



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, 28 June 2012]

2 [Open session]

3 [Accused present]

4 [Upon resuming at 9.00 a.m.]

08:53:38 5 JUSTICE DOHERTY: Good morning. Can Kigali hear us?

6 MR HERBST: Yes, good morning, Your Honour. We can hear  
7 you. Can you hear us?

8 JUSTICE DOHERTY: Yes, I can hear you very clearly. I'll  
9 take appearances first now that we can hear each other.

08:59:43 10 Mr Herbst.

11 MR HERBST: Robert Herbst for the Prosecution, Your Honour.

12 JUSTICE DOHERTY: Thank you. Mr Herbst, if you could  
13 switch off your microphone, please.

14 MR NICOL-WILSON: Your Honour, Melron Nicol-Wilson for  
09:00:15 15 Hassan Papa Bangura, and my colleague Mr Serry-Kamal and  
16 Mr Kevin Metzger are on their way to the Court. I think they are  
17 slightly delayed because of the traffic on the way to the Court.

18 JUSTICE DOHERTY: What I need to know, and maybe  
19 Ms Serry-Kamal could tell me better, is if Mr Serry-Kamal is  
09:00:39 20 actually coming in now, as he did say something that he was going  
21 for a medical appointment.

22 MS SERRY-KAMAL: He tried to see the doctor yesterday.  
23 Unfortunately, he could not. They couldn't see him. So he has  
24 to go this morning to get some medication or else he won't be  
09:00:58 25 able to travel, so unfortunately - he was supposed to be there at  
26 9 o'clock, but I am not sure, you know, he said he was going to  
27 come. My last word from him this morning was he was going to  
28 just go there quickly and come over to the Court.

29 JUSTICE DOHERTY: Thank you for that.

1 Mr Herbst, did you hear what was said just now?

2 MR HERBST: I did indeed, Your Honour.

3 JUSTICE DOHERTY: Mr Nicol-Wilson.

4 MR NICOL-WILSON: Your Honour, in view of the present  
09:01:39 5 circumstances while we await the arrival of Mr Metzger and  
6 Mr Serry-Kamal, I don't know whether this is an appropriate time  
7 for me to renew my application for bail, because the Independent  
8 Counsel is in Court and I am in Court, and we could just save  
9 time by dealing with this issue now.

10 JUSTICE DOHERTY: I did say yesterday that if  
11 Mr Serry-Kamal was late, I was going to ask him to -  
12 Mr Independent Counsel to interpose his next witness, who I  
13 understand is Saffa. So I'm going to see if Saffa is available.  
14 We can get the preliminary matters such as swearing, et cetera,  
09:02:23 15 dealt with whilst we're waiting for other counsel. Counsel know  
16 the time the Court starts.

17 Mr Herbst, did you hear what I said? I see you haven't got  
18 your earphones on.

19 MR HERBST: Your Honour, I did hear. And it is my  
09:02:40 20 understanding that Mr Saffa is available and should be either in  
21 the courtroom or nearby with a set of documents that have  
22 basically been used to cross-examine Mr Sesay and which I would  
23 introduce through him.

24 JUSTICE DOHERTY: Very well. I have had an indication  
09:03:03 25 from --

26 MR HERBST: [Overlapping speakers]

27 JUSTICE DOHERTY: -- a representative of WVS that Mr Saffa  
28 is in the Court precincts. In that case, we will proceed as  
29 indicated yesterday. I will interpose Mr Saffa. We will at

1 least go through the preliminary motions, necessity of swearing,  
2 et cetera. Yes.

3 MS SERRY-KAMAL: I have a point of information. I was able  
4 to talk to the Pelican people, the boats who take you to Lungi,  
09:03:29 5 and I was informed that if you wanted to make the flight you need  
6 to be there by 1.30. They advised counsel to be there by 1.30.

7 JUSTICE DOHERTY: I've already indicated that we're rising  
8 12.30 to accommodate that. It's on record.

9 MS SERRY-KAMAL: Okay.

09:03:46 10 JUSTICE DOHERTY: Please call Mr Saffa.

11 MR HERBST: Your Honour, we call Mr Saffa.

12 THE INTERPRETER: What language will the witness be  
13 speaking?

14 JUSTICE DOHERTY: Mr Witness, Mr Court Attendant, what  
09:04:49 15 language will the witness give his evidence in?

16 THE WITNESS: English.

17 JUSTICE DOHERTY: Mr Interpreter, you hear?

18 THE INTERPRETER: Thank you, Your Honour.

19 Then the channel needs to be changed, Mr Court Attendant.

09:05:01 20 JUSTICE DOHERTY: [Microphone not activated].

21 THE COURT OFFICER: I've done so, Your Honour.

22 WITNESS: JOSEPH SAFFA

23 Examination-in-chief by Mr Herbst:

24 JUSTICE DOHERTY: Thank you, Mr Saffa. Please be seated  
09:05:38 25 and I will ask Mr Herbst to proceed.

26 MR HERBST: Thank you, Your Honour.

27 Q. Mr Saffa, how are you currently employed?

28 A. I am a senior investigator at the Office of the Prosecutor,  
29 Special Court for Sierra Leone.

1 Q. And how long have you been so employed?

2 A. I have been an investigator since 2002.

3 Q. And what was your position in November 2010?

4 A. In November 2010 I acted in the same position.

09:06:40 5 Q. Senior investigator?

6 A. Yes, My Lord.

7 Q. Mr Saffa, what is the first time you became aware of the  
8 allegations in this case?

9 A. The first time I became aware of the allegation in this  
09:07:09 10 case was on 1 December 2010.

11 JUSTICE DOHERTY: Mr Saffa, do you have a paper in front of  
12 you?

13 THE WITNESS: Yes.

14 JUSTICE DOHERTY: Just pause, Mr Herbst. You should not  
09:07:25 15 have any papers in front of you when you are giving evidence  
16 until papers are put in front of you. Mr Court Attendant, please  
17 remove any papers until papers are formally put before the  
18 witness. Proceed, Mr Herbst.

19 MR HERBST: Yes, Your Honour, I'm sorry, that's my fault  
09:07:46 20 because I had asked Mr Saffa to bring into the courtroom all of  
21 the papers we were going to use on his examination.

22 JUSTICE DOHERTY: I see. Not to worry. No harm has been  
23 done.

24 MR HERBST: [Overlapping speakers]. Okay.

09:07:59 25 JUSTICE DOHERTY: I don't think he's been presented as an  
26 expert.

27 MR HERBST: [Overlapping speakers]

28 JUSTICE DOHERTY: Sorry Mr Herbst.

29 MR HERBST: No, he's not, Your Honour. He's a fact

1 witness.

2 JUSTICE DOHERTY: Please proceed.

3 MR HERBST: I said he's presented as a fact witness. Thank  
4 you, Your Honour.

09:08:15 5 Q. Mr Saffa, would you tell the Court how you became aware of  
6 the allegations in this case on 1 December 2010?

7 A. On that day, my Lord, the Chief of Prosecutions, who  
8 doubles as Investigations Coordinator, sent me an e-mail which he  
9 received from Brenda Hollis.

09:08:58 10 Q. Is that one of the documents you brought into the Court?

11 A. Yes, my Lord.

12 MR HERBST: By the way, all these documents have been  
13 shared with the Defence; all the ones we're going to use. Would  
14 the e-mail please be placed before the witness.

09:09:19 15 JUSTICE DOHERTY: Just to make sure that Mr Court Attendant  
16 takes the right document, is there a date on that e-mail on it so  
17 he can identify it before he shows it to Defence counsel?

18 MR HERBST: Your Honour, if it is the document that - just  
19 so Your Honour knows - and again this is a problem that we're in  
09:09:41 20 two separate places, so the document that I believe he is going  
21 to be shown is a three-page e-mail string. The first one  
22 probably says "FW information from 334, Robert Herbst" on the  
23 second line and it says "page 1 of 3" in the upper right-hand  
24 corner and it's three pages. In other words, it's page 1 of 3, 2  
09:10:17 25 of 3, 3 of 3. Does the Court attendant have that document?

26 JUSTICE DOHERTY: Just let me check with him, please.

27 MR HERBST: Your Honour, it may be that Mr Saffa's copy  
28 doesn't contain that e-mail, which was the e-mail that I sent to  
29 Ms Bola-Clarkson so that the e-mails below could be disclosed.

1 So the relevant e-mail is the one that says, "from Johnson 30  
2 un.org sent Wednesday, June 27 2012, 10.01 a.m." and it has below  
3 it the e-mail forwarded by Jim Johnson and says "Jim Johnson,  
4 12/1/2010, 7.22 a.m."

09:11:30 5 JUSTICE DOHERTY: Mr Herbst, you're giving me too much  
6 information at once. I'm going through these.

7 MR HERBST: Your Honour, if I might make a suggestion.

8 JUSTICE DOHERTY: Yes. I don't see an e-mail of the type  
9 you mention. Obviously I'm not reading any of these documents  
09:12:33 10 because they are not tendered before me. I'm just looking at the  
11 headings.

12 MR HERBST: Could I suggest, Your Honour --

13 JUSTICE DOHERTY: Yes, please, Mr Herbst.

14 MR HERBST: -- that the set of documents that Mr Saffa  
09:12:49 15 brought into the courtroom be handed back to him very briefly so  
16 that he could select out or identify to the Court attendant which  
17 e-mail he was referring to and then give the rest of the  
18 documents back to the Court attendant. I know it's unorthodox  
19 but [overlapping speakers] --

09:13:12 20 JUSTICE DOHERTY: Just a moment, please. I've got - no,  
21 it's not 1 of 3. Mr Herbst, for purposes of transparency, I have  
22 e-mails to Johnson, from Johnson to Saffa, but not - it's  
23 forwarding another e-mail.

24 MR HERBST: That's the one, Your Honour.

09:13:58 25 JUSTICE DOHERTY: And is dated --

26 MR HERBST: Yes, that's the one.

27 JUSTICE DOHERTY: 12/01/2010, 7.22 a.m.

28 MR HERBST: Yes, Your Honour, that's the one. If that and  
29 the other e-mails underneath it could be shown to the witness.

1 JUSTICE DOHERTY: There aren't any other e-mails --

2 MR HERBST: [Overlapping speakers]. Okay, fine.

3 JUSTICE DOHERTY: I'm going to ask Mr Court Attendant to  
4 show this to counsel for the Defence and then the witness and let  
09:14:44 5 the witness identify what is relevant. Ms Clarkson, I would  
6 prefer that remarks aren't on record.

7 THE COURT OFFICER: [In Kigali] I do apologise, Your  
8 Honour. I didn't know that the mic was on.

9 JUSTICE DOHERTY: That's all right. The witness has  
09:15:34 10 acknowledged a document, and I'm now going to invite you,  
11 Mr Herbst, to proceed with your evidence.

12 MR HERBST: Thank you, Your Honour.

13 Q. Mr Saffa, do you have the e-mail to which you referred in  
14 front of you?

09:15:51 15 A. Yes, my Lord.

16 Q. Would you tell the Court what that e-mail is?

17 A. This e-mail is about an e-mail sent by Shayamala Alagendra  
18 to Brenda Hollis, the Prosecutor, about a message he received  
19 from 334.

09:16:27 20 MR HERBST: Your Honour, I move the admission of the e-mail  
21 and the Alagendra e-mail that the document reflects was forwarded  
22 first to Ms Hollis, then to Mr Johnson -- [overlapping speakers]

23 JUSTICE DOHERTY: I haven't worked out from your questions  
24 how it's become into the control of the witness, how he can  
09:16:54 25 tender it.

26 MR HERBST: Your Honour, the witness has testified that he  
27 received a copy of the e-mail from Mr Johnson on 1 December.

28 JUSTICE DOHERTY: He didn't say that, no.

29 MR HERBST: 2010.



1 JUSTICE DOHERTY: No, Mr Herbst, he didn't say that. If  
2 he's going to say that, let him say it from his own mouth.

3 MR HERBST: I'm sorry, Your Honour, I thought I had heard  
4 him say that. I'll ask the question again.

09:17:24 5 Q. Would you tell the Court how you first became aware of the  
6 allegations in this case?

7 JUSTICE DOHERTY: I got that answer very clearly and he  
8 said there was a chief - the Chief of Prosecution who doubles as  
9 coordinator sent an e-mail to Brenda Hollis. Fine, but I don't  
09:17:43 10 know how the communication between Hollis and the Chief of  
11 Prosecutions came into the hands of the witness. The witness is  
12 going to tender, he must identify it and show he has knowledge of  
13 it and the content.

14 MR HERBST:

09:18:12 15 Q. Mr Saffa, when you got the e-mail from Mr Johnson --

16 JUSTICE DOHERTY: He hasn't got it yet, Mr Herbst. How did  
17 he get it?

18 MR HERBST:

19 Q. How did you get the e-mail, Mr Saffa?

09:18:23 20 A. This e-mail was forwarded to me by Mr Jim Johnson.

21 Q. And when was it forwarded to you?

22 A. It was forwarded to me on 1 December 2010.

23 Q. And was it forwarded to you by e-mail?

24 A. Yes, my Lord.

09:18:54 25 Q. And is the forwarding e-mail present before you?

26 A. Yes, my Lord.

27 Q. And does it have underneath it the Alagenda e-mail to  
28 Ms Hollis?

29 A. Yes, my Lord.

1 Q. And when was that e-mail forwarded to Ms Hollis?

2 A. The e-mail was forwarded to Ms Hollis on 30 November 2010.

3 Q. At what time?

4 A. At 0515 p.m.

09:19:53 5 Q. 5.15 p.m.; not a.m., right?

6 A. Yes, my Lord.

7 MS SERRY-KAMAL: Your Honour, I'm sorry, I'm a little  
8 confused by Mr Herbst's questions. I guess I'm objecting.

9 Because I'm looking here and it says forwarded by Jim Johnson

09:20:11 10 6.27 2012 up here; there's nothing that shows it was forwarded to  
11 him on --

12 JUSTICE DOHERTY: [Microphone not activated]

13 MS SERRY-KAMAL: Yes, to the witness himself on anything  
14 other than it says, forwarded by Jim Johnson from Special Court  
09:20:24 15 on 6.27, 2012, 2 p.m. I thought I was reading that wrong. Then  
16 right after that below it shows the date that the e-mail was  
17 supposedly written, but it doesn't say anything about it being  
18 forwarded to Mr Saffa on that day. It said it was forwarded by  
19 Jim Johnson I mean on 6.27, 2012 which is just a few days ago.

09:20:49 20 MR HERBST: Your Honour, if I may respond? Counsel is not  
21 reading the proper line of the e-mail. There's a line of the  
22 e-mail that says "forwarded" right under the one she mentioned.

23 MS SERRY-KAMAL: Maybe in your copy but in my copy it  
24 doesn't say forwarded. It says forwarded by Jim Johnson and then  
09:21:11 25 the date Jim Johnson and then 12/1/2010 which from my  
26 understanding of e-mails, that is actually the date that the  
27 e-mail was written by Jim Johnson. It doesn't say it was  
28 forwarded to Mr Saffa on that day. Additionally if you could  
29 look down it says forwarded by Brenda Hollis on 11/30/2010

1 which shows that was forwarded to Mr Jim Johnson on that day. So  
2 unless I'm reading something incorrectly this e-mail was does not  
3 say it was forwarded to Mr Saffa on December 1st, 2010. Correct  
4 me if I am wrong.

