

IN THE DISTRICT COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
CRIMINAL CASE NO. DCCC 687 OF 2004

Transcript of the audio recording of the  
Ruling on Permanent Stay of Proceedings at the  
trial of Shum Chiu (D1, Wong Hung-ki (D2), Yu  
Chi-wai (D3) & Wong Tin-sum, Ann (D6), charged  
with Conspiracy to Offer an Advantage, etc.,  
before Deputy Judge Julia M Livesey

Date: 5 July 2005 at 2.35 pm

Present: Mr Cheng Huan, Senior Counsel, leading Mr Joseph  
W Y Tse and Miss Charlotte E Draycott, instructed  
by Messrs F Zimmern & Co., for the 1st Defendant  
Mr Daniel Y Marash & Mr Gary J Plowman, Senior  
Counsel, leading Mr Keith K H Yeung, instructed  
by Messrs Boase Cohen & Collins, for the 2nd  
Defendant  
Mr Peter N Duncan, Senior Counsel, leading Mr C K  
Wong, instructed by Messrs Haldanes, for the 3rd  
Defendant, and leading Mr Richard T W Wong,  
instructed by Messrs Haldanes, for the 6th  
Defendant  
Mr Giles M Surman, Counsel on fiat, for HKSAR  
Mr Francis K M Yip, instructed by Messrs Wong Hui  
& Co., holding watching brief for the 4th & 5th  
Defendants

\*\*\*\*\*

1. Applications are made on behalf of all four  
defendants for a permanent stay of these proceedings. I  
have borne in mind at all times that these are very grave  
applications and, if granted, will deprive the prosecution  
of their right to a trial.

2. All the applications rely upon the fact that ICAC  
investigating officers arranged for, and carried out, a  
covert recording of a meeting that took place on Saturday,  
16 November 2002, in a restaurant at which PW1, D3 and two  
solicitors from Haldanes were present. It is the  
attendance of PW1 at the meeting, and its taping, that  
form the cornerstone of the whole application.

3. I have borne in mind that the burden of proof  
lies upon the defence to establish, on the balance of

A probabilities, the facts relied upon to demonstrate abuse A  
B of process. There has been no oral evidence given in B  
C these applications, save from Mr Fung of Haldanes, as it C  
D proved possible for all parties to agree the premised D  
E facts. E

F 4. At the conclusion of the defence applications, F  
G the prosecution sought to withdraw from the premised fact G  
H that the meeting was covered by legal professional H  
I privilege and they sought leave to call evidence and I  
J invited the court to listen to the tape of that meeting. J  
K I refused both applications and gave my reasons. I will, K  
L in this judgment, refer to additional matters that, in my L  
M judgment, further support that refusal. M

N 5. All the applications rely upon the same agreed N  
O premised facts to a greater or lesser extent. O

P 6. These premised facts are set out in paragraph 5 P  
Q of Mr Duncan's skeleton argument, Exhibit MPI-1, as Q  
R expanded by the prosecution facts set out in Exhibit MFI- R  
S 2, and added to by paragraphs 1 to 11 of Mr Cheng's S  
T skeleton argument, Exhibit MFI-3 and 4. Brief oral T  
U evidence was given by Mr Louis Fung, a partner in the firm U  
V of solicitors Haldanes, which evidence confirmed that V  
W Haldanes had been instructed in relation to the affairs of W  
X the company ABB, D3 and its other employees, and that, at X  
Y the meeting of 16 November, he gave legal advice to D3 and Y  
Z PW1. This evidence was unchallenged. Z

7. Mr Fung also has conduct of this trial on behalf P  
Q of D3 and D6. Q

8. Briefly, those premised facts are that R

- R (a) On 3 May 2002, PW1, an employee of ABB, was R  
S arrested by the ICAC. It was clear, even at that S  
T stage, that PW1, D1, D2, D3, D4, PW2 and others T  
U were suspected of conspiracy to offer advantages U  
V to a public officer. V

