



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

Tuesday, 13 November 2007
11:00 a.m.
STATUS CONFERENCE

TRIAL CHAMBER II

Before the Judges:

Julia Sebutinde (Presiding)
Richard Lussick
Teresa Doherty
El Hadji Malick Sow (Alternate)

For Chambers:

Mr Simon Meisenberg
Ms Sidney Thompson

For the Registry:

Mr Michael Adenuga
Ms Rachel Irura
Ms Rosette Muzigo-Morrison

For the Prosecution:

Ms Brenda J Hollis
Mr Nicholas Koumjian
Ms Leigh Lawrie
Ms Maja Dimitrova

For the accused Charles Ghankay Taylor:

Mr Courtenay Griffiths, Q.C.
Mr Terry Munyard
Mr Andrew Cayley
Mr Morris Anyah

For the Office of the Principal Defender:

Mr Charles Jalloh

1 Tuesday, 13 November 2007

2 [Open session]

3 [Status Conference]

4 [The accused present]

11:03:57 5 [Upon commencing at 11.03 a.m.]

6 COURT OFFICER: The Special Court is sitting for a
7 Status Conference pursuant to Rule 65 bis in the case of the
8 Prosecutor versus Charles Dankpannah Ghankay Taylor.

9 PRESIDING JUDGE: Good morning. I'll start by taking the
11:05:05 10 appearances from the Prosecution and then the Defence. Thanks.

11 MS HOLLIS: Good morning, Madam President, your Honours.
12 Brenda J Hollis, Nicholas Koumjian, Leigh Lawrie, and
13 Maja Dimitrova appear today for the Prosecution.

14 PRESIDING JUDGE: Thank you, Ms Hollis.

11:05:34 15 MR GRIFFITHS: Good morning, your Honour, I appear today
16 with my learned friends Mr Munyard, Mr Cayley, and Mr Anyah.

17 MR JALLOH: Your Honours, Charles Jalloh, Legal Officer and
18 Duty Counsel for the Office of the Principal Defender. Thank
19 you.

11:05:58 20 PRESIDING JUDGE: Thank you. This Status Conference
21 basically has two agenda items, the first being an update from
22 the parties on your various preparations for the trial in
23 January.

24 Does the Prosecution have anything to say? Are things
11:06:18 25 progressing well with your side?

26 MS HOLLIS: Yes, your Honour, we are progressing well. We
27 will be prepared to provide, before the recess, the required
28 copies of exhibits and list of witnesses for the first two weeks
29 when we comment in January; and depending upon the decisions that

1 are made when we have a meeting regarding trial practices on the
2 28th of November, we will be prepared to provide whatever
3 additional materials will be required as well. So we are
4 progressing well.

11:07:10 5 PRESIDING JUDGE: Mr Griffiths, how is the Defence
6 progressing?

7 MR GRIFFITHS: Your Honour, to date the Defence preparation
8 has been going well, subject to one minor matter which I ought to
9 report to the Court, and it concerns aspects of disclosure.

11:07:36 10 We're grateful to the Prosecution for having, since our
11 appointment, assisted us in ensuring that we have all necessary
12 documentation, and they have taken several steps in order to
13 assist us in that way. We have, however, requested some of the
14 material in electronic format, and the Prosecution have told us
11:08:03 15 that they have some difficulty in providing us with certain
16 disclosure in electronic format between the date the 4th of June
17 of this year and the 25th of June [sic].

18 We're somewhat perplexed at that reluctance on their part,
19 given that they've provided material up until the 4th of June in
11:08:25 20 electronic format and they've provided material since the 25th of
21 September in the same format. So it seems rather illogical and
22 inconsistent that they have taken that particular stance in
23 relation to disclosure for that limited period.

24 And of course, given that some of our team are not based in
11:08:51 25 The Hague as yet, it would be so much more convenient if the
26 Prosecution were to oblige us and provide us with that material
27 in electronic format because it's so much easier to transport.
28 And I don't know whether a kindly word from the Court may well
29 oil the wheels of motion in this particular instance.

1 PRESIDING JUDGE: Mr Griffiths, sorry to ask you again.
2 This is in relation to materials disclosed between which periods?

3 MR GRIFFITHS: The 4th of June, 2007, and the 25th of
4 September, 2007.

11:09:31 5 PRESIDING JUDGE: And you're saying that with regard to
6 material disclosed outside of that period, you're satisfied with
7 the method of disclosure?

8 MR GRIFFITHS: We are, your Honour, yes.

9 PRESIDING JUDGE: Okay. Okay.

11:09:49 10 Ms Hollis, could you respond to that perhaps before we say
11 anything?

12 MS HOLLIS: Yes, your Honour, I would be happy to. Perhaps
13 Defence counsel is perplexed with the issue he raises; we also
14 are perplexed, since we addressed that issue in a letter to him
11:10:11 15 very recently. And our position was, first of all, that as he
16 also has stated, providing materials in electronic format is not
17 required as a part of disclosure. In order to assist the
18 Defence, we have provided such materials in that format.

