5 the Defence of Mr. Thomas Lubanga, and before starting, I would like to
6 warn you, we are both speaking French and we have to be very careful to
7 respect a rather artificial pause between the question and the answer in
8 order to make sure that the interpreters and court reporters can follow
9 without any difficulty. And once again, even if our mutual understanding
10 of what each of us is saying is perfect, I will ask you for the very same
11 reason to go slowly.

12 First of all, I would like you to provide us with a few
13 additional items of information with regard to the organisation of the
14 team or teams that you belonged to. You indicated that you were firstly
15 an investigator within a team under the management of
16 Mr. Bernard Lavigne, and that this team comprised two investigators, and
17 you went on to add in your written statement that there were two analysts
18 as well. Now, my first question to you is as to who or what was the
19 identity of the second investigator within the team of Mr. Bernard
20 Lavigne there was yourself and who was the second individual?

21 THE INTERPRETER: Answer, without a pause.

22 THE WITNESS: (Interpretation) The second investigator in August
23 2004 was (Redacted) (* phon).

24 PRESIDING JUDGE FULFORD: Not a good beginning, Mr. Biju-Duval.
25 We've been doing this for a long time now.

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1 Right. Redactions, please, to the names that have been given.

2 Do you want us to go into private session so you can identify how you are
3 going to be questioning the witness? How are we to do this?

4 MR. BIJU-DUVAL: (Interpretation) Yes, we might need to go into
5 private session for a few moments.

6 PRESIDING JUDGE FULFORD: Private session, please.

7 *(Private session at 12.15 p.m.) Reclassified as open session

8 COURT OFFICER: We are in private session.

9 PRESIDING JUDGE FULFORD: Yes.

10 MR. BIJU-DUVAL: (Interpretation)

11 Q. You talked to us about two analysts, could you please provide us
12 with their names?

13 A. Yes, the first analyst was called Christian Nielsen and the
14 second was Aurelie Merle.

15 Q. Thank you. You indicated that during the time when you were
16 commencing the investigations in the year 2004, and in the year 2005, you
17 found yourself up against a number of security problems.

18

19 MR. BIJU-DUVAL: (Interpretation) Mr. President, I believe that we
20 might move back into open session.

21 PRESIDING JUDGE FULFORD: Sorry, sir, please don't answer the
22 question yet, sir.

23 Public session, please.

24 (Open session at 12.16 p.m.)

25 COURT OFFICER: We are in open session.

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1 PRESIDING JUDGE FULFORD: Do you want to start the question
2 again, Mr. Biju-Duval?

3 MR. BIJU-DUVAL: (Interpretation) Yes, Mr. President. I'm going
4 to ask the question more precisely.

5 Q. You stated that you found yourself under a number of constraints
6 whilst conducting your investigation and my question to you was: Who was
7 imposing these constraints? Was it an institution or an authority? Who
8 imposed the constraints during the conduct of the investigations?

9 A. The first constraint was one of security, which meant both for
10 the Office of the Prosecutor and the United Nations who were providing us
11 with assistance on the -- in the field, to restrict our movements the security situation
12 at the time in Ituri was difficult. And against such security problems there,
13 we had restrictive movement with regards to the town itself. Is this
14 what you're trying to ascertain? Is this the object of your question?

15 THE INTERPRETER: Without a pause.

16 MR. BIJU-DUVAL: (Interpretation)

17 Q. Yes, I'm trying to ascertain who set up the instructions to be
18 respected for the conduct of investigations with regard to the security
19 issues?

20 A. Now, in Bunia, the office had an agreement with the security
21 services of the United Nations which meant that a number of rules had to
22 be respected. That was a first thing. Secondly, well, it's common
23 sense, we had to impose a number of rules and regulations with regards to
24 our activities in the field, what we can do and what we couldn't do with
25 regard to the conditions, and, of course, before you undertake something,

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1 then the office was consulted in order to give its consent or not.

2 Q. I thank you. Would it be true to say that during this period
3 when the ICC investigations commenced and when they were ongoing, the
4 NGOs presents in the field, whether it be local or international, were
5 moving about in Bunia and the surrounding areas?

6 A. It's difficult for me to answer that question because I was not
7 part of those NGOs, and the contacts that I have, when I did have contact
8 with NGOs, was in Bunia itself. So it is difficult to answer saying,
9 yes, with regard to all the NGOs. The only example that I could furnish
10 would be with regard to the mining services, the services for finding
11 land mines, they had to act outside of Bunia that I believe were always under an
12 armed escort.

13 Q. Now, this security question, was it reassessed as time went by?

14 A. Yes, indeed.

15 Q. Thank you. And at a given moment in time, were you able to note,
16 that is to say the Office of the Prosecutor, was it able to note that
17 movement was indeed possible, in addition to what had been initially
18 planned for?

19 A. Indeed. In the year 2007 we were capable of conducting a
20 reconnaissance exercise in a village south of Bunia, after having heard
21 from the security services of the United Nations -- they used to assign a colour
22 according to the security status. We were told that that road was indicated with a
23 green colour which meant that we could circulate, we could move about. However,
24 there was a certain proviso that a number -- a minimum number of vehicles be
25 respected. I think that we could have two, I believe, and we had two radios, and we

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1 had satellite telephones, so this was the only time or this was the only time
2 that we were able to come -- or leave Bunia on our own. We were in armoured
3 vehicles.

4 Q. Thank you.

5 MR. BIJU-DUVAL: (Interpretation) Mr. President, I shall ask for
6 closed session for one question, please.

7 PRESIDING JUDGE FULFORD: Private session, please.

8 *(Private session at 12.22 p.m.) Reclassified as open session

9 COURT OFFICER: We are in private session now.

10 MR. BIJU-DUVAL: (Interpretation)

11 Q. In paragraph 12 of your written statement, you state that the DRC
12 team was divided into two sub teams, in 2005, the beginning of 2006,
13 Bernard Lavigne was in charge of the DRC 1 team, and Lyne Decarie was in
14 charge of team DRC 2. You say:

15 "I was assigned to the DRC 2 when it was formed," I quote.

16 My question is as follows: End of the year 2006 --

17 THE INTERPRETER: At the end of the year 2005, correction.

18 MR. BIJU-DUVAL: (Interpretation)

19 Q. -- did you then come under the authority of Lyne Decarie or did
20 you remain under the authority of Bernard Lavigne?

21 A. I was under the authority of Lyne Decarie.

22 MR. BIJU-DUVAL: I believe we will be able to move back into open
23 session.

24 PRESIDING JUDGE FULFORD: Public session, please.

25 (Open session at 12.23 p.m.)

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1 COURT OFFICER: We are in open session.

2 MR. BIJU-DUVAL:

3 Q. (Interpretation) Could you in simple terms tell us, in terms of
4 competency, how things were shared out between the teams DRC 1 and the
5 team DRC 2 without providing any names because we are in open session?

6 A. Yes. Now, team DRC 1 focused its work on the UPC, and DRC 2
7 focused its investigations on the FNI and FRPI militia.

8 Q. Thank you. I will now briefly hark back to the security issues
9 and the associated problems. On the occasion of the elections which
10 occurred in the Congo in 2006, the international community delegated
11 international observers for the purpose, did it not?

12 A. That might have been the case. I really can't answer that
13 question.

14 Q. I thank you. At paragraph 12 of your statement, you also
15 indicate that you served as the team leader in team DRC 2 until you left
16 in September 2007. Now, I have a question to put to you in private
17 session with regard to this team.

18 PRESIDING JUDGE FULFORD: Private session, please.

19 *(Private session at 12.26 p.m.) Reclassified as open session

20 COURT OFFICER: We are in private session.

21 MR. BIJU-DUVAL:

22 Q. (Interpretation) Who were the investigators or personnel under
23 your orders during that period from the moment in time where you acted as
24 the head of the team of team DRC 2?

