

Case No. SCSL-2004-16-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
SANTIGIE BORBOR KANU

WEDNESDAY, 28 SEPTEMBER 2005
9.24 A.M.
STATUS CONFERENCE

TRIAL CHAMBER II

Before the Judges:	Teresa Doherty, Presiding Julia Sebutinde Richard Lussick
For Chambers:	Mr Simon Meisenberg
For the Registry:	Ms Maureen Edmonds
For the Prosecution:	Ms Lesley Taylor Mr Jim Hodes Ms Maja Dimitrova (Case Manager)
For the Principal Defender:	Mr Vincent Nmehielle Ms Claire Carlton-Hanciles Mr Ibrahim Foday Mansaray
For the accused Alex Tamba Brima:	Ms Glenna Thompson Mr Kojo Graham Mr Brima Osman Keh Kamara
For the accused Brima Bazy Kamara:	Mr Andrew William Kodwo Daniels Mr Mohamed Pa-Momo Fofanah
For the accused Santigie Borbor Kanu:	Mr Amadu Koroma Ms Karlijn van der Voort (legal assistant)

1 [AFRC28SEP05A - SGH]
2 Wednesday, 28 September 2005
3 [Open session]
4 [Accused not present]
09:16:00 5 [Status conference]
6 [Upon commencing at 9.24 a.m.]
7 PRESIDING JUDGE: Good morning, counsel. I understand the
8 accused are not in court and have not been brought up. Is there
9 any explanation? I presume they have opted not to come.
09:21:13 10 MS THOMPSON: Your Honour, I think the understanding was
11 that since it was a status conference they need not be here.
12 They know they have an option, but it wasn't a necessity for them
13 to be here, that is why they have stayed away. No disrespect to
14 the Court, of course.
09:21:28 15 PRESIDING JUDGE: Yes, it is just for the purposes of
16 record, Ms Thompson. I just want to ensure that it is noted that
17 they are voluntarily absent. Thank you.
18 We will proceed on with the agenda. Ms Taylor, are you
19 dealing with this for the Prosecution?
09:21:41 20 MS TAYLOR: Yes, I am, Your Honour.
21 Your Honour, the Prosecution is getting very close to the
22 end of its evidence. There are a number of pending matters that
23 impact upon how soon or otherwise the Prosecution will be in a
24 position to close its case. From the Prosecution point of view
09:22:05 25 the most important of those is the decision that is pending,
26 which is, with respect, a judicial notice and the admission of
27 evidence, because the timing of other matters depend upon when
28 that decision is received.
29 I certainly do not mean to be presumptuous in raising that

1 with Your Honours, but it is likely that, following that
2 decision, the Prosecution would wish to tender further evidence
3 or attempt to tender further evidence pursuant to Rule 92 bis,
4 and also to independently tender certain exhibits before the
09:22:44 5 Trial Chamber. Until the Prosecution is in a position to know
6 what Your Honours' decision is with respect to the matters that
7 are already before Your Honour, we are not in a position to know
8 the extent of that material. Bearing in mind, of course, that
9 Rule 92 bis has at least a 15 day time limit in it, that is that
09:23:00 10 the Prosecution is obliged to give the Defence 10 days notice of
11 any material that it wishes to submit pursuant to Rule 92 bis and
12 the Defence have five days in which to lodge any objections.

13 To assist both Your Honours and my learned friends, it was
14 the intention of the Prosecution to give a list of the matters,
09:23:25 15 the further bits of material that the Prosecution would seek to
16 have tendered pursuant to Rule 92 bis and or Rule 89(C), and a
17 list of the exhibits that are to be separately tendered to the
18 Defence as soon as possible, perhaps within 24 hours of the
19 judicial notice decision, so that those time limits can start to
09:23:51 20 run. I am just trying to think of the way in which we might be
21 able to progress the matter.

22 The other issue that I wish to raise with respect to the
23 pending judicial notice decision is how any matters that are
24 judicially noticed or any material that has been accepted under
09:24:09 25 Rule 92 bis is to be marked by the Court and the allocation of
26 exhibit numbers. I am aware that there was a decision of Trial
27 Chamber I in the CDF trial that simply directed the officers of
28 Court Management to allocate exhibit numbers to specific material
29 that was accepted under Rule 92 bis and I just thought that that

1 was something that was worth raising in the status conference so
2 that some months down the track, when everyone is keeping track
3 of material, material can be identified easily.