19 On the 4th of June, as you're aware, we received a letter,
11:10:35 20 as all of us did, that the accused would represent himself.
21 Thereafter, there was a determination that a new Defence team
22 would be appointed. Now, there was a notice that the Defence
23 team had been appointed, in fact, but by a media release shortly
24 after that. We had concerns that in fact this new Defence team
11:11:00 25 had not signed any type of agreement that would bind them to keep
26 confidential materials confidential.

27 So until we had assurances that this new Defence team would
28 in fact honour obligations that they had signed up to honour, we
29 did not disclose any of our materials in electronic format. We

1 have serious concerns about disclosing the material directly to
2 the accused in electronic format, and we have explained those
3 concerns to the Defence.

4 Now, the Defence did then ask us by letter that we provide
11:11:40 5 electronic format for this period of time between the 4th of June
6 and the 25th of September. And what we responded to them was
7 quite simple, that as they have workload issues, we have workload
8 issues, and that I discussed with my Case Manager her ability to
9 go back and do this, given her current obligations. And as I
11:12:05 10 noted to the Defence in the letter we sent them, that we
11 determined that as our workload permits, we will provide these
12 materials in electronic format.

13 PRESIDING JUDGE: When will this be, Ms Hollis?

14 MS HOLLIS: As our workload permits. We will -- we
11:12:23 15 estimate that we will be able to do that over a period of several
16 weeks.

17 PRESIDING JUDGE: So do I understand, Ms Hollis, that the
18 Prosecution no longer has the confidentiality concerns? That
19 you're being prepared to disclose electronically means that you
11:12:37 20 now trust the Defence?

21 MS HOLLIS: We now believe they have signed certain
22 agreements that obligate them to treat confidential material as
23 confidential and not to disclose it. And so -- and we also have
24 confidence in the integrity of the Defence team. So as of --

11:12:54 25 PRESIDING JUDGE: Including the accused?

26 MS HOLLIS: No.

27 PRESIDING JUDGE: Because I think what Mr Griffiths is
28 asking is disclosure to the Defence lawyers, not necessarily the
29 accused. And what seems to be the problem now?

1 MS HOLLIS: We are disclosing --

2 PRESIDING JUDGE: Why can you not disclose electronically?

3 MS HOLLIS: We have -- we are continuing now to disclose
4 electronically; and as our workload permits, we will fill in the
11:13:23 5 gap.

6 PRESIDING JUDGE: Because, Ms Hollis, the materials in
7 question are between the 4th of June and the 25th of September.

8 MS HOLLIS: That's correct.

9 PRESIDING JUDGE: This would, in my thinking, mean material
11:13:34 10 that you already have in electronic format.

11 MS HOLLIS: We did not put it in electronic format because
12 we were not disclosing it to the Defence in electronic format.
13 What we do if we disclose it in electronic format is to put it on
14 to a CD as we prepare the hard copy disclosure, and during that
11:13:55 15 period of time we did not do that for all of those materials. So
16 what we need to do now is go back and make sure we have done it
17 for all of it; and as we do that, we will disclose it.

18 PRESIDING JUDGE: Yeah. But, Ms Hollis, you do realize
19 from what Mr Griffiths said, the purpose of this electronic
11:14:11 20 disclosure is to assist the Defence counsel that do not yet
21 reside in The Hague. It's going to serve very little purpose if
22 this disclosure is done somewhere near January, when they've
23 probably taken up residence here.

24 MS HOLLIS: Well, we appreciate that, your Honour, and
11:14:30 25 hopefully your Honours appreciate that we also have current
26 workloads and current obligations that we are attempting to
27 fulfil, and that electronic disclosure does facilitate the
28 Defence's preparation but it is not required. We are certainly
29 willing to do it, but we also have in mind our current

1 obligations which we must also fulfil in a timely fashion.

2 PRESIDING JUDGE: Ms Hollis, of course I do appreciate that
3 under the Rules you have no obligation to do so and that whatever
4 you do, you do so really in good faith to the Defence. But I
11:15:01 5 want to hear from Mr Griffiths.

6 Having heard what the Prosecution has now explained, what
7 would you like the Court to do for you?

8 MR GRIFFITHS: Well, your Honour, can I just address a
9 couple of preliminary matters first. So far as the
11:15:17 10 confidentiality of disclosure is concerned, all team members of
11 the Defence side signed a document accepting our responsibility
12 for non-dissemination and maintain in the confidentiality of all
13 materials served upon us; and that was signed and provided to the
14 Prosecution from the time of the last Status Conference in
11:15:47 15 September. So that was dealt with from then.

16 Secondly, we find it quite surprising that in this day and
17 age, the Prosecution did not already have the materials for that
18 period between the 4th of June and September in electronic
19 format. But be that as it may, it would seem to us that this
11:16:10 20 matter ought to be prioritized by the Prosecution in order to
21 facilitate the speedy preparation by all parties to these
22 proceedings. And in that light, we would submit that the Court
23 should set a deadline by which the Prosecution should, firstly,
24 reduce this material into electronic format; and secondly, serve
11:16:36 25 it upon the Defence. And that deadline should allow us ample
26 time prior to the start of the trial in January.

