

017)

SCSL-11-02-PT
(73-97)

73



SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before: Justice Teresa Doherty, Presiding
Single Judge of Trial Chamber II

Registrar: Ms. Binta Mansaray

Case No.: SCSL-2011-02-PT

Date filed: 16 May 2012

PROSECUTOR **Against** **Hassan Papa Bangura**
Samuel Kargbo
Santigie Borbor Kanu
Brima Bazzy Kamara

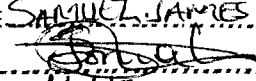
PUBLIC WITH ANNEX
PROSECUTOR'S PRE-TRIAL BRIEF AND FILINGS
PURSUANT TO SCHEDULING ORDER OF 1 MAY 2012

Office of the Independent Counsel:
Mr Robert L. Herbst

Counsel for the Accused:
Mr Melron Nicol Wilson
Chief Charles A. Taku
Mr Kevin Metzger
Mr A.F. Serry Kamal

SPECIAL COURT FOR SIERRA LEONE
RECEIVED
COURT MANAGEMENT
THE HAGUE

* 16 MAY 2012

NAME SAMUEL JAMES FORNAN
SIGN 
TIME 16:18

Office of the Principal Defender:
Ms Claire Carlton-Hanciles

1. This Pre-trial Brief and Filings are respectfully submitted pursuant to the Scheduling Order of 1 May 2012.
2. This Brief describes the legal and factual issues to be tried. It sets forth in turn the nature of the charges, the applicable law and essential elements of those charges, and the factual issues and summary of the Prosecutor's case. Included in that summary are the list of witnesses we intend to call, with the name or pseudonym of each, a summary of the facts on which each is expected to testify, and the estimated length of time required for each witness. Also included are the oral admissions made by each accused to the Independent Counsel during the investigation, although no formal written admissions have been made by any of the accused and, accordingly, there are no matters not in dispute. All matters of fact and law contained in this Brief must be considered contested at this time. That may, of course, change when the Defence for the accuseds file their statements of admitted facts and law, if any, on or before 1 June 2012. We note that the Prosecution duly requested Reciprocal Discovery from the accuseds in its Rule 66 Disclosures dated 15 July 2011, but to date has received none.

NATURE OF THE CHARGES

3. All accuseds are charged in the Order in Lieu of Indictment with contempt of the Special Court, in two counts, by knowingly and willfully interfering with the Special Court's administration of justice by offering a bribe and attempting to influence a witness who gave testimony before a Trial Chamber. in violation of Rule 77(a)(iv) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (as amended 14 May 2005).
4. Count 1 charges that each accused knowingly and wilfully interfered with the Special Court's administration of justice by offering a bribe to a witness who has given testimony before a Chamber; in particular, that on or about 27 November 2010 to 16 December 2010, in Freetown, or from Rwanda, each offered a bribe to

witness TF1-334,¹ who previously had given testimony before Trial Chamber II in the proceedings of *Prosecutor v. Brima, Kamara and Kanu*, in return for recanting his testimony in that trial. Count 2 charges that each accused knowingly and wilfully interfered with the Special Court's administration of justice by otherwise interfering with a witness who has given testimony before a Chamber; in particular, that on or about 27 November 2010 to 16 December 2010, in Freetown or Rwanda, each attempted to influence protected witness TF1-334, who gave testimony before Trial Chamber II in the proceedings of *Prosecutor v. Brima, Kamara and Kanu*, to recant his testimony.

5. The Accused Brima Bazzy Kamara is charged with an additional count (Count 3) of contempt, in knowingly and willfully interfering with the Special Court's administration of justice by disclosing confidential information relating to proceedings in knowing violation of an order of a Chamber, in violation of Rule 77(A)(ii); in particular, that on 29 November 2010, he revealed the identity of protected witness TF1-033 to Samuel Kargbo during a telephone conversation.

APPLICABLE LAW AND ESSENTIAL ELEMENTS OF THE CHARGES

6. The applicable law and essential elements of these charges are well established and have been set out in the Decision of 18 March 2011 determining that an Independent Counsel should be appointed to investigate this matter. The relevant parts of Rule 77 provide:

Rule 77: Contempt of the Special Court

- (A) The Special Court, in the exercise of its inherent power, may punish for contempt any person who knowingly and willfully interferes with its administration of justice, including any person who:

...

¹The Order in Lieu of Indictment states that TF1-334 was a protected witness at the time of the alleged Contempt. I have been advised that that might be inaccurate; in any event, it is not an essential element of the charges under either Count 1 or 2.

(ii) discloses information relating to proceedings in knowing violation of an order of a Chamber;

...

(iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness;

....

(B) Any incitement or attempt to commit any of the acts punishable under Sub-Rule (A) is punishable as contempt of the Special Court with the same penalties.

7. In connection with the charge of disclosing the identity of a protected witness in violation of an order, the prosecutor in any contempt proceeding must prove that:
 - (a) an accused disclosed the identity of a witness to a member of the public;
 - (b) the disclosure was in violation of an order of a Chamber; and
 - (c) the violation was knowingly and willfully committed.²
8. A knowing and willful *mens rea* includes the requirement that the accused acted with a specific intent to interfere with the administration of justice.³ A knowing violation means not only a deliberate violation, but also a deliberate failure to ascertain the circumstances under which a witness testified. Thus, the knowledge requirement may be met either by actual knowledge or willful blindness (also known as deliberate ignorance), but not by negligence.⁴ More specifically, willful blindness is made out where it is established that the alleged contemnor suspected that the fact or order existed, or was aware that its existence was highly probable, but refrained from finding out whether it did exist, so as to be able to deny knowledge of it.⁵ Reckless indifference as to whether a specific conduct was in

²See, e.g., *Independent Counsel v. Brima Samura*, SCSL-2005-01, Judgment in Contempt Proceedings, para. 21.

