

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-2004-16-T
TRIAL CHAMBER I

THE PROSECUTOR
OF THE SPECIAL COURT
V.
ALEX TAMBA BRIMA
BRIMA KAMARA
SANTIGIE KANU

TUESDAY, 5 APRIL 2005
9.22 A.M.
TRIAL

Before the Judges:

Teresa Doherty, Presiding
Julia Sebutinde
Richard Lussick

For Chambers:

Mr Simon Meisenberg

For the Registry:

Ms Maureen Edmonds

For the Prosecution:

Ms Lesley Taylor
Ms Melissa Pack
Mr Robert Braun
Ms Jennifer Beckley (intern)
Mr Mark Wallbridge (Case Manager)

For the Principal Defender:

Ms Claire Carlton-Hanciles
Ms Elizabeth Natamya

For the accused Alex Tamba Brima:

Ms Glenna Thompson
Mr Osman Kamara

For the accused Brima Kamara:

Mr Mohamed Pa-Momo Fofanah
Mr I Mansaray

For the accused Santigie Kanu:

Mr Abibola Manley-Spaine
Ms Karlijn van der Voort

1 Tuesday, 5th April 2005
2 [The accused not present]
3 [Open Session]
4 [Upon commencing at 9.22 a.m.]

MS EDMONDS: Day seven of the trial of Alex Tamba Brima, Brima
6 Bazy Kamara, Santigie Borbor Kanu.

7 PRESIDING JUDGE: Can I have appearances, please, counsel?

8 MS TAYLOR: May it please Your Honour, I appear with my learned
9 friend Ms Pack, Mr Wallbridge and Ms Beckley.

10 PRESIDING JUDGE: Thank you, Ms Taylor. For the Defence.

11 MS THOMPSON: May it please Your Honour, I appear with -- I am Glenna
12 Thompson for Brima and with me is Osman Kamara.

13 MR MANLEY-SPAINE: Your Honour, for Kanu, A Manley-Spaine and Karlijn
14 van der Voort.

15 PRESIDING JUDGE: Sorry, could I have the name again, Mr
16 Manley-Spaine, I could not quite hear?

17 MR MANLEY-SPAINE: Karlijn van der Voort.

18 MR FOFANAH: Your Honour, for Kamara, Mohammed P Fofanah. Appearing
19 with me on a temporary basis is Mr I F Mansaray. He has just gone out to
20 ease himself.

21 PRESIDING JUDGE: It would appear the accused are not present in
22 court.

23 MS THOMPSON: Your Honour, that is so. As far as today's proceedings
24 are concerned the accused will not be here. Your Honour, I can explain
25 further. They mean no disrespect to the Court, but a letter was written to
26 all assigned counsel yesterday regarding their position because they have
27 not had sight of this report which was ordered by this Chamber before we
28 broke off last time. I think perhaps, Your Honour, it would make more
29 sense if I were to pass this letter -- we have no objections, this is

1 something that we have conferred about, but if the suggestion were put we
2 have no objections if the Trial Chamber were to see this letter and it is
3 self-explanatory.

4 PRESIDING JUDGE: Thank you, Ms Thompson, I will record that the
5 accused voluntarily absented themselves.

6 MS THOMPSON: Yes, Your Honour, for the reasons contained in the
7 letter. Your Honour, I have enough copies for each of you.

8 PRESIDING JUDGE: Thank you.

9 MS TAYLOR: Your Honour, I have not seen the letter.

10 PRESIDING JUDGE: In that case, please pass it back before it is
11 tendered in court. I will allow -- Excuse me I did not have my microphone
12 on. I was just saying that it should be shown to the Prosecution before it
13 is tendered in Court. I will therefore direct that you have it and I will
14 stand down the --

15 MS THOMPSON: I have a copy for them and I will give it to them.

16 PRESIDING JUDGE: The tender will therefore be stood down. Ms
17 Taylor, are your ready to proceed?

18 MS TAYLOR: Yes, the Prosecution is ready to proceed. Your Honour,
19 the first witness the Prosecution will call is Witness TF1-098 and that
20 witness will be led by my learned friend Ms Pack.

21 PRESIDING JUDGE: Please proceed.

22 MS THOMPSON: Your Honour, before we proceed, may I just say there is
23 an issue which needs to be addressed which is the same issue for which we
24 had to adjourn prematurely on the last occasion. Your Honour will note
25 that a motion was filed yesterday, a confidential motion, it is a joint
26 defence motion by the Defence dealing with the investigators report and
27 also --

28 JUDGE LUSSICK: I am sorry to interrupt, did you say a motion was
29 filed yesterday?

1 MS THOMPSON: A motion was filed yesterday, yes, Your Honour.

2 JUDGE LUSSICK: I have got a document here which describes itself as
3 a request. There is no such form under the rules, I believe. Did you also
4 file a motion?

5 MS THOMPSON: Your Honour, I re-phrase, a request was filed
6 yesterday.

7 JUDGE LUSSICK: Under what rule did you file that request?

8 MS THOMPSON: Your Honour, if you will bear with me I will look at my
9 rule book again. Your Honour, it is described as a request but in actual
10 fact it is a motion and it touches and concerns the very issues for which
11 this Court adjourned prematurely on the last occasion. We are in the same
12 position. My learned friend has just indicated that she is about to call a
13 witness. We will find ourselves in the same position as we did on the last
14 occasion if this issue is not resolved once and for all. We are aware that
15 the independent investigator has completed his investigations. We are also
16 aware that that report has been submitted to the Trial Chamber. It is a
17 report, the contents of which we know nothing about, but the contents of
18 which is of paramount importance to us as a team and as lawyers doing our
19 jobs and also to the people who we represent.

20 JUDGE LUSSICK: Let us make this clear, do you hold instructions from
21 any of these five people that are being investigated to appear for them?

22 MS THOMPSON: We are not representing the people who are being
23 investigated, we are representing the accused persons -- the people who
24 stand accused before this Trial Chamber, Your Honour. But we are also --
25 we also have amongst those five people our investigator.

26 JUDGE LUSSICK: We are talking about two different sets of
27 proceedings: One is this trial that we are trying to hear; and the other
28 one is a potential contempt of court, a totally different proceeding. Now
29 are you, or any other counsel for the defence, instructed by any of those

1 five people who are being investigated in respect of the contempt of court
2 issue?

3 MS THOMPSON: Your Honour will recall that this issue about contempt
4 of court arose because allegations were made --

5 JUDGE LUSSICK: Look, I was here, I was here, I am quite well aware
6 of that. But we are not talking about your client's rights. They are not
7 charged with contempt of court. You have an investigator who, if he has
8 done something wrong, should not be investigating, but it is a matter that
9 will need to be decided on as to whether any Prosecution follows or not.
10 But if a Prosecution does follow, what right have you or any other counsel
11 to address this Court on that matter when you do not hold instructions from
12 any of those five people who appear for them in the contempt of court or
13 potential contempt of court proceedings?

14 MS THOMPSON: Your Honour, we are not talking about the contempt of
15 court proceedings, we are talking about what triggered those proceeding.
16 That is what touches and concerns our clients, that is what touches and
17 concerns us for the simple reason that the information that we need to
18 cross-examine witnesses will come from an investigator. And if it is the
19 case that there is suspicion over the head -- there is a cloud of suspicion
20 over the head of that investigator, we will need to reassess any
21 information that he has brought us. Now, it may well be, we do not
22 represent the rights of these accused, that is not strictly speaking in a
23 legal sense none of our business. But the fact remains, what triggered
24 this contempt of court proceedings is to do with information -- I don't
25 know whether -- I think we are in open session so the least I say the
26 better, but it concerns an investigator working for us, and unless that is
27 cleared, we do not know what information we can and cannot use because
28 there is a cloud of suspicion on this team on this investigator. Your
29 Honour, I am afraid these are issues which we went through on the last

1 occasion and we thought that by now one of the -- I think one of the reason
2 we adjourned early was so that the reports could dealt quickly,
3 disseminated and whatever has to be done will be done. And we thought that
4 by now that will be done. We do not have sight of that report and we need
5 to be able to see that for us to be able to continue. We cannot
6 cross-examine anybody without knowing what exactly the fate is of our
7 investigator or what the outcome is of those proceedings.

8 JUDGE LUSSICK: How do you say that if an investigator in your team
9 is found to have done something wrong - and I am not saying that he has as
10 yet - but how do you say that casts a shadow over the whole of the defence
11 team? You are saying that you may have done something wrong as well?

12 MS THOMPSON: Absolutely not, Your Honour. What I am saying is that
13 the information on which we have been basing our defence may well be
14 tainted and we need to be able to clarify that before we are able to go on.
15 We cannot, certainly speaking for -- and I am sure my learned friends
16 cannot cross-examine on information the veracity of which we are not now
17 sure.

18 PRESIDING JUDGE: Ms Thompson, it is my recollection that the
19 Principal Defender was to supply another investigator.

20 MS THOMPSON: I think Mrs Hanciles can throw more light on that, Your
21 Honour.

22 PRESIDING JUDGE: You must know whether you have an investigator or
23 not, Ms Thompson.

24 MS THOMPSON: As of now we don't. There is a reason for it, that I
25 why I said Mrs Hanciles from the Principal Defender's Office can actually
26 throw more light on that.

27 MRS CARLTON-HANCILES: Very well, Your Honours. During the recess,
28 the office has been on several occasions to the accused Brima with a lot of
29 names of potential investigators, people who have applied to the office,

1 and he has categorically rejected on the grounds that he is still waiting
2 the outcome of the independent investigator's report.

3 PRESIDING JUDGE: A point of clarification, Ms Carlton-Hanciles, did
4 you say that the list went to the accused Brima and why did it not go to
5 his counsel?

6 MRS CARLTON-HANCILES: It goes to counsel as well as the accused, but
7 the accused we contacted because we have direct contact with him and
8 counsel can speak for themselves because they have been in contact with the
9 accused again. Your Honour, may I appraise you on the status of the other
10 investigators? For Kamara, the investigator is already on board. He came
11 on board a few days ago. And we are also in the process of bringing on
12 board an independent investigator for the entire team.

13 MS THOMPSON: Your Honour, if I can just clarify, now that Mrs
14 Hanciles has stated the position of the Defence Office. The position of
15 the client is this - and always has been - that unless and until he knows
16 the fate of his now suspended investigator there is no point in another
17 investigator coming on board, wherein the person will have to be installed
18 in the whole possess and start again. The fact is that that investigator
19 was seen to be working well. Now, if he is exonerated and we have
20 appointed a new investigator then that leaves us in a limbo. If he is not,
21 then fair enough, at least we know what our position is, but at the moment
22 we are not any clearer what the position is. And we cannot use
23 information -- until that is clear, we cannot use information given us to
24 by that investigator.

25 PRESIDING JUDGE: Ms Thompson, are you submitting to the Court that
26 the accused has a right to pick and choose his own investigator and
27 thereby, while he exercises that, that this Court and this trial can be
28 suspended sine die?