27 PRESIDING JUDGE: Ms Hollis, it's been brought to my
28 attention that previously with the former Defence team when the
29 Prosecution needed to disclose materials electronically, you did

1 solicit the assistance of the Registry in helping you to
2 outsource the conversion of these materials. Would you consider
3 doing the same, because this would considerably speed up the
4 process?

11:17:16 5 MS HOLLIS: If we could have their assistance with that,
6 certainly we would consider it, certainly, your Honour.

7 PRESIDING JUDGE: Because if they did, and I'm sure that
8 they are willing, the Registry has indicated that it is willing
9 to help you speed up the process of these disclosures. I am
11:17:30 10 concerned -- we're concerned that this delay, you know, with
11 people not residing in Freetown -- sorry, in The Hague and
12 waiting for the paper -- the hard copies, might lead to
13 undesirable delay. And if the Registrar can help, then I think
14 you should have recourse to that assistance.

11:17:53 15 MS HOLLIS: Thank you, your Honour. May I make two points,
16 please. First of all, the Defence has the ability to scan the
17 materials themselves; and if they scan it they turn it into
18 electronic copy to send to the people who are not here. So they
19 have that ability. That's my understanding and I believe that's
11:18:11 20 correct.

21 Secondly, I would like to address the request by the
22 Defence that a deadline be set for electronic disclosure. We
23 would oppose that because in our view by setting a deadline for
24 electronic disclosure, this Court is determining that electronic
11:18:28 25 disclosure is a required form of disclosure; and we do not
26 believe it is required under the Rules. We have acted in very
27 good faith by providing materials to the Defence, in some
28 instances three times because they couldn't find what we had
29 disclosed before. We have provided a very large amount of

1 material in electronic form to assist them, and I certainly can
2 assure this Court that we would not be dilatory in providing this
3 back-log of information in the context of our ongoing obligations
4 that themselves have time-limits.

11:19:06 5 [Trial Chamber conferred]

6 PRESIDING JUDGE: Okay. We've considered the Defence
7 request to set a deadline for this electronic disclosure, and we
8 think it is not appropriate for us to issue such a deadline
9 because, first of all, it's not an obligation under the Rules for
11:21:10 10 the Prosecution to make this electronic disclosure.

11 Secondly, we want really to rely on the goodwill of the
12 parties in this regard and on the assistance of the Registrar,
13 which he has indicated he is more than willing to give. And I do
14 trust in the professionalism on both sides and the good faith of
11:21:33 15 the Prosecution that they have exhibited thus far, that they will
16 do their best to disclose electronically the relevant materials.
17 So I will not make an order in that regard.

18 Now, the second agenda item is any issues in relation to
19 the administration of this case. I do not know if the parties
11:21:57 20 have any issues that they would like the Bench to address at this
21 stage.

22 Mr Griffiths.

23 MR GRIFFITHS: There are a number of matters that we would
24 like to raise, your Honour. The first such matter is somewhat
11:22:16 25 sensitive, and consequently we consider that it would be most
26 appropriate for that to be dealt with in closed session.

27 [Trial Chamber conferred]

28 PRESIDING JUDGE: Mr Griffiths, if I may ask, is this a
29 matter for a Status Conference or is this a matter for a motion?

1 MR GRIFFITHS: I think it could be adequately dealt with at
2 a Status Conference, your Honour, particularly bearing in mind
3 the time constraints, that we're now a matter of weeks away from
4 the start of the trial, and it is a subject matter which is of
11:23:09 5 vital importance to the future preparation of the Defence.

6 PRESIDING JUDGE: Is this matter -- does it have anything
7 to do with a previous order of the Court?

8 MR GRIFFITHS: It does -- tangentially it does, your
9 Honour, but it relates to some documentation which we caused to
11:23:34 10 be sent through to the Court last night a very slim bundle,
11 that's the matter that I have in mind.

12 PRESIDING JUDGE: Ms Hollis, what do you say to the
13 application for closed session? This is not very regular for a
14 Status Conference, but I have no idea what this matter concerns.
11:23:53 15 I'd appreciate hearing from the Prosecution.

16 MS HOLLIS: Your Honour, we received the materials that
17 Defence counsel referred to, we received them this morning; I
18 have reviewed them. And given the subject matter and orders that
19 have been entered by this Court, the Prosecution would suggest
11:24:14 20 perhaps not a closed session but perhaps a private session so
21 that there is no audio going out of the courtroom. I believe
22 that it is a matter that would need to be dealt with outside the
23 public forum.

24 PRESIDING JUDGE: Mr Griffiths, would you -- would a
11:24:32 25 private session do instead of a closed one?

26 MR GRIFFITHS: Well, if my learned friend is happy with
27 that procedure, then I'll accede to that, your Honour, yes.

28 PRESIDING JUDGE: Court Management, is it possible to have
29 a private session organized? So I suppose it won't take five

1 minutes.

2 COURT OFFICER: I think it's possible.

3 PRESIDING JUDGE: Do we sit here or do we retire?

11:25:00

4 COURT OFFICER: We'll contact the AV booth and we'll get
5 back.

6 PRESIDING JUDGE: In the meantime, is there anything else
7 that we can address, aside from this issue?

11:25:15

8 MS HOLLIS: Your Honour, the Prosecution did raise two
9 matters that perhaps properly fall within the administration of
10 the case, and that has to do with discussing the course of the
11 proceedings on the 7th of January and also whether or not there
12 will be a Status Conference in December. So if your Honours are
13 happy to discuss these issues under the administration of the
14 case, we could go forward with that.