A (b) From 3 May 2002 until June 2003, PW1 acted as an A  
B undercover agent on behalf of the ICAC; inter B  
C alia, he removed various documents from his C  
D employer's premises without their knowledge and D  
E gave them to the ICAC. He also agreed E  
F occasionally to wearing covert recording devices F  
G during this period in an attempt to collect G  
H evidence. During this period, PW1 made a number H  
I of non-prejudicial statements to the ICAC. I  
J

G (c) On 7 November 2002, the ICAC, having obtained G  
H search warrants, executed an operation at the H  
I premises of ABB. They seized various exhibits, I  
J including those documents set out in paragraph 4 J  
K of Exhibit MFI-4, and arrested a number of K  
L persons. L

K (d) PW1 had been informed that it was the intention K  
L of the ICAC to arrest D3 during that raid but D3 L  
M and Keith Leung, another suspect, were not M  
N arrested as they were not in Hong Kong. D3 was N  
O only arrested on 16 August 2003. The seized O  
P documents are to be part of the prosecution case P  
Q and had been referred to by PW1 when making some Q  
R of his non-prejudicial statements. R  
S

P (e) On 7 November, Messrs Haldanes were retained by P  
Q ABB to protect the interests of the company and Q  
R its employees. Thereafter, Keith Leung R  
S frequently contacted PW1 during the ensuing days S  
T and told PW1 not to say anything if arrested but T  
U to contact Mr Fung of Haldanes. U

T (f) On 14 November, PW1 informed the ICAC that he was T  
U to attend a lunch with D3 and a lawyer on 16 U  
V November. D3 is the second most senior executive V

A in the company; PW1 is a subordinate. It was  
B further admitted, during admissions, that PW1  
C always used the Chinese word meaning "solicitor"  
in his non-prejudicial statements.

D (g) Having received this information, the ICAC  
E arranged for PW1 to be equipped with a covert  
F recording device so that the meetings could be  
G recorded. On 16 November, PW1 attended the  
meeting at which D3 and two solicitors, including  
Mr Louis Fung from Haldanes, were present.

H (h) Mr Fung gave evidence in court that he was  
I present at the meeting and that he gave legal  
J advice to PW1 and D3. Mr Fung stated that he had  
retained conduct of these proceedings on behalf  
of Haldanes.

K (i) The meeting lasted about an hour, and it was  
L recorded by the ICAC using covert taping being  
M carried by PW1. This tape is not to form part of  
N the prosecution case and has not been heard by  
O prosecuting counsel nor his court ICAC  
assistants, nor the Department of Justice, and  
P also not by counsel acting on behalf of any of  
the defendants.

Q (j) The ICAC, prior to the meeting, informed PW1 of  
R his own right to privileged communication with  
S the lawyer should he be offered advice. Again,  
T it was agreed, during submissions, that PW1  
waived his right to privilege prior to the  
meeting taking place.

U (k) The same covert device was used to tape a  
V conversation between D3 and PW1 after the

A meeting. It is the prosecution's intention to  
B seek to use this section of the tape as part of  
C their case.

- (1) Since the meeting, the tape has been listened to  
D by at least PW1 and two ICAC officers when PW1  
E was asked to confirm that the contents of the  
F tape were correct.

9. The application on behalf of D3 is not based upon  
G the contention that D3 will not have a fair trial.  
H Indeed, the prosecution have made it quite clear from the  
I outset that the prosecution team have not heard the tape,  
J there is no transcript and that they have no intention of  
K relying upon the taped conversation.

10. The application on behalf of D3 is on the basis  
L that it is submitted that, by recording this conversation,  
M the ICAC have engaged in conduct which was such a breach  
N of the fundamental rights of the accused as to strike at  
O the very integrity of the administration of justice and  
P that there exists a line of cases which recognises the  
Q existence of a discretion in the court to stay proceedings  
R where there has been a degradation of the lawful  
S administration of justice. It is further submitted that a  
T failure to have such a discretion would result in the  
U court participating in the consequences of the illegality.

