



Case No. SCSL-2004-14-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
SAM HINGA NORMAN
MOINI NA FOFANA
ALLIEU KONDEWA

WEDNESDAY, 18 JANUARY 2006
10.05 A.M.
STATUS CONFERENCE

TRIAL CHAMBER I

| | |
|-----------------------------------|---|
| Before the Judges: | Pierre Boutet, Presiding Bankole Thompson Benjamin Mutanga Itoe |
| For Chambers: | Ms Roza Salibekova Ms Anna Matas |
| For the Registry: | Ms Maureen Edmonds |
| For the Prosecution: | Mr James C Johnson Mr Joseph Kamara Mr Kevin Tavener Ms Bianca Suci u (Case manager) Ms Lynn Hintz (intern) |
| For the Principal Defender: | Mr Lansana Dumbuya |
| For the accused Sam Hinga Norman: | Dr Bu-Buakei Jabbi Mr John Wesley Hall Mr Alusine Sesay |
| For the accused Moinina Fofana: | Mr Arrow Bockarie Mr Michiel Pestman Mr Andrew Ianuzzi |
| For the accused Allieu Kondewa: | Mr Yada Williams Mr Ansu Lansana |

1 [CDF18JAN06 - EKD]
2 Wednesday, 18 January 2006
3 [Status conference]
4 [Open session]
09:57:47 5 [The accused Fofana present]
6 [The accused Norman and Kondewa not present]
7 [Upon commencing at 10.05 a.m.]
8 MS EDMONDS: The CDF status conference.
9 PRESIDING JUDGE: Good morning. I have a bit of a cold
10:05:07 10 this morning, so if my voice disappears it is outside of my
11 control.
12 May I ask for representation this morning, please, starting
13 with the first accused?
14 MR JABBI: Good morning, Your Honour.
10:05:30 15 PRESIDING JUDGE: Good morning.
16 MR JABBI: Your Honour, this morning Dr Bu-Buakei Jabbi for
17 the first accused, and with him, if I may be given leave --
18 PRESIDING JUDGE: Yes, please.
19 MR JABBI: Mr Alusine Sesay, who I want to just introduce
10:05:52 20 very briefly with your leave, My Lord.
21 PRESIDING JUDGE: Yes, please do so.
22 MR JABBI: Mr Sesay is joining our team newly. He is a
23 Sierra Leonean lawyer of 13 years standing with extensive
24 criminal practice and has been for quite some time a special
10:06:16 25 consultant to the Law Officers department in Sierra Leone. Thank
26 you, My Lord.
27 PRESIDING JUDGE: Thank you. So I take it he will be part
28 of your regular team as we move along.
29 MR JABBI: Yes, indeed, My Lord.

1 PRESIDING JUDGE: Thank you. Mr Sesay, welcome to this
2 Court. Mr Hall.

3 MR HALL: Yes, Your Honour, John Wesley Hall also for
4 Mr Norman and our legal assistant. Introduce yourself.

10:06:51 5 PRESIDING JUDGE: Please, introduce himself, that will be
6 easier.

7 MR DUMBUYA: Sorry, Your Honour. I am from the Defence
8 Office, the duty counsel. I am not --

9 PRESIDING JUDGE: So you are the duty counsel. You are not
10:07:07 10 the one assigned to the team of Mr Norman.

11 MR DUMBUYA: I am assigned to the team of Mr Norman.

12 PRESIDING JUDGE: But you are not a legal assistant.

13 MR DUMBUYA: No, I am duty counsel.

14 PRESIDING JUDGE: Understood, thank you.

15 MR HALL: I was confusing him with Mr Yillah's former role.

16 JUDGE ITOE: I was going to ask, is he numerically stepping
17 in for Yillah?

18 MR HALL: No, Mr Sesay is.

19 PRESIDING JUDGE: No, that's Mr Sesay.

20 JUDGE ITOE: Mr Sesay. All right. Okay.

21 MR PESTMAN: Good morning.

22 PRESIDING JUDGE: Good morning. Welcome back.

23 MR PESTMAN: Thank you. It's nice to be back. On my right
24 Andrew Ianuzzi and on my left Arrow Bockarie and myself, Michiel
25 Pestman.

26 PRESIDING JUDGE: Thank you, Mr Pestman.

27 MR LANSANA: And if it pleases Your Honours, AB Lansana for
28 the third accused.

29 PRESIDING JUDGE: Thank you, Mr Lansana. For the

1 Prosecuti on?

2 MR KAMARA: Your Honours, for the Prosecuti on Jim Johnson,
3 Kevin Tavener, Joseph Kamara, Bi anca Suci u and Lynn Hintz.

4 PRESIDING JUDGE: So I presume the last name you said is to
5 come later?

6 MR KAMARA: Yes, she stepped out a few moments ago.

7 PRESIDING JUDGE: Thank you. So the purpose of this status
8 conference this morning is a follow-up to the last meeting that
9 has taken place in this court room, which was a pre-defence trial
10:12:30 10 conference that was presided over by Honourable Justice Thompson.
11 It appeared that as a result of that conference that there were
12 still fairly important outstanding issues that needed
13 clarifi cation and we felt that it was most appropriate to try to
14 solve these matters before we embark upon hearing evidence from
10:12:30 15 the Defence. So it is done in a way to try to not only clarify
16 these matters but make sure that there is a common understanding
17 of these matters and that the proceedings that will follow will
18 be done in an orderly fashion and will lead to an expeditious
19 trial. So this is really what we are trying to do this morning
10:12:30 20 and we are trying to achieve some progress in this respect.

21 For the information of all concerned, what we are planning
22 to do at this particular moment, and I say this before we look
23 into the specificity of the purpose of the conference, is
24 tomorrow morning we will we hear all comments from both parties
10:12:31 25 on the motion that has been filed by both the second accused and
26 the first accused about the subpoena to be issued to
27 President Kabbah. This is what we are setting aside for tomorrow
28 morning, oral arguments on this issue. When I say oral
29 arguments, I would like, inasmuch as possible, that parties would

1 expand on what they have submitted up to now in writing. And we
2 would, if need be, intervene in this presentation to seek some
3 clarification on some of these matters as we move long. So this
4 is what we are hoping to do tomorrow morning.

10:13:00 5 Tomorrow afternoon, we would like to start with the opening
6 statements, if any, and I know there has been indication yet that
7 the second accused and the third accused will make opening
8 statements. So it is expected that this is what we are going to
9 be starting with in the afternoon tomorrow.

10:13:51 10 [Trial Chamber conferred]

11 What my brother and colleague has mentioned to me is should
12 the arguments in the morning be so short - but it is not the
13 experience we have had up till now - but if they are very short
14 and everything is dealt with in a very short time frame, we might
10:14:09 15 wish to hear the opening statements in the morning. We are
16 mentioning that so that everybody is ready to proceed accordingly
17 tomorrow morning.

18 Any question on these matters up to now, and we are talking
19 here of procedural matters? Yes, Mr Hall?

10:14:26 20 MR HALL: Yes, Your Honour. Is the first accused able to
21 make an opening statement?

22 PRESIDING JUDGE: Absolutely not. He has already exercised
23 his right at the beginning of the trial and that was the subject
24 of many discussions. You may remember that at that particular
10:14:40 25 moment. And therefore he is precluded from making a statement
26 now. He had the right, he exercised that right at the beginning
27 to make his opening statement then, and therefore there is not
28 the second option to make another opening statement. That is why
29 in my comments I directed that the second accused and then the

1 third accused would make opening statements.

2 MR HALL: I wasn't here when that happened but I read the
3 transcript three days ago and it was not definitively stated. We
4 tried to figure out exactly what it said. This issue was
10:15:17 5 addressed at that time but whether or not he was precluded from a
6 later opening statement --

7 PRESIDING JUDGE: Well, if there is any doubt in your mind
8 I would hope that my comment now makes it very clear that he is
9 not allowed to make another opening statement.

10:15:31 10 MR HALL: Would the Court at least allow counsel 15
11 minutes?

12 PRESIDING JUDGE: No, there are no such provisions. This
13 was explained to the first accused when that took place at the
14 opening of the CDF trial. It is either the accused or his
10:15:51 15 counsel, but -- when I say the first accused will not make an
16 opening statement, that means the first accused and/or his
17 counsel, whoever it may be.

18 MR HALL: Understood.

19 PRESIDING JUDGE: Thank you, Mr Hall.

10:16:24 20 The first issue that I would like to raise at this
21 particular moment - and this is directed to the team of the first
22 accused, Mr Norman - has to do with the first accused testifying
23 as a witness, being the first witness to be called. The
24 information that was provided to the Court, at least at the
10:16:54 25 pre-trial conference, was that Mr Norman was to testify first.
26 Is it still the case and is he to testify? Because there has
27 been some information that would indicate that he may not testify
28 now. So we would like to know clearly if he is to testify, and,
29 indeed, if he is to testify that he will, in accordance with the

1 Rule, testify first. Mr Jabbi?

2 MR JABBI: My Lord, our position is still that the first
3 accused will be testifying. I believe it is by operation of the
4 relevant rule that if he is testifying he must testify first. As
10:17:54 5 up to now that is the team's understanding.

6 PRESIDING JUDGE: But this is your understanding as well,
7 that he will indeed testify?

8 MR JABBI: So far as I can tell, yes.

9 PRESIDING JUDGE: Well, so far as you can tell, Dr Jabbi,
10:18:13 10 we are the day before the opening of his evidence. So we want to
11 have a fairly clear indication as to is he or is he not. This is
12 not a maybe, because. You have been in the case for a long time,
13 Dr Jabbi, so you know we are about to start. You are telling me
14 and you are telling this Court that he is the first witness to be
10:18:36 15 called and I don't sense, in what you are telling the Court, that
16 there is a clear indication that he will indeed testify.

17 MR JABBI: Yes, My Lord.

18 PRESIDING JUDGE: He will?

19 MR JABBI: He will.

10:18:50 20 PRESIDING JUDGE: Thank you.

21 JUDGE THOMPSON: Learned counsel, having given that
22 undertaking of assurance as far as you can give it, do I take it
23 then as a matter of law that if the first accused does testify
24 there will be no request to vary the statutory provisions of Rule
10:19:50 25 85(C) in terms of what it stipulates clearly there? And of
26 course, one is here more or less reflecting on a comparative
27 analysis between our own Rule 85(C) as distinct from similar
28 rules in ICTR and ICTY, which do not have the strict stipulation
29 that we have. I just want some kind of assurance that indeed we

1 would not have cause to entertain any motion to vary the strict
2 terms of Rule 85(C).

3 MR JABBI: By that I understand Your Lordship to be
4 referring to the order.

10:20:44 5 JUDGE THOMPSON: Precisely. We are on the same radar
6 screen, Dr Jabbi.

7 MR JABBI: My Lord, we will endeavour to stay on that
8 screen.

9 JUDGE THOMPSON: Thank you.

10:21:08 10 PRESIDING JUDGE: Another issue related to the first
11 accused giving evidence has been raised by the Prosecution in
12 their notice of issues to be raised at this hearing, which has to
13 do with the disclosure of a witness summary or statement to the
14 Prosecution by the Defence. Am I misquoting you, Mr Prosecutor?

10:21:44 15 Mr Kamara or Mr Johnson or whoever, or Mr Tavener? Yes?

