



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 [Thursday, 23 August 2012]

2 [Open session]

3 [Accused present]

4 [Upon resuming at 9.00 a.m.]

5 JUSTICE DOHERTY: Good morning. I'll take appearances. I
6 will ask everyone [indiscernible] Freetown can hear clearly.

7 THE COURT OFFICER: We can hear you, your Honour, but not
8 clearly. It's a little bit faint.

9 JUSTICE DOHERTY: Very well. If I speak louder, this is
10 better?

11 THE COURT OFFICER: Yes, please, if you speak louder,
12 your Honour. Thank you.

13 JUSTICE DOHERTY: Thank you. I'll say again good morning
14 to Freetown as well, and I will now take appearances.

15 MR HERBST: Good morning, your Honour. Robert Herbst for
16 the Prosecution.

17 JUSTICE DOHERTY: Thank you, Mr Herbst.
18 For the Defence.

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

21 JUSTICE DOHERTY: Thank you, Mr --

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

24 JUSTICE DOHERTY: Thank you. Here in Kigali?

25 MR METZGER: May it please your Honour, Kevin Metzger for
26 Santi gi e Borbor Kanu.

27 MR SERRY-KAMAL: Your Honour, Abdul F Serry-Kamal for Brima
28 Bazy Kamara.

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

1 I understand from my Associate that [i ndi scerni bl e].

2 MR HERBST: That's correct, your Honour. Your Honour may
3 recall that during Prosecution's case in the cross-examination of
4 Mr Saffa, the Court made an inquiry of Mr Saffa to see whether
5 there was some additional material in the database, and I wanted
6 to - I'm prompted to remind the Court of that, because I received
7 recently a letter from Ms Hollis, the Prosecutor, which has
8 information in it that responds to the inquiry. I'm not able to
9 print it out because I don't have an internet connection here to
10 get it to a letter, but I would like to summarise what the
11 response was to the Court, and then ask the Court's view of what
12 should happen next.

13 JUSTICE DOHERTY: Obviously, I haven't seen it. Your
14 information is the first I know of it, but my initial reaction is
15 I think there should be disclosure before it comes before me. As
16 I speak, I'm looking for the Rules. Just a moment until I have
17 the Rules before me.

18 I refer to Rule 68B, where there is a continuing obligation
19 to disclose exculpatory material. I don't know whether this is
20 exculpatory or otherwise, as I haven't seen it, but there is also
21 a duty in my mind to disclose under Rule 66. So in the
22 circumstances, I think the proper thing to do would be to first
23 disclose it to Defence counsel. You obviously have a technical
24 problem, and I will ask Madam Court Manager if she can assist in
25 having that printed to enable you to serve it.

26 MR HERBST: Your Honour, I don't think I made myself clear.

27 THE COURT MANAGER: Your Honour, we have trouble hearing
28 you. I he di dn't get the last bit you said about CMS doing
29 something. I di dn't get that.

1 JUSTICE DOHERTY: Freetown, I just said I would ask CMS if
2 they could assist with the technical dissemination for printing.
3 And Mr Herbst is going to make a clarification before I proceed
4 with that request. So if we can hear what Mr Herbst has to say.

5 MR HERBST: Thank you, your Honour. The Prosecution has
6 written me a letter indicating that there is some written
7 material but they want me to ask the Court because of - there's
8 some security information that's contained in the material that
9 was requested, if they can, instead of disclosing the full
10 contents, provide a proffer of what is in. And what I would like
11 to do is explain to the Court by summarising this letter what the
12 concern of the Prosecutor is, and then your Honour can be advised
13 and can make a ruling as to what I should do.

14 During the July 2012 proceedings on cross-examination of
15 Saffa.

16 [Video link disconnected]

17 [Video link restored].

18 JUSTICE DOHERTY: Please proceed, Mr Herbst.

19 MR HERBST: Thank you, your Honour. During the
20 cross-examination of Mr Saffa, at that time Mr Metzger asked
21 Mr Saffa if he recalled Mr Sesay's reporting to the OTP - to his
22 dissatisfaction about a DVD relating to his evidence in the
23 Special Court, which he - Mr Metzger inquired whether this
24 complaint might be recorded in the OTP database, to which
25 Mr Saffa replied it was possible. The Court asked Mr Saffa to
26 check for such an entry and promised to do so, and Mr Metzger
27 also asked Mr Saffa about the completeness of the entries from
28 the database which were contained in Exhibit P-12, which Mr Saffa
29 had extracted and printed prior to disclosure to independent

1 counsel. Mr Saffa testified that there was a page he didn't
2 print relating to 1 September 2010, but that all of the
3 information from 15 November 2010 was all contained therein.
4 Mr Metzger then asked Mr Saffa if the entries for the OTP
5 investigations database available for 1 September 2010 to 15
6 November 2010 could be made available, and Mr Saffa said that it
7 could be.

8 The Court then inquired of Defence counsel, why he required
9 the information, and he responded that he was asking and would
10 ask a series of questions that would make it crystal clear why
11 the information was pertinent. The Prosecutor, after examining
12 the record, has informed me that Defence counsel and the
13 Prosecutor did not ask questions that would show its relevance.
14 Thereafter, the single Judge asked Mr Saffa to check for a second
15 entry after he had concluded his evidence.

16 The Prosecution has checked the database and has determined
17 that the information relating to both requests is the same. In
18 short, information was entered into the database on 1 September
19 2010 regarding a report made by 334 and another individual on the
20 16th of August 2010, in which they complained about publicly
21 available video clip which featured Prosecution witnesses who
22 testified in The Hague for the Taylor trial.

23 Now, the Prosecutor because she is not a party to these
24 proceedings stated in this letter to me stated that it is unclear
25 how they are to communicate the results of the search, and they
26 requested a procedure be used - which if I think it is
27 appropriate, and I do think it's appropriate - and that procedure
28 is to do just what I'm doing here, to remind your Honour of the
29 request and the basis for it, and that the Prosecutor has

1 reviewed the database and has printed out the information
2 contained in the 1 September 2010 database entry. They also wish
3 me to notify the Court that OTP deleted the information contained
4 in the comments section as that information constitutes internal
5 work product in the OTP and is not subject to disclosure under
6 Rule 70A.

7 Then they asked me to do - to further impart the following
8 to your Honour: A request that you not order disclosure of the
9 database entry until its relevance has been established; and if
10 you determine that the information is in fact relevant, that you
11 allow disclosure of the proffer of the 1 September 2010 database
12 entry, rather than the full entry. The proffer being offered to
13 protect the identity of the person who accompanied 334 on 16
14 August and also registered a complaint as this person is not a
15 party or a witness to the Bangura proceedings. So it's these
16 particular proceedings here.

17 In order for your Honour to determine if the proffer is
18 accurate and may be disclosed in lieu of the entire database
19 entry, we have a copy of both the proffer and the complete
20 database entry for your Honour's review, if your Honour wishes to
21 proceed in this fashion.

22 And that's essentially another - should your Honour
23 determine that the information about the other witness should not
24 be disclosed and the proffer would be disclosed to the Defence,
25 and if your Honour determined that the database entry itself,
26 including the information related to the other person present
27 must be disclosed, then we would be able to provide that entry to
28 Defence counsel. So that - I appreciate your Honour's indulgence
29 in letting me explain that so that the full context of the

1 situation could be explained.

2 JUSTICE DOHERTY: Mr Herbst, [i ndi scerni bl e] [overl appi ng
3 mi crophones] yesterday applicati on relating to the admi ssi on of
4 evi dence [i ndi scerni bl e] cross-exami nati on. I'II stand thi s down
5 [i ndi scerni bl e] and I wi ll stand the reply and response to thi s
6 down unti l we complete thi s cross-exami nati on.

7 Shal l I, for purposes of record, treat what you have now
8 put before me, Mr Herbst, as a formal applicati on that wi ll
9 enable me then to invite a response and make a request.

10 MR HERBST: Yes, your Honour, I wou ld be grateful i f
11 your Honour wou ld do that.

12 JUSTICE DOHERTY: Very wel l. I wi ll treat i t i n that way.
13 I wi ll, i n due course, ask counsel for Defence to
14 [i ndi scerni bl e].

15 MR HERBST: Your Honour, the only other prelimi nary matter
16 i s Mr Metzger has placed some di ari es - materi al s on the desk,
17 whi ch he has i ndi cated to me he i ntends to - may tend to
18 i ntroduce i nto evi dence at some poi nt. I requested yesterday the
19 permi ssi on to agai n exami ne the materi al [i ndi scerni bl e]
20 yesterday. I t seems to me that i t' s evi dence that i f i ntended to
21 be used, shou ld be di scl osed and made avai l abl e so that when the
22 ti me comes to cross-exami nati on [i ndi scerni bl e] we don' t have to
23 waste ti me or ask for an adjournment to exami ne the materi al s
24 [i ndi scerni bl e].

25 JUSTICE DOHERTY: Can you poi nt me to any Rules that I --

26 THE COURT OFFICER: Madam, excuse me, please. Can I
27 i nterrupt the Court?

28 JUSTICE DOHERTY: Oh, i t' s froze i n Freetown.

29 THE COURT OFFICER: [I n Kigali] That' s the fi rst i ssue.

1 The freezing is between UNLB and Rwanda, and Freetown has sent an
2 e-mail to Brindisi to help us with the freezing, but I just want
3 to check that they can hear us.

4 Mr Alpha, can you hear us?

5 THE COURT OFFICER: We can hear some of you. I don't know
6 if it was Kevin who spoke just a while ago. We couldn't hear
7 anything. I didn't hear and the transcriber didn't hear
8 anything.

9 THE COURT OFFICER: [In Kigali] Okay. Madam, that is the
10 second issue. Mr Herbst is not speaking loud enough and is going
11 too fast for all the officials in Freetown.

12 JUSTICE DOHERTY: Well, first of all, Mr Metzger hasn't
13 spoken other than to note his appearance. The speaker was
14 Mr Herbst. I will paraphrase what he said last by noting that he
15 is making an application to look at what may be Defence exhibits
16 - they may or may not - and I had invited him to refer me to the
17 Rules before hearing further on that. I accept that the
18 transcribers and the interpreters are doing a sterling job in
19 keeping up with us at a distance, and I would again ask all
20 counsel and remind myself of the need to speak more slowly and
21 more distinctly.

22 THE COURT OFFICER: Thank you, your Honour.

23 JUSTICE DOHERTY: Mr Herbst, I hope I paraphrased that
24 accurately.

25 MR HERBST: Thank you. Yes, indeed, your Honour. And I
26 will also try to speak more slowly and even louder. I can't get
27 any closer to the microphone than I have been, but I'll try to
28 speak --

29 JUSTICE DOHERTY: Not unless you [i ndi scerni bl e].

1 MR HERBST: Yes, I'll try to speak more loudly.
2 Your Honour, I'm cognisant of the fact that at the two pre-trial
3 conferences we were asked about evidence that we would be
4 introducing, both the Prosecution at its pre-trial conference at
5 the beginning of the case, and then just recently this week at
6 the Defence pre-trial conference. It was my understanding at
7 that point, that at least at that point, that if there were
8 exhibits that were going to be introduced or intended to be
9 introduced, that there was an obligation to disclose those. I
10 have not perused the Rules again in the last two minutes to try
11 to find the rule on which that would be based, but it seemed to
12 me it followed logically from the fact that at the pre-trial
13 conferences we were required to identify evidence that would be
14 introduced, so that was the basis of my application. I'm sorry I
15 can't be more helpful to the Court at this point.

16 JUSTICE DOHERTY: Mr Metzger, your reply, please.

17 MR METZGER: Good morning, your Honour. First of all, in
18 doing my best to assist the Prosecution, I think that the
19 application he's sought to make in relation to the material
20 relating to disclosure is under Rule 66B. 66B provides that such
21 application should be in camera, ex parte, in camera before - to
22 a Judge designated by the President.

23 I suppose that that is something that your Honour - I don't
24 take too much issue. I simply raise it with the Court, and I'm
25 content to address the Court on that particular matter in due
26 course, as your Honour proposes.

27 In relation to Mr Herbst's recent application without
28 benefit of the Rules, I rely on the selfsame provision I believe
29 the Prosecution rely on, which is Rule 70 relating to work

1 product, whereby it appears I'm not in a position to make, shall
2 we say, sensible submissions until I have digested what we've
3 been told about material being destroyed because it is said to be
4 work product or deleted, as I understood Mr Herbst involve just
5 told us. Sorry, does your Honour want to say something.

6 JUSTICE DOHERTY: Yes, I'm dealing with Mr Herbst's
7 application to have sight of what I think he referred to as
8 diaries that may be put in evidence by your client, Mr Kanu.

9 The other matter to do with the Prosecution, I've stood
10 down for fuller argument because I want to ensure that I complete
11 Mr Kamara. So I'm dealing with the diaries only at this time. I
12 have in mind if we have to recall Saffa, he's in Freetown. There
13 is a practical issue here. I'm only dealing now with these
14 diaries [indiscernible] your client.

15 MR METZGER: Thank you, your Honour. If I appear to stray
16 into that which Mr Herbst first proposed to you this morning,
17 then that straying was in order to rely on Rule 70.

18 These are diaries that Mr - and telephone books that
19 Mr Kanu has which I have been able to take instructions on.

20 It is proposed that Mr Kanu will be saying to this Court
21 that he does not have Samuel Kargbo's telephone number. I don't
22 believe that is an issue. But if it is, he will have his diaries
23 and all the telephone numbers that he has recorded over time,
24 that will - he can then proffer to the Court.

25 The situation likely arises is if Mr Herbst, shall we say,
26 finds himself in a position where he cannot resist to ask that
27 question. But until that point in time, it seems to me that all
28 of Mr Kanu's diaries are covered by Rule 70.

29 I am content and have prepared a number of exhibits which

1 are with the Court office at the moment. Your Honour and my
2 learned friend may understand that there are some issues with
3 logistics, but there are now available certain documents which I
4 would hope to be able to - for Mr Kanu to be able to produce
5 before the Court and to use whilst he is giving evidence that
6 will cover adequately the position that Mr Kanu wishes to put
7 before the Court in giving evidence about his access to
8 telephones or telephone numbers.

9 Forgive me if I anticipate that there is an outside chance
10 - I cannot speak for my learned friend - that the Prosecution may
11 want to ask questions ad infinitum about all writing materials or
12 all numbers that Mr Kanu has in his possession, and it may be
13 that that is the case. I know not. One follows the
14 cross-examination of Mr Kamara to give one an insight into the
15 way in which the Prosecution wishes to pursue cross-examination.
16 Should that then arise, then the material will be available.

17 I am content for present purposes for the documents which I
18 have asked for copies to be made of by Court Management services,
19 whose kind facilities have allowed us to have that ready in time,
20 for Mr Herbst to have that. But it does seem to me that
21 respectfully what is sauce for the goose is sauce for the gander.
22 If Rule 70 is claimed in relation to comments and work product,
23 then Rule 70 is claimed in relation to personal diaries, which
24 will only be at a time when one has to consider the position of
25 the Prosecution. I think it will be entirely in Mr Kanu's hands
26 whether or not those books become relevant. I wouldn't want to
27 give Mr Herbst up necessary reading. There's five diaries and I
28 think an address book and spiral notepad spanning perhaps at
29 least three years, much of which contains material that would be

1 wholly irrelevant in this case and would not place the Defence in
2 a position to put forward in its entirety as evidence.

