

Trial Hearing
WITNESS: DRC-OTP-P-0017

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI - Courtroom 2
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Trial Hearing
7 Wednesday, 3 February 2016
8 (The hearing starts in open session at 9.32 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: Good morning.
13 Court officer, please call the case.
14 THE COURT OFFICER: Thank you, Mr President.
15 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
17 We are in open session.
18 PRESIDING JUDGE FREMR: Thank you.
19 Now appearances as usually. Prosecution first.
20 MS LUPING: Good morning, Mr President, your Honours. Appearing today on
21 behalf of the Prosecution are Nicole Samson, senior trial lawyer; Selam Yirgou, case
22 manager; James Pace and Rens van der Werf, assistant trial lawyers; Eric Iverson, trial
23 lawyer; and myself, Dianne Luping, trial lawyer.
24 PRESIDING JUDGE FREMR: Thank you, Ms Luping.
25 Defence now.

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1 MR BOURGON: (Interpretation) Good morning, Mr President. Good morning,
2 your Honours. Representing Bosco Ntaganda, who is present in the courtroom
3 today, Ms Sandrine De Sena, intern, Margaux Portier and Chloé Grandon, and myself,
4 Stéphane Bourgon. Thank you, Mr President.

5 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.
6 Legal Representatives of Victims, please.

7 MS PELLET: (Interpretation) Thank you, Mr President. Former child soldiers are
8 represented by Mohamed Abdou and myself, Sarah Pellet, counsel at the OPCV.
9 Thank you.

10 MS GRABOWSKI: Good morning, Mr President, your Honours. The victims of the
11 attacks are today represented by myself, Ms Anne Grabowski from the OPCV.
12 Thank you.

13 PRESIDING JUDGE FREMR: Thank you, both of you.
14 Duty counsel.

15 MR NÈVE: (Interpretation) Good morning, Mr President. Good morning, your
16 Honours. Marc Nève, duty counsel to assist the witness.

17 PRESIDING JUDGE FREMR: Thank you, Mr Nève.
18 Before we start with or before we continue with testimony of our witness, the
19 Chamber was informed that Defence would like to make some submissions.
20 Mr Bourgon, you have the floor.

21 MR BOURGON: Thank you, Mr President. Before we continue with the
22 cross-examination of this witness, at this time the Defence would seek leave for
23 additional time to cross-examine the witness. This request is based on four main
24 reasons.

25 The first one, of course, is the fact that this is the importance which is attributed to

1 this so-called insider witness by the Prosecution and the fact that he covered during
2 his examination-in-chief almost every aspect of the indictment.

3 The second reason is the amount of material of course that was disclosed for this
4 witness, which does require additional time in order to highlight all of the
5 contradictions found therein in all fairness to the accused.

6 The third reason, Mr President, is the fact that we -- the fact that we did, as the Court
7 has seen, since the beginning of the cross-examination we have been using some maps
8 and also from technical devices of the court for the first time. In our respectful
9 submission this is of the utmost importance in order to allow the Trial Chamber to
10 assess the evidence of this witness not in the abstract but based on concrete images
11 and on the --

12 Mr President, can we take a short break, please. I don't feel well.

13 PRESIDING JUDGE FREMR: No problem. We will break now.

14 The Chamber will move to the deliberation room and we will await for your report
15 when hopefully Mr Bourgon will be okay soon.

16 THE COURT USHER: All rise.

17 (Recess taken at 9.37 a.m.)

18 (Upon resuming in open session at 10.07 a.m.)

19 THE COURT USHER: All rise.

20 Please be seated.

21 PRESIDING JUDGE FREMR: So as we all have seen, due to unexpected
22 circumstances we had to break. So far we don't have any new news that would
23 allow us to continue, so we will have to adjourn and we ask parties to be on alert, and
24 participants, and as soon as we will get any news, we will update you. We still
25 believe, hopefully, that the situation will improve and then we will be able to

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1 continue today, but it depends on the situation you are aware of. So as I said, please
2 be on alert and we will inform you.

