



Case No. SCSL 2011-01-I
THE INDEPENDENT PROSECUTOR

-V-

HASSAN PAPA BANGURA, SAMUEL KARGBO, SANTIGIE BORBOR KANU AND
BRIMA BAZZY KAMARA

| | |
|---------------------------------------|---|
| Before the Judge: | Justice Teresa Doherty |
| For Chambers: | Erica Bussey |
| For the Registry: | Elaine-Bola Clarkson Adama Daff |
| For WVS: | Saleem Vahidy |
| For the Prosecution: | Mohammed Saidu Bangura Laura Kathleen Campbell |
| For the accused Hassan Papa Bangura: | Melron Nicol Wilson |
| For the accused Samuel Kargbo: | Charles Taku |
| For the accused Santigie Borbor Kanu: | Kevin Metzger |
| For the accused Brima Bazzy Kamara: | Abdul Serry Kamal |
| For the Principal Defender: | Claire Carlton-Hanciles Joseph Buckle |

15 July 2011

Independent Prosecutor -v- Hassan Papa Bangura, Santigie Borbor Kanu and Brima

Bazzy Kamara

JUSTICE DOHERTY: Good morning. Before I swear in the interpreter and take appearances, I will first check that we have a good clear view from Kigali and that Kigali can hear and understand all that is being said. Can I get confirmation from Kigali that they can hear and see us?

MR METZGER: The Defendants are not getting the translation, but that's probably because the translator -- the interpreter hasn't started.

JUSTICE DOHERTY: I intend therefore --

MR METZGER: Other than that, we are getting you loud and clear.

JUSTICE DOHERTY: Yes, I am going to put in the interpreter before I take appearances so that the accused can clearly hear and understand everything that is being said, including appearances. So I will now proceed. Now that I know that you can hear you, I will now proceed to swear in the interpreter.

Madam Court Officer, if the Court interpreter can be sworn.

MR METZGER: Thank you, your Honour.

JUSTICE DOHERTY: Well, I will first ask that the case be called.

THE COURT OFFICER: This is case number SCSL 2011-02-I, Independent Counsel against Hassan Papa Bangura, Samuel Kargbo, Santigie Borbor Kanu, Brima Bazzy Kamara, with Justice Teresa Doherty presiding. All persons having anything to do in this case, draw near and give your attendance.

JUSTICE DOHERTY: Thank you. We will now proceed to swear in the interpreter. Is the interpreter here?

(The interpreters enter the courtroom)

JUSTICE DOHERTY: Please come forward.

THE COURT OFFICER: Your choice is it the Bible, or the Koran? The Bible. Okay,

1 the Bible, the Koran. Okay. I will administer the oath under Rule 76 to our
2 interpreters. Can you put your hands on the books. Before performing any duties
3 as an interpreter, do you solemnly declare to interpret faithfully, independently,
4 impartially and with full respect for the duty of confidentiality, so help you God?
5 Thank you.

6 JUSTICE DOHERTY: Thank you, Madam Court Officer. I will take appearances.
7 I'll start with Kigali. Appearances, please, Counsel?

8 MR METZGER: Good morning, your Honour. It is Kevin Metzger for Santigie
9 Borbor Kanu.

10 JUSTICE DOHERTY: Thank you, Mr Metzger. Who else do we have?

11 MS CARLTON-HANCILES: And in Freetown it is Abdul Serry Kamal for Brima
12 Bazy Kamara. Abdul Serry Kamal is on his way now. He was caught up in a
13 serious traffic. He intimated me that I stand in for the time being until he comes and
14 he sends his apologies. He is doing his best to be here, but for the time being I
15 represent him, the Principal Defender.

16 JUSTICE DOHERTY: Thank you, Ms Hanciles. For the other accused, yes?

17 MR WILSON: Your Honour, Melron Nicol Wilson appears for Hassan Papa
18 Bangura.

19 JUSTICE DOHERTY: Thank you, Mr Nicol.

20 MR TAKU: May it please your Honours, my name is Chief Charles Taku and I
21 appear for Mr Samuel Kargbo.

22 JUSTICE DOHERTY: Thank you, Mr Taku.

23 MR BANGURA: [Microphone not activated] For the Prosecution, Mr Robert L
24 Herbst and Mohammed Sahid Bangura. Unfortunately, Mr Herbst is not within the
25 jurisdiction and I will definitely step in in his absence. My apologies for that.

26 JUSTICE DOHERTY: It was understood, Mr Bangura, that he could not be available
27 and the Registrar has accordingly appointed you, and I personally have no problem
28 with such an appointment which is within the jurisdiction of the Registrar. And

1 who have you with you?

2 MS CAMPBELL: Your Honour, I am Kate Campbell of the Prosecution.

3 JUSTICE DOHERTY: Thank you, Ms Campbell.

4 Are there any preliminary matters before I proceed to arraign the accused? Mr Taku,
5 you are getting to your feet.

6 MR METZGER: On behalf of Santigie Borbor Kanu --

7 JUSTICE DOHERTY: Mr Metzger, I think that is your voice.

8 MR METZGER: -- we do not believe that there are any preliminary matters --

9 JUSTICE DOHERTY: Thank you, Mr Metzger.

10 MR METZGER: -- which exist at this stage, but we would like to place the Court on
11 notice that, once material has been served on us, it may just be that consideration will
12 have to be given to some preliminary motions, or matters.

13 JUSTICE DOHERTY: Thank you. I could -- I could foresee such applications. We
14 will deal with them in due course, Mr Metzger. Thank you.

15 MR METZGER: I am very much obliged, your Honour.

16 MS CARLTON-HANCILES: Your Honour, just in my hand is an authorisation just
17 for the purposes of today for Mr Serry Kamal to appear in Freetown whilst the -- his
18 client appears in Rwanda, and this authorisation is to the effect that they have
19 discussed all legal matters pertaining to the initial appearance and that he is fine to be
20 in Kigali and that Mr Serry Kamal can appear today in Freetown on his behalf. If
21 you wish, your Honour, I could tender it to the Court?

22 JUSTICE DOHERTY: That would be helpful, Ms Hanciles. Of course arrangements
23 between Counsel and their client that do not impinge on the course of justice would
24 normally be acceptable to the Court.

25 MS CARLTON-HANCILES: Much obliged, your Honour.

26 JUSTICE DOHERTY: Yes, I have read the document and I am satisfied that the
27 accused has agreed to the appearance of his Counsel here in Freetown.

28 MS CARLTON-HANCILES: Much obliged, your Honour.

1 JUSTICE DOHERTY: Thank you. Mr Taku, you are on your feet.

2 MR TAKU: May it please the Court, I will be making representations on behalf of
3 Mr Kargbo prior to him taking his plea, and we will leave the time at which this
4 representation should be made entirely at the discretion of the Court.

5 JUSTICE DOHERTY: This is a matter that relates to the plea that should be dealt
6 with before the plea is taken?

7 MR TAKU: Exactly, your Honours. It is a matter that relates to his plea.

8 JUSTICE DOHERTY: As you know, Mr Taku, we do not have any set procedure
9 for -- that would be say comparable to the procedure of the ICTY, but if there is some
10 matter that has to be brought to the attention of the Court before the plea is put, or
11 plea is taken, I will consider it if it is something I should consider beforehand. So if
12 you have something that you wish to say to the Court before I put the plea to your
13 client, please proceed to do so.

14 Could I -- just before you proceed, can I note the appearance of Mr Serry Kamal for
15 purposes of record. Yes, Mr Taku?

16 MR TAKU: Yes, your Honour. When I was assigned to defend Mr Kargbo I took
17 very urgent measures to meet him for a briefing on the matter, and Mr Kargbo
18 informs me and I believe that he had opted to get into a plea agreement with the
19 Independent Prosecutor in this case. I did, your Honours, talk to him at length. I
20 talked to Bob Herbst and Mr Bangura with regard to this plea agreement.
21 I am conscious and I did advise the client that we do not really have the equivalent of
22 Rule 62 ter, or Rule 62 bis, as might be the case in ICTR or ICTY. Nevertheless, at
23 some point, your Honours, prior to the enactment of Rule 62 ter at ICTY this situation
24 did arise before that Court, and in the case of Prosecutor versus Momir Nikolic the
25 Court invoked its inherent jurisdiction to consider the plea agreement and that
26 judgment is a judgment of December 2003 and in paragraph 49 it was decided that the
27 Court, the Trial Chamber or the Judge, being the ultimate guarantor of the fairness of
28 the proceedings and the rights of the accused, has inherent powers to look at the act

1 or the circumstances and facts and evidence brought to the attention of the Court that
2 would assist the Court in doing justice in the matter.

3 The next case that that was concerned was Prosecutor versus Sirikica, S-I-R-I-K-I-C-A.
4 That is the judgment of 13 November 2001 and paragraphs 52 to 55.

5 Your Honours, we will be tendering that plea agreement to the Court now. It has a
6 confidential annexure. However, we assure the Court that for the fairness of the
7 proceedings and fairness to all the co-accused in this case, at some point in time under
8 your direction the plea agreement will be disclosed to them in order to prepare their
9 defence, but because of the fact that the confidential annexure contains matters which
10 this Court had already issued protective measures, your Honour will make such
11 orders that Counsel and parties to which this plea agreement will be disclosed do not
12 do anything to divulge the information contained therein to parties who are not
13 involved in the proceedings. That will enable us the Court to reach the plea
14 agreement and to consider in the context of the plea - the overall context of the
15 plea - that Mr Kargbo will make shortly in this case.

16 Your Honours, here is a copy of the plea agreement with the confidential annexure
17 which we tender to the Court.

18 JUSTICE DOHERTY: Thank you, Mr Taku.

19 Mr Bangura, are you aware of this?

20 MR BANGURA: I am very much aware of the plea agreement and the necessary
21 signatures are appended therein and there has been substantial cooperation between
22 the Prosecution and Chief Taku in respect of that.

23 JUSTICE DOHERTY: I have just been informed that one of the interpreters wasn't
24 here to be sworn in, so we are going to swear that interpreter in now. As I've
25 already said, it is important that everyone understands what is being said and
26 therefore it is important that the interpreters are in place.

27 MR KAMAL: I am sorry, your Honour.

28 JUSTICE DOHERTY: Mr Serry Kamal.

1 MR KAMAL: Yes, indeed. I am sorry, I was -- I had some difficulty getting here
2 and getting my robes. I appear for Ibrahim Bazy Kamara.

3 JUSTICE DOHERTY: Thank you, Mr Serry Kamal. I noted your appearance and
4 Ms Hanciles had explained to the Court the reasons for your absence, or the delay,
5 and I have now put on record your appearance.

6 MR KAMAL: Thank you very much, your Honour.

7 JUSTICE DOHERTY: Where is this interpreter?

8 THE COURT OFFICER: The Court has one more interpreter coming in that needs to
9 be sworn in.

10 (Pause in the proceedings)

11 JUSTICE DOHERTY: I am beginning to think he's a mythical figure.

12 (The interpreter enters the courtroom)

13 JUSTICE DOHERTY: Just a moment. Is this the interpreter?

14 THE COURT OFFICER: Yes, this is the interpreter.

15 JUSTICE DOHERTY: Now, you have been an interpreter in this Court before and
16 you know we start at 9 o'clock. What happened to you?

17 THE INTERPRETER: [Microphone not activated].

18 JUSTICE DOHERTY: I see. All right, please proceed to take the oath.

19 THE COURT OFFICER: Before performing any duties as an interpreter, do you
20 solemnly declare to interpret faithfully, independently, impartially and with full
21 respect for the duty of confidentiality, so help you God?

22 THE INTERPRETER: So help me God, yes, I do.

23 THE COURT OFFICER: Thank you.

24 JUSTICE DOHERTY: What language will you speak?

25 THE COURT OFFICER: Krio.

26 JUSTICE DOHERTY: Krio, thank you. I am going to quickly read this document
27 and then I will proceed to take the pleas.

28 MR METZGER: May I address the Court, your Honour? May I address the Court?

1 (Pause in the proceedings)

2 JUSTICE DOHERTY: Who's got a mobile phone in Court?

3 (Pause in the proceedings)

4 JUSTICE DOHERTY: I have read this document. In accordance with my normal
5 attitude and procedure I have not read the witness statements, as I don't believe in
6 predetermining issues of fact until I hear from the people concerned.

7 I note that the accused, Samuel Taku (sic), has made certain decisions on how he will
8 proceed in this hearing, but has clearly and categorically stated that he has done so in
9 the knowledge that it in no way binds the Court and that the independence of the
10 Court in regard to him is not interfered with or bound by any of the understandings
11 that he has formulated after taking advice of his Counsel.

12 In the light of that, I will put the document aside temporarily and I will proceed to
13 ask Madam Court Officer to arraign the accused.

14 Before I do so, I note that the indictments refer to a protected witness under their
15 pseudonym or TFI-number. An accused is of course entitled to know exactly what
16 accusations are being levelled against him in the indictment and, for reasons of
17 protection of the protected witness and their security, I will have the indictment read.
18 I will then briefly go into closed session in relation to each accused and inform each
19 accused the name of the person referred to. The plea will of course be taken openly
20 and in public.

21 I will commence by taking -- asking Madam Court Officer to arraign those persons
22 standing accused in Kigali. Mr Metzger, you are Counsel representing in Kigali.
23 Have you any objection to the procedure which I intend to adopt to ensure the
24 protection and security?

25 MR METZGER: I have no objections to that, but wish to make some observations
26 before we proceed to that process, if I may?

27 JUSTICE DOHERTY: Are they of a procedural nature, Mr Metzger, or are they -- do
28 they go to the core of the issue before us?

1 MR METZGER: They don't go to the core of the issue. They are of a procedural
2 nature.

3 JUSTICE DOHERTY: Please proceed then and make those submissions, Mr Metzger.

4 MR METZGER: First of all, may I apologise for sitting while addressing your
5 Honour. It is the way the video set-up is.

6 JUSTICE DOHERTY: Don't worry, Mr Metzger. The most efficient way of
7 handling this case and upholding the process of justice is most important, so I do not
8 object. Please continue. The impression I form from the picture is that things have
9 frozen. I don't see any movement, or hear anything. Can you hear me in Kigali?

10 MR METZGER: I can hear you now, your Honour. This is the difficulty and this
11 was what I wanted to raise to your attention. It is sometimes difficult to let the
12 Court know what our position is, and perhaps at every juncture before we move on if
13 we could just check that we are getting each other loud and clear?