29 MS THOMPSON: Your Honour, no, but the accused is the person who has

1 to work with the investigator, just like all accused persons have a free
2 will as to which counsel they choose, they are all given a list and they
3 all choose who they want to represent them. We cannot impose someone on
4 him, any more than you can impose a lawyer on an accused person. At the
5 end of the day, unless we -- there is someone on board who was working,
6 that person is now suspended under a suspicion. We need to be able to know
7 that person's fate before we carry on with either getting a new
8 investigator or at least reassessing the whole thing. I am not asking the
9 Court to wait sine die, but as far as I am aware there is a report and the
10 report has already been submitted.

11 PRESIDING JUDGE: If we take your argument to its logical conclusion,
12 Ms Thompson, it would mean that you could continue to raise objections and
13 this trial could never proceed. That could happen. We also have in front
14 of us, as my learned brother has just pointed out, a document which is
15 stated to be a request. It would appear that you are now actually arguing
16 and submitting on the motion herein without having given the Prosecution a
17 chance of reply and, more importantly, it is filed, as my learned brother
18 has indicated, as a request when in fact it is a motion seeking an
19 adjournment and it is not -- you have not pointed out to us under which
20 rule this request in its present form can be submitted and heard.

21 MS THOMPSON: Your Honour, I raise these issues that I am raising now
22 because my learned friend was about to call a witness, and if she calls her
23 witnesses we are not in a position to cross-examine these witnesses. That
24 was why I raised it. I wasn't going into the substance of the motion you
25 have before you. Obviously, it would, in my respectful submission, be of
26 [inaudible] if we were to get some clarity as far as the position of the
27 motion is concerned. It is not something I wish to go into because
28 obviously my learned friend has not replied, but the reason I raised it is
29 because my learned friend was about the call her witnesses. And, Your

1 Honour, I say again, this adjournment does not need to take forever and I
2 am not going to object -- there is no reason for us - and I certainly do
3 not seek to frustrate these proceedings and I have to make that absolutely
4 clear, it is not our intention to frustrate these proceedings. My main
5 submission is that if, as I understand it, a report has been submitted, we
6 ought to know the findings of that report for us to be able to know whether
7 or not we can continue with the same investigators or not.

8 JUDGE LUSSICK: Tell me, supposing - and this is a hypothetical
9 situation - we find against all your submissions and order that the trial
10 proceed, where are your lead counsel?

11 MS THOMPSON: All out of the jurisdiction. That is not to say that
12 we are not competent enough to carry on the trial, we do have our rotas so
13 that is not a concern. The fact that our lead counsel are not here, does
14 not mean that we cannot carry on with the trial if that is what was -- All
15 things being equal, if witness were to come, cross-examinations I think we
16 are all competent enough to carry that out.

17 JUDGE LUSSICK: All right. Well have made that clear, then, thank
18 you. If we decide against you, you are quite prepared to carry on without
19 lead counsel.

20 MS THOMPSON: I am sorry, Your Honour, perhaps you misunderstand me.
21 Competence is not an issue at the moment without lead counsel. As to
22 whether or not we can carry on, if you rule against us, that is something
23 we would have to confer between ourselves, because we will be handicapped
24 in cross-examination and I don't want to be in a position where every time
25 a witness comes for cross-examination I say "I'm afraid I cannot
26 cross-examine this person," I don't want to have to do that.

27 JUDGE SEBUTINDE: Ms Thompson, if I may make a few remarks. You keep
28 saying that you or your team does not know where it stands regarding this
29 investigator, but I wish us all to remind ourselves of the court order as

1 at Monday the 14th, just before we adjourned. The court order was to the
2 effect -- it had two prongs. One was that the Mr Brima Samura was under
3 suspension. Effectively, that severed his relationship with the Defence
4 team, he was asked to hand in all notes and all information relating to
5 your client's case; is that not right? That was one of the orders that was
6 made. The second order was that your team was to acquire a replacement and
7 to immediately liaise with that replacement investigator so that you use
8 the two weeks break for him to catch up with your case. Was that not
9 right? That is what I have on my record. And, therefore, this, it would
10 appear to me, is an order that is in place, it has not been cancelled or
11 reviewed and we don't want to look backward, we want to look forward. If
12 you keep saying the Brima team is handicapped, then you are handicapping
13 yourselves, because, as we have heard from the Defence Office, we have
14 heard from the Defence office they have lavishly given you a list from
15 which to choose and to proceed and you have wasted, apparently, your two
16 weeks in choosing this person and you are holding on to someone whose
17 relationship was severed by this current order. Because whether or not he
18 is exonerated, he is still under suspension and is beside this trial. It
19 is a matter beside this trial. Even, if I may echo what Judge Lussick has
20 just said, the issue of the contempt proceedings, the potential contempt
21 proceedings, is beside this trial. It is beside this trial, especially as
22 none of you on the Defence teams represent any of the five people. So if
23 you keep saying you are handicapped, you are handicapping yourselves. It
24 is not the Court or anybody else that is handicapping you.

25 MS THOMPSON: Your Honour, with respect, it is not as straight
26 forward as that and perhaps in some ways I wish it was. My understanding
27 is that the suspension was pending investigations, and correct me if I am
28 wrong, but I thought those investigations were to finish as soon as
29 possible, that is one of the reasons why, if I remember rightly, we broke

1 off before we were actually due to break off.

2 Now, the reasons that existed at the time we were supposed to
3 cross-examine Witness TF1-023 still exist now. It is not a case -- it is
4 not as easy as that as getting a new investigator in -- "Go off and do
5 your investigations," it is not as clear-cut as that. And if one is
6 suspended there comes a time when either your suspension becomes permanent
7 or it is revoked, and if that suspension is pending investigations, the
8 investigation has to come to an end at some point and I know I did not, but
9 I know Mr Metzger and other counsel gave evidence before this independent
10 investigator. So we know that the investigation took place and came to an
11 end at some point. Having come to an end, we would -- I think it would be
12 only fair if we are to know whether the investigator is still suspended
13 when the investigations have come to an end, or whether he has been given a
14 clean bill of health as it were and he can resume his duties. It is not to
15 say that because someone has suspended therefore there is -- he cannot work
16 with the team ever again. If it is the case that the suspicion were
17 baseless, then he can come back. There is also the fact that we do not
18 have -- because of this issue we do not have our clients in Court.

19 PRESIDING JUDGE: Ms Thompson, we are getting away from the main
20 issue here. Are you asking this Court to stand down today? And if when do
21 you expect this Court to resume?

22 MS THOMPSON: Yes, Your Honour, I am asking the Court to stand down
23 today and I am asking the Court to stand down until we know what is in the
24 investigator's report. I don't think that can take a whole lot of time
25 given that I think it was completed sometime last month.

26 JUDGE LUSSICK: I am very concerned that the whole Defence team has
27 taken the outcome of this morning's application, if you can call it that,
28 as a fait accompli. You have just assumed that you can hold the Court up,
29 you have told your accused clients not to show up --

1 MS THOMPSON: Your Honour, if I can interrupt.

2 JUDGE LUSSICK: Please don't interrupt me, you will get a chance --

3 MS THOMPSON: I'm sorry, Your Honour, that is not the case.

4 JUDGE LUSSICK: -- I have been listening to you without interruption.
5 Don't interrupt me.

6 MS THOMPSON: Your Honour, that is not the case, we did not tell --

7 JUDGE LUSSICK: All right. You can explain that when I am finished
8 speaking. And your lead counsel have not bothered showing up either, and
9 as far as I know there is not one ounce of explanation as to why they are
10 not in court, notwithstanding that they have signed agreements to be
11 available as lead counsel.

12 MS THOMPSON: Your Honour, if I can take you one by one. We have not
13 assumed there to be a fait accompli, that is why we have come with an
14 application. If we had assumed it, we would not have bothered making an
15 application. That is one. Two, at no stage - and I can speak for each and
16 every one of us, including those counsel who are not here - did we tell any
17 accused person not to be here. It would be unprofessional of us and it is
18 certainly not something the practice that any of us would engage in and,
19 Your Honour, that is not the case. We did not tell them, it is something
20 that came from them last night. I know that certainly the legal assistant
21 to our team and one other person with them, Mr Fofana, until very late
22 yesterday when they then wrote a letter. At no stage did any counsel tell
23 any accused person not to bother to come to court. It is not right.

24 JUDGE LUSSICK: Did you tell them to come to court?

25 MS THOMPSON: Yes, Your Honour, we told them to come to court. It is
26 their -- they are grown men, they have a free will to decide what they want
27 to do, but the advice from each counsel is that you come to court and
28 whatever you want to say to the Court, we will take it from there, but you
29 come to court. It is not right to say that we did not and, Your Honour, I

1 beg -- making such assumptions, casting aspersions, further aspersions on
2 us. It is something I hope Your Honour will not be repeated. Thirdly --

3 JUDGE LUSSICK: Don't you ever rebuke the Court. You are the one who
4 has suggested that by your investigator doing something wrong aspersions
5 are cast on the whole Defence team. Now, it seems to me, Ms Thompson, that
6 you are very ready to accept aspersions cast on the Defence team when none
7 are intended. I don't want you ever again to rebuke a judge for making a
8 legitimate comment. You behave yourself or we will order you to leave the
9 court.

10 MS THOMPSON: Your Honour, I withdraw my last statement, but I say
11 again that at no time did any counsel tell any accused person not to be in
12 court. I withdraw my last statement, but I do insist that no counsel did
13 tell any accused person not to come to court.

14 PRESIDING JUDGE: I have recorded that, Ms Thompson.

15 MS THOMPSON: May I just make a third point? Thirdly, it is right to
16 say that the lead counsel are not here. They did not deliberately stay
17 away. Your Honour, perhaps it may not be common knowledge, but none of the
18 lead counsel are actually based in Sierra Leone. They will be here later
19 on, I think at least one or two of them will be here later on this week.
20 This is something we arranged with -- We do have, in terms of what the
21 Defence - and I think to a certain extent [inaudible] request, that we do
22 have a rota system between all of us as to who will be here, when and how
23 we are going to conduct the trial. That is something -- that is our own
24 strategy, that is something which the Defence have decided amongst
25 themselves. It is not to say that they have deliberately stayed away.
26 Each one of us has a practice outside of the Special Court, independent of
27 the Special Court, and we have to juggle our diaries to suit the case as
28 and when we see fit.

29 PRESIDING JUDGE: The point being made by my learned brother, is it

1 not an undertaking by counsel to be here during the trial?

2 MS THOMPSON: It is an undertaking given by all counsel, but if your
3 client is properly represented at all times, at no time will a client be
4 left unrepresented or inadequately represented. I think between us here
5 there is something like over 40 years joint experience, so I am not sure
6 that any client is left, as it were, short-changed by lead counsel not
7 being here. In any event, even if they were here it was always going to be
8 that rota system.