4 I don't know if you want me to continue through the agenda.

09:24:56 5 PRESIDING JUDGE: I think you have raised two practical
6 issues: The presentation of evidence, which, from what you are
7 saying, Ms Taylor, will have to await the decision, therefore,
8 there is no point in asking the Defence on that aspect. Is that
9 correct?

09:25:17 10 MS TAYLOR: That is correct. As I say, to facilitate
11 matters for Your Honours and for my learned friends, it is my
12 intention, once the judicial notice decision is received, to
13 present both the Court and the Defence with a very detailed list
14 of any subsequent material that the Prosecution would wish to
09:25:32 15 have before the Court. So that if there is any objection it can
16 then be raised before the Court, or if the matter can be resolved
17 between the parties, then so be it.

18 PRESIDING JUDGE: And the next practical question is the
19 numbering. I understand from what you say that there is a
09:25:50 20 decision in Trial Chamber I. Has the Defence any points to raise
21 on the question of numbering, exhibit numbering or tendering of
22 any evidence, following judicial notice?

23 MR GRAHAM: With respect, Your Honours, for the Brima
24 defence, not at this point in time. We don't have any.

09:26:04 25 MR KOROMA: Similarly, Your Honour, for the Kanu defence,
26 we have no objection to that.

27 MR DANIELS: Likewise the Kamara defence team.

28 JUDGE LUSSICK: I realise it is a little difficult to go
29 into this in any detail until you have the judicial notice

1 decision before you, but it must be kept in mind that there is
2 always the possibility, after that decision has been delivered,
3 of having a further status conference.

4 MS TAYLOR: Your Honours, if it is of assistance to you,
09:26:43 5 the decision from Trial Chamber I in the CDF trial is called "The
6 Decision on Prosecution Request to admit into evidence certain
7 documents pursuant to Rules 92 bis and 89(C)" and it is dated
8 14th July 2005.

9 PRESIDING JUDGE: Ms Taylor, that appears to exhaust 1.1
09:28:23 10 and 2.1 and 2.2.

11 MS TAYLOR: Yes, yes, it does, Your Honour. I take it then
12 that there will be some mechanism decided upon with respect to
13 the allocation of exhibit numbers.

14 PRESIDING JUDGE: Yes. As my learned brother said, we can
09:28:47 15 always deal with this again. In many ways it might be more
16 practical to deal with this when you have received a decision and
17 decided on what applications you wish to make.

18 MS TAYLOR: Yes, Your Honour. And the inclusion of the
19 decision mentioned at the pleadings before Your Honours,
09:29:06 20 mentioned at 1.2, that decision also the Prosecution would like
21 to see prior to officially closing its case. It was just raised
22 as a matter of completeness.

23 PRESIDING JUDGE: I understand.

24 MS TAYLOR: With respect to item number 4, witness issues,
09:29:27 25 immediately prior to the recess the Prosecution filed a renewed
26 core witness list that had reduced the number of witnesses.
27 Since that time, the Prosecution has found itself to be in a
28 position where it has not been able to call Witness TF1-150. The
29 Prosecution did wish to call that witness to testify,

1 specifically towards the widespread and systematic element of the
2 burden which the Prosecution bears.

3 Again, part of this is tied to whatever decision Your
4 Honours make with respect to the judicial notice motion, however,
09:30:06 5 the Prosecution would like to move one witness from the back-up
6 list to the core list and call that witness at the end of the
7 proceedings. That witness is Witness TF1-217. That witness was
8 disclosed unredacted to my learned friends on Monday of this
9 week, although my learned friends have been in possession of the
09:30:30 10 redacted material since 19th November 2003. The material is not
11 bulky, it is one statement of five pages and a second statement
12 of one page, and the witness has already given evidence before
13 Trial Chamber I in the RUF proceedings and the transcript from
14 that is simply 44 pages.

09:30:56 15 I raise that at this stage because if we are to close the
16 case sometime next month, which is what the Prosecution estimates
17 all things going well, then we would be calling that witness
18 within the 42 days which is the time frame. It would be my
19 submission that given the minimum scope of that witness's
09:31:22 20 evidence, albeit that that witness's evidence does go towards
21 most counts on the indictment, that that would not necessarily
22 put my learned friends in a difficult position.

