

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

TUESDAY, 24 JANUARY 2006
9.38 A.M.
TRIAL

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 Desmond de Silva Mr Joseph Kamara Mr Mohamed Bangura Mr Kevin Tavener Ms Bianca Suciu (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 Charles Margai Mr Ansu Lansana |

1 [CDF24JAN06 - SGH]

2 Tuesday 24th January 2005

3 [Open Session]

4 [The accused present]

09:29:55 5 [Upon commencing at 9.38 a.m.]

6 PRESIDING JUDGE: Good morning. We are this morning
7 resuming proceedings in this trial. We are at the stage now when
8 we left off last week it was for the first accused to call --
9 defence team for the first accused to call their first witness.

09:39:38 10 And at that time the first witness announced was to be the first
11 accused. Dr Jabbi, are you ready to proceed this morning?

12 Please open your microphone.

13 MR JABBI: My Lord, this morning I would like to begin by
14 making an application in respect of the giving of evidence by the
09:40:03 15 first accused.

16 JUDGE ITOE: Dr Jabbi, if I may ask, is this application to
17 put into question the stand of this Court on this particular
18 issue?

19 MR JABBI: No, My Lord. No, My Lord. Not at all.

09:40:28 20 JUDGE ITOE: Right, okay.

21 PRESIDING JUDGE: But I would like also to carry on on what
22 my brother Justice Itoe just said. Why did you wait this morning
23 to make this application when we were in Court last week to try
24 to iron out any difficulties or problems that might have existed
09:40:45 25 so that we could proceed speedily this morning? I am a bit
26 concerned about that, Dr Jabbi. As you know, we have granted you
27 an adjournment for the continued preparation of your case, but we
28 thought we would be able to start of this morning with hearing
29 evidence.

1 MR JABBI: My Lord, as I go along with this application it
2 will be clear how it has become necessary that I make this
3 application. I would like to assure the Court that it is an
4 eventuality that has more or less been forced upon us by events
09:41:22 5 during the past weekend, from Thursday to now, when the first
6 accused was clearly known to be coming to give evidence.

7 PRESIDING JUDGE: Very well.

8 MR JABBI: I will make it clear, My Lord, as I go along.

9 PRESIDING JUDGE: Can we be informed of the substance of
09:41:41 10 your application?

11 MR JABBI: The application, if I may state it, first of
12 all, before going on to any supporting statements, the
13 application, My Lords, is that the Trial Chamber do grant leave
14 for the first accused to give his testimony -- for the first
09:42:33 15 accused to give his testimony before this Court on alternate days
16 and that the intervening time be used to afford -- that the
17 intervening time be used to afford the defence team of the first
18 accused and the first accused complete freedom of interaction and
19 communication between them during the period of the first
09:44:21 20 accused's testimony. And that the first day following the ruling
21 in this matter, if the leave is granted -- and that the first day
22 following the ruling in this application, if the leave is
23 granted, be taken as a first intervening day.

24 My Lords, first of all, as Your Lordships did draw to our
09:45:26 25 attention when the decision on the first accused coming to give
26 evidence was taken, I would want to refer to the rule of practice
27 about not entertaining communication between parties and
28 witnesses, or their witnesses -- between parties and their
29 witnesses when one's witness testimony has commenced.

1 My Lord, if I may briefly refer to Jones and Powles,
2 International Criminal Practice.

3 PRESIDING JUDGE: Which edition?

4 MR JABBI: The 2003 edition, My Lord.

09:46:50 5 PRESIDING JUDGE: Thank you.

6 MR JABBI: At page 738, paragraphs 8.5.681 to 685. Also,
7 My Lords, I will be citing the one I have just mentioned, but if
8 I may also refer to May and Wierda, International Criminal
9 Evidence 2002 Edition at pages 156 to 157, paragraphs 5.39
09:48:56 10 to 5.40.

11 My Lords, if I may now, with your leave, read from
12 paragraph 8.5.681 of Jones and Powles which reads as follows.

13 MR De SILVA: My Lord, I've got an objection. I apologise
14 for objecting in this way and I hope my learned friend will
09:49:34 15 forgive me, but, as the Court probably appreciates, this
16 application has come without any warning to the Prosecution. The
17 proper way in which it ought to be done is, even if there is no
18 warning given, that the documents being cited, the authority
19 being cited by my friend, should be copied to the Bench, this
09:50:04 20 learned Court, and to prosecuting counsel. It might have
21 something to do with the equality of arms that we keep hearing
22 about. The idea is not to take people by surprise or ambush
23 people suddenly. I just invite the Court to consider the way in
24 which these particular proceedings are now developing.

09:50:28 25 JUDGE ITOE: Mr Prosecutor, wouldn't you think it would be
26 more appropriate to raise that when the Prosecution would be
27 called upon to make its response to this application?

28 MR De SILVA: My Lord, of course.

29 JUDGE ITOE: Why don't we listen to him to the tail end and

1 then we will come back to you.

2 MR De SILVA: Yes, I was simply trying to save time, but
3 there it is.

4 JUDGE ITOE: Thank you.

09:50:56 5 MR JABBI: Thank you very much, My Lords. My Lords, I must
6 say that I am indeed sorry that this application has had to be
7 made at this time in this way, but it is totally unavoidable and
8 I might have been led --

9 JUDGE THOMPSON: Learned counsel, I think you must proceed.
09:51:14 10 Leave that apology.

11 MR JABBI: Thank you very much, My Lord. So, My Lord, if I
12 may now, with your leave, read paragraph 8.5.681 of Jones and
13 Powles in confirmation of this rule of practice and its exact
14 nature.

09:51:48 15 PRESIDING JUDGE: Proceed.

16 MR JABBI: My Lord, that paragraph read as follows:
17 "A party calling a witness cannot communicate with that
18 witness after the witness has taken the solemn declaration.
19 The Trial Chamber so held" --

09:52:05 20 THE INTERPRETER: Your Honours, can learned counsel please
21 take it slowly for the interpreter.

22 MR JABBI: There is always a tendency to slightly forget
23 that interpretation is being done. I am sorry. So if I may
24 start once more.

09:52:30 25 "A party calling a witness cannot communicate with that
26 witness after the witness has taken the solemn declaration.
27 The Trial Chamber so held in Kupreskic in its decision on
28 communication between the parties and their witnesses of
29 September 21st, 1998. It ordered that 'The Prosecution and

1 defence henceforth must not communicate with a witness once
2 he or she has made the solemn declaration provided for in
3 Rule 90[B] and commenced testifying except with the leave
4 of the Chamber'."

09:55:02 5 My Lord, if may end the citation there and just to say
6 that, more or less, the same is referred to in pages 156 to 157
7 of May and Wierda.

8 My Lord, first of all, I just wish to state that this is a
9 rule of practice which of course developed as a result of
09:55:32 10 processes within various criminal trials in international
11 tribunals. It is a rule of practice as distinct from either a
12 settled rule of procedure and evidence in the proper instruments
13 of that nature in the tribunals -- as distinct from either a
14 proper rule of procedure and evidence in the relevant instruments
09:56:54 15 of that name in the various tribunals, or from provisions of
16 primary statutory legislation, or from provisions of primary
17 statute or legislation which govern the respective tribunals.
18 Such rule of practice, it is submitted, accordingly operates
19 within the framework and parameters of the relevant Rules of
09:57:55 20 Procedure and Evidence and the relevant provisions of primary
21 legislation or statute governing the relevant tribunal. The rule
22 also obviously operates within the discretion of Their Lordships
23 who have control of their respective trials.

24 So, My Lords, if I may further refer to Rule 90(F) of the
09:59:42 25 Rules of Procedure and Evidence of the Special Court for Sierra
26 Leone as amended on 14th May 2005. That, I believe, is the most
27 recent edition of the Rules of Procedure and Evidence. My Lords,
28 with your leave, if I may read sub-rule (F) of Rule 90.

29 "The Trial Chamber shall exercise control over the mode and

1 order of interrogating witnesses and presenting evidence so
2 as to:

3 (i) Make the interrogation and presentation effective
4 for the ascertainment of the truth; and

10:01:36 5 (ii) avoid the wasting of time."

6 My Lord that is just to say that the rule of practice
7 already cited operates within such rules of procedure and
8 evidence as the one I have already read.

9 My Lord, if I may also refer to another of our rules,
10:02:46 10 Rule 89(B). With your leave, if I may read it, sub-rule (B)
11 says:

12 "In cases not otherwise provided for in this section, a
13 Chamber shall apply rules of evidence which will best
14 favour a fair determination of the matter before it and are
10:03:34 15 consonant with the spirit of the statute and the general
16 principles of law."

17 My Lord, these two sub-rules are just two among others of
18 the rules which repose the control of the procedure of the Court
19 entirely in the hands of Your Lordships, subject, of course, to
10:04:53 20 the wider principles of criminal procedure and also the relevant
21 governing primary legislation on the matter. That is to say,
22 therefore, that Your Lordships do have power and discretion --

23 JUDGE ITOE: [Indiscernible] that, Dr. Jabbi. Who said it?

24 PRESIDING JUDGE: Also, I don't think it is disputed. We
10:05:42 25 do have that special power. If this is all your argument in this
26 respect, we do.

27 MR JABBI: Thank you very much, My Lord.

28 Now, My Lords, the other set of provisions within which
29 both the rule of practice I have cited and the powers and

1 discretion of Your Lordships operate are what I have referred to
2 as the provisions of governing primary legislation concerning the
3 particular tribunal. If I may cite Article 17 of the Statute to
4 the agreement between the contracting parties by whose agreement
10:07:16 5 this Court came into being and operation.

6 PRESIDING JUDGE: We are familiar with Article 17 of the
7 statute, Mr Counsel.

8 MR JABBI: Specific portions of that Article, if I may just
9 mention them, Article 17(2), which reads:

10:07:40 10 "The accused shall be entitled to a fair and public
11 hearing, subject to measures ordered by the Special Court
12 for the protection of victims and witnesses."

13 The emphasis for this particular occasion being on the limb
14 of fairness in that citation. If I may also, with your leave,
10:08:07 15 refer to Article 17(4)(b), which also reads with your leave,
16 My Lords:

17 "In the determination of any charge against the accused
18 pursuant to the present statute, he or she shall be
19 entitled to the following minimum guarantees in full
10:08:45 20 equality."

21 (b) following to say:

22 "To have adequate time and facilities for the preparation
23 of his or her defence and to communicate with counsel of
24 his or her own choosing."

10:09:45 25 Of course, the other subparagraphs there which I would like
26 to mention, sub-paragraph (4)(c), sub-paragraph (4)(d), paragraph
27 (4)(e) and sub-paragraph (4)(g).

28 PRESIDING JUDGE: I am not sure what application you will
29 make of (g), but --

1 MR JABBI: Well, My Lord, (g) may become relevant in this
2 application. In the sense that if the witness, who is an accused
3 person were not allowed to give evidence, then there may be a
4 marginal relevance of Article 17(4)(g) --

10:11:08 5 PRESIDING JUDGE: I thought the witness was not only -- the
6 witness -- the accused is not only allowed, he is to be the first
7 witness. So I don't understand the logic of your argument, in
8 this respect.

9 MR JABBI: My Lord, yes, I am very, very, very clear about
10:11:28 10 that. That is why I have said (g) is not the focal point of this
11 application, but it could be of marginal relevance if
12 decisions -- which I can say I am sure will not turn out that
13 way, but if it were to happen that decisions were to taken which
14 would be prejudicial to the accused and tantamount to his not
10:12:03 15 being allowed to give evidence. As I say, that is only of
16 ultimate marginal relevance.

17 PRESIDING JUDGE: (g) is not only marginal, he's not to be
18 compelled to testify. He is not being compelled to testify.
19 This is his own choice and his own decision to testify or not. I
10:12:19 20 mean, he is not being compelled at all. Regardless of the
21 circumstances, he is not compelled.

22 MR JABBI: Certainly not, My Lord. Certainly not, My Lord.

23 PRESIDING JUDGE: Carry on with your argument, Mr Jabbi.
24 Sorry for my intervention.

10:12:35 25 MR JABBI: Thank you very much, My Lord. Those later
26 sub-paragraphs which are referred to are in fact matters of
27 incidental relevance, but, nevertheless, they are part of the
28 picture when a decision is to be taken. If I may just briefly
29 cite some of them, or parts of some of them, taking (g) to now

1 have been done, I refer to (c), that the accused is entitled to
2 be tried without undue delay - without undue delay. Now,
3 My Lords, this particular provision is the hobby-horse --

4 JUDGE ITOE: Can you let us know how that applies in
10:13:33 5 principle?

6 MR JABBI: That's what I'm trying to do in the statement I
7 have just started, My Lord.

8 JUDGE ITOE: Can you expound and let us know?

9 MR JABBI: Yes, in this statement I have just started is
10:13:47 10 that this provision is a well-known hobby-horse of all criminal
11 prosecutors - of all criminal prosecutors. Certainly not only of
12 this one, but this one included. Undue delay, My Lord, with your
13 leave -- I mean, in reactions or applications of the provision
14 related to undue delay, there is often a tendency to ignore the
10:14:37 15 epithet "undue" in that phrase. I submit I should properly be
16 giving emphasis. So that what may sometimes appear as delay, on
17 closer examination, in all the circumstances of the particular
18 case, may in fact turn out not to be undue delay. That's why I
19 want to just mention it.

10:15:17 20 So that this application I am making, on the face of it,
21 and when all the factors and circumstances are considered, it
22 will be discovered that it is only on the face of it -- on the
23 face of it, it may appear to be delay. But in all the
24 circumstances, My Lords, I wish to submit that when the facts and
10:15:42 25 the factors I will be referring to are considered in this
26 particular circumstance that delay - for want of a more relevant
27 word - will be found not to be undue in all the circumstances.

28 JUDGE THOMPSON: But it's a qualifying epithet, that's all.

29 MR JABBI: Yes, My Lord.

1 JUDGE THOMPSON: That's all it is.

2 MR JABBI: Pardon me, My Lord?

3 JUDGE THOMPSON: I said, that's all it is. It's a
4 qualifying epithet, "undue".

10:16:18 5 MR JABBI: My Lord, yes. That is its character.

6 JUDGE THOMPSON: That's qualifying the substantive delay
7 and so it is matter of degree and a matter of characterisation.

8 MR JABBI: And it is also the epithet in that particular
9 phrase that commands the need for judgment in particular

10:16:30 10 circumstances.

11 JUDGE THOMPSON: Because of its qualifying --

12 MR JABBI: That's right, My Lord. Thank you very much, My
13 Lord.

14 If I may then proceed to sub-paragraph 17(4)(d).

10:16:51 15 JUDGE ITOE: You are proceeding backwards.

16 MR JABBI: (d), My Lord?

17 JUDGE ITOE: Starting with (e), (d), maybe you will end up
18 with (c).

19 MR JABBI: I only went to (g) because of His Lordship's
10:17:08 20 intervention.

21 JUDGE ITOE: Go ahead.

22 MR JABBI: And I didn't want to repeat all that exchange,
23 that's why I said (d) should be considered as taken.

24 JUDGE ITOE: Right.

10:17:15 25 MR JABBI: Thank you very much, My Lord. (d) reads:

26 "To be tried in his or her presence, and to defend himself
27 or herself in person or through legal assistance of his
28 or her own choosing."