25 A. I might not remember all the names, but shall I give you the name

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1 of each person?

2 Q. Yes, please. If they are not too numerous.

3 A. No. Indeed. There weren't many of them. I would just like to
4 specify one thing, that the human resources, in terms of investigators,
5 were shared between the two teams, and according to needs and priorities
6 established, those who were appointed to team DRC 2 might then move to
7 DRC 1 according to the requirements. Which meant that on paper there was
8 a team but in reality, we -- it might not be possible to use people as
9 such.

10 Now, the individuals that I remember, we are talking here about
11 June 2006, well, we will start with myself, and then there was Dounia
12 Bennamar, Stéphanie Brancaforte, Sabina Zanetta, Bernard Lavigne,
13 Jasmine Schumann, and there were other investigators but I am not sure
14 when they joined. So when we're talking -- if we are talking about June
15 2006 here, I might make mistakes. There was also Alice Zago who joined
16 the team in October 2004 and who remained working in DRC 1, and there was
17 Jean-Jacques Badibanga.

18 THE INTERPRETER: Message from the English booth: When giving
19 names, could the witness please speak clearly into the microphone. Thank
20 you.

21 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, I think you'll need to
22 go back over some of those names. Well, let me rephrase that. In the
23 English transcript, it's not good, but looking at the French transcript,
24 it seems to be all right. So there may not be a need, in fact, on
25 reflection. Right. Do we need to stay in private session or shall we

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1 move back into public?

2 MR. BIJU-DUVAL: I'd like to put another question in private
3 session, if it's possible.

4 Q. Now, in respect of Mr. Jean-Jacques Badibanga did he intervene as
5 an investigator?

6 A. In the year 2006, yes, I do believe that he intervened in that
7 capacity.

8 Q. I thank you. I believe -- no maybe one more question in closed
9 session.

10 Now, during that period from June 2006 until your departure in
11 September 2007, who was your line manager, your direct superior?

12 A. My direct manager was Michel de Smedt at the time. The DRC team
13 was divided into two sub teams, so my direct manager was
14 Mr. Michel de Smedt.

15 MR. BIJU-DUVAL: Thank you. We can go back into open session,
16 your Honour.

17 PRESIDING JUDGE FULFORD: Public session, please.

18 (Open session at 12.31 p.m.)

19 COURT OFFICER: Open session.

20 MR. BIJU-DUVAL:

21 Q. In paragraph 16 of your statement, your written statement, you've
22 stated that analysis had made it possible to determine possible avenues
23 of investigation but that no evidence had really been gathered at that time
24 except for a batch of documents originating from some militias active in
25 Ituri which had been provided by the United Nations. I believe you said

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1 in your statement. My question is as follows: The documents provided by
2 the United Nations at that time, as far as you know, were those documents
3 sent within the framework of a confidentiality agreement or were those
4 confidentiality agreements signed later?

5 A. It's difficult for me to answer this question. The first reason
6 being that I myself was not present. I was not working for the Court at
7 the point in time when these documents were obtained. I'm sure that they
8 were recorded at the time, so rather than giving you just any answer,
9 I think it would be preferable to check with the registration information
10 relating to those documents in order to find out the conditions under
11 which those documents were transmitted.

12 MR. SACHDEVA: Mr. President, I'm not sure of the relevance of
13 that question in relation to the Defence abuse of process and in relation
14 to the evidence that this witness is here to give.

15 PRESIDING JUDGE FULFORD: Where are we going on this,
16 Mr. Biju-Duval?

17 MR. BIJU-DUVAL: (Interpretation) I won't go any further with
18 that, your Honour.

19 PRESIDING JUDGE FULFORD: There we are. Please carry on.

20 MR. BIJU-DUVAL: (Interpretation)

21 Q. In paragraph 18 of your written statement, you stated that you
22 first worked on gathering evidence on the attack against Nyankunde by the
23 Lendu and Ngiti militias, and then on UPC political structure and the
24 attacks on the blue helmets, and finally on the FNI-FRPI structure and
25 the attack on Bogoro. Can you tell us approximately when, that

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1 is what was the period when you were working on the UPC's political
2 structure?

3 A. I would say 2005. If I remember correctly, I believe I began
4 working on that aspect after the incident that caused loss of life of
5 blue helmets in February of 2005. At least that is my recollection.

6 Q. Thank you. I believe that I read in your resume that you're a
7 reserve officer. Were you able to investigate on the military structure
8 of the UPC, that is its organisation, its components, the hierarchy,
9 during that period?

10 A. Personally, no, but investigator number 2, whose name I mentioned
11 a moment ago, following your question, handled that aspect, that is the
12 military aspect.

13 Q. Thank you. In paragraph 29 of your written statement, you state
14 that until an ICC office was opened in Bunia, and OTP staff were
15 permanently posted there, witnesses and the problems they might face were
16 managed by telephone from The Hague or through intermediaries. Could you
17 give us an indication of the date when an ICC office was opened in Bunia,
18 with permanent staff?

19 A. I don't know what the exact date was but it was during the year
20 2006.

21 Q. Thank you.

22 MR. BIJU-DUVAL: Your Honour could we go into private session?

23 *(Private session at 12.37 p.m.) Reclassified as open session

24 COURT OFFICER: We are in private session.

25 MR. BIJU-DUVAL: (Interpretation)

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1 Q. I would simply like for us to agree on the following. I'm going
2 to discuss now your relationship with the intermediary (Redacted) who
3 has been recorded under the number 0316. Therefore, when I refer to that
4 intermediary, if the Chamber agrees, and if the OTP agrees, I would
5 suggest we use the number 0316. This will enable us to distinguish from
6 other intermediaries, if we were to broach questions regarding other
7 intermediaries later on.

8 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva?

9 MR. SACHDEVA: Perhaps it might have been wise for me to have
10 done that they beginning, but 0316 has now been referred to as
11 Mr. X (Witness 0316) in relation to this witness's testimony. So for the
12 sake of consistency perhaps it's best to keep it to Mr. X (Witness 0316).
13 Although I must say I do accept my learned friend's general comment.

14 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Sachdeva.
15 What we will do, Mr. Biju-Duval, is we'll use the number 0316 because
16 I think it will make the transcript more usable later, and we order that,
17 in the edited transcript of today's hearing, every reference to Witness X
18 is to be replaced with Witness 0316. Thank you. Please continue.
19 Public or private? Public now?

20 MR. BIJU-DUVAL: (Interpretation) I have one or maybe two
21 questions in private session, your Honour.

22 Q. Could you tell us what is the name and perhaps the function of
23 the individual who initially enabled you to become acquainted with 0316?

24 A. The person who introduced me to 0316 was (Redacted). I
25 don't remember whether at the time he worked for the ICC or not.

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1 Previously he had worked for him when he -- with him, rather, he had met
2 him when he worked with the (Redacted) of the United Nations.

3 MR. BIJU-DUVAL: (Interpretation) Thank you. We can go back into
4 open session and we shall continue using the agreement we made earlier.

5 PRESIDING JUDGE FULFORD: Thank you very much. Just before we do
6 so, a slight amendment to the order I made just now. In the earlier
7 references where Witness X is referred to, there should appear
8 immediately after the reference to Witness X the opening of brackets,
9 Witness 0316, and then closed brackets. I think otherwise the transcript
10 may become confused because of the discussion that took place a few
11 moments ago. So we will retain the references to both Witness X and 0316
12 but adding 0316's name wherever -- or not 0316's name but the number
13 0316, wherever Witness X has been referred to.

14 Yes, Mr. Sachdeva.

15 MR. SACHDEVA: Mr. President, I apologise, but upon reflection
16 when I indicated to the Court Officer that the statements of this witness
17 should be entered into the record publicly, upon reflection, I with, your
18 leave, think that perhaps there are certain parts that should be redacted
19 from the public, just to alert the Court Officer and the Chamber to that.