16 MR TAVENER: Certainly that is a concern. We don't know
17 what Chief Norman will be testifying about. There is no summary
18 provided as to his proposed evidence.

19 PRESIDING JUDGE: Mr Jabbi, do you wish to say anything
10:22:05 20 about that at this particular moment?

21 MR JABBI: Yes, indeed, My Lord. My Lord, we have usually
22 given some indication of the special constraints the team
23 experiences.

24 PRESIDING JUDGE: Sorry, Dr Jabbi. Please proceed.

10:22:38 25 MR JABBI: Yes, My Lord. I was just explaining that we
26 have either given some indication as to the special constraints
27 that the team has been experiencing in connection with our
28 client. We have endeavoured to elicit these pieces of
29 information which would give the basis for the supply of

1 summaries of witness statements to the other side, but we have
2 encountered problems so far. If you saw me saying at the
3 beginning that so far as we know the accused will give evidence,
4 this is one of the factors leading to that form of speech. Even
10:23:44 5 though we are sure that he will, we have not been, up to this
6 moment, able to obtain from him the basic statement that will be
7 the ground for his evidence. But it is still possible that
8 before he actually comes to the witness stand that may be
9 available. Unfortunately, we will not then have been able to
10:24:16 10 have filed, for the benefit of the other side, the relevant
11 pieces of information. This is a special constraint, My Lord,
12 that we are experiencing. We have tried to get over it by every
13 possible means, but we have not been able to get over it, and we
14 can only inform the Chamber to that effect. But we are
10:24:41 15 endeavouring to ensure that notwithstanding that we will still
16 keep compliance with Rule 85. Thank you very much, My Lord.

17 PRESIDING JUDGE: Thank you, Dr Jabbi. Can we hear from
18 you, Mr Tavener, for the Prosecution?

19 MR TAVENER: Thank you, Your Honour. The Prosecution view
10:25:06 20 is we would like to start this session and continue on without
21 unnecessary adjournments or delays. Without any information as
22 to the evidence or the material to which Chief Norman will
23 testify, that may cause an application by the Prosecution to
24 adjourn if matters are raised about which we have no notice or
10:25:29 25 haven't been raise previously. So our preference would be to
26 have a summary prior to Chief Norman testifying, so that then,
27 one, he can testify, we have an idea of the matters he will be
28 raising, and then we can go on to the next witness without any
29 application from our part.

1 Then we have the other issue that I will just mention in
2 passing. We then don't know, at this stage, who the second
3 witness will be, and again, we don't --

4 PRESIDING JUDGE: We will get there in due course.

10:25:57 5 MR TAVENER: Yes. One thing at a time, I appreciate that.
6 But certainly we would like to know what Chief Norman is
7 testifying about. In particular, is it relevant and other
8 related issues. Thank you.

9 PRESIDING JUDGE: Thank you. You wish to add anything?
10:26:13 10 Yes, Mr Hall?

11 MR HALL: I would like to make a suggestion, if it would
12 help Mr Tavener. Of course we haven't had our client write out a
13 statement, but we generally know what he is going to say. But if
14 the Court would allow, if they ask for leave, we wouldn't object
10:26:34 15 for them to postpone cross-examination of Mr Norman while we take
16 the next witness. As long as the postponement was for two or
17 three days, for as long as they need to prepare, then we could
18 get on to the next witness. Our next witness will be Dr Demby,
19 the former vice-president. He is here.

10:26:47 20 PRESIDING JUDGE: We will get there, Mr Hall.

21 MR HALL: So we could go right to the next witness.

22 PRESIDING JUDGE: That's fine.

23 MR TAVENER: Our preference would always be that upon the
24 evidence-in-chief being completed we go straight to
10:27:01 25 cross-examination in order to maintain the momentum, and also for
26 the fairness of the witness as well. We don't want delays of
27 several days between a person testifying and being
28 cross-examined. That wouldn't be suitable at all.

29 JUDGE THOMPSON: But we have in the past departed from the

1 strict pattern where compelling circumstances so dictate, and
2 sometimes in favour of the Prosecution. So even though one
3 recognises the importance of adhering to the strict sequence, one
4 cannot discount the possibility that in some cases, because of
10:27:38 5 certain imponderables and certain unpredictables, where there is
6 judicial concession on the part of the Chamber to Prosecution,
7 the same cannot be discounted in the case of the Defence.

8 MR TAVENER: I accept that, Your Honour, but there are no
9 imponderables here. The Defence has just said they know what
10:27:57 10 Norman is going to say.

11 JUDGE THOMPSON: They say they know generally. They do not
12 know specifically or with great particularity, and that is very
13 much an important dimension of the judicial process. We usually
14 make a distinction.

10:28:14 15 JUDGE ITOE: To back-up my learned colleague, it is not
16 counsel who will be testifying for Norman. It is Norman who will
17 be testifying for himself. They may know generally, but Norman
18 may depart from the pattern they think he might adopt.

19 PRESIDING JUDGE: And experience has shown that it has
10:30:00 20 happened in the past.

21 MR TAVENER: I understand it has happened. But we would at
22 least -- it may progress the matter more quickly if Defence at
23 least tell us at this stage what they know, or what they are
24 willing to tell us. If they provide a summary of what they know
10:30:00 25 as we now speak and that may preclude us from asking for an
26 adjournment.

27 JUDGE ITOE: Will you not complain about the details
28 contained in the summary?

29 MR TAVENER: I haven't seen it yet, Your Honour.

1 JUDGE ITOE: Well, I am just coming in because I know what
2 your stand is on this matter from previous notes.

3 MR TAVENER: Any indication will be helpful, rather than
4 what we have at the moment.

10:30:00 5 JUDGE THOMPSON: I am clearly in agreement with your
6 position. You are entitled to know if there is anything to know.
7 Of course, the point we have been making is that sometimes it is
8 a little difficult for counsel where they find themselves in a
9 situation in which they are trying to extract from their client
10 important specifics. We can see that all good faith efforts are
11 being made. It is important for us, the judges, to be able to
12 balance the conflicting interests here. And if there are times
13 we make concessions for the Prosecution, I am sure that the
14 doctrine of equality of arms require us to accord to the other
10:30:02 15 side the same concession. But, of course, I agree with you if
16 there is anything they have there, which they can usefully
17 disclose to you, they should, out of good faith, do that to avoid
18 any possibility of trial by ambush.

19 MR TAVENER: The other issue, of course, is that Chief
10:30:20 20 Norman being the accused is in a slightly different position from
21 other witnesses. The rationale behind the accused giving
22 evidence is so that he can't alter his testimony depending on the
23 nature of defence witnesses' testimony. So he goes first, then
24 other witnesses follow. Mr Demby will then be giving evidence
10:30:41 25 second. We would say it is inappropriate that there be this
26 change of order. We prefer all the evidence --

27 THE INTERPRETER: Your Honours, the interpreter is finding
28 it difficult to interpret what learned counsel is saying because
29 he is going very fast. Can you go a little slowly, please.

1 MR TAVENER: Thank you. We would prefer, at least as
2 regards to the accused, that his entire evidence be finished in
3 one section.

4 JUDGE THOMPSON: I think all we can say is that the Bench
10:31:07 5 will take note of this. Of course, with the caveat that the
6 Bench would be very slow to want to dictate to the Defence the
7 methodology in terms of how they present their defence.

8 PRESIDING JUDGE: I would add to that as well that you have
9 made a comment that I think is very appropriate, that the
10:31:32 10 situation of an accused giving evidence puts him, although he is
11 a witness, in a different category of witness, I would suggest to
12 you, than other witnesses. So I would suggest that some
13 adjustment needs to be made in this respect. So an accused
14 testifies or can testify indeed as to, and could testify as to
10:31:49 15 all the charges. In fact, he is the one -- no other witness is
16 facing these charges. He is the accused, and therefore you can
17 expect normally that an accused should and could speak to all the
18 charges and any relevant matter about these charges. So in this
19 respect I don't see what the Prosecution is expecting. So, in
10:32:14 20 other words, why should you ask such definite commitment on the
21 part of an accused who is likely to give evidence when he is
22 facing all of these charges. I am at a bit of a loss to
23 understand the logic of your questioning in this respect,
24 Mr Tavener. I would like to be enlightened if I may.

10:32:35 25 MR TAVENER: All the Prosecution is asking for is that the
26 Rules be complied with, and that is that we be given a notice of,
27 one, the order in which witnesses are testifying, and secondly, a
28 useful summary about what they are testifying about.

29 PRESIDING JUDGE: We are talking of the accused, we are not

1 talking of other witnesses.

2 MR TAVENER: Yes, that's a general proposition. In regards
3 to Mr Norman, Chief Norman, we have no indication of what he is
4 going to say. We are not even quite sure, although I understand
10:33:00 5 my friend has given undertakings, that he will in fact be
6 testifying. But if he does testify, we should have some notice
7 about which he testifies. The reason for that, amongst other
8 reasons, is to enable us to cross-examine appropriately to
9 prepare our cross-examination.

10:33:14 10 JUDGE ITOE: Mr Tavener, are you suggesting, on the side on
11 which you are sitting, that up to now you have no idea of what
12 Norman is likely to say in this case?

13 MR TAVENER: Obviously we have a reasonable idea, or a
14 reasonable anticipation of what he'll say.

10:33:29 15 JUDGE ITOE: That's right.

16 MR TAVENER: But as has already been mentioned by the
17 Bench, there is no fetter on what Chief Norman may well testify
18 about. Now if a surprise comes out, if matters have not been put
19 to prosecution witnesses during the course of the case --

10:33:49 20 obviously we have a good understanding of the case. But if there
21 are matters that are put that Chief Norman raises for the very
22 first time unbeknownst to us, that may require some
23 investigation, some inquiry. There may be matters Chief Norman
24 knows about that haven't been disclosed at all in any way. And
10:34:09 25 for that we need time. For that we need some degree of notice to
26 enable a reasonable cross-examination. We are not concerned
27 about the matters we know about, it is the matters we don't know
28 about as we now speak that concern us. And that is why we need
29 some indication of what Mr Norman will be testifying about.

1 JUDGE ITOE: Are you suggesting that if matters do arise
2 ex-improvisio that than adjournment for you to look at the new
3 situation which has been presented would be suitable.

4 MR TAVENER: Yes, but that is what we are trying to avoid.
10:34:45 5 Once we start this session we don't want to have breaks,
6 adjournments. We prefer to start and finish.

7 JUDGE ITOE: But this is inevitable. Adjournments,
8 Mr Tavener, are inevitable. We tolerated adjournments during the
9 presentation of the case for the Prosecution and I don't see why
10:35:05 10 it should be different now that the Defence is about to present
11 its case.

12 MR TAVENER: Well, our preference is to --

13 JUDGE ITOE: Nobody wants a break, you know, nobody wants
14 to break the proceedings by numerous adjournments. But I am
10:35:20 15 saying that these are part of the judicial process. Adjournments
16 are part of the judicial process and where they are necessary we
17 have to live with them. This is just what I am saying.

