



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

-V-

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

---

Before the Judge:	Justice Teresa Doherty
For Chambers:	Elizabeth Budnitz
For the Registry:	Elaine-Bola Clarkson 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 Wara Serry-Kamal
For the Principal Defender:	Claire Carlton-Hanciles

1 [Tuesday, 21 August 2012]

2 [Open session]

3 [Accused present]

4 [Upon resuming at 9.00 a.m.]

5 JUSTICE DOHERTY: Thank you. Good morning. Welcome back  
6 to resume our case.

7 Before I take appearances, I want to first check that  
8 Freetown can hear me and see me and hear all that has been said  
9 here.

10 THE COURT OFFICER: We can see you, your Honour. Just to  
11 confirm that counsel can see you. They have been nodding in  
12 consent.

13 JUSTICE DOHERTY: Thank you. Can I remind --

14 CHIEF TAKU: Good morning, your Honour.

15 JUSTICE DOHERTY: -- all officers of this Court, regardless  
16 of their status, this Court is scheduled to start at 11. It is  
17 incumbent on all the parties to be present at 11 and that  
18 [i ndi scerni bl e] future as it has been in the past. I'll take  
19 appearances.

20 MR HERBST: Yes. Good morning, your Honour. Robert Herbst  
21 for Prosecuti on. I apologise for being late, your Honour, but  
22 our transportation system fell down this morning. I didn't get  
23 here until 11 o'clock.

24 JUSTICE DOHERTY: In the circumstances, I will forgive you  
25 for your late appearance, Mr Herbst.

26 MR HERBST: Thank you, your Honour.

27 JUSTICE DOHERTY: For the Defence [i ndi scerni bl e]  
28 appearances.

29 MR NICOL-WILSON: Your Honour, Mel ron Ni col -Wi lson appears

1 for Hassan Papa Bangura.

2 CHIEF TAKU: May it please your Honour --

3 JUSTICE DOHERTY: Thank you.

4 CHIEF TAKU: May it please your Honour, my name is Chief  
5 Charles Taku. I appear for Mr Samuel Kargbo.

6 JUSTICE DOHERTY: Thank you, Chief Taku.

7 MR METZGER: Morning --

8 JUSTICE DOHERTY: Accused counsel.

9 MR METZGER: Good morning, your Honour. Kevin Metzger for  
10 Santi gi e Kanu.

11 JUSTICE DOHERTY: And?

12 MR SERRY-KAMAL: Thank you, your Honour, AL Serry-Kamal for  
13 the accused.

14 JUSTICE DOHERTY: Thank you, Mr Serry-Kamal.

15 I note that the accused Kamara and Kanu are present  
16 appearing in detention and the accused Papa Bangura are also  
17 present; is that correct, Mr Court Officer, in Freetown?

18 THE COURT OFFICER: Yes, your Honour.

19 JUSTICE DOHERTY: Thank you.

20 Counsel, I issued a scheduling order in this matter, first  
21 setting a pre-trial conference. In doing so, I have reviewed and  
22 considered the pre-trial and submissions made by each of the  
23 accused in May on various dates, 22nd, 29th, and 28th, I have  
24 noted the contents thereon, but since this is not a completion of  
25 the Prosecution case, Defence of course is entitled to review  
26 their situation, and in light of that, I have scheduled a  
27 pre-trial conference.

28 I will quickly go through the agenda items, and I will ask  
29 each counsel in turn for their comments that they may have, if

1 any. I bear in mind of course that there's no obligation on  
2 Defence to say anything at this stage. It therefore will be  
3 [i ndi scerni bl e].

4 Mr Ni col -Wil son, you've got a scheduling order and I ask  
5 that you indicate if there are any items in agenda Item 1, (i) to  
6 (vii), that you wish to put before the Court.

7 MR NICOL-WILSON: Your Honour, I wish to draw the Court's  
8 attention to an outstanding motion which was filed by the  
9 Prosecution in relation to the bail granted by your Honour to  
10 Hassan Papa Bangura, and I want that to be included as an agenda  
11 item.

12 JUSTICE DOHERTY: I can short-circuit that by informing you  
13 that I have drafted my decision on that matter, and it will be  
14 published not this afternoon, but first thing tomorrow morning.  
15 In it I have explained that I was not aware of your response, as  
16 outside of the juris diction. I had no electronic communications  
17 until mid - in fact, mid - [i ndi scerni bl e]. That will be filed  
18 this afternoon - either this afternoon or first thing this  
19 morning. The draft is completed.

20 MR NICOL-WILSON: I'm grateful, your Honour.

21 JUSTICE DOHERTY: Have you any - are there any admissions  
22 or statements of other matters that are not in dispute on behalf  
23 of the accused Bangura?

24 MR NICOL-WILSON: No, your Honour.

25 JUSTICE DOHERTY: Perhaps I could make it more shorter,  
26 Mr Ni col -Wil son, by asking you: Are there any matters that  
27 differ from your original submissions prior to the opening of the  
28 Prosecution case that you filed in May?

29 MR NICOL-WILSON: Your Honour, based on your ruling on our

1 no-case submission, I will say that there are no different  
2 matters at this stage, and there are no admissions by the accused  
3 Hassan Papa Bangura, beside what was stated in the Defence  
4 pre-trial brief.

5 JUSTICE DOHERTY: May I therefore take it that your  
6 indication in that pre-trial is that the accused Bangura would  
7 give evidence and might call two other witnesses still stand?

8 MR NICOL-WILSON: No, your Honour. The accused Hassan Papa  
9 Bangura at this stage would like to rely on the statement annexed  
10 to the Defence pre-trial brief and would like to be given a  
11 little more time, at least until the end of today, to know  
12 whether he will be calling additional witnesses. But the accused  
13 Hassan Papa Bangura does not wish to testify in these proceedings  
14 and would rely on the statement annexed to the Defence pre-trial  
15 brief.

16 JUSTICE DOHERTY: Bear with me, Mr Nicol-Wilson, until I  
17 find that statement. Mr Nicol-Wilson, the document I have before  
18 me dated 30 May 2012, has - does not have a separate annexure of  
19 a statement. Is there another document that I'm not aware of?

20 MR NICOL-WILSON: Your Honour, that --

21 MR HERBST: Your Honour, I have a copy.

22 MR NICOL-WILSON: -- that is the document but the statement  
23 was filed confidentially.

24 JUSTICE DOHERTY: I see, for reasons known best to the  
25 filing authorities - I first of all note that there's no  
26 reference to a confidential annexure on the cover sheet of this  
27 document and I don't have that. I will therefore ask that a copy  
28 be made available [indiscernible], and I will note that you will  
29 be making further submissions in due course.

1 MR NICOL-WILSON: As your Honour please.

2 JUSTICE DOHERTY: Are there any other matters to be brought  
3 to my attention in relation to the agenda items, Mr Nicol-Wilson?

4 CHIEF TAKU: Your Honour, this is Chief Taku from Freetown.  
5 I would respectfully apply that a copy of that confidential  
6 statement which Mr Nicol-Wilson filed be served on Mr Kargbo  
7 through his counsel, through me. I didn't receive a copy of that  
8 confidential statement that Mr Nicol-Wilson had just talked  
9 about.

10 JUSTICE DOHERTY: Well, I must say that it should have been  
11 filed and served on all parties confidentially, and if it was not  
12 served on you, Chief Taku, it should be served on you. I'm  
13 puzzled about this because there is nothing on the cover sheet of  
14 that document to indicate that there was a confidential annexure,  
15 and this leads me to ask myself if it is, in fact, document  
16 number 22 of 30 May 2012 or if it's a different document.

17 THE COURT OFFICER: [In Kigali] Madam, it is document  
18 number 22. It's an oversight from the CMS that they accepted it  
19 without Article 4 being observed. Madam, would I like you to  
20 help CMS in ordering all counsel to specify on the cover sheet  
21 whether or not their document is public or confidential. That  
22 would make it easy for the staff in CMS when filing. And I can  
23 assure Chief Taku that this document was filed to him at the time  
24 of filing. But I can instruct the CMS staff to resend it to his  
25 e-mail that he has provided for us.

26 JUSTICE DOHERTY: Possibly it would be better that a hard  
27 copy is [indiscernible] to Chief Taku at the time and the need  
28 for prompt instructions.

29 THE COURT OFFICER: [In Kigali] Yes, ma'am.

1 Court Officer, in Freetown, could you give Chief Taku  
2 document 22 - a hard copy of document 22 to Chief Taku.  
3 Thank you.

4 THE COURT OFFICER: I will.

5 CHIEF TAKU: Thank you very much, your Honour.

6 JUSTICE DOHERTY: [Indiscernible] provisions of rule  
7 [indiscernible].

8 Chief Taku, you have also received a copy of the scheduling  
9 order. Is there anything that your accused - your defendant,  
10 rather, will need to add in relation to the Defence case that is  
11 covered by the scheduling order?

12 CHIEF TAKU: Nothing, your Honour.

13 JUSTICE DOHERTY: Thank you, Chief Taku.

14 Mr Metzger, on behalf of the accused Kanu again has already  
15 [indiscernible] documents filed on the 22nd and 29th of May.  
16 Again, I, of course, do not lose sight of the [indiscernible] of  
17 the accused.

18 MR METZGER: I'm very much obliged, your Honour. I take it  
19 we're looking at item agenda number 1 --

20 JUSTICE DOHERTY: Yes.

21 MR METZGER: -- in terms of matters which are agreed. It  
22 seems to me that there is now an agreement as between the  
23 Prosecution and Defence insofar as it assists that Mr Kanu was in  
24 hospital in Kigali in December. I can't remember exactly what  
25 dates.

26 MR HERBST: I think it's between 8th of December and the  
27 13th of December, is my recollection, but we would check to  
28 confirm.

29 JUSTICE DOHERTY: So --

1 MR METZGER: I'm very much obliged.

2 JUSTICE DOHERTY: I'm entitled to take note that there is  
3 an agreed fact between Defence and Prosecution that the accused  
4 Kanu was in hospital between 8th and 13th of December 2010 and is  
5 it - am I also entitled to take it that he was in - how do I put  
6 it? Full-time [overlapping speakers] --

7 MR METZGER: Yes.

8 JUSTICE DOHERTY: -- outpatient.

9 MR METZGER: He was an outpatient, but during that time, he  
10 was accommodated at the Kigali central prison.

11 JUSTICE DOHERTY: Without going into Defence evidence, is  
12 there - is it also an agreed fact that because he was in Kigali  
13 central prison and attending the hospital, that he did not have  
14 access to communications? Is that agreed or is that still in  
15 dispute?

16 MR HERBST: Your Honour, I have no information on that. So  
17 I can't agree to that. I have no information as to his  
18 communications were or were not available. The only thing that  
19 we are agreeing to is what I have been advised, which is that he  
20 was in hospital between those dates, and for example, I didn't  
21 even realise he was an outpatient until Mr Metzger just mentioned  
22 that. So that's the extent of the agreement.

23 JUSTICE DOHERTY: I would note that it is agreed by counsel  
24 for the Defence and counsel for the Prosecution that the accused  
25 Kanu was an outpatient in Kigali and resident at Kigali central  
26 prison between the 8th and 13th of December inclusive.