9 MR MANLEY-SPAINE: May it please Your Honour, I believe I should
10 inform the Court that in the case of Mr Knoops he sent an e-mail to the
11 Registry to Mr Meisenberg, explaining the reasons for his absence and I am
12 here with instructions to proceed, cross-examine if necessary, except on
13 certain issues it will be necessary for me to refer to him for further
14 instructions.

15 PRESIDING JUDGE: [Microphone not activated]

16 MRS CARLTON-HANCILES: Much obliged, Your Honour. As from next week,
17 we are expecting both the lead counsel for Brima and also the lead counsel
18 for Kamara. We have in court today three co-counsel who have been working
19 with the lead counsel during the pre-trial from the time they were assigned
20 and indeed they did all sign the availability form. And during the recess
21 we heard from all lead counsel that there has been a meeting and that they
22 are going to be represented in court today by the three lead counsel and
23 other assistants and these people have full instructions to proceed with
24 the case before you.

25 PRESIDING JUDGE: Mrs Carlton Hanciles, there are private
26 negotiations between counsel, they are private and not for the Court, but
27 the fact remains that counsel should be in court for the hearing.

28 MRS CARLTON-HANCILES: Your Honour, again these counsel are
29 co-counsel and they have their own private arrangements, but for official

1 purposes, as far as the Principal Defender's office is concerned, they are
2 ably capable to represent the accused persons and we are satisfied with
3 that.

4 MR FOFANAHA: May it please, Your Honour. In the case of Mr Wilbert
5 Harris, may I start by apologising for his absence. An assignment beyond
6 his control kept him away from this Court and he is not absent as a result
7 of disrespect to this honourable Court.

8 I wish to draw Your Honours' attention to the definition of Defence
9 in the rules, the Rules of Procedure and Evidence it basically states that
10 Defence means the accused and/or the accused's counsel. And counsel by
11 inference includes all of us present, those of us who are co-counsel. And
12 like my colleagues have indicated we are competent, willing and able to
13 pursue the defence for all the accused persons as Your Honour will direct.
14 Suffice to it say, that I particularly want to draw the attention of Your
15 Honour Lussick to the fact that I particularly do not consider it a
16 legitimate comment to say that we instructed the accused to be absent,
17 especially as I was present there for almost --

18 JUDGE LUSSICK: That comment has been explained, thank you. I don't
19 want to hear any more about that.

20 MR FOFANAHA: As Your Honour pleases. In any case, on the question of
21 the Kamara Defence team continuing its defence as this Honourable Court
22 will direct, we are further handicapped by the fact that, like
23 Mrs Carlton-Hanciles has explained, our investigator only came on board
24 fully yesterday, and as a result of that pursuant to the provisions of the
25 Statute of this Court, we do not think we have adequate - and I will
26 emphasise that word, adequate - time and facility to conduct any
27 cross-examination of further witnesses that the Prosecution will call. And
28 for that the citation is Article 17(4)(b), which states that: "In the
29 determination of any charge against the accused pursuant to the present

1 Statute he or she shall be entitled to the following minimum guarantees:
2 In full equality, to have adequate time and facilities for the preparation
3 of his or her defence and to communicate with counsel of his or her own
4 choosing."

5 Your Honour, we are saying the word there, "adequate", the
6 investigator only came on board fully yesterday and he has not been fully
7 briefed, especially as to the testimony that the further witness will be
8 making. So we think that in all fairness to the Defence and the principles
9 of equality and justice, which this Chamber must uphold, it would be but
10 fair that we be given adequate time and facility to conduct our defence.

11 PRESIDING JUDGE: Mr Fofanah, when you say adequate time, what do you
12 mean?

13 MR FOFANAH: By adequate, I'm simply saying that since the
14 investigator, who forms part and parcel of our defence team, only came on
15 board yesterday --

16 PRESIDING JUDGE: I understand that. I'm asking for a time
17 estimation?

18 MR FOFANAH: Well, I will agree with my colleagues that until
19 Your Honour decides the issue of whether this court can proceed in the
20 given circumstances that we are handicapped by investigation.

21 PRESIDING JUDGE: In other words, an unknown time. Thank you,
22 Mr Fofanah. It would appear therefore that court is being asked to adjourn
23 this case for an unspecified period of time.

24 Ms Taylor, do you wish to reply before the Court reaches its
25 decision?

26 MS TAYLOR: Yes, Your Honour, thank you. I can do so quite briefly.
27 The Defence application is opposed by the Prosecution. As to the first
28 matter that the Defence seeks, which is the disclosure of the report of the
29 independent investigator into the alleged contempt, the Prosecution notes

1 that Rule 77(C)(iii) says that the report is to go to the Chamber and that
2 neither the Defence nor the Prosecution are parties to that action. The
3 Prosecution would submit that the Defence counsel in these proceedings
4 would only have standing in relation to those matters insofar as any of
5 those allegations affect the rights of the accused to a fair trial, and the
6 Prosecution submit that there are none that have been demonstrated. There
7 has been no demonstration of anything that affects the fair trial of the
8 three accused before this court. Beyond that, the Prosecution believes it
9 does not have standing and therefore says no more about the disclosure of
10 the report to any of the parties to these proceedings.

11 As relating to the issue of the shadow of suspicion that is alleged
12 to have been cast over the whole team of the first accused, the Prosecution
13 would submit that it is erroneous to suggest that the Defence team, of the
14 many components that a team consists of including counsel, investigators,
15 drivers, interpreters, all of those people can be seen as being part of a
16 Defence team. It is erroneous to say that those people are one and
17 indivisible, and that there can be no responsibility visited upon Defence
18 counsel and still less upon the accused for the rogue actions, if that's
19 what they turn out to be, of an investigator. And so much was made clear
20 by Your Honour Judge Sebutinde on the last occasion. In very clear terms
21 she instructed Mr Metzger that this Court held no opinion as to his conduct
22 or the conduct of his co-counsel; and the transcript reference, Your
23 Honours, in relation to those comments, is of the transcript of the 10th of
24 March, page 47 lines 2 to 18. And this issue is particularly so because if
25 defence counsel in this case become involved in the contempt proceedings it
26 can only be as a witness and as nothing else. And of course no suspicion
27 can arise as to involvement in any wrongdoing by people who are simply
28 witnesses. Further, if the Defence are called upon in the contempt
29 proceedings, if in fact there are to be contempt proceedings, this does not

1 impact upon the ability of the Defence to cross-examine in this matter and
2 this Trial Chamber has already indicated that because of that potential, if
3 there are to be contempt proceedings, they will not be before this Trial
4 Chamber.

5 And it was Your Honour, the learned presiding judge, that said that
6 on the 10th of March, page 15 lines 19 to 22. So there can be no impact
7 upon whatever occurs as a result of the independent investigator's report
8 upon the conduct of defence counsel in these matters.

9 And as regards the role or the information presented by each of the
10 teams' investigators it has been made plain by all defence counsel on more
11 than one occasion that the Defence in this trial have adopted a joint
12 approach. Indeed, on the last occasion that we were before Your Honours on
13 the 14th of March, my learned friend Mr Knoops made it plain that there was
14 sharing of information between counsel as gained by one investigator. And
15 the transcript reference to that is on 14th of March page 2. The request
16 that was filed yesterday said that the Kamara team did not yet have a new
17 investigator.

18 MS THOMPSON: I wasn't given audience to explore what's in that
19 request if my learned friend is going to reply, then I think she ought to
20 base her reply on what I said orally and not on what's in the motion filed.

21 PRESIDING JUDGE: The request filed. We still have not got to the
22 stage of whether it's a motion or a request, although the relief it seeks
23 should be dealt with in a motion. I was coming to that point. I was
24 intending to ask counsel to clarify this document headed "Joint defence
25 request". Since it is arisen now, Ms Taylor, I will ask you directly.
26 This appears to be requesting matters that should be raised by way of
27 motion and therefore the Prosecution by way of motion would have the right
28 of reply within a period of time. Are you in fact addressing on this
29 request now?

1 MS TAYLOR: I am not, Your Honour. The Prosecution would reserve its
2 right to file a written response to this pursuant to the rules. I am
3 actually addressing the issue raised by my learned friend Mr Fofanah in
4 relation to his investigator. And he has said that the investigator, the
5 Kamara investigator, was on board since yesterday and the only point that I
6 would seek to make is the document filed yesterday by all counsel says that
7 the --

8 MS THOMPSON: Your Honour, again I was not given audience -- I was
9 not given leave to reply on that document.

10 PRESIDING JUDGE: Miss Thompson, this is a matter raised by counsel
11 by Mr Fofanah, not by yourself. I will permit the Prosecution to respond
12 that.

13 MR FOFANAH: In any case, Your Honour, I will object to that on the
14 simple grounds that the contents of the document she is about to refer to
15 is not before the Court.

16 PRESIDING JUDGE: I have a record of what you said, Mr Fofanah, and I
17 am sure it has been properly recorded.

18 MR FOFANAH: Yes, I'm basically --

19 PRESIDING JUDGE: And that is what Ms Taylor is replying to and I
20 permit Ms Taylor to reply to it. Please sit town.

21 MR FOFANAH: Your Honour, I am basically saying that to mention that
22 we had -- we indicated in a request or motion, whatever it is, that I mean
23 up until yesterday we did not have an investigator. I mean, it is only
24 contained in a request or motion that we filed which Your Honour has not
25 given us the opportunity to address, so if she is going to reply on that
26 and then go into the contents --

27 PRESIDING JUDGE: Please do not refer to counsel as she.

28 MR FOFANAH: If counsel is going to address on that without at least
29 giving us the opportunity to address on the same then it would be very,

1 very onerous on our part to reply after counsel has finished her reply to
2 this Honourable Court because she is going into the contents of a document
3 which Your Honour has clearly ruled, I mean, on us proceeding with.

4 PRESIDING JUDGE: I did not rule on it and secondly, I am permitting
5 counsel for the Prosecution to reply to your statement made in court this
6 morning; we were handicapped, the investigator came on board yesterday.
7 Counsel may reply to that. Your objection is overruled.

8 MS TAYLOR: Thank you, Your Honour. The point that I would wish to
9 make is that there seems to be conflicting information before the court as
10 to the state of the Kamara team's investigator. If we return to the
11 transcript of the 14th of March, page 2, lines 15 to 16, the Court was
12 there informed by the Principal Defender that the process of recruiting the
13 Kamara investigator was almost completed. There was the document filed
14 yesterday, and then we were told this morning that the investigator was on
15 board since yesterday. I also point out in relation to that, that until
16 the issue arose with respect to the Brima investigator, that the Kamara
17 defence team did not take any issue with the difficulties of their
18 investigator as hampering their efforts to adequately defend their client.