³*Id.*, para. 19.

⁴*Id.*, para. 23.

⁵*Id.*, para 24.

violation of an order is sufficient to warrant punishment for contempt.⁶

Accordingly the requirement of *mens rea* is either actual knowledge or willful blindness, and applies not only to the general elements of contempt, but also to the requisite specific intent to interfere with the admission of justice.⁷

9. In connection with the charge of offering a bribe to a witness in the instant factual context, the prosecutor in any contempt proceeding must establish that:
 - (a) an accused offered money or something of value to a witness who has given evidence in proceedings before a Trial Chamber; and
 - (b) the violation was knowingly and willfully committed.
10. In connection with the charge of otherwise interfering with, a witness, again in this factual context, the prosecutor must establish that:
 - (a) an accused otherwise interfered with, a witness who has given evidence in proceedings before a Trial Chamber; and
 - (b) the violation was knowingly and willfully committed.
11. The above discussion of the *mens rea* requirements in connection with the charge of disclosing the identity of a protected witness; i.e., that the accused acted with a specific intent to interfere with the administration of justice, and that he have either actual knowledge of or willful blindness to the violation, applies equally to the charges of offering a bribe, intimidating, or otherwise interfering with a witness, whether or not protected, who has given evidence in proceedings before a Trial Chamber.
12. Implicit in the Trial Chamber's 18 March 2011 Decision determining that there was reason to believe that a bribe was offered in this case is the legal principle that it is not necessary to establish that money was actually provided to the witness.⁸ Similarly implicit is the legal principle that no specific sum of money need be offered or accepted in order to make out charge of offering a bribe. The facts presented by the Prosecutor to the Trial Chamber leading to the 18 March 2011 Decision made clear that only the promise of financial compensation, with

⁶ *Id.*, para 25.

⁷ *Id.*, para.27.

⁸ Decision of 18 March 2011, para. 37.

no specificity in amount, was proffered to the witness. Therefore, the Trial Chamber's Decision, finding cause to believe that the offer of a bribe may have been committed, effectively established the principle that an offer of money in an undetermined amount is something of value that is sufficient under the first essential element of that charge.⁹

13. Similarly, in its 18 March 2011 Decision, the Trial Chamber determined that intimidation does not require proof that the witness was actually intimidated; the Prosecution need only prove that the conduct in question was intended to interfere with the Tribunal's due administration of justice,¹⁰ and that the offence of "otherwise interfering with a witness" can encompass conduct of similar gravity to intimidation that "seeks to influence the outcome of a pending case by interfering with a witness or potential witness" and that "it is not necessary for the Prosecution to prove that the witness was actually deterred or influenced."¹¹ Again, implicit in the Trial Chamber's 18 March 2011 Decision on the facts before it is the holding that persistent contact of a witness over the course of six days to persuade such witness to recant his prior testimony, and thus to influence the outcome of the AFRC case already concluded, is legally sufficient to establish the offence of "otherwise interfering with" such witness.¹²

⁹ *Id.*, para. 33-36. This holding is consistent with the bribery jurisprudence in the United States. See, e.g., *United States v. Synowiec*, 333 F.3d 786, 789-90, 2003 U.S. App. LEXIS 12745 (7th Cir. 2003), and cases cited therein (holding that an offer to bribe is made when the accused expresses an ability and desire to pay a bribe, even if there is no discussion of the specific amount of the bribe, as long as the accused make it clear that something of value will pass to the person if he takes improper, or withholds proper, action, and in this factual context, with the intent to corrupt the administration of justice).

¹⁰ *Id.*, para.38, quoting *Prosecutor v. Brdjanin*, IT-99-36-R77, Decision on Motion for Acquittal Pursuant to Rule 98bis Concerning Allegations against Milka Maglov, 19 March 2004 ("*Brdjanin* Decision"), para. 23.

¹¹ *Id.*, para. 39, quoting the *Brdjanin* Decision, para. 28, and also citing *Prosecution v. Taylor*, SCSL-03-01-T-1218, Decision on the Public with Confidential Annexes A-E and Public Annex F Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone and Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 25 February 2011, para. 43.

¹² *Id.*, para. 39-41. See also *Prosecutor v. Beqa Beqaj*, ICTY-IT-03-66-T-R77, Judgment on Contempt Allegations, 27 May 2005, para. 20-21, also citing *Kajelijeli* Contempt Decision of the