27 MR METZGER: I'm very much obliged, your Honour. I'm not  
28 sure whether the Prosecution will agree to this. I'm sure it  
29 came from the evidence of Mr Sengabo that the mobile telephone in



1 question did not leave Mpanga Prison. So he wouldn't have had  
2 access to it during that time. I don't think much turns on the  
3 case in relation to that, but that is the position as I  
4 understand it.

5 JUSTICE DOHERTY: Any other matters that are agenda item 1,  
6 Mr Metzger?

7 MR METZGER: Regrettably, I don't think there's anything  
8 that we can agreed in its entirety, but I can confirm that in the  
9 course of the next 24 hours I am content to sit with Mr Herbst  
10 and to develop any further areas that the Prosecution may want,  
11 as permitted, if I am able to do so.

12 JUSTICE DOHERTY: What I'm asking clearly, or possibly not  
13 clearly, is Mr Kanu going to call - give evidence and is he going  
14 to call a witness or and witnesses?

15 MR METZGER: It is anticipated that Mr Kanu will give  
16 evidence. At this point in time, it is not anticipated that  
17 there will be other witnesses on behalf of Mr Kanu. Your Honour  
18 will note the issue as regard to Mr Sengabo who was the witness  
19 we were proposing to call. It may be - I don't think now that  
20 there would be the necessity to call another witness to prove his  
21 stay in hospital because that's what the agreement is about. And  
22 so, it seems to me, at this point in time barring any surprises  
23 or matters that may arise in cross-examination, it is not  
24 proposed to call further witnesses, certainly not in Kigali on  
25 behalf of Mr Kanu.

26 JUSTICE DOHERTY: Mr Serry-Kamal - Mr Serry-Kamal, do you  
27 on behalf of Kamara, do you have any matters that - other than  
28 what you [indiscernible] if it was 24 May?

29 MR SERRY-KAMAL: No, your Honour.

1 CHIEF TAKU: May it please --

2 JUSTICE DOHERTY: At that point, Mr Serry-Kamal -

3 Just a moment, Mr Taku - Chief Taku, please, if you will  
4 allow me to put my question.

5 Mr Serry-Kamal, you were inconclusive as to whether  
6 Mr Kamara would give evidence in your document. What is the  
7 situation now?

8 MR SERRY-KAMAL: The situation now is that Mr Kanu -  
9 Mr Kamara will give evidence.

10 JUSTICE DOHERTY: Thank you.

11 MR. SERRY-KAMAL: And will call two witnesses in Freetown.

12 JUSTICE DOHERTY: He will give evidence here.

13 MR SERRY-KAMAL: He will give evidence here.

14 JUSTICE DOHERTY: And his witnesses will be in Freetown?

15 MR SERRY-KAMAL: In Freetown, yes.

16 JUSTICE DOHERTY: I understand. Then if there is nothing  
17 else, then I'm going to - Mr Herbst, you appear - sorry. First  
18 of all, Chief Taku was on his feet, so I'll deal with his matter  
19 first and then I will [indiscernible].

20 Chief Taku, you were on your feet.

21 CHIEF TAKU: Yes, your Honour. I wish respectfully to take  
22 this opportunity to put on record that we would defer our  
23 representations on whether we will call witnesses only to the  
24 sentencing hearing. We did file some statements from potential  
25 witnesses. At that moment, we will seek proper directions from  
26 the Court whether we would rely on the statements of those  
27 witnesses give viva voce evidence. That said, Your Honour, we  
28 would defer further representation on this issue to the  
29 sentencing hearing. But I want to put it on record now so that

1 when the Court is making the [i ndi scerni ble] orders with regard  
2 to sentencing at the appropriate moment, the Court will take that  
3 into consideration.

4 JUSTICE DOHERTY: [Mi crophone not activated] and at that  
5 point then depending on the outcome of that decision, it will be  
6 appropriate to deal with the sentencing hearing, indeed, once it  
7 arrives [i ndi scerni ble]. I make this a very condi ti onal  
8 statement [i ndi scerni ble].

9 Mr Herbst, you wish to say something?

10 MR HERBST: Yes, your Honour. Thank you. So I j ust want  
11 to make sure my understanding is correct, and I have a questi on  
12 to ask in that regard. I understand Mr Bangura will call no  
13 witnesses; that Mr Kanu will call only Mr Kanu, and I heard  
14 actually some slight reservati on in that regard with respect to  
15 other witnesses in Freetown; and I j ust want to indicate that I  
16 think it would be appropriate to hear at this point, since five  
17 weeks have elapsed since the end of the Prosecuti on' s case and  
18 we' re here at the Defence pre-trial conference, to hear with more  
19 defini ti on whether or not other witnesses will testi fy, and if  
20 so, who they will be.

21 But with respect to Mr Kamara, it' s my understanding  
22 Mr Kamara will testi fy and will call two witnesses. And I would  
23 ask, at this time, for the i denti ficati on of the two witnesses,  
24 since I' ve not been apprised as to who they are nor have I seen  
25 any i ndicati on vi a witness statement or otherwise what the  
26 anti cipated nature of the testi mony will be. I wonder if that  
27 would be appropriate at this time?

28 JUSTICE DOHERTY: Mr Serry-Kamal , the Rule 73 *ter* B does  
29 allow me to ask you to state the name and the pseudonym of each

1 witness that you intend to call. So please state the name and  
2 pseudonym, if any, of the [i ndi scerni bl e] [overl appi ng speakers].

3 MR SERRY-KAMAL: Just a moment, please. Your Honour, my  
4 problem is - the names of the witnesses were only given to me  
5 yesterday, and this is in relation to an issue which arose only  
6 on the last day before we left, and since then I've not had time  
7 to interview my client. It's only yesterday that I interviewed  
8 my client and he gave me the names of the witnesses. Actually,  
9 they are four of them, but I need to select one or two of them to  
10 testi fy [i ndi scerni bl e]. They will be provi ng the same issue.  
11 And we'll have the selecti on from three or four wi tnesses  
12 menti oned, one of them to at least testi fy [i ndi scerni bl e].

13 JUSTICE DOHERTY: What issue arose at the last - on the  
14 last day?

15 MR SERRY-KAMAL: The questi on of the telephone - it was the  
16 questi on of the telephone log at the prison and the MTN record.  
17 These were not di scli osed to us at the time. On the di scli osure  
18 obl i gati ons [i ndi scerni bl e] the Prosecul ti on.

19 JUSTICE DOHERTY: But they were di scli osed here.

20 MR SERRY-KAMAL: Yes, your Honour, but --

21 JUSTICE DOHERTY: Not on the last day. They were di scli osed  
22 well before the last day.

23 MR SERRY-KAMAL: But we had to interview our clients, which  
24 was only yesterday, and it was only yesterday that he mentioned  
25 the names to me, and I've not had time to see all of them. The  
26 names were menti oned yesterday. And it's only when I get to  
27 Freetown, that I will be able to interview them and decide on  
28 which of them to call. I can give you names, but I will not be  
29 able to tell you which of them I'll be able to call.

1 JUSTICE DOHERTY: I find it very odd that a client, one  
2 year and one month after he was arraigned, will only now start  
3 giving instructions. Be that as it may, I direct that you give  
4 the four names to counsel for the Prosecution and in accordance  
5 with the provisions of the Rules, that - I'm not saying that you  
6 are to give a written statement, because there is no mandatory  
7 obligation on the Defence to give such a written statement.  
8 However, you can indicate to the Prosecution what aspects of the  
9 Prosecution case they will deal.

10 MR SERRY-KAMAL: I will give the names now.

11 JUSTICE DOHERTY: Not on public record.

12 MR SERRY-KAMAL: I will give them in private to my learned  
13 friend.

14 JUSTICE DOHERTY: I think that would be more appropriate.

15 MR SERRY-KAMAL: As your Honour pleases.

16 JUSTICE DOHERTY: Because I don't want to bind counsel on  
17 record to matters which are a discretionary point.

18 MR SERRY-KAMAL: I'm grateful to your Honour.

19 JUSTICE DOHERTY: Now, it appears that we have one definite  
20 witness ready to give - it appears from the submissions that we  
21 have one definite witness, that is Mr Kamara. I'm not sure why  
22 Mr Metzger you need more time with Kanu.

23 MR METZGER: I'm happy to assist.

24 JUSTICE DOHERTY: You said you anticipated he would give  
25 evidence. The remarks I made about time applied fully to him,  
26 and I'm anxious as in the scheduling order [i ndi scernible] to  
27 make use of the time we have here, and I wish to hear evidence  
28 from today until the 23rd. So when are you going to call - be  
29 able to call him?

1 MR METZGER: Your Honour, can I address - first of all,  
2 there are four matters in relation to, at large, item 1. I  
3 thought initially you were only asking about (i).

4 JUSTICE DOHERTY: Possibly, I should have repeated in  
5 relation to each counsel that I was dealing with (i) to (vii), as  
6 I did with Mr Nicol-Wilson.

7 MR METZGER: Thank you. In that case, your Honour, can I  
8 address you on the matters in each of those subsections of item  
9 (i). First and foremost, bearing in mind the Rule 98  
10 submissions, the Prosecution's response and your Honour's  
11 decision, it seems to me that before the Defence for Kanu can be  
12 called, the Prosecution needs to nail its colours to the mast as  
13 to what the basis of count 2 is. Now, it seems that in the  
14 course of the Prosecution's pre-trial brief, count 2 was put on  
15 the basis that it related to the purported or alleged  
16 intimidation of 334 via the conversation about who he ought to be  
17 afraid of. However, in the Prosecution's response, he left it  
18 open as to what otherwise interfered with was. It seems to me  
19 that in the 24th May decision of the Trial Chamber the -  
20 certainly the indication that was given was that this Chamber  
21 would be looking at the otherwise interfered with referred to in  
22 count 2 as that intimidation.

23 In view of the Prosecution's response - and I understand  
24 that response, because it was a response to Defence submission  
25 that there was absolutely no case on count 2 - it seems that  
26 there are other matters than the simple intimidation. Now, if  
27 that were the case and the otherwise interfered with is a  
28 separate count from count 1 relating to the alleged continued  
29 communications with 334, then we have two counts that rely on

1 exactly the same evidence but which the Prosecution has not put  
2 forward as alternatives.

3 It is important for your Honour, as the trial Judge in this  
4 case, and for all counsel who have to meet that count to be able  
5 to understand exactly what it is that we are meeting in count 2.  
6 In my respectful submission, the Prosecution's brief has been as  
7 unclear as possible in relation to count 2 and his response to  
8 Defence submissions is also fairly vague when we nailed our  
9 colours to the mast in relation to the point of intimidation.  
10 That's the first point that I raise.

