



Case No. SCSL 2011-02-T  
THE INDEPENDENT COUNSEL

-V-

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

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|---------------------------------------|---------------------------------------|
| Before the Judge:                     | Justice Teresa Doherty                |
| For Chambers:                         | Elizabeth Budnitz                     |
| For the Registry:                     | Elaine-Bola Clarkson<br>Thomas Alpha  |
| For WVS:                              | Tamba D. Sammie                       |
| For the Prosecution:                  | Robert L. Herbst                      |
| 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 Bazy Kamara:    | Abdul Serry-Kamal<br>Wara Serry-Kamal |
| For the Principal Defender:           | Claire Carlton-Hanciles               |

1 [Saturday, 1 September 2012]

2 [Open session]

3 [The accused present]

4 [Upon resuming at 9.01 a.m.]

5 JUSTICE DOHERTY: Good morning, Kigali. Can you hear me  
6 clearly?

7 MR HERBST: Good morning, your Honour.

8 Good morning, Kigali. We can hear you clearly.

9 Good morning everybody in Freetown.

10 JUSTICE DOHERTY: Thank you. I will, therefore, take  
11 appearances, and I will start with Kigali. Appearances, please.

12 MR HERBST: Good morning, your Honour. Robert Herbst,  
13 independent counsel for the Prosecution, and I have two  
14 exceedingly brief matters to raise.

15 MR METZGER: Good morning from me, Kevin Metzger, for  
16 Santiage Borbor Kanu.

17 JUSTICE DOHERTY: Thank you, Mr Herbst, Mr Metzger.

18 I will now take appearances in Freetown.

19 MR NICOL-WILSON: Good morning, your Honour. Melron  
20 Nicol-Wilson for Hassan Papa Bangura.

21 JUSTICE DOHERTY: Thank you, Mr Nicol-Wilson.

22 CHIEF TAKU: May it please your Honour, Chief Charles Taku  
23 for Mr Samuel Kargbo.

24 JUSTICE DOHERTY: Thank you, Mr Nicol-Wilson. And again, I  
25 want to put on record my gratitude that counsel and all our  
26 support staff have come despite the bad weather and despite it  
27 being Saturday to work. I greatly appreciate it.

28 Mr Herbst, I noted your preliminary matter. I'll deal with  
29 it first. Then I'll deal with Mr Nicol-Wilson's client's

1 statement, which is the subject of an application under Rule 4B  
2 of the filing rules. We'll start with you first.

3 MR HERBST: Briefly, your Honour, this is the first one, I  
4 just wanted to make a record of the fact that we have delivered  
5 the proffer to Mr Metzger and the Court Officer. That's the  
6 first thing.

7 The second thing is having looked back at the transcript of  
8 yesterday, at page 1830, I asked Mr Kanu this question: Did you  
9 get this document in 2010, referring to the memorandum that we  
10 received for the first time, I guess, yesterday in which  
11 Mr Metzger was reexamining his client on. The answer was "they  
12 gave it to me, yes".

13 So your Honour will recall my objection was that I thought  
14 Mr Metzger was trying to impeach his client on that very issue.  
15 So I renew my objection on that.

16 JUSTICE DOHERTY: Yes, I recall that exchange. I think I  
17 allowed the question. So I note that you have retracted your  
18 allegation. I think that's what you're saying to me. Am I  
19 right, Mr Herbst, that's what you're saying?

20 MR HERBST: Your Honour, I think it was disputed yesterday  
21 as to whether Mr Kanu had testified on cross-examination that he  
22 did get the document in 2010. And we didn't have the transcript,  
23 neither Mr Metzger or myself had the transcript. So this morning  
24 we do have the transcript, and I went back and looked at it, and  
25 I wanted to bring to your attention the fact that he did - that  
26 my recollection was accurate and he did make that - give that  
27 answer yesterday.

28 JUSTICE DOHERTY: I see. I understand now. Because I  
29 missed part of your sentence. Please give me the transcript

1 citation again. The question was: Did you get the document?  
2 And the answer, I didn't get it in full. Please read it to me  
3 again.

4 MR HERBST: I would be happy to. It's at page 1830.

5 JUSTICE DOHERTY: Yes, I've noted that.

6 MR HERBST: The question was: "Did you get this document  
7 in 2010?"

8 Answer, "They gave it to me, yes."

9 JUSTICE DOHERTY: Well, there is some validity to what you  
10 said, but it's come and gone so I can't change it. But I do note  
11 for purposes of record --

12 MR METZGER: I would like to be heard.

13 JUSTICE DOHERTY: Yes, Mr Metzger.

14 MR METZGER: The question that I asked to which Mr Herbst  
15 took objection is rather different from that which his  
16 recollection permits him to put before your Honour. And the  
17 question I asked is at page 1917 of the transcript. [Overlapping  
18 speakers] 1917, your Honour.

19 JUSTICE DOHERTY: Yes, I have that. Proceed.

20 MR METZGER: "Had you received a memorandum dated 2 July  
21 2010 by the time the Registrar came to see you in late 2010."  
22 It was a specific question, and it was that question to which  
23 Mr Herbst objected.

24 As I understand it, the portion of the evidence Mr Herbst  
25 referred to wasn't specific as to when in 2010 Mr Kanu got the  
26 document. And, therefore, I was entitled to deal with that issue  
27 in re-examination, which is what I sought to do and what I still  
28 seek to do. It says the question was in 2010 period.

29 Now, of course it is correct that there are 12 months in

1 2010, and we know that the Registrar visited sometime before the  
2 4 November letter. The 4 November letter, paragraph 1, speaks  
3 for itself in my respectful submission, and that is a document  
4 that is now an exhibit before the Court.

5 JUSTICE DOHERTY: Yes, I'm clear on what's happening. But  
6 the fact remains that I allowed you to ask the question and there  
7 was a reason why I allowed you to ask the question because of the  
8 difference. I'm not going to change my ruling. It's now been  
9 asked, answered, and can continue. So I will allow - I had  
10 allowed the question, and we had moved on in the course of  
11 re-examination and - [Overlapping speakers]

12 MR METZGER: It was not answered.

13 JUSTICE DOHERTY: I'm just rereading my notes and you're  
14 quite right. I undertook to give a ruling on it. I have to  
15 correct myself. I'm rereading my notes from yesterday. I'm  
16 rereading the notes I made yesterday. I don't have the  
17 transcript before me, but I have a note in it. The question was,  
18 as Mr Metzger says, You had not received the memo - you had said  
19 you had not received the memo of the 2nd and 8th of July 2010.  
20 "Had you received the memorandum of July 2010 when the Registrar  
21 came in 2010?" There was no date for the arrival of the visit of  
22 the Registrar when that - in that question. And I think the  
23 counsel is entitled to clarify whether the document was in the  
24 hands of Kanu when the Registrar came in 2010 as there was an  
25 ambiguity in his answer at page 1830, "They gave it to me, yes."  
26 So I will allow that question.

27 That is - before we move on now to continue the  
28 cross-examination, I want to deal briefly with the application  
29 relating to Mr Bangura's statement, and then we will move into

1 the cross-examination.

2 THE COURT OFFICER: Your Honour, can I ask for the  
3 transcript reference again? That way I could try to get it for  
4 you.

5 JUSTICE DOHERTY: It's fine, Mr. Court Officer. I have  
6 relied on both counsel's citations and on my own notes, and I'm  
7 satisfied that counsel have read it to me accurately. So there  
8 is no need to print it out. Thank you.

9 This is an oral decision relating to an oral application by  
10 independent counsel for the lifting of the confidentiality of an  
11 annexure to the pre Defence - I quote, "Defence pre-trial brief  
12 of Hassan Papa Bangura filed on 30th of May 2012, and the  
13 annexure filed confidentially to that document is a statement of  
14 Hassan Papa Bangura dated 26th of May 2012.

15 Independent counsel has sought to have the document made  
16 public. And I look to the provisions of Article 4B of the  
17 practice direction on filing documents before the Special Court  
18 for Sierra Leone, which provides that a document may be marked  
19 "confidential" and a party filing such a document must indicate  
20 the reasons for the confidentiality on the relevant Court  
21 management form. Thereafter, the judge or the chamber shall  
22 review the document and determine whether confidentiality is  
23 necessary.

24 I have not seen the Court management section form with the  
25 reasons for confidentiality, but I rely on Mr Nicol-Wilson's  
26 submissions which are that parts of the document are private and  
27 confidential to the witnesses and accused's family. I have  
28 closely examined both the original document of the 26th of May  
29 2012 and the amended sections thereto filed on 28th of August

1 2012. Having reviewed it, I note that the accused witness Hassan  
2 Papa Bangura briefly sets out his Army career and where he  
3 worked, then sets out his interactions with Alex Tamba Brima,  
4 Bazy, and Five Five - Bazy being Bazy Kamara and Five Five  
5 being Santiage Borbor Kanu.

6 He then addresses issues between himself and independent  
7 counsel when he was interviewed and accusations - I'm quoting  
8 here from the subtitle in the document. I do not see anything in  
9 these documents that relate to the whereabouts of his family or  
10 that would identify his family in any way so that their privacy  
11 could be interfered with, and therefore I consider that there is  
12 nothing in these documents that wouldn't come out in sworn  
13 evidence before a Court openly. And I direct that the documents  
14 be made public and be filed publicly.

15 Independently, Mr Nicol-Wilson, I have reread the document  
16 of 28 August 2012 in the light which you have explained the  
17 background to us, and I'm sure Mr Bangura appreciates now the  
18 distinct possibility of this leading to investigation of Mr Brima  
19 and possible charges. But I'm sure he made this statement in  
20 that full knowledge that this is what could ensue.

21 I will now proceed - I'm going to actually adjourn - not  
22 adjourn, but pause briefly because I need some earphones sorted  
23 out. And then we will go on with the evidence.

24 MR NICOL-WILSON: Your Honour, my brief comment on your  
25 last statement is that I am sure the independent counsel did a  
26 proper investigation before the commencement of these  
27 proceedings. So he ought to know those who had evidence -

28 JUSTICE DOHERTY: I'm not talking about him at all. I'm  
29 not even directing anybody. I'm not even making a charge of any

1 kind. I am commenting that this could - might - may - I'm not  
2 saying it will - lead to a review. I'm not even directing the  
3 Registrar or anyone. I'm just making the comment.

4 Now, I have allowed Mr Metzger's question to be put to  
5 Mr Kanu. I first remind you, Mr Kanu, that you are under oath  
6 that; the oath is binding upon you; and that you must answer  
7 questions truthfully. Did you hear me?

8 THE WITNESS: Yes, your Honour. Good morning.

9 JUSTICE DOHERTY: Good morning, Mr Kanu.

10 Mr Metzger, please proceed.

11 MR METZGER: Thank you, your Honour.

12 SANTI GIE BORBOR KANU

13 CROSS-EXAMINATION CONTINUED BY MR METZGER:

14 Q. Good morning, Mr Kanu. Yesterday I was about to ask you  
15 about the document from the Registrar, which you have there dated  
16 2 July 2010. My question to you was: Had you received this  
17 document by the time the Registrar came to visit you at Mpanga  
18 that you told us about earlier?

19 MR METZGER: Your Honour, this is Exhibit P-16.

20 THE WITNESS: No, sir.

21 MR METZGER:

22 Q. Thank you, Mr Kanu. Now, can I ask you what is our Exhibit  
23 D Kanu exhibit 3, which is the 4 November 2010 letter from the  
24 Registrar that you produced to this Court.

25 MR HERBST: Sorry, November 4?

26 MR METZGER: Yes. November 4 letter, your Honour, D Kanu

27 3.

28 Q. Do you have that in front of you, Mr Kanu?

29 A. Yes.

1 Q. Thank you.

2 MR METZGER: Your Honour, may I just check that the answer  
3 to the previous question about the July 2 letter was recorded as  
4 answered.