11. It is contended, on behalf of D3, that the court  
has a discretion to stay these proceedings as the  
Q recording of this meeting has resulted in such a  
R degradation of the lawful administration of justice and  
S that such discretion should be exercised in favour of D3.

12. The applications on behalf of D1, D2 and D6 are  
T wider in that they are two-pronged: (1) the conduct of  
U the ICAC in carrying out this covert recording was so  
V unworthy or shameful that it would be an affront to public  
conscience to allow the prosecution to proceed; and (2)

A they are unable to have a fair trial as a result and it  
B would be an abuse of the court's process to allow the  
C prosecution to proceed.

D 13. From the facts above, the only inference which,  
E in my judgment, can be drawn is that the ICAC deliberately  
F and intentionally recorded a conversation between D3 and  
G his solicitors, knowing that legal advice would almost  
H certainly be given and would almost certainly cover  
I matters relating to the raid, which meeting would,  
J therefore, be prima facie privileged. The fact that they  
K warned PW1, prior to the meeting, that he would have a  
L right to privilege in relation to any advice given during  
M the meeting and that they obtained his waiver prior to the  
N meeting clearly shows that it was in their mind at that  
O stage.

P 14. They knew that a solicitor would be present for a  
Q number of reasons and were probably aware of the identity  
R of that solicitor:

L (1) PW1 informed ICAC that a solicitor was to be  
M present; PW1 specifically used the Chinese word  
N for "solicitor", rather than just "lawyer", in  
O his non-prejudicial witness statements;

P (2) PW1 informed ICAC that Keith Leung had advised  
Q him to say nothing and contact Mr Fung of  
R Haldanes, if he were to be arrested, and to  
S remain silent.

T 15. The fact that the meeting occurred in a  
U restaurant rather than in the solicitor's or the client's  
V office does not in any way affect the fact that it was a  
meeting which attracted privilege, although it does seem  
to me to have been a rather dangerous precedent and may  
cause suspicion as to the formality of the meeting. As I  
indicated to counsel, taking a covert recording device

A into the solicitor's office would have been an even more  
B serious matter than the situation here.

C 16. Newman J, in the case of R. v. Sutherland, 29  
D January 2002, a case to which I have been referred at  
E length, stated:

F "The suspects were there to be interviewed by the  
G police and it is obvious the solicitors were there to  
H advise them in connection with their arrests and the  
I interviews. There can be no question that the  
J occasions of the conversations, albeit not occurring  
K in the privacy of an interview room, are to be  
L regarded as occasions which attracted privilege."

M 17. This was not a situation, I repeat, where the  
N ICAC came into possession of privileged material by  
O mistake or accident or only where privileged conversations  
P might have taken place. This was a meeting which the ICAC  
Q knew would be prima facie covered by legal professional  
R privilege and which they proceeded to intentionally record  
S and listen to.

T 18. The only relevant circumstances in which a law  
U enforcement authority can intercept a privileged  
V conversation is if they have grounds to believe that the  
meeting with the lawyer was concerned in the furtherance  
of some criminal activity.

19. There is a procedure within the ICAC to obtain an  
authorisation for the covert obtaining of taped evidence.  
I have been shown a copy of the relevant authorisation in  
these proceedings. It is dated 15 November 2002 and is  
signed by a principal investigator.

20. It is of note that there is no mention in the  
document that solicitors were to be present at the  
meeting. It is also of note that, although there is  
reference to the possibility that evidence of a possible  
offence of perverting the course of justice being secured,  
there was no factual or, indeed, any basis to such belief  
set out in the document. It is clear, therefore, that  
there was a serious flaw in the granting of the  
authorisation.