14 JUSTICE DOHERTY: That sounds very constructive. I will therefore proceed now
15 to the arraignment and, at the end of Madam Court Officer reading the first
16 indictment, I will ask you all if you have heard it and then if you have a problem we
17 will recite it again. I hope that will overcome any logistical problems.

18 Madam Court Officer, if you first please read the indictment to Mr Kanu and, when
19 you have finished reading Count 1 and Count 2, we will go briefly into private
20 session to allow you to inform the accused who the person is that has been referred to
21 by a TFI-number.

22 Mr Kanu -- can Mr Kanu stand in accordance with the usual procedure for an
23 arraignment, or is that going to be difficult? Mr Kanu, can you hear us?

24 SANTIGIE BORBOR KANU: (Interpretation) Yes, I hear you. I hear you. Just
25 increase the level of your voice a bit.

26 JUSTICE DOHERTY: Madam Court Officer, if you can proceed now and speak
27 loudly for the accused, please. Well, actually it is the interpreter that should speak
28 loudly for the accused.

1 THE COURT OFFICER: Order in lieu of an indictment. The Trial Chamber of
2 Special Court for Sierra Leone, pursuant to Rule 77 of the Rules of Procedure and
3 Evidence, charges Santigie Borbor Kanu, resident of Mpanga Prison, Rwanda. He is
4 charged with the following offences:

5 Count 1: Knowingly and willfully interfering with the Special Court's
6 administration of justice by offering a bribe to a witness who has given testimony
7 before a Chamber in violation of Rule 77(A)(iv).

8 Particulars: On or about 27 November 2010 to 16 December 2010, from Mpanga
9 Prison, Rwanda, Santigie Borbor Kanu offered a bribe to protected witness TF1-334,
10 who gave testimony before Trial Chamber II in the proceedings of Prosecutor v.
11 Brima, Kamara and Kanu, in return for recanting his previous testimony in that trial,
12 both directly by telephone on or around 29 November 2010 and through instructions
13 to Samuel Kargbo and Hassan Papa Bangura.

14 Count 2: Knowingly and willfully interfering with the Special Court's
15 administration of justice by otherwise interfering with a witness who has given
16 testimony before a Chamber, in violation of Rule 77(A)(iv).

17 Particulars: On or about 27 November 2010 to 16 December 2010, from Mpanga
18 Prison, Rwanda, Santigie Borbor Kanu attempted to influence protected witness
19 TF1-334, who gave testimony before Trial Chamber II in the proceedings of
20 Prosecutor v. Brima, Kamara and Kanu, to recant his previous testimony in that trial,
21 both directly by telephone on or around 29 November 2010 and through instructions
22 to Samuel Kargbo and Hassan Papa Bangura, aka Bomb Blast.

23 JUSTICE DOHERTY: Mr Kanu, did you hear the two counts read to you?

24 SANTIGIE BORBOR KANU: (Interpretation) Yes, my Lord.

25 JUSTICE DOHERTY: Did you understand the two counts that were read to you?

26 SANTIGIE BORBOR KANU: (Interpretation) Indeed, my Lord, I understand.

27 JUSTICE DOHERTY: I will now, pursuant to Rule 75(b), put the Court in brief
28 private session to allow the Court Officer to inform you of the name of the person

1 who has been referred to as TF1-334. For those members of the public who are here
2 in the Court, you will be able to see the proceedings, but you will not hear it, and this
3 is for the security and safety of a protected witness.

4 Madam Court Officer, please put the Court in closed session for a brief period.

5 THE COURT OFFICER: The Court is now going into closed session.

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26 THE COURT OFFICER: The Court is now in open session.

27 JUSTICE DOHERTY: Mr Kanu, you have heard the indictment put to you. How
28 do you plead to indictment number 1, guilty or not guilty?

1 SANTIGIE BORBOR KANU: (Interpretation) My Lord, I am not guilty of any of
2 the offences.

3 JUSTICE DOHERTY: And indictment number 2, how do you plead; guilty, or not
4 guilty?

5 SANTIGIE BORBOR KANU: (Interpretation) My Lord, it is just the same. I am
6 not guilty of the offence.

7 JUSTICE DOHERTY: Thank you, Mr Kanu. Please be seated. I will now proceed
8 on to deal with Mr -- put that same indictment to Mr Kamara. I will not deal with
9 any procedural matters until all pleas have been taken.

10 Madam Court Officer, please read the indictment to Mr Kamara. Mr Kamara, please
11 stand up. That's Mr Kanu who is standing up. Where is Mr Kamara? Oh, you
12 have grown your hair since I last saw you, Mr Kamara. I didn't recognise you for a
13 moment. Now, Mr Kamara, can you hear clearly?

14 BRIMA BAZZY KAMARA: (Interpretation) Yes, I can hear you loud and clear.

15 JUSTICE DOHERTY: Thank you, Mr Kamara. Your lawyer is here in Court. If he
16 has any matters that he wants to put on your behalf, or any problems, he will
17 immediately alert me. I am now going to have the Court Officer read the two
18 indictments to you and, as we have done in the case of Mr Kanu, we will give the
19 name of the protected witness to you after the indictment is read in closed private
20 session. Do you understand this, Mr Kamara?

21 BRIMA BAZZY KAMARA: (Interpretation) I understand you.

22 JUSTICE DOHERTY: Thank you. Please proceed to read the indictment.

23 THE COURT OFFICER: Brima Bazy Kamara, resident of Mpanga Prison, Rwanda,
24 is charged with the following offences:

25 Count 1: Knowingly and willfully interfering with the Special Court's
26 administration of justice by offering a bribe to a witness who has given testimony
27 before a Chamber, in violation of Rule 77(A)(iv).

28 Particulars: On or about 27 November 2010 to 16 December 2010, from Mpanga

1 Prison, Rwanda, Brima Bazzy Kamara offered a bribe to protected witness TF1-334,
2 who gave testimony before Trial Chamber II in the proceedings of Prosecutor v.
3 Brima, Kamara and Kanu, in return for recanting his previous testimony in that trial,
4 both directly by telephone on or around 29 November 2010 and through instructions
5 to Samuel Kargbo and Hassan Papa Bangura.

6 Count 2: Knowingly and willfully interfering with the Special Court's
7 administration of justice by otherwise interfering with a witness who has given
8 testimony before a Chamber, in violation of Rule 77(A)(iv).

9 Particulars: On or about 27 November 2010 to 16 December 2010, from Mpanga
10 Prison, Rwanda, Brima Bazzy Kamara attempted to influence protected witness
11 TF1-334, who gave testimony before Trial Chamber II in the proceedings of
12 Prosecutor v. Brima, Kamara and Kanu, to recant his previous testimony in that trial,
13 both directly by telephone on or around 29 November 2010 and throw instructions to
14 Samuel Kargbo and Hassan Papa Bangura, AKA Bomb Blast.

15 Count 3: Knowingly and willfully interfering with the Special Court's
16 administration of justice by disclosing information relating to proceedings in knowing
17 violation of an order of a Chamber, in violation of Rule 77(A)(ii).

18 Particulars: On or about 29 November 2010, Brima Bazzy Kamara from Mpanga
19 Prison, Rwanda, disclosed confidential information in knowing violation of an order
20 of Trial Chamber I (Prosecutor v. Sesay, Kallon and Gbao, SCSL-04-15-T-180, Decision
21 on Prosecution Motion for Modification of Protective Measures for Witnesses, dated
22 5 July 2004) by revealing the identity of the protected witness TF1-033 to Samuel
23 Kargbo during a telephone conversation.

24 JUSTICE DOHERTY: Thank you. Mr Kamara, have you heard the first indictment
25 read?

26 BRIMA BAZZY KAMARA: (Interpretation) Yes, your Honour.

27 JUSTICE DOHERTY: And did you hear the second indictment read?

28 BRIMA BAZZY KAMARA: (Interpretation) Yes, your Honour.

1 JUSTICE DOHERTY: Very good. And the third indictment, did you hear that
2 read?

3 BRIMA BAZZY KAMARA: (Interpretation) Yes, your Honour.

4 JUSTICE DOHERTY: Did you understand each of those three indictments?

5 BRIMA BAZZY KAMARA: (Interpretation) Yes, your Honour.

6 JUSTICE DOHERTY: I will now put the Court briefly in closed session to allow
7 Madam Court Officer to read to you the names of each of the two protected witnesses
8 that have been referred to in those indictments.

9 Again, for the purposes of the public, I am going to put the Court briefly in closed
10 session to reveal the names of two protected witnesses. Again you will be able to see,
11 but you will not be able to hear, and for clarification and elimination of doubt you're
12 welcome to sit on and watch what's happening.

13 Madam Court Officer, please put the Court temporarily in closed session.

14 Mr Kamara, if you would like to sit down while that's being done, you are welcome to
15 do so.

16 THE COURT OFFICER: The Court is now going into a closed session.

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THE COURT OFFICER: The Court is now in open session.

JUSTICE DOHERTY: Thank you. Mr Kamara, to indictment number 1, how do you plead; guilty, or not guilty?

BRIMA BAZZY KAMARA: (Interpretation) Not guilty, your Honour.

JUSTICE DOHERTY: Please repeat that, because it wasn't very clear.

BRIMA BAZZY KAMARA: (Interpretation) I'm not guilty, your Honour.

JUSTICE DOHERTY: Thank you, Mr Kamara. To indictment number 2, how do you plead; guilty, or not guilty?

BRIMA BAZZY KAMARA: (Interpretation) Not guilty, your Honour.

JUSTICE DOHERTY: Thank you. And number 3, indictment number 3, how do you plead; guilty, or not guilty?

BRIMA BAZZY KAMARA: (Interpretation) Not guilty, your Honour.

JUSTICE DOHERTY: Thank you, Mr Kamara. Please be seated.

Mr Serry Kamal, in accordance with what I have done previously I will now proceed to arraign the other indictee and, unless there are procedural matters, we will deal with those afterwards.

MR KAMAL: Thank you very much.

JUSTICE DOHERTY: Madam Court Officer, please proceed to read the indictments to Hassan Papa Bangura.

Mr Hassan Papa Bangura, please stand up.

THE COURT OFFICER: Hassan Papa Bangura, also known as Bomb Blast, a resident of Freetown, is charged with the following offences:

1 Count 1: Knowingly and willfully interfering with the Special Court's
2 administration of justice by offering a bribe to a witness who has given testimony
3 before a Chamber, in violation of Rule 77(A)(iv).

4 Particulars: On or about 27 November 2010 to 3 December 2010 in Freetown, Hassan
5 Papa Bangura offered a bribe to protected witness TF1-334, who gave testimony
6 before Trial Chamber II in the proceedings of Prosecutor v. Brima, Kamara and Kanu,
7 in return for recanting his testimony in that trial.

8 Count 2: Knowingly and willfully interfering with the Special Court's
9 administration of justice by otherwise interfering with a witness who has given
10 testimony before a Chamber, in violation of Rule 77(A)(iv).

11 Particulars: On or about 27 November 2010 to 16 December 2010 in Freetown,
12 Hassan Papa Bangura attempted to influence protected witness TF1-334, who gave
13 testimony before Trial Chamber II in the proceedings of Prosecutor v. Brima, Kamara
14 and Kanu, to recant his testimony.

15 JUSTICE DOHERTY: Mr Bangura, did you hear the first indictment read to you?

16 HASSAN PAPA BANGURA: [Microphone not activated].

17 JUSTICE DOHERTY: Good. And did you hear the second indictment read to you?

18 HASSAN PAPA BANGURA: (Interpretation) Yes, my Lord.

19 JUSTICE DOHERTY: I will now put the Court briefly again in closed session to
20 allow us to inform you of the name of the person who has been referred to as TFI-334.
21 If you wish to be seated while the Court is being put in closed session, you may do so.
22 Madam Court Officer. And again for members of the public I repeat, as I have said
23 before, that we will be going into a brief closed session to allow the details of the
24 person referred to by a TFI-number to be revealed to the accused. Again you will
25 not be able to hear, but you will be able to see. It is for protection of a witness.
26 Please put the Court in closed session.

27 THE COURT OFFICER: The Court will now go into a closed session.

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THE COURT OFFICER: The Court is now in open session.

JUSTICE DOHERTY: Thank you. Please -- Mr Samuel Kargbo, please stand up.

MR METZGER: [Microphone not activated]. The previous accused has pleaded in open session.

JUSTICE DOHERTY: Mr Kargbo, Madam Court Officer will now read the indictments to you and, in accordance with the previous procedure, we will give you the name of a protected witness in a closed session. Please proceed to read the indictment.

1 THE COURT OFFICER: Samuel Kargbo, also known as Sammy Ragga, a resident of
2 Freetown, is charged with the following offences:

3 Count 1: Knowingly and willfully interfering with the Special Court's
4 administration of justice by offering a bribe to a witness who has been -- who has
5 given testimony before a Chamber, in violation of Rule 77(A)(iv).

6 Particulars: On or about 27 November 2010 to 16 December 2010 in Freetown,
7 Samuel Kargbo offered a bribe to protected witness TF1-334, who gave testimony
8 before Trial Chamber II in the proceedings of Prosecutor v. Brima, Kamara and Kanu,
9 in return for recanting his testimony in that trial.

10 Count 2: Knowingly and willfully interfering with the Special Court's
11 administration of justice by otherwise interfering with a witness who has given
12 testimony before a Chamber, in violation of Rule 77(A)(iv).

13 Particulars: On or about 27 November 2010 to 16 December 2010 in Freetown,
14 Samuel Kargbo attempted to influence protected witness TF1-334, who gave
15 testimony before Trial Chamber II in the proceedings of Prosecutor v. Brima, Kamara
16 and Kanu, to recant his testimony.

17 JUSTICE DOHERTY: Mr Kargbo, did you hear the first indictment read?

18 SAMUEL KARGBO: (Interpretation) Yes, my Lord.

19 JUSTICE DOHERTY: Did you understand it?

20 SAMUEL KARGBO: (Interpretation) I understood.

21 JUSTICE DOHERTY: Did you hear the second indictment read?

22 SAMUEL KARGBO: (Interpretation) Yes, my Lord.

23 JUSTICE DOHERTY: Did you understand it?

24 SAMUEL KARGBO: (Interpretation) I understood.

25 JUSTICE DOHERTY: Very well. I am now going to put the Court into closed
26 session to allow Madam Court Officer to inform you of the name of the witness who
27 has been referred to as TFI-334. Again, pursuant to Rule 75(b), the Court will be
28 briefly in closed session to allow the name to be revealed to the accused, Mr Kargbo.