18 MR TAVENER: I accept that.

19 JUDGE THOMPSON: Consistent with that, in fact, I would say
10:35:35 20 myself ideally we would not want to have breaks and adjournments,
21 but of course, like my learned brother has already hinted, we are
22 not in a perfect world and there are situations where we have had
23 to confront the unpredictables, the imponderables in the case of
24 the Prosecution. So it does not lie within the -- in the mouth
10:36:02 25 of the Prosecution to say that okay, it may well have been
26 inevitable in some of our situations, but it may not be
27 inevitable in the case for the Defence. Because the question of
28 whether we grant adjournments or not is eminently a matter of
29 judicial control. We the Bench are in control of that and we

1 determine whether the circumstances warrant that. It is just
2 that we don't want you to push us into a straight-jacket. These
3 are matters of experience. The life of the law has never been
4 logic, entirely logic. It has been experience also, common sense
10:36:48 5 and all these things. Things that we are not able to control.
6 So the judicial process is subject to all this.

7 I agree with you that somehow you need to know, with some
8 degree of reasonableness, what the first accused may come to talk
9 about. But I think that in a conceptual sense you know he will
10:37:13 10 be coming to rebut the charges that you have laid against him and
11 also the evidence that you have led in this Court. So why not
12 proceed on that kind of premise, that he will be coming here to
13 rebut them, to poke holes in your case.

14 MR TAVENER: I am sure that is his intention. All we would
10:37:33 15 like is to know what each witness is going to say, including the
16 accused, and in what order, but that is another issue. We are
17 not asking for any more than what is required. I am sure the
18 Defence are capable at this stage, one or two days before their
19 client testifies, to indicate what he is going to say in general.
10:37:53 20 That is all we are asking. And I understand in courts there are
21 always adjournments, however we can reduce the potential for
22 adjournments by that simple process of providing us with the
23 information we are entitled to.

24 PRESIDING JUDGE: We have listened to you, Mr Tavener, and
10:38:11 25 we will proceed with some other issues and we will give a
26 direction in this respect shortly. I just want to say that our
27 aim, as is the same as the one by the Prosecution, and I would
28 say by the Defence, is to proceed expeditiously but at the same
29 time with fairness. This is to try to balance the whole of it

1 and we will see how best we can achieve this. So we have
2 listened to you. Thank you.

3 Given that the first accused is to appear as the first
4 witness in his own case, we would like to emphasise that the
10:38:50 5 proper order of examination would be for counsel for Norman to
6 examine him first; that will be then followed by
7 cross-examination by counsel for the second accused;
8 cross-examination by counsel for the third accused; then
9 cross-examination by the Prosecution. The scope of the
10:39:09 10 cross-examination again should, as much as possible, should be
11 limited to issues raised during examination-in-chief. Obviously,
12 there are exceptions to this, but I just want to remind parties
13 that we would like to see a focused cross-examination if at all
14 possible and feasible. This is the procedure in as much as the
10:39:29 15 first accused is concerned giving evidence. I hope that this
16 issue of procedure to be followed is well understood by all
17 concerned.

18 I would like as well to remark that the counsel for the
19 first accused may re-examine the first accused once this is
10:39:46 20 completed, but again, as the rule prescribes, only on new issues
21 that may have been raised during cross-examination.

22 An additional comment has to do with the evidence to be
23 given by the first accused - and I know counsel are aware of it -
24 but I want to remind the parties that once the accused has taken
10:40:10 25 an oath or affirmation and commenced testifying he has then
26 become the witness of the Court and the Prosecution and the
27 Defence must not communicate with the witness on the content of
28 the witness testimony because he is a witness in the Court,
29 except with leave of the Court at that particular moment. If the

1 Defence wishes to communicate with the witness at that particular
2 moment, they shall inform the other parties of their intent and
3 what is the matter that they wish to raise and this matter may be
4 raised with the Chamber if need be. So, I just want to caution
10:40:47 5 the parties so we avoid any difficulties in this respect. As I
6 say, once the accused is giving evidence, he is a witness with
7 the Court at that particular moment and I just caution about
8 difficulties that may ensue as a result of that.

9 Yes, Dr Jabbi, I see that you are looking at me quite
10:41:05 10 attentively.

11 MR JABBI: My Lord, I just want to inquire whether all you
12 have said is without prejudice to Defence having to see their
13 client out of court if need be as may indeed arise.

14 PRESIDING JUDGE: Obviously, if the witness, if the first
10:41:27 15 accused is a witness giving evidence in this trial in the course
16 of his evidence - I am not talking about after he has finished
17 his evidence - obviously, after he has finished his evidence, I
18 am talking of the accused as a witness giving evidence while he
19 is giving evidence. After he is finished, it's a different
10:41:44 20 scenario. Yes, Mr Bockarie.

21 JUDGE ITOE: That means that if he will be on the witness
22 stand, Dr Jabbi, for one month, you have no right to communicate
23 with him. If he is in the witness stand. If he is giving
24 evidence for one week, two weeks and so on, he is a witness of
10:42:04 25 the Court and so it is only after he steps out that you can
26 communicate with him. Is that understood?

27 MR JABBI: I am in a little doubt there. I was actually
28 trying to --

29 PRESIDING JUDGE: Once he has finished giving his evidence

1 and you are proceeding now to call your second witness from that
2 moment on, you can speak to him. But while he is giving
3 evidence, whether in chief or in cross-examination and so on, he
4 is a witness of the Court and the communications you may have
10:42:36 5 with him, if any, must be very restricted and I say only in the
6 scenario and according to the procedure. You shall inform the
7 other parties you wish to communicate to him and about what.
8 Because he is no more, although he is still the client in that
9 respect in a wider sense, he is a witness of the Court and
10:42:54 10 communication with witnesses, as you know, have to be curtailed
11 and a witness may not be spoken to about his evidence. That is
12 basically the rule. Is it clear now? I am not sure because
13 looking at you I am not sure whether it is.

14 MR JABBI: No, My Lord, I am just concerned about the
10:43:16 15 possible length of time that he might take and the demands of our
16 own interaction with him for other purposes as a client,
17 especially when he is in detention.

18 PRESIDING JUDGE: If that scenario comes about, as I say,
19 you may not speak to the witness about his evidence while he is
10:43:43 20 giving evidence. If you communicate with him, as such, you can
21 do it only while informing the other parties as to what you want
22 to talk to him about and say, essentially, "We want to talk to
23 him about witness three," or whatever it is and not about his
24 evidence and if there is an objection, the Chamber will have to
10:44:04 25 decide on that matter.

26 MR JABBI: As Your Lordship pleases.

27 PRESIDING JUDGE: That is a piece of advice and caution on
28 this so we don't get into trouble.

29 MR JABBI: It is well taken.

1 PRESIDING JUDGE: Thank you. Yes, Mr Bockarie.

2 MR BOCKARIE: Yes, Your Honour, it is a question, if I
3 rightly got you, you said cross-examination will be limited to
4 issues raised in examination-in-chief.

10:44:23 5 PRESIDING JUDGE: Should be, I didn't say shall be, but
6 should be. Credibility is always an issue.

7 MR BOCKARIE: Yes, Your Honour. I am just thinking of a
8 situation where it is a common witness and we may like to raise
9 certain issues through that witness --

10:44:39 10 PRESIDING JUDGE: We will get to that, common witnesses is
11 a different issue. If you allow me, you are moving ahead of me
12 on this issue.

13 MR BOCKARIE: I will, Your Honour.

14 PRESIDING JUDGE: Thank you. I take it now, to clarify
10:45:23 15 another issue with respect to the order of witnesses, Mr Jabbi,
16 but we will get to it later. I take it now from your comments
17 that your next and second witness is to be Dr Demby; am I right?

18 MR JABBI: My Lord, at this stage not yet. We are still
19 expecting -- we don't know yet what the outcome of the motion is
10:45:58 20 going to be, the subpoena motion, but I did order that after the
21 accused has given evidence, our second witness, if everything
22 goes well, will be the President, and the former vice-president
23 might only come in if there are impossible problems with the
24 subpoena.

10:46:28 25 PRESIDING JUDGE: Okay, but we will get to that later on if
26 you allow me, Mr Jabbi. I am the one who has moved ahead of what
27 we were planning to do in our own schedule.

28 We are at this moment seized with the Prosecution request
29 for order to Defence pursuant to Rule 73ter to disclose witness

1 statements which has been filed on 7 December. The responses
2 were filed by each defence team on 8 December and the Prosecution
3 consolidated reply was filed on 9 December.

4 THE INTERPRETER: Your Honour, if I may, you are going a
10:47:15 5 little fast. The interpreter would like to interpret accurately.

6 PRESIDING JUDGE: Thank you. This motion about the
7 disclosure of the defence witness statement, as I said, was filed
8 on 7 December. The response was filed on 8 December 2005 and the
9 consolidated reply by the Prosecution on 9 December. After we
10:47:46 10 finish with the status conference, we will take a short pause and
11 we should come back and give a short ruling on this that will be
12 followed later on by a more detailed reasoned ruling.

13 Does the Prosecution wish to add anything in this respect
14 about the submission? As I say, we will proceed based on the
10:48:08 15 written submissions for the time being. Mr Kamara or Tavener?

16 MR TAVENER: We have nothing further to say.

17 PRESIDING JUDGE: Thank you. Dr Jabbi?

18 MR JABBI: I don't have any positions yet.

19 PRESIDING JUDGE: Mr Bockarie?

10:48:26 20 MR BOCKARIE: The same, Your Honour.

21 PRESIDING JUDGE: Mr Lansana.

22 MR LANSANA: None, Your Honour.

23 PRESIDING JUDGE: This issue will be disposed of shortly
24 after we have paused and we'll move to the next issue on our own
10:48:37 25 agenda, which is the issuance of a subpoena to President Kabbah,
26 which is the issue that Mr Jabbi has just raised. As I indicated
27 earlier, and the discussion about the status conference, we will
28 hear oral arguments about that tomorrow morning and following
29 that, we will take this matter under advisement. I should

1 mention to you, Mr Jabbi, for the preparation of your order of
2 witnesses that it is highly unlikely that the decision will be
3 rendered either in the morning or in the afternoon tomorrow.
4 This is a very important and serious matter. We want to give it
10:49:25 5 proper consideration as well. I would suggest that you look at
6 your other witnesses, having in mind the possibility that that
7 decision may not be - it will certainly not be given before your
8 first witness is called. This is an absolute certainty. Whether
9 it will be done before you get to number two, I don't know. If
10:49:46 10 the first witness testifies for a month, it is likely to be done
11 before that. That's why I say if he testifies for a day, it is
12 unlikely. I am just mentioning that so you can prepare your
13 order of calling witnesses with that in mind.

14 MR JABBI: As far as we are doing that, My Lord, we will
10:50:09 15 also hope that the time of the testimony of the first accused and
16 the fairly extended cross-examination that will take place might
17 be enough for a decision to have been reached, My Lord.

18 PRESIDING JUDGE: It is quite possible. I don't want you
19 to be under the impression that if it is possible we will and we
10:50:29 20 would like to do that as soon as we can. But it will be as soon
21 as we can is not likely to be before this coming weekend.