29 My Lord, I wish to stop that far in that particular

1 paragraph and just to say that the application being made is
2 indeed designed to enhance the import of this particular minimum
3 guarantee as the provision calls it. So if I may proceed to
4 (d) -- with that observation on (d), if I may proceed to (e).

10:18:11 5 (e) reads:

6 "To examine or have examined the witnesses against him or
7 her and to obtain the attendance and examination of
8 witnesses on his" --

9 THE INTERPRETER: Your Honours, if I may, learned counsel
10:18:29 10 has started going very fast again.

11 MR JABBI: I am sorry. I am sorry.

12 JUDGE ITOE: Learned counsel is overtaken by passion for
13 the arguments he is presenting, so let the booth excuse him. It
14 is normal for lawyers to go that way at times.

10:18:48 15 MR JABBI: (e) reads:

16 "To examine or have examined the witnesses against him or
17 her and to obtain the attendance and examination of
18 witnesses on his or her behalf under the same conditions as
19 witnesses against him or her."

10:19:35 20 So, My Lord, as I said, these provisions are also part of
21 the wider substantive primary governing legislation that helps
22 Your Lordships control proceedings in the trial. So that even
23 the Rules of Procedure - the substantive ones - and Evidence, and
24 certainly rules of practice which may not be encapsulated or
10:20:38 25 enshrined in the settled Rules of Procedure and Evidence, all
26 operate within the outer governing framework of those primary
27 legislations and their provisions. More particularly the
28 provisions as to fairness to the accused person and to his
29 entitlement to call witnesses and adduce evidence in his own

1 defence, those are extremely crucial principles in any criminal
2 prosecution and more particularly in the practice of the
3 international criminal tribunals. And I believe that is a point
4 that has been emphasised time and again by Your Lordships even in
10:22:11 5 this trial.

6 My Lord, if I may now proceed to let these citations and
7 principles bide upon this specific application that I have made.

8 My Lords, the first accused has clearly indicated that he
9 wishes to testify in his own defence. I will just want to, first
10:23:25 10 of all, mention a seeming conundrum in the decision of the first
11 accused to testify in his own defence and, technically speaking,
12 to be a witness in his own defence. And that seeming conundrum -
13 and I call it "seeming" - that seeming conundrum relates to the
14 point that he is a party in this prosecution and also has elected
10:24:20 15 to be a witness in his own defence. And so one may ask, in what
16 sense and with what justification would the rule of practice
17 relating to the avoidance of communication between parties and
18 their witnesses once the witness has started giving evidence, in
19 what sense does it properly apply in the case of a party who is
10:25:26 20 also a witness?

21 The point, My Lord, I want to bring out in this section is
22 whether that rule applies exclusively between parties and
23 witnesses who are not also parties. That is to say, if an
24 accused elects to give testimony in his own defence and thereby
10:26:32 25 technically becomes a witness, can he be subject to the rule of
26 practice which says that such communication between parties and
27 their witnesses should not be allowed after the witness has
28 started giving evidence? My Lord, I believe that - and I so
29 submit - that the rule has evolved in respect of those situations

1 where a party - in this case an accused person -- My Lord, I will
2 slightly re-phrase that sentence before I complete it.

3 I believe - and I so submit - that the rule about avoidance
4 of communication between parties and witnesses after a witness
10:28:12 5 has commenced giving evidence --

6 JUDGE THOMPSON: You mean the rule of practice.

7 MR JABBI: The rule of practice, yes, My Lord.

8 JUDGE THOMPSON: Because you made a distinction between the
9 rule of practice and the rule of law, procedural law.

10:28:29 10 MR JABBI: Yes, I am talking about the rule of practice,
11 My Lord.

12 JUDGE THOMPSON: You had better keep it in focus.

13 MR JABBI: The rule of practice. If I may begin that
14 statement again, My Lord. Thank you very much for the
10:28:34 15 intervention.

16 I believe - and I so submit - that the rule of practice to
17 the effect that communications between parties and witnesses
18 should be avoided after a witness has commenced testimony,
19 applies to those situations where such witnesses are only
10:29:28 20 witnesses pure and simple. Or that the said rule of practice --

21 JUDGE ITOE: Where the parties are witnesses?

22 MR JABBI: I said that the rule of practice applies to
23 those situations where the witnesses are only witnesses pure and
24 simple.

25 PRESIDING JUDGE: And not a party to the proceedings.

26 MR JABBI: And not parties to the proceedings.

27 PRESIDING JUDGE: So, you are suggesting that there are two
28 types of witnesses; witnesses pure and simple and witnesses who
29 are parties to the proceedings? Am I misquoting you?

1 MR JABBI: I am at least saying, My Lord, that those are
2 two types, even if they are not the only types, but those are two
3 clearly distinguishable types of witness.

4 PRESIDING JUDGE: That is your submission in this respect,
10:30:31 5 that there are two types of witnesses.

6 MR JABBI: Yes.

7 PRESIDING JUDGE: Ordinary witnesses and witnesses that are
8 parties to the proceedings?

9 MR JABBI: Yes, indeed, My Lord. My Lord, that is the
10:30:49 10 first point I have made in trying to apply all the analysis and
11 submissions I have done so far to the application that I have
12 made and I would like to invite Your Lordships to a sympathetic
13 appreciation of that distinction.

14 My Lord, the next point I want to make is more now of a
10:31:28 15 factual nature, factual and historical. That relates, My Lord,
16 to what I would seek your forgiveness to call the rigmarole of
17 circumstances concerning the first accused's participation in
18 these proceedings. I do not mean "rigmarole" prejudicially at
19 all, but just to indicate that there have been twists and turns,
10:32:07 20 rises and falls.

21 JUDGE THOMPSON: With your experience in linguistics, why
22 not take on a more elegant characterisation?

23 MR JABBI: Pardon, My Lord.

24 JUDGE THOMPSON: With your experience in linguistics and
10:32:25 25 your proficiency in that, why not think of a more elegant
26 characterisation? How does a court really, a bench of three
27 judges who are more familiar with judicial vocabulary understand
28 this concept of rigmarole unless you are prepared to expand on
29 it?

1 MR JABBI: As Your Lordships please.

2 JUDGE THOMPSON: Twists and turns would sound a much better
3 phraseology than rigmarole. I hesitate to call the word for the
4 purposes of our own proceedings.

10:33:08 5 MR JABBI: My Lord, if I may say that I owe a lot to Your
6 Lordships' perfect command of the English language and
7 sensitivity in the choice of diction relating to criminal
8 practice and I am very grateful for the observation.

9 What I want to point to is the sustained difficulty, I
10:33:34 10 would call it, arising from the reasons and circumstances for
11 various modes of participation by the first accused in these
12 proceedings since the proceedings started and that is to say,
13 briefly, at least from the time that I joined this defence team,
14 the first accused was a full participant in the proceedings at
10:34:25 15 that time being his own defender. He was operating within his
16 right of self-defence and even counsel were only of a stand-by
17 status. And at that time we all remember he participated fully
18 in the proceedings, even to the extent of extended
19 cross-examinations of witnesses before stand-by counsel could
10:35:08 20 come in, and then the position changed and for certain reasons,
21 which I don't want to go into, he withdrew from the proceedings
22 and that has been a very long time. I am not aware to what
23 extent he did follow the proceedings, notwithstanding that he was
24 absent from them.

10:35:33 25 I would also want to say, and we have said this before,
26 that after the redesignation of counsel to court-appointed
27 counsel resulting directly from that withdrawal, counsel have
28 encountered a lot of difficulty of interaction with the first
29 accused. That is partly what resulted in the very belated final

1 report that the first accused was indeed going to testify in his
2 own defence and that finally took place only last week; Thursday,
3 I believe.

4 PRESIDING JUDGE: What is it that only took place last
10:36:40 5 week? That you met with him?

6 MR JABBI: No, the final decision by the first accused that
7 he would testify in his own defence.

8 [CDF24JAN06B - EKD]

9 MR JABBI: My Lord, part of that difficulty has been that
10:37:14 10 until that time last week the defence team of the first accused
11 had not been able to discuss with him freely and fully the
12 evidence that he would give if he finally decided to testify.

13 PRESIDING JUDGE: Why was that that you were unable to
14 discuss that with him before last week, bearing in mind when the
10:38:02 15 case for the Prosecution ended?

16 MR JABBI: My Lord, I have just said that when the first
17 accused withdrew from the case obviously he had developed a set
18 of attitudes which did not immediately import his ultimate
19 willingness to testify.

10:38:53 20 PRESIDING JUDGE: But between willingness to testify and
21 discussion of evidence there is a huge difference as well. So
22 are you suggesting that he was also unwilling to discuss with you
23 anything that had to do with the evidence that was being led in
24 court during that time, with you and/or other members of his
10:39:12 25 defence team?

26 MR JABBI: That reluctance to discuss the evidence with us
27 obtained throughout that period.

28 PRESIDING JUDGE: Was there, or there was no discussion of
29 the evidence?

1 MR JABBI: My Lord, I did not hear the beginning of the
2 question, I'm sorry.

3 PRESIDING JUDGE: Was there any discussion about the
4 evidence, or there was reluctance but there were discussions?

10:39:37 5 MR JABBI: My Lord, insofar as the evidence that the
6 accused might lead himself there was reluctance even to reveal
7 it, let alone to discuss it. I may also add insofar as objective
8 evidence from other witnesses in the proceedings were
9 concerned --

10:40:18 10 JUDGE ITOE: Learned counsel, if he was reluctant then, as
11 you say, to discuss the evidence with you, and he has now
12 accepted to testify as a witness in his defence, does this not
13 afford him an opportunity now to really produce --

14 MR JABBI: My Lord, I am coming to that and that is the nub
10:40:41 15 of the application.

16 JUDGE ITOE: -- all the evidence that is necessary?

17 MR JABBI: I am coming to that very soon.

18 JUDGE ITOE: Because we are losing time on issues where we
19 shouldn't lose time. When we talk of expeditiousness I think we
10:40:50 20 mean it. Very soon you would have been one hour on your feet on
21 this issue. You may proceed, but I think that the first accused,
22 having taken the decision to testify, is affording himself an
23 opportunity to let this Tribunal know what those things were that
24 he might have been hiding from you and which should now come to
10:41:17 25 light. I wonder if you share my opinion on this.

26 MR JABBI: Certainly, My Lord, and if I may go to that then
27 straight as the nub of the application.

28 JUDGE THOMPSON: Before you go to that perhaps you might
29 combine the two, because, following what my learned brothers have

1 said, I would be more interested in an exposition as to the
2 extent to which the prohibition against out of court
3 communications between the first accused once he begins to
4 testify and you, his court appointed counsel, would deprive him
10:41:56 5 of the basic judicial guarantees that you have reminded us of.
6 Also, in effect, what would be this adverse impact upon his
7 right - his unquestionable right - to a fair and expeditious
8 trial. That's the kind of analysis that I would be interested in
9 in determining whether the application that you now put forward
10:42:31 10 is meretricious or meritorious.

11 MR JABBI: Thank you very much, My Lord. My Lord, with
12 your leave, if I may just take a drink.

13 JUDGE THOMPSON: You are entitled.

14 JUDGE ITOE: I am sure you deserve it very much.

10:43:20 15 MR JABBI: So, My Lords, if I may proceed to that other
16 aspect of it and --

17 JUDGE THOMPSON: Because you have talked about unfair,
18 undue delay. I mean, the obligation of this tribunal is to
19 ensure that the first accused person has a fair and expeditious
10:43:42 20 trial alongside the others. That is our continuing supreme
21 obligation. Your premise, if I understand it rightly, is that
22 once he begins to testify he becomes a witness of the Court and
23 that if we ban you from communications with him out of court,
24 that will impact adversely upon this, his undoubted right to fair
10:44:11 25 and expeditious trial. I am interested in the particulars of
26 prejudice and how this will happen. Because that is your
27 complaint, that is why you cited this rule of practice.

28 MR JABBI: That's why, My Lord.

29 JUDGE THOMPSON: Yes.

1 MR JABBI: My Lord, I will therefore want to begin with
2 that concept of expeditiousness.

3 PRESIDING JUDGE: And bearing in mind as well the decision
4 of the first accused that he made at the time not to attend
10:44:38 5 proceedings. That decision was his own, on his own volition, and
6 it was his own responsibility at the time. So I would like you
7 to put that in context as well. I know you have basically spoken
8 shortly about what you describe as the historical background to
9 his giving evidence today, but I would like, when you are asking
10:45:00 10 this Court to make this assessment, that you put that in that
11 prospective as well. Because this is not a factor that we are
12 prepared to set aside or ignore completely because this is
13 indeed, I would suggest to you, a very important factor, if not
14 the most important one, in making a decision about the fairness
10:45:19 15 of those proceedings and the question of undue delay.

16 MR JABBI: Yes, My Lord. My Lord, it is true --

17 JUDGE ITOE: I would like to add, Dr Jabbi, that the first
18 accused has taken a very historical move within the context of
19 these trials. He backed out of the trials and he has taken a
10:45:54 20 very plausible and historical move to come back to these trials
21 because he thinks that he should be heard. And, because he
22 thinks that he should be heard, he has, in addition, taken the
23 option to testify before this Court and, I would say, before this
24 public. I think that putting any blocks to these options which
10:46:33 25 he has made would be seen to be adversely affecting the effort by
26 this Court to arrive at a fair determination of this case. Thank
27 you.

28 MR JABBI: Thank you, My Lord. My Lord, I will properly
29 take that into account in the submissions I continue to make. If

1 I may start with a historical point which His Lordship, the
2 President --

3 PRESIDING JUDGE: Presiding Judge.

4 MR JABBI: The Presiding Judge reminded me of. I do not
10:47:29 5 wish to go into the details of that history, more particularly
6 into the legal justification of the particulars in that history,
7 but I would just want to say that, as a matter of fact, the first
8 accused did have serious misgivings as to certain procedures and
9 processes --

10:49:32 10 PRESIDING JUDGE: Dr Jabbi, I don't want to stop you again.
11 We don't want to get into this argument this morning. I have
12 just told you you have to -- in your application this morning to
13 have a special procedure for this particular witness you have put
14 forward some arguments. I said in your arguments you have to
10:49:32 15 factor in the decision by your client, by the first accused, not
16 to attend the proceedings as such. That's what I'm saying. I
17 don't want you to argue this morning whether it was justified or
18 not. I don't want to hear about that.

19 MR JABBI: My Lord, that is how I have essentially started.
10:49:33 20 I am not going into the justification of the particulars of the
21 history, but just to state the bare fact that this and this did
22 happen and I do not want at all, My Lord, even to canvass the
23 opposing legal views on the matter. I just want to --

24 JUDGE THOMPSON: Let me intervene. I think if we are not
10:49:33 25 careful we will multiply the issues. As far as I am concerned it
26 is very important. You have an application before us, and you
27 are saying to us that if we prohibit any communications - out of
28 court communications - between you and the first accused once he
29 becomes a witness of the Court, this is likely to impact

1 adversely upon his right to a fair trial. And you are asking us,
2 notwithstanding some existing rule of practice, schemed out of
3 the jurisprudence of other tribunals, to make a differentiation
4 between what you think procedurally should be the right approach
10:50:13 5 here in exercise of this Court's jurisdiction as distinct from
6 the practice. I say to be able to determine the merit of this
7 application one needs to be satisfied as to the extent, if any,
8 to which such a prohibition, which has been made by the Presiding
9 Judge, is likely to affect the right of your client to a fair and
10:50:45 10 expeditious trial. Any attempt to go into the checkered history
11 of this particular trial, in terms of the participation and
12 acquiescence in certain other things of your client, is bound to
13 complicate the issue. And I would say, speaking for myself, I
14 think we need to focus on that.

