

**THE TRIAL CHAMBER**

**Case No.:** STL-11-01/T/TC

**Before:** Judge David Re, Presiding  
Judge Janet Nosworthy  
Judge Micheline Braidy  
Judge Walid Akoum, Alternate Judge  
Judge Nicola Lettieri, Alternate Judge

**Registrar:** Mr Daryl Mundis

**Date:** 14 July 2016

**Original language:** English

**Classification:** Public

**THE PROSECUTOR**

v.

**SALIM JAMIL AYYASH  
HASSAN HABIB MERHI  
HUSSEIN HASSAN ONEISSI  
ASSAD HASSAN SABRA**

---

**DECISION ON EVIDENCE RELATED TO THE LOCATIONS OF DAHIEH  
AND SYRIAN MILITARY INTELLIGENCE DETACHMENTS IN LEBANON**

---

**Office of the Prosecutor:**

Mr Norman Farrell, Mr Graeme Cameron &  
Mr Alexander Hugh Milne

**Counsel for Mr Salim Jamil Ayyash:**

Mr Emile Aoun, Mr Thomas Hannis & Mr Chad  
Mair

**Legal Representatives of  
Participating Victims:**

Mr Peter Haynes, Mr Mohammad F. Mattar  
& Ms Nada Abdelsater-Abusamra

**Counsel for Mr Hassan Habib Merhi:**

Mr Mohamed Aouini, Ms Dorothee Le Fraper du  
Hellen & Mr Jad Khalil

**Counsel for Mr Hussein Hassan Oneissi:**

Mr Vincent Courcelle-Labrousse, Mr Yasser  
Hassan & Ms Natalie von Wistinghausen

**Counsel for Mr Assad Hassan Sabra:**

Mr David Young, Mr Guénaél Mettraux &  
Mr Geoffrey Roberts



## INTRODUCTION

1. The Prosecution seeks the admission into evidence, under Rule 155 of the Special Tribunal's Rules of Procedure and Evidence, of two witness statements of a Prosecution analyst, Mr Andrew Fahey (Witness PRH263). It also seeks to add to the exhibit list and to admit into evidence, under Rule 154, a response by the Lebanese Minister of National Defence to a Prosecution request for assistance.<sup>1</sup> This describes the locations of 30 Syrian Military Intelligence detachments in Lebanon in 2004 and 2005 that the Prosecution intends to plot on a map and include in its Electronic Presentation of Evidence programme (EPE).<sup>2</sup> Mr Fahey explains the mapping of these locations by converting their geographic coordinates for their plotting into the EPE, and also by analysing the testimony of three witnesses to define the general area of Dahieh, in the southern suburbs of Beirut, for mapping in the EPE.<sup>3</sup> Counsel for the Accused, Mr Salim Jamil Ayyash, Mr Hassan Habib Merhi and Mr Hussein Hassan Oneissi, and counsel acting for the then Accused Mr Mustafa Amine Badreddine,<sup>4</sup> opposed the motion.<sup>5</sup>

## SUBMISSIONS

### **A. Prosecution submissions**

#### **i) Addition to exhibit list and admissibility**

2. The Prosecution seeks to add to its exhibit list the Lebanese Government's response, dated 26 May 2015, to the Prosecution's request for assistance. A similar response containing near identical information was disclosed to the Defence on 20 March 2015. The Defence has had notice of the

---

<sup>1</sup> STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2122, Prosecution Motion for the Admission of Evidence Related to the Locations of Dahieh and Syrian Military Intelligence Detachments in Lebanon, 17 August 2015.

<sup>2</sup> Prosecution motion, paras 2-3 and 6.

<sup>3</sup> Prosecution motion, para. 4; Witnesses Mr Mustafa Nasser, transcript of 10 April 2015, p. 7; Mr Ghazi El-Youssef, transcript of 11 March 2015 pp 38-41 and 47-50; Mr Bassem El-Sabeh, transcript of 16 March 2015, p. 13, 18 March 2015, pp 93-94.

<sup>4</sup> F0019-AR126.11, Decision on Badreddine Defence interlocutory appeal of the "Interim decision on the death of Mr Mustafa Amine Badreddine and possible termination of the proceedings", 11 July 2016; F2633, Order Terminating Proceedings Against Mustafa Amine Badreddine Without Prejudice and Ordering the Filing of an Amended Consolidated Indictment, 11 July 2016.