19 It was clear on the 14th of March and it is clear again this morning
20 that pursuant to Your Honours' order the Office of the Principal Defender
21 has made available to the Brima team an investigator. That was said by the
22 Principal Defender on the 14th of March, page two, lines ten to 14, that an
23 investigators had been offered and refused by the accused. And on the same
24 date in the transcript on page four, Mr Metzger said that he had to act on
25 his client's instructions, as regards to the issue of the investigator.
26 Your Honours, the Prosecution's submission is that the accused has no right
27 to choose his own investigator. If we look first to the language of
28 Article 17 which deals with rights of the accused, Article 17(4)(b) says:
29 "To have adequate time and facilities for the preparation of his or her

1 defence and to communicate with counsel of his or her own choosing."

2 The choosing is limited to counsel. And obviously the reasons for
3 that are well-known. The provision of facilities and resources which must
4 include the investigators is not something of the accused's choosing; it is
5 something that this Court has an obligation to ensure occurs as a measure
6 of equality of arms. And any issue of the utilization of those resources
7 is not a matter for the Court and if the Brima team chooses not to use the
8 resources offered then that is a choice, a forensic choice, that they make
9 and they must live with the consequences of that.

10 Your Honours, I can refer you to a decision of the International
11 Criminal Tribunal for Rwanda. It is Prosecutor and Kayishema. It's the
12 judgment in that decision dated 21 May 1999, and I refer you to paragraph
13 61. And the Court said: "The question of equality of arms was verbally
14 raised on other occasions. The Defence counsel complained, for example, of
15 the impossibility to verify the technical and material data about the
16 Kibuye Prefecture submitted by the Prosecution. However the Trial Chamber
17 is aware that investigators paid for by the Tribunal was put at the
18 disposal of the Defence. Furthermore, Article 17(C) establishes that any
19 expenses incurred in the preparation of the Defence case relating, inter
20 alia, to investigative costs are to be met by the Tribunal. The Trial
21 Chamber is satisfied that all of the necessary provisions for the
22 preparation of a comprehensive defence were available and were afforded to
23 all Defence counsel in this case. The utilization of those resources is
24 not a matter for the Trial Chamber."

25 And it is clear that what has been said this morning that there
26 hasn't been just one investigator offered to the Brima team, there has been
27 a selection made available to them. And relevant to this point is that the
28 investigator for the Brima team who is currently suspended has in fact only
29 been with the Brima team since January of this year. And that fact was

1 told to the court by Mr Metzger on the 10th of March on the transcript page
2 44, lines 26 to 28. So the investigator had been with the team roughly two
3 months, or perhaps a little over two months, before he was suspended. In
4 those circumstances, it should be expected that given that the last trial
5 session finished early and that there was a recess, that a new investigator
6 could have been taken on board and prepared the matters that were necessary
7 to continue the trial. Bearing in mind, of course, that the Defence have
8 been on notice as to the order in which the Prosecution intends to call the
9 witnesses, they have been in possession of the unredacted statements for
10 mostly 18 months, and now have been in possession of the -- I beg your
11 pardon, the redacted statements for 18 months and the unredacted statements
12 of the first witnesses in excess of 42 days.

13 I also submit that the reason given by the Defence on the last
14 occasion as to why the suspension of the investigator hampered the
15 cross-examination of the witnesses was not because they hadn't had time to
16 do the investigation with the statements as they had been disclosed; it was
17 in case any new material arose during the examination of the witnesses.
18 And in those circumstances to assert that there is a blanket inability
19 cross-examine witnesses is in my submission nonsensical.

20 My learned friend Miss Thompson referred to the witness TF1-023. As
21 Your Honours will recall on the 10th of March this witness was released by
22 the Court and it was made plain to the Defence counsel that if they wished
23 to seek to cross-examine that witness they would have to make an
24 application to do so. And all I say about that is that if that application
25 is to be made the Prosecution would like an opportunity to respond to it.

26 Your Honours, in short compass, those are my submissions unless I can
27 assist you with anything else.

28 PRESIDING JUDGE: Thank you, Ms Taylor.

29 MS THOMPSON: Your Honour, do I have a right of reply or must I seek

1 leave?

2 PRESIDING JUDGE: I beg your pardon, Ms Thompson.

3 MS THOMPSON: I was asking whether I had right of reply or need I
4 seek leave.

5 PRESIDING JUDGE: You will have to seek leave unless it's a point of
6 law.

7 MS THOMPSON: Your Honour, it is just that, Your Honour, I wish to
8 reply to at least three comments made by my learned friend.

9 PRESIDING JUDGE: Which?

10 MS THOMPSON: The issue of fair trial; the issue of the investigator
11 having been in place since January; and the issue of whether it's motion or
12 a request. Especially, Your Honours, since my submissions were dismissed
13 as nonsensical.

14 PRESIDING JUDGE: We will hear, then, the matter on the fair trial.
15 The other matters are on record, Ms Thompson.

16 MS THOMPSON: Your Honour, the issue of fair trial is it is right to
17 say that we did say that we need an investigator on board because of new
18 material that will be coming in. I also mentioned that we do not know
19 whether material obtained by this investigator is now tainted. The fact is
20 this investigator although having been in place since January was able to
21 cover a lot more than the previous investigator who had been in place for
22 over six months. And for someone who'd got so much material we now have to
23 start reviewing that material because we don't know whether that material
24 is tainted or not. That is the issue of fair trial. Without that, without
25 the review of that material, be it with another investigator, be it with
26 the same investigator, we cannot be in a position to adequately
27 cross-examine new material, the veracity of which we are now not sure. The
28 issue of whether it is a request or a motion, Your Honour, it is a motion,
29 okay, erroneously labelled request at the top, but if you look at the

1 (inaudible) at the end, it is a motion.

2 Your Honour, unless I can help you further those are the points I
3 wished to clarify.

4 PRESIDING JUDGE: Thank you, Ms Thompson.

5 JUDGE LUSSICK: There is just one thing I would like to say. I am
6 saying it not just to you, Ms Thompson, but to the whole Defence team and
7 it is in regard to something I have put to Miss Thompson. I certainly did
8 not mean to impugn the integrity of the Defence team when I said that the
9 three accused had been told not to come to court. Perhaps I should have
10 phrased that better and put it in the form of a question, had the three
11 accused been told not to come to court, but I accept, without reservation,
12 what Miss Thompson has told me that, in fact, they were given proper advice
13 that they should attend court, and that they in fact chose not to in the
14 face of counsel's advice. I want to make that clear, Miss Thompson.

15 MS THOMPSON: I am grateful for the clarification especially since we
16 have the press outside and some of us actually have to practised here.
17 Thank you.

18 MR FOFANAH: Just another point, Your Honour. May I seek your leave
19 to also reply on one issue that was raised by counsel, the Prosecutor.

20 PRESIDING JUDGE: Is it a point of law, Mr Fofanah?

21 MR FOFANAH: It could be technically a point of law.

22 PRESIDING JUDGE: What's the point?

23 MR FOFANAH: In the sense that she mentioned proceedings of the 14th
24 of March 2005, and she indicated to this Court that we, our team, indicated
25 that I mean we were comfortable with the situation of having only one
26 investigator for all of -- I mean the three teams. I particularly wish to
27 draw Your Honours' attention to the transcripts of that proceedings. I
28 don't think we ever stated that we were comfortable with that situation.
29 To start with we have always had the problem of having to seek

1 investigators who until the ruling on the Brima defence teams investigator
2 was with us and apparently, basically --

3 PRESIDING JUDGE: Mr Fofanah, it is not point of law and I do recall
4 it. The transcript will speak for itself. Rest assured we will review it.
5 Thank you.

6 MR FOFANAH: As Your Honour pleases.

7 PRESIDING JUDGE: In the light of the issues raised, we will consider
8 the various submissions and we will give our decisions at two o'clock
9 today. Please adjourn the court.

10 [Luncheon recess taken at 10.21 a.m.]

11 [TB050405B - RK]

12 [On resuming at 2.14 p.m.]

13 PRESIDING JUDGE: I have before me the decision of the Trial Chamber
14 on the oral application this morning by the Defence for an adjournment of
15 the trial. I will now read that decision.

16 [Ruling]

17 After considering the oral application for an adjournment of the
18 trial submitted this morning by the Defence counsel for Brima and having
19 heard the oral arguments of both parties, we decide as follows:

20 The Chamber recalls its oral ruling of the 14th of March 2005
21 allowing an adjournment of the trial in order to accommodate the Defence
22 and enable it to retain an alternative investigator.

23 We consider that since that date the Defence had ample time to make
24 alternative arrangements regarding the appointment of a Defence
25 investigator.

26 The Chamber notes the provisions of Article 17 of the Statute which
27 does not give an accused person any right to select an investigator.

28 The Trial Chamber notes that the Defence office to start its legal
29 obligation under Rules 45(A) and 45(B)(iii) over two weeks ago by

1 furnishing each of the relevant Defence teams a list of potential
2 investigators from which to choose a replacement for Brima Samura.

3 The Trial Chamber cites with approval the principle laid down by the
4 International Criminal Tribunal for Rwanda in the case of the Prosecutor v.
5 Clement Kayishema and Ruzidana in which the tribunal held: "Once the Trial
6 Chamber is satisfied that all of the necessary provisions for the
7 preparation of a comprehensive defence were available, and were afforded to
8 all the Defence counsel in this case. The utilisation of those resources
9 is not a matter for the Trial Chamber."

10 We further cite with approval the principle laid down by the
11 International Criminal Tribunal for Rwanda in the case of the Prosecutor v.
12 Pauline Nyiramasuhuko and others where the president of the tribunal held:
13 "Whereas an indigent accused has a right to choose Defence counsel to
14 represent him, he does not have a similar right to the choice of an
15 investigator."

16 The Trial Chamber notes that a joint defence request for disclosure
17 of the independent investigator's report on contempt of court proceedings
18 and request for a stay of proceedings was filed by the Defence on the 4th
19 of April 2005 and will be decided after the response and reply of both
20 parties are filed.

21 This Trial Chamber emphasises that the current trial against the
22 accused and the potential contempt of court proceedings against other
23 persons are two different matters. The status of the potential contempt of
24 court proceedings has no bearing on the present trial.

25 The Chamber also notes that none of the Defence counsel has been
26 instructed to act for any of the parties to the potential contempt of court
27 proceedings.

28 Moreover, the Chamber observes that the Defence submission that
29 materials received from the Defence investigator could be tainted is

1 speculative and does not constitute a valid reason for an adjournment.

2 The Court notes that the accused have, by their own choice, absented
3 themselves from the proceedings and notes the provisions of Rule 60(B).

4 The Chamber observes that, although none of the lead defence counsel
5 is currently present at trial, the Chamber notes that the submission by
6 Defence counsel that the accused are all represented by experienced and
7 prepared counsel.

8 The Chamber concludes that the Defence has submitted no convincing
9 reasons for an adjournment of the trial and therefore this Chamber rejects
10 the oral application by the Defence for an adjournment of the trial and
11 orders immediate continuation of the trial.