11 Secondly, your Honour will have noted that the issue of the  
12 date of the telephone call as relied on by the Prosecution,  
13 whatever my learned friend may say, really only reared its head  
14 on the last two days when we were sitting in Kigali. The  
15 Prosecution's opening remarks, the Prosecution's brief, the  
16 statements served on us from 334 suggested that this occurred on  
17 Monday, 29 November 2010. Although in fairness to my learned  
18 friend in his brief, he said on or around. But of course, the  
19 Prosecutor, like other counsel in the Court officers in the case,  
20 is bound by the evidence he purports to call. And that evidence  
21 was 334 categorically stating in his statement, which is an  
22 exhibit now in this case - in fact there are two exhibits  
23 relating to his statement, I think 3 and 4 - 5 - and in his  
24 evidence before this Court that he was certain it was a Monday;  
25 he was certain it was the 29th of November; and then obviously  
26 the Prosecution's case shifting rather like the sands in a sand  
27 storm in the desert, to accommodate the by now well noted - I use  
28 the word advisedly - Alagenda e-mail, which the Prosecution have  
29 chosen not to call Ms Alagenda. There is no evidence of the

1 accuracy of the times on that document. There is no evidence  
2 from the person who took the first-hand hearsay - I beg your  
3 pardon, in relation to this case the second-hand hearsay from  
4 Mr Alimamy Bobson Sesay, and yet the Prosecution used that and  
5 its alleged threat and electronic footprint of which no metadata  
6 a has been served in order to support the now Prosecution case as  
7 it comes into the Defence that this must have occurred on 30  
8 November 2011.

9 This, therefore, has required a further in depth discussion  
10 with Mr Kanu, which could only have been done once we arrived  
11 here about 30th of December. Instructions had been taken from  
12 him. Your Honour will recall how brief we were after the  
13 statement was served on us by the Prosecution, when in fact the  
14 time that had been allotted to the Defence had been somewhat  
15 eaten into by I suppose logistical difficulties in the  
16 Prosecution obtaining a statement from Mr Sengabo. And the issue  
17 clearly benefits from Mr Kanu being able to go and check any  
18 records he has available to him and any notes he may have made  
19 over a period of time, which he didn't have with him at that  
20 time.

21 Another matter which arose, as your Honour will have noted  
22 from the request made by the Defence for permission to call a  
23 handwriting expert - and I do accept that your Honour has a ruled  
24 on that matter in the face of opposition, strong perhaps from the  
25 Prosecution - because very clearly one of the issues now that  
26 will arise in this case, as a result of this evidence that was  
27 called, is there's issue between the Prosecution and the Defence  
28 as to whose handwriting and signature it was on 30th of November,  
29 Exhibit P15-A. Clearly, that is something that could not have



1     been contemplated by the Defence at the time we filed in May our  
2     pre-trial Defence, because it was not something that was being  
3     put forward by the Prosecution, and it was not put forward by the  
4     Prosecution - with greatest respect to my learned friend, whether  
5     by virtue of oversight or any other matter - until it became  
6     proposed evidence to be served through the statement of  
7     Mr Sengabo which was served on us, as I recall it, on either the  
8     3rd or the 4th of July this year shortly before he was called to  
9     give evidence-in-chief.

10           I beg your pardon, I may be wrong. It may have been the  
11     2nd, if I can read my learned friend's handwriting on the  
12     document. But certainly it was just before he was called to give  
13     evidence in this case.

14           So in terms of having to rebut opinion evidence, which is  
15     not expert evidence about handwriting and signatures, I have  
16     commenced yesterday an exercise with Mr Kanu in identifying other  
17     signatures and handwriting than the 26, which your Honour may  
18     very well recall having referred to it in your decision on the  
19     matter, which I pointed out by way of reference to the Court was  
20     accepted were in fact Mr Kanu's handwriting. So that is a  
21     completely new area, and while it has been five weeks,  
22     your Honour will understand in the particular circumstances of  
23     this case that as counsel seeking to represent the best interests  
24     of my client and the interests of justice, and in order to  
25     preserve confidentiality, which has also been an issue in this  
26     case as between counsel and client, it has not been decided  
27     prudent to take instructions like that or indeed practical over  
28     the telephone.

29           So your Honour, in terms the third point that I raise in

1 relation to handwriting is split into two. The question of  
2 dealing with the expertise or opinion, and the declaration to the  
3 Court on behalf of Mr Kanu for the avoidance of doubt - and I'm  
4 sure that your Honour will have seen the submissions made on  
5 behalf of Kanu on Friday, I think it was - in order to make it  
6 quite clear that it is not accepted on behalf of Mr Kanu and it  
7 is believed that it was put to Mr Sengabo that in fact it was not  
8 accepted that the signature ascribed to him when he did the  
9 writing on 30th of November is Mr Kanu's.

10 Your Honour, those are the matters that I believe arise out  
11 of item 1 in the agenda. May I just have a look? Insofar as the  
12 list is concerned, I have indicated to your Honour that I propose  
13 to call Mr Kanu. The Prosecution has responded by saying they  
14 would like more information, and I would reply to that response  
15 at this point by saying I'm content to provide as much  
16 information as I can to be of the greatest assistance as I can to  
17 my learned friend the Prosecutor. However, absent the gift of  
18 clairvoyance, I cannot assist him because I do not know the  
19 questions that he is likely to ask my client that will require me  
20 to call evidence in rebuttal. So it is - if further witnesses  
21 are called - out of an abundance of caution that I have indicated  
22 on behalf of Mr Kanu in this case that it may be the Defence will  
23 be required to call witnesses. I anticipate those witnesses will  
24 be in Sierra Leone because if there is an issue of rebuttal, it  
25 may come about as a result of questions being asked by - in  
26 cross-examination by the Prosecutor.

27 I cannot estimate exactly how long Mr Kanu will be required  
28 to give evidence. I do not believe his evidence-in-chief will  
29 last longer three hours, if I have sufficient time to deal with

1 all the matters that I had hoped to before calling him. And I  
2 will be able to provide a list of exhibits that we may use in  
3 this case. Logistically, I need some time for those to be passed  
4 on to the Court Officer, who has kindly agreed to make  
5 arrangements for photocopies to be done. There are some original  
6 pieces of paper, parts of diaries, and so on and so forth.

7 Those are all the matters in relation to item 1 on the  
8 agenda, unless I can assist you any further.

9 JUSTICE DOHERTY: Yes. You referred to [i ndi scerni ble] of  
10 this trial chamber on 24 May. What's the name and number of that  
11 decision?

12 MR METZGER: I'm so sorry, your Honour. I believe that is  
13 the decision of 2011 on the Independent Prosecutor's request for  
14 the contempt proceedings. If you bear with me one moment,  
15 your Honour, I will --

16 JUSTICE DOHERTY: So it's basically the original order in  
17 lieu of the indictment, is that what the document - and the  
18 decision that went - preceded it?

19 MR METZGER: Your Honour, that is quite right. I have it  
20 here: It is the decision of 24 May 2011, decision on the report  
21 of the independent counsel by Trial Chamber II. It is SCSL  
22 04-16-ES, pages 2208 to 2214, and there are relevant portions of  
23 that decision - are paragraphs 38 through 41.

24 JUSTICE DOHERTY: Mr Herbst, [i ndi scerni ble] matters you  
25 wish to respond to any of these [i ndi scerni ble].

26 MR HERBST: Yes, your Honour. Thank you. First of all, I  
27 - if I understand correctly what Mr Metzger has said, is that  
28 right now he does not intend to call witnesses other than  
29 Mr Kanu, unless matters come up in rebuttal to which he - to

1 which he might respond with witnesses in Sierra Leone, and I  
2 understand that, if my understanding is correct, as to why he may  
3 not be identifying those witnesses.

4 But I would ask with respect to the exhibits that he  
5 mentioned, whether those have been handed over to the Court  
6 Officer or whether they have been identified, whether he can give  
7 copies of those to us now, or when he intends to do that. With  
8 respect to the two issues that he raised, subsequent issues that  
9 he raised, I would like to say that with respect to the date in  
10 this case of November 30, this is not something that came up in  
11 the last two days of the trial at all.

12 First of all, the Alagenda e-mail, which counsel  
13 mentioned, was disclosed as soon as we received it, long, long  
14 before the trial started, and that e-mail indicates clearly that  
15 the date of the conversation in question was November 30. So all  
16 counsel were on notice that - of that evidence.

17 In addition, it was Mr Metzger who came to Kigali months  
18 before the trial started, reviewed the prison log with Mr Sengabo  
19 and obviously saw --

20 MR METZGER: I would ask my learned friend to withdraw  
21 that, please. Not "obviously", because I do have some comment  
22 about that.

23 JUSTICE DOHERTY: All I would say on this matter is that I  
24 have noted [indiscernible] in the pre-trial brief of 22nd of May  
25 references in - on 22nd and 29th of May and the references  
26 therein to an unnamed prison officer in one case and the name was  
27 not Sengabo [indiscernible] on the other and a reference to  
28 documentation unspecified. That is officially before the Court  
29 and [indiscernible] acknowledge at this time.

1 MR METZGER: Thank you.

2 MR HERBST: In addition, your Honour, in the opening  
3 statement, my recollection serves me correctly, I indicated it  
4 was our contention that the conversation in question occurred on  
5 November 30th. So there was no - absolutely no surprise with  
6 respect to that contention and with respect to the powerfully  
7 incriminating nature of the evidence of the prison log and the  
8 MTN phone records, all of which again were - the MTN phone  
9 records disclosed to counsel at the outset of the case.

10 And Mr Kanu has had - I understand what Mr Metzger said,  
11 but there has been significant amount of time for Mr Kanu to  
12 identify what other signatures there are and to proceed with  
13 respect to whatever aspect of Defence he and his counsel wished  
14 to pursue.

15 With respect to count 2, again there is no surprise. The  
16 count is not limited to intimidation. Nowhere does there appear  
17 to be, in the indictment nor in any of the materials that I  
18 served, confinement of count 2 to intimidation. And I believe,  
19 again in my opening statement, I indicated that even without  
20 regard to the offer of money, the contempt was committed when an  
21 attempt was made by the accused to reach out to 334 --

22 [Video link disconnected].

23 THE COURT OFFICER: [In Kigali] Madam, the link is back  
24 on.

25 JUSTICE DOHERTY: Thank you. Can we be heard and seen in  
26 Freetown, Mr Court Officer in Freetown?

27 THE COURT OFFICER: Yes, your Honour. We can see you, and  
28 we're able to hear you as well.

29 JUSTICE DOHERTY: Thank you. Counsel has not heard the

1 submissions of Mr Herbst, and the last submission I - part of  
2 that submission I have noted is an opening statement which he  
3 noted was an attempt to reach out to 334. He was dealing with  
4 the submissions by Mr Metzger on count 2. He said they were not  
5 limited to intimidation. Has that all been heard by counsel in  
6 Freetown?

7 Mr Nicol-Wilson, did you hear the submissions of counsel  
8 for the Prosecution?

9 MR NICOL-WILSON: Your Honour, I've heard the repetition of  
10 the submissions made by counsel by your Honour, but the link was  
11 lost and I did not hear most of what counsel said.

12 JUSTICE DOHERTY: I see. I will ask counsel to pick up -  
13 one of the last points he made was - and I take note of what I  
14 have paraphrased it as - Mr Kanu has had significant time to  
15 identify what he wants to do to proceed.