20 PRESIDING JUDGE FULFORD: If it's been uploaded already, you will
21 need to enter into e-mail negotiations with the Court Officer to see what
22 needs to be done.

23 Public session, please.

24 (Open session at 12.43 p.m.)

25 COURT OFFICER: We are in open session.

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1 PRESIDING JUDGE FULFORD: Yes, Mr. Biju-Duval.

2 MR. BIJU-DUVAL: (Interpretation).

3 Q. When 0316 was introduced to you in April 2005, do you know
4 whether he had already been in contact with the ICC or did you understand
5 that he hadn't as of yet come into contact with the ICC and that he was
6 to come into contact?

7 A. To my knowledge, at the time, he had not been in contact with the
8 ICC, keeping in mind the fact that I don't really remember whether or not
9 the individual who introduced me to him at that time worked for the ICC
10 or not.

11 Q. Thank you. After you were introduced in April 2005, did 0316
12 begin immediately or rapidly working with you and your team? Or was it
13 later on?

14 A. According to my recollection, I believe that right after our
15 first meeting, I asked him to provide some information, to get an idea of
16 what he was able to provide.

17 Q. What kind of information did you ask of him at that time?

18 A. The initial information I asked for was to obtain the contact
19 details, in particular telephone numbers, of individuals who belonged to
20 the various militia groups.

21 Q. Thank you. I have a question for closed session, your Honour,
22 please.

23 PRESIDING JUDGE FULFORD: Private session, please.

24 *(Private session at 12.45 p.m.) Reclassified as open session

25 COURT OFFICER: We are in private session.

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1 PRESIDING JUDGE FULFORD: Yes.

2 MR. BIJU-DUVAL: (Interpretation)

3 Q. When you were introduced to 0316 and in the aftermath, when you
4 began rapidly to work with him, did 0316 tell you what kind of profession
5 he occupied? Did he tell you whether he had a job, what exactly did he
6 tell you as regards that question?

7 A. According to my recollection, at the first meeting, I asked him
8 to introduce himself, to tell me what he had done, and what job he
9 held. As far as I remember, he had said that he had always belonged to
10 (Redacted). I remember that that is what he
11 said at the time. At least I think so.

12 Q. Thank you. I'm going to now give you two binders with a number
13 of documents that we are going to be referring to.

14 MR. BIJU-DUVAL: (Interpretation) Could the Usher, please, be so
15 kind as to give the witness the two binders?

16 I believe that all of the parties, including the Chamber, have
17 received these two binders.

18 Q. I'd like to ask you to turn to tab 23 in the smaller of the two
19 binders. This document bears the code EVD-OTP-00597, and the ERN number
20 is DRC-OTP-0216-0300. This is, in fact, a curriculum vitae established
21 by 0316 on December 5th, 2004. Do you remember having had a copy of this
22 document or being informed of this document at any point in time?

23 A. To be truthful, I would say no. Perhaps yes, but I cannot be
24 certain, I'm afraid. Very sorry.

25 Q. Thank you.

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1 MR. BIJU-DUVAL: We can go back into open session, your Honour.

2 PRESIDING JUDGE FULFORD: Public session, please.

3 (Open session at 12.50 p.m.)

4 COURT OFFICER: Open session.

5 PRESIDING JUDGE FULFORD: Yes.

6 MR. BIJU-DUVAL: (Interpretation).

7 Q. You began working with 0316 in April of 2005 or shortly

8 thereafter. Is it correct that you used the services of 0316 until your

9 departure in September of 2007, your departure from the ICC?

10 A. Yes. I was in contact with 0316 throughout that period, but in
11 variable frequency.

12 Q. Thank you.

13 THE INTERPRETER: "With variable frequency" would have been
14 better but ...

15 MR. BIJU-DUVAL: (Interpretation)

16 Q. Without giving any names at this point, did you use any other
17 intermediaries?

18 A. Yes.

19 Q. From your testimony, can we understand that 0316 was, however,
20 your main intermediary?

21 A. For the matters that I was interested in, yes, he was a crucial
22 individual in order to localise militia members, in particular UPC
23 members.

24 Q. I would like to ask for certain details in private session, if
25 possible.

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- 1 PRESIDING JUDGE FULFORD: Private session, please.
- 2 *(Private session at 12.52 p.m.) Reclassified as open session
- 3 COURT OFFICER: We are now in private session.
- 4 MR. BIJU-DUVAL: (Interpretation)
- 5 Q. Did you use (Redacted) as an intermediary?
- 6 A. Personally, no.
- 7 Q. Did any other investigators under your responsibility use that
- 8 person?
- 9 A. (Redacted) cooperated with investigators in the team,
- 10 indeed.
- 11 Q. Thank you.
- 12 MR. BIJU-DUVAL: (Interpretation) I believe we can go back into
- 13 open session, your Honour.
- 14 PRESIDING JUDGE FULFORD: Public session, please.
- 15 (Open session at 12.53 p.m.)
- 16 COURT OFFICER: We are in open session.
- 17 MR. BIJU-DUVAL: (Interpretation)
- 18 Q. Did you discuss with Mr. Bernard Lavigne regarding matters or
- 19 events of concern or related to 0316?
- 20 A. I'm not sure I understand your question.
- 21 Q. Did you discuss with your head of team - I don't think there is
- 22 any problem in my mentioning his name, Mr. Bernard Lavigne - about
- 23 matters or, for example, a mission regarding 0316, or when problems
- 24 occurred regarding his involvement? Did you discuss with other team
- 25 members, and in particular with Mr. Bernard Lavigne?

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1 A. Yes, it was perfectly normal in preparing a mission. If we
2 needed 0316, obviously before we left, we would discuss with him.

3 Q. Thank you.

4 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

5 MR. SACHDEVA: Mr. President, just in order to be clear, the
6 question by my learned friend was in fact a compound question, so when
7 the witness responds "yes," we are not sure exactly what he's responding
8 yes to.

9 PRESIDING JUDGE FULFORD: I think it's a fair point,
10 Mr. Biju-Duval. In the end, you asked quite a complicated question, with
11 a number of different ingredients, and for the sake of clarity, might
12 I suggest you break it down to make sure there is no misunderstanding.
13 Thank you, Mr. Sachdeva, I think it's quite appropriate.

14 MR. BIJU-DUVAL: (Interpretation)

15 Q. When you prepared a mission where 0316 was involved, did you
16 discuss it with Bernard Lavigne?

17 A. Yes.

18 Q. At the end of that mission, would you report to Bernard Lavigne
19 as to how the mission went?

20 A. Yes. I reported when I came back but not just to Bernard
21 Lavigne, to the entire OTP. In 2004 and 2005, there were relatively few
22 people working there, and so the information was circulated virtually to
23 everyone, but at the end of a mission, there was a report drafted systematically, and
24 once you were out in the field, it was customary to report either on a
25 daily basis or every two days.

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1 Q. You have stated, I believe, that at the end of June 2006, you
2 were appointed head of team and you stated that at the time you had a
3 direct line manager. Who -- well, at that point in time, did you
4 report to that line manager from the OTP?

5 A. Yes. The -- that was the person I reported to, yes. But the
6 report was copied to the head of DRC 1 team since he was also concerned with what
7 was happening, and -- but, in fact, the main report went to the joint investigation
8 team that was composed of the three divisions.

9 Q. There is an ICC body or -- called EXCOM. Did you report to the
10 members of EXCOM?

11 A. Personally, I believe I attended two meetings of that executive
12 committee, and the purpose was to report on the progress of the
13 investigation and the evidence that had been collected, up until the
14 point in time when we went before that committee.

15 PRESIDING JUDGE FULFORD: We have a short administrative matter
16 we need to deal with before the luncheon adjournment if that's convenient
17 for you. Thank you.

18 And thank you very much, sir. We are going to sit again at 2.45,
19 so we look forward to seeing you then. Usher, could you please accompany
20 the witness to the witness waiting room.

