

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Open Session)

ICC-01/04-01/06

1 International Criminal Court
2 Trial Chamber I - Courtroom 1
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Thomas Lubanga Dyilo ICC-01/04-01/06
5 Presiding Judge Adrian Fulford,
6 Judge Elizabeth Odio Benito and Judge René Blattmann
7 Trial Hearing
8 Tuesday, 9 November 2010
9 (The hearing resumes in open session at 2.30 p.m. from Courtroom 2)
10 THE COURT USHER: All rise. Please be seated.
11 PRESIDING JUDGE FULFORD: Mr Sachdeva.
12 MR SACHDEVA: Thank you, Mr President. In relation to the Defence request, at
13 least specifically related to 316 for disclosure, I just make the following observations:
14 The first point in reference to the material prior to March 2007, I would say that we
15 have been routinely disclosing investigator's notes and various other reports related
16 to 316 and other persons that he dealt with on a frequent basis and the Defence do
17 have that material.
18 Pursuant to the decision on 13 October, as I have mentioned before, the Prosecution
19 undertook a further indepth review of its materials in all its databases, and the fruits
20 of those searches have been, if deemed relevant and within the order, have been
21 disclosed to the Defence. That's what I'd say on the first point.
22 On the second point, regarding 183 we have disclosed an item today to the Defence.
23 We've also disclosed a statement of 183 to the Defence and, of course, we are
24 reviewing whether there are other materials that are relevant for disclosure. Of
25 course, the Prosecution would submit that there needs to be a proper basis for the

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1 request of disclosure of materials related to 183 given that there are no allegations
2 against 183. In this case, 183 is not involved in any -- was not an intermediary
3 related to any of the witnesses that are part of the abuse of process in this case, or any
4 of the other witnesses that were -- that testified in this case.
5 With respect to point 3, at this stage and upon reviews that have been conducted, the
6 Prosecution does not have further information on this person. With respect to point
7 4, that item will be or I understand has been disclosed today.
8 And in respect to the last item, the Prosecution submits that this document is
9 non-disclosable to the Defence because it is -- it emanates from 316's counsel and in
10 our submission it is not our material to disclose to the Defence. Of course it is in our
11 possession, and the subsequent -- the subsequent letter the Prosecution wrote has
12 been disclosed to the Defence, but the initial letter from 316's counsel in our
13 submission is not disclosable to the Defence.
14 PRESIDING JUDGE FULFORD: Just before you sit down, Mr Sachdeva, in relation
15 to 2, please tell me if I am wrong, but as I recall it 183 had a close working relationship
16 with the present witness; is that right?
17 MR SACHDEVA: That's right, yes, and --
18 PRESIDING JUDGE FULFORD: And isn't there a suggestion within the disclosed
19 materials that 316 said that something happened to 183 which was untrue?
20 MR SACHDEVA: Yes, that is indeed correct.
21 PRESIDING JUDGE FULFORD: So although 183 may not himself be an
22 intermediary who has crossed the threshold, isn't there now apparent an argument
23 that by association with 316 certainly some material relating to him has now crossed
24 the disclosure threshold?
25 MR SACHDEVA: Absolutely, and we do not -- we do not contest that. There is

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1 obviously a need for some material to be disclosed within the boundaries that your
2 Honours have just described and we have been disclosing material on 183, but my
3 point was simply that there may be areas where the disclosure should not extend to.
4 PRESIDING JUDGE FULFORD: Your point then is that this shouldn't just simply be
5 blanket disclosure every visit that 183 has ever made to a supermarket or whatever; it
6 has to be focused.
7 MR SACHDEVA: Precisely.
8 PRESIDING JUDGE FULFORD: Fine. All right. Thank you very much indeed.
9 Very helpful.
10 Now, Maître Mabilie, in your hands as to whether or not you want to reply now or
11 whether you would prefer us to get on with 316 and come back on this once you've
12 had an opportunity to digest what Mr Sachdeva has said. It's really up to you.
13 MR DESALLIERS: (Interpretation) Mr President, we can answer you straightaway.
14 On the first point, my learned friend indicates that we had regularly received
15 disclosure. In fact, the Defence is not asking for regular disclosure, but rather to
16 receive full disclosure once and for all.
17 For quite some time now, we have been asking to know when we will be certain of
18 having received full and complete, definitive disclosure. That is the point we were
19 addressing in point 1.
20 Point 2. As you said, we have received information which calls into serious question
21 the integrity of intermediary 183 presented by the OTP as a collaborator with the
22 witness we have before us at the moment, Witness 316.
23 And I would add another factor which will perhaps be covered or perhaps not by the
24 OTP in their questioning, but in any case by our questioning, this intermediary 183
25 was presented as being a person who had been killed, who had been murdered, and

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1 this information was made known to the OTP which according to the indications we
2 have received expressed a considerable surprise because they met that person
3 subsequently. So all information likely to call into question the behaviour or the
4 integrity of intermediary 183 or with regard to Witness 316, the Defence would ask to
5 be disclosed.

6 Concerning point 3, we received a note from an investigator. This is a note that was
7 transmitted to us after a specific request from the Defence. This note talks about an
8 encounter on a specific time -- date and in a specific place.