1 This is in order to protect the witness. Please put the Court briefly in closed session.

2 THE COURT OFFICER: The Court will now go into closed session.

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17 THE COURT OFFICER: The Court is now in open session.

18 JUSTICE DOHERTY: Mr Kargbo, please stand up again. To the first indictment,
19 how do you plead; guilty, or not guilty?

20 SAMUEL KARGBO: (Interpretation) Guilty, my Lord.

21 JUSTICE DOHERTY: To the second count, how do you plead; guilty, or not guilty?

22 SAMUEL KARGBO: (Interpretation) I plead guilty, my Lord.

23 JUSTICE DOHERTY: Thank you. Mr Kargbo, I have read a document in which
24 you clearly state that you have been advised and are aware of your rights and that
25 you have decided to make this plea and that you have done so without any
26 conditions and knowing that it in no way binds this Court. However, for purposes
27 of public record, I must ask you some questions to ensure that you fully understand
28 and are making that plea without any pressure and you are doing so freely.

1 When I ask you those questions, you are not obliged to tell me anything that you
2 discussed with your lawyer. Anything you discuss with your lawyer is private to
3 you. Therefore, I will now ask those questions in accordance with Rule 62.

4 Mr Kargbo, you have pleaded guilty and I must therefore ask you if you have done so
5 to Count 1 and to Count 2 -- have you done it voluntarily; that means you yourself
6 have decided to do it of your own free will?

7 SAMUEL KARGBO: (Interpretation) Yes, my Lord.

8 JUSTICE DOHERTY: And you have done so freely?

9 SAMUEL KARGBO: (Interpretation) Yes, my Lord.

10 JUSTICE DOHERTY: And, prior to doing so, you did it with full information of the
11 implications of that plea?

12 SAMUEL KARGBO: (Interpretation) Yes, my Lord.

13 JUSTICE DOHERTY: And you are not making any reservations? It is an
14 unequivocal plea?

15 SAMUEL KARGBO: (Interpretation) Yes, my Lord.

16 JUSTICE DOHERTY: Very well, the plea is confirmed. Please sit down.

17 And before I proceed on, it has been brought to my attention that inadvertently
18 Mr Bangura's plea was taken in closed session, when of course it should have been in
19 open session so that the public are aware of what was said.

20 Therefore Mr Bangura, please stand up again. Mr Bangura, by accident your plea
21 was taken when members of the public could not hear. The public at large is entitled
22 to hear what you say and, therefore, I ask you again to enter your plea. Just a
23 moment. I trust your Counsel is not objecting to me doing this? It's for purposes
24 only of record and for public and transparent trial.

25 MR WILSON: Yes, your Honour.

26 JUSTICE DOHERTY: Very good. Mr Bangura, I'm going to ask you once more to
27 publicly state how you plead to the first count of the indictment, Count 1. How do
28 you plead; guilty, or not guilty?

1 HASSAN PAPA BANGURA: (Interpretation) Not guilty, my Lord.

2 JUSTICE DOHERTY: And to Count 2 how do you plead; guilty, or not guilty?

3 HASSAN PAPA BANGURA: (Interpretation) Not guilty, my Lord.

4 JUSTICE DOHERTY: Thank you. Please sit down.

5 I have now got three pleas or counts -- on counts of not guilty and, in accordance with
6 the procedure, the matter will have to be set down for hearing at a date to be set in
7 accordance with the Rules by the Registrar. I have one plea of not guilty (sic) and
8 the procedure there is to proceed on to a sentencing hearing.

9 Before I deal with any of those questions, Mr Metzger in Kigali, you have indicated to
10 me at the opening that you had some procedural matters, and if this is the
11 appropriate time to raise these I will ask you to raise them now before I ask Counsel
12 for the other accused to address me likewise on procedural matters. I'll deal with
13 yours first, please.

14 MR METZGER: Thank you, your Honour. I think we now have a facility where
15 I can stand and address you.

16 JUSTICE DOHERTY: Very good.

17 MR METZGER: First and foremost, I wanted to state for the record that we in Kigali
18 did not hear the last part of Chief Taku's submissions --

19 JUSTICE DOHERTY: Sorry, Mr Metzger, which submissions?

20 MR METZGER: -- to the Court when he supplied the document.

21 JUSTICE DOHERTY: Oh, Mr Metzger, there was a confidential document filed. It
22 will be made available to all Counsel and, if it would be of assistance to Counsel, I
23 will outline it unless there is an objection. Just allow me to address Chief Taku first
24 and deal with that particular point, if you wish to be seated.

25 MR METZGER: I am much obliged.

26 JUSTICE DOHERTY: Chief Taku, Counsel for Mr Kanu has raised the matter that
27 they are not aware of the document that you handed up which preceded but did not
28 influence the plea of your client, Mr Kargbo. That of course will in due course be

1 made available. Do you have any objection to me outlining the content of that
2 document at this point to other Counsel?

3 MR TAKU: We urge the Court to read that document and at the appropriate
4 moment make a ruling as to whether the entire document or part of the document
5 will be made available. It is my understanding - and I think the Prosecutor will
6 agree - that we raise several issues in that document. We did discuss this issue that,
7 if need be, if Mr Kargbo will play any further role in the proceedings at some point in
8 time it will be entirely appropriate for them to have this information, that document,
9 there is no doubt about that, but for now, as per the jurisprudence I cited, it is for the
10 fact that your Honour will review the document and make any other orders that you
11 deem appropriate with regard to that document now that it is before the Court.

12 JUSTICE DOHERTY: Thank you, Mr Taku.

13 Mr Bangura, have you anything to add or comment before I outline this document?

14 MR BANGURA: No, your Honour, just concurring to what my learned friend has
15 said that there are certain confidential issues that are there in the document that we
16 handed up. The names of certain protected witnesses are also there, et cetera,
17 et cetera, and so at the appropriate time and based on your ruling we think we will
18 abide.

19 JUSTICE DOHERTY: Very well. For purposes of record and for purposes also of
20 transparency, I can inform Counsel for other accused in the Court that at the opening
21 of the Court, as has been seen, a document was given to me. This is a document
22 prepared in a similar manner to that provided in the ICTY, as Counsel Chief Taku
23 made in his submissions. We do not have a similar provision in our Rules, but he
24 correctly in my view stated that a Court is entitled and has an inherent jurisdiction to
25 consider certain matters.

26 In this document the accused, Mr Kargbo, states that he agreed he will plead guilty
27 and will answer questions pursuant to Rule 62; the questions that I put to him. He
28 says that he did so knowingly and willfully -- excuse me, unequivocally having taken

1 advice. He did so knowing the penalties and the provisions in the Rules and Statute
2 of the Court. He did so - and I now quote - "... that in determining a sentence a Trial
3 Chamber shall, pursuant to Article 19 of the Statute of the Special Court and Rules 101
4 of the Rules, take into consideration such factors as the gravity of the offence and the
5 individual circumstances of the convicted person. In addition, the Trial Chamber
6 shall take account of such factors as any aggravating circumstances, any mitigating
7 circumstances ..." --

8 THE INTERPRETER: Your Honour, the interpreters find it difficult to go at your
9 pace.

10 JUSTICE DOHERTY: -- "... including the substantial cooperation with Independent
11 Counsel by the convicted person before or after conviction, the general practice
12 regarding prison sentences in the International Tribunal for Rwanda and the national
13 courts of Sierra Leone and the extent to which any penalty imposed by a Court of any
14 state on the convicted person for the same act has already been served as referred to
15 in Rule 9(3), Article 9 subrule -- Article 3 of the Statute."

16 He then goes on to state that he has made a witness statement, which I have already
17 indicated I have not read prior to hearing any pleas, which sets out the factual basis
18 for establishing the crimes to which he has pleaded. He has reviewed them and
19 unequivocally agrees with the assertions in them.

20 He then proceeds to say that he will continue to cooperate with the Independent
21 Counsel and will appear as a witness and provide truthful testimony at any trial
22 which is held on the charges contained in the order in lieu of the indictment. He
23 further agrees that he will make himself available to the Independent Counsel at the
24 request of the Counsel and details how he will do that.

25 And in addition to those promises set out, that I have read, the Counsel agrees to
26 recommend to the Court that appropriate officials of the Witness and Victims Section
27 perform a security assessment to determine whether in the light of the plea and the
28 cooperation he requires protection and, if so, on what level.

1 He understands that if -- whether protection is provided and the level of it are matters
2 entirely within the control of the appropriate officials of the Court and not of the
3 Independent Counsel, and I would add at this point not to me. I must depend on
4 any information from the Registrar.

5 He agrees that he will not have any discussion or contact with co-accused, or persons
6 close to them or acting on their behalf, and to report any attempts by anyone to
7 contact him, or on their behalf.

8 He then goes on, in conforming with the Rules and the Articles of the Court and the
9 Statute, that he understands he's giving up his rights to plead guilty and the rights
10 enshrined in Article 17, which I do not need to read, and that he has done this
11 independently and he does not waive his right to be represented by Counsel at all
12 stages of the proceedings until their conclusion, and he has signed a document to this
13 effect.

14 As I have said in -- before I took the pleas this document does not bind the Court, and
15 that is readily acknowledged by both the Prosecution and by Counsel and by
16 the -- Mr Kargbo himself.

17 Mr Metzger, I have now outlined. Have you heard and understood? Have you any
18 other questions?

19 MR METZGER: Your Honour, just to say I have heard and understood and I am
20 content to say that I am far better informed (Indiscernible).

21 JUSTICE DOHERTY: Sorry, Mr Metzger, you broke -- the voice didn't come through
22 very clearly. Would you just repeat the last part, please.

23 MR METZGER: I am far better informed, if not much the wiser.

24 It seems to me that, in the circumstances, it need not affect the way in which I have
25 carried out discussions with the Independent Prosecutor. We will be having a trial
26 at some stage, it would appear, and we have discussed dates which may be suitable to
27 all parties.

28 Having said that, and without prejudice to the generality of the foregoing, I have also

1 informed the Independent Prosecutor that we must -- duty requires that we consider
2 a significant issue in this case, which is that of the 77(A)(iv) provision and its
3 interpretation particularly when applying the ejusdem generis rule.

4 In those circumstances, it seems to me that we may seriously give consideration to a
5 preliminary motion or preliminary arguments - and at this point in time it is difficult
6 to say where the venue for those arguments ought to properly be - to consider
7 properly the interpretation of Rule 77(A)(iv), bearing in mind that that matter was not
8 fully argued before the Trial Chamber and considering that certainly I haven't seen
9 the confidential report of the Independent Counsel and we do await evidence in this
10 case.

11 It does seem to me, however, that it need not interfere with the procedure of this trial,
12 because we can either deal with any preliminary arguments in this tribunal
13 immediately prior to the trial itself, or in any other constituted tribunal, as it were, if
14 not simultaneously, in a corresponding manner.

15 In the spirit of cooperation and openness I have had a lengthy discussion with the
16 Independent Prosecutor on this matter, and I am content to have discussions with
17 other Defence Counsel, other than those I have already spoken to, in order to
18 streamline any process so that we can proceed post-haste.

19 Those are the matters that I wish to raise at this point, your Honour.

20 JUSTICE DOHERTY: Thank you, Mr Metzger. That certainly sounds a
21 constructive approach. For purposes of clarification, when you talk about the
22 interpretation of Rule 77(A)(iv) of the Rules, and I have it before me, is this -- for
23 example, are you saying that it is duplicitous, or is it ultra vires accord? Can you
24 give me an indication, without of course predetermining anything, so I can
25 arrange -- decide whether we will proceed by way of written motions, or what would
26 be the most constructive way forward?

27 MR METZGER: Indeed, your Honour. Insofar as we can address the Court at this
28 point, it would seem to me that there is a --

1 JUSTICE DOHERTY: Sorry, Mr Metzger, you've gone off -- gone off beam again
2 with the mechanics.

3 (Pause in the proceedings)

4 MR METZGER: It looks as if we have gone off.

5 JUSTICE DOHERTY: You're back on, Mr Metzger. I always know where -- when
6 you stand frozen, I can only guess that something has interfered with the reception.
7 I had asked you a question, which I think you heard?

8 MR METZGER: Can your Honour tell me where I left off?

9 JUSTICE DOHERTY: And you were just starting to answer it. I can say now that if
10 it is possibly an interpretation or a jurisdictional question I have in mind, subject of
11 course to hearing from other Counsel, that it may be a matter that would be
12 appropriate for a motion under Rule 72. However, I would ask you to answer my
13 question before I address other Counsel on the point.

14 MR METZGER: Your Honour, yes. In short, ultra vires is a potential issue; the
15 question whether the Court was functus officio at the time that these offences are said
16 to have been committed.

17 JUSTICE DOHERTY: That is very --

18 MR METZGER: In short, the submission would be that if the Court was functus
19 officio, using the ejusdem generis rule of interpretation, it would require either the
20 Appeals Chamber or some other Rule in order to interpret it otherwise. Yes.
21 Secondly, we will have to look at the question of whether counts 1 and 2 in Mr Kanu's
22 case could in fact said to be -- could be in fact said to be duplicitous, or whether or not
23 the Prosecution should be electing one or other of the charges.

24 Unless I can assist you any further?

25 JUSTICE DOHERTY: No, Mr Metzger. I will first invite a reply from the
26 Prosecutor. I have in mind that this -- we are now at a procedural point, rather than
27 making any rulings. I have not invited any substantive submissions. I'm just
28 looking at the way forward.

1 I will speak first to all to Counsel for Prosecution and then ask co-Counsel. It
2 appears to me that this matter is coming from you on behalf of your client, Mr Kanu.
3 I haven't heard similar applications from other Counsel, but I will of course be asking
4 them if they are joining you in this.

5 I will speak first to Mr Bangura, if you wish to be seated.

6 Mr Bangura, you have heard an indication of a procedural matter from Mr Metzger
7 and have you a view on how we should proceed? This is now I'm thinking only of
8 procedure, not of the substantive issues.

