

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-2004-14-T
TRIAL CHAMBER I

THE PROSECUTOR
OF THE SPECIAL COURT
v.
SAM HINGA NORMAN
MOININA FOFANA, AND
ALLIEU KONDEWA

FRIDAY, 10 SEPTEMBER 2004
9.43 a.m.
TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For Chambers:

Ms Sharelle Aitchison
Mr Clemens Daburon

For the Registry:

Ms Maureen Edmonds
Mr Geoff Walker

For the Prosecution:

Mr Jim Johnson
Mr Kevin Tavener
Mr Joseph Kamara
Mr Raimund Sauter
Ms Leslie Murray (intern)

For the Principal Defender:

Ms Simone Monasebian
Mr Ibrahim Yillah

For the Accused Sam Hinga Norman:

Mr John Wesley Hall
Ms Quincy Whitaker

For the Accused Moinina Fofana:

Mr Arrow Bockarie
Ms Phoebe Knowles

For the Accused Allieu Kondewa:

Mr Charles Margai
Mr Yada Williams
Mr Ansu Lansana
Mr Neerav Kingsland (intern)

1 Friday, 10 September 2004
2 [The accused entered the Court]
3 [Open session]
4 [The witness entered Court]
09:44:42 5 [Upon commencing at 9.43 a.m.]
6 PRESIDING JUDGE: The session resumes. Mr Williams, you may
7 continue with the cross-examination of this witness, to
8 conclude, hopefully, within under 20 minutes.
9 MR WILLIAMS: As My Lord pleases.
09:46:30 10 WITNESS: TF2-159 [Continued]
11 [Witness answered through interpretation]
12 CROSS-EXAMINED BY MR WILLIAMS:
13 MR WILLIAMS:
14 Q. Mr Witness, did you say -- let me ask you this: when you
09:46:47 15 saw -- you said you saw Mr Norman the day before the
16 meeting at the Barri. Was a time stated for the said
17 meeting?
18 A. No.
19 Q. So I'm -- but before his arrival, were you already seated
09:47:25 20 at the Barri?
21 A. No.
22 Q. How did you know when he was coming to Koribundu? How
23 did you know the time he was due to arrive?
24 A. There was no notice that he was coming to Koribundu.
09:48:02 25 I only saw him come and go to Pujehun.
26 JUDGE THOMPSON: Has there been an answer to that question?
27 MR WILLIAMS: I didn't get the answer, My Lord. Could the
28 interpreters just repeat what he said?

1 THE INTERPRETER: Can you ask the question again, please?

2 PRESIDING JUDGE: Yes. Can the interpreters please restate
3 the reply? I understand they want the question asked
4 again.

09:48:50 5 THE INTERPRETER: Can he ask the question again, please?

6 MR WILLIAMS:

7 Q. How did you know the arrival time of Mr Hinga Norman at
8 the first meeting?

9 A. That's what I said, that I saw him come and go to
09:49:21 10 Pujehun.

11 MR WILLIAMS: I didn't get the interpretation. I don't know
12 what's happening to the mike.

13 THE INTERPRETER: Maybe check your channel. Can you get me
14 now? Can you hear me now?

09:49:44 15 JUDGE BOUTET: You have to look at your channel.

16 PRESIDING JUDGE: The English channel.

17 THE INTERPRETER: Can you hear me?

18 MR WILLIAMS: Yes. Would you repeat the answer, please?

19 PRESIDING JUDGE: Can you ask your question again, please?

09:49:57 20 MR WILLIAMS:

21 Q. How did you know the arrival time of Mr Hinga Norman for
22 the first meeting?

23 A. We were standing at the junction when he came and went to
24 Pujehun. That's how I knew that there was going to be a
09:50:23 25 meeting.

26 Q. Can you answer my question, please? When you saw him
27 at -- I mean, the day before your meeting, you said he
28 did not specify a time for a meeting at the Barri the

1 following day. I mean, I'm asking you how did you come
2 about the time that he would be arriving the following
3 day?

4 JUDGE THOMPSON: Is it -- does the record indicate that he
09:50:55 5 knew the time ahead of time?

6 MR WILLIAMS: Your Honour, I asked him whether he was seated
7 at the time Mr Norman came. He said no, he was not, so
8 it's that line of --

9 PRESIDING JUDGE: Because he had to accompany him triumphantly
09:51:13 10 to the meeting.

11 JUDGE THOMPSON: I'm not suggesting it's not a legitimate line
12 of cross-examination. I'm only asking whether the record
13 reflects that he did have some kind of advance knowledge
14 of the time of arrival.

09:51:25 15 MR WILLIAMS: No, the record --

16 JUDGE THOMPSON: I see, that's what you are probing.

17 MR WILLIAMS: That's what I'm asking.

18 JUDGE THOMPSON: All right.

19 MR WILLIAMS:

09:51:34 20 Q. You said your father and brothers left for your farm the
21 very Friday the Kamajors arrived in town?

22 A. No, I did not say that. On Friday, they did not go to
23 the bush.

24 Q. When did they go to the bush?

09:52:12 25 A. That was when the Kamajors came and attacked the town on
26 Friday in the afternoon.

27 Q. When did your parents go to your farm to seek refuge?

28 A. At 8.00 in the night we went together.

1 Q. That is Friday?

2 A. Yes, Friday in the afternoon - in the evening, sorry.

3 Q. And your father and brothers did not return to your house
4 till when?

09:53:03 5 A. Till Thursday, when they went and got us from the bush.

6 Q. But you were going backwards and forwards; is that
7 correct -- going to and fro the farm?

8 A. Yes, I was coming out, I would come, and return.

9 Q. You said in your absence -- in your testimony, when my
09:53:34 10 learned friend was asking you questions, you said in your
11 absence -- I mean, you were in the bush, you came back on
12 a particular morning and you found your house burnt; is
13 that correct?

14 A. I didn't say that.

09:54:04 15 Q. Were you present when your house was burnt?

16 A. Yes, I was there on Saturday when they started burning
17 houses, but I was not there when they burnt my house on
18 Saturday.

19 Q. That's what I'm saying. When was your house burnt?

09:54:22 20 A. They burnt my house on Sunday in the evening. The back
21 house was burnt, not the main building.

22 Q. Does the main house still stand?

23 A. Yes, it's still there, but it's destroyed. The smaller
24 houses were burnt.

09:54:42 25 Q. And you were not present when those smaller houses were
26 put on fire?

27 A. No, I was not there.

28 Q. And did you say when you came -- when you returned you

1 found your grandparents burnt in the house?

2 A. Yes, the back house, the kitchen room that was built
3 which was attached, that's where they were. That's the
4 house that I saw that was burnt on Wednesday.

09:55:28 5 Q. And they were burnt inside their house; is that correct?

6 A. But they came out and laid down by the house. They
7 crawled and came --

8 Q. They crawled out?

9 A. They crawled out of the house.

09:55:45 10 Q. But you were not present when the house was set on fire?

11 A. No. That Wednesday evening I was not there.

12 Q. How many grandparents did you have at the house?

13 A. Three people.

14 Q. Three people. I'll refer you to a portion of the

09:56:14 15 statement you made to the -- My Lord, Exhibit 7. I refer
16 you to a portion of your statement and I'll read it out
17 to you. I'll invite you to accept or deny what you said
18 to the investigators.

19 A. Please say so.

09:56:38 20 Q. Did you tell the investigators that on Tuesday Kamajors
21 arrested three elderly people that witness was related
22 to?

23 A. Can you take the question again, please?

24 Q. Did you tell the investigators that on Tuesday Kamajors
09:57:07 25 arrested three elderly people that you were related to?

26 A. No, that is not in my statement.

27 Q. Thank you. And did you say they were locked up in your
28 house and the house was set on fire? Did you tell them

1 that?

2 A. That is not in my statement, no.

3 Q. It's in your statement. I mean, you mentioned them, and

4 I don't say them now, because that might reveal your

09:58:00 5 identity.

6 PRESIDING JUDGE: Counsel, can we be precise? I find that

7 there is a distinction between, "That is not in my

8 statement" and, "I didn't tell them that."

9 MR WILLIAMS: Sorry, My Lord?

09:58:12 10 JUDGE THOMPSON: I find a clear distinction between, "That is

11 not in my statement" and, "I did not tell them that," so

12 can we clarify that for the record, because I'm not

13 prepared to accept, "That is not in my statement," if

14 what is meant is, "I did not tell the investigators

09:58:28 15 that."

16 MR WILLIAMS: As My Lord pleases. Does your Lordship want to

17 ask the witness that?

18 JUDGE THOMPSON: You pursue it.

19 MR WILLIAMS: As My Lord pleases.

09:58:38 20 Q. Are you saying you did not tell them that, or that is not

21 recorded in your statement?

22 A. I didn't tell them that they caught three people and put

23 them in the house and set the house on fire. That's not

24 said in that statement.

09:59:11 25 Q. And did you tell them the names of your three

26 grandparents? I mean, the names are stated there, but

27 I won't mention it for protective reasons. Where did

28 they get these names from? Did you tell them that? Did

1 you tell them the names of your three relatives?

2 A. Yes, I told them their names.

3 Q. You told them their names. Yes, okay. And did you tell

4 them that you heard Kamajors saying that the three men

09:59:44 5 had kids who had joined the collaborators, therefore they

6 must be killed?

7 A. My people that they killed, no.

8 Q. So you didn't tell them that?

9 A. No.

10:00:10 10 JUDGE BOUTET: Mr Williams, just for greater certainty, I'm

11 not sure if you are paraphrasing what is in the document,

12 or you are interpreting or you are quoting to the witness

13 verbatim what's in this document. I just want to be sure

14 of which option you are pursuing now.

10:00:28 15 MR WILLIAMS: My Lord, I'm not quoting verbatim; I'm

16 paraphrasing.

17 PRESIDING JUDGE: There is a risk in paraphrasing.

18 JUDGE BOUTET: I know there are some difficulties because of

19 identity of witnesses. Accepting that, other than the

10:00:46 20 fact that it may reveal the identity of the witness, if

21 you are putting a question to the witness as to, "Did you

22 say whatever," as such --

23 JUDGE THOMPSON: I'm concurring with what my learned brothers

24 have said. I think the best procedure would be to put

10:01:02 25 the exact things to the --

26 MR WILLIAMS: My Lord, the statement is not in the first

27 person. Yes, that is --

28 JUDGE THOMPSON: Is that the cause of the difficulty?

1 MR WILLIAMS: Yes, My Lord.

2 PRESIDING JUDGE: Why don't you put questions to him directly
3 resulting from what you have before you? Why don't you
4 put questions to him?

10:01:21 5 MR WILLIAMS: My Lord, I will read from his statement and that
6 might be even more confusing.

7 JUDGE THOMPSON: So we have to trust your rendition --

8 MR WILLIAMS: Yes, My Lord.

9 JUDGE THOMPSON: -- of what you are in fact gathering from the
10:01:33 10 statement.

11 MR WILLIAMS: Yes, My Lord.

12 JUDGE THOMPSON: I do hope that, if that's the way we are
13 going to proceed, the Prosecution will see the liberty to
14 object if they see anything has been stated amiss.

10:01:46 15 MR WILLIAMS: Yes, My Lord. The fact that they have not
16 objected shows that they are in agreement.

17 JUDGE THOMPSON: I so assume, and I say no more.

18 MR WILLIAMS: I'll read verbatim what's in the statement.

19 JUDGE BOUTET: Mr Williams, please, the statement, I
10:01:59 20 understand, would read something like "He said" whatever,
21 rather than "I said" and this kind of a statement. But
22 I would suggest that you put it to the witness as you
23 have it there and, if there is confusion, then try to
24 clarify that. Rather than, "He said", "You, Mr Witness
10:02:20 25 have said" whatever, and we will see. If it doesn't work
26 and it causes more confusion, we'll revert to the
27 scenario that you using now.

28 JUDGE THOMPSON: Learned counsel, we're forcing you to go back

1 to your school days and see if you can move from the
2 reported to the direct speech form.

3 MR WILLIAMS: As My Lord pleases.

4 Q. Did you say this to the investigators, that you heard --

10:02:53 5 I don't know --

6 JUDGE THOMPSON: Go ahead.

7 MR WILLIAMS: Should I go through the entire thing again?

8 JUDGE BOUTET: No, carry on where you were.

9 MR WILLIAMS:

10:03:09 10 Q. Did you tell the investigators that you heard Kamajors

11 say that the three men had kids - children - who had
12 joined the collaborators, therefore they must be killed?

13 A. Repeat it so that I can understand.

14 Q. Did you tell the investigators that you heard the

10:03:35 15 Kamajors say that the three men had kids who had joined
16 the collaborators, therefore they must be killed?

17 A. That is not in my statement. I didn't say that.

18 Q. I am putting to you, Mr Witness, that you are not a
19 truthful person.

10:04:15 20 A. I am here to tell the truth.

21 Q. You're not a truthful person. I mean, inside or outside,
22 you're not a truthful person.

23 A. I am here to say the truth. If I didn't say it, I'll say
24 it. What is in my statement is what I talk about.

10:04:38 25 Q. Yes. Your statement is quite -- it's at variance with
26 what you said in Court. The statement you've tendered --
27 the statement you made to the investigators is at
28 variance, to a very large extent, to what you've said in

1 the witness box?

2 MR KAMARA: Objection. The evidence that we have heard before
3 this Court and the statement are not, to a large extent,
4 at variance. Moreover, we have two other --

10:05:18 5 MR WILLIAMS: My Lords, if that's an objection, my learned
6 friend can't understand the question.

7 MR KAMARA: I'm still on my feet.

8 MR WILLIAMS: No, please, let him --

9 JUDGE THOMPSON: Will counsel on both sides please restrain
10:05:27 10 yourselves? Let's hear the objection.

11 MR KAMARA: I'm objecting to the line of cross-examination,
12 particularly counsel on the other side misstating the
13 evidence and what we have before this Court by way of
14 testimony from this witness is not "to a large extent at
10:05:44 15 variance with the statement".

16 JUDGE THOMPSON: Counsel, that's a matter of inference.
17 I thought you were quarrelling with the formulation of
18 the question, not so much whether there is a variation
19 between the statement and the testimony to a minimal or
10:06:09 20 optimal or whatever extent. That would be an
21 interpretation; it would be a submission from you.

22 MR KAMARA: Yes, Your Honour, I agree with you.

23 JUDGE THOMPSON: The point, of course, it would seem to me
24 here, is that if learned counsel on the other side were
10:06:22 25 to be more specific, that would assist the Court. I'm
26 not assisted by what you said to the investigator and
27 what you're saying now are largely at variance with each
28 other. I think what should be called for now is

1 specificity rather than an objection based on your
2 submission.

3 MR KAMARA: That is it, My Lord. I couldn't have put it more
4 right. Secondly, also, Your Honour, is the fact that
10:06:50 5 there are additional statements from this witness, which
6 we've disclosed to the Defence, of which the witness has
7 clearly specified that, "This is what I said" and, "This
8 is not what I said" --

9 PRESIDING JUDGE: Wouldn't you think this is a matter for

10:07:05 10 submissions, for the Court's appreciation --

11 JUDGE THOMPSON: Good point.

12 PRESIDING JUDGE: -- when it comes to time?

13 JUDGE THOMPSON: You cannot tutor counsel how to ask his --

14 PRESIDING JUDGE: An objection must arise from something that
10:07:19 15 is technically wrong with the question that has been put
16 to the witness by the Defence counsel.

17 MR KAMARA: I'll take my cue from that.

18 PRESIDING JUDGE: The objection is overruled. Can you
19 continue, please, Mr Williams?

10:07:32 20 JUDGE BOUTET: Before you do, please, just one moment.

21 PRESIDING JUDGE: Yes, Mr Williams.

22 JUDGE THOMPSON: Learned counsel, go ahead.

23 MR WILLIAMS:

24 Q. Yes, that what you said to the investigators is largely
10:09:05 25 at variance with what you've said in the witness box.

26 JUDGE THOMPSON: Learned counsel, wouldn't it help to have
27 specificity here?

28 MR WILLIAMS: As My Lord pleases.

1 JUDGE THOMPSON: Because that is -- I mean, he is not going to
2 be able to answer that what he told the investigator is
3 largely at variance.

4 MR WILLIAMS: As My Lord pleases.

10:09:26 5 JUDGE THOMPSON: Because, clearly, I'm sure you're not
6 suggesting that everything told to the investigator is at
7 variance with what his -- but if that's what you're
8 suggesting, why not give particulars?

9 MR WILLIAMS:

10:09:40 10 Q. For example, Mr Witness, you represented to the
11 investigators that you were present when your
12 grandparents were killed.

13 JUDGE THOMPSON: "You stated".

14 MR WILLIAMS: Sorry?

10:09:53 15 JUDGE THOMPSON: "You stated". "Represented" is a legal
16 vocabulary.

17 MR WILLIAMS:

18 Q. You stated or you mentioned to the investigators that you
19 were present when your grandparents were killed, or when
10:10:07 20 they were locked up and burnt to death in the house?