9 We had asked for two things: First of all, who is the intermediary who made
10 possible this contact, the first contact with the witness? And on this point, could I
11 indicate that the testimony of Witness 15, a witness for the Prosecution, had given
12 indicators to the -- or did that person give indication to the OTP of how to find that
13 intermediary?

14 And, secondly, we are surprised to hear today that the OTP cannot find out who the
15 investigator was who carried out the interview of that witness, because that is one of
16 the things that we had asked to be told.

17 Point 4 I understand poses no difficulties. Point 5, Mr President, simply this: We
18 have received disclosure from the OTP with regard to a letter dated 2 July 2010.

19 Perhaps we could go into closed session so that I could read this. It is very short and
20 it will help the Chamber I believe to understand why we are making this application.

21 PRESIDING JUDGE FULFORD: Closed session, please.

22 *(Private session at 2.39 p.m.) Reclassified as Open session

23 THE COURT OFFICER: We are in private session, Mr President.

24 MR DESALLIERS: (Interpretation) This is document DRC-OTP-0231-0428, letter
25 by the -- letter from Mr Manoj Sachdeva to the counsel for Witness 316 dated

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1 2 July 2010. It reads as follows in English: (Speaks English) "Dear sir, we are
2 writing in response to your letter dated 25 June 2010 requesting safe passage for your
3 client, Witness 316, who is due to arrive at the International Criminal Court in The
4 Hague to testify in the case of The Prosecutor versus Thomas Lubanga Dyilo. The
5 Prosecution assures you and your client that during your client's anticipated visit to
6 The Hague, this office will not seek his arrest or detention for any offence that might
7 arise out of his activities as an intermediary in a pending case," (Interpretation) end of
8 quotation.

9 So, Mr President, the Defence considers that this kind of guarantee given to a witness
10 concerning a certain type of immunity is completely relevant in assessing the
11 witness's credibility. And to understand this letter of 2 July 2010, it seems to us
12 necessary to obtain a copy of the letter of counsel dated 25 July 2010. Thank you
13 very much.

14 PRESIDING JUDGE FULFORD: Mr Desalliers, I want to ask a couple of questions.
15 Firstly, in relation to point 2, you have referred to the integrity of 183 being a proper
16 subject matter for disclosure. Now, I'm not sure whether that's right, is it? I can
17 well imagine that you want disclosure of everything concerning 183 to the extent that
18 he had dealings with 316. So the relationship between them and the extent to which
19 183 helps to provide a more coherent picture as regards the activities of 316 I
20 personally don't have any difficulties with your interest, but is the integrity of 183 in
21 play? I don't think it is, is it?

22 MR DESALLIERS: (Interpretation) Mr President, Witness 183 is presented as being
23 a collaborator of 316, his assistant, in the way of intermediary. So an assistant to
24 intermediary 316.

25 If in the file there was information concerning 183 with regard to which we were

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1 absolutely certain that it could not be connected to Witness 316, then perhaps,
2 Mr President, if Witness 183 had robbed a bank in 1988 it would in fact not be of any
3 interest to the Defence.
4 However, what we would like is to obtain all information within the file of the OTP
5 which makes it possible to understand the relationship that there may have been
6 between 316, 183 and, between the Witness of 316 who may have had contact with
7 183. Thank you.
8 PRESIDING JUDGE FULFORD: I think you and I have both said the same thing,
9 Mr Desalliers. I mean, in due course, if you can find a difference between the way I
10 put it and the way that you've just put it, please revert to the Chamber, but I think we
11 are both agreed, as certainly by way of presenting a position, that the Defence -- that
12 the principal interest of the Defence is in the relationship between 316 and 183.
13 MR DESALLIERS: (Interpretation) Yes, all right.
14 PRESIDING JUDGE FULFORD: Fine. I don't think -- thank you. I don't think
15 you quarrel with that, Mr Sachdeva, do you?
16 MR SACHDEVA: May I just have a moment, Mr President? I must say in principle,
17 no, we do not quarrel with that, but of course there are different types of relationships.
18 If there is anything to suggest there may have been the fact of an improper contact or
19 an improper dealing between the two then perhaps we would agree that's disclosable,
20 but a document suggesting that 316 and 183 went for a drink in a bar, I don't think
21 that's disclosable.
22 PRESIDING JUDGE FULFORD: No, there is no difficulty about that, Mr Sachdeva.
23 It is not each and every item. It's anything that would throw light on the matters
24 that are being investigated before us, and it is rather like when you know you have
25 seen an elephant when it's in front of you. I am sure that within this material if there