3 Now the Court is adjourned.

4 THE COURT USHER: All rise.

5 (Recess taken at 10.09 a.m.)

6 (Upon resuming in open session at 11.33 a.m.)

7 THE COURT USHER: All rise.

8 Please be seated.

9 PRESIDING JUDGE FREMR: So good morning again. We can continue.

10 Mr Bourgon, we have listened to the beginning of your submission, so now, please,
11 you may proceed.

12 MR BOURGON: Thank you, Mr President.

13 My submission, as mentioned earlier, is to request additional time to cross-examine
14 this witness, Witness P-0017. I went -- I earlier said that there were four main
15 reasons and I think I was addressing the third of these reasons.

16 The third of these reasons being that, as the Court saw, we've been using some maps
17 and we've been using technical means of the Court because we believe it is essential
18 to assess the evidence of this witness more in a concrete manner. And of course this
19 takes additional time, which I'm sure we can improve over time in terms of how we
20 use the technical means of the Court.

21 The last issue is I've made an assessment over the evening with my colleagues and
22 with what I have to -- prepared today in order to cross-examine this witness. The
23 Court said last night that I had 3 hours and 45 minutes left. I'm still from a factual
24 point of view still in the events in Sayo and Mongbwalu, which is of course half
25 basically of the testimony of this witness.

1 I have much less questions, and I can certainly increase the pace for the second half of
2 the witness's testimony, but in my assessment, Mr President, I would need 2.5 hours
3 more than the 10 hours allotted in order to complete the cross-examination of this
4 witness.

5 This would mean, Mr President, 25 percent more, one 25 percent more than what the
6 Prosecution used.

7 We believe that in the circumstances this is reasonable and that we are not
8 overburdening the Court with a request in the sense that this witness must be fully
9 cross-examined.

10 I'll stop here, Mr President, and leave the matter to my colleague to respond. Thank
11 you, Mr President.

12 PRESIDING JUDGE FREMR: Thank you, Mr Bourgon.

13 Ms Luping.

14 MS LUPING: Thank you, Mr President, your Honours. The Prosecution opposes
15 the request for additional time.

16 Dealing with the factors raised in turn. First, in terms of the importance of this
17 witness, well certainly we share the view of my learned friend that, indeed, he is an
18 important witness. We were -- we had the same issues in fact of having to be
19 constrained within the 10-hour limit that was -- that we had originally indicated and
20 that we essentially kept to.

21 There are a number of areas that this witness was able to usefully cover, but we were
22 able to keep largely within that time frame and that -- we don't see why there should
23 be any reason for the Defence not to do the same.

24 And in fact, it was with a view to, you know, the concerns of ensuring that there is
25 sufficient time for preparation for the next witness that we didn't seek to make an

1 application for more time ourselves. We were very much mindful of that.

2 As for the amount of material disclosed, well, you know, your Honours, this material

3 has been disclosed for an extremely long period of time. It was -- you know, we kept

4 to the March original deadline for disclosure of all incriminatory matters in this case.

5 As far as disclosure of the order of the witnesses, the Defence has known since

6 24 November of last year that this witness would be called.

7 The -- this witness was amongst the witnesses that this Defence counsel was allocated

8 and was going to be dealing, so there has been a long period of time that this has been

9 known.

10 As for the maps and the technical devices, well, choices are made and the Prosecution

11 has also had to make hard choices, your Honours. There are a number of exhibits

12 that we would have liked to have shown the witness. There are very important

13 exhibits that he could have also addressed but we had to make a very careful selection

14 and we decided to choose what we thought were the most important, the most

15 pertinent, even though we know he could usefully comment certainly on a number of

16 other exhibits.