3 Therefore, one would need a significant amount of
4 time to select pages from the diaries, photocopy those, and then
5 hand them over to the Prosecution. They would be in themselves
6 voluminous. And the Prosecution would then be entitled to say,
7 "I want to see the rest of the diary."

8 Unless and until there arises a situation where there
9 is no way around that because that is where the Prosecution is
10 going, it seems to me that it is not in the interests of justice
11 and keeping this case to a reasonable period of time that one
12 should be forced to disclose those to the Prosecution.

13 I don't know, your Honour, if there is any
14 significant matter which your Honour with like me to address you
15 on in the light of the application and those matters which I have
16 elucidated herein.

17 JUSTICE DOHERTY: I do recall that there is a decision of
18 the Appeals Chamber [i ndi scerni ble]. Trial Chamber II
19 [i ndi scerni ble]. If my recollection serves me properly, that
20 Rule 70 [i ndi scerni ble] might take some time to try and do some
21 research on [i ndi scerni ble].

22 Mr Herbst --

23 MR METZGER: Your Honour -- [overlapping speakers].

24 JUSTICE DOHERTY: [I ndi scerni ble] by Mr Metzger, that's the
25 first thing [i ndi scerni ble] circumvent the situation and if it
26 will not, do you have any legal points because I note the word
27 "relevance" has been --

28 MR METZGER: Your Honour, just before Mr Herbst - because
29 I'm terribly sorry you mentioned the question of privilege. I am

1 in a position to address you on privilege should that arise in
2 relation to these matters.

3 JUSTICE DOHERTY: Yes, Mr Herbst. You have prepared what
4 appears for want of a better word to be a proffer of some of the
5 [i ndi scerni bl e] the question of relevance was also
6 [i ndi scerni bl e].

7 MR HERBST: If those copies have been made, I would request
8 to see them and evaluate whether I want to persist with the
9 application. But I just would note, as a matter of law, it
10 doesn't seem to me the diaries would constitute work product.
11 But perhaps that's the best way to proceed with --

12 JUSTICE DOHERTY: Yes.

13 MR HERBST: -- to get those copied. Have the copies been
14 made?

15 MR METZGER: They will be handed to you by CMS.

16 JUSTICE DOHERTY: I will, therefore, stand this whole
17 matter down until independent counsel has had an opportunity to
18 look at the documentation that's been prepared. I will then
19 allow both parties to renew their arguments if that does not
20 overcome this situation.

21 MR HERBST: Thank you, your Honour.

22 JUSTICE DOHERTY: I will then now proceed if there's
23 nothing else.

24 MR NICOL-WILSON: Your Honour, there is a preliminary
25 matter I want to bring to your attention.

26 JUSTICE DOHERTY: [I ndi scerni bl e] proceed, Mr Ni col -Wi l son.

27 MR NICOL-WILSON: Your Honour, there is a preliminary
28 matter I want to bring to your attention.

29 JUSTICE DOHERTY: I'm asking you to proceed on with it,

1 Mr Nicol-Wilson. I hear you clearly.

2 MR NICOL-WILSON: Yes, your Honour. I think there was some
3 problems. I didn't get you as well.

4 Your Honour, my client notes your decision revoking the
5 bail granted to him and would like to bring to your attention two
6 issues of urgent concern relating to his detention at the Special
7 Court detention facility.

8 Your Honour, the first relates to his right of access by
9 visitors. This is a matter which started early this month and in
10 which I was instructed to address. I wrote a letter to Mr Atiq
11 Shaikh, the chief of security, bringing to his notice the fact
12 that my client has complaining he has been denied visits by some
13 of his relatives, especially members of his family, and the only
14 person who has been allowed at the moment to visit my client is
15 his wife. When he was taken into detention, he submitted a list
16 containing names of people he would like to be given access to
17 visit him at the detention facility, and at the moment the
18 position is that those people have not been allowed to visits
19 him, including his brothers and sisters, and the only person who
20 has been allowed to visit is his wife.

21 I wrote two letters to the chief of security on 8 August
22 and on 17 August, and I've not got any response. And I thought
23 that this is a matter which I could bring to your attention *vi va*
24 *voce*. And I will hand over copies of the letters I wrote to the
25 Court Officer, if your Honour considers that the prudent way
26 forward, so that your Honour can see what the - what's the
27 content of those letters are.

28 The second detention issue, your Honour, relates to the
29 fact that no television has been provided to either my client or

1 to the other detainee at the Special Court detention facility.
2 Taking into consideration the fact that there are only two
3 detainees at the detention facility, they would definitely need
4 some form of outside information which will be in the form of a
5 television so that they could be - they could keep abreast with
6 developments in the outside world and that at the moment has not
7 been provided, which is almost creating a de facto situation of a
8 solitary confinement for my client because he does not have
9 anyone to talk to beside the other detainee, who is from a
10 different tribe and from a different background than himself.

11 So my client has instructed me to bring these two matters
12 to your attention and to request an order for a television set to
13 be provided and for members of his family to be allowed access to
14 visit him, especially now that it appears he will have to spend
15 some more time at the detention facility. Those are my
16 instructions.

17 JUSTICE DOHERTY: Thank you, Mr Nicol-Wilson. I will
18 consider the two matters you have brought to my attention. I
19 will also consider [indiscernible] Rule 17 and the Rules
20 governing detention, and I will make a ruling in the course of
21 today [indiscernible].

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

23 JUSTICE DOHERTY: [Indiscernible] thank you. I will now
24 proceed on if there's nothing else to remind Mr Kamara of his
25 oath and to ask independent counsel to proceed with the
26 cross-examination which commenced yesterday.

27 BRIMA BAZZY KAMARA:

28 Mr Kamara, can you hear me, please?

29 THE WITNESS: Yes, your Honour.

1 JUSTICE DOHERTY: You yesterday undertook the oath. That
2 oath was to tell the truth. That oath is still binding upon you.
3 You must answer questions truthfully. Have you understood what
4 I've said?

5 THE WITNESS: I understand.

6 JUSTICE DOHERTY: Mr Herbst, please continue.

7 MR HERBST: Thank you, your Honour.

8 CONTINUING CROSS-EXAMINATION:

9 MR HERBST:

10 Q. Good morning, Mr Kamara. Yesterday you gave some names of
11 people that you talked to on November 30, 2010, but I don't
12 believe you gave the given names of any or all of them. So I
13 just want to ask you Keh-For-Keh, what is his given name?

14 A. Keh-For-Keh's name is Ahmed Keh-For-Keh Kamara. Hamid, H.

15 Q. So Hamid Kamara?

16 A. Hamid Keh-For-Keh Kamara?

17 Q. Okay. Then the next person you mentioned was Eddie, who
18 you called Maf, Pastor Eddie. What is his given name?

19 A. Eddie. Edward Williams, but it's cut short. Eddie.

20 Q. Then the next person I think you mentioned was V-Boy. What
21 is V-Boy's given name?

22 A. David Vamboi.

23 Q. How do you spell Vamboi?

24 MR METZGER: V-A-M-B-O-I.

25 THE WITNESS: V-A-M . . .

26 JUSTICE DOHERTY: Have we got a connection with Freetown?

27 THE COURT OFFICER: Yes, your Honour.

28 JUSTICE DOHERTY: Can Freetown hear us?

29 THE COURT OFFICER: Yes, we can hear and see you from

1 Ki gal i .

2 JUSTICE DOHERTY: Very well. Mr Interpreter, I did not
3 hear the last part of the spelling. I got the V-A-M bit but not
4 the rest.

5 THE INTERPRETER: I did not hear the last as well. I just
6 heard V-A-M, and I was waiting for the rest.

7 JUSTICE DOHERTY: Thank you, Mr Interpreter.

8 Mr Kamara, what is the rest of the spelling of the name?

9 THE WITNESS: I said V-A-M-B-O-I, Vamboi .

10 MR HERBST:

11 Q. Then the next person you mentioned on the call was Manga.
12 What is his given name?

13 A. This thing is cracking. Say that again.

14 Q. Manga. The next person you mentioned as a person you
15 talked to on that call was Manga. What is his given name?

16 A. Lansana Bangura, but we call him Manga.

17 Q. I'm sorry, all I heard was Bangura. I didn't hear the
18 first part.

19 JUSTICE DOHERTY: I think I called Lansana Bangura. We
20 called him Manga. Counsel has nodded in agreement.

21 Proceed, Mr Herbst.

22 MR HERBST:

23 Q. I think the next person was someone called Matt Conteh or
24 Gi no. What is his given name?

25 A. Nat. Nat Conteh.

26 Q. How do you spell the first name?

27 A. [Witness speaking Krio]

28 THE INTERPRETER: I did not hear the spelling, your Honour.

29 THE WITNESS: N-A-T, Nat. Yes, yes.

1 MR HERBST:

2 Q. Now, when we left off yesterday, I had directed you to the
3 call on page 18 of 39 of P-14. Do you have that in front of you?

4 JUSTICE DOHERTY: What page?

5 MR HERBST: Page 18 of 19 - of 39.

6 Actually, before we do that, let me direct your attention,
7 Mr Kamara, to your testimony yesterday in which, if I understood
8 you correctly, in describing your alleged lack of knowledge of
9 Mr Kargbo, I believe you said that you only saw him once when you
10 were taking a bath at the Pademba prison in 2002; is that
11 correct?

12 A. Yes.

13 Q. You said you never any contact with him in the army? And
14 you said you never saw him and never had any contact with him in
15 the army; is that correct?

16 A. I did not say that. I said I saw him, but we are not - we
17 were not friends. I used to see him going around, but the two of
18 us are not friends.

19 Q. Well, when you say you saw him, did you spend time with
20 him? I said, when you saw him, did you spend time with him when
21 you were in the army together?

22 A. No.

23 Q. So is your testimony that you saw him around but never
24 spoke to him while you were in the army?

25 A. No, we were not talking. We were not friends.

26 Q. Mr Kamara, you heard Mr Kargbo testify he became close to
27 you as a friend at the time of joining the army - when you both
28 joined the army; do you remember that testimony?

29 A. Yes.

1 Q. And you're saying that's not - sorry. And you're saying
2 that's not true; is that right?

3 A. That's not true, because I did not know where he trained.

4 JUSTICE DOHERTY: Mr Interpreter, I'm sorry. I did not
5 hear you clearly. Repeat what you said.

6 THE INTERPRETER: "I did not know where he trained."

7 MR HERBST:

8 Q. Well, in fact, you were working in the same place for a
9 time when you were in the army together; isn't that correct?

10 A. No, we never worked.

11 Q. Weren't you in the same military camp in Freetown?

12 A. What camp?

13 Q. Cockerill or cockroach?

14 JUSTICE DOHERTY: Cockerill, did you mean?

15 MR HERBST: I think I meant Cockerill.

16 THE WITNESS: I thought he said cockroach. Is that
17 Cockerill you're talking about?

18 MR HERBST:

19 Q. Yes; is that right?

20 A. He and I never worked. I was a commander at Cockerill
21 headquarters.

22 THE INTERPRETER: Your Honour, the witness is sounding far
23 away from the microphone.

24 JUSTICE DOHERTY: Mr Kamara, your answers one sentence at a
25 time, please. You said, "I was a commander at Cockerill." What
26 did you say after that?

27 THE WITNESS: I said I was the security commander at
28 Cockerill.

29 MR HERBST:

1 Q. Did you ever work in an armoury at a military camp in
2 Freetown [overlapping microphones] --

3 THE INTERPRETER: Your Honour, I did not hear the witness.

4 MR HERBST: I didn't hear that.

5 MR METZGER: Either did they.

6 JUSTICE DOHERTY: Mr Interpreter, I think you were trying
7 to interpret and then the question was asked, and we didn't hear
8 what you were actually saying. I heard Mr Kamara start to say "I
9 knew". Could we have the interpretation of that part of the
10 answer, please.

11 THE INTERPRETER: That's what I did not hear. I did not
12 hear the rest of the answer.

13 THE WITNESS: I'll repeat, your Honour. I said --

14 THE INTERPRETER: I'm not hearing what he's saying at all.

15 THE WITNESS: [Witness speaks Krio].

16 JUSTICE DOHERTY: Indeed, Mr Kamara, I agree with you that
17 you are doing that, and I think the problem must be with static
18 on the line. So perhaps at our end we have to have some
19 assistance from our technicians.

20 Mr Kamara, please speak again, and let us see if the
21 interpreter can hear you more clearly.

22 THE WITNESS: I said --

23 THE INTERPRETER: I'm not hearing him again, your Honour.

24 THE COURT OFFICER: Your Honour, we still have the static.

25 THE COURT OFFICER: [In Kigali] Madam, the line is
26 currently busy. So we can't call Freetown, so if you could give
27 us a minute.

28 [Video link disconnected]

29 [Video link restored]

1 THE COURT OFFICER: [In Kigali] Mr Sesay, can you hear us?

2 THE INTERPRETER: I can hear you.

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

4 JUSTICE DOHERTY: Mr Kargbo was repeating - sorry, excuse
5 me, I correct myself, Mr Kamara was repeating an answer relating
6 that he had said something about his position as security
7 commander. Mr Kargbo, please pick up that answer and give us the
8 rest of it.

9 THE WITNESS: Mr Kamara.

10 MR SERRY-KAMAL: Your Honour, you keep saying Mr Kargbo, it
11 is Mr Kamara.

12 JUSTICE DOHERTY: [Indiscernible] myself when I said
13 Kamara. Did I say "Kargbo" twice? Counsel, you've all been
14 told many times about my family tendency to misname people.

15 Mr Kamara, I apologise. Pick up your answer and repeat it,
16 please.

17 THE WITNESS: Yes, your Honour. At the time that I was
18 working at Cockerill, security commander, all the men who were
19 working who were my subordinates and my bosses.

20 Q. Mr Kamara, at any time when you were in a military camp in
21 Freetown, were you assigned to an armoury?

22 A. No, I was never an armorer.

23 Q. Mr Kamara, I put it to you that you used to drive in the
24 same car with Mr Kargbo on occasion, did you not?

25 JUSTICE DOHERTY: Mr Herbst, I want to be clear what period
26 we're talking about. Because the evidence shows what I think of
27 as possibly three periods: The army days; the AFRC days; and the
28 West Side boy days, all three of which have been referred to. So
29 when you say used to drive with him, could you be specific on

1 which period of time that you are referring to.

2 MR HERBST: The army period, your Honour, being from '91
3 until '98. Is that approximately right?

4 JUSTICE DOHERTY: '97. Thank you for that clarification.

5 Mr Kamara, you are clear on the question now?

6 THE WITNESS: Yes, your Honour.

7 MR HERBST.

8 Q. Let me put it to him again?

9 JUSTICE DOHERTY: Yes, please do so.

10 MR HERBST:

11 Q. Mr Kamara, isn't it true that during your army days you
12 used to on occasion be in the same car with Mr Kargbo?

13 A. It never happened. Not a day.

14 MR METZGER: [Indiscernible].

15 THE INTERPRETER: It never happened.

16 MR SERRY-KAMAL: Your Honour, I believe the witness said
17 "never" not --

18 JUSTICE DOHERTY: Mr Interpreter, we've had this exchange
19 before about the expression "not a day". What is
20 the interpretation of that expression for you?

21 THE INTERPRETER: It never happened. Not a day did it
22 happen.

23 JUSTICE DOHERTY: Thank you, Mr Interpreter. That is now
24 the official record.

25 Please proceed.

26 MR HERBST:

27 Q. How about during AFRC days; did you ever drive in a car
28 with Mr Kargbo?

29 A. During the AFRC days, that man was never with me. I was an

1 authori ty.