09:21:45 5 MR HERBST: Your Honour, yes. Counsel is, I believe,  
6 respectfully, reading incorrectly because between the two lines  
7 that she cited there is a from - there is an e-mail, Jim Johnson,  
8 SCSL, 12/01/2010, 7.22 a.m. and then to the right of it it says  
9 "to Joseph Saffa." So that reflects the e-mail being sent to  
09:22:16 10 Mr Saffa.

11 JUSTICE DOHERTY: Just a moment. The evidence before me is  
12 from the - from the witness is that he received it, it was  
13 forwarded to him, and that's the evidence I have. If it's in  
14 dispute that it wasn't received by him, then that would be  
09:22:41 15 appropriate for cross-examination. But I will obviously look at  
16 the points counsel is putting before me when and if it is  
17 tendered, either for - as an exhibit or to be marked for  
18 identification.

19 Proceed, Mr Herbst.

09:23:02 20 MR HERBST: Thank you, your Honour. At this time I move to  
21 introduce the document into evidence, the e-mail string, starting  
22 from Ms Alagenda, her e-mail, and the e-mail show that it's  
23 forwarded by Brenda Hollis, obviously to Mr Johnson, who sent it  
24 to Mr Saffa. So I think the foundation has been laid. I move to  
09:23:28 25 introduce the document.

26 JUSTICE DOHERTY: Please let me see the document.

27 I have before me a one-page document printed on both sides.  
28 The heading is Jim Johnson/SCSL, 12/01/2010, 7.22 a.m. to Joseph  
29 Saffa/SCSL. Subject matter: Information from 334. Underneath

1 is a document headed - not a document. A continuation  
 2 headed: "Forwarded by Brenda Hollis/SCSL at 11/30/2010," and  
 3 underneath that is the name Alagenda Shayamala at the ICC, being  
 4 the International Criminal Court. Again, the date is 11/30/2010,  
 09:25:22 5 and it starts, "Dear Brenda..." and continues in a written  
 6 script. The reverse side is only a message saying that it is  
 7 confidential information and privileged in two languages.

8 Counsel, this document is being tendered through the  
 9 witness.

09:25:42 10 MR NICOL-WILSON: I have no objection, your Honour.

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

12 Ms Serry-Kamal?

13 MS SERRY-KAMAL: No objection, I guess.

14 JUSTICE DOHERTY: I am satisfied that this document was in  
 09:25:58 15 the custody and control of the witness and accordingly I accept  
 16 it as an exhibit. I think this is Prosecution Exhibit 4. Just  
 17 let me check that, please. Yes, confirmed. Prosecution  
 18 Exhibit 4. Please proceed.

19 EXHIBIT P4 ADMITTED AND MARKED

09:26:24 20 MR HERBST: Thank you, Your Honour.

21 Q. Mr Saffa, would you read out the e-mail that Ms Alagenda  
 22 sent to Brenda Hollis on 11/30/2010 at 5.15 p.m.?

23 A. My Lord, the e-mail is not in front of me.

24 JUSTICE DOHERTY: Let me return it.

09:27:00 25 [Mr Metzger enters Court]

26 JUSTICE DOHERTY: Proceed, Mr Saffa.

27 THE WITNESS: The e-mail says:

28 "Dear Brenda, I received an SMS and call from 334 this  
 29 evening. He informs me that he was contacted by Sammy Ragga, who

1 was recently released from prison. He was with the West Side.  
2 He went to 334's house and informed him that the AFRC accused  
3 persons have been advised by their lawyers that if the main  
4 insider witnesses were to change their statements, they would get  
09:27:55 5 an early release from prison soon. The AFRC accused are  
6 requesting that 334 make a statement that his statement to OTP  
7 and his testimony to the Court was a lie. He was told to say  
8 that he was released from the prison by OTP so that he would lie  
9 in order to convict them, that OTP had paid him money to provide  
09:28:29 10 his false testimony.

11 "334 spoke to Five Five today on Ragga's phone. Five Five  
12 told him, We are brothers and we will soon be released and we  
13 expect you to help us with the release. 334 is expecting that he  
14 will be contacted on this again. The AFRC accused have promised  
09:28:56 15 to pay 334 large sums of money and to do what the Special Court  
16 were supposed to but did not do for him, which is to take care of  
17 his security and relocate him and his family. He says Bomb Blast  
18 is aware of this and maybe they have contacted him. He believes  
19 they may have also contacted Sammy Kargbo.

09:29:26 20 "334 informs me he will not do anything on this and will  
21 provide OTP with all the information on this. 334 is in contact  
22 with Mustapha but has not informed him of this matter yet. I do  
23 not know the reason why, but I have told him to please make  
24 contact with Mustapha from OTP and to report this matter in the  
09:29:56 25 usual way. Please let me know if there is anything I can do with  
26 regards to this. Kind regards, Shayamala."

27 JUSTICE DOHERTY: Thank you.

28 Mr Metzger, I note your appearance.

29 MR METZGER: I'm very much obliged, Your Honour. You have

1 my apologies. The traffic situation from where I was coming  
2 today, we were confronted by two pools of water. We had to  
3 relocate and move. I let the Principal Defender know, and as I  
4 say, I'm very apologetic. Unfortunately, circumstances were  
09:30:41 5 beyond my control. I am, however, very surprised that  
6 Your Honour didn't get that information.

7 JUSTICE DOHERTY: Indeed, Mr Nicol-Wilson did tell me on  
8 your behalf that you would be delayed in traffic. But from the  
9 Principal Defender, I must acknowledge that I did not receive the  
09:30:59 10 information. But your colleague did explain on your behalf.

11 MR METZGER: In which case I'm most disconcerted on behalf  
12 of my client that evidence has started to be called in my absence  
13 in view of the fact that these were extraordinary circumstances.

14 JUSTICE DOHERTY: No, they weren't extraordinary. We all  
09:31:18 15 know that traffic is bad in Freetown and I thought you were only  
16 going to be a few minutes. And in any event, it's only been --

17 MR METZGER: It wasn't just the traffic, Your Honour. I'm  
18 explaining the circumstances.

19 JUSTICE DOHERTY: In any event, rainy season, we've all  
09:31:33 20 been here before, and I would add that all we've done so far is  
21 have the witness sworn, identify his work, and had a long  
22 exchange concerning one e-mail which he has now read out and that  
23 is all as far as we've got.

24 MR METZGER: An e-mail which the Prosecution knows, with  
09:31:53 25 the greatest of respect, that I have objected to throughout the  
26 currency of these proceedings on the basis that it is an e-mail  
27 from Ms Alagenda. It is she who must produce it because he  
28 seeks to rely on circumstances on the e-mail in relation to date  
29 and time, and the date and time, as I have already submitted to

1 this Court, I know not how things work in my learned friend's  
2 jurisdiction from my personal knowledge, but from those that I  
3 have contacted, whenever one serves material relating to computer  
4 e-mails, you also serve what is called the metadata, that is that  
09:32:36 5 which goes with it, so that you can check and rely on the  
6 accuracy of the dates stated on the document. Had I been here, I  
7 would have objected to it on that basis.

8 There is another matter I wanted to raise with your Honour  
9 at this point. Last night I made inquiries of travel from this  
09:32:58 10 side, and I have been told that unless one gets on - if you're  
11 going by the sea crossing at 1.30, you would have to hire a boat.  
12 The cost of that I think far exceeds in all the circumstances  
13 that which I find myself able to pay. And I would beseech the  
14 Court to reconsider its decision to sit until 12.30, because it  
09:33:26 15 would make things incredibly difficult.

16 JUSTICE DOHERTY: I was told it only takes 15 minutes to  
17 get from here to the crossing.

18 MR METZGER: With the greatest respect, Your Honour has  
19 been misinformed. And may I mention those two words again,  
09:33:46 20 "rainy season." It is a water crossing. Between the point that  
21 one disembarks and the airport, there is the Atlantic Ocean which  
22 is unencumbered by anything other than two bays, so to speak.

23 JUSTICE DOHERTY: Very well. We will rise at 12.

24 MR METZGER: Much obliged.

09:34:05 25 JUSTICE DOHERTY: Proceed, Mr Herbst.

26 Incidentally, without making any rulings or anything or  
27 even giving knowledgeable indications, the facts of life are that  
28 the e-mail is hearsay.

29 MR METZGER: I'm very much obliged to Your Honour.

1 JUSTICE DOHERTY: Proceed, Mr Herbst.

2 MR HERBST: Thank you, Your Honour.

3 Q. Mr Saffa, what did you do after receiving the e-mail that  
4 you have just read out on 1st December - on the morning of 1st  
09:34:54 5 December 2010?

6 A. My Lord, after receiving the e-mail, I was also given a  
7 verbal instruction by Mr Jim Johnson to call 334 to come to the  
8 office.

9 JUSTICE DOHERTY: Proceed.

09:35:16 10 MR HERBST:

11 Q. And did you do - did you do so?

12 A. Yes, My Lord. I called him and he came in a bit later and  
13 met with me.

14 Q. And would you tell the Court what happened during the  
09:35:37 15 meeting?

16 A. Yes, My Lord. I met him with Thomas Lahun, another  
17 investigator, and he told me about contact that has been made to  
18 him.

19 Q. And did you and/or Thomas make notes of what he told you or  
09:36:12 20 make a written record in some fashion of what he - what 334 told  
21 you?

22 A. My Lord, I was the one who made the written record of what  
23 334 told me.

24 MR HERBST: Your Honour, I would like now to have the  
09:36:32 25 document, which I believe --

26 MR METZGER: I object, Your Honour.

27 JUSTICE DOHERTY: I don't even know what document we're  
28 talking about.

29 MR HERBST: [Overlapping speakers]



1 MR METZGER: I do know what document he's talking about and  
2 I object. I object on the basis that my learned friend has not  
3 made the proper basis for putting this to this witness. He says  
4 I made a note. Here is a document. He should ask him in what  
09:36:59 5 form did he make the note? Where was the note? Have you got an  
6 original copy? And then hand it on to the witness, with respect.

7 JUSTICE DOHERTY: Mr Herbst, there was a note. He made a  
8 written record. Let's get what format the written record was in,  
9 the date it was made, and that basic foundation, please.

09:37:38 10 MR HERBST:

11 Q. Mr Saffa, would you tell us in what form you made the  
12 written record and the date that you did it?

13 A. It was on 1 December 2010, and I got the information from  
14 him, which I recorded, first in a statement form on the statement  
09:38:10 15 template, and then also I put it in a memo with the caption  
16 "meeting with TF1-334".

17 MR HERBST: At this time I would ask that the document  
18 earlier marked for identification as MF-1 and headed "meeting  
19 with TF1-334" be placed before the witness.

09:38:47 20 JUSTICE DOHERTY: I have a question before that can be  
21 done.

22 Mr Saffa, what language was the meeting held in?

23 THE WITNESS: 334 spoke to me in Krio and I recorded the  
24 interview in English.

09:39:15 25 JUSTICE DOHERTY: How competent are you between English and  
26 Krio?

27 THE WITNESS: Please ask the question again.

28 JUSTICE DOHERTY: How competent is your ability to speak  
29 both English and Krio?

1 THE WITNESS: I speak Krio fluently and I also speak  
2 English and write fluently.

3 JUSTICE DOHERTY: Thank you, Mr Witness.

09:39:44 4 MR METZGER: I'm grateful to Your Honour for concluding the  
5 foundational questions.

6 JUSTICE DOHERTY: Please put the document MFI-1 before the  
7 witness. I note that a document has been put before the witness.

8 MR HERBST:

9 Q. Mr Saffa, take a look [overlapping speakers]

09:40:21 10 JUSTICE DOHERTY: Yes, continue.

11 MR HERBST:

12 Q. Would you take a look at that two-page document?

13 A. Yes, my Lord.

14 Q. And tell us whether that is one of the documents to which  
09:40:32 15 you referred in your answer a minute or two ago?

16 A. Yes, my Lord, this is one of the documents.

17 Q. Directing your attention to [indiscernible] on the first  
18 page [overlapping speakers] --

19 MR NICOL-WILSON: Your Honour --

09:40:58 20 JUSTICE DOHERTY: Mr Herbst, please pause.

21 MR NICOL-WILSON: Can a copy of this document be made  
22 available to me so I can verify it's the exact --

23 JUSTICE DOHERTY: Yes, I did omit to instruct Mr Court  
24 Attendant to show it to counsel for the Defence first. Please do  
09:41:12 25 so now, Mr Court Attendant.

26 Counsel has seen the document?

27 Please proceed with your evidence, Mr Saffa. The document  
28 is back in the hands of the witness? Very good it's before him.  
29 Your question was - you started off drawing his attention to

1 somethi ng.

2 MR HERBST: Yes.

3 Q. Directing your attention to everything on the first page  
4 except the first two lines, the first paragraph, and everything  
09:42:17 5 on the second page except the last two paragraphs. Does the  
6 content of that memo --

7 MR METZGER: Leading questi on, Your Honour.

8 MR HERBST:

9 Q. Accurately reflect the substance [overl appi ng speakers] --

09:42:30 10 JUSTICE DOHERTY: Mr Herbst, you're l eadi ng. Pl ease  
11 rephrase.

12 MR HERBST:

13 Q. What does that document reflect, Mr Saffa?

14 A. Thi s document reflects the i ntervi ew I had wi th 334 on that  
09:42:55 15 day.

16 JUSTICE DOHERTY: Mr Herbst, pl ease proceed.

17 MR HERBST: Your Honour, I thought the wi tness had not  
18 completed hi s answer. I thought he stopped i n the mi ddle of hi s  
19 answer and was revi ewi ng the document.

09:43:36 20 JUSTICE DOHERTY: I understand. Is there anythi ng el se you  
21 wi sh to say, Mr Wi tness?

22 THE WITNESS: Thi s document al so reflects al l what 334 told  
23 me when I met wi th hi m wi th Thomas Lahun.

24 JUSTICE DOHERTY: Proceed, pl ease.

09:43:57 25 MR HERBST: Your Honour, I move the admi ssi on of the  
26 document, and I poi nt out that the document was the subject of  
27 extensi ve cross-exami nati on yesterday of 334.

28 MR METZGER: There' s no obj ecti on, Mr Herbst.

29 MR HERBST: [Overl appi ng speakers] substi tuted thi s wi tness

1 --

2 JUSTICE DOHERTY: I understand, Mr Herbst, there's no  
3 objection from Mr Metzger. Lets see what other counsel wish to  
4 say.

09:44:22 5 MR NICOL-WILSON: No objection, Your Honour.

6 MS SERRY-KAMAL: No objection.

7 JUSTICE DOHERTY: Thank you. For purposes of record and  
8 clarity, is the document going in in its entirety or is it going  
9 in without paragraph 1 of page 1 and without the last two  
10 paragraphs of page 2?

11 MR METZGER: I have no objection to the whole document  
12 going in.

13 JUSTICE DOHERTY: Thank you.

14 MS SERRY-KAMAL: No objection.

09:44:46 15 JUSTICE DOHERTY: Mr Nicol-Wilson?