5 JUSTICE DOHERTY: I have a note that he answered no.

6 MR METZGER: Thank you.

7 Q. Now, Mr Kanu, I think I want to read to you the first  
8 paragraph of that letter, which says, "I first would like to  
9 address the issue you raised concerning the memorandum I sent you  
10 subsequent to my last visit to Mpanga Prison in mid June 2010.  
11 It appears that you have not received this memo, which was sent  
12 twice, on 2 and 8 July 2010. I am therefore reattaching it to  
13 this letter."

14 Do you see that paragraph, Mr Kanu?

15 A. Yes, sir.

16 Q. Do you agree that you had not received anything on 2 or 8  
17 July 2010?

18 MR HERBST: Your Honour --

19 JUSTICE DOHERTY: You're leading the witness, Mr Metzger.

20 Mr Herbst, sorry, I intervened.

21 MR HERBST: I was making - that was my objection, your  
22 Honour. I had said the same thing, so you didn't --

23 MR METZGER: Excuse me for trying to take a shortcut. I  
24 didn't think that there would be any issue about it. I can ask  
25 the question another way.

26 Q. Mr Kanu, do you disagree with this paragraph?

27 A. I disagree, sir.

28 THE INTERPRETER: Your Honour, I can't hear the witness  
29 clearly.

1 JUSTICE DOHERTY: Mr Kanu, the interpreter cannot hear you.  
2 Please repeat your answer again. Repeat it slowly. And whilst  
3 you're doing that, I note the appearance of Mr Serry-Kamal.

4 Speak again, Mr Kanu.

5 THE WITNESS: This document --

6 THE INTERPRETER: Your Honour, I've not heard him again.

7 JUSTICE DOHERTY: Again, Mr Kanu, we're having a problem  
8 with the line. Please repeat what you said.

9 MR METZGER: It appears, your Honour, for some strange  
10 reason that there is some interference. When Mr Kanu is  
11 speaking, there seems to be a great deal of white noise in the  
12 background. Can we try again? And if it persists, it may be a  
13 technical problem.

14 JUSTICE DOHERTY: Mr Kanu and Mr Interpreter, please repeat  
15 your answer, Mr Kanu. You said "this document". Continue from  
16 there and if there is a problem, we will have to ask the  
17 technicians to help. Speak now, Mr Kanu.

18 THE WITNESS: Your Honour, this document --

19 JUSTICE DOHERTY: Yes, we're listening.

20 THE WITNESS: -- 2010 June when she returned, that was when  
21 she replied to us. But we received this letter in late November  
22 by the --

23 THE INTERPRETER: Your Honour, that's not clear.

24 THE WITNESS: By somebody in Rwanda prison. By the  
25 administration of Rwanda prison. So that is what happened, sir.

26 JUSTICE DOHERTY: Proceed, Mr Metzger.

27 MR METZGER: Your Honour, I'm content that that part that I  
28 want to deal with has been dealt with sufficiently in addition to  
29 what Mr Herbst asked, and I'm going to now move on to another

1 question unless your Honour requires or seeks further --

2 HER LADYSHIP: No, no, please proceed.

3 MR METZGER: Thank you. I would now like, please, for the  
4 two letters that were filed confidentially to the Registrar to be  
5 shown to Mr Kanu.

6 Madam Court Manager, can we have the two letters. Document  
7 number 56.

8 Your Honour, for the clarification of doubt, P-16, as I  
9 understand it, the Prosecution's exhibit, solely related to the 2  
10 July letter or memorandum.

11 MR HERBST: That's one of the documents filed yesterday. I  
12 think it's P-16.

13 MR METZGER: But there are two further documents.

14 JUSTICE DOHERTY: P-16 was a confidential document dated 2  
15 July 2010 from the Registrar addressed to the present witness.  
16 That's P-16.

17 MR METZGER: Your Honour, yes, that is document number 57.

18 JUSTICE DOHERTY: Correct. You are now referring to  
19 document 56, which is a letter.

20 MR METZGER: That's correct. Well, in fact there are two  
21 letters.

22 Q. Mr Kanu, these two letters are confidential documents. I  
23 don't want you to read them out. Can you just read them to  
24 yourself so that I can ask you questions about them without us  
25 having to go into a closed session.

26 JUSTICE DOHERTY: Have you read that document, Mr Kanu?

27 THE WITNESS: Yes, your Honour.

28 JUSTICE DOHERTY: Proceed, Mr Metzger.

29 MR METZGER: Thank you, Your Honour.

1 Q. First of all, the first document. We've heard in open  
2 Court that it is a letter dated 20 December 2010 and addressed to  
3 the Registrar; is that correct?

4 A. Yes, sir.

5 Q. The second document is a letter dated 20 December 2010 to  
6 somebody other than the Registrar; is that correct?

7 A. Yes, sir.

8 Q. Both of those letters have a number of signatures.

9 A. Say again, sir.

10 Q. Both of those letters have a number of signatures.

11 A. Yes, sir.

12 Q. In total, six signatures on each.

13 A. Yes, sir.

14 Q. And you are one of the signatories on each of those  
15 letters.

16 A. You are correct, sir. Yes, sir.

17 MR METZGER: Your Honour, I'm seeking to ask one further  
18 question, and perhaps I can seek your Honour's guidance on this  
19 to prevent us having to go into closed session and out again  
20 within a short space of time.

21 We have heard evidence through the cross-examination on D  
22 Kanu 3 that there was communication to the Registrar via a letter  
23 of 20 December, and that is because your Honour will see the  
24 letter of 19 January 2011, part of D Kanu 3, in which the  
25 Registrar acknowledges receipt of that letter.

26 JUSTICE DOHERTY: Yes, I recall that, Mr Metzger.

27 MR METZGER: I would like to introduce document number 56  
28 as a Defence exhibit, that is, those two letters, and simply to  
29 ask this witness to confirm that those letters do not mention a

1 request for a review.

2 I am, of course, in your Honour's hands. The letters speak  
3 for themselves, and I don't want to breach - or potentially  
4 breach confidentiality, and that's why I seek your guidance on  
5 this matter.

6 MR HERBST: Your Honour, if I could be heard briefly on  
7 this?

8 JUSTICE DOHERTY: Yes, Mr Herbst.

9 MR HERBST: I believe that by the time of this letter, 20  
10 December, the allegations [i ndi scerni bl e]. I could be wrong, but  
11 it seems to me that it's entirely immaterial, that is,  
12 irrelevant, that the letters talk generally about defending  
13 interests in all legal matters as opposed to the specific issue  
14 [i ndi scerni bl e].

15 So I don't think this is pertinent at all and would not be  
16 helpful to the Court. I just add those sentiments.

17 JUSTICE DOHERTY: Whilst I agree that its relevance is, I  
18 would say, marginal, there are two matters referred to in it:  
19 One is a reference to someone to represent the person signing in  
20 all legal matters before the Special Court and in any Court of  
21 law; and further down there is, on both letters, a scoring out of  
22 the words "local lawyer", and I do recall evidence relating to  
23 add advice or information suggesting legal advice from the  
24 Rwandan bar.

25 So whilst potentially it is, as I say, marginal as far as  
26 relevance goes, I think I should admit it on the grounds that it  
27 corroborates those two matters that have come through in the  
28 course of the evidence-in-chief and cross-examination. So for  
29 that reason I am prepared to admit it.

1           On the question of putting re-examination on it,  
2 Mr Metzger, the document does speak for itself. It is in the  
3 general terms that I have mentioned. If you wish to put the  
4 question I will not object to you doing so, but it's not entirely  
5 necessary.

6           MR METZGER: Far be it from me, Your Honour, to do something  
7 that is unnecessary. As I say, it does speak for itself. I'm  
8 content to move on. I have covered the ground that I wished to  
9 do with this document, save for the application to make it a  
10 Defence exhibit. If your Honour agrees with me, it will become D  
11 Kanu 4. I know that there are other documents waiting to  
12 [Overlapping speakers] --

13           JUSTICE DOHERTY: Yes, there are two at least.

14           We'll ask Mr Herbst if he's got an objection to the tender  
15 of the document as - two documents as an exhibit. [Overlapping  
16 speakers].

17           Mr Herbst, have you any response to that application?

18           MR HERBST: Sorry, your Honour, I do not. In light of your  
19 Honour's comments, I have no objection.

20           JUSTICE DOHERTY: Thank you. That's most cooperative.

21           I will therefore admit and retain the confidentiality of  
22 two documents, being letters written by six persons, including  
23 the witness, who therefore becomes an author of it. They are  
24 both dated 20 December 2010, and they become Exhibit D Kanu 4A,  
25 being the letter addressed to the Registrar, and D Kanu 4B, being  
26 the letter addressed to another person through the principal  
27 defender.

28           Mr Court Officer, if you've noted that, please.

29           Proceed, Mr Metzger.

1 MR HERBST: Your Honour, before Mr Metzger [i ndi scerni ble],  
2 could I just interject for one - in light of the fact that these  
3 are letters coming from or to the Registrar and another person, I  
4 wonder whether - rather than the other way around, whether it  
5 would be necessary to be retaining this confidentiality. In  
6 other words, there is nothing from the Registrar that would  
7 require [i ndi scerni ble] confi denti al [i ndi scerni ble] subj ect  
8 matter, so I'm just wondering whether it would be - your Honour  
9 might reconsider that.

10 MR METZGER: Your Honour, for the record, I do beg to  
11 differ with my learned friend on the basis that it is a document  
12 submitted by the Registrar, and therefore any decision pertaining  
13 to its status ought properly to be dealt with in the presence of  
14 representation by the Registrar. I have no particular view on  
15 the matter, but it does seem to me that the rules tend to require  
16 that.

17 JUSTICE DOHERTY: There are two reasons why I think they  
18 should be confidential: First, the accused witness is not the  
19 sole author of these documents. They are signed by five other  
20 people whose privacy is also to be considered by the court; and  
21 secondly, this document is a document from the Registrar which  
22 she filed confidentially, and if I am to lift the confidentiality  
23 of it under Rule 4B, then I would want to hear from her.

24 So for those two reasons I am maintaining the  
25 confidentiality of the document.

26 MR HERBST: I understand, your Honour. And in light of  
27 your Honour's comments that - [i ndi scerni ble].

28 JUSTICE DOHERTY: Thank you, Mr Herbst.

29 Proceed, Mr Metzger.

1 MR METZGER: Thank you, your Honour.

2 Q. Mr Kanu, some general questions, please, before we go to  
3 the log - the MTN log and the prison log of telephone calls. Can  
4 I ask, please, that you look at the diary for 2006?

5 A. Yes, sir.

6 Q. Bear with me. If you look, please, at the section which is  
7 - doesn't have any dates, it just has "notebook" written at the  
8 top, right at the back, please, where the names of certain  
9 witnesses by their numbers, starting with 334, are written.

10 A. I have seen it, sir.

11 Q. Thank you. When you were being asked questions by the  
12 learned prosecutor on this matter, you were asked about those.

13 MR METZGER: I believe, your Honour, the reference is at  
14 transcript page 1720.

15 Q. You said, lines 2 to 3 --

16 MR HERBST: Just give me one minute.

17 MR METZGER: You asked the questions, Mr Herbst. Do you  
18 want me to wait until you find --

19 JUSTICE DOHERTY: Proceed, Mr Metzger. Proceed.

20 MR METZGER: Thank you, your Honour.

21 Q. You said, "It was during our trial, during the AFRC trial  
22 when Judge Doherty and others - we - are giving us our statement.  
23 I wrote all during the AFRC trial." Do you remember answering  
24 the question in that way?

25 A. Indeed, sir. Indeed, sir.

26 Q. Can you explain to us what you mean when you say there that  
27 they were "giving us our statement"?

28 A. Yes, sir. During our trial, sir - during our trial, the  
29 AFRC trial, our lawyers usually give us statements. They usually

1 give us statements where they put this TFI so and so and so. So  
2 that's the time that I wrote this.