2 Q. Now, I want to direct your attention to the month of May of
3 1997. You had an accident in a car you were driving; isn't that
4 right?

5 A. Which date?

6 Q. Let's take the year 1997. Didn't you have - weren't you
7 driving a car, and you had an accident in the car in which you
8 were driving, a road accident; isn't that right?

9 A. In 2007?

10 Q. In 1997?

11 A. I can remember I was involved in an accident with my family
12 members. At that time, I was coming from my village.

13 Q. How many accidents did you have in a car in which you were
14 driving in the year 1997?

15 A. One. That's the accident I've told you about.

16 Q. In the car you were driving when you had an accident in
17 1997, I put it to you that Mr Kargbo was in the car; yes?

18 A. I am putting it to you too that Mr Kargbo was never in any
19 car that I was.

20 Q. Now, you heard Mr Kargbo testify that he used to visit you
21 in your house in Wilberforce Village; do you remember that
22 testimony?

23 A. Yes.

24 Q. Did you live in a house at Wilberforce Village?

25 A. Yes, I have told this Court that I was born and bred in
26 Wilberforce Village.

27 Q. How many houses have you lived in in Wilberforce Village?

28 A. Three houses. And I can explain to you if you want me to.

29 Q. Well, let me ask you this: You heard Mr Kargbo describe a

1 house in Wilberforce Village that he attributed to you, and he
2 gave in response to your counsel the route by which one goes to
3 the house. Do you remember that testimony?

4 A. Yes.

5 Q. Did you have a house there?

6 A. The man does not know how to describe the place. I can
7 tell you everything about the house.

8 MR SERRY-KAMAL: Your Honour, I don't believe that the
9 interpreter's completely interpreted what the witness said.

10 JUSTICE DOHERTY: The official record stands,
11 Mr Serry-Kamal.

12 MR SERRY-KAMAL: In each case, your Honour, I would like
13 the witness to repeat what he said so that the Court will have a
14 proper - the correct interpretation of what he said.

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

16 THE WITNESS: The way the man described the house, you
17 would know that the man does not know the house.

18 THE INTERPRETER: Your Honour, I can't hear the witness
19 clearly.

20 THE WITNESS: I said, the way the man described the house,
21 you would know that the man does not even know Wilberforce.
22 Because where I am in Wilberforce --

23 THE INTERPRETER: Your Honour, I can't hear the witness
24 clearly from this point.

25 THE WITNESS: I said --

26 THE INTERPRETER: Now I am not hearing him at all.

27 JUSTICE DOHERTY: Can we check if Mr Kamara's on the right
28 channel, or if there's anything of that nature that could be
29 interfering with this transmission.

1 THE COURT OFFICER: [In Kigali] Yes, ma'am, I will.

2 [Technical difficulties]

3 JUSTICE DOHERTY: Mr Interpreter, can you hear us now?

4 THE INTERPRETER: Yes, I can, your Honour.

5 JUSTICE DOHERTY: Mr Kamara, please go back to what you
6 were saying about your house at Wilberforce and let us hear
7 Mr Interpreter [indiscernible].

8 Mr. Kamara?

9 THE WITNESS: Yes, my Lord. The way the man described the
10 house, you --

11 THE INTERPRETER: I can't hear him again, your Honour.

12 THE WITNESS: Let me try it again slowly. The way the man
13 described the house --

14 JUSTICE DOHERTY: Mr Interpreter, can you hear us?

15 THE INTERPRETER: I did not hear the rest of the witness's
16 answer. I can hear you now, your Honour.

17 JUSTICE DOHERTY: Counsel, would you be satisfied if I
18 asked Mr Serry-Kamal to interpret it because we've been repeating
19 this one sentence.

20 THE INTERPRETER: Your Honour, I'm not interpreting because
21 as soon as he starts his answer, as I'm interpreting I do not get
22 the rest of what he is saying. Not that I cannot interpret
23 what he is saying; it's that I cannot hear what he's saying.
24 That's why I'm not interpreting.

25 JUSTICE DOHERTY: I understand that, Mr Interpreter, but
26 what is worrying me is that you are not hearing it. Is it
27 because Mr Kamara is speaking over you that you cannot hear him
28 or is it something on the line?

29 THE INTERPRETER: It's like - it is something on the line.

1 It's like it is static, and you just get some noise on the line.

2 You do not get the witness's voice. Just like that static.

3 JUSTICE DOHERTY: Mr Kamara, instead of repeating all of
4 the answer, just repeat only the last, last bit so Mr Interpreter
5 can hear you.

6 THE WITNESS: Yes, your Honour. I said the man does not
7 know the house and --

8 JUSTICE DOHERTY: Please proceed, Mr Herbst.

9 MR HERBST:

10 Q. So your testimony here is that you can't get to your house
11 in Wilberforce by leaving Bottom Mango, going straight, coming to
12 a junction at the market and turning left; is that your
13 testimony?

14 A. That's not what I'm telling the Court. I am telling you
15 that the house - Spur Road, then you go up Lumley Road when you
16 climb the hill.

17 Q. What is the address of the last house you lived in in
18 Wilberforce?

19 A. Number 47B, Lumley Road, Wilberforce Village.

20 Q. What years did you live there?

21 A. Say that again?

22 Q. [Microphone not activated] years did you live there? From
23 when to when?

24 A. When I was young until I became an adult and joined the
25 army.

26 Q. So until 1991 you lived there?

27 A. Yes, that's my parents' house. That's my dad's house.

28 Q. From 1991 on did you live at any other house in
29 Wilberforce?

1 A. No. No.

2 Q. Okay. So your testimony is that Mr Kargbo never visited
3 you; correct?

4 A. Yes.

5 Q. And in fact, your testimony is that the only time you spoke
6 to him in your life was on November 30 in a telephone call you
7 described; is that correct?

8 A. No, I did not say in my life. I said --

9 THE INTERPRETER: Your Honour, I can't hear anything the
10 witness is saying.

11 THE WITNESS: I said the man is not my friend. But when
12 you're talking about life, I used to see him around but we did
13 not talk to each other like friends.

14 MR HERBST:

15 Q. Other than to say hello when you saw him, I thought that
16 your testimony was in this Court that you never really had a
17 substantive conversation with him; is that right?

18 A. Say that again?

19 Q. Other than saying hello to him when you saw him around
20 town, I thought that your testimony in the case was that you had
21 never actually had a substantive conversation with him. The only
22 thing you used to do, I thought you were saying, was you would
23 say hello if you saw him around town; is that true?

24 A. That man that says hello to me, I can't see that man and
25 say hello to him.

26 Q. Okay. Now, Keh-For-Keh was someone you were close to,
27 right? You knew him as a comrade in the army and he was a
28 brother-in-law, right?

29 A. Yes.

1 Q. [Microphone not activated] testified for you in the AFRC
2 trial. I'm sorry. And he testified for you as a witness at the
3 AFRC trial; is that right?

4 A. Yes.

5 Q. And Pastor Eddie, he was close to you; is that right?

6 A. Yes.

7 Q. And V-Boy, he was close to you --

8 MR HERBST: I apologise, Judge, I'm jumping on the
9 interpreter. I apologise.

10 JUSTICE DOHERTY: The interpreter is coping very well.

11 MR HERBST:

12 Q. And V-Boy was very close to you, correct?

13 A. Not very close. Not very close.

14 Q. Well, you knew that V-Boy was a bodyguard to Mr Bangura,
15 correct?

16 A. V-Boy was not a bodyguard to Mr Bangura.

17 Q. But he testified for you at the AFRC trial; is that right?

18 A. Yes.

19 Q. And Manga, Mr Lansana Bangura, was he close to you?

20 A. Just like V-Boy. Not very close.

21 Q. But according to you, they were both much closer to you
22 than Mr Kargbo, correct?

23 A. I regarded those men as my younger brothers.

24 Q. You say they were your younger brothers?

25 MR SERRY-KAMAL: The witness says "small one dem".

26 MR HERBST: My what?

27 MR SERRY-KAMAL: "My small one dem.

28 MR HERBST: "Small wandum"?

29 MR SERRY-KAMAL: Yes.

1 MR HERBST: What's "wandum?"

2 MR SERRY-KAMAL: Let him translate. He will tell you.

3 "Small one dem."

4 MR HERBST:

5 Q. What is a small wandum?

6 THE COURT OFFICER: [In Kigali] Small ones.

7 MR SERRY-KAMAL: Do you want me to repeat?

8 JUSTICE DOHERTY: Mr Kamara, repeat and let the official
9 interpretation be put on.

10 THE WITNESS: I said V-Boy and Manga --

11 JUSTICE DOHERTY: Mr Interpreter, [indiscernible].

12 THE INTERPRETER: I am not hearing him, your Honour.

13 JUSTICE DOHERTY: Mr Kamara, repeat that last part where
14 you were saying "small, small".

15 THE WITNESS: When I say my small, small ones, like when I
16 go in the area --

17 THE INTERPRETER: Your Honour, the witness is breaking in.
18 He's breaking in. I'm not getting him clearly at all.

19 THE WITNESS: Your Honour, I'm very close to the mic. I
20 wonder what is the problem.

21 JUSTICE DOHERTY: I agree Mr Kamara is very close to the
22 microphone, so it's something [indiscernible] on the line.

23 [Technical difficulties]

24 JUSTICE DOHERTY: Mr Interpreter, we're now on a different
25 line, so I'm going to ask Mr Kamara to repeat that.

26 I think we've heard that answer. Have you heard it in
27 full, or have you not?

28 THE INTERPRETER: No, I have not.

29 JUSTICE DOHERTY: Say again, please.

1 THE INTERPRETER: I have not heard the answer in full,
2 your Honour.

3 THE WITNESS: I said Manga, V-Boy --

4 THE INTERPRETER: I am not hearing anything. I did not
5 hear anything after "V-Boy".

6 MR HERBST: Your Honour, I think what's happening is that
7 when you interpreter is speaking, the line continues after even
8 when he stops, and therefore the witness here cannot be heard in
9 the direction from Kigali to Sierra Leone. That's what it sounds
10 like.

11 JUSTICE DOHERTY: I do not have the technical
12 qualifications, so I don't know. I just know that there's --

13 MR METZGER: There's a delay.

14 JUSTICE DOHERTY: It's difficult to hear.

15 Mr Interpreter, you said something just now and I'm sorry,
16 I didn't hear it properly.

17 THE INTERPRETER: No, I just said that after I said "V-Boy"
18 I did not hear anything the witness was saying, if he said
19 anything at all.

20 JUSTICE DOHERTY: He said quite a few things, so obviously
21 you're not hearing it; I can see that.

22 MR METZGER: Might I make a suggestion?

23 JUSTICE DOHERTY: I'm looking at the time.

24 MR METZGER: I have taken the opportunity of listening to
25 both the Krio channel and the English channel, and it's very
26 clear that the Krio channel seems to be getting some of the
27 material that the interpreter isn't getting. So that sounds like
28 a technical issue to me.

29 JUSTICE DOHERTY: I have no doubt that Mr Kamara could not

1 get any closer to the microphone, so he is doing his best to get
2 his answers across. And I have no doubt that the interpreter is
3 equally working hard to deal with the - what he hears, and it's
4 what he hears is the problem.

5 We are coming up close to the break time. I'm going to
6 take a break early to allow the technicians to see what they can
7 do, particularly, I would say the technicians in Freetown. The
8 reason I say that is because I'm also hearing two lots of
9 interpreters on occasion in Freetown, and that leads me to think
10 there might be something in Freetown.

11 So it is now 12.40 Kigali time and we will take the
12 45-minute break, which means we will start again at 1325 here in
13 Kigali, and I would ask both sets of technicians to see what they
14 can do, and let us and use this time to try and do something at
15 both ends. So we will adjourn now until 1325.

16 THE COURT OFFICER: [In Kigali] Madam, before I adjourn
17 the Court, could I please ask the interpreters in Freetown not to
18 close the booth, because the technicians would like access to the
19 booth to rectify the problem.

20 [The Court adjourn at 10.40 a.m.]

21 [Upon resuming at 11.40 a.m.]

22 COURT OFFICER: [Indiscernible] be able to concluded.
23 Freetown has yet to confirm that they have gotten rid of the
24 static and any technical problems they are experiencing. So we
25 haven't got that word as yet, so we would say that the Court is
26 not ready to proceed.

27 JUSTICE DOHERTY: In light of that situation, did counsel
28 want to adjourn further? [Indiscernible]

29 MR HERBST: Your Honour, of course, I haven't consulted

1 with my learned friends, but it seems to me that in light of what
2 we've just heard and of course with what we experienced before,
3 that taking at least some period of adjournment would make sense.
4 There are things I could do with my time here, but we could also
5 remain available here in the courthouse so that when things are
6 ready, we can reconvene.

7 JUSTICE DOHERTY: [Indiscernible] Defence.

8 THE COURT OFFICER: Your Honour, I know that we are able to
9 hear you from Kigali. I am not sure because of course the
10 picture is frozen from Kigali. We can't see Kigali but we can
11 hear you, and I don't know if that's the same for you, whether
12 you can hear us.

13 JUSTICE DOHERTY: Mr Court Officer, we can both see and
14 hear you. Our immediate problem, which we were speaking about,
15 is whether the problems with the reception for the interpreter
16 [indiscernible] reception has not improved at all, I'm told. And
17 I was, therefore, canvassing views of counsel if there's anything
18 that we can achieve by sitting here. Mr Herbst has indicated
19 that he could use his time, and I'm just about to ask Defence
20 counsel for their view.

21 Do you hear me?

22 MR SERRY-KAMAL: I'm sorry?

23 JUSTICE DOHERTY: Is that Chief Taku I hear speaking?

24 CHIEF TAKU: Your Honour, I defer entirely to the wisdom of
25 the Court. I've observed that this problem has persisted since
26 yesterday probably. It may be with some time today for the
27 conditions to resolve this matter comprehensively so that the
28 proceedings could continue undisturbed.

29 JUSTICE DOHERTY: Mr Metzger, Mr Serry-Kamal?

1 MR METZGER: I agree with the view or views that have
2 already been expressed. It doesn't seem as if there is anything
3 that we can usefully do in the Court, because in order to have
4 the problem resolved, I think the technicians have to do testing.
5 I don't know if there are any outstanding matters that can be
6 dealt with in chambers, but I don't think there are. We can make
7 use of our time doing other things.

8 The only thing that I did want to say is I am now
9 increasingly concerned, even about travel plans that Defence
10 have, noting that Mr Herbst is I think some little way away from
11 finishing his cross-examination, and Mr Kanu has not yet gone
12 into the witness box.

13 JUSTICE DOHERTY: That's something we can discuss in
14 chambers.

15 Mr Serry-Kamal, do you concur with the other views of
16 counsel?

17 MR SERRY-KAMAL: Yes, your Honour. Put it in one word:
18 Yes.

19 JUSTICE DOHERTY: We're not going to achieve anything
20 sitting here looking at each other. All of us have other things
21 we can do, so we'll do them.

22 Would it be practical, Freetown, to take your lunch break
23 now to make use of this - try and make use and catch up as much
24 time as we can.

25 MR NICOL-WILSON: Your Honour, I think it will be, but I
26 want to remind you about the issues I brought to your attention
27 this morning.

28 JUSTICE DOHERTY: I have not forgotten, Mr Nicol-Wilson.
29 In fact, I've written something up over the short adjournment and

1 I will render them. Your client must be able to hear the
2 decision and until this problem with the link to the interpreters
3 is sorted out, that may not be heard - he may not be able to have
4 the translation. So I will give that decision.