21 (The witness stands down)

22 PRESIDING JUDGE FULFORD: How long do we have this witness for,
23 Mr. Sachdeva?

24 MR. SACHDEVA: What I have been told or what we have been told by
25 the VWU is that he must depart the office, the ICC the 24th of November

1 at 1500 hours, 3.00 p.m.

2 PRESIDING JUDGE FULFORD: So 3 p.m. on Wednesday.

3 MR. SACHDEVA: Yes, Mr. President.

4 PRESIDING JUDGE FULFORD: Good, thank you.

5 Mr. Biju-Duval, sitting the hours that are currently available to
6 us, and bearing in mind that Mr. Sachdeva may have a few follow-up
7 questions, and given how things have gone this morning, is that
8 sufficient?

9 MR. BIJU-DUVAL: (Interpretation) In view of the concise nature
10 of the witness's answers, I believe that the time imparted will suffice.

11 PRESIDING JUDGE FULFORD: Right. Can everybody keep monitoring
12 this? Because at the moment we only have an hour and a half in the
13 afternoon, and you'll all recall that if we need to ask for more time I
14 have to put in an application in triplicate, with appropriate seals on
15 it, to the Registry, to see whether we can obtain a slightly longer
16 afternoon sitting. So everybody please bear that in mind, particularly
17 given there may be some disclosure difficulties along the way.

18 2.45.

19 --- Luncheon recess taken at 1.00 p.m.

20 --- On resuming at 2.47 p.m.

21 COURT USHER: All rise. Please be seated.

22 PRESIDING JUDGE FULFORD: Witness, please.

23 (The witness takes the stand)

24 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, we are in public
25 session.

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1 MR. BIJU-DUVAL: (Interpretation)

2 Q. Witness, before the lunch break, we discussed the matter of
3 potential discussions between yourself and Mr. Bernard Lavigne regarding
4 Witness 0316. I would like to ask you the same question, that is
5 regarding discussions, conversations, you had between yourself and your
6 team and your line manager when a problem occurred as regards 0316, that
7 is regarding the behaviour of 0316, in relationship to the missions that
8 had been entrusted to him?

9 A. I assume you're referring to the incident which occurred in 2006
10 when some colleagues complained that he had -- that he had lied. Are you
11 referring to that incident?

12 Q. Well, we will come to that incident that you mentioned in your written
13 statement, but I'm speaking here in general terms. Were there discussions
14 when a matter arose regarding a certain type of behaviour of 0316?

15 A. (No interpretation) [I could not give you any details on this, but in effect, it is
16 quite normal to discuss the staff we are using within the team.]

17 Q. You indicated that 0316 enabled you to come into contact with
18 certain members of the UPC, certain militia members.

19 THE INTERPRETER: The interpreter would like --

20 PRESIDING JUDGE FULFORD: Interventions from the interpreters,
21 interventions from Mr. Sachdeva. We will take Mr. Sachdeva first.

22 MR. SACHDEVA: I apologise, Mr. President, but the last answer
23 the witness has given has not been recorded or interpreted and I think it
24 should be.

25 PRESIDING JUDGE FULFORD: I think your right, Mr. Sachdeva. It's

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1 always preferable.

2 Was the answer given in French?

3 THE INTERPRETER: Your Honour, it was the interpreter who simply
4 forgot to turn on the microphone. Would you like me to interpret that
5 question?

6 PRESIDING JUDGE FULFORD: Could the interpreter please interpret
7 the last answer from the witness?

8 THE INTERPRETER: Unfortunately, we no longer have the question
9 on the screen. Would Mr. Biju-Duval be so kind as to repeat that
10 question?

11 PRESIDING JUDGE FULFORD: No, we don't need the question being
12 put again. We need an interpretation of what the answer was. I think
13 that's now going to be impossible because we'll need to replay the tape.
14 However, the Defence and the Prosecution have it in French so this can be
15 included in the edited transcript in due course. So when the edited
16 transcript is prepared, this answer in English needs to go in it.

17 Right. Gentlemen, remember, speed. Remember, leave a pause
18 between each of you. Please carry on, Mr. Biju-Duval. You may need to
19 put your last question.

20 MR. BIJU-DUVAL: (Interpretation).

21 Q. Is it correct that intermediary 0316 did introduce to the OTP
22 individuals for whom the OTP, in fact, did not know the identity or the
23 existence?

24 A. Yes, that did occur in certain -- on certain occasions.

25 Q. Do you have an approximate idea of the number of individuals that

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1 I will call potential witnesses who were introduced through intermediary
2 0316 to your team?

3 A. I can't give you an exact number. I think that is the case.

4 Q. Thank you. You have indicated that as well as reimbursing
5 expenses that were incurred by intermediary 0316, the OTP also paid to
6 him an amount of money in remuneration on a fixed sum basis when he worked
7 one or several days for the OTP. I would like to ask you the following:
8 Was this payment calculated on the basis of a number of days? Was it a
9 daily rate on the basis of days worked? Is that how it was calculated?

10 A. Probably, but I am not certain whether it was a daily rate or a fixed hourly rate.
11 I frankly don't remember.

12 Q. Could you turn now to tab 32? Behind tab 32, you will find a
13 number of documents, and I would like to ask you to turn to number 7.
14 This document already has an EVD number which is D01-00353. And it also
15 has the number DRC-OTP-0216-0222. This document is entitled, "Receipt
16 for Reimbursement." And it was prepared by one of the investigators
17 whose name you gave us in private session. Under "name of the person
18 reimbursed," you can see the code DRC-SS05. Can you confirm that this
19 was the code given to intermediary 0316?

20 A. Yes, indeed.

21 Q. You can see here that there is mention of salary for
22 reimbursement, and there is a daily amount of approximately \$30?

23 A. Yes, indeed.

24 Q. Thank you. Under this same tab, would you please turn to number
25 9, document number 9, which has the EVD number OTP-00611,

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1 DRC-OTP-0216-0016? This is a receipt for reimbursements, made out by
2 yourself. Can you confirm that this involves intermediary 0316?

3 A. Yes, indeed.

4 Q. We can see here under description, in the second box, it says:

5 "Salary, 11 times 44.56 US dollars (25th of September 2005 until
6 5th of October 2005)."

7 Does this correspond to a daily salary that was paid to him?

8 A. Most probably, yes.

9 Q. Thank you. Was this type of payment used throughout your work
10 with intermediary 0316 or were there other systems?

11 A. It varied, in that there wasn't necessarily a payment every time
12 when, for example, he gave me simply a telephone number or an address, it
13 wasn't necessarily a full day. In that case he was not paid other than,
14 of course, a reimbursement of his expenses.

15 Q. Thank you.

16 THE INTERPRETER: Your Honour, speakers are overlapping.

17 MR. BIJU-DUVAL: (Interpretation).

18 Q. In other words, his remuneration was based on the exact amount of
19 time spent for work done for the OTP, in other words work done and time
20 spent for the OTP?

21 A. In the second example that you have pointed out here, it was for
22 travel. In other words, it was time spent to travel and to go -- to get
23 a witness and bring him to the place of the interview, so it would take
24 time from morning till evening and that led to the reimbursement of
25 expenses on the one hand, and also payment for his time.

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1 Q. Thank you. Aside from bringing you into contact with witnesses, did
2 intermediary 0316 carry out other tasks? I believe you've already
3 mentioned taking films or photographs of mass graves. Were there other
4 missions, other tasks, that were entrusted to intermediary 316?

5 A. As I explained this morning, he provided intelligence regarding
6 the location of mass graves or individual graves. He also regularly provided
7 information on the security situation in Bunia and in Ituri in general.
8 We were in regular contact in order to obtain information as to what was actually
9 happening out in the field.