21 A. No.

22 JUDGE THOMPSON: In other words, the answer is, "I deny that
23 I told the investigator."

24 MR WILLIAMS: Yes, "I didn't say that." My Lords, I wish to
10:10:56 25 have that particular paragraph of Exhibit 7 --

26 JUDGE BOUTET: Read that paragraph, please.

27 MR WILLIAMS: "On Tuesday Kamajors arrested three other people
28 that witness was related to. They were locked up in the

1 witness's house and the house was set on fire." They
2 mention their names which I will not repeat. "We heard
3 the Kamajors say that the three men had kids who had
4 joined the collaborators, therefore they must be killed.
10:11:30 5 They could not have been in two places at the same time."
6 It is -- I mean, vive voce that they were at the farm
7 which is --

8 JUDGE BOUTET: Please, don't argue; we'll take that. That's
9 fine.

10:11:41 10 MR WILLIAMS: As Your Honour pleases. So those - paragraph 2
11 should be highlighted.

12 JUDGE BOUTET: Of which page?

13 MR WILLIAMS: Page 2, My Lord. My Lord, just to clarify
14 things, My Lord, he made a subsequent statement changing
10:12:06 15 the "Tuesday" in that paragraph to "Wednesday".

16 JUDGE BOUTET: So what you have introduced as an exhibit is
17 this document you're referring to. There have been
18 comments that there's more than one statement. In fact,
19 the evidence is to the effect that there has been more
10:12:28 20 than one statement. Statements 2 and 3, if I'm not
21 mistaken, were essentially modifications or corrections,
22 or something along these lines, of document 1. Am
23 I stating the facts correctly?

24 MR WILLIAMS: Yes, he made subsequent statements correcting --

10:12:41 25 JUDGE BOUTET: That's right.

26 MR WILLIAMS: That's right, My Lord.

27 JUDGE BOUTET: So you said the witness has made a statement
28 correcting a portion of that?

1 MR WILLIAMS: Yes, the day. Instead of "Tuesday", it's now
2 "Wednesday".

3 JUDGE BOUTET: Thank you.

4 MR WILLIAMS:

10:13:07 5 Q. Were all your goods - I mean, your property that was
6 there, was everything destroyed when your house was
7 burnt?

8 A. Repeat the question for me to understand.

9 Q. Did you have your personal belongings in the house that
10:13:36 10 was burnt allegedly by the Kamajors?

11 A. Yes. At the back house where we had put some of our
12 things.

13 Q. So all your earthly possessions were destroyed allegedly
14 by the Kamajors?

10:14:06 15 A. Yes, all what my parents had put together, all was burnt.

16 Q. Could you answer me? Could you say what -- restrict your
17 answer to what you had? I mean, all your earthly
18 possessions were destroyed?

19 A. Yes -- yes, all my belongings.

10:14:42 20 JUDGE BOUTET:

21 Q. Mr Witness, are you saying that all your belongings were
22 in that back house and were burnt?

23 A. Yes, all was burnt. Then they took some away.

24 Q. When you say "all was burnt", all that was in that back
10:15:04 25 house, but was all of your property in that back house?

26 A. Yes.

27 Q. Did you say when -- so you'd agree with me if I were to
28 say that, apart from the clothing that you had on when

1 you left for the farm, I mean, you did not have any
2 personal belonging -- any other personal belonging?

3 A. [No response]

4 PRESIDING JUDGE: Mr Williams, are you tired this early?

10:16:03 5 MR WILLIAMS: I had a long night, My Lord.

6 THE INTERPRETER: Maybe you should take the question again.

7 MR WILLIAMS:

8 Q. Would you agree with me if I were to say that, apart from
9 the dress that you had on, all your other personal
10:16:21 10 belongings were lost?

11 A. Yes, except for the one that I had -- that was what I put
12 on my head was some food. All the rest I left there.

13 Q. Thank you. And did you say, when you heard Mr Norman say
14 that he was annoyed for certain reasons, you left the
10:16:58 15 meeting and went to sit by your goods?

16 A. [Interpretation interrupted]

17 Q. Did you say that?

18 PRESIDING JUDGE: Allow him to explain himself.

19 MR WILLIAMS: If he answers the question --

10:17:27 20 PRESIDING JUDGE: That is what I mean. Let him explain
21 himself. This is someone from a traditional environment.
22 Let's listen to what he has to say in reply to your
23 question. Please, ask him your question again.

24 MR WILLIAMS:

10:17:38 25 Q. Did you say, when you heard Mr Norman say certain things
26 he was annoyed about, you left the meeting and went to
27 sit by your goods?

28 A. Yes. Because of what he said, that's why I left the

1 meeting. I went and sat by my goods.

2 Q. Which goods did you have?

3 A. I had a cigarette box, and that's where I was selling my
4 things.

10:18:21 5 Q. You'd already started a business?

6 A. Yes. This has been terminated since. You think I'd just
7 be sitting like that not doing anything?

8 Q. And did you say you went to that meeting with your chair?

9 A. Yes.

10:18:44 10 Q. And where did you get that chair from?

11 A. Yes, it was made by a Barri carpenter and that's what
12 I used to sit on at the junction.

13 Q. And where did you get all that money from -- the money to
14 do your chair, the money to start a business? On the
10:19:04 15 13th or thereabouts, all your earthly possessions were
16 destroyed. Three weeks down the line you'd started a
17 business; you'd started acquiring properties. Where did
18 you get all that money from?

19 [No response]

10:19:28 20 PRESIDING JUDGE: Did he say that he only started doing
21 business three weeks after the incident?

22 MR WILLIAMS: My Lord --

23 PRESIDING JUDGE: Is it on record?

24 MR WILLIAMS: My Lord, it's implied from his --

10:19:37 25 PRESIDING JUDGE: I don't want implications; I want --

26 MR WILLIAMS: I'll say it's expressed, My Lord. "I lost
27 everything I had." If I start business down the line, it
28 means I had acquired capital.

1 PRESIDING JUDGE: This man -- this witness said that, in
2 addition to being a farmer, he was also a businessman.

3 MR WILLIAMS: My Lord, but he lost all his earthly
4 possessions, which obviously would include his business.

10:20:01 5 PRESIDING JUDGE: Well, I thought you were implying that he
6 only started business after the incident.

7 MR WILLIAMS: Restarted, My Lord.

8 PRESIDING JUDGE: Go ahead.

9 MR WILLIAMS: Yes.

10:20:13 10 Q. Tell the Court where you got all these moneys from.

11 A. I had gone to Bo. There was no person that I could go to
12 in Bo -- could go in Bo and ask them to give me money,
13 and they refuse to give me. That's a question of pride
14 here.

10:20:47 15 Q. You tell the Court that between the time your house was
16 burnt and the first week of March you left for Bo and you
17 were able to get some money to start your business; is
18 that what you say?

19 A. What I've said you're supposed to understand.

10:21:18 20 Q. Well, I did not understand, so you'll have to explain.

21 A. I said after that attack I returned to Bo. My friends
22 are in Bo and, if I go to any of them to give me wares to
23 sell, they will give it to me, and that's what I did when
24 I returned.

10:21:42 25 Q. I'm suggesting to you -- I'm putting to you that --

26 JUDGE THOMPSON: We didn't get the answer to that -- a
27 translation.

28 MR WILLIAMS: That he went to Bo and his friends helped him

1 out with capital.

2 JUDGE THOMPSON: I see, thank you.

3 JUDGE BOUTET: He said "wares". He didn't say "money", he
4 said "goods".

10:22:04 5 PRESIDING JUDGE: Goods to sell.

6 MR WILLIAMS: As My Lord pleases, but I'll abandon that line
7 of cross-examination.

8 Q. I'm putting it to you, Mr Witness, that you were one of
9 those who looted Koribundu.

10:22:17 10 THE INTERPRETER: Come again, please.

11 MR WILLIAMS:

12 Q. I put it to you that you were one of those who looted the
13 houses at Koribundu.

14 A. Myself during this war, if I loot anybody's house - oh,
10:22:40 15 if I go to anybody's house and take anything away, may
16 the Lord not have mercy upon me; may the Lord destroy me.

17 Q. How well do you know Joe Tamidey?

18 A. That was the time when they took over Koribundu.

19 Q. And you had several -- you came across him several times;
10:23:12 20 is that correct?

21 A. When they took Koribundu, yes -- yes, we did see each
22 other.

23 Q. I mean, did you like him?

24 MR KAMARA: Objection, Your Honour. Counsel is still seeking
10:23:30 25 the opinion of this witness.

26 JUDGE THOMPSON: We think that question is permissible. Why?
27 He'll give an answer.

28 MR KAMARA: As Your Honours please.

1 MR WILLIAMS: If My Lord pleases.

2 Q. I mean, did you like Joe Tamidey?

3 A. I didn't like him, but, because he's an authority, yes,
4 I was supposed to like him.

10:24:03 5 Q. And he was the battalion commander for Koribundu;
6 correct?

7 A. Yes.

8 PRESIDING JUDGE: Please stop asking questions for which we've
9 had answers and save our time, please.

10:24:26 10 MR WILLIAMS: This witness has not answered that question
11 before.

12 PRESIDING JUDGE: He did. He said he knew Joe Tamidey. If
13 you look at what we have heard here as pieces of
14 evidence, he said that he knew Joe Tamidey to be the
10:24:39 15 battalion commander of the Kamajors. It is clearly on
16 the records here.

17 MR WILLIAMS: I do not have that on my records, My Lord, I'm
18 sorry.

19 JUDGE BOUTET: These were not answers to your questions, but
10:24:51 20 they were answers given to other counsels' questions many
21 times.

22 MR WILLIAMS: Yes, My Lord.

23 Q. And was he -- I mean, do you know whether reports of --
24 I mean, these bad things that you said that went on at

10:25:12 25 Koribundu, do you know whether they were reported to him?

26 A. Yes, but also we used to make complaints to him. Yes, we
27 did; we did make reports to him. That is why in fact
28 they stopped burning the town.

1 Q. Did you say -- I mean, I didn't get the last answer
2 correctly -- I mean properly. Did you say that it was
3 Joe Tamidey who stopped the burning down of houses at
4 Koribundu?

10:26:17 5 JUDGE THOMPSON: No, the answer is that the bad things that he
6 allegedly spoke about that happened in Koribundu were in
7 fact reported to Joe Tamidey, and that was why they
8 stopped burning the town.

9 MR WILLIAMS:

10:26:51 10 Q. Did you -- I want to refer to your evidence -- I mean
11 your version of what happened at Koribundu on the Monday
12 after the Kamajors came. You said eight people were
13 killed; is that correct? You saw eight people - I mean
14 you saw eight people being killed?

10:27:20 15 PRESIDING JUDGE: Mr Williams, you just have five minutes to
16 wrap up with your cross-examination, please.

17 THE INTERPRETER: Can you repeat the question again?

18 MR WILLIAMS: Yes, go on.

19 THE INTERPRETER: Repeat the question again, please.

10:27:33 20 MR WILLIAMS:

21 Q. Did you say that eight people were killed by the Kamajors
22 on the Monday after the Kamajors entered Koribundu?

23 A. Kamajors entered on Friday and they killed those people
24 on Monday.

10:27:57 25 Q. And did you say that your father helped in burying those
26 corpses the following day?

27 A. Put that question for me to understand.

28 Q. Did you say that your father and brothers helped -- did

1 you tell the investigators that your father and brothers
2 helped in burying those people the following day?

3 A. It was not my father; it was myself and my brothers who
4 buried those corpses.

10:28:54 5 Q. That was on Tuesday?

6 A. Monday, the same day when they killed them.

7 Q. Okay. Did you not, a short while ago, say -- sorry, did
8 you not say that, when your father and brothers left for
9 the farm on Saturday -- on Friday, they did not return
10 until Thursday; did you say that?

11 A. I didn't say that when we left Friday that they didn't
12 come until Thursday. I said that to you?

13 Q. Yes, you said that a short while ago, that when your
14 father and brothers left Koribundu for the farm on
10:29:45 15 Friday, they did not return until Thursday.

16 A. What I said I wouldn't deny today. If you put it any
17 way, there's no way I can forget it. If didn't say it,
18 I'll say I didn't say it.

19 PRESIDING JUDGE: Mr Witness, you said that when they went to
10:30:19 20 that oil palm farm on the Friday, they remained there.
21 You were going to town and coming back and that they only
22 came back to town - that's your father and brothers - on
23 Thursday.

24 A. Yes, that's what I said.

10:30:43 25 MR WILLIAMS:

26 Q. Having left with those brothers, who were present on the
27 Tuesday to help you bury -- they were at the farm, but
28 they could help you to bury the corpses on the Tuesday?

1 A. We didn't bury them on Tuesday; I said Monday.

2 MR WILLIAMS: No further questions for this witness.

3 JUDGE BOUTET: Mr Williams, do you wish -- because you were

4 alluding to some portion of that statement or that

10:31:35 5 document that you did put to the witness as such --

6 MR WILLIAMS: Yes, My Lord.

7 JUDGE BOUTET: I took it that, because you underlined

8 paragraph 2 of page 2 -- do I take it from that you want

9 that to be part of the exhibit?

10:31:54 10 MR WILLIAMS: Yes, part of the records, My Lord. Then, My

11 Lord, another piece is in paragraph -- the first line --

12 the first paragraph of page 2. He said his father and

13 his two brothers helped him bury the bodies. They were

14 also present when the killings occurred. So I want that

10:32:19 15 to also to form part of the records.

16 JUDGE BOUTET: Also on page 2.

17 MR WILLIAMS: That's also on page 2. His father and his two

18 brothers helped him bury the bodies. They were also

19 present when the killings occurred.

10:32:31 20 JUDGE BOUTET: Thank you.

21 PRESIDING JUDGE: Thank you, Mr Williams.

22 JUDGE THOMPSON: Any re-examination?

23 MR KAMARA: Yes, Your Honour, just a few questions.

24 RE-EXAMINED BY MR KAMARA:

10:33:11 25 MR KAMARA:

26 Q. You were asked so many times by counsel on the other side

27 how many times you spoke to the Prosecution team.

28 I would like to draw your attention to 31 May 2004. Do

1 you recall speaking to the Prosecution?

2 A. No, I can't remember that date as it is.

3 Q. Do you remember, at the end of May 2004, where were you,
4 Mr Witness?

10:34:12 5 A. I was in Freetown -- I was in Freetown here.

6 Q. Did you speak to any member of the team of the
7 Prosecution while you were in Freetown?

8 A. Yes.

9 Q. Did you make any changes to your statement that you have
10:34:34 10 already been referred to --

11 JUDGE THOMPSON: Did he make any statement? Not changes --
12 did he make any statement?

13 MR KAMARA: Yes, My Lord.

14 Q. Did you make a statement to the person that you spoke to?

10:34:54 15 A. Yes.

16 Q. And in that statement do you recall making changes to
17 your previous statement?

18 MR MARGAI: I'm sorry, My Lord, I don't know what your
19 disposition is, but I would have thought that it was
10:35:19 20 duty-bound of counsel in his examination-in-chief to have
21 brought all of this out, because they obtained the
22 statements, they knew how many statements they obtained,
23 they knew the purposes of the various statements. He
24 should have highlighted all of these to assist the Court,
10:35:39 25 to lay the foundation.

26 PRESIDING JUDGE: But it arose during cross-examination.

27 JUDGE THOMPSON: Quite right. The only thing we can do here
28 is to make sure that the scope of the examination is

1 confined to elimination of ambiguities, inconsistencies,
2 or response to new issues that may have arisen out of
3 cross-examination.

4 MR MARGAI: Perhaps, My Lords, for the tidiness of the record,
10:36:05 5 in future we adopt a more tidy procedure. As My Lords
6 please.

7 JUDGE THOMPSON: Clearly, I thought it was premature, because
8 I don't know yet where it's going, but these matters,
9 which he has been adverting to, they did arise out of
10:36:24 10 cross-examination.

11 MR MARGAI: Yes, they did, My Lord.

12 JUDGE THOMPSON: And, therefore, he is entitled to clarify
13 ambiguities, inconsistencies, and to respond to new
14 matters in rebuttal, but I haven't seen him go outside --

10:36:38 15 MR MARGAI: As My Lords please.

16 JUDGE BOUTET: I would also add that I have some problem with
17 your proposal. Why would the Prosecution try to
18 introduce evidence about statements when they are not
19 using statements themselves? Obviously, it is of
10:36:56 20 assistance to the Defence, but the Prosecution, to my
21 knowledge, up till now have not used any of these
22 statements.

23 MR MARGAI: My Lords, I'm sure quite a number of us here have
24 been prosecutors before we came here. In the '70s I was
10:37:05 25 a prosecutor with one of you, and we had our own
26 procedure, which is quite different now. You are in
27 control of your case. You know the statement that has
28 been obtained. You know how much of the statement you

1 are going to make use of in Court, and therefore you are
2 duty-bound to assist the Court that statements you have
3 made - not necessarily to mention them, but then to lead
4 evidence; call for statements that have been made
10:37:31 5 previously; once they have been made, subsequently to
6 correct whatever wrongs or ills might have appeared in
7 the previous statements.