11:25:44

15 We raise these two issues simply to ensure that any matters
16 which might delay the commencement of presentation of evidence
17 are raised in a timely fashion so they can be dealt with before
18 the 7th of January; and for that reason, we ask guidance as to
19 what the Trial Chamber and the Defence contemplate would be the
20 course of proceedings, the agenda, for the 7th of January. And
21 in that regard, we envision possible scenarios to include, of
22 course, just beginning with presentation of evidence or beginning
23 with housekeeping matters that may have arisen that are minor in
24 nature and then going on to presentation of evidence. What we
25 would like to avoid or have advance notice of is if the 7th of
26 January would somehow turn into a Status Conference, at which --
27 after which no evidence would be presented.

11:26:30

28 So we want to raise this matter so that if the Defence has
29 any issues they believe could impact the commencement of the

1 presentation of evidence on the 7th of January, those issues can
2 be brought up now and dealt with before the recess so that we may
3 move forward in a very organized and efficient manner on the 7th
4 of January.

11:27:05 5 So the two items we raised really are one in the sense that
6 if there are other matters that need to be raised that might
7 impact beginning to present evidence on the 7th of January, then
8 perhaps that should be done no later than at a December Status
9 Conference.

11:27:27 10 PRESIDING JUDGE: Okay. Maybe before I address these two
11 issues, I'm informed that we're ready for a private session. I
12 think -- I will respond to the two issues that you have raised
13 after the private session.

14 So, Ms Hollis, if you will take your seat, we will consider
11:27:55 15 the issue that's for the private session.

16 COURT OFFICER: Your Honour, we are going into private
17 session.

18 [Private session]

19 PRESIDING JUDGE: Court is now in private session.

11:28:09 20 Mr Griffiths.

21 MR GRIFFITHS: May it please your Honour. Last evening I
22 caused to be served on the Crown a small bundle of document. Do
23 your Honours have that?

24 JUDGE DOHERTY: The Crown, Mr Griffiths?

11:28:26 25 MR GRIFFITHS: I'm sorry. The Prosecution, I'm sorry. I
26 don't want to upset any sensibilities.

27 PRESIDING JUDGE: I apologise, Mr Griffiths. Please
28 continue.

29 MR GRIFFITHS: Last evening, your Honour, I caused to be

1 served on the Court a small bundle of documents. Have you had an
2 opportunity of looking at them?

3 Now, your Honours, that small bundle --

11:29:06

4 JUDGE LUSSICK: Mr Griffiths, I certainly haven't been
5 served with any small bundle of documents. Are you referring to
6 a copy of the Prosecution's letter dated the 5th of November?

7 MR GRIFFITHS: Your Honour, yes.

8 JUDGE LUSSICK: That's the only thing that's been served on
9 me.

11:29:19

10 MR GRIFFITHS: And was there anything to annexed to it,
11 your Honour?

12 JUDGE LUSSICK: And its annexes, yes.

13 MR GRIFFITHS: That's what I'm referring to, your Honour.

14 JUDGE LUSSICK: I see. Fine.

11:29:33

15 MR. GRIFFITHS: This very small bundle here.

16 JUDGE LUSSICK: I see. Fine. Thank you.

11:29:52

17 MR GRIFFITHS: As your Honours will be aware, that material
18 concerns witness-related material disclosed to the Defence
19 pursuant to Rule 68, but subject to Rule 70 constraints. And you
20 will see when we refer to the third page of that bundle, comments
21 attributed to a named individual, material obtained by the
22 Prosecution in consequence of an interview conducted with that
23 individual in April of this year. Your Honours will also have
24 seen the content of that page and the following page.

11:30:34

25 Now, we raise this issue at this stage for this reason. We
26 submit that prima facie this disclosure is inadequate, because we
27 submit that it's clear that the snippets of information disclosed
28 in these two pages have been extracted from a much larger source
29 document. It is also clear in our submission that the material

1 disclosed is relevant to the Defence case in that it undermines
2 the Prosecution case. However, in light of that limited
3 disclosure we would like to follow-up and conduct further
4 investigations. And two matters consequently arise.

11:31:46 5 Firstly, you will see from the letter addressed to the
6 Prosecution dated the 6th of November, which immediately follows
7 the second page of that disclosure document, that we wrote to the
8 Prosecution on the 6th of December requesting that -- of
9 November, requesting that they provide us with the current
11:32:12 10 contact details for that named individual, and I refer to the
11 third paragraph of that letter.

12 In response to that request, your Honours will see that by
13 letter of the 7th of November, 2007, the Crown assert that they
14 are now attempting, and I quote, "to obtain the contact
11:32:36 15 information for the relevant body" and thereafter "contact with
16 that named individual."