23 So, that is the issue that I wish to raise with respect to
24 the final core witness list. If that matter is resolved this
09:31:41 25 morning, the Prosecution will file, for everyone's convenience, a
26 further final core and back-up list. But, as I said, the issue
27 is just that the Prosecution would be in a position of calling
28 that witness inside the 42 days. I can say, Your Honours, that
29 we would be looking perhaps to call that witness sometime during

1 the week starting 17th October.

2 JUDGE LUSSICK: I take it you have not broached this
3 particular issue with the Defence yet, Ms Taylor?

4 MS TAYLOR: No, I have not with respect to this specific
09:32:36 5 witness. As I said, the material was disclosed on Monday.

6 PRESIDING JUDGE: Any comment from the Defence on that
7 matter? Notice has been given.

8 MS THOMPSON: Your Honour, it is right, as my learned
9 friend said, I did receive it on 26th September, which was Monday
09:33:15 10 I think. It was served on me personally.

11 The stance I take is not to be necessarily obstructive, but
12 perhaps to be more principled. The decision about 150 was, I
13 think, over a week ago and this was served on us on Monday. And
14 when I looked at this, the first thing I looked at is whether it
09:33:37 15 was one of the witnesses that was on the list to be called,
16 because my learned friend had served us with the list of
17 witnesses that was to be called and this witness was not there.

18 My view is that it does violate the 42 day rule, but more
19 effort could have been made for us to receive this earlier. On
09:33:58 20 behalf of the Brima team - and I haven't discussed with my
21 learned friends so I can't speak for them - but on behalf of the
22 Brima team, whilst I sympathise with my learned friend's
23 position, I leave it entirely up to the Bench to make a
24 suggestion whether or not this witness ought to be called. But,
09:34:14 25 as I say, more effort should have been made for this to have been
26 served on us much earlier than Monday.

27 MR KOROMA: May it please, Your Honours. On behalf of --

28 PRESIDING JUDGE: Sorry, Mr Koroma.

29 MR KOROMA: May it please, Your Honour, on behalf of the

1 Brima team. Your Honour, the problem we have on our side is that
2 we have not had enough time to have a look at the statement of
3 the witness that is sought to be called. So, Your Honour, we
4 would rather prefer if we wait until we are able to thoroughly
09:34:59 5 look at the statement until we give our own opinion on that
6 point.

7 PRESIDING JUDGE: Anyone else got any comment?

8 MR DANIELS: Your Honours, respectfully, we would have
9 wished that it would have been specifically mentioned in the
09:35:26 10 agenda. If they had actually mentioned 127 and then perhaps we
11 would have been able to make a more constructive contribution.
12 In the meantime, I think we will leave it entirely in the hands
13 of the Bench.

14 PRESIDING JUDGE: There appears to be no formal notice from
09:35:50 15 either side replying or objecting, so the matter will take its
16 course. If there is a formal application or a formal objection
17 we will deal with it at the time.

18 MR KOROMA: May it please Your Honour, I believe we raised
19 the issue that we are asking for some more time to look at the
09:36:10 20 document.

21 PRESIDING JUDGE: Yes, but you are not objecting to the
22 witness being called, you have asked for time to look at it. In
23 other words, you are reserving your position.

24 MR KOROMA: Yes, Your Honour.

09:36:21 25 JUDGE LUSSICK: Well, look, it might be an idea, once the
26 Defence has had adequate time to consider the proposed evidence,
27 for the parties to get together and if no consensus can be
28 arrived at, perhaps a formal application ought to be made then to
29 allow replies to be made by the Defence.

1 MS TAYLOR: Your Honour, I am happy to adopt that course,
2 although I thought that I had actually raised it as an
3 application to call the witness within the time. I do point out
4 that the Defence have been in a possession of this material since
09:36:59 5 November 2003, albeit in a redacted form. The redactions in five
6 pages amounting to less than a paragraph and dealing only with
7 names mentioned in the statement.