3 MR HERBST: [Indiscernible] at the same time as the  
4 witness, and I cannot hear.

5 THE WITNESS: I said during our trial, the AFRC trial, the  
6 lawyers we had used to give us witness statements - used to give  
7 us statements that were against us. So at the top of every  
8 statement, they would write this there. That was the time that I  
9 wrote this, after I would have read it. This is June 2006.  
10 That's when we had it.

11 MR METZGER:

12 Q. Mr Kanu, can you tell us what the position was when you  
13 first saw statements with "TFI-334" or any other number on, did  
14 they always have the witness's name on them?

15 A. Of course, sir. They gave it to you with the name.

16 Q. And can you tell this Court why you were writing the names  
17 and numbers of the witnesses in June 2006?

18 A. They were witnesses who were against us. I just wrote them  
19 down and read them.

20 Q. When you say you read them, what is the "them" that you  
21 read?

22 A. I read their statements against us.

23 Q. Thank you, Mr Kanu. Let's put that diary to one side.  
24 Just bear with me, Your Honour, while I'm marshalling the papers.

25 JUSTICE DOHERTY: Very well, Mr Metzger.

26 MR METZGER:

27 Q. Can you have now in front of you the 2008 diaries.

28 A. Yes, sir.

29 Q. I think you were asked about the number written in the

1 section for Monday, 4 February 2008. Can you turn up that page?

2 JUSTICE DOHERTY: Did you say 4 February, Mr Metzger, 2008?  
3 Because I'm looking among the papers I have, and there are is a  
4 February, but it doesn't have a year.

5 MR METZGER: Your Honour, there should be the year "2008"  
6 above it. May I hold up my copy?

7 JUSTICE DOHERTY: Yes, please do.

8 MR METZGER: It's the Keh-For-Keh entry. I can take this  
9 matter very shortly if your Honour doesn't have it. I know  
10 Mr Kanu was cross-examined on it, and that's why [overlapping  
11 speakers].

12 JUSTICE DOHERTY: Very well, proceed. I'll ask Mr Court  
13 Officer to assist me in looking at these various papers that I  
14 have to see if I've got it. But proceed on.

15 MR METZGER: If might assist your Honour, it doesn't  
16 actually say "February" on the page. It's got "2008"  
17 [Overlapping speakers].

18 JUSTICE DOHERTY: I've been very helpfully identified it.  
19 As you say, there is no actual month on it, that's the problem.  
20 But I do say the Keh-For-Keh and a number. Thank you. Proceed.

21 MR METZGER:

22 Q. I want to ask you, Mr Kanu, to turn up the last few pages  
23 of that diary where the number Blast is written. But let me ask  
24 you in turn about those two entries. First of all, can you help  
25 us with why you wrote down the number for Keh-For-Keh in your  
26 diary?

27 A. Yes, sir.

28 Q. Can you tell us.

29 A. I asked Bazzy to give it to me so I can hand it down. So

1 this is it, sir. Mpanga Prison.

2 MR HERBST: I'm sorry, your Honour. I did not hear.

3 JUSTICE DOHERTY: Mr Herbst, my note is as follows: Yes, I  
4 asked Bazzy to give it to me so I could write it down in Mpanga  
5 Prison. That's my note.

6 MR HERBST: I thank the Court.

7 BY MR METZGER:

8 Q. Did you intend to use it to contact Keh-For-Keh for a  
9 regular basis?

10 A. No, sir, I just wrote it down. I don't even call him.

11 Q. One general question, you have a lot of numbers and names  
12 written down in your diaries that you have been produced. Do you  
13 call all those people?

14 A. No, sir. I don't call some, sir.

15 Q. Thank you, Mr Kanu.

16 MR METZGER: Your Honour, I'm about to move on. I didn't  
17 ask about Bomb Blast. I thought the matter was exhaustively  
18 dealt with by Mr Herbst, and I don't think anybody would benefit,  
19 apart from the possibility of an objection, if I were to ask him  
20 to give the same answers to that question. So I'm proposing to  
21 move on.

22 JUSTICE DOHERTY: Please do.

23 MR HERBST: Your Honour, is it necessary for counsel to  
24 explain why he is not asking questions?

25 JUSTICE DOHERTY: In my experience, it's somewhat unusual.  
26 But we'll move on anyway.

27 MR METZGER: I'm happy just to carry on, your Honour. Just  
28 so that it is very clear that I'm dealing with these matters  
29 topic by topic.

1 JUSTICE DOHERTY: Yes, please on, Mr Metzger. You are  
2 entitled to put questions in re-examination, provided they arose  
3 in cross-examination. I haven't stopped you. Continue.

4 MR METZGER:

5 Q. The next topic I want to ask you about, Mr Kanu, is the  
6 Jeep that you told us about which led to the confrontation with  
7 Mr Bobson Sesay. I think Mr Herbst suggested to you that it was  
8 Savage that took the Jeep. Do you have any knowledge about  
9 Savage's involvement with the vehicle that you have told this  
10 Court about?

11 A. It was no Savage, sir.

12 Q. Do you want to explain?

13 A. Yes, sir. The Jeep, sir, after May 8 of 2000, one of my  
14 friends gave me that Jeep to keep. So I took it to Kabassa Lodge  
15 in Juba, one of its garages, that is where I parked it.

16 Q. Mr Kanu, I don't want to stop you, but I don't want to  
17 encourage to you repeat evidence you may have already given. Can  
18 I direct your answer to the question, have you any knowledge of  
19 Savage being involved with that Jeep?

20 A. No, sir. No, sir.

21 Q. Thank you. Now, can we look at our Exhibit 14 and also  
22 have Exhibit 15, Prosecution exhibits available.

23 JUSTICE DOHERTY: Proceed, Mr Metzger.

24 MR METZGER: I'm just waiting for the witness to be  
25 provided with the exhibits. If we start with the 39-page one.

26 Q. Mr Kanu, you were asked a number of questions about this  
27 log. I'm going to try to ask you just a few. You told us that  
28 one of the calls or some of the calls that you had made have been  
29 to a gentlemen by the name of Christo?

1 A. Yes, sir.

2 Q. You told us that on 19 November you called him, the three  
3 calls listed on the log were made by yourself in answer to  
4 Mr Herbst.

5 MR HERBST: If I can help my learned friend, I don't think  
6 page 39 relates to 19th of November.

7 MR METZGER: I think you'll find it at page 25.

8 MR HERBST: Thank you.

9 MR METZGER:

10 Q. In answering Mr Herbst, you said during those calls you  
11 were greeting Christo.

12 MR METZGER: And, your Honour, I would ask that the  
13 interpretation to the witness use the word "greeting" because  
14 that was the word that was used, rather than the normal  
15 translation.

16 Q. Can you explain, Mr Kanu, what you mean by the term  
17 "greeting"?

18 A. Yes, sir.

19 Q. Please do so, Mr Kanu.

20 A. Greeting, sir, for instance --

21 THE INTERPRETER: Your Honour, I can't hear him clearly.

22 JUSTICE DOHERTY: Mr Kanu, please repeat your answer so the  
23 interpreter can hear you clearly. Pick up where you said "for  
24 instance".

25 THE WITNESS: I said, for instance, if I called "Judge",  
26 "Justice Doherty", and I greet her, that's what I mean by  
27 greeting, sir.

28 MR METZGER:

29 Q. The comment has been made that there were three long calls.

1 Were you simply saying hello and greeting during those long  
2 calls?

3 MR HERBST: Your Honour, I'm going to object on the grounds  
4 not only that the question suggests an answer, but also the  
5 witness has now twice explained what he meant and what was said  
6 during those calls, and I think counsel is now trying to impeach  
7 what his witness said.

8 MR METZGER: Respectfully in response to that, your Honour,  
9 I am simply trying to deal with an area which, in my respectful  
10 submission, is not clear. I don't propose to give evidence about  
11 the Krio language, which is why I'm asking the witness to explain  
12 what he was talking about during those three long calls. It may  
13 be - well, I shan't say any more about that.

14 And secondly, I'm not impeaching my witness.

15 JUSTICE DOHERTY: I've only heard that word said once.  
16 It's not exactly a mantra.

17 MR METZGER: It may be the communication, your Honour.  
18 I've heard it several times.

19 MR HERBST: Your Honour, he has already answered the  
20 question. And any further inquiry is, in effect, asking him to  
21 testify otherwise.

22 MR METZGER: I'm a little concerned, your Honour --

23 JUSTICE DOHERTY: I'm a little concerned that I'm getting  
24 an objection and a reply, and then I'm getting another objection  
25 and another reply. There has to be an end to objections and  
26 replies.

27 MR METZGER: Thank you, your Honour. That is exactly what  
28 I am asking to happen here. Mr Herbst is continually responding  
29 to the replies. I thought the rules were he objects, I respond,

1 your Honour decides, we move on.

2 JUSTICE DOHERTY: It's not exactly him who is exclusively  
3 -- [overlapping speakers].

4 MR HERBST: We've lost the link.

5 MR METZGER: It's your fault.

6 JUSTICE DOHERTY: It's nobody's fault.

7 MR METZGER: Sorry, your Honour. We thought we had lost  
8 the link, and it was counsel that was trying to blame each other  
9 for the loss of the link.

10 JUSTICE DOHERTY: It's all on record. The witness in  
11 cross-examination was asked about the content of the calls to  
12 Christo, the fact that three were made in succession. I recall  
13 his answer, much as it is now, giving an example of calling and  
14 greeting. So to go further and ask were the three long calls  
15 simply hello and greeting is going further than matters arising  
16 from a cross-examination. It's leading new evidence and it is  
17 close to challenging the witness himself. I do not allow that  
18 question.

19 MR METZGER: I'm grateful to your Honour, as always abide  
20 by your Honour's ruling. Will you just give me one moment so I  
21 can confer with Madam Court Manager with the - [overlapping  
22 speakers]

23 JUSTICE DOHERTY: Certainly, Mr Metzger.

24 MR METZGER: Your Honour, I'm just seeking to identify the  
25 list of numbers for the convicted person at Rwanda that  
26 Mr Sengabo produced as his exhibit through the Prosecution. Yes,  
27 the Court Officer is just looking for it. Unfortunately, my  
28 personal copy I haven't brought with me as I started to pack in  
29 somewhat joyous anticipation.

1 JUSTICE DOHERTY: When you're ready, Mr Metzger. I do  
2 indeed have the document in front of me.

3 MR METZGER: Thank you, your Honour. Whilst that's being  
4 found, maybe I can go on to another question. The witness  
5 already has the [i ndi scerni ble].

6 Q. Now, Mr Kanu, can I ask you, first of all, to go to page 30  
7 of 39 in the MTN logs?

8 A. Yes, sir.

9 Q. You were asked by the Prosecution about just over halfway  
10 down that page, the number ending 1055, three calls made from  
11 11.48 am on 23rd of November until the last call being made at  
12 12.16 p.m. on the same day. Do you see those calls?

13 A. Yes, sir.

14 Q. The Prosecution then suggested that the next call, the 395  
15 call to Keh-For-Keh for made by yourself or that you were present  
16 there. Can you explain for us what happens when you finish a  
17 telephone call and sign for your call?

18 A. Yes, sir.

19 Q. Carry on, please.

20 A. Like I said, sir, Mpanga Prison we call by times. When I  
21 say by times --

22 MR HERBST: [I ndi scerni ble] speaking at the same time.  
23 [I ndi scerni ble] the last part.

24 JUSTICE DOHERTY: Mr Herbst, I hear your voice. Are you  
25 making an objection or what's happening?

26 MR HERBST: Your Honour, I had said that because the  
27 witness was speaking at the same time as the interpreter, I did  
28 not catch the portion of the answer after when I finish and sign  
29 for my calls at the prison, something. Both men were speaking at

1 the same time. The witness and the interpreter.

2 JUSTICE DOHERTY: My note is: We called by times. When I  
3 say by time - and that's all I've heard. So Mr Kanu, can you  
4 pick up where you said "when I say by time"? And pause a bit  
5 longer at the end of each sentence to allow the interpreter to  
6 interpret. Continue.