22 MR JABBI: Thank you, My Lord.

23 PRESIDING JUDGE: Yes, Mr Tavener.

24 MR TAVENER: Your Honour, the problem that that causes is
10:50:49 25 that if the President -- the ruling about the President and the
26 mechanics of bringing him here, including the taking of a
27 statement from him, are not resolved for a month, he will not be
28 able for this session. The Prosecution is still in the invidious
29 position of not knowing who the second -- it may well be the

1 ex-vice-president, it may not be. We don't know whether that
2 summary of Mr Demby is accurate. Then we move on to other
3 witnesses such as Mr Penfold, Mr Hirsh, both of whom held offices
4 with their respective foreign office's State Department. We
10:51:29 5 don't know, and I am seeking confirmation now, that those
6 respective employers have allowed those people to testify.
7 Sorry, I am looking at the summary. I will start again.

8 So whether those persons, Mr Penfold and Mr Hirsh will be
9 available at some time, if at all. But going back to the list I
10:51:55 10 now have in front of me, I would like confirmation Mr Demby will
11 be testifying second and is available to testify second in this
12 session, perhaps even from next week, some time next week, and
13 whether the other persons we have on the list, nominated from
14 four to 15, will all be available in this session to testify. I
10:52:17 15 understand the witness number 16, we haven't had confirmation,
16 but that particular witness may not be called, that person not
17 appearing on the original witness list. I don't know about the
18 position there. In short, the Prosecution would like to know who
19 is the second witness and whether they will be available next
10:52:39 20 week, that is putting aside the issue of the President.

21 PRESIDING JUDGE: I understand the second witness is
22 Dr Demby.

23 MR TAVENER: All right. I would like confirmation of that
24 and I would like --

10:52:48 25 PRESIDING JUDGE: Am I misquoting you, Mr Jabbi?

26 MR TAVENER: And that he is available -- he is available
27 next week.

28 JUDGE ITOE: But it is not for you to confirm that he is
29 available. He is not your witness.

1 MR TAVENER: No, I would like to know who -- I would like
2 confirmation of the order of the witnesses and their
3 availability.

4 JUDGE ITOE: I just wanted to say that it is not for you to
10:53:13 5 confirm that he is available. It is for the Defence to confirm
6 that he is available. Dr Jabbi, is he available?

7 MR JABBI: Pardon, My Lord?

8 PRESIDING JUDGE: Is that witness, Dr Demby, available to
9 be called as a witness, either next week or the week after? In
10:53:32 10 other words, when we are ready to move to witness number two?

11 MR JABBI: He will be.

12 PRESIDING JUDGE: He will be?

13 MR JABBI: He definitely will be. My Lord, I was just
14 going to say that the Presiding Judge's overall assessment of the
10:53:48 15 situation in respect of the subpoena situation and also the
16 possibility of Dr Demby coming as second, I would have thought
17 would have disposed of this matter for the moment. We are very
18 sensitive to the need to let the Prosecution know in good time
19 who the next witness will be. But as we have just indicated, the
10:54:14 20 question of the subpoena is still pending and we believe that, as
21 was put by Your Lordship, it is possible a decision could come
22 maybe early next week or so.

23 JUDGE ITOE: No, we don't want to make such a commitment.
24 I wonder if you followed the Presiding Judge properly. He
10:54:41 25 doesn't want to make a commitment as to a time frame when that
26 decision will come. That I think is --

27 MR JABBI: Yes, My Lord. I believe what he actually said
28 was that it is unlikely that it would be available by the end of
29 this week.

1 PRESIDING JUDGE: Highly unlikely.

2 MR JABBI: Highly unlikely.

3 PRESIDING JUDGE: Indeed.

4 MR JABBI: And that means that it is, at least, not
10:55:03 5 unlikely; that some time next week it could be available.

6 PRESIDING JUDGE: That is one way to look at it.

7 MR JABBI: We cannot be very definite about how to put that
8 situation for now, except that we promise to be sensitive to the
9 requirements of the situation in terms of notifying the
10:55:31 10 Prosecution about the next witness after the first accused.

11 PRESIDING JUDGE: Dr Jabbi, I thank you for these comments.
12 As I say, it is a delicate situation. This is an important
13 issue. We want to take the time to look into this issue about
14 this particular witness, but at the same time, we are also
10:55:44 15 concerned that the proceedings should move ahead. You have made
16 the alternative arrangement to say that if that decision is not
17 there at that time, you are prepared to move with the one next on
18 your list as being Dr Demby. We are satisfied with that.

19 MR JABBI: Yes, but it is a very definite format that my
10:56:08 20 learned friend wanted to put on it.

21 PRESIDING JUDGE: I understand.

22 MR JABBI: I am just trying to caution.

23 PRESIDING JUDGE: But we control the process, not the
24 Prosecution.

10:56:13 25 MR JABBI: Thank you very much.

26 PRESIDING JUDGE: I understand their concerns, but we are
27 concerned as well.

28 The order of witnesses for the first accused again, I do
29 have some observation to make in this respect, and I know it has

1 been alluded to by Mr Tavener as well. Excluding your witness
2 number two now, which might be an alternative, as such, but, in
3 other words, if the Court grants your application and
4 President Kabbah is called, and that decision is made before, he
10:57:02 5 would be your witness number two. If not, then you are going to
6 proceed with Dr Demby and so on until that decision is rendered,
7 and when that decision is rendered, presumably then we will have
8 to see if and when it is possible to have that witness. But we
9 will deal with that situation in due course, whenever and if we
10:57:21 10 get there. Leaving aside, for the time being, given the motion
11 that is still outstanding, but the order that you have listed in
12 your documentation is still for Dr Demby to be number two and is
13 followed up by the witnesses as you have listed them. This is
14 your intention at this time; am I right?

10:57:45 15 MR JABBI: Yes, My Lord, that is correct.

16 MR KAMARA: Your Honour, if I may be heard?

17 PRESIDING JUDGE: Yes.

18 MR KAMARA: There has been a tradition the Court has
19 followed with reference to witnesses. That is once witnesses are
10:58:23 20 on the stand, we always have a stand-by witness. I am bringing
21 this point in the event that the first accused, if anything
22 happens that he is able to continue, we shall have a stand-by
23 witness to proceed. I guess I am right in the part that this
24 Court has adopted. As such, with advising my learned friends on
10:58:46 25 the other side, that following that tradition, if we are going by
26 it, that we have a stand-by witness, as we've always done while
27 presenting the case for the Prosecution. If anything happens,
28 Chief Norman is unable to proceed, then number two or number
29 three should be available and then the proceedings are not

1 interrupted. Thank you, Your Honour.

2 PRESIDING JUDGE: Thank you for your suggestion, Mr Kamara.
3 Yes, Mr Sesay.

4 MR SESAY: I believe the essence of this list, the list
10:59:15 5 which has now been presented to the Court is for the Prosecution
6 to have an idea of the sequence that these witnesses will have to
7 testify. So the issue of a stand-by witness does not arise in
8 this case because if Chief Norman is not in a position to
9 testify, as we did with the second witness, President Kabbah,
10:59:38 10 then the next witness will have to follow.

11 PRESIDING JUDGE: Yes, but this is not of concern only to
12 the Prosecution. It is of concern to the Court as well. What
13 Mr Kamara is suggesting here is that we have asked the
14 Prosecution to always have stand-by witnesses so we don't get
10:59:54 15 into a scenario where we have to adjourn for a day simply because
16 no witnesses are available at the particular time, so this is the
17 suggestion that is being made. Should, for example, Mr Norman
18 decide not to come or he is sick for a week, or whatever it is,
19 as such, we want to be sure that you have prepared your other
11:00:16 20 witnesses with that in mind, that you should have witnesses
21 available all the time so we are not caught in a scenario where
22 we have to adjourn simply because no steps have been taken to
23 have witnesses available when we need them, when you need them.

24 MR SESAY: Your Honour, I am quite confident that our
11:00:37 25 witnesses will be available.

26 JUDGE THOMPSON: Well, the thing is simply that on any one
27 day you must endeavour to have two witnesses in court. I think
28 that is simply what it means.

29 MR SESAY: We will do so, My Lord.

1 JUDGE THOMPSON: So that in case something happens, witness
2 A is not able to testify, there will be a witness sitting there
3 waiting to come and testify, so that the day is not lost. That
4 is what we are trying to say.

11:01:05 5 MR SESAY: I will endeavour to make sure that they --
6 [Overlapping speakers].

7 JUDGE THOMPSON: That's what availability means.

8 MR JOHNSON: Your Honour, if I may, please, just to add a
9 little bit to that. Mr Kamara's and our principle concern is
11:01:22 10 certainly with additional witnesses, as we go down the list of
11 witnesses, as with the Prosecution, there will always be another
12 witness ready to testify. I do think we might want to address
13 that, however, a little further. I think this is what my
14 colleague was bringing up in the case of Chief Norman. Of
11:01:41 15 course, the Rule does say that Chief Norman must give evidence
16 and thereafter call his witnesses. So maybe in the event of that
17 one exception with Chief Norman, if the case arose, we would want
18 to consider it and of course this was our concern earlier when
19 Mr Tavener mentioned a witness coming in. I mean, if we wanted a
11:02:02 20 delay to cross Chief Norman, a witness coming in in the interim.
21 Our concern is that I believe the rule is stating that
22 Chief Norman should indeed finish his testimony direct and cross
23 before any additional witnesses are called then, of course, I
24 think the normal rules would kick in at that time that there
11:02:22 25 always be a witness waiting to go. If for some reason a summary
26 or a statement was inadequate and the Prosecution needed
27 additional time to prepare for cross-examination, that then
28 another witness could indeed be called and cross could be delayed
29 in the case of those witnesses. But my concern is that in the

1 case of the accused, I am not sure that rule would apply in that
2 case when we look at Rule 85(C). So that is just my concern;
3 that witness might be a little different.

11:03:00

4 JUDGE THOMPSON: Rule 85 is silent on that. It is a
5 question of what practice we develop around it if I see -- he
6 only says that after the accused has testified then he proceeds
7 to call his witnesses. It doesn't really give us any guidance as
8 to what to do in a situation where we need to fill in a
9 deficiency. The practice has always been to go, as learned
10 counsel said, by the stand-by witness concept; somebody available
11 in court to testify. The situation can become a little
12 complicated. Those are my random thoughts, anyway.

11:03:32

11:03:56

13 MR JOHNSON: Well, Your Honour, if I only might suggest - I
14 don't think we need to belabour this right now - if we would get
15 to that issue with Chief Norman that we might reserve judgment on
16 that, because hopefully the case will not arise: He will start
17 and we'll go through and then we never have to address this, but
18 we would reserve the right that if some of those situations
19 possibly would come up in Chief Norman's testimony, that we could
20 revisit whether it would be appropriate to put an intervening
21 witness in in that case.

11:04:13

11:04:31

22 PRESIDING JUDGE: We will, certainly. I would ask, at
23 least, that there be consultation between the two sides. That
24 was done while the Prosecution was leading its case, I would
25 imagine, and I would hope that the same would happen with the
26 Defence when they are leading their case. If there are
27 difficulties, and it does happen with witnesses, for whatever
28 reason, one witness is all of a sudden sick and cannot appear,
29 that proper notification and notices will be given to the other

1 side and a suggestion that we would like to pursue this witness
2 because. So I would hope there is this kind of preparation as
3 well so we can proceed as expeditiously as we can and avoid
4 unnecessary delays. I would hope that that happens. You are
11:05:05 5 right, Mr Johnson, we will see how it goes once we are through
6 with witness one. If there is a comment to make adjustment,
7 we'll ask for a suggestion and make the necessary adjustment as
8 we move along.

