



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  
10 the Prosecution to make this electronic disclosure.

11:21:10

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  
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.

11:21:33

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  
20 have any issues that they would like the Bench to address at this  
21 stage.

11:21:57

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  
25 sensitive, and consequently we consider that it would be most  
26 appropriate for that to be dealt with in closed session.

11:22:16

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  
5 vital importance to the future preparation of the Defence.

11:23:09

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  
10 be sent through to the Court last night a very slim bundle,  
11 that's the matter that I have in mind.

11:23:34

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.  
15 I'd appreciate hearing from the Prosecution.

11:23:53

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  
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.

11:24:14

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

11:24:32

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?

4 COURT OFFICER: We'll contact the AV booth and we'll get  
11:25:00 5 back.

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

8 MS HOLLIS: Your Honour, the Prosecution did raise two  
9 matters that perhaps properly fall within the administration of  
11:25:15 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  
11:26:07 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  
11:26:30 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.

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 [REDACTED]

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23 [REDACTED]

24 [REDACTED]

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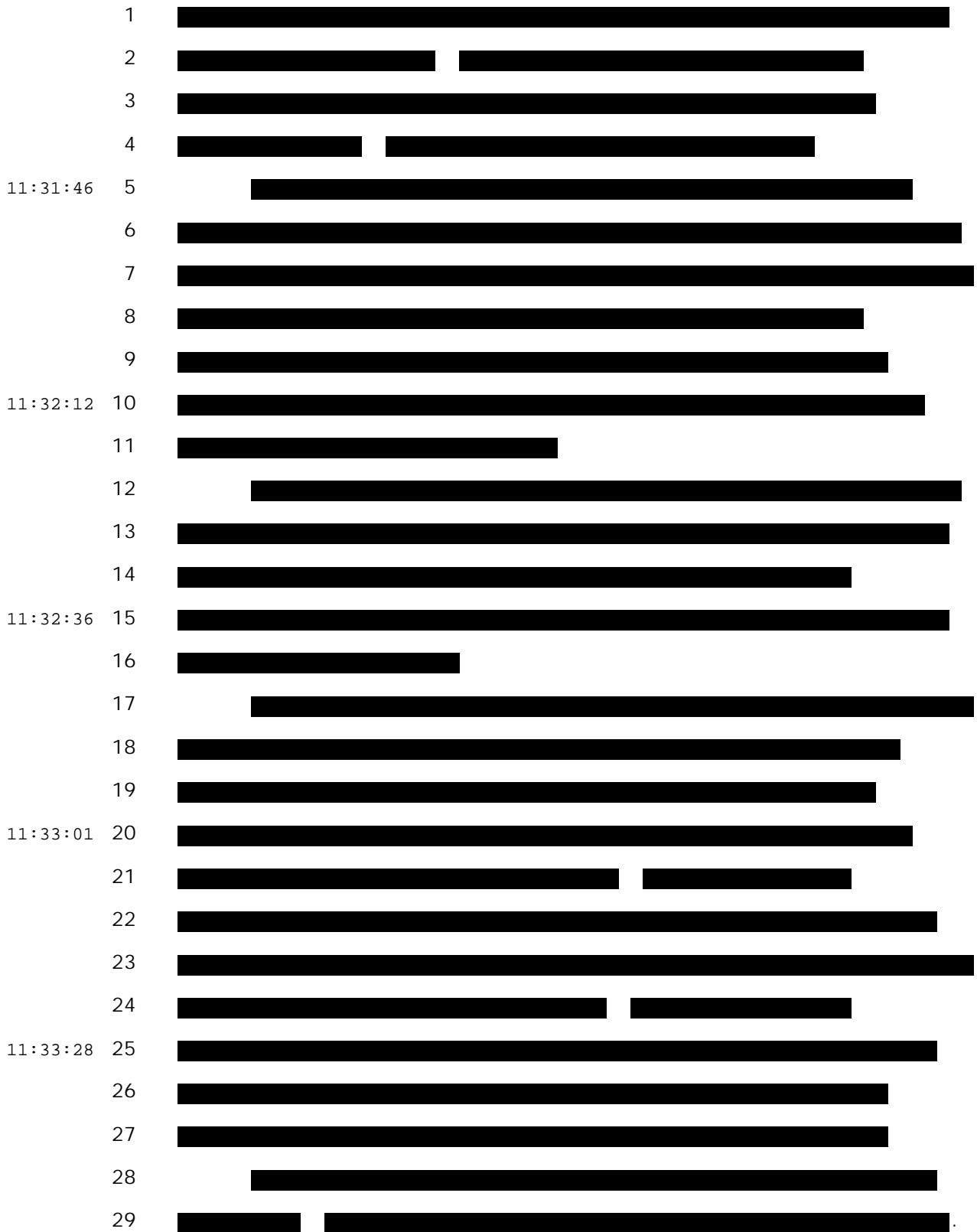
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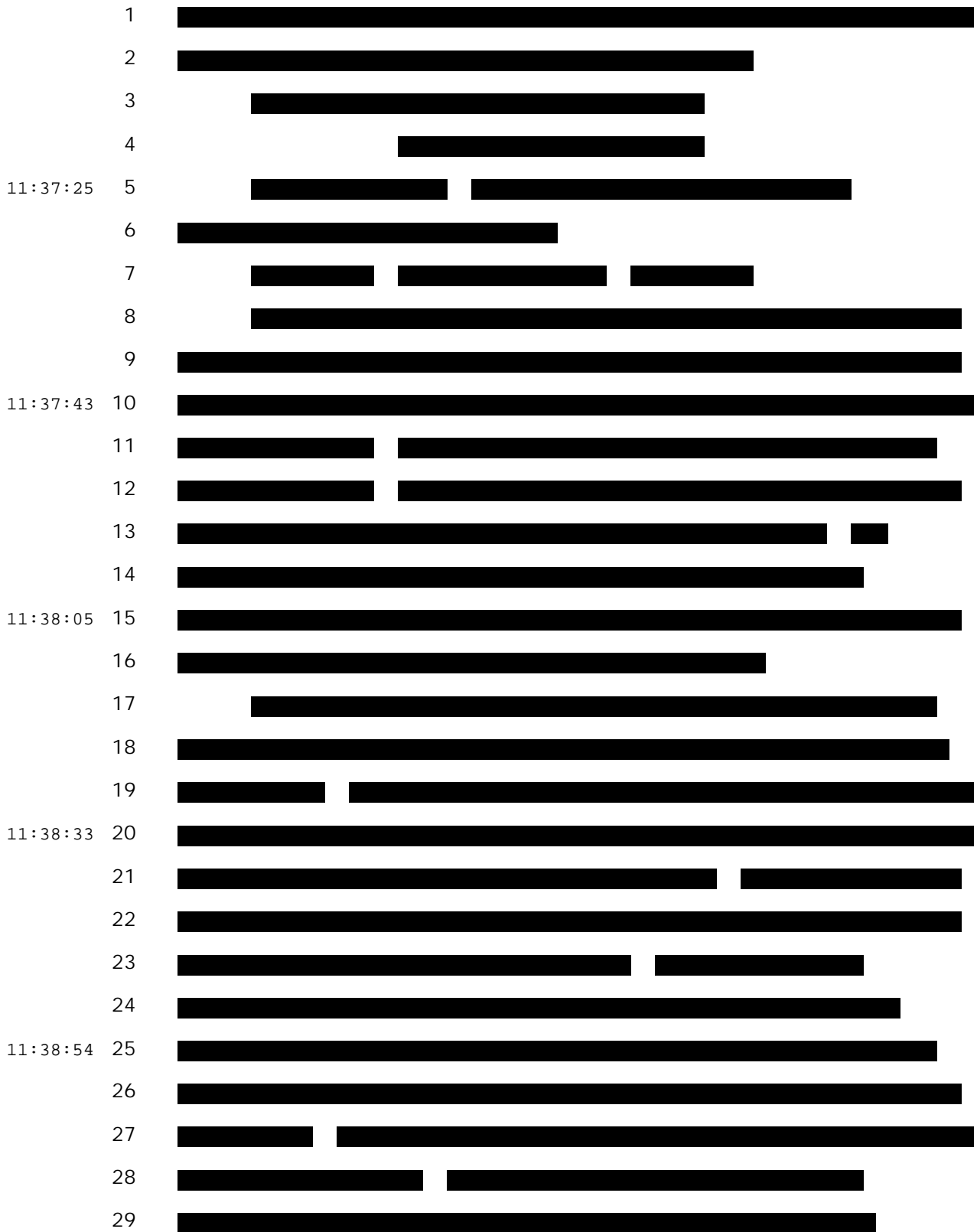
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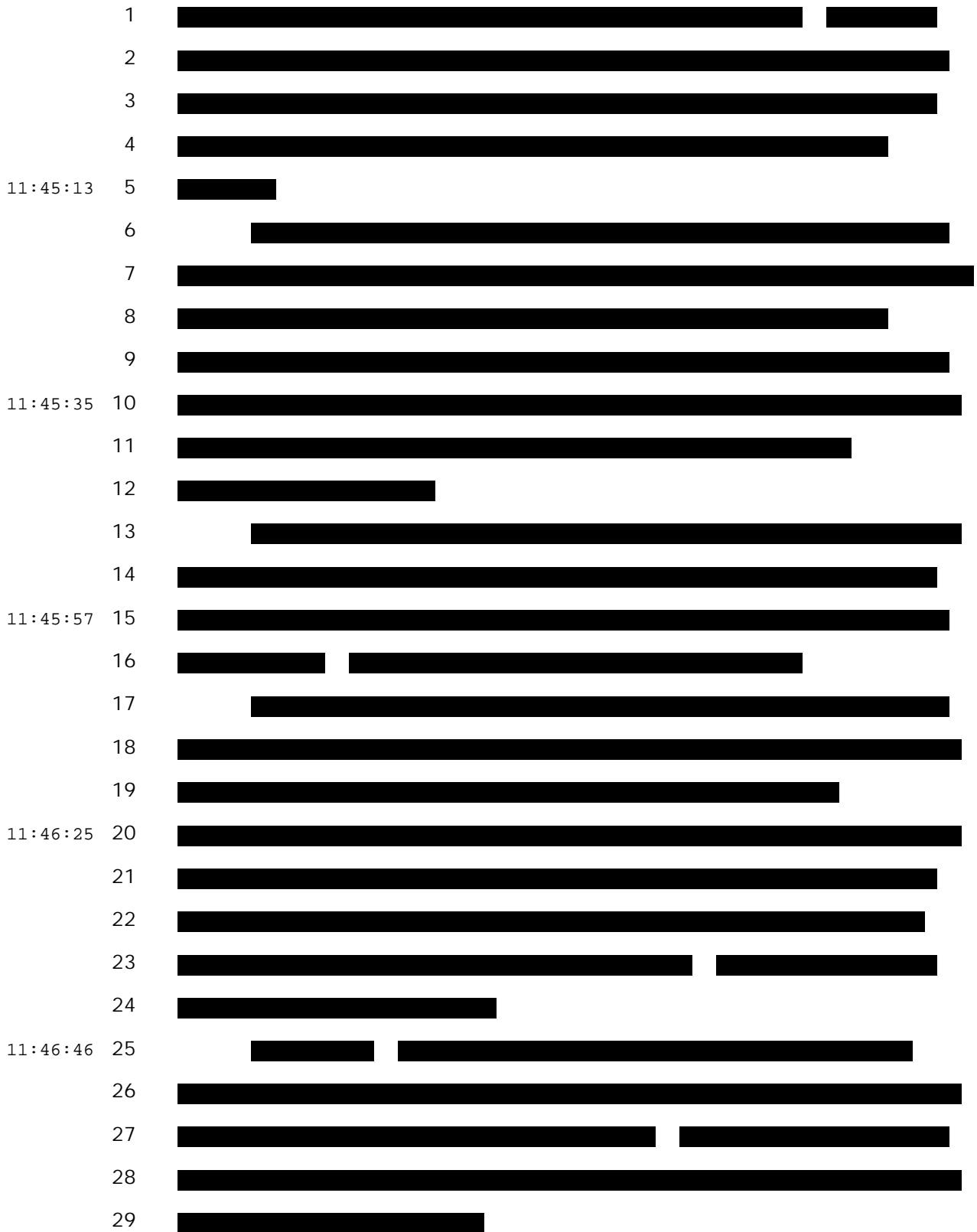
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8 [Open session]

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.

4 PRESIDING JUDGE: And then why are you seizing the Court  
12:04:29 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  
12:04:46 10 to be an attitude which is pervading the way in which ...

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.

19 MR GRIFFITHS: Very well. Your Honour, it may well be that  
12:05:31 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.

24 Then there being no other matters, I will adjourn these  
12:05:50 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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