10:51:20 15 MR JABBI: Thank you very much, My Lord. My Lord, if I
16 may, in summary of that particular aspect, seek leave to adopt
17 the observations of Your Lordship on that issue and proceed.

18 So, My Lord, what I'm saying there is that as a matter of
19 fact this withdrawal took place and it created its own
10:52:06 20 difficulties in the interaction between the defence team and the
21 accused person.

22 If you will excuse me to mention an illustration of the
23 effort by the defence team to ensure that that situation did not
24 lead to undue delay in the proceedings, I will just briefly
10:52:40 25 mention something. That situation, even threatened the tracing
26 of witnesses, and it could well have been that that exercise
27 might have been delayed until a clear situation arose.
28 Nonetheless, the defence team decided that in order to avoid
29 undue delay they should not wait to get a clear-cut indication

1 from the first accused before trying to do the witness tracing.
2 And that exercise continued without obvious -- without the
3 obvious blessing of the accused person, to ensure that before the
4 defence opened, all witnesses required would be in place. So
10:53:39 5 that is one little way in which, notwithstanding that difficulty,
6 the defence team sought to minimise the potential delay that was
7 likely to arise from the delayed decision of the accused person
8 that he was going to give testimony on his own behalf. So we
9 have very significantly reduced that potential undue delay by
10:54:14 10 having put together the battery of witnesses that we have on his
11 behalf.

12 Now, My Lords, the point is this, if I may clinch the
13 application, that having only started full discussions of the
14 evidence the first accused is likely to give, and the review of
10:54:58 15 evidence that has been given in this Chamber in his absence, all
16 this only having started after he decided or made a clear-cut
17 indication that he was going to give evidence, the time available
18 to ensure that the preparation of his defence is relatively
19 adequate, that time has not been enough. And it seems still
10:55:31 20 necessary that that interaction and communication with the first
21 accused in the preparation of subsequent aspects of his evidence,
22 the time for that interaction is needed, and if it is not given,
23 the defence team will find it extremely difficult to ensure that
24 they have given enough to the witness to be able to ensure his
10:56:15 25 adequate preparation to give evidence on his behalf. But,
26 nonetheless, we are very concerned --

27 JUDGE ITOE: Dr Jabbi, when you are saying that you need
28 evidence to interact with him and maybe to understand his case
29 better, in what context are you making this application? Is it

1 in the context of an adjournment to enable you to study his case,
2 or within the contextual nature of the application you have made,
3 and that is that he would be giving evidence on alternate days so
4 that you have enough time within that period to be able to
10:57:03 5 understand his case and to continue with his testimony? Can you
6 clarify the Tribunal on this, please?

7 MR JABBI: My Lord, clearly and solely it is the latter of
8 the two alternatives you have just stated. That is to say, we
9 are not seeking adjournment, but we do not want to wait until he
10:57:22 10 has commenced evidence and that rule of practice comes into force
11 and certain aspects of the preparation of his case have not been
12 done, and then he is inadequately prepared. So all we are asking
13 for, My Lord, is the evidence will commence, but Your Lordships
14 grant us leave to interact and communicate with him on alternate
10:57:44 15 days for successive preparation of the totality of the evidence
16 he wants to lead. That is all we are asking for, My Lord, we are
17 not asking for adjournment as such. We are not asking for
18 adjournment as such at all. As soon as the decision is given and
19 we are granted that leave, he can commence his testimony and we
10:58:11 20 only want to be allowed on alternate days to interact and
21 communicate with him fully, so that subsequent pieces of evidence
22 are treated adequately and satisfactorily to enable him to come
23 and give evidence.

24 So, if I may conclude, if that clarification is made, as I
10:58:38 25 said earlier, it may well be that even that rule of practice is
26 strictly not applicable to his present circumstances. That is to
27 say, he is a party who has opted to be a witness in the matter
28 and a rule the parties and witnesses cannot interact may not
29 logically be so applicable in his case, because it embodies the

1 true concepts in himself when he offers to give evidence.
2 My Lord, I have referred to the overall provisions as to the
3 rights of the accused person to a fair and public trial and to
4 entitlement to adequate time in which to prepare his evidence and
10:59:38 5 I would like to suggest that those criteria are very crucial and
6 they may even, in some particular circumstances, have overriding
7 force over certain procedures and certain practices. We are
8 urging Your Lordships to take all that we have said this morning
9 into consideration and grant us leave, as applied for, so that we
11:00:04 10 can be sure that the first accused is adequately prepared to give
11 his evidence. We do not want to delay the proceedings at all
12 beyond that.

13 Thank you very much, My Lord.

14 PRESIDING JUDGE: Thank you, Mr Jabbi. Is the Prosecution
11:00:28 15 ready to respond now or you wish to have some time?

16 MR De SILVA: My Lord, I am happy to say that I don't need
17 any time.

18 PRESIDING JUDGE: Very well. So we can hear from you now?

19 MR De SILVA: I hope so.

11:00:46 20 PRESIDING JUDGE: Thank you.

21 MR De SILVA: This application is totally without merit. I
22 concede at once that in any criminal proceedings if one party or
23 another wishes to depart from established rules it can only
24 happen in two circumstances: Firstly, with the leave of the
11:01:39 25 Court; and secondly, for very good reason. Because these rules
26 exist in order to ensure the fairness of trials, and indeed to
27 protect the interests of an accused. The application that has
28 been made, for reasons I shall deal with, is, in fact, highly
29 damaging to the interests of the accused. Highly damaging.

1 The heart of the application is this, as I understand it:
2 Because the first accused has failed in the past to give adequate
3 instructions, because he has been the author of his own
4 misfortune in that regard, that some additional benefit should be
11:03:23 5 conferred upon him. When a defendant goes into the witness box,
6 he is a witness like any other witness, for his credibility to be
7 judged, or lack of credibility to be judged, by Your Lordships.

8 The first accused wants to be in a position of privilege.
9 He wants to be more equal than other witnesses. He seeks special
11:04:34 10 treatment. He wants to be above the law that applies to the
11 others, which, of course, is the Prosecution case against him.

12 My Lords, can I invite Your Lordships to Rule 90 which was
13 referred to by my learned friend, Mr Jabbi. Rule 90(F), which
14 reads as follows:

11:05:38 15 "The Trial Chamber shall exercise control over the mode and
16 order of interrogating witnesses and presenting evidence so
17 as to:
18 (i) make the interrogation and presentation effective for
19 the ascertainment of the truth."

11:06:07 20 I want to underline those words "for the ascertainment of
21 the truth". I shall deal with (ii) about wasting time in a
22 moment. "For the ascertainment of truth." The reason why, as
23 Your Lordships in your great experience know, that when a witness
24 takes the oath and goes into the witness box he is not allowed to
11:06:45 25 be seen by advisors is in order that, in the process of justice
26 being seen to be done, it could not be said that he has been
27 coached, that he has had suggestions made to him, that he has had
28 weaknesses in his evidence underlined. It is to protect a
29 witness from accusations of that kind that the rule exists. That

1 when a man goes into the witness box, or a woman for that matter,
2 and takes the oath to tell the whole truth, that that is
3 precisely what that person does without the assistance, advice
4 and counseling of others. That is the whole point of it. That
11:08:00 5 is why those words "for the ascertainment of the truth" appear.

6 Any witness giving evidence who is discovered to have had
7 communications during the currency of his evidence with lawyers,
8 or anybody else, touching upon the matters about which he is
9 testifying loses credibility. I am trying to protect the first
11:08:44 10 accused from the suggestions that are being made that will in
11 fact seriously damage, or could damage, or might damage, his
12 credibility.

13 We understand that the first accused is a leader of men.
14 We understand that he wants to go to the witness box to give his
11:09:22 15 story, if that is the case. It is baffling why a man of such
16 distinction and leadership cannot go into the witness box and
17 tell Your Lordships about the events that have been unfolding in
18 this Court. To go against the hallowed practice - and I say
19 "hallowed practice" - of permitting a witness to give evidence --
11:10:10 20 in this case, to permit a witness to give evidence on alternate
21 days so that he can maintain communication with his legal team is
22 a proposition so astonishing that I would invite this Court to
23 reject it out of hand.

24 I do so, curiously, with the interests of the first accused
11:10:51 25 in mind because he will be open to the accusation, when he is
26 being cross-examined, that he has been advised as to what to say.
27 He will be. Indeed, he would be opening himself up to it. It is
28 quite inconceivable, in our respectful submission, that such an
29 application could be made.

1 There are very rare instances - very rare instances - where
2 a witness giving evidence, particularly a defendant, is permitted
3 to have communication with his lawyer for a specific reason,
4 limited by the Court, because of something that has arisen very
11:12:02 5 often whilst that defendant was in the witness box and, because
6 he cannot maintain communication with the outside world, doesn't
7 know. But the proposition that is being advanced, in our
8 respectful submission, with great respect to my learned friend,
9 must be tongue in cheek. I thought he must be teasing us when I
11:12:37 10 first heard the application, but apparently not.

11 Well, My Lords, the anxiety I have is this -- and I took
12 down what my learned friend said, his exact words as he concluded
13 his submission: Having only started full discussions as to the
14 evidence the first accused is likely to give, since he decided to
11:13:19 15 give evidence, we have not had enough time.

16 Well, I recall, My Lords - I think I've got the date
17 right - that on 18th of this month My Lord who presides asked
18 Mr Jabbi, "Will your client be able to give evidence tomorrow?"
19 Answer, "Yes". The following day, as Your Lordships recall, we
11:14:04 20 were asked for a seven day adjournment. Your Lordships gave, if
21 my arithmetic is right, a five-day adjournment until today. Now
22 that adjournment was granted - a generous adjournment was granted
23 by Your Lordships, if I might say so - in order that any
24 deficiencies in the knowledge of the defence team as regards the
11:14:36 25 first accused's case could be rectified.

26 If the Court of its own motion were to make an inquiry of
27 the detention centre as to how many hours were spent by the
28 lawyers for the first accused in the past five days consulting
29 him over these very important matters on the basis of which this

1 Court was asked for an adjournment, I think there might be some
2 astonishing results.

3 JUDGE THOMPSON: You are not inviting us to do that?

4 MR De SILVA: I don't disinvite Your Lordships to do so.

11:15:31 5 It might be quite -- because we have got to, with respect, live
6 in a real world. A world in which applications are made and
7 sometimes one begins to wonder whether there is any basis to
8 these applications, or is it nonsense.

9 JUDGE ITOE: We won't go that far to use the qualification
11:15:57 10 of nonsense.

11 MR De SILVA: Your Lordship is too kind. There it is.

12 JUDGE ITOE: We wouldn't want to go that far.

13 MR De SILVA: Well, then I am not that kind.

14 JUDGE ITOE: I am sure you are not treating the application
11:16:11 15 by the Defence as nonsensical.

16 JUDGE THOMPSON: Perhaps we will invite you to probably use
17 characterisations like "misconceived" which is more familiar with
18 the dignity and the protocol of the Court. We deal here with --
19 we will certainly not characterise submissions by using that N
11:16:30 20 word. We would probably prefer to say that they are
21 misconceived.

22 MR De SILVA: Well, I was going to say that as well, but I
23 say misconceived. My Lords, I have made my point. I don't think
24 I can take it any further. I do have the interests of the first
11:16:58 25 defendant at heart in this sense: That I do want to ensure, as
26 the Prosecutor in this case -- I do not wish to preside over an
27 Office of the Prosecutor which can in any way be said to have
28 participated in anything other than a totally fair trial. I am
29 anxious, curiously, to defend when I think the interests of an

1 accused may be damaged by an application indeed made on his
2 behalf.

3 We would submit that the argument made for giving evidence
4 on alternate days is simply a method not only that will result in
11:18:00 5 diminishing the quality of the first accused's evidence, it is
6 calculated to waste time as well, which is part (ii) of
7 Rule 90(F). So not only does it not assist in the ascertainment
8 of the truth, it plays a significant part in violating
9 Rule (F)(ii), namely, the avoidance of time. My Lords, that is
11:18:41 10 all I have to say.

11 PRESIDING JUDGE: Thank you, Mr Prosecutor.

12 JUDGE THOMPSON: Before you sit down, you yourself concede
13 that as a matter of law the position is not all that inflexible.
14 That this so-called rule of practice, which of course you have
11:18:58 15 invested with some degree of sanctity by referring to it as
16 hallowed, does leave some room for the exercise of judicial
17 discretion. So it is your submission that this is not the kind
18 of case that the discretion can properly and judiciously be
19 exercised. Do I understand that to be your position?

11:19:26 20 MR De SILVA: Your Lordship couldn't have put it better. I
21 couldn't possibly have improved upon the way in which
22 Your Lordship puts it.

23 PRESIDING JUDGE: Mr Jabbi, you wish to reply?

24 MR JABBI: Very briefly, My Lords. My Lord, I just first
11:19:52 25 would want to emphasise the import of sub-rule (F) -- of some of
26 the phrases in sub-rule (F) of Rule 90 which my learned friend
27 has also decided to refer to after my citation. The first I wish
28 to emphasise, which is widely accepted, is that the Chamber has
29 control or shall exercise control over the mode and order of

1 interrogating witnesses and presenting evidence. That point,
2 first of all.

3 Secondly, My Lord, the phrase in (F)(i), which refers to
4 one of the purposes of that control being ensuring that the
11:20:48 5 interrogation and presentation are effective for the
6 ascertainment of the truth and that is very, very important.
7 Indeed, it is precisely because we want to ensure that the truth
8 actually does come out that we are asking for this leave so
9 that --

11:21:13 10 JUDGE ITOE: Dr Jabbi, would the truth come out, if, from
11 what your learned friend, the Prosecutor, Mr Desmond, has stated,
12 there were any chance for any suspicion that schooling is part of
13 the process of ascertaining the truth? If there is any basis to
14 proceed on that assumption, would you concede to his
11:21:42 15 interpretation of the concept of the ascertainment of the truth,
16 which is quite different from yours?

17 MR JABBI: My Lord, I would only want to say there that the
18 integrity of defence counsel will be in question here, and we are
19 very, very careful to ensure that that integrity does not even
11:22:11 20 appear to be dented. And it is only because of the need to
21 ensure that the witness is adequately prepared, even perhaps
22 probably in a statistical sense considering the volume of
23 evidence in question, that is the primary objective of the
24 application. I want to give complete assurance that that
11:22:44 25 integrity will be maintained at all times, as I believe has been
26 throughout this trial, notwithstanding all the straights and
27 constraints that the defence team has been exposed to.

28 My Lord, if I could continue, I would also want to refer
29 more specifically now to this authority from the ICTY, which is

1 Prosecutor v Kupreskic and others. It is a decision on
2 communications between the parties and their witnesses. The more
3 particular reason why I am citing this particular authority, is
4 that the party in question there in this authority is the
11:24:00 5 Prosecutor. This time not the Defence.