8 JUDGE THOMPSON: Learned counsel, even if there was merit in
9 what you say, which I'm not prepared to debate, but
10:37:47 10 prosecutorial methodologies differ. I don't think at
11 this stage one can complain that counsel's approach yet
12 borders on the impermissible.

13 MR MARGAI: The law is based on consistency and uniformity.

14 PRESIDING JUDGE: I agree, it's based on consistency and
10:38:06 15 uniformity. If the issues of the new statements were not
16 brought up during cross-examination, maybe you would have
17 stood on firmer ground to say that he has no basis to
18 cross-examine on this. But since his question -- his
19 re-examination is based on what was raised --

10:38:27 20 MR MARGAI: I take the cue from the Bench. He's within the
21 ambit for now, and let's hope he charts his way forward
22 more safely.

23 JUDGE THOMPSON: We won't allow him to have a second bite at
24 the cherry.

10:38:40 25 PRESIDING JUDGE: We are vigilant, but I am sure even more
26 vigilant in the interests of your client to make sure
27 that he does not step beyond bounds.

28 MR MARGAI: As My Lords please.

1 MR KAMARA: Thank you, Your Honours.

2 Q. Mr Witness, you said you spoke to the Prosecutor and then
3 you made changes to your previous statement. Mr Witness,
4 do you recall that you informed this person that you
10:39:05 5 spoke to that the killing of the five elderly men by
6 Kamajors took place on Sunday, the second day of the
7 attack on Koribundu, and not Saturday?

8 A. Yes, they killed them on Sunday and the Kamajors entered
9 Koribundu on Saturday around 9.00. They killed them on
10:39:58 10 Sunday in the morning.

11 Q. Yes, on Sunday; that is what you said to the person that
12 you spoke to. And counsel on the other side drew your
13 attention to your statement of 3 December on page 2, your
14 Lordships, wherein it's referred to that on Tuesday

10:40:17 15 Kamajors arrested three elderly people. Do you recall,
16 Mr Witness, that the person you spoke to informed him --

17 THE INTERPRETER: The statement is too long, My Lord. Can the
18 speaker please make it short, or take it step-by-step?

19 PRESIDING JUDGE: Go slowly, please.

10:40:38 20 MR KAMARA: Thank you, Your Honour.

21 Q. In your statement tendered in evidence -- I think it's
22 Exhibit 7 now are we on?

23 PRESIDING JUDGE: Exhibit 7.

24 MR KAMARA:

10:40:47 25 Q. Exhibit 7 on page 2, the second paragraph, it stated that
26 on Tuesday Kamajors --

27 PRESIDING JUDGE: Slowly, please.

28 MR KAMARA: Sorry, Your Honour.

1 Q. In that statement, Exhibit 7, the second page, the second
2 paragraph shows that Tuesday was the day that your
3 grandparents were killed, or you discovered them dead?

4 A. When they asked me, I said I didn't go anywhere on
10:41:28 5 Tuesday. I told them I didn't go anywhere on Tuesday and
6 I can't answer now that I went somewhere on Tuesday.
7 I said I came on Monday. When they killed those people,
8 I was scared and I didn't come on Tuesday.

9 JUDGE THOMPSON: [Microphone not activated]

10:41:46 10 MR KAMARA: The incident alleged in the second paragraph did
11 not happen on Tuesday.

12 JUDGE THOMPSON: [Microphone not activated]

13 MR KAMARA: Yes.

14 Q. Also in that statement that you made to the person you
10:41:58 15 spoke to, you informed that person that the third
16 accused --

17 MR WILLIAMS: I take an objection to this line of
18 re-examination for several reasons, My Lord. One, My
19 Lord, that my learned friend is putting words into the
10:42:09 20 mouth of the witness. He is quoting from a document
21 which is not in evidence. Even in re-examination,
22 leading questions are not allowed, and my learned friends
23 are spelling out what they want the witness to say.

24 JUDGE THOMPSON: Did I hear you say that he was reading from a
10:42:37 25 statement not in evidence?

26 MR WILLIAMS: Yes, My Lord. My learned friend has referred to
27 a statement made --

28 JUDGE THOMPSON: I thought I heard him say Exhibit 7.

1 MR WILLIAMS: No, My Lord. He was reading from an additional
2 statement which is not before the Court. We don't have
3 any other objection to him tendering it, but let a proper
4 thing be done.

10:43:02 5 JUDGE THOMPSON: Learned counsel?

6 MR KAMARA: Your Honours, I am merely laying the foundation
7 for tendering the document and this witness -- and
8 counsel on the other side has referred to several
9 portions of the initial statement, which is Exhibit 7,

10:43:15 10 and I read from Exhibit 7 directly, which is already
11 tendered in evidence.

12 JUDGE THOMPSON: [Microphone not activated]

13 MR KAMARA: Yes. I was also referring to portions of the
14 other statement which has been served on the Defence and
10:43:27 15 which has been filed in the Court.

16 JUDGE THOMPSON: And did they refer to that statement in their
17 cross-examination?

18 MR KAMARA: They did refer to that statement.

19 JUDGE THOMPSON: I'm satisfied that you definitely are

10:43:37 20 proceeding according to the rules.

21 MR KAMARA: Thank you, Your Honour. At this point, Your
22 Honours, I'd like to tender the statement of 31 May 2004
23 to clarify the issues that have already been raised by
24 counsel on the other side as regards to the date of
10:43:58 25 the -- the date of the Tuesday and, also, with regards to

26 the issue of the Sunday when the elderly men were killed.
27 And I think, in fairness, and in the interests of
28 justice, if the first statement is only tendered in as an

1 exhibit, we have to see the whole statement from this
2 witness and it is in light of that, for clarity purposes.

3 JUDGE THOMPSON: Can you show the statement to the --

4 MR MARGAI: My Lords, we have copies of that statement, but
10:44:29 5 then I would want to know under what procedure my learned
6 friend is endeavouring to tender this document, since
7 this Court is bound by Rules of Procedure and Evidence.
8 We tendered Exhibit 7, because we were saying that there
9 was inconsistency in the evidence of the witness
10:44:49 10 vis-a-vis his statement.

11 PRESIDING JUDGE: He says he's tendering it because it arose

12 during cross-examination, but it is to clarify --

13 MR MARGAI: Let him refer us and the Court to the procedure as
14 is stated in black and white that he can so - because we
10:45:04 15 are bound by your ruling of 16 July, or certain
16 paragraphs.

17 JUDGE THOMPSON: Paragraph 21, page 8; that deals with
18 cross-examination, not re-examination.

19 MR MARGAI: My Lord, I'm saying that we tendered pursuant to
10:45:29 20 the rules as laid down in that ruling.

21 PRESIDING JUDGE: Is counsel suggesting that he's not
22 tendering in accordance with the rules of re-examination?

23 MR MARGAI: For my own edification, and I am sure for the
24 guidance of the Bench, I'm asking my colleague on the
10:45:46 25 other side to tell us under what rule of procedure he's
26 attempting to tender this document.

27 JUDGE THOMPSON: I want to ask you now whether what we decided
28 on 16 July and what you've cited in respect of your

1 submission, paragraph 21, why should that procedure apply
2 to the tendering of statements for the purposes of
3 rebutting issues that may have arisen under
4 cross-examination?

10:46:27 5 MR MARGAI: My Lord, I was not trying to draw an analogy, and
6 I was not inferentially or expressly saying that that
7 ruling applied to the instant attempt.

8 JUDGE THOMPSON: Thank you, counsel.

9 MR MARGAI: Thank you, My Lord.

10:46:43 10 JUDGE THOMPSON: We are at one.

11 MR MARGAI: Thank you.

12 JUDGE THOMPSON: so Proceed --

13 PRESIDING JUDGE: At a certain stage you want to --

14 MR MARGAI: I was merely saying that we followed a procedure
10:46:51 15 and the reason why we asked for that document to be
16 tendered, because we were saying that -- we were trying
17 to impeach the witness, as it were, because of
18 inconsistency. Now, he is not coming under
19 inconsistency. I don't know what he's coming under.

10:47:09 20 JUDGE THOMPSON: Let me tell you what I think. He's
21 exercising a right of rebuttal -- a right of rebuttal.
22 Certain matters had been raised during cross-examination
23 which have created ambiguities -- alleged ambiguities and
24 inconsistencies. Probably he might argue that some of
10:47:31 25 them are new. Of course, I don't take the view. So the
26 matters that have arisen are in categories 1 and (b) -
27 ambiguities and inconsistencies. The law allows him to
28 exercise a right in rebuttal.

1 MR MARGAI: I'm in total agreement with his right of rebuttal.

2 I would not even attempt to question that, but my concern
3 here is that, My Lord, this is a Tribunal which is not
4 only dealing with this matter, but whatever rulings are
10:48:01 5 given by this Tribunal will be guidelines for future
6 Tribunals and, therefore, we should be very, very careful
7 as to the Rules of Procedure.

8 JUDGE THOMPSON: As we develop our jurisprudence.

9 MR MARGAI: Indeed, My Lord, we want to positively develop the
10:48:19 10 jurisprudence, not from a negative point of view.

11 PRESIDING JUDGE: Precisely. That is why we --

12 JUDGE BOUTET: Mr Margai, I should mention to you that in your
13 cross-examination -- not yourself but your colleague as
14 such -- there was reference on more than one occasion
10:48:38 15 that there was more than one statement. There was that
16 statement that you have tendered as an exhibit,
17 Exhibit 7 --

18 MR MARGAI: Conceded.

19 JUDGE BOUTET: -- and that there were two other statements.

10:48:48 20 MR MARGAI: Conceded.

21 JUDGE BOUTET: You deemed it appropriate not to introduce
22 those statements.

23 MR MARGAI: Conceded.

24 JUDGE BOUTET: But you've also stated yourself - you or
10:48:57 25 Mr Williams - that these statements were clarifications
26 of the statement you've tendered in evidence.

27 MR MARGAI: Conceded.

28 JUDGE BOUTET: So you've already led that kind of evidence, so

1 this is not something new that the Prosecution is
2 springing on the Court. They are only trying to clarify
3 these matters.

4 MR MARGAI: I'm in total agreement with him clarifying the
10:49:16 5 matter. What I am not comfortable with is his attempt to
6 tender that particular document.

7 JUDGE THOMPSON: In other words, your problem really, as I
8 understand it, is under what statutory authority he now
9 seeks to proceed.

10:49:33 10 MR MARGAI: Precisely, My Lord.

11 JUDGE THOMPSON: Suppose I answer and say it would seem as if
12 the step that he's about to take, or is inviting the
13 Court to endorse, falls within the ambit of Rule 89(C) of
14 our Rules of Procedure.

10:49:51 15 MR KAMARA: Thank you, Your Honour, I was going to deal with
16 that.

17 MR MARGAI: You were going to? I'm sure it never crossed your
18 mind.

19 PRESIDING JUDGE: Mr Margai, you cannot say it never crossed
10:50:03 20 his mind.

21 MR MARGAI: My Lord, knowing my learned friend as I do, he
22 would have said.

23 PRESIDING JUDGE: Let's not underestimate --

24 MR MARGAI: No. I have the greatest respect for his ability
10:50:14 25 as a lawyer. 89 --

26 JUDGE THOMPSON: We just took it as a lawyer's joke.

27 MR KAMARA: "General provisions" is 89(C), "A Chamber may
28 admit any relevant evidence," and do we have a ruling on

1 the objection of Mr Margai?

2 JUDGE THOMPSON: Have you had that, one having been made?

3 MR KAMARA: Not as yet.

4 MR MARGAI: My Lords, I will rest on that, because I'm sure it

10:51:00 5 will be reciprocal.

6 JUDGE THOMPSON: Equality of arms.

7 MR MARGAI: Indeed, My Lords, and farewell.

8 PRESIDING JUDGE: We've listened to the arguments of both

9 sides and learned counsel Mr Margai's objection is

10:51:16 10 overruled, and counsel may continue.

11 [10.50 a.m. HN100904B]

12 MR KAMARA: Your Lordships, it's the Prosecution's wish to

13 tender this document as an exhibit before this Court and

14 marked Exhibit 8.

15 PRESIDING JUDGE: You are not the one to mark the exhibits.

16 MR KAMARA: I'm sorry, My Lord.

17 PRESIDING JUDGE: It is not counsel who mark exhibits. Tender

18 it.

19 MR KAMARA: Tender it.

20 PRESIDING JUDGE: Can you show it to the Prosecution,

21 please -- to the Defence. Show that document to the

22 Defence.

23 JUDGE THOMPSON: For consistency, may we highlight the

24 portions, too, that are relevant?

25 MR KAMARA: The entire document, My Lord.

26 JUDGE THOMPSON: Fine, okay, then highlight the entire

27 document.

28 MR KAMARA: The entire document.

1 PRESIDING JUDGE: Well, following our ruling this document is
2 submitted in evidence and marked as Exhibit 8.

3 [Exhibit No. 8 was admitted]

4 MR KAMARA: Thank you, Your Honour.

5 Q. Mr Witness, do you recall also talking to the Office of
6 the Prosecutor as recently as the 6th September 2004?

7 A. Yes.

8 Q. Did you make a statement to the Prosecution?

9 PRESIDING JUDGE: On what date, what date is that?

10 MR KAMARA: 6th.

11 THE INTERPRETER: 6th September.

12 THE WITNESS: Apart from what I told them.

13 MR KAMARA:

14 Q. The question, Mr Witness, is: did you make a statement
15 to the Prosecution on that day of the 6th September 2004?

16 A. Yes, it was on paper with them.

17 Q. Mr Witness, you recall that on cross-examination --

18 PRESIDING JUDGE: That is not a direct answer. Did he make a
19 statement to the Prosecutor. Please, let him --

20 Q. Did you make a statement on 6th September?

21 JUDGE THOMPSON: Yes or no?

22 PRESIDING JUDGE: 6th September, did you make a statement?

23 MR KAMARA:

24 Q. His Lordship would like to have a yes or no answer on
25 that, Mr Witness.

26 A. Yes, I made a statement.

27 Q. Thank you. And on cross-examination by counsel on the
28 other side, you were referred to your statement of 3rd

1 December 2003 many, many times. And on paragraph 3 at
2 page 1, the last --

3 PRESIDING JUDGE: I hope that the interpreters are getting the
4 speed at which you are going. It is your case.

5 MR KAMARA: Yes, Your Honour.

6 Q. You were referred to Exhibit 7, which is your statement
7 of the 3rd December 2003. On paragraph 3 of that
8 statement, the last line of the third paragraph, it is
9 stated that, "Witness saw Kamajors burn ten houses on
10 Blama Road." And issues were raised, because in your
11 evidence you said that you counted 25 houses that were
12 burnt along Blama Road. Mr Witness, do you recall
13 modifying that statement to the person you spoke to on
14 the 6th September 2004?

15 JUDGE THOMPSON: What is modify for him? Can't we be a little
16 clear, otherwise we invite a kind of argumentative
17 response?

18 MR KAMARA: As Your Honour pleases.

19 JUDGE THOMPSON: And would you want to re-phrase that a bit,
20 recall modifying?

21 MR KAMARA: I will.

22 Q. Did you indicate to the person you spoke to on the 6th
23 September that the number of houses burnt was not ten,
24 but 25?

25 JUDGE THOMPSON: More specific, yes.

26 THE WITNESS: Yes. Yes, from Blama Road up to the junction
27 towards the Lebanese, it was 25. That it was not ten
28 houses, but 25, and that's what I told him.

1 MR KAMARA: Thank you, Mr Witness.

2 Q. And also in your statement of the 3rd December, which is
3 Exhibit 7 in paragraph -- on page -- right at page 2, the
4 sub-heading, "second meeting" - I believe it is the
5 seventh paragraph, Your Honours - the last bullet point
6 on that paragraph which is titled "second meeting",
7 "witness stated that third accused, Allieu Kondewa, was
8 present at that second meeting, but Moinina Fofana wasn't
9 there."

10 A. Yes.

11 JUDGE THOMPSON: [Inaudible]

12 MR KAMARA:

13 Q. Mr Witness, do you recall that on the 6th September you
14 did indicate to the person you spoke to that --

15 PRESIDING JUDGE: You made a statement on this to the person
16 you spoke to?

17 MR KAMARA: Yes.

18 PRESIDING JUDGE: Don't tell him what he indicated.

19 MR KAMARA: Yes.

20 Q. Did you make a statement to the person you spoke to that
21 Allieu Kondewa was not present --

22 PRESIDING JUDGE: First of all, a statement.

23 JUDGE THOMPSON: [Inaudible]

24 PRESIDING JUDGE: Did he make a statement.

25 MR KAMARA: I thought I asked that, sorry, Your Honours.

26 JUDGE THOMPSON: Well, let's have the answer again.

27 MR KAMARA:

28 Q. Did you make a statement to the person you spoke to on

1 the 6th September 2004?