16 MR NICOL-WILSON: No objection, Your Honour.

17 JUSTICE DOHERTY: Very well. The entire document is  
18 admitted. MFI-1 because Prosecution Exhibit 5. Exhibit 4 is the  
19 e-mail. And it goes in as the entire document.

09:45:18 20 Please proceed, Mr Herbst.

21 MR HERBST: Thank you, Your Honour.

22 Q. Now, after the meeting with 334 and after he left the Court  
23 on that morning of 1 December 2010, did you subsequently receive  
24 another communication from him that day?

09:45:45 25 A. Yes, my Lord.

26 JUSTICE DOHERTY: You're leading again, Mr Herbst.

27 MR HERBST: I apologise, Your Honour.

28 MR METZGER: Your Honour, the question has been answered.  
29 But my learned friend really ought to be a little more careful.

1 This man is a professional. He should ask him non-leading  
2 questions. I'm sure he'll get the answers he requires.

3 JUSTICE DOHERTY: Please proceed.

4 MR HERBST: Your Honour, let me just say that again the  
09:46:13 5 legal cultures are different and in mine --

6 JUSTICE DOHERTY: Mr Herbst, you could have fooled me about  
7 your culture --

8 MR HERBST: [Overlapping speakers]

9 JUSTICE DOHERTY: -- and others when it comes to  
09:46:24 10 Prosecution and leading questions. I'm not a member of your  
11 bar --

12 MR HERBST: [Overlapping speakers]

13 JUSTICE DOHERTY: -- but I have had some experience.

14 MR METZGER: Ms Serry-Kamal is.

09:46:42 15 JUSTICE DOHERTY: We have that benefit.

16 MS SERRY-KAMAL: Yes.

17 JUSTICE DOHERTY: Let us not have any more exchanges on  
18 this subject. I am trying to keep control of it. Now,  
19 Mr Herbst, you've had an answer to the question. Please proceed.

09:47:00 20 MR HERBST:

21 Q. What happened later in the day on 1 December?

22 A. My Lord, I received a call from 334 in the afternoon.

23 Q. And what happened during that call?

24 A. He explained to me that he had received another call from  
09:47:32 25 Sammy Ragga.

26 JUSTICE DOHERTY: Continue.

27 MR HERBST:

28 Q. And did he - well, go ahead. Continue.

29 A. And he gave me --

1 Q. What did he tell you? What did he tell you during the  
2 call?

3 A. He told me that he received a call from Sammy Ragga, who  
4 told him that they should meet at the place in Freetown they call  
09:48:05 5 Sweissy business area at about midday.

6 JUSTICE DOHERTY: Continue.

7 THE WITNESS: They met in Sweissy. They met with him in  
8 Sweissy and he was informed that - he was informed by Ragga that  
9 he received a call from Rwanda that a lawyer was coming from  
09:48:47 10 Ghana who will be speaking to 334 in respect of the same issue he  
11 had earlier told him.

12 JUSTICE DOHERTY: Continue.

13 THE WITNESS: He also said that Sammy Ragga asked him about  
14 the whereabouts of somebody, who he told him he doesn't know his  
09:49:18 15 whereabouts. Those were the two things he told me.

16 JUSTICE DOHERTY: Continue.

17 MR HERBST:

18 Q. And what - how did you record the information that was  
19 given to you by 334 in that telephone call?

09:49:45 20 A. In this memo I added that information to the previous  
21 information he had given me in the morning of December 1, 2010.

22 Q. And would you point out where in P5 that information is?

23 A. That information is found on the last two paragraphs of  
24 this document, my Lord.

09:50:24 25 Q. Thank you. What was the next thing that happened in  
26 connection with your investigation of these allegations?

27 A. The next thing that happened was that I prepared this note  
28 in the form of a statement.

29 JUSTICE DOHERTY: Continue, please.

1 THE WITNESS: And on 3 December 2010, I was instructed by  
2 Mr Jim Johnson.

3 JUSTICE DOHERTY: Mr Witness, can you give me the date  
4 again, please?

09:51:32 5 THE WITNESS: 3 December --

6 JUSTICE DOHERTY: Thank you. Please continue.

7 THE WITNESS: -- 2010. I was instructed by Mr Johnson to  
8 tell 334 that the office of the Prosecutor would like to report  
9 this contact that has been made to him to the Registrar of the  
10 Special Court for action.

09:52:04

11 JUSTICE DOHERTY: Yes, continue, please.

12 THE WITNESS: And I called --

13 MR HERBST:

14 Q. What did you do after receiving --

09:52:27

15 A. I called 334 and told him about it.

16 JUSTICE DOHERTY: Yes. Continue.

17 THE WITNESS: He told me that he had no objection for this  
18 line of action.

19 JUSTICE DOHERTY: Continue [microphone not activated]

09:52:52

20 please.

21 THE WITNESS: He only said that he was concerned --

22 MR HERBST:

23 Q. I'm sorry, can you - you can continue. I thought you had  
24 completed your answer. But go ahead.

09:53:13

25 A. He only said that he was concerned about his security  
26 because whether - whether the convicts or Sammy Ragga thought  
27 that he was the one who reported this matter, but they will  
28 definitely know, so he was concerned about his security.

29 JUSTICE DOHERTY: Continue, Mr Herbst.

1 MR HERBST:

2 Q. Mr Saffa, did you do anything to record the substance of  
3 the communication that you had with Mr 334 that you've just  
4 described?

09:54:06 5 A. Yes, My Lord, I recorded it.

6 Q. And would you tell the Court in what manner you did and on  
7 what date?

8 A. It was in the form of a memo and on the 3rd of December,  
9 2010.

09:54:34 10 MR HERBST: Your Honour, at this point I would ask that the  
11 document which was referred to yesterday on cross-examination,  
12 headed "Follow-up Contact With TF1-334," be placed before the  
13 witness.

14 MR METZGER: I should keep my powder dry. I will be  
09:54:57 15 expecting some foundational questions.

16 JUSTICE DOHERTY: [Microphone not activated] Have you got  
17 the document to show to the witness? Please show the document in  
18 question to the witness. First show it to counsel for the  
19 Defence. Is this a copy for me?

09:55:25 20 THE COURT OFFICER: Yes.

21 JUSTICE DOHERTY: Proceed, Mr Herbst. The witness has the  
22 document before him. Could I please remind you, Mr Herbst, to  
23 switch off your machine when you're not speaking, please.

24 MR HERBST: Yes, Your Honour, I'm sorry.

09:56:04 25 Q. Mr Saffa, is that the document to which you just referred -  
26 the memo that you just referred?

27 MR METZGER: Objection, Your Honour. He should be shown  
28 the document and asked him what that document is. Because the  
29 document of itself does not have a date. There is no way we can



1 identify it. That's a leading question.

2 JUSTICE DOHERTY: It is a leading question. Please  
3 rephrase.

4 MR HERBST:

09:56:28 5 Q. What is that document?

6 A. My Lord, this document was a follow-up contact with 334 and  
7 was written when I got instruction from the chief of  
8 prosecutions, Mr Jim Johnson, to inform 334 about our intention  
9 in the Office of the Prosecutor to report the matter to the  
10 Registrar of the Court.

09:56:59

11 Q. In which paragraph of the document refers to that  
12 instruction that you recorded?

13 A. That is in the first paragraph, and this document was  
14 prepared on the 3rd December --

09:57:26

15 Q. [Overlapping speakers] --

16 A. -- 2010.

17 Q. Thank you. Now, when you spoke to 334, in what language  
18 did he speak to you?

19 A. I spoke to him in Krio.

09:57:47

20 Q. And in what language did you record what he said?

21 A. I recorded the interview or the conversation in English.

22 Q. And would you tell us in which paragraphs of the document  
23 you recorded that conversation that you've just described?

24 A. I recorded the conversation on the second, third, fourth,  
25 fifth, and sixth paragraphs.

09:58:30

26 MR HERBST: Your Honour, at this time I move the admission  
27 of the document.

28 JUSTICE DOHERTY: The document is tendered.

29 MR NICOL-WILSON: No objections, Your Honour.

1 MR METZGER: I welcome the document's entry into evidence.

2 JUSTICE DOHERTY: Thank you.

3 MS SERRY-KAMAL: No objection.

4 JUSTICE DOHERTY: The document becomes Prosecution

09:59:10 5 Exhi bi t P6.

6 EXHIBIT P6 ADMITTED AND MARKED

7 JUSTICE DOHERTY: Please proceed.

8 MR HERBST:

9 Q. Now that the document is in evidence, Mr Saffa, the fifth

09:59:32 10 and sixth paragraphs contain information that you have not

11 related yet, so would you tell us what Mr 334 told you in that

12 connection that you recorded in the last two paragraphs on

13 December 3 of 2010?

14 A. After discussing with 334 about the OTP intention to report

10:00:05 15 the matter to the registrar, and we dealt with that issue, 334

16 informed me that Sammy Ragga went to him at his house that same

17 morning and told him that he received another call from the

18 convicts in Rwanda. Ragga said that the convicts told him to

19 tell TF1-334 that they were quite prepared to fulfil their

10:00:34 20 promise earlier made to him, that they were asking him to just

21 exercise some patience so that they can put things in place. He

22 also informed me that --

23 [Mr Serry-Kamal enters Court]

24 THE WITNESS: -- Ragga also told him that Bazzy's brother

10:00:58 25 is a chairman for the APC party in America and that he has

26 informed him about the matter. According to him, Sammy Ragga

27 told him that the brother of Bazzy has also contacted

28 Mr Tamba Sam-Sumana, the Vice-President of Sierra Leone, to

29 render some assistance in helping the convicts out of jail in

1 Rwanda. He said the vice-president has said that he will give  
2 any assistance within his reach. But that Sammy Ragga did not  
3 tell him the name of the brother - of Bazy in America. That was  
4 another information he gave me.

10:01:53

5 MR HERBST:

6 Q. Thank you. Now earlier in your testimony you mentioned  
7 another document that you said you had prepared in the form of a  
8 witness statement. Do you remember that testimony?

9 A. Yes, My Lord.

10:02:08

10 Q. On what dates did you prepare that document?

11 A. That document was prepared on the 1st and the 3rd of  
12 December 2010.

13 Q. Would you tell the Court how you prepared that document -  
14 how you went about preparing it?

10:02:30

15 A. I went about preparing it through the interview I had with  
16 him - I had with 334 and the information he gave me on the 1st  
17 and the 3rd of December 2010.

18 Q. Did you use, in preparing that document --

19 MR METZGER: Sounds like a leading question to me,  
20 Your Honour.

10:02:58

21 MR HERBST: [Overlapping speakers]

22 JUSTICE DOHERTY: Seems to be starting to be a leading  
23 question. Please be cautious.

24 MR HERBST:

10:03:08

25 Q. What, if any, other documents did you use in preparing the  
26 document you just mentioned in the form of a witness statement?

27 A. I prepared it on a witness statement template.

28 JUSTICE DOHERTY: I don't think that was the question

29 Mr Herbst was asking, Mr Witness. He said what if any other

1 documents did you use? But I suppose a template is something you  
2 would use.

3 So please continue, Mr Herbst. Mr Herbst, can I remind you  
4 about your microphone.

10:03:48 5 MR HERBST: Thank you, Your Honour.

6 JUSTICE DOHERTY: You got another question for the witness.

7 MR HERBST: Yes, thank you. Very sorry, Your Honour. I  
8 do. But I guess, Your Honour, I would ask now that the next -  
9 that the document that he just referred to be placed before him

10:04:06 10 so he can identify it. It consists of four pages and is headed  
11 "Witness Statement."

12 JUSTICE DOHERTY: Is this Exhibit P3?

13 MR HERBST: [Overlapping speakers] December.

14 JUSTICE DOHERTY: What date is it, Mr --

10:04:23 15 MR HERBST: [Overlapping speakers] It has a statement date  
16 of 1 and 3 December 2010. It consists of four pages. It's in  
17 the form of a witness statement, something like P3, but it is not  
18 that witness statement and it's not signed.

19 JUSTICE DOHERTY: I understand. Please,

10:04:45 20 Mr Court Attendant, take the document out of the bundle and show  
21 it to Defence counsel and then the witness.

22 Mr Witness, Mr Court Attendant says he does not have that.  
23 Was it in the bundle that you brought that I instructed you to  
24 hand over to Mr Court Attendant?

10:05:57 25 MR METZGER: Can I cut matters short, Your Honour? I'll be  
26 objecting to this document. I don't see the basis or relevance  
27 of it being tendered in evidence. As a document for the  
28 assistance of the witness's memory, then I would have no  
29 objection to it.

1 JUSTICE DOHERTY: I understand. Let's see if we can  
2 identify it first. And I will note the line of procedure you  
3 intend to adopt.

4 Mr Herbst, the witness has identified P3 but my  
10:06:52 5 understanding was that it's an unsigned document and it's not P3.

6 MR HERBST: That's correct, Your Honour. I believe that  
7 document was among the documents that Ms Bola-Clarkson sent over  
8 many days ago for the Court attendant and I had thought that that  
9 was also in the folder of documents Mr Saffa brought. Perhaps we  
10:07:26 10 could ask him.

11 JUSTICE DOHERTY: I have asked.

12 MR METZGER: Your Honour, may I make my objection now in  
13 the interests of saving time whilst that document is being found.  
14 As I understand it on my reading of the document, that is exactly  
10:07:42 15 the same document that was later signed on 9 December by the  
16 witness Mr Alimamy Bobson Sesay. In the circumstances, it may be  
17 duplicating something that is before the Court except that it  
18 would now appear in its unsigned format. There is no issue on  
19 behalf of the defendant Kanu that the statement, if you like, was  
10:08:10 20 taken by this witness. We take it as read. That is the evidence  
21 that has been given. And that it was prepared in that format and  
22 in due course, it was converted to a statement that was signed on  
23 the 9 December. Now, if my learned friend wants to put it for  
24 any other reason, we would object. It's really superfluous in  
10:08:33 25 all the circumstances of the case.

26 JUSTICE DOHERTY: Mr Herbst, you've heard Mr Metzger's  
27 observations and prospective objection. Have you anything to  
28 say?

29 MR HERBST: Yes, I do, Your Honour. First of all, this is

1 not identical to the witness statement that was signed six days  
2 later. There are differences, and the witness is prepared to  
3 explain why those differences exist, number 1, and it is part of  
4 his investigation and what happened in light of the allegations  
10:09:15 5 that were raised --

6 MR METZGER: I withdraw the objection in the circumstances.

7 JUSTICE DOHERTY: That's helpful. Mr Herbst, the objection  
8 has been withdrawn by counsel.

9 MR HERBST: [Overlapping speakers]

10:09:23 10 JUSTICE DOHERTY: So we're just trying to get this document  
11 and Mr Court Attendant is doing some photocopying and we're  
12 hoping to show it to the witness.

13 MR HERBST: Thank you, Your Honour, I appreciate that. But  
14 let me also - while that's happening so we're not wasting any  
10:09:42 15 time, let me just add that there was reference by the witness in  
16 cross-examination to a second statement, and this is perhaps the  
17 explanation for that testimony.

18 JUSTICE DOHERTY: I see. The document has been shown to  
19 counsel and it has --

10:10:10 20 MR HERBST: Thank you, Your Honour.