FACTUAL ISSUES AND SUMMARY OF PROOF

14. The available evidence clearly establishes persistent contact with witness TF1-334 over the specified period by the accuseds, offering TF1-334 monetary compensation and otherwise attempting to persuade him to recant the testimony he had given against the accuseds Kamara and Kanu in the Special Court trial which resulted in their conviction and imprisonment in Rwanda, with the specific intent to interfere with the administration of justice. There is powerful credible evidence of joint enterprise in this effort to corrupt TF1-334 as a witness who had given important insider testimony against the Rwanda convicts at their trial.
15. During one such contact, Samuel Kargbo asked TF1-334 for the whereabouts of TF1-033 by his real name, having been asked to make that inquiry by Mr. Kamara. Because Mr. Kamara knew that TF1-033 was a protected witness who had also given testimony against the Rwanda convicts at their trial, and whom they also wanted to influence to recant his testimony, he is charged with knowingly and wilfully interfering with the administration of justice by disclosing TF1-033's identity as a witness in that trial to Mr. Kargbo.
16. The key witnesses providing direct testimony against the accuseds are TF1-334, who reported their bribe offer and interference to Special Court personnel, and Mr. Kargbo, who began cooperating in April 2011 during the Independent Counsel's investigation, and who will provide substantial corroboration of TF1-334's account. On 12 July 2011, Mr. Kargbo, represented by his own defence counsel, entered into a plea agreement with the Independent Counsel in which he agreed to (1) plead guilty to the charges in the Order in Lieu of Indictment, (2) continue to cooperate, and (3) be available as a witness to provide truthful testimony at trial. On 15 July 2011, Mr. Kargbo pleaded guilty before the Single Judge, who rendered a verdict of guilty on the same day.
17. The testimony of each witness, standing alone, would be sufficient to convict beyond a reasonable doubt. Together, their evidence provides overwhelming

ICTR, para.9 (holding that an attempt to induce witnesses to change their testimony is alone sufficient to make out the prohibited interference).

evidence of guilt. And, as outlined below, their account is corroborated by other witnesses and by significant oral admissions of certain of the accuseds.

TF1-334

18. Confidential Annex 1 of our Rule 66 disclosures contained the following statements and memoranda summarizing TF1-334's anticipated trial testimony: a 9 December 2010 executed Witness Statement of TF1-334 (3 pages); the 17 December 2010 Confidential Statement of Senior Investigator Joseph Saffa containing additional information provided by TF1-334 to the Prosecutor on 16 and 17 December 2010 (1 page); a draft Witness Statement dated 1&3 December 2010 prepared for TF1-334 by Senior Investigator Saffa for TF1-334 but never signed by him (4 pages); a Contact Summary reflecting contacts from TF1-334 on 15 November 2010 (non-pertinent) and 30 November 2010, 7 December 2010, 11 January 2011, and 24 January 2011 (3 pages); and memoranda provided by Senior Investigator Saffa and Investigator Magnus Lamin reflecting meetings or telephone contacts with TF1-334 on 1 December 2010 (2 pages), 3 December 2010 (1 page), 7 December 2010 (1 page), 14 December 2010 (1 page), and 21 January 2010 (1 page).
19. The facts reflected in these statements may be summarized as follows:
20. On or about 26 and 27 November 2010, TF1-334 received a call from, and then met with, Mr. Kargbo, who related that he had received a call from the AFRC convicts in Rwanda and had been requested to approach TF1-334 about recanting his testimony to help them get their sentences reduced. When TF1-334 stated that he was not interested, Mr. Kargbo nevertheless attempted to persuade him to do so. In doing so, Mr. Kargbo called the accused Hassan Papa Bangura, a/k/a Bomblast, who told TF1-334 to do what the convicts in Rwanda were asking TF1-334 to do. After that telephone call, Mr. Kargbo persisted in the attempt to persuade TF1-334 to honor the request to recant by noting that the convicts were prepared to pay TF1-334 money to do so. But TF1-334 insisted to Mr. Kargbo, who was a close friend, that he was not willing to recant his testimony.

21. On or about Monday, 29 November 2010, Mr. Kargbo again called and met with TF1-334. Mr. Kargbo again urged that TF1-334 comply with the request to recant, and again TF1-334 said he was not interested. Mr. Kargbo persisted in trying to persuade TF1-334 to do, by again pointing out that the proponents of the scheme were ready to give him money to do so, and that Mr. Kargbo was also expecting to obtain financial compensation from the deal. On this occasion, Mr. Kargbo received a phone call from the accused Kamara in Rwanda. TF1-334 heard Mr. Kargbo tell Mr. Kamara that he was with TF1-334, at which point Mr. Kargbo indicated that Mr. Kamara wanted to speak directly to TF1-334, which TF1-334 declined to do. After the call, Mr. Kargbo told TF1-334 that Mr. Kamara was going to have the accused Santigie Borbor Kanu call back, which he did. Mr. Kargbo advised TF1-334 that Mr. Kanu wanted to speak to him, and insisted that TF1-334 do so. Mr. Kanu told TF1-334 that he and the Rwanda convicts were all brothers and that they were counting on him to assist them. Mr. Kanu also asked TF1-334 if Mr. Kargbo had spoken to him about the request they were making and the fact that they were putting modalities in place to compensate TF1-334 if he rendered the requested assistance. TF1-334 replied that Mr. Kargbo had explained everything and that he was thinking about it, and then handed the phone back to Mr. Kargbo. TF1-334 recognized Mr. Kanu's voice on the phone. After that phone conversation, Mr. Kargbo persisted in trying to persuade TF1-334 to comply with the request, emphasizing the financial benefit, and saying that the Rwanda convicts had sufficient funds in place, but not mentioning either a specific sum or where the money was coming from.¹³
22. Several days later, on or about 1 December 2010, Mr. Kargbo called and met TF1-334 a third time. Mr. Kargbo told TF1-334 that he had again been in communication with the Rwanda convicts and had been told that a Lawyer was coming from Ghana and would be speaking to TF1-334 about the same issue of his recanting his testimony. Mr. Kargbo also asked TF1-334 for the whereabouts of TF1-033 by his real name, saying he was also one of the people the Rwanda

¹³ As noted below, it was after this contact that TF1-334 reported the accuseds' approach to OTP.

convicts wanted to talk to about his testimony. TF1-334 advised that he did not know where TF1-033 was presently staying.