A 21. In England and Wales, before a covert operation  
B can be carried out using listening devices for the  
C obtaining of evidence, it is necessary for the law  
D enforcement authority to make an application to a senior  
E officer under the provisions of the Regulation of  
F Investigatory Powers Act of 2000. Such procedure was  
G followed in Edward Grant v. R., 4 May 2005, another case  
H to which I was referred at length. Laws LJ at paragraph  
I 46, six lines down, states:

G "The application made was gravely defective because  
H of the absence of any warning of the possibility that  
I solicitors' communications might be picked up."

J 22. In this case, no mention was made in the  
K application that solicitors' communications not just might  
L but would be picked up. There was reference to the  
M possibility of an offence of perverting the course of  
N justice taking place. There has been no evidence of such  
O an offence taking place since but, more importantly, the  
P ICAC were relying upon the claimed impropriety of Keith  
Q Leung who was not present at the meeting, was not expected  
R to be there, and is to play no part in these proceedings.

S 23. The circumstances in which the covert recordings  
T came to be made in this case and in the cases of Grant and  
U Sutherland are very different. In this case, there was no  
V need to carry out the covert recording of this meeting.  
The ICAC had PW1 working inside the company; he was  
providing them with the necessary documentation and other  
covertly taped conversations. They were only looking for  
evidence to corroborate their case, as stated in the  
application for the authorisation.

24. D3 had not yet been arrested, but that was  
because he had not been present at the company at the time  
of the operation on 7 November. He was a suspect, and had  
been since May 2002.



A 25. The main conversations to be recorded were A  
B between D3, PW1 and the solicitors, although there may B  
C have been other conversations when the solicitors were C  
D absent. One conversation was recorded after the D  
hour. D

E 26. By contrast, certainly in the case of Sutherland, E  
F the police were investigating a very serious charge - F  
G conspiracy to murder. Ordinary police methods had not G  
H even produced a body at the time. There were, however, a H  
I number of suspects and they had been arrested and I  
J cautioned at the time of the covert recording and were in J  
the process of being interviewed at the police station  
with their legal advisors. The recordings took place over  
more than 24 hours and other conversations, apart from  
that with solicitors, were targeted.

K 27. Laws LJ in Grant stated: K

L "... but we are in no doubt but that, in general, L  
M unlawful acts of the kind done in this case, M  
N amounting to a deliberate violation of a suspected N  
person's right to legal professional privilege are so  
great an affront to the integrity of the justice  
system and, therefore, the rule of law that the  
associated prosecution is rendered abusive and ought  
not to be countenanced by the court."

O 28. Laws LJ referred to Lord Taylor CJ in the House O  
P of Lords in R. v. Derby Magistrates' Court, ex parte B P  
[1996] AC 487, wherein Lord Taylor CJ states:

Q "Legal professional privilege is thus much more than Q  
R an ordinary rule of evidence limited in its R  
S application to the facts of a particular case which S  
administration of justice as a whole rests."

T 29. Laws LJ continued: T

U "It is unnecessary to multiply authority to U  
V demonstrate the importance which the law attaches to V

A legal professional privilege. It is enough to say  
B that, in this area, the jurisprudence of the European  
C law of human rights marches with the common law. The  
D reasoning in Brennan v. The United Kingdom shows that  
E a breach of Article 6 of the European Convention on  
F Human Rights may be constituted by an infringement of  
G the right to confidential legal advice even though it  
H is not shown that, in consequence, the accused cannot  
I have a fair trial."

30. In Hong Kong, the right to privacy is guaranteed  
by Articles 29 and 30 of the Basic Law, and the right to  
receive confidential legal advice is enshrined in Article  
35.

31. Laws LJ continued:

"It is not, in general, the function of criminal  
courts to discipline the police. Where a fair trial  
remains possible, faced with an application for a  
stay on the grounds of abuse, the court has a balance  
to strike. On the one hand, the public confidence in  
the criminal justice system has to be maintained and,  
where misconduct by the police or prosecution is  
shown, that will favour a stay of proceedings. On  
the other hand, it is the court's duty to protect the  
public from crime, especially serious crime, and that  
may militate in favour of the refusal of stay."