2 JUDGE BOUTET: About this matter.

3 PRESIDING JUDGE: About this matter.

4 JUDGE THOMPSON: About this matter, quite, yes.

5 MR KAMARA:

6 Q. Did you make a statement to the person you spoke to on
7 September 6th, 2004 that Allieu Kondewa was not
8 present --

9 JUDGE THOMPSON: Impermissibility, again, we remind you that
10 re-examination also does not allow leading questions.
11 So, let him tell us whether he made a statement and, if
12 he did, what did he say on the issue before. I am sure
13 that was the approach of the cross-examiners.

14 MR KAMARA: Yes, I will take --

15 JUDGE THOMPSON: And I think you need to proceed along similar
16 lines.

17 MR KAMARA: I will take the cue, Your Honours.

18 Q. Mr Witness, did you make a statement that -- you made a
19 statement to the person you spoke to in the Prosecutor's
20 office that --

21 JUDGE THOMPSON: On the same subject.

22 MR KAMARA:

23 Q. On the same subject as I have spoken to you from your
24 statement of the 3rd December?

25 A. I can't remember that December at all.

26 Q. Your statement of December 3rd is Exhibit 7 which counsel
27 on the other side referred you to.

28 JUDGE THOMPSON: What was the answer to that?

- 1 MR KAMARA: He denies --
- 2 JUDGE THOMPSON: Was he making an enquiry?
- 3 MR KAMARA: No, Your Honour, he wasn't making an enquiry.
- 4 JUDGE THOMPSON: Probably you should advise your witness that
- 5 the sort of responses we are having may well persuade an
- 6 imaginary judge from space, perhaps, to think that he is
- 7 trying to hide something.
- 8 MR KAMARA: I get you, Your Honour. I will still -- I will
- 9 leave that ambit [inaudible].
- 10 Q. As I asked you earlier on, Mr Witness, and you confirmed
- 11 to the Court, that you made a statement to the
- 12 Prosecution on the 6th September 2004; was that statement
- 13 made in writing?
- 14 A. No.
- 15 Q. Did you see the person you spoke to take down notes?
- 16 A. Yes, I did see him writing, but that statement I
- 17 didn't --
- 18 Q. Can we have that again, please?
- 19 THE INTERPRETER: Can we have that again, the answer.
- 20 THE WITNESS: Yes, I saw him with the paper in front of him.
- 21 MR KAMARA:
- 22 Q. Mr Witness, did you see the person you spoke to take down
- 23 notes?
- 24 A. I didn't see him writing any notes.
- 25 Q. Now, Mr Witness, you spoke to this person of the
- 26 Prosecution's office; what is it that you said to him
- 27 with reference to the fact that 25 houses were burnt
- 28 along Blama Road?

1 PRESIDING JUDGE: But he has replied to that question; hasn't
2 he?

3 MR KAMARA: He did.

4 PRESIDING JUDGE: Yes, cover this ground.

5 MR KAMARA: Well, then in the light of that, your Honours,
6 pursuant to the Rules of Procedure of this Court, Rule
7 89(C), I seek to tender this document of the 6th
8 September 2004 to clarify the issues of inconsistencies,
9 as raised by my counsel -- by counsel on the other side
10 and, if tendered, Exhibit 7. And to aid the Court to
11 understand the details of the inconsistencies, if at all.

12 PRESIDING JUDGE: But there are two issues.

13 MR KAMARA: Yes, Your Honour.

14 PRESIDING JUDGE: The burning --

15 MR KAMARA: Yes.

16 PRESIDING JUDGE: -- and the issues related to the second and
17 the third accused.

18 MR KAMARA: Yes, Your Honour.

19 PRESIDING JUDGE: Are they in that statement?

20 MR KAMARA: The one of the -- the third accused is in the
21 statement, because in Exhibit 7 they were compounded
22 together, the second and third, but in his corrigendum,
23 more or less, he specifically only referred to the third
24 accused.

25 PRESIDING JUDGE: Has he confirmed that there was a statement,
26 you know, recorded because he says -- I got him here to
27 say that he did not -- that the police did not record a
28 statement, you know, from him. In relation to what, you

1 know, because you questioned him on the first arm of your
2 questions?

3 MR KAMARA: Yes.

4 PRESIDING JUDGE: He said, "Yes, I originally said there were
5 ten houses that were burnt along Blama Road."

6 Subsequently, in his corrigendum, he did say that he
7 changed that statement and said, "25 houses were burnt
8 along Blama Road."

9 MR KAMARA: Yes, your Honour.

10 PRESIDING JUDGE: But there is still a question mark as to
11 what he said, you know, about the second accused or the
12 third accused, because that is not yet established, you
13 know, from his own testimony as having been affected by a
14 subsequent corrigendum in the statement which he made to
15 the police.

16 JUDGE THOMPSON: Yes, of course, following my learned
17 brother's analysis there, the alleged inconsistency or
18 perceived inconsistency that you seem to be seeking to
19 clarify is in relation to the burning of houses. In
20 other words, a number change, so to speak. Do we
21 understand that?

22 MR KAMARA: That is the first ambit.

23 JUDGE THOMPSON: The first arm?

24 MR KAMARA: Yes. The second arm is about the day which is --

25 JUDGE THOMPSON: Present at the meeting.

26 MR KAMARA: Not the day for the meeting.

27 JUDGE THOMPSON: What is that?

28 MR KAMARA: The day he discovered his grandparents were dead

1 was on a Wednesday and not on Tuesday.

2 JUDGE THOMPSON: All right. But is there not a third issue
3 relating to the presence of the third accused --

4 MR KAMARA: Yes.

5 JUDGE THOMPSON: -- at some meeting.

6 MR KAMARA: Exactly so. That is the one I was seeking to get
7 the witness to confirm. That is the third issue.

8 JUDGE THOMPSON: Have you laid the foundation for that one?

9 MR KAMARA: That is what I am going to do now, Your Honour,
10 thank you very much.

11 PRESIDING JUDGE: That was my worry.

12 MR KAMARA: Thank you, Your Honour.

13 Q. Mr Witness, at the second meeting, which you said in your
14 testimony and in cross-examination, you mentioned the
15 persons that were present in that meeting. Was the third
16 accused present in that meeting?

17 PRESIDING JUDGE: No, that's a leading question. That is a
18 leading question. Which people did you say were present,
19 don't ask him that question, we don't -- we overrule that
20 question.

21 MR KAMARA: As Your Lord pleases, as your Lord pleases.

22 Q. Mr Witness, I will take your mind back to the second
23 meeting at Koribundu. Do you recall the persons present
24 in that meeting that you know?

25 A. Yes.

26 Q. Can you tell this Court?

27 A. Yes.

28 JUDGE THOMPSON: I am not quite clear how we are proceeding.

1 What, if anything, did he say about that under
2 cross-examination which you now seek to clarify?

3 MR KAMARA: On the cross-examination, Your Honours, it was
4 brought out as an inconsistency.

5 JUDGE THOMPSON: No, no, no, no, no, I am not -- I am not, in
6 fact, concerned about the -- how it was raised, but what
7 exactly did he say? In other words, what testimony was
8 challenged as being inconsistent on that particular
9 issue?

10 MR KAMARA: The fact that in the statement he mentioned that
11 the third accused was present and also in his
12 testimony --

13 JUDGE THOMPSON: Testimony, the oral testimony here, what did
14 he say?

15 MR KAMARA: He said he wasn't.

16 JUDGE THOMPSON: Good. So --

17 MR KAMARA: And he made a corrigendum to that before
18 testifying --

19 JUDGE THOMPSON: Well, that's why I want the premise laid,
20 that here under cross-examination he said so and so. As
21 learned counsel Margai was saying, it is a matter of
22 logical and procedural tidiness.

23 MR KAMARA: Okay.

24 Q. Mr Witness, under cross-examination - and thus before
25 this Court - our attention was drawn to that paragraph
26 wherein your statement you mentioned that a third accused
27 was present. And in your evidence before this Court, you
28 stated that in that second meeting he was not present.

1 JUDGE THOMPSON: So, in other words, both cannot be true at
2 the same time.

3 MR KAMARA: Yes, Your Honour.

4 Q. So, Mr Witness, do you recall that second meeting; was
5 that accused person present in that second meeting?

6 PRESIDING JUDGE: I say no to that question. I said no to
7 that question.

8 MR KAMARA: Agreed.

9 Q. Upon cross-examination, Mr Witness --

10 PRESIDING JUDGE: You can re-frame it and have whatever
11 results, you know, you want, but it still has --

12 MR KAMARA: The leading --

13 PRESIDING JUDGE: -- the effigy of a leading question.

14 MR KAMARA:

15 Q. I am going over this with you on the issue of the
16 presence of the third accused. And in the
17 cross-examination you were cross-examined on that issue
18 about his presence in that second meeting. And that is
19 why I asked you the question: who were present in that
20 second meeting?

21 MR MARGAI: My Lord, I am sure that this question does not
22 arise, because if we are talking about the second meeting
23 and Exhibit 8, which has been tendered by my learned
24 friend, that clearly answers the question because Exhibit
25 8 -- sorry, paragraph 4, it is stated, "Allieu Kondewa
26 was not present at the second meeting addressed by Hinga
27 Norman in Koribundu." That is Exhibit 8 tendered a few
28 minutes ago by my learned friend.

1 JUDGE BOUTET: Yes, but the problem there - I don't disagree
2 with what you are saying - the problem is counsel for the
3 Prosecution has been told that he has not led any
4 evidence about that particular issue, even though that
5 statement has been led, we have said the first part of
6 that statement is acceptable, the second part -- or the
7 third part, the one that you are just talking about, is
8 not admitted.

9 MR MARGAI: My Lord, if my memory serves me correctly - and I
10 am sure I am not suffering from lapse of memory or -- I
11 believe when learned counsel was leading the witness in
12 chief, that question was addressed. It was addressed and
13 the witness clearly stated what is contained in Exhibit
14 8. I stand corrected by the notes.

15 JUDGE BOUTET: I was not alluding to the evidence-in-chief, I
16 was just alluding to the evidence in re-examination and
17 the comments by the Prosecutor in re-examination.

18 MR MARGAI: Well, what I am saying now is that if what I am
19 saying is, in fact, the case then, of course, the
20 re-examination relating to what he said about the third
21 accused at the second meeting does not arise.

22 JUDGE THOMPSON: In other words, you are saying it is
23 superfluous. Is that what you are saying; it is
24 unnecessary?

25 MR MARGAI: It is unnecessary, superfluous indeed.

26 JUDGE THOMPSON: And my difficulty here is -- what is the
27 perceived inconsistency here again between the oral
28 testimony and the statement and the corrigendum in the

1 context of what was the issue emanating from
2 cross-examination? And, Mr Margai, do sit down, let him
3 enlighten me a bit. What is your difficulty here?

4 MR KAMARA: The difficulty that I have here is that a lot of
5 hullabaloo was made about inconsistency.

6 JUDGE THOMPSON: I do not like that word. It is not forensic;
7 it is not consistent with the traditions here.

8 MR KAMARA: A lot of issues were raised with regards --

9 JUDGE THOMPSON: Yes.

10 MR KAMARA: -- with regards to the statement of the 3rd
11 December, amongst which the fact of a Tuesday -- and not
12 Tuesday, but Wednesday, the fact of the burning of the
13 houses, ten to 25.

14 JUDGE THOMPSON: Yes.

15 MR KAMARA: And also the presence of the third accused in that
16 meeting.

17 JUDGE THOMPSON: Legitimate issues raised from their
18 perspective.

19 MR KAMARA: These were raised by the cross-examiners.

20 JUDGE THOMPSON: Yes.

21 MR KAMARA: Yes, your Honours. And thereafter, a statement
22 was tendered, the statement of the 3rd was tendered as
23 Exhibit 7.

24 JUDGE THOMPSON: Yes.

25 MR KAMARA: And, Your Honours, no other statement has been
26 brought before this Court, except the one I tendered,
27 which is Exhibit 8.

28 JUDGE THOMPSON: Okay.

1 MR KAMARA: To kind of --

2 JUDGE THOMPSON: Complete the picture, give us a global
3 perspective.

4 MR KAMARA: As Your Honour has best put it.

5 JUDGE THOMPSON: Yes.

6 MR KAMARA: And in forbearance to that, this second -- this
7 third statement throws more light with regards to the
8 last issue. I have already laid the foundation for the
9 one, the 25 burnt houses --

10 JUDGE THOMPSON: Yes.

11 MR KAMARA: -- and the fact of not Tuesday but Wednesday, and
12 I was doing -- intend to lay the foundation for the third
13 ambit, which the President of the Court clearly told me
14 that I need to further lay the foundation before
15 permitting that question, which I asked that was meant to
16 be leading.

17 JUDGE THOMPSON: In other words, you intend also to tender
18 another statement --

19 MR KAMARA: Yes, your Honours.

20 JUDGE THOMPSON: -- to clarify issue number three?

21 MR KAMARA: Issue number -- to clarify the issue 25 and then
22 the Wednesday, which were not in that first -- in
23 statement number 2.

24 JUDGE THOMPSON: I see.

25 MR KAMARA: But for speed and other issues - and as Mr Margai
26 has mentioned - if at all, that issue has already been
27 resolved, and it is of no harm to the Prosecution, I can
28 tender this document and highlight the first two

1 paragraphs which deals with 25 burnt houses and
2 Wednesday, but not Tuesday.

3 JUDGE BOUTET: I should mention as well, that along with
4 Mr Margai, that in the Exhibit 8 that you have tendered,
5 paragraph 4 is exactly with that issue.

6 MR KAMARA: Yes.

7 JUDGE BOUTET: So, I don't know why we are getting into this
8 repetitive nature of things.

9 MR MARGAI: My Lords, may I be guided before my learned friend
10 proceeds? Is it the case that my learned friend is
11 attempting to clarify inconsistencies between two
12 statements?

13 JUDGE THOMPSON: Well, that would be clearly impermissible.

14 MR MARGAI: Because this is what he seems to be --

15 JUDGE THOMPSON: I am sure that what he is trying to do, or I
16 am assuming that what he is trying to do is to exercise
17 his right under re-examination of eliminating
18 inconsistencies, possible inconsistencies, or ambiguities
19 arising from cross-examination.

20 MR MARGAI: I would presume here that the inconsistencies
21 should relate to the oral testimonies --

22 JUDGE THOMPSON: Precisely.

23 MR MARGAI: -- and statements. But it seems to me that his
24 track is rectifying inconsistencies between Exhibit 7 and
25 Exhibit 8.

26 JUDGE THOMPSON: Well, if that's what he's trying to do --

27 MR MARGAI: Maybe he might enlighten us, because we want to be
28 on equal --

1 JUDGE THOMPSON: Footing here.

2 MR MARGAI: -- footing, you know, so that we will make
3 progress.

4 JUDGE THOMPSON: Well, I hope that is not what I understand
5 him to be doing, but quite right --

6 MR MARGAI: Well, he alone can tell us, but that seems to be
7 my reading of the issue.

8 MR KAMARA: Your Honours, the --

9 THE ACCUSED NORMAN: My Lord --

10 THE INTERPRETER: His mike is not on, My Lord, his microphone
11 is not on.

12 THE ACCUSED NORMAN: Sorry, I have been the [inaudible] has
13 sat over cases.

14 In Exhibit 8, My Lord, number -- item number 5, it
15 is stated there that there were only two meetings held in
16 Koribundu addressed by Hinga Norman, not three. Now,
17 when you come to Exhibit 7, of the three meetings which
18 is -- the Prosecution really produced them before you
19 that Hinga Norman may have addressed, because they were
20 all containing some very important statements that were
21 made by Hinga Norman.

22 JUDGE THOMPSON: Well, perhaps the Prosecution should
23 enlighten us a little more, because the scope of -- I say
24 the scope of re-examination is equally narrow. It is
25 narrower than the other two processes and if the purpose
26 of your re-examination is to clarify alleged
27 inconsistencies between two documents, then it would seem
28 to me that the process is becoming very convoluted. I

1 expect that the scope of re-examination limits you to
2 clarifying inconsistencies between evidence that has
3 arisen out of cross-examination and the oral testimony of
4 this witness. Are we on the same wavelength?

5 MR KAMARA: Yes, Your Honours, we are on the same wavelength.

6 What the Prosecution seeks to do here is, Exhibit 7 has
7 been tendered, which is the first statement of the
8 witness, and the second and third statement, which we
9 believe in all fairness and the interests of justice,
10 should be made available before this Court and that is
11 what the Prosecution is seeking to tender.

12 JUDGE THOMPSON: But to assist us in reconciling any possible
13 or alleged inconsistencies between the oral testimony and
14 what arose out of cross-examination, that is our boundary
15 line.

16 MR KAMARA: That is what I have been doing in laying the
17 foundation and highlighting the portions of the first
18 statement which the cross-examiners on the other side
19 have reiterated as inconsistent. And in the second
20 statement I am putting it before the Court so that the
21 Court can could take a look at those documents in its
22 entirety and see the complete picture.