21 Q. Mr Saffa, is this the document you were referring to  
22 earlier as the document that you prepared in the format of a  
23 witness statement that was dated 1 and 3 December 2010?

24 A. Yes, my Lord.

10:10:31 25 MR HERBST: Your Honour, if there is no objection, and  
26 that's what I understand, at least from one counsel, I'll move  
27 the admission of the document now.

28 MR METZGER: There was no objection to the document that  
29 had been served on the Defence. I note that the copy that is now

1 provided to us is different in certain material particulars from  
2 that which was disclosed by the Prosecution. That is to say,  
3 that there are handwritten amendments at page 1 and page 3 of the  
4 document. I have just looked at it, and I would seek, before  
10:11:12 5 this document is admitted in any format, for foundational  
6 questions to be asked about those additions. I don't necessarily  
7 propose to withdraw my withdrawal of the objection. I'm just  
8 putting it on record. This document in this format, Mr Herbst,  
9 I'll be just 30 seconds more. This document in this format has  
10:11:39 10 not been served to the best of my knowledge on the Defence before  
11 this moment.

12 JUSTICE DOHERTY: Mr Herbst, you've heard what was said.

13 MR HERBST: Your Honour, I didn't - yes, I did not realise  
14 that there were any marks or revisions on the page. I had  
10:12:03 15 understood that the blank document that I had served on the  
16 defendants would be the document that I was going to offer. So I  
17 suspect - well, I don't want to say, but I guess we could - if we  
18 could locate that document, that's the one that I would ask to be  
19 admitted, the one that does not have any lines on it, the one  
10:12:32 20 that I disclosed more than a year ago - or almost a year ago.  
21 That was among the documents, I believe, that was forwarded to  
22 the Court attendant.

23 JUSTICE DOHERTY: I don't know what was --

24 MR HERBST: [Overlapping speakers] Your Honour, I have a  
10:13:15 25 blank copy of it. I'm going to ask the Court Officer to e-mail  
26 it over to Freetown.

27 JUSTICE DOHERTY: Just pause for one moment, Mr Herbst.  
28 First of all, the document has now been put in front of the  
29 witness, whether that was your intention or not. Are you asking

1 me to withdraw it?

2 MR HERBST: Your Honour, I haven't seen that document. I  
3 don't know what the handwriting is on document. So it wasn't the  
4 document that I had intended to introduce. I had intended to  
10:13:51 5 introduce the document that was clean and free of any handwritten  
6 notations. So I guess I am asking to withdraw the document  
7 because frankly, I've not seen it. I don't know what's on it.

8 JUSTICE DOHERTY: Counsel, that document is going to be  
9 withdrawn from the witness. Another document is going to be  
10:14:24 10 sent.

11 Now, two things occur to me: The first is that that's  
12 going to take a minute or I don't know how long to get copied,  
13 et cetera; and I note now that Mr Serry-Kamal is in, and we did  
14 interpose Mr Saffa in order to accommodate Mr Serry-Kamal's  
10:14:48 15 absence and then proceed to complete his cross-examination of  
16 334. I had rather hoped we might get Mr Saffa's  
17 evidence-in-chief in, but this delay has occurred. So I am going  
18 to stand - I think to save time and we should complete 334 first.  
19 I will stand Mr Saffa down and I will have Mr Alimamy Bobson  
10:15:17 20 Sesay called and complete his cross-examination. In the  
21 meantime, this document can be sorted out. Mr Saffa, did you  
22 hear me --

23 MR HERBST: That's an excellent idea, Your Honour.

24 THE WITNESS: Yes, Your Honour, I can understand.

10:15:37 25 JUSTICE DOHERTY: You are free to leave the witness box now  
26 but as you're under oath you shouldn't discuss your evidence with  
27 other people. We will try and recall you as soon as we can. I  
28 would ask WVS to bring in Mr Sesay.

29 THE WITNESS: Thank you, ma'am.



1 JUSTICE DOHERTY: You're welcome.

2 [The witness withdrew]

3 Alimamy Bobson Sesay, previously sworn.

4 Cross-examination by Mr Serry-Kamal:

10:17:17 5 JUSTICE DOHERTY: Good morning, Mr Sesay. I trust you are  
6 well. I again remind you of the oath that is binding on you that  
7 you took some days ago, and Mr Serry-Kamal on behalf of the  
8 accused Kamara, has got questions for you. As you know, you  
9 should answer them truthfully. Did you understand?

10:17:40 10 THE WITNESS: Yes, my Lord.

11 JUSTICE DOHERTY: Mr Serry-Kamal, proceed.

12 MR SERRY-KAMAL: Thank you, Your Honour, for allowing me to  
13 see the doctor.

14 Q. Mr Sesay, I recall that you said on one of your visits to  
10:17:59 15 Sweissy you took pity on Sammy Ragga because he was homeless and  
16 he stayed with you. You took him in and gave him one room in  
17 your house?

18 THE INTERPRETER: Your Honour, the witness's channel needs  
19 to be changed to Krio.

10:18:29 20 JUSTICE DOHERTY: Yes, indeed, we forgot that. Please  
21 assist the witness, thank you for reminding me, Mr Interpreter.

22 THE INTERPRETER: You're welcome, Your Honour.

23 MR SERRY-KAMAL:

24 Q. You said you took Sammy in, you found him crying because  
10:18:55 25 his partner had put him out of the house. Do you recall saying  
26 that?

27 A. I did not say I took Sammy. I said Sammy met me and  
28 explain to me why he was crying. He said he and his partner are  
29 having a problem, so he doesn't want to get into any problem

1 because he's just come from prison. He said I should help him so  
2 that he would have some place to rest until they solved the  
3 issue. That was what I said.

4 MR HERBST: Your Honour, I'm sorry to interrupt, but I  
10:19:35 5 wonder if we could have the witness's microphone turned down here  
6 so that I can hear the translation. I could not hear what the  
7 witness said.

8 JUSTICE DOHERTY: Do you mean when the answer comes, you  
9 hear the witness's voice?

10:20:05 10 MR HERBST: Yes, precisely, Your Honour. And I hear as  
11 loudly as the - as the interpreter. So the English interpreter,  
12 so that's the problem.

13 JUSTICE DOHERTY: I understand. First of all, if there is  
14 a technical way of eliminating or decreasing it within our AV  
10:20:24 15 booth, maybe they could action it. And in the meantime, I will  
16 also ask Mr Court Attendant to lower the volume of the witness's  
17 microphone not completely, because at least four of our Defence  
18 counsel speak Krio and they will want to hear it.

19 Please proceed.

10:20:52 20 THE INTERPRETER: Your Honour, in addition to that  
21 Mr Serry-Kamal should be advised to switch off his microphone  
22 because he is close to the witness - to be switching off his  
23 microphone when he finishes asks his question.

24 JUSTICE DOHERTY: Mr Serry-Kamal, did you hear  
10:21:06 25 Mr Interpreter?

26 MR SERRY-KAMAL: No.

27 JUSTICE DOHERTY: Mr Interpreter asks that you switch off  
28 your microphone. Your proximity to the witness's microphone does  
29 not help and as we've already been advised having two on at once

1 does cause problems. So if you could remember to switch yours  
2 off. I'll signal you, Mr Serry-Kamal. Please proceed,  
3 Mr Serry-Kamal.

4 MR SERRY-KAMAL:

10:21:31 5 Q. Now, did you take him to your house?

6 A. Well, I told him that that's no problem. There was no  
7 problem. He could go to my house. He came. He met me later at  
8 my house.

9 Q. Did he stay in your house?

10:21:49 10 A. Yes, he stayed with me for some time.

11 JUSTICE DOHERTY: Mr Serry-Kamal, you're not turning off  
12 your microphone but now you're about to ask a question so you  
13 have to put it back on again.

14 MR SERRY-KAMAL:

10:22:08 15 Q. Now, which house are you referring to?

16 A. I'm referring to number 3 St John Drive, Wellington.

17 Q. Which month was this?

18 A. Well, like I said, before this issue came up, this  
19 contemporary issue. This problem had not come up when that  
10:22:40 20 happened.

21 Q. I know. But can you tell us which month this was or which  
22 month you did all of this great favour for your friend?

23 A. I can't really recall the month, but I can remember that it  
24 was not long after he was released from prison when this problem  
10:23:05 25 happened. I cannot precisely recall that it happened on a  
26 particular month, but it was after he was released. Just after  
27 he was released when he had this problem with the woman he was  
28 staying with when he told me this problem at Sweissy.

29 JUSTICE DOHERTY: Mr Serry-Kamal, continue.

1 MR SERRY-KAMAL:

2 Q. Was it in 2010?

3 A. Well, like I'm precisely saying, before - it was before  
4 this contempt issue came up.

10:23:40 5 Q. That is before December 2010?

6 A. Yes, before this issue came up.

7 Q. Leave the contempt issue. Let us talk about months now.  
8 Was it before December of 2010?

9 A. As I am saying, before this trial came up. That was when  
10:24:06 10 this happened.

11 JUSTICE DOHERTY: Continue.

12 MR SERRY-KAMAL:

13 Q. Now, when did he leave your house?

14 A. Well, actually, Sammy did not spend more than one month at  
10:24:31 15 my place, because he was not convenient there. I just rescued  
16 him for a moment. He did not stay long there.

17 Q. I know this is a different point but I'm used to practising  
18 when you ask a question you just answer the question and stop  
19 giving long speeches.

10:24:49 20 JUSTICE DOHERTY: Incidentally, Mr Serry-Kamal, I think  
21 this has been explored by another counsel and I did indicate that  
22 two counsel cannot cross-examine on the same issue. But in any  
23 event, the answer is he did not spend more than a month, so.

24 MR SERRY-KAMAL: Your Honour, I believe when my learned  
10:25:12 25 friend was cross-examining him he was dodging --

26 JUSTICE DOHERTY: You've had a chance. I do not  
27 necessarily conclude it's dodging. It can be a matter for  
28 submission. Proceed.

29 MR SERRY-KAMAL:

1 Q. You mentioned that Mr Kargbo, Ragga, called you and  
2 informed you that he had something very important to discuss with  
3 you in November 2010. To be precise, on Friday, 26 November  
4 2010?

10:25:55 5 A. Yes, my Lord.

6 Q. You say he came - ultimately he came to your house the next  
7 day?

8 A. Yes, my Lord.

9 Q. Now, what time of the day did he come to your house?

10:26:19 10 A. It was in the morning hours, because I had prepared myself  
11 to go to Newton. It was in the morning hours. I wouldn't know  
12 the time, but it was in the morning hours.

13 Q. Between what time and what time?

14 A. Well, it was going to 9. Going to 9. 8 to 9. Because it  
10:26:43 15 was in the morning that I was preparing to go to Newton. It was  
16 a journey that I could have left very early to go on to drop  
17 something.

18 Q. And you said you both travelled to Newton?

19 A. Yes, my Lord.

10:27:00 20 JUSTICE DOHERTY: Mr Serry-Kamal, please, please adapt  
21 yourself to switching off that microphone. I'm beginning to  
22 learn it. We can all learn it. Proceed.

23 MR SERRY-KAMAL: [Microphone not activated] I say it's  
24 difficult to teach an old dog new tricks.

10:27:25 25 JUSTICE DOHERTY: Don't I know it. Continue.

26 MR SERRY-KAMAL:

27 Q. Now, Mr Witness, Bobson Sesay, you drove to Newton and you  
28 came back the same day?

29 A. Yes, my Lord.

1 Q. At that time Mr Sesay was not staying with you. He did not  
2 stay with you that day?

3 A. No.

4 Q. Sorry, I keep calling him Mr Sesay?

10:27:57 5 A. He was not with me, yes.

6 JUSTICE DOHERTY: Yes, continue.

7 MR SERRY-KAMAL:

8 Q. Let me take you back a bit. You said that Mr Kargbo is a  
9 very good friend of yours?

10:28:13 10 A. Yes, Papa.

11 Q. You also said that both your parents - your fathers came  
12 from the same village?

13 A. Yes.

14 Q. Might I ask where this - what is this village and where it  
10:28:45 15 is?

16 MR HERBST: Your Honour, that was answered on a previous  
17 occasion and during another cross-examination, and I think the  
18 subject matter was also explored.

19 JUSTICE DOHERTY: It's been dealt with, Mr Serry-Kamal.  
10:28:58 20 Please move on to another topic.

21 MR SERRY-KAMAL: The name of the village they were from?  
22 It was not dealt with, my Lord. The name of the town.

23 JUSTICE DOHERTY: Mr Serry-Kamal says the name of the  
24 village is not on record.

10:29:13 25 MR SERRY-KAMAL: [Microphone not activated] on record.

26 MR HERBST: Yes, it is.

27 JUSTICE DOHERTY: Can you remind me what it is.

28 MR HERBST: I'm looking for it in the transcript right now.

29 Maybe it would be easier to just let --

1 JUSTICE DOHERTY: Yes, maybe it would. Please answer  
2 Mr Witness.

3 MR HERBST: [Overlapping speakers] Less time.

4 JUSTICE DOHERTY: Please answer, Mr Witness.

10:29:33 5 THE WITNESS: It is Kamabai.

6 MR SERRY-KAMAL: Thank you.

7 Q. You say sometime later you also met him again at Sarolla -  
8 or he met you at Sarolla, which is which? Sarolla?

9 MR METZGER: [Microphone not activated]

10:30:12 10 JUSTICE DOHERTY: Sorry, Mr Metzger, I didn't hear you.

11 MR METZGER: I heard a noise and thought we may have lost  
12 the link but it may not be the case.

13 JUSTICE DOHERTY: Continue.

14 MR SERRY-KAMAL:

10:30:22 15 Q. You said you met him at the Sarolla area?

16 A. Yes, because when he called me, I was driving toward PWD  
17 and we met at Sarolla.

18 Q. Who were you going to see, your sister or your aunt?

19 A. I was going to meet my sister at the PWD junction.

10:30:48 20 Q. Not your aunt?

21 A. No, I was not going to meet my aunt. It was my sister. I  
22 don't have an aunt at PWD. It is my sister who is at PWD.

23 JUSTICE DOHERTY: Continue.

24 MR SERRY-KAMAL:

10:31:04 25 Q. Did you tell anybody that you were going to visit your  
26 aunt?

27 A. My Lord, I did not tell anybody that. I am an adult. If I  
28 was going to --

29 Q. [Overlapping speakers] anybody in the OTP?

1 A. That I was going to visit my aunt? I did not tell anybody  
 2 in the OTP that I was going to visit my aunt. I said I was going  
 3 to visit my sister.

4 MR SERRY-KAMAL:

10:31:41 5 Q. You said you alighted from the vehicle?

6 A. Yes, when I parked I alighted the vehicle.

7 Q. Now I am putting it to you that throughout this period,  
 8 Mr Bazy did not talk to you personally.

9 A. I am also putting it to you that when Sammy called me he  
 10:32:12 10 told me that Bazy wanted to talk to me and I said no, I don't  
 11 want to talk to Bazy that was what I told the Court.

12 Q. Mr Sesay?

13 A. Yes, Papa Serry-Kamal.

14 Q. Mr Bazy did not talk to you?

10:32:32 15 A. I refused to talk to him. That's true. When Sammy said  
 16 Bazy wanted to talk to me I said no. I'm not going to talk to  
 17 him.

