

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. Jiamia Bongor Chiefdom. Koribundu belonged to the Jiamia





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 43

EXAMINED BY MR JABBI 43