16 Have you heard that, Mr Nicol-Wilson?

17 MR NICOL-WILSON: Yes, your Honour.

18 JUSTICE DOHERTY: Very well. Mr Herbst, could you pick up  
19 where you referred to count 2 is not limited to intimidation.  
20 Could you please pick up and repeat that part of your submission  
21 and continue from there.

22 MR HERBST: Yes, your Honour. Thank you. I would be happy  
23 to. What I was saying was that there was nothing in our - in  
24 either the indictment, nor the papers that we filed prior to  
25 trial, nor in the opening statement, that restricted count 2 to  
26 the issue of intimidation by the accused of 334. Rather, the  
27 theory of the Prosecution has been that the offence under count 2  
28 was made out at the time, early on, when there was an agreement  
29 and an act in furtherance of the agreement to reach out to 334 to

1 influence him to request him to alter or change his testimony -  
2 recant his testimony. So they went out without regard to the  
3 offer of a bribe. It has been our contention, continues to be  
4 our contention, that count 2 was committed without regard to  
5 intimidation; though, of course, intimidation is and can be a  
6 part of it. So that was the submission with respect to count 2  
7 that I had wanted to make.

8 I think that's about it.

9 JUSTICE DOHERTY: Clearly, these are all issues of fact and  
10 at the end of the day, issues of interpretation of Rule 77. It  
11 would be improper to comment at this point without having heard  
12 all evidence [i ndi scerni ble] submi ssi ons. My i mmedi ate regard is  
13 to move [i ndi scerni ble] Mr Kamara has opted, as he's entitled to  
14 do [i ndi scerni ble] Court to give evidence. Mr Kanu has asked for  
15 some time to consider his posi ti on, notwi thstandi ng my view that  
16 he has had some time, I note the issues raised by his counsel ,  
17 and therefore, I will not direct him to be called first.

18 I'm going to allow some time. We have tried hard to  
19 accommodate the difference in time between Freetown and Kigali .  
20 I will start hearing the evidence this afternoon. I will allow  
21 both counsel time to consult with their clients. I will start by  
22 hearing counsel for Kamara this afternoon, and I will note that  
23 withstanding he is to give evidence here, he will not be closing  
24 his evidence because he has a right to call witnesses in Freetown  
25 if he calls them.

26 As soon as his evidence is finished, whenever that will be,  
27 I will then decide if Kanu needs any further time.

28 I will set the Court to resume. It's now 12 o'clock in  
29 Kigali time and it's 10 o'clock in Freetown. I will allow until

1 1 o'clock Freetown time, or 3 o'clock here, to recommence and  
2 call the evidence in accordance with [i ndi scerni bl e]. So we wi ll  
3 adjourn unti l 3 o'clock.

4 [The Court adjourned at 10.10 a.m.]

5 [Upon resumi ng at 1.00 p.m.]

6 JUSTICE DOHERTY: Good afternoon, counsel .

7 MR HERBST: Good afternoon, your Honour.

8 MR METZGER: Good afternoon, your Honour.

9 JUSTICE DOHERTY: Mr Serry-Kamal , in the course of thi s  
10 morni ng I referred to Rule 84 of the Rules of Procedure and  
11 Evidence in relati on to [i ndi scerni bl e]. Of course Rule 84  
12 i tsel f is a di screti onary matter. You are not obliged to make an  
13 opening statement if you shoul d not wish to do so  
14 [i ndi scerni bl e].

15 THE COURT OFFICER: Your Honour, if I may, please.

16 JUSTICE DOHERTY: [I ndi scerni bl e]. Somebody spoke?

17 THE COURT OFFICER: Yes, your Honour. Just thi s moment we  
18 have a di srupti on in the l i nk to Kigali . The Defence side can' t  
19 see what' s going on in there, so we need a few minutes to ki ndly  
20 sort that out. Just thi s moment as the defendants were comi ng  
21 i nto Court, we realised that their side of the Court doesn' t have  
22 the - they can' t see what' s going on. The moni tor is off.

23 JUSTICE DOHERTY: Very well . We' ll wait and allow counsel  
24 and the accused to see what is happeni ng here.

25 THE COURT OFFICER: Thank you, your Honour, the l i nk is  
26 restored. We can proceed.

27 JUSTICE DOHERTY: Thank you, Mr Court Offi cer. The counsel  
28 and the accused in Freetown heard my openi ng remark to  
29 Mr Serry-Kamal ?



1 THE COURT OFFICER: Your Honour, we can't quite hear you  
2 very clearly. Can we kindly ask that you speak a little bit up  
3 so that the people in Freetown - especially the interpreters -  
4 they did mention that they have been struggling all morning to  
5 hear you.

6 JUSTICE DOHERTY: In that case I will bring the microphone  
7 closer to myself and I will endeavour to speak more slowly.

8 THE COURT OFFICER: That's better, your Honour, thank you.

9 JUSTICE DOHERTY: My remarks were directed to counsel for  
10 Mr Kamara, Mr Serry-Kamal, that in the course of this morning I  
11 made a reference to Rule 84 of the Rules of Procedure and  
12 Evidence. That is not a mandatory provision in that  
13 Mr Serry-Kamal is not obliged to make an opening statement, but  
14 if he does not [i ndiscernible] statement he may go directly to  
15 his evidence in accordance, of course, with Rule 85.

16 Mr Serry-Kamal was about to say something when the link froze,  
17 and I will therefore ask Mr Serry-Kamal what he wished to say.

18 MR SERRY-KAMAL: Your Honour, it's a procedure matter. It  
19 seems to me that before we can lead evidence, the case for the  
20 first defendant ought to be closed before I can lead - I stand  
21 corrected.

22 JUSTICE DOHERTY: The first defendant is Mr Bangura; is  
23 that who you are referring to?

24 MR SERRY-KAMAL: Yes.

25 JUSTICE DOHERTY: Mr Serry-Kamal, when I made my remarks  
26 that I made in my scheduling order, I had in mind the provisions  
27 of Rule 85 and the interests of justice. But having reread it, I  
28 did not see that I was obliged to determine any sequence of  
29 Defence evidence; that I was entitled to direct evidence in the

1 trial in accordance with Rule 85, which says that - 85A(2),  
2 evidence for the Defence - "Defence" being a generic term, mind  
3 you, in that section, and it doesn't - unless you can point me to  
4 some either procedural mandatory rule, or some procedural - a  
5 precedent that is binding upon me, I consider I'm at liberty in  
6 the interests of justice, and as best determines the trial in a  
7 fair and expeditious manner, to rule who gives evidence first.  
8 If you refer me, I will consider it and invite for a response,  
9 both from the Prosecution, and from counsel for the first  
10 defendant.

11 MR SERRY-KAMAL: Your Honour will [i ndi scerni bl e] allow me  
12 to [i ndi scerni bl e].

13 MR METZGER: Your Honour, may I ally myself to  
14 Mr Serry-Kamal's application.

15 May it please your Honour, Mr Kamal would be content for me  
16 to make submissions while he's considering his position, if that  
17 finds favour with the Court.

18 MR HERBST: I'm sorry, your Honour, I did not hear what  
19 Mr Metzger said.

20 MR METZGER: May it please your Honour, Mr Serry-Kamal is  
21 content for me to make submissions to the Court while he is  
22 considering his position, if that finds favour with the Court.

23 JUSTICE DOHERTY: If you're making the same submission,  
24 then please proceed.

25 MR METZGER: Yes. My submission is pursuant to Article 17,  
26 the fair trial rights of Mr Kanu.

27 In this case, the Prosecution case against Mr Kanu is based  
28 on the evidence largely of discussions between himself,  
29 Mr Bangura and Mr Kamara, together with - well, the allegation is

1 that he spoke to Mr Kargbo, but that he was in the plan with  
2 Mr Bangura.

3 JUSTICE DOHERTY: Who is the "he" you are referring to?

4 MR METZGER: Sorry. Mr Kanu, who I represent.

5 Thus far, as I see the evidence prior to the closure of  
6 Mr Bangura's case, the Prosecution's case resting on the evidence  
7 that has been called against Mr Kanu comes from Mr Kargbo,  
8 I largely speaking, and Mr Bobson Sesay. Mr Bobson Sesay says that  
9 he actually spoke to Mr Kanu. That is disputed. That's neither  
10 here nor there. Mr Kargbo vacillates between having spoken to  
11 him by way of greeting and actually being instructed to do  
12 things. Again, that may be neither here nor there.

13 But the other party to these matters is Mr Bangura, who, as  
14 it stands at the moment, it appears, is not giving evidence. So  
15 that's that matter out of the way. But he may be calling  
16 evidence. It seems that it would be prudent, if he is calling  
17 evidence, for his case to be completed and out of the way so that  
18 Mr Kanu, when he comes to his case, knows the case he has to deal  
19 in the order that it has been presented in front of this Court,  
20 and therefore it seems to me that when one looks at Rule 82,  
21 which gives, shall we say, the discretion to the Court to try  
22 persons jointly, the way in which the order of indictment is  
23 drafted gives a certain expectation to an accused before this  
24 Court.

25 If changing that order may potentially cause prejudice to  
26 an accused or may cause a conflict of interest, then the  
27 indictment order should be followed, and respectfully in this  
28 particular case, inasmuch as one knows, we believe there's no  
29 conflict with Mr Bangura's case. But unless there is an

1 assurance to that effect, the indictment order effectively means,  
2 in my respectful submission, that in order to keep within the  
3 provisions of Article 17, and considering the provisions of Rule  
4 82, Rule 85 ought to be interpreted as evidence for the Defence  
5 in the order in which the case against the defendants has been  
6 presented. Unless I can assist you further, those are my  
7 submissions.

8 JUSTICE DOHERTY: What do you say to the fact  
9 Mr Nicol-Wilson this morning indicated - or stated on record that  
10 the evidence for Bangura is contained in the annexure to his  
11 pre-trial brief of the 22nd - sorry, of June 2012.

12 MR METZGER: Well, I'm content with that. I'm not sure  
13 whether he's calling any further evidence.

14 JUSTICE DOHERTY: My understanding what of he said is that  
15 he is not, but I will clarify that with him in due course.

16 MR SERRY-KAMAL: Your Honour, I was going to rely on Rule  
17 72*bis*.

18 JUSTICE DOHERTY: 72*bis*?

19 MR SERRY-KAMAL: Yes, which is [i ndi scerni bl e] accused.  
20 The cases are gone into in a manner - in the order in which we  
21 are preparing the indictment [i ndi scerni bl e].

22 JUSTICE DOHERTY: Where exactly does it say that in Rule  
23 72 --

24 MR SERRY-KAMAL: It just says there are Rules of  
25 [i ndi scerni bl e] derived from national laws. That's what I'm  
26 saying. In legal systems, including in the [i ndi scerni bl e].  
27 That was in a normal - in a trial where the accused in the order  
28 [i ndi scerni bl e] in the order in which they appear in the  
29 indictment. Mr Nicol-Wilson has already indicated that he will

1 not be calling evidence and will be relying on the document he  
2 filed. He has not said if he has anything else on behalf of his  
3 client.