9 Before I move to the other matter, the other witnesses for
10 the first accused, a few questions that have to do with the other
11 witnesses that you have produced, the Prosecution have pointed
12 out in their notice and the Chamber also observed that the last
13 witness appearing on your list, witness number 16, was not
14 previously included in the list of witnesses that you had
11:05:49 15 submitted on 5 December. I would like to hear from you as to was
16 that a mistake, what is the problem, and if you add this is
17 indeed a new witness that was added to the list, there is a
18 procedure to be followed, and I would invite the counsel for the
19 first accused to follow that procedure, if that is the case. I
11:06:12 20 would like to hear from you on this issue.

21 MR JABBI: Your Honour, the exclusion of this witness from
22 the filed witness list was simply what may be called a
23 typographical error. In all the preparatory lists that we had
24 before the witness list was filed, this witness was on the list.
11:06:42 25 I myself did not realise that the name had been omitted.

26 My Lord, in the circumstances, we intend to proceed as if
27 the witness is a new witness. In fact, I should also say that
28 this witness is already available and on the basis that we have
29 thought the name was not omitted on the list. So we will take

1 the appropriate measures proceeding as if this witness is a new
2 witness, My Lord.

3 PRESIDING JUDGE: That is fine.

4 MR JABBI: Thank you very much.

11:07:18 5 PRESIDING JUDGE: That answers my question. Mr Jabbi,
6 witness 32 and 33 of your witness list, this witness appears to
7 have the same name. These two witnesses appear to have the same
8 name, same occupation, although their areas of testimony are
9 different. Are we talking of the same witness talking of two
11:07:47 10 different issues, or it just happens to be two witnesses that
11 have exactly the same name? I would like to have some
12 clarification on that.

13 MR JABBI: My Lord, may I just the numbers again, please?

14 PRESIDING JUDGE: Thirty-two and 33.

11:08:41 15 MR JABBI: My Lord, it is not the same witness. There is a
16 repeat, I believe, of 32, a repeat of the name by mistake. It is
17 not the same witness, My Lord.

18 PRESIDING JUDGE: It is a different witness?

19 MR JABBI: It is a different witness.

11:09:13 20 PRESIDING JUDGE: So the mistake is in the repeat of the
21 name.

22 MR JABBI: It is in the repeat of the name.

23 JUDGE THOMPSON: And also the occupation too.

24 MR JABBI: Well, the entire information there is a repeat.

11:09:26 25 JUDGE THOMPSON: It is misleading.

26 MR JABBI: It is exactly repeated from 32.

27 JUDGE THOMPSON: Quite right. So in other words, we are
28 talking about two different persons.

29 MR JABBI: Two different people, and the name and

1 particulars of 33 having been left out.

2 JUDGE THOMPSON: Yes, because the areas of testimony are
3 different.

4 MR JABBI: They are different, My Lord.

11:09:46 5 PRESIDING JUDGE: So you will clarify that as well?

6 MR JABBI: Yes, indeed, My Lord.

7 PRESIDING JUDGE: Mr Tavener, I see you have your --

8 MR TAVENER: I was just curious about the name of
9 witness 33. I am sure the Defence will tell us at some time.

11:09:59 10 PRESIDING JUDGE: Yes, they will. Indeed, if they intend
11 to call that witness, being a different witness than 32, they
12 will have to give you the name. One other issue I would like to
13 clarify with you, Dr Jabbi, and as well with Mr -- witness 15 on
14 your order of the first 16 witnesses, his name is Bockarie. I am
11:10:31 15 not sure how you pronounce the second name, but --

16 MR JABBI: Beiloko.

17 PRESIDING JUDGE: Is this the same as witness 26, which is
18 Bockarie Beiloko?

19 MR JABBI: It is the same, My Lord.

11:10:55 20 PRESIDING JUDGE: It is the same witness?

21 MR JABBI: Yes, My Lord.

22 PRESIDING JUDGE: So number 15 and 26 is a duplication.

23 MR JABBI: My Lord, the list with the 16 names is the
24 proposed order of appearance, and the numbering from 1 to 16 does
11:11:21 25 not necessarily reflect the exact number of some of those
26 witnesses.

27 PRESIDING JUDGE: Yes, but the concern I have and I am
28 raising, Dr Jabbi, is simply that it would appear that the same
29 individual is listed twice in your witness list as being number

1 15 and being number 26. That is my question. Is it the same
2 individual we are talking about, or we are talking here of two
3 different individuals?

11:12:00

4 MR JABBI: My Lord, the proposed order of appearance, after
5 a certain stage, does not necessarily have the same order in the
6 filed list of witnesses. So number 15 is indeed number 26.
7 Number 15 on the proposed order of witnesses is number 26 on the
8 list of witnesses filed.

9 PRESIDING JUDGE: Okay, I see.

11:12:33

10 MR JABBI: As he is not number 15 on the list of witnesses
11 filed.

12 PRESIDING JUDGE: Thank you. Before I move to another area
13 to finish with you, Dr Jabbi, you had expressed, in some of your
14 proceedings, fear that some of your witnesses had expressed
15 initial fear to come forward because of "alleged intimidation".
16 The Chamber has noted the submission at the pre-defence
17 conference and invited counsel to probe the matter further with
18 the Witness Protection Unit. Do you have any new comments about
19 that, or is this a matter that has been disposed of?

11:13:27

20 MR JABBI: Yes, My Lord. Insofar as the witnesses who are
21 now available to come before the Court are concerned, that
22 situation has indeed plagued us at the stage of tracing
23 witnesses. And it has effectively, so far, prevented us from
24 getting some of the witnesses we might have wanted to get. But
25 those that have become available are no longer prey to this
26 situation.

11:13:53

27 PRESIDING JUDGE: But I thought at the pre-defence
28 conference that you had been invited to look into this matter
29 because you had made comments that you had heard about this but

1 that you had no firm indication any more than heard that some
2 witnesses might have felt intimidated by some comments that had
3 been made - some comments or actions, I'm not sure what it was -
4 by the Special Court Outreach team. So you probed into this but
11:14:39 5 you are saying now even if it happened, but you cannot affirm or
6 deny if it has happened, but whether it has or not, it has no
7 impact on the witnesses you are calling. That is what you are
8 saying.

9 MR JABBI: No impact on the witnesses we now have available
11:14:55 10 to appear before the Court. From the pre-defence conference time
11 we have not had time to access the other witnesses in order to
12 probe this. Very, very distant places.

13 PRESIDING JUDGE: So you are saying the situation that
14 existed at the pre-trial conference is no different now. You
11:15:16 15 have not probed the issue at all.

16 MR JABBI: No, I have probed the issue, My Lord, but only
17 with respect to those witnesses who are available --

18 PRESIDING JUDGE: To come.

19 MR JABBI: Let's say in Freetown.

11:15:22 20 PRESIDING JUDGE: Okay.

21 MR JABBI: We have not been able -- we have quite a long
22 list and they stay in very different places and distant places.
23 We have not been able to go round them in order to check that
24 out. But so far as those who are available in Freetown are
11:15:37 25 concerned, that is no longer a problem. I have already checked
26 it out.

27 PRESIDING JUDGE: But did you discuss this matter with the
28 Witness Protection Unit, or you have just done that on your own?

29 MR JABBI: Well, My Lord, I thought I would only have had

1 to discuss it with them if the problem was still there.

2 PRESIDING JUDGE: Okay. And for the time being there is no
3 problem.

4 MR JABBI: Thank you very much.

11:16:07 5 PRESIDING JUDGE: Thank you.

6 We move now to the common witness issue. We will come to
7 you, Mr Bockarie, in this respect because that was one of your
8 comments and observations. We have reviewed and compared the
9 witness list of each defence team and noted the following: It

11:16:47 10 appears that each defence team is intending to call at least 18
11 witnesses who seem to be common to either defence team. For
12 example, witness indicated as number 3 on Norman's order of 16
13 witnesses and as number 2 on Norman's witnesses, Dr Demby. Same
14 witness is listed on Fofana's revised list witness under

11:17:18 15 number 5. Witness Musa Junisa seems to appear as witness
16 number 57 on Norman's witness list and as number 10 on Fofana's
17 witness list and as number 19 on Kondewa's list. Witness
18 Lahai Bangura appears as witness number 1 on Fofana's list and as
19 number 5 on Kondewa's list.

11:17:47 20 I can only urge all the Defence teams to review their list
21 according to the Chamber's observation in order to identify,
22 first just by looking at the list and the names as I observe,
23 they appear to be the same. I may be wrong. That may be the
24 same name but we are talking of different witnesses. But if they
11:18:07 25 are the same, then there should be a bit of coordination between
26 the three or the two, depending, of the teams that are calling
27 these witnesses to determine how best to deal with that. Because
28 there appears, as I say, some witness that are common to the
29 three defence teams, and there is at least 18 of them that are

1 common to either the three or to at least two defence teams. So
2 I would like to hear from all of you in this respect. As I said,
3 looking at the list I can give you the names all along. The
4 spelling at times is a bit different so I am not absolutely sure
11:18:46 5 these are the same individuals, but they appear to be the same.
6 If that is the case, what is the position? If they are being
7 called obviously by the first accused as part of his case, as
8 number one example is number 27 or 28 and it is number 5 on the
9 second accused, well, when you get to number 5 second accused the
11:19:08 10 first accused will have already exhausted his list.

11 So what is the respective position in this respect? Can I
12 hear from you, Dr Jabbi, first? And I can only insist at this
13 stage that, in order to move in a proper way, there must be
14 discussions between all defence teams on these witnesses. As I
11:19:23 15 say, just on my own look of the witnesses shows that there is at
16 least that number of witnesses that are common to one or more
17 teams as such. How best to proceed with that, and I would like
18 to hear from you, Dr Jabbi, first.

19 MR JABBI: My Lord, the defence teams have commenced
20 discussion on this issue, although those discussions have not yet
21 been concluded. But we are already beginning to have an
22 understanding that some of those common witnesses will at some
23 appropriate time be treated as witnesses of a certain accused
24 person who may call them. We have not yet specified which will
25 be which. But I think it will be easy in the end to come to some
26 conclusion so that some of them will be the witnesses of some
27 accused person in particular, and then cross-examination by the
28 others goes on.

29 JUDGE THOMPSON: So it means that the number 18 will shrink

1 at some point.

2 MR JABBI: In terms of the sense of having them as
3 witnesses for all two or three accused, that number will
4 certainly shrink.

5 JUDGE THOMPSON: So what would be the advantage of the
6 shrinkage?

7 MR JABBI: My Lord, the advantage would be -- one
8 advantage, at least, will be that a witness may not have to be
9 called two or three times. That is one issue that my colleague
10 Arrow Bockarie was in fact already pointing to. We have not
11 concluded. But if, for example, let's say witness number 9 on
12 the first accused's list is also a witness to the others, it may
13 well be that the first accused may call that witness and he
14 automatically drops out of the other lists and cross is done. Or
15 it could well be that by the time we come to that witness Defence
16 may have decided that perhaps such a witness should be the
17 witness of the second accused --

18 PRESIDING JUDGE: And will not be called as part of your
19 case.

20 MR JABBI: And will not be called by the first. But we are
21 continuing discussions --

22 JUDGE THOMPSON: Will there be a corresponding shrinkage in
23 the global figure of all the witnesses?

24 MR JABBI: I believe so. I believe so. Purely
25 mathematically.

26 JUDGE THOMPSON: Mathematically speaking. All right.

27 MR JABBI: Yes, indeed.

28 JUDGE THOMPSON: All right.

29 PRESIDING JUDGE: I look at your number 2 witness, for the

1 time being Dr Demby, and Dr Albert Joe Demby also appears by that
2 name as number 5 on the Fofana list of witnesses. So presumably
3 we are talking of the same individual.