32. Laws LJ continued:

"We are quite clear that the deliberate interference  
with a detained suspect's right to the confidence of  
privileged communications with his solicitor, such as  
we have found was done here, seriously undermines the  
rule of law and justifies a stay on grounds of abuse  
of process notwithstanding the absence of prejudice  
existing in evidence gathered by the Crown as the  
fruits of the police officers' unlawful conduct."

33. In this case, it was, in my judgment, a cynical  
and flagrant infringement of D3's right to legal  
professional privilege as, I repeat, it was unnecessary  
and they knew precisely the nature of the problems they  
were getting to. They had sufficient evidence. They had,  
inter alia, PW1 and the necessary documents obtained in  
their search operations.

A 34. In the authorisation, reference was made to A  
B obtaining the evidence which would corroborate the section B  
C 4(1) Prevention of Bribery Ordinance offence. They sent C  
D PW1 into the meeting advising him of his right to legal D  
E professional privilege and obtained a waiver from him E  
F first. F

G 35. In my judgment, the fact that D3 was not under G  
H arrest at the time, and undergoing interrogation, does not H  
I affect the serious nature of this conduct. The ICAC were I  
J ready to arrest D3 on 7 November. He was a suspect and J  
K had been since May 2002. K

L 36. In my judgment, by itself, this was a breach of a L  
M fundamental condition upon which the administration of M  
N justice as a whole rests. I accept the submission made on N  
O behalf of D3 that O  
P

Q "It is an affront to the public conscience with Q  
R severe consequences for public confidence in the R  
S administration of justice" S

T as was said by Sir Anthony Mason NPJ in HKSAR v. Lee Ming- T  
U tee (2) at page 395F. U

V 37. I now turn to the applications made on behalf of V  
D1, D2 and D6.

38. I will deal with the matter of unfairness first, V  
as so invited by Mr Marash, Senior Counsel. D3 has not V  
waived his privilege, although PW1 has waived his V  
privilege, and did so prior to the meeting. V

39. In my earlier ruling, I rejected the V  
prosecution's submission that either D3, by inviting PW1 V  
to the meeting, had thereby impliedly waived his legal V  
privilege and/or that PW1, by waiving his privilege, had V  
thereby waived the privilege of D3. I do not propose to V  
repeat my reasons herein. V

40. Newman J in Sutherland, at page 10C, stated: V

"It is, of course, elementary that the privilege is V  
that of the defendant and it is the privilege which V

A he enjoys not simply as against the prosecution but  
B as against his fellow defendants, as well."

C Strenuous efforts were made in the Sutherland trial to  
D restrict the number of persons within the trial who had  
E heard the material. Inquiry also had to be made as to how  
F much of the privileged evidence had been listened to, and  
G by whom, in the police investigating team.

H 41. That is not a problem in this case, as we know  
I that PW1 was present throughout the whole meeting and,  
J when he came to make a later non-prejudicial witness  
K statement, the tape was played in his presence and in the  
L presence of the two interviewing officers. There is no  
M question of them having been listened to by mistake. It  
N was done intentionally and deliberately and at a stage the  
O ICAC knew the identity of the persons who had been present  
P at the meeting. A video was also made of the meeting by  
Q ICAC officers.

R 42. In this case, the discussion which took place  
S during the privileged meeting are known to PW1, the main  
T prosecution witness to whom an immunity has been given, Mr  
U Fung of Haldanes, who represents D6, and at least two of  
V the investigating ICAC team. It is likely that their  
superior officers will also know of the contents. D3 has  
not waived his privilege and so the prosecution have in  
their possession material that they are not entitled to  
disclose.