4 JUSTICE DOHERTY: Mr Nicol-Wilson, have you anything to say  
5 in this matter?

6 MR NICOL-WILSON: Your Honour, I rely on the provisions of  
7 Rule 85C, which states, and I quote, that the accused may, if he  
8 so desires, appear as a witness in his own Defence.

9 I have taken instructions from my client and I've stated  
10 his position in Court this morning, and his position is that he  
11 does not desire to appear as a witness in his own Defence, and he  
12 wants to rely on the statement annexed to the Defence pre-trial  
13 brief, which I have already filed.

14 Your Honour, I do not want to close the door to him having  
15 the right to call any witness at a later stage, but at this stage  
16 my instructions are that he will not be calling any witness and  
17 he will not be appearing as a witness in his own Defence.

18 JUSTICE DOHERTY: The status of an unsworn statement,  
19 Mr Nicol-Wilson, is not provided for in Rule 85C. It was my  
20 intention to [indiscernible] for your client, the exercise of his  
21 entitlements under Rule 85C.

22 This is not a common law Court, and the rules relating to  
23 unsworn statements are not binding upon it; however, it is an  
24 unsworn statement and since the issue is now arising, how does an  
25 unsworn statement sit with the provisions of Rule 85C, which  
26 provides that a witness - excuse me, an accused shall give his  
27 evidence under oath or affirmation.

28 MR NICOL-WILSON: Your Honour, I merely directed your  
29 attention to Rule 85C just to buttress the fact that the accused

1 have a choice to either appear as a witness in his own Defence or  
2 not. I did not draw your attention to look at the second arm of  
3 85C, which talks about evidence under oath or affirmation. I  
4 merely wanted to convey the right of the accused not to appear as  
5 a witness in his own Defence.

6 My instructions are that the accused does not want to  
7 appear as a witness in his Defence, and he relies entirely on the  
8 Defence pre-trial brief and the statement attached thereto.

9 JUSTICE DOHERTY: I understand that, Mr Nicol-Wilson, and I  
10 would not interfere in any way with the accused's option and his  
11 choice to give evidence or not. I was merely canvassing the  
12 status of the document.

13 I will not pursue that matter, because what I'm dealing  
14 with now is an objection by counsel for Kamara, who says - he  
15 submits that your client has to close his case before his client  
16 can opt to give evidence. If you have any submissions in law or  
17 procedure that would assist me, I would be grateful to hear them.  
18 If you do not wish to make any further submissions, then that, of  
19 course, is your prerogative.

20 MR NICOL-WILSON: Your Honour, I think within national  
21 jurisdictions, especially the Sierra Leone jurisdiction, it's  
22 normal for the Defence to lead evidence in the sequence in which  
23 the charges have been brought, basically meaning that the first  
24 accused will lead evidence first, and the second will lead  
25 evidence next. But in terms of the procedure at the Special  
26 Court there is no such requirement, and Rule 85 is very, very  
27 clear. It says evidence for the Defence without any specificity.  
28 So it can be the second accused; it can be the third accused.

29 And I also think, your Honour, that now that the Court is

1 sitting in Rwanda and counsel for Kamara is in Rwanda and Kamara  
2 is also in Rwanda, it's more expedient for Kamara to lead  
3 evidence at this stage and not to wait until the Court moves to  
4 Freetown. Those would be my submissions.

5 JUSTICE DOHERTY: Thank you, Mr Nicol-Wilson, I'm grateful.

6 Chief Taku, have you any comment, as your client is also a  
7 defendant in this matter.

8 CHIEF TAKU: Your Honour, at this point in time I do not  
9 have any comment to make. I only wanted to say that in respect  
10 of the confidential document which Mr Melron filed, I've been  
11 served with a copy. And to the extent that it was filed along  
12 with his pre-Defence brief, it is part of the records of the  
13 Court and the Court could refer to them at the appropriate  
14 moment.

15 JUSTICE DOHERTY: Thank you, Chief Taku.

16 Mr Herbst, [i ndi scerni ble] appli cati on?

17 MR HERBST: Yes, I have, your Honour, and I thank you for  
18 the opportunity to address them.

19 I find the application extraordinary in light of the fact  
20 that Mr Kanu's attorney has specifically requested Mr Kamara, who  
21 is named after him in the indictment, proceed with his case  
22 first --

23 MR METZGER: With respect, that was not our request. That  
24 was a decision the Court --

25 JUSTICE DOHERTY: Please do not interrupt counsel.

26 MR HERBST: I see nothing in the Rules of this Court that  
27 would restrict the discretion of this Court to order the  
28 [i ndi scerni ble] and presentation of the Defence case in the most  
29 expeditious and just way considering the circumstances.

1           In terms of national laws, speaking only from my own legal  
2 culture, the Courts are vested with discretion to order the  
3 proof, even though typically one proceeds in the order of the  
4 indictment, but that is varied with some frequency. And in fact,  
5 witnesses are taken out of order all the time, as in fact we did  
6 in this case. We took some witnesses out of order because of the  
7 places in which they were located and because of unforeseen  
8 circumstances like illness and so forth.

9           I think Mr Nicol-Wilson's point is an excellent one, that  
10 when we - it was determined to start the case here in Rwanda with  
11 your Honour being present in Rwanda, it was assumed, at least by  
12 me, that the cases of Mr - of those accused who were here in  
13 Rwanda would proceed before Mr Bangura's case.

14           So I don't think there is any restriction whatsoever, and I  
15 don't think it's necessary for Mr Bangura's case to be formally  
16 closed. Although frankly, it appears as if there isn't going to  
17 be much, if any, case that Mr Bangura presents after the Court  
18 goes back to Freetown. So that's my submission.

19           JUSTICE DOHERTY: Thank you, Mr Herbst.

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

21           JUSTICE DOHERTY: Only on a point of law.

22           MR METZGER: First of all, a point of correction and then a  
23 point of law.

24           The point of correction - and we should be accurate when we  
25 use words which are sometimes as sharp as weapons in this Court.  
26 Counsel --

27           JUSTICE DOHERTY: Indeed, Mr Metzger, I have noticed it.

28           MR METZGER: Counsel for Kanu has at no stage during these  
29 proceedings asked for Kamara to go before him. I simply asked



1 for time, and the record will show that.

2 JUSTICE DOHERTY: I have noted that I made the direction.

3 MR METZGER: Thank you, your Honour.

4 And on a point of law, and seeking to assist on both this  
5 matter and the matter raised by your Honour, I was going to  
6 direct Your Honour, if it was possible, to look at the book by  
7 Jones and Powles - I have a 3rd Ed, International Criminal  
8 Practice - which perhaps gives some assistance looking at Rule  
9 85. I'm looking in particular at page 714, evidence called at  
10 the proper time and the order of presentation of evidence, and  
11 I'm also looking, your Honour, at page 717, which deals with the  
12 issue of the accused not being ordered to appear as the first  
13 Defence witness.

14 I have come across another point that may have assisted  
15 parties in relation to whether or not reliance - or to what  
16 extent reliance can be placed on an unsworn statement.

17 JUSTICE DOHERTY: Are you going to be handing that up to  
18 me?

19 MR METZGER: Indeed, your Honour. It seemed better than me  
20 making full submissions. I just raise it for the awareness of --

21 JUSTICE DOHERTY: On the status of the unsworn statement  
22 I'm not going to make any ruling or any - I merely invited a  
23 remark in order to [i ndi scerni ble] deci di ng [i ndi scerni ble]  
24 accord wi th Mr Serry-Kamal 's i nvi tati on.

25 MR SERRY-KAMAL. Your Honour, can I make this point?

26 JUSTICE DOHERTY: Is it a point of law, Mr Serry-Kamal?

27 MR SERRY-KAMAL: I wanted to alert my learned friend with a  
28 point of procedure and practice which was - he was trying to  
29 equate the witnesses who testified in this case and the accused

1 persons whose name appear in a particular order. He cannot  
2 equate both [i ndi scerni ble] different categories. One is whose  
3 name appears in the name - indictment and it appears in a  
4 particular order, and one would expect following national  
5 jurisprudence would suggest that they would present their cases  
6 in the order in which they appear in the indictment.

7 JUSTICE DOHERTY: Is there legislation in Sierra Leone on  
8 this point?

9 MR SERRY-KAMAL: Unfortunately, I do not have my  
10 [i ndi scerni ble]. Unfortunately. But that has always been the  
11 practice, and I've had the benefit of being on both sides for the  
12 last 43 years.

13 JUSTICE DOHERTY: I've had the benefit of being on one  
14 side, and I don't remember the practice; however, I would not be  
15 bound, but I would be able to look at the legislation.

16 You referred me to some parts of [i ndi scerni ble] text. My  
17 note was page 785.

18 MR METZGER: Sorry, your Honour, I think it should have  
19 been 714.

20 JUSTICE DOHERTY: I have 714 here and I've got 717. It's  
21 not 781. You reported that incorrectly.

22 MR METZGER: I think so, but unless, of course, I did spot  
23 781, but I haven't noted it.

24 JUSTICE DOHERTY: I haven't looked at it. It doesn't  
25 appear to be relevant. So that must have been an erroneous  
26 transcription.

27 This is a decision on an objection raised by counsel for  
28 Kamara [i ndi scerni ble] of the inducement of Defence evidence.

29 I note that this matter now before me first came before

1 this Trial Chamber as a complaint by the Prosecutor - of the  
2 Prosecutor [i ndi scerni ble] to waive an application to appoint  
3 independent counsel to investigate an alleged attempt.

4 A decision was made by the Trial Chamber, and the title of  
5 both the original application and the decision of 24 May 2011 was  
6 entitled "Prosecutor v. Brima, Kamara and Kanu" in that sequence.  
7 None of these names was recorded as a first, second or third  
8 defendant, but hence from the outset Kamara and Kanu's names  
9 preceded those of the co-accused. There is nothing in the  
10 decision of 24 May 2011 which states that there is a first, or a  
11 second, or a third, or some other priority order among the  
12 accused.

13 Submissions which have been made as to what happens in  
14 other jurisdictions are vague and without statutory basis of a  
15 jurisprudential ruling that can assist me.

16 The naming of defendants as first defendant, second  
17 defendant, et cetera, is a procedure in civil liability cases.  
18 Criminal matters do not say first accused, second accused,  
19 et cetera.

20 Counsel says that the order of indictment gives an  
21 expectation. An expectation is not a rule. Rules provided in  
22 Rule 85 provide for evidence [i ndi scerni ble] of the Defence.  
23 This is not determinate of an order in which the accused, if they  
24 elect to give evidence, are to be called.

25 Rule 72*bis* referred to by Mr Serry-Kamal refers to general  
26 principles of law from national jurisdictions, including national  
27 law of Sierra Leone. I'm not referred to any statutory law of  
28 Sierra Leone that states an order in which evidence is to be  
29 adduced in the Defence in a criminal trial.

1           Likewise Powles, which are referred to by counsel, does not  
2 say that Rule 85 in that case in his text of the ICTR and ICTY  
3 determines which co-accused adduces evidence first.

4           Rule 85 gives the Court a discretion, a discretion which  
5 states that unless otherwise directed by the Trial Chamber, in  
6 the interests of justice evidence at the trial shall be presented  
7 in the following sequence. The discretion vested in the Trial  
8 Chamber is to be exercised in the interests of justice, which are  
9 also the interests of a fair and expeditious trial.