12 That is the ruling of the chamber.

13 MR MANLEY-SPAINE: May it please Your Honour, having regard to the
14 instruction given by the defendant Kanu for not coming to court, we -- I,
15 as Defence counsel of Kanu, request an adjournment so that I can visit him
16 and reconcile my position. As you may be aware, carrying on in his absence
17 and contrary to his instructions may embarrass me.

18 PRESIDING JUDGE: Mr Manley-Spaine, in fact in the light of this
19 ruling, the Court has every intention of allowing Defence counsel to inform
20 and advise their respective clients on the implication of this ruling and
21 to advise them of their rights and allowing the accused to give appropriate
22 instructions. Subject to any other submissions, we will adjourn briefly.
23 However, before we do so, counsel will recall that this morning Ms Thompson
24 was tendering a handwritten document from the accused and I ruled that the
25 Prosecution should be shown it before it was tendered and subsequently we
26 got lost in the procedure. So if that could now be put into the Court,
27 please, as we have had no opportunity to read it.

28 MS THOMPSON: Yes, My Lord, I have given it to my learned friend for
29 the Prosecution. I shall now pass it on again.

1 PRESIDING JUDGE: No objection was raised.

2 MS TAYLOR: No objection, Your Honour.

3 PRESIDING JUDGE: Thank you. Subject to any other matters, the Court
4 will adjourn for 15 minutes to permit counsel for the Defence to take
5 instructions.

6 MS THOMPSON: Your Honour, I think it will take longer than 15
7 minutes. It takes about 15 minutes just getting to the Detention Centre.

8 PRESIDING JUDGE: Counsel for the Prosecution had indicated this
9 morning the number of a witness. I presume from that that the Prosecution
10 is ready to proceed?

11 MS TAYLOR: Yes, Your Honour.

12 PRESIDING JUDGE: We note that Prosecution are ready to proceed. You
13 need some time, Ms Thompson. Let us say 3.00 and if you are in great
14 difficulties, I'm sure you will inform the court attendant who will bring
15 it to our attention.

16 MS THOMPSON: Thank you.

17 PRESIDING JUDGE: Please adjourn the Court until 3.00, Madam Court
18 Attendant.

19 MS EDMONDS: All rise.

20 [Recess taken at 2.23 p.m.]

21 [On resuming at 3.32 p.m.]

22 PRESIDING JUDGE: Yes, Ms Pack, you're on your feet.

23 MS PACK: Your Honour, I'll call Witness TF1-098.

24 PRESIDING JUDGE: Just before you do so, I note that the accused are
25 not present in court. Are they -- yes, Mr Manley.

26 MR MANLEY-SPAINE: Your Honour, we've met with the accused persons as
27 we wanted to do and we informed them of the ruling that you delivered and
28 explained it to them. We have also expressed to them the fact that the
29 trial has to go on. We have discussed with them and advised them on the

1 consequences of their failure or refusal to continue to attend the trial.
2 They, on the other hand, Your Honour, have said to us that they are willing
3 and are ready to come to court to face whatever witnesses that are brought
4 against them. They in fact -- to the situation that led them to come to
5 the decision which is expressed in the letter that is now before the Court.

6 The time, Your Honour, that was given to us was not sufficient, let
7 me put it that way, for us to deliberate with them, advise them and come to
8 a conclusion. They want us to extend to the Court the fact that they would
9 need some time, probably the rest of the day to handle it and come to a
10 decision, which we would hope would be to the benefit of the Court in the
11 sense that it would be a positive decision.

12 We as counsel also, Your Honour, would also like time to meet with
13 them again and for us to know what their final decision is on this matter
14 so that we can, not only convey to the Court, but before conveying it to
15 the Court meet amongst ourselves to decide what our positions would be. We
16 would be grateful, Your Honour, if you would give a little thought to what
17 the position of counsel is at the moment.

18 PRESIDING JUDGE: Just a point of clarification. You told them that
19 you had advised them of their rights as such. Are you actually making some
20 form of application, Mr Manley-Spaine?

21 MR MANLEY-SPAIN: Yes, at the end of the day I would make an
22 application, Your Honour. Your Honour, the application, if I may go to
23 that directly for us to be given some time like tomorrow morning to meet
24 with them again and come to a final conclusion. We've not been able to do
25 that. And as I was saying, we would appreciate it, Your Honour, if you
26 would give consideration to our position. We are in a state of limbo in
27 the sense that we have certain instructions from our clients and we have a
28 certain duty to the Court and we would like to reconcile that in a positive
29 way. So we're praying that you grant us some time to meet and decide and

1 come to a final decision. Not only to meet with our clients, but amongst
2 ourselves.

3 PRESIDING JUDGE: You're requesting that tomorrow morning.

4 MR MANLEY-SPAIN: To meet with them tomorrow morning.

5 PRESIDING JUDGE: To be clear on my mind. The court hearing can
6 proceed now but you wish to have more time tomorrow morning. I obviously
7 will need to hear from the Prosecution in reply and also to consult with
8 my --

9 MR MANLEY-SPAIN: What we're asking for is for the hearing to be
10 postponed to Thursday.

11 PRESIDING JUDGE: You seem to be changing. It's gone from tomorrow
12 morning to Thursday.

13 MR MANLEY-SPAIN: No, we should meet with them tomorrow morning and
14 we don't know how long that will take and there will be no session in the
15 afternoon. Tomorrow is Wednesday. That is what we're asking.

16 PRESIDING JUDGE: Ms Taylor or Ms Pack, you started off calling a
17 witness and now we seem to have an application for an adjournment.

18 MS TAYLOR: Your Honour, the Prosecution would oppose the application
19 for the adjournment. The conditions set out in Rule 60(A) which allow that
20 the trial may proceed in the absence of the accused, that is, that the
21 accused have made their initial appearances, have been afforded the right
22 to appear in the trial but refuse to do so would seem to be made out in the
23 current circumstances. The letter that was tendered previously -- I might
24 say that that letter wasn't given an exhibit number.

25 PRESIDING JUDGE: I was going to come to that, Ms Taylor. We have
26 noticed that, yes.

27 MS TAYLOR: The accused voluntarily absent themselves from the Court
28 this afternoon. I have not heard my learned friend say that he has any
29 difficulty with his position to continue to represent his client in his

1 application, and in those circumstances the Prosecution would submit that
2 it is appropriate that the trial proceed.

3 PRESIDING JUDGE: To deal with the matter of the letter tendered
4 without objection, that is a Defence document and will become Exhibit D2,
5 according to our records. We understand that is the next number in the
6 system.

7 [Exhibit No. D2 was admitted]

8 MR MANLEY-SPAINE: Your Honour, I may not have said so in so many
9 words that I have difficulty in respect of representing my client, but that
10 is the gist of what we're saying. We're saying that our position is such
11 that we want to resolve the situation in a positive light and I think it
12 would be in the interest of justice for us to be given time to do so.

13 PRESIDING JUDGE: I'm not clear what you're saying. When you say you
14 want to resolve the matter, which matter is that, Mr Manley-Spaine, the
15 nonappearance of the accused?

16 MR MANLEY-SPAINE: Yes, Your Worship. You have afforded us time to
17 go and meet with them. We have not concluded. We would think that it
18 would be in the interest of the Court if we were given enough time to
19 conclude that. I don't think that would be delay the matter unduly. We're
20 not asking -- we do not want to delay the matter unduly but just be given
21 the opportunity to defend our clients to the best of our ability.

22 [Trial Chamber confers]

23 PRESIDING JUDGE: The Court is of the view that there already has
24 been a hearing and an application to adjourn which has been ruled upon.
25 The matter has now been dealt with. The accused have had time to decide
26 whether to come to court or not; that is what we're dealing with now only
27 and the trial will proceed.

28 Please call your witness.

29 MS PACK: Your Honour, I'll call Witness TF1-098.

1 [The witness entered court]

2 PRESIDING JUDGE: Ms Pack, what language will the witness speak?

3 MS PACK: In Krio, Your Honour.

4 PRESIDING JUDGE: Thank you.

5 WITNESS: TF1-098 [Sworn]

6 [Witness answered through interpreter]

7 PRESIDING JUDGE: Thank you, please proceed.

8 EXAMINED BY MS PACK:

9 Q. Witness, when were you born?

10 A. 1973.

11 Q. Witness, when Freetown was attacked where did you live?

12 A. At xxxxx Street.

13 Q. Witness, whereabouts is xxxxxx Street in Freetown?

14 A. By xxxxxx Road.

15 Q. Who did you live in xxxxxx Street with?

16 A. I was with my family.

17 Q. Who attacked Freetown?

18 MR FOFANAH: Objection, objection, Your Honour.

19 PRESIDING JUDGE: What is the objection?

20 MR FOFANAH: I think the issue of attack coming has not been raised
21 by the witness.

22 PRESIDING JUDGE: You haven't really laid the ground for that, Ms
23 Pack.

24 MS PACK:

25 Q. What happened in January 1999?

26 A. Rebels attacked in 1999, in January 6th.

27 Q. Where were you when rebels attacked in January 1990 -- did you say 6?

28 JUDGE LUSSICK: January the 6th.

29 MS PACK: I do apologise. January the 6th, 1999.

1 THE WITNESS: January 6th, 1999.

2 Q. Where were you when the rebels attacked?

3 A. I was at xxxxxx Street.

4 Q. How did you know that street had been attacked.

5 A. Well, at that time I saw so many civilians, around two at night
6 coming together with the Kamajors. The civilians were saying rebels had
7 entered into Freetown again. They were passing by so many civilians and
8 Kamajors and later we saw ECOMOG soldiers coming.

9 Q. Witness, you've described passing civilians and Kamajors and later
10 ECOMOG soldiers, which direction were these people moving?

11 A. They were coming from xxxxx Town and coming to the East End Police
12 area.

13 Q. Did you remain in your house?

14 A. Well, after the civilians had passed I decided to come out and look
15 for my mother at xxxxx Street.

16 Q. Whereabouts is xxxxx Street, which area?

17 A. Around xxxxxx Police and xxxxx xxxx area.

18 Q. Where did you think she might be there?

19 A. Because my mother was at xxxxx Town when I saw so many people coming
20 from xxxxxx Town, that was the reason why I came there to ask for him from
21 the other families.