23 JUDGE THOMPSON: How do you respond to my learned brother,
24 Judge Boutet, who has seen it this way that already we
25 have covered that ground? So why are we being invited to
26 go through this process?

27 MR KAMARA: The third ground on the statement that I seek to
28 tender has already been covered, I agree with

1 Judge Boutet on that, and that is why I have kind of
2 abandoned it, and I am trying to seek to tender this
3 document and highlight the first two paragraphs which
4 were not covered by Exhibit 8. Thank you, Your Honours.

5 The Prosecution seek to tender this document, the
6 statement of the 6th September 2004 as an exhibit for
7 this Court.

8 PRESIDING JUDGE: Well, this statement dated -- whose
9 interview took place on the 6th of September 2004 is
10 admitted in evidence and marked as Exhibit 9.

11 [Exhibit No. 9 was admitted]

12 MR KAMARA: Thank you, Your Honour.

13 PRESIDING JUDGE: Yes.

14 MR KAMARA: That is all for this witness.

15 JUDGE BOUTET: Just for some clarity - you can sit down - I
16 just want to make sure that for the record, that these
17 exhibits that are part of public record should not
18 include the identification of the witness as these
19 documents refer to the witness by name and by pseudonym.
20 So, whatever identification is contained in these
21 documents -- and that applies as well to exhibits
22 tendered by Defence counsel. I have not seen it now, but
23 I presume reference to the name of the witness is
24 probably contained in Exhibit 6. So, if it is, that
25 portion of that statement should not be publicly
26 disclosed, will form part of the record, but is not to be
27 publicly disclosed. Thank you.

28 PRESIDING JUDGE: Yes, I think this is all about this witness.

1 Mr Witness, thank you.

2 MR PESTMAN: Your Honour, there is one pending issue.

3 PRESIDING JUDGE: Yes.

4 MR PESTMAN: I am not sure what the status is of the three

5 lines, sentences, I marked in Exhibit 7. Maybe you can

6 clarify it because I am not sure.

7 JUDGE BOUTET: I think it was Exhibit 6, but --

8 MR PESTMAN: It's the first.

9 JUDGE BOUTET: First statement, yes.

10 MR PESTMAN: It's 7, I was told it was 7.

11 JUDGE BOUTET: Seven. Yes, it is 7. When we left off

12 yesterday, there was a bit of confusion on that issue and

13 the confusion had to do with whether or not yourself had

14 established that. Indeed, what you are trying to mark as

15 part of that exhibit --

16 PRESIDING JUDGE: Yes.

17 JUDGE BOUTET: -- was any connection to the other exhibit. So,

18 what was missing is some linkage between that document

19 that you were trying to introduce, and the one that has

20 been marked out now as Exhibit 7 and this witness. So,

21 that is what we were asking for yesterday in the

22 confusion. So if you could just establish that whatever

23 it is --

24 PRESIDING JUDGE: Establish that very briefly and then we will

25 revisit the issue from where we left it yesterday.

26 MR PESTMAN: Well, it is the same document.

27 JUDGE BOUTET: Well, try to do that. You have Exhibit 7?

28 MR PESTMAN: I am not sure I understand the question because

1 I --

2 JUDGE BOUTET: It's a question of clarifying the issue for the
3 records. So you are saying it is the same document that
4 may be --

5 MR PESTMAN: You would like me to confirm whether it is the
6 same document? Can I have a look at the exhibit?

7 PRESIDING JUDGE: If I may remind you, you did make an
8 application yesterday to tender this document earlier on
9 in the day. The Chamber considered that you had not laid
10 sufficient grounds for the document to be admitted in
11 evidence. Later on your colleague, for his own purposes
12 and for his own Defence team, laid the foundation and
13 tendered portions of that document, of that statement,
14 which related to his case. Those portions -- that
15 document was admitted and those portions were
16 highlighted. As soon as the document was admitted for
17 purposes of highlighting the issues that were referred to
18 by the Defence team of the third accused, you came here
19 and you said well you, too, want portions marked. The
20 Chamber said, "No, you have to lay a foundation in order
21 to have - for your own purposes, you know - those
22 portions that you want to rely on to be marked." That is
23 where we parted yesterday and that is where we, the
24 Chamber, is inviting you to lay the foundation for
25 purposes of that so that we can wrap up the issue and
26 continue from there.

27 JUDGE THOMPSON: If I can contribute shortly to this, the way
28 I see it is that -- another way I see it is that -- and I

1 need to be -- I need to be corrected if I am seeing it
2 differently from how you see it - is that you -- the
3 document is now in evidence, is it, and you now become a
4 beneficiary of the foundation laid by another colleague?
5 If the document is in evidence, then it seems as if you
6 have got to do something for your purposes to adopt the
7 document. In other words, to guide the Court in respect
8 of your own line of cross-examination, because what it
9 means is that your request has now been overtaken by
10 events, in that the document which you sought to have
11 admitted in evidence has already been admitted in
12 evidence for another purpose. And so, if there is some
13 affinity between the purpose for which the document has
14 been admitted and the purpose for which you intended it
15 to be admitted, then perhaps you should adopt and become
16 beneficiary of it. I don't know how you intend to do it,
17 but I am just trying to be creative in my own way, but I
18 stand to benefit from your own creativity. I have always
19 asked you to do that.

20 MR PESTMAN: Well, yesterday I tried to point out
21 inconsistencies between the statement made by this
22 witness, given by this witness in court, and part of the
23 statement he gave to the Prosecutor or to the Prosecutors
24 or investigators on the 3rd December 2003. And I
25 highlighted in this particular document the three
26 sentences showing that these inconsistencies exist and I
27 cross-examined these particular witnesses on these
28 particular lines and after that I tried to submit this

1 document.

2 JUDGE BOUTET: What other are the lines?

3 MR PESTMAN: The first three lines of the last paragraph of
4 Exhibit 7, which I read out to the witness yesterday in
5 court.

6 PRESIDING JUDGE: Can you read them out again?

7 JUDGE BOUTET: And that's on page 1?

8 MR PESTMAN: Page 1 of the statement, yes. I am happy to read
9 them again. "On Monday morning he was threatened by
10 Kamajors and he went to hide in the bush." He being the
11 witness. "He returned on Monday night. He witnessed
12 Kamajors kill five people: Mohammed; Sofiana; Aminata,
13 woman; Jainaba, woman; Esther, woman. They cut their
14 throats." And I pointed out yesterday that there were
15 inconsistencies between these lines and the statement
16 given by this witness in court. And in order to support
17 that I would like to highlight these.

18 JUDGE BOUTET: Was it the only paragraph you were intending
19 to --

20 MR PESTMAN: Yes.

21 JUDGE BOUTET: Okay. That's fine by me.

22 MR PESTMAN: Does it get a new number?

23 JUDGE BOUTET: That's -- no, no, no, it's the same. We don't
24 want any more confusion on this. This remains Exhibit 7
25 and for your purposes --

26 PRESIDING JUDGE: With the new highlighting for purposes of
27 the Defence of the second accused.

28 JUDGE BOUTET: Yes.

1 PRESIDING JUDGE: Mr Witness, thank you for coming. We hope
2 you will remain the brave man you say you are all the
3 time. But always be brave in the fear of the Lord.
4 Thank you, you can go. If and when -- if we ever need
5 you back to this courtroom, you will be duly informed.
6 Thank you.

7 THE WITNESS: Okay.

8 PRESIDING JUDGE: The Court will rise for 15 minutes.
9 Mr Bockarie, did you -- I thought you wanted to pre-empt
10 the Court from rising. All right. I thought it was a
11 hostage taking by Mr Bockarie. The Court will rise for
12 15 minutes and if there are any motions, we will take
13 them, you know, when we do resume in the next 15 minutes.
14 The Court will rise, please.

15 [Recess taken at 11.32 a.m.]

16 [On resuming at 11.58 a.m.]

17 PRESIDING JUDGE: Court session resumes. As we did indicate
18 in our calendar of shadows, we consecrated the day of
19 Friday to the hearing of motions inter alia. We would
20 like to entertain any motion or motions, and very
21 briefly, that counsel may want to -- for any oral
22 applications where they don't -- we would entertain them,
23 provided that they are not very complicated to require
24 some time for the learned colleagues on the other side to
25 be able to put up with, you know, in the course of the
26 session. So, the Chamber is open to take on any motions
27 which may be available. Yes. Yes, Ms Whitaker.

28 MS WHITAKER: Your Honour, I am grateful. I think on behalf

1 of Chief Hinga Norman, there are three issues that we'd
2 invite you --

3 PRESIDING JUDGE: When I say Miss, I mean M-S. I don't intend
4 to be pejorative.

5 MS WHITAKER: Not at all, Your Honour. Certainly.

6 PRESIDING JUDGE: I mean M-S.

7 MS WHITAKER: It certainly wasn't taken that way.

8 On behalf of Chief Norman I think there are three
9 issues which we would invite the Chamber to consider this
10 morning. One, which I believe the Chief will deal with
11 himself, concerns a letter that he trusts you have
12 received concerning the indictment which he will
13 principally deal with. Then arising from the matter
14 raised at the status conference, we believe there is the
15 issue of whether a closed session is appropriate or not
16 for a particular witness.

17 JUDGE BOUTET: Will that be raised -- argued by Mr Norman or
18 you?

19 MS WHITAKER: No. Well, I am certainly happy to argue that on
20 his behalf, unless he would rather I didn't.

21 JUDGE BOUTET: I am just asking. I am not suggesting.

22 PRESIDING JUDGE: These are matters which arose from the
23 status conference.

24 MS WHITAKER: This is -- I believe there was -- there's an
25 application pending from the Prosecution for a particular
26 witness to be held in closed session.

27 PRESIDING JUDGE: I see.

28 MS WHITAKER: And it was determined that that could be dealt

1 with orally rather than in writing in order to expedite
2 matters.

3 JUDGE BOUTET: And I had said yes to that at the status
4 conference.

5 MS WHITAKER: Indeed, His Honour Judge Boutet kindly agreed to
6 that application, oral application. And thirdly, there
7 is an issue we would like to raise regarding disclosure
8 of interview notes that have not been disclosed, such as
9 may or may not exist.

10 PRESIDING JUDGE: [Inaudible] interview notes, in what form
11 Ms Whitaker?

12 MS WHITAKER: Your Honour, it appears this witness and the
13 witness, the preceding witness, both testified that their
14 interviews were taken down in longhand, handwritten form.
15 With both those witnesses we have only been provided with
16 computer-generated statements and we submit if these --

17 JUDGE THOMPSON: You mean handwritten interview notes?

18 MS WHITAKER: That was the evidence of the witnesses.

19 JUDGE THOMPSON: I see, yes.

20 MS WHITAKER: And if the witnesses are correct in their
21 testimony, then we submit in the light of Your Honour's
22 ruling regarding what --

23 JUDGE THOMPSON: What constitutes a statement.

24 MS WHITAKER: Indeed.

25 JUDGE THOMPSON: In other words, we expanded the categories.

26 MS WHITAKER: Indeed. And I rely on Your Honour's
27 jurisprudence in relation to that issue.

28 JUDGE THOMPSON: Yes, okay, right.

1 MS WHITAKER: We have written to the Prosecution requesting
2 these notes and been informed that we are not entitled to
3 them. They do not consider that we are entitled to them
4 in any event, and we would ask for the Chamber to rule on
5 that issue to assist us.

6 PRESIDING JUDGE: Is there a fourth issue? Is there a fourth
7 issue; you have raised three issues?

8 MS WHITAKER: Those are the matters we would seek your
9 guidance on. But I don't know about my colleagues.

10 PRESIDING JUDGE: Yes, we acknowledge the presence -- the
11 Chamber acknowledges the presence of the Principal
12 Defender. You are very welcome. It is a pleasure having
13 you in our midst; it is very re-assuring always. We feel
14 more covered, and I am sure the Defence feels very well
15 protected, that is -- that is very well body-guarded, you
16 know, from behind by the Principal Defender. I see she
17 is on her feet. Yes, Madam Principal Defender.

18 MS MONASEBIAN: Thank you, Your Honours, and good morning.
19 Just one small matter of common interest that is somewhat
20 administrative as well and would be, if I could have the
21 opportunity to briefly address the learned Trial Chamber
22 about the Defence response to the 9 September 2004 letter
23 of Mr Johnson in regard to his potential expert witness
24 on the use of child soldiers. This was also addressed
25 during Tuesday's status conference, and it is an issue
26 that will affect the RUF trial and the AFRC, as well as
27 any other trials. And so as a matter of common interest,
28 I think it is important to briefly address it today, if

1 Your Honour so allows.

2 PRESIDING JUDGE: Do we have you on record to say it affects
3 the RUF and AFRC?

4 MS MONASEBIAN: Yes, I believe it does. But it's a matter --

5 PRESIDING JUDGE: But not the CDF?

6 MS MONASEBIAN: No, it emanates from a letter strictly in
7 relation to the CDF trial. I am sorry I did not make
8 that clear. I gave the date of the letter, but not the
9 indication that was it in relation to the CDF trial. But
10 I also note for Your Honours that whatever ruling is made
11 in regard to this is something that does affect the RUF
12 and the AFRC trials in that the counsel in those cases
13 are very insistent that one ruling is given in this
14 matter that will not adversely affect them, as are the
15 counsel in this case, I am sure, who need the same
16 disclosure.

17 PRESIDING JUDGE: You said the letter was from Mr Johnson; not
18 so?

19 MS MONASEBIAN: Yes, it is dated 9 September 2004 and it is
20 titled, "OTP efforts to secure potential expert witness
21 on the use of child soldiers - fulfillment of undertaking
22 during the status conference held 7 September 2004." And
23 I would respectfully say, Your Honour, that it is not a
24 fulfillment of that undertaking and that's the problem
25 that I have.

26 PRESIDING JUDGE: Well, thank you, we would address that
27 later.

28 Mr Pestman, do you have any?

1 MR PESTMAN: Yes. We are supporting the motion already
2 mentioned by my colleague, Ms Whitaker. Not the first
3 one, but the third one.

4 PRESIDING JUDGE: The third.

5 MR PESTMAN: On the disclosure of witness statements, and I
6 would just like to ask whether Your Honours are in the
7 possession of a letter we wrote to the Prosecution, to
8 Mr Johnson, with regard to this matter on the 8th
9 September 2004, in which we asked Mr Johnson to comply --
10 fully comply with his disclosure obligations. I
11 understand the answer is yes.

12 JUDGE BOUTET: The letter that has been handed to us is not
13 that one, it is the one of 9 September.

14 MR PESTMAN: Well, I have not got that letter either,
15 actually. I don't know whether it would be possible, but
16 I would be grateful if we were provided with a copy of
17 that particular letter.

18 PRESIDING JUDGE: What has been Mr Johnson's -- this is --
19 your own letter is dated the 8th of September.

20 MR PESTMAN: Yes.

21 PRESIDING JUDGE: What -- has there been any reaction from
22 Mr Johnson on this?

23 MR PESTMAN: I just spoke to him --

24 PRESIDING JUDGE: Just, when you say "just", just --

25 MR PESTMAN: In the short break we had 20 minutes ago. But
26 maybe he can explain his position. I haven't received a
27 written answer.

28 PRESIDING JUDGE: He is in court now.

1 MR PESTMAN: Yes, he has been hiding from the Defence for the
2 last couple of days.
3 PRESIDING JUDGE: He is taking good cover behind there.
4 MR PESTMAN: And I have a point of order --
5 PRESIDING JUDGE: Because he didn't want your bullets to hunt
6 him.
7 MR PESTMAN: At a point of order, I don't know whether the
8 Prosecution is going to address the issue of the closed
9 session, but if it is, that matter should be dealt with
10 in a closed session as well. In an in camera hearing as
11 determined or as ruled -- stated in Rule 75(B), so that
12 means we have to close the doors of this --
13 JUDGE BOUTET: I am not sure -- you mean, if we hear that
14 application?
15 MR PESTMAN: Yes.
16 JUDGE BOUTET: The application itself will be in closed
17 session?
18 MR PESTMAN: Yes, in camera, according Rule 75(B).
19 JUDGE BOUTET: Yes, thank you.
20 MR PESTMAN: So that means something has to happen because
21 there is public --
22 JUDGE BOUTET: That's fine, yes. But we will wait until we
23 get there, if we get there today.
24 PRESIDING JUDGE: Mr Bockarie, nothing to add? Mr Margai?
25 MR MARGAI: Yes, My Lord. My Lord, referring to the letter of
26 the 8th, I want to believe that our exclusion was an
27 oversight, and having now had the opportunity of reading
28 the document, we are in full support of it and we ask to

1 be associated with it. Thank you.

2 PRESIDING JUDGE: Yes, I'm sorry, we were deliberating on
3 certain issues. Ms Whitaker has raised a number of
4 issues, I think three. The first being the letter
5 written by the first accused and raising a number of
6 issues. This letter is dated the 7th of September and it
7 is addressed to the stand-by counsel, is it is addressed
8 to the judges -- to the judges and copied to the stand-by
9 counsel, the Registrar, the Principal Defender, the
10 Prosecutor and the Hinga Norman Defence teams at home and
11 abroad. And then, of course, you know, to the family
12 file and to the press.