8 Although I am happy to discuss it with my friends, I didn't
9 hear anyone say that they were going to be prejudiced by the
09:37:23 10 calling of this witness. They will have had three weeks' notice
11 of the unredacted version of this material, as well as, of
12 course, nearly two years' worth of possession of the redacted
13 material. But, be that as it may, I am happy to adopt the course
14 suggested by Your Honour Justice Lussick and discuss the matter
09:37:44 15 with my friends.

16 I can say that this witness will probably be the last
17 witness called viva voce by the Prosecution in doing everything
18 possible to assist my friends to be ready for this witness.

19 Your Honours, turning to agenda 4.2, the availability of
09:38:12 20 international witnesses. The Prosecution does have left on its
21 list a number of witnesses who are coming internationally and one
22 witness locally who is travelling internationally, and we have
23 organised a timetable for those witnesses. My learned friends do
24 have notice of this and I raise it simply because we would seek
09:38:35 25 to interpose these witnesses when they are in the jurisdiction as
26 necessary and that process will start from next week.

27 On Monday, 3rd October, the Prosecution will call
28 Zainab Bangura, who is one of the witnesses that Your Honours
29 gave leave to add to the core witness list. On 4th October, but

1 only in the afternoon, so from 2.15, the Prosecution will be in a
2 position to call TF1-296. Another international witness,
3 John Petrie, will also be within the jurisdiction next week,
4 although he is slightly more flexible and therefore we would aim
09:39:21 5 to start his evidence either on 5th October, if TF1-296 is
6 finished, or on 6th October. But he will be called immediately
7 after TF1-296. And the following week the international witness
8 TF1-301 will be within the jurisdiction and we would aim to call
9 that witness probably on 12th October, which is the Tuesday.

09:39:54 10 As I say, my learned friends do have notice of that and
11 have not raised any objection to the slotting in of these
12 witnesses. Obviously, we are in the middle of a witness at the
13 moment, the cross-examination will commence tomorrow. We do have
14 two other witnesses available and on stand-by. If we finish
09:40:15 15 those witnesses, the question of interposing may not arise, but
16 given the logistical difficulties of getting people here, I
17 simply raise that so that everyone is aware of the process that
18 the Prosecution will adopt.

19 PRESIDING JUDGE: We have noted that. Thank you,
09:40:48 20 Ms Taylor.

21 MS THOMPSON: Your Honour, before my learned friend -- I
22 think you were about to leave witness issues. Before we move on
23 to item number 5, so we are moving pretty quickly, the Defence
24 had given notice that one of the issues we would wish to raise
09:41:07 25 under witness issues was recalling of a particular witness, 023.
26 Your Honours will recall that 023 was the subject of the contempt
27 proceedings. Indeed, the contempt issues arose out of the
28 complaint which she made whilst giving evidence-in-chief in this
29 Court back in March this year.

1 At end of her examination-in-chief a decision was made by
2 the Defence at the time that we were not in a position to
3 cross-examine her, particularly because at the centre of those
4 allegations was the investigator to the Brima defence team,
09:41:53 5 Brima Samura. We, at the time, thought it prudent that until
6 another investigator was in place or at least the cloud had been
7 lifted over Brima Samura, then any information that we were going
8 to use in the course of our cross-examination was potentially
9 tainted because the allegations against them --

09:42:14 10 JUDGE LUSSICK: I am sorry to interrupt, Ms Thompson, but I
11 take it you are making an application for us to consider now --

12 MS THOMPSON: Yes.

13 JUDGE LUSSICK: -- as to whether that witness be recalled
14 or not?

09:42:26 15 MS THOMPSON: Yes, Your Honour.

16 PRESIDING JUDGE: Just pause, Ms Thompson, thank you.

17 JUDGE LUSSICK: And Ms Taylor, what is the Prosecution's
18 attitude to that application?

19 MS TAYLOR: The Prosecution would oppose the application.

09:42:45 20 JUDGE LUSSICK: I see. All right, thank you.

21 PRESIDING JUDGE: Ms Thompson, I can indicate to you that
22 we will be seeking a formal application in writing for this. So,
23 is there something you feel that would assist the Bench, or,
24 having given you that indication, would you wish to reserve what
09:45:35 25 you have to say to make your formal application?