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- 1 is something that will assist as regards matters being explored by Mr Desalliers, you
2 will recognise it as such and disclose it.
- 3 If there is any material which in your view is equivocal, could you please show it to
4 the Chamber so that we can resolve any doubts that may be in your mind.
- 5 MR SACHDEVA: Of course, and in fact those are the principles that we have been
6 working under. Absolutely.
- 7 PRESIDING JUDGE FULFORD: I am just gently reminding. Mr Sachdeva, next,
8 point 3. Mr Desalliers has now been very precise about the particular individuals
9 that he is interested in. Given that specificity, will you be able to assist in relation to
10 that request?
- 11 MR SACHDEVA: Mr President, at this stage I imagine in respect of the second
12 issue.
- 13 PRESIDING JUDGE FULFORD: Sorry.
- 14 MR SACHDEVA: In respect of the second issue, I understand there were two points
15 raised in respect of point 3.
- 16 PRESIDING JUDGE FULFORD: You're absolutely right, so the intermediary who
17 made the contact possible, and the investigator who carried out the interview.
- 18 MR SACHDEVA: Yes, I was referring to the investigator.
- 19 PRESIDING JUDGE FULFORD: Right. What about the earlier part?
- 20 MR SACHDEVA: With your leave, I would have to come back on that.
- 21 PRESIDING JUDGE FULFORD: Could you please.
- 22 MR SACHDEVA: I will, certainly.
- 23 PRESIDING JUDGE FULFORD: So it's yes to point 2; question mark over point 1?
- 24 MR SACHDEVA: Yes, Mr President.
- 25 PRESIDING JUDGE FULFORD: Thank you. Now while I have got you on your

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1 feet, Mr Sachdeva, finally the letter. We have one half of the correspondence, not the
2 other. The request made by counsel is in your possession and it's, as I would
3 understand it, not covered by legal professional privilege because this isn't just a
4 communication between a lawyer and his or her client; this has been sent to the
5 Prosecution. It is now in your possession.

6 Now, given that in those circumstances lawyer/client confidentiality privilege has
7 been waived, what then can be the objections to the Prosecution giving the other half
8 of this particular picture?

9 MR SACHDEVA: Well, Mr President, I would argue that it is similar to material that
10 we have received from the Victims and Witnesses Unit, for example, that refers to
11 witnesses in this case. Of course, the material is in our possession. However, in our
12 submission, we would not be in a position to make a decision as to whether to
13 disclose that material unless the Victims and Witnesses Unit have had at least an
14 opportunity to comment and to review the document that actually emanates from
15 their institution.

16 And so in the same breath I would argue that at the very least we need to inform
17 counsel of 316 that this has been a request and seek his views because, yes, we have
18 possession of the document, but we are not the owner of that material.

19 PRESIDING JUDGE FULFORD: I can understand as a matter of courtesy an
20 approach to the legal representatives of 316. I imagine that could be done by email
21 or telephone today, couldn't it?

22 MR SACHDEVA: It certainly could.

23 PRESIDING JUDGE FULFORD: Please do so and then if you could come back to us
24 on these two points at 9.30 tomorrow morning, Mr Sachdeva.

25 MR SACHDEVA: I will do so.

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- 1 PRESIDING JUDGE FULFORD: Thank you very much indeed. One last matter,
2 Mr Sachdeva: Mr Desalliers was right when he said that you originally referred to
3 the ongoing routine disclosure that has been made in relation to the investigator's
4 notes and similar documents for 316. Am I right in assuming that the Prosecution's
5 position is that after an appropriate review of all of the material in your possession
6 you are satisfied that you have disclosed everything that is disclosable as regards 316?
- 7 MR SACHDEVA: Mr President, what I can say is this: That we have conducted
8 extensive reviews before -- when the allegations first surfaced last year, after the
9 decision by your Honours on 13 October, and we have disclosed several hundred
10 documents related to 316.
- 11 On that basis, and also on the basis that the criteria used for those searches was
12 effective, rigorous and detailed, I can say that I am satisfied that material that needs to
13 be disclosed to the Defence has been disclosed.
- 14 Now, I say this with of course the incessant caveat that because of the huge amounts
15 of material that the office has there are inevitably going to be documents that fall
16 through the cracks. I think that's an understandable point because one can only do
17 what -- otherwise we would be looking through millions of documents page by page,
18 but you have to construct certain criteria for the effective searches, and that's what
19 we've done.
- 20 PRESIDING JUDGE FULFORD: Human error will always be with us, but the
21 Prosecution has used its best efforts to ensure that everything that is disclosable in
22 relation to 316 has been disclosed?
- 23 MR SACHDEVA: Absolutely, Mr President.
- 24 PRESIDING JUDGE FULFORD: Fine. Thank you. Thank you very much. Well,
25 I think that nearly answers the questions, Mr Desalliers. There are I think two issues