10 Q. Thank you. Could you turn now to tab 32, document number 4 which
11 already has an EVD number, OTP-00602 and DRC-OTP-0216-0020. Can you --
12 have you found this document? In fact, this is a receipt for the amount
13 of \$100 written out or, rather, paid to intermediary 0316 for having
14 taken photographs of individual and mass graves in Bunia and in the
15 environs, and it lists the purchase of a camera, film, and batteries.
16 Are we to understand that the OTP asked intermediary 0316 to go take
17 pictures regarding this matter?

18 PRESIDING JUDGE FULFORD: Mr. Sachdeva.

19 MR. SACHDEVA: I just want that make sure, Mr. President, that
20 the document is not being broadcast to the gallery. Thank you very much.

21 COURT OFFICER: The document is not broadcast.

22 PRESIDING JUDGE FULFORD: Good. So the question, did the OTP ask
23 0316 to take pictures regarding this matter?

24 THE WITNESS: (Interpretation) As far as I remember, it was 0316
25 who mentioned the fact that he had information regarding graves, and

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1 since we could not go there, the only way we could record this
2 information and keep it for future use would be to have sketches and
3 additionally photographs, and since he did not have a camera, 0316 did
4 not have a camera, it was decided to purchase one for him and give it to
5 him so that he'd be able to take those pictures, so, yes, this is the
6 receipt which corresponds to that.

7 MR. BIJU-DUVAL: (Interpretation)

8 Q. Thank you. Did he take other pictures on other matters other
9 than mass graves or individual graves?

10 A. There is nothing that I can recollect at this point in time.

11 Q. Thank you. Did it ever occur that the OTP or your team ask
12 intermediary 0316 to go and collect documents? For example, perhaps I
13 can give you a first example, regarding the witnesses that were
14 introduced by intermediary 0316? Did the OTP ask 0316 to collect
15 documents regarding those witnesses which would make it possible to
16 establish their identity?

17 A. I don't remember that sort of thing, I must say. Do you mean
18 that he bring us documents proving the identity of those persons? I'm
19 not absolutely certain to have understood your question. I'm very sorry.

20 Q. Well, what I mean is that in a case where intermediary 0316 is
21 introducing someone to the OTP, did it ever occur that you ask
22 intermediary 0316 to provide documents, identity cards, for example, to
23 provide a set of documents which made it possible to attest to the
24 identity of said individual?

25 A. As far as I remember, my answer is no. When he mentioned that he

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1 had someone of interest, that he could introduce to us, we tried to
2 collect as much information as possible. Now, of course, if there was
3 anything that -- of course, if he had supporting information, we would
4 ask that person to bring in documents, if he or she had any, but that applies to
5 the person being introduced.

6 Q. Thank you. Would you now turn, please, to the same tab 32, the
7 very first document which bears the EVD number OTP-00599,
8 DRC-OTP-0216-0017? This is a receipt made out and signed by intermediary
9 0316. Do you recognise your own signature at the bottom right?

10 A. Yes, indeed.

11 Q. In order to justify the amount paid, it
12 says, copies or copy, without any further details. Do you remember what particular
13 document might have been copied?

14 A. Well, you can see that this is a fairly old document. It's more
15 than five years, five and a half years. Frankly, I'm afraid that I
16 cannot tell you exactly what is referred to here.

17 Q. Thank you. This morning you mentioned that intermediary 0316 had
18 also worked under contract with the ICC; is that correct?

19 A. Yes. He was to work under contract for a very brief period of
20 time. It was one month or three months, I think. I remember that it
21 was, I believe, at the beginning of the year 2006.

22 Q. Thank you. Were you consulted at the point in time when he was
23 being recruited for that contract, for your opinion?

24 A. We are referring to a temporary contract, the answer is yes.

25 Later on, when he applied for a staff position, the answer is no.

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1 Q. When you were consulted, what opinion did you give?

2 A. I gave a favourable opinion, of course. This made it possible to
3 formalise a de facto situation where 0316 had been working as an
4 informant and intermediary and he was now becoming someone who would
5 provide a much more open and public range of functions for the OTP.

6 Q. Thank you. You stated this morning that your trust in him was
7 somewhat hampered at the end of 2005 because you discovered that he was
8 working with other individuals without having informed you of that fact.
9 Did I understand you correctly?

10 A. Yes. That is exactly what I was just saying. Yes, it was -- we
11 were making official something that was de facto. He had been an
12 informant, an intermediary, and now he was becoming a publicly-recognised
13 member of the team, recognised by the entire team, and being used by our team
14 and also certain services within the Registry, so this in fact officialised his role with
15 the Court, and I felt at the time that it was the best solution.

16 Q. In your written statement, in paragraph 37, and I quote:

17 "The fact that he was being used -- because he was being used by
18 more and more people within the office as well as by some units within
19 the Registry, the idea came about to give him a temporary contract. This
20 was only for a few months and he was not considered suitable to work as a
21 liaison officer, indeed he did go through the recruitment process but was
22 not ultimately selected."

23 Could you indicate why, to your knowledge, and in your opinion,
24 he was not considered suitable to work as a liaison officer in Bunia?

25 A. As I stated earlier on, I did not participate in the entire

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1 selection process. The panel that interviewed him for the job did not
2 consider that he was more capable than other candidates which were, in
3 fact, hired.

4 Q. And do you have any knowledge as to the reasons for the
5 non-selection of this candidate by the panel, aside from the fact that there were others
6 who were more capable?

7 A. No, in view of the fact that -- apart from the fact that there
8 were others who were more capable, I did not see any other reason.

9 Q. I thank you.

10 PRESIDING JUDGE FULFORD: Now, gentlemen, you're not building in
11 enough pause. There is insufficient gap between questions and answers
12 and answers and questions. So you must remember that the translation has
13 got to be completed before the next intervention.

14 MR. BIJU-DUVAL: (Interpretation).

15 Q. You indicated that some services within the Registry had used the
16 services of intermediary 0316. Now, can you tell us specifically which
17 services within the Registry had done that?

18 A. Unfortunately, no. I do not recollect which service did so.

19 Q. I thank you. You stated that intermediary 0316 did not reach the
20 end of the recruitment process and that his candidacy or application was
21 rejected. Would it be true to say that through a period of two to three
22 months, according to your testimony, he did, however, work under contract
23 as a liaison officer?

24 A. He did indeed work for two to three months, I believe. And the
25 services he provided at the time were logistical also in nature, notably

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1 maintenance of vehicles, and I believe that this was one of the reasons
2 why he was not really deemed to be qualified in the sense that he was
3 more a logistician than -- or, rather, he did not have a role within the
4 field of intelligence or in the field of -- or in the area of gathering
5 information and evidence or names.

6 Q. Should we understand that subsequent to that period, he once
7 again took up his activities cooperating with the Office of the
8 Prosecutor in the context of intelligence work and setting up contact
9 with potential witnesses?

10 A. It was more or less the same period when the incident described
11 at paragraph 38 occurred. This was when the decision was taken to
12 restrict to the maximum the utilisation of intermediary 0316 in order to
13 make sure that he be used either by myself or by Mr. Lavigne.

14 Q. I thank you. Now, with regard to this incident that you
15 mention -- that you mention more particularly in paragraph 38 of your
16 written statement, in the paragraph you state that:

17 "Investigators in the DRC team complained about 0316 in early
18 2006 and said that he had lied to them about the threats received by a
19 witness he had been tasked with keeping an eye on."

20 Should we understand that he provided to the Office of the
21 Prosecutor false information with regard to the situation of one or
22 several witnesses?

23 A. As I said previously, I did not really become very involved in this
24 incident, and I did not get to the root of the matter. What I did understand
25 from the investigators who did live through this issue was that he gave

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1 some information with regard to a security problem or he was requested to -- or
2 in fact we asked him to check something about a witness's security. I think the
3 problem was effectively that he had said that he had taken care of it whereas a
4 third person had done that. I am not sure whether the information had come through
5 and he was then asked to check something, or if it was the opposite. I'm not sure.