17 Now, bearing in mind that an interview was conducted by the
18 Prosecution with that individual in April of 2007, it seems
19 somewhat disingenuous to us for the Prosecution to be now
11:33:01 20 suggesting that somehow they are having difficulty obtaining
21 contact details for that individual. It seems somewhat
22 surprising, given the fact that earlier in this very year they
23 were able to make such contact and obtain the material from which
24 these excerpts have been extracted. We submit that the
11:33:28 25 Prosecution ought to be required to provide those details by a
26 specified date, thereby allowing the Defence ample time to
27 conduct further investigations with that named individual.

28 Now, there is a second aspect to this, your Honours, and
29 it's this: We would like to have access to the source material.

1 Furthermore, it is clear from the first page of the disclosed
2 material that the named individual must have in consequence of
3 the duties outlined by him in the fifth line of that document
4 which ends with "conference," no doubt that individual would have
11:34:28 5 reported back to his superiors in his country of origin, setting
6 out details obtained by him in consequence of that meeting.

7 Now, we ask in relation to such possible material, which we
8 submit must exist, firstly: Do the Prosecution have it in their
9 possession, any reports or any other documentation prepared by
11:35:02 10 that individual? If they do not have that material in their
11 position, why not, given that in consequence of the telephone
12 interview conducted with that named individual in April they
13 should have been alerted to the existence of that material,
14 immediately recognised its direct relevance to the Defence case,
11:35:29 15 and consequently triggered their obligation to obtain that
16 material and retain it in their possession for potential
17 disclosure to the Defence. If they have not done that, then we
18 submit that all necessary steps should now be taken by the
19 Prosecution to obtain that material, it being their
11:35:53 20 responsibility as ministers of justice in this trial.

21 Now, we are, of course, alive, your Honours, to the
22 anxieties the Prosecution may have in providing us with this
23 material. We, therefore, suggest the following procedure which
24 we hope commends itself to the Court. We suggest that the
11:36:21 25 Prosecution ought to obtain this material and also the original
26 interview conducted with this named individual in April. They
27 should provide that material in the first instance to the Court
28 so that the Court itself could view the material and decide if
29 there is any reason why we, the Defence, should not have that

1 source material and any other relevant documentation which may or
2 should be in the possession of the Prosecution.

3 That is our application, your Honour.

4 [Trial Chamber conferred]

11:37:25 5 PRESIDING JUDGE: Ms Hollis, could you respond to
6 Mr Griffiths's request, please.

7 MS HOLLIS: Yes, your Honour. Thank you.

8 First of all, your Honour, the Prosecution in no way acted
9 in a disingenuous fashion and Defence counsel misinforms himself
11:37:43 10 as to the process which is followed when you contact a government
11 for information. We never had contact information relating to
12 this individual. We had a liaison with United States government
13 whom we contacted, stating our wish for an interview. The
14 liaison arranged it under their conditions, and then the
11:38:05 15 interview was conducted over the phone with various personnel at
16 the other end with the person being interviewed.

17 As ministers of justice, we acted under Rule 68 and took
18 steps to ensure that the Rule 68 material could be disclosed to
19 the Defence. And as soon as the appropriate orders were in place
11:38:33 20 consistent with the requirements of the United States government,
21 we provided this information to the Defence. We do not have the
22 contact information for this individual; and if we did, we would
23 not have the authority to provide it. The United States
24 government has the authority to provide it, and that is the
11:38:54 25 reason we indicated to them that we were attempting to get the
26 contact information for the current liaison in the United States
27 government. There have been a change of personnel and there is a
28 new person in place. I have sent e-mails requesting the
29 appropriate contact information, and in the last e-mail I

1 indicated that my understanding was this person would be the
2 contact person and unless I learned otherwise, I would provide
3 this person's e-mail address to the Defence.

4 So this is the way the process has worked. The Defence has
11:39:33 5 the Rule 68 material, and we will ensure that they are provided
6 with the contact information for the United States government;
7 and then it is a matter between the Defence and the United States
8 government.

9 PRESIDING JUDGE: Thank you, Ms Hollis.

11:39:51 10 Mr Griffiths, do you have anything in response, in reply?

11 MR GRIFFITHS: Your Honour, yes.

12 Your Honour, it's somewhat telling that my learned friend
13 in the course of her response has not addressed the second aspect
14 of my application, which is other material which might be in the
11:40:10 15 possession of the United States government, the product of the
16 work of this named individual, which prima facie should exist as
17 a result of the discharge of his duties in Liberia. And if such
18 material is in existence, it seems to us that if it's exculpatory
19 material, which prima facie it may well had be, then we want to
11:40:39 20 have sight of it.

21 And so the question I ask is: How does the Prosecution
22 view their obligations and responsibilities in respect of that
23 residual material? And to what extent are they willing to adopt
24 the procedure we suggest, which is for the Court to monitor
11:41:00 25 disclosure of that material so that any anxieties they may have
26 can be allayed?