5 So we'll adjourn - normally Freetown has the three quarters
6 of an hour. What I'm going to do is take another half hour for
7 Freetown and then after some time we'll take 20 minutes in the
8 course of the afternoon so that everyone can have another break.
9 So on the questions that Defence counsel here have concerning
10 matters raised by Mr Metzger, please indicate whether it would be
11 convenient to meet in chambers.

12 MR METZGER: For my part, I'm at your Honour's pleasure.
13 Now would be as good a time as any.

14 JUSTICE DOHERTY: We'll do that now. We are going to take
15 the first half hour of Freetown's lunch break and we are going to
16 reconvene at - in what will be 2.15 our time and 12.15 your time.
17 Please adjourn Court.

18 [The Court adjourned at 11.45 a.m.]

19 [The Court resumed at 12.20 p.m.]

20 THE COURT OFFICER: [In Kigali] [Indiscernible] We have not
21 been successful to this point.

22 JUSTICE DOHERTY: I notice [indiscernible] Mr Nicol-Wilson.

23 THE COURT OFFICER: We have trouble, your Honour. We have
24 trouble hearing you. I don't know if you are hearing us. We
25 can't hear you at all and also we - the transcriber has a problem
26 that there is something that she has not been able - something
27 has gone wrong with her system. And we're trying to fix that as
28 well. So at the moment nothing is being transcribed.

29 JUSTICE DOHERTY: Well, first of all, I can hear you very

1 clearly. Secondly, I think that Mr Nicol-Wilson is on his feet.
2 Am I right?

3 MR NICOL-WILSON: No, your Honour, I wasn't.

4 [Technical difficulties]

5 THE COURT OFFICER: [In Kigali] Madam, the Court can go
6 ahead.

7 JUSTICE DOHERTY: Fine. I had started by asking if
8 Mr Nicol-Wilson had something - he was on his feet. He's seated
9 now.

10 So Mr Nicol-Wilson, can you inform me did you have some
11 form - was there something you wished to say?

12 MR NICOL-WILSON: No, your Honour.

13 JUSTICE DOHERTY: That's fine. We are going to now proceed
14 again with the cross-examination of Mr Kamara. Again we will
15 hope that the technical problems indicated with Freetown are
16 being resolved.

17 Mr Kamara, I remind you again of the oath.

18 Mr Herbst, please proceed.

19 MR HERBST: Thank you, your Honour.

20 Q. Mr Kamara, in 1997 you were a CS03, were you not?

21 A. Say that again?

22 Q. In 1997 were you a CS0 or CS03?

23 A. No.

24 Q. [Microphone not activated] charge of security or
25 [indiscernible] in 1997?

26 A. I was a security commander at --

27 THE INTERPRETER: And I did not get the last word.

28 THE WITNESS: I was a security commander. I had my
29 [indiscernible]. I had my company and my company sergeant major.

1 Q. Okay. And did there come a time in May or June of 1997
2 that you went to attack forces in Mammy Yoko?

3 MR SERRY-KAMAL: I really want to object to that. I know
4 that cross-examination is very lax, but it has to be relevant to
5 the issues.

6 MR HERBST: It is indeed relevant, and it relates to the
7 denial of the witness with respect to the car accident
8 [i ndi scerni bl e].

9 JUSTICE DOHERTY: I will allow it. I will review that
10 decision if it appears to me to not be relevant. Please put the
11 question.

12 MR SERRY-KAMAL: As your Honour pleases.

13 MR HERBST:

14 Q. Mr Kamara, did you have occasion in either May or June of
15 1997 to attack forces - to go to attack forces in Mammy Yoko?

16 [Techni cal di ffi cul ti es]

17 JUSTICE DOHERTY: Freetown, can you hear me? Mr Court
18 Officer in Freetown, can you hear me?

19 THE COURT OFFICER: Yes, your Honour. I can hear you but
20 you are faint. You're coming in faint. It's really not all that
21 clear.

22 JUSTICE DOHERTY: I will speak louder. I had asked earlier
23 if Mr Interpreter had heard the answer given by the witness.

24 THE INTERPRETER: No, your Honour. I did not hear
25 anything.

26 JUSTICE DOHERTY: Thank you, Mr Interpreter. Mr Kamara,
27 you made a one-word answer to the last question. Please repeat
28 that answer.

29 Mr Interpreter, did you hear Mr --

1 THE INTERPRETER: No, your Honour, I did not.

2 JUSTICE DOHERTY: I'm not sure it's going to help because
3 as hard as you are trying, I don't think he's hearing you.

4 Mr Interpreter, I'm puzzled why you hear me but you don't
5 hear Mr Kamara.

6 THE INTERPRETER: Me too. Yes, I can hear you. I can hear
7 Mr Herbst. I can hear the other lawyers but not when the witness
8 is speaking right now.

9 MR HERBST: Your Honour, I have a suggestion.

10 JUSTICE DOHERTY: The problem - yes, what is it?

11 MR HERBST: I think that the problem with respect to the
12 witness's line has not been rectified, and I would suggest that
13 we consider adjourning again for not a set period, but a period
14 that would end immediately when you were notified by the
15 technical staff that they have resolved problem [i ndi scerni ble].

16 JUSTICE DOHERTY: First of all [i ndi scerni ble]
17 Mr Interpreter and Mr - I can get you [i ndi scerni ble] it might be
18 something to do with Mr Kamara's machine.

19 THE COURT OFFICER: [Kigali] Madam, that was my suggestion
20 to the technical team. If the interpreter can hear your mic,
21 maybe the mic from Mr Kamara needs changing.

22 [Techni cal di ffi cul ti es]

23 THE COURT OFFICER: [In Kigali] Madam, the Court can
24 continue, but we have to continue as it is now. If Freetown can
25 see us and hear us, we can see Freetown and hear Freetown, but
26 the image would not be a large image. We would have to do with
27 that image for now.

28 MR HERBST: Will the microphone work is the question.

29 JUSTICE DOHERTY: I don't think that image - I can see

1 clearly. I have no doubt others can see exactly the same thing
2 as I'm seeing. I do not think that interferes with any rights or
3 Rules under Article 17, so we'll continue.

4 But first of all, Mr Interpreter in Freetown, I think Mr
5 Kamara's microphone has been changed in the light of your advice
6 that you could hear the rest of us but not him, and I would now
7 ask him to repeat his last answer. Mr Interpreter, please tell
8 me if you can hear.

9 THE INTERPRETER: I will, your Honour.

10 JUSTICE DOHERTY: All right. Mr Kamara, please repeat your
11 last answer.

12 THE INTERPRETER: This time I heard him, but he was not
13 clear.

14 MR HERBST: Your Honour, I don't remember the question, but
15 I'll just put another question to the witness.

16 MR METZGER: [Indiscernible] at Mammy Yoko.

17 MR HERBST:

18 Q. Did there come a time when you went to attack forces in
19 Mammy Yoko, Mr Kamara?

20 A. No.

21 Q. Now, in late May or early June of 1997, I believe I heard
22 you say that you had some security position. So you were
23 security commander or had some security position; is that
24 correct?

25 A. I said I was a security commander at Cockerill. Cockerill
26 headquarters.

27 Q. And did you have one or more bodyguards?

28 A. No. I was doing my duty. I would deploy my men and then
29 go home.

1 Q. Was Junior Lion with you at that time?

2 A. Say that again.

3 Q. Was Junior Lion with you at that time?

4 A. Junior Lion was not a soldier at that time.

5 Q. Do you know a man named Pan Mahkey?

6 A. Say that again.

7 Q. Pan Mahkey. Pan Mahkey, and the phonetic spelling is P-A-N
8 M-A-H-K-E-Y.

9 A. Maybe you are talking about Pa Mankie.

10 Q. I am. That is exactly who I'm talking about. Can you
11 please tell the Court who he was?

12 A. He's my friend.

13 Q. Was he with you in late May or early June of 1997?

14 A. Yes.

15 Q. What was his position - and what was his position with
16 respect to you?

17 A. We were workers, but I was senior in rank to him.

18 Q. I didn't catch what he said with the interpretation
19 [i ndi scerni bl e] just before [i ndi scerni bl e]?

20 MR METZGER: "We were workers".

21 JUSTICE DOHERTY: We were workers.

22 MR SERRY-KAMAL: Senior to him in rank.

23 MR HERBST:

24 Q. And did he occasionally drive you?

25 A. Say that again.

26 Q. Pa Mankie - did Pa Mankie occasionally drive you?

27 A. No, I was a qualified driver in the army.

28 Q. I put it to you, Mr Kamara, that in late May or early June
29 1997 you were driving a white car. In the car was --

1 MR SERRY-KAMAL: Objection, your Honour. Too many
2 questions in one. Double [i ndi scerni bl e].

3 JUSTICE DOHERTY: I don't know that so far it's more than
4 one question in one, because he just described [i ndi scerni bl e].

5 MR SERRY-KAMAL: He said he would drive it in the company -
6 it has to be established first if he was driving a white car
7 before we start talking about who the passengers were in the car.

8 JUSTICE DOHERTY: [I ndi scerni bl e]. I recall talking about
9 - let us have the car first, Mr Herbst, to save time.

10 MR HERBST:

11 Q. I put it to you, Mr Kamara, that in late May or early June
12 1997 you were driving a white car. Let's start with that.

13 A. In early June I was driving - I can't remember I was
14 driving a white car.

15 Q. Whatever the vehicle, I put it to you that you had an
16 accident and that in the car were Mr Kargbo, Junior Lion and Pa
17 Mankie; isn't that right?

18 A. It's not correct.

19 Q. I further put it to you that Mr Kargbo was in the car with
20 you because he was one of the people on your security team?

21 MR SERRY-KAMAL: May it please Your Lordship, the witness
22 has categorically said that he was not driving a car. He was
23 driving a jeep. I'm sure there is a difference between a jeep
24 and a car.

25 MR HERBST: That's why I modified the next question as to
26 vehicle.

27 JUSTICE DOHERTY: [I ndi scerni bl e] vehicle is a generic term
28 [i ndi scerni bl e] and --

29 MR HERBST:

1 Q. And the question was, Mr Kamara, isn't it true that
2 Mr Kargbo was in the car with you and Junior Lion and Pa Mankie
3 because he was one of the members of your security team at that
4 time?

5 A. I have told you that Sammy Ragga and I have never been in a
6 car. He was never my security. He was never close to me. It
7 never happened.

8 Q. Okay. Now, let's go back to P-14. And when we broke
9 yesterday, I was - you were - you had answered a question or two
10 about the call to Mr Bangura on his cell phone that's reflected
11 on page 18 of 39.

12 MR HERBST: May we have P-14 placed before the witness
13 again, page 18 of 39, if that's possible. I would ask the Court
14 Officer to assist.

15 JUSTICE DOHERTY: Madam Court Officer is not here, and if
16 there's no objection, I'll ask my Associate to help the technical
17 staff to assist her in finding that particular document.

18 THE COURT OFFICER: Your Honour, could you kindly repeat
19 that sentence, the last bit you just said? I didn't hear it.

20 JUSTICE DOHERTY: Mr Court Officer, are you addressing me?

21 THE COURT OFFICER: Yes, your Honour. You said something
22 about documents. I didn't quite get that.

23 JUSTICE DOHERTY: For purposes of record, Madam Court
24 Manager is not here, and I have asked if my Associate can assist
25 in bringing the document before the witness and if there was any
26 objection. No objection has been raised, and therefore she is
27 trying to assist by bringing the document to the witness.

28 THE COURT OFFICER: Thank you, your Honour.

29 JUSTICE DOHERTY: [Indiscernible]

1 ASSOCIATE: Counsel, he has page 18.

2 MR HERBST:

3 Q. Mr Kamara, do you remember that page from the Court
4 proceeding at the end of the day yesterday?

5 A. Yes.

6 Q. And the call - the call on November 13, 2010 at 1.19 p.m.
7 to Mr Bangura's number, 23233810173, you told us that you made
8 that call; do you remember?

9 A. Yes.

10 Q. Why were you calling Mr Bangura at that time?

11 A. I have told you that Mr Bangura was someone I can call at
12 any time that I feel like. I call him in the morning when he's
13 sleeping. I wake him up. Because there are a lot of things that
14 we talk as brothers - as brother and friend.

15 Q. Now, look at page 31 of 39, please.

16 A. Yes.

17 Q. The fourth call from the top is another call to Mr Bangura
18 on November 23, 2010 at around - at 4.50 p.m.; do you see that?

19 A. Yes.

20 Q. Did you make that call? Did you make that call?

21 A. It is Mr Tamba Alex Brima who made this call.

22 Q. How do you know that?

23 A. Because during that time he called me to talk to him.

24 Q. So you have an actual recollection that on November 23,
25 Tamba Brima placed a call and then during the call, called you
26 over and asked you to speak to Mr Bangura?

27 A. Yes, because Mr Brima used to call him.

28 Q. Why did he want you to come over and speak to him?

29 A. Because you know the man is my friend. When he spoke to

1 him, he wanted me to talk to him too.

2 Q. So it's your testimony that you remember speaking to
3 Mr Bangura and that you just discussed normal pleasantries, how
4 you were doing, and how he was doing?

5 A. Yes.

6 Q. And it had nothing to do with contacting witnesses?

7 A. No.

8 Q. And it had nothing to do with a petition for review; that's
9 your testimony?

10 A. No.

11 JUSTICE DOHERTY: Please proceed, Mr Herbst.

12 MR HERBST:

13 Q. Would you look at the page in the - in P-15, the prison
14 log, Mr Kamara, for the date November 23rd, 2010: It's actually
15 the page that starts 22/11/2010 --

16 A. I've not even seen the page yet.

17 MR HERBST: [Indiscernible] for your Honour's benefit,
18 it's one - in the copy that we all have, for the Court's benefit,
19 it's the fifth page in. That's it this page.

20 Q. Mr Kamara, if you have that page in front of you, and you
21 look at the tenth entry down, it reads, "23/11/2010" and it has
22 your name next to that date at that particular line. Do you have
23 that in front of you?

24 A. 23 --

25 Q. 23/11/2000 --

26 A. I have in front of me 27/11 [i ndi scerni bl e].

27 JUSTICE DOHERTY: Mr Herbst, if it's 23rd November log,
28 it's a different page on mine.

29 MR HERBST: Yes. I'm sorry, your Honour. We have the

1 wrong page in the original book. I apologise.

2 JUSTICE DOHERTY: As long as - provided that everyone in
3 Freetown and here knows which document we're looking at, we can
4 proceed.

5 A. Yes, I have it in front of me.

6 Q. You see that line reads "23/11/10 Bazzy Kamara brother
7 19.45", and then it has Mr Bangura's phone number. Do you see
8 that?

9 A. I've seen it.

10 Q. Now, does that refresh your recollection that you
11 [i ndi scerni bl e]?

12 A. Yes, correct. I have recalled now.

13 Q. Do you have any explanation for the fact that the book says
14 19.45, which is 7.45 p.m., whereas, the record reflects the call
15 was made at 4.50 p.m.?