9 MR BANGURA: Yes, your Honour. Our firm conviction is that some of these
10 issues were raised and then deliberated upon before, and reference to the decision of
11 Trial Chamber II of 18 March 2011, and I believe they were raised and completely
12 deliberated upon. But be that as it may, your Honour, we'll be pleased to proceed in
13 line with Rule 72 whenever a motion is properly filed.

14 JUSTICE DOHERTY: Other Counsel? Mr Melron? I am not asking you to make a
15 submission. I am just asking if you will be joining in this issue, or whether you will
16 have any procedural issues of your own?

17 MR WILSON: Your Honour, firstly I will be joining Mr Metzger in bringing a
18 motion and I think the normal practice is that such motions will be filed between now
19 and trial. In addition to that, once we have disclosures we might also bring an
20 independent and separate motion from that of Mr Metzger relating to Rule 42(A)(iii).
21 We want to bring the Court on notice that we will be joining Mr Metzger and at the
22 same time we will be bringing a separate motion.

23 JUSTICE DOHERTY: Which Rule did you say, Mr Melron Nicol?

24 MR WILSON: Your Honour, depending on the nature of the materials that will be
25 disclosed shortly, we may file a motion with regard to the enforcement of
26 Rule 42(A)(iii), which is the right to remain silent and the right to be cautioned that
27 any statement a suspect makes shall be recorded and may be used in evidence, but
28 like I said, your Honour, this depends on what will be disclosed to us shortly.

1 JUSTICE DOHERTY: That's Mr Bangura's right to remain silent?

2 MR WILSON: Yes.

3 JUSTICE DOHERTY: I see.

4 MR WILSON: During the course of the investigations by the Independent Counsel.

5 JUSTICE DOHERTY: I am clear now on the point you are making.

6 MR WILSON: Thank you, your Honour.

7 JUSTICE DOHERTY: Mr Serry Kamal, really I should have apologised. I should
8 have asked you first, because you were second in the line of arraignments, but --

9 MR KAMAL: I don't mind at all, your Honour. Mr Metzger and I have
10 discussed -- Mr Metzger and I have discussed our position and we will be filing a
11 motion.

12 JUSTICE DOHERTY: Thank you. Mr Taku, I would say that this does not affect
13 you, but if you wish to be heard I will certainly do so?

14 MR TAKU: It doesn't really affect me at this point in time, considering the
15 agreement that -- we are bound by the agreement to the extent that it binds the
16 Prosecutor as well.

17 JUSTICE DOHERTY: Thank you. I understand.

18 Now, I have, as I have already noted, three pleas of not guilty and one plea of guilty.
19 I must proceed on and I will deal first with the procedural matters raised by Counsel.
20 I consider it appropriate, given the legal issues raised and again in observation of the
21 matters raised by Counsel for the Prosecution, that this matter should be dealt with as
22 a preliminary issue prior to any hearing and I consider it would be best served if it is
23 dealt with by way of a motion to allow full argument and full consideration.

24 I will therefore direct that these issues be raised in accordance with Rule 72. I do not
25 know how long Counsel will require. I would have in mind that arguments -- the
26 motion should be filed within maybe two to three weeks. Would that be sufficient
27 time, Mr Metzger and Mr Serry Kamal?

28 MR METZGER: Your Honour, I would say effectively, according to Rule 72, we are

1 allowed 21 days after the provision of evidence. Whilst I would have been content
2 to have considered the matter let's say within three weeks of today, bearing in mind
3 we were looking at an outline of evidence based on the historical nature of this case,
4 respectfully the plea and the special circumstances of Mr Samuel Kargbo really mean
5 that we ought to wait and see exactly what it is that he is saying so that we can make
6 full submissions at the earliest opportunity --

7 JUSTICE DOHERTY: Very well. I will now turn to --

8 MR METZGER: -- and not have to make addenda. Sorry.

9 JUSTICE DOHERTY: What I will -- I don't like making hypothetical orders, but
10 I think the best I can do is to rule that a motion should be filed within 21 days
11 of -- 21 days plus say four days of disclosure. I am saying four days to allow you to
12 read it before you proceed with your motion. I don't have the dates when disclosure
13 will be made and therefore I can't be more precise than that. I would -- if Counsel
14 would find it helpful, once I get dates of disclosure I could set a specific date. If you
15 want that wide ruling, I will equally adhere to that wide ruling of 25 days after
16 disclosure.

17 MR METZGER: We are happy, your Honour, with that ruling. It is helpful to all
18 parties.

19 JUSTICE DOHERTY: Thank you, Mr Metzger.

20 Now, I have therefore to consider the plea of guilty and what will happen to all
21 accused pending the full hearing. Mr Taku, you wish to say something before I
22 indicate that I am going to go off the Bench and consider the facts in Mr Kargbo's case?
23 Did you wish to say something? I noticed you --

24 MR TAKU: Your Honour, no. I just wanted to say that the Court will consider the
25 plea, looking at all the circumstances, and then we move from there. I think the
26 Rules also say that thereafter there will be a date set for the sentencing hearing.

27 JUSTICE DOHERTY: Well, what I have in mind to do now is this. I will adjourn
28 for a short time to consider the facts and the evidence in Mr Kargbo's case and return

1 with a verdict, if I consider that I am able to reach a verdict today. I am waiting to
2 hear. The Prosecutor will indicate to me what are the facts and what evidence he is
3 putting forward.

4 If I cannot reach a -- feel in fairness to the accused I cannot reach a verdict today, I
5 will try and reach a verdict on Monday morning. This is both for the efficiency of
6 the Court and in fairness to the accused to know whether his plea has been -- the
7 return on his plea.

8 I have to also consider the position of the other three accused. Two of those accused
9 are serving sentence and therefore issues of bail or remand cannot arise. Their case
10 is clear. Mr Bangura's case is not, and I will be inviting submissions from both
11 Counsel as to what should be done pending the setting of a date by the Registrar.

12 So, subject to any submissions or applications, I will now adjourn this matter until -- I
13 have another matter to deal with. I think it is at 12. I will try and adjourn this
14 matter until 11.30. I am choosing the time of 11.30 because I understand that the link
15 with Kigali will expire at 12 and, if I can inform Kigali within the three hour period, I
16 think it's only proper that I do so. If in fairness to Mr Kargbo I feel I cannot reach a
17 decision today before 12, then I will set a date on -- a time on Monday morning when
18 I understand we again have a link with Kigali. If there's no comment on that
19 procedure I'm about to adopt, I will adjourn the Court until 11.30. Is there any?

20 MR METZGER: Your Honour, just one point.

21 JUSTICE DOHERTY: Mr Metzger, I can hear you.

22 MR METZGER: I am sorry, thank you. I just wanted to remind the Court that the
23 submissions that we will be making will include the necessity for a decision as to
24 whether or not the indictment is valid.

25 JUSTICE DOHERTY: In relation to your client?

26 MR METZGER: In the circumstances the Court may very well want to consider, if
27 that were successful, if it would have an effect on the plea of the erstwhile co-accused.

28 JUSTICE DOHERTY: I see, Mr Metzger. It would appear you are making a --

1 MR METZGER: I only say this, as it were, *de bene esse*.

2 JUSTICE DOHERTY: I am glad you mentioned that, because I was for a moment
3 thinking you were making a submission on behalf of Mr Taku's client, but I will bear
4 this in mind.

5 MR METZGER: Of course not, your Honour.

6 JUSTICE DOHERTY: I am being facetious, Mr Metzger, one of my worst habits.
7 I will adjourn the Court. First, Mr Bangura, I obviously have the report of the
8 Independent Counsel before me. Have you any other evidence to hand up on behalf
9 of the Counsel before I retire to consider my decision in the matter of the Prosecutor
10 and -- or the Independent Counsel and Mr Kargbo?

11 MR BANGURA: None at the moment, your Honour.

12 JUSTICE DOHERTY: So I may rely on the documentation that has been filed?

13 MR BANGURA: That is correct.

14 JUSTICE DOHERTY: Thank you. Unless there is other comment from Counsel, I
15 will now adjourn this Court until 11.30. I will endeavour to reach a decision and, if I
16 cannot reach a decision, I will come and explain why and I will then proceed to hear
17 any submissions concerning Mr Bangura and any decisions concerning Mr Kargbo.
18 The two accused, Mr Kargbo and Mr Bangura, will remain within the precincts, or
19 within the custody of the Court, until 11.30. Please adjourn Court until 11.30.

20 THE COURT OFFICER: Court is adjourned. All rise.

21 (Short adjournment)

22 JUSTICE DOHERTY: I will again check with Kigali before asking Madam Court
23 Registrar to recall the case. Can you hear me clearly in Kigali?

24 MR METZGER: Yes, we can.

25 JUSTICE DOHERTY: Please call this matter for Ragga for decision.

26 THE COURT OFFICER: This is the case number SCSL 2011-02-I, the Independent
27 Counsel against Hassan Papa Bangura, Samuel Kargbo, Santigie Borbor Kanu, Brima
28 Bazy Kamara, with Justice Doherty presiding. All persons having anything to do in

1 this case, draw near and give your attendance.

2 JUSTICE DOHERTY: The accused, Samuel Kargbo, has pleaded guilty to two counts
3 pursuant to Rule 77 of the Rules of Procedure and Evidence of the Special Court for
4 Sierra Leone. Those two counts are that he knowingly and willfully interfered with
5 the Court's administration of justice by offering a bribe to a witness who has given
6 testimony before a Chamber in violation of Rule 77(A)(iv), and Count 2 of knowingly
7 and willfully interfering with the Court's administration of justice by interfering with
8 a witness. On the first count it is alleged that he offered a bribe to a protected
9 witness TFI-334, who gave testimony before the Court, and in Count 2 it is alleged
10 that he attempted to influence protected witness TFI-334.

11 This is an extemporary decision, which I have made in the light of the fact that the
12 accused has a right to know a decision about his case in as fair and expeditious a way
13 as possible. I have also attempted to render it this morning, because I was
14 mistakenly informed that we would be not in contact with Kigali after 12 noon and I
15 therefore would not be able to convey the decision to those in Kigali. In fact, we
16 have a longer period than I thought. However, I have had adequate time to consider
17 the evidence.

18 I have read the statement of witness TFI-334 made on 1 and 3 December 2010, which
19 has been put in evidence in this case, and I have also read the statement of the
20 accused, Mr Kargbo, made on 6 May 2011. I have read that, but have borne in mind
21 that, notwithstanding anything he may have said, the obligation is on the Prosecution
22 and the Independent Counsel in this case to prove all elements of the case. I will
23 therefore allude only to certain parts of his statement.

24 I have -- the statement of TFI-334 shows that Sammy Kargbo, known as Sammy
25 Ragga, met him on 27 November 2010 and told him, that is TFI-334, that he had "...
26 received a call from AFRC convicts ...", unnamed, "... to recount my testimony." I
27 note the term used is "recount." However, the import of the statement and the
28 accompanying statements around it make it clear that the word intended was "recant";

1 in other words, to retract a statement.

2 I say this, because the statement of TFI-334 goes on to say that this recanting, or
3 recounting depending on which word we use, will help reduce the sentencing period
4 and was made on advice of lawyers unnamed, and so I am satisfied that what was
5 being sought was for TFI-334 to recant his testimony.

6 TFI-334 stated that he did not want anything to do, but in his words "Ragga
7 persisted." There followed a phone call and after that phone call Ragga again tried
8 to prevail, and I quote, "... said convicts were ready to pay money."
9 I will use the term "Ragga" where in this statement that name is used, but the name
10 "Ragga" means the accused, Mr Samuel Kargbo.

11 On 29 November, a second day and occasion, the accused Ragga again contacted
12 TFI-334 by phone and he, and I quote, "... called and said he wanted to see me
13 urgently." I quote, "He continued to convince me, saying that this was something I
14 will have to gain financial benefit from as the guys were ready to give me money,"
15 end of quote. "He also said he was convincing me ...", that is TFI-334, "... because he
16 too is expecting to get financial benefit from the whole deal," end of quotation.

17 After some time, it is not entirely clear from this statement and the evidence whether
18 it was the same day or a later day, there was another phone call and again Ragga
19 contacted 334 and I quote "insisted," so 334 decided to talk to someone on the phone.
20 As a result of the conversation that 334 had and that Ragga subsequently had with the
21 person on the phone, I quote, "Ragga continued to talk to me to still honour the
22 request as I will surely stand to financially benefit from the deal. Sammy Ragga then
23 left me, promising to see me again later."

24 TFI-334 again received another call from Sammy, who I quote, "... told me to meet him
25 down in Freetown. We met at Swazi business area at about 12 noon midday.
26 Sammy Ragga informed me that he had again communicated with persons ...",
27 unnamed, "... and was told that a lawyer was coming from another country who
28 would be speaking to me in respect of the same issue. He did not name the lawyer

1 and he did not name the time."

2 On a third day, possibly a third because as I have indicated it is not clear whether all
3 these events took place on those two days or on different dates, on 3 December 2010
4 the accused Kargbo went to the house of TFI-334, and I quote, "... told me that he
5 received another call from the convicts. He said that the convicts ...", and I quote, "...
6 told him to tell me they were quite prepared to fulfil their promise earlier, but they
7 would ask me to exercise patience while they were putting things together."

8 "Ragga then mentioned the name of a chairman of the APC party in America, who
9 would help." We are not given the name of that person. We are only given this title
10 of his position. "He also mentioned that influence would be made from a
11 Vice-President of Sierra Leone to render assistance." Again we are not given a name,
12 we are given a position, and the witness TFI-334 is quite specific when he says he did
13 not -- that no names were given of those particular people; only their positions were
14 named. This then is the evidence of 334.

15 I have also considered the confidential document, a statement of Mr Kargbo himself,
16 given on 6 May 2011 to Independent Counsel, which has been submitted to the Court.
17 I stress that, whilst I have read that, the duty of the Court is to consider the evidence
18 of the Prosecution and not of an accused himself. However, I note that Mr Kargbo
19 concedes that he met TFI-334 in various places, that he told him that they wanted him
20 to recant his testimony - and, again, I note on this occasion the word "recant" is
21 correctly used - and that their lawyers had told them that this was the only way to get
22 convictions quashed, or sentences reduced. Again, there is no name of a lawyer and
23 it's not relevant in my view because the exchange was between the accused and
24 TFI-334.