22 Q. Did you find your mother at this point?

23 A. I didn't see her. I was unable to see her there.

24 Q. So what did you do?

25 A. I went back to xxxxx Street that night.

26 Q. What was the next thing that happened after you returned to xxxxxx
27 Street?

28 A. Well, after 5.00 then we started hearing gunshots. We started
29 hearing heavy artillery firing.

1 Q. How long did that heavy artillery firing and gunshot go on for?

2 A. They started firing at 5.00, up to 7.00 in the morning. That was the
3 time they ceased firing.

4 Q. What were you doing when this was going on?

5 A. We were hiding in the houses when this firing was going on.

6 Q. When the firing stopped, what did you do?

7 A. Then we decided to go to xxxxxx Town to look for our mother.

8 Q. Who is we? Don't mention any names, please?

9 A. Myself and my brother.

10 Q. Witness, when you went out to look for your mother in xxxxxx Town,
11 what did you see outside on the streets?

12 A. When we came by xxxxxx Road, we saw so many civilians coming. Some
13 had white headbands on their head.

14 Q. Apart from civilians, who else did you see?

15 A. Then we saw rebels.

16 Q. What were the rebels wearing?

17 A. Some had combat fatigues and some had civilian clothes.

18 Q. Did you hear them say anything?

19 A. Well, at that time the rebels said everybody should have white
20 headband, they didn't come to fight.

21 Q. On your way to xxxxx Town, did you pass the xxxx area?

22 A. Yes, yes, we went to xxxxx.

23 MS THOMPSON: Before the witness answers that last question I didn't
24 mean to interrupt my learned friend but I heard the witness say that people
25 he saw were wearing soldier uniform and the interpretation I got was combat
26 fatigue, and I'm not sure whether combat fatigue was the same as soldier
27 uniform. As far as I'm aware, soldiers have several uniforms, not all of
28 them combat fatigues. If we just had soldier uniform to soldier uniform,
29 which is the direct interpretation, I think that would be better, certainly

1 for the records.

2 MS PACK: Your Honour, I'll ask the question again and perhaps ask
3 the witness to describe a little further what the uniform looked like.

4 PRESIDING JUDGE: Well, I was going to have --

5 MS THOMPSON: Your Honour, I'm sorry, but the issue is that the
6 interpretation coming, soldier uniform combat fatigue, may not necessarily
7 be the same. So if the interpreter can -- we do have a direct translation
8 from Krio to English on soldier uniform.

9 PRESIDING JUDGE: Ms Thompson, we also have an official
10 interpretation.

11 MS THOMPSON: Which is not the same, Your Honour.

12 PRESIDING JUDGE: I think in the light of the fact that we have an
13 official interpretation I will allow counsel for the Prosecution to put the
14 question she proposes.

15 MS PACK: I'm grateful, Your Honour.

16 Q. Witness, did you pass the xxxxx area on your way to xxxxxx Town?

17 A. Yes, I went through there.

18 Q. What did you see at the xxxxx area?

19 A. I saw soldiers. I saw soldiers wearing soldier uniforms, some of
20 them wearing civilian clothes.

21 Q. Did you hear these men say anything at this time?

22 A. Yes.

23 Q. What were they saying?

24 A. Well, the people I saw some they are saying, when people said they
25 were going to die at Pademba Road now they are out. When they thought they
26 would die at Pademba Road, they are now out.

27 Q. By Pademba road, what did you take them to mean?

28 A. That was the soldiers that were locked at the Pademba Road prison,
29 when they came out that was the group that we met at the xxxxx area.

1 Q. Which direction were they heading?

2 A. They were going towards Ferry Junction.

3 Q. Where did you go next?

4 A. Well, then we went through the main road coming down to Ferry
5 Junction.

6 Q. Who did you see at Ferry Junction?

7 A. I met rebels there. We met so many corpse there that were ECOMOG
8 soldiers.

9 Q. The rebels you saw there, what were they wearing?

10 A. Some had soldier combat and some civilian clothings.

11 Q. Were they armed?

12 A. Yes, they had weapons. All of them had weapons.

13 Q. What sort of weapons did you see?

14 A. They had different weapons. They had AK-47, RPG, G3.

15 Q. After Ferry Junction which road did you use to get to xxxxxx Town?

16 A. We went through the old road.

17 Q. What did you see on the old road?

18 A. We saw so many corpse, men, women, children.

19 Q. Did you reach xxxxxx Town?

20 A. Yes, we reached xxxxxx Town.

21 Q. Did you find your mother there?

22 A. Yes. I saw her, but by then, the mother could not walk.

23 Q. So what did you do?

24 A. We decided to return to xxxxx Street.

25 Q. What road did you use to come from xxxxx Town?

26 A. When we were coming back we decided to use the new road.

27 Q. What did you see on the new road?

28 A. We saw so many corpses, we met so many people killed, civilians.

29 Q. Witness, after you got back to xxxxx Street. What was the next

1 thing that happened to you?

2 A. Well, after a week, then the rebels came to our house. They came and
3 asked for a woman that used to work at the bank. They came and knocked at
4 her room. When they could not find her, then they sent the fuel in the
5 house, petrol and burnt the house. We were in the house.

6 Q. Pause a minute, please. Who was in the house with you?

7 A. I was in the house with my brothers and sisters and the family.

8 Q. How did you know they were going to burn the house?

9 A. Well, we were inside and we got the smell of the petrol. It was not
10 too long we started experiencing the heat of the fire. Then our brother
11 broke the window. There was a garage by, all of us jumped out there. We
12 were there until the house was completely burned down.

13 Q. Did you see the man who burned down your house?

14 A. No, we were unable to see them, because we were in the house when
15 they came to burn the house.

16 Q. I'm just going to ask you, going back to the week that you were in
17 your house before it was burned down, did you see any rebels in that week
18 before your house was burned down?

19 A. Yes, I used to see them, because in that area rebels had been there
20 during that time.

21 Q. How could you see them?

22 A. They were going up and down wearing soldier combats and their
23 weapons. They tied the American muffler.

24 Q. Did you know any of these men described as soldiers?

25 A. Yes, at that time when I used to see them, I know them. I know most
26 of them that they were soldiers.

27 Q. How did you know that?

28 A. Because, because most of them were in Freetown. I used to see them.

29 Q. In Freetown when?

1 A. The time the soldiers and rebels had not come together yet.

2 Q. Before the attack on Freetown?

3 A. The time the soldiers had not gone to the bush yet. It was a time
4 I realised that they were soldiers.

5 Q. Going back to the night that your house was burned down, you hid
6 inside the garage, you've told the Court, with your family. How long were
7 you hiding in the garage?

8 A. Yes, we were there up until the morning. In the morning --

9 Q. What happened in the morning? What did you do?

10 A. Well, in the morning beings we decide to cross over to xxxx Road.
11 We came down to xxxx Road to stay there with my younger brother and
12 cousin, the other family and neighbours and the people.

13 Q. When you were staying at xxxxx Road, what was the next thing to
14 happen?

15 A. Well, after two weeks then ECOMOG advanced. They advanced towards
16 xxxxx, but by then they were unsuccessful, because the rebels were tensed
17 at that time. The ECOMOG retreated.

18 Q. How were you aware of this going on?

19 A. Well, at that time we were very close to xxxx Road. The house where
20 we were, it was there the rebels went and placed their machine-gun.

21 Q. You said that the advance of ECOMOG was unsuccessful. What happened
22 then to you and to your family?

23 A. Well, at that time, we hid. When ECOMOG retreated we decided to
24 leave there and come down to xxxxx Lane.

25 Q. Who did you go to xxxxxx Lane with?

26 A. I went with my younger brother and cousin.

27 Q. What happened on the 17th of January?

28 A. Well, it was on the 17th that ECOMOG advanced up to xxxxx.

29 Q. What happened after they advanced to xxxxx?

1 A. They fought until they reached xxxxxx, but they were unable -- they
2 could not face the tension so they were there up to 30 minutes and then
3 ECOMOG retreated again.

4 Q. How could you see what was going on?

5 A. The house we were in is a storeyed building. So we were very close
6 to the cemetery. We see them clearly when they were exchanging firing. By
7 then the rebels were in the cemeteries, they were so many.

8 Q. Witness, what happened on the following day, the 18th of January?

9 A. Well, during that morning, we hid in the house and the rebels came.
10 They came and kicked the door where we hid. They opened the door. They
11 held me and my younger brother and my cousin. We were placed under
12 gunpoint.

13 Q. Who else was in the house with you?

14 A. There were other people there. We were many in there, but I was
15 there with my younger brother and cousin that were very close to the door.

16 Q. Describe the rebels that came to the door, what were they wearing?

17 A. They had soldier combats. Some had uniform, some had black T-shirts,
18 tied American muffler, with American flag.

19 Q. Witness, you've said that these men, these rebels held you and your
20 brother and your cousin the gunpoint. What did they do then?

21 A. Well, at that time, they said they would come and send us to Pa
22 Kabbah. We were pushed and then came down to xxxxxx Street. We were
23 put in a queue at a school gate. Then they said they will send us to Pa
24 Kabbah for Pa Kabbah to know that they were in control. Because Pa Kabbah
25 had been saying ECOMOG was in control.

26 Q. At the school you talk about, how far away was it from where you
27 were, xxxxx Lane?

28 A. It was not too far away. It was -- xxxx Lane to xxxxx Street
29 is not too far.

1 Q. After you got to the primary school and the rebels said the things
2 you've described them saying to you, did anyone else join you?

3 A. Yes, they had other people. We were four in number whom they brought
4 and joined us together.

5 Q. Were these men or women?

6 A. We were men, but the time we were seated, we heard people shouting in
7 the school.

8 Q. I'm just asking you about the people you were with. How many of you
9 were there sitting in total?

10 A. We were seven in number.

11 Q. Can you remember the name of the any of the other civilians that were
12 there?

13 A. There were only two people that I never knew their names, but the
14 rest I knew them.

15 Q. Tell us the names, please. Not the name of your brother or your
16 cousin but the names of the two civilians you know?

17 A. I knew Edward xxxxxx and Sheku xxxxx.

18 Q. Once you were sitting there with these other civilians, what happened
19 next?

20 A. Then they said right now, they would send us to Pa Kabbah and chop
21 off our hands and then go to Pa Kabbah to give us hands. He has come with
22 a container of it.

23 Q. What did they do after saying that?

24 A. They started calling us one after the other. They called Sheku.
25 Sheku's hand was chopped off. Then they called my cousin. He too, his
26 hand was chopped off. My younger brother.

27 Q. Sorry to interrupt you, Mr Witness, who cut Sheku's hand? Can you
28 remember any names?

29 A. It was Tommy, Tommy chopped off all of our hands. He was holding on

1 the cutlass. He held the axe. The axe was used to chop OFF our hands.

2 Q. Did you know what Tommy did before then?

3 A. Like what.

4 Q. Did you recognise Tommy?

5 A. Tommy, well, at that time I was unable to look at his face. I was so
6 panicked I was unable to look at him. But he is somebody that is in the
7 area; he was born in that area.