16 A. You are talking about 2010. In 2010 --

17 THE INTERPRETER: Your Honour, I'm not hearing the witness
18 clearly.

19 THE WITNESS: I said [i ndi scerni bl e].

20 MR HERBST:

21 Q. All right. First of all, the name Bazzy Kamara, is that in
22 your handwriting?

23 A. Say that again?

24 Q. The name Bazzy Kamara -

25 I'm sorry, your Honour, I jumped on the interpreter again.

26 I apologise.

27 JUSTICE DOHERTY: Mr Herbst is going to repeat.

28 MR METZGER: Very sorry.

29 MR HERBST:

1 Q. In the second column on that line, Mr Kamara, it has your
2 name Bazzy Kamara; do you see that?

3 A. Yes.

4 Q. You wrote that. You wrote that, did you not?

5 A. I did not - I did not enter the name. I've told you that
6 before.

7 Q. Well, which Court Officer entered that - wrote that - wrote
8 your name in it?

9 A. I think the prison guard would help you with that question,
10 because they keep changing duties, so I cannot tell you the right
11 man on that day. But I signed. After entering everything, I
12 signed.

13 Q. What about the entry just above it, Alex Brima?

14 A. I cannot tell you about that one. That one is Alex Tamba
15 Brima.

16 Q. You've seen Mr Brima write his name, have you not?

17 A. No. On this book, no. I can see the sign; that's all.

18 Q. All right. Now, is it your testimony that the officer
19 wrote "brother" as well right next to it - next to your name?

20 A. I have told you that it was not me. I only signed at the
21 end.

22 Q. Who wrote the word "brother"?

23 THE INTERPRETER: Your Honour, I did not hear the witness
24 clearly.

25 JUSTICE DOHERTY: Mr Kamara, you moved away from the
26 microphone. Please come closer and repeat your answer.

27 THE WITNESS: I told the man - he had asked me the same
28 question, and I told him that the officer does the entry. He
29 writes everything.

1 MR HERBST:

2 Q. Did you tell the Court Officer you were calling your
3 brother?

4 A. Yes, because - yes.

5 THE INTERPRETER: Your Honour, I did not get the witness's
6 complete answer.

7 THE WITNESS: I said, I am used to calling that man my
8 brother.

9 JUSTICE DOHERTY: Mr Kamara, did you hear the question?

10 THE WITNESS: No, your Honour.

11 JUSTICE DOHERTY: And Mr - Mr Herbst, please put the
12 question again.

13 MR HERBST: Yes, your Honour.

14 Q. Mr Kamara, Mr Bangura was not on your approved caller list
15 at that time in November 2010, was he?

16 A. At that time we did not have a call list. It was after
17 September 2011 they asked us to present a call list. Then I gave
18 15 names.

19 MR HERBST: I will ask your Honour that P-13 be placed
20 before the witness.

21 JUSTICE DOHERTY: [Indiscernible].

22 THE COURT OFFICER: [In Kigali] Madam, I can't locate my
23 copy of P-13. Please bear with me.

24 JUSTICE DOHERTY: Has counsel got an unmarked copy?

25 MR HERBST: Yes. That's it. We have it. Thank you,
26 your Honour. Show him the whole thing, and then it will be the
27 third page.

28 Q. Mr Kamara, you have P-13 in front of you?

29 A. Yes.

1 Q. You have to put your microphone --

2 A. Yes.

3 Q. And on the third page of that document, you see your name
4 at the top?

5 A. Yes.

6 Q. And there are a bunch of names there, correct?

7 A. Yes.

8 Q. Now, you were in this Court when Mr Sengabo testified that
9 this list was the approved caller list in November and December
10 of 2010, were you not?

11 A. No, Mr Sengabo did not tell you that. I can explain to you
12 about this list. If you want me to, I can explain to you about
13 this list.

14 Q. Well, okay. Go ahead. Explain.

15 A. Thank you very much.

16 MR NICOL-WILSON: Your Honour --

17 THE WITNESS: When we came in 2009 --

18 MR NICOL-WILSON: Your Honour, I would like to object to
19 the last question put by the independent counsel as a
20 misstatement of - a misquotation of the evidence. Mr Sengabo did
21 not testify to the fact that Exhibit P-13 is the approved list as
22 of November 2010, so I'm objecting to that question.

23 MR HERBST: Your Honour, I beg --

24 JUSTICE DOHERTY: Mr Nicol-Wilson, I have a note of what
25 Sengabo said, and in the light of my own note, I will ask you to
26 direct me to the relevant transcript before I proceed further
27 with your objection.

28 MR NICOL-WILSON: Your Honour, I cannot at this stage, but
29 my recollection is that Mr Sengabo did not testify to that

1 information which the independent counsel has just given to you.
2 That's my recollection. I stand to be guided by the independent
3 counsel. Maybe he will refer to the relevant portion of the
4 transcript to me in rebuttal.

5 JUSTICE DOHERTY: Mr Herbst, can you - you've heard the
6 objection. Please respond.

7 MR HERBST: Your Honour, I can look at my outline. I don't
8 have my copy of the hard copy transcripts with me. But my strong
9 recollection is that Mr Sengabo testified that the relevant times
10 in this case, which were November and December 2010, this was the
11 applicable list. I'll be guided by your Honour's notes or if
12 your Honour permits me, I will take a minute and try to find in
13 my index and my summary whether or not I actually made a note of
14 that. Otherwise, I would have to open my computer and try to
15 find [i ndi scerni bl e].

16 JUSTICE DOHERTY: Neither counsel, understandably, has an
17 exact transcript before me [i ndi scerni bl e]. I likewise do not
18 have an exact transcript in front of me. However, my own notes
19 are this is the Sengabo said this is the updated list you'll see
20 [i ndi scerni bl e] 2010. This was the list, in fact, in November
21 2010. Those are my notes. In many ways not a great deal turns
22 on the exact wording because the witness has challenged the
23 record, and he has been invited to explain his challenge. For
24 that reason, I do not see that Mr Bangura is prejudiced if, in
25 fact, there is not an exact quotation of the evidence. I will
26 allow Mr Kamara to answer the question.

27 Mr Kamara, you said in your evidence, "I can explain this."
28 You're invited to make your explanation. Please do so now.

29 THE WITNESS: Yes, your Honour.

1 THE INTERPRETER: Your Honour, I can't hear what he's
2 sayi ng.

3 THE WITNESS: I said when we were leaving Freetown in 2009,
4 it was the Special Court that did this list for all of us, our
5 family members. You will find out that when you look in my
6 column, there are some names and numbers here. Since I came, I
7 have not had contact with those people because this is the
8 Special Court's telephone record that they used. They said
9 immediate family - that we're allowed immediate family. If you
10 go through all of the names for the prisoners - of the prisoners,
11 you won't find any extra family member: Girl friend, boyfriend,
12 wives, sister, brother, son, daughter. So this is from the
13 Special Court and not the original list from Mpanga Prison. At
14 this time that the Special Court asked us to make a list - I'm
15 sorry, the detention, it was during this latter part, this
16 September of 2011. So this list, if Mr Sengabo tells you that
17 this was the approved list, then he would have told you lies.

18 Q. First of all, Mr Kamara, if you look at the previous page
19 under Mr Kanu's list in P-13, if you take a look at the previous
20 page.

21 A. Yes.

22 Q. You'll see that at the end of his list there's a Mrs Scott,
23 who is listed as a friend; can you see that?

24 A. Yes, I've seen it. It's girl friend.

25 Q. All right. But in any event, your testimony is this was
26 not an approved list, and Mr Sengabo was mistaken in his
27 testimony; is that right?

28 A. I have answered that Mr Sengabo lied to you. This is not -
29 this is not the approved list from Mpanga Prison.

1 Q. You would agree with me, looking again at your list, that
2 neither Mr Kargbo nor Mr Bangura, nor Keh-For-Keh, is on the
3 list; correct?

4 A. Yes.

5 Q. And would you agree with me - will you agree with me that
6 the procedures at the prison were such that you could essentially
7 call anyone you wanted, whether he was on the list or not on the
8 list?

9 A. Yes, when we just came, that was what used to obtain when
10 we just came.

11 Q. I'm sorry, your Honour. I couldn't make out the
12 translation?

13 MR METZGER: "When we first came, that was what used to
14 obtain. "

15 JUSTICE DOHERTY: Mr Interpreter, I didn't hear it clearly
16 either.

17 THE WITNESS: I said, when we just came - when we just
18 came, we'll tell the officer and he would dial the number. We'll
19 tell them everything, and they would enter it in the book. That
20 was all.

21 MR HERBST:

22 Q. Okay, that was not my question. Let me ask it again.
23 Isn't it true that at the time you were making these calls to
24 Mr Bangura in November and December 2010, the procedures at the
25 prison were such that you could call anyone you wanted whether or
26 not they were on the approved list?

27 A. I have told you, we did not have an approved list. We did
28 not have a list at that time. The authorities --

29 Q. So let me ask it this way: Isn't it true that procedures

1 at the prison at the time were such that you can essentially call
2 anyone you wished?

3 MR SERRY-KAMAL: My Lord, the witness has answered that
4 question before.

5 JUSTICE DOHERTY: I haven't heard that answer,
6 Mr Serry-Kamal. The answer I heard was there was no approved
7 list. I want a clear answer to that question.

8 MR SERRY-KAMAL: Because he said at first when we went -
9 before that he said, at first when we went to Mpanga Prison, we
10 could call anybody. It was what he said before that.

11 MR HERBST: I think he said, that but that didn't come out
12 in the official translation. That's why I'm pressing the
13 question.

14 JUSTICE DOHERTY: What I have noted was that he said, we
15 say to the officer, "dial the number" and he - I will allow the
16 question because we must have it clearly in Court and give the
17 witness an opportunity to state it. Put the question, please.

18 MR HERBST:

19 Q. Mr Kamara, isn't it true that at the time you were making
20 calls in November and December 2010, the procedures at the prison
21 were such that you could essentially call whomever you wished?

22 A. Yes, you could call any number. You will tell the officer
23 to call that number, and he will call it.

24 Q. And isn't it also true that anybody could call you - could
25 call that prison cell phone and ask to be - for the phone to be
26 given to you?

27 A. They received calls. Calls used to come in.

28 JUSTICE DOHERTY: Mr Kamara, that doesn't exactly answer
29 the question. The question was: Could anybody call you?

1 THE WITNESS: Yes, your Honour, my family used to call me.
2 They would call me and I'll receive calls.

3 MR HERBST:

4 Q. Mr Kamara, you also received calls from other than family;
5 isn't that correct?

6 A. Girl friends, we regard them as families. All of them used
7 to call me.

8 Q. When Mr Bangura called you he wasn't family, right?

9 MR NICOL-WILSON: Objection, your Honour.

10 JUSTICE DOHERTY: Yes, Mr Nicol-Wilson.

11 MR NICOL-WILSON: Your Honour, the witness stated yesterday
12 that at no time did Mr Bangura call him in Rwanda. On the
13 contrary, he used to call Mr Bangura.

14 JUSTICE DOHERTY: Mr Herbst, you've heard the objection.
15 The question cannot be put in its present form [indiscernible].

16 MR HERBST: Your Honour, I don't have a recollection one
17 way or another.

18 MR SERRY-KAMAL: That's what he said.

19 JUSTICE DOHERTY: I do recall that.

20 MR METZGER: So do I.

21 MR HERBST:

22 Q. My question though, Mr Bangura, was: The prison staff - if
23 someone called you and asked to speak to you on the prison cell
24 phone, the prison staff would not ask at this time in November or
25 December of 2010 if the person was on the approved list. He
26 would just - the prison officer would just bring you the phone;
27 isn't that correct?

28 MR SERRY-KAMAL: Your Honour, I object to this question.

29 The witness has said time and again that the list which is

1 Exhibit P-13 was prepared by the Special Court. And at the time
2 they went there, there was no limit on what person to call or
3 what person not to call. You could call anybody and anybody
4 could call you.

5 JUSTICE DOHERTY: This is the distinction that concerns me,
6 Mr Serry-Kamal. I see a distinction in the evidence that they
7 could call anyone. We are now looking at any incoming call. In
8 other words, as I see it, were the incoming calls vetted. That,
9 I consider, is a question that counsel is entitled to ask on
10 cross-examination.

11 MR SERRY-KAMAL: Not to this witness. Not to this witness.
12 How could he know what they said, it's not --

13 MR HERBST:

14 Q. Mr Kamara, it's true, is it not, that the incoming calls
15 were not screened by the prison staff?

16 MR SERRY-KAMAL: Let me - again he's been asked to give an
17 opinion about cause. Let him be specific about the calls to
18 Mr Kamara. If he's specific about Mr Kamara, then I will not
19 object.

20 JUSTICE DOHERTY: Very well. It must be put specifically
21 in relation to this witness as a recipient of calls rather than
22 generally.

23 MR HERBST: Your Honour, could I just reply by saying that
24 I think a question about general procedure would be appropriate
25 for this witness since he is one of ten or eleven --

26 JUSTICE DOHERTY: I don't agree, Mr Herbst, because he only
27 knows what's within his knowledge. He's not - I cannot rely on
28 him giving opinion evidence as to how the prison administered
29 other persons.

1 MR HERBST:

2 Q. So I'll put the question this way to you, Mr Kamara: Isn't
3 it true that when you got an incoming call - when you got an
4 incoming call and someone asked to speak to you, the phone would
5 be brought to you without any inquiry by the prison staff as to
6 who the person was or whether the person was authorised to call
7 you?

8 A. Say that again?

9 Q. Isn't it true that when a person called the prison cell
10 phone number for you and asked for you, the prison staff would
11 bring you the phone without questioning whether the person
12 calling was approved or authorised to speak to you?

13 A. Let me make one thing clear for you to understand.

14 [Technical difficulties]

15 THE INTERPRETER: No, your Honour. I was waiting for a
16 continuation of the witness's answer.

17 JUSTICE DOHERTY: Mr Kamara, please pick up where you were
18 saying when the phone rings and continue with your answer.

19 THE WITNESS: Yes, your Honour.

20 THE COURT OFFICER: Your Honour, we can't hear Kigali at
21 all. We have lost sound from Kigali. I'm not sure if you can
22 hear us, but we can't hear you certainly.

23 [Technical difficulties]

24 JUSTICE DOHERTY: We'll just have to rectify that, please,
25 if we can.

26 THE COURT OFFICER: We are beginning to hear sound already.
27 We got some sound just a moment ago, so maybe if somebody can
28 speak from the courtroom there.

29 JUSTICE DOHERTY: [Indiscernible]

1 THE COURT OFFICER: It's breaking in. There is static,
2 that much I can say. There is static.

3 JUSTICE DOHERTY: We'll pause until it is [indiscernible].

4 MR DAVIES: Thomas Alpha, can you hear me loud and clear?

5 THE COURT OFFICER: Clear, but not very loud.

6 MR DAVIES: Okay. What about now?

7 THE COURT OFFICER: Yes, I can hear you now. It's loud,
8 it's clear.

9 MR DAVIES: Okay. Thank you.

10 JUSTICE DOHERTY: Yes. Mr Kamara, please try again, and I
11 will then ask Mr Interpreter if he hears you. Please continue.

12 THE INTERPRETER: I still can't hear him, your Honour.

13 THE WITNESS: Your Honour, can I try again? When the phone
14 rings, the mobile phone, the officer on duty for that day would
15 hold the phone and look for anyone of the eight of us. Then he
16 would hand over the phone to us because he does not speak Krio,
17 and he does not speak English. So then he would call one of us
18 and hand the phone over to us to speak to the person. Then I
19 would ask the person, "Who do you want to talk to?" If he said
20 he wanted to talk to Mr Kanu, for example, I would say, "Hold on
21 for one minute", for me to give it to Mr Kanu or call Mr Kanu.
22 So that's how we used to operate at that time.