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- 1 which are now outstanding which we will revert to at 9.30 tomorrow morning.
- 2 Thank you very much.
- 3 Anything else before the witness? Thank you. Closed session, please.
- 4 *(Closed session at 2.56 p.m.) Reclassified as Open session
- 5 THE COURT OFFICER: We are in closed session, Mr President.
- 6 PRESIDING JUDGE FULFORD: Yes, witness, please.
- 7 (The witness enters the courtroom)
- 8 PRESIDING JUDGE FULFORD: Private session, please.
- 9 *(Private session at 2.59 p.m.) Reclassified as Open session
- 10 THE COURT OFFICER: We are in private session, your Honours.
- 11 WITNESS: DRC-OTP-WWWW-0316 (On former oath)
- 12 (The witness speaks French)
- 13 PRESIDING JUDGE FULFORD: Good afternoon, sir.
- 14 THE WITNESS: (Interpretation) (No interpretation).
- 15 PRESIDING JUDGE FULFORD: Mr Sachdeva, we are now in private session. If at
- 16 any stage it's possible to come out of it and return to public session, please let me
- 17 know.
- 18 MR SACHDEVA: Certainly, Mr President.
- 19 Q. Sir, before the luncheon break, we were discussing this tabulation of payments
- 20 that you had signed and produced, and you had mentioned that you had paid money
- 21 to buy aeroplane tickets, for photo-passports and so on, and you also spoke of cash
- 22 payments. Do you recall at that time what would the cash payments have been for?
- 23 A. When I say that these expenses were in cash, well, it is because these -- this was
- 24 money that was spent in cash. This was cash that I handed over to --
- 25 THE INTERPRETER: (Inaudible)

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1 THE WITNESS: (Interpretation) -- for him to be able to --

2 THE INTERPRETER: Message from the English interpreter. There is more than
3 one microphone on; we cannot hear the witness.

4 THE WITNESS: (Interpretation) Unfortunately, in his statement he said he
5 brought it in my company, but I was not there. He went to buy it on his own.

6 MR SACHDEVA:

7 Q. Sir, I'm very sorry, but unfortunately part of your answer was not heard and
8 transcribed. Could I ask you to repeat your answer, please.

9 A. Could you please indicate to me where I -- where you could not hear me any
10 more?

11 PRESIDING JUDGE FULFORD: I am afraid it's going to have to be the whole
12 answer, Mr Sachdeva.

13 MR SACHDEVA: Indeed.

14 Q. Sir, I'm afraid that you're going to have to repeat your full answer. If you want
15 me to repeat the question, please let me know.

16 A. Yes, could you please repeat your question?

17 Q. Yes, so I was asking you in relation to the cash payments that are listed here.
18 Generally, what would the cash payments be for, if you recall that?

19 A. I was saying that this was the money that I handed over to him for him to buy
20 the (Redacted). He asked for this himself. He asked this as a cover
21 story.

22 Now, he stated that we went to buy the (Redacted) together and that I bought the
23 (Redacted) for him and handed them over to him. I say "no" to that. I did not go
24 with him where he went to buy the (Redacted). That is my answer.

25 Q. Thank you. I'm now going to show you another document. This document is

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1 contained in tab 32.

2 And Mr President, the copy that is in the binder is in fact not the best one and I do
3 have better copies, with accompanying translations, to be handed out to your
4 Honours and to the parties and participants and to the witness indeed.

5 THE INTERPRETER: Message from the English interpreter: We would like to take
6 this opportunity to reiterate that we can hardly hear the witness, that we have to turn
7 our volume up to maximum in order to be able to hear what he's saying, and then
8 turn the volume down to nearly minimum in order to hear counsel. Thank you.

9 MR SACHDEVA:

10 Q. Sir, we have just had a message from the interpreters that they are having
11 difficulty to properly hear you. May I suggest that when you answer, you try and
12 speak closer to the microphone and at a reasonable volume so the important things
13 that you are saying are recorded properly? Is that understood?

14 A. Yes, I have understood.

15 THE INTERPRETER: Further message from the interpreter: We believe that it
16 might be an interference that is technical in nature. We do not know quite what it is,
17 but there is a distinct hum which makes life very difficult for us, and we apologise for
18 our repeated interventions. Thank you.

19 PRESIDING JUDGE FULFORD: Can I ask the interpreters whether the hum is still
20 there now?

21 THE INTERPRETER: In response to that question, your Honour, not when you're
22 speaking, but when the witness speaks, yes.

23 PRESIDING JUDGE FULFORD: Right. We will have another question and answer
24 from Mr Sachdeva and the witness and we'll then pause to see how tolerable or
25 intolerable it is.

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1 Right. We're at tab 32, Mr Sachdeva. Let's have a question and an answer and see
2 how the mechanics are.
3 MR SACHDEVA: May I just give the ERN number before I do that, Mr President?
4 It's DRC-OTP-0222-0004 and, actually, perhaps this can be conducted in open session.
5 And, sir, as long as you remember to refer to the person that we've been speaking
6 about as Mr X, if you need to.
7 PRESIDING JUDGE FULFORD: Open session, please.
8 (Open session at 3.07 p.m.)
9 THE COURT OFFICER: We are in open session, Mr President.
10 PRESIDING JUDGE FULFORD: Yes.
11 MR SACHDEVA:
12 Q. Sir, you have this document in front of you. I'd like you -- I'm simply going to
13 invite you to make any comments you have about this document.
14 A. I thank you. Casting an eye over this document which is, I presume, a
15 photocopy or a scanned version, I would say that I do not recognise this note, nor do I
16 recognise the paper or the fingerprint or even the handwriting that is used to draw up
17 this note. Of course, I have not yet had the chance to read the contents thereof, but
18 from the outset I can tell you that I do not recognise this piece of paper.
19 PRESIDING JUDGE FULFORD: Pause, please. Interpreters, how was that?
20 THE INTERPRETER: Things are much improved, your Honour. We thank you.
21 PRESIDING JUDGE FULFORD: We are very pleased to hear it.
22 Right. Mr Sachdeva, I think there is a special plea from the French interpreters that
23 we build in a really solid gap. If you look back over the transcripts of both this
24 morning and this afternoon, there have been repeated observations that they are
25 finding it very difficult to keep up when one speaker comes in quickly after the other,

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1 and I think I am principally at fault.