43. Newman J in Sutherland stated, at page 46 A to C:

"In a case where all parties should be on an equal  
footing so far as the case against them is concerned,  
the prosecution have a unique position. The  
prosecution are in possession and have been in  
possession of evidence in connection with each of  
these defendants whose conversations they  
intercepted, which cannot be known to the other  
defendants. In a case such as this, allegations  
between defendants are run-of-the-mill - namely, one  
defendant, in the course of an interview with a  
solicitor, stating what his position is and stating

A what he believes the position of any other co-  
B defendant might be."

C Newman J continued:

D "The prosecution cannot cure this inequality, this  
E lack of equality of arms. The police have created it  
F by being possessed of material which it should never  
G have acquired and which it cannot now reveal to all  
H the defendants."

F 44. The fact that none of the counsel in this trial  
G and none of the ICAC officers who are in court assisting  
H the prosecution are aware of the contents of the tape  
I cannot make equal what is manifestly not and cannot be  
J made equal.

I 45. In my judgment, the tape is primarily a bug and a  
J potential exhibit, although it plainly can have a  
K secondary use of being an aide-mémoire. Similarly, a  
L cautioned statement can have a secondary use of being an  
M aide-mémoire although that is not its primary use.

L 46. D1, D2 and, indeed, D6 do not know what happened  
M at the meeting and are not entitled to know and cannot  
N find out what use was made of that material. It is clear  
O from the application of the authorisation that the ICAC  
P were intending to obtain evidence that would corroborate  
Q offences under section 4(1) of the Prevention of Bribery  
R Ordinance and section 19 of the Theft Ordinance.

P 47. The obtaining of evidence was not against one  
Q particular suspect. The defence cannot discover how PW1's  
R evidence was affected by what he heard at that meeting, as  
S his evidence could not be challenged in cross-examination.  
T The defence could not know whether PW1 was lying and  
U perhaps of more importance is the fact that none of the  
V defence counsel would know whether something detrimental  
or positive was said about their respective clients during  
the meeting, save, perhaps, for Mr Fung who would,  
presumably, be in a position to advise Mr Duncan, Senior  
Counsel, when to go no further.

A 48. On the face of the witness statements made by A  
PW1, there have been some changes in his evidence. There B  
are many reasons why these changes may have been made.

C 49. My attention was drawn to one example of an C  
amendment made by PW1 in the non-prejudicial statement he D  
made after the meeting of 16 November. There may be a D  
perfectly innocent explanation as to the need to make the E  
amendment at that stage but it did happen after the E  
meeting of 16 November, despite the fact that the F  
documents had been seen by him and commented upon by him F  
in non-prejudicial witness statements prior to the G  
meeting. It is a coincidence that cannot be explained in G  
detail and cannot be properly tested because of privilege. H

I 50. Further, I wholly concur with the submission, put I  
on behalf of D2, that, even if the meeting had not been J  
taped, the prosecution would have had to disclose the J  
contents of the meeting as there is a duty on the K  
prosecution to disclose information as well as documents. K  
However, because the meeting was privileged, PW1 cannot L  
disclose his full recollections of the meeting because, as L  
night follows day, the prosecution cannot disclose that M  
either. M

N 51. Having considered the matter from all angles, I N  
am drawn to the conclusion that, as a result of the ICAC O  
conduct in not just recording the meeting of 16 November O  
2002 but by having PW1 present, D1, D2 and D6 cannot have P  
a fair trial. The trial would be an abuse of process and, P  
accordingly, I also order a permanent stay in relation to Q  
these three defendants. I would also have exercised my Q  
discretion to stay the proceedings on the same ground as I R  
stayed D3's proceedings and for essentially the same R  
reasons. S

T 52. If I may say, in defence of the ICAC, that the T  
fact that Hong Kong holds such a respected position in U  
international trade and finance is due very largely to the U  
part played by them in controlling corruption in Hong V

A Kong. It is a law enforcement agency that is admired in  
B many countries and I am sure that many countries in the  
C world, including Europe and North America, would benefit  
D from such an agency. However, they must make sure that  
E they do not overstep the bounds of what is right in their  
F enthusiasm for ridding Hong Kong of corruption.