17 And it's obviously -- it's -- we're not making any comments on the choices that

18 Defence has made, and certainly if, in the view of the Defence, maps are extremely

19 important, then it is for their -- you know, their choice, their decision to spend a

20 considerable amount of time within the 10 hours allotted to look at and use these

21 various images.

22 There were alternatively obviously available to them. This witness has actually

23 previously commented on maps, he's annotated maps. In fact, there are very similar

24 maps that he was asked to mark up that are not so dissimilar to the ones that he has

25 already previously been shown to him either in (Redacted)

1 (Redacted), or in fact in interviews that were conducted by the Prosecution. So there
2 were other alternatives, your Honours, as to the manner in which maps could have
3 been addressed in our submission.

4 As for the time that is needed, we think that two and a half hours is really excessive
5 and in due -- you know, out of fairness to the Prosecution that there shouldn't be, as
6 my learned friend has indicated, approximately 25 percent more time allotted to the
7 Defence. It would not be fair, especially as we had to make the hard choices, we had
8 to select what we thought were the most critical areas that we wanted to have elicited
9 from this witness. And we would simply ask that the Defence be asked to do the
10 same.

11 They have 3 hours and 45 minutes. I think I was up to a similar time limit by the
12 time I started before getting into the next incident and I had to be very focused as to
13 the topics that I was able to cover, and I think even more limited time than 3 hours,
14 45 minutes frankly.

15 Thank you, Mr President. Thank you, your Honours.

16 PRESIDING JUDGE FREMR: Thank you.

17 Mr Bourgon.

18 MR BOURGON: With your leave, Mr President, very briefly, the -- first of all, of
19 course, there's a big difference between examination-in-chief and cross-examination,
20 but I don't think this would make the point.

21 The issue is the Chamber has adopted a rule since the beginning of this trial of going
22 one for one, which means that the time allotted to the Prosecution and the Defence is
23 getting the same time.

24 We said from the beginning that we did not think that this rule was appropriate and
25 that it was important to go on a case by days basis. This is the second time that we

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1 apply. I think we have now 10 or 11 witnesses and it's the second time that we apply
2 for additional time.

3 The first time that we did apply for additional time was with Witness P-0010, and the
4 reason for this is -- actually, we did not get more time but we got the time initially
5 planned because the Prosecution had used less than its time. And that was for
6 Witness P-10.

7 So, in fact, it's the first time that we ask for more time. And the -- all I'm going to say
8 yes, it's our choice to use exhibits, but it is a new courtroom and we had some glitches
9 with working the -- working with some of the exhibits. We tried to save the time by
10 practising before the hearings and we took the time to set up the material before the
11 hearings. And we acted in what we believe to be a responsible manner in order to
12 try and avoid any waste of time.

13 And I understand also, Mr President, that much of this time has been taking -- has
14 been deducted already from the time that I've used. We're perfectly familiar with
15 that. But if we look at past practice in terms of examination-in-chief and
16 cross-examination, the rule one for one does not always work. And when you have
17 a witness who covers so many areas and a witness -- then it is necessary sometimes to
18 go at least two to one.

19 And two to one is a very normal for -- in other cases. The experience has shown that
20 two to one is not excessive where the Defence would have cross-examine a witness
21 for twice as long as what happened in examination-in-chief. We have not done any
22 such requests, and I think that what we are asking for now is quite reasonable.

23 Thank you, Mr President.

24 PRESIDING JUDGE FREMR: Thank you.

25 At least what is clear for this moment that we cannot finish testimony of this witness

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1 today as we endeavoured originally. We will now sit until 1 o'clock and we will
2 deliberate on this request during the lunch break and we will deliver our decision at
3 the beginning of the afternoon session, just to give you a clear perspective for the rest
4 of your cross-examination.

5 And we would like to sit from 2.30, at least to 4.30 in order to, at least partially to
6 compensate the fact that we can't sit for the first morning session.

7 So we will inform you and we will deliver our decision at the beginning of our
8 afternoon session.

9 Now, Mr Bourgon -- first we will have to bring our witness in and Mr Bourgon then
10 may continue with cross-examination.