6 JUDGE ITOE: Dr Jabbi, who are the parties in this case?

7 MR JABBI: This one?

8 JUDGE ITOE: This case, in the current proceedings.

9 MR JABBI: The parties are three accused persons and the
11:24:34 10 Prosecutor.

11 JUDGE ITOE: Thank you.

12 MR JABBI: So, My Lord, what I was saying was I want to
13 cite an authority which this time refers to this issue being
14 determined between the Prosecutor and witnesses called by the
11:24:54 15 Prosecutor because we have come as the Defence making this
16 application. How did that sort of application work in the case
17 of prosecutor and their own witnesses? It will help to set a
18 certain angle on this matter.

19 My Lord, if I may just read a few paragraphs from the total
11:25:19 20 report here, including the preamble -- some of the preambular
21 paragraphs. In one preambular paragraph, for example:

22 "In this case it was the Defence that raised objection to
23 interaction and communication between the Prosecutor and
24 their witnesses in between pieces of evidence."

11:25:40 25 It was the defence that raised the objection in this case.

26 JUDGE THOMPSON: How authentic is the document? Which
27 particular report is that?

28 MR JABBI: This is the ICTY case of Prosecutor v Zoran
29 Kupreskic and others.

1 JUDGE THOMPSON: That is the actual decision, is it?

2 MR JABBI: Yes, My Lord.

3 PRESIDING JUDGE: What is the date of the decision?

4 MR JABBI: The date of this decision is 1st September 1998.

11:26:09 5 The title of the decision is "Decision on Communications Between
6 the Parties and Their Witnesses".

7 JUDGE ITOE: So decision is 1st December? The date of the
8 decision is?

9 MR JABBI: 21st September, My Lord. 21st September 1998.

11:26:36 10 JUDGE THOMPSON: You are reading from a copy?

11 MR JABBI: It's a photocopy, My Lord, abstracted from the
12 Internet.

13 PRESIDING JUDGE: We would appreciate, as the practice is,
14 to be given copies, the ones that you using.

11:26:49 15 MR JABBI: That will be done, My Lord.

16 JUDGE ITOE: And for the Prosecution also, even though
17 the -- let us make sure we are working on the same document.

18 MR JABBI: We will ensure we will do that.

19 PRESIDING JUDGE: But, Mr Jabbi, you knew you would be
11:27:03 20 using this decision this morning, so I do not understand why you
21 did not have copies made available for all the parties prior
22 coming to court. You have your own copies so obviously you
23 intended to you use that copy.

24 MR JABBI: My Lord, even my own copy, if I may betray a
11:27:20 25 state of fact, even my own copy which I have in my hand now has
26 been supplied to me only after I have started addressing
27 Your Lordships. The reference was taken from the authorities I
28 cited from Powles, and May and Wierda. Jones and Powles and May
29 and Wierda and I requested my legal assistant to abstract it and

1 bring it to me. That's the only reason why we have not been able
2 to send copies --

3 PRESIDING JUDGE: Please proceed.

4 MR JABBI: Sorry, My Lord. Sorry about that.

11:27:59 5 My Lord, I just want to read a few paragraphs from this
6 decision, including some of the preambular paragraphs and, of
7 course, the ultimate order that was made. And, as I say, this
8 was a matter involving an objection by the defence to
9 communication between the prosecutor and the prosecutor's
11:28:20 10 witnesses in between pieces of evidence.

11 With your leave:

12 "Noting the objections raised by defence counsel at the
13 hearings of 16 and 17 September 1998 to evidence being
14 adduced in court as a result of out of court communications
11:28:50 15 between the Prosecutor and its witnesses during breaks in
16 the witness's testimony."

17 That is preambular paragraph 2. Preambular paragraph 4
18 says:

19 "Noting that this is not to imply in any way that the
11:29:14 20 Prosecutor has on any occasion acted with impropriety or
21 exerted any influence on the witnesses in question, and
22 that the Chamber fully accepts the Prosecutor's explanation
23 that on each occasion the witness in question has
24 volunteered the information during the break, which was
11:29:46 25 later the subject of a tender of evidence."

26 And preambular paragraph 4 says:

27 "Considering that the importance of the issue raised by the
28 Defence transcends this specific question to which the
29 Defence has drawn attention" --

1 THE INTERPRETER: Your Honours, if I may, learned counsel
2 has started going very fast again for the interpreter.

3 MR JABBI: Sorry, My Lord. The momentum of rhetoric,
4 My Lord, has that trick.

11:30:24 5 PRESIDING JUDGE: So repeat that.

6 MR JABBI: Yes, My Lord, I will.

7 "Considering that the importance of the issue raised by the
8 Defence transcends this specific question to which the
9 Defence has drawn attention, and that it appears crucial to
11:30:51 10 the proper administration of international criminal
11 justice, that the Chamber rule on the whole matter of
12 contacts between witnesses and the party which called him
13 or her to testify."

14 Next:

11:31:21 15 "Considering that there is nothing in the Statute or Rules
16 of Procedure and Evidence which expressly addresses this
17 subject."

18 And the penultimate preambular paragraph reads:

19 "Considering, finally, that this decision will take effect
11:31:50 20 after the Prosecution has conducted the
21 examination-in-chief of several of its witnesses, and has
22 been permitted with respect to those witnesses there be no
23 decision to the contrary in force until the present
24 decision to communicate with them during breaks in their
11:32:30 25 testimony, and that the Chamber will therefore apply this
26 decision with due regard and consideration for the rights
27 of the Defence."

28 Those are preambular paragraphs in this order before the
29 actual order is finally made. And the first paragraph of the

1 order reads as follows:

2 "The Prosecution and Defence henceforth must not
3 communicate with a witness once he or she has made the
4 solemn declaration provided for in Rule 90(B) and commenced
11:33:16 5 testifying on the subject of the content of the witness's
6 testimony except with the leave of the Chamber."

7 So, My Lord, the simple points we are making are that, one,
8 this is a rule of practice; two, it is obviously subject to the
9 discretion of the Court, and to those primary legislations I
11:33:54 10 referred to; three, the rule of practice itself is not stated in
11 absolute terms, but is flexible and allows for exceptions in
12 appropriate circumstances; four, we have a concrete example of
13 that rule in its flexible form having been implemented to the
14 benefit of a prosecutor in an international criminal tribunal, in
11:34:52 15 which the point is emphasised that in fact the existence of
16 communications between the prosecutor and their witnesses was in
17 operation before this matter arose, and it was permitted by that
18 court before even the issue arose, and in the ruling it has more
19 or less been endorsed by the Court applying it now to both sides.

11:35:29 20 So, My Lord, I hope that is enough response.

21 JUDGE THOMPSON: Well, there is a logical difficulty here
22 that I have. Remember in the course of argument you did say that
23 it is possible that one can differentiate that situation, since
24 in fact it didn't relate to a situation in which an accused
11:35:52 25 person was the witness in question. In other words, you sought
26 to invite this Court to say well, that rule of practice in fact
27 based on the decision Kupreskic was in relation to witnesses per
28 se, not an accused person who was in fact himself at that point
29 in time testifying as a witness.

1 So what I am asking you to do now, if that was your
2 original position, are you modifying it logically or are you in a
3 way approbating and reprobating? Are you saying that -- in other
4 words, which are you relying on? That it's not applicable at all
11:36:40 5 to your situation and that therefore this Court must evolve its
6 own jurisprudence, or should we borrow a leaf from this practice,
7 and if so, how do we set about the jurisprudential engineering to
8 apply it to the situation? Do you get my point?

9 MR JABBI: I do get the point, My Lord.

11:37:08 10 JUDGE THOMPSON: You distinguished it yourself. You said
11 it is not applicable because the witness there was not an accused
12 person who was testifying in the capacity of a witness. So how
13 instructive then is the jurisprudence from your perspective?

14 MR JABBI: Thank you very much, My Lord. My Lord, of
11:37:31 15 course, that was just one stage of my presentation and I was
16 drawing the Court's attention to that fact as a possible point of
17 distinction without necessarily doing away with the relevance and
18 application of the general witness situation, because indeed the
19 accused in question would also be called a witness. So I was not
11:37:51 20 trying to say that where witnesses appear as simple witnesses and
21 not parties, this rule applies there and there only; and
22 therefore their application in that context should not be
23 referred to when we are considering the question with relation to
24 a witness who is also a party. I was not trying to --

11:38:16 25 JUDGE THOMPSON: All right.

26 MR JABBI: My Lord, I would also want, therefore, with that
27 point having been made by Your Lordship, to refer to another
28 specific authority which touches on that point.

29 JUDGE ITOE: Go ahead.

1 MR JABBI: This time it is Prosecutor v Kordic and Cerkez
2 in a decision entitled "Decision on Prosecutor's Motion on Trial
3 Procedure" dated 19th March 1999. The first paragraph of the
4 order given by that court in that decision reads as follows,
11:39:24 5 My Lord, and I believe it conclusively answers Your Lordship's
6 question:

7 "Once a witness, including an accused, has made the Solemn
8 Declaration provided for in Rule 90(B) and commenced
9 testifying, the Prosecution and Defence must not
11:39:53 10 communicate with the witness on the content of the
11 witness's testimony except with leave of the Trial Chamber,
12 or by informing the other party, who could raise an
13 objection before the Trial Chamber."

14 So that authority is in fact saying, notwithstanding my
11:40:23 15 invitation that the point be considered for the possibility of a
16 distinction, it is in fact saying that the witness concept does
17 include an accused giving evidence under this rule could still
18 apply there.

19 My Lord, I'm happy to say that I have just received copies
11:40:45 20 of these authorities I have referred to. If I can make them
21 available to the Prosecution. We are very sorry we were not able
22 to do so at the beginning, but it is because of the very great
23 pressure of time involved in this exercise.

24 JUDGE ITOE: I am sure you would concede that the
11:41:08 25 Prosecution would need, unless they so decide not to, ask for
26 time to look at those decisions before coming up with a reply on
27 the submissions that you have made on this issue.

28 MR JABBI: My Lord, I am sure they are entitled to ask for
29 time, but asking my own attitude on the matter, I have said

1 complete confidence in their command of the law, but perhaps it
2 was only being --

3 JUDGE ITOE: I am saying if they so desire.

4 MR JABBI: If they so desire, My Lord.

11:41:46 5 JUDGE ITOE: If they so desire, yes.

6 PRESIDING JUDGE: But before we go to the Prosecution in
7 this respect, I would just like to observe that the direction I
8 issued last week at the Status Conference about the ability to
9 communicate or not communicate with witnesses is indeed very much
11:42:06 10 in line with those decisions. I said in my direction last week
11 that yes, indeed, you could communicate but with leave of the
12 Chamber. That is what I have said. So these decisions don't
13 bring any more light to all of that. So I take it that those
14 decisions clearly support the position taken by this Court.

11:42:22 15 MR JABBI: Certainly, My Lord.

16 PRESIDING JUDGE: What you are saying now is within that
17 discretion to grant leave we should grant leave to allow you to
18 do whatever -- [Overlapping speakers].

19 MR JABBI: Exactly, My Lord. Exactly, My Lord.

11:42:34 20 PRESIDING JUDGE: So these cases don't shed any more
21 light -- [Overlapping speakers]

22 MR JABBI: I have said that, My Lord, if we are applying
23 for leave in the circumstances, except that -- I mean, we are not
24 attacking either the statement of the law or the order of the
11:42:52 25 Court in making that point. But if we are making an application
26 within the framework of that ruling, we will be remiss if we do
27 not also refer to the relevant authorities.

28 PRESIDING JUDGE: That's fine. These authorities
29 essentially, from reading very quickly of these decisions, at

1 that time, '98/'99, in ICTY they didn't have any clear
2 directions. These decisions clearly spell out what could or
3 could not be done in discussing with witnesses once witnesses are
4 giving evidence. So there seems to have been some ambiguity
11:43:25 5 before. These two decisions clarify that; say you should not
6 unless you have leave of the Court. This is why we gave that
7 direction last week and presumably this is why, based upon that,
8 you're coming today to ask leave of the Court to be allowed to do
9 what you are proposing.

11:43:40 10 MR JABBI: Yes, My Lord.

11 PRESIDING JUDGE: Mr Prosecutor, I know there was a
12 proposal that copies will be given to you, but I took from your
13 own comments and response you were essentially familiar with
14 these issues and you took it -- because these cases, I
11:43:57 15 understand, were cases that were referred to in the Jones and
16 Powles book and publication.

17 MR De SILVA: With my humble acquaintanceship with the law,
18 the principles set out in those cases are no different to what I
19 was saying to the Court. Of course there are occasions on which
11:44:22 20 communications have got to be made in limited circumstances with
21 the leave of the Court and the Prosecution having been informed
22 or the Defence having been informed, whichever case it is. That
23 in itself indicates how limited it must be.

24 My learned friend cannot possibly sit on alternate days,
11:44:51 25 acquainting himself with facts and then telling me, the
26 Prosecutor, what he has been discussing with the defendant. I
27 mean, it would make a complete nonsense and mockery of the whole
28 situation. That in itself would be a violation of client/lawyer
29 confidentiality and therefore it couldn't work. It is for those

1 reasons, My Lords, I don't particularly wish to comment on these
2 cases, save to say that I don't think they assist my learned
3 friend in any way.

4 PRESIDING JUDGE: Thank you. We will now break to consider
11:46:08 5 this application. The Court will resume its proceedings this
6 afternoon at 2.30. Thank you very much.

7 [Luncheon recess taken at 11.46 p.m.]

8 [CDF24JAN06C-CR].

9 [Upon resuming at 3.00 p.m.]

15:01:57 10 [Ruling]

11 PRESIDING JUDGE: The Chamber, after considering the
12 submissions made by the first accused through his counsel and by
13 the Prosecution, reject and dismisses the application made as
14 being meretricious. The Chamber reiterates here its order of
15:02:13 15 18 January 2006 where, at the Status Conference, it instructed
16 counsel as follows with regard to the evidence of the first
17 accused - I will just repeat what I said at the Status Conference
18 on 18 January 2006. The Chamber instructed counsel for Norman of
19 the mode of examination and on trial procedure when the first
15:02:36 20 accused testifies as follows: If the first accused is appearing
21 as a witness, the Chamber wishes to emphasise that the proposed
22 order of examination would be for counsel for Norman to examine
23 him first, followed by the cross-examination by counsel for the
24 second accused and counsel for the third accused and then the
15:02:59 25 Prosecution counsel. The scope of cross-examination of counsel
26 for Fofana and Kondewa and the Prosecution should normally be
27 limited to issues raised during examination-in-chief. In other
28 words, a focused cross-examination. Then counsel for Norman may
29 re-examine the witness on new issues raised during

1 cross-examination. This is the portion that I would like to draw
2 your attention to more specifically.

3 Additionally, the Chamber wishes to remind the parties that
4 once the first accused has taken an oath or affirmation and
15:03:32 5 commences testifying, the Prosecution and Defence must not
6 communicate with the witness on the content of the witness's
7 testimony, except with leave of the Chamber, or by informing the
8 other party who could raise an objection before the Court. If
9 Norman wishes to contact his Defence counsel, he shall either
15:03:51 10 inform the staff of the Witness and Victim Section, who will then
11 report the matter to the Defence or contact the Defence directly.
12 Counsel may then apply to the Chamber for leave to communicate
13 with the witness or inform the other party, who could raise an
14 objection before the Chamber. This is the procedure we had
15:04:08 15 stated that should be followed and this is the procedure that
16 should be followed as a result of this decision again today. So
17 that concludes this issue. I should just add that we will
18 provide a written, detailed decision on this matter later on.
19 Let that suffice for the moment and it will allow us to proceed
15:04:32 20 from where we were.