25 He concedes also, and I quote, "[Redacted]'s body language and countenance was not
26 good and I could not tell that ..." -- excuse me, I restate, "I could tell that he did not
27 want to do it, even though I tried to persuade him to do so." He also states later,
28 having met him, that is TFI-334, "I kept asking [Redacted] until he agreed to take the

1 phone call. Bazy and Kanu said they would give money." He therefore concedes
2 the meetings, the reluctance of the witness TFI-334 and again speaks of a further
3 meeting and a reference to a lawyer coming with money.

4 I find this evidence convincing and I find that it has not been challenged and it has
5 not been rebutted. I consider that this evidence shows two aspects of persuasion:
6 (1) the offer of money in order that a witness would recant their evidence in order to
7 affect the outcome of a verdict of the Court. There is a reference both to conviction
8 and to sentence; both of which are decisions of a properly constituted court. I find (2)
9 that, over and above the bribery, there was active, persistent persuasion. So there
10 were two aspects to the behaviour of the accused: Persuasion by way of for example
11 I have quoted the reference to political leaders, or persons in authority, reference to
12 legal persons who would be assisting or giving advice, and an offer of a bribe.
13 Accordingly, I find that there is two -- there is sufficient evidence in the case before
14 me to find beyond reasonable doubt that the accused, Samuel Kargbo, knowingly and
15 willfully interfered with the Court's administration of justice by offering a bribe to the
16 Court, in violation of Rule 77(A)(iv), and knowingly and willfully interfering with the
17 Court's administration of justice by otherwise interfering with a witness who had
18 given testimony before a Chamber, in violation of Rule 77(A)(iv), and accordingly I
19 find both counts proved beyond reasonable doubt.

20 Mr Kargbo, please stand up. Mr Kargbo, did you hear what I said?

21 SAMUEL KARGBO: Yes, my Lord.

22 JUSTICE DOHERTY: Did you understand all I said?

23 SAMUEL KARGBO: Yes, my Lord.

24 JUSTICE DOHERTY: Mr Kargbo, you have properly in my view given the evidence
25 before the Court entered pleas of guilt because, having read the evidence, I am
26 convinced beyond reasonable doubt that you are guilty of these offences.

27 Accordingly, I find you guilty on Count 1 of knowingly and willfully interfering with
28 the Special Court's administration of justice by offering a bribe to a witness who has

1 given testimony before a Chamber, in violation of Rule 77(A)(iv).

2 I further find you guilty of knowingly and willfully interfering with the Special
3 Court's administration of justice by otherwise interfering with a witness who has
4 given testimony before a Chamber, in violation of Rule 77(A)(iv).

5 Mr Kargbo, first did you hear and understand what the two verdicts I have returned?

6 SAMUEL KARGBO: Yes, my Lord.

7 JUSTICE DOHERTY: I will not ask you to say anything at this point. I will invite
8 your Counsel, Chief Taku, to address as to how we will proceed in the matter of
9 sentencing, and I would therefore ask you to sit down and please listen to your
10 Counsel.

11 MR TAKU: May it please your Honour, we will be asking for the Court to set a date
12 for the sentencing - I did discuss this with the Independent Prosecutor that the dates
13 would be fixed - and also that Mr Kargbo in the meantime be granted bail on the
14 grounds that he came here voluntarily when he was summoned, he is cooperating
15 with the Prosecutor and we will be asking that he be released on bail and placed at
16 the disposal of the Prosecutor and the Witness Protection Unit, pursuant to the
17 understanding that we have at this point in time, and we also pray very respectfully
18 that you set the date for the sentencing hearing.

19 JUSTICE DOHERTY: Mr Taku - Chief Taku - I hear what you say. I also have to
20 consider Mr Bangura's situation. Likewise he has now surrendered to the Court and
21 has entered a plea, so of course his status has also changed. As I have already
22 indicated to Mr Metzger in Kigali, the issue of his client's status cannot arise because
23 they are convicted persons.

24 I would like to invite Counsel to address on a few matters: The matter of the bail,
25 which you have indicated on behalf of Mr Kargbo; Mr Bangura's situation; whether
26 the sentencing hearing -- we have Rules which give a time-frame for sentencing and
27 of course those Rules are always subject to the accused's rights to a fair and
28 expeditious trial and that could also include the right to know his -- the outcome of

1 his case quickly.

2 I will therefore -- given that we do have this little extra time with our contact in Kigali,
3 rather than rush this I will stand over this actual decision as to how we will move
4 forward on the sentencing hearing, on the trial hearing date and this respect of what
5 will happen to the two - one is now a convicted person and the other is an accused
6 person - between the hearing and today.

7 So in the light of those three matters that we have to decide on, I can indicate to you
8 now, if it is of assistance, I am available on Monday, as you know, and if it was
9 thought to bring forward the sentencing I would hear -- I would hear what you have
10 to say about it, but I think we all know there are other procedures that have to be
11 thought about.

12 Would it suit if I stood the matter over to this afternoon to allow you to prepare your
13 respective applications, or submissions, as the case may be? Would that suit -- first
14 of all, Chief Taku, would that suit you if I stood your substantive bail application,
15 which you have now outlined to you -- if I stood it over until this afternoon and heard
16 Counsel?

17 MR TAKU: I am entirely available to the Court, your Honour.

18 JUSTICE DOHERTY: Thank you.

19 MR TAKU: I defer to your wisdom.

20 JUSTICE DOHERTY: Mr Bangura -- excuse me, Mr Nicol, Mr Melron Nicol, will it
21 suit you to deal with the question of what will -- how we will deal with Mr Bangura
22 pending the hearing? Would it suit you to deal with that this afternoon?

23 MR WILSON: Yes, your Honour.

24 JUSTICE DOHERTY: Mr Bangura?

25 MR BANGURA: Yes, your Honour.

26 JUSTICE DOHERTY: This afternoon?

27 MR BANGURA: Yes.

28 JUSTICE DOHERTY: Now, I do have one other matter which I would like to call.

1 If I were to set this would 2.30 be a good time, or should I make it 3 o'clock in case the
2 other case takes a bit longer? Mr Serry Kamal, I haven't asked you because
3 obviously your client is not subject to such an application, but you will want to be
4 heard on the question of timing of the hearing?

5 MR KAMAL: Yes, your Honour, of course. I would like to be heard on the
6 question of timing.

7 JUSTICE DOHERTY: Yes.

8 MR KAMAL: Our position is that we can put it for October.

9 JUSTICE DOHERTY: No, I just want to hear you -- I want to hear everything fully
10 this afternoon.

11 MR KAMAL: Yes.

12 JUSTICE DOHERTY: 2.30, or 3 o'clock might be better?

13 MR KAMAL: 3 o'clock would be fine.

14 JUSTICE DOHERTY: Would that suit Counsel and I will deal with the other matter
15 in the interval? Very well.

16 MR BANGURA: Your Honour, yes.

17 JUSTICE DOHERTY: If there is no -- unfortunately, Mr Nichol, you are somewhat
18 obscured from my view by this piece of machinery, so please do not think I am
19 ignoring you if I don't address you directly.

20 MR WILSON: I am obliged, your Honour.

21 MR KAMAL: Your Honour --

22 JUSTICE DOHERTY: Mr Serry Kamal.

23 MR KAMAL: -- I am sorry to make this point, but there is a two hour time
24 difference. They are two hours ahead of us and so we have to take that into
25 consideration.

26 JUSTICE DOHERTY: Oh, indeed. In that case, I will ask Mr Metzger. 3 o'clock is
27 5 o'clock your time, I think. That would not maybe be wise. They have to go back
28 to Mpanga.

1 MR METZGER: Yes, it is a considerable distance. I can of course enquire with the
2 prison authorities as to what modalities they have in place.

3 JUSTICE DOHERTY: Well, I am sure your colleagues -- learned colleagues here will
4 be flexible and so will I, and if you could just take some information, please, and
5 come back to me as soon as you can. Well, we will wait to hear from you.

6 MR METZGER: Thank you. Just excuse me, please.

7 (Pause in the proceedings)

8 MR METZGER: May it please your Honour, having spoken to the Director of the
9 Prisons and the gentlemen who are directly in charge of the defendants here today,
10 they tell me that they must normally return the prisoners by 5 p.m. Kigali time. That
11 would create a great deal of difficulty for them, and the only way I can see forward is
12 if we were to receive for example authority from the defendants insofar as there are
13 only procedural matters that would be dealt with that we can proceed in their
14 absence.

15 JUSTICE DOHERTY: I could try and accommodate it. If we had a hearing at say --

16 MR METZGER: Sorry, I can't hear you.

17 JUSTICE DOHERTY: I am looking at the clock, Mr Metzger. If we were to have a
18 hearing on this matter at say 2 o'clock and they left at before 3, would that be all right?
19 That would get them to Mpanga by 5. We would deal with --

20 MR METZGER: They would hope so, yes. Yes.

21 JUSTICE DOHERTY: Yes. Well, I will stand --

22 MR METZGER: But of course 2 o'clock -- it is already 2 o'clock here.

23 JUSTICE DOHERTY: I see. It's 12 o'clock noon with us.

24 MR METZGER: Yes.

25 JUSTICE DOHERTY: We will start promptly at 2. We will deal with hearing date
26 first. It's to be set by the Registrar. It's a matter of asking the usual questions as to
27 numbers of witnesses in order to make an estimate of time, et cetera. That should
28 not take a lot of time, and we will try and reach a decision in a time that enables the

1 two defendants in Kigali to be returned safely.

2 So I will stand over those matters - procedural matters - as to timing and as to what
3 happens to Mr Bangura and Mr Kargbo to 2 o'clock. We will adjourn temporarily
4 now. I will ask -- sorry, Mr Metzger, 2 o'clock my time.

5 MR METZGER: Your Honour, may I say that 2 o'clock your time is 4 o'clock for us
6 here.

7 JUSTICE DOHERTY: Oh, wait a minute. 4 o'clock. Indeed, you are quite right.
8 Let me revise that.

9 MR METZGER: That does not leave sufficient time.

10 JUSTICE DOHERTY: No. Just pause, please.

11 MR METZGER: May I suggest getting authority from the Defendants?

12 JUSTICE DOHERTY: By all means do so. By all means. They're not going to
13 anywhere.

14 MR METZGER: I am sorry, I have lost the sound.

15 JUSTICE DOHERTY: No, by all means please take instructions. I don't want to be
16 rushing a matter to do with the liberty of the individual without proper submissions.

17 MR METZGER: I understand. I do have authority to approach Mr Kamara from
18 Mr Serry Kamal and from Mr Kamara himself.

19 JUSTICE DOHERTY: Mr Kamal is on his feet here.

20 MR KAMAL: That is what I wanted to say, your Honour.

21 JUSTICE DOHERTY: Mr Serry Kamal has confirmed that, Mr Metzger.

22 MR METZGER: May I take quick instructions?

23 (Pause in the proceedings)

24 MR KAMAL: Your Honour, can I make an alternative suggestion? I know the
25 other matter is fixed for 12 o'clock. Is there any possibility of standing it down to
26 1 o'clock to give us time -- to give my learned friend time to marshal his facts? I am
27 sure he is quite ready, because of the --

28 JUSTICE DOHERTY: Stand which matter down, Mr Serry Kamal?

1 MR KAMAL: The other matter that you have. The Senessie matter.
2 JUSTICE DOHERTY: Yes.
3 MR KAMAL: So that we can continue with this one.
4 JUSTICE DOHERTY: Oh, you want to continue with it now?
5 MR KAMAL: Yes.
6 JUSTICE DOHERTY: Everybody is ready to proceed, are they?
7 MR KAMAL: I'm not sure. It is only one person.
8 JUSTICE DOHERTY: No, no. Oh, no, there's two.
9 MR WILSON: Yes, your Honour.
10 JUSTICE DOHERTY: Mr Nicol has a client here as well.
11 MR WILSON: I can proceed now, your Honour.
12 JUSTICE DOHERTY: Oh, well in that case we will do that, if that is acceptable to
13 everybody. Mr Metzger? Oh, he's not.
14 (Pause in the proceedings)
15 MR METZGER: May it please your Honour, after consulting both Mr Kanu and
16 Mr Kamara --
17 JUSTICE DOHERTY: Mr Metzger, I didn't have my headphones on.
18 MR METZGER: Whilst they are concerned with -- sorry, whilst both Mr Kanu and
19 Mr Kamara were concerned about what was going to happen should they be absent, I
20 have made it clear to them that it will be procedural matters. It is not the case that
21 Mr Kargbo will be sentenced today.
22 JUSTICE DOHERTY: No.
23 MR METZGER: In those circumstances, they will be content for me to deal with the
24 procedural matters in their absence if this meets with the approval of the Court.
25 JUSTICE DOHERTY: We will certainly accept that. Whilst you were taking
26 instructions, Mr Kamara (sic) rose to his feet and asked us to deal with it right away
27 to stand down the other case and deal with it now in order to accommodate both your
28 client and his client.

1 So I am going to proceed on to hear both the procedural and the question of what will
2 happen to the two persons who are here in Freetown. So I will now hear -- first of all,
3 I will deal with the procedural matters. Perhaps since you are on your feet,
4 Mr Metzger, if you are ready to inform me about witnesses, et cetera, that you will be
5 calling to allow me to give an estimate of time?

6 MR METZGER: At this point in time it is difficult to say, but it seems to me that we
7 will require at least one witness from the administration in Mpanga Prison to deal
8 with the use of the telephone and to produce the records that they have available to
9 them.

10 In addition, Mr Kanu during part of the relevant period on the indictment was under
11 medical care. We will need another witness from the hospital to produce those
12 records, and perhaps another witness from the administration, or the same one, to
13 deal with telephone access that was available to Mr Kanu whilst he was being treated.
14 At this point in time I am unable to say how we will deal with the allegations
15 concerning the persons or positions named until we have further information, and it
16 may require us to investigate those matters.

17 JUSTICE DOHERTY: I understand.

18 MR METZGER: Other than that, it will clearly be a situation where we will require
19 extensive cross-examination of some Prosecution witnesses, or putative Prosecution
20 witnesses, and perhaps slight cross-examination of others.

21 JUSTICE DOHERTY: I understand. Thank you for that, Mr Metzger.

22 MR METZGER: I don't know if that assists?

23 JUSTICE DOHERTY: It does indeed assist. It gives me a fair estimate.

24 Mr Kamal - Serry Kamal - may I ask again the same question, again in anticipation of
25 the number of witnesses, in order to give me an estimate of time?