23. A few days later, on or about 3 December 2010, Mr. Kargbo came to TF1-334's house, saying that he had received another call from the Rwanda convicts, who told him to tell TF1-334 that they were quite prepared to fulfil their promise earlier made to TF1-334 but asking that he be patient for a while as they were putting things together. Mr. Kargbo advised TF1-334 that Mr. Kamara's "brother" was the Chairman of the APC party in America and had been informed about this matter, and that the "brother" had contacted Vice President Tamba Sam Sumana of Sierra Leone to render some assistance in helping the Rwanda convicts out of jail. Mr. Kargbo further advised that the Vice President had said that he would give any assistance within his reach.
24. On or about 16 December 2010, TF1-334 met Mr. Bangura and Mr. Kargbo and drove them in his car to the office of Ibrahim Mansaray, Esq. On the way, Mr. Bangura and Mr. Kargbo advised TF1-334 that they were going to meet Mr. Mansaray, a lawyer who was coordinating the activities of the AFRC convicts in Rwanda to contact witnesses to recant their testimonies. While in the car, Mr. Bangura received a call and told TF1-334 that it was the lawyer Mansaray who was calling to know their present location. Also while en route, Mr. Bangura asked TF1-334 how much money he wanted to be paid for the deal. TF1-334 did not reply with an amount; suggesting that this was a big deal and that "you decide what you want to give me."
25. TF1-334 dropped Mr. Bangura and Mr. Kargbo off at Mr. Mansaray's office and did not go in with them. Later that afternoon, after the meeting, Mr. Bangura and Mr. Kargbo met TF1-334 again and related that while they were at the lawyer Mansaray's office, Mr. Kamara and Mr. Kanu called and made the same promise that modalities were being put in place to make sure that what was promised to TF1-334 earlier would happen soon. Mr. Bangura also told TF1-334 that he should not be afraid of rendering the assistance to the convicts; if there was anyone that TF1-334 should be afraid of, it should be Mr. Bangura and Mr.

Kargbo, but as long as they have given TF1-334 the go ahead he should do so without any fear.

26. On or about 29 or 30 November 2010, TF1-334 texted Shayamala Alagendra, Esq., a former member of the Office of the Prosecutor of the SCLC, and reported the approach. Ms. Alagendra subsequently called TF1-334 back and advised him to report the contact to OTP, which he then did. TF1-334 subsequently met in person spoke on the phone with OTP investigators to apprise them of events described above.
27. Estimated length of time required for witness TF1-334's testimony: 1 to 1.5 trial days, depending upon the length of the cross-examination by three defence lawyers.

Samuel Kargbo, aka Sammy ("Ragga")

28. Mr. Kargbo agreed to cooperate during the Independent Counsel's investigation, providing information which substantially corroborated TF1-334's account. On 6 May 2011, Mr. Kargbo provided the statement contained in Confidential Annex 2 of our Rule 66 disclosures. On 12 July 2011, Mr. Kargbo entered into the plea agreement also previously disclosed in Confidential Annex 2. On 15 July 2011, Mr. Kargbo entered a plea of guilty in open court in these proceedings, pleading guilty to both counts of the Order in Lieu of Indictment.
29. The evidence reflected in Mr. Kargbo's witness statement, and the facts to which it is anticipated he will testify at trial, may be summarized as follows:
30. Mr. Kamara asked Mr. Kargbo to ask TF1-334 to assist the Rwanda convicts by recanting his testimony in return for monetary compensation, and that he did so. Mr. Kargbo largely confirms the places, general time frames and substance of his telephone calls and/or meetings with TF1-334, Mr. Bangura, Mr. Kamara, Mr. Kanu and Mr. Mansaray. Mr. Brima and Mr. Kanu were sometimes present when Mr. Kamara spoke to him about the plan on the Rwanda prison cell phone's speakerphone. Mr. Kargbo was aware that TF1-334 was reluctant from the outset to get involved; but he, Mr. Bangura, Mr. Kamara and Mr. Kanu all nevertheless attempted to persuade TF1-334 to recant and promised him financial benefit if he

did so. Although TF1-334 sometimes told Mr. Bangura, Mr. Kamara and Mr. Kanu that he was thinking about it, Mr. Kargbo could tell that TF1-334 was probably not inclined to be persuaded to do it.

31. Mr. Kamara asked Mr. Kargbo to ask TF1-334 the whereabouts of TF1-033 by his real name. Mr. Kamara also revealed to Mr. Kargbo in the same telephone conversation that TF1-033 had testified against the Rwanda convicts at the AFRC trial, a fact of which Mr. Kargbo had not known, and that the Rwanda convicts also wanted to persuade TF1-033 to recant his testimony.
32. At Mr. Kamara's request, Mr. Kargbo and Mr. Bangura went to see Mr. Mansaray in his office in mid-December 2010 to discuss the plan to compensate TF1-334 to change his testimony before the Special Court. In the lawyer's office, they told Mr. Mansaray that Mr. Kamara had said that he would be in a position to offer TF1-334 financial benefit so that TF1-334 can change his evidence before the Special Court, and that Mr. Kamara wanted Mr. Kargbo and Mr. Bangura to assist the AFRC Rwanda convicts. Mr. Mansaray introduced himself as one of Mr. Kamara's defense lawyers, and asked Mr. Kargbo and Mr. Bangura if they would be in a position to convince TF1-334 to recant his evidence. Mr. Kargbo replied that TF1-334 is his younger "brother" and that Mr. Kargbo could persuade him. Mr. Mansaray stated that it would be very difficult for TF1-334 to go back to the Court and recant his evidence; but when Mr. Kargbo told Mr. Mansaray that Mr. Kamara had said that they (i.e., the Rwanda convicts) would put modalities in place to have enough money to convince TF1-334 to recant his evidence, Mr. Mansaray then replied that if that was the case, they should go ahead and convince TF1-334 to do it. Mr. Mansaray told Mr. Kargbo and Mr. Bangura that this type of idea needed money to facilitate, and that Mr. Mansaray wanted the Rwanda convicts to pay him.
33. TF1-334 drove Mr. Kargbo and Mr. Bangura to the meeting. In the car on the way over, Mr. Mansaray called to ask where they were. While in the meeting at Mr. Mansaray's office, one of the Rwanda convicts called Mr. Mansaray, apparently to ask if Mr. Kargbo and Mr. Bangura had arrived, and Mr. Mansaray replied that they were sitting in front of him.