<sup>5</sup> F2150, Ayyash Defence Response to Prosecution Motion for the Admission of Evidence Related to the Locations of Dahieh and Syrian Military Intelligence Detachments, 31 August 2015; F2155, Badreddine Defence Response to the "Prosecution Motion for the Admission of Evidence Related to the Locations of Dahieh and Syrian Military Intelligence Detachments in Lebanon", 31 August 2015; F2154, Réponse de la Défense de Merhi à la "Prosecution Motion for the Admission of Evidence Related to the Locations of Dahieh and Syrian Military Intelligence Detachments in Lebanon", 31 août 2015; F2151, Oneissi Defence Response to the "Prosecution Motion for the Admission of Evidence Related to the Locations of Dahieh and Syrian Military Intelligence Detachments in Lebanon" dated 17 August 2015, 31 August 2015.

Prosecution's intention to file an application relating to the locations of Syrian Military Intelligence detachments in Lebanon since then and will not be prejudiced by this addition to the exhibit list.<sup>6</sup>

3. The response contains relevant information identifying locations on which witnesses have already testified concerning telephones attributed to the former Syrian Chief of Intelligence in Lebanon, Mr Rustom Ghazaleh, and to Mr Rafik Hariri's Chief of Security, Mr Abou Tareq (Yahya Al-Arab) and to senior Hezbollah officials who were in contact with Mr Ghazaleh.<sup>7</sup>

4. The information in the response contains the necessary indicia of reliability. The Lebanese Minister of National Defence provided the information to the Office of the Public Prosecutor at the Court of Cassation on 26 April 2015 which then forwarded it to the Special Tribunal's Office of the Prosecutor on 26 May 2015.<sup>8</sup> Mr Fahey verified a number of the locations identified in the response against independent mapping information. Additionally, other witnesses have also independently identified two locations that Mr Ghazaleh used as his offices.<sup>9</sup>

#### **ii) Admissibility of witness statements under Rule 155**

5. The statements are relevant and have probative value as they set out how Mr Fahey plotted the locations. A significant portion of call activity of the Green and Blue network telephones—as pleaded in the consolidated indictment and allegedly used in the preparation of the attack on the former Lebanese Prime Minister Mr Rafik Hariri, and the personal mobile telephones of Mr Badreddine and Mr Ayyash—is connected with cell sites in the Dahieh area.<sup>10</sup> Mr Fahey's first statement describes how he converted the coordinates of the Syrian Military Intelligence detachments into a coordinate system for plotting into the EPE software, to within 100 metres of accuracy.<sup>11</sup> His second statement analyses the evidence of three witnesses who have already testified about an area they referred to as Dahieh, in the southern suburbs of Beirut.<sup>12</sup> Mr Fahey maps the

---

<sup>6</sup> Prosecution motion, para. 20.

<sup>7</sup> Witnesses Mr Ghaleb Ahmad El-Chammaa, transcript of 11 February 2015, pp 21-23; Mr Atef Majdalani, transcript of 28 April 2015, pp 32-36; Mr Walid Jumblatt, transcript of 4 May 2015, p. 23; Mr Hani Hammoud, transcript of 20 May 2015 pp 38-39.

<sup>8</sup> Prosecution motion, Annex A: the Prosecution state that the information was "provided to the Office of the Public Prosecutor of the Court of Cassation on 26/05/2015 who in turn forwarded it to the Office of the Prosecutor at the STL on 26/04/2015". The Trial Chamber assumes there must be a typographical error in the dates and that they are meant to be stated the other way around.

<sup>9</sup> Witnesses Mr Ghaleb Ahmad El-Chammaa, transcript of 11 February 2015, pp 21-23, 37, 39; Mr Atef Majdalani, transcript of 28 April 2015, pp 32-36; Mr Walid Jumblatt, transcript of 4 May 2015, p. 23; Mr Hani Hammoud, transcript of 20 May 2015 pp 38-39.

<sup>10</sup> Prosecution motion, paras 11-13.

<sup>11</sup> Dated 14 August 2015, ERN 60311263-60311270, paras 16-17; Prosecution motion, para.10.