4 MR JABBI: Yes.

5 PRESIDING JUDGE: On the one hand we have Albert Joe Demby,
6 doctor, and the other one it does not say doctor, but I presume
7 we are talking of the same individual.

8 MR JABBI: I believe he is the same individual.

9 PRESIDING JUDGE: But he is number 5 on the witness list
10 for the second accused. Mr Bockarie, you are shaking your head.
11 It is not the case?

12 MR BOCKARIE: Yes, My Lord, what we are saying is we have
13 not indicated the order in which they will be appearing.

14 PRESIDING JUDGE: But we are talking of the same
15 individual, are we?

16 MR BOCKARIE: Yes, we agree, yes, Your Honour.

17 PRESIDING JUDGE: So this is one that is quite clear now,
18 that that witness is certainly to be called by the first accused
19 and that is what I mean by coordination and cooperation. Because
20 if the first accused is calling this witness, we expect that this
21 witness will not subsequently be called again by the second
22 accused because then we are losing our time because he is a
23 witness for the Defence at that particular moment.

24 MR BOCKARIE: Yes, Your Honours, as you were rightly told
25 by Dr Bu-Buakei Jabbi, deliberations are presently on the way.
26 In the first place we need to ascertain whether the issues that
27 are of interest to our defence, whether it is of interest to
28 their defence at all. The deliberation is going to take this
29 thread, so that we will ascertain whether our defence will be put

1 through them or not. This is what we contemplate doing,
2 Your Honour.

3 PRESIDING JUDGE: Okay.

4 MR LANSANA: Your Honour, if I may be heard at this stage.

5 PRESIDING JUDGE: Yes.

6 MR LANSANA: I will address myself to the concern raised by
7 Justice Thompson when he was talking about the numerical
8 shrinkage of witnesses that the Defence will be calling.

9 My observation, or rather my understanding of this
10 situation is that where we have common witnesses, and let's say
11 the first accused calls a witness, we will be cross-examining
12 that witness. But then the situation really is that that witness
13 is a witness for the first accused. So I reckon that the
14 questions in chief would be questions that would be particularly
15 circumscribed to the first accused. And when the second and
16 third accused do their cross, they might be bringing in issues
17 that are pertinent to their own client. But then it will not
18 always be the case that all that they want from that witness with
19 particularity to their client will be done in the cross. So
20 there might be the necessity of calling that witness so that he
21 will testify or she will testify with particularity to their
22 client. When the cross-examination is done, and let's say
23 counsel for the second accused is satisfied that the issues that
24 he would have raised if he were to lead that witness in evidence
25 had been settled, then there would not be the need for counsel
26 for the second accused to call that witness. I think in that
27 situation there would not be the necessity for counsel for the
28 second accused to call that witness.

29 JUDGE THOMPSON: If I get you rightly, then you are

1 virtually saying there is a possibility here of duplicating
2 witnesses.

3 MR LANSANA: There is a possibility of duplicating
4 witnesses.

5 JUDGE THOMPSON: Which seems to me to erode the concept of
6 common witnesses.

7 PRESIDING JUDGE: If it is a common witness my
8 understanding, and I stand to be corrected, my understanding is
9 if it is a common witness you are not cross-examining that
10 witness. If it is a common witness it is common, and therefore
11 he is your witness for all intents and purposes. You are not
12 cross-examining. If it is to be your witness and at the same
13 time you will try to impeach the credibility of this witness, it
14 just does not stand up to reason. So presumably that common
15 witness, that witness that is common to you and some others as
16 such, if it is first accused they would lead examination-in-chief
17 and then we move to second accused. If it is common to the
18 three, it is examination-in-chief by the first accused,
19 examination-in-chief by the second accused, examination-in-chief
20 by the third accused and then cross-examination. That is the
21 procedure. So it is not cross-examination and
22 examination-in-chief. That is not the way it is to be done.

23 MR LANSANA: Your Honour, what I'm talking about is there
24 is a distinction between witnesses that are joint -- [Overlapping
25 speakers]

26 PRESIDING JUDGE: No, no, we don't have joint and common
27 witnesses. There are common witnesses or no common witnesses.
28 It does not exist. In our mind there is no difference between a
29 common or joint witness. They are common or they are not common.

1 MR LANSANA: My Lord, just talking about, like, the
2 difference between a witness that they are going to call on their
3 witness list and a witness that is on our witness list.

4 PRESIDING JUDGE: It is the same witness?

5 MR LANSANA: The same witness. As opposed to a witness,
6 like an expert witness, that is going to testify on behalf of two
7 accused persons.

8 JUDGE THOMPSON: Let me ask one question. Let me interrupt
9 you there. What is the purposes of the deliberations you are
10 having, or your projected deliberations? What is your
11 definition, because you must have a working definition of a
12 common witness? What definition have you agreed upon? There
13 must be an agreement among all counsel as to who a common witness
14 is and the purposes and objectives in respect of which that
15 witness is going to be called. For some reason it seems as if
16 you are speaking differently from what we probably would
17 understand Dr Jabbi to be saying. Is there a working definition
18 that you have agreed upon as to who is a common witness and the
19 purposes for which a common witness would be called to testify?
20 Because that is very important.

21 MR LANSANA: I understand that, Your Honour.

22 JUDGE ITOE: Or are you making a distinction, Mr Lansana --

23 JUDGE THOMPSON: Are you making a distinction between a
24 common witness and a joint witness? And if you don't have this
25 agreement among yourselves as to the proper characterisation of
26 this creature, then of course we are going to be in the lurch.

27 MR LANSANA: Your Honour, we came across a difficulty when
28 we had the pre-defence conference, when we had some time
29 deliberating on joint witnesses or [Overlapping speakers]

1 JUDGE THOMPSON: And then I remember at advice that we went
2 to the Oxford dictionary to find out --

3 MR LANSANA: Precisely.

4 JUDGE THOMPSON: For the ordinary meaning.

5 MR LANSANA: Your Honour, my understanding of a joint
6 witness simply is a witness that is going to testify for one
7 accused person, but that witness is also going to be testifying
8 for another accused person. The distinction here is that where a
9 witness testifies on behalf of all three accused persons, that
10 witness is shared and joint. But if a witness is on a witness
11 list for one accused person and on the list of another accused
12 person, that witness is common to both of them, but not joint
13 because he is not specified on behalf of the two of them.

14 JUDGE THOMPSON: Right, okay. Whatever may be the value or
15 the utility of this kind of analysis, which I am not questioning
16 at this stage, what have you, the lawyers, agreed upon as your
17 own working tools in terms of definition? What have you agreed
18 upon?

19 MR LANSANA: Mr Pestman will want to --

20 MR PESTMAN: I understand this topic has been discussed
21 before at last week's pre-trial conference or status conference
22 and I would like to ask permission for Andrew Ianuzzi to take the
23 stand.

24 PRESIDING JUDGE: No, no. We will hear from you; not
25 Mr Ianuzzi. No, no. It is either you or Mr Bockarie.
26 Mr Bockarie was here last week so we can hear from Bockarie, but
27 not --

28 MR PESTMAN: There is a risk that I will repeat arguments
29 that have been raised or make points that have been raised

1 before.

2 JUDGE THOMPSON: As long as they are enlightening.

3 MR PESTMAN: My concern is that of course there would be no
4 problem to follow your suggestion if there is not the
5 possibility -- the possibility would not exist that a conflict of
6 interest would arise. It is, of course, possible that a common
7 witness - not a joint witness, a common witness - will testify
8 against our client, the witness examined on behalf of Mr Norman
9 will testify against our client.

10 [CDF180106B-SGH]

11 And we would like to have the possibility then to
12 cross-examine that witness on that particular point even if it is
13 a common witness. So we would like to reserve the right to
14 cross-examine a witness led by Mr Norman's team if that witness
11:31:35 15 testifies against our client. But we understand your concern and
16 we will, of course, not call a witness again if we are satisfied
17 about the statement given earlier in Mr Norman's case.

18 JUDGE ITOE: Mr Pestman, what would be your position if the
19 evidence given by this particular witness is favourable to your
11:31:59 20 client? What would be your position?

21 MR PESTMAN: Then there would be no need to cross-examine
22 and if we are allowed to examine the witness as well, after the
23 examination by Mr Norman or Mr Norman's team, then there will be
24 no need to call that witness again. That will be my position.

11:32:14 25 PRESIDING JUDGE: What we are trying to achieve here is
26 avoid unnecessary repetition of witnesses and additional
27 witnesses that have absolutely -- does not add anything to the
28 process. I mean, obviously, witness that may be called - we will
29 use the example that you are using - by the first accused may

1 speak of matters that are not necessarily in favour of your
2 client as such. You would like to be able to clarify these kind
3 of issues. Well, we will deal with them when we come along, but
4 the principle is unless this is that kind of a scenario
11:32:48 5 normally -- because if you're going to cross-examine a witness,
6 it's because a witness that would be your witness as well might
7 become questionable as to his own credibility. So if you impeach
8 the credibility of a witness that you are calling as such, you
9 are getting into some difficulty yourself.

11:33:04 10 So you understand what I am saying. So then what is the
11 value to you to use this witness as your witness if he is of no
12 help to you at all? I'm talking of practical issues here.

13 MR PESTMAN: Yes, of course, that is a decision we will
14 have to take, whether we are willing to cross-examine and
11:33:20 15 thereby --

16 PRESIDING JUDGE: That's what I mean.

17 MR PESTMAN: That is a matter of our concern solely, I
18 think.

19 PRESIDING JUDGE: Indeed. If you're cross-examining at
11:33:29 20 that particular time we may tell you that you may not lead
21 evidence on examination-in-chief because you've decided to move
22 in that direction. I agree with you; this is your call. It is
23 not our call. And we are talking here as to how best to proceed
24 with this and we are trying to see how best to achieve this.

11:33:45 25 MR PESTMAN: We're just concerned that we will not have the
26 possibility to cross-examine a witness. I would just like to
27 express that concern.

28 PRESIDING JUDGE: The concern is you are not able to
29 cross-examine because in theory this is your witness too. You

1 cannot have a witness you are calling and cross-examine that
2 witness. That is basically the issue.

3 MR PESTMAN: In practice, it's not only our client. It is
4 also the client for Mr Norman.

11:34:09 5 JUDGE THOMPSON: Let me ask one question: Is it safe to
6 assume that already having identified these so-called common
7 witnesses - whether they are properly so called or not - you
8 already have some overview of the evidence that their likely to
9 come and give? Is it safe to assume that you do have an overview
11:34:30 10 of the evidence that these common witnesses are coming to give?

11 MR PESTMAN: Only as far as our case is concerned. I have
12 no overview of what these particular witnesses might say --

13 JUDGE THOMPSON: But that's the point. I am trying to
14 process in my mind how you could have arrived at the conclusion
11:34:48 15 that they are common witnesses without some kind of analytical
16 exercise as to the substantive nature of what they are likely to
17 come and talk about. Is it the chicken and the egg kind of
18 thing?