21 I turn to you, Mr Jabbi, and ask you to call your first
22 witness.

23 MR JABBI: Thank you very much, My Lord. I wish to call
24 Mr Samuel Hinga Norman, the first witness on behalf of the first
15:04:58 25 accused.

26 PRESIDING JUDGE: Thank you, Mr Jabbi. Can the witness be
27 assisted to take his position as a witness, please?

28 JUDGE ITOE: He has been sworn in, should he stand up? He
29 should sit down.

1 THE WITNESS: My Lords, I have not taken the oath. May I
2 say something very briefly?

3 PRESIDING JUDGE: It depends what it is. We will see if we
4 may allow you to do so. We do not want any statement as such.

15:06:58 5 THE WITNESS: Nothing of controversy. If there is then you
6 may stop me, My Lord.

7 I just want to thank Your Lordships and all those who have
8 come this far with me and bore with me and on whose toes I have
9 stepped many times, right up to now. I want it to be known that
15:07:24 10 this was not deliberately to hurt anybody, but it was in the
11 cause of my Defence, like a beast in a trap. So whatever may
12 have transpired, I wish that Your Lordships will kindly and
13 maturely at least treat me with that understanding. This being
14 said, I want to proceed.

15:07:47 15 PRESIDING JUDGE: Thank you very much, Mr Norman. You can
16 rest assured that we will proceed with you as fairly as the law
17 allows us and to the best of our ability. Can we proceed with
18 the swearing in of the witness, please?

19 WITNESS: SAMUEL HINGA NORMAN [Sworn]

15:08:55 20 PRESIDING JUDGE: Thank you, you may be seated, Mr Norman.
21 Dr Jabbi, just a reminder that everything is to be interpreted
22 and therefore try to keep the pace that is sufficient enough to
23 allow for the translation to take place. Thank you very much.

24 EXAMINED BY MR JABBI:

15:09:11 25 Q. Now, Mr Witness, first of all may I welcome you to the
26 Chamber after a long absence. Can you tell this Court your full
27 names?

28 A. Yes, My Lords. I am Samuel Hinga Norman.

29 Q. Can you tell us a bit about your nationality?

1 A. I am Mende and a Sierra Leonean.

2 Q. And a little bit more of bio data concerning yourself?

3 A. Well, I was told when I grew up to understanding that I was
4 born in 1940 by a father called Musa Norman and a mother called
15:10:43 5 Nyagua Norman in a village called Ngolala. In, at that time,
6 Lunia Chiefdom, now Valunia Chiefdom because of amalgamation, and
7 the town called Mongeri, chiefdom, Valunia Chiefdom, Bo District,
8 southern region of Sierra Leone.

9 Q. What about your family situation?

15:11:26 10 A. Meaning my wife and children?

11 Q. Including that.

12 A. And brothers and sisters. I happen to be the last child
13 born to my father and my mother. I was told after my birth, my
14 father's other children never had any other child to them and
15:11:47 15 even my own mother. I had ten brothers and one sister. My
16 father died ten months after my birth and my mother died in 1958
17 when I was 18 years. My only surviving brother cannot walk for a
18 mile now; he's old. Our sister, our only sister, died years ago
19 when I was just about seven years. We have a large family. My
15:12:31 20 brothers and sister having other children. I also have my own
21 large family, including grandchildren.

22 Q. Thank you. Can you briefly tell the Court your educational
23 background?

24 A. Yes. From 1946 to 1949 I attended the Native
15:13:03 25 Administration School in Mongeri Telato. From 1949 to 1950 I was
26 brought down from the provinces, then protectorate, to Freetown,
27 and I attended the Military Elementary School to 1954. From 1954
28 I was selected as the first West African child soldier trainees
29 and educated that wise from the age of 14 until I became 18

1 years. From 18 years I undertook extra studies with various
2 secondary schools in Freetown, including the technical institute.

3 Q. I want to pass over to you the reminder that the Bench gave
4 me at the beginning as to the pace of evidence. You are being
15:14:20 5 interpreted.

6 A. Thank you, I will take note of that.

7 Q. Carry on, please.

8 A. I said from 1949 I was brought down to Freetown by my
9 brother from the protectorate. From 1950, I was enlisted into
15:14:51 10 the Military Elementary School in Murray Town, to 1954. From
11 1954, I was enlisted as a child soldier in the British Army, and
12 I received both elementary and secondary education at that stage
13 until I was 18. The institution was referred to as Boys Platoon,
14 Sierra Leone. That was an institution running from Nigeria,
15:15:29 15 Ghana and Sierra Leone.

16 Q. So you obviously had very early contact with the military
17 institution.

18 A. Yes, My Lords.

19 Q. Would you like to tell the Court of the early military
15:16:09 20 life of yours.

21 A. Yes, I would. This was a system introduced in West Africa
22 by the British to train future leaders of what was going to be
23 the African army. So from that early stage, boys at that age
24 were selected nationwide in this country, in Ghana and in
15:16:39 25 Nigeria, and trained at all levels and in all subjects - academic
26 and technical.

27 Q. And you enlisted in the army?

28 A. The army enlisted me, yes.

29 Q. I asked you earlier for a little more information on your

1 military life beyond the childhood stage.

2 A. After 18 years, I was then enlisted as a soldier instead of
3 a boy soldier. I was posted to the Royal Signals of
4 Sierra Leone, where I was trained as a wireless operator. Later
15:17:49 5 I was sent abroad to be trained as an instructor and to also work
6 with the British soldier in the field. So I proceeded to
7 Britain, from where I further proceeded to join the British Army
8 of the Rhine in Germany in 1960. Initially I was told we were to
9 spend more years than eventually what it turned out to be. When
15:18:39 10 we had taken almost one year in training, we were informed, those
11 of us who were sent abroad, that Sierra Leone was to become
12 independent. And so those of us who were considered adequately
13 educated to begin to man institutions and to head situations were
14 to be returned to the country. So I returned to Sierra Leone and
15:19:12 15 participated in the independence activities in 1961. After that,
16 I was promoted to the rank of a corporal, but not until when I
17 was sent to Congo, Leopold V as the first contingent member of
18 the Sierra Leone contingent to the United Nations services in the
19 Congo. So towards the end of 1962, I returned to Sierra Leone
15:19:54 20 after a service of about eight months there.

21 Q. How long did you spend in the army after that?

22 A. I joined the army 1954 and I was shoved out -- pushed out
23 in 1972. I think I spent about 16 years -- 18 years or so.

24 Q. In that time, what ranks did you attain?

15:20:31 25 A. When I returned from the Congo, I pursued further studies;
26 attempted the RAF examination, passed and I was sent to Mons,
27 Officer Cadet School, where I was commissioned and gained Her
28 Majesty's commission as a second lieutenant, and I became an
29 officer, a commissioned officer.

1 PRESIDING JUDGE: When was that, Mr Norman?

2 THE WITNESS: This was in 1966, My Lords. And I returned
3 and was then assigned to --

4 JUDGE ITOE: You say you were commissioned as a second
15:21:22 5 lieutenant?

6 THE WITNESS: Yes, My Lord. I returned and I was then
7 posted to the military headquarters at Murray Town as general
8 staff officer, training, where I was until I was appointed as ADC
9 to the Governor-General in 1966, later part of 1966, up to 1967,
15:22:13 10 when there was a political crisis in Sierra Leone and I was
11 reposted to the 1st Battalion, Sierra Leone Regiment, and I was
12 appointed adjutant to the battalion in 1968.

13 MR JABBI:

14 Q. You spoke just now about a political crisis whilst you
15:22:54 15 were -- in 1967, you said?

16 A. Yes.

17 Q. Can you give more information?

18 A. 1966 I was posted, 1967 was the political crisis.

19 Q. What posting did you have at the time of the said political
15:23:12 20 crisis?

21 A. I was posted -- the army calls that posting on to the Y
22 list, where your rank continues but you are not on active
23 service. So it is a semi-administrative service posting to the
24 Governor-General of Sierra Leone as ADC.

15:23:38 25 Q. ADC?

26 A. Yes.

27 Q. What was the particular crisis?

28 A. There was a general election that drew up contention
29 between the parties. Eventually, there was a military

1 intervention in that crisis.

2 Q. Did you play any particular role in that?

3 A. Yes, I did. Being the ADC, I was at State House when the
4 crisis built up and parties were moving into the State House,
15:24:25 5 playing their own politics with the Governor-General. There were
6 elections in Sierra Leone and the ordinary members' election had
7 taken place and the chiefs' election --

8 Q. You're talking about elections to Parliament?

9 A. Elections to Parliament, yes, parliamentary elections. At
15:24:52 10 that time, there were two sections of the election process. The
11 first was the ordinary members, the second and the last was the
12 chiefs' members of the house of Parliament. During the election
13 of the chiefs' members of the house of Parliament --

14 Q. Please watch your pace.

15:25:19 15 A. During the time of the elections of the chiefs, halfway
16 through, I was invited by telephone to Flagstaff House, the
17 residence of the then chief of staff, commonly at that time known
18 as the force commander, the residence of the force commander.
19 The force commander at that time was the late Brigadier Lansana.

15:26:00 20 When I arrived there, he asked whether I knew of an appointment
21 of a prime minister. I said I did not know. He told me, "The
22 Prime Minister, I have been told, has been appointed and the
23 elections are going on."

24 Q. The elections have not been completed yet?

15:26:30 25 A. No. He said, "Even as I'm talking to you, results are
26 coming. If this is to stand, there will be crisis in the
27 country. I rule that you return immediately and inform the
28 Governor-General that whilst elections are going on, appointment
29 of a prime minister will not be made. And please inform the

1 Governor-General to withhold the appointment and not to make it
2 recognised until the elections are over."

3 JUDGE ITOE: Who was telling you this? Brigadier Lansana?

4 THE WITNESS: Brigadier Lansana.

15:27:22 5 MR JABBI:

6 Q. The then force commander?

7 A. The then force commander. I returned and conveyed exactly
8 that message to the Governor-General, His Excellency.

9 Q. Was that the end of the matter?

15:27:46 10 A. No, The Governor-General then asked me to accompany him to
11 his suite, which I did. Later on, there was another telephone
12 call that the State House gates should not be left open for fear
13 of security threats and that those gates should be closed and
14 that he, the force commander, would soon be on his way to the
15:28:34 15 Governor-General. I carried out those orders by conveying them
16 to the guard commander, who then carried out the orders by
17 closing the gates.

18 Q. Yes.

19 A. Thereafter, until night, I had not seen the force commander
15:29:07 20 and the orders were to stand as they were, and they did.

21 Q. Yes, are you finished?

22 A. I am.

23 Q. When you say, "The orders were to stand as they were and
24 they did," what do you mean?

15:29:42 25 A. Meaning that the gates were never opened to anybody wanting
26 to come and see His Excellency.

27 Q. Was that the final resolution of that?

28 A. That was not the final resolution. I had to return the
29 next day and the next day saw the announcement of the declaration

1 of martial law by the force commander. And from the martial law,
2 the days progressed into the announcement of the formation of the
3 National Reformation Council by the Brigadier's junior officers.
4 And a contingent of soldiers were sent to the State House where
15:31:03 5 they requested that there were guests to His Excellency the
6 Governor-General, who were named and were taken away under
7 military guard.

8 Q. The guests?

9 A. Yes.

15:31:24 10 Q. What happened to the Governor-General himself? Did
11 anything happen to him?

12 A. No, he was there and I was also there at the State House.

13 Q. You were there with him?

14 A. Yes, nobody took us anywhere else and nobody took him
15:31:38 15 anywhere else.

16 Q. Did anything happen to you?

17 A. No. The only thing that happened to me was that I remained
18 as the ADC, but then orders to me became changed from the force
19 commander to a group that was known as NRC, National Reformation
15:32:07 20 Council.

21 Q. That was a military --

22 A. That became the military government.

23 Q. As a result of the role you played in that exercise, did
24 anything happen to you afterwards?

15:32:36 25 A. Long after that, there was a counter-coup and after the
26 counter-coup, I was arrested and later charged with treason.

27 Q. With treason?

28 A. Yes, together with some other senior military officers,
29 police officers and senior politicians. I think I was about the

1 youngest among them.

2 Q. Was the charge ever read to you?

3 A. Yes, the charge was read and at that time a lot of other
4 legal conditions were fulfilled, representation by a lawyer for
15:33:28 5 me, appearance in the lower court and confirmation of the charge
6 and then continuation of the trial at the higher court.

7 Q. Did you take a plea when the charge was read to you?

8 A. I did. The investigations were carried out. I made a
9 statement and a lot of other people made statements. I was told
15:33:59 10 by the police that after having studied all the statements, some
11 of us whom they held culpable were charged. So I took a plea of
12 not guilty.

13 Q. You pleaded not guilty?

14 A. Yes.

15:34:18 15 Q. And you were tried, I suppose?

16 A. Yes, I was.

17 Q. What was the outcome?

18 A. The outcome was an initial verdict of guilty. The
19 Prosecutor now was one of those lawyers who defended some of the
15:34:43 20 accused people. He did his best, together with the team of
21 Richard Cook [phon] and others. We did not regret. Of course,
22 we had very good defence.

23 Q. You're referring to this substantive Prosecutor of this
24 Court?

15:35:12 25 A. Yes, he was then Mr de Silva. I now understand that he is
26 now a QC.

27 Q. How was the final outcome of your total trial, if we can
28 conclude that?

29 A. The total outcome was initially we were convicted,

1 sentenced to death and, consequently, we appealed and after a
2 year in the condemned cell, the appeal succeeded and some people
3 were immediately released. I happened to stay for about another
4 year.

15:35:51 5 Q. There?

6 A. At Pademba Road. The reason was that there were other
7 charges that were being considered, whether those charges could
8 be dropped because they had not been dropped and they were on
9 record. So, eventually, whether they were dropped or not, I was
10 eventually told by the Attorney-General that was no further
11 prosecution, so I was let out almost one year after the decision
12 of the appeal.

13 Q. And that was around 1968 or 1969?

14 A. The original arrest was in 1968 --

15:36:40 15 Q. When you were originally released.

16 A. 1972.

17 Q. 1972?

18 A. From 1968 to 1972.

19 Q. Now, you were released in 1972. Briefly, briefly, very
15:37:18 20 briefly. Can you tell us about your life subsequently, very
21 briefly?

22 A. Yes, from 1972 upon my release, I was informed that I had
23 been compulsorily retired from the army, so I found myself on the
24 street. So I became a businessman, a manufacturer's
15:38:04 25 representative for about one and a half years. The next year,
26 which was 1974, when I was away from Freetown, I heard that there
27 was another political crisis. There had been an attempt on the
28 government and that arrests were going on.

29 Q. What attempt?

1 A. Attempt to overthrow the government in 1974. I returned to
2 Freetown because my family was then there. Not long after my
3 return, I was picked up as one of the suspects. I spent 14 days
4 at the CID in a very terrible condition. That was from the
15:39:10 5 beginning of August 14 almost to 1 September 1974 I was
6 transferred from the CID to Pademba Road and I was placed in the
7 solitude confinement with just one blanket and one cup of water.
8 I was there in my cell for 13 months without leave my cell or
9 taking bath. I had fleas, in Sierra Leone I referred to them as
15:39:58 10 karangbas. Eventually, I was released, and there was no case for
11 me, no question, nothing.