11 (The witness enters the courtroom)

12 PRESIDING JUDGE FREMR: Good morning, Mr Witness. I hope that you took
13 some rest after long day yesterday and that you are feeling okay today.

14 WITNESS: DRC-OTP-P-0017 (On former oath)

15 (The witness speaks French)

16 THE WITNESS: (Interpretation) Yes, I'm fine.

17 PRESIDING JUDGE FREMR: Very well. So we will continue with your testimony.
18 Mr Bourgon, you have the floor.

19 MR BOURGON: Thank you, Mr President.

20 QUESTIONED BY MR BOURGON: (Continuing)

21 Q. (Interpretation) Good morning, Witness.

22 A. Good morning.

23 PRESIDING JUDGE FREMR: Mr Bourgon, a classical question from my part, do you
24 want to remain in open session or would you prefer to move into private?

25 MR BOURGON: (Interpretation) We should go into private session, your Honour.

- 1 PRESIDING JUDGE FREMR: All right.
- 2 Court officer, please let's move into private session.
- 3 (Private session at 11.47 a.m.)
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- 17 (Recess taken at 1.11 p.m.)
- 18 (Upon resuming in open session at 2.42 p.m.)
- 19 THE COURT USHER: All rise.
- 20 Please be seated.
- 21 PRESIDING JUDGE FREMR: Good afternoon, everybody.
- 22 First I would like to thank Mr Bourgon for his update.
- 23 Thank you very much, Mr Bourgon. And we are very glad to hear that you are feeling
- 24 better. Thank you.
- 25 Then I will continue with an oral decision on Defence request for further --

1 (Pause in proceedings)

2 PRESIDING JUDGE FREMR: So during the break we deliberated on the Defence request
3 for further time for cross-examination.

4 The Chamber notes that this morning the Defence requested a further two and a half
5 hours in which to cross-examine the present witness for four reasons.

6 The first reason indicated by the Defence is the importance which is attributed to this
7 witness by the Prosecution.

8 The second reason stated is the amount of material that was disclosed for this witness,
9 which, in the submission of the Defence, requires additional time in order to, quote,
10 "highlight all of the contradictions found therein in all fairness to the accused." Unquote.

11 The third reason stated by the Defence is the fact that maps and technical devices have
12 been used by the Defence in the courtroom for the first time which has taken additional
13 court time.

14 The fourth reason is that the cross-examination of the witness has not sufficiently
15 progressed, being only, in the Defence's submission, half basically of the testimony of this
16 witness.

17 The Prosecution opposes the request, arguing that the Prosecution also faced considerable
18 time constraints in conducting its examination within the allotted 10-hour period and had
19 to make careful choices as to what material it had time to show to the witness.

20 The Prosecution submits further that two and a half hours is really excessive and that the
21 Defence ought not to be allotted with 25 percent more time than the Prosecution.

22 In reply, the Defence submitted that cross-examination is significantly different to
23 examination-in-chief and indicated that it had been allotted the time initially estimated for
24 examination by the Prosecution for its cross-examination of Witness P-10, even though,
25 even though the Prosecution did not use all of its allotted time.

1 The Chamber notes paragraph 29 of its decision on the conduct of proceedings, in which it
2 held that, quote, "in principle, cross-examination shall not last longer than the
3 examination-in-chief. The Chamber will decide on a case-by-case basis ... whether
4 additional time for cross-examination may be warranted." Unquote.

5 The Chamber observes that, in the present circumstances, in the Defence's own
6 submission, the cross-examination of the witness has not progressed to the extent required
7 to address all of the matters arising from examination-in-chief. The Chamber considers
8 that, generally, it is incumbent on parties to arrange their questioning of the witness in a
9 manner to allow for completion of such examination in time allotted by the Chamber.