19 MR PESTMAN: Maybe it's all an academic exercise. But we
11:35:11 20 can also cross that bridge when we get there.

21 JUDGE THOMPSON: Indeed.

22 MR PESTMAN: There is one other concern I would like to
23 raise. When a witness is led by Mr Norman's team and we are
24 allowed to examine that witness, a common witness, as well, are
11:35:28 25 we allowed to go beyond the scope of Mr Norman's?

26 PRESIDING JUDGE: Yes obviously.

27 MR PESTMAN: So we are not limited to the --

28 PRESIDING JUDGE: No, no. It is your case too. In the
29 sense if Mr Norman's counsel have not dealt with an issue that

1 you feel is the issue you want from that witness, obviously you
2 are at liberty and you should do it. No, no, there is absolutely
3 no limitation to your examination-in-chief except relevancy. So
4 obviously it has to be relevant to something, otherwise -- But
11:35:55 5 other than that, there is no limitation.

6 MR PESTMAN: I think that will answer my questions.

7 MR JABBI: My Lord, I don't know if I can draw a sort of
8 summary from the discussion so far.

9 JUDGE ITOE: Do not draw a summary because Mr Lansana was
11:36:13 10 on his feet. Can we hear from Mr Lansana, please.

11 MR LANSANA: Yes, Your Honour. Thank you very much. What
12 I was going to address myself to was the question that
13 Justice Thompson asked, whether we have some idea of what these
14 common witnesses are going to testify about. When we last
11:36:35 15 deliberated we did in fact have an idea of exchanging witness
16 statements from one team to the other of these common witnesses
17 so we have a clear idea of what these witnesses were coming to
18 testify on. And my -- I had a doubt that has just been
19 clarified, when Mr Pestman did ask a question regarding how we
11:36:59 20 carry on with the cross. It is just, to me, a matter of
21 nomenclature whether it is going to cross-examination or --

22 JUDGE ITOE: Or re-examination or a continued
23 examination-in-chief.

24 MR LANSANA: Yes, Your Honour. So my take on it is that
11:37:11 25 what we are actually end up doing would be continuation of
26 examination-in-chief as a carry-over from the
27 examination-in-chief of the witness for the first accused. And
28 if that is clarified --

29 JUDGE ITOE: To suit your own purposes.

1 MR LANSANA: Precisely, Your Honour. And if that is done
2 then I think we have crossed over the hurdle of having to call
3 that witness again because then we would be satisfied that that
4 which we wanted to go into evidence on behalf of our client is
11:37:39 5 indeed in evidence. There will be no need to duplicate that
6 witness again.

7 PRESIDING JUDGE: That's why we are asking this question.

8 MR LANSANA: Precisely, and I think I am clear on that now.

9 PRESIDING JUDGE: Okay. Dr Jabbi.

11:37:50 10 MR JABBI: Well, maybe he has also said some of the things
11 I wanted to say. Mr Lord, my understanding therefore is, so far
12 as the phrase "common witness" is concerned, it is only the idea
13 of a certain witness being on more than one list.

14 PRESIDING JUDGE: Indeed, yes.

11:38:08 15 MR JABBI: I believe that is the only reason I believe we
16 are calling them "common witnesses". It may well be that a
17 witness, notwithstanding that he is on more than one list, may
18 give evidence through a particular accused person which the other
19 defence may not wish to challenge, and indeed, in that case there
11:38:37 20 may be no need for cross-examination by that defence team. It
21 may also be, on the other hand, that he may give evidence which
22 that defence team may wish to challenge, in which case he will
23 indicate that he wants to do a cross on that witness.

24 The other possibility is that the evidence he gives may not
11:39:03 25 touch some required evidence that the other team may have listed
26 him for which the team that has called him initially cannot
27 possibly call for. In that case, the defence team in question
28 will have to indicate whether he prefers, with that particular
29 witness, to go on with the continued examination-in-chief, in

1 which case he cannot cross-examine, of course. That way we help
2 to shrink the number of witnesses even though the
3 examinations-in-chief may not necessarily shrink. But that is my
4 own general understanding of the discussion so far and I believe
11:39:49 5 that would be the most convenient way to proceed.

6 PRESIDING JUDGE: Well, we think so too but again from what
7 you are saying and with all the questions that have been raised,
8 is -- it is clear that there needs to be more consultation and
9 co-operation between all of the defence teams. As you say,
11:40:08 10 "common" may be common as to the subject matter or it may be
11 common only as to the name but the issue you will be talking
12 about is absolutely uncommon.

13 MR JABBI: Yes, sir.

14 PRESIDING JUDGE: But how is it that you want to know is
11:40:16 15 for you to talk together to see what it is.

16 MR JABBI: I am in that process, My Lord.

17 PRESIDING JUDGE: All we have, as far as this Court is
18 concerned, for now is the summary of the evidence and the name of
19 the witnesses. So my comments have to do only with looking at
11:40:29 20 names to see that the same names appear to be in that sense they
21 are common to more than one. So that is all.

22 MR JABBI: We will continue our discussions of this.

23 JUDGE ITOE: And I would say you will continue your
24 discussions and to see whether the evidence of any one of these
11:40:48 25 common witnesses does not implicate any one of the accused
26 present. Because they cease to be common, you know, if they are
27 not on the same wavelength. I mean, if it turns out that one of
28 the common witnesses from your discussions is indeed coming to
29 give evidence that is prejudicial to any one of the accused then

1 you will have to reveal your strategies and to know how to use
2 that witness within the respective defence teams. This is the
3 warning that I thought I should --

4 MR JABBI: Very very well taken, My Lord.

11:41:27 5 PRESIDING JUDGE: That covers essentially our agenda for
6 this morning. We still have to dispose of a few matters and we
7 said we would take a short break and we will do that now, and
8 when we come back we should be able to give some clear direction
9 in respect of at least two issues and that should complete the
11:41:44 10 status conference this morning. So we will break now and come
11 back in a short time. Thank you.

12 [Break taken at 11.42 a.m.]

13 [On resuming at 12.18 p.m.]

14 [Ruling]

12:19:27 15 PRESIDING JUDGE: The Chamber is seized of the Prosecution
16 request for order to Defence pursuant to Rule 73ter to disclose
17 witness statements and this request was filed on 7 December 2005.
18 The responses were filed by each defence team on 8 December and
19 the Prosecution consolidated reply on 9 December 2005.

12:19:57 20 The Chamber considered the submissions of the parties on
21 the said motion and hereby issues its oral ruling which will be
22 followed by a written, reasoned decision.

23 The Chamber denies the Prosecution motion in respect of its
24 request for disclosures of written defence witness statements.

12:20:18 25 The Chamber further informs the parties that the consequential
26 order will be issued subsequent to this status conference which
27 will order The Defence to produce which will assist the
28 Prosecution in preparation of further cross-examination. The
29 denial of the prosecution motion in respect of its request for

1 disclosure of witness statements is denied at this point in time.
2 And I underline "at this point in time". The Chamber wishes to
3 alert counsel for Norman, Fofana and Kondewa in order for them to
4 be ready to proceed speedily and to start collecting any
12:21:08 5 identifying information which is available for all of their
6 witnesses. This information shall include family name; first
7 name; and nicknames; date and place of birth, if known; names of
8 parents; religion; occupation at the time relevant to the
9 indictment; and current address. By this consequential order the
12:21:32 10 Fofana defence team will be ordered to refile their chart of
11 witnesses which was initially filed on 5 December 2005 by
12 including the real names of the witnesses, summary of proposed
13 testimony, points on the indictment, length of testimony and mode
14 of testimony.

12:21:45 15 THE INTERPRETER: Your Honour is going a little fast for
16 the interpreter.

17 PRESIDING JUDGE: By this consequential order, the Fofana
18 defence team will be ordered to refile their chart of witnesses
19 which was initially filed on 5 December 2005, by including the
12:22:06 20 real names of witnesses, summary of proposed testimony, points of
21 the indictment, length of testimony, mode of testimony,
22 languages.

23 So all of this will form part of the consequential order
24 that we hopefully will be issuing this afternoon, so I am just
12:22:27 25 giving this as preliminary indication what the consequential
26 order will include, so you can get ready to move on with this
27 when it is issued. So we don't have to face any more delays on
28 that so this is essentially what we will do today with this
29 consequential order. So that should for the time being dispose

1 of this issue. And we will reconvene tomorrow morning at 0930 to
2 hear oral arguments on the subpoena issue, that is the subpoena
3 to President Kabbah. So, Mr Jabbi, yes.

12:23:14 4 MR JABBI: Your Honour, with your leave I just wish to make
5 a clarification in respect of the witness Wuiyata Sheriff.

6 PRESIDING JUDGE: Yes. That witness we discussed earlier.

7 MR JABBI: Yes, indeed My Lord. My Lord, in fact the
8 situation is that as I said earlier on, by some typographical
9 error the name under item 32 was mistakenly repeated under item
12:23:45 10 33. But all the information against item 33 is in respect of
11 Wuiyata Sheriff and --

12 PRESIDING JUDGE: Is he witness 16 or 33?

13 MR JABBI: On the filed list she is 33, but on the proposed
14 order she is 16.

12:24:04 15 PRESIDING JUDGE: She is 16.

16 MR JABBI: So My Lord, I wish to request that the relevant
17 amendment be done and that no extra application in respect of her
18 be made as a new witness because indeed she is not.

19 PRESIDING JUDGE: We will see from the other side what they
12:24:29 20 have to say about that and you, Mr Tavener, you wish to --
21 Mr Pestman, we have not forgotten. We'll just dispose of that
22 and we'll come to you. Yes, Mr Tavener.

23 MR TAVENER: Yes, I understand there are two Sheriffs on
24 the list and I'll just confirm later on with defence counsel
12:24:43 25 which one they are referring to. It may be a spelling problem
26 there.

27 Just one other point, Your Honour, which has come up. In
28 terms of the common witnesses will the Defence after their
29 discussion identify to the Court and to the Prosecution which

1 ones are in fact the common witnesses are, as they are called so
2 we know?

3 PRESIDING JUDGE: I would hope so. Otherwise, the whole
4 purpose of this discussion this morning was to try to come to
12:25:09 5 that kind of conclusion, so we have achieved some progress in
6 this respect for everybody to know exactly how we are to proceed
7 and especially for the Prosecution in this respect.

8 MR TAVENER: Just at the start of each witness so we know
9 what their status is.

12:25:22 10 PRESIDING JUDGE: Indeed.

11 MR TAVENER: Thank you.

12 PRESIDING JUDGE: But Mr Tavener, my question was in
13 response to Mr Jabbi's request that that name just be added
14 because he was -- typographical error and the name just
12:25:36 15 disappeared from their list. Can you comment on that.

16 MR TAVENER: That's what we need to do. I understand
17 there's -- from memory, there's two Sheriffs or Sheriffs on the
18 list, on the initial list filed by the first accused. I'm not
19 sure whether the spelling is correct.

12:25:51 20 MR JABBI: Indeed My Lord, there are two Sheriffs on the
21 list. Thirty-three is one we are talking about and it should be
22 Wuiyata Sheriff. Thirty-four is Dauda Sheriff. It's a
23 completely different person. Thirty-four.