2 MR SACHDEVA: Thank you, Mr President. I will certainly be much more vigilant.

3 Q. Earlier on today, when I asked you about your position regarding Mr X's
4 allegations against you, you spoke about a letter that was allegedly written in your
5 house, in the garden of your house. Were you referring to this letter, or something
6 else?

7 A. I was referring precisely to this letter and I said - and I state again - that I do not
8 recognise this letter and that it is not binding upon my person in the sense that, as I
9 said, that notably that the letter was alleged to be written under the guava tree in my
10 compound. I say that is false, that is entirely false, because I did not have a guava
11 tree where I was living. He said that it was drafted on the grass, or on the lawn.
12 I would say that that is false. It is completely false. There wasn't any lawn in the
13 compound where I was living. And furthermore, he stated that the ink that was
14 used that I appended my fingerprint, and I asked and I said that if the original is here,
15 in view of progress in the field of science, we might have this verified as to whether
16 this fingerprint is indeed mine, or not.

17 As for the calligraphy, or the handwriting, I have in the possession of the Court a
18 number of documents that I drafted of my own hand and that I also signed, and I
19 believe that on the basis of the originals of these documents, and were we to compare
20 them with this document, we would be able to establish that this is forgery and use of
21 forged documents. I do not recognise it. This is lies. This is a tissue of lies.

22 MR SACHDEVA: Mr President, could this document be given an EVD number?

23 Although I suspect it might already have a Defence exhibit number.

24 PRESIDING JUDGE FULFORD: I think it does, Mr Sachdeva. Mr Sachdeva, if it's
25 convenient, the original has an EVD number and I'll ask the court officer in a moment

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- 1 to read that out so that it forms -- so that we all know what it is. What I assume is
2 the accompanying translation doesn't, and certainly for me it would be helpful for
3 that to have an EVD number so long as it's accepted that broadly it reflects what is in
4 the original. So unless anybody rises to their feet, please read out the original -- the
5 EVD number for the original and then assign an EVD number for the translation.
- 6 THE COURT OFFICER: Yes, Mr President. So the original document referenced as
7 DRC-OTP-0222-0004 already has an EVD number assigned, which is EVD-D01-00120.
8 And the new document, which is the translation referenced as DRC-OTP-0222-0011,
9 will be assigned EVD reference EVD-OTP-00612. And both documents will be
10 marked as confidential.
- 11 PRESIDING JUDGE FULFORD: Thank you. Yes, Mr Sachdeva.
- 12 MR SACHDEVA: Thank you.
- 13 Q. Sir, before I move on to another topic, just one final question: When was the
14 first time you saw this document?
- 15 A. I saw this document when I was reading the statement of Mr X, and that was
16 when I was here at the Court.
- 17 MR SACHDEVA: Mr President, may we move into private session, with your leave.
- 18 PRESIDING JUDGE FULFORD: Private session, please.
- 19 *(Private session at 3.16 p.m.) Reclassified as Open session
- 20 THE COURT OFFICER: We are in private session, Mr President.
- 21 MR SACHDEVA:
- 22 Q. Sir, my next question is also related to (Redacted). Did you have occasion to
23 speak to him in 2007 about travelling to somewhere outside of Bunia?
- 24 A. Never.
- 25 Q. Did you ever ask (Redacted) to assume another name?

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1 A. No, never.

2 Q. Specifically, did you ever ask him to assume the name of (Redacted)?

3 A. I say, no.

4 Q. Did you ever arrange and procure for him an identification document with the
5 name (Redacted)?

6 A. Never. I wasn't even in contact with him, nor was I in contact with his family.

7 And for what purpose? Why would I do that? I never did that.

8 Q. You have already commented on the letter that we've seen and, following on
9 from that, did you ever tell (Redacted) to make up stories about his security, about
10 threats to his family, for the purposes of being relocated by the ICC?

11 A. Never. I wasn't even informed of any threats to his person. I -- I was never in
12 contact with him and I do not have any news of him.

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

14 PRESIDING JUDGE FULFORD: Certainly.

15 (Counsel confer)

16 PRESIDING JUDGE FULFORD: Mr Sachdeva, we're going to give the witness ten
17 minutes. Thank you. Sir, we're going to give you a ten-minute break. We will sit
18 again at 25-to-4. Closed session, please.

19 *(Closed session at 3.21 p.m.) Reclassified as Open session

20 THE COURT OFFICER: We are in closed session, Mr President.

21 (The witness stands down)

22 PRESIDING JUDGE FULFORD: 25-to.

23 THE COURT OFFICER: All rise.

24 (Recess taken at 3.22 p.m.)