26 MS THOMPSON: Perhaps not, Your Honour. I just thought
27 that since we were dealing -- because obviously there is a
28 timetable here, the Defence -- sorry, I beg your pardon, the
29 Prosecution have indicated that they will be finished by

1 mid-October, and if they were going to -- I mean, provided, of
2 course, if your decision was yes, she can be recalled, then
3 obviously the Prosecution have time to put the logistics in
4 place. That's the reason why I raised it. But if Your Honour
09:46:04 5 thinks that it is better done in writing then obviously I will
6 reduce my arguments to a written form.

7 PRESIDING JUDGE: Thank you, Ms Thompson. First of all, I
8 am grateful for the indication. We had noted it in writing.
9 However, there are issues that were discussed at the time as you
09:46:20 10 may recall in March and the indication was that leave would have
11 to be granted. There are issues of procedure and law which would
12 be of more benefit, both to the Bench and to the Prosecution, by
13 way of a formal application. Given the time parameters, you may
14 wish to start that application to allow for response, reply and a
09:46:35 15 formal decision.

16 MS THOMPSON: I am grateful, Your Honour, for that
17 indication.

18 PRESIDING JUDGE: Those were two witness issues. Are there
19 any other witness issues? Ms Thompson has raised one which --

09:47:00 20 MS TAYLOR: Yes, I am grateful to my learned friend for
21 consideration of the Prosecution, if the decision happens to
22 favour my learned friend, in terms of the logistics of bringing
23 the witness back to Court. If my learned friend files that
24 written application shortly the Prosecution will do its best to
09:47:22 25 respond well within the time limits to assist both my learned
26 friend and the Court. There are no other witness issues in
27 respect of the Prosecution, Your Honour.

28 PRESIDING JUDGE: I will invite the Defence to indicate if
29 they have any witness issues before we move on to the next item.

1 MR GRAHAM: Your Honour, we do not have any issues relating
2 to witnesses at this point.

3 PRESIDING JUDGE: Thank you, Mr Graham. Any other Defence
4 counsel?

09:47:51 5 MR KOROMA: That is also the same, Your Honour.

6 PRESIDING JUDGE: Thank you, Mr Koroma.

7 MR DANIELS: Likewise, no further issues.

8 PRESIDING JUDGE: Thank you, Mr Daniels. We will move on
9 to the next agenda item.

09:48:03 10 MS TAYLOR: Your Honour, if the judicial notice decision is
11 given shortly and all the other matters are taken care of, the
12 Prosecution believes that it will be in a position to formally
13 close its case some time during the week commencing the 17th
14 October. That then leaves the issue of what happens next.

09:48:36 15 If my learned friends intend to make any motion pursuant to
16 Rule 98, an issue arises as to the form of that motion and to the
17 timing, or a timetable, in respect of that motion. Rule 98 was,
18 of course, amended during the last plenary, and it simply is in
19 different terms to the Rule in the ICTY. Their Rule 98 bis
09:49:14 20 specifically states that the motion and the decision are to be
21 done orally. It would be my submission that is perhaps something
22 that Your Honours might consider in this case. There is nothing
23 in our Rule 98 that prohibits any motion and any decision being
24 given orally.

09:49:41 25 The reason I raise that is obviously if there is going to
26 be complex written submissions, that is going to eat up quite a
27 lot of time both in the filing and in the response, and then
28 whether Your Honours would hear any supplementary oral
29 submissions. It would be my submission that neither party would

1 be prejudiced by being allocated a specific time to argue those
2 matters before Your Honours if those matters are going to be
3 raised by my learned friends.

4 But, again, just in terms of timing of the remainder of the
09:50:20 5 trial, I thought this was one issue that perhaps could be
6 addressed just prior to the close of the Prosecution case.

7 PRESIDING JUDGE: Thank you, Ms Taylor. I note this was a
8 Defence agenda item submitted by the Kanu team. I understand the
9 correspondence was a joint application. It is framed in a way
09:50:48 10 that indicates that there is going to be such motion, but I am
11 not clear if there is going to be such motion.

12 MR GRAHAM: Respectfully, Your Honour, in respect of a
13 Rule 98 motion, I speak on behalf of the Brima team as well as
14 for the Kamara and Kanu team in respect of the substantive issues
09:51:13 15 relating to the form of the motion and related issues.