7 THE WITNESS: When I say "by time," we have one phone for  
8 eight of us. When I call and I finish, the next man would come.  
9 That is what we do, sir.

10 MR METZGER:

11 Q. Mr Kanu, if there is a break of two minutes between the end  
12 of one call and the start of a second call, is that a long or a  
13 short time?

14 A. It's a long time. You see, 12.16 and 12.28. Have you seen  
15 it, sir? And where we are from the office, where we make calls  
16 to our block, it's just one minute. It's not a far distance.

17 Q. Can you tell us Mr Brima - sorry, Mr Kanu, whether you are  
18 allowed to make telephone calls outside of this office where the  
19 telephone is?

20 A. They don't allow us. You make the calls in there.

21 Q. Thank you. Could you turn over the page, please, to page  
22 31 of 39.

23 A. Yes, sir.

24 Q. Here you are asked about a number of calls including, I  
25 believe, the call halfway down the page on 23rd of November at  
26 6.44 p.m. Can you just identify that, please.

27 A. I have seen it, sir.

28 Q. Can you also have before you the book, that is to say the  
29 manual log, and if you look, please, at the entry at 1842, so

1 third from the bottom, on the 5th page in the book, start at the  
2 top with "Augustin Gbao", dated 22/11.

3 A. I have seen it, sir.

4 Q. Do you see the same number, 232777273088 on the entry in  
5 the manual log against the time 18.42? Can you see that,  
6 Mr Kanu?

7 A. Yes, sir.

8 Q. In the manual log, whose name is that recorded against,  
9 that number?

10 A. In the manual log that the prison uses, it's Alex Tamba  
11 Brima.

12 Q. And in the third column, "relationship", I think it is,  
13 what is written there?

14 A. It is wife and sister.

15 Q. Now could you look at Exhibit P-13?

16 JUSTICE DOHERTY: Incidentally, for the record, I note  
17 Exhibit P-13, third page, under "Alex Tamba Brima", that number  
18 appears.

19 MR METZGER: Your Honour has the gift of foresight. That's  
20 exactly where I was going next. In the circumstances, the record  
21 speaks for itself. I don't propose now to ask the witness the  
22 question. I was simply going to ask him to look at page 3 of  
23 that document and identify that that is a number for a person  
24 listed as wife to Alex Tamba Brima.

25 MR HERBST: Your Honour, let me just say for the record  
26 that in my cross-examination of the witness I did not suggest  
27 otherwise.

28 JUSTICE DOHERTY: No. My notes are, Mr Herbst, that the  
29 witness did indeed respond that the call was made by Brima.

1 MR HERBST: I thank the Court.

2 MR METZGER: I raise it, if any explanation is needed,  
3 simply because although the witness answered the call was made by  
4 Brima, Mr Herbst did suggest calls were made by certain people on  
5 a number of occasions. I think that clarifies a possible  
6 confusion in that matter.

7 JUSTICE DOHERTY: Proceed, Mr Metzger.

8 MR METZGER: Now can I ask the witness be shown the same  
9 Exhibit P-14, but 10 of 10.

10 Q. Have you got that, Mr Kanu?

11 A. Yes, sir.

12 Q. If you look, please, at the second line of page 10 of 10,  
13 you were asked questions by Mr Herbst yesterday, and I believe  
14 you said that you had made a call to your sister. Can you now  
15 recall exactly what you and your sister talked about during that  
16 conversation?

17 A. Say that again, sir.

18 Q. You now remember exactly what you and your sister spoke  
19 about during that conversation?

20 A. No, sir. My sister and I talk every day. I call her to  
21 know how she was doing, how the children are doing, and the home  
22 [Overlapping speakers].

23 Q. The relevance section of the manual of the prison log.  
24 It's --

25 MR HERBST: I'm sorry, your Honour, I think - I know  
26 Mr Metzger did this inadvertently, but I think that  
27 [Indiscernible].

28 [Overlapping speakers]

29 JUSTICE DOHERTY: Did you get all of the answer, Mr Herbst?

1 That's the important thing.

2 MR HERBST: No, I did not, your Honour. I got, "No, I  
3 can't remember what I said in that call. I call her every day,  
4 see how she was feeling", and after that I didn't get anything.

5 JUSTICE DOHERTY: Well, my notes - and again it's my note -  
6 "I call her every day. I call her to know how she is doing, how  
7 the children are doing, and the home."

8 MR HERBST: I thank the Court.

9 MR METZGER: I'm asking your Honour if now the witness  
10 could look at the manual prison log for December 2010.

11 Your Honour, I shall withdraw that question. It's a bit  
12 difficult to find in the log.

13 Q. Mr Kanu, let me concentrate on page 10 of 10 here.

14 According to this log, we can see the timing of the call at  
15 1.49 p.m. for 544 seconds. That's nearly 10 minutes. You were  
16 asked yesterday by Mr Herbst whether you made the next call to  
17 Mr Bangura. Can you look at that next line, please, and tell us  
18 what time the next call on the MTN log was made.

19 A. Yes, sir.

20 Q. Please carry on.

21 A. When I called my daughter, sir, the time was 4.02. The  
22 next call is 4.13.

23 Q. [Microphone not activated] 0173 is, I think, Mr Bangura's  
24 number. The number ending 5275 is whose number again?

25 A. 5275, it's a number I called. 1.49 --

26 THE INTERPRETER: Your Honour, can he repeat the starting  
27 of his answer. It was not clear.

28 JUSTICE DOHERTY: Mr Kanu, the interpreter did not hear you  
29 clearly at the beginning. Please repeat your answer from the

1 beginning.

2 THE WITNESS: Yes, your Honour. When I called, it was at  
3 1.49. The next call is 4.02. That is what is there.

4 Q. So is it your evidence that the next call was over two  
5 hours later?

6 A. Of course, sir. Look at the book, sir. It speaks, sir.

7 Q. I next want to ask you, please, Mr Kanu, about 30 November  
8 2010. If you still have the book, can you please go to the page  
9 for 30 November 2010. I'm referring to the manual log. Have you  
10 got it?

11 A. Yes, sir.

12 Q. When you were asked questions about this by Mr Herbst, that  
13 is to say, the entry which, it is suggested, you signed, you said  
14 it was a manipulation by Mr Herbst and Mr Sengabo. What do you  
15 mean by that?

16 A. When I said manipulation, it's dishonesty [Overlapping  
17 speakers].

18 Q. [Microphone not activated] whether you have seen this entry  
19 in this book --

20 JUSTICE DOHERTY: Mr Metzger, I think I didn't heard all  
21 the answer. The answer I heard is, "It is a dishonesty," but I  
22 think the witness was still speaking.

23 Mr Kanu [Overlapping speakers] did you finish your answer?  
24 Was there anything said after the word "dishonesty"?

25 THE WITNESS: I said it's a crooked game when someone is  
26 dishonest.

27 JUSTICE DOHERTY: Proceed, Mr Metzger.

28 MR METZGER: Your Honour, may Mr Kamara be excused in the  
29 usual terms?

1 JUSTICE DOHERTY: Yes, indeed.

2 MR METZGER:

3 Q. I think the next question I asked you, Mr Kanu, was whether  
4 you had ever seen this entry and these signatures prior to this  
5 trial.

6 A. Before this trial, sir?

7 Q. Indeed.

8 A. Never, sir. Never. This is something that happened in  
9 Kigali here between Mr Herbst and Hillary Sengabo. And even the  
10 number from Freetown, up until now I don't know this number.  
11 Never.

12 Q. Mr Kanu, hopefully the last question on this topic. Why do  
13 you say that it happened in Kigali between Mr Herbst and  
14 Mr Sengabo? What is your basis for saying this?

15 A. Why, sir? Because Mr Herbst and Mr Hillary have been going  
16 up and down in Kigali here, so I suspect they did this work, sir.

17 Q. Can you explain what you mean by "up and down"?

18 A. Yes, sir.

19 Q. Carry on.

20 A. During Mr Herbst's case --

21 THE INTERPRETER: Your Honour, can he repeat his answer. I  
22 did not get him clearly.

23 JUSTICE DOHERTY: Mr Kanu, the interpreter did not hear you  
24 clearly. Please pick up your answer where you said, "During  
25 Mr Herbst's case." Continue from there.

26 THE WITNESS: I said during Mr Herbst's case against us  
27 when they went to the prison to take us, it is Mr Hillary who  
28 goes. But when we are returning, he stays behind with Mr Herbst.  
29 We took notice of that three or four times. Then I called my

1 lawyer. I said, "Please, sir, something is going on, sir. I am  
2 seeing Mr Hillary and Mr Herbst going up and down, sir." Then I  
3 informed you, sir. Then you said you would deal with the matter.  
4 So that is what happened, sir.

5 Q. Thank you. I would like to go on now to the last topic.  
6 For that we need exhibit P14, 39 of 39 pages. I'd like you to  
7 look at page 28. Have you got it, Mr Kanu?

8 A. Yes, sir.

9 Q. I would like you, please, to look first of all at the entry  
10 for 21 November, just over halfway down the page, at 7.36 p.m.

11 A. I have seen it, sir.

12 Q. When you were being asked questions by Mr Herbst on  
13 Thursday, I believe it was, he asked you about the calls to  
14 Christo and he asked you to look at the next number, which is the  
15 number ending 1528 at 7.46 p.m. the same day. Can you see that?

16 A. I have seen it, sir.

17 Q. Mr Herbst asked you whose number that was and, at page 1799  
18 of the transcript, asked whether you were trying to call that  
19 number. Do you remember him suggesting that you were trying to  
20 call that number, the number ending 1528?

21 A. That was what he told me. That was what he put to me.

22 Q. Do you know whose number that is off the top of your head?

23 A. No, sir.

24 Q. Can you look, please, at the third page of the manual log.  
25 It starts at the top 19 November 2010. If you go down to the, I  
26 think, third or fourth entry from the bottom where it says  
27 "20/11/2010, prison calling, Sesay", can you identify that for  
28 us?

29 A. It's "Sesay" that is there, sir.

1 Q. And can you tell us the relationship to the person who was  
2 calling?

3 A. It's "wife", sir.

4 Q. Look at the "number" column and compare it with the number  
5 on the MTN log for me.

6 A. They are the same, sir.

7 Q. Is it your answer that they are the same number ending  
8 1528?

9 A. 1528. 1528. It's the same number, sir.

10 Q. [Overlapping speakers] the same number is referred to as  
11 being belonging to the wife of the prisoner Sesay; is that  
12 correct?

13 A. Yes, sir. She's Issa Sesay's wife, sir.

14 Q. So I think what Mr Herbst was suggesting was that you had  
15 called, at 7.46 p.m., that number.

16 MR HERBST: Your Honour, I'm going to object to the  
17 question and point out that at page 1799 on line 2  
18 [indiscernible] the question was not, "So I am suggesting to  
19 you"; the question was, "So I ask you whether you were trying to  
20 call that number ending in 1528, and I guess your answer is 'No';  
21 is that right?" And the witness said, "It's not here. I haven't  
22 seen it."

23 So the only thing I'm pointing out is not every question is  
24 a suggestion. Sometimes a question is just a question.