6 THE INTERPRETER: Could the witness please be requested to slow
7 down.

8 MR. BIJU-DUVAL: (Interpretation)

9 Q. The investigators who found themselves up against this situation
10 were working within your team, were they not?

11 A. Yes, in the DRC team, yes.

12 Q. I suppose that they kept you informed of this problem which had
13 taken on a certain importance?

14 A. I do believe that the female investigators did draft a document in this regard,
15 detailing the information and the information that came to light. From
16 memory I do not remember the precise contents of this document that was
17 produced but, yes, they did produce a written report on the incident but
18 as to the contents, unfortunately, I do not remember every detail.

19 Q. I do apologise to -- for revisiting the wording that you used in
20 your written statement. You said specifically that investigators in your
21 team complained about the fact that 0316 had lied to them about the
22 threats, serious threats, about a witness. So I understand that this is
23 somewhat different?

24 PRESIDING JUDGE FULFORD: Yes.

25 MR. SACHDEVA: Mr. President, just a precision. The statement

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1 says investigators in the DRC team and there are two teams in the DRC
2 team.

3 PRESIDING JUDGE FULFORD: Right. Not necessarily your team, sir,
4 but in one of the two teams, but the question is -- well, I leave this to
5 you, Mr. Biju-Duval, so I don't misrepresent it. Bearing in mind what
6 Mr. Sachdeva has just suggested, could you put the question again,
7 please.

8 MR. BIJU-DUVAL: (Interpretation)

9 Q. My question would be as follows: That you said that the
10 investigators concerned with the issues of the lies uttered by 0316 with
11 regard to the threats received by a witness.

12 A. I think that we need to come back to one item here. We are
13 talking about the beginning of the year 2006. I was not in charge of any of the
14 teams at the time, firstly. The report was made to seemingly Bernard Lavigne.
15 That was the document. And I had access to it with regard to this incident.
16 It was to do with a threat to a witness. I cannot tell you specifically
17 whether the threat or the information about the threat was received
18 by the Office of the Prosecutor which had requested that 0316 ascertain
19 whether those threats were true or not, or whether the threats were received
20 by the witness and then he or she contacted 0316 who evidently omitted to do
21 something or did not do something properly. I do not remember the details.

22 Q. I thank you. Could you please consult tab 30? This document
23 bears the reference DRC-OTP-0233-0179. And this document is a note, an
24 internal note, within the Office of the Prosecutor bearing the date of
25 12th of January 2006. Now, I shall not ask you to read this document in

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1 its entirety, nor will I put any further questions to you in this regard.

2 But I would quite simply like you to cast your eye rapidly over this

3 document and tell us whether at the time the note was drafted, you were

4 aware of it.

5 A. I can't tell you specifically when I was made aware of this

6 document, but I was made aware of its existence, yes.

7 Q. I thank you. Could you please consult tab 29?

8 COURT OFFICER: It does not have an evidence number. Should an

9 evidence number being assigned to is it? The evidence number shall be

10 EVD-D01-00383.

11 MR. BIJU-DUVAL: (Interpretation) I thank you.

12 Q. At tab 29, this is a document of the same type dated 13th of

13 February 2006, and my question is the same as to whether you were aware

14 of this document.

15 A. Probably, but I cannot be 100 per cent certain.

16 Q. Thank you.

17 MR. BIJU-DUVAL: (Interpretation) Yes. I think we might need an

18 EVD number for this document, please.

19 COURT OFFICER: (Interpretation) Could you please repeat the ERN

20 number that you provided?

21 MR. BIJU-DUVAL: (Interpretation) DRC-OTP-0232-0276.

22 PRESIDING JUDGE FULFORD: Now, Mr. Biju-Duval, a short

23 mid-afternoon break, and there is a brief administrative issue that

24 I want to raise.

25 So, sir, thank you. We are going to give you a 10 minute break

1 now and look forward to seeing you again at 20 to 4.00. Usher could you
2 please accompany the witness to the waiting room for just over 10
3 minutes.

4 (The witness stands down)

5 PRESIDING JUDGE FULFORD: Now, Mr. Sachdeva, we've been told that
6 there are outstanding issues as regards points 2, 3, 4, 5, 11, and 12 of
7 the Defence disclosure request of Friday last week, which are clearly
8 going to have to be resolved unless you tell us that there is still room
9 for sensible further reflection on these matters or is the position that
10 we are now going to have to rule on them?

11 MR. SACHDEVA: Mr. President, in our view, at this stage, the
12 Chamber would have to become involved.

13 PRESIDING JUDGE FULFORD: Well, I'm just going to take the first
14 one as an example, Mr. Sachdeva. The Defence are asking not for the
15 documents but simply for the list of the documents which 0583 had with
16 him when he prepared his statement, and as I understand the position, it
17 is said that that is material to the preparation of the Defence case.
18 Now, is there really a difficulty in simply identifying the documents, if
19 any, that he had in front of him?

20 MR. SACHDEVA: There is no difficulty with that. The only reason
21 why the Prosecution is questioning the Defence request is that the
22 witness himself has stated very clearly in paragraph 9 of his statement
23 that he did not use these documents to prepare his statement. And
24 therefore in our submission, this information is unnecessary.

25 PRESIDING JUDGE FULFORD: Well, whether or not he actually used

1 them, if he had been provided with particular documents in order to
2 assist him in the process of compiling his statement, then, as
3 I understand it, the Defence would like to know just the list of what
4 he'd been given. Now, is there a problem with that, Mr. Sachdeva?

5 MR. SACHDEVA: Mr. President, I don't believe that there is. We
6 can provide the Defence with categories of documents that the witness has
7 been provided, even though he says he did not use them in the preparation
8 of his statement. And I would just add, if I may, that we undertook this
9 exercise pursuant to your Honour's ruling in a sense that, to expedite
10 the whole process of the creation of the statement, the Prosecution would
11 be permitted to provide reports that would assist the witness in
12 preparing the statement.

13 PRESIDING JUDGE FULFORD: Absolutely, Mr. Sachdeva. It's just
14 the Defence are interested to know what he'd been shown, and maybe
15 there'll be questions arising out that, maybe there won't, but they just
16 want to know the list, that's all. Good. Well, I don't think there is a
17 problem with that.

18 MR. SACHDEVA: Very well.

19 PRESIDING JUDGE FULFORD: Every exchange of correspondence or
20 information between the Prosecution and Witness 0583 in relation to
21 witnesses 0016 and Prosecution witness 0015. What's the Prosecution's
22 stance on that, Mr. Sachdeva?

23 MR. SACHDEVA: Mr. President, the request is prompted by
24 paragraph 9 of -- excuse me, paragraph 10 of the witness's statement,
25 where he indicates that in March 2010, there was some contact with the

1 Office of the Prosecutor in relation to Witness 0015, Defence Witness
2 0016, and Witness 0316. And our position is as follows: These contacts
3 were in the context of an internal investigation in preparation for the
4 cross-examination of Defence Witness 0016 and Prosecution Witness 0015.
5 At this stage, the Witness 0583 had not been identified as a witness for
6 the Prosecution. Your Honours are aware that he was initially suggested
7 as a witness in June 2010 pursuant to the decision on intermediaries on
8 12th of May 2010. Therefore, we view these communications as internal
9 communications. I would also add that notwithstanding the fact that 0583
10 no longer works for the Office of the Prosecutor, there are certain
11 confidentiality agreements that still persist given the fact that he
12 has -- despite the fact that he has left the office.