25 *(Upon resuming in closed session at 3.35 p.m.) Reclassified as Open session

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- 1 THE COURT USHER: All rise. Please be seated.
- 2 PRESIDING JUDGE FULFORD: Witness, please.
- 3 (The witness enters the courtroom)
- 4 PRESIDING JUDGE FULFORD: Private, please.
- 5 *(Private session at 3.36 p.m.) Reclassified as Open session
- 6 THE COURT OFFICER: We are in private session, Mr President.
- 7 PRESIDING JUDGE FULFORD: Yes, Mr Sachdeva.
- 8 MR SACHDEVA: Thank you, Mr President.
- 9 Q. Sir, I am now going to move on to another topic and I just want to use the
- 10 opportunity to remind you again, and also for myself, that we need to observe pauses
- 11 between questions and answers so your evidence is properly recorded. Do you
- 12 know somebody called (Redacted), also known as (Redacted)?
- 13 A. I remember the person; the person in question.
- 14 THE INTERPRETER: Message from the English booth: The first part of the answer
- 15 was inaudible.
- 16 MR SACHDEVA:
- 17 Q. Sir, I am sorry, it seems again that the first part of your answer was not heard.
- 18 Could you repeat that, please?
- 19 A. I said after reading his statement and also the office, the Court, showed me his
- 20 photograph and it is a person that I remember.
- 21 Q. If I could show you a document under tab 20 of the binder, and for the Court it
- 22 is DRC-OTP-0216-0288. Can you tell us who this person is, if you know?
- 23 A. First of all, I would say he has grown up as well, he has changed, though when I
- 24 saw him the last time, and in terms of his statement, I would say it is (Redacted).
- 25 MR SACHDEVA: May this photograph have an EVD number, please?

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1 PRESIDING JUDGE FULFORD: Certainly.

2 THE COURT OFFICER: Yes, your Honour. The document under tab 20,
3 referenced as DRC-OTP-0216-0288, will receive the reference EVD-OTP-00613 and
4 will be marked as confidential.

5 MR SACHDEVA:

6 Q. Sir, I want to try and move into open session, and so when I refer to (Redacted)
7 (Redacted), we will use the term "Mr Y" and I would ask you
8 to do the same in open session. Do you understand that?

9 A. Yes, I've understood.

10 PRESIDING JUDGE FULFORD: Public session, please.
11 (Open session at 3.40 p.m.)

12 THE COURT OFFICER: We are in open session, Mr President.

13 PRESIDING JUDGE FULFORD: Yes.

14 MR SACHDEVA:

15 Q. Now, we've already spoken about the interview that you gave in October 2009.
16 At that interview, were you asked questions about Mr Y?

17 A. Yes, I was asked about Mr Y.

18 Q. Were you asked questions about whether you knew Mr Y?

19 A. I think I was asked whether I knew Mr Y. First of all, when I was told about
20 (Redacted) a few moments ago, (Redacted) -- I beg your pardon, Mr Y, I said that I
21 didn't know him because I hadn't seen his photograph first, and a few moments later
22 they brought out a photograph, a photograph that was fuzzy, by the way, without
23 identity and in relation to -- I knew there was several people -- there were several
24 people with that name. (Redacted) is a common name. (Redacted) as well is also a
25 common name. There are several people with the name (Redacted) and I think I was

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1 entitled to say that I did not know that person, but when I arrived at the court I was
2 given the identity of the person, Mr Y. I was shown his photograph.
3 Of course, he had changed a great deal, because at the time I knew him he was a child,
4 and he had -- he's gained weight and size in any event, or rather weight, but in any
5 event with regard to his statement, part of it, the part I read, he is a person whom I
6 knew.

7 MR SACHDEVA: Mr President --

8 PRESIDING JUDGE FULFORD: I've asked for redactions. I am afraid I think it
9 would be easier if we were in private session. Private session, please.

10 *(Private session at 3.44 p.m.) Reclassified as Open session

11 THE COURT OFFICER: We are in private session, Mr President.

12 PRESIDING JUDGE FULFORD: Please continue.

13 MR SACHDEVA:

14 Q. You said that when you arrived at the Court you were shown the photograph of
15 (Redacted). Can you say whether the photograph that you saw here at the Court was of
16 a better or worse quality than the photograph you were shown back in October 2009?

17 A. I said at the beginning that the photograph that I saw was fuzzy, it wasn't clear,
18 and there was no identity associated with it. The one I was shown when I was at the
19 Court in relation to his identity --

20 THE INTERPRETER: Inaudible.

21 THE WITNESS: (Interpretation) -- a person that I remember.

22 MR SACHDEVA:

23 Q. Sir, just before you finished your answer, before you said, "a person that I
24 remember," you said something else before that. Could you repeat what you said
25 before that?

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1 A. I think that I was talking about his identity.

2 Q. When did you first meet (Redacted)?

3 A. I met (Redacted) in Bunia as well in the year 2005, and at that time he was
4 selling -- selling telephones for (Redacted) after he had been demobilised.