12 Q. Were you tried at any stage?

13 A. No.

14 Q. Not at all?

15:40:11 15 A. No charge, no question, no statement. I was just released.

16 Q. You were not interrogated by the police, for instance?

17 A. No, I was not interrogated at all. There was no record of
18 interrogation. I was just told, "We have found out that there is
19 nothing to investigate about you".

15:40:35 20 Q. How long did it take to find that out?

21 A. 13 months.

22 Q. 13 months, while you were at Pademba Road Prison?

23 A. I was in solitude confinement.

24 Q. That was in 1974?

15:40:48 25 A. 1974 to 1975.

26 Q. So you ultimately left in 1975?

27 A. From September to October 1975.

28 Q. After 1975, anything of interest?

29 A. Yes. I then joined the youth of the SLPP when I was

1 released and so we started political canvassing to compete with
2 the APC for the election of 1977. While we were out in different
3 ways and different areas campaigning, some of our colleagues were
4 killed in mysterious circumstances. Those of us who remained
15:42:02 5 alive got together and we decided some of us to either leave the
6 country or to stay. Those of us who were lucky left. I left in
7 1978.

8 Q. Left --

9 A. Sierra Leone. I went into political asylum to Liberia and
15:42:28 10 I never returned until 1989.

11 Q. From 1978 to 1989 --

12 A. Yes.

13 Q. You were in exile; is that what you're saying?

14 A. If you call it that, yes.

15:42:46 15 Q. Self-imposed?

16 A. Yes. I was convinced to cautiously advise myself to leave
17 the country because of the disclosal [sic] of the information of
18 a group of assassigators who had been trained abroad and who were
19 then back in this country to eliminate political components and I
15:43:15 20 was convinced because I saw my name on one of the lists so I had
21 to leave.

22 Q. You spent some 11 years in Liberia?

23 A. Yes.

24 Q. Obviously, you subsequently returned to Sierra Leone?

15:43:26 25 A. Yes, I did.

26 JUDGE ITOE: He said he was there from 1978?

27 THE WITNESS: From 1978. My Lord, I left Sierra Leone on
28 Sunday, May 14, 1978 and I returned, I think, in October 1989.

29 MR JABBI: Eleven years?

1 A. Yes, 11 years in which time I became a house-boy, all types
2 of work I could do to make me survive. Eventually I established
3 myself a poultry farm and a company and I employed some
4 unemployed people in Liberia, set up some team of young boys whom
15:44:18 5 I grew up, as a football team, about three sets of them, and I
6 had to say goodbye to them when the situation was changing for
7 hostility in Liberia, so I had to return home.

8 Q. So when did you return home?

9 A. 1989.

15:44:38 10 Q. 1989. So what was your pattern of life like when you
11 returned?

12 A. When I returned, I went home to Mongeri and the chiefdom
13 elders got together to recognise my service and to ask me to
14 assist them in the administration of the chiefdom in the position
15:45:12 15 of spokesperson for the chiefdom and I became a spokesman for the
16 chiefdom from that time on to 1994 when I was appointed regent
17 chief for Jiama Bongor chiefdom.

18 Q. As spokesman for Valunia, where were you based?

19 A. In Telato, my own home town.

15:45:48 20 Q. In Valunia Chiefdom?

21 A. Valunia Chiefdom.

22 Q. Then you say you were appointed regent chief?

23 A. Yes.

24 Q. 1994?

15:45:56 25 A. October 1994 I took that appointment.

26 Q. What government appointed you?

27 A. At that time it was the NPRC government, a military
28 government.

29 Q. How long were you regent chief?

1 A. I was regent chief from 1994 up to when the chief was
2 crowned in January 2003.

3 Q. 2003?

4 A. Yes.

15:46:57 5 Q. By 1994 -- had the civil war in Sierra Leone started by
6 then?

7 A. The civil war had started in 1991, so the civil war was
8 about three years when I became regent chief.

9 Q. Right up to that time you were based in Valunia Chiefdom?

15:47:19 10 A. I was in Valunia Chiefdom, yes, up to 1994. In 1994, I
11 moved up to Jiam Bongor and resided there in Telu, which was
12 chiefdom headquarter.

13 Q. Can you tell this Court any highlights of your stay in Telu
14 as regent chief?

15:47:52 15 A. Yes. After my installation ceremony in that October,
16 chiefs around my chiefdom, meaning Boama Chiefdom, Wunde, Gboyama
17 Chiefdom, Tikonko Chiefdom, and there was another chiefdom, which
18 was part of Pujehun. All of us got together and discussed the
19 war and what action we were to take to protect our various
15:48:50 20 chiefdoms.

21 Q. So the war had, in fact, reached your chiefdoms?

22 A. The war had not reached my chiefdom, but then other
23 chiefdoms had been evaporated in Pujehun and we had a lot of
24 displaced people in all our chiefdoms and the chiefdoms around
15:49:11 25 me, especially at Gbundema, Telu, Koribundu, Gerihun and so. So
26 we decided we should approach the NPRC government to assist in
27 the protection of the various chiefdoms since there were not
28 soldiers around us to protect us at that time. So we formed a
29 chiefdom -- a chiefs' committee that came out --

1 Q. Please watch your pace as you go along.

2 A. Thank you. A chiefs' committee came up with a
3 recommendation for the selection of young able-bodied young men
4 who the NPRC government would assist us in training and giving
15:50:31 5 arms for them to be our chiefdom boundary guards so that the
6 rebels would not run us out of our chiefdoms.

7 Q. Which rebels?

8 A. At that time it was the RUF rebels.

9 Q. What does RUF mean?

15:50:56 10 A. Later on I found out that it was Revolutionary United
11 Front. That is how they called themselves at that time. We
12 did - "we", meaning chiefs - selected, at that time, 75 young men
13 by chiefdom and asked that they be trained in Koribundu.

14 Q. Why Koribundu?

15:51:30 15 A. That was a military garrison at the time when I took over
16 the chiefdom as regent. A military -- I think a company -- I
17 should say a company was stationed in Koribundu. That's a very
18 strategic road junction running from Bo to Pujehun and then from
19 Moyamba on to Kenema.

15:51:55 20 Q. What chiefdom is that, Koribundu?

21 A. It was the chiefdom that I was regent of.

22 Q. The one you were regent chief?

23 A. Yes.

24 PRESIDING JUDGE: Did you say you took 75 young men from
15:52:08 25 each chiefdom?

26 THE WITNESS: Each chiefdom, 75, initially.

27 MR JABBI:

28 Q. Yes, I asked you what chiefdom Koribundu was.

29 A. Jiama Bongor Chiefdom. Koribundu belonged to the Jiama

1 section of Jiama Bongor. That again is another amalgamated
2 chiefdom, Jiama and Bongor, so when they amalgamated they became
3 Jiama Bongor.

4 Q. You said just now that you selected 75 young men from each
15:52:50 5 chiefdom for the military to help train for you to protect your
6 boundaries. How many other chiefdoms were involved in that
7 arrangement?

8 A. I did not select. The selection was done by chiefdoms.

9 Q. The chiefdoms selected 75 --

15:53:16 10 A. 75 young men.

11 Q. Each, each chiefdom.

12 A. Yes.

13 Q. How many chiefdoms were involved in that?

14 A. Wunde, Gboyama, Boama, Tikonko. There was a chiefdom in
15:53:47 15 Pujehun.

16 Q. At least just the number of chiefdoms.

17 A. Yes, five chiefdoms.

18 Q. Five chiefdoms.

19 A. Yes.

15:53:59 20 Q. Was this selection of young men random, or did they have to
21 have any particular --

22 A. Well, every chiefdom had to do their own selection. Maybe
23 some did it randomly, others did it selectively, but what we did
24 was -- Jiama Bongor called a meeting of section chiefs and asked
15:54:34 25 that these young men be selected for that training so that they
26 could perform chiefdom defence, you know, group of young men.

27 Q. Was there, for example, any occupational criterion for
28 selecting?

29 A. No, there was no limit of qualification, no limit of age.

1 Once they were young and they were willing enough and the chiefs
2 would do their own selection, it was a matter of defence. So if
3 one was selected, one not just -- one would be very careful not
4 to even deny the selection by chiefs, especially when section
15:55:42 5 chiefs and town chiefs, villages would select you and you say,
6 "I'm not going." Eventually there was a crisis, especially a
7 rebel attack. The passion you feel to defend your own people was
8 not very good at all. If I was a young man, I would be afraid
9 not to accept the selection.

15:56:13 10 Q. Did the training in fact take place, the training of those
11 young people?

12 A. Of course. They were sent and they were trained and
13 eventually they were returned to the various chiefdoms. My own
14 selected men were returned, about 75 of them, and because of my
15:56:33 15 own knowledge in military craft, I also assisted my own to
16 further - you know, help them in training and while we were in
17 one of these training one morning, precisely, it was Thursday,
18 30 June 1995, we attacked. The town Telu was attacked and there
19 was serious casualty among them out of the 75. Later when the
15:57:16 20 battle was over, I counted 50 dead of the trainees. And other
21 heavy number of other civilians, those that were displaced people
22 in the town who had come to seek refuge in my chiefdom, many were
23 killed and houses were destroyed. I myself escaped and that was
24 what really happened on that day.

15:57:53 25 Q. What day again? Can you please --

26 A. On Thursday, June 30, 1995.

27 Q. The RUF rebels attacked Telu; is that what you are saying?

28 A. This was very difficult to tell whether it was RUF or who,
29 but then we felt it was a rebel attack. They led and some of

1 them were in military attire and some of them were in different
2 clothes so you could not say whether they were civilians or
3 soldiers or rebels, whoever. But there was a serious attack and
4 they had AK-47, RPG and other guns, other explosives, grenades
15:58:40 5 and so on.

6 [CDF24JAN06D - SV]

7 Q. Were you, yourself, in Telu Town when this happened?

8 A. I was in Telu, and at one stage I was being led to the
9 execution centre when my escape took place.

15:58:54 10 Q. Being led to the execution centre?

11 A. Yes.

12 Q. By who?

13 A. By some people who were carrying arms and were just holding
14 arms and singing around me, and were just holding me from all
15:59:09 15 sides and I was being led. And then suddenly we ran into gunfire
16 and eventually I never saw those who were carrying me and just
17 saw myself alone and I had to just dive for cover and I survived.

18 Q. You must be very lucky.

19 A. I count myself very lucky. In Sierra Leone that luck had
15:59:44 20 earned me very miraculous issues and names.

21 Q. After that encounter where did you go?

22 A. I left that same afternoon and passed the night in one of
23 my section towns called Mamboma. Passed the night there. The
24 following day was Friday. I arrived in Gondama camp and
16:00:18 25 eventually made my way to Bo.

26 Q. Gondama camp?

27 A. Yes.

28 Q. How far is that from Bo?

29 A. I think about 17 miles.

1 Q. From Bo?

2 A. From Bo, and three miles from Telu.

3 Q. And you came Bo?

4 A. Yes, I came to Bo, and I was residing there when I had a
16:00:47 5 call from the chief of defence staff then to report to Freetown.
6 Came down --

7 Q. Who was that?

8 A. At that time he was Brigadier Kelly.

9 Q. Kelly?

16:01:01 10 A. Kelly. The following day he took me to the NPRC minister
11 responsible for defence and I was taken to the chairman NPRC, to
12 whom I told my stories. He decided that of the remaining
13 trainees they should issue them seven Ithaka shotguns to be my
14 personal bodyguards. That was done and a quantity of shotgun
16:02:00 15 cartridges were issued to them.

16 Q. By the NPRC government?

17 A. Yes.

18 JUDGE ITOE: Remaining trainees out of the contingent
19 of 75?

16:02:14 20 THE WITNESS: Seventy-five after having lost 50, My Lord.

21 MR JABBI:

22 Q. Fifty out of your own 75?

23 A. Counted dead before my own town.

24 Q. Before you departed?

16:02:26 25 A. Yes.

26 JUDGE ITOE: What did you call those guns again?

27 THE WITNESS: Ithaka, I-T-H-A-K-A. These are police
28 weapons used in New York to this day.

29 MR JABBI:

1 Q. The group to whom those weapons were issued to become --
2 JUDGE ITOE: Just a minute. Just a minute. You were taken
3 to the chairman of the NPRC. May we have the name, please?
4 THE WITNESS: The name of the chairman?
16:03:29 5 JUDGE ITOE: Yes.
6 THE WITNESS: He was then Captain VEM Strasser.
7 JUDGE ITOE: Thank you.
8 MR JABBI:
9 Q. Valentine Strasser?
16:03:42 10 A. Maybe.
11 Q. Now I was just asking you, when His Lordship asked for that
12 clarification, I was asking about the group to whom the Ithaka
13 guns were given to be your personal bodyguard?
14 A. Yes.
16:04:03 15 Q. Was that group part of your chiefdom's 75 people who had
16 been sent for training?
17 A. Yes, and these are the ones commonly referred to in
18 Sierra Leone as Kamajors.
19 Q. Now, when you say that is the group referred to commonly as
16:04:24 20 Kamajors, are you saying, for instance, that the 75 selected from
21 the various chiefdoms were Kamajors?
22 A. That was the name of the group of hunters in the various
23 chiefdoms that had been if, you know, there was a group of people
24 that were not military men but these were hunters in our local
16:05:00 25 words. So the Mendes will call them their own name and the other
26 tribes would call their own names. And these are various groups
27 that are known as Kamajors. In Kono land they call them Donsos.
28 In Koranko, Yalunka, Madingo they call them Tamaboros. In Temne
29 land, the inland Temne call them Kapras. The riverine Temne call

1 them Gbethis, G-B-E-T-E -- T-I-S, Gbethis. And in the
2 cosmopolitan area here in Freetown of Ojeh Ogugu hunting, we call
3 them Organised Body of Hunting Society, commonly known as OBHS.
4 OBHS. Organised Body of Hunting Society. So across the country
16:05:58 5 from time immemorial you have these people, even before I was
6 born.

7 Q. You were a bit detailed just now about the names given to
8 hunting groups in various parts of the country. Would you just
9 like to go over that again?

16:06:31 10 A. Yes, I would. The Mende and Mende associated tribes call
11 their own Kamajors. The Konos call their own Donsos.
12 D-O-N-S-O-S, Donsos. Yalunka, Madingo, and the like in the
13 mountain area sharing border with Guinea, they call their own
14 Tamaboros. The inland Temne call their own Kapras. K-A-P-R-A-S,
16:07:13 15 Kapras. The riverine Temne call their own Gbethis. And the
16 cosmopolitan area here call their own Organised Body of Hunting
17 Society. They call them OBHS. You have the Ojeh, the hunting
18 and --

19 JUDGE ITOE: What is this last group again?

16:07:35 20 THE WITNESS: OBHS, My Lord.

21 JUDGE ITOE: Yes, you say they were who?

22 THE WITNESS: Organised --

23 JUDGE ITOE: No, no, no, I know. Who were they?

24 THE WITNESS: These are the companies of Ojeh society,
16:07:50 25 hunting society.

26 JUDGE ITOE: That was here?

27 THE WITNESS: Here in Freetown.

28 MR JABBI:

29 Q. So the OBHS was confined to the Freetown area?

1 A. Well, we call them the Western Area.

2 Q. Western Area?

3 A. Western Area hunters. They are all over Waterloo, Lumpa,
4 all over the place right around the Western Area. Not only

16:08:16 5 Freetown. Freetown is part of the Western Area.