34. Mr. Kargbo also corroborates TF1-334's testimony that Mr. Bangura asked TF1-334 how much money he wanted to recant his testimony, and that TF1-334 did not respond with an amount.
35. Mr. Kamara told Mr. Kargbo that the Chairman of the APC Party in America wanted to assist the Rwanda convicts, and that the only way the Chairman could see to help them was for TF1-334 to recant his evidence, which would then provide grounds to attack the judgment in the Special Court. Mr. Kamara also told Mr. Kargbo that this Chairman was Mr. Kamara's "brother" and has a line to the Vice President of Sierra Leone, and that as soon as TF1-334 recanted his statement, the Vice President would intervene. Mr. Kamara said that the Chairman in America had already talked to the Vice President and that the Vice President went to America, where the Chairman presented his proposal to the Vice President.
36. Estimated length of time required for Mr. Kargbo's testimony: 1 trial day.

Ibrahim Mansaray, Esq.

37. Ibrahim Mansaray, Esq. was appointed *pro bono* counsel in November 2010 for the Rwanda convicts Brima, Kamara and Kanu. Mr. Mansaray's testimony confirms the existence of a plan to secure the recantation of a witness who testified against the Rwanda convicts at the AFRC trial.
38. Mr. Mansaray's anticipated testimony may be summarized as follows:
39. Mr. Mansaray was assigned to represent the Rwanda convicts *pro bono* in November 2010. He met with Mr. Bangura and Mr. Kargbo sometime in December 2010 in his office. They said they desired to help his clients, the three Rwanda convicts, who were friends of theirs; and that they wanted to discuss the possibility and feasibility of an earlier witness going back on his statement to the Special Court.
40. Estimated length of time required for Mr. Mansaray's testimony: 1 hour.

Andrew Daniels, Esq.

41. The anticipated testimony of Mr. Daniels, a lawyer based in Ghana, may be summarized as follows:
42. Mr. Daniels joined the Kamara defense team at the AFRC trial after TF1-334 had testified. Since that trial, Mr. Daniels has been in frequent communication with Mr. Kamara by telephone. Sometime in late 2010, Mr. Kamara advised him that the Rwanda convicts were contemplating a Review, and were filing a petition before the Court to assign Mr. Daniels as counsel to submit a request for such Review to the Court. During this conversation Mr. Daniels talked to Mr. Brima as well as Mr. Kamara. They indicated that some witnesses were prepared to change their testimony. At first, they did not mention the names of any such witnesses who were prepared to change their testimony, but Mr. Daniels was thinking that they were referring to the former soldiers, the insiders, rather than the civilian witnesses, the most important of which was the first, TF1-334. At some point in the conversation, it is likely that Mr. Kamara or Mr. Brima mentioned TF1-334's name. Thereafter, Mr. Daniels was standing by, waiting to hear from Ms. Carlton-Hanciles, the Principal Defender, with respect to his assignment, but he never did hear from her, and he never again heard from Mr. Kamara or Mr. Brima on the subject.
43. Mr. Daniels has traveled to Freetown on various occasions since the trial, and was there in May and December 2010. On one of those occasions, in May 2010, he visited Mr. Kamara's mother.
44. Mr. Daniels thus corroborates the existence of a joint plan by the Rwanda convicts to have one or more witnesses, including TF1-334, recant their testimony, and to use such recantation(s) to support a Review by which the previous judgment against them might be reversed, and by which they might be released from prison. Mr. Daniels' testimony that he was told that the Rwanda convicts were hoping to have Mr. Daniels assigned as counsel to submit such Review to the Special Court also corroborates the testimony of TF1-334 and Mr. Kargbo that they were told in December 2010 that "a lawyer was coming from Ghana" to speak to TF1-334 about recanting his testimony.

45. Estimated length of time required for Mr. Daniels's testimony: 1 to 2 hours.

Claire Carlton-Hanciles, Esq.

46. The anticipated testimony of Claire Carlton-Hanciles, Esq., the Special Court's Principal Defender, may be summarized as follows:

47. The Rwanda convicts were pressing Ms. Carlton-Hanciles to get a local lawyer to handle all their legal issues in Freetown. She has visited the Rwanda convicts whenever the need arises. One such visit was in early November 2010. On that occasion, the prisoners identified Mr. Mansaray as one of their prior local lawyers, and asked if Mr. Mansaray could help them *pro bono*.

48. Upon her return to Freetown, Ms. Carlton-Hanciles called Mr. Mansaray and told him that some of the Rwanda convicts wanted him *pro bono*, and asked if Mr. Mansaray would do it and help answer their questions about the trial and allay their anxieties. Mr. Mansaray agreed. Ms. Carlton-Hanciles specifically told Mr. Mansaray that there are protected witnesses and to be mindful of his obligations to the Court. Thereafter, she had one meeting in Freetown with Mr. Mansaray, but no further contacts with him thereafter.