16 Your Honours, the plan of the Defence in respect of this
17 matter is as follows: Your Honour, we intend, by way of form, to
18 file the Rule 98 motion in two formats. The first part, Your
19 Honours, will involve a joint defence motion relating to the
09:51:45 20 legal issues that will be addressed in the substantive motion.

21 Secondly, I think in respect of the factual issues that will be
22 addressed under the motion, what the Defence team intends to do
23 is to allow the respective teams to file their own individual
24 written submissions relating to the factual issues arising out of
09:52:09 25 the motion. Your Honours, of course, it will be one substantive
26 motion under two different headings.

27 In terms of page limitation issues, Your Honours, we intend
28 for the part of the motion that will be filed jointly by Defence
29 teams to have a 50-page limit.

1 PRESIDING JUDGE: Who said you had a 50-page limit?

2 MR GRAHAM: That is what we had in mind subject to
3 Your Honours --

4 PRESIDING JUDGE: Are you asking? Because there is already
09:52:38 5 a suggestion from the Prosecution that there be oral submissions.
6 Are you asking for written submissions?

7 MR GRAHAM: Yes, Your Honour. We would address the
8 Prosecution submissions raised in respect of whether they prefer
9 an oral ruling for the motion, and, Your Honours, we address
09:52:51 10 that. All we are trying to address or deal with presently is the
11 issue relating to the number of pages.

12 Your Honours, we are asking that in respect of the issues
13 arising for the Defence in this matter, we are proposing, subject
14 to Your Honours' approval, to have a 50-page limit for the joint
09:53:18 15 Defence motion relating to the legal issues. In respect of the
16 part to be filed separately by each Defence team, Your Honours,
17 we are proposing, subject to your approval, that each Defence
18 team intends to have a 30-page limit in respect of the factual
19 issues that will be addressed under Rule 98 motion. Your
09:53:34 20 Honours, in summary these are the issues arising for the Defence
21 in terms of the form of the Rule 98 motion.

22 Of course, at this point, Your Honours, I would also want
23 to address the issue of the preference of the Prosecution for an
24 oral ruling. Your Honours, we would not object -- at least the
09:54:02 25 Brima Defence team does not have any objection to the
26 Trial Chamber making an oral ruling on the motions. But our
27 preference definitely is for the Defence to file a written motion
28 for the Rule 98. That is our preference.

29 Your Honours, also in respect of the time frame issues, the

1 Prosecution has just made the submission that they intend,
2 hopefully, to close their case some time in the second week of
3 October. Your Honours, subject to your approval, it is the
4 Defence's position that, looking at the issues arising, we are
09:54:43 5 proposing once again to have at least a minimum period of eight
6 weeks for the preparation of the motion for acquittal.

7 Your Honours, if I may just bring that down to numbers.
8 What I mean is that we expect to file our motion for acquittal
9 some time during the second week of December --

09:55:14 10 PRESIDING JUDGE: The second week of which month?

11 MR GRAHAM: December 2005. That will be some time to eight
12 weeks after the Prosecution closes its case.

13 PRESIDING JUDGE: So you are filing the motion in December?

14 MR GRAHAM: Your Honour, these are the issues being raised.
09:55:29 15 Respectfully, Your Honours, will recognise that at this point --

16 PRESIDING JUDGE: I am just making sure that I have my
17 facts correct; I am not making any comment.

18 MR GRAHAM: Yes, Your Honour. Respectfully, that is our
19 submission in respect of this. The timing for the --

09:55:52 20 JUDGE LUSSICK: Did you have something more to say? You
21 started to say something about the timing after the filing of a
22 motion.

23 MR GRAHAM: Your Honours, I was about to say that the
24 proposed time frame has been influenced essentially also by the
09:56:07 25 volume and nature of witnesses that we are having, just getting
26 to the final stages of the Prosecution's case. Your Honours with
27 great respect will realise that some of the evidence that is
28 coming in at the tail-end of the Prosecution's case is quite
29 significant and substantial so far as the case against lay

1 clients in this matter is concerned. So, Your Honours, we intend
2 to ensure that we fairly represent our clients in this matter.
3 We believe that the proposed time frame would be about the
4 reasonable minimum period of time we would need to adequately put
09:56:52 5 our case across in respect of Rule 98 motion.