27 PRESIDING JUDGE: Ms Hollis, do you have anything further
28 to say before we rule on this matter?

29 MS HOLLIS: Yes, your Honour.

1 PRESIDING JUDGE: With regard to that last issue --

2 MS HOLLIS: Yes.

3 PRESIDING JUDGE: -- that Mr Griffiths mentioned.

4 MS HOLLIS: Yes, your Honour. We have provided the Defence
11:41:31 5 with all the Rule 68 material we have relating to this
6 individual. We are not calling this individual as a witness. We
7 are not submitting any documents relating to this individual.
8 Under the Rules we have fulfilled our obligations. We have made
9 it known to the Defence of the existence of what we consider to
11:41:51 10 be Rule 68 material, which is very, very broadly defined.

11 Now, by actually providing this information to the Defence,
12 we have actually gone beyond the requirements of Rule 68, which
13 simply requires us to put them on notice of the existence of
14 information known to us which would fall within Rule 68. We, in
11:42:12 15 fact, provided them with the information.

16 That, the Prosecution submits, is the extent of our
17 obligations. The Defence is now in the position of being able to
18 move forward, dealing with the United States government, for
19 information which is theirs, not ours, and to deal with those
11:42:32 20 matters. We have no additional Rule 68 material of which we have
21 knowledge relating to this individual.

22 And just to answer the last direct question, no, we do not
23 agree to adopt the procedure that has been suggested by the
24 Defence. We simply don't have the authority to do so, and the
11:42:59 25 Defence can deal directly with the United States government.

26 [Trial Chamber conferred]

27 PRESIDING JUDGE: I will make a brief oral ruling on the
28 request by the Defence, after indicating that they imagine that
29 the Prosecution is in possession of additional material, Rule 70

1 material, that it has not disclosed to the Defence. The Trial
2 Chamber has considered this request and is of the view that the
3 Prosecution has satisfactorily stated that they have disclosed
4 all material, Rule 70 material, in their possession to the
11:45:13 5 Defence.

6 Now, any additional material that the Defence thinks that
7 the Prosecution might be in possession of, we're of the view that
8 the Defence is free to directly approach the government in
9 question, namely, the United States government, upon receipt of
11:45:35 10 the contact details of the government -- the relevant government
11 officials to receive this information directly from the
12 government concerned.

13 We do not think it is appropriate under Rule 68, or indeed
14 under Rule 70, to compel the Prosecution to provide this other
11:45:57 15 additional information that they have clearly indicated they do
16 not possess. And so the Defence request is denied.

17 If, on the other hand, the Defence later finds that maybe
18 the Prosecution has failed to provide the contact details of the
19 government official, the official of the United States
11:46:25 20 government, not of the person who conducted the interview - that
21 distinction must be made - if the Defence feel later that they
22 have a matter to raise before the Court validly, then they're
23 free to approach the Court in that regard. But otherwise, the
24 request for now is denied.

11:46:46 25 MS HOLLIS: Your Honour, with leave to ask a question.
26 Perhaps I misheard, but our position was we have provided all of
27 the Rule 68 material in our possession. We did not say we have
28 provided all the Rule 70 material in our possession but, rather,
29 all the Rule 68 material.

1 PRESIDING JUDGE: Then I will correct myself. Indeed, the
2 Prosecution has provided all the Rule 68 material that they have
3 in their possession, and we -- the Court has no reason to doubt
4 that.

11:47:20 5 If there are no other matters for the private session, then
6 I would ask Court Management that we return to the open session
7 to commence and conclude with the other agenda items.

8 [Open session]

9 COURT OFFICER: Your Honour, we are now in open session.

11:47:57 10 [Trial Chamber conferred]

11 PRESIDING JUDGE: The court is now in open session.

12 Just before we went into private session, Ms Hollis, you
13 raised two issues of concern I believe to the Prosecution, the
14 first of which was whether on the 7th of January you expected a
11:48:24 15 Status Conference to be held or whether the Prosecution should
16 plan to lead witness testimony.

17 Now, in my view, the Trial Chamber made it abundantly clear
18 on the 20th of August, 2007, in our -- when we ordered that the
19 trial was adjourned for hearing to Monday, the 7th of January,
11:48:49 20 2008. In my view, "hearing" is precisely that; hearing is not a
21 Status Conference, it is the hearing of evidence. The
22 Prosecution has already commenced its case because they made
23 their opening statement way back in the middle of the year, and
24 we do not expect that they -- that the 7th of January will be a
11:49:17 25 Status Conference. We expect to continue with the hearing of
26 evidence. I think it's as clear as can be, and that is indeed
27 what we intend to do.

28 Now, the second issue is whether there would be a Status
29 Conference in December. Now, I remember in the last Status

1 Conference held in September the Judges were of the view that we
2 should actually have a Status Conference every month; and if I
3 remember correctly, it was the parties that objected to this.
4 And you stated, I think on both sides, that you didn't need a
11:50:05 5 Status Conference every month and that you wanted the Judges to
6 leave you alone to actually get on with the business of preparing
7 for trial. And now, lo and behold, you are talking of a Status
8 Conference two weeks away from now.

9 Now, I'm not saying that a Status Conference will not be
11:50:26 10 necessary, but really I'm just wondering why you are sending
11 these contradictory signals to the Bench.