49. In almost all her visits to Rwanda since their imprisonment there, Mr. Kamara, Mr. Kanu and Mr. Brima all raised with her and discussed Rule 120 of the Special Court, which provides for Review Proceedings "[w]here a new fact has been discovered which was not known at the time of the proceedings before the Trial Chamber or Appeals Chamber and which could have been a decisive factor in reaching the decision[.]" In those circumstances, "the convicted person . . . may submit an application for a review of the judgment." Also discussed were Rules 123 and 124, which permit the President of the Special Court, in consultation with the judges, to determine that a pardon or commutation of sentence should be granted to eligible convicts "on the basis of the interests of justice and the general principles of law."

50. The subject of a Review, commutation and remission under the laws of Rwanda were discussed with Mr. Kamara, Mr. Kanu and Mr. Brima together during Ms. Carlton-Hanciles's November 2010 visit. She advised them to write directly to

the President of the Special Court in the event that they developed fresh evidence, and told them that she could assist by forwarding such evidence to the President, and that if they have witnesses willing to come forward, they should work with a local *pro bono* lawyer (like Mr. Mansaray), send the witnesses to him, and have the lawyer collect the evidence and work with them. She was careful to tell them that protected witnesses should not be interfered with.

51. Ms. Carlton-Hanciles became aware of the contempt allegations when she saw the Prosecutor's initial filing on 17 December 2010. A few days later she decided to call those named and to advise them of the allegations. She spoke to Mr. Kamara, then Mr. Kanu, and then Mr. Brima, and then spoke to them all together. She explained to them that there was an application from the Prosecutor saying that there was a violation of protective measures and that it was a serious filing, but she did not go into the details of the allegations.
52. Estimated length of time required for Ms. Carlton-Hanciles's testimony: 2 hours.

James Johnson, Esq.

53. The anticipated testimony of Mr. Johnson, Chief of Prosecutions, may be summarized as follows:
54. TF1-334 was a critical witness at the AFRC trial who was relied upon heavily in nearly every count and was involved in 80 to 90 percent of the accusations, and was found credible and reliable.
55. Estimated length of time required for Mr. Johnson's testimony: One-half hour.

Investigators Joseph Saffa and Magnus Lamin

56. Investigators Joseph Saffa and Magnus Lamin provided memoranda dated 30 November, 1, 3 and 7 December 2011 (included in Confidential Annex 1), which show contacts and interviews with TF1-334 about the latter's reports relevant to this investigation. The earliest extant memorandum, of a 30 November telephone call with TF1-334, reflects that a prior report had been made by TF1-334.
57. The anticipated testimony of of Inv. Saffa and/or Lamin may be summarized as follows:

58. TF1-334 first called Inv. Lamin to report that Mr. Kargbo and another individual had contacted TF1-334 on behalf of the Rwanda convicts. Inv. Lamin wrote a computerized memo to Inv. Saffa, but neither one could find it in the central computer. Since the computer became corrupted in 2007, a document sent from one person to another occasionally does not register in the central computer. To the best of Inv. Lamin's knowledge and belief, after reviewing TF1-334's witness statement again, the first contact from TF1-334 came after the 29 November meeting with Mr. Kargbo. The 30 November memorandum reflects that TF1-334 reported that he had been advised by Mr. Kargbo that "a package will be put together and delivered to the witness for him to cooperate." A draft witness statement dated 1 & 3 December 2011 reveals that TF1-334 first met in person with Inv. Saffa and Inv. Thomas Lahun on December 1, reporting essentially what is contained in the final Witness Statement executed by TF1-334. Thereafter TF1-334 maintained close contact with investigators from the Office of the Prosecutor.
59. Estimated length of time required for Inv. Saffa's and/or Inv. Lamin's testimony:
1 hour.

Shayamala Alagendra, Esq.

60. The anticipated testimony of Ms. Alagendra, a former member of the OTP, is reflected in an email she wrote to Brenda J. Hollis, Esq., the Prosecutor, on 30 November 2010, contained in Annex 1 attached hereto. That email reflects that she had just received a text and call from TF1-334, who advised her that he had been contacted by Mr. Kargbo, who told him that the AFRC convicts had been advised by their lawyers that if the main insider witnesses were to change their statements, they would get an early release from prison, and that the AFRC convicts were requesting that 334 make a statement that his testimony to the Court was a lie, and that he was told to say that he was released from prison by OTP so that he would lie in order to convict them, and that OTP had paid him money to provide his false testimony. The email further reflects that TF1-334 told Ms. Alagendra that he had spoken that day to Mr. Kanu on Mr. Kargbo's

phone, and that Mr. Kanu told him that the convicts expected him to help them with their release. The email further reflects that TF1-334 advised that the AFRC convicts had promised, among other things, to pay him large sums of money, and that Mr. Bangura was aware of this. Finally, the email reflects that TF1-334 informed Ms. Alagendra that he would provide this information to OTP.