6 So Your Honours, this is the common position of the Defence
7 in respect of the issues relating to the form of the Rule 98
8 motion, as well as the time frame for the submission of the
9 motion. And Your Honours, once again in respect of the issue of
09:57:18 10 an oral ruling, I once again wish to say we do not have any
11 objections to the Trial Chamber making an oral ruling once the
12 Rule 98 motion is filed within the time frame.

13 PRESIDING JUDGE: Thank you, Mr Daniels. Mr Graham, are
14 you speaking on behalf of all of the teams.

09:57:45 15 MR GRAHAM: Your Honour, I believe so. In respect of the
16 form and timing issues on the Rule 98 motion, I believe I am
17 speaking on behalf of --

18 PRESIDING JUDGE: So a synopsis of your submission is, (a),
19 you are opposed to an oral application as proposed by the
09:58:00 20 Prosecution. You are seeking to put in a page limitation of up
21 to 110 pages.

22 MR GRAHAM: Yes.

23 PRESIDING JUDGE: And eight weeks. When you say you are
24 filing it in December, does that mean you are putting in all this
09:58:12 25 documentation or are you making the application and then putting
26 in the documentation? Would you clarify the word file, please?

27 MR GRAHAM: Your Honour, I believe that we are saying that
28 eight weeks as of the close of the Prosecution case we are going
29 to file our Rule 98 motion.

1 JUDGE SEBUTINDE: Counsel, do you think you could also
2 address the Bench on the time frames that you have in mind for
3 response and reply, by way of projecting time frames. What are
4 your views on?

09:58:46 5 MR GRAHAM: Your Honours, in considering the issue of the
6 time frame, indeed we do have an eight week period in mind. But
7 in arriving at that position, we also have in mind the issues
8 relating to the time frame for the Prosecution to also respond.
9 In that regard I think that we also consider the possibility of
09:59:09 10 also being flexible enough to be able to do that probably also
11 within a six to eight period, having in mind the period within
12 which the Prosecution thinks that it will be in a position to
13 also respond to the motion. So in spite of the fact we are
14 proposing eight weeks, we also do believe that we have some
09:59:30 15 flexibility that would also allow us to be able to also to do
16 that at the very minimum within a six week period after the close
17 of the Prosecution's case. So that is the time frame that,
18 Your Honours, we are respectfully looking at.

19 PRESIDING JUDGE: Thank you, Mr Graham. Ms Taylor, you
09:59:49 20 have heard the application. Have you anything to say on each of
21 the issues raised in reply?

22 MS TAYLOR: Yes, Your Honour. First, with respect to the
23 timetable, it would be my submission that 8 weeks for filing the
24 of any Defence motion under Rule 98 after the close of the
10:00:11 25 Prosecution case is excessive. Bearing in mind that this is not
26 a closing submission. A motion under Rule 98 simply must address
27 the issue of whether there is no evidence capable of supporting a
28 conviction, not that the evidence should not be believed or that
29 the evidence is not strong enough or there has been no

1 satisfaction beyond reasonable doubt. It has to address the
2 issue of no evidence capable of supporting. In that respect, my
3 learned friends, if they are going to make that submission, must
4 have a lot of that in mind by now. They certainly do not need,
10:00:49 5 in my submission, eight weeks after the close of the Prosecution
6 case to do that.

7 My learned friend also proposed that the Prosecution have
8 six to eight weeks after the filing of that motion to respond.
9 The Prosecution would not need six to eight weeks to respond, but
10:01:11 10 bearing in mind if Your Honours were to accept the timetable
11 proposed by my learned friend, the Prosecution six to eight weeks
12 would be right over the Christmas and New Year period, which
13 would of course cause difficulties for the Prosecution.

14 It is my submission that because of the nature of these
10:01:27 15 motions, emphasising that they are not final addresses or final
16 submissions, that 110 pages, I believe I heard Your Honour say,
17 is an excessive amount of material to address the issue. It can
18 be done orally, but if it is to be done in writing, it should be
19 done in a far more reduced number of pages and in a far tighter
10:02:03 20 timetable. For example, if it is to be in writing, perhaps
21 within two weeks after the close of the Prosecution case and the
22 Prosecution having two weeks to respond.