23 MR HERBST:

24 Q. Okay, Mr Kamara, the next call to Mr Bangura is on page 34
25 of 39. Would you look at that page, please.

26 A. Yes, I have it in front of me.

27 Q. Okay. And on the second page of that - second line of that
28 page, there's a call to Mr Bangura's phone on November 26 at 5.17
29 p.m.; do you see that?

1 A. Yes.

2 Q. Did you make that call?

3 A. Well, I don't recall making this call, because Mr Bangura's
4 number, it's either me or Mr Kanu. It's either me or Mr Brima.
5 We were the only ones who would call.

6 MR METZGER: Your Honour, I would like that again. Hearing
7 it in the original, I heard something different from what was
8 translated. I heard the word "especially".

9 JUSTICE DOHERTY: Mr Kamara, please repeat your answer.
10 The official interpretation will be given.

11 THE WITNESS: I said --

12 THE COURT OFFICER: We have lost the sound. We can't hear
13 anything from Kigali.

14 [Technical difficulties]

15 THE COURT OFFICER: Okay. The sound is back. The sound is
16 back, but there still appears to be some breaking sound.

17 MR DAVIES: Mr Thomas Alpha, are you getting me now?

18 THE COURT OFFICER: Yes, Mr Davies. I can hear you now.

19 MR DAVIES: Thank you.

20 JUSTICE DOHERTY: Mr Kamara, please repeat your answer and
21 [indiscernible].

22 THE WITNESS: I have seen the number.

23 MR HERBST: Your Honour, I would like to, I guess,
24 interpose a mild protest as to the issue on the translation here,
25 because what happened here - even I could hear it. The initial
26 answer was to the effect that any of the three of us could have
27 made the call, and he specifically mentioned the three names
28 himself, Mr Brima, and Mr Kanu could have made it, and then he
29 added something like it's more likely, or more often, something

1 Like that, in this case Brima. Then there was an interjection
2 about the translation by counsel, and then Mr Kamara began
3 answering the question again and did not [i ndi scerni bl e]. So my
4 concern is --

5 MR METZGER: And that wasn't translated.

6 MR HERBST: I understand. But my concern is we have an
7 official interpreter. And I understand the complications that
8 we're [i ndi scerni bl e] and I understand counsel are
9 [i ndi scerni bl e] concerned too, but my concern is when there's an
10 objection like that, it does have an effect on the witness
11 possibly prompting the witness completely without any intent on
12 the part of counsel, I understand. So I would ask that even if
13 counsel has some concern about the translation, the official
14 interpretation be the one that sits.

15 JUSTICE DOHERTY: I believe the official interpretation is
16 the one that sits. Occasionally, we entertain [i ndi scerni bl e]
17 either an accused or a co-accused [i ndi scerni bl e] and this is one
18 of the very few times when I have asked it to be repeated because
19 given the static, et cetera, Mr Interpreter may not have heard
20 something. So for that very limited reason in this particular
21 instance [i ndi scerni bl e]. Normally I do not. So I'm not sure
22 where we are at the moment. I know I have just taken a note, and
23 my note is Mr Bangura [i ndi scerni bl e].

24 Mr Kamara, yes.

25 THE WITNESS: Your Honour, I haven't said Mr Bangura used
26 to call Mr --

27 THE COURT OFFICER: Kelson, can you hear them?

28 THE INTERPRETER: He's breaking in. I can't hear him
29 clearly.

1 THE COURT OFFICER: We've lost sound. Mr Interpreter is
2 not hearing, your Honour.

3 [Technical difficulties]

4 MR METZGER: Your Honour, might I make an observation
5 whilst Mr Kamara is [indiscernible]. I do regret if my
6 interjection caused any concern. The difficulty is that I know
7 that these proceedings are recorded, but because of the technical
8 problems, I don't know whether what I hear and what we hear is
9 being recorded here and will ever be listened to by anybody
10 except by a specific request. Because then it's clear. I think
11 Mr Herbst heard and what I heard as well and your Honour did.
12 Because the interpreter couldn't hear it, he couldn't translated
13 it. So we're getting some stilted evidence because of that.

14 MR HERBST: Just in brief reply, I don't think we're
15 getting stilted evidence to the extent - because I heard the
16 translation as well as the original [indiscernible]. I don't
17 think we're getting stilted evidence. What we're getting I think
18 is evidence, it's just it's coming in with difficulty.

19 JUSTICE DOHERTY: Let us get - I'm now wanting to ensure
20 that we all know where we are with the last answer. The last
21 answer was that Brima or Kamara wished to call Bangura. Now, is
22 that the answer which each counsel and Mr Interpreter heard.

23 Mr Interpreter, is that the answer on record?

24 Mr Interpreter, can you hear me?

25 THE INTERPRETER: I can hear you faintly, your Honour.

26 JUSTICE DOHERTY: Have you completed the interpretation of
27 the last answer stated by the witness.

28 THE INTERPRETER: What I heard, yes.

29 JUSTICE DOHERTY: Mr Interpreter, are you speaking or have

1 we lost you?

2 THE INTERPRETER: Yes, I am speaking. I said I have
3 interpreted what I heard.

4 JUSTICE DOHERTY: [Indiscernible]. Next question,
5 Mr Herbst.

6 MR HERBST: Thank you, your Honour.

7 Q. Now, with respect to this November 26th call on page 34 of
8 39, I would like you to look at the corresponding page of the
9 log, that is, P-15 and see if that log assists you in determining
10 who made the call.

11 MR HERBST: If I could ask for the assistance of the Court
12 Officer. For the Court's benefit, it's the seventh page in. It
13 starts with two entries on the 25th, and then it goes to the
14 26th.

15 Q. Mr Kamara, if you have that page in front of you, you will
16 see that you're recorded at 16.50 having called your mother,
17 which is 4.50 in the afternoon; do you see that?

18 A. Mr Prosecutor, I have told you that I do not do the
19 recording. I only sign.

20 Q. Maybe I have not made myself clear. The book - whoever
21 recorded the entry, the book recorded you as having spoken to
22 your mother - having called your mother at 16.50, or 4.50 p.m.;
23 do you see that?

24 A. Yes. Yes, I've seen my mother's number.

25 Q. And immediately above that, there's an entry for Mr Kanu
26 that does not have a time; do you see that?

27 A. I've seen it, but I'm not concerned with Mr Kanu. I'm
28 concerned with Mr Bazzy.

29 Q. I understand, Mr Kamara. But I'm asking you if you see

1 that there's an earlier entry which is untimed. It doesn't have
2 seem; do you see that?

3 A. Yes.

4 Q. And the earlier time - the earlier time entry has to do
5 with Mr Sesay at 14.14, which is 2.14 p.m.; do you see that?

6 A. Yes.

7 Q. So this call to Mr Bangura that's reflected in the MTN
8 records as having occurred at 3.05 p.m., that call is not
9 recorded in the book; is that right? That number does not appear
10 anywhere on this page; isn't that right?

11 THE INTERPRETER: Your Honour, can he repeat his answer
12 slowly.

13 THE WITNESS: I said - I said --

14 THE INTERPRETER: I have lost him.

15 THE WITNESS: I said --

16 MR HERBST: I didn't understand the interpreter's answer.
17 I apologise.

18 JUSTICE DOHERTY: There was static so it was difficult to
19 hear.

20 Mr Interpreter, can you hear us.

21 THE INTERPRETER: Yes, I can hear you, your Honour.

22 JUSTICE DOHERTY: I could ask Mr Kamara to speak again,
23 because there was a lot of noise as you spoke.

24 Mr Kamara, please repeat.

25 THE WITNESS: Sure, your Honour, I will. I said I was not
26 doing the recording. That's not my problem. I only signed. So
27 if that man's number does not appear, that's not my problem.

28 MR HERBST:

29 Q. Well, do you have any explanation for how a call was made

1 and not recorded in the logbook?

2 MR SERRY-KAMAL: Objection. I don't think the witness can
3 be asked to answer that question. He has categorically said on a
4 number of occasions that he does not make the entries. His duty
5 is to sign.

6 JUSTICE DOHERTY: He's asked if he can explain that. He is
7 entitled to offer an explanation if he has one. I will allow the
8 question.

9 MR SERRY-KAMAL: [Indiscernible] Your Lordship's order but
10 I would have thought that question also should have been put to
11 Mr Sengabo.

12 JUSTICE DOHERTY: Repeat the question.

13 MR HERBST:

14 Q. Mr Kamara, can you explain how it happened that a call to
15 Mr Bangura was made by either you or Mr Brima or Mr Kanu without
16 [overlapping microphones] --

17 MR METZGER: Objection in relation to Kanu not to be
18 included in the question. He can't answer for Mr Kanu.

19 JUSTICE DOHERTY: Put it in a wider - a more general term.

20 MR HERBST:

21 Q. Mr Kamara, can you - do you have an explanation for why a
22 call was apparently made to Mr Bangura that lasted for 291
23 seconds or almost five minutes and was not recorded at all in the
24 logbook?

25 A. Yes.

26 Q. What is that explanation?

27 THE INTERPRETER: Your Honour, I did not get the witness's
28 answer.

29 THE WITNESS: I said --

1 JUSTICE DOHERTY: [Indiscernible] Mr Kamara.

2 THE WITNESS: I said, when you give the officer the number,
3 he dials it. So it's the officer's duty. After you would have
4 spoken, you give him back the phone. Then he would enter all the
5 numbers in the phone and the times, then you would sign. That's
6 all.

7 JUSTICE DOHERTY: Proceed.

8 MR HERBST:

9 Q. I put it to you, Mr Kamara, that in the calls on November
10 23rd and November 26th you were discussing with Mr Bangura your
11 petition for a review and his assisting you in contacting
12 witnesses to support your review. What's your response to that?

13 A. I am putting it to you too that Mr Bangura --

14 THE COURT OFFICER: We have lost the sound again,
15 your Honour. The sound is back.

16 JUSTICE DOHERTY: Thank you, Mr Court Officer.

17 Mr Herbst, please proceed.

18 MR HERBST:

19 Q. Now, Mr Kamara, I would like you to turn to the last page
20 of this exhibit, which is page 10 of 10?

21 MR NICOL-WILSON: Your Honour --

22 MR HERBST: That has calls on December 7 --

23 MR NICOL-WILSON: Your Honour, the answer to the last
24 question put by the independent counsel did not come through, the
25 answer by the witness.

26 JUSTICE DOHERTY: Oh, I see. Well, in that case I will ask
27 it to be repeated so that you can hear it, Mr Nicol-Wilson.

28 Mr Witness, Mr Kamara, your answer was not heard in
29 Freetown. Please repeat your answer, and if you need the

1 question, I will ask it to be repeated.

2 THE WITNESS: I said --

3 THE COURT OFFICER: It still did not come through,
4 your Honour.

5 THE WITNESS: I said I never spoke to Mr Bangura to meet
6 anybody to change his statement or this language that you have in
7 this Court to recant.

8 MR HERBST: May I proceed, your Honour?

9 JUSTICE DOHERTY: Yes.

10 MR HERBST:

11 Q. Would you look at the last page of Exhibit P-14, which is
12 page 10 of 10. Do you have that page before you, Mr Kamara?

13 A. The transcript, or this one? What page? 39 of 39?

14 Q. 10 of 10.

15 [Confirmation of exhibit]

16 THE COURT OFFICER: Your Honour, 10 of 10 is supposed to be
17 P-14, if that assists the Court.

18 JUSTICE DOHERTY: Thank you, Mr Court Officer. I have it
19 before me [indiscernible]. Counsel is just checking theirs
20 [indiscernible].

21 MR HERBST: Thank you, your Honour.

22 Q. Mr Kamara, on the third line there's a call to Mr Bangura,
23 right?

24 A. Yes, I can see that.

25 Q. And that's at -- and that's at December 7 at 4.02 p.m.,
26 right?

27 A. Yes.

28 Q. For 370 or a little more than 6 minutes, right?

29 A. Yes.

1 Q. Did you make that call?

2 A. I don't recall. It's too long. Since 2010 to now, I can't
3 remember.

4 Q. All right. Now, immediately below that there's another
5 call to Mr Kargbo; is that right?

6 A. I can see that here. I can see Mr Kargbo's number next.

7 Q. [Indiscernible] p.m., correct?

8 A. Sorry?

9 Q. The time of that call was 4.13?

10 A. Yes, 4.13. 4.13.

11 Q. Did you make that call, Mr Kamara?

12 A. No. No.

13 Q. Did Mr Brima make that call?

14 A. I don't know about Mr Brima.

15 Q. Did Mr Brima make that call?

16 A. I don't know about Mr Kanu.

17 Q. I put it to you that the calls to Mr Bangura and Mr Kargbo
18 in succession were made pursuant to your attempt to have them
19 contact and continue to contact 334 to assist you. What do you
20 say to that?

21 A. You're lying about me. It's a lie.

22 THE INTERPRETER: Your Honour, the line is breaking. I did
23 not hear all of his answer.

24 JUSTICE DOHERTY: Mr Kamara, you spoke too quickly. Please
25 answer again and --

26 THE WITNESS: Yes, I'll go slowly. I was just telling --

27 THE INTERPRETER: Again, I can't hear his entire answer.
28 He's breaking in.

29 JUSTICE DOHERTY: Unfortunately, your line is also breaking

1 up, Mr Interpreter. So we'll try again from the beginning.

2 Mr Witness, please repeat the last part of your answer.

3 MR SERRY-KAMAL: Mr Witness, your attention.

4 THE WITNESS: I said --

5 THE COURT OFFICER: Your Honour, we still did not get that.
6 We didn't get the interpretation at all.

7 JUSTICE DOHERTY: Please repeat, Mr Herbst.

8 MR HERBST:

9 Q. Mr Kamara, Mr Bangura has submitted a statement of his in
10 this case. Have you seen it?

11 A. You should show it to me.

12 MR HERBST: Your Honour, I had made a duplicate copy of it,
13 but I cannot seem to put my hands on it. So if the Court Officer
14 would be kind enough to print out. I apologize.

15 THE COURT OFFICER: [In Kigali] Mr Herbst, is this what
16 we're looking for?

17 MR HERBST: It is indeed. Thank you. Just for the Court's
18 understanding, [indiscernible] Mr Bangura that is attached to the
19 pre-trial --

20 MR METZGER: I can hardly hear you, Mr Herbst.

21 JUSTICE DOHERTY: Proceed, Mr Herbst.

22 MR HERBST: Thank you, your Honour.

23 Q. Mr Kamara, if you look at the second page of that witness
24 statement, in the lower half of that second page there's a
25 heading called the accusations?

26 A. Yes.

27 Q. The first paragraph of the statement says, "One day Bazy
28 called me on my mobile phone and said he wants to talk to Samuel
29 Kargbo." Do you see that?

1 A. Yes.

2 Q. I put it to you - well, did that happen? Did you call your
3 friend Mr Bangura on his mobile phone and ask him - or say that
4 you wanted to talk to Mr Kargbo?

5 A. It never happened. I never did that. I never - I never
6 told him that I wanted to talk to Samuel Kargbo, no.

7 Q. Mr Bangura further says in the statement that at your
8 request that I just mentioned, that he handed over his phone to
9 Mr Kargbo, who was with him, and that you spoke to Mr Kargbo for
10 about ten minutes. Do you see that in the statement?

11 A. Yes.

12 Q. Did that happen?

13 A. No.

14 Q. Mr Bangura further goes on to say that he heard Mr Kargbo
15 give his mobile phone number to you while talking to you on his
16 phone. Do you see that?