53. The legislators also need to introduce the  
E regulations required for lawful covert recording as was  
F originally envisaged under the Basic Law. They should do  
G so with all due haste, so that the guarding of the guards  
H is not just left to the Judiciary.

54. The trial will be stayed in relation to all four  
H defendants.

55. I believe D1 and D2 can be discharged and I  
I believe, in relation to D3 and D6, their bail will be  
J extended in relation to other matters.

K COURT: Yes, thank you.

L MR MARASH: Your Honour, before you depart, there is an  
M application, inevitably, for costs in this matter ...

M COURT: Yes.

N MR MARASH: ... on behalf of my client. I think Mr  
O Cheng ...

(Counsel takes instructions)

P MR MARASH: I'm sorry, I'm told to stand the matter down  
Q and ask for instructions before I make the  
R application.

Q COURT: Okay.

R MR MARASH: If we could perhaps have ten minutes.

S COURT: Certainly.

Court adjourns - 3.55 pm

Court resumes - 4.08 pm

Defendants not present. Appearances as before.

U MR CHENG: Thank you.

A COURT: Yes. A

B MR CHENG: Thank you very much, your Honour, for your B  
C indulgence. Obviously, Mr Shum is absolutely C  
delighted with your Honour's ruling but he has no  
application.

D COURT: No application for costs. D

E MR CHENG: Thank you. E

F MR MARASH: And I'm pleased to say, your Honour, my client F  
also has no application.

G COURT: So I don't need to refuse it. G

H MR DUNCAN: In the case ... H

I COURT: And you're still in -- going on? I

J MR DUNCAN: Beg your pardon? J

K COURT: You're still going on in other trials, I think. K

L MR DUNCAN: We are going on in another trial but there is, L  
also, the matter of an application for costs in  
respect of these proceedings, ...

M COURT: I see, okay. M

N MR DUNCAN: ... your Honour, and there is an application N  
O for costs in the case of D3 and D6. When I mentioned O  
P that to my learned friends in your absence a few P  
moments ago, there were a lot of groans, not, I  
trust, directed at the integrity of that sort of  
application but the fact that I would be holding  
people up in getting away from the court, this  
afternoon. I discussed that, also, with my learned  
friend Mr Surman, and subject to your Honour's  
direction, might I respectfully propose that we hear  
that application in the morning?

Q COURT: I suppose so, yes. I've got a plea, actually, at Q  
R 10 o'clock.

S MR DUNCAN: Right. S

T COURT: They've already put something in. But how long is T  
it going to last?

U MR DUNCAN: I don't think it would last any more than half U  
an hour ...

V COURT: All right. V



A MR DUNCAN: ... but if it would be more ...

B COURT: No, that's fine.

C MR DUNCAN: If it's better for your Honour to hear it  
D later in the day, we don't have a problem with that,  
I think, either.

E MR SURMAN: No.

F MR DUNCAN: It's a matter for your Honour.

G COURT: It's probably best at about 12 o'clock.

H MR DUNCAN: Very good, your Honour. Thank you.

I MR SURMAN: Thank you, your Honour.

J COURT: Okay, it's going to be adjourned to - what's the  
K date tomorrow? - 6th, midday. I don't need to make  
L any order in relation to D3 and D6; it's up to them  
M whether or not they attend.

N MR DUNCAN: I'm much obliged.

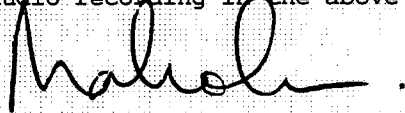
O MR SURMAN: Yes, I was just going to raise that, your  
P Honour.

Q COURT: Yes, thank you.

R MR SURMAN: Thank you.

S Court adjourns - 4.11 pm  
T 5 July 2005

U I/we certify that, to the best of my/our ability  
V and skill, the foregoing is a true transcript of  
the audio recording in the above proceedings.

  
.....  
Malcolm B I'Anson  
Date: 5 July 2005