<sup>12</sup> Dated 14 August 2015, ERN 60311271-60311286; Witnesses Mr Mustafa Nasser, transcript of 10 April 2015, p. 7; Mr Ghazi El-Youssef, transcript of 11 March 2015 pp 38-41 and 47-50; Mr Bassem El-Sabeh, transcript of 16 March 2015, p. 13, transcript of 18 March 2015, p. 94.

minimum area they agree upon. The two witness statements do not go to the acts and conduct of the Accused but rather relate to background issues concerning mapping methods.<sup>13</sup>

## **B. Defence submissions**

6. Counsel for Mr Ayyash object to the Prosecution's motion, submitting that the Prosecution has not advanced any justification for seeking to add the response to the exhibit list eighteen months after the commencement of trial.<sup>14</sup> The Trial Chamber should reject the addition of the response to the Rule 91 exhibit list and to reject the addition of the two witness statements to the exhibit list and their admission into evidence.<sup>15</sup> The Prosecution has not established *prima facie* relevance and probative value because the purported locations of Mr Ghazaleh's offices do not feature in the consolidated indictment or in the pre-trial brief.<sup>16</sup> The statements should not be admitted into evidence without the Prosecution first requesting their addition to the Rule 91 exhibit list. The mere fact that the witness is on the witness list does not provide sufficient notice as to which statements the Prosecution intends to use. For example Defence counsel had received 26 witness statements of Mr Fahey.<sup>17</sup> The Prosecution is confusing its disclosure obligations with the requirement to give the Defence proper notice and adequate time to prepare its defence.<sup>18</sup>

7. Counsel for Mr Badreddine, who was then an Accused, also opposed the motion, taking issue with the late disclosure of the response, submitting it was disclosed two months after the Prosecution received it.<sup>19</sup> Additionally, the Prosecution failed to establish the relevance of the response that the Prosecution is referring for the first time to the suggestion that 'phones attributed to senior Hezbollah officials were in contact with Rustom Ghazaleh on days when their phones connected to cell towers in Chtaura and Anjar, such as 5 January 2005'.<sup>20</sup> This is an inappropriate way to notify new allegations that lack specificity.<sup>21</sup>

8. They also objected to the late disclosure without good cause of the two witness statements and to the Prosecution seeking to circumvent the necessity of requesting their addition to the Rule 91 exhibit list.<sup>22</sup> Such late disclosure, three years after the disclosure deadline has expired and one

---

<sup>13</sup> Prosecution motion, paras 14 and 18.

<sup>14</sup> Ayyash response, para. 5.

<sup>15</sup> Ayyash response, paras 21- 25.

<sup>16</sup> Ayyash response, para. 6.

<sup>17</sup> Ayyash response, para. 10.

<sup>18</sup> Ayyash response, para. 18.

<sup>19</sup> Badreddine response, para. 2.

<sup>20</sup> Badreddine response, para. 4.

<sup>21</sup> Badreddine response, paras 4 and 5.

<sup>22</sup> Badreddine response, para. 6.

month before the witness concerned was scheduled to testify means that the Defence has not been put on adequate notice that the maps in question will cover the alleged delineation of the Dahieh area and the purported location of Syrian Military Intelligence detachments.<sup>23</sup>

9. Counsel for Mr Merhi oppose the addition of the response to the exhibit list and its admission into evidence under Rule 154, and admitting the witness statements into evidence under Rule 155.<sup>24</sup> The two statements are not *prima facie* relevant under Rule 149 (C).<sup>25</sup> Moreover, it would be unfair and prejudicial to the Defence to include them in the ‘case file’, within the meaning of Rule 149 (D) because of their connection with the new allegations implicating the Accused which have not been notified.<sup>26</sup> The location of Mr Ghazaleh’s office and the allegation that there was contact between Mr Ghazaleh and Hezbollah officials goes beyond the mere presentation of the political context but instead go to proof of new allegations not signified in the indictment, which implicate the accused. The motion vaguely cites the relevance, without any reference, of locating senior Hezbollah officials on particular days, which are not defined, when their telephones were allegedly in contact with Mr Ghazaleh, in Chtaura and Anjar. The date of 5 January 2005 has been added to those already referred to in the Prosecution motion of 21 July 2015, without any explanation. The vague elements contained in the Prosecution motion make it impossible to prepare a proper defence.<sup>27</sup>