10           I can find no obligation imposed upon a Court to follow the  
11 title of the indictment which, if it had been followed in the  
12 sequence of the original documentation, would have had Kamara,  
13 then Kanu, followed by other co-accused.

14           In any event, I see no reason why Mr Bangura, and  
15 presumably Mr Kanu, are obliged to give evidence before Kamara  
16 and Kanu, and I again direct counsel for Kamara to state if he  
17 intends to make an opening statement pursuant to Rule 84, and if  
18 he does so, to proceed.

19           MR SERRY-KAMAL: Your Honour, I did not wish to make an  
20 opening statement.

21           JUSTICE DOHERTY: Thank you, Mr Serry-Kamal, you are  
22 entitled not to do so [indiscernible].

23           First I will ask Ms Associate to return Mr Metzger's text,  
24 for which I'm grateful, Mr Metzger.

25           Mr Serry-Kamal, which evidence will Mr Kamara give his  
26 evidence in?

27           MR SERRY-KAMAL: In Krio. He will give his evidence in  
28 Krio. I've just been told that there is not an interpreter  
29 ready, so we'll try to --

1 JUSTICE DOHERTY: Can I ask in Freetown which interpreters  
2 are in place?

3 THE INTERPRETER: The Krio interpreters are in place,  
4 your Honour.

5 THE COURT OFFICER: [In Kigali] No Temne interpreter was  
6 requested, so ...

7 JUSTICE DOHERTY: Does Mr Kamara wish to give evidence  
8 [i ndi scerni bl e]?

9 I BRAHIM BAZZY KAMARA, SWORN

10 JUSTICE DOHERTY: You are familiar with the oath,  
11 [i ndi scerni bl e] Mr Kamara?

12 Mr Interpreter, please ask Mr Kamara if he is familiar with  
13 the oath in English. As he took it in English, and I want to  
14 make sure he gives evidence in a language he understands.

15 ACCUSED KAMARA: I'd like to give evidence in Krio.

16 THE COURT OFFICER: [Kigali] Kel son?

17 THE INTERPRETER: Can you hear me? Yes, I am in Court.  
18 Yes, Elaine, I can get you, but you are breaking in very  
19 seriously.

20 JUSTICE DOHERTY: Mr Kamara is entitled to understand  
21 everything that is said to him and that he in turn says. He  
22 therefore should have the oath [i ndi scerni bl e].

23 Mr Interpreter, please translate the oath for the witness.

24 I BRAHIM BAZZY KAMARA, SWORN

25 EXAMINATION-IN-CHIEF BY MR SERRY-KAMAL:

26 MR SERRY-KAMAL:

27 Q. Mr Kamara, could you please give us your full names?

28 A. My name is Ibrahim Bazy Kamara.

29 Q. Where do you live?

1 A. At present I am in Rwanda in Mpanga Prison.

2 Q. You are a prisoner of the Special Court for Sierra Leone  
3 [i ndi scerni ble] sent to prison in Rwanda?

4 A. Yes.

5 Q. Can you tell us when you were brought to Rwanda?

6 A. 2009

7 Q. When?

8 A. Since 2009.

9 JUSTICE DOHERTY: Sorry, Mr Interpreter, I didn't hear the  
10 last part of that answer. Please repeat it.

11 THE INTERPRETER: Since 2009. October 2009.

12 MR SERRY-KAMAL:

13 Q. You were enlisted in the Sierra Leonean army?

14 A. Yes.

15 Q. In what year were you enlisted in the army?

16 A. I joined the army in 1991.

17 JUSTICE DOHERTY: Please pause, Mr Serry-Kamal.

18 THE COURT OFFICER: [In Kigali] The interpreters are  
19 asking Mr Serry-Kamal to wait for them to interpret before you  
20 ask the next question. Thank you.

21 JUSTICE DOHERTY: Please proceed, Mr Serry-Kamal.

22 MR SERRY-KAMAL:

23 Q. Now, you said you were enlisted in the army when?

24 A. I was enlisted in the military in 1991.

25 Q. Did you undergo any training, and where did you undergo  
26 your training?

27 A. Yes, I underwent a training.

28 Q. Did you train [i ndi scerni ble] anybody in this Court you  
29 [microphone not activated]? Let me rephrase the question. Did

1 you train with anybody now in Mpanga Prison --

2 THE INTERPRETER: Your Honour, we are wondering if the  
3 witness is answering, because we can't hear what the witness is  
4 saying at all, so we are not interpreting anything because we are  
5 not hearing anything he is saying.

6 JUSTICE DOHERTY: Is that the interpreter speaking? I  
7 didn't hear - I didn't get an identification.

8 Mr Interpreter, was that your --

9 THE COURT OFFICER: [In Kigali] That was Mr Interpreter  
10 specifying that there must be a gap, because at the moment they  
11 cannot hear what the defendant is saying.

12 JUSTICE DOHERTY: Mr Serry-Kamal, I know we've had this  
13 problem before. As you know, everything is transcribed and  
14 everything is going back and forth, and there is a lapse of time.  
15 So I would again ask you to pause at the end of your question.

16 Mr Kamara, you wait until Mr Serry-Kamal finishes his  
17 question before you start answering. If you speak over each  
18 other, it's impossible for us to hear. Did you understand,  
19 Mr Kamara?

20 MR SERRY-KAMAL:

21 Q. Let me ask the question again. Did you train with anybody  
22 now in Mpanga Prison?

23 A. Yes.

24 Q. Who was it?

25 A. Alex Tamba Brima.

26 Q. Do you know the first accused, Hassan Papa Bangura?

27 A. Yes, my Lord.

28 Q. Where did you first meet him?

29 A. Well, I knew him before we joined the army.

1 Q. You say he joined the army at the same time as you?

2 A. Yes, we joined the army in the same year.

3 Q. Did you train together?

4 A. Yes, we trained together in the same company.

5 Q. Did you get to know the third accused, Santigie Borbor  
6 Kanu?

7 A. Yes, my Lord.

8 Q. Where?

9 A. Well, during the NPRC.

10 MR METZGER: It's not complete --

11 MR SERRY-KAMAL: I'm afraid it's not complete. The  
12 interpretation is not complete.

13 JUSTICE DOHERTY: I think the answer was not clear.

14 Please repeat your answer, Mr Kamara.

15 THE WITNESS: Yes, my Lord. I knew Mr Santigie Borbor Kanu  
16 during the NPRC.

17 THE INTERPRETER: Your Honour, it's not clear at all to us  
18 on this side.

19 JUSTICE DOHERTY: Mr Interpreter, did you say you didn't  
20 hear --

21 THE INTERPRETER: I did not hear your Honour.

22 JUSTICE DOHERTY: Mr Kamara, please repeat your answer from  
23 the point where you were saying that he, Mr Kanu, was a  
24 bodyguard.

25 THE WITNESS: I said I knew Mr Kanu during time of the NPRC  
26 when he was a bodyguard to the junta leader at that time,  
27 Valentine Strasser.

28 MR SERRY-KAMAL:

29 Q. Now, Mr Bri ma - Bri ma and yourself were charged before the



1 Special Court for Sierra Leone and sentenced?

2 A. Yes, your Honour.

3 Q. Would it be fair to say that before you were charged, you  
4 were good friends - the three of you were good friends?

5 MR HERBST: Your Honour, I'm going to just object to the  
6 form of the question as to the leading. I haven't objected thus  
7 far, but I think at this point I will interpose my objection.

8 JUSTICE DOHERTY: It is a leading question, Mr Serry-Kamal,  
9 [i ndi scerni bl e] rephrase it.

10 MR SERRY-KAMAL: [I ndi scerni bl e] but I thought it was  
11 introductory.

12 JUSTICE DOHERTY: As counsel for the Prosecution has noted,  
13 he did not object to the preliminary leading matters, and I did  
14 not raise it because he did not object. It's objected to now,  
15 and he's entitled to raise an objection to a leading question,  
16 and I uphold that objection.

17 MR SERRY-KAMAL: As your Honour pleases.

18 Q. What has been your relationship between the three of you?  
19 Who leads Alex Brima, Five Five, the other accused yourself  
20 [i ndi scerni bl e]?

21 THE INTERPRETER: Your Honour, the witness's answer is not  
22 coming clearly to us.

23 JUSTICE DOHERTY: Pause, Mr Kamara.

24 Mr Interpreter, please repeat what you said [microphone not  
25 activated].

26 THE INTERPRETER: We are not getting the witness clearly at  
27 all.

28 JUSTICE DOHERTY: He is fairly close to the microphone and  
29 he is speaking slowly, so I'm going to ask our technical staff if

1 they can assist.

2 THE COURT OFFICER: [In Kigali] Madam, the technician says  
3 it might be a problem in Freetown how they have linked the  
4 interpreter to the mic. So can we have five minutes to check  
5 that?

6 JUSTICE DOHERTY: Freetown may not have heard what you  
7 said, so please transmit it to Freetown itself so that they in  
8 turn can make a check.

9 THE COURT OFFICER: We heard that, your Honour. We will  
10 check into that.

11 THE COURT OFFICER: [In Kigali] Mr Alpha?

12 THE COURT OFFICER: Yes, Elaine.

13 THE COURT OFFICER: [In Kigali] Oh, I heard that.

14 THE COURT OFFICER: Yes, we will look into that.

15 THE COURT OFFICER: [In Kigali] Thank you.

16 JUSTICE DOHERTY: Can Freetown give us an estimate so that  
17 I can decide whether to rise or to wait?

18 THE COURT OFFICER: Your Honour, please tell Elaine to talk  
19 to Samuel Davis to call Mr Fadika here in Freetown. Then once  
20 Mr Fadika and Samuel Davis are able to talk, they may be able to  
21 find a way to solve the problem. Because I spoke to Fadika, and  
22 he thinks the problem is from that end because that's where the  
23 witness is.

24 THE COURT OFFICER: [In Kigali] Noted. We just need to  
25 consider this matter.

26 JUSTICE DOHERTY: Perhaps because everyone has needs and -  
27 would it be appropriate to adjourn for a few minutes and allow --

28 THE COURT OFFICER: [In Kigali] Madam, that would be wise.

29 JUSTICE DOHERTY: Mr Kamara, in order that your evidence

1 can be heard by everyone and properly interpreted, we've got to  
2 get the machinery properly in place. We're going to adjourn for  
3 a few minutes so that can be done.

4 In the meantime, now that you've taken the oath you should  
5 not discuss your evidence with anyone else. Do you understand  
6 what I said, Mr Kamara?

7 THE WITNESS: Yes, your Honour.

8 JUSTICE DOHERTY: Very well. Court is now adjourned.

9 [The Court adjourned at 2.15 p.m.]

10 [Upon resuming at 2.30 p.m.]

11 JUSTICE DOHERTY: Mr. Serry, please proceed.

12 THE COURT OFFICER: Just one more appeal. The interpreters  
13 are asking that you kindly tell the witness to pause after every  
14 sentence. That's the only other appeal we'll ask for. Thank  
15 you.