17 A. I've seen it. Yes, I've seen it.

18 Q. And your testimony is that that never happened?

19 A. Never. Never.

20 Q. Now, you're still good friends with Mr Bangura, are you
21 not?

22 A. Yes.

23 Q. Do you know of any reason why Mr Bangura would lie about
24 you?

25 A. Mr Bangura is my friend. I'm surprised to see this type of
26 statement that he made, because I never spoke to him about
27 talking to Sammy Ragga. I never did.

28 Q. Well, now in your direct testimony - well, withdrawn. I'll
29 put another question first. Mr Bangura in his statement in the

1 next paragraph goes on to say that after some time, you called
2 him and asked him if he knew a lawyer Mansaray. Do you see that?

3 A. Yes, I've seen it.

4 Q. Did you call Mr Bangura and ask him if he knew Mr Mansaray?

5 A. No. No, because Mr Mansaray, he never defended me.

6 Q. And Mr Bangura goes on in his statement to say that when
7 you asked him if he knew Mr Mansaray, he said no. And then he
8 says that you directed him to Mr Mansaray's office. Do you see
9 that?

10 A. Yes.

11 Q. And did that happen?

12 A. No, I don't know Mr Mansaray's office. I've never known
13 it.

14 Q. Mr Bangura goes on to say that you gave him Mr Mansaray's
15 office address and mobile phone number. Do you see that?

16 A. Yes.

17 Q. Did that happen?

18 A. No, I don't know --

19 THE INTERPRETER: Your Honour, can he take this answer
20 again more slowly.

21 THE WITNESS: No, I don't know Mr Mansaray's address or his
22 telephone number.

23 MR HERBST:

24 Q. Mr Bangura goes on to say in his statement that you told
25 him that he should take Mr Kargbo to Mr Mansaray's office along
26 with him. Do you see that?

27 A. Yes, I've seen it.

28 Q. Did that happen?

29 A. No. No.

1 Q. Mr Bangura goes on to say that he accepted, meaning that he
2 agreed to do what you had asked him to do. Do you see that?

3 A. I've seen it. I have seen it.

4 Q. Your testimony under oath here is that he never agreed to
5 do that because you never asked him to do it?

6 A. I have told you I never, ever sent Mr Bangura or - to
7 Mr Mansaray when Mr Mansaray is not my lawyer, and Mr Mansaray
8 never defended me, so why should I send someone to Mr Mansaray?
9 I already sent to Pa Momoh.

10 MR SERRY-KAMAL: Witness --

11 JUSTICE DOHERTY: Mr Interpreter, are you hearing this
12 [i ndi scerni bl e].

13 THE INTERPRETER: Yes, and I'm interpreting his answer.
14 Say that again, your Honour.

15 JUSTICE DOHERTY: Mr Interpreter, are you receiving us?

16 THE INTERPRETER: Yes, I am, and I'm interpreting witness's
17 answer.

18 JUSTICE DOHERTY: I did say we would have a break at some
19 point in the afternoon, and this appears to be a good time to
20 have it and allow the technicians to do their job. We'll take a
21 15-minute break.

22 [The Court adjourn at 2.26 p.m.]

23 [Upon resuming at 2.50 p.m.]

24 JUSTICE DOHERTY: [I ndi scerni bl e].

25 MR SERRY-KAMAL: Yes, your Honour, I just want to guided
26 about the status of that document which Mr Herbst is putting to
27 the witness. Because I believe that it was filed, but it was
28 filed as an annex to the pre-trial brief, which is not evidence
29 in these proceedings, and, not only that, it's not under oath; it

1 was just filed. And I believe at the beginning your Honour was
2 at pains to find out what was the purpose of that document --

3 MR HERBST: Your Honour, there's so much static on the line
4 I'm having trouble hearing even Mr Serry-Kamal, so I apologise.
5 I think I got the drift of what he said.

6 MR METZGER: I think [i ndi scerni bl e] Freetown
7 [i ndi scerni bl e].

8 JUSTICE DOHERTY: Freetown, can you hear me?

9 THE COURT OFFICER: I can hear you, your Honour, and I did
10 hear Mr Serry-Kamal .

11 JUSTICE DOHERTY: Can I just check that Mr Nicol -Wilson has
12 heard Mr Serry-Kamal? Because it's important that he hears us.

13 THE COURT OFFICER: Mr Nicol -Wilson is shaking hi s head
14 that he didn' t hear that.

15 MR HERBST: Di d not?

16 THE COURT OFFICER: He di d not hear Mr Serry-Kamal . He di d
17 not.

18 JUSTICE DOHERTY: I would therefore ask Mr Serry-Kamal to
19 recommence hi s obj ecti on i n order that Mr Nicol -Wi lson mi ght
20 respond.

21 Please proceed again, Mr Serry-Kamal , by stati ng your
22 obj ecti on.

23 MR SERRY-KAMAL: My obj ecti on to the Prosecu tor conti nu ing
24 to cross-examine on that document is that that was - that is
25 meant to be an unsworn statement which was annexed to the
26 pre-trial brief, which is not evidence i n thi s case.

27 Now, quite apart from that, it is the normal practice when
28 a witness - sorry, when an accused makes an unsworn statement, he
29 is not cross-examined on that statement; nei ther is a co-accused

1 cross-examined on that statement.

2 But it seems to me that in these proceedings, an unsworn
3 statement is being put to another accused person. An unsworn
4 statement made by one accused is being put to another accused
5 person, and the unsworn statement is not evidence before the
6 Court.

7 JUSTICE DOHERTY: Mr Nicol-Wilson, you've heard
8 Mr Serry-Kamal address the Court on the status of your
9 [overlapping speakers] --

10 MR NICOL-WILSON: Yes, your Honour [overlapping
11 speakers] --

12 JUSTICE DOHERTY: [Overlapping speakers].

13 MR NICOL-WILSON: -- I think the appropriate person to
14 respond is the independent counsel, who is putting the statement
15 to the witness. He is the appropriate person to respond to
16 Mr Serry-Kamal's objection.

17 JUSTICE DOHERTY: Before I do that, I was intending, of
18 course, to ask him to respond. I was intending to ask him to
19 respond. But since the document is yours and an objection has
20 been raised to its status as an unsworn statement, I'm inviting
21 you to respond should you so wish. If you do not wish to
22 respond, I would merely acknowledge that the status of the
23 document --

24 MR NICOL-WILSON: Your Honour, it is an unsworn statement,
25 and I think Mr Serry-Kamal is correct.

26 CHIEF TAKU: Your Honour, with leave of the Court, I think
27 - if I may contribute to this important point of law. When --

28 JUSTICE DOHERTY: Just a moment. Chief Taku, one moment.
29 Mr Serry-Kamal made at least two points, and I wish to know which

1 one that Mr Nicol-Wilson is referring to, and then I will invite
2 you to speak.

3 MR NICOL-WILSON: Your Honour, if I just make myself more
4 clear.

5 I am in support of Mr Serry-Kamal's objection that since
6 this statement is an unsworn statement, it cannot be put to the
7 witness during cross-examination because the witness is not the
8 author of this statement, and so questions cannot be put to the
9 witness on the content of this statement.

10 So I'm in support of Mr Serry-Kamal's objection that the
11 independent counsel should not have, and should refrain from,
12 putting further questions to the witness based on an unsworn
13 statement made by Mr Bangura.

14 JUSTICE DOHERTY: Just a moment, please. Both
15 Mr Serry-Kamal and Mr Nicol-Wilson, can you indicate to me any
16 precedent or Rule of the Special Court to support your
17 submissions?

18 MR SERRY-KAMAL: I would ask for a few minutes to be
19 allowed to quote from the Criminal Practice.

20 MR HERBST: I'm sorry, your Honour, I didn't fully hear or
21 understand what Mr Serry-Kamal just responded to.

22 JUSTICE DOHERTY: He asked for two minutes to look at his
23 Criminal Practice. It's surprising, since he moves the objection
24 [i ndi scerni bl e].

25 THE COURT OFFICER: [In Kigali] Madam, can the technicians
26 take the opportunity while the point is being looked for to
27 reboot the system? They would like to reboot the system.
28 Thank you.

29 [Video link disconnected]

1 [Video link restored]

2 MR NICOL-WILSON: Your Honour --

3 JUSTICE DOHERTY: Mr Nicol-Wilson, you may address the
4 Court [i ndi scerni bl e].

5 MR NICOL-WILSON: Your Honour, I have looked at the text on
6 International Criminal Evidence by Richard May and Marieke
7 Wierda. It's the 1st edition. It appears to give a guide on
8 this issue, which apparently, I think, is a mute point in
9 international criminal practice, because it basically talks about
10 evidence before an international tribunal.

11 I think, your Honour, I would submit that this statement
12 does not amount to evidence in these proceedings, and it can only
13 be referred to if Mr Bangura is in the witness box and cannot be
14 used against Mr Kamara because it does not amount to evidence.

15 JUSTICE DOHERTY: Where does it say that? I don't have a
16 May and Wierda in front of me.

17 MR NICOL-WILSON: It's page --

18 JUSTICE DOHERTY: [Overlapping speakers].

19 MR NICOL-WILSON: It's page 172 of May and Marieke. The
20 difference between the provisions of 172 and this particular
21 situation is that it talks about evidence, and in this case I
22 will submit that this statement does not amount to evidence in
23 these proceedings in the same way as the Prosecutor's pre-trial
24 brief does not amount to evidence in these proceedings.

25 JUSTICE DOHERTY: And what document are the authors
26 referring to when they say "it is this statement"? What are they
27 talking about?

28 MR NICOL-WILSON: They cited the Kordic case, which says
29 accomplice evidence admissible subject to caution. It talks

1 about oral testimonies made during proceedings in Court.

2 JUSTICE DOHERTY: [Indiscernible].

3 MR NICOL-WILSON: Your Honour, the fundamental difference
4 is we have to come to a determination firstly as to whether this
5 statement amounts to evidence in these proceedings, and I would
6 submit it is not, because it's merely an annex to the Defence
7 pre-trial brief in the same way that the Prosecution's pre-trial
8 brief does not amount to evidence in these proceedings.

9 Also this statement can only be put to Mr Bangura if he
10 comes to the witness box. That is why your Honour rightly stated
11 when we recommenced these proceedings that you will not deal with
12 the issue of weight at this stage - what weight does that
13 statement have, and I was also thinking about addressing that
14 issue during the closing arguments; not at this stage.

15 At this stage I think it's improper for that statement to
16 be put to Mr Kamara and for questions to be asked relying on that
17 statement, because Mr Kamara is not the author of that statement.

18 MR SERRY-KAMAL: And I will refer, My Lady, to Blackstone's
19 Criminal Practice, 2008 edition at page 2345 under the
20 [indiscernible] F10 which deals with giving evidence from the
21 witness box. And it refers to the criminal evidence at 1898,
22 section 14, which provides that every person charged in criminal
23 proceedings who is called as a witness in proceedings shall not,
24 otherwise - unless otherwise ordered by the Court, give evidence
25 from the witness box or other place from which other witnesses
26 give their evidence.

27 This document was not tendered in Court by an accused who
28 gave evidence and tendered it, so it is not evidence in these
29 proceedings. With respect, it's an unsworn statement which

1 cannot be used. It's an error to allow it to be used, and I so
2 urge this Court that rule that, being an unsworn statement it is
3 not evidence, and therefore the Prosecutor cannot put it to the
4 witness.

5 JUSTICE DOHERTY: Chief Taku, you wished to say something
6 [i ndi scerni bl e]. I would now ask you to do so.

7 CHIEF TAKU: Thank you, your Honour. I feel compelled to
8 make my observations before the Court on this issue because the
9 area in which these questions were asked are of interest to my
10 clients with regard to the overall assessment of his credibility
11 and demeanour before the Court.

12 The submissions made by my learned colleague Mr Melron
13 creates another ambiguity here, because only yesterday when he
14 submitted that his client had elected not to testify in his own
15 Defence, he also submitted that he was relying on this
16 confidential statement that was annexed to his pre-Defence brief.

17 That application has not been withdrawn to the extent that
18 he had applied to rely on that confidential statement that was
19 annexed to his pre-Defence brief, and to the extent that
20 Mr Serry-Kamal did not object to that application at the
21 appropriate moment, I find it curious that today they can now
22 urge the Court to disregard a statement on which it had applied
23 to rely on without objection from any of the parties, without
24 objection from the Prosecutor, without objection from
25 Mr Serry-Kamal or from any of the co-accused in this case.

26 Besides, your Honour, if the statement was unsworn and the
27 statement was - if the statement is deemed to be unsworn and
28 never tried, what is material here is not the admissibility of
29 questions relating to that particular statement. What I want to

1 address the Court is the matter of relevance and probative value
2 that the Court may attach to it. And I think that the rules of
3 all international criminal tribunals, the Special Court for
4 Sierra Leone, in particular Rule - no. With permission of
5 your Honour, Rule 89C of the ICTY, ICTR and the Special Court of
6 Sierra Leone, Article 69(4) of the ICC Statute gives discretion
7 to the Court to omit, to exclude, evidence in these
8 circumstances. In order to exercise that discretion at this
9 point in time, the overriding principle that would guide the
10 Court would be probative value and relevance.

11 Now, were the questions asked for - the limited purpose for
12 which the questions were asked, did they go to a material issue
13 for determination for the Court or will they advance the course
14 of justice? Will they assist the Court? This question is
15 relevant, I submit to your Honour with due respect, that they
16 meet the test of relevancy and probative value for the Court to
17 exercise its discretion.

18 Now, is it an unsworn statement as such? The rules of
19 admissibility of unsworn statements - unsigned statements before
20 international tribunals, it's abundant with jurisprudence that
21 the Court looks at it this from a very flexible perspective, and
22 that it is at the time that the Court will summon up the entire
23 evidence that the Court will know what weight to attach to them.

24 For now, I think the question that's appropriate, in view
25 of the submissions of my colleagues yesterday that they relied on
26 this statement, he has not applied that the Court should
27 reconsider or withdraw the application, in light of the fact that
28 the questions are relevant to the indictment.

29 I wish to take exception, your Honour, with due respect, to

1 the fact that any of these accused is an accomplice. No. The
2 question of being an accomplice does not arise here. They are
3 all charged as co-perpetrators, and the notion of co-perpetration
4 in international criminal law is quite different from the other
5 [indiscernible]. Being an accomplice may be a form of liability
6 which is different from co-perpetration as we know. They are
7 co-perpetrators in this particular case can.

8 So I urge the Court to exercise its discretion by admitting
9 all evidence that is relevant and have probative value at this
10 point in time, and that as fact finder the Court has a duty to
11 discover the truth, the whole truth, and nothing but the truth.
12 That's my humble submissions, your Honour.

13 JUSTICE DOHERTY: Thank you, Mr Chief Taku.

14 MR NICOL-WILSON: Your Honour --

15 JUDGE DOHERTY: [Indiscernible].

16 MR HERBST: Yes, Your Honour. I hear Mr Nicol-Wilson --

17 MR NICOL-WILSON: Yes, Your Honour, I just need
18 [overlapping speakers] --

19 JUSTICE DOHERTY: Just a moment, please.

20 MR NICOL-WILSON: As your Honour pleases.

21 JUSTICE DOHERTY: You can't hop up and down like this.

22 There is a procedure to be followed.

23 Response, please, Mr Herbst.

24 MR METZGER: Your Honour, just before Mr Herbst responds, I
25 know that my client isn't directly mentioned. But should the
26 Court require any assistance from me, I would be happy to give
27 it.