10 Indeed the Chamber does not consider it appropriate for the Defence to raise a
11 disagreement with the principle of equal time outlined in the Chamber's conduct of
12 proceedings decision at this stage.

13 However, the Chamber observes that the Defence cross-examination appears to have been
14 slower than anticipated, in part stemming from technical reasons. The Chamber further
15 notes that the use of maps, in various forms, prompted a large number of objections from
16 the Prosecution's side, further slowing down the pace of cross-examination.

17 Nevertheless, in this regard, the Chamber observes that the Defence's late provision of the
18 materials used appears to have contributed to at least part of the delay and objections.

19 Based on the foregoing and noting that the current witness will be required in any event
20 to be present tomorrow, the Chamber considers that it is in the interests of justice, having
21 particular regard to the Chamber's truth-seeking function under Article 69(3) of the
22 Statute, to allow a further limited period of cross-examination of the witness.

23 Therefore, the Chamber shall allow a further period of approximately 1 hour for
24 cross-examination.

25 Given we will sit this afternoon until 4.30 p.m., that means, Mr Bourgon, you should

1 complete your cross-examination by the end of the first session tomorrow.

2 Ms Luping, I note you estimated 15 to 20 minutes for re-examination. The Chamber shall
3 be lenient with this estimate, although as per usual, re-examination shall be limited to
4 matters raised during cross-examination.

5 That ends our oral ruling.

6 Now, Mr Bourgon, you may proceed with examination.

7 MR BOURGON: (Interpretation) Thank you, your Honour.

8 Q. Good afternoon, Mr Witness. I would like to move on to a different topic still in
9 relation to Sayo. During your testimony you said that you saw some people in the
10 church on 28 January, page 78, lines 18 to 27. My question to you is to give a precise
11 description of how you went to the church, how you arrived inside the church to be able
12 to see what was there.

13 A. From where I was it is the only main road, so I followed that road that everybody
14 was using and I went to that building that we marked today.

15 Q. From which side of the building were you able to observe the people inside?

16 A. I remember that there was a group of people near the door, and that is where I stood
17 also.

18 Q. At what precise point in relation to the building? Was there a door there? On
19 which side of the building was the door?

20 A. I no longer remember.

21 Q. Can you confirm the number of people you saw inside the church?

22 A. I said that I cannot tell you the precise number, but there were about seven people or
23 so.

24 Q. About seven?

25 A. Yes, those whose heads I could see.

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1 Q. Now, when you say that you saw the heads of these people, can you describe us
2 precisely what you mean?

3 A. I was not in front of the crowd, I was behind. There were people in front of me and
4 all of us were standing and that is how I was able to observe.

5 PRESIDING JUDGE FREMR: Mr Bourgon, sorry to interrupt. I think there are good
6 reasons to move into private session.

7 Court officer, let's move into private session.

8 (Private session at 2.53 p.m.)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

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4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Open session at 3.18 p.m.)

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

9 And I will request the Defence to put its computer on mute.

10 PRESIDING JUDGE FREMR: Thank you.

11 MR BOURGON: (Interpretation) Thank you, court officer.

12 Q. Mr Witness, as I was saying earlier on, we are now in open session and I will ask
13 you to view this video that appears on your screen. It is a video you have already had
14 opportunity to view with the Prosecution from time stamp 45.55 to 48.35.

15 (Viewing of the video excerpt)

16 MR BOURGON: (Interpretation) Let us start the video from the right spot.

17 (Viewing of the video excerpt)

18 THE INTERPRETER: Correction from the interpreters: The video starts at 45.54.

19 PRESIDING JUDGE FREMR: Thank you.

20 (Viewing of the video excerpt - continuing)

21 MR BOURGON: (Interpretation) There you have it.

22 Mr President, can we now go back to private session?

23 PRESIDING JUDGE FREMR: Just for the information to public we are sorry, but we now
24 have to move into private session because the responses potentially given by the witness
25 could reveal his identity.