26 MR KAMAL: I would -- I would at this stage think it would be about four witnesses.

27 JUSTICE DOHERTY: Four witnesses. Thank you, Mr Kamal. I am taking it that
28 they are four witnesses who will be subject to examination-in-chief and

1 cross-examination?

2 MR KAMAL: Indeed, my Lady.

3 JUSTICE DOHERTY: That's fine, thank you.

4 MR WILSON: Your Honour, in the absence of full disclosure by the Independent
5 Counsel one will not state with any degree of certainty as to how many witnesses we
6 will be calling, although I think it is going to be in the region of five and six Defence
7 witnesses, but this will depend on what is disclosed by the Independent Counsel.

8 JUSTICE DOHERTY: Thank you. As you know, this is only for -- to give me an
9 estimate of time. It's not in any way binding on anyone.

10 Mr Bangura, in your case of the Prosecution, have you some idea of again estimates to
11 enable us to --

12 MR BANGURA: Well, again I cannot say with mathematical certainty, but I am sure
13 that it cannot be less than four witnesses and, in the absence of very lengthy
14 cross-examination, then we are thinking that four to seven days' trial.

15 JUSTICE DOHERTY: Well, that's very helpful. I think we will err on the side of
16 caution here. If you say seven to four days and given Mr Metzger's indication of
17 adducing records and so on, I think it might be wise to allow two working weeks, that
18 is ten days, for the hearing.

19 As you are aware -- Mr Serry Kamal, I see you are trying to get to your feet.

20 MR KAMAL: Yes, your Honour. I am sorry I have to come back to this point. We
21 have to take into consideration the fact that some of the witnesses will have to be
22 taken in Kigali and some in Freetown.

23 JUSTICE DOHERTY: Yes, indeed.

24 MR KAMAL: So we have to take that into account.

25 JUSTICE DOHERTY: I haven't heard any submissions or observations regarding
26 that, so I am assuming that we all know those are the realities and until I hear
27 something to the contrary I will proceed on that basis. Mr Metzger has made it very
28 plain that some of his are administrative officers, who are in Kigali, and therefore that

1 evidence will be adduced from Kigali.

2 MR KAMAL: On -- I mean like the people in the prison we will also need to call
3 them, and in fact next time I will be over there.

4 JUSTICE DOHERTY: I see. Perhaps I should make an observation that, whilst we
5 are attempting to set things in motion here, if any matters that could arise between
6 now and the hearing date, any Counsel is at liberty to make an appropriate
7 application and it will be considered.

8 MR KAMAL: Thank you, your Honour.

9 JUSTICE DOHERTY: Now, the Rules of the Court provide that a hearing date will
10 be set by the Registrar, and accordingly I note the estimate and that will be conveyed
11 by way of -- it's now on public record and I will -- the Registrar will set a date. I am
12 not going to speculate as to when it will be, we have to get many things in order,
13 but -- and Mr Serry Kamal has made an offhand suggestion as to a month, but I am
14 not going to predetermine the decision, but adequate notice will be given to all parties.
15 So this is stood over for a date to be set and I allow an estimate of two working weeks;
16 that is, ten working days.

17 I will now proceed on to set the date for the sentencing hearing. Mr -- Chief Taku, as
18 I have indicated, I am willing to try and accommodate the rights of an accused to a
19 fair and expeditious trial to do it quickly. I bear in mind that our Rules do give time
20 parameters, but they are always subject to application. So have you some time in
21 mind in which to make your submissions and for the accused himself to speak on his
22 own behalf?

23 MR TAKU: May it please the Court, I thought that maybe we may have to file a
24 sentencing brief for your consideration and maybe my colleague will respond. In
25 other words, I think in fixing the date -- asking you to fix a date for the hearing of the
26 substantive matter involving other co-accused, maybe we may put it within that
27 session and we take some time within that session for the sentencing?

28 JUSTICE DOHERTY: There are usually considerations in these situations as to

1 whether the trial should be completed before the sentencing. So I will -- if you wish
2 to make these submissions in writing, for example character, et cetera, then I will
3 entertain those. They should be exchanged. I will equally hear them in Court,
4 because it's a public hearing and of course everyone must know what is being said.
5 So I will take them in writing should you wish, but I will be reading them out.

6 MR TAKU: Yes. Also, your Honour, it may be -- it may be desirable, and I say this
7 and I defer to your wisdom on this, when I talked to Mr Kargbo whether to advise
8 myself whether it might also be desirable to call one or two witnesses to testify viva
9 voce in mitigation for him?

10 JUSTICE DOHERTY: Well, that is his entitlement and I will not interfere with it.

11 MR TAKU: Exactly. Exactly, your Honour. So in addition to the sentencing brief,
12 we are thinking very, very seriously about exploring that possibility. So we will be
13 very, very happy if we were accommodated within the time-frame that the Registrar
14 will set for the substantive hearing of the other matters.

15 JUSTICE DOHERTY: Very well. I will have the Registrar note this accordingly,
16 that it will be stood down to the same time as the substantive hearing.

17 Mr Bangura, I didn't invite you to reply to this as I understood from the document I
18 have already read parts of that you were also ad idem with Chief Taku that the
19 sentencing would be dealt with in accordance with the Rules.

20 MR BANGURA: Yes, your Honour. We have -- based on the plea agreement we
21 made certain proposals, which we know are not binding on you and it depends on
22 your good wisdom to take them in the good part, and we noticed that I mean under
23 Rule 100(A) you have seven days -- we have seven days within which we should
24 submit any relevant information regarding sentence. But at this moment, your
25 Honour, we are restrained by the fact that certain issues have to come out first to be
26 properly equipped, for example the cooperation of the accused and all the rest of it,
27 and those matters can adequately be addressed if they are deferred over and above
28 what is stipulated by Statute.

- 1 JUSTICE DOHERTY: Are you sure it is Rule 101?
- 2 MR BANGURA: 100(A). It comes under "Sentencing Procedure."
- 3 JUSTICE DOHERTY: Mr Bangura, I can't see the actual -- 101.
- 4 MR BANGURA: It is 100(A).
- 5 JUSTICE DOHERTY: Oh, 100(A).
- 6 MR BANGURA: Yes, one-zero-zero-A, yes.
- 7 JUSTICE DOHERTY: I misheard. I apologise. Yes, that is the provision which I
8 mentioned does give a time, but if in the interests of justice that should be changed I
9 am willing to hear. It is clear to me that we will not deal with the sentencing during
10 this session and, therefore, it is appropriate on the submissions that it be dealt with
11 when the Court reconvenes.
- 12 MR BANGURA: We are exceedingly grateful for that.
- 13 JUSTICE DOHERTY: Right. Now, that we have -- Mr Taku?
- 14 MR TAKU: No, I am sorry, your Honour. I jumped up even before I was given the
15 floor. I am very sorry about that. I just wanted to remind your Honour about the
16 outstanding issue that I raised about the bail for Mr Kargbo within this time.
- 17 JUSTICE DOHERTY: I am just coming to that next.
- 18 MR TAKU: Thank you, your Honour.
- 19 JUSTICE DOHERTY: I am doing a mental checklist here, Mr Taku.
- 20 MR TAKU: Yes, thank you, your Honour.
- 21 JUSTICE DOHERTY: I have dealt with two parts of my three item list, and I now
22 come to the third part which is, as I have indicated, the Court must make a decision
23 concerning what happens to both the accused, Mr Bangura, and to the convicted
24 person, Mr Ragga, pending disposal.
- 25 I will deal first with Mr Kargbo and then I will deal with Mr Bangura. Mr Bangura --
- 26 MR METZGER: Sorry, your Honour, but may I address you on the matter you have
27 just dealt with before we move on to that?
- 28 JUSTICE DOHERTY: Oh, certainly. Yes, Mr Metzger.

1 MR METZGER: Yes, they are really observations and an invitation to the Court to
2 make sure that sentence for Mr Kargbo predates the trial of this matter and, secondly,
3 to make it clear that there should be disclosure of all submissions made by both
4 Prosecution and Defence relating to the reduction of sentence as it is a pertinent issue
5 should he become a Prosecution witness.

6 JUSTICE DOHERTY: Thank you, Mr Metzger. I did have in mind that normal
7 procedure in situations of this type is to deal with the sentencing before the
8 substantive hearing. That's the normal procedure, but that of course is only
9 procedural. It is not in the Rules, it is not in any Statute and I will be in due course
10 making rulings concerning Rules 66 and 68 disclosure rulings. So I -- but I am
11 grateful for that reminder.

12 MR METZGER: I am much obliged, your Honour. Thank you.

13 JUSTICE DOHERTY: Chief Taku, would you please now proceed on to address on
14 what will -- should happen now in the case of your client, Mr Kargbo, pending the
15 hearing? The indications are that it is going to take some -- certainly it will not be
16 immediate. I don't know when the Registrar is going to set it, but I don't see it in the
17 near future. When I say "the near future," I don't mean next year. I'm talking about
18 weeks, rather than months.

19 MR TAKU: Yes, may it please the Court, before I address that issue, the question
20 about sentencing when is within the discretion of the Court, and as we pointed out in
21 the jurisprudence I don't think it is subject of comment. We cannot -- Counsel
22 cannot comment on that. It is within the discretion of the Court entirely.
23 Issues may arise in the course of considering the submissions, looking at the personal
24 circumstances of Mr Kargbo, that might demand that judgment be given immediately,
25 or deferred as the case may be. We don't know. We haven't addressed the Court
26 on that. When we address the Court on that, the Court will look at all the
27 circumstances and make appropriate orders at that point in time.
28 With regard to the question of bail, we respectfully urge the honourable Court to give

1 due consideration to the issues we raised in the plea agreement with the Prosecutor;
2 namely, that Mr Kargbo is cooperating with the Independent Prosecutor, the
3 Independent Prosecutor indicates that his investigations are ongoing and he will need
4 Mr Kargbo to be available to him at any time he deems necessary to conduct further
5 investigations and preparation of this case. We agreed to that and we reduced it into
6 the plea agreement. We too, the Defence for Mr Kargbo, would like to remain
7 available to him at all times, should the need arise, to advise him on this process, how
8 it proceeds.

9 We are praying, as a consequence, that your Honour looks at what was said about,
10 you look at the plea agreement, and release him, but leave him at the pleasure -- at the
11 pleasure of the Independent Prosecutor and the Witness Protection Unit. He could
12 report to them at such times and other such times as the Court may deem necessary
13 and in the interests of justice.

14 Secondly, if he were to testify, it would be desirable that he cooperates fully and
15 unequivocally with the Independent Prosecutor, and that we also wish to draw your
16 attention to the fact that when he was summoned to appear he appeared willfully, he
17 cooperated and the Prosecutor -- the Prosecutor has also drawn your attention in the
18 plea agreement that when he was first contacted he cooperated and he has been
19 cooperating all along.

20 So we are praying very respectfully that he be given bail in his own recognisance and
21 placed at the disposal of the Registrar, the Independent Prosecutor and the Witness
22 Protection Unit. In doing so, your Honour will have the interests of justice, the fair
23 administration of justice. As it has been indicated that he will testify, it is only
24 proper that he be made available to the appropriate institutions of the Court
25 whenever they require his presence in order help in this process.

26 Thank you very much, your Honour.

27 JUSTICE DOHERTY: Can you give me some personal details about his background,
28 where he lives, family connections, et cetera?

1 MR TAKU: Yes, Mr Kargbo is married. He is a Sierra Leonean, a citizen of Sierra
2 Leone, and he is married with two children. Presently he lives in Freetown. He has
3 been in contact with the Independent Prosecutor since May, since he was first
4 contacted, and he has also been in contact already with the Witness Protection Unit.
5 He has been cooperating with them already. In fact, those contacts with the Witness
6 Protection Unit would have continued, but we wanted to formalise it with an
7 application before the Court so that the Court knows that he is already in contact with
8 that unit and they can confirm it.

9 And so Mr Kargbo is a citizen of Sierra Leone, married with two young children and
10 living in Freetown, and he's also prepared, your Honour, to live in any other part of
11 Sierra Leone, or elsewhere, or any other location, that the interests of justice may
12 demand, or the Independent Prosecutor, or the Registry may demand, that his
13 presence in that location will facilitate the further investigations in this matter.
14 That is our humble prayer, your Honour.

15 JUSTICE DOHERTY: Thank you. I will proceed to hear Mr Bangura for the -- on
16 this point before I then turn to the other -- to Mr Bangura's case, which I will hear as
17 well.

18 MR BANGURA: Yes, your Honour. I mean, in principle we are not opposed to the
19 application. We would request most respectfully that this honourable Court draws
20 its attention to certain issues which we'd like to be conditions precedent for his
21 continuous release. In other words, your Honours, we would like -- we are
22 suggesting that the conditions are to the effect that the accused continue to be in
23 constant contact with us whenever it is appropriate, he should be of good conduct, he
24 should also cooperate with us, because that is the basis for which the plea agreement
25 was reached and we have indicated that his cooperation is highly needed in our case.
26 Again, I can confirm that he has been cooperating with the Independent Prosecutor at
27 all material times since he was asked to make a statement in this matter, and he has
28 been doing it to date as I speak, and if that is a condition precedent upon which he

1 will be released then we have no objection to that, except you wish me to address you
2 on any other point?

3 JUSTICE DOHERTY: What about -- has there been anything said by the witness
4 TFI-334 since his original complaints that have given rise to the proceedings today?

5 MR BANGURA: Not to my attention, your Honour, and I contacted Mr Saleem this
6 morning and based on the information I heard he has been very cooperative with
7 them and so there is no need to complain in this regard.

8 JUSTICE DOHERTY: Who has been cooperative? TFI-334 has been cooperative?

9 MR BANGURA: Yes, your Honour, and also with the Independent Prosecutor.

10 JUSTICE DOHERTY: Incidentally, for purposes of record TFI-334 is not called
11 Saleem.

12 MR BANGURA: Sorry.

13 JUSTICE DOHERTY: I think -- Saleem I think is a member of the Court personnel.

14 MR BANGURA: That is exactly what I was trying to say, my Lord, that the accused
15 person has been cooperative based on information that I got from that unit.