25 JUSTICE DOHERTY: It was a fairly direct question,  
26 Mr Metzger, so rephrase.

27 MR METZGER: All right. It may be, your Honour, that  
28 Mr Herbst saw some sense after I had tried to prevent him from  
29 asking a question as directly as I --

1 JUSTICE DOHERTY: Not comments, please.

2 MR METZGER: I shall ask a different question.

3 I'm sorry, your Honour?

4 JUSTICE DOHERTY: No comments, please.

5 MR METZGER: I didn't hear your Honour.

6 JUSTICE DOHERTY: I'm saying not - please do not make  
7 comments.

8 MR METZGER: Oh, I'm sorry, your Honour, I was just  
9 responding to Mr Herbst. I shall ask the next question.

10 JUSTICE DOHERTY: Please proceed.

11 MR METZGER:

12 Q. Did you call Mr Sesay's wife after you spoke to your  
13 daughter?

14 A. No, sir, I do not call anybody's wife. I only call my  
15 wife. That's all.

16 MR METZGER: Your Honour, that is where I propose to end my  
17 re-examination with Mr Kanu.

18 I would like for it to be admitted on the record that the  
19 number 1528 ending in those four digits is Issa Hassan Sesay's  
20 wife's number, and it would be appropriate, your Honour, for us  
21 to also look at the other documents that were marked for  
22 identification. Because if your Honour is not convinced that 3B  
23 ought to be exhibited, then I would propose to ask one or two  
24 questions on it --

25 JUSTICE DOHERTY: Which one is 3D?

26 MR METZGER: 3B, your Honour will recall, is the rather  
27 tattered copy of numbers from the, if you like, authorities given  
28 to Mr Kanu on which he had written his own numbers, simply  
29 because the name "Barry" appears on that document.

1 JUSTICE DOHERTY: There's several MFIs that have to be  
2 moved by both counsel, and we'll have to deal with them one by  
3 one. And that's only one of the ones that are marked for  
4 identification at the moment, Mr Metzger, so we'll deal with them  
5 one by one when the time comes.

6 MR HERBST: Your Honour, if I could - if Mr Metzger permits  
7 me - I can state for the record that on P13, the approved call  
8 list which was - Mr Sengabo testified was operative at the time  
9 these calls were made, Mr Sesay's wife has a different number;  
10 but that on Kanu 3B, which appears to be - we all know what 3B  
11 is - that number is written in next to the space for Mr Sesay's  
12 wife. That is the state of the record, and I have no problem  
13 pointing that out.

14 MR METZGER: And that is why, your Honour, I propose to  
15 deal with 3B if there is an issue in relation to that being  
16 admitted in evidence as D Kanu 5 before the witness is released.

17 JUSTICE DOHERTY: Before the witness is released, I have a  
18 few questions as well. And I want to ask my questions, because  
19 the normal sequence of events is the Bench asks the questions,  
20 there is questions arising, and then the exhibits are dealt with.  
21 That's what we normally do in this Court.

22 MR METZGER: I see, your Honour. But I'm terribly sorry,  
23 your Honour, I'm quite happy to deal with the other exhibits, but  
24 I would like to have this document exhibited at this point, which  
25 is why I'm asking if it may be exhibited. Or if it isn't, then I  
26 want do not finish my re-examination yet so that I --

27 JUSTICE DOHERTY: I see. Well, let me just adopt the  
28 normal procedure. The document marked MFI-D3, a copy of a list  
29 of phone numbers, added to which are numerous handwritten

1 insertions of numbers and a few names, is now being moved as an  
2 exhibit, Mr Herbst. Do you object or do you not object to the  
3 admission of this as an exhibit?

4 MR HERBST: Your Honour, could I just ask which page - is  
5 this the one that was originally marked Kanu 3B that I was just  
6 talking about?

7 JUSTICE DOHERTY: It's exactly the same page, Mr Herbst.  
8 It's exactly the same page.

9 MR HERBST: I thank the Court. Your Honour, the problem  
10 that I have with the exhibit and the handwritten numbers is that  
11 there is no indication on the document as to when these numbers  
12 were added. And so whether the numbers are operative numbers at  
13 the times pertinent to the calls that have been in evidence in  
14 this case is really unresolved and this document doesn't assist  
15 us in that regard. I note that the document - well, let me say  
16 it's my recollection, and I'm willing to be corrected by counsel  
17 or the Court if I am misrecalling, but I don't believe that this  
18 document was put to Mr Sengabo. If I'm wrong about that, I would  
19 like to know.

20 It seems to me that in terms of trying to lay the  
21 appropriate foundation, that would have been the witness to put  
22 this to to ask about it as to whether these numbers constituted  
23 amendments to the official call list.

24 So I don't think the appropriate foundation has been laid  
25 for the admission of the document. On the other hand, the only  
26 relevance that I have seen from this document so far at least  
27 that has been called to our attention is the number for BAR or  
28 Barry, which the witness has identified orally as Barry, and  
29 finally this number for Mr Sesay's wife which is in the prison

1 Logbook. So that with respect to the two instances with  
2 relevance that I can see from the document, it would be  
3 duplicative anyway even if the foundation were properly laid. So  
4 that's my objection or objections, plural, to the document.

5 JUSTICE DOHERTY: Well, I don't require a reply,  
6 Mr Metzger, because I consider that the document is admissible as  
7 the witness has identified himself as the author of the document  
8 and on that ground I am prepared to admit it as part of his  
9 personal record and authorisation. Questions as to its weight,  
10 probative value, and whether it was put to another witness are  
11 matters for submission, particularly --

12 MR HERBST: Could I just ask for clarification - I'm sorry,  
13 your Honour.

14 JUSTICE DOHERTY: Yes, Mr Herbst. Was I not speaking  
15 loudly enough?

16 MR HERBST: No, I just wanted to ask a clarification. Was  
17 it the testimony that the witness had identified all the  
18 handwriting on the page?

19 JUSTICE DOHERTY: No, he had not. He had only identified  
20 some of it. But he waved it around a lot and said it was his.  
21 So inasmuch as he identified certainly parts of it as his and  
22 that he had it within his control and custody, then he had  
23 adopted that document. So on that basis it is admissible in my  
24 view.

25 The other matters you raise, and you have raised pertinent  
26 matters, are its probative value and the fact that it wasn't put  
27 to another witness, are in my views matters that are more  
28 appropriately raised in submissions when we consider its weight.  
29 So on that basis I am going to admit the document and if my

1 recollection is correct it now becomes Kanu D5.

2 Now, Mr Court Officer, can you assist me on that, is it  
3 Exhibit D Kanu 5 or is it a different number? Mr Court Officer  
4 has advised me it should be D Kanu 6. So it will become D Kanu  
5 6, a one-page document with both print and handwritten  
6 insertions.

7 I've also been alerted to the fact that the tape is about  
8 to run out and I note that we are over the last part of - over  
9 the normal time for the Kigali break.

10 Mr Metzger, in view of the fact that I've admitted this  
11 document, does that mean that you are now closing your  
12 cross-examination?

13 MR METZGER: Yes, it seems to me once the document is  
14 admitted, we are all entitled to comment on it. Just for the  
15 avoidance of doubt, is your Honour simply admitted at this stage  
16 as D Kanu 5 what was originally --

17 JUSTICE DOHERTY: I've been corrected by Mr Court Officer  
18 it is D Kanu 6. It was originally MFI 3. So the number changes  
19 because of other exhibits interposed between its marked for  
20 identification. Are you clear - are counsel satisfied that that  
21 is correct sequence?

22 MR METZGER: Yes, yes, your Honour. I will seek to just  
23 identify what 4 and 4 are in due course. We can do that in the  
24 break, between the court officers and myself. I just wanted to  
25 clarify it is just that page, MFI 3B, rather than 3A and 3B,  
26 because it's actually on one page. The original is the front and  
27 back of the page. Isn't it? If your Honour can look at the  
28 screen and if I am in it --

29 JUSTICE DOHERTY: Very much so. Oh, there was something on

1 the back as well. Yes. I've only got the front bit that you're  
2 now showing me. I will ask if Mr Court Officer if he's got the  
3 back of that because they should ride together. They're all one  
4 document.

5 THE COURT OFFICER: In that case, your Honour, it's D5.

6 MR METZGER: The front of it is 3A.

7 MR HERBST: Your Honour, the front of the document, 3A,  
8 relates to the call lists of Mr Gbao and Mr Kallon.

9 JUSTICE DOHERTY: I think the tape is running out. So can  
10 we adjourn now and between you and I ask Mr Court Officer to  
11 liaise with Kigali. Because I have only one page here in front  
12 of me at the moment. If there is another back page, then they  
13 should ride together and become one exhibit and I would put the  
14 two together when the time - if that is the situation.

15 So I will adjourn now for 40 minutes rather than 45 because  
16 we've lost a bit of time and we will resume at - I think it would  
17 be 10 to the hour. 10 to the hour. That's 10 to 12 Freetown  
18 time. Please adjourn Court.

19 [The Court adjourned at 11.03 a.m.]

20 [The Court resumed at 11.55 a.m.]

21 MR SERRY-KAMAL: May it please your Honour --

22 JUSTICE DOHERTY: Kigali, can you hear us?

23 THE COURT OFFICER: [In Kigali] Yes, your Honour, we can.

24 JUSTICE DOHERTY: Sorry, I didn't hear a reply because I  
25 didn't have my earphones in. Kigali, can you hear me?

26 THE COURT OFFICER: [In Kigali] Yes, we can.

27 JUSTICE DOHERTY: I have some questions of the witness.

28 Mr Kanu, you disputed the spelling of your name. You said  
29 it was K-H-A-N-U and the record shows K-A-N-U. Now, if you look

1 at the letters from the Registrar that we have seen in Court,  
2 they all spell your name K-A-N-U; isn't that correct?

3 THE WITNESS: They are spelling it as K-A-N-U, but I'm  
4 spelling mine as K-H-A-N-U.

5 JUSTICE DOHERTY: Isn't the reason that your name is  
6 spelled in the Court as K-A-N-U was because when you applied as  
7 an indigent looking for Legal Aid, you spelled it as K-A-N-U.

8 THE WITNESS: Say that again, your Honour.

9 JUSTICE DOHERTY: When you first came to the Special Court,  
10 you signed some papers asking for Legal Aid; in other words, a  
11 lawyer. Didn't you sign those papers K-A-N-U?

12 THE WITNESS: At that stage I was depressed, so I didn't  
13 know what I was doing. Now I am spelling it as K-H-A-N-U.

14 JUSTICE DOHERTY: I see. Mr Kanu, you were a member of the  
15 AFRC Council; is that correct?

16 THE WITNESS: Say that again, Ma'am.

17 JUSTICE DOHERTY: Were you a member of the AFRC Supreme  
18 Council, the council where, for example, Mr Brima was a PLO?

19 THE WITNESS: Yes, Ma'am.

20 JUSTICE DOHERTY: And Johnny Paul Koroma was a chairman of  
21 that council, wasn't he?

22 THE WITNESS: Yes, Ma'am.

23 JUSTICE DOHERTY: And didn't Sammy Kargbo act as an ADC to  
24 Johnny Paul Koroma?

25 THE WITNESS: Which Samuel Kargbo?

26 JUSTICE DOHERTY: Sammy Ragga.

27 THE WITNESS: ADC?

28 JUSTICE DOHERTY: Well, if it wasn't ADC, didn't he work  
29 with Johnny Paul Koroma?

1 THE WITNESS: That man is not - he's not a security, not  
2 even to Johnny Paul.

3 JUSTICE DOHERTY: I didn't say he was a security. I'm  
4 saying he worked administratively.

5 THE WITNESS: Well, I don't know if he worked there, Ma.

6 THE INTERPRETER: Your Honour, the rest of his answer did  
7 not come as clearly.

8 JUSTICE DOHERTY: All right. Mr Kanu, the interpreter  
9 heard you say, "I do not know if he worked there." If you said  
10 something after that, please repeat what you said.

11 THE WITNESS: That man did not work with Johnny Paul. I  
12 don't even know him working with Johnny Paul.

13 JUSTICE DOHERTY: Fine. Now, I want to go on to - I've got  
14 one question, sorry: What's your ethnicity? What group do you  
15 belong to?