10. They also oppose admitting the two statements into evidence as they are not on the Prosecution’s exhibit list. Written statements are separate from the witness ‘entities’ within the meaning of Rule 91 (G) (ii), and are exhibits under Rule 91 (G) (iii). This interpretation has been accepted until now; since the start of its case, the Prosecution has included written witness statements of its witnesses on the exhibit list. The Trial Chamber has also accepted this interpretation by admitting them as exhibits.<sup>28</sup> The Prosecution’s obligation under Rule 91 to identify, by adding to the exhibit list, the evidence it intends to tender into evidence, is separate from its disclosure obligation. Accepting the Prosecution’s interpretation would oblige the Defence to mobilise resources and preparation time to analyse numerous statements which probably will never be admitted into the ‘case file’.<sup>29</sup> The disclosure of the lists provided for in Rule 91 is connected to an obligation to notify that valid reasons are required to be submitted for any modification once the trial has begun.<sup>30</sup> The

---

<sup>23</sup> Badreddine response, paras 10-11.

<sup>24</sup> Merhi response, paras 1-2 and 5.

<sup>25</sup> Merhi response, paras 4 and 9.

<sup>26</sup> Merhi response, para. 4.

<sup>27</sup> Merhi response, para. 3.

<sup>28</sup> Merhi response, para. 6.

<sup>29</sup> Merhi response, para. 7.

<sup>30</sup> Merhi response, para. 8.

Prosecution is now attempting to circumvent that requirement through its new interpretation of Rule 91 (G) (iii).<sup>31</sup>

11. Both witness statements were disclosed to the Defence three days before the motion was filed. The topics addressed are new, technical and not specified in the summary of Mr Fahey's proposed testimony on the Rule 91 (G) (ii) list, and their relevance regarding the political context is highly questionable. There is no valid reason to add the statements to the exhibit list and in the absence of appropriate notification; it would be prejudicial to the Defence to have to take a position as to their content.<sup>32</sup>

12. Counsel for Mr Oneissi oppose the motion. The 'assistance' of the locations is limited to their accuracy.<sup>33</sup> The location evidence is Mr Fahey's analytical work product, bringing together secondary sources, the validity of which has never been objectively ascertained.<sup>34</sup> Mr Fahey can orally explain these procedures. The Defence can cross-examine him on his procedures in creating the coordinates. The admission of the location evidence at this juncture is therefore premature.<sup>35</sup> Moreover, the Prosecution has also not properly set out the relevance of this evidence; it has continuously refused to specify the alleged role of Hezbollah in its case and has never explained the relevance of evidence related to the Syrian military. Therefore, until the Prosecution sets out the role of the Syrian officials and Hezbollah within its case, the relevance of such specific evidence cannot be ascertained.<sup>36</sup> The Trial Chamber should postpone its decision as to admission until it has heard the witness's *viva voce* evidence.<sup>37</sup>

## **DISCUSSION**

### **A. Amending the Prosecution's exhibit list**

13. The Trial Chamber may, in the interests of justice, allow a party to amend its witness and exhibit lists.<sup>38</sup> In doing so it must balance the Prosecution's interest in presenting any available evidence against the rights of an Accused person to adequate time and facilities to prepare for trial.<sup>39</sup> The evidence must be *prima facie* relevant and probative, and the Trial Chamber may consider,

---

<sup>31</sup> Merhi response, para. 8.

<sup>32</sup> Merhi response, para. 9.

<sup>33</sup> Oneissi response, para. 4.

<sup>34</sup> Oneissi response, para. 6.

<sup>35</sup> Oneissi response, para. 7.

<sup>36</sup> Oneissi response, para. 8.

<sup>37</sup> Oneissi response, para. 9.

<sup>38</sup> F2149, Decision on Prosecution Motion to Admit 62 Photographs, 28 August 2015, para. 3; F2062, Decision on Prosecution Motion for the Admission of Locations Related Evidence, 9 July 2015, para. 62.