16 JUSTICE DOHERTY: I am thinking of 334 at the moment.

17 MR BANGURA: Oh, 334. No, my Lord, there hasn't been any contact basically
18 adverse to his position at the moment.

19 JUSTICE DOHERTY: Any prior convictions of the -- of Mr Kargbo that I should bear
20 in mind?

21 MR BANGURA: Yes, your Honour. We are informed that he has been convicted
22 before but, your Honour, I will state that that is not the basis for which we are not
23 objecting. As long as he vouches to be in good conduct and he cooperates, then
24 I think it is very important to our case.

25 MR TAKU: Your Honour, yes, just to assist the Court in respect of one question you
26 asked. Yes, he was convicted, but he was granted a presidential pardon and
27 therefore that expunges any previous conviction. So, as we talk, he is a citizen of
28 Sierra Leone in good standing.

1 JUSTICE DOHERTY: Thank you for that clarification. I will consider this and now
2 hear Mr -- what Mr Nicol says about the accused, Mr Bangura.

3 MR WILSON: Your Honour, Mr Bangura has pleaded not guilty to all the counts on
4 the indictment and he strenuously denies the charges against him. He does not have
5 any previous criminal convictions. He is married, and as a matter of fact his wife is
6 even at the public gallery witnessing these proceedings, and he has three children
7 aged ten, six and four.

8 Your Honour, I am particularly urging this Trial Chamber to grant Mr Bangura bail
9 on his own recognisance for the following reasons: Firstly, he does not represent any
10 flight risk. He was served an order in lieu of the indictment on 3 June and has since
11 then been within the Sierra Leone jurisdiction and has voluntarily attended today's
12 proceedings.

13 Mr Bangura is willing to surrender his passport, which is the only travelling
14 document he has, and is willing to be available whenever the Court needs his
15 presence.

16 Mr Bangura also has very strong community ties in Freetown. He is a private
17 businessman and sole proprietor, and in his absence his business cannot move which
18 will have an adverse effect on his family. For that reason we are --

19 JUSTICE DOHERTY: What sort of business is that, Mr Nicol?

20 MR WILSON: He owns a private business in which he basically retails goods. He
21 will buy goods in Freetown and he will take them to the provinces and sell. It is a
22 sole proprietorship, he runs the business alone because the wife is at home looking
23 after the three kids, and he also has other financial responsibilities besides that of
24 relating to his immediate family. In Sierra Leone we have the extended family
25 system, and so he has about ten other members of his family staying with him and he
26 is responsible for their material well-being.

27 Additionally, Mr Bangura has cooperated with the Independent Counsel during the
28 investigation. He was summoned by the Independent Counsel, he made himself

1 available and he had lengthy discussions with the Independent Counsel prior to the
2 issuing of the order in lieu of the indictment.

3 The very nature of the Special Court's Witnesses and Victims Section will prevent
4 Mr Bangura from interfering in any way with witnesses for the Prosecution, and --
5 JUSTICE DOHERTY: Why do you say that?

6 MR WILSON: Because the Court in itself has proper mechanisms in place to make
7 sure that witnesses are not easily interfered with, and Mr Bangura is making an
8 undertaking that he will not in any way interfere with witnesses for the Prosecution.
9 He has also undertaken to reside throughout the period of his provisional release in
10 Freetown, where the Court is, and just out of an abundance of caution and for clarity
11 and certainty he is a Sierra Leonean citizen and has resided in Freetown for his entire
12 lifetime.

13 Your Honour, those will be my humble submissions, except you want me to elaborate
14 on some other issues in detail?

15 JUSTICE DOHERTY: I will ask you the same question as I asked concerning
16 Mr Kargbo. Has he got any prior convictions that I should take into account?

17 MR WILSON: Your Honour, Mr Bangura does not have any prior conviction. He
18 has never been convicted, not even for a traffic offence. I am grateful.

19 JUSTICE DOHERTY: Mr Nicol -- excuse me, Mr Bangura?

20 MR BANGURA: Yes, your Honour. Again in principle we are not opposed to the
21 application, provided he ceases any contact with our witnesses, or any of their family
22 members.

23 JUSTICE DOHERTY: When you say "ceases contact," that sounds to me like he has
24 had contact.

25 MR BANGURA: As it pleases your Honour. I mean, what I am saying is that, if
26 there is any potential of him interfering with our witnesses, it has to be a condition
27 upon which he is released to keep away from our witnesses and their families. Some
28 of them were brought to his attention during the investigation, so he knows exactly

1 what we are talking about.

2 Again, we will ask as a condition that he distance himself from Mr Kargbo and
3 erstwhile co-accused at the moment, and we will also ask as a further condition that
4 he makes himself available, or about his whereabouts, and if that is done we are not
5 opposed to the application.

6 JUSTICE DOHERTY: One matter that occurs to me, that had not come to my mind
7 when I heard Mr Chief Taku address, was you will have heard the ruling I made on
8 the facts in relation to Mr Kargbo and the frequent mention in the facts found of use
9 of phones. How many phones have we got between Mr Kargbo and Mr Bangura? I
10 will ask you both to address that. Are there phones and are they going to be a
11 problem, because they seem to be the main means of communication in this case?

12 MR BANGURA: As it pleases your Honour.

13 MR TAKU: May it please the Court, we would suggest that Mr Kargbo be provided
14 a phone - a communication phone - with appropriate number by the Independent
15 Counsel, or the Witness Protection Unit. We will also undertake that he will not in
16 any way misuse the phone to call any of these individuals and, if they were to call
17 him - and we put this in the plea agreement - any phone call to him there will be a
18 report to the Independent Investigator and to me and to his Counsel. We took care
19 of that, we discussed that at length and we put it in the plea agreement.

20 JUSTICE DOHERTY: Thank you, Chief Taku. And what about Mr Bangura? Has
21 he got a couple of phones, or one phone, or what is he doing with his phone?

22 MR WILSON: Your Honour, Mr Bangura has one mobile phone, but I have
23 indicated to him that he should not in any way be in contact with Mr Kargbo and I
24 have told him that mobile phone communications can easily be traced through
25 records from the mobile phone companies. So he has undertaken not to be in contact
26 with Mr Kargbo, or with any other individual associated with this case.

27 MR BANGURA: May it please you, your Honour --

28 JUSTICE DOHERTY: Yes, Mr Bangura.

1 MR BANGURA: -- it came up during the process of negotiating the plea agreement
2 that the accused Kargbo should change his number as a first precaution. I didn't
3 hear Mr Taku addressing you on that when it comes to the issue of -- when it came to
4 the issue of the mobile phone, or use of the mobile phone.

5 JUSTICE DOHERTY: I want -- I want to make it clear that, although there is a
6 reference to a plea agreement, it's not binding on the Court. I don't want anybody to
7 think that I have gone in here having been persuaded one way or the other, because
8 those things are not binding on us and I only say that because there has been several
9 references.

10 I haven't -- thank you, Mr Bangura. I have not asked the Registry to address on this
11 subject, but in the light of the fact that I did ask both Counsel if there had been any
12 complaint from TFI-334 since this issue first came before the Court by way of a
13 complaint from the Prosecutor, which in turn led to the investigation by the
14 Independent Counsel, is there anyone from the Registry who would be able to
15 address the Court on the situation relating to TFI-334 and if there's been any
16 complaint since?

17 MR VAHIDY: Your Honour, I could speak on this.

18 JUSTICE DOHERTY: I would be grateful, Mr Vahidy.

19 MR VAHIDY: After the initial contact, we have been in continuous touch with 334
20 and there hasn't been any other contact after the contact in November/December.

21 JUSTICE DOHERTY: Well, you have heard the submissions by Counsel in which
22 they say there would not be contact and there has not been contact. You cannot
23 predict the future any more than anyone else, but can you confirm this statement that
24 there has been no interference or contact since the complaint was made? You have
25 given me an answer and I am asking you to categorically state it now for purposes of
26 record.

27 MR VAHIDY: I will categorically state what I have been informed by 334, that it has
28 not been -- well, I will be frank with you, not in the last sort of a month-and-a-half,

1 but prior to that I was in contact and between the initial issues which arose in
2 November and December after that there has been no contact with 334.

3 JUSTICE DOHERTY: No contact between him and any other person named in these
4 proceedings?

5 MR VAHIDY: Between him and the two accused present at the moment.

6 JUSTICE DOHERTY: I see. Thank you for that, Mr Vahidy.

7 I will stand this -- I will give some thought to this. It's a very serious situation.

8 Once an accused person has come within the jurisdiction of the Court, careful thought
9 must be given to what happens between the trial and the entering of the plea and so
10 I'm going to give this some careful thought.

11 I will stand it down and try -- I will give a ruling in the course of the afternoon. I
12 particularly note that Mr Metzger now has instructions to take -- hear a ruling in the
13 absence of Kamara and Kanu, the co-accused, if they have to be returned for logistical
14 reasons to Mpanga.

15 I have one other matter to deal with. I will open that matter in say ten minutes, and
16 then I will inform Counsel as soon as I possibly can of when we will reconvene today
17 in order for me to give a ruling on these two applications for what will happen to
18 Mr Kargbo and Mr Bangura pending the continued hearing.

19 I will stand the Court down now let's say until 1 o'clock. I will reconvene in order to
20 have Mr Senessie's matter at least mentioned, if not dealt with, and I will give at least
21 half-an-hour's notice to other Counsel in this matter.

22 Mr Serry Kamal - oh, and Mr Bangura too - I suppose you are the people who are
23 likely to be travelling around. Half-an-hour would be enough? Yes.

24 MR BANGURA: That's okay.

25 JUSTICE DOHERTY: I will stand this case down for a time to be set in the course of
26 the afternoon, and I will reconvene the Court at 1 o'clock and we will call the matter
27 of the Independent Prosecuting Counsel and Senessie.

28 Madam court officer, please adjourn the Court until 1.

1 THE COURT OFFICER: Court is adjourned until 1 o'clock. All rise.

2 (Short adjournment)

3 JUSTICE DOHERTY: Please be seated.

4 THE COURT OFFICER: This is case number SCSL 2011-02-I, Independent Counsel
5 against Hassan Papa Bangura, Samuel Kargbo, Santigie Borbor Kanu, Brima Bazzy
6 Kamara, with Justice Teresa Doherty presiding. All persons having anything to do
7 in this case, draw near and give your attendance.

8 JUSTICE DOHERTY: This is several decisions on procedure and applications on bail.
9 Before I proceed, Mr Metzger, I notice you are here at the Court in Kigali and I note
10 that the accused Kamara and Kanu are not present and I take it that your -- the
11 instructions that you informed us of earlier continue? Mr Metzger, did you hear
12 what I asked? Are we having communication with Kigali, do we know?

13 MR METZGER: So if I press that now they should be able to hear? I am sorry, I
14 could not hear anything for the last few minutes.

15 JUSTICE DOHERTY: I was mentioning that I note Mr Kamara and Mr Kanu are not
16 with you, and I am merely checking for purposes of record that the information you
17 gave us concerning instructions still stand?

18 MR METZGER: Your Honour, yes. For the record, the information still stands.

19 JUSTICE DOHERTY: Very good. Thank you, Mr Metzger.

20 MR METZGER: They are fully aware that we are going to the next stage.

21 JUSTICE DOHERTY: Thank you. I will now proceed to give these rulings.

22 There are several procedural and substantive issues in this matter which are to be
23 determined. I will commence with the procedural matters by first reminding

24 Counsel of the disclosure obligations provided for in Rule 66, 67 and 68 of the

25 Rules of Procedure and Evidence. I do this only because, while I have no doubt at all
26 that Counsel are well aware of those Rules, that disclosure impacts upon the time set
27 for secondly the filing of preliminary motions.

28 Mr Metzger has evinced an intention to file such a motion, and I have varied the

1 provisions of Rule 72 to allow him 25 days, rather than 21 days, for the disclosure to
2 file such a motion. I do so bearing in mind the distances and the locations of the
3 Court, the accused and Counsel.

4 I also remind Counsel of the provisions --

5 MR METZGER: I am sorry, we are only getting the Krio translation.

6 JUSTICE DOHERTY: Ah, now that is not too good.

7 MR METZGER: Hello. We have lost the live feed.

8 JUSTICE DOHERTY: Let me check, Mr Metzger. We are having a lot of rain here.

9 MR METZGER: It is on again. I can hear you, your Honour.

10 JUSTICE DOHERTY: Did you hear my last mention about the filing of preliminary
11 motions?

12 MR METZGER: I did, your Honour.

13 JUSTICE DOHERTY: And I have repeated the 25 days which I have already -- we
14 have already ruled upon.

15 MR METZGER: Yes.

16 JUSTICE DOHERTY: And again I return to my third point, which is to remind
17 Counsel in the matter of the Independent Counsel and Kargbo of the provisions of
18 Rule 101(A) on sentencing brief. I do this, because on reviewing my notes I am not
19 entirely clear if the Independent Counsel was seeking a variation of the times
20 provided in the Rules and accordingly I wish to make that record clear and if there is
21 a ruling required to give it.

22 Mr Bangura? Mr Taku?

23 MR BANGURA: Yes, your Honour. In effect, that is what -- that was what exactly
24 we were seeking for you to give a ruling that we do extend that period under 100(A)
25 within which we will submit materials as far as sentencing is concerned.

26 JUSTICE DOHERTY: Now, you did give me one reason for that, it was to do with
27 ongoing investigations, et cetera, but it's not an open-ended time,

28 Mr Bangura - excuse me, yes, Mr Bangura - and I would need to make a precise ruling

1 in view of the clear date times given in the Rules. So, if I am varying that, I must put
2 something on record.

3 MR BANGURA: As it pleases your Honour. We are particularly mindful of the
4 fact that it is in the interests of justice that, when we give all the materials regarding
5 sentence, we do so within the ambit of what we get and we cannot be able to appraise
6 the situation regarding cooperation of the accused unless and until we see how the
7 events unfold themselves during the trial itself. That is one main reason we do not
8 want to at this stage I mean be in a kind of blanket situation in which we will not be
9 able to prefer exactly a case for him, or against him, because we are mindful of the
10 fact that so many issues regarding plea may either be -- I mean, may amount to
11 aggravating circumstances when it comes to sentence, or mitigating.

12 JUSTICE DOHERTY: Now, now, careful. How can you have aggravating
13 circumstances when he's already been found guilty?

14 MR BANGURA: As it pleases your Honour. Your Honour, I was referring
15 to -- excuse me for that. I was referring to mitigating circumstances when it comes to
16 sentencing.