18 Q. Mr Bazy did not talk to you?

19 A. I have already stated that I refused to talk to Mr Bazy  
 10:32:48 20 when Sammy said Bazy wanted to talk to me.

21 Q. [Microphone not activated]

22 THE INTERPRETER: Learned counsel's microphone is not on.

23 MR SERRY-KAMAL:

24 Q. [Microphone not activated] talk to you?

10:33:05 25 A. He did not talk to me directly.

26 JUSTICE DOHERTY: Continue.

27 MR SERRY-KAMAL:

28 Q. And throughout this time you're reporting, he did not talk  
 29 to you?



1 A. I won't tell lies. He did not talk to me. It was Sammy  
2 who was relaying messages to me that Bazzy and - that's true. He  
3 said that he wanted to talk to me. I said no, I was not going to  
4 talk to him.

10:33:36 5 Q. Yapo, please cooperate with us so we save time.

6 JUSTICE DOHERTY: I think the answer is clear.

7 THE WITNESS: First Mr Serry-Kamal Papa I'm still  
8 cooperating with you.

9 MR SERRY-KAMAL:

10:33:55 10 Q. Now, Mr Sesay, you gave evidence at the RUF trial, not so?

11 A. Yes, my Lord.

12 Q. You gave evidence against Bazzy in the AFRC trial?

13 A. Yes, my Lord.

14 Q. Needless to say, it resulted in very serious punishments  
10:34:23 15 being meted out against the convicts.

16 JUSTICE DOHERTY: Is that an observation or is it a direct  
17 question?

18 MR SERRY-KAMAL: [Microphone not activated] I was just  
19 laying the foundation for the next question I wanted to put.

10:34:50 20 JUSTICE DOHERTY: [Microphone not activated]

21 MR SERRY-KAMAL:

22 Q. Now, by the time you came to give evidence against  
23 Mr Bazzy, he had been moved to the detention centre of the  
24 Special Court, was no longer at Pademba Road; is that right?

10:35:14 25 A. Yes.

26 Q. There was no communication between Mr Bazzy and yourself at  
27 that time?

28 A. We had no communication.

29 Q. Could you please tell this Court the last time you ever

1 spoke to Mr Bazy when you were military people?

2 A. The last time that I spoke to Mr Bazy, it was at the time  
3 that he met us at the Pademba Road. When he met us at Pademba  
4 Road.

10:35:56 5 Q. [Microphone not activated]

6 A. That was around 2003 or so when they took them there after  
7 being charged with certain incidents. They took him there and he  
8 was in there for some time.

9 Q. Now, during that time neither Bazy nor anybody attempted  
10:36:27 10 to contact you?

11 JUSTICE DOHERTY: Is that at Pademba Road, Mr --

12 MR SERRY-KAMAL: No, when he was already in the detention  
13 centre of the Special Court.

14 JUSTICE DOHERTY: I see. Because I thought we were still  
10:36:39 15 at Pademba Road. Maybe you could specify.

16 MR SERRY-KAMAL: He was moved to the detention centre now  
17 in 2003 I believe.

18 JUSTICE DOHERTY: You're referring to the time Mr Bazy was  
19 in the detention centre.

10:36:56 20 MR SERRY-KAMAL: The detention centre, yes.

21 JUSTICE DOHERTY: Mr Witness, are you clear on that  
22 question? It's communication between you and Bazy whilst Bazy  
23 was here at the detention centre at the Special Court.

24 THE WITNESS: Well, because a matter came up that I  
10:37:15 25 brought up with the Court. We were with one of the  
26 investigators, Samura, when they contacted me. I made it known  
27 to the Court. Even during my cross-examination I said that, that  
28 one the investigators met me, that those men wanted to talk to  
29 me. That matter came up during the cross-examination and I

1 brought it up.

2 MR SERRY-KAMAL:

3 Q. [Microphone not activated] baseless.

4 JUSTICE DOHERTY: Mr Serry-Kamal, you talked across the  
10:37:41 5 witness. I only heard --

6 MR SERRY-KAMAL: [Microphone not activated]

7 JUSTICE DOHERTY: Yes. Please put your question  
8 completely.

9 MR SERRY-KAMAL:

10:37:47 10 Q. That matter, the case against Samura, was gone into by the  
11 Court and found to be baseless.

12 JUSTICE DOHERTY: No, I'm not sure what we're talking about  
13 here. A matter came up about an investigator Samura.

14 MR SERRY-KAMAL: Samura, yes.

10:38:04 15 JUSTICE DOHERTY: First of all, it's not answering your  
16 question, and I don't know which - well, I don't know whose side  
17 this Samura was an investigator for.

18 Now the question, Mr Witness, was this --

19 MR METZGER: I can help, Your Honour.

10:38:17 20 I -- [overlapping speakers]

21 JUSTICE DOHERTY: I remember Mr Samura extremely clearly  
22 but the witness has not identified him.

23 MR Witness --

24 MR METZGER: I think Mr Samura is the only person who's  
10:38:26 25 ever been acquitted in the Special Court.

26 MS SERRY-KAMAL: And I believe the witness did mention  
27 Mr Samura. He said --

28 JUSTICE DOHERTY: Just a moment. I am speaking. The  
29 witness mentioned an investigator Samura. He did not specify if

1 it was for the Defence or for the Prosecution. Therefore, it's  
2 not on record. And secondly, and more importantly, it does not  
3 answer your question.

4 Mr Witness, the question was during the time that Bazy was  
10:38:55 5 in detention did you speak to Bazy here at the Special Court?  
6 That's the question I want an answer to.

7 THE WITNESS: It happened. That caused me to make that  
8 report.

9 MR SERRY-KAMAL:

10:39:10 10 Q. Did you speak to Bazy?

11 A. Yes, when he was in the detention through Samura.

12 Q. [Microphone not activated]

13 A. Yes, on the phone. On the phone. It happened during the  
14 AFRC trial.

10:39:27 15 Q. The AFRC trial, you made an allegation against Mr Samura  
16 the investigator of the accused Bazy and others?

17 MR HERBST: Your Honour, I object. I have an objection.

18 JUSTICE DOHERTY: Yes, Mr Herbst. I'm listening to it.

19 MR HERBST: Your Honour, I don't see how the prior  
10:39:52 20 allegation, whatever it is - and I'm not informed of it - could  
21 possibly be relevant to this case. I understand relevance of  
22 when Mr Sesay last spoke to Mr Kamara and that it's come out now  
23 that he's spoken in - sometime in 2008, I guess. But I do not  
24 understand that there is any relevance whatsoever to whatever the  
10:40:24 25 prior investigation was. Whatever the outcome is, it's entirely  
26 irrelevant and I don't think any evidence should be heard on it.

27 JUSTICE DOHERTY: Mr Serry-Kamal, your response to that  
28 objection.

29 MR SERRY-KAMAL: Your Honour, I submit with great respect

1 that the questions are relevant. We are investigating another  
2 report, this time not made against an investigator of the Defence  
3 but against the defendants personally.

4 JUSTICE DOHERTY: You mean Kamara personally.

10:41:10 5 MR SERRY-KAMAL: Kamara personally.

6 JUSTICE DOHERTY: Before I rule on this, switch off your  
7 microphone, are you putting to the witness this is the Samura -  
8 Brima Samura who was charged with contempt of the Special Court,  
9 and are you putting to this witness that he was in some way  
10:41:32 10 involved in that allegation made against Brima Samura? Is that  
11 what you're putting to him?

12 MR SERRY-KAMAL: [Microphone not activated] Yes, Your  
13 Honour. He was involved. He made a report. The witness.

14 JUSTICE DOHERTY: Well, I had that report made in this  
10:41:48 15 Court by TF1-023. That's what led to that contempt. So I am not  
16 intending to give evidence from the bar table, but I recall that  
17 the complaint emanated from TF1-023, not this accused - not this  
18 witness. So I'm not sure where this is coming in and I don't  
19 know the relevance of all this if it is --

10:42:13 20 MR SERRY-KAMAL: Perhaps my learned friend --

21 JUSTICE DOHERTY: -- the same contempt.

22 MR SERRY-KAMAL: Your Honour, maybe my learned friend  
23 Mr Nicol-Wilson, who took part in the trial, will be of some  
24 assistance to us.

10:42:23 25 MR NICOL-WILSON: Your Honour, if I may just assist the  
26 Court. The witness said he made a complaint against Samura  
27 during - in answer to a question put to him by my learned  
28 colleague Mr Serry-Kamal.

29 JUSTICE DOHERTY: Mr Serry-Kamal is more than capable of

1 reminding me of that and the witness - what the witness said, a  
2 matter came up with the investigator Samura. Now, if it is a  
3 contempt relating to Brima Samura, it is not relevant and I am  
4 not allowing this line of questioning. Communications between  
10:43:02 5 your client and the witness: Definitely relevant.

6 MR SERRY-KAMAL: Your Honour, I know your rule, but the  
7 answer he gave was that he made a complaint. He made a complaint  
8 during that trial. That is what he said. Maybe the Krio  
9 interpreter did not interpret that but --

10:43:16 10 JUSTICE DOHERTY: I heard --

11 MR SERRY-KAMAL: -- I heard it.

12 JUSTICE DOHERTY: No. The witness said, Yes, it happened.  
13 That caused me to make a report.

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

10:43:24 15 JUSTICE DOHERTY: Because he spoke to Samura through - to  
16 Bazy through Samura's phone. Now that's not to do with the  
17 contempt. Let us --

18 MR SERRY-KAMAL:

19 Q. Was Samura subsequently charged by the Court for contempt?

10:43:47 20 JUSTICE DOHERTY: I'm not allowing that question because  
21 it's not factually based.

22 MR METZGER: Your Honour, may I just see if I can be of  
23 some assistance. My recollection accords with Your Honour's  
24 about the contempt case in relation to Samura, and I have very  
10:44:02 25 good cause to be cognisant and to recall those circumstances. I  
26 just wanted to say that my note of the - my note of the witness's  
27 answer was that Samura had contacted him, that he gave a report.  
28 He even gave evidence about it. So the witness has given that  
29 answer. It does seem to me that he is indicating another report

1 which the Prosecution says he's unaware of and I am unaware of.

2 But I just wanted to, as it were, first of all, give the  
3 Court the benefit of my note, and then also to support  
4 Your Honour in Your Honour's recollection because I recall it  
10:44:44 5 very well.

6 JUSTICE DOHERTY: Thank you for that, Mr Metzger. We've  
7 got the full answer now, that he spoke and the witness gave  
8 evidence about it. So continue, Mr Serry-Kamal.

9 MR SERRY-KAMAL:

10:44:57 10 Q. Now, Mr - you said Mr Bazy contacted you by Mr Samura's  
11 phone. Did you make a report?

12 A. I made the report, and even during my cross-examination I  
13 brought that up.

14 THE INTERPRETER: Your Honour, can we have the witness's  
10:45:19 15 answer so that we can interpret it accurately.

16 THE WITNESS: It was brought to the knowledge of the WVS.  
17 It was in my cross-examination at that time and I mentioned it  
18 during the cross-examination.

19 MR SERRY-KAMAL:

10:45:33 20 Q. [Microphone not activated] investigated?

21 A. They did not give me any follow up later on that issue. I  
22 was not involved in any case at that time.

23 MR HERBST: Excuse me.

24 JUSTICE DOHERTY: Yes, Mr Herbst.

10:45:48 25 MR HERBST: Your Honour, I'm sorry. I know it's very  
26 difficult for myself to be - to make myself heard in an  
27 objection, and I have not - I tried to keep for the benefit - I  
28 understand any communications that the witness had with Bazy  
29 Kamara is fair game. But my objection to any - any questions

1 about was a complaint investigated, what the outcome was, whether  
2 someone was convicted or acquitted is not relevant to this trial.  
3 We're not trying whether this witness made an accusation and how  
4 that came out. It is totally irrelevant to this case.

10:46:40 5 MR SERRY-KAMAL: I'm sure, My Lord, that my learned friend  
6 appreciates that the reliability of a witness is relevant to the  
7 issues in dispute.

8 JUSTICE DOHERTY: In any event, we've explored it fully and  
9 the evidence was of a communication allegedly made on the phone,  
10:47:06 10 a complaint lodged thereafter, came out in cross-examination, and  
11 that's - that I think is sufficient evidence. Move on, please.

12 MR SERRY-KAMAL: Thank you, Your Honour.

13 Q. Mr Witness, it seems to me from reading the transcript  
14 evidence and all the evidence that has been disclosed that in  
10:47:37 15 fact you were running the show in the OTP?

16 JUSTICE DOHERTY: Which show is this?

17 MR SERRY-KAMAL: This complaint about being interfered with  
18 and so on --

19 JUSTICE DOHERTY: [Microphone not activated].

10:47:50 20 MR SERRY-KAMAL: -- by the witness, by the accused in  
21 Rwanda, by Sammy Ragga.

22 Q. You were running the show?

23 A. My Lord, I have never run a show with the Court. I was  
24 peacefully in my home when somebody brought up an issue with me  
10:48:10 25 in relation to how I can change my statement, how I could help  
26 others.

27 Q. Even when it came to preferring charges, you, as it were,  
28 advised as to when was appropriate to bring those charges?

29 A. It was a suggestion that was made that they wanted to do



1 this and I said - the people said they would bring money, because  
2 in my own way and plan I wanted them to arrest all of us on that  
3 day. I wanted - Jim, who was in charge of investigations, I told  
4 him that they should go and arrest us, because if you want me to  
10:48:53 5 talk - I said they should go and arrest us at the time that they  
6 were going to meet us in that office so that they can prove that  
7 those people met me with the lawyer --

8 JUSTICE DOHERTY: You're talking over each other.

9 THE INTERPRETER: Your Honour, I'm leaving some of the  
10:49:07 10 things the witness is saying out because learned counsel is  
11 talking as the witness is talking and as I'm interpreting.

12 JUSTICE DOHERTY: Mr Serry-Kamal, I've said until I'm blue  
13 in the face: Do not talk over each other. The interpreter is  
14 not a magician. He's skilled, he's knowledgeable, but it's not  
10:49:28 15 possible to do two things at once.

16 MR SERRY-KAMAL: I apologise [microphone not activated].

17 JUSTICE DOHERTY: So I'm going to --

18 MR HERBST: I apologise as well.

19 JUSTICE DOHERTY: Yes, Mr Herbst.

10:49:44 20 MR HERBST: But I could not hear what the witness said, any  
21 of it.

22 JUSTICE DOHERTY: Well, it's not surprising. There was  
23 about three people trying to speak at once. Basically I haven't  
24 got it exactly, but --

10:50:02 25 MR SERRY-KAMAL: [Microphone not activated] Let me go over  
26 it again, perhaps slowly this time.

27 JUSTICE DOHERTY: I have that the people - yes, let us take  
28 it bit by bit. And Mr Witness, slowly so the interpreter can  
29 hear you.

1 MR SERRY-KAMAL:

2 Q. Now you recall in response to my question you said that you  
3 advised the OTP not to prefer the charges on the 15th but to wait  
4 until the 16th of December?