8 Q. What was he wearing; do you remember that?

9 A. He had soldier combat. He wore soldier combat.

10 Q. What language was he speaking?

11 A. Tommy was speaking Krio. Most of them were speaking Krio. Some of
12 them were speaking the Liberian language.

13 Q. Witness, you've described --

14 A. What.

15 Q. You've described Sheku having his hand cut.

16 A. Sheku.

17 Q. You described the next person having his hand cut. Who was that?

18 A. I said it was Sheku.

19 Q. I know. After Sheku who had his hand cut?

20 A. My cousin's hands was chopped off. After that it was my small
21 brother's hand that was chopped off.

22 Q. And Edward -- when was Edward's hands chopped off?

23 A. After they had called me then they called Edward.

24 Q. What happened, witness, when they called you?

25 A. The time they called me to chop off my hand it was only God who knew
26 how I was. Even myself I didn't know where I was.

27 Q. Witness, for the record which hand did they cut off, did Tommy cut
28 off?

29 A. It was my left hand he chopped off.

1 Q. Did anyone say anything to you after they had done this?

2 A. After they had chopped off my hand they said let us go to Pa Kabbah,
3 let him give us hands.

4 Q. How many of you in total had your hands amputated?

5 A. We were seven.

6 Q. Where did you go after this had happened to you?

7 A. After they chopped off my hand I tried to come up along Ginger Hall
8 part. There I came, I say xxxxx lying down. At that time the way I saw
9 xxxx, I was broken-hearted. I met him lying there covering his face. I
10 tried to pick him up but he was not able to turn, so I left him. I moved
11 back. I went and met my small brother.

12 Q. Don't name any names. What happened after you met your small
13 brother?

14 A. Well, when I saw my younger brother we decided to go back to the
15 house where we were held. We went there but we were not able to go far.
16 We fell near a house. We were there for about 30 minutes and then we
17 recovered. Because by then we never knew ourself any way; it was only
18 through the power of God.

19 Q. Witness, did you get any help for your injuries?

20 A. During that time there was nobody, because everybody was on the run.
21 Everybody was running away. When they said they've cut our hands,
22 everybody was running away. We went to the house where we were. There
23 I left my younger brother. He went to where my family is at xxxxx Street.
24 I went and met our elder brother. He took me and carried me to one private
25 hospital at xxxxx xxxx Street.

26 Q. What did you see when you got to the private hospital?

27 A. When we were going we saw a lot of corpses. We even met some rebels
28 that early morning time.

29 Q. Witness, did you hear what happened to your cousin as a result of his

1 injuries?

2 A. Well, my cousin couldn't survive, so he died. Where he laid, that
3 was the place he died.

4 Q. Witness, those are all the questions I have to ask you. Wait there.

5 MS PACK: Your Honour, those are all my questions.

6 PRESIDING JUDGE: Thank you, counsel. Defence counsel, it's usually
7 the most senior. Have counsel decided any rules among themselves?

8 MR MANLEY-SPAINE: At this stage, Your Honour, because of the reasons
9 I've given before, the position with our clients I cannot ask any question.
10 I might later on, if it is resolved, apply to recall this witness.

11 PRESIDING JUDGE: You will apply later?

12 MR MANLEY-SPAINE: Yes, to recall the witness.

13 PRESIDING JUDGE: You are aware that that will be a matter for the
14 Court, Mr Manley-Spaine. Yes, Ms Thompson, questions for the witness?

15 MS THOMPSON: Your Honour, for the same reasons, I adopt my learned
16 friend's position. Your Honour, might I add at this stage that it is not
17 our intention to appear obstructive and we are in no way being obstructive,
18 but we find ourselves in a position which as Defence counsel is proving
19 very difficult and for these reasons, which have already been explored in
20 this Court, that we cannot ask any questions of this witness at this point
21 in time.

22 MS PACK: Your Honour, I hate to interrupt my learned friend. I'm
23 aware that the witness has also got the rather bad reception I have in the
24 headphones, and that might be hurting him. So I wonder if he could take
25 off his headphones or something could be done about the distortion.

26 PRESIDING JUDGE: Madam Court Attendant, do you know of any reason
27 why this -- let the witness take off his earplugs if it makes him feel more
28 comfortable.

29 MS EDMONDS: We're trying to sort the problem out at the moment.

1 PRESIDING JUDGE: I'm sorry. I didn't have my earphones on when
2 I spoke. I think we'll have to adjourn.

3 MS EDMONDS: Your Honour, AV asks if they could have five minutes'
4 adjournment.

5 MS EHRET: Your Honours, I just spoke to the audio people. They said
6 that they would have to come inside and do it quickly. Five minutes.

7 PRESIDING JUDGE: I think we'll have to adjourn to allow that to
8 happen.

9 JUDGE SEBUTINDE: Could the accused person switch off his microphone,
10 maybe? Sorry, the witness, could he switch off his microphone first.

11 PRESIDING JUDGE: I think we'll adjourn very briefly to allow them to
12 look at this and see if we can stop that squeaking noise. Madam Court
13 Attendant, could you please advise the Bench when the problem is resolved.

14 [Break taken at 4.20 p.m.]

15 [TB050405C-SGH]

16 [On resuming at 4.25 p.m.]

17 PRESIDING JUDGE: Mr Fofanah, do you have any questions for this
18 witness.

19 MR FOFANAH: Your Honour, for the same reasons averred by my
20 colleagues I respectfully apply to the Court for my cross-examination of
21 this witness to be postponed.

22 PRESIDING JUDGE: Mr Fofana, how can you apply to have it postponed?

23 MR FOFANAH: For it to be deferred.

24 PRESIDING JUDGE: I don't know of such a right. Are you assuming
25 that you have a right to defer cross-examination.

26 MR FOFANAH: No, I started by saying that for the reasons stated by
27 them. I take it that they have already indicated to the court that we are
28 kind of handicapped by the fact that --

29 PRESIDING JUDGE: Yes, they said they would seek leave.

1 MR FOFANAH: This is what --

2 PRESIDING JUDGE: I would say when you seek leave, it does not mean
3 that leave is automatically given.

4 MR FOFANAH: Your Honour, I will re-phrase that. I now say that I
5 will seek leave at a later date to have this witness --

6 PRESIDING JUDGE: But Mr Fofanah, Mr Manley-Spaine, Ms Thompson, you
7 have already advised the Court this morning that you are experienced
8 counsel and you must realise that to say to a Court I will seek leave to
9 cross-examine, does not mean that you are automatically going to be given
10 leave to cross-examine. This witness is here today, he is under oath, he
11 has been brought, he is available for cross-examination and I have been
12 given no good reason, other than difficulties of the -- "I cannot ask any
13 questions I will apply to recall." Will apply. Will apply.

14 MR FOFANAH: Your Honour, I just stated that I meant firstly we
15 respect every decision of this Court and we recognise the fact that if this
16 witness is not cross-examined today it can only be done by leave. Your
17 Honour, I also recognise the fact that a number of issues have been raised,
18 I mean, by the witness in examination-in-chief for which I will need to
19 confer with both the accused as well as, I mean, the new investigator that
20 we have so that I can conduct my cross-examination properly. And I believe
21 that when the time is right for that, Your Honour will consider all these
22 factors in giving, if need be, your leave to cross-examine the witness at a
23 later date. Thank you.

24 PRESIDING JUDGE: The Court notes that this witness's evidence has
25 not challenged in cross-examination. The Court will discharge the witness
26 from his oath. The witness is at liberty to leave the court. Just pause
27 one moment. Excuse me.

28 JUDGE SEBUTINDE: I do have a clarification that I seek from the
29 witness. You will excuse my asking this because I am not from here so I

1 don't know the nomenclature. People keep referring to Kamajors and this is
2 also interpreted in English as Kamajors. I am totally lost, I have no idea
3 what a Kamajor is.

4 MS PACK: Your Honour, I will ask the witness.

5 PRESIDING JUDGE: Her Honour has put a question to the witness. I
6 realise the witness did not have his earphones on. So please assist the
7 witness to have his earphones on.

8 JUDGE SEBUTINDE: I will repeat the question, Mr Witness. You
9 referred to the word "Kamajors" which was interpreted in English as
10 Kamajors. Could you help the Court to understand what you mean?

11 THE WITNESS: As Kamajor, it was the CDF.

12 PRESIDING JUDGE: Any questions arising?

13 MS PACK: No questions arising out of this.

14 MS THOMPSON: Your Honour, before this witness is released, I heard
15 that Your Honour did say to the witness that he is being released because
16 no further question have been asked of him. Your Honour, do I take that to
17 mean that any subsequent application for leave to recall this witness will
18 not be entertained?

19 PRESIDING JUDGE: All applications will be entertained, Ms
20 Thompson, and will be ruled on the submissions and evidence submitted to
21 the Court at the relevant time. I am now allowing this witness to leave
22 the court precincts and to discharge him from his oath. The Court will
23 hear and entertain any subsequent application.

24 MS THOMPSON: That being the case, Your Honour, I am merely seeking
25 guidance here, would it not be in the interests of any future application,
26 whether that application would be granted or denied, for the witness to be
27 told that there may be a possibility of him being recalled? That is just a
28 possibility, we are not saying that any future application will be granted,
29 but the witness should leave this Court with the knowledge that there might

1 be an application and that that application is a possibility, however
2 slight it might be at the moment, but there may be a possibility of this
3 witness being recalled? I note that, Your Honour, that was the statement
4 to the last witness. I think it is 023.

5 PRESIDING JUDGE: Mr Witness, we have no other questions of you
6 today. You are free to leave the Court and we thank you for your evidence.
7 There may be a possibility you may be asked to come back, we do not know.
8 Do you understand?

9 THE WITNESS: Yeah.

10 PRESIDING JUDGE: Once the witness has been allowed to leave the
11 Court I would be grateful if, Madam court attendant, if you would move the
12 blinds to allow him to leave us as he is protected.

13 [The witness stands down]

14 MS TAYLOR: Your Honour, the next witness is TF1-278 and that witness
15 will be led in evidence by my learned friend Mr Braun. I believe he has
16 been introduced to the court previously.

17 WITNESS: TF1-278 [Sworn]

18 EXAMINED BY MR BRAUN:

19 PRESIDING JUDGE: In what language will the witness speak?

20 MR BRAUN: Your Honour, the witness will give his evidence in Krio.

21 PRESIDING JUDGE: Thank you. Please proceed.

22 Q. Good afternoon, Mr Witness.

23 A. Good afternoon.

24 Q. I will ask you some questions now. I ask you to listen carefully to
25 my questions and be slow in your response. Do you understand?

26 A. Yes, sir.

27 Q. Do you know when you were born?

28 A. No, sir.

29 Q. Do you know how old you are, approximately?

1 A. As for me, it is 52.

2 Q. Where were you born?

3 A. xxxxxx village.

4 Q. What district is that?

5 A. It is at xxxxxxx.

6 Q. And what chiefdom?

7 A. xxxx xx.

8 Q. Have you ever attended any school?

9 A. No.

10 Q. What is your native language?

11 A. I am a Limba by tribe.

12 Q. Do you speak any other languages than Limba?

13 A. Yes.

14 Q. What languages do you speak?

15 A. I can talk Temne and Krio.

16 Q. Are you married?

17 A. Yes, sir.

18 Q. Do you have any children?

19 A. I have three.

20 Q. Are these three your own children?

21 THE INTERPRETER: Your Honour, let the lawyer repeat his question.

22 MR BRAUN:

23 Q. Are those your own children.

24 A. Yes, the three are my own children.

25 Q. Are there any more children you take care of?

26 A. Yes, I have about two of my sister's children.

27 Q. Why are you taking care of your sister's children?

28 A. Because where she was married her husband had died, there was nobody
29 to take care of them. That is why I brought them.