61. Estimated length of time required for Ms. Alagendra's testimony: 1 hour.

ORAL ADMISSIONS OF THE ACCUSED DURING THE INVESTIGATION

Hassan Papa Bangura, aka Bomblast

62. On 20 April 2011 Mr. Bangura was interviewed in the presence of his counsel, Mr. Serry-Kamal, who was present throughout the interview, as was Mr. Akinbobola, who translated from Krio where necessary. In a few instances, Mr. Serry-Kamal also translated or clarified his client's Krio statements where he thought Mr. Akinbobola's translation was not spot on. After he was advised of his rights, Mr. Bangura made the following admissions:

63. Mr. Bangura admitted that he communicated with Mr. Brima, Mr. Kamara and Mr. Kanu by calling the cell phone number in Rwanda, and that all three use that number to call him. Normally he could talk to all three at once on the speaker phone.

64. Mr. Bangura admitted that he met TF1-334 and asked him whether he would go to the Special Court and say he regretted his testimony if "we" got together as a family and raised a small sum of money for him. Mr. Bangura stated that, when he asked TF1-334 that question, Mr. Bangura only thought that TF1-334 would say he regretted his testimony, not that he would go and change his testimony; but when asked by the Independent Counsel how he thought TF1-334's saying that he regretted his testimony, rather than changing his testimony, would help the three Rwanda convicts, Mr. Bangura said that he did not know.

65. Mr. Bangura stated that the idea of putting together a fund as a family to get TF1-334 to say he regretted his testimony was Mr. Bangura's own idea, i.e., that it originally came from him.

66. Mr. Bangura admitted that when TF1-334 did not firmly reject this suggestion, Mr. Bangura communicated with Mr. Brima, and Mr. Brima advised Mr. Bangura to go see Mr. Brima's lawyer, to find out what effect it would have if TF1-334 said he regretted the testimony. Mr. Bangura further stated that Mr. Brima gave him Mr. Mansaray's number and he called and made an appointment, with Mr. Mansaray directing him to his office.
67. Mr. Bangura admitted that he told Mr. Kargbo that he was going to go to Brima's lawyer and why, relating to Mr. Kargbo the conversation he had had with TF1-334, and that he had relayed the conversation to Mr. Brima, who told Mr. Bangura to go to the lawyer. Mr. Bangura also stated that he went to Mr. Mansaray's office with Mr. Kargbo, his friend with whom he was often together (although, according to Mr. Bangura, he went up alone to see Mr. Mansaray without Mr. Kargbo).
68. Mr. Bangura further admitted that he told Mr. Mansaray that, "as a family," they wanted to put a fund together to give to TF1-334 so that TF1-334 would help by telling the Court that he regretted having testified against them.
69. Mr. Bangura described the three convicts in Rwanda and TF1-334 as his "brothers." He noted that he was with Mr. Kargbo in the Army, but that their relationship is different from the relationship he has with the three Rwanda convicts because unlike them, Mr. Kargbo is from the East of Freetown.

Brima Bazy Kamara

70. On 23 April 2011, Mr. Kamara was interviewed in Rwanda in the presence of his counsel, Mr. Serry-Kamal. After being advised of his rights, Mr. Kamara made the following admissions:
71. Mr. Kamara stated that he was informed by the Principal Defender, Claire Carlton-Hanciles, during her trip to Rwanda in November 2010 that (1) there was a provision in the Special Court rules that provided for a possible review of the Rwanda convicts' cases if they had witnesses ready to come before the Court again.

72. Mr. Kamara admitted that he subsequently contacted Mr. Bangura, who had helped the Rwanda convicts collect defense witnesses for their original trial, to tell him that he would be needed to start looking again for witnesses for them. Mr. Kamara further admitted that Mr. Bangura agreed to do so whenever they were ready. Mr. Kamara said he placed the call to Mr. Bangura's cell phone from the cell phone that the prisoners used in Rwanda, sometime in late November 2010.
73. Mr. Kamara admitted that he subsequently discussed this with Mr. Brima and Mr. Kanu, telling them that they need to come together to try to get their review witnesses, and that he had already spoken with Mr. Bangura, who was ready to help. The three men agreed that when they were ready they would call Mr. Bangura to start putting things together to get the witnesses they want.
74. Mr. Karama further admitted that, subsequently, he and Mr. Brima and Mr. Kanu decided to start getting witnesses by contacting Mr. Bangura.
75. Mr. Kamara stated that Mr. Bangura was his friend, unlike TF1-334 and Mr. Kargbo, who were just soldiers under his control or working with him.
76. Mr. Kamara admitted that he thought of the APC as "our people," that it contains their brothers and fathers, and that he sent his mother to visit some people to tell them that the men in Rwanda were suffering and to ask these people to try to help the men in Rwanda.
77. Mr. Kamara acknowledged that he did hear occasionally that some prosecution witnesses were unhappy with how they were living in Freetown, including TF1-334, who is known to Bazy's mother.
78. Mr. Kamara admitted that he knew that it was an offense to go out and try to persuade a witness to change his testimony, as they had said as much in Court during the AFRC trial.
79. Mr. Kamara also acknowledged that he knew Lawyer Mansaray. He also acknowledged knowing two lawyers from Ghana, one of whom was Andrew Daniel, who was his lead counsel at the trial.
80. Mr. Kamara stated that he would speak to Mr. Bangura every week or two, and that when he needed him he would call him. Mr. Kamara stated that the cell

phone is kept with the officers. If the caller says (s)he wants to speak with Mr. Kamara, the officer brings the phone to him. He also noted that his mother or other callers can flash or beep him, leaving their number, and he can call them back on the cell phone.

81. Finally, Mr. Kamara admitted that he knew TF1-033 by his real name.

Santigie Borbor Kanu aka 5-5

82. On 23 April 2011, Mr. Kanu was interviewed in Rwanda in the presence of his counsel, Mr. Serry-Kamal. After being advised of his rights, Mr. Kanu made the following admissions:

83. Mr. Kanu acknowledged that he has called his Aunt, his sister, his daughter and his wife in Sierra Leone for assistance in talking to the government to get him released, and that his intent was that they would seek a pardon.