<sup>39</sup> Article 16 (b) STL Statute.

among other factors, (i) whether the Prosecution has shown good cause for not seeking the amendments at an earlier stage; (ii) the stage of the proceedings; and (iii) whether granting the amendment would result in undue delay.<sup>40</sup>

14. The Trial Chamber has carefully reviewed the response to the Prosecution's request for assistance, received on 26 May 2015. The Defence has been on notice that the Prosecution intended to file an application relating to the locations of the Syrian Military Intelligence detachments in Lebanon since 20 March 2015. An earlier response containing almost exactly the same information was received on 25 February 2015 and when it was disclosed to the Defence on 20 March 2015, the Prosecution informed Defence counsel that it was intending to apply to add it to its exhibit list.<sup>41</sup> Additionally, Mr Fahey testified on 16 September 2015 about the EPE system, how he chose cell site data and the various locations that have been plotted into this system.<sup>42</sup>

15. The Trial Chamber is satisfied of the *prima facie* relevance of the material. The response providing the locations of the Syrian Military Intelligence detachments in Lebanon in 2004 and 2005 is relevant to meetings and movements of people connected to the Prosecution's case and described by a number of witnesses in their testimony. In particular, the information contained in the response identifies locations about which witnesses have already testified concerning telephones attributed to Mr Ghazaleh, Mr Abou Tareq (Yahya Al-Arab), and senior Hezbollah officials who were in contact with Mr Ghazaleh.<sup>43</sup> Several witnesses have independently identified two of the locations Mr Ghazaleh used as his offices.<sup>44</sup> This information is not new.

16. Mr Fahey compared the information in the response, provided by the Lebanese Minister of National Defence,<sup>45</sup> with other independently obtained mapping information, and verified the consistency and accuracy of the information contained in the response.<sup>46</sup> The response to the request for assistance is therefore also *prima facie* reliable and hence has probative value. Good cause to add

---

<sup>40</sup> STL-11-01-T/TC, F1484, Decision on Prosecution Motion on a Consolidated Indictment and Amending Witness and Exhibit Lists, 4 April 2014, para. 15; STL-11-01/PT/TC, F1308, Decision on Prosecution's Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014, para. 3; F1280, First Decision on the Prosecution request for Admission of Written Statements under Rule 155, 20 December 2013, para. 5; F1228, Decision Authorising the Prosecution to Amend its Exhibit List and to Redact Exhibit 55, 19 November 2013, para. 4.

<sup>41</sup> Prosecution motion, para. 20.

<sup>42</sup> Transcript of 16 September 2015, pp 3, 22 and following.

<sup>43</sup> Witness Mr Ghaleb Ahmad El-Chammaa, transcript of 11 February 2015, pp 21-23, Mr Atef Majdalani, transcript of 28 April 2015, pp 32-36, Mr Walid Jumblatt, transcript of 4 May 2015, p. 23, Mr Hani Hammoud, transcript of 20 May 2015 pp 38-39.

<sup>44</sup> Witnesses Mr Ghaleb Ahmad El-Chammaa, transcript of 11 February 2015, pp 21-23, 37, 39, Mr Atef Majdalani, transcript of 28 April 2015, pp 32-36, Mr Walid Jumblatt, transcript of 4 May 2015, p. 23, and Mr Hani Hammoud, transcript of 20 May 2015 pp 38-39.

<sup>45</sup> Prosecution motion, para. 6.

<sup>46</sup> Prosecution motion, para. 8.

the response to the exhibit list is demonstrated by the Prosecution obtaining the information in response to evidence provided in court.

17. Adding these documents to the exhibit list will not prejudice the Defence preparations for trial. Mr Fahey has completed the first part of his cross-examination and is available for further cross-examination, if necessary, by Defence counsel. The document may be added to the exhibit list.

### **B. Admitting evidence from the bar table**

18. The Trial Chamber has held that admitting evidence ‘from the bar table’ is a well-established practice before international courts and tribunals. Admitting documents into evidence in this manner allows parties to tender documents or other records into evidence without requiring a witness.<sup>47</sup> As noted above the information in the response to the request for assistance is relevant to the Prosecution case and its *prima facie* reliability has been demonstrated and the document may therefore be admitted into evidence under Rule 154.