1 Q. What is your occupation?

2 A. At first I was a cook.

3 Q. And now?

4 A. Now I am a beggar in the street because my hands have already been
5 chopped off.

6 Q. Were you ever a member of any armed group at any time?

7 A. I did not get you.

8 Q. Were you ever a member of any armed group at any time?

9 A. No, sir.

10 Q. Did you ever use a weapon during the conflict in Sierra Leone?

11 A. No, no.

12 Q. In which town did you leave in January 1999?

13 A. I was in xxxxx, Freetown.

14 Q. With my next question I ask you to be careful with names, Mr Witness.
15 Who else lived with you at that time?

16 A. I had some tennants with me and my own children.

17 Q. Where was your wife at that time?

18 A. We were all together.

19 Q. Besides your wife and your own children, who else was with you?

20 A. The other tenants who rented the place where we were.

21 Q. Mr Witness, where were you on the morning of 22nd January 1999?

22 A. Well, I found myself in the banana trees.

23 Q. Why did you find yourself in the banana trees?

24 A. Why I was there? When I saw that they have driven us all from the
25 house and they set fire on the house, I had to run from the house and then
26 I hid myself in those banana trees.

27 Q. When you say they were setting your house on fire, who are you
28 referring to?

29 A. Well, because I saw combat -- people in combatant they might be SLA

1 soldiers.

2 Q. How do you know that?

3 A. Because they came on January 6th and they were in the city.

4 Q. Did you see when your house was burnt by the SLA?

5 A. Yes. They sent us as we -- because we were in the house we were
6 asked to leave the house.

7 Q. Why did they ask you to leave --

8 MS THOMPSON: Your Honour, my learned friend's question was: "Did
9 you see when your house was burnt by the SLA?" The previous answer to his
10 question was it might be SLA, it was not established as a matter of fact
11 that they were SLA.

12 PRESIDING JUDGE: Yes.

13 THE WITNESS: I have not got you.

14 PRESIDING JUDGE: Just wait a moment, Mr Witness. He has already
15 answered and the answer has been recorded.

16 MS THOMPSON: The answer could be struck off, Your Honour. The fact
17 is that there wasn't -- the witness did not establish as a matter of fact
18 who burnt his house. The question that followed was as if a factual
19 statement had been made and the witness had used the words although the
20 interpretation was might.

21 PRESIDING JUDGE: It is true the interpretation, Mr Braun, was might
22 be SLA.

23 MR BRAUN: May Your Honour assist me what else the witness said
24 beside SLA?

25 PRESIDING JUDGE: The record I have is: "I saw the combatants might
26 be SLA soldiers. They came on 6th January. We were in the city."

27 MR BRAUN:

28 Q. Mr Witness --

29 A. Yes, sir.

1 Q. Why did the combatants tell you to leave the house?

2 A. They just said, "Because we did not allow for peace, it is because
3 you have a place to sleep, that's why we burn the house."

4 Q. Did you see how your house was burnt?

5 A. I saw with my eyes because where we were hiding in the banana trees
6 it was not too far.

7 Q. Mr Witness, do you recall that you referred to those persons as
8 combatants that might belong to SLA. Why do you think they might be SLA?

9 A. I did not say something I said they were SLA. Because anybody
10 wearing combatant they are not in the shop for sale. That makes -- surely
11 showing that they are SLA.

12 Q. Who else besides you was staying in the banana plantation?

13 A. We were many there because we are over 15 children there and over --
14 we the elder ones were about 20.

15 Q. Do you know why those other people were staying in the banana
16 plantation?

17 A. It was because of the same crisis. Because where we were it was fire
18 all over. Everybody was running out of his house.

19 Q. When you say fire was all over, what exactly do you mean by that?

20 A. Because when they were setting fire on the houses.

21 Q. What exactly did you see?

22 A. I saw fire.

23 Q. Do you know where the fire was?

24 A. Me, I only saw because we were sitting on the parlour and fire was --
25 there was fire all over the place so we had to run out, out of the house.

26 Q. Where was your family at that time?

27 A. Well, most of us were scattered within the fire. After the fire
28 everybody went away.

29 Q. Mr Witness, where was your family at the time you were at the banana

1 plantation?

2 A. We were able to gather ourselves then later that around one o'clock
3 at night I saw my wife where they went to hid him themselves. I think they
4 met another combatant in there. They came and met us at the banana tree.

5 Q. Can you tell the court who belonged to your family at that time?

6 A. I had xxxx, then I had xxxx.

7 Q. Who was xxx?

8 A. xxxx was my wife's sister.

9 PRESIDING JUDGE: I understood there was a direction that names
10 should not be mentioned.

11 MR BRAUN: Your Honour, his direction was with regards to another
12 person. There is no problem by mentioning that name from the point of the
13 Prosecution. May I continue?

14 PRESIDING JUDGE: Yes, please.

15 Q. Mr Witness --

16 A. Yes, sir.

17 Q. How did how long did you stay in the banana plantation?

18 A. We spent two days there.

19 Q. Did anything happen on the 22nd January 1999?

20 A. Yes.

21 Q. Would you please tell us?

22 A. I might be able to explain to you a little bit. What happened, I was
23 hiding for three days, and two days they were making three days my child
24 started crying with hunger. He was telling his mother that he was hungry
25 and so I told my wife, "Eh, let this child not cry for hunger. If this
26 child cries here they will kill us here." And then the suckling mother
27 said he had no plaster to plaster his mouth.

28 Q. Will you remember to go slowly, please?

29 A. Yes, sir.

1 Q. You can go on now.

2 A. I said, "Suckle him, mother. Cajole this small child not to cry
3 here. If he cries here we'll all be killed here." And the suckling mother
4 said he had no plaster to plaster the child's mouth and so the child
5 shouted loudly. And people who were at the back of us were not seeing us.

6 Q. Mr Witness?

7 A. Yes sir, okay.

8 Q. Mr Witness, I ask you to wait until you answers are translated until
9 you go on.

10 A. Okay, sir.

11 Q. You just mentioned other people in the back. Can you explain what
12 you mean by that?

13 A. There were other people at the back from whom we are hiding from for
14 them not to see us.

15 Q. Did you say other people? Who are you referring to?

16 A. The same SLA who were at the back of us that is at Blackhall Road.

17 Q. So what happened next?

18 A. After the child has cried loudly they saw us and then they started
19 dragging us to leave this place. They said if we don't leave that place
20 they will cut all of our hands and so we became panicked. So we left
21 there.

22 Q. So you left and where did you go?

23 A. We took it between the xxxxxx Street and xxxxxx Street to come
24 to town.

25 Q. Again, I ask you to be careful with names with regard to my next
26 question. Who was with you when you left the banana plantation?

27 A. I was with my children and some tenants who were with us. And
28 another group that were there. They came from a different side.

29 Q. Where was your wife?

1 A. It was later she came there.

2 Q. On your way from the banana plantation did you notice anything
3 unusual?

4 A. Yes.

5 Q. What did you notice?

6 A. As we reached around xxxxxx street, we met one corpse that was
7 lying there.

8 Q. Can you describe the corpse?

9 A. I didn't get you clear. Describe like what?

10 Q. Can you describe what exactly you saw with regard to the corpse?

11 A. Well since I was panicked and I was going but the corpse was dressed
12 in a civilian dress and we saw blood oozing from him but we didn't put much
13 attention on it.

14 Q. What happened next, Mr Witness?

15 A. We continued going. We were trying to find xxxxx Street.

16 Q. Why did you want to go to xxxxxx Street?

17 A. We are just trying to pull out so we can get to the new road so -- to
18 the old road so we can get to the new road.

19 Q. What happened next?

20 A. As we were about to reach the junction we saw four combatant men
21 before us and one civilian.

22 Q. Can you describe those persons to the Court?

23 A. Those ones I don't know them. That was the first time we saw them.
24 They were well armed. The four were well armed and the other had civilian
25 clothes. And they stopped us that if we moved they would shoot at us. So
26 we stood there.

27 Q. Can you just stop it here? Do you recall how the civilian was
28 dressed like?

29 A. It was one civilian because he was he wore black polo and he had a

1 muffler.

2 Q. How did he wear his muffler?

3 A. He tied it between his nose and the eyes.

4 Q. So what happened next?

5 A. I had one my friend with whom we are going. I told him, I said,
6 "Hey, you are better, you don't have children but I will not leave my
7 children here and go. If you are able to run, go." And indeed he went.

8 Q. So what happened next?

9 A. Well, the other tenant with whom we were going, he went and asked
10 that he was the first to answer his call.

11 MR BRAUN: Your Honour, I just noticed that it's five o'clock on
12 the dot.

13 PRESIDING JUDGE: [Microphone not activated]

14 MR BRAUN: I have some more questions, Your Honour.

15 PRESIDING JUDGE: Well, in that case we will adjourn. I will try and
16 explain to the witness. Mr Witness, can you hear me?

17 THE WITNESS: Yes, sir.

18 PRESIDING JUDGE: Now, it is after five o'clock and the court
19 normally stops at five o'clock. But there are more questions for you and
20 more of your story and therefore, we would ask you to come back tomorrow
21 morning. Do you understand this?

22 THE WITNESS: Yes, sir.

23 PRESIDING JUDGE: You have sworn on the Koran to tell the truth and
24 therefore the rules of court are that between now and the time that all
25 your story is finished you are not to discuss your evidence with anyone
26 else. Do you understand?

27 THE WITNESS: Okay, sir.

28 PRESIDING JUDGE: Thank you very much.

29 THE WITNESS: Okay.

1 MR MANLEY-SPAINE: Your Honour, without trying to be persistent, we
2 crave your indulgence to give us time in the morning about an hour to
3 meet with our clients again. We will start at 10.15, if it is possible?

4 PRESIDING JUDGE: The view of the Bench is that you have all of this
5 evening and tomorrow afternoon and therefore the court will start at the
6 regular time, Mr Manley-Spaine.

7 Madam court attendant, would you please adjourn the court until 9.15
8 tomorrow.

9 [Whereupon the Court adjourned at 5.05 p.m. to be reconvened on
10 Wednesday, 6th April 2005 at 9.15 a.m.]

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EXHIBITS:

Exhibit No. D2 31

WITNESSES FOR THE PROSECUTION:

WITNESS: TF1-098 32

EXAMINED BY MS PACK 32

WITNESS: TF1-278 47

EXAMINED BY MR BRAUN: 47