13 The Chamber has taken -- has noted the contents of
14 this letter and is of the opinion -- Mr Norman, please,
15 can you stand up?

16 THE ACCUSED NORMAN: Yes, My Lord.

17 PRESIDING JUDGE: Yes, we have taken cognisance of the letter
18 which you have addressed to us. We can see that the
19 letter raises certain -- a good number of legal issues
20 and, since your correspondence is rather administrative
21 in nature, what we say is that we have taken cognisance
22 of it, but that if you think you want to pursue this
23 matter further, you should come to the Court in the
24 proper manner. I suppose that you do understand so that,
25 you know, we are seized of the matter the proper way for
26 us to be able to examine it after hearing both sides. So
27 this is our position on your letter and we hope that --
28 and we do say that if you want to pursue the matter

1 further, then you should come to us, you know, the proper
2 way.

3 THE ACCUSED NORMAN: Thank you, My Lord.

4 MR MARGAI: My Lords, before we leave that issue, I believe
5 that this being a joint trial, whatever issues are being
6 raised by one party to this trial necessitates apprising
7 the other members of the trial team, at least, for us to
8 know what is happening. We may not react, but I think
9 that should be the best approach.

10 PRESIDING JUDGE: We agree with you, Mr Margai.

11 MR MARGAI: In the circumstances, may we then ask that we be
12 served with a copy of that document?

13 PRESIDING JUDGE: That should be done and any subsequent
14 documents which will be filed should be served on the
15 Defence teams.

16 MR MARGAI: Appreciated, thank you.

17 PRESIDING JUDGE: Right.

18 THE ACCUSED NORMAN: Thank you, my Lord.

19 PRESIDING JUDGE: The other issue relates to matters that were
20 raised during the status conference and I think it is the
21 Prosecution which wanted a certain witness or certain
22 witnesses to be heard in closed sessions of this Chamber.
23 I hope that we are right in our presumption that the
24 Defence is prepared to take on that motion if it is
25 raised now by the Prosecution. Let us find out what the
26 position of the Prosecution is in making this
27 application.

28 MR JOHNSON: Thank you, Your Honour. Yes, of course, as we

1 mentioned in the status conference, specifically we were
2 looking at -- for the testimony of witness number 5 in
3 this session to be held in closed session. I can deal
4 with this initially in a very generic sense and I will
5 endeavour to do so. However, as counsel for the second
6 accused has pointed out, that if indeed it would be
7 required to go into the specific factual basis for a
8 motion, then we would need to go into closed session
9 because that again is exactly why we want to go to closed
10 session for when the witness testifies.

11 PRESIDING JUDGE: What.

12 MR JOHNSON: Yes, sir.

13 PRESIDING JUDGE: What I am asking is, are you prepared, if we
14 went into closed session - because we agree with
15 Mr Pestman when he says that the application should also
16 be taken at a closed session. Will you be -- are you
17 prepared to make the application at a closed session if
18 it became necessary now?

19 MR JOHNSON: Yes, Your Honour, we are.

20 PRESIDING JUDGE: Is the Defence prepared to take it on, you
21 know, in that manner?

22 MS WHITAKER: Yes, Your Honour.

23 PRESIDING JUDGE: Right, okay.

24 Well, on this second issue, we will proceed orally,
25 but the matter will not be taken on -- it will be taken
26 on after this when the Court will give an indication for
27 the dispositions for a closed session to be put in place.

28 The other issue is the disclosure of interview notes

1 which, again, was raised by Ms Whitaker. I think what
2 was said on them were notes passed through the computer
3 and, they want to have access to the originals of what
4 was recorded by the investigators or by the Prosecution,
5 as the case may be. So what is the position of the
6 Prosecution in respect to these particular applications
7 by the Defence?

8 [12.25 p.m. HN100904C]

9 MR JOHNSON: Thank you, Your Honour. First, I would just like
12:26:44 10 to state that contrary to Mr Pestman's assertion, not
11 being in the courtroom the last few days, I didn't
12 necessarily consider I was hiding from the Court, but
13 just the same I apologise, I guess if I need to. Thank
14 you.

12:27:03 15 And, secondly, I would like to point out that what
16 was asked of us to please explain why the OTP has failed
17 to fully comply with our disclosure obligations, I would
18 submit that the determination as to whether or not we
19 have failed to comply is yours and not the Defence.

12:27:20 20 The Defence has pointed to -- yes, I too agree that
21 what they're asking for are any handwritten notes that
22 may have been associated with --

23 PRESIDING JUDGE: I don't want to cut you short, Mr Johnson.

24 I want to run down -- run through this list. Are you
12:27:38 25 prepared to take on this matter if it had to go on today?

26 MR JOHNSON: Yes, Your Honour.

27 PRESIDING JUDGE: Right, okay. Mr Pestman?

28 MR PESTMAN: Yes.

1 PRESIDING JUDGE: Yes. Okay, that's all right. We'll
2 re-visit it later.

3 Well, there is also the application, you know, by
4 the Principal Defender, which is related to Mr Johnson's
12:28:11 5 letter dated the 9th of September 2004 on child soldiers.
6 She has succinctly mentioned it. Mr Johnson, can you
7 please indicate to us, you know, what the position is?

8 MR JOHNSON: Well, Your Honour, I'm not exactly sure on what
9 the Principal Defender's position is at this time. If I
12:28:38 10 could hear hers first, then I could answer that.

11 PRESIDING JUDGE: Will you be prepared to go on if we're so
12 minded?

13 MR JOHNSON: Again, Your Honour, I can't answer that until I'm
14 sure of the specifications of her application or the
12:29:00 15 point she is going to make.

16 PRESIDING JUDGE: Do you have a copy of -- this is a copy of
17 your own letter. It is a copy of your own letter. What
18 you're saying is that you have nothing on record about
19 the contentions of the Principal Defender on this issue.

12:29:21 20 MR JOHNSON: Yes, Your Honour, that's correct. I didn't bring
21 a copy of my letter, but I'm certainly familiar with the
22 contents of my letter. But I'm not yet familiar with the
23 Principal Defender's complaints or concerns.

24 JUDGE THOMPSON: Well, will you be interested in a debate on
12:29:38 25 that at some point?

26 MR JOHNSON: Certainly, Your Honour.

27 MS MONASEBIAN: If I could just briefly note that it is the
28 same concern I brought up at the status conference, so I

1 would not take the Prosecution by surprise.

2 JUDGE THOMPSON: You're prepared to address any kind of
3 concerns? I mean, we're not suggesting comprehensively,
4 but just to hear it and then --

12:30:02 5 PRESIDING JUDGE: Well, the point is, since the issue of child
6 soldiers is a very sensitive issue before this Court,
7 maybe the Principal Defender could furnish, you know,
8 further and better particulars to the Prosecution so that
9 we create an agenda for us to be able to visit this
12:30:25 10 issue, not necessarily today -- not necessarily today,
11 maybe sometime next week or so.

12 MS MONASEBIAN: I'm happy to take Your Honour's instruction.
13 I would just like to clarify that this is nothing new.
14 This is the same concern I brought up on Tuesday that
12:30:43 15 they've now addressed today and I would like to respond
16 to. Were -- were it new, of course, I would put it in
17 writing or ask for it to be put on an agenda. And if
18 Mr Johnson requires a copy of his letter, I have an extra
19 copy for him. It is just a response to this letter and
12:31:01 20 what I said on Tuesday. I'll be very brief.

21 PRESIDING JUDGE: Yes, Mr Johnson.

22 MR JOHNSON: Your Honour, I would have to check, if I could.
23 I'm not sure that I could be fully prepared to bring
24 forward to you the details of the efforts that we have
12:31:19 25 taken -- that the Prosecution has taken to secure the
26 services of an expert. I need to check back with the
27 office to see if I could have that ready for you this
28 afternoon -- I'm not sure if I could, if you wanted to go

1 into the factual details of the efforts that we have
2 taken. Of course, going into those factual details, a
3 portion of that, as I indicate in a letter, would need to
4 be down either in a closed session or by confidential
12:31:50 5 correspondence.

6 PRESIDING JUDGE: I think -- there doesn't appear to be -- you
7 don't appear to be ad idem, you know, in your approaches,
8 that's true. So whether we should take it immediately or
9 not -- and I think we would like to give both Prosecution
12:32:01 10 and the Principal Defender enough time to expand on their
11 positions so that the Court has adequate elements and
12 information to be able to rule on the issue that is being
13 raised by the Principal Defender. In this regard we, the
14 Chamber, are of the opinion, and so direct that, you
12:32:27 15 know, this matter will be taken on Friday, next week --
16 Friday next week. I don't have the date. So, Court
17 Management, the matter will come up on Friday next week
18 and I hope that the parties will be fully prepared to
19 confront the issues at stake. Right.

12:33:09 20 Mr Pestman supports the third proposal by
21 Ms Whitaker on interview notes, and also submits a letter
22 which he had written to Mr Johnson for a full disclosure
23 and, of course, he added that on the application for a
24 closed session -- for a witness to be taken on closed
12:33:43 25 session, such an application should also be heard in
26 closed session. That, we agree. We shall move into
27 closed session, very shortly.

28 MR PESTMAN: Sorry, Your Honour, to interrupt, but I don't

1 think the third motion should be dealt with in closed
2 session.

3 PRESIDING JUDGE: No, I know.

4 MR PESTMAN: Oh, I misunderstood. Sorry.

12:34:12 5 PRESIDING JUDGE: I know. So there is a letter which you said
6 you wrote to Mr Johnson on full disclosure. Can you give
7 us -- is it the same --

8 MS WHITAKER: I believe it has just been handed up to Your
9 Honours.

12:34:32 10 PRESIDING JUDGE: Pardon me? It is a letter of the 8th of
11 September?

12 MS WHITAKER: Yes.

13 PRESIDING JUDGE: Yes. Mr Johnson, have you -- there is this
14 letter, the 8th of September; have you received it? Did
12:34:53 15 you receive it?

16 MR JOHNSON: Yes, Your Honour, I have it.

17 PRESIDING JUDGE: When did you receive it?

18 MR JOHNSON: I received it early yesterday morning.

19 PRESIDING JUDGE: Are you prepared to go on this?

12:35:05 20 MR JOHNSON: Yes, Your Honour.

21 PRESIDING JUDGE: Right, okay. I think this letter of the 8th
22 of September also concerns the Defence team, as indicated
23 by Mr Margai of the third accused. I think it is the
24 same letter, the letter of the 8th.

12:35:33 25 MR MARGAI: Yes, that we have associated with, yes.

26 PRESIDING JUDGE: Yes, that's right. Okay.

27 JUDGE BOUTET: We'll proceed with the interview notes as the
28 first issue as this is a public hearing, and we'll hear

1 that, and then we'll -- sometime today we're going to the
2 last -- the closed session issue on the insider witness.
3 So are you prepared? Ms Whitaker, you want to address
4 that first?

12:36:22 5 MS WHITAKER: As Your Honours please, yes.

6 Your Honour, the position is --

7 PRESIDING JUDGE: We would like counsel to be as brief as
8 possible to the core issues so that we move quite fast.
9 I'm not saying that Ms Whitaker --

12:36:44 10 MR MARGAI: May I just say something before my learned friend
11 proceeds on this matter, because I think there is -- I do
12 share a relationship between the Bench and the Bar. When
13 this matter was brought up to my attention this morning,
14 I took the liberty to discuss it with my learned friend
12:36:58 15 Kamara, and he assured me that he would discuss it with
16 Mr Johnson and would get back to us, and I think I
17 apprised my learned friends on the other side, because
18 his own situation was that he was not in a position to
19 ascertain whether all these handwritten statements were
12:37:23 20 available, and because of that he needed time to go and
21 consult. I stand to be corrected. That is the position,
22 and I believe you ought to be apprised of that before my
23 learned friend proceeds, because I am of the view that
24 matters such as these ought to be discussed amongst us as
12:37:35 25 colleagues and, failing an agreement, then we come to the
26 Bench.

27 PRESIDING JUDGE: Thank you, very much. Thank you for the
28 cooperation that -- and the initiative that you took to

1 discuss it with the Prosecution even before we came to --

2 MS WHITAKER: I'm grateful.

3 PRESIDING JUDGE: Yes, I was saying that I didn't mean to

4 suggest that Ms Whitaker was going to take a very long

12:38:05 5 time in pre-empting by saying that counsel should be

6 brief. This said, Ms Whitaker, you can go, please.

7 MS WHITAKER: Indeed, one would have hoped we could have

8 resolved these matters amicably. Sadly, I've been

9 informed by Mr Johnson, unequivocally, that he takes the

12:38:18 10 view we are not entitled to this material. In those

11 circumstances, with all due respect to my learned

12 colleague, I feel I must seek the Trial Chamber's

13 guidance at this juncture. We consider these are

14 necessary matters in order for us to effectively

12:38:33 15 cross-examine the witnesses, and thus, I must raise them

16 prior to the next witness being called.

17 Your Honours, it is clear from the last two

18 witnesses that have testified - number 162 and 159 - both

19 gave evidence on oath that handwritten notes were taken

12:38:59 20 by the investigator while were being interviewed. And my

21 recollection, Your Honour, is that the witnesses in the

22 prior session also gave similar evidence. It may be that

23 the Prosecution are now asserting that those witnesses

24 are not to be believed in this respect and such notes

12:40:00 25 weren't taken, in which case that is clearly a matter

26 relevant to their credibility, the witnesses, not the

27 Prosecution.

28 However, on the assumption that the Prosecution take

1 the view that they have adduced witnesses of truth, we
2 submit we are clearly entitled to those notes, following
3 Your Honours' detailed and considered ruling in the
4 decision on disclosure of witness statements and
12:40:36 5 cross-examination, dated the 16th of July. Our primary
6 submission then is, pursuant to Rule 66(A)(i) or (ii) we
7 are entitled to these notes as a matter of disclosure.

8 If I could perhaps briefly refer Your Honours to
9 Your Honours' ruling, which we rely, in its entirety, on
12:41:18 10 the meaning of witness statement, I don't know if Your
11 Honours are assisted by having a copy of Your Honours'
12 decision.

13 JUDGE THOMPSON: We do -- we do have a copy.

14 PRESIDING JUDGE: You can go ahead; we know what it is.

12:41:31 15 MS WHITAKER: I'm sure Your Honours do. Yours Honours then
16 will recollect at paragraph 8 that there was a -- one of
17 the central issues which this ruling concerned was the
18 contention as to whether or not interview notes amounted
19 to witness statements within Rule 66.

12:41:54 20 Your Honours noted in your ruling at paragraph 9
21 that the dictionary definition in Black's Law Dictionary
22 describes evidence as including an account taken by the
23 police pursuant to the investigation of the offence. And
24 Your Honours further noted at paragraph 10 that other
12:42:23 25 international tribunals have considered that, amongst
26 other things, records of questions put to witnesses and
27 answers given constitute witness statements.

28 Your Honours then considered the relevant

1 jurisprudence, which we rely again in its entirety, the
2 case of Blaskic, at paragraph 11, which, if Your Honours
3 will remember, the Trial Chamber held that all documents
4 in the Prosecution file should be disclosed in response
12:42:55 5 to a Defence application for disclosure.

6 Similarly, at paragraph 13 Your Honours consider the
7 case of Kordic where the tribunal at Yugoslavia held that
8 the Prosecution is required to make available to the
9 Defence the witness statement in the form in which it has
12:43:29 10 been recorded.

11 And further noting at paragraph 14 of your judgment
12 that the mere fact that the particular witness statement
13 does not correspond to the standard does not relieve a
14 party from its obligation to disclose it, pursuant to
12:43:49 15 Rule 66 of the Yugoslavian Rules and, indeed, our Rules,
16 too.

17 Your Honours, I skip over the part of your judgment
18 dealing with cross-examination and turning to the portion
19 under disclosure of witness statements, paragraph 22,
12:44:04 20 Your Honours found that, in the light of the foregoing
21 analysis, that there was no merit in the Defence
22 contention that the Prosecution's interview notes
23 prepared from oral statements of witnesses, do not, in
24 law, constitute witness statements. And, further, at
12:44:20 25 paragraph 23, that you were of the opinion that any
26 statement or declaration made by a witness in relation to
27 an event he witnessed and recorded, in any form - my
28 emphasis - by an official in the course of an

1 investigation falls within the meaning of a witness
2 statement.

3 Your Honour, in our submission, with that expansive
4 definition of a witness statement of the notes taken by
12:44:45 5 the investigator must clearly come under the rubric of a
6 witness statement and, as such, we're entitled to it
7 under the Rules on disclosure.