10:50:36 5 A. They asked me. They told me that they want to prefer  
6 charges. And I said, Well, these men, Sammy has called me. They  
7 said they were going to meet me. So to prove that I am not going  
8 to tell lies about anybody, let them wait until the 16th when  
9 this man said they were going to call me. Whatever they were  
10:50:55 10 going to establish - in fact, I even said that if it causes them  
11 to arrest all of us on the same, that will prove that I'm not  
12 going to tell lies, and they said that won't be a problem.

13 Q. Mr Sesay, we'll come back to it. You are no stranger to  
14 the OTP?

10:51:14 15 JUSTICE DOHERTY: What does that mean?

16 MR SERRY-KAMAL: He's been there several times to be  
17 briefed on various cases --

18 Q. -- that you testified in?

19 JUSTICE DOHERTY: Answer that question

10:51:26 20 [microphone not activated].

21 THE WITNESS: Well, I used to come. You said I was not -  
22 I am not a stranger. It's the matter that used to meet me. That  
23 was why I used to come to the OTP and it was after they contacted  
24 me. It was the matter that was at hand that caused me to come to  
10:51:46 25 them.

26 MR SERRY-KAMAL:

27 Q. [Overlapping speakers] 2010 you came to the OTP, September?

28 JUSTICE DOHERTY: September 2010, Mr Witness.

29 THE WITNESS: Except if he reminds me, I can't say I'll

1 recall that I was coming there. He has to remind me on what I  
 2 came there for on September 2010.

3 JUSTICE DOHERTY: Proceed.

4 MR SERRY-KAMAL: Your Honour, it's a contact summary. That  
 10:52:17 5 is a contact with Mustapha - Late Mustapha Koroma.

6 JUSTICE DOHERTY: Mr Serry-Kamal, put your question,  
 7 please.

8 MR SERRY-KAMAL:

9 Q. Now, there's a record here that on 1 September you were  
 10:52:40 10 contacted by the OTP?

11 A. I can't deny that because I told you that the OTP, from  
 12 that Court contact, they used to contact me when I told them that  
 13 I had something of importance.

14 Q. Monday, 15 November you again contacted the OTP?

10:53:03 15 JUSTICE DOHERTY: He contacted OTP?

16 MR SERRY-KAMAL: Yes, Your Honour.

17 THE WITNESS: Correct.

18 MR SERRY-KAMAL:

19 Q. And you made contact with Mustapha Koroma?

10:53:19 20 A. Yes, my Lord.

21 Q. [Microphone not activated] contact OTP?

22 A. Yes, because as developments took place they told me to  
 23 call them to brief them on how issues were developing. I was not  
 24 just doing it just like that.

10:53:46 25 Q. You said they should wait until 16 December?

26 JUSTICE DOHERTY: Is that related to 15 November?

27 MR SERRY-KAMAL: We're talking about the contacts with the  
 28 OTP and so on.

29 Q. And he asked for the charges to be deferred - the

1 preferment of the charges to be deferred to 16 December?

2 JUSTICE DOHERTY: He has answered that.

3 MR SERRY-KAMAL: To provide an opportunity to entrap the  
4 rest of them.

10:54:16 5 Q. Wasn't that what you said? You wanted to be caught  
6 red-handed?

7 A. Yes, that was what I wanted. Because they were  
8 investigating something. And the OTP had said that they were  
9 interested in investigating this matter.

10:54:36 10 Q. [Overlapping speakers] provide evidence - provide the  
11 evidence?

12 A. So that they would see the truth of what I had said.

13 Q. That means you were prepared to provide a convenient  
14 situation for persons to be arrested; caught in the act?

10:55:04 15 A. I wanted them to do that, yes, because I did not want  
16 someone to misinterpret me.

17 Q. [Microphone not activated] trying to be agent provocateur?

18 THE INTERPRETER: Your Honour, the interpreter has not  
19 gotten learned counsel's question.

10:55:20 20 JUSTICE DOHERTY: Mr Serry-Kamal, repeat your question.  
21 The interpreter did not hear it.

22 MR SERRY-KAMAL:

23 Q. Did you want to be a spy for the OTP?

24 A. No, my Lord. You should know in the first place there was  
10:55:36 25 a matter that - I did not want to become a spy but there was a  
26 case at hand that they had - when they met me that I should  
27 change my story. So I had to be very sensible and smart enough  
28 so that nobody would involve me and tarnish my character and my  
29 family's character.

1 Q. This is not a matter of your character. It's your - I am  
2 putting it to you it's your desire to be relocated?

3 A. Mr Serry-Kamal, as I am telling you now, I am boasting  
4 about my family, that they are able to get me out of Freetown my  
10:56:12 5 sisters are capable; my family is capable, not on this issue. I  
6 have told you that those people brought this matter up to me.  
7 And a matter that involves my life and that would tarnish by  
8 reputation and my family's reputation, I must take my time as to  
9 how to go about it.

10:56:31 10 Q. Mr Sesay, on 7 December 2010 you provided information to  
11 Mr Magnus Lamin?

12 A. Yes, I was giving them information concerning - I did not  
13 give them information --

14 MR HERBST: [Indiscernible] excuse me.

10:56:53 15 JUSTICE DOHERTY: Mr Herbst, yes.

16 MR HERBST: Your Honour, this area and the December 7  
17 memorandum has been fully - fully explored and exhausted. We're  
18 just reploughing old ground.

19 JUSTICE DOHERTY: Mr Herbst submits it's been fully  
10:57:22 20 explored by other counsel and I would remark also, in  
21 parenthesis, so has the relocation issue been fully put.

22 MR SERRY-KAMAL: Your Honour with respect quite apart from  
23 the fact that I have a brief on behalf of my client, but there  
24 are other issues which have arisen in the cross-examination which  
10:57:42 25 need to be explored. It's not watertight with respect to my  
26 learned friend.

27 JUSTICE DOHERTY: If it's a new matter you're entitled to  
28 put it.

29 MR SERRY-KAMAL: The witness has said quite categorically

1 that he has a means to travel.

2 JUSTICE DOHERTY: I'm not talking about the travelling.  
3 I'm talking about December 7 providing information to Lamin, so  
4 please put that --

10:58:03 5 MR SERRY-KAMAL: That was the information I was going to  
6 refer you to, where he said he needed the OTP to assist him  
7 obtain a visa and then buy him a ticket and he said --

8 JUSTICE DOHERTY: If that is what we're going to hear, that  
9 has been explored at very great length in detail by other  
10:58:21 10 counsel. I have already laid a benchmark to counsel they cannot  
11 ask the same line of questioning. If you have something else  
12 that is relevant to your client you're entitled to put it and I  
13 said you should put it.

14 MR SERRY-KAMAL: Your Honour, the only difference is that  
10:58:37 15 on that occasion the questions were addressed to him going  
16 abroad. But here he says he can do it himself. The question  
17 we're asking if you can do it yourself, why are you - why did you  
18 ask that they should provide you with a visa --

19 JUSTICE DOHERTY: Ask that question then. Please put that  
10:58:58 20 question.

21 MR SERRY-KAMAL:

22 Q. In response to my learned friend the other day, you  
23 answered that you wanted to go abroad, your sister was ready to  
24 accommodate you, et cetera. That is what you said to Mr Magnus  
10:59:20 25 or Jim, Magnus Lamin, I don't know exactly; remember that?

26 A. Yes, I remember.

27 Q. In answer to my question recently you said you would be  
28 able to finance - your family would be able to finance your trip  
29 to France?

1 A. Yes, I'm saying that my sisters as of now, even when my  
2 brother is [indiscernible] they are ready for that [overlapping  
3 speakers].

4 Q. Why did you tell Mr Lamin that you needed OTP to assist you  
10:59:56 5 to get a visa?

6 A. We were discussing and I told him, I said Mr Lamin, now  
7 even now if the OTP were able to help me to get a visa I said  
8 maybe if I apply they might reject me at the embassy because  
9 maybe I've gone to this trial. Maybe they would reject me. But  
11:00:16 10 if you the Court can facilitate that, I said there is no need for  
11 me to be here. It's because I am here that's why all these  
12 things are happening I should have been with my sisters and they  
13 are ready for that.

14 Q. Why did you also ask the OTP to provide you with a ticket?  
11:00:33 15 MR HERBST: Excuse me, your Honour.

16 JUSTICE DOHERTY: This has already been explored. I cannot  
17 allow this to go on. It has been explored by two counsel. I put  
18 you on warning.

19 MR SERRY-KAMAL: Your Honour, it's the reason why --

11:00:47 20 JUSTICE DOHERTY: It's been explored. It's been answered.  
21 Move to a new topic relevant to your client's case. Sorry,  
22 Mr Herbst.

23 MR HERBST: Your Honour, if you permit the interjection on  
24 another subject, I've been advised that the tape in Freetown is  
11:01:06 25 about to finish. It needs changing and the Court attendant is  
26 not picking his phone up.

27 JUSTICE DOHERTY: Mr Serry-Kamal, have a seat and rest your  
28 knees while we change the tape. [Microphone not activated].

29 It's ready. Please proceed. Mr Metzger.

1 MR METZGER: Just a quick question. Bearing in mind the  
2 situation in Kigali and the way in which we've been sitting  
3 recently, is it Your Honour's intention to continue sitting  
4 through until 12 or --

11:02:35 5 JUSTICE DOHERTY: I just noticed and I was just about to  
6 ask Kigali that because we've brought forward the rising time to  
7 12 from 12.30 in the light of what you said. So I'm going to ask  
8 that question.

9 Kigali, can we continue to try and finish this  
11:02:54 10 cross-examination and then rise completely at 12?

11 MR HERBST: Your Honour, I'm advised that we can sit at  
12 least until 12.

13 JUSTICE DOHERTY: That's very good. Because it will be  
14 good to complete --

11:03:10 15 MR HERBST: By the way I might advise the Court that I took  
16 the identical trip to the ferry from the Court about ten days  
17 ago.

18 MR METZGER: I don't need Mr Herbst' advice on this matter  
19 with the greatest respect to him.

11:03:26 20 MR HERBST: [Indiscernible]

21 JUSTICE DOHERTY: Mr Herbst sorry I didn't hear you.

22 MR HERBST: It did take no more than 15 minutes  
23 [overlapping speakers].

24 JUSTICE DOHERTY: There are other issues so let us  
11:03:39 25 continue. Mr Serry-Kamal, your next question? We're going to  
26 try and finish this cross-examination. Continue, Mr Serry-Kamal.

27 MR METZGER:

28 Q. Let's move to another matter. Apart from the time he was  
29 residing in your house, I am putting it to you that Ragga is



1 always in your house?

2 A. I am putting it to you, my Lord, that Ragga is not always  
3 at my house.

4 JUSTICE DOHERTY: Continue.

11:04:21 5 MR SERRY-KAMAL:

6 Q. Now, in connecti on with this inci dent you are testi fyi ng  
7 to, how many times did he visi t your house?

8 A. I want you to bring this questi on agai n.

9 JUSTICE DOHERTY: How many times did he visi t your house at  
11:04:41 10 the time these inci dents were happeni ng?

11 THE WITNESS: Before the charge or after the charge?

12 MR SERRY-KAMAL:

13 Q. [Mi crophone not acti vated]

14 A. As I had said, he went to me on that day that we went to  
11:05:04 15 Newton. He met me at the juncti on, and the other day when he  
16 went to tell me about Bazzy' s brother, he met me at my house. As  
17 I can recall, it was twice.

18 Q. Were you still a taxi driver?

19 A. Toward what time?

11:05:22 20 Q. [Mi crophone not acti vated]

21 A. Yes, I was still driving my taxi. I was a taxi owner and a  
22 dri ver.

23 Q. Owner and dri ver, yes?

24 JUSTICE DOHERTY: Conti nue.

11:05:36 25 MR SERRY-KAMAL:

26 Q. Where is your taxi now?

27 A. I have sold i t.

28 Q. After the Tayl or tri al?

29 A. It was not after the Tayl or tri al. It was wi th me after

1 the trial.

2 MR HERBST: Objection, Your Honour. I don't see the  
3 relevance of this line.

4 JUSTICE DOHERTY: I don't see the relevance of the line  
11:06:05 5 either. What is the relevance of the line.

6 MR SERRY-KAMAL: [Microphone not activated] the witness is  
7 a taxi driver. Seems to me that he's always at the house.  
8 That's why I was asking.

9 JUSTICE DOHERTY: It's been answered. Please proceed.

11:06:21 10 MR SERRY-KAMAL: My Lord, it was Sweissy, not - the last  
11 question was in relation to Sweissy. It wasn't in relation to  
12 his house. With respect.

13 JUSTICE DOHERTY: The last question I heard was it after  
14 the Taylor trial that it was sold? If you're now asking about  
11:06:40 15 Sweissy it's not on record.

16 MR SERRY-KAMAL: I didn't ask about. It's his house.

17 JUSTICE DOHERTY: Yes, we've had the answer Mr Serry-Kamal.  
18 I'm clear on that --

19 MR SERRY-KAMAL:

11:06:48 20 Q. What about after the charge?

21 A. After the charge except that we would meet as brother he  
22 would greet me and I would greet him because there's no boundary.  
23 It was not like - he will greet me and I will greet him. That  
24 was no problem. I did not have malice for anybody. The only  
11:07:10 25 thing was that he did not bring that discussion to him and I did  
26 not take that discussion to him.

27 Q. Mr Sesay, I was asking about how many times he was in your  
28 house after the charges had been preferred?

29 A. After the charges had been preferred he did not go to my

1 house. After the charges, Sammy was not going to my house. We  
2 would only meet on the street.

3 Q. He did not go to your house after your wife died?

4 A. Mr Serry-Kamal, you have provoked me a little. When my  
11:07:46 5 wife died, the funeral was at the family house. I told you on  
6 that day a large crowd of people went there to witness the  
7 funeral. I cannot - I cannot tell you that everybody went there,  
8 those whose names I can remember. There are many people. And  
9 the funeral was at my wife's house, not at my house.

11:08:06 10 Q. Thank you for the information. The question I wanted to  
11 know was: Did he visit your house when your wife died?

12 A. He did not go at my house. The funeral was at my wife's -  
13 my wife's family house. Everybody who went to visit met me there  
14 continuously.

11:08:24 15 JUSTICE DOHERTY: Continue.

16 MR SERRY-KAMAL:

17 Q. So you agree with me that at the time you testified against  
18 Bazzy and others at the AFRC trial, there was no friendship  
19 between any of you, between my client and yourself?

11:09:03 20 A. I want you to repeat that question.

21 Q. You were not on speaking terms with my client at the time  
22 you testified against him in the AFRC trial?

23 A. We had no discussion. We did not talk. That's true.  
24 There was no friendship between us.

11:09:23 25 Q. I'm talking about Bazzy. I'm not talking about anybody  
26 else.

27 JUSTICE DOHERTY: [Microphone not activated]

28 MR SERRY-KAMAL:

29 Q. Now up until now there is no friendship between you?

1 A. That is true, because that man is there and I'm here. It's  
2 only at the time that Sammy brought that talk up with me. I have  
3 no way of inquiring about them or anything else.

11:09:52 4 Q. [Microphone not activated]... Sammy and Bazzy. I said  
5 Bazzy and yourself?

6 A. I have stated that clearly, that there is no - there was no  
7 friendship between myself and them.

8 JUSTICE DOHERTY: Continue.

9 MR SERRY-KAMAL:

11:10:09 10 Q. Now, you said you went to Robert Street - Brook Street.  
11 Brook Street.