STATEMENT OF CONTESTED MATTERS OF FACT AND LAW

84. All of the above matters of fact and law are contested as of this filing. The following matters of mixed fact and law are also contested:

85. Mr. Kamara, Mr. Kanu, and Mr. Bangura, acting jointly and in concert with Mr. Kargbo, intended to, attempted to and did offer money to and otherwise interfered with TF1-334, a witness who had given important evidence at the AFRC trial, in order to persuade him to change his testimony, so as to provide support for a petition to Review the Special Court's Judgement(s) against Mr. Kamara, Mr. Kanu and Mr. Brima, all with a knowing and willful state of mind and with specific intent to interfere with the administration of justice.

86. Mr. Kamara knowingly and willfully interfered with the Special Court's administration of justice by disclosing confidential information relating to its proceedings in knowing violation of a previous order of the Court, by revealing the identity of protected witness TF1-033 to Mr. Kargbo during their telephone conversation on or about 29 November 2010, when Mr. Kamara revealed to Mr. Kargbo that TF1-033 (by his real name) had testified as a prosecution witness at the AFRC trial, and asked Mr. Kargbo to ask TF1-334 his (TF1-033's)

whereabouts; Mr. Kamara well-knowing of TF1-033's status as a protected witness.

EXHIBITS

87. The Prosecution currently does not plan on introducing any exhibits, other than possibly the witness statements, memoranda, plea agreement and email referred to above if they become relevant. The Defence has not yet stipulated to the authenticity of any of those documents.
88. The only other records or documentary evidence developed during the Independent Counsel's investigation are telephone records for the cell phone used by the prisoners in Rwanda. These records were made available last year for inspection by Defence counsel. If such records are introduced at trial, the Prosecution reserves the right to call a knowledgeable Rwanda prison official to testify that there were no procedures in place at the time to prevent the recipient of a prisoner's call from facilitating a conversation between the prisoner and a third party.

REQUEST FOR RECIPROCAL DISCLOSURE

89. In July 2011, after making its Rule 66 disclosures, the Prosecutor notified the defence of all available documents, the names of the witnesses intended to be called at trial, and the detailed substance of the anticipated testimony of each such witness, fully adequate to prepare cross-examination. The Defence has essentially received "open file" discovery, a bird's eye view of the entire case. In return, the Prosecutor requested, as reciprocal disclosure, (1) the exhibits intended to be introduced at trial, (2) the names of any witnesses each defence counsel expects to call at trial, and (3) the substance of what each witness is expected to testify, adequate to prepare cross-examination of such witnesses. This request was intended to encompass all of the reciprocal disclosure requirements of Rule 67, including but not limited to, notice of the defence of alibi and any other special defence(s) and the disclosures attendant thereto. Also requested was the Defence Case Statement mentioned in that Rule and the disclosures attendant thereto,

including the nature of each accused's defence, the matters on which he takes issue with the Prosecutor, and the reasons why he takes issue with the Prosecutor. Notwithstanding agreement by certain defence counsel to provide same, no such reciprocal disclosure has yet been received. It is therefore requested again here, and if not produced on or before 1 June 2012, notice is hereby served of our intention to seek all appropriate sanctions and orders of preclusion for failure to comply with the defence's reciprocal discovery obligations under Rule 67.

Respectfully submitted,



Robert L. Herbst

Independent Counsel

Dated: 16 May 2012

ANNEX 1



Brenda Hollis/SCSL
08/01/2011 03:41 PM

To Jim Johnson/SCSL@SCSL
cc
bcc
Subject Fw: Information from 334

Brenda J. Hollis
The Prosecutor
SCSL/HSO
+31705159734
hollisb@un.org, hollisbjh@yahoo.com
— Forwarded by Brenda Hollis/SCSL on 01/08/2011 17:41 —



"Alagenda, Shyamala"
<Shyamala.Alagenda@icc-
cpi.int>
30/11/2010 18:15

To "Brenda Hollis" <hollisb@un.org>, "Nick Koumjian"
<koumjian@gmail.com>
cc
Subject Information from 334

Dear Brenda,

I received an "sms" and call from 334 this evening. He informs me that he was contacted by Sammy "Ragga" (who was recently released from prison, he was with the Westside). He went to 334's house and informed him that the AFRC accused persons have been advised by their lawyers that if the main insider witnesses were to change their statements they would get an early release from prison soon. The AFRC accused are requesting that 334 make a statement that his statement to OTP and his testimony to the court was a lie. He was told to say that he was released from the prison by OTP so that he would lie in order to convict them, that OTP had paid him money to provide his false testimony.

334 spoke to 55 today on Ragga's phone. 55 told him "we are brothers and we will soon be released and we expects you to help us with the release". 334 is expecting that he will be contacted on this again.

The AFRC accused have promised to pay 334 large sums of money, and to do "what the special court were supposed to but did not do for him" which is to take care of his security and relocate him and his family. He says Bomblast is aware of this, and maybe they have contacted him. He believes they may have also contacted Samuel Kargbo.

334 informs me, he will not do anything on this, and will provide OTP with all the information on this.

334 is in contact with Mustapha, but has not informed him if this matter yet. I do not know the reason why, but I have told him to please make contact with Mustapha from OTP and to report this matter in the usual way.

Please let me know if there is anything I can do with regards to this.

Kind regards,
Shyamala