8 Alternatively, if Your Honours are not with us on
9 the contention that these amount to witness statements,
12:45:10 10 we would submit disclosure is clearly required under
11 either Rule 66(iii), which stipulates that at the request
12 of the Defence the Prosecution are required to make
13 available for inspection any documents that may be
14 material to the preparation of the Defence. Clearly,
12:45:32 15 interview notes that either confirm or are inconsistent
16 with a witness statement are relevant to the Defence in
17 terms of preparing the cross-examination of that witness
18 and ascertaining the veracity of his testimony - or her.

19 Alternatively, the matter must be -- disclosure must
12:45:57 20 be required as exculpatory evidence, if the notes reveal
21 significant inconsistencies with the statement that is
22 submitted to us.

23 Clearly, there are -- there is every legitimate
24 reason for the Defence to be entitled this material, and
12:46:20 25 one can see no good reason there could be for
26 non-disclosure by the Prosecution of such material,
27 unless, for instance, in some way it reflects on the
28 credibility of the witness or other matter, which again

1 is a matter appropriate for the Trial Chamber to be aware
2 of.

3 Your Honours, if it is the case - and it may be, I
4 know not - that the Prosecution is saying such notes no
12:46:54 5 longer exist, then we would ask that a statement be
6 provided by the Prosecution to that effect with no
7 suggestion on the -- no slur intended on the bone fides
8 of the Prosecution, but those of us who practice are
9 aware that the Prosecution is often a multi-headed beast,
12:47:17 10 and what one aspect of the Prosecution they consider they
11 don't have in their possession, in fact, another part of
12 it find they do have in their possession, and we would
13 welcome that that matter was thoroughly considered. And
14 if it is the case that those notes have been destroyed,
12:47:28 15 we would require information as to how that occurred, in
16 the chain of custody of the notes, from the handwritten
17 notes that the witnesses have testified to the
18 computer-generated statement.

19 It has appeared to those of us on this side of the
12:47:50 20 Bench that the Prosecution appear to be aware of
21 information beyond that in the statement to which the
22 witness testifies. It appears to not take them by
23 surprise in quite the way it does the rather more
24 expansive nature some of the evidence has been given to
12:48:07 25 that which the -- to the restricted statements that we've
26 been supplied with. If this additional information has
27 come from interview notes that we're not in possession
28 of, then clearly, that is an appropriate matter for us to

1 have knowledge of in order to be able to fairly deal with
2 at the time.

3 In keeping with Your Honour's suggestion that I
4 should be brief, unless there is any matter which I can
12:48:34 5 specifically assist you further, those are my submissions
6 on this issue.

7 JUDGE BOUTET: Just one question on your second alternative
8 under 66(iii) for inspection.

9 MS WHITAKER: Yes.

12:49:06 10 JUDGE BOUTET: This one is slightly different. What you're
11 suggesting is, if it is not disclosed, that at least the
12 Defence be allowed to inspect and look at these
13 documents.

14 MS WHITAKER: Indeed. If Your Honours are against me on my
12:49:19 15 primary contention that this comes within the very
16 expansive definition of a witness statement --

17 JUDGE BOUTET: I'm just inquiring of your second option. I'm
18 not disposing of the first one.

19 MS WHITAKER: No. Simply, there can be no good reason for not
12:49:33 20 disclosing it and that's where it is clearly relevant to
21 the preparation of the Defence.

22 JUDGE BOUTET: Don't read anything into my comments. I'm just
23 asking for clarification.

24 MS WHITAKER: I certainly won't, Your Honour, read anything
12:49:45 25 into it.

26 JUDGE THOMPSON: A question I might ask then: There are two
27 options that you have to the main -- you have two options
28 to your main submission.

1 MS WHITAKER: Yes.

2 JUDGE THOMPSON: In other words, if we do not agree with you
3 on the first option, then we consider option 2.

4 MS WHITAKER: Indeed.

12:50:05 5 JUDGE THOMPSON: Is option 3 conjunctive with option 2,
6 because there is also option 3. I think you talked about
7 exculpatory.

8 MS WHITAKER: Yes.

9 JUDGE THOMPSON: Is that a third option, or is it conjunctive
12:50:23 10 with option 2?

11 MS WHITAKER: It is a separate obligation, in my submission,
12 the obligation to disclose exculpatory material which
13 arises irrespective of a Defence request.

14 JUDGE THOMPSON: Yes.

12:50:32 15 MS WHITAKER: But as it happens in this case, we have made a
16 request, and so it may be that there is no difference in
17 practice between the requirement of the Prosecution to
18 disclose this material.

19 JUDGE THOMPSON: Yes.

12:50:45 20 MS WHITAKER: But as I understand the Rules, the obligation to
21 disclose exculpatory material arises whether we request
22 it or not.

23 JUDGE THOMPSON: Or not, yes.

24 MS WHITAKER: And clearly inconsistent interview notes with
12:50:57 25 that of a statement, in my submission, is potentially
26 exculpatory.

27 JUDGE THOMPSON: May well, yes. Okay, thanks.

28 MS WHITAKER: Your Honours.

1 JUDGE BOUTET: Mr Pestman, do you wish to add anything? And I
2 invite you, not necessarily to comment.

3 MR PESTMAN: No, I have nothing to add. Thank you.

4 JUDGE BOUTET: Okay, thank you. Mr Margai, on this issue?

12:51:23 5 MR MARGAI: Nothing to add, My Lords.

6 JUDGE BOUTET: Thank you. Mr Johnson?

7 MR JOHNSON: Thank you, Your Honour.

8 PRESIDING JUDGE: Before you proceed, we have it on record
9 from Ms Whitaker that you said that they are not entitled
12:51:39 10 to this material they're asking for.

11 MR JOHNSON: For the handwritten investigator notes, yes, Your
12 Honour. That is our position.

13 PRESIDING JUDGE: Go ahead.

14 MR JOHNSON: Okay, thank you, Your Honour.

12:51:49 15 First, let me address the issues with regards to
16 witnesses and statements by the witnesses and witnesses
17 saying that handwritten notes were being taken at the
18 time they were being interviewed, and I certainly will
19 not contest that. I'm absolutely sure that has happened
12:52:08 20 in many or most instances that witnesses have been
21 approached and have been interviewed, and I would only
22 like to point out first, that, as I believe, came through
23 one witness. Many, many different people from several
24 sections have, of course, interviewed these witnesses and
12:52:27 25 all taken notes, and in all instances, I would submit to
26 you, that if you look to your -- to your definition of a
27 statement in paragraph 23 of your opinion of 16 July,
28 where you state: "...that any statement or declaration

1 by a witness in relation to an event he witnessed...", in
2 that possibly many instances that these witnesses have
3 been referring to have been visited by the OTP Witness
4 Management Section where they have merely been checking
12:53:00 5 up on the witness, or getting particulars from the
6 witness, or even visits from the Registry Victim and
7 Witnesses Section, so again, to check on the witness or
8 to get personal information or other types of information
9 from the witness. And I'm not sure that the witness in
12:53:20 10 every case is distinguishing those kinds of visits and
11 those kinds of notes being taken from visits or
12 interviews concerning the events that they have
13 witnessed.

14 So all I'm merely suggesting in this case is that
12:53:35 15 the witnesses are visited numerous times by numerous
16 people from different places, and that doesn't
17 necessarily mean that every time they're there to take
18 witness statements or to take evidence from that witness.

19 Next, I would like to distinguish a little bit, if I
12:53:53 20 could, in your reference -- and again also to your
21 opinion on 16 July, and to possibly discuss the interview
22 notes that were being discussed in that opinion, and
23 where you clearly say -- of course, ironically at that
24 time the Defence was making the application that the
12:54:15 25 interview notes were not statements from the witness, but
26 just the same, you clearly state you, "...find no merit
27 in the Defence contention that the Prosecution interview
28 notes, prepared from oral statements of witnesses, do not

1 in law constitute witness statements." And we agree with
2 that; that was indeed our argument. And the interview
3 notes that were being discussed, in relationship to those
4 opinions, were the computer-generated interview notes
12:54:42 5 that were ultimately to disclose to Defence.

6 I submit to you, that at the time this opinion was
7 drafted, the handwritten investigator notes that were
8 used to possibly prepare those interview notes was not
9 what was being contemplated by you in that opinion. And
12:55:01 10 so, of course, we too do agree with the things that you
11 have -- with the characterisation of statements and
12 interview notes that you have in your opinion. But as
13 far as the point at hand regarding the handwritten
14 interview notes that we're referring to -- that the
12:55:24 15 Defence is seeking to obtain in this case, I would -- it
16 is our position that these interview notes are covered
17 under Rule 70(A) of the Rules which provides:

18 "Notwithstanding the provisions of Rule 66 and 67,
19 reports, memoranda, or other internal documents prepared
12:55:44 20 by a party, its assistants or representatives in
21 connection with the investigation or preparation of the
22 case, are not subject to disclosure or notification under
23 the aforementioned provisions."

24 I also draw your attention to the cite that you have
12:56:02 25 in paragraph 13, and I'll read a little bit more from it,
26 because I believe that learned counsel for the Defence
27 also referred to the paragraph 13. In the quote that you
28 take out of the Kordic case, it states: "Any undisclosed

1 prior statements of the accused in possession of the
2 Prosecution made in any type of judicial proceedings, and
3 whether collected by the Prosecution or originating from
4 any other source, save for any material covered by Rule
12:56:31 5 70(A) of the Rules which have not be disclosed."

6 You, too, have -- in your opinion, you have referred
7 to the Blaskic case. I would like to draw your
8 attention -- I'm sorry, I don't enough copies for
9 everybody. I have a few copies here. If we can at least

12:56:59 10 give one to the Bench and one or two over to Defence.
11 This is out of the Blaskic case, the decision on the
12 production of discovery materials dated 27 January 1997
13 which finds at paragraph 40: "It therefore finds that
14 the notes of the investigations, as well as the internal
12:57:22 15 reports at the Office of the Prosecution for any expert
16 witness must fall within the scope of 70(A) and not the
17 subject of any disclosure or exchange."

18 I submit to you that these handwritten notes from
19 which, in many cases, the computer-generated -- not in
12:57:44 20 every case, but in many cases there were handwritten
21 notes that would have led to the computer-generated
22 statements being prepared that were ultimately disclosed,
23 are not subject to disclosure, and they are indeed
24 covered under Rule 70(A) of the Rules of Procedure and
12:58:05 25 Evidence. It is not the policy of the Prosecution to
26 keep these handwritten notes after interviews have been
27 taken and after they have been ultimately transcribed
28 into a statement, whether it is under the title

1 "interview notes", "interview reports" or "witness
2 statements", which I believe -- as well as "confirmation
3 reports". I believe we have made disclosures of witness
4 statements and, again, we do take a very broad definition
12:58:35 5 of witness statements. I believe that we have made
6 disclosure of witness statements to the Defence under all
7 of those different names and, therefore, to my knowledge,
8 in most or all instances these interview notes, once
9 their function no longer exists, have been destroyed.

12:58:57 10 Now, the Defence pointed to exculpatory material.

11 PRESIDING JUDGE: I want to get you right, you know, on that.

12 Are you saying that those notes, which are being
13 solicited by the Defence, have been destroyed?

14 MR JOHNSON: I'm saying, Your Honour --

12:59:19 15 PRESIDING JUDGE: I want to get that right on the record,
16 because you remember Ms Whitaker raised the question; she
17 didn't raise the possibility of that. If they have been
18 destroyed, then she would like a cause to be shown as to
19 why they were destroyed. This is a very crucial issue,
12:59:43 20 Mr Johnson. Yes, you can go on.

21 MR JOHNSON: I understand. These notes -- if these notes --
22 as I said, it is not the policy of the Prosecution or the
23 investigations within the Prosecution to maintain these
24 notes and, typically, as I understand it, when their
12:59:59 25 function for these notes is no longer -- ceases because
26 they have been transcribed into a statement that I
27 believe, yes, these notes are destroyed, and these notes
28 are destroyed on the basis of the position of the

1 Prosecution, and the position of the Prosecution for a
2 long time, that these notes were not disclosable under --
3 as stated under Rule 70(A) of the Rules, and that is a
4 practice -- to my knowledge, it is not the practice
13:00:33 5 within the other tribunals to -- particularly the ICTY,
6 to disclose these interview -- handwritten notes. Now,
7 whether or not there were -- I can state to you that
8 handwritten notes do not exist in the witnesses that have
9 been referred to. There are no handwritten notes in
13:00:54 10 those cases in existence. If there were handwritten
11 notes at one time, I don't know, but I can state that
12 we've looked specifically for any such notes regarding
13 these witnesses and no such notes exist.

14 PRESIDING JUDGE: That is, the notes they are asking for you
13:01:15 15 say no longer exist?

16 MR JOHNSON: I don't know if they did exist with regard to
17 these witnesses. I don't specifically know if
18 handwritten notes were taken in regard to these
19 witnesses. I can tell you that in regard to the two
13:01:33 20 specific witnesses that the Defence is referring to in
21 this case, that no notes exist at this time.

22 JUDGE THOMPSON: Learned counsel, my experience with you is
23 that you have a reputation for precision. Do those
24 notes, in respect of which learned counsel for the
13:01:57 25 Defence are making this request, do you know whether they
26 existed or did not exist?

27 MR JOHNSON: I do not know that for these two --

28 JUDGE THOMPSON: Not that they do not exist at this time or

1 did not exist at some point in time?

2 MR JOHNSON: I know they do not exist at this time. Whether
3 handwritten notes were used in the preparation of the
4 witness statements for these two witnesses, I do not --
13:02:27 5 if they ever existed, I do not know.

6 JUDGE THOMPSON: You cannot assist the Court on this. I
7 thought there was confusion on whether they existed or
8 did not exist.

9 MR JOHNSON: If handwritten notes existed for the two
13:02:45 10 witnesses that have been referred to in this case --

11 JUDGE THOMPSON: You do not know.

12 MR JOHNSON: -- I do not know.

13 JUDGE THOMPSON: And you're not prepared to say that they did
14 not exist.

13:02:57 15 MR JOHNSON: I am not prepared to say that they did not exist
16 because I have checked and I know that they do not exist.
17 I have not gone to the particular people that would have
18 interviewed these witnesses and asked them specifically:
19 "Did you take handwritten notes and, from those
13:03:10 20 handwritten notes, did you ultimately prepare the
21 computer-generated statement?"

22 JUDGE THOMPSON: But do you agree as Prosecutor you must have
23 some peculiar knowledge in this area? I mean, I'm just
24 now -- do you agree that it is fair to conclude, or for
13:03:28 25 me to conclude that as a Prosecutor you would have
26 peculiar knowledge as to existence or non-existence, or
27 whether they did exist or did not exist?

28 MR JOHNSON: I can --

1 JUDGE THOMPSON: Would that be a fair assumption that -- in
2 other words, as Prosecutor, rather than as distinct from,
3 say, an ordinary staff member working within the Office
4 of the Prosecutor, would it be fair to say that you would
13:03:58 5 have peculiar knowledge on these matters?

6 MR JOHNSON: Yes, Your Honour.

7 JUDGE THOMPSON: Would it be fair or not fair?

8 MR JOHNSON: If I understand your question, I think that would
9 be fair, yes, Your Honour.

13:04:11 10 JUDGE THOMPSON: To say that you should have peculiar
11 knowledge of these matters, because you must assist the
12 Court and treat the Court with candour, because I'm
13 prepared to accept your word as Prosecutor, who has been
14 involved in this case, that what you say here we should
13:04:27 15 accept in good faith. So I'm struggling --

16 MR JOHNSON: Yes, Your Honour. Yes, Your Honour.

17 JUDGE THOMPSON: -- to understand the train of your thought.

18 I'll say no more on that point and let you continue.

19 PRESIDING JUDGE: Yes, can you be wrapping up, please.

13:04:50 20 MR JOHNSON: Oh, yes, Your Honour, yes.

21 With respect to the Defence concerns about
22 exculpatory material, as I've stated I believe many times
23 in the past, we fully understand and are aware of our
24 obligation to disclose exculpatory material, and
13:05:14 25 certainly it is our policy to -- when things are
26 transcribed and statements are put together and
27 computer-generated statements are put together, that any
28 exculpatory material that may have been provided to us by

1 the witness are certainly included in those statements,
2 by whatever name those statements have been provided,
3 whether it is under the name of an interview note, an
4 interview report or witness statement.

13:05:43 5 I have not contemplated the Defence request under
6 66(iii) and, therefore, I can only say to the extent that
7 I really don't think that this was the kind of thing that
8 was contemplated by Rule 66(iii).

9 The Defence briefly addressed the issue again
13:06:16 10 concerning the full content of witness statements and
11 that there are times when witnesses testify beyond what
12 was in the witness statement, and I just submit to you
13 that that has been dealt with thoroughly by opinions in
14 both this case and the RUF case.

13:06:36 15 Finally, I believe I could follow up with -- no, I
16 can't -- okay, that's what I have, Your Honour. Our
17 position quite simply is that this is accepted in
18 international practice that these notes are covered under
19 Rule 70(A).

13:06:56 20 JUDGE BOUTET: I do have a few questions, if I may. I heard
21 you to say that to disclose these kinds of notes,
22 interview notes, it is not a practice at ICTY. What is
23 the practice, if you know it, at ICTR?