6 Q. Now, the name OBHS which you say is -- OB, did you say?

7 A. Organised. O for organised, B for body, H for hunting and
8 S for society.

9 Q. Organised Body of Hunting Societies?

16:08:40 10 A. Yes.

11 Q. That looks like some federative name.

12 A. Well, that is how they organised themselves in Freetown in
13 the Western Area here. You have the mountain hunt -- if you were
14 in Freetown in the past just Eid ul-Adha or something period,

16:09:06 15 there was -- you call the Padul Ojeh, that came out, that was the
16 part of them.

17 Q. And they belonged to an organisation?

18 A. Yes.

19 Q. By themselves?

16:09:18 20 A. In this Western Area.

21 Q. Not introduced by the war? That organisation as an
22 organisation was not introduced by the war?

23 A. They were here when I was brought as a child in 1949 and
24 they are still here. They will continue to be here when I'm
16:09:33 25 dead.

26 PRESIDING JUDGE: Your witness has testified that these
27 organisations have been forever. It has been part of the
28 tradition.

29 MR JABBI: My Lord, it's just some clarification. I was

1 trying to have him -- cause he says they were different groups.

2 PRESIDING JUDGE: We understood his evidence to be quite
3 clear in this respect.

4 MR JABBI: Thank you, My Lord.

16:09:55 5 JUDGE THOMPSON: In other words, that organisation predates
6 the war, the OBHS, in the Western Area.

7 MR JABBI: Yes, My Lord.

8 Q. Now, after you were given -- or after these weapons, the
9 Ithaka guns, were given for your personal bodyguard, did you go
16:10:29 10 back to Telu?

11 A. No, I did not go back to Telu. I went back to Bo, where I
12 resided, and most of my section chiefs had left Telu. We had
13 lost a good number of villagers and my people were no longer
14 quite safe. So we left just incognito people in charge and the
16:11:08 15 chiefs came down to Bo with me and we were in Bo.

16 Q. When you say the chiefs came down with you to Bo, are you
17 talking about Telu alone or --

18 A. No, I'm talking about Jiama Bongor Chiefdom.

19 Q. The whole Jiama Bongor chiefdom?

16:11:28 20 A. The whole of Jiama Bongor chiefdom, excepting Koribundu.
21 Excepting Koribundu where they felt secured that soldiers were
22 there and so they stayed.

23 Q. But the rest of the chiefdom --

24 A. A good part of the chiefdom authorities moved.

16:11:47 25 Q. To Bo?

26 A. To Bo.

27 Q. And you did not ever go back to Telu?

28 A. I went back to Telu.

29 Q. When did you go back?

1 A. When the war was over, His Excellency and a group of
2 ministers and myself went to sympathise with them for what befell
3 of the town and the people.

4 Q. You said His Excellency?

16:12:15 5 A. The President; Dr Ahmad Tejan Kabbah.

6 Q. He and a group of his ministers?

7 A. Ministers and myself, including UNAMSIL officers and then
8 all of them, we went to Telu. He saw the mass grave of those who
9 had died in that episode.

16:12:40 10 Q. When was that? Can you be precise?

11 A. This was in the year 2002.

12 Q. 2002?

13 A. Yes, 2002.

14 Q. 2002?

16:12:59 15 A. Yes, 2002. And I believe it was between October and
16 November 2002. Maybe around that.

17 Q. What was your association with government by that time?

18 A. I was the Deputy Minister of Defence at the time when His
19 Excellency paid a visit to Telu.

16:13:37 20 Q. To Telu?

21 A. But when I had been ran out of Telu in 1995, right up to
22 the elections I was the Regent Chief. I was not a minister of
23 government.

24 Q. Okay, let's just get this -- as a sure matter of history,
16:14:03 25 let us just get it clear. What you're saying is that when you
26 left Telu in 1995 --

27 A. Yes.

28 Q. -- you did not return there as chief or even in person
29 until 2002?

1 A. No, I -- during that time before 2002, I was paying visit
2 to the people at the time when the attacks had been now, you
3 know, seemed so far away and the people were safe. They returned
4 and I was paying them visits. Up to the time of the elections of
16:14:42 5 1996 I was not paying visits to Telu.

6 Q. Up until 1996?

7 A. Yes. Only I was sending, you know, hunters and some
8 trusted chiefs to go and assure people of our efforts to resettle
9 them.

16:15:00 10 Q. You mentioned an election in 1996. What sort of election
11 are you talking about?

12 A. General election of a civilian government after the NPRC
13 had taken over.

14 Q. So, this was a parliamentary and presidential, was it?

16:15:27 15 A. Yes.

16 Q. You also said that when you went back with the president
17 and others to Telu in 2002, you were by that time a deputy
18 minister?

19 A. Yes.

16:15:47 20 Q. What sort of deputy minister?

21 A. Deputy Minister of Defence.

22 Q. Deputy Minister of Defence. When did you become Deputy
23 Minister of Defence?

24 A. I cannot now name the precise date, but I think it was in
16:16:08 25 1996.

26 Q. Some time in 1996?

27 A. Yeah, some time. Any time after March.

28 Q. Some time after March?

29 A. Yes. Maybe April, maybe May, about that time.

1 Q. Would it be certainly before June?

2 A. So, yes.

3 Q. Certainly before June. Who was your Minister of Defence?

4 A. His Excellency the President was the Minister of Defence,
16:16:46 5 commander-in-chief; Dr Ahmad Tejan Kabbah.

6 Q. And how long were you minister of -- Deputy Minister of
7 Defence?

8 A. I was Deputy Minister of Defence from appointment in 1996
9 until when I was appointed Minister of Internal Affairs in the
16:17:37 10 year 2002.

11 Q. 2002. After the Telu visit?

12 A. No, before the Telu visit.

13 Q. So during the Telu visit, when you went to Telu with the
14 President and others you had not become Minister of Internal
16:18:00 15 Affairs?

16 A. No, I was deputy. The elections for the year 2002 had not
17 taken place yet.

18 Q. I see. When was the election in 2002?

19 A. I think it was in June.

16:18:11 20 Q. June. So at the time of the Telu visit you were Deputy
21 Minister of Defence and that was before the general election of
22 that year?

23 A. You are correct, My Lord.

24 Q. As Deputy Minister of Defence what -- who was your -- to
16:18:47 25 whom did you principally report in terms of responsibility?

26 A. To my boss, the Minister of Defence, who happened to be the
27 president.

28 Q. Now, would you want to give the Court an idea of a
29 highlight of activities or engagements as Deputy Minister of

1 Defence?

2 A. Well, yes.

3 Q. I just note that you say that was from after the general
4 election in 2000 -- sorry, after the general election in 1996
16:19:52 5 when, between March and May, you became Deputy Minister of
6 Defence, until 2002 after the general election of that year as
7 well. So, during the period that you were Deputy Minister of
8 Defence can you give the Court an idea of the general structure
9 of responsibilities you had and any highlights of engagements?

16:20:23 10 A. So, at the time I was appointed Deputy Minister of Defence,
11 the nation had just come from being under the control of a
12 military government. Soldiers were then our boss. Suddenly, we,
13 civilians, became their own boss and they were carrying arms and
14 had handed over power to government. I had the unenviable job of
16:21:31 15 transforming that soldier from being in charge to become a
16 servant to the civilian government which was not an easy job, but
17 I was a trained soldier in every respect. I had been a child
18 soldier and I had been an ordinary soldier. I had been a
19 non-commissioned NCO soldier and I had been a commissioned
16:22:27 20 officer soldier. And because I was an officer, I had been an
21 officer before becoming a minister --

22 Q. A military officer, you mean?

23 A. A military officer before becoming a minister. The
24 officers were then talking to their colleague officer who
16:23:00 25 understood their modes of behaviour. And so, I was trying to
26 interrelate with them and to let them understand that at that
27 time it was a civilian government that was in charge. I have
28 said it was an unenviable work. The office of the Deputy
29 Minister of Defence, or even the office of the Minister of

1 Defence and that of the office of the commander in chief of the
2 armed forces of Sierra Leone, and eventually the office of the
3 president of Sierra Leone, was not comparable to that of the
4 Chief of Defence Staff of the army in terms of importance by
16:24:26 5 appearance. The office of that of the Chief of Defence Staff was
6 by far more respectable-looking and --

7 Q. You mean more respectable-looking than --

8 A. Than the office from the president right down to the Deputy
9 Minister of Defence.

16:24:53 10 Q. From the president?

11 A. Right down.

12 Q. Yes, carry on.

13 A. So even the Deputy Minister of Defence did not have an
14 office outside of the military barracks of Cockerill Barracks. A
16:25:18 15 little military office at the Cockerill Barracks was furnished to
16 be the office of the Deputy Minister of Defence. In this
17 situation, the Deputy Minister of Defence did not surely find
18 himself safe in a military camp for an office, especially at a
19 time when a civilian government had just succeeded that of a
16:26:02 20 military government. But we existed for some time, even though
21 with suspicion; they looking at us in a different way, we also
22 looking at them in a different way. But as a government, we had
23 to govern and, as a minister, I had to administer the office of
24 the Deputy Minister of Defence. So in that situation directives
16:27:00 25 were to come from government to an army that was not willingly
26 intended to take some of these directives. So it was a difficult
27 period. Eventually suspicions grew and then there were talks
28 about coup or coups or counter coups.

29 Q. About what period would that be now?

1 A. We had then crossed into 1997 from 1996. I had moved from
2 the military barracks to Slaughter Terrace where an office was
3 put together and which I occupied, and His Excellency was then
4 using one of the suites at the State House. Being a soldier, a
16:28:34 5 lot of arrangements were put in place in the army so that there
6 could be some intelligence, an early warning intelligence.

7 Q. Who put this in place?

8 A. I did, using some very good, decent officers and soldiers
9 who are still there. The war was then again pressing, even unto
16:29:20 10 when the 1996 election had taken place and on the day of the
11 election in 1996, those of us who survived up to this day and
12 participated in casting our ballots are aware of what we went
13 through to elect a government at that time. After that
14 election - we saw a lot of bloodshed, death and so on - had come
16:30:09 15 the government that eventually elected me as a deputy minister.

16 Q. Elected, did you say?

17 A. Selected me as a deputy minister, correction. So right up
18 from that time there had been again civilian suspicion of who
19 really were these rebels. Some of them were wearing civilian
16:30:43 20 clothes. Others would wear military clothes. So the entire
21 nation was in confusion as to who was the rebel and who was the
22 soldier. A lot of good soldiers lost their good name and were
23 being called different names, sometimes even insulting names,
24 which made them -- some of them most angry.

16:31:16 25 Q. Do you have any examples of such names?

26 A. Yes.

27 Q. Yes?

28 A. A comment that was ringing around Sierra Leone was Sobels.

29 Q. What did that mean?

1 A. Soldiers and rebels combined.

2 Q. Sobel?

3 A. Sobel. Soldier/rebel, rebel/soldier.

4 Q. What's the spelling?

16:31:45 5 A. That was the name given to soldiers that were viewed by
6 civilians who did not understand whether rebels were wearing
7 soldier uniform or soldiers were actually behaving, or rebel
8 activities. So it was a confused situation in this country.

9 Q. What is the spelling of Sobel?

16:32:10 10 A. S-O-B-E-L-S, Sobels.

11 Q. Any other example of such name?

12 A. Everybody used to call them their own names. The Mendes,
13 instead of saying rebels, they say "lebel" and others gave other
14 names to them. But you and myself would be very difficult -- it
16:32:44 15 would be very difficult for you and myself to say which was
16 really true, whether the soldiers had really transformed their
17 loyalty into becoming rebels or it was the rebel that was trying
18 to cause confusion among the population. And eventually, if that
19 was the situation, they succeeded in putting us against our
16:33:08 20 soldiers. So when chiefs, including myself, decided to arm young
21 men in our chiefdoms to protect our land, homeland, property and
22 life, soldiers viewed this as a disservice to their loyalty, and
23 so Hinga Norman, being a soldier they were looking up to.

24 Q. Who is that Hinga Norman?

16:33:50 25 A. Myself, and also a chief who had then sided with his
26 colleague chiefs and armed men wasn't taken to being against
27 soldiers.

28 Q. As Deputy Minister --

29 A. As Deputy Minister of Defence, all soldiers thinking that

1 you are against them. So I was only lucky to survive. That was
2 how it was when, in 1997, I had a lot of intelligence covert in
3 the army and they did their best in giving me information that
4 later proved accurate. Most, if not all, of this information I
16:34:58 5 did not keep to myself. I passed them to my boss.

6 Q. Meaning?

7 A. The Minister of Defence, the commander-in-chief of the
8 armed forces and the president of Sierra Leone. I requested
9 measures to be taken to safeguard the armory where guns,
16:35:42 10 explosives and other dangerous weapons are kept and this is
11 where, when I heard that I have been selected as one of those who
12 bear the greatest responsibility for whatever happened in
13 Sierra Leone resulting into massive deaths and destruction of
14 life and property for which I am sitting down here, I feel
16:36:25 15 aggrieved. That I am also held for omission - that is, not doing
16 what I should have done to prevent that, whether it was by
17 punishment or by preventing what happened to Sierra Leone. I do
18 feel aggrieved and that is why I am very grateful that after all
19 my long stay from this Court, finally their Lordships did not
16:37:06 20 walk me out of this Court to say, "Go back. You said you were
21 not coming here, so we are not accepting you." I have been given
22 the opportunity to tell this Court, this nation and the world
23 whether it is me or those two people over there, are those who
24 are now there in detention that have been picked that are
16:37:31 25 responsible, they're to be left to Their Honours.

26 JUDGE ITOE: Please wait.

27 THE WITNESS: Thank you, sir.

28 PRESIDING JUDGE: Dr Jabbi, we will let you finish this
29 particular aspect with the witness and we'll break for a short

1 period of time.

2 MR JABBI: My Lord, I did not get --

3 PRESIDING JUDGE: I said I will let you finish this
4 particular aspect of the evidence of the witness and then we'll
16:38:19 5 break for a short time and then come back. So if you just finish
6 this area and then we'll come back.

7 MR JABBI: Today?

8 PRESIDING JUDGE: Yes, we'll break and then come back. But
9 we'll just take a short break.

16:38:31 10 THE WITNESS: Just a wee bit, I will be finished with this
11 statement through which His Lordship asked me to wait. I said
12 that is the reason why I was grateful to Your Lordships for
13 allowing me to give testimony here and then after which
14 Your Honours will be at liberty to decide whichever way whoever
16:39:05 15 was responsible, whoever did or did not do what. That was what I
16 was just trying to complete.

17 MR JABBI:

18 Q. You were talking about some intelligence you had got?

19 A. I had put in place --

16:39:25 20 Q. Some action, you were talking about it?

21 A. I had put in place intelligence in the army to inform me,
22 as an early warning system, for events, and which worked, I said,
23 to some extent. Their information to me was accurate and I did
24 not keep this to myself. I communicated this intelligence
16:39:58 25 information to my boss, who was the Minister of Defence, the
26 commander-in-chief of the armed forces of Sierra Leone and the
27 President of Sierra Leone.

28 Q. What was the intelligence information?

29 PRESIDING JUDGE: Before we carry on with your next

1 questions, I think it would be proper to break for 15 minutes to
2 allow everybody time to take a pause. To avoid any problem with
3 security, would you just allow, once we move out, so the security
4 will assist Mr Norman. Then after that counsel can move in and
16:40:45 5 out. Thank you very much.