### **C. Admission of Mr Fahey’s witness statements under Rule 155 and Government of Lebanon’s response under Rule 154**

19. A witness statement need not be on a Party’s exhibit list for admission into evidence under Rules 155, 156 or 158.<sup>48</sup> If a witness is on a witness list and the opposing Parties have notice of the scope of that witness’s evidence, it is unnecessary to add each statement of that witness to an exhibit list.<sup>49</sup> The Trial Chamber had determined procedural safeguards for admitting statements into evidence under Rule 155 in lieu of oral evidence.<sup>50</sup> A statement must meet the basic requirements for admission into evidence under Rule 149 and, if going to proof of the acts or conduct of the Accused, may not be admitted without cross-examination.

20. The two statements are relevant and have probative value. In the first, Mr Fahey details the process he followed ‘to convert the coordinates of the Syrian Military Intelligence detachments

---

<sup>47</sup> F2584, Decision on Prosecution Rule 154 Motion for the Admission of Documents Relating to Telephone Subscriber Records from the Alfa Company, 3 May 2016, para 22.

<sup>48</sup> F2224, Decision on Prosecution Motion for the Admission of the Statements of Witness PRH056 and PRH087, 29 September 2015, para. 18.

<sup>49</sup> F2224, Corrected Version of ‘Decision on Prosecution Motion for the Admission of the Statements of Witnesses PRH056 and PRH087’ of 29 September 2015, 5 October 2015, para. 18; F2282, Decision on Prosecution Motion to Admit the Statements of Witnesses PRH575 and PRH703, 21 October 2015, paras 17-19.

<sup>50</sup> F0937, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements under Rule 155, 30 May 2013, para. 13; F1280, First Decision on the Prosecution Motion for Admission of Written Statements Under Rule 155, 20 December 2013, paras 7-14; F1785, Corrected Version of Decision on the Prosecution Motion for Admission under Rule 155 of Written Statements in Lieu of Oral Testimony Relating to Rafik Hariri's Movements and Political Events, 11 December 2014, 13 January 2015, para. 3; F2062, Decision on ‘Prosecution Motion for the Admission of Locations Related Evidence’, 9 July 2015, para. 5.



provided in the RFA response into a coordinate system enabling it to be plotted into the EPE programme.<sup>51</sup> The response to the request for assistance, as decided above, is relevant and probative and hence admissible.

21. Regarding the second statement, the Trial Chamber has already heard evidence on the general area of Dahieh—the contours which vary depending upon who is describing it—and three witnesses have already testified about this. A significant portion of the call activity pleaded by the Prosecution relating to the Green and Blue network telephones, and the alleged personal mobile telephones of Mr Badreddine and Mr Ayyash, are connected with cell sites in Dahieh. The information contained in the statement is therefore relevant. The statement identifies the minimum area agreed upon by the three witnesses in their testimony and assists in presenting the general area on a map,<sup>52</sup> thereby giving it probative value.

22. These two statements do not go to the acts and conduct of the Accused; they merely provide information on locations relevant to the Prosecution's case. The evidence relates to background issues (i.e., mapping methods) and not to issues that are important and live between the parties. Such evidence need not be presented *viva voce*. Mr Fahey's statements contain the necessary indicia of reliability. They may be admitted into evidence under Rule 155 (C).

### **DISPOSITION**

**FOR THESE REASONS**, the Trial Chamber:

**ALLOWS** the Prosecution to amend its exhibit list by adding the Lebanese Government's response to the request for assistance;

**DECLARES** admissible, under Rule 154, the Lebanese Government's response to the request for assistance listed in Annex A of the Prosecution's motion;

**DECLARES** admissible, under Rule 155 (C), the two statements of Mr Andrew Fahey listed in Annex B; and

**DECIDES** that it will, at a suitable stage in the proceedings, formally admit the documents into evidence.

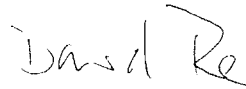
---

<sup>51</sup> Prosecution motion, para. 10.

<sup>52</sup> Prosecution motion, para. 11.

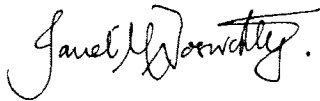
Done in Arabic, English, and French, the English version being authoritative.

Leidschendam,  
The Netherlands  
14 July 2016



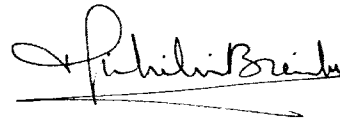
---

Judge David Re, Presiding



---

Judge Janet Nosworthy



---

Judge Micheline Braidy