13 The second point is that the Defence suggest, from what I can
14 gather, that these contacts and communications which were undertaken by
15 e-mail should be viewed as rule 76 statements of a witness that is
16 testifying. In our submission, the jurisprudence under international
17 criminal law requires, or I understand that it requires that a statement
18 of a witness is a document that is used for judicial purposes, also in
19 line with Rule 111 and 112, an e-mail from a potential witness in our
20 view cannot be considered as a statement within the parameters of rule
21 76. The third point is that there is no prejudice to be -- there is no
22 prejudice to the Defence on this issue. The witness is here. The
23 Prosecution has offered him as a witness. And the questions can be asked
24 of the witness, questions can be asked as to the types of discussions he
25 may have had. He himself has stated in his statement that he had those

1 discussions. In our view there is no prejudice to the Defence. They can
2 broach this with the witness and therefore we -- the Prosecution should
3 not be asked to turn over what, in our view, are internal communications
4 and also communications protected by Rule 81(2).

5 PRESIDING JUDGE FULFORD: Mr. Sachdeva, doesn't it all depend on
6 what's in the communications? If he mentions entirely anodyne and
7 uncontroversial material, then there will be nothing there which would be
8 of interest to the Defence for the preparation of the accused's case.
9 But if there is material there, it may reveal a witness has lied, it may
10 reveal a witness is unreliable or in other ways may in some substantive
11 way advance the evidential position and assist the Chamber in relation to
12 finding the truth in this case, doesn't the material then become
13 disclosable? Let's say somebody had said, "I'm frightfully sorry, I've
14 been lying for the last three months"? Surely, that kind of material
15 should be handed over to the Defence, shouldn't it?

16 MR. SACHDEVA: Indeed that kind of material ought to be handed
17 over to the Defence. The material is, as of course the Prosecution
18 accepts, is in relation to 0316, Defence Witness 0016 and Witness 0015.
19 And the Defence also base their request on your Honour's decision on the
20 12th of November in relation to the Prosecution's disclosure obligations
21 in relation to Defence witnesses. And our response is twofold. Firstly,
22 the decision was not in effect at the time in March. Secondly, the
23 material relates to Defence Witness 0016, yet the disclosure sought is in
24 relation to Prosecution Witness 0583, and the other issue, albeit a side
25 issue, is that, of course, Prosecution Witness 0015 is not a Defence

1 witness.

2 And in our submission, the decision on the 12th of November was
3 based upon the Prosecution's internal investigative work in anticipation
4 of Defence witnesses coming to be able to provide the Defence with
5 material that is either incriminatory or exculpatory so they can prepare
6 for their case. In our view the 12th of November decision does not have
7 bearing on the precise request the Defence have made today. Having said
8 that, the Prosecution of course is willing to provide the Chamber with
9 those e-mail communications for an ultimate decision to be made by your
10 Honours.

11 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I really want to
12 understand the essence of this. Do I interpret what you've said
13 correctly, that the Prosecution accepts that if there is something within
14 those e-mail exchanges which is relevant to the area identified by the
15 Defence, and which will assist them in some material way in Defence
16 preparations, that the Prosecution is under an obligation to disclose
17 them, or are you saying that you are, in fact, entitled to withhold that
18 material even though it has potential value to the accused?

19 MR. SACHDEVA: Of course, it depends what is meant by "relevant."
20 There may be, in internal communications with amongst the staff members
21 and indeed former staff members, there may be various opinions and
22 assessments made which, in our view, are not disclosable pursuant to Rule
23 81(1) and, indeed, pursuant to your Honour's decision of 13th October
24 2010.

25 PRESIDING JUDGE FULFORD: So even if a staff member says,

1 "I consider this witness to be unreliable or this intermediary to be
2 unreliable" and even if perhaps reasons are given as well for that
3 conclusion, the Prosecution is saying, if it's an internal
4 communications, not disclosable?

5 MR. SACHDEVA: Mr. President, I think it has to be determined on
6 a case-by-case basis, but what the Prosecution is trying to demonstrate
7 in addition to what we have said in the past is that internal assessments
8 that can be made on a -- for a particular reason or an internal opinion
9 are not necessarily disclosable as compared to the actual facts that the
10 opinions are based on because if that was the case, then you could not
11 have an office conducting itself in a way that it needs to to conduct
12 investigations, and therefore you have every possible opinion or
13 assessment being potentially disclosable.

14 PRESIDING JUDGE FULFORD: It's not every opinion, every
15 assessment, Mr. Sachdeva. It's when there are assessments that somebody
16 of relevance to this case is, for instance, not believable or not
17 reliable.

18 Now if there is an internal assessment made by a relevant OTP
19 official, that either an intermediary or a witness is not believable or
20 is not to be relied on or there is a problem with their account, what is
21 the difficulty in there being transparency in relation to that and
22 providing it to the accused?

23 MR. SACHDEVA: There is -- well, our understanding of your
24 Honour's decision on 13th of October 2010, is that the Prosecution, given
25 the evolution of the Defence abuse of process case, the Prosecution is

1 obliged to disclose any information that it has that suggests knowledge
2 of the Prosecution of improper or unreliable behaviour by the
3 intermediaries.

4 What has been excluded from disclosure in my understanding is
5 internal assessments made under 81(1) and 81(3), and therefore in our
6 submission, there is a distinction to be drawn between the factual basis
7 for a particular assessment as opposed to the opinion or the assessment
8 itself. For example, if somebody was to -- but not necessarily
9 memorialising it or writing it down, but to suggest, "Well, I don't
10 believe this witness," that is not necessarily disclosable, but I don't
11 believe this witness because of this fact and that fact, then clearly
12 those facts are disclosable.

13 PRESIDING JUDGE FULFORD: All right, Mr. Sachdeva, we understand.
14 We are clearly going to have to deal with this in the very, very near
15 future. In the meantime, please supply to the bench and the bench alone
16 any documentation which you have which comes under 3 of the kind that you
17 have just described to us which the OTP is currently withholding.

18 Now, point 4, the photograph, what is the difficulty with
19 providing the photograph?

20 MR. SACHDEVA: Mr. President, may I just make one further
21 clarification to the previous point?

22 PRESIDING JUDGE FULFORD: Certainly.

23 MR. SACHDEVA: The Prosecution, in a general way, views that the
24 nature of the requests are moving in a direction that does impede upon
25 the ability of the Prosecution to make internal assessments, and so we

1 are contesting it as a point of principle. Of course, your Honours are
2 quite correct that if there is information, and we have in fact disclosed
3 information in the past, that may, out of an abundance of caution, that
4 may strictly go beyond the terms of the 13th of October 2010 decision,
5 but I don't want the Chamber to have an impression that we are making a
6 stance unnecessarily because we don't know how it would be viewed in
7 terms of precedent in other cases. Of course, we understand that we have
8 a unique situation here where there is an abuse of process case that has
9 evolved and is evolving, but just to assure the Judges that's the reason
10 why some of the submissions are being made.

11 PRESIDING JUDGE FULFORD: Thank you. The photograph in point 4?

12 MR. SACHDEVA: The Prosecution has no objection to providing the
13 photograph that was shown to witness 0582 before he testified as long as
14 the same criteria or the same parameters that were invoked for the
15 photograph of 0183 are implemented. In other words, the recent decision
16 from the Katanga case governing how the Defence can use such a photograph
17 in any investigation they conduct.

18 PRESIDING JUDGE FULFORD: Content with that, Maître Mabilie?

19 MR. BIJU-DUVAL: (Interpretation) Yes, your Honour, just one
20 question regarding the photo. The photo had been forwarded to Witness 0582 in an
21 e-mail, and we would also like to be able to obtain the e-mail which had
22 presented this photo to 0582 and that put questions to 0582
23 pertaining to this photo, so this disclosure request is pertaining to the
24 e-mail in which that photo had been disclosed.

25 PRESIDING JUDGE FULFORD: But doesn't it all depend,

1 Mr. Biju-Duval, as to what's in the e-mail? Whether or not the e-mail is
2 disclosable will depend on whether there is anything that could
3 reasonably be said to be material to the Defence case? Isn't that a
4 question of judgement for the Prosecution? You agree, right. Good,
5 thank you.