- 1 So now, court officer, please let's move into private session.
- 2 (Private session at 3.23 p.m.)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
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25 (Open session at 3.35 p.m.)

1 THE COURT OFFICER: We're in open session, Mr President.

2 PRESIDING JUDGE FREMR: Court officer, thank you.

3 Mr Bourgon, you may proceed.

4 MR BOURGON: (Interpretation) Thank you, Mr President.

5 Q. Mr Witness, according to your testimony at transcript 358, page 86, line 27 to page
6 87, line 1, I am referring also, given that this issue was discussed twice, to transcript 58,
7 T-58, page 17, lines 13 to 18.

8 According to your testimony, and please correct me if I'm mistaken, you indicated that
9 you received an order from Salumu to go to Bosco Ntaganda's camp after the capture of
10 Sayo; is that correct?

11 A. Yes.

12 Q. When you were asked to give the reason why the order was given to go to
13 Bosco Ntaganda's camp - and I'm referring here to transcript 58, page 70, line 21 to 24 - the
14 order -- the reason for the order is that the (Redacted) had to be displaced to
15 Bosco Ntaganda's camp; is that your testimony?

16 THE INTERPRETER: Correction from the interpreter: It's transcript 59.

17 THE WITNESS: (Interpretation) Yes.

18 MR BOURGON: (Interpretation)

19 Q. You were also asked why the (Redacted) had to be displaced and taken to
20 Bosco Ntaganda's camp. I'm referring here to transcript 59, page 17, lines 25 --

21 PRESIDING JUDGE FREMR: Sorry, Mr Bourgon, I have overlooked, Mr Nève is on his
22 feet.

23 Mr Nève.

24 MR NÈVE: (Interpretation) I would like to apply for private session for the purpose of
25 receiving the answer to this question.

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1 PRESIDING JUDGE FREMR: And you think it is for the purpose of Rule 74 or because
2 of risk of possible reveal of the identity?

3 MR NÈVE: (Interpretation) Yes, indeed because reference is made here to certain facts
4 or points that I believe were dealt with in private session.

5 PRESIDING JUDGE FREMR: Ms Luping.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 So let's move into private session.

12 (Private session at 3.39 p.m.)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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11 (Open session at 4.32 p.m.)

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

13 PRESIDING JUDGE FREMR: Mr Witness, thank you very much. We are concluding
14 for today. We will continue tomorrow morning. So thank you very much for patiently
15 responding to all questions put to you.

16 As usually, I have to remind you that in the meantime you must not discuss your
17 testimony with anybody else.

18 As to the future planning, so, as we already said, Mr Bourgon you have at your disposal a
19 whole morning, 90-minute session, and the second one then will be devoted to
20 re-examination, if any.

21 Ms Luping, do you have any, do you envisage any, or are you able to specify a bit your
22 need for your re-examination?

23 MS LUPING: Perhaps if I could give you the answer tomorrow morning, Mr President?
24 It will give me an opportunity to --

25 PRESIDING JUDGE FREMR: It's pretty fine. We can ask even after Mr Bourgon

1 finishes.

2 So it's all for today. And we will continue tomorrow 9.30.

3 The Court is adjourned.

4 And I would like to also thank -- Mr Nève.

5 MR NÈVE: (Interpretation) Mr President, thank you. I would like to draw your
6 attention to the fact that, for professional reasons, binding professional reasons, I will not
7 be able to be present tomorrow, but I could be reached by phone if need be. This is
8 something that we have already done before in agreement with our other colleagues.

9 PRESIDING JUDGE FREMR: It is fine because in fact we are sitting over our -- longer
10 than we originally planned. It is fine. And in case of need, we will contact you.

11 And I also forgot to thank interpreters and court reporters and guards, they had to be
12 with us longer than normally. Thank you very much.

13 THE COURT USHER: All rise.

14 (The hearing ends in open session at 4.35 p.m.)