16 THE WITNESS: I am of two tribes.

17 JUSTICE DOHERTY: Which ones?

18 THE WITNESS: My mother is Mende.

19 JUSTICE DOHERTY: And do you speak Mende?

20 THE WITNESS: From Bonthe.

21 JUSTICE DOHERTY: Do you speak Mende?

22 THE WITNESS: No.

23 JUSTICE DOHERTY: But you speak Krio?

24 THE WITNESS: Yes, your Honour. My father is Temne.

25 JUSTICE DOHERTY: Thank you. Now, I want to be --

26 THE WITNESS: From Port Loko.

27 JUSTICE DOHERTY: I understand. Now, I want to try and  
28 understand a little bit more about the making of the phone calls.  
29 You have told us very clearly that the officer makes the entries

1 in the logbook; you dial the number - no, excuse me, correction,  
2 you give him the number and he dials it. This is what you told  
3 us; isn't that right?

4 THE WITNESS: Yes, Mammy.

5 JUSTICE DOHERTY: That's fine. Now, when he hands you back  
6 the phone, does he stand and watch you making the call, or does  
7 he allow you to move to somewhere private so you can make - speak  
8 privately?

9 THE WITNESS: Mammy, when we came here initially,  
10 Mr Hillary, Issa Sesay, and I, if I want to make a call, I'll  
11 give him the number, then I'll say, "Call my sister." When he  
12 gets her, then he'll pass the phone to me. Issa will sit like  
13 this, and Hillary like this. We'll sit on the bench. Then I'll  
14 talk.

15 When I finish, then I'll give him back the telephone and he  
16 will record the number. Then I'll go. Maybe after 10 minutes,  
17 then he'll say, "Call another person to come." In that 10  
18 minutes he would interview Issa about what that man said to  
19 Freetown. If it's anything bad, Issa will tell him. If it's  
20 anything good, Issa will tell him. Even if you wanted to talk to  
21 your wife, Issa would tell him everything. So that was what used  
22 to obtain initially when we just came.

23 JUSTICE DOHERTY: And what about in November 2010 and  
24 December 2010, did he sit watching you make the call at that  
25 time, a year after you came initially?

26 THE WITNESS: By then they had established an office for  
27 the telephone. When you go there ...

28 JUSTICE DOHERTY: Yes. Mr Interpreter, are you hearing the  
29 answer? Because I see Mr Kanu is speaking.

1 THE INTERPRETER: No, I'm not hearing anything.

2 JUSTICE DOHERTY: Very well. Mr Kanu, did you say after  
3 you said the words "by then they had established an office for  
4 the telephone. When you go there ..." Continue your answer from  
5 there.

6 THE WITNESS: Yes, your Honour. I said when you go to the  
7 office, you will meet the officer there on duty. Then you tell  
8 him that you want to make a call. You would tell him to put 500  
9 units. Then he would put it. Then you would give him the  
10 number. Then he would dial the person. When the phone rings,  
11 then he would hand it over to you. When you finished talking,  
12 you would give him back the phone. Then he would do the entries,  
13 Ma. Then you would sign.

14 JUSTICE DOHERTY: And during that phone call when you are  
15 speaking, where is the officer?

16 THE WITNESS: In there, Ma'am. In the office. In the  
17 office. They have a bench where we sit. They would give you  
18 instruction to sit down. If you don't sit down, they won't call.

19 JUSTICE DOHERTY: Those are my questions, counsel. If  
20 there's any questions arising. First on questions arising,  
21 Mr Herbst?

22 MR HERBST: If your Honour would just give me a moment. I  
23 just wanted to ask what PLO, was, your Honour.

24 MR METZGER: Public Liaison officer.

25 MR HERBST: Public what?

26 MR METZGER: Liaison officer.

27 JUSTICE DOHERTY: It was a post in the AFRC Council, public  
28 Liaison officer. There were two.

29 MR HERBST: [Indiscernible].

1 JUSTICE DOHERTY: Any other questions arising?

2 MR HERBST: [Indiscernible].

3 JUSTICE DOHERTY: Mr Herbst, if you have no other questions  
4 arising, I will ask Mr Metzger if he has any questions arising.

5 MR METZGER: One, your Honour.

6 JUSTICE DOHERTY: Thank you, Mr Metzger.

7 MR METZGER:

8 Q. Mr Kanu, you were asked about your ancestry, and during the  
9 course of that series of questions you said you speak Krio?

10 A. Yes, sir.

11 Q. Can you tell the Court how or why it is that you speak  
12 Krio?

13 A. Why I speak Krio, sir?

14 Q. Why or how you are able to speak Krio?

15 A. Put the question again, sir.

16 Q. Yes. You've told us that you speak Krio, and I'm asking  
17 how come it is that you are able to - that you can speak Krio.  
18 What are the circumstances?

19 A. Well, why I talk Krio, I was born in Sierra Leone. Krio is  
20 our local language. And two, I am not well educated, I just  
21 stopped at form 5 at the collegiate school. So that is what  
22 happened, sir.

23 MR METZGER: May I just ask one supplementary question?

24 JUSTICE DOHERTY: Yes, please do.

25 MR METZGER: Again on this point.

26 Q. Mr Kanu, during your evidence-in-chief you told us that you  
27 were living with a lady, Mrs Mason, who brought you up and I  
28 think you told us she passed away before you were able to obtain  
29 further education; is that correct?

1 A. Pa, that's true.

2 Q. What ethnicity was Mrs Mason?

3 A. Her full name was Mrs Eyo Mason. Since I was in class 4,  
4 that was when she took me up as a ward at Tengbeh Town until I  
5 got to form 5. After my O level in August, she died. If she  
6 were alive, I wouldn't be in all of this thing today, but that is  
7 what God said. She was Krio, sir.

8 MR METZGER: Thank you, your Honour. Those are the only  
9 questions I have.

10 JUSTICE DOHERTY: Thank you, Mr Metzger. Has any other  
11 counsel got questions arising? No.

12 CHIEF TAKU: None, your Honour.

13 JUSTICE DOHERTY: Thank you, Chief Taku. The other counsel  
14 have indicated they do not have questions arising.

15 Mr Kanu, that is the end of your evidence and I  
16 thank you for giving your evidence. You are now free to sit with  
17 Mr Kamara because the next part will be dealing with some of the  
18 documents that you have brought to Court.

19 Counsel, we'll now look at these various marked for  
20 identification and move through them.

21 Mr Kanu, you wished to say something.

22 MR HERBST: Your Honour, I wonder if I might --

23 JUSTICE DOHERTY: Mr Kanu had his light on first. Yes,  
24 Mr Kanu, you had your light on.

25 THE WITNESS: Yes, your Honour. Can I talk to my lawyer  
26 now?

27 JUSTICE DOHERTY: Yes, you can talk to him, but he has some  
28 work to do and I would prefer that you - we deal with that  
29 completion. It's part of your evidence, these documents, so we

1 should complete that before you talk to him. But certainly once  
2 we've finished that, you are at liberty to talk to him.

3 THE WITNESS: Okay, thank you.

4 JUSTICE DOHERTY: Now, gentlemen, we'll deal with these  
5 exhibits, and I'll ask Mr Court Officer to keep us straight on  
6 the MFI numbers. Madam Court Manager in Kigali too will have the  
7 MFI numbers.

8 MR HERBST: Your Honour, I wonder if I could interrupt for  
9 just a minute, if I may be heard.

10 JUSTICE DOHERTY: Yes, Mr Herbst, certainly.

11 MR HERBST: Your Honour, I wanted to renew my application  
12 for admission of the original diaries on the ground that having  
13 reviewed them, there are many pages which are torn out and the  
14 only way, I think, that the Court can properly consider the  
15 contention of the Defence that certain numbers such as  
16 Mr Kargbo's were never contained in the diaries is to see the  
17 original with the pages torn out because I don't think  
18 your Honour can see that from the individual pages that are -  
19 that we Xeroxed and sent to you. So - because it's our  
20 contention that it's impossible to tell whether Mr Kargbo's  
21 number [i ndi scerni bl e].

22 JUSTICE DOHERTY: It appears to me, Mr --

23 MR HERBST: So on that --

24 JUSTICE DOHERTY: Please complete what you were saying,  
25 Mr Herbst.

26 MR HERBST: So it seems on that ground the original diary  
27 ought to be admitted.

28 JUSTICE DOHERTY: But surely if you're saying that you are  
29 putting them in to say the pages were torn out, you're trying to

1 prove a negative; in other words, that what you are implying was  
2 that some of the pages were torn out deliberately and that they  
3 contained incriminating evidence, i.e., a phone number. But that's  
4 a negative proposition and it's based on some speculation, for  
5 which I do not have evidence before me. So I'm not quite sure  
6 how your submission is served by admission of the entire  
7 document.

8 MR HERBST: Your Honour, I'm not - all I'm saying as far as  
9 I'm going on that is that it's impossible to tell from the  
10 diaries because the integrity of them were not maintained for  
11 whatever reason. I did ask him on cross-examination about the  
12 torn pages, but - so the issue has been presented. But all I'm  
13 saying to the Court is that one cannot fully appreciate without  
14 looking at the originals and seeing that there are torn pages  
15 [i ndi scerni bl e].

16 THE COURT OFFICER: [In Kigali] [I ndi scerni bl e].

17 MR METZGER: You're mumbling.

18 MR HERBST: I'm hearing that I'm not being heard,  
19 your Honour.

20 JUSTICE DOHERTY: I heard you quite clearly. I note that  
21 you said that it's impossible to tell because of the lack of  
22 integrity of the documents. He was asked in cross-examination  
23 about the pages - and I do recall that - and it's not possible to  
24 tell. I've heard those submissions. If there's something I  
25 missed, then by all means repeat it.

26 MR HERBST: No, I think you did get it, your Honour, and  
27 I'm not saying that I can prove that it was torn out - that a  
28 particular number was torn out. All I'm saying is that in  
29 [i ndi scerni bl e] proposition of the Defence which is suggested

1 that the diaries do not contain the number and therefore never  
2 contained the number, that one can - that one cannot assess that  
3 contention without seeing the torn pages and the number and so  
4 forth. That's all.

5 It's not a large point, your Honour, but I did want to  
6 renew my application for admission of the originals of those  
7 diaries.

8 JUSTICE DOHERTY: Mr Metzger, your response.

9 MR METZGER: I shall be as short as I can on this point.  
10 Mr Herbst has conducted a commendably thorough cross-examination  
11 over some three days or four of Mr Kanu. At no stage did he  
12 suggest as the Prosecutor that Mr Kanu had written the number  
13 down in his diary and torn it out.

14 There was one fairly - I'm struggling here with the word so  
15 that I don't offend anybody, but perhaps I can just say that  
16 there was one question dealing with some torn pages in the diary  
17 - in a diary [indiscernible]. It wasn't put to the witness that  
18 that was deliberately to remove evidence of Mr Kanu's - sorry,  
19 Mr Kargbo's number in the diary. So I'm a little perplexed that  
20 the submission made now by the independent counsel rests on that.

21 I do, I think, follow the line of reasoning that  
22 your Honour has so properly put forward that any attempt to  
23 exhibit all the diaries for the purpose of proving a negative is  
24 perhaps not of the greatest assistance to this Court. The  
25 diaries support the evidence given by Mr Kanu, which in principle  
26 is that he never had Mr Kargbo's number; he doesn't know  
27 Mr Kargbo personally; and has never written it down.

28 In those circumstances, it would be my humble submission  
29 that the basis upon which the Prosecution seeks to admit the

1 diaries is in no way supportive of proper reasoning for  
2 submitting same.

3 Admittedly, the Prosecution has referred to certain  
4 pages in the diary and has cross-examined at length about  
5 [indiscernible]. If it is decided that those should be exhibits  
6 in this case so that it would assist your Honour when reviewing  
7 the evidence, then one could understand the force of that  
8 argument.

9 It is in those circumstances that I would not stand on the  
10 side of the Prosecution in the application that he has made.

11 JUSTICE DOHERTY: Independent counsel seeks to put in the  
12 diaries of Kanu to show that pages were torn out. In the course  
13 of evidence it was put to Kanu that pages were torn out and that  
14 was answered.

15 I did not consider that the empty spaces are relevant in  
16 proving that Kanu knew or had previously written Kargbo's number,  
17 and for that reason I am not prepared to admit these diaries.

18 The absence of pages, which was properly put in  
19 evidence by way of cross-examination, are a matter for submission  
20 when we come to consider the evidence.

21 I'll now move on to those MFIs that are still outstanding  
22 as they came up in Mr Kanu's evidence, and again I will seek the  
23 assistance of our Court Management team, both here and in Kigali,  
24 to ensure that I deal with all of them, and I will go through  
25 them one by one. Some were brought up by Prosecution; those I  
26 will address to Mr Herbst. Some were brought up by Defence;  
27 those I will address to Mr Metzger. Let us hope between us we'll  
28 keep ourselves right as to what's in and what's out.

29 The first one I have as an MFI, a marked for

1 identification, is - excuse me, I'm going to deal with the  
2 Defence ones first because they came first in the course of the  
3 evidence. Let me make sure I have - Mr Metzger, my recollection  
4 was that there was two outstanding Defence MFIs, marked for  
5 identifications. Now, I'm going through the bundles that I've  
6 got here. Could you help me in - was MFID3 has now been  
7 exhibited as Exhibit D Kanu 6, but there was one other, if my  
8 memory serves me right.

9 MR METZGER: That could be 2A and 2B, which are the front  
10 and back of a similar document to what is now D Kanu 6. On 2A  
11 there's a list of numbers, we can't quite see the name, but  
12 surmise that it relates to Mr Kamara. Then there is a name we  
13 can see "T Brima" and on the back of that, or on a separate sheet  
14 in your case it may be, there are further names on that list, so  
15 this would be 2B, which, looking at them, would probably relate  
16 also to Mr Brima. Nothing has turned --

17 JUSTICE DOHERTY: Yes, go on.

18 MR METZGER: -- on these two documents - or rather this one  
19 page, which is front and back. And in the circumstances, not  
20 wanting to make your Honour's or anybody else's task more  
21 difficult, it would be prudent for me to say I am not pushing  
22 that this be exhibited.

23 MR HERBST: I wonder if I might be heard on that,  
24 your Honour.

25 JUSTICE DOHERTY: I'm going to have to ask Mr Court Officer  
26 to get it for me, because I don't have it in my bundle. So  
27 whilst I listen to you, Mr Herbst, Mr Court Officer, please see  
28 if you can get me a copy.

29 THE COURT OFFICER: Your Honour, honestly I am myself, I

1 must confess, overwhelmed. Can Mr Metzger kindly go over it.

2 JUSTICE DOHERTY: We're clear on what the document is and  
3 Mr Metzger is now holding it up. I understand what he is talking  
4 about.

5 Madam Court Manager in Kigali, would you please maybe scan  
6 that and send it to us? Because it seems we're having trouble  
7 finding it. What I can do --

8 THE COURT OFFICER: [In Kigali] Mr Alpha, it was scanned,  
9 and it was named as "2A and 2B." That was the title of the scan,  
10 "Kanu 2A and 2B".

11 THE COURT OFFICER: Yes, I have those ones. I'm only  
12 trying to say what are we naming them now?

13 JUSTICE DOHERTY: No, they are not in yet, so don't name  
14 them anything. Just give me a copy of them please. And then  
15 I'll hear Mr Herbst. They don't have a name yet.

16 Mr Herbst, you were going to speak on this topic?

17 MR HERBST: Your Honour, this is the document that pertains  
18 most directly to Mr [Indiscernible]. It seems to me 2, 3A and 3B  
19 which are Defence - at least one of them is [indiscernible] 3D  
20 is 3 Kanu 6. It seems to me that on the same basis that this  
21 document should come in evidence as well, because it does relate  
22 specifically to Mr Kamara. And it does contain the Bangura  
23 telephone number, which was the subject of cross-examination.

24 If your Honour looks at 2A, that is the - and the top  
25 portion of it which relates to Mr Kamara, even though his name is  
26 not there, your Honour will recall that Mr Metzger indicated that  
27 one can tell from the body of it that it does relate to Mr  
28 Kamara, and that was clear.

29 You will see next to the fourth [indiscernible]

1 annexed to the printed number 033362139 the number 810

2 [i ndi scerni ble]. So I thi nk that --

3 JUSTICE DOHERTY: It's actual ly alongsi de the fi fth wi fe, I  
4 thi nk. But I fi nd now what you're ta lki ng about. Yes.

5 MR HERBST: It's actual ly the six th. It's the six th.

6 MR METZGER: Actual ly, the six th one.

7 JUSTICE DOHERTY: The six th wi fe of a total of ei gh t wi ves.

8 MR HERBST: Yes.

9 JUSTICE DOHERTY: I ndeed, I do see what you're ta lki ng  
10 about.

11 MR HERBST: I wou ld ask - so your Honour, I wou ld ask that  
12 i t be admi tted.

13 MR SERRY-KAMAL: Your Honour, before i t's admi tted, I must  
14 i nform the Court that I do not have a copy of the document. So  
15 as counsel for Bazzy Kamara, I'm not able to make a contributi on.

16 JUSTICE DOHERTY: I'm going to l end Mr Serry-Kamal my copy,  
17 whi ch Mr Court Offi cer has given me, because I see i t i n my  
18 handwri ting MFI is on i t, and I wi ll stand that applicati on down  
19 whi le he looks at i t, and I'll deal wi th the next set of MFIs.  
20 Stood down temporarily.

21 And we now come to the documents whi ch were put by  
22 Mr Herbst to the witness, and they are extracts from the di ari es.  
23 I'll start wi th exhibit MFI -P1, whi ch is the 2006 di ary pages and  
24 i t contai ns ei gh t pages.

25 Mr Herbst, that is your exhibit.

26 MR HERBST: Your Honour, I'm movi ng the admi ssi on of all of  
27 the di ary entries that I used on cross-exami nati on.

28 JUSTICE DOHERTY: Very well. I wi ll look at them globa lly.  
29 I wi ll ask Mr Metzger i f he has a globa l yes or no. I f he

1 doesn't have a globe yes or no, I will go through them one at a  
2 time.

3 MR METZGER: I'm happy for your Honour to look at them  
4 globally, and in the spirit of fairness, it seems to me if  
5 Mr Herbst has cross-examined on the document, in some cases  
6 [i ndiscernible], that it is, of course, a matter for your Honour.  
7 But I would not object, and in certain cases, I would support his  
8 application to move them into evidence.

9 JUSTICE DOHERTY: I think that's a pretty sensible  
10 approach. So we will - I will, as best as I've noted, I will go  
11 through them following the sequence that we heard. So the MFI-P1  
12 is the eight pages extract of the diary of 2006. That becomes  
13 Exhibit P Kanu 1. I now move on to --

14 MR METZGER: I'm sorry, your Honour. I just want to make  
15 sure that I'm with you because I think I have rather larger  
16 extracts, and I'm not sure [overlapping speakers].

17 JUSTICE DOHERTY: I have eight pages - I'm going to go  
18 through the pages, Mr Metzger, so - because that's what I've got  
19 in front of me. I'll go through what they say, and you can -  
20 both counsel and Madam Court Manager can check. I have the  
21 following: 2006, two pages numbered 4/5; two pages numbered  
22 20/21 which are blank; another two pages 4/5, subheaded  
23 "Wednesday, week 41" and "Thursday week 41" with writing; two  
24 pages numbered 29, Wednesday week 49, Thursday week 50 - with the  
25 number 5 and 3 blank.

26 The next is 2006, two pages with the word "notebook" one  
27 starts - has writing saying "session of hostility, et cetera,"  
28 and the other has a list of TF1-numbers which were put to the  
29 witness and names; then there are two pages without any number or

1 without any date and they both have writing. One starts "com Sr  
2 Bazy" and has further writing, the other pages starts - the  
3 writing starts "one of our colleague Chief Samuel Hinga Norman.  
4 The next is two pages Friday week 47 and Saturday week 47 headed  
5 17 and 18 blank; the next is a week - Friday, week 48, Saturday  
6 week 48 numbered 24, 25, both with writing; the next is  
7 Wednesday, week 49, Tuesday week 50 numbered 29 and 5, blank.

8 That's what I had. That's what was put before me. That's  
9 what I've admitted. The next MFI --

10 MR METZGER: I'm sorry, Mr Herbst.

11 JUSTICE DOHERTY: That's what's in.

12 MR METZGER: Your Honour, I would want to address you on  
13 some of those pages.

14 JUSTICE DOHERTY: Oh, very well. Do so. Not all of them  
15 were put to the witness.

16 MR METZGER: Indeed, your Honour. It seems to me week 48  
17 was not put in any way, shape and form, the 28 and 29 that you  
18 mentioned. And I can't now recall, because I have a now subsheet  
19 kindly put before me by the Learned Court Manager, but  
20 your Honour seemed to go beyond the pages that were copied.

21 MR HERBST: Your Honour, I wonder if I could make a  
22 suggestion with respect to this.

23 JUSTICE DOHERTY: Certainly, Mr Herbst, if it short  
24 circuits this longwinded problem, it would be very greatfully  
25 received by everyone, particularly, your colleagues in Freetown.

26 MR HERBST: Yes, I'm not really going to be able to help  
27 the Court on this, because I didn't actually make individual  
28 copies of the pages that I used. But it seems to me that the  
29 transcript of yesterday will - or the first day, I guess, of

1 cross-examination, will reveal how the diaries were used and what  
2 pages were used, and I think that rather than putting Mr Metzger  
3 to the task of doing that now, it might be better if we gave him  
4 until Monday, and we just stood down these particular admissions.  
5 I think we're all agreed that the items that were used would be  
6 admitted, and I think that if Mr Metzger takes a look at the  
7 transcript, he'll be able to advise us if he has any objection  
8 [i ndi scerni bl e].

9 JUSTICE DOHERTY: I had something similar in my mind. It's  
10 clear from what I've read out as one example that there's blank  
11 pages and pages that weren't put to the witness, and it seems to  
12 me eminently sensible if we can correlate these relevant pages  
13 with the evidence and/or have them agreed by - have them entered  
14 by consent. And I think it would be wise - Mr Metzger?

15 MR METZGER: I was going to say I agree with both proposals  
16 with the exception of by Monday. Because if things go as I plan,  
17 I doubt very much whether I will be in a position to be looking  
18 at the amount of transcripts that I would have to look at between  
19 now and Monday. Or between when we rise and Monday.

20 JUSTICE DOHERTY: What I will do, therefore, is put them  
21 down to as soon as we deal with this I can stand it over. And I  
22 can tell you now if it's of any help, I might even be able to  
23 work out what goes in and what goes out, but it's much better  
24 that counsel do it than I do it. So I'll stand this over to the  
25 nearest convenient time to revisit these admissions.

26 The documents will be properly numbered as exhibits when  
27 it's agreed. And if it's not agreed, when it's ruled upon.

28 Mr Serry-Kamal wanted to say something about the moving of  
29 the document MFI -D2, which Mr Metzger has moved - has referred to

1 and has said that nothing turned on this page. So he was not  
2 pushing it to be exhibited. Mr Herbst wanted it admitted. Since  
3 it refers to the accused Kamara, it wasn't brought up by Kamara,  
4 so I'm not quite sure what your locus standi is to object to it,  
5 Mr Serry-Kamal. It didn't come up in the course of your  
6 evidence.

7 MR SERRY-KAMAL: Your Honour, I'm not objecting to it.  
8 What I'm wanted is just to have a look at it and see what it's  
9 all about.

10 JUSTICE DOHERTY: I perfectly understand, and of course if  
11 it is a Court document, be it an MFI or an exhibit, you're  
12 entitled to see it.

13 MR SERRY-KAMAL: Precisely. I have no objection.

14 JUSTICE DOHERTY: Thank you, Mr Serry-Kamal. There's been  
15 no objection to this document. It is actually a Defence exhibit.  
16 Counsel for the Defence is not exhibiting it. Counsel for the  
17 Prosecution is. I consider that it is admissible, as it has been  
18 referred to in the course of examination. I will admit it as an  
19 exhibit. But since it's now been moved by the Defence, I will  
20 call it - give - excuse me, I correct myself. Since it has been  
21 moved now by the Prosecution --

22 MR METZGER: Your Honour, may I say something?

23 JUSTICE DOHERTY: Yes, Mr Metzger.

24 MR METZGER: In order not to confuse people, if you want to  
25 make it an exhibit, it is properly placed with what is now D Kanu  
26 6. I have no objection to it being adduced in evidence. After  
27 all, it was the Defence for Kanu that tried to adduce it. I'm  
28 simply saying that questions weren't asked about it, but if the  
29 Court is happy to admit it and the Prosecution are happy to admit

1 it, I'm happy to admit it within the confines of D Kanu 6 or in  
2 any other format that makes it easier for everybody to follow.  
3 It doesn't have to be a Prosecution exhibit.

4 JUSTICE DOHERTY: Thank you for that, Mr Metzger. That's  
5 helpful.

6 I will now call it exhibit D Kanu 7, being the first page,  
7 and D Kanu - D Kanu 7A the first page, and D Kanu 7B the second  
8 page.

9 MR METZGER: Your Honour, just for clarification purposes,  
10 we had D Kanu 6, which I thought was both page 3A and 3B. Is  
11 that not the case?

12 JUSTICE DOHERTY: It should be, but at the moment I've only  
13 one page in front of me. But you quite properly did say there  
14 was writing on the back, and it should be there. The only reason  
15 I didn't give it an A and a B was because I didn't have the  
16 second page. But Mr Court Officer is now bringing me up the  
17 second page. Now that it have it, it would be more accurately  
18 named as exhibit D Kanu 6A and D Kanu 6B.

19 MR METZGER: Finally, your Honour, for clarification of the  
20 D Kanu exhibits, the Court Officer here, like myself, seems to  
21 have lost count. After D Kanu 3 we believe we have D Kanu 4, but  
22 we don't know what D Kanu 5. Can I just go through --

23 JUSTICE DOHERTY: Yes, this was the one yesterday where I  
24 thought it was 5 and Mr Court Officer said it was 6.

25 4A and B is the letter from the internees to the Registrar  
26 and another person - oh, let's do it this way and save time.  
27 Let's have our Court Officer here and his counterpart in Kigali,  
28 some time in the next couple of days, check those numbers, and we  
29 can renumber them if we have misnumbered them. I think that

1 would be more efficient than us fiddling around.

2 MR METZGER: That was a brilliant suggestion, your Honour.  
3 One with which I agree utterly.

4 JUSTICE DOHERTY: So --

5 MR HERBST: Your Honour, I think a solution - I - just very  
6 quickly, I think a solution may be that the - because I have a  
7 note that the 19 January 2011 letter at one point was marked Kanu  
8 5, so that may be the solution.

9 MR METZGER: Let them sort it out.

10 JUSTICE DOHERTY: Which letter, Mr Herbst? Oh, 19 January.  
11 That's the letter from the Registrar to the witness. I thought  
12 that was all part of one exhibit, Kanu D3. It's all one bundle.  
13 So if it's received an extra number, then it shouldn't have had.  
14 It's all part of D Kanu 3.

15 Is there any other matters from Kigali? I'm going to leave  
16 this numbering in the efficient hands of our staff in the CMS,  
17 and Mr Metzger is going to look at those pages.

18 Any other matters to deal with the tendering?

19 MR HERBST: Well, I have three matters that don't pertain  
20 to exhibits, but they are matters that I would like to discuss  
21 before we adjourn for today.

22 JUSTICE DOHERTY: Well, I want to let Defence counsel here  
23 go, because all of this doesn't relate to them and they all want  
24 to get their next witnesses sorted out. So is it something to do  
25 with Kanu? In which case, I'll deal with it in their absence.

26 MR HERBST: Your Honour, it deals with witnesses, and I  
27 thought that we were going to identify today what witnesses would  
28 be available or called for Monday. [Overlapping speakers].

29 JUSTICE DOHERTY: That's what I want to do before Defence

1 counsel go, so please let me do it.

2 MR HERBST: Yes, of course.

3 JUSTICE DOHERTY: Mr Serry-Kamal, you indicated to us that  
4 you were going to interview witnesses and they would be  
5 available. What is the situation with your witnesses?

6 MR SERRY-KAMAL: I expect to interview them today at 2 p.m.  
7 They should be waiting for me in my chambers this minute.

8 JUSTICE DOHERTY: Well, I'm going to let you go and do it.  
9 How many witnesses are you calling? Because Prosecution is  
10 entitled to know.

11 MR SERRY-KAMAL: I may call just two.

12 JUSTICE DOHERTY: Will one of those be Keh-For-Keh?

13 MR SERRY-KAMAL: Definitely.

14 JUSTICE DOHERTY: Well, in that case there may be --

15 MR SERRY-KAMAL: And he's going to be a long witness.

16 JUSTICE DOHERTY: Well, I can tell you now --

17 MR SERRY-KAMAL: And I know my learned friend will  
18 cross-examine him for four days.

19 JUSTICE DOHERTY: Not if I've anything to do with it.

20 I think Keh-For-Keh was in Court in the public gallery  
21 yesterday.

22 MR SERRY-KAMAL: [Microphone not activated].

23 JUSTICE DOHERTY: Pardon?

24 MR SERRY-KAMAL: [Microphone not activated]. He wasn't  
25 here yesterday. For some reason, from the first day he was  
26 banned from coming to this Court - to these premises.

27 JUSTICE DOHERTY: Then I have an identification problem.  
28 If he was, I was going to remind you all about the Rules.

29 MR SERRY-KAMAL: No, no, no, it wasn't him.

1 JUSTICE DOHERTY: Very well, that's eliminated that  
2 probl em.

3 Mr Nicol -Wilson.

4 MR NICOL-WILSON: Your Honour, in terms of the order of  
5 call of witnesses, I would like to have the first bite on Monday  
6 morni ng wi th Mr Bangura.

7 JUSTICE DOHERTY: I have no problem with that. Strictly -  
8 strictly - it should be completion of Kamara's case. We must be  
9 practical. If Mr Bangura is ready to go, I will so order,  
10 because I have some discretion under Rule 85. So Mr Bangura will  
11 be going first on Monday. Very good.

12 You heard, Mr Herbst?

13 MR HERBST: I did, your Honour. I'm grateful to know so  
14 that I can focus my preparation, and I think your Honour was -  
15 and it's my understanding that that would be Mr Bangura's only  
16 witness, would be himself.

17 JUSTICE DOHERTY: That was the indication.

18 MR HERBST: I think your Honour was also going to ask --

19 JUSTICE DOHERTY: Yes. What was I going to do?

20 MR HERBST: I think your Honour was also going to ask  
21 Mr Metzger about who - if he was going to call any additional  
22 witnesses.

23 JUSTICE DOHERTY: He's made no application, so I'm not  
24 going to encourage that. And he's indicated to us he'll be  
25 travelling.

26 MR METZGER: Your Honour, it wasn't a question of  
27 application. We had a discussion yesterday in which I was going  
28 to be given the opportunity to peruse the transcripts and inform  
29 your Honour today what my decision was going to be. I think

1 that's what my learned friend was alluding to.

2 JUSTICE DOHERTY: I'm pretty sure that is what he is  
3 alluding to. I do remember it.

4 MR METZGER: Yes. And in the circumstances, having read  
5 the transcripts, I would like to interview the following  
6 witnesses: Isatu Baby Kamara - or potential witnesses -  
7 Christopher Kamara, I believe his name was - I beg your pardon,  
8 Sesay, the rock breaker; and Dorinda - your Honour will recall  
9 the middle names - Kanu.

10 At this point in time if they are called as witnesses, they  
11 will be, I hope, short witnesses from the Defence point of view.  
12 But judging by the independent counsel's stance on telephone  
13 calls and their content, I cannot properly, as it were, second  
14 guess what his position will be on those witnesses.

15 But like Mr Serry-Kamal, I need to come to Freetown. I  
16 need to interview the witnesses and then, having taken statements  
17 from them or otherwise, be placed in a position where I can call  
18 the evidence or close my case.

19 JUSTICE DOHERTY: Well, Mr Metzger, I will expect them to  
20 be short and not duplicate each other.

21 MR METZGER: Oh, indeed, your Honour. I may even tender  
22 witnesses. Apart from the rock breaker, because I suspect he  
23 wasn't present. He's not exactly in Freetown and he may not have  
24 been present with - oh, I forgot one potential witness, which is  
25 Sappa Samura.

26 JUSTICE DOHERTY: Yes, that's the [i ndi scerni ble].

27 MR METZGER: Yes. I mean, obviously I shall also bear in  
28 mind that the fundamental principle of criminal cases, even  
29 before the international tribunal, is that it is the Prosecution

1 who brings the case and must prove it.

2 JUSTICE DOHERTY: That never shifts. Never.

3 Very well. Mr Nicol-Wilson is on his feet.

4 Yes, Mr --

5 MR NICOL-WILSON: Your Honour, after leading Mr Bangura, I  
6 will seek to interview Tamba Alex Brima as a potential Defence  
7 witness and lawyer Ibrahim Mansaray. So those are two people I  
8 [i ndi scerni ble] to look at the possibility of them coming in as  
9 Defence witnesses to are Mr Bangura.

10 JUSTICE DOHERTY: This trial is being protracted at an  
11 incredible rate. That is all I'm going to say.

12 MR HERBST: I would like to be heard on that last point. I  
13 don't know if your Honour wishes [i ndi scerni ble].

14 JUSTICE DOHERTY: No, I'm not going to make comment until I  
15 know what the actual situation is.

16 MR HERBST: Would I have leave to object to the appearance  
17 of those witnesses?

18 MR METZGER: When the application is made.

19 JUSTICE DOHERTY: When we know whether they are coming,  
20 I'll hear whether - anything of that nature.

21 I'm going to adjourn now until Monday morning at 9 o'clock.  
22 Please adjourn Court until Monday at 9 o'clock.

23 MR HERBST: Your Honour --

24 MR METZGER: Your Honour, before we adjourn -  
25 your Honour --

26 JUSTICE DOHERTY: Who spoke from Kigali?

27 MR METZGER: Before we adjourn, would it - yes, it's Kevin  
28 Metzger. I wonder if there's a short matter that we can deal  
29 with in chambers from a logistical point of view in view of the

1 location I expect to be at on Monday.

2 JUSTICE DOHERTY: Does that involve you and myself, or do  
3 you need other Defence counsel present? Because Defence counsel  
4 need to go and prepare witnesses. I cannot ask them to sit here  
5 when things are not relevant to them.

6 MR METZGER: I understand. The situation is because we  
7 don't know exactly what's happening on Monday, I can't give  
8 consent for anybody to hold a watching brief for Mr Kanu. Unless  
9 I speak to Mr Kanu and he gives me his consent that I may do so.

10 JUSTICE DOHERTY: What I will do --

11 MR METZGER: And I haven't been able to speak to him yet.

12 JUSTICE DOHERTY: You go and talk to him, and then it can  
13 be done in chambers, and I will ask Mr Court Officer to contact  
14 other Defence counsel if there's any necessity for them to be  
15 informed.

16 MR METZGER: I'm obliged.

17 MR NICOL-WILSON: Your Honour, I think I have indicated  
18 Mr Bangura will testify on Monday.

19 JUSTICE DOHERTY: You certainly did. I have no doubt about  
20 that. But what Mr Metzger is saying is that he has to decide  
21 whether he has to be there in person or through Mr Serry-Kamal,  
22 because the original indication was that they were - have a -  
23 holding watching briefs for each other. I know exactly what  
24 you're saying, Mr Nicol-Wilson.

25 Court is adjourned until 9 o'clock on Monday morning.

26 I will be waiting in chambers to hear anything from  
27 Mr Metzger.

28 I will excuse other Defence counsel coming to chambers to  
29 hear that.