16 JUSTICE DOHERTY: Mr Kamara, did you hear the interpreter's  
17 request?

18 MR SERRY-KAMAL: Yes, your Honour.

19 JUSTICE DOHERTY: Very good. Please do so. That helps a  
20 clear interpretation. Proceed, Mr Serry-Kamal.

21 MR SERRY-KAMAL:

22 Q. Yes. My question was, Mr Kamara, who leads Five Five and  
23 yourself? What is the relationship, or what has been the  
24 relationship since you knew yourselves? In one sentence.

25 A. They are my friends. They are my friends.

26 Q. I want to take you back to the time you were brought to  
27 Mpanga Prison. Yes?

28 A. Yes, your Honour.

29 Q. Were you allowed to use the telephone in the prison?

1 A. Yes, your Honour.

2 Q. Was that a laid-down procedure for you to use the telephone  
3 in the prison?

4 MR HERBST: I'm sorry. I didn't understand the question.  
5 I didn't hear it.

6 JUSTICE DOHERTY: Mr Serry-Kamal, please repeat.

7 MR SERRY-KAMAL: The question I asked - the first question  
8 was:

9 Q. Were they allowed to use the telephone in the prison at  
10 Mpanga. The second question is: What was the procedure for  
11 using - for you people, the convicts, using the telephone at  
12 Mpanga Prison?

13 A. Well, when we came initially, deputy director in the Mpanga  
14 Prison was the one who directed the calls.

15 Q. What is the name of the deputy director now?

16 MR HERBST: I'm sorry, your Honour. I didn't hear the  
17 translation at the end or couldn't understand it.

18 JUSTICE DOHERTY: Mr Interpreter, please repeat the answer.

19 THE INTERPRETER: Your Honour, can the witness kindly  
20 repeat his answer.

21 JUSTICE DOHERTY: [Indiscernible] please repeat your  
22 answer.

23 THE WITNESS: I said the deputy director at Mpanga Prison  
24 was the one who conducted the calls in the Mpanga Prison.

25 MR SERRY-KAMAL:

26 Q. Was he deputy director then, or it's now that he is deputy  
27 director?

28 A. He is the deputy director now. Before he was a liaison.

29 JUSTICE DOHERTY: Continue.

1 MR SERRY-KAMAL:

2 Q. Can you please, in your own words, tell us what was the  
3 procedure for making telephone calls in the prison when you first  
4 arrived there?

5 A. Yes. When we came initially, during - the prisoner would  
6 request the prison guards to make a call. Then you would sit at  
7 a desk, like this one I'm sitting at, then they would ask you --  
8 [overlapping speakers].

9 Q. Tell us about the seating arrangement.

10 A. I sit just like this table. The prison guard would sit.  
11 Then you, the prisoner, would sit in front of him. Then he would  
12 ask you who you want to call.

13 JUSTICE DOHERTY: For purposes of record, the witness  
14 indicated [indiscernible] indicated that they are - sit at the  
15 opposite [indiscernible].

16 MR SERRY-KAMAL: Oppose each other, that is correct.

17 JUSTICE DOHERTY: Please proceed.

18 THE WITNESS: After you have given the man the number - the  
19 prison guard the number - because they had codes. [Speaking  
20 Krio] --

21 MR SERRY-KAMAL:

22 Q. Just a minute. Just a minute.

23 A. When the phone rings --

24 Q. You'll give him the number?

25 A. Yes.

26 Q. And what happens when you give him the number?

27 A. Then he will dial the number, the prison guard. Then he  
28 would listen to the phone. When the phone switches off, he will  
29 tell you that the phone is off. But when the phone rings, he

1 would hold on to the phone until someone picks it up. Then he  
2 would hand over the phone to you. Then you will start discussing  
3 with the person that you called. During that time, he would have  
4 his recorder and an officer who would do the entry. They would  
5 request the coordinator, who was Sesay. [Speaking Krio].

6 Q. Just a minute. Who is this Sesay you are referring to?  
7 Who is this Sesay you are referring to as coordinator?

8 A. Issa Hassan Sesay, he is our coordinator. He would sit  
9 like I'm sitting here. [Overlapping speakers].

10 THE INTERPRETER: Your Honour, can the witness kindly  
11 repeat. He is breaking in. I did not hear what he just said.

12 THE WITNESS: I said Mr Sesay would always sit. If there  
13 is anything - if there is anything the prison guard is not  
14 satisfied with, he would tell Mr Sesay because we normally spoke  
15 in Krio. So Mr Sesay always listened to all our conversations.  
16 That was something I did not like, but ...

17 JUSTICE DOHERTY: Mr Herbst, you tried to intervene there.

18 MR HERBST: Yes, your Honour. I didn't hear the portion of  
19 the answer that said the prison guard did something or something  
20 happened with the prison guard, and then there was a language  
21 after that and I missed it.

22 JUSTICE DOHERTY: Mr Interpreter, do you recall that part  
23 of the answer, the prison guard [indiscernible].

24 THE INTERPRETER: Your Honour, I'm really making my best  
25 effort to interpret what I can hear. I can't remember what he  
26 just said. Maybe if he repeats it, I'll repeat it as well.

27 MR SERRY-KAMAL: Your Honour, we'll get the witness to  
28 repeat what he said.

29 JUSTICE DOHERTY: Yes. Mr Kamara --

1 MR SERRY-KAMAL:

2 Q. Now, you said Mr Sesay - Issa Hassan Sesay would be on the  
3 other side of the table listening to your conversation. And you  
4 said something about him having to interpret if the warden wasn't  
5 satisfied with what you were saying in Krio?

6 JUSTICE DOHERTY: Repeat that part of your answer,  
7 Mr Kamara, so the interpreter can interpret.

8 THE WITNESS: I said Mr Sesay would always sit at my  
9 left-hand side, and he would listen to our conversation, what we  
10 would say to our people, to our family members. If, for example,  
11 there is an argument between myself and the person on the phone,  
12 they would ask Mr Sesay.

13 MR SERRY-KAMAL:

14 Q. [Microphone not activated]. To do what?

15 A. They would ask if, for example, I am angry with - if I  
16 express an anger with my child, they would ask me why is Bazzy -  
17 they are asking why is Bazzy - why is Bazzy so annoyed? Because  
18 I've seen him expressing anger on the phone. Issa would tell  
19 them that he was talking to his child.

20 Q. In other words, he was interpreting what you said in Krio  
21 in English to the prison officer in charge?

22 A. Yes.

23 Q. Yes, go on. After the call what would happen?

24 A. After he would have called and handed over the phone to the  
25 prison guard, they would record the numbers and the time and the  
26 air time - and the air time, that is the card.

27 Q. How much air time was allowed each prisoner per day?

28 A. At the time that we just came, it was 1,500 air time.

29 Q. Now, did they have a book where they kept record of all the

1 calls you were making?

2 A. Yes, your Honour.

3 Q. If you see that book in Court here, would you be able to  
4 identify it?

5 A. Yes.

6 MR SERRY-KAMAL: I believe, your Honour, it is Exhibit 15.

7 Is it 15?

8 JUSTICE DOHERTY: P15.

9 MR SERRY-KAMAL: Can you produce P15, please.

10 Q. Mr Bazzy, I would like you to look at that book and see if  
11 that is a book which you had - which the prison people had?

12 A. Yes, my Lord.

13 Q. Exhibit P15 identified. Now, who keeps that book - or who  
14 kept it?

15 A. The prison administration.

16 Q. Now, earlier on in your testimony you said that after the  
17 call you would hand over the telephone to the prison officer, he  
18 would look at the number and enter it in this book?

19 A. Yes.

20 Q. So are you saying that they made [microphone not  
21 activated]. Are you saying that they made entries in this book?

22 A. Yes.

23 Q. After they had made the entry, were you required to do  
24 anything to the book? The caller, were you referred to anything  
25 to where in the book they have recorded number - the numbers and  
26 the time, et cetera?

27 A. Yes, they would ask you to sign at the end of the number  
28 that they have entered.

29 Q. Yes.



1 A. During this time.

2 JUSTICE DOHERTY: Mr Kamara, I wish to be clear. Are you  
3 saying that the prison officer entered the number after you made  
4 the call or before you made the call?

5 THE WITNESS: After I would have made the call. Just after  
6 I would have made the call. I would hand over the phone to him  
7 and he would check the time, the number, and he would record  
8 everything.

9 JUSTICE DOHERTY: Please continue, Mr Serry-Kamal.

10 MR SERRY-KAMAL:

11 Q. You were telling us that all you were required to do was  
12 sign against the column where the entry was made?

13 A. Yes, you would sign at the end of the page where they  
14 entered the number. That's where you would sign.

15 Q. Now, has that procedure been changed - sorry, let me - I'll  
16 come back to that. Now, that - the telephone, who keeps the  
17 telephone?

18 A. The prison administration.

19 Q. Who keeps the book where you sign where the entries are  
20 made - telephone entries are made?

21 A. They keep them, the book and the telephone.

22 Q. Now, is that the same procedure that now obtains, or has it  
23 been changed?

24 A. Now? Now there is a slight change. There is a slight  
25 change. Now we would make calls in one security room and the air  
26 time - before now it was 1,500. Now they would give us 3,000 and  
27 there is a recorder. As we speak, the recording is going on.

28 Q. Now, are you at liberty to call any person, or do you have  
29 telephone numbers that you have given them that MTN will only

1 allow calls?

2 A. It does not work. When you call - dial a number that is  
3 not approved by MTN, it does not go through. In fact, it is the  
4 officer who dials the number. If the number is not approved, he  
5 will not dial it. Even if you check --

6 Q. [Overlapping speakers] slowly.

7 JUSTICE DOHERTY: [Indiscernible] talking over the  
8 interpreter.

9 MR SERRY-KAMAL: Yes, your Honour.

10 Q. You said now you have a list which you have submitted to  
11 them?

12 MR HERBST: Your Honour, could we just ask the witness to  
13 repeat the answer.

14 MR SERRY-KAMAL: That is what I'm trying to do.

15 Q. Now you said you spoke about a list which the prison  
16 officers have. Now, who supplies that list of people to call -  
17 or people you can call, let me say?

18 A. We give them the list. You would write the names of all  
19 your relatives - your relatives, their numbers and their  
20 addresses.

21 Q. Did anybody ask you to give that list of people you want to  
22 be included to be able to call?

23 A. Yes, the prison administration, they asked us.

24 Q. And did they have to approve that list?

25 A. They approved some, and up until now they haven't approved  
26 some.

27 Q. So would it be fair to say that since that time the initial  
28 period to now the procedure has been changed?

29 MR HERBST: I object to the form of the question.

1 JUSTICE DOHERTY: It's leading [i ndi scerni ble].

2 MR SERRY-KAMAL: Your Honour, the witness has already  
3 testified that the procedure has been changed. That is his  
4 evidence. I'm only asking him --

5 JUSTICE DOHERTY: His answer was [i ndi scerni ble] slight  
6 change.

7 MR SERRY-KAMAL: There's a change.

8 JUSTICE DOHERTY: So if there's a slight change, let us  
9 hear it again.

10 MR SERRY-KAMAL:

11 Q. Now, you are giving me that the procedure had an initial  
12 stage and the procedure now are different?

13 MR HERBST: Objection to the leading.

14 JUSTICE DOHERTY: It's still leading.

15 MR SERRY-KAMAL:

16 Q. Now what is your view initially and now about the  
17 procedure?

18 A. Just like I said a while ago, I said it has changed. I  
19 gave you an example.

20 Q. When was the new procedure implemented? What year?

21 A. You mean the one that we're using now?

22 Q. Yes.

23 A. If my memory can serve me right, it was in December, I  
24 think.

25 Q. September?

26 A. September. September.

27 Q. In what year?

28 A. 2011, if I can remember.

29 Q. Do you know a witness by the name of Samuel Kargbo? He

1 testified against you in this trial. Do you know him? He's  
2 called Sammy Ragga sometimes?