17 JUSTICE DOHERTY: You see, I want to be very careful. The defendant has been
18 found guilty on a plea. Quite properly, he has pleaded in accordance with the
19 advice and the decisions he himself has made voluntarily. You have told us that, but
20 he is not under a legal obligation to go further in my view. If he cooperates, or if he
21 does certain things, that is something within his volition. He cannot be forced to go
22 further than what he has already done. So I want to be very careful that I don't place
23 any obligation upon Mr Kargbo that he is not duty bound or legally bound to
24 perform.

25 MR BANGURA: Yes, your Honour. In that light we have intimated to you that we
26 will definitely be using him as a witness for the Prosecution, and as such we would
27 require his cooperation in that light and all those issues might be brought up when it
28 comes to forwarding materials to you to consider sentence.

1 JUSTICE DOHERTY: You know yourself that I'm not going to force him to do
2 anything like that. Anything I say again is between you and -- not between you
3 personally. I mean between Independent Counsel and a prospective witness. The
4 Court does not direct, or interfere.

5 But -- so the times are still vague. Mr Taku, can you help me what you have in mind
6 for a time? As you know, the days are seven days to each party.

7 MR TAKU: May it please the Court, if I had before me the schedule provided by the
8 Registrar it would have assisted both me and the Prosecutor to give an opinion on
9 this. For now, I am quite -- you know, I don't know exactly the schedule of the Court,
10 because your Honour is also involved in other business of the Court, and also other
11 factors that the Prosecutor may look at.

12 Sincerely with regard to the issue that Mr Bangura raised, we know very well that one
13 of the factors in mitigation is a substantial cooperation with the Prosecutor. That is
14 in the jurisprudence of the Court. We will look at that, as the case may be, but
15 whatever the case we will very respectfully urge the Court probably to defer this.

16 As soon as we get the directives from the Registrar, we will be able to make written
17 submissions to the Court so the Court can have in giving a ruling on this issue.

18 (Pause in the proceedings)

19 JUSTICE DOHERTY: It would appear that by consent Counsel are seeking to waive
20 the provisions of Rule 100(A), providing for the time limits for the filing of
21 submissions in relation to sentence. Given that this appears by consent, I will set the
22 filing of Independent Counsel's brief on sentencing to be filed four weeks before the
23 date set by the Registrar for the sentencing hearing and the Defence reply one week
24 after the filing of the Prosecution's submission.

25 I will now turn to the fourth item, which is the status of the accused.

26 MR METZGER: Freetown, can I just indicate that we are only getting the
27 interpreter's channel.

28 JUSTICE DOHERTY: Let me check that again. We are having a lot of rain here,

1 Mr Metzger. I think it is interfering with the wavelengths, or whatever way it goes.

2 (Pause in the proceedings)

3 JUSTICE DOHERTY: Can you hear me now, Mr Metzger?

4 MR METZGER: Yes, your Honour. I could hear your Honour just now.

5 JUSTICE DOHERTY: Very good. I will proceed, and again if the same problem
6 happens please tell me.

7 I now turn to the situation status of the accused, Bangura, and the convicted person,
8 Samuel Kargbo. The two defendants are now within the jurisdiction of the Court.
9 Their status has changed. Mr Bangura is to stand trial for a very serious offence, and
10 Mr Kargbo has been convicted of a very serious offence.

11 Those offences are allegedly involving interfering with the course of justice and
12 interfering with a person. The Court has a duty to protect its witnesses and to
13 ensure that there will be no interference with evidence, with potential witnesses, or
14 with the Court process. I take that obligation very seriously, but I also make my
15 decisions only on the facts and the evidence put before me.

16 In the case of Mr Kargbo, I accept that he has cooperated and that cooperation is
17 shown in his plea. I do not accept that he must be at liberty to cooperate with the
18 Independent Investigator, as I do not consider he is under any legal obligation to
19 further cooperate. I accept that he is of stable background and has -- and resides in
20 Freetown and has done so for some time. I consider the most particular and
21 significant matter in this application is that Independent Counsel does not oppose bail
22 and has gone as far as to state this in quite unequivocal terms. I accept that
23 Mr Kargbo is otherwise of good behaviour.

24 After some very deep consideration I have decided to grant him bail, but I do so with
25 an exceptionally stern warning and the following conditions: He is to remain in the
26 Freetown Western Area. Any travel outside of this area is to be with the knowledge
27 and with the consent of the Registrar. He is to appear for a sentencing hearing at the
28 date fixed by the Registrar. He is to report to the Court once per week, each week, at

1 a time to be set by the Registrar, and I ask that the Registrar facilitate that. He is not
2 in any way --

3 MR METZGER: Your Honour, I am sorry to interrupt, but we lost you after the
4 words "exceptionally stern warning".

5 JUSTICE DOHERTY: I will pick up from where Counsel in Kigali had heard. I
6 have decided to grant bail, but with an exceptionally stern warning and on the
7 following conditions: He is to remain in the Freetown Western Area. Any travel
8 outside that area is to be with the knowledge and consent of the Registrar. He is to
9 appear for sentencing hearing at a date to be fixed by the Registrar. He is to report
10 to the Court once per week, each week, at a time to be set by the Registrar, and I ask
11 that the Registrar facilitate that. He is not in any way, directly or indirectly, to
12 contact any witness, or any alleged victim. He is not in any way, directly or
13 indirectly, to contact any co-accused. He is to be of good behaviour, and I include
14 here categorically any offence whether it be connected with this trial or not.

15 A question of protective measures for the convicted person has been raised, and
16 before I proceed I will ask if those are to be dealt with through the normal channels
17 with WVS, or if it is to be decided they are to be dealt with by this Court?

18 MR BANGURA: Your Honour, preferably we would like those matters to be dealt
19 with by WVS.

20 JUSTICE DOHERTY: I will therefore not comment further on this, but will refer the
21 matter in accordance with Rule 75 to WVS for investigation and for any decision.

22 I will not address either Mr Kargbo, until I have dealt with his co-accused.

23 In the case of Hassan Papa Bangura, I repeat that I take the issue of bail extremely
24 seriously. I note the evidence put before me that the defendant is of a stable
25 background and is the sole provider for his family, who are dependent upon his
26 business enterprises. Again I must decide solely on the evidence and facts before me,
27 and I note in particular that Independent Counsel does not oppose bail pending the
28 hearing.

1 I put no weight at all on the submission that this Court has a mechanism to protect its
2 witnesses. The duty, the obligation and the onus is on the accused person not to
3 interfere in any matter or form with any witness, or with any alleged victims.

4 I will allow bail, therefore, on his own recognisance on the following conditions: He
5 is to surrender his passport. He is to remain within Sierra Leone and to reside at his
6 present address in Freetown. He is to appear when directed by the Registrar for
7 hearing. He is not to contact in any way or means any of the co-accused in this trial,
8 that is Mr Kanu, Kamara or Kargbo, and when I say "in any way" that means calls by
9 phone, messages through other people and even so-called friendly statements such as
10 "Let's be friends" and "Don't forget we were once brothers;" any form of direct or
11 indirect communication. He is not to contact by any way or means, directly or
12 indirectly, any alleged witness or alleged -- excuse me, any prospective witness or
13 alleged victim. He is to report once per week to the Registrar at the Special Court at
14 a day and time to be fixed, but at a different time to that of Mr Kargbo. He is to be of
15 good behaviour and any offence or alleged offence, violence or otherwise, even if it
16 is not connected with this Court case, will bring into question the grounds and basis
17 for allowing of bail today and may result in an application of -- to revoke.

18 Mr Kargbo, please stand up. Mr Kargbo, did you understand what I said?

19 SAMUEL KARGBO: Yes, my Lord.

20 JUSTICE DOHERTY: Mr Kargbo, I can tell you now that it is not usual to allow bail
21 in a case like this and I have given a lot of thought to that fact, but in the light of the
22 fact that strong submissions have been made on your behalf and certain statements
23 have been made, particularly by the Independent Counsel, stressing your cooperation
24 and your good behaviour in the past, I am going to allow you bail pending the
25 sentencing.

26 I do so on the following conditions and you are to tell me if you don't understand any
27 of them: You are to remain in the Freetown Western Area and, if you want to travel
28 away from here, you have to get permission of the Registrar. You are to appear in

1 this Court for the sentencing hearing at a date that you will be informed when it is
2 fixed by the Registrar. You are to report to the Court once a week. The Registrar
3 will inform you of the day and time which you are to report. You are not in any way,
4 directly or indirectly, to contact any witness who may give evidence in the trial, or
5 any alleged victims. When I say "indirectly," that means messages from people
6 known to you to them. You are not in any way to contact any co-accused; that is,
7 Mr Bangura, Mr Kamara and Mr Kanu. You are to be of good behaviour and, if you
8 are convicted or we have reports of that you are not of good behaviour, it is open to
9 the Prosecutor to seek to have your bail revoked because we are -- because I am
10 making this decision on the basis that I have been told you are of good behaviour.

11 Mr Kargbo, did you understand what I have said?

12 SAMUEL KARGBO: Yes, my Lord.

13 JUSTICE DOHERTY: And are you willing and ready to comply with these
14 conditions?

15 SAMUEL KARGBO: Yes, my Lord.

16 JUSTICE DOHERTY: Very well. Please sit down, Mr Kargbo.

17 SAMUEL KARGBO: Thank you, my Lord.

18 JUSTICE DOHERTY: Mr Bangura, please stand up. Mr Bangura, you also heard
19 what I said?

20 HASSAN PAPA BANGURA: Yes, my Lord.

21 JUSTICE DOHERTY: Again I state to you, as I have stated to Mr Kargbo and which I
22 have stated in Court, bail in these situations is not that common and I have been
23 around for a long time and I know why it is not that common, but based on the
24 submissions made on your behalf and based on what I have been told by the
25 Independent Counsel I'm taking the exceptional step in this case of allowing you bail.
26 You are to surrender your passport to the Registrar. You are to do that immediately,
27 except you may not have it with you today, but you are to get it up here quickly.

28 You are to remain within Sierra Leone and you are to continue to reside at your

1 present address in Freetown. You are to appear in this Court when directed by the
2 Registrar for the hearing of this trial. You are not to contact in any way or means
3 any of the co-accused in this trial, that is Mr Kanu, Kamara or Kargbo, and as I have
4 already said that means indirect. Little messages through sisters, brothers, children
5 to other people's sisters, brothers, children and cousins, anything remotely like that
6 will be open to the interpretation that they are not as innocent as you think they are.
7 You are not to contact by any way or means any prospective witness, or any alleged
8 victim. You are to report once per week to the Registrar at the Special Court at a
9 time and day to be fixed by the Registrar, and that day and time will be different to
10 the day and time that Mr Kargbo is to report. I am doing that deliberately so there's
11 no chance of either of you meeting by accident. You are to be of good behaviour and,
12 as you have heard me say, any offence - even an alleged offence or an alleged act of
13 violence whether it is connected in this case or not - could result in an application
14 being made to revoke your bail, because the basis of you being granted bail is that I
15 have been assured that you will be of good behaviour and you have been. If I get a
16 whiff that you are not, I'll be back down here dealing with it. Do you understand
17 what I said?

18 MR BANGURA: Yes, my Lord.

19 JUSTICE DOHERTY: Are you ready and prepared to comply with these
20 obligations?

21 MR BANGURA: Yes, my Lord.

22 JUSTICE DOHERTY: Very well, if there are no other matters -- please sit down. I
23 will ask Counsel in turn. I think according to my notes I have dealt with procedural
24 and other issues raised, but I will ask Counsel in turn to ensure that I have dealt with
25 all matters.

26 Mr Metzger, have I -- have we dealt with all procedural and other timetabling issues
27 that we can deal with here now?

28 MR METZGER: So far as I can tell, your Honour, we have. Just to recap, it seems

1 that any preliminary motions will obviously have to come after a point in time when
2 the issues between Mr Kargbo and the Independent Counsel have been resolved.

3 JUSTICE DOHERTY: I am not quite sure what you mean by that, Mr Metzger. The
4 Rules provide for disclosure and a time following that.

5 MR METZGER: Yes.

6 JUSTICE DOHERTY: So I reminded Counsel of their obligations on disclosure - they
7 are well aware of them, I am sure, and I have merely reminded of them - and then I
8 have allowed you some extra days over and above that set by the Rules in order to file
9 your preliminary issues. Is there something I have overlooked?

10 MR METZGER: Yes, I do understand. No, no, no. I do understand, your Honour.
11 I am just suggesting that disclosure cannot have properly taken place until such time
12 as that issue between Mr Kargbo and the Independent Counsel has been resolved, if
13 he is a prospective witness.

14 JUSTICE DOHERTY: I see. You are saying that the issue as to whether he is a
15 prospective witness is something that will preclude you from filing a preliminary
16 motion? Is that what you mean, or could preclude you from filing a preliminary
17 motion?

18 MR METZGER: It could do so, your Honour, but I think we have enough to file on
19 the jurisdictional issues about him.

20 JUSTICE DOHERTY: Perhaps in the circumstances I should add in that particular
21 ruling, which was just let me check my second ruling, I would add liberty to apply.

22 MR METZGER: I am very much obliged.

23 JUSTICE DOHERTY: Thank you. I will now proceed to other Counsel and ask the
24 same question. Mr Serry Kamal, have all procedural issues been dealt with, or is
25 there any matter which has not been -- which has been overlooked?

26 MR KAMAL: None, your Honour.

27 JUSTICE DOHERTY: Thank you, Mr Serry Kamal. Chief Taku, any matters?

28 MR TAKU: No matters, your Honours. We just want to take this opportunity to

- 1 thank the Court and all my colleagues who have participated in this process.
- 2 JUSTICE DOHERTY: Thank you. That's kind of you, Mr Taku. Mr Nicol, are
3 there any matters that have not been dealt with by the Court?
- 4 MR WILSON: None, your Honour.
- 5 JUSTICE DOHERTY: Thank you. Mr Bangura, any matters.
- 6 MR BANGURA: None so far.
- 7 JUSTICE DOHERTY: Thank you. In that case, I will now adjourn the hearing to a
8 date to be set by the Registrar in accordance with the Rules. Please adjourn Court to
9 a date to be set.
- 10 THE COURT OFFICER: This Court is now adjourned.
- 11 (The hearing was adjourned)