24 MR JOHNSON: Your Honour, at this time I guess what you are
12:26:17 25 asking is should we allow this addition without a good cause
26 motion. And at this time we will take Defence at their word on
27 this one, that this is truly just an omission and allow the
28 witness to be added in but I think we are going to be sticklers
29 from here on out that new witnesses get -- come by good cause.

1 PRESIDING JUDGE: That's the procedure. I appreciate your
2 comments in this respect, Mr Johnson. I mean, you are privileged
3 to object to it if want to and we will dispose of it. But I
4 appreciate your co-operation in this respect. What they are
12:26:55 5 asking [indiscernible]. You have stated to the court and we
6 accept that, that it was an honest mistake and a name has been
7 misprinted or whatever it was but it didn't appear where it
8 should have been. And so witness 16 is the witness properly
9 described with the statement contained under 33.

12:27:11 10 MR JABBI: Certainly, My Lord.

11 PRESIDING JUDGE: So you understand what we are saying.
12 Very well.

13 JUDGE ITOE: I am sure Dr Jabbi appreciates the concession
14 that has been made.

12:27:27 15 MR JABBI: Very much, My Lord. I am very grateful to my
16 colleagues on the other side.

17 JUDGE ITOE: Right.

18 PRESIDING JUDGE: Thank you. Mr Pestman.

19 MR PESTMAN: Just a point of order about the hearing
12:27:36 20 tomorrow morning. We were wondering whether it would not be
21 useful to invite somebody representing the President to attend
22 the hearing tomorrow morning.

23 PRESIDING JUDGE: He has been informed and invited now.

24 MR PESTMAN: They have been invited? Yes. I would be
12:27:51 25 interested to know, for example, whether they want, the President
26 wishes to respond to the motion we have filed. Thank you. We
27 will see tomorrow morning.

28 PRESIDING JUDGE: We will ascertain that this afternoon,
29 that indeed this is clearly understood that they are invited. I

1 that is all we can do for now. Thank you.

12:28:28 2 MR DUMBUYA: Your Honours, I am Dumbuya from The Defence
3 office, the duty counsel for the CDF. I have been asked by the
4 Principal Defender who is unavoidably absent for this sitting to
5 ask that he makes an opening statement.

6 PRESIDING JUDGE: We are aware about that and we will
7 dispose of that in due course. Indeed. I am aware of it because
8 he has forwarded this application to us.

12:28:48 9 MR DUMBUYA: Thank you, Your Honour. And he has asked that
10 if you can give your blessings now so that he would --

11 JUDGE ITOE: We cannot now. We will let him know in due
12 course.

13 MR DUMBUYA: Thank you, Your Honours. Thank you.

12:29:12 14 MR JABBI: My Lords, I also wish to raise the issue of when
15 the first accused may be required to take the witness stand.

16 PRESIDING JUDGE: Friday morning.

17 MR JABBI: Friday morning.

18 JUDGE ITOE: We are just to come to that, Dr Jabbi.

12:29:23 19 PRESIDING JUDGE: At 9.30 Friday morning is the start of
20 the Defence case.

21 MR JABBI: That is what I was going to ask you, My Lord.

22 PRESIDING JUDGE: This Friday.

23 MR JABBI: Thank you.

24 PRESIDING JUDGE: Thank you. Mr Pestman.

12:29:33 25 JUDGE ITOE: That is after tomorrow.

26 MR JABBI: I was just concerned that perhaps the opening
27 statements might take so short that --

28 PRESIDING JUDGE: No, we will -- if they are that short,
29 that's fine. We will accept that but we will still proceed

1 Friday morning at 9.30 with the first witness.

2 MR JABBI: Thank you very much.

3 PRESIDING JUDGE: We will not adjust the schedule for
4 tomorrow. Yes, Mr Pestman.

12:29:57 5 MR PESTMAN: For your information, our opening statement
6 will not take more than 30 minutes, we will try to keep within
7 the set time. I would just like to state for the record that we
8 object to the Principal Defender giving an opening statement. We
9 do not see any reason why he should do so and there is also no
12:30:16 10 provision in the rules to do so. And I certainly don't want the
11 Principal Defender to speak on behalf of our client and whatever
12 his intention is. So, I would like to state for the record that
13 we object to an opening statement.

14 PRESIDING JUDGE: Thank you. Mr Johnson, for the
12:30:35 15 Prosecution.

16 MR JOHNSON: Thank you, Your Honour. I just want to, I
17 think, reiterate what Mr Pestman has said, of course, this is the
18 first we had heard of an opening statement by the Principal
19 Defender and, of course, I don't know if it is contained in the
12:30:53 20 application or indicates in any way what the content of that
21 opening statement would be, but I think that we may very well
22 take a position and at least initially object to it without
23 knowing the contents or what the purpose of it would be. We
24 would object to that. If we knew the contents and purpose, we
12:31:09 25 might have another position, but at least right now we would have
26 to say we object again for some of the same reasons and certainly
27 there are no provisions in the rules for this kind of thing.
28 Lastly, Your Honour, I would just like to add, based on your
29 decision a few moments ago concerning our motion for statements,

1 and also I didn't catch all the things you were referring to as
2 to the consequential order that will be issued this afternoon,
3 but, absent a statement, was there going to be anything in the
4 consequential order concerning at least a summary on the part of
12:31:41 5 Mr Norman if he is to begin his testimony on Friday.

6 MR DUMBUYA: Sorry, Your Honours, I have noticed that
7 counsel for the second accused and the Prosecutor has just
8 indicated that he would not like the Principal Defender to make
9 an opening statement. I am sorry if I used the words "opening
12:32:11 10 statement". He intends making a statement, not an opening
11 statement.

12 PRESIDING JUDGE: In fact, they are stating that they
13 object to that statement, any such statement being made, an
14 opening statement, but does that change your position,
12:32:29 15 Mr Johnson, whether it is opening or a statement rather than
16 opening statement.

17 MR JOHNSON: No, I don't think, Your Honour, unless we have
18 some idea of what it is about.

19 PRESIDING JUDGE: Mr Pestman, does your objection still
12:32:39 20 stand?

21 MR PESTMAN: Yes, of course.

22 PRESIDING JUDGE: Any other comment in respect of any such
23 statement by Dr Jabbi. Do you wish to comment on that as well?
24 You may as well.

12:32:50 25 MR JABBI: On the question of?

26 PRESIDING JUDGE: Whether or not the Principal Defender
27 should address the Court.

28 MR JABBI: My Lord, I do not wish to say anything about it.

29 PRESIDING JUDGE: Thank you. Mr Lansana.

1 MR LANSANA: No comment at all.

2 PRESIDING JUDGE: Thank you. Indeed, Mr Johnson, we will
3 address this issue of Mr Norman's statement in the consequential
4 orders we will be issuing this afternoon.

12:33:20 5 MR JOHNSON: Thank you, Your Honour.

6 PRESIDING JUDGE: So, Unless there is any other matter, we
7 intend to conclude the status conference now. Dr Jabbi, any
8 other matter you wish to raise?

9 MR JABBI: Yes, My Lord. My Lord, I am sorry I have to
12:33:36 10 raise this after the observations that Your Lordship made at the
11 beginning, but notwithstanding the transcripts of 15th June 2004,
12 we have been under the impression that the opening statement of
13 the first accused is required by the rules to arise at the
14 opening of the defence case and that therefore it had not been
12:34:14 15 affected by the proceedings of 15th June 2004.

16 My Lord, we would have liked to address Your Lordships on
17 this issue so that it is reconsidered because it may well be
18 that, notwithstanding what happened, he may not have waived his
19 right to an opening statement under Rule 84.

12:34:50 20 PRESIDING JUDGE: But when we dealt with opening statements
21 back in 2004, the whole issue wasn't Rule 84, as such, it was a
22 very clear understanding by this Chamber and this Bench at that
23 time that this is what we were talking about and we gave a wider
24 interpretation to Rule 84 in the sense that we would have allowed
12:35:09 25 and we did allow Mr Norman to make an opening statement at that
26 time, although the normal prescribed procedure is for such
27 statements to be made only at the opening of the Defence. I
28 mean, that was the whole of the argument that went on at the
29 time.

1 JUDGE ITOE: Yes, and as far as my recollection goes,
2 Mr Norman was put to his election to either make the opening
3 statement at that time and forfeit making it at the beginning of
4 the case of the Defence. And he opted, you know, to make the
12:35:51 5 opening statement at the time that the Prosecution also made its
6 own opening statement. So, I don't see any -- I don't find any
7 good reason for us to come back to this issue which, as far as I
8 am concerned, is to be laid to rest.

9 MR JABBI: My Lord, as we have just seen, there was a
12:36:21 10 request just now for the Principal Defender to make a statement
11 which was construed as the phrase "opening statement" and after
12 the objections were indicated, the clarification was made that it
13 is a statement that he wishes to make.

14 JUDGE ITOE: They still objected to the statement.

12:36:45 15 MR JABBI: They still objected to the statement. Yes, I am
16 just trying to refer to this question of calling a statement an
17 opening statement, which may not necessarily be in the sense of
18 Rule 84.

19 PRESIDING JUDGE: Dr Jabbi, we have disposed of that issue
12:37:00 20 with Mr Norman and there is no re-opening of this issue. I
21 understand you may have instructions to raise this issue again,
22 that is fine. I have said so earlier in this process this
23 morning and, as my colleague Justice Itoe has said, at the time
24 we made it very clear in our mind to Mr Norman that if he were to
12:37:19 25 make an opening statement now he would be precluded from making
26 one later on at the opening of the Defence and he opted for
27 making a statement at the time in the circumstances we know of
28 and therefore, to us he has done his opening statement, in
29 compliance with Rule 84, and, therefore, we are not prepared to

1 give him another opportunity to make a statement. That was the
2 object of mass discussions at that time and, as far as we are
3 concerned, this matter has been disposed of and he will not be
4 allowed to make an opening statement now.

12:37:53 5 MR JABBI: It is just the possibility that he may have
6 understood the statement at that time to be called opening
7 statement simply because it was coming at the beginning of the
8 proceedings.

9 PRESIDING JUDGE: Well, I disagree with you, because the
12:38:06 10 discussions we had in this Court at that time, I will say to you,
11 were quite clear that is what -- And, in fact, we went on to say
12 that "if you are doing this now you will not be able to make,"
13 and "normally the procedure will be for you to do that only after
14 the case for the Prosecution has been closed and before the case
12:38:25 15 for the defence". I mean, we have no doubt in our mind that that
16 has been clearly spelled out and we do not intend to change our
17 mind in this respect, nor the Court's decision. And this is a
18 unanimous decision, I must say, from the Bench.

19 MR JABBI: As Your Lordships please.

12:38:51 20 PRESIDING JUDGE: Mr Pestman, any other matter?

21 MR PESTMAN: No, Your Honour.

22 PRESIDING JUDGE: Thank you. Mr Lansana.

23 MR LANSANA: Not at all, Your Honour.

24 PRESIDING JUDGE: Mr Tavener or Mr Johnson?

12:39:00 25 MR JOHNSON: No, Your Honour.

26 PRESIDING JUDGE: Thank you. That concludes this status
27 conference, thank you.

28 [Whereupon the Status Conference adjourned at
29 12.39 p.m.]