6 Photograph then to be disclosed, subject to the restrictions that
7 Mr. Sachdeva has referred to. And we ask you, please, Mr. Sachdeva, to
8 look at the e-mail that accompanied the photograph and make a decision as
9 to whether there is anything disclosable within it. However, if that
10 e-mail falls into the category of materials that you've just been dealing
11 with, please supply it to the Chamber so that we can make our own
12 assessment.

13 MR. SACHDEVA: Certainly, Mr. President.

14 PRESIDING JUDGE FULFORD: Can we please, this is now point 5, can
15 we, the Chamber, please be provided with a non-redacted copy of document
16 0051? I've looked at the disclosed copy and it is very heavily redacted
17 indeed.

18 MR. SACHDEVA: I -- in anticipation, I do have copies for your
19 Honours.

20 PRESIDING JUDGE FULFORD: Thank you, if you could give it to
21 Ms. Guhr when we rise, please. Thank you. Then point 11, what is the
22 difficulty in providing not the name but the number of the intermediary
23 who is said to have signed a contract with the Court?

24 MR. SACHDEVA: Mr. President, we have indeed responded to the
25 Defence on this issue, and we are of the view that the -- providing this

1 code may have adverse security implications. Since this individual was
2 not involved in introducing trial witnesses to the Prosecution, nor did
3 he have contact with 0316, 143, 321, and in our view in line with the 12
4 May decision in 2010, the -- we resist the provision of this code because
5 it may disclose information -- more information regarding the witness's
6 identity over and above what has already been obtained, elicited in
7 evidence. That could, yes, that could have adverse security situations.

8 PRESIDING JUDGE FULFORD: Sorry, I'm going to ask you to put some
9 flesh on that submission. How does giving the number increase the
10 security risks for him or her or someone else?

11 MR. SACHDEVA: Because with the provision of that number, the --
12 one would be able to identify the various contacts the person would have
13 had, perhaps the locations where those contacts were made, and given that
14 your Honours had only ordered the identities of 143, 0321, and 0316 to be
15 disclosed to the Defence, the provision of the code would provide --
16 would potentially provide the Defence with more information related to
17 this intermediary whose name was elicited during the questioning of 0582
18 inadvertently.

19 PRESIDING JUDGE FULFORD: Thank you. For point 12, would you
20 please provide the Chamber with the non-redacted copies of the e-mails,
21 that's 0236 and 0232.

22 MR. SACHDEVA: Mr. President, upon reflection, again, these two
23 e-mails were the e-mails that accompanied the provision of the categories
24 that we thought 0582 and 0583 should focus upon in preparing their
25 statements. The accompanying e-mails contain material that relates to

1 logistical, practical information regarding their testimony and the
2 preparation of their statement.

3 Principally, that material in our view is not disclosable and is
4 covered by Rule 81(1); however, we do not have a problem in providing
5 that information to the Defence. But we want to indicate that we did
6 explain to the Defence that the redactions were imposed on issues that
7 related to passport details, travel details, and even -- even after that
8 explanation, the Defence are coming back with more information saying
9 they want that material unredacted, but as I said we can provide it to
10 them.

11 PRESIDING JUDGE FULFORD: Good. So in a sense under protest the
12 Prosecution will furnish that material to the Defence.

13 MR. SACHDEVA: Yes, Mr. President.

14 PRESIDING JUDGE FULFORD: Thank you very much. Well, we needn't
15 make any ruling on that, then. Thank you, Mr. Sachdeva.

16 Mr. Biju-Duval, just one question: Given that, just give me a
17 moment, for point 11, the individual whose number you're requesting
18 didn't -- was not involved in any stage in introducing trial witnesses to
19 the Prosecution and didn't have contact with 0316, 0143, and 0321, is
20 there any basis in those circumstances for asking for his number? How do
21 you respond to the suggestion that given Mr. Sachdeva has provided that
22 evidential foundation, he is in fact irrelevant?

23 MR. BIJU-DUVAL: (Interpretation) Just a moment, your Honour.

24 For the Defence, Mr. President, it would be extremely useful to
25 be able to make the tables as readable as possible, the tables that were

1 forwarded to the Defence. We have good reasons to believe that the
2 intermediary whose name had been revealed by 0582, had links with 0143. So
3 these links for this potential contact, we feel, would be interesting in
4 the framework of the questions that the Defence would like to explore.

5 PRESIDING JUDGE FULFORD: Well, Mr. Biju-Duval, given that the
6 Prosecution has said, in terms, that that individual didn't have contact
7 with 0143, over the ten-minute adjournment that's about to take place,
8 would you please explain to Mr. Sachdeva what the basis is for you saying
9 that there are good reasons to believe that the intermediary did have
10 links with 0143, because if Mr. Sachdeva is provided with that
11 information it may then persuade him that, in fact, this material is
12 disclosable. If those discussions fail, come back to us either later
13 this afternoon or tomorrow, and we will then rule on the issue.

14 Good. We will sit at 5 past 4.00.

15 Mr. Biju-Duval.

16 MR. BIJU-DUVAL: (Interpretation) Yes, excuse me, Mr. President,
17 there is still one disclosure point we would like to submit to the
18 Chamber which was mentioned at the end of the letter that had been sent
19 to the Chamber earlier. The situation is the following: Last Friday, at
20 6.00 p.m. we received an e-mail from the OTP responding to a variety of
21 requests for disclosure. The last point of this e-mail involved the
22 disclosure relative to 0583, and in this point the OTP referred to two
23 phrases that had been said by 0583 in May 2006 that were particularly
24 relevant for the interview of this witness. These two phrases that were
25 particularly relevant were necessarily included in an internal note to

1 the OTP that we would like to be able to submit to the witness so as to
2 ensure that he could comment that.

3 So our request, therefore, is that the OTP forward the note
4 itself to us from May 2006, perhaps having redacted the information that
5 we are not supposed to have so that we may submit a document to the
6 witness and not merely quotes that were made by the OTP in an e-mail sent
7 to the Defence. And I'd also like to draw your attention to the urgency
8 of this question because we would like to be able to submit this document
9 very quickly to the witness. So this would be one of my upcoming
10 questions.

11 PRESIDING JUDGE FULFORD: Right. We well recognise that both
12 sides are under a not inconsiderable amount of pressure at the moment,
13 but very often mature reflection and discussion can resolve these issues
14 satisfactorily to both sides. Rather than rise now for ten minutes,
15 bring the witness back for ten minutes, and then rise again for the day,
16 the time would be much better spent if the Prosecution and the Defence
17 immediately after we leave the bench sit down together, discuss the last
18 matter raised by Mr. Biju-Duval, and the other matters that I identified
19 a few minutes ago, and any other pressing disclosure requests, see
20 whether they can be resolved, and if they can't, please, together, draw
21 up a short list of unresolved disclosure points, particularly those
22 relating to 0583, that can be forwarded to Ms. Guhr so that we can
23 reflect on them overnight and deliver, if we have to, a ruling on any
24 outstanding issues at 9.30 tomorrow morning.

25 Is that acceptable, Mr. Sachdeva?

1 MR. SACHDEVA: Certainly, Mr. President.

2 PRESIDING JUDGE FULFORD: Thank you.

3 Mr. Biju-Duval?

4 MR. BIJU-DUVAL: (Interpretation) Yes, Mr. President.

5 PRESIDING JUDGE FULFORD: We rise for the day. We will sit

6 together at 9.30 tomorrow morning, and please try and resolve as many of

7 these disclosure points as possible before then.

8 COURT USHER: All rise.

9 The hearing ends at 4.00 p.m.

10 RECLASSIFICATION REPORT

11 Pursuant to Trial Chamber I's email instruction dated 2nd November 2011,

12 the transcript is reclassified as public after the indicated redactions

13 have been implemented as ordered by the Chamber. All private

14 and closed sessions (*) are now available to the public with the exception of the

15 portions the transcript that have been redacted.