28 JUSTICE DOHERTY: Thank you, Mr Metzger.

29 Mr Herbst.

1 MR HERBST: Your Honour, I join in just about everything
2 that Chief Taku just said.

3 I find the objection first - and by no means most
4 importantly, but it's worth stating - to be untimely in light of
5 the fact that I've been questioning the witness on this statement
6 for some time, but before the break.

7 But secondly, I do also recall very, very specifically
8 Mr Nicol-Wilson stating that although his client was not going to
9 testify, he was going to rely on the statement.

10 I also recall that there was a discussion yesterday, I
11 guess, or perhaps the day before - I don't recall - when a
12 treatise was consulted about the admissibility of an unsworn
13 statement, and I did not have the treatise - a copy of the
14 treatise. But my learned friend Mr Metzger was kind enough to
15 advise me that as to the admissibility of an unsworn statement,
16 it apparently said that it was admissible or the weight was to
17 be, you know, determined by the finder of fact, and obviously,
18 because it's unsworn, one would take that into account in terms
19 of admissibility.

20 But I find an enormous difference between weight and
21 admissibility, and I do agree that Rule 89 provides that this
22 Court can admit the statement - although it has not yet been
23 proffered - can admit the statement and can consider it for
24 whatever relevance and probative value it has. And obviously the
25 relevance is enormous, which is why we're getting this objection
26 now.

27 I don't think I need to expound at great length about the
28 relevance of this line of questioning being asked in light of his
29 extraordinary testimony on direct and cross-examination.

1 This is not just a statement that was made by one person to
2 another. This is a statement that was formally offered in this
3 Court by an accused that, through counsel, stated that he was
4 going to rely on his statement in his defence. It seems to me
5 that although the question of its weight and consideration may
6 have been - was certainly fair game for the Prosecution in
7 cross-examination to believe that the statement was an
8 appropriate matter to be used in cross-examination, and I would
9 say that even if it were not lawful, it would be appropriate to
10 use not only in cross-examination; it would be admissible as a
11 statement against interest and on a bunch of other alternative
12 grounds.

13 So I think for all these reasons the motion or application,
14 whatever you want to call it, should be denied.

15 MR METZGER: Your Honour, in view of what Mr Herbst has
16 just said, I would crave the Court's indulgence to intervene on
17 this matter, because it now applies, effectively, across the
18 board. We are looking at also the effect of the document and
19 whether or not it is admissible as evidence, which is what is
20 being suggested. If it's evidence in the case, it becomes
21 evidence against all parties.

22 JUSTICE DOHERTY: Mr Metzger, we have only a few minutes
23 before the accused have to leave to go back to - that does not
24 mean to say --

25 MR METZGER: I'm happy to make written submissions.

26 JUSTICE DOHERTY: No. Make your submission as succinctly
27 as the others [indiscernible].

28 MR METZGER: As succinctly as I can, in my respectful
29 submission the proper interpretation of Rule 85C effectively

1 means that the statement, respectfully, cannot be classed as
2 evidence against anyone other than the defendant or accused
3 person who made it - that is to say, Mr Bangura - because he has
4 not chosen to give evidence in this case.

5 I juxtapose that with Rule 92 *ter*, which gives your Honour
6 some guidelines for how to admit written statements. In my
7 respectful submission, none of the three pointers in italics
8 apply in Rule 92 *ter*, because there is no agreement between the
9 parties as to the status of the evidence, and I pray in Rule 95,
10 should there be some semblance of a decision that it was
11 evidence, in my respectful submission be evidence against
12 Mr Bangura only, and to use that in the way that the Prosecution
13 has done effectively would amount to bringing - or could amount
14 to bringing the administration of justice into serious disrepute.

15 I quote the case of R v. Windass, 89 Cr App R 258. There
16 is another one which I haven't looked at yet. It's R v. Grey,
17 1998, CLR 570, which are authorities under English law for the
18 proposition, in my respectful submission, that the interview of a
19 co-defendant, that is to say, a statement of a co-defendant who
20 chooses not to give evidence is not evidence against a
21 co-defendant who does give evidence. I hope that's--

22 JUSTICE DOHERTY: That case deals with records of
23 interview, doesn't it?

24 MR METZGER: Yes.

25 JUSTICE DOHERTY: This is an unsworn statement. And in
26 common law, which you're now referring me to, there is a
27 [i ndi scerni bl e].

28 THE COURT OFFICER: Your Honour, may we kindly ask you to
29 go a little closer to the mic, because we can't hear you very

1 well, please.

2 JUSTICE DOHERTY: I'm sorry. I put it to Mr Metzger that
3 the case he is citing, which is a common law case, deals with
4 records of interview, which are different, I'm suggesting to him,
5 to an unsworn statement of an accused person, which has a
6 particular status in common law in England and in other
7 Commonwealth jurisdictions, I would add, and I ask - therefore
8 ask on the applicability of the precedent he is putting before
9 me.

10 MR METZGER: And my response very briefly again,
11 your Honour, is that the unsworn statement, for example, could be
12 a statement put in interview instead of being asked questions by
13 police officers, which would have, in modern terminology, the
14 status; and therefore I am using the authorities of Windass and
15 Grey for us to remind ourselves of the way in which it has been
16 decided in the past that injustice can be caused to defendants
17 where they are questioned about, and evidence from other
18 defendants who have chosen not to give evidence are put to them
19 or used in evidence as against them.

20 JUSTICE DOHERTY: Two matters that I immediately say is
21 that the accused in this Court, that is, Mr Kanu and Mr Kamara,
22 must return to the detention facilities within a certain time,
23 and that time is now.

24 Therefore, whilst I have formulated some thoughts in my
25 mind, I do not think it is appropriate to make a ruling in their
26 absence. I will therefore reserve my ruling on this to Saturday
27 morning so that they can hear the ruling.

28 I will therefore also allow the accused Kanu and Kamara to
29 leave the precincts of the Court. There is a matter relating to

1 an application by Mr Nicol-Wilson which does not affect them
2 which I have to rule on, and I understand that there is an
3 administrative application by Court Management Services which
4 again does not affect them, and, as they are represented, I will
5 deal with those two administrative matters in their absence, but
6 in the presence [i ndi scerni bl e].

7 Mr Kamara, did you hear what I said?

8 THE WITNESS: Yes, your Honour.

9 JUSTICE DOHERTY: Mr Kamara, I'm going to now adjourn.

10 Sorry? Oh, sorry, Mr Interpreter. Thank you, Mr Interpreter,
11 thank you.

12 Mr Kamara, I'm going to adjourn your evidence at this
13 point. I will make a ruling first thing Saturday morning, and
14 after that your cross-examination, your evidence, will continue.
15 No matter what way my ruling goes, it will continue. I therefore
16 remind you again of the oath and that you should not discuss your
17 evidence with any other person until your evidence is completed.
18 Do you understand, Mr Kamara?

19 THE WITNESS: Yes, your Honour.

20 JUSTICE DOHERTY: I will now - thank you, Mr Interpreter.
21 I will now permit Mr Kanu and Mr Kamara to be escorted from the
22 Court and I will make two matters not directly affecting them,
23 but in the presence of their counsel, who is, I have no doubt,
24 [i ndi scerni bl e].

25 Do you wish to speak to your client privately, Mr Metzger?

26 MR METZGER: Just very briefly, your Honour.

27 JUSTICE DOHERTY: Mr Serry-Kamal, do you wish to do so?

28 MR SERRY-KAMAL: [I ndi scerni bl e].

29 JUSTICE DOHERTY: Sorry, is there something I shouldn't be

1 hearing?

2 MR METZGER: Sorry, I was just making a request if it would
3 be possible for us to - I'm sure that could be done
4 administratively - see Mr Kanu tomorrow.

5 MR HERBST: Your Honour, before Mr Metzger - just those
6 diaries, the subject of the earlier application [indiscernible].
7 I had actually hoped to - now that I have seen the documents that
8 he's going to produce, ask the Court to permit me to examine them
9 on Saturday.

10 JUSTICE DOHERTY: Item number 2 on Saturday morning.

11 I'm dealing with a preliminary issue raised by
12 Mr Nicol-Wilson on behalf of his client Mr Bangura which related
13 to conditions in detention. Mr Bangura, through his counsel,
14 raised issues regarding his conditions in the detention centre
15 and asks that the Court make orders. These relate firstly to his
16 visitors, and secondly to use of a television.

17 At the outset I state that I have considered the rules
18 governing the detention of persons awaiting trial or appeal or
19 otherwise detained under the authority of the Special Court for
20 Sierra Leone. In particular, I have looked at Rules 3, 40, 53
21 and 59.

22 Rule 3 of those Rules provides, and I quote: "The Special
23 Court shall retain sole responsibility for all aspects of
24 detention pursuant to the Rules. Under the authority of the
25 Registrar, the Chief of Detention shall have sole responsibility
26 for all aspects of the daily management of the detention
27 facility, including security and good order, and may make all
28 decisions thereto except otherwise as provided for in the Rules."

29 Rule 40 also provides that detainees shall be entitled,

1 under such conditions of supervision and time restraints that the
2 Chief of Detention deems necessary, to communicate and means of
3 communication as the Registrar permits.

4 Rule 41 permits the receiving of visits from families and
5 others under such restrictions and supervision as the Chief of
6 Detention, in consultation with the Registrar, deems necessary.

7 Rule 53 allows detainees to procure books and keep
8 themselves informed of the news by reading, by radio, or
9 television, or lectures, as authorised and controlled by the
10 Chief of Detention.

11 It is my understanding that the detainees do have a radio
12 and do have access to newspapers.

13 I quote these rules because in each of these rules the
14 control and supervision is vested in the Chief of Detention, and,
15 in turn, by the Registrar.

16 It has been stated in this Court and upheld that a Trial
17 Chamber has only in limited circumstances the right to review
18 administrative decisions of Court and detention officers, and
19 only then when they are related to the fundamental rights of the
20 accused.

21 The Trial Chamber, for example, in the matter of The
22 Prosecutor v. Taylor said that unless conditions of detention,
23 et cetera, affected the Article 17 rights of an accused, the
24 Trial Chamber could not intervene, and the administration vested
25 in the Registrar and the Chief of the Detention under the rules
26 and under Rule 33 of the Rules of this Court.

27 For that reason, I have neither the power nor the authority
28 to intervene in this particular matter, because visitors and news
29 or television do not affect the Article 17 rights to a fair trial

1 of a detainee.

2 Mr Nicol-Wilson, on behalf of his client, has stated that
3 he has written. I also cite the provisions of Rule 59 of the
4 rules of detention, which provide that a detainee or his counsel
5 may make a complaint to the Chief of Detention or his
6 representative, and, at Rule 59B, if not satisfied with the
7 response, the detainee shall have the right to make a written
8 complaint without censorship to the registrar.

9 I am not entirely sure where Mr Nicol-Wilson's complaint
10 has landed, but I will inform the Registrar that such a complaint
11 has been lodged - if it is indeed in accordance with Rule 59 -
12 and ask the Registrar to ensure that if it is a 59 complaint, it
13 is dealt with in accordance with the Rules.

14 That's my ruling on the application this morning.

15 I now turn to what I understand is another administrative
16 matter. I do not have the documentation before me, but I
17 understand it comes from Court Management. Madam Court Manager
18 is going to address on that matter.

19 THE COURT OFFICER: [In Kigali] Thank you, Madam. Madam,
20 CMS would like to make an oral application with regards to the
21 filings in this case.

22 We acknowledge that this has been partly the fault of Court
23 Management in accepting these documents, but a number of
24 documents have been accepted by Court Management that are
25 deficient. These documents have not complied with Article 4A(5)
26 and Article 4B of the practice direction.

27 My application to the Court is if I can please put back all
28 the front pages to the offending parties requesting compliance.
29 I have made copies of the front pages to make it easier for the

1 offending parties, but --

2 JUSTICE DOHERTY: "Offending parties" is a very strong
3 word. It's a deficient filing.

4 THE COURT OFFICER: [In Kigali] It is. I have made a list
5 of the front pages that are deficient, and I would ask the
6 parties to comply with article 4A(5) and Article 4B.

7 Madam, some of the documents are from yourself; I have
8 three documents from counsel for Kanu; I have five documents from
9 the Principal Defender; and I have four documents from counsel
10 for Bangura.

11 I will provide a list of these documents, and I would ask
12 them to be changed for the archives. Thank you.

13 MR HERBST: Your Honour, I just want the record to note the
14 absence of one party who is not mentioned.

15 JUSTICE DOHERTY: That's three: Chief Taku wasn't
16 mentioned, and Mr Serry-Kamal's client wasn't either.

17 So in order to allow the parties the proper right to reply,
18 I will ask that that list be circulated to the parties involved.

19 Chief Taku was about to say something.

20 Chief Taku, please address the Court.

21 CHIEF TAKU: No, your Honour, I would just like to say that
22 we're eternally grateful to Court Management, because they drew
23 my attention to this problem when I did a filing sometime ago,
24 and I would do well to comply with the regulation as much as
25 possible. We're inhibited by the programme that we are very,
26 very mobile. I have to run between three tribunals, the ICC,
27 ICTR and this Court. But nevertheless, I'll make an arrangement
28 to get someone on the spot in Freetown who will help me and a
29 legal assistant who will help me comply with these Rules.

1 JUSTICE DOHERTY: Thank you, Chief Taku. I think you have
2 not before referred to. So I will therefore direct Court
3 Management, in order to have a proper implementation --

4 [Video link disconnected]

5 [Video link restored]

6 THE COURT OFFICER: Your Honour, if you could kindly repeat
7 just a few bits of the - the last few sentences, because we lost
8 you some part of the way.

9 JUSTICE DOHERTY: I do not actually have a written ruling
10 before me, so my repetition may not be entirely exactly the same.

11 I am directing Court Management to circulate the list of
12 the documents which they are saying do not comply with Rule 4A
13 and Rule 4B. I will not make any direction until I have given
14 each of the parties involved an opportunity to consider and make
15 any appropriate submissions.

16 I will direct Court Management to have that circulated by
17 noon Freetown time Monday, 27 August, and I will give parties to
18 noon, 28 August, to respond, either orally, or, if they agree
19 that they have to amend their cover sheets, to allow them to do
20 so. That is my direction.

21 MR METZGER: Your Honour, a point of clarification. Does
22 that mean we don't have to do anything until Monday on this
23 matter?

24 JUSTICE DOHERTY: If you are satisfied that yours is one of
25 the documents - because I haven't seen it - but if yours is one
26 of the documents and that you feel you should have put either
27 "confidential", or "public", or whatever it is, on it, and you
28 are willing to do it immediately, let us not waste time. Please
29 go ahead and do it.

1 MR METZGER: It's just that I think on all three of the
2 documents there were rulings which were unfavourable to me, and I
3 think there were three judgments unfavourable to me which also
4 offend in the same way, and it may just be easier for us to
5 remove everything from the record.

6 JUSTICE DOHERTY: I would be so lucky. The Appeals Chamber
7 would have a lot to say about that.

8 Court Management, if there's no other matters, we will
9 adjourn to Saturday morning.

10 MR HERBST: Your Honour, the only other matter is to wish
11 you a safe and pleasant flight back.

12 MR METZGER: Likewise, your Honour. And indeed,
13 your Honour's team.

14 MR HERBST: Yes, and your whole team.

15 JUSTICE DOHERTY: Thank you very much, counsel.

16 [The Court adjourned at 3.45 p.m. until 9 a.m.
17 Saturday, 25 August 2012]

18
19
20
21
22
23
24
25
26
27
28
29