6 [Break taken at 4.40 p.m.]

7 [CDF24JAN06E - EKD]

8 [Upon resuming at 5.08 p.m.]

9 MR JABBI:

17:08:28 10 Q. Now, Mr Witness, just before the break --

11 PRESIDING JUDGE: Yes, Dr Jabbi, please proceed.

12 MR JABBI:

13 Q. Just before the break you were talking about your
14 activities and official engagements or responsibilities as Deputy
17:08:47 15 Minister of Defence, and you were already on a particular
16 narrative concerning some intelligence information and what you
17 had done about it. Can you continue now, please?

18 A. Yes, My Lords. I said I received intelligence information,
19 which I did not keep to myself, but communicated, saying to my
17:09:24 20 boss, the Minister of Defence, commander-in-chief and the
21 President of Sierra Leone, Dr Ahmad Tejan Kabbah.

22 Q. Can you be specific about --

23 A. Yes. That a coup was imminent.

24 Q. What point in time are you talking about?

17:09:57 25 A. I'm talking about 1997 now. Any time beginning from March,
26 April, May.

27 Q. During that period?

28 A. During that period.

29 Q. Yes.

1 A. And in April, or thereabouts, I took leave of him and went
2 to Parliament.

3 JUDGE ITOE: In April of what year, Mr Norman? Can you be
4 specific? Do you remember the year?

17:10:34 5 THE WITNESS: Yes, My Lord.

6 PRESIDING JUDGE: 1997. Was it in '97?

7 THE WITNESS: 1997. April 1997.

8 JUDGE ITOE: Thank you.

9 THE WITNESS: I took leave of His Excellency and went to
17:10:49 10 Parliament and had talks with the Speaker of Parliament. I told
11 the Speaker that the situation in the country was unsafe and that
12 I had asked permission of His Excellency to proceed to Parliament
13 to inform them of this situation so that I could request of them
14 to do something. And that request was since the paramount chiefs
17:11:41 15 in the entire Sierra Leone had put together an arrangement for
16 hunter protection, local hunter protection, I was then requesting
17 Parliament to legitimise their use of firearms for protection of
18 their homes, land, life and property.

19 MR JABBI:

17:12:26 20 Q. "Their", you mean -- of their home land and property,
21 "their", meaning --

22 A. Meaning the people of the chiefdoms of Sierra Leone. And I
23 informed the Speaker that I was aware that it would be
24 treasonable for anybody to put together a group of people in arms
17:13:04 25 if that were not the authority of Parliament. So I was seeking
26 parliamentary legitimisation for such hunters in all the
27 chiefdoms. I said --

28 JUDGE ITOE: Please wait.

29 THE WITNESS: Yes, My Lord. I said I had survived a

1 sentence of death for treason and I would not want to have a
2 second experience. That very day, while I was at Tower Hill, the
3 Speaker issued his normal parliamentary orders. Parliament was
4 assembled, the subject was introduced, discussed, and a unanimous
17:14:35 5 decision was arrived to legitimise the use of arms by hunters,
6 commonly called Kamajors, Donsos, Kapras, Tamaboros, Gbethis and
7 OBHS. I left Parliament that day, went back to His Excellency --

8 MR JABBI:

9 Q. I'm sorry. If I may just ask about the legitimisation
17:15:39 10 process. Was Parliament in normal session?

11 A. I wouldn't know what you would call normal session in
12 Parliament. I am not a parliamentarian.

13 Q. Were they, for instance, assembled in the main well of
14 Parliament?

17:15:57 15 A. They were in the same place where normally we ministers
16 appear before them to even defend budget and other things.

17 Q. In the main well of Parliament?

18 A. The main well of Parliament.

19 Q. Carry on.

17:16:12 20 A. After that, intelligence again got to me that soldiers were
21 not very pleased about what had happened. Soon afterwards, that
22 same April I believe, 1997, I received some officers.

23 JUDGE ITOE: Can we get you very clearly. The soldiers
24 were not happy about what had happened.

17:16:55 25 THE WITNESS: [Overlapping speakers].

26 JUDGE ITOE: [Overlapping speakers] the Parliament
27 legitimised the carriage of arms by the Kamajors, the Donsos, the
28 Kapras, the Tamaboros.

29 THE WITNESS: Yes, My Lord. I received some officers with

1 a bag in one of their -- in the hands of one of them.

2 MR JABBI:

3 Q. With a what?

4 A. With a bag.

17:17:20 5 Q. A bag, carry on.

6 A. A very great bag, sizably large. The content of the bag
7 was working parts of dangerous weapons that was in Freetown at
8 that time.

9 Q. With whom?

17:17:48 10 A. With one of the officers.

11 Q. I mean the weapons. You said dangerous weapons that were
12 in Freetown at that time with whom?

13 A. In the army.

14 Q. In the army?

17:17:57 15 A. Yes, the various barracks and so on. And I was told that
16 there was an imminent coup, but that with those parts of the
17 weapons absent the coup may not be deadly and destructive. And
18 so they were giving it to me for safekeeping. I took it from
19 them. And as soon as they left, I also left and took this bag to
17:18:39 20 my boss.

21 Q. Meaning?

22 A. The President -- the Minister of Defence,
23 commander-in-chief and the President. And told him that this was
24 what I have been told, and that a safe -- this was what I have
17:19:04 25 been given that has been removed from these weapons unknown and
26 that he should keep these parts. It's for him to keep, not me.
27 I left the country and went to --

28 Q. Where did you leave the bag?

29 A. I left the bag with the President for him to safekeep the

1 contents. Soon afterwards I left the country and went to
2 Ivory Coast, together with the acting IG. In fact, together with
3 the DIG then, not the IG. We went to Yamoussoukro on
4 cross-border criminality conference. The DIG.

17:20:13 5 Q. What is the name of that DIG?

6 A. The DIG then was Kande Bangura, Kande Bangura. On our
7 return from that conference I was approached by the same
8 officers.

9 Q. Which?

17:20:34 10 A. The same officers who had brought the parts, working parts,
11 of those weapons in that velvet bag. They inquired after the
12 bag, that they wanted to know if I still had those bags. I told
13 them I did not keep the bag. As soon as they left I took the bag
14 and its contents to my boss, meaning the Minister of Defence,

17:21:12 15 commander-in-chief and President. Then they told me the parts
16 have been returned to those weapons and so we cannot retrieve
17 them any more. I was surprised, mildly shocked. I asked them to
18 give me until the next day to come back. They did. In the
19 absence I went and met His Excellency, the President and I

17:21:56 20 inquired after the bag and the contents. He told me he had
21 returned the contents and the bag to the chief of defence staff
22 and the army chief, meaning late Hassan Conteh and late
23 Max Kanga. I said then --

24 JUDGE ITOE: Let's have the titles. Returned the bags to
17:22:43 25 whom?

26 THE WITNESS: To the chief of defence staff.

27 MR JABBI:

28 Q. Name?

29 A. Brigadier Hassan Conteh. And colonel -- and the army

1 chief, Colonel Max Kanga. Both are late now, My Lords.

2 MR JABBI: Kanga, My Lords, is spelt K-A-N-G-A. Kanga.

3 THE WITNESS: M-A-X, Kanga.

4 MR JABBI: Max Kanga.

17:23:33 5 THE WITNESS: I said, "Your Excellency, it means the coup
6 cannot be averted." Some time after that when I was informed
7 that there was definitely now going to be a coup, that was on
8 Thursday, 15th May 1997.

9 MR JABBI:

17:24:24 10 Q. Just before you go on that other limb of narrative, I just
11 want to return to the bag. Did you yourself check what was in
12 that bag?

13 A. Those were parts of weapons, guns, heavy machine guns and
14 so.

17:24:46 15 Q. Complete sets of parts?

16 A. I wouldn't call them complete sets of parts. Parts of
17 weapons. These are military terms, that it belongs to various
18 weapons. Like you have pens of different size and calibres.

19 PRESIDING JUDGE: So they were key components of these
17:25:05 20 weapons?

21 THE WITNESS: Very key components, very sensitive key
22 components, My Lord. Thank you, My Lord, I'm sure I'm talking to
23 a military brain.

24 PRESIDING JUDGE: Thank you.

17:25:25 25 THE WITNESS: And on 15th May I was informed --

26 MR JABBI:

27 Q. Year?

28 A. 1997. Resulting from this information, I requested to meet
29 His Excellency in person and in the presence of other people I

1 would like to meet with him together. He permitted me. So I
2 requested the presence of the Vice-President then, Dr Joe Demby;
3 the presence of the Chief of Defence Staff, Brigadier Hassan
4 Conteh; the Chief of Army Staff, Colonel Max Kanga; the Chief of
17:26:23 5 Navy Staff, Commander Sesay, C-O-M-M-O-N-D-O-R [sic], My Lord,
6 naval rank; and the Inspector General of police, I think he was
7 Mr Teddy Williams. We met His Excellency on Friday, 16th May
8 1997 at State House.

9 Q. All those people you have just named?

17:27:27 10 A. Yes. And in their presence I told His Excellency that
11 there was going to be a coup and that the two military officers
12 knew about it.

13 Q. Which?

14 A. The Chief of Defence Staff, Brigadier Conteh, and Chief of
17:27:52 15 Army Staff, Colonel Max Kanga. And that I would like him, as
16 Minister of Defence, commander-in-chief of the armed forces, and
17 the President of Sierra Leone, to give military orders to the
18 military officers to inform their senior officers that this has
19 been his information and that the coup should not take place.

17:28:51 20 And that he himself as president of this nation, I was requesting
21 him to inform the nation by radio to forestall that coup because
22 it was my information that the coup could be disastrous to the
23 life and property of the people of Sierra Leone.

24 Q. Can you give the date of that meeting again?

17:29:27 25 A. Friday, 16th May 1997. His Excellency turned to the
26 officers and said, "Did you hear what chief has said?" They
27 said, "Yes." His Excellency said to them, "Do you have anything
28 to say?" They said, "No, Your Excellency." I was upset at that
29 time and I turned around to His Excellency and said, "Your

1 Excellency, I did not bring these men here for them to say
2 anything to you. I brought them so that you could give them your
3 orders so that the coup cannot take place. It seems that those
4 orders are not coming. If these men are not stopped and the coup
17:30:52 5 eventually takes place, the people of Sierra Leone who have
6 elected you through the ballot box may not take kindly to that
7 coup and I may be tempted to take sides with them. And
8 eventually if, by God's grace, the coup is reversed" --

9 Q. That is still your statement to the President?

17:31:17 10 A. Yes, yes. "If by God's grace the coup is reversed, you,
11 Your Excellency, may be required to sign the death warrants of
12 these men and those who may be involved. The army of
13 Sierra Leone has lost many brains" --

14 JUDGE ITOE: Please, you're going too fast.

17:31:40 15 THE WITNESS: Thank you, My Lord. Sorry.

16 MR JABBI:

17 Q. Okay.

18 A. "The army of Sierra Leone has lost many brains" --

19 Q. That is still part of your statement to the President?

17:32:02 20 A. Still part of my statement. "And these are brains that the
21 taxpayers of Sierra Leone have paid for. This time round I do
22 not want these men hanged or executed. Please." His Excellency
23 did not say anything or do anything and thereafter did not do
24 anything.

17:32:33 25 Q. How did the meeting end?

26 A. We left, after we had come to an end that nothing could be
27 done or said to stop the coup.

28 Q. Did His Excellency respond in any way to those comments you
29 had made?

1 A. After my statement, no way. I was -- when I left I felt I
2 was walking with an imminent death around me, having told about
3 the coup, and I was walking out with the same men. Only God
4 preserved me up to today, so I can understand why the soldiers
17:33:15 5 would not like me.

6 Q. Were those military men at the meeting the same to --

7 A. The two of them?

8 Q. Yes, no. Were they the same to whom the bag of sensitive
9 parts had been --

17:33:28 10 A. Had been returned. But because the bag transaction was
11 done between the President and myself alone, this time round I
12 wanted witnesses to be there for him to be informed of the coup,
13 so that there cannot be any more mistaken issues of not being
14 told.

17:33:58 15 Q. And that's why you invited the other men to that meeting?

16 A. Precisely. After that we all know what happened to
17 Sierra Leone that has eventually brought me here.

18 Q. Some of us don't particularly know?

19 A. Well, we now know.

17:34:20 20 Q. What happened?

21 A. We now know what happened. If you cannot definitely know
22 that there was massive loss of life and property in this country
23 resulting from that coup, then at least those Sierra Leoneans who
24 are hearing me now know.

17:34:43 25 Q. What coup?

26 A. The coup of 25th May 1997 took place after that meeting.
27 Eight days, on the ninth day after that meeting the coup took
28 place. And that was the coup that sent all of us out of Freetown
29 and out of Sierra Leone, and I had to return alone among the

1 group of ministers and join the people of Sierra Leone to
2 reinstate the presidency, the government, and to restore
3 democracy and constitutional rule.

4 MR JABBI: Okay. My Lords, I was looking at the clock. In
17:36:06 5 light of what Your Lordship had said earlier.

6 PRESIDING JUDGE: Inasmuch as we can we hope to be
7 finishing by 5.30, quarter to six. Are you about to embark on a
8 new area?

9 MR JABBI: I believe so, from the cadence in his voice in
17:36:25 10 the last statement it seems he has finished this particular
11 episode.

12 Q. Is that correct?

13 A. That's correct.

14 PRESIDING JUDGE: That is fine. We will adjourn to 9.30
17:36:36 15 tomorrow morning.

16 THE INTERPRETER: Before we adjourn, the interpreter's
17 booth would like to make a gentle appeal.

18 PRESIDING JUDGE: Make your appeal.

19 THE INTERPRETER: We do appreciate the efforts being made
17:36:50 20 by learned counsel and the witness to moderate the pace of the
21 examination-in-chief. But in addition to that we would also want
22 learned counsel and the witness to pay attention to the fact that
23 they should be giving a little space between the question and the
24 answer. Because when the question comes immediately after the
17:37:05 25 answer there is a tendency for there to be an overlap, which is
26 giving the interpreters a little bit of a problem in the booth.

27 PRESIDING JUDGE: Dr Jabbi, you understand the technical
28 difficulties, so let's tomorrow try to be a bit --

29 JUDGE ITOE: The witness himself as well, because you need

1 to be properly translated and recorded in the Court records.

2 THE WITNESS: Thank you very much.

3 JUDGE ITOE: If you are not faithfully recorded it is a
4 lost effort. I think you should go fairly slowly in order to
17:37:42 5 ensure that your testimony is faithfully recorded. Please.

6 THE WITNESS: Thank you.

7 PRESIDING JUDGE: So what is being asked of you, Mr Norman,
8 is when the question is being asked just wait for only a second
9 to break in between, and then there is no overlap for the
17:38:00 10 interpreters between the question and your answer.

11 THE WITNESS: Precisely.

12 PRESIDING JUDGE: So we will take it from there tomorrow.
13 So the Court is adjourned to 9.30. Thank you.

14 [Whereupon the hearing adjourned at 5.38 p.m.,
17:38:33 15 to be reconvened on Wednesday, the 25th day of
16 January 2006, at 9.30 a.m.]

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WITNESSES FOR THE DEFENCE:

WITNESS: SAMUEL HINGA NORMAN

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EXAMINED BY MR JABBI

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