23 As I mentioned earlier on, Your Honours, the ICTY rule
24 specifically states that these matters are to be dealt with both
10:02:20 25 in submission and in decision orally. And this year there has
26 been a very tight turnaround of some cases in the ICTY. The Oric
27 decision, the Prosecution closed its case on 31st May, oral
28 submissions under Rule 98 bis there equivalent were heard on 2nd
29 and 3rd June, and the Court delivered its decision orally on 8th

1 June.

2 Another example from the ICTY is Krajisnick,
3 K-R-A-J-I-S-N-I-K. Oral submissions were heard on the 16th August
4 and the Court delivered a decision on 19th August of this year.

10:03:07 5 I raise those matters simply to illustrate that it is possible,
6 as in other jurisdictions that deal with trials of similar
7 magnitude, to do these matters very quickly.

8 The other point to raise, of course, in the timetable of
9 these matters is that once Your Honours have heard submissions
10:03:31 10 from both parties, Your Honours of course have to make a
11 decision, and then there is another timetable that needs to start
12 and that is the process that is contemplated by Rule 73, which of
13 course is the next item on the agenda.

14 But in relation to this item on the agenda, I don't think I
10:03:45 15 can assist Your Honours any further.

16 PRESIDING JUDGE: Thank you, Ms Taylor. We will reserve on
17 this particular application and we will indicate to you the time
18 we will give a decision in due course.

19 MR GRAHAM: I am sorry, Your Honour, I just to need clarify
10:04:16 20 a point with my learned friend on the other side rather quickly.

21 PRESIDING JUDGE: Yes.

22 MR GRAHAM: Your Honour, in my submission I was making the
23 point -- I never said the Prosecution was going to have six to
24 eight weeks to file their reply. What I was saying is that from
10:04:30 25 our perspective we have a flexible time frame of within six to
26 eight weeks after the close of the Prosecution's to file a
27 Rule 98 motion. That was my submission. I never made any
28 references to the time frame for the Prosecution to respond,
29 unless, of course, they are assuming if we have six to eight

1 weeks to file then they have the same period of time to file
2 their responses.

3 PRESIDING JUDGE: Thank you for that clarification,
4 Mr Graham.

10:04:57 5 JUDGE LUSSICK: I also noted, Mr Graham, that in fact you
6 didn't say that each defendant wanted 110 pages of submission.
7 You said 30 each and 50 for the whole three, which, if you divide
8 50 by three, it will be an average of about 47 pages per accused.

9 MR GRAHAM: Thank you, Your Honour, for that clarification.
10:05:19 10 That's right.

11 JUDGE LUSSICK: That's the way I took it anyway.

12 MR GRAHAM: Yes.

13 PRESIDING JUDGE: Item 6 in the agenda. I presume,
14 therefore, we have dealt with item 5 and the Bench will reserve
10:05:42 15 on that. Item 6, is this joint? I again look at the matter
16 raised by the Defence team.

17 MS THOMPSON: Your Honour, I think given the fact that your
18 ruling is going to be reserved on item 5, then in my submission
19 item 6 is now redundant as it were. Because unless we have a
10:06:04 20 time frame for item 5, we can't actually deal with item 6. And
21 in any event, item 6 presupposes that any Rule 98 motions we file
22 would in itself be redundant and your decision would be against
23 the Defence and, therefore, we need to deal with items. So in my
24 submission we cannot deal with item 6 today.

10:06:34 25 PRESIDING JUDGE: Ms Thompson, rest assured that there is
26 no implication that all on this agenda item and we relied
27 entirely 100 per cent on your own joint letter to our legal
28 officer which says, "The team time frame for the start of
29 Defence". So rest assured there is no implication to --

1 MS THOMPSON: I am aware of that Your Honour, yes.

2 PRESIDING JUDGE: If there is no other matters we will
3 adjourn until tomorrow morning. Any other matters, counsel?

4 MS TAYLOR: No, Your Honour.

10:07:41 5 MS THOMPSON: None for The Defence, Your Honour.

6 PRESIDING JUDGE: In that case we will adjourn until
7 tomorrow morning at 9.15 a.m. Madam Court Attendant, please
8 adjourn court.

9 [Where upon the status conference adjourned at
10:08:35 10 10.13 a.m.]

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