12 A. Robert Street. 16 Robert Street.

13 Q. [Microphone not activated]... at the junction of Brook  
14 Street and Robert Street?

11:10:26 15 A. I did not say so. I said I drove them to Robert Street.  
16 Check the transcript or your statement. They disembarked. Then  
17 I drove off.

18 JUSTICE DOHERTY: Continue.

19 MR SERRY-KAMAL:

11:10:47 20 Q. I am putting it to you that at no time did by client have  
21 any correspondence of any description with you from the time you  
22 gave evidence up to the present?

23 A. My Lord, I am putting it to you that, as I said, I and that  
24 man had no direct talk, but Sammy and Blast brought his talk to  
11:11:11 25 me. Even on that day that we were driving away, that those men  
26 have called us, we are going now to discuss how to work things  
27 out.

28 Q. Now finally, I'm putting it to you that this story - what  
29 you have testified to is a story that you made up for your own

1 convenience?

2 A. And finally, I am telling you, too, Mr Serry-Kamal, as a  
3 respected man, this Defence that you are making, you're doing it  
4 to turn the truth into a lie. But what I'm --

11:11:54 5 Q. [Overlapping speakers]

6 A. I'm trying to answer it. What I'm say - what I told the  
7 Court is not a formulated story. It is something that happened.

8 Q. Now, in your evidence here yesterday or the day before, you  
9 said those people in Rwanda, and including even myself, the

11:12:09 10 Defence counsel, we are APC people?

11 A. Mr Serry-Kamal, it was closed session. Now you want to  
12 risk my life? I am not here on political issues. You are  
13 risking my life. Let me put it to the Court. You are bringing  
14 something that was in closed in the open. I'm not here to talk  
11:12:35 15 on politics, please.

16 Q. [Overlapping speakers]

17 JUSTICE DOHERTY: Just a moment. The witness has raised an  
18 issue that was put in closed session. If you are going to  
19 continue on this line of questioning, I'm putting the Court back  
11:12:48 20 into closed session.

21 MR SERRY-KAMAL: As your Honour pleases.

22 JUSTICE DOHERTY: For members of public, this matter is for  
23 security of witnesses and victims. The Court will go into closed  
24 session. You can see but you cannot hear what is happening.

11:13:00 25 Put the Court into closed session, please.

26 JUSTICE DOHERTY: And I would remind counsel that if this  
27 is a matter that's already been dealt with, it cannot be raised  
28 again, although I do notice that you yourself have put yourself  
29 into that question. In fact, you put two questions in one, but

1 they' ve been answered.

2 [Cl osed sessi on]

3 [Redacted]

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

1 [Open sessi on]

2 MR SERRY-KAMAL:

3 Q. [Mi crophone not activated] I forgot to ask you about one  
4 thi ng when I was talking about Magnus Lami n. Now, have you ever  
11:25:47 5 applied for a visa to France?

6 A. I've never applied. It's my sister who was telling me that  
7 if I can apply, I shoul d. She said maybe, now that I've been to  
8 the Tayl or trial, maybe they would reject me. I never applied.  
9 My sister told me to apply.

11:26:10 10 Q. Are you saying that your sister told you to apply for a  
11 visa?

12 A. Yes, my sister told me. I have two sisters. My younger  
13 sister and my elder sister. I am afraid of you in fact for you  
14 to have known them.

11:26:32 15 JUSTICE DOHERTY: Mr Serry-Kamal [mi crophone not activated]

16 MR SERRY-KAMAL: Your Lordship is not hearing the Kri o  
17 i nterpretation. That's why people laugh --

18 MR HERBST: I'm sorry, Your Honour.

19 JUSTICE DOHERTY: Yes, Mr Herbst.

11:26:46 20 MR HERBST: I'm sorry, Your Honour, I didn't hear the last  
21 answer.

22 JUSTICE DOHERTY: The wi tness said he has two sisters, an  
23 ol der and a young are one, and it's as well I Mr Serry-Kamal  
24 doesn't know them.

11:26:59 25 MR SERRY-KAMAL: [Mi crophone not activated]

26 JUSTICE DOHERTY: He's afraid of them.

27 THE WITNESS: He's causing me to be afraid of them. Now  
28 that he's calling the names of my two sisters directly.

29 JUSTICE DOHERTY: [Mi crophone not activated] I think --

1 THE WITNESS: I'm afraid of Mr Serry-Kamal because of that.  
2 The man is an old politician so I should be afraid of him.

3 JUSTICE DOHERTY: We have established that quite clearly  
4 several times. So we'll move on, Mr Serry-Kamal.

11:27:36

5 MR SERRY-KAMAL:

6 Q. The last area. Now, Mr Sesay, Ragga - you are in a better  
7 position than Ragga financially or otherwise. You have a house.  
8 He doesn't have a house. He has to stay with you when he's in  
9 difficulty. And sometimes you even give him some brokes. As you  
10 say, you put for him sometimes?

11:28:04

11 A. I never told you that I give him. Ragga is an adult. I  
12 only rendered assistance to him. He has his own business that he  
13 does. What you are putting to me is not correct.

14 Q. I am further putting it to you that you used Ragga to build  
15 up this story, so that you get --

11:28:31

16 MR HERBST: [Indiscernible]

17 JUSTICE DOHERTY: Mr Serry-Kamal. Yes, Mr Herbst.

18 MR HERBST: I'm sorry, Your Honour, we lost a part of the  
19 video link there for a while and I did not catch all of the  
20 witness's answer. I wonder if I could have the answer repeated.

11:28:43

21 JUSTICE DOHERTY: The question was: In a better financial  
22 position; you have a house, you even give him some  
23 [indiscernible]. I never told him that. I never told that.  
24 Ragga is an adult. He has his own business. It is not correct.

11:29:06

25 MR SERRY-KAMAL:

26 Q. I'm saying that you have used Ragga to build up this story  
27 against my client.

28 A. My Lord, I have not used any Ragga to build up this story.  
29 Just as you are defending those men because they have given you a



1 story that's not true. I did not use Ragga to build up any  
2 story.

3 Q. When you look at the evidence, it's Ragga said this, Ragga  
4 said this against Bazzy, Ragga said that against Bazzy it's all  
11:29:44 5 Ragga, Ragga, Ragga.

6 A. My Lord, if Sammy did not bring up those men, I wouldn't  
7 say Sammy said that. Sammy is an adult. The fact that I  
8 mentioned his name it was because of what he told me and what  
9 happened.

11:30:07 10 Q. I'm suggesting it's a figment of your imagination. All  
11 you've said here is a figment of your imagination.

12 MR HERBST: Your Honour, I object. This has been fully  
13 explored.

14 JUSTICE DOHERTY: Answer this question.

11:30:33 15 THE WITNESS: You see. You are saying you are an old  
16 politician. Now you are telling about Kono plan. What is Kono  
17 plan? I didn't understand what you meant.

18 JUSTICE DOHERTY: I didn't understand Kono plan either.

19 MR SERRY-KAMAL: If it's a figment of his imagination, in  
11:30:51 20 local language it's called a Kono plan.

21 JUSTICE DOHERTY: I see. Well, since Kono is a place, I'm  
22 sure it's open to misinterpretation. You are making this story  
23 up basically.

24 MR SERRY-KAMAL: Exactly [overlapping speakers]

11:31:06 25 THE WITNESS: I am saying it clearly to this Court, to this  
26 nation, to my family, that I have not made up any story to cause  
27 any problem for those people. This is what happened that I have  
28 said to this Court.

29 MR SERRY-KAMAL: Your Honour, that will be all are for this

1 witness.

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

3 Re-examination, Mr Herbst?

4 MR HERBST: Yes, Your Honour, thank you.

11:31:35 5 Re-examination by Mr Herbst.

6 MR HERBST: Since the Alagenda e-mail is now in evidence I  
7 would like it placed before the witness.

8 MR METZGER: I object. Same principle, same grounds. It  
9 is in evidence. Your Honour notes it's a hearsay document,  
11:31:50 10 produced as a hearsay document. There is no basis to put to this  
11 witness.

12 MR NICOL-WILSON: Your Honour, I associate with the  
13 objections of Mr Metzger.

14 MR SERRY-KAMAL: So do I. I think it has no relevance in  
11:32:05 15 the case.

16 JUSTICE DOHERTY: There's an objection, Mr Herbst.  
17 Mr Herbst, there's an objection. Can I have your response?

18 MR HERBST: Yes, Your Honour. The witness has testified  
19 several times on cross-examination that he only spoke to Mr Kanu  
11:32:30 20 once during these events and also testified that he texted and  
21 called Ms Alagenda on the same day --

22 MR METZGER: Your Honour, with the greatest respect, my  
23 learned friend should state what his objection is and not rehash  
24 the evidence.

11:32:56 25 JUSTICE DOHERTY: No it's response. Your's is the  
26 objection.

27 MR METZGER: He should state what his response is and not  
28 rehash the evidence. If he's going to rehash the evidence I  
29 would ask the that witness should leave Court.

1 JUSTICE DOHERTY: Yes. Mr Herbst, please give me a  
2 response in law. Give me a legal response.

3 MR HERBST: Your Honour, the response in law is that now  
4 that the document is in evidence, I think I ought to be able to  
11:33:26 5 put the document before him and to refresh his recollection or  
6 ask him if it refreshes his recollection as to what the date of  
7 the conversation was.

8 JUSTICE DOHERTY: No.

9 MR HERBST: [Overlapping speakers] Kanu.

11:33:44 10 JUSTICE DOHERTY: No, Mr Herbst, I don't agree. He is not  
11 the author of this document. It was not a contemporaneous  
12 document that was prepared by him that would enable me to allow  
13 his memory to be refreshed and on that basis I'm not prepared to  
14 allow it to be put before the witness. It is in evidence.  
11:34:02 15 Please proceed to your next question.

16 MR HERBST: If Your Honour bears with me then I'm going to  
17 see if I can shorten.

18 Q. Mr Sesay, you spoke to Mr Bangura, Mr Bomb Blast. Did you  
19 recognise his voice?

11:34:38 20 A. I recognised his voice and I even informed Mr Aki before I  
21 picked up the call. I said it's your man calling me. I told  
22 Mr Aki that it was Blast calling me. He's the Chief at the WVS.  
23 The phone was ringing and I said Mr Aki this is the man calling  
24 me. I recognised his voice and I know that number. That's the  
11:35:00 25 number that he usually calls me on. His Zain number.

26 Q. Directing your attention to the events of Saturday,  
27 November 27, 2010 --

28 JUSTICE DOHERTY: Just a moment, Mr Herbst [microphone not  
29 activated]

1 MR NICOL-WILSON: Your Honour, I would like to know the  
2 relevance of that question. Because I know exactly where the  
3 Independent Counsel is going as far as Saturday 27 November is  
4 concerned. I want to know the relevance.

11:35:43 5 JUSTICE DOHERTY: Relevance of what question? I haven't  
6 heard any question yet.

7 MR NICOL-WILSON: The question he asked previously which he  
8 is now trying to put to Saturday, 27 November.

9 JUSTICE DOHERTY: I don't know if he's trying to put it in  
11:35:53 10 27 November but the last question was a matter arising out of  
11 examination-in-chief and is a relevant matter to do with  
12 identification, so there is no problem. I'll hear what the  
13 question is and then I'll rule.

14 MR NICOL-WILSON: I'll wait for the [overlapping speakers]

11:36:07 15 JUSTICE DOHERTY: Please put your question. You said  
16 events of the 27th of which month?

17 MR HERBST: November.

18 JUSTICE DOHERTY: [Microphone not activated]

19 MR HERBST:

11:36:20 20 Q. When you spoke on the phone with Bomb Blast, did you  
21 recognise his voice?

22 A. Yes, my Lord.

23 JUSTICE DOHERTY: It's a perfectly admissible question.

24 Proceed.

11:36:42 25 MR HERBST:

26 Q. When you spoke to Mr Kanu who you also identified as Five  
27 Five several days later, did you recognise his voice?

28 MR METZGER: Your Honour, I object to the insertion of  
29 several days later. That was not the evidence of this witness.

1 My learned friend is seeking to obfuscate the evidence.

2 JUSTICE DOHERTY: Mr Herbst, specify the date, please.

3 MR HERBST: Well, Your Honour, there's a question as to.

4 What the date is, and that's why I put it. I put it as I

11:37:24 5 did. I don't think the date is relevant to the question, which  
6 is merely when he spoke to him, which the evidence is clear was  
7 only on one occasion whether he recognised his voice. That's the  
8 only thing I want to ask. I don't want to get into the question  
9 of whether it was on the 29th or the 30th.

11:37:44 10 JUSTICE DOHERTY: Put it in terms that when you spoke to  
11 him did you recognise his voice.

12 MR METZGER: Thank you, Your Honour. And again I don't  
13 appreciate and object to my learned friend explaining about terms  
14 of 29th or 30th. This is his witness. He is not cross-examining  
11:37:58 15 the witness. The witness has given evidence as to date and he  
16 ought not to seek, with the greatest of respect, to impeach his  
17 witness - I don't suppose he's doing that - but to partially rely  
18 on other evidence to the witness. He is bound by the evidence  
19 that the witness has given, whether he likes it or not in my  
11:38:24 20 respectful submission.

21 JUSTICE DOHERTY: I have allowed the question.

22 MR HERBST:

23 Q. Mr Sesay --

24 JUSTICE DOHERTY: Yes, Mr Herbst, please put the question.

11:38:30 25 MR HERBST:

26 Q. When you spoke to Mr Kanu on the phone, did you recognise  
27 his voice?

28 A. Yes, my Lord, I recognised his voice.

29 Q. Now, when you spoke to Ms Alagenda on the phone, did you

1 or did you not tell her that you had just talked to Five Five on  
2 the phone?

3 MR METZGER: Your Honour, I object. Asked and answered.  
4 This is not the opportunity for the Prosecution to, in  
11:39:16 5 re-examination, just re-ask questions. He has been asked  
6 questions about it. He has answered those questions in chief.  
7 And Your Honour may note that he wasn't asked questions in  
8 cross-examination about Ms Alagendra, so it doesn't arise out of  
9 there. I don't therefore know where it is that the Prosecution  
11:39:37 10 in this case thinks that it can take another bite at the cherry.

11 JUSTICE DOHERTY: Is this a question arising, Mr Herbst,  
12 from questions put in cross-examination? Mr Herbst, can you hear  
13 me.

14 MR HERBST: Yes, Your Honour, I had the wrong button  
11:40:12 15 pushed. My recollection is that Mr Metzger did put questions to  
16 the witness based on the Alagendra e-mail and asked questions  
17 about what he had said to her. And I don't have a firm  
18 recollection as to whether on direct examination --

19 JUSTICE DOHERTY: Normally, it's only matters arising from  
11:40:48 20 cross-examination that we deal with at this point.

21 MR HERBST: Yes, Your Honour. So I think it does come out  
22 of --

23 JUSTICE DOHERTY: If that's - was put in cross-examination.

24 MR METZGER: I would like my learned friend to identify the  
11:41:04 25 questions. Quite happy to check my cross-examination matrix.  
26 But in my respectful submission, he who asserts must prove. Can  
27 he please identify the area in which he says cross-examination on  
28 this point took place.