5 Q. You said that he had been demobilised. Do you know from which army he
6 had been demobilised?

7 A. Of course. The army of the UPC, the Patriotic Front for the Liberation Of
8 Congo, the UPC.

9 Q. Sir, again, and I am sorry to repeat this, but I fear that perhaps we're not
10 observing the proper amount of time between my question and your answer and, as I
11 said, it's important for your evidence to be properly recorded. So, if you can just
12 take a couple of seconds to observe that pause, I would be most grateful.

13 A. Thank you.

14 Q. How did you know that he was in the UPC?

15 A. I had said at the beginning that, in relation to my profession, of course I
16 explained --

17 THE INTERPRETER: Inaudible.

18 THE WITNESS: (Interpretation) -- recognised practically, because I myself, from
19 memory, I try to keep faces in my memory, and I have known him. I recognised that
20 he was one of the demobilised children. And even the place where he was working,
21 the communication service, at the time it was called (Redacted), and now in the country it
22 is called (Redacted). He was a seller there; he sold goods there. That's where he spent his
23 day. I mentioned all this at the beginning. It was a framework or a structure, so to
24 speak, that made it possible to
25 keep an eye on their movements so that they could not be re-enrolled into the army.

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1 We had to find a trade for them. We had to find some way so that they could
2 support themselves on a day-to-day basis. And furthermore, after he had embezzled
3 money, I'm sorry to have to say it, when he did that, he left and he even -- there
4 even was a complaint about him. So, there was a warrant for him, but it did not go
5 anywhere.

6 Q. How did you -- how did you know that he was demobilised from the UPC, as
7 opposed to, for example, the FNI? How was it that you knew that point?

8 A. Thank you for the question. I think that at the outset, looking at his face, I had
9 stressed earlier that the town was divided and no one from the UPC camp who was in
10 the north-east part could find himself in the camp of the FNI.

11 Let me give you an example that I heard of. I heard about it in my (Redacted). The
12 (Redacted) had (Redacted) that were used who were from the UPC community and others
13 were from the FNI group. Given the changes in staff, we carried out a number of
14 transfers, and that was done in a particular way, and the out-post chief who were in
15 Myala, around Mudzipela, that was -- that was the out-post before one enters the
16 town of Bunia --, so there was a swap and he was sent to Yambi. So there was the
17 Dele position, and the person took on the same duties and that was part of an effort to
18 allow -- well, to determine whether cohabitation between the two ethnic groups was
19 possible. But, to our great surprise, first of all, the leader of the post who was in Dele
20 said to the organisation that he could not take up his new assignment. The person
21 who was in Myala left his position to take up duties in Dele, and I inform you that it
22 was worse -- it would have been -- it was worse had it not been for the intervention
23 by MONUC and, furthermore, by the staff, and if it hadn't been for the staff of our
24 leader, he would have been killed. So we realised that people on the UPC side had
25 to stay in that area that was under their control and people who came under FNI had

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1 to stay in that area that was exclusively under their control. There was a zone in the
2 middle where even taxi drivers or motorbike taxi drivers couldn't go past that
3 particular boundary.
4 Another example: A taxi driver from the FNI side could never take a customer from
5 the space that was under the control of the FNI and cross with his customer into the
6 zone that was under the control of the UPC and vice-versa. And also for your
7 information, this line -- correction, this road to the airport was almost the same as the
8 boundary line, so there, there was the MONUC . That was almost a neutral zone, but
9 quite often, on several occasions, we saw people killed, murders committed either by
10 the other side, by the UPC, or by the FNI group who made sporadic incursions.

11 Q. In your answer you said that the (Redacted) that were used who were
12 from the UPC. When you say "(Redacted)," what are you talking about?

13 A. When I talk about "(Redacted)," I am talking about -- well, if I could put it this
14 way, I am talking about the (Redacted)
15 (Redacted).

16 Q. The (Redacted) was that part of the government of the Democratic
17 Republic of Congo, or was it part of another institution?

18 A. Thank you for your question. If I made myself understood -- well, in the
19 process of the Ituri Pacification Commission, it was necessary as well to gradually
20 reconcile the ethnic groups that were clashing, help them learn to live together, and
21 each armed group had its security service. There was the security service that came
22 under their army, their armed branch, and there was also the security service that
23 came under the pacification commission. However, it was a service that was so
24 infiltrated -- well, at that time I can say that the government had only a few (Redacted)
25 who they had placed in there who reported to the actual government, but pacification

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1 was almost when the government gradually set up operations so as to manage Ituri
2 after the conflict.
3 PRESIDING JUDGE FULFORD: Does that complete that point, Mr Sachdeva?
4 MR SACHDEVA: That point, yes, it does, Mr President.
5 PRESIDING JUDGE FULFORD: We're at 4 o'clock. Time's out.
6 MR SACHDEVA: Okay.
7 PRESIDING JUDGE FULFORD: Thank you very much, sir. That brings us to the
8 end of the hearing for this afternoon. We look forward to seeing you tomorrow
9 morning at half-past-9. Closed session, please.
10 *(Closed session at 4.01 p.m.) Reclassified as Open session
11 THE COURT OFFICER: We are in closed session, Mr President.
12 (The witness stands down)
13 PRESIDING JUDGE FULFORD: Now, how are we doing time-wise, Mr Sachdeva?
14 MR SACHDEVA: I believe -- I think before lunch I should complete the
15 examination.
16 PRESIDING JUDGE FULFORD: Two-and-a-half days sufficient, Mr Desalliers?
17 MR DESALLIERS: (Interpretation) My initial assessment, your Honour, was
18 three-and-a-half-days. I had understood that my colleague would need a day for
19 examination-in-chief and that is why we agreed to shift Monday's hearing to 2.00 p.m.
20 I will do all I can to focus my examination, but I must tell the Chamber I have a great
21 deal of material and my initial assessment was three-and-a-half-days. I will do my
22 best, your Honour.
23 PRESIDING JUDGE FULFORD: Thank you. Mr Sachdeva, I wholly understand
24 that there are particular issues that you want the witness to deal with given the
25 allegations that have been made. I think it's inevitable that on all of these issues we