12 MS HOLLIS: Thank you, your Honour. First of all, we don't
13 consider the signals to be contradictory. We suggested, as I
14 recall, that there was no need for a Status Conference unless
11:50:51 15 there were matters which needed to be resolved. In light of the
16 fact that the presentation of evidence begins immediately
17 following the judicial recess, Prosecution raises the possibility
18 of a Status Conference simply to ensure that if the Defence has
19 an issue they are now aware of which they feel should be
11:51:15 20 addressed prior to the presentation of evidence, that we do it
21 either today or we do it in a Status Conference in December.

22 Similarly, as we said, if there is a reason to have a
23 Status Conference we would request one. Should the Prosecution
24 have any issues which might impact events of the 7th of January,
11:51:34 25 we would request a Status Conference. But this is simply to put
26 it in the minds of everyone to ensure that if there is a need for
27 one indeed it is requested so that all the appropriate matters
28 can be dealt with before the judicial recess. That was the
29 reason for raising the issue, your Honour.

1 [Trial Chamber conferred]

2 PRESIDING JUDGE: Please be seated, Ms Hollis.

3 Mr Griffiths, have you changed your mind about having
4 another Status Conference? Can we hear from you.

11:52:29 5 MR GRIFFITHS: It's not a question of changing my mind, but
6 my recollection is that when we met in September the parties
7 agreed that there would be no need for a further Status
8 Conference in October, it being suggested by the Bench that we
9 needed a monthly meeting. So that the agreement - and I

11:52:49 10 respectfully agree with my learned friend on this - was that we
11 wouldn't have one in October, not that we wouldn't, following our
12 November meeting, require a further meeting at some stage in
13 December. Because it seems to us, given that we're all hopeful
14 that proceedings will begin smoothly on the 7th of January, it

11:53:12 15 just seemed to us appropriate that perhaps at the beginning of
16 December or sometime close to the beginning of December we ought
17 to have a meeting to in effect clear the decks before the
18 Christmas break so that all parties can return after the
19 Christmas break knowing that the 7th of January is an effective
11:53:36 20 date.

21 And consequently, we had in mind perhaps such a Status
22 Conference being held on the 11th of December. I don't know if I
23 can assist you any further on that, your Honour.

24 PRESIDING JUDGE: Thank you. Thank you, Mr Griffiths.

11:53:54 25 [Trial Chamber conferred]

26 PRESIDING JUDGE: Ms Hollis, would you be agreeable to a
27 Status Conference on December the 11th, that would be a Tuesday I
28 believe?

29 MS HOLLIS: Yes, your Honour.

1 PRESIDING JUDGE: You would be agreeable to that.

2 Mr Griffiths, you suggested Tuesday, the 11th.

3 MR GRIFFITHS: [Microphone not activated]

4 PRESIDING JUDGE: All right then. Tuesday, the 11th of
11:55:41 5 December, we'll have a Status Conference, again to monitor the
6 progress of preparations for the trial, and the time will be
7 11.00 a.m. We will publish an agenda for the day in due course.

8 I don't know if there's any other business.

9 MR GRIFFITHS: There is a couple of additional matters that
11:56:03 10 we'd like to mention, your Honour. Your Honour, the first is
11 this. We were made aware of a decision made by your Honours
12 regarding an ex parte application made on behalf of the Crown at
13 the end of August this year, that is, the -- a decision of
14 your Honours T-355 dated the 5th of November, 2007.

11:56:43 15 PRESIDING JUDGE: Yes, we are aware of that.

16 MR GRIFFITHS: Now, we're grateful of course for the
17 decision made by your Honours in response to that application;
18 however, we are anxious that the ex parte procedure be not abused
19 by any party to these proceedings, because it seems to us that
11:57:03 20 such a procedure affects the quality of decision-making because
21 the Court only hears from one party to the proceedings. And
22 there are a host of grounds upon which we would have objected,
23 had we been party to the argument surrounding that particular
24 motion filed by the Prosecution.

11:57:29 25 Now, whereas we accept, consistent with your Honours'
26 decision, that this was a most unmeritorious application by the
27 Prosecution without any jurisprudential foundation, we are
28 anxious that there is no repeat of such abuse of the Court's
29 procedure, and consequently would respectfully ask the Court to

1 issue a practice direction for the guidance of all parties as to
2 the use of the ex parte procedure by any party to these
3 proceedings. That is my application, your Honour.

4 PRESIDING JUDGE: Ms Hollis, would you kindly respond.

11:58:32 5 MR KOUMJIAN: Thank you, your Honour. Nicholas Koumjian.

6 Your Honours, the application that the Prosecution made in
7 that case was to obtain access to documents which the Prosecution
8 felt could be critical documents incriminating the accused. Our
9 belief that these personal archives contained evidence critical
10 to the Prosecution case came from a statement of Mr Griffiths in
11 the hearing, where your Honour asked him: Is there any
12 documents -- or I believe your Honour actually said you're not
13 saying there are any documents that affect the Prosecution case;
14 and Mr Griffiths said: I cannot make that. There appear to be
11:59:12 15 documents directly relevant to the Prosecution case.

16 This type of motion to seize documents is made ex parte in
17 all jurisdictions all over the world. It simply wouldn't make
18 sense to have a procedure where one party notifies the other
19 party that -- the accused, in fact, that we're going to come and
11:59:32 20 ask to take documents from you that can prove you are guilty.
21 That would be -- that's not done anywhere that I know and it
22 wouldn't make sense.