29 MR HERBST: Your Honour, my notes reflect that Mr Metzger

1 asked the witness about whether he told Ms Alagenda something  
2 about a lie. If Your Honour will give me one minute?

3 MR METZGER: I can assist. I asked the witness about the  
4 juxtaposition of his speaking with Mr Mustapha and the call and  
11:42:17 5 text he made to Ms Alagenda. That's my recollection boosted by  
6 my matrix of cross-examination.

7 MR HERBST: Well, then he has just - he has just  
8 acknowledged that he was putting questions to the witness about  
9 the relationship between the conversation with Five Five and the  
11:42:39 10 call to Ms Alagenda.

11 JUSTICE DOHERTY: I will allow the question.

12 MR METZGER: No, Your Honour, I didn't, with the greatest  
13 of respect. What I said was, what was the amount of time between  
14 when you spoke to Mr Mustapha and when you spoke to Ms Alagenda?  
11:42:51 15 He told me there was some time in between. He's then said it was  
16 something in the region of two weeks. And I left the matter  
17 blessedly alone. This was forensic cross-examination. It's  
18 something that I prepared to do. Now in my respectful  
19 submission unless the Prosecution can identify where he says I  
11:43:16 20 asked about the content of the that document to this witness,  
21 Your Honour, he has no grounds to object to it. I mean to  
22 introduce it.

23 JUSTICE DOHERTY: What document are we talking about?

24 MR METZGER: The e-mail.

11:43:27 25 JUSTICE DOHERTY: He never mentioned the e-mail.

26 MR METZGER: He did. He wants the witness to look at the  
27 e-mail and I was going to ask about --

28 JUSTICE DOHERTY: I ruled against it.

29 MR METZGER: Yes, but now he's going to say to him what did

1 you say to her during the course of your call? I didn't ask him  
2 about what he said to her. The Prosecution has an easy way out  
3 of that: Call Ms Alagenda and Mr Herbst knows that is my stance  
4 in this case. He's known it since June last year. If he chooses  
11:43:56 5 not to call a witness it's a matter for him but --

6 JUSTICE DOHERTY: You're talking over each other.

7 MR METZGER: I'm on my feet. I hoped I wasn't - I shall  
8 sit down.

9 JUSTICE DOHERTY: I'm trying to hear two people at once  
11:44:09 10 it's just not possible.

11 MR METZGER: Sorry, Your Honour.

12 JUSTICE DOHERTY: Mr Herbst, are you speaking as well?  
13 What's happened in Kigali?

14 MR METZGER: Microphone is not on as far as I can tell.

11:44:27 15 JUSTICE DOHERTY: Mr Herbst I didn't see you for a while  
16 there and I was getting a little concerned and you were both  
17 speaking at once.

18 MR HERBST: I'm here, Your Honour.

19 JUSTICE DOHERTY: Good. What is this question you were  
11:44:43 20 going to ask? Because I need to make a ruling on it. I've only  
21 got part of it. Mr Herbst, what's the question.

22 MR HERBST: The question is during the conversation with  
23 Ms Alagenda, did you or did you not tell her that you had talked  
24 to Five Five on the phone that day.

11:45:08 25 JUSTICE DOHERTY: That did not arise in cross-examination  
26 and therefore I'm not allowing it. Please proceed to the next  
27 question.

28 MR HERBST: No further questions, Your Honour.

29 JUSTICE DOHERTY: I do not have any questions of the



1 witness. Mr Sesay, that is the end of your testimony before the  
2 Court. I want to record that we are grateful for you coming,  
3 particularly when we know you were not well, and you are free to  
4 leave the Court now and return home. You understand?

11:45:51 5 THE WITNESS: Yes, my Lord.

6 MR SERRY-KAMAL: I want to assure him that he need not be  
7 afraid of me.

8 JUSTICE DOHERTY: And please be assured that  
9 Mr Serry-Kamal, who indirectly referred to himself as old, please  
11:46:07 10 do not worry about the political aspects of his past. Do you  
11 understand me?

12 THE WITNESS: Well, yes, my Lord. But human beings don't  
13 change. Sierra Leone is a country of revenge. It is true. We  
14 are seeing instances happening. He knows.

11:46:27 15 JUSTICE DOHERTY: I trust it won't happen, but as a person  
16 who comes from a country of revenge, it's relatively calm in  
17 comparison, Sierra Leone. Thank you, Mr Sesay.

18 MR METZGER: We have a saying in this country, Your Honour,  
19 if they give you a room don't take the living room.

11:46:46 20 JUSTICE DOHERTY: Please assist the witness to leave the  
21 box and please ask Mr Saffa to come back into Court, as I have to  
22 - he's still on oath.

23 [The witness withdrew]

24 JUSTICE DOHERTY: Mr Herbst, as Mr Saffa is coming in, he  
11:47:27 25 was in examination-in-chief and we've only got about ten or so  
26 minutes left before Mr Serry-Kamal and Mr Metzger have to leave.  
27 Did you have much more examination-in-chief? Because obviously  
28 it would be neat to finish it so counsel for the accused can take  
29 proper instructions and could it be completed in a short time?

1 Mr Herbst, I'm sorry, but I don't hear you.

2 [Witness enters courtroom]

3 MR HERBST: I'm sorry, Your Honour. I was saying if you  
4 can hear me now.

11:48:10 5 JUSTICE DOHERTY: I can hear you clearly.

6 MR HERBST: That the - and again I'm pausing because I'm  
7 hearing myself talking. So I will not be able to complete the  
8 direct examination in the ten or twelve minutes that Your Honour  
9 has mentioned.

11:48:40 10 JUSTICE DOHERTY: Let's make use of the few minutes we've  
11 got and move on to the next topic, because if there's more  
12 documents to be put to Mr Saffa, and they are here in his  
13 custody, it would be good. I have not lost sight of the fact  
14 that Mr Nicol-Wilson wishes to make an application and I'm going  
11:49:00 15 to make that application when - I'll hear it just after twelve  
16 when other counsel are here. They are not involved and it can be  
17 safely done in their absence to allow them to travel. So put  
18 whatever questions you have and then counsels Metzger and  
19 Serry-Kamal will be leaving to make their travel arrangements.  
11:49:25 20 So put those questions to Mr Saffa.

21 MR HERBST: Your Honour.

22 JUSTICE DOHERTY: Yes.

23 MR HERBST: Hopefully, Your Honour, the Court now has in  
24 its possession the unmarked copy of the 1 and 3 December 2010  
11:49:45 25 four-page draft witness --

26 JUSTICE DOHERTY: I think Mr Court Attendant did mention a  
27 document. I think that could well be it. I will check. Yes,  
28 indeed. I'm going to ask him to show it to counsel and then show  
29 it to the witness.

1 Joseph Saffa, previously sworn

2 Continuing examination-in-chief by Mr Herbst:

3 JUSTICE DOHERTY: The witness has the document before him.

4 MR HERBST:

11:50:35 5 Q. Mr Saffa, good morning again. Do you recognise this  
6 document as the document you were talking about earlier in your  
7 testimony?

8 A. Yes, my Lord.

9 MR HERBST: Your Honour, I had frankly forgotten what  
11:51:00 10 questions I had asked but foreseeing there may be no objection, I  
11 will just ask that the document be moved into evidence at this  
12 time.

13 JUSTICE DOHERTY: Mr Saffa seems to be having a problem  
14 with his ear phones. Can you hear me, Mr Saffa.

11:51:12 15 THE WITNESS: I'm hearing it, my Lord, but I'm not getting  
16 him from Rwanda.

17 JUSTICE DOHERTY: I understand. Mr Herbst has asked you if  
18 you recall the document. You said yes, and Mr Herbst is now  
19 asking me to have the document put into evidence. I will ask  
11:51:27 20 counsel if they have anything to say on that point.

21 MR NICOL-WILSON: No objections, Your Honour.

22 MR METZGER: I'm sorry for the trees. I have no objection.

23 JUSTICE DOHERTY: Mr Serry-Kamal?

24 MR SERRY-KAMAL: No objection.

11:51:50 25 JUSTICE DOHERTY: Thank you. There's no objection to the  
26 tender of that document. It becomes Prosecution exhibit - I  
27 think it's 7. Yes, 7.

28 EXHIBIT P7 ADMITTED AND MARKED

29 MR HERBST: Yes, Your Honour. It's 7.

1 JUSTICE DOHERTY: Thank you. Mr Serry-Kamal, your machine.  
2 Your next question, Mr Herbst?

3 MR HERBST: Thank you, Your Honour.

4 Q. Now, Mr Saffa, does that document contain essentially the  
11:52:24 5 same language as the two memos you earlier described, P5 and P6?

6 A. Yes, My Lord.

7 Q. Now, what's the - after you drafted that document on  
8 December 1 and 3, that is P7 that's just been introduced into the  
9 evidence, what's the next thing that happened in the course of  
11:53:03 10 your investigation?

11 A. My Lord, the next thing that happened was investigator  
12 Magnus Lamin spoke to 334 on the 7th of December 2010. He  
13 prepared a memo for that discussion and it was e-mailed to the  
14 chief of prosecutions and it was copied to me.

11:53:33 15 MR HERBST: Your Honour, I'd like to have the 7/2010  
16 memorandum placed before the witness. It should be the next one  
17 in the series of documents we provided earlier. It's a one-page  
18 document, Your Honour.

19 MR METZGER: I have no objection to the introduction of  
11:54:04 20 this document as a business record.

21 JUSTICE DOHERTY: Thank you. We'll have the witness  
22 identify it. Let counsel see it, Mr Court Attendant, please, to  
23 make sure we're all talking about the same document.

24 Mr Herbst, the document we have addressed to J Johnson from  
11:54:50 25 Lamin copied to the witness is dated the 14th of December.  
26 You're referring to one of the 7th of December.

27 MR HERBST: Yes, Your Honour, that's a different document.  
28 I believe all counsel have seen it. I thought that that was one  
29 of the documents that was sent over, but perhaps Mr - perhaps

1 Mr Saffa, if he has an unmarked copy, could provide it to the  
2 Court.

3 JUSTICE DOHERTY: Mr Saffa, you brought in a bundle of  
4 documents. Can you - I will have the bundle of documents  
11:55:26 5 returned to you and you can identify it.

6 THE WITNESS: Yes, My Lord. Mr Sam will help us bring  
7 those documents from the officer.

8 JUSTICE DOHERTY: Yes.

9 MR METZGER: Your Honour, I must crave the Court's  
11:55:46 10 indulgence. I note the time.

11 JUSTICE DOHERTY: 12.00, yes.

12 MR METZGER: It's not the Cinderella syndrome, but there  
13 are some administrative matters that need to be dealt with at  
14 this Court before we can embark on [overlapping speakers] --

11:56:00 15 JUSTICE DOHERTY: Oh, yes. You are both excused  
16 appearance. I notice that you are not objecting to the tender of  
17 the document. If it's found, I will hear - Mr Serry-Kamal are  
18 you objecting to the tender of --

19 MR METZGER: I don't object to the tender of this. I don't  
11:56:11 20 object to the tender of the 14th, and can Mr Herbst let me know  
21 if he's got any other documents he wants to put forward so I can  
22 not object to them.

23 JUSTICE DOHERTY: I see.

24 MR HERBST: [Overlapping speakers]

11:56:19 25 JUSTICE DOHERTY: Mr Serry-Kamal hasn't spoken yet.

26 MR HERBST: [Overlapping speakers] two-page contact  
27 summary?

28 JUSTICE DOHERTY: Mr Serry-Kamal does not object either.

29 MR SERRY-KAMAL: I don't object, but I was waiting for

1 Mr Herbst to finish.

2 JUSTICE DOHERTY: I understand.

3 Gentlemen, you're free to leave the Court. I'm going to --

4 MR METZGER: There's one more document Mr Herbst has  
 11:56:46 5 requested consent on. This is the contact summary. I object to  
 6 that. I want the original summary brought to Court. Thank you.

7 JUSTICE DOHERTY: I see.

8 MR METZGER: Thank you.

9 JUSTICE DOHERTY: So Mr Nicol-Wilson hasn't had a chance to  
 11:56:55 10 speak yet.

11 MR HERBST: Your Honour, that --

12 JUSTICE DOHERTY: Yes.

13 MR HERBST: Your Honour, with respect to the contact  
 14 summary before Mr Metzger leaves, it's my understanding that is a  
 11:57:06 15 computerised document. They are just computer entries. There is  
 16 no original and that is the entirety of the document as far as  
 17 OTP is concerned. At least I believe that I've been advised of  
 18 that.

19 MR METZGER: And I have objected to it on the basis that I  
 11:57:24 20 have asked the Prosecution to provide me with a complete copy of  
 21 whatever it is, whether it's on a computer or otherwise, from the  
 22 dates that are included on this - that the Prosecution rely on  
 23 right - the first date, which I think is September, right up  
 24 until the last date that the Prosecution rely on. So my  
 11:57:54 25 objection stands until the provision of the full document unless  
 26 Your Honour Rules against me.

27 JUSTICE DOHERTY: I've got the 4th - the 7th of December --

28 MR HERBST: Your Honour, the Prosecution is --

29 JUSTICE DOHERTY: Yes, Mr Herbst.

1 MR HERBST: I'm sorry, Your Honour. We're not relying on  
2 any communications from the contact summary prior to the  
3 November 15, 2010, entry which is the first complete entry on the  
4 document.

11:58:33 5 JUSTICE DOHERTY: Well, I'm going to deal with that when it  
6 comes up --

7 MR HERBST: [Overlapping speakers]

8 JUSTICE DOHERTY: -- when counsel are around. I cannot  
9 deal with it in a vacuum. I now have before me a document dated  
11:58:45 10 the 7th of December 2010 as described by the witness, and I  
11 understand there is no objection to it. Do you have further  
12 questions on it? I understand you're tendering it.

13 MR HERBST: If - right. If there's no objection,  
14 Your Honour, we would just offer that document, and I'm a little  
11:59:07 15 loathe to ask substantive questions as to what transpired in the  
16 investigation in the absence of counsel.

17 JUSTICE DOHERTY: I think that's proper.

18 MR HERBST: I would offer - this document is P8. But I  
19 would offer --

11:59:20 20 JUSTICE DOHERTY: Prosecution Exhibit P8 and questions will  
21 be reserved on it.

22 MR HERBST: Right. And I would again, apparently without  
23 objection, I would offer as P9 the December 14th 2010 one-page  
24 memorandum. I don't know if Mr Metzger is still in the courtroom  
12:00:11 25 but there was one document not mentioned. It was Mr Saffa's  
26 memorandum of the 17 December 2010 which was used by all counsel  
27 in cross-examination of 334 that I did tend to offer, but if  
28 it's - since I didn't mention it, if counsel are gone, I can wait  
29 to proffer that document.

1 JUSTICE DOHERTY: They are trying to pack up so I would  
2 prefer to let them do that and deal with it during the rest of  
3 Mr Saffa's evidence. I think in fairness to them. Since I have  
4 already an indication that the --

12:00:44 5 MR HERBST: [Overlapping speakers] Yes, of course.

6 JUSTICE DOHERTY: I have already marked now the internal -  
7 interoffice memorandum of 14 December as Exhibit P9