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1 are going to return to them very quickly as soon as Mr Desalliers starts asking him
2 questions.
3 Could I ask you to ponder over night as to whether actually there is any material
4 benefit in having you taking him to the issue once, for him to say, "I behaved well and
5 I didn't do anything wrong," only to have us go to the issue again when Mr Desalliers
6 asks questions when one can anticipate that his answer on the broad thrust of the
7 questioning is going to be the same.
8 It might be that you can deal with these issues on a more general basis, leaving it for
9 Mr Desalliers then to go to the particular issues that he wishes to focus on. Of course,
10 if there's time and it's justified, it may be, and I make no undertakings, but it may be
11 that on particular issues you would be entitled to return to them right at the end, but
12 as I say I stress I don't give any undertaking because we're stuck for time.
13 Now, that may help us ensure that we conclude this witness by the end of the week,
14 which is absolutely critical.
15 MR SACHDEVA: Indeed, Mr President. And I must say that I do apologise, but
16 we had -- I had obviously thought about the manner in which it could be conducted
17 and, in a sense, offering him up for the Defence to ask questions.
18 However, strategically we thought it's essential for the Prosecution to ask the
19 questions -- ask the witness to respond to some of the allegations, also because we felt
20 it was our obligation to do so and that's why it has taken longer than initially
21 anticipated.
22 So it was a strategic decision, in respect of Witness 15, perhaps it can certainly be
23 done more efficiently or shortened and of course the Defence are going to raise their
24 own issues, but I would ask that if -- well, I would --
25 PRESIDING JUDGE FULFORD: Can I help, Mr Sachdeva. If you don't take him to

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1 each and every one of the allegations that have been made you are not going to be
2 criticised by the Bench for that. If it is a question of formality that you feel you are
3 under an obligation to confront him with each and every one of those allegations, we
4 are not going to criticise you later for having not done so.

5 So if it is convenient for you to deal with these matters in a more general way,
6 without going to the specifics which are inevitably going to be returned to by
7 Mr Desalliers very shortly afterwards, well, that may be a more convenient way of
8 proceeding.

9 MR SACHDEVA: Thank you, Mr President. I am guided.

10 PRESIDING JUDGE FULFORD: Could you reflect on it. I am not dictating how
11 you do your questioning, Mr Sachdeva. I'm, given that we have got a real time
12 problem, I am seeing whether we can do justice to this without you having to go
13 through all of the material followed immediately by Mr Desalliers.

14 MR SACHDEVA: Indeed. We will certainly reflect on that, Mr President.

15 PRESIDING JUDGE FULFORD: Could you?

16 MR SACHDEVA: Yes.

17 PRESIDING JUDGE FULFORD: Thank you very much indeed. Mr Desalliers, in
18 reality, we have got to finish this witness this week, given what's happening next
19 week and then the difficulties with the week afterwards, this has got to happen. If
20 by the end of tomorrow you apprehend that you have got real time problems in
21 concluding, we will consider, I put it no higher than that, we will consider applying to
22 the Registry for some additional time on Thursday and Friday, but in order to get
23 additional time the Judges have to discuss it amongst themselves to see whether we
24 are prepared to do that and, secondly, we have to put in an application to the
25 Registry.

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1 MR DESALLIERS: (Interpretation) Yes, that's fine.

2 PRESIDING JUDGE FULFORD: Is there any follow up material in relation to 583?

3 MR SACHDEVA: At this stage, Mr President, nothing.

4 PRESIDING JUDGE FULFORD: We will sit at 25-past-9 tomorrow morning so we
5 can be brought up to date, and can we please try and have an answer by then.

6 MR SACHDEVA: Certainly.

7 PRESIDING JUDGE FULFORD: Yes. Anything from anyone else? No.

8 Interpreters, thank you for your patience for the ten extra minutes. We will sit in
9 this courtroom all day tomorrow starting at 25-past-9. Thank you.

10 THE COURT USHER: All rise.

11 (The hearing ends in closed session at 4.08 p.m.)

12 RECLASSIFICATION REPORT

13 Pursuant to Trial Chamber I's email instruction dated 8 December 2011, the transcript
14 is reclassified as public after the indicated redactions have been implemented as
15 ordered by the Chamber. All private and closed sessions (*) are now available to the
16 public with the exception of the portions of the transcripts that have been redacted.