23 The Prosecution certainly respects the need for proceedings
24 to be public that -- and that any ex parte motions be very
11:59:51 25 limited in purpose and in scope. We don't have a problem, for
26 example, now that the motion has been denied in making our
27 application public; we have no problem with that at all. But
28 while it was pending, it wouldn't make sense to make that a
29 public application. While your Honours were considering the

1 motion it wouldn't make sense for the Defence and the defendant
2 to know that the Prosecution was seeking incriminating documents
3 in his possession. Thank you.

4 [Trial Chamber conferred]

12:00:26 5 PRESIDING JUDGE: Mr Griffiths, I know you want to reply,
6 but we really don't want to relitigate a decision that we already
7 made. I think your application was with regard to the issuance
8 of some kind of practice direction to guide the parties as to
9 when they may properly file ex parte motions.

12:00:45 10 MR GRIFFITHS: Your Honour, it seems to us that such
11 guidance would benefit all the parties in these proceedings
12 because we were concerned that the Prosecution in this case,
13 having arrested and transported this accused halfway across the
14 world and charged him on an indictment containing several counts,
12:01:08 15 thereafter should see fit to in effect have access to Defence
16 material whilst that Prosecution is ongoing. I know of no
17 precedent for such an application in criminal proceedings.

18 PRESIDING JUDGE: Mr Griffiths, really, with due respect, I
19 think you are relitigating this issue, an issue that was settled
12:01:30 20 I believe in the benefit or to the benefit of the accused in this
21 case and of the Defence team. There really is no need to do
22 that. And really, in the issue of ex parte proceedings you
23 cannot set rules -- general rules for ex parte proceedings
24 because each case is unique in and of itself, and so I don't
12:02:02 25 think it's an appropriate kind of application to make at this
26 stage. The Trial Chamber is prepared on a case-by-case basis to
27 deal with these applications as and when they arise on their
28 merits.

29 I will ask my colleague Justice Lussick to say something.

1 JUDGE LUSSICK: Well, the only thing I wanted to add to
2 that, Mr Griffiths, is that you seem to be proceeding on the
3 presumption that had the Prosecution ex parte motion had any
4 merit, we still would not have called upon the Defence and given
12:02:34 5 them a chance to respond; and that is just not correct. Had that
6 motion had some merit, we would have lifted the ex parte and the
7 Defence would have had every chance to respond to it. We made
8 our decision on the basis, as you've already commented, that
9 there was no merit to it and that it was saving time to deal with
12:02:57 10 it there and then.

11 MR GRIFFITHS: I'm grateful for that indication, your
12 Honour.

13 PRESIDING JUDGE: Are there any other matters before I
14 adjourn these proceedings?

12:03:12 15 MR GRIFFITHS: [Microphone not activated]

16 JUDGE LUSSICK: Can you turn your mike on, please.

17 MR GRIFFITHS: I'm sorry, my fault.

18 We're in receipt of a letter from the Prosecution dated the
19 8th of November, 2007, in which the Prosecution make various
12:03:36 20 allegations regarding, in effect, witness interference by persons
21 associated with the Defence. Now, we are becoming slightly
22 concerned, your Honour, that a number of such statements have
23 been made by the Prosecution during the course of these
24 proceedings; and yet, to date very little in the way of hard
12:04:01 25 evidence has been provided, either to the Court or to the
26 Defence, in order to substantiate these suggestions.

27 PRESIDING JUDGE: Mr Griffiths, I beg your pardon, but we
28 have no idea what you're talking about. Is the Court in receipt
29 of such a letter or is this merely a letter addressed to the

1 Defence team?

2 MR GRIFFITHS: This is a letter addressed to the Defence
3 team, your Honour.

12:04:29

4 PRESIDING JUDGE: And then why are you seizing the Court
5 with this issue?

6 MR GRIFFITHS: Because it's a matter which has been raised
7 I think with the Court in the past, which is witness
8 interference, and consequently the imposition of protective
9 measures. And it is a matter that concerns us because it seems
10 to be an attitude which is pervading the way in which ...

12:04:46

11 [Trial Chamber conferred]

12 PRESIDING JUDGE: Mr Griffiths, are you referring to a
13 motion that is pending before the Court for protective measures?

14 MR GRIFFITHS: No, I'm not.

12:05:16

15 PRESIDING JUDGE: Because if you're not, then we are at a
16 loss. We have no clue what you are talking about. We don't know
17 what matter was previously brought to the attention of the Court,
18 as you allege.

12:05:31

19 MR GRIFFITHS: Very well. Your Honour, it may well be that
20 in the circumstances that this particular issue may well be left
21 to another occasion when we can address it compendiously with the
22 further motion being requested by the Prosecution here.

23 PRESIDING JUDGE: Thank you.

12:05:50

24 Then there being no other matters, I will adjourn these
25 proceedings to the 11th of December at 11.00 a.m. for a Status
26 Conference.

27 [Whereupon the hearing adjourned at 12.06 p.m.]

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