24 MR JOHNSON: I couldn't get in touch with them. I only spoke
13:07:12 25 with the Prosecution at ICTY, Your Honour.

26 JUDGE BOUTET: And can you tell me why this is the policy at
27 your office to destroy these notes?

28 MR JOHNSON: These are covered under Rule -- that these are

1 covered under Rule 70(A), Your Honour.

2 JUDGE BOUTET: To destroy them?

3 MR JOHNSON: Oh, no, no. But we see no obligation to -- no

4 requirement to disclose these, and so we have no

13:07:42 5 obligation to keep them. Certainly, if we felt we had an

6 obligation to keep these, we would never destroy them.

7 JUDGE BOUTET: But what if there are fundamental discrepancies

8 in what you have as the computer printout now and the

9 notes that were taken at the time?

13:08:00 10 MR JOHNSON: I would submit --

11 JUDGE BOUTET: If there were major discrepancies that would

12 reveal a problem between the notes taken and what you

13 have now as a computer-generated statement --

14 MR JOHNSON: I'm not aware --

13:08:18 15 JUDGE BOUTET: -- how is the Defence to know about it? If a

16 witness, for example, at the time of the interview has

17 given certain information, as such, and that information,

18 for whatever reason, does not appear in your final

19 statement?

13:08:35 20 MR JOHNSON: Well, Your Honour, other than the professionalism

21 and due diligence of the investigator or --

22 JUDGE BOUTET: But mistakes do happen.

23 MR JOHNSON: I acknowledge that they could, but we try very

24 hard to ensure that they don't.

13:08:52 25 JUDGE BOUTET: Okay, thank you.

26 JUDGE THOMPSON: I have just one brief question of law and I

27 hope you follow me carefully. What aspects of the

28 reasoning, crystallising in our ruling on the meaning of

1 witness statements, compel you to come to the conclusion
2 that our meaning limits or our ruling limits or restricts
3 the meaning of witness statements to include only
4 interviews that are computer-generated or interview notes
13:09:32 5 that are computer-generated and not interview notes that
6 are in handwritten form? In other words, where did we
7 say in that ruling that the meaning of witness
8 statements, in respect of interview notes, only applies
9 to those -- or only applies to those that are
13:09:57 10 computer-generated and not the ones that are handwritten?
11 I mean, what is your authority for that? Why do you say
12 that, when we made the decision, we only contemplated
13 interview notes that are computer-generated and not
14 interview notes that are in handwritten form? What is
13:10:20 15 your authority for that?

16 MR JOHNSON: If I follow your question, Your Honour --

17 JUDGE THOMPSON: Yes, go ahead.

18 MR JOHNSON: If interview notes were not subsequently
19 transcribed in a computer-generated form, as such, then
13:10:38 20 the handwritten interview notes would be what we would
21 have and what we would use and what we would disclose. I
22 can't think of an example of that. Certainly, we have
23 disclosed handwritten statements to the Defence. In most
24 instances these statements are statements that have been
13:10:59 25 signed by the particular witness.

26 JUDGE THOMPSON: But clearly -- what I'm concerned about is
27 not so much the disclosure aspect. When we're defining a
28 witness statement, we defined a witness statement to

1 include interview notes.

2 MR JOHNSON: Um-hum.

3 JUDGE THOMPSON: But you're saying that our definition of

4 interview notes there only relates to interview notes

13:11:26 5 that are computer-generated. My question is: Where in

6 this reasoning or ruling did we so limit or restrict

7 ourselves?

8 MR JOHNSON: No, it's -- no, I believe I understand your

9 question, and in nowhere in that light in what you're

13:11:46 10 saying, and if we did not transcribe the handwritten

11 notes into a typewritten form, which is really all we're

12 saying when we say "computer-generated," if the

13 handwritten notes had not been transcribed into a

14 type-written form, then it would be those handwritten

13:12:13 15 notes that would be covered by your opinion as interview

16 notes.

17 JUDGE THOMPSON: Yes. I find no authority limiting us to

18 that. In fact, we're embarking upon an all-encompassing

19 definition present to our minds. We're not limiting

13:12:17 20 factors --

21 MR JOHNSON: I understand --

22 JUDGE THOMPSON: -- because if you are right - of course

23 you've considered that you are not - then it would mean

24 that you are saying, using the language of corporate law,

13:12:38 25 we can not pierce the veil of computer-generated form.

26 MR JOHNSON: Absolutely not, Your Honour. What I was simply

27 trying to say is that, in this opinion, of course, was

28 written, of course, concerning interview notes that we

1 had passed along, and in each case those interview notes,
2 if they were taken in a handwritten form in the first
3 place, and I could not answer that question, because
4 there certainly have been times where the investigator or
13:13:08 5 the attorney, in some cases, who have taken a statement,
6 have actually taken that statement directly on to a
7 computer; in other words, there were no handwritten
8 notes.

9 JUDGE THOMPSON: Yes. Remember, we were confronted with a
13:13:24 10 very novel proposition by the Defence that only
11 statements in the first person can be regarded as
12 statements within the meaning of the ruling. And we
13 said, "No, we don't agree." But when we were trying to
14 embrace interview notes, we didn't intend to restrict
13:13:44 15 ourselves to only those that were computer-generated.

16 MR JOHNSON: Absolutely, Your Honour, and I certainly did not
17 intend to imply that.

18 JUDGE THOMPSON: Thank you.

19 MR MARGAI: My Lords, I'm sorry. I don't know whether we
13:13:59 20 would be asking too much if we're to suggest, in the
21 interest of progress, for the Prosecutor's Office to
22 disclose to this Chamber, if need be on oath, without
23 casting any aspersions on the integrity of the office,
24 all handwritten notes relating to witnesses who have
13:14:23 25 testified and those to testify within their possession.
26 You see, because we anticipate a situation arising
27 whereby we might receive information relating to
28 exculpatory evidence which was -- which featured when the

1 interview was conducted, and if that were to be brought
2 before this Court, we would find ourselves, and also our
3 colleagues on the other side, in a very invidious
4 position as to how the scenario should be addressed.

13:15:03 5 These are possibilities, though remote.

6 MS WHITAKER: Could I reply very briefly to the Prosecution
7 submissions?

8 JUDGE BOUTET: Yes.

9 MS WHITAKER: I'm sure my learned friend has no intention of
13:15:17 10 misleading the Court, but with the greatest of respect to
11 him, I would submit that I fail -- it is very difficult
12 to see how he can assert that these don't exist if he's
13 never found out whether they did exist in the first
14 place. You could only assert to the Court "they no
13:15:32 15 longer exist" if you had spoken to the investigator who
16 took the notes who says, "I've destroyed them," because
17 although my learned friend may not be able to locate them
18 at the moment, there is nothing to indicate that the
19 investigator doesn't have them in a locked cupboard in
13:15:45 20 his room, for instance. I make that point and I submit
21 that would be absolutely required as a bare minimum if
22 the Prosecution are to expect us to accept that these
23 notes no longer exist.

24 The obvious issue that arises between the notes and
13:16:01 25 the statement is that unhelpful material to the
26 Prosecution may not find its way from the notes into the
27 computer-generated statement, or there may be basic
28 transcription errors between the notes and the computer

1 statement - and mistakes are clearly occurring somewhere
2 down the line, hence the numerous correction statements
3 that we're getting, and indeed, the evidence of this
4 witness, the last witness, that he didn't say various
13:16:27 5 things that were put in his statement.

6 My Lord -- Your Honours, on the issue of Rule 70(A),
7 not requiring disclosure, in my submission, that is
8 clearly referring to privileged material, reports,
9 memorandums, internal documents of which are -- under no
13:16:49 10 definition did notes of an interview amount to privileged
11 material. And I'm grateful to Your Honour.

12 The case of Blaskic that my learned friend refers
13 to, the notes of investigations which are withheld, in my
14 submission, are clearly notes about following leads,
13:17:02 15 about how to progress the investigations which are, under
16 my understanding of the common law, privileged material
17 which, indeed, are protected from disclosure -- clearly,
18 not what is under discussion at the moment.

19 By way of information, Your Honour, I'm informed
13:17:18 20 that the practice at the ICTR was that investigators --
21 where there were discrepancies, the investigators were
22 brought before the Court and cross-examined, under
23 penalty of perjury, thoroughly about any discrepancies.
24 Now, that is an alternative, for my learned friend to
13:17:33 25 produce the investigators and then to be cross-examined
26 at great length, but within the interests of expedition,
27 he may prefer to take the disclosure route.

28 JUDGE THOMPSON: Not to present the Court with a fait

1 accompli.

2 MS WHITAKER: Indeed, absolutely, Your Honour.

3 PRESIDING JUDGE: The Chamber has listened to the parties and
4 we're putting this matter on advisement and we'll

13:19:26 5 consider the arguments raised and we will deliver our
6 ruling on a date that will be announced in due course in
7 the very near future, certainly, of course, within the
8 session in order to allow the proceedings, you know, to
9 move along without any interruptions. So we'll fix the
13:19:54 10 date when we shall deliver our ruling on this matter.

11 Thank you very much. It is 1.15, getting to 1.20. We
12 would rise and continue with the other issues on the

13 agenda at 3.00.

14 MR JOHNSON: Excuse me, Your Honour.

13:20:20 15 PRESIDING JUDGE: Yes, Mr Johnson.

16 MR JOHNSON: I apologise. I'm not sure if it was your
17 intention to pick up with a witness again today. I was
18 only going to suggest that, if it is not, I don't know
19 that we couldn't resolve the issue of the closed session
13:20:35 20 for the witness in a very short period of time and
21 perhaps get everything done before lunch.

22 [Trial chamber confers]

23 PRESIDING JUDGE: Yes, Mr Johnson, we've taken note of your

24 suggestion and the Chamber prefers to take this issue
13:21:24 25 sometime in the afternoon. So the Court would raise this
26 and other issues -- we'll take this and other issues that
27 were raised by learned counsel for the Defence to be
28 addressed by this Court in the afternoon, but we can say

1 here now, you know, following the train of argument that
2 we might not be able -- we would not be able to take on
3 any witness this afternoon. So the issue of witnesses
4 would be resumed on Monday.

13:22:04 5 MR JOHNSON: Thank you, Your Honour. We have a witness
6 standing by and we'll let that witness go.

7 PRESIDING JUDGE: You can dispose of him and prepare him for
8 Monday.

9 MR MARGAI: My Lords, since I will not be affected by the
13:22:20 10 issues to be deliberated upon at 3.00, may I respectfully
11 ask for your permission for me to take my exit so that I
12 could avail of the -- -

13 PRESIDING JUDGE: We always like to have a full court.

14 MR MARGAI: I know that, My Lord.

13:22:36 15 PRESIDING JUDGE: Although the indictments are --

16 MR MARGAI: My Lord, I'm craving your indulgence. I mean,
17 quite frankly, as I said to the --

18 PRESIDING JUDGE: That's all right. That's okay, Mr Margai.

19 MR MARGAI: Thank you.

13:22:42 20 PRESIDING JUDGE: That's all right, yes. Mr Margai, you
21 can -- I know weekend obligations are --

22 JUDGE THOMPSON: And pressing legislative duties.

23 MR MARGAI: [Microphone not activated] -- very taxing because
24 by the time we leave here at 5.00, 6.00 one is just fit
13:23:05 25 for a shower and the bath.

26 PRESIDING JUDGE: I will quote a friend: "You know you are
27 preaching to the choir." Right. The Court will rise.
28 Please.

1 [Luncheon recess taken at 1.20 p.m.]

2 [On resuming at 3.15 p.m.]

3 [HN100904D]

4 PRESIDING JUDGE: The session is resumed and -- are there any
15:13:32 5 other issues? Incidentally the accused bench is doubly
6 amputated; not triply amputated, I said doubly amputated.
7 Thanks to goodness, Mr Hinga Norman is there. May we
8 have an explanation for that, please?

9 MR PESTMAN: Yes. My client had some family visits again from
15:14:02 10 outside of Freetown, so he asked to be excused to attend
11 this meeting. He is seeing his family now at the moment.

12 PRESIDING JUDGE: Not he has to be excused. Is he praying the
13 Court to excuse his absence or?

14 JUDGE THOMPSON: Did I hear you say "asked" to be excused?

15:14:34 15 PRESIDING JUDGE: "Has," you said "has."

16 MR PESTMAN: Asked.

17 PRESIDING JUDGE: Oh, I heard him saying "has."

18 JUDGE THOMPSON: No, I heard "asked."

19 PRESIDING JUDGE: Well, okay.

15:14:40 20 JUDGE THOMPSON: He praised the Court to be excused. This
21 should be the common law tradition, the civil would be
22 different. I'm sure the same result anyway --

23 PRESIDING JUDGE: Even the civil, which I am very familiar
24 with, you know, has those very nice expressions. In my
15:14:48 25 country we have two systems: The civil and the common,
26 and we swim between the two. At times we get lost but we
27 find our way somehow. So is it the same with the third
28 because counsel for the third -- there is no counsel

1 representing the third accused? Can the Principle
2 Defender enlighten us on this?

3 MS MONASEBIAN: My understanding, Your Honours was that only
4 counsel asked to be excused, but maybe that was an
15:15:18 5 omission and he may have meant for his client as well.
6 We are happy to appear for him. As he's his client, I
7 cannot give you a definitive answer.

8 JUDGE BOUTET: Although my understand of the request was made
9 by Mr Margai, and about Mr Margai. I did not understand
15:15:46 10 his request for the absence of the total team this
11 afternoon, and certainly not for his client or their
12 client, but I take it anyhow, there must have been some
13 misunderstanding somewhere.

14 PRESIDING JUDGE: Is there any other issue that we have left
15:16:16 15 unattended to during the open session, I mean, the issues
16 which we -- which are raised by counsel for the defence;
17 is there any other? We know that there is an issue that
18 was raised for the closed session. Is there any one that
19 concerns the open session that we have not attended to?

15:16:44 20 MR JOHNSON: Not to my knowledge, Your Honour.

21 PRESIDING JUDGE: Not to Your Knowledge.

22 MR JOHNSON: Not to my knowledge, Your Honour.

23 PRESIDING JUDGE: Right. At this stage, we would like -- we
24 do grant the application of the -- we uphold the
15:17:02 25 submission by Mr Pestman that since the application
26 before us is to hear a witness in closed session, that
27 that application should be heard in closed session as
28 well. We do uphold that submission, and this said, we

1 would be moving into the closed session. We would like
2 the disposition to be put in place for the closed session
3 to take place.

4 JUDGE BOUTET: Although we are going to be moving into a
15:17:38 5 closed session, is it the intent of either party to call
6 witnesses in this closed session or simply arguments? Mr
7 Pestman.

8 MR PESTMAN: No. I have no intention to hear witnesses at
9 all.

15:17:58 10 JUDGE BOUTET: Because we can just close the speakers on the
11 public gallery, but still leave the -- open the curtains
12 depending as to what it is you intend to do. That is why
13 I am asking the question.

14 MR PESTMAN: No, I am not intending to hear any witness. I
15:18:06 15 think if it is technically possible to close all -- to
16 turn off the mics --

17 JUDGE BOUTET: Oh yes, we can closed the mics on the public
18 gallery.

19 PRESIDING JUDGE: Well, I think all the public gallery needs
15:18:14 20 to know is that we are moving into a closed session which
21 is not a public session, and that if they so desire, they
22 might stay. If --

23 JUDGE BOUTET: There would be no voice.

24 PRESIDING JUDGE: Yes, there would be no voice; you would not
15:18:30 25 hear anything, but if you just want to see us talking
26 like dummies, well you can just sit there and be watching
27 us talking like dummies and amusing yourselves. But --
28 it is always a pleasure having the gallery with us. We

1 will miss you very much, but we will continue without you
2 for legal reasons which we hope you understand. Thank
3 you. Can the technicians please put in place the --

4 JUDGE BOUTET: Can the security tell us if the sound is off?

15:19:30 5 No, it is still on. Thank you. Is it off now? You
6 still hear me; it's off? I would imagine that it means
7 it is off.

8 [At this point in the proceedings, a portion of the
9 transcript, pages 99 to 117, was extracted and sealed

15:19:54 10 under separate cover, as the session was heard in camera]

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C E R T I F I C A T E

We, Maureen P Dunn, Roni Kerekes, Susan G Humphries and Momodou Jallow, Official Court Reporters for the Special Court for Sierra Leone, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (machine writer) and thereafter transcribed by computer, that the foregoing pages contain a true and correct transcription of said proceedings to the best of our ability and understanding.

We further certify that we are not of counsel nor related to any of the parties to this cause and that we are in nowise interested in the result of said cause.

Maureen P Dunn

Susan G Humphries

Roni Kerekes

Momodou Jallow

EXHIBITS:

Exhibit No. 8	34
Exhibit No. 9	50

WITNESSES:

WITNESS: TF2-159	1
CROSS-EXAMINED BY MR WILLIAMS:	1
RE-EXAMINED BY MR KAMARA:	22