3 A. Yes.

4 Q. Where did you know him from the first time?

5 A. Well, I used to see him in Freetown up and down. The only  
6 place where I identified him was at the Pademba Road.

7 Q. Now, when you say Pademba Road, you mean central prisons,  
8 Pademba Road?

9 A. Pademba Road central prisons.

10 Q. Has he ever been your friend?

11 A. No, he was never my friend. No.

12 Q. Now, do you remember when you were taken to Pademba Road  
13 Prison?

14 A. Yes, I can remember. In 2002.

15 Q. In connection with what event?

16 A. In connection with the treason trial. The alleged treason  
17 trial.

18 Q. Were you arrested in connection with that incident?

19 A. Yes, I was arrested.

20 THE INTERPRETER: Interpreter, your Honour, can the two  
21 parties wait for the interpretation? We're having a lot of  
22 trouble.

23 JUSTICE DOHERTY: Mr Interpreter, I'm sorry. I didn't hear  
24 you clearly.

25 THE INTERPRETER: The witness and learned counsel seem to  
26 be speaking over each other, so we're having trouble getting them  
27 one after the other.

28 MR SERRY-KAMAL:

29 Q. Were you detain anywhere?

1 A. Yes, when I was arrested, I was taken to the central  
2 prisons.

3 Q. You mean Central Police Station?

4 A. Yes, sorry, opposite. Yes.

5 JUSTICE DOHERTY: I di dn' t hear [i ndi scerni bl e].

6 THE WITNESS: Ki ng Ji mmy Market.

7 MR SERRY-KAMAL:

8 Q. After that were you taken anywhere?

9 A. Yes, I spent about two weeks at the King Jimmy. I was  
10 taken to the Pademba Road prisons.

11 Q. Whi lst at Pademba Road Central Pri son, di d you see anybody  
12 there that testi fied i n thi s case agai nst you?

13 A. Say that agai n?

14 Q. The questi on i s di d you see anybody - di d you see anybody  
15 who testi fied i n thi s case at Pademba Road Central Pri son?

16 A. Yes.

17 Q. [Mi crophone not acti vated] i t? Who was i t?

18 A. Sammy Ragga. Samuel Kargbo.

19 Q. The pri son has several bl ocks cal led di fferent names.  
20 Whi ch bl ock were you i n?

21 A. I was at Cl arkson.

22 Q. Not Bol a-Cl arkson. What about Sammy Ragga, whi ch bl ock was  
23 he?

24 A. I thi nk he was i n the Wi lberforce bl ock. Wi lberforce  
25 bl ock.

26 Q. Di d you at any ti me see hi m whi lst you were i n pri son - you  
27 were both i n pri son?

28 A. Yes, once when we were allowed to go and take our bath.

29 Because the late --

1 THE INTERPRETER: Your Honour, can the witness kindly  
2 repeat the answer, especially the name of the person.

3 JUSTICE DOHERTY: Mr Kamara, please repeat the name  
4 [overlapping speakers].

5 THE WITNESS: Yes, your Honour. One witness who was a  
6 Prosecution witness in the Special Court case, he was the yard  
7 provo.

8 MR SERRY-KAMAL:

9 Q. What was the name of the witness who was the yard provo?

10 A. He was called Alabama. That's the name I know for him.

11 Q. Go on?

12 THE INTERPRETER: Your Honour, the witness has faded away  
13 again. I can't hear him.

14 MR SERRY-KAMAL:

15 Q. Slowly. Again?

16 JUSTICE DOHERTY: Pause, Mr Kamara. Mr Interpreter, I  
17 didn't hear you, so I'm not sure if you gave an answer or  
18 [overlapping speakers].

19 THE INTERPRETER: He faded away. I didn't get him clearly.  
20 I didn't get what he was saying.

21 MR SERRY-KAMAL:

22 Q. Could you please repeat it, Mr Kamara. You said  
23 [indiscernible]?

24 A. Because where we used to take our bath, it was a general  
25 place where prisoners take their bath. So they were stopped and  
26 we were called to go and take our bath. So during that time when  
27 we came to take our bath, I saw Sammy Ragga and others and they  
28 were waving to us.

29 Q. So he was - are you saying that he was in the crowd, the

1 group that was blocked from coming?

2 A. Yes.

3 Q. [Overlapping speakers] to you?

4 A. Yes.

5 Q. Was that all the contact you had when you were at Pademba  
6 Road?

7 A. Yes, we used to have steady baths. We had no access to  
8 talk to anybody.

9 Q. We don't understand what you mean by steady baths and we  
10 have not been to Pademba Road, thank God. When say steady bath,  
11 could you please explain to us what you mean?

12 A. What I mean - meant by steady bathing, they would keep us  
13 and they would lock us up and they would only open us up to give  
14 us food. So in 24 hours you were in there.

15 Q. You were locked up 24 hours a day?

16 A. Yes, that is steady bathing.

17 Q. 24 hours a day?

18 A. Yes.

19 JUSTICE DOHERTY: [Indiscernible] heard something about  
20 food. Was food mentioned?

21 MR SERRY-KAMAL: They would only open when --

22 THE WITNESS: When they bring food, lunch, or breakfast,  
23 they would open and give it to us and lock - lock it up again.  
24 For lunch they would come and they would give you the lunch, then  
25 they would lock it up again. That is steady bathing.

26 MR SERRY-KAMAL:

27 Q. So you're saying that was - the time you saw him in the  
28 bath was the only time you saw him?

29 A. Yes, sir.

1 Q. Now, after your detenti on [overl appi ng speakers] after your  
2 detenti on, were you rel eased?

3 A. Yes, I was rel eased after I was i nvesti gated.

4 Q. After your rel ease, di d you at any ti me see Sammy Ragga?

5 A. No, I never saw hi m.

6 Q. Were you arrested by the Speci al Court?

7 A. Yes, after my rel ease j ust after one month. The Speci al  
8 Court arrested me on 29 May.

9 Q. 29 May of what year?

10 A. 2003.

11 Q. But when you were arrested, where were you taken to?

12 A. I was taken to the CID. I went to the CID. Then I was  
13 handed over to some whi te men who were - those whi te men, they  
14 were wi th some Si erra Leonean poli cemen. They drove us to Jui .

15 JUSTICE DOHERTY: Proceed, Mr Serry-Kamal .

16 MR SERRY-KAMAL:

17 Q. From Jui di d they take you anywhere?

18 A. Yes.

19 Q. Where?

20 A. I spent three days at Jui . Then some whi te peopl e came and  
21 picked me up and took me to the Hastings Ai rfi el d. About ten or  
22 fi fteen mi nute l ater a heli copter came and I was taken to Bonthe.

23 Q. That was the detenti on centre for the Speci al Court at the  
24 ti me?

25 A. Yes.

26 Q. And i n Bonthe you were brought to Ki ng Harmon Road, Speci al  
27 Court detenti on centre?

28 A. Yes.

29 Q. Now, throughout that ti me you were i n detenti on di d you



1 know the whereabouts of Sammy Ragga - Samuel Kargbo?

2 A. No.

3 Q. There's another witness who testified who is called 334. I  
4 suppose you know him who [i ndi scerni ble], not so? 334?

5 JUSTICE DOHERTY: You put two questions there,  
6 Mr Serry-Kamal: Did you know him; and was he a soldier.

7 MR SERRY-KAMAL:

8 Q. Do you know 334?

9 A. Yes, your Honour.

10 Q. Was he a soldier?

11 A. Yes.

12 Q. There's something I forgot to ask you. What was your last  
13 rank in the army before all of this upheaval started?

14 A. I was a staff sergeant.

15 Q. What about your friend Tamba Brima, Gullit?

16 A. He too was a staff sergeant.

17 Q. The first accused - the first accused, Hassan Bangura -  
18 Papa Bangura, was he - did you know him before you joined the  
19 army?

20 A. Yes.

21 Q. Now, where did you grow up? You, where did you grow up?

22 A. I grew up in Wilberforce. I was born in Wilberforce  
23 Village and that's where I grew up.

24 Q. Now, what about Hassan Bangura - Papa Bangura?

25 A. Hassan Bangura --

26 THE INTERPRETER: Your Honour, the witness is breaking in  
27 again. I can't get him at all.

28 JUSTICE DOHERTY: Mr Kamara, please repeat your answer.

29 THE WITNESS: My answer: Hassan Papa Bangura, he was born

1 in the barracks. That is where his family is.

2 MR SERRY-KAMAL:

3 Q. To some of us when you say "barracks", we know what you  
4 mean. But which barracks are you referring to?

5 A. The Wilberforce Barracks.

6 Q. Did you know him well?

7 A. Yes.

8 Q. You said you enlisted in the army at the same time?

9 A. Yes, I joined the army with him in the same year and  
10 trained in the same [microphone not activated].

11 Q. Now, after your training were you assigned to any unit?  
12 You, were you assigned to any unit?

13 A. Yes.

14 Q. Which unit?

15 A. Army transport service, eight years.

16 JUSTICE DOHERTY: Mr Serry-Kamal, [indiscernible] I've just  
17 been alerted to the fact that the prisoners need to be  
18 transported back to central prison. It's a slightly different  
19 time from what I was informed before. I've just been alerted to  
20 the fact. As result, I'm going to require - they require time to  
21 [indiscernible] and to arrive there before [indiscernible] time.  
22 So where we normally [indiscernible] have more time, we do not  
23 have that time today. I will seek clarification of the  
24 procedures [indiscernible] to return now.

25 Mr Kamara, I'd normally allow counsel to continue with his  
26 questions [indiscernible] return, and I am adjourning Court now.  
27 I remind you that you are under oath; that you are not to discuss  
28 your evidence with any other person until all of your evidence is  
29 finished.

1 THE WITNESS: Yes, your Honour.

2 JUSTICE DOHERTY: [Overlapping speakers] tomorrow at  
3 9 o'clock.

4 Sorry did someone want to say something?

5 THE COURT OFFICER: [In Kigali] The interpreter  
6 interpreted.

7 JUSTICE DOHERTY: Thank you, Mr Interpreter.

8 I will adjourn until 9 o'clock tomorrow Freetown time and  
9 11 o'clock tomorrow morning Kigali time, when the evidence will  
10 continue.

11 [Whereupon the Court adjourned at 3.20 p.m. until  
12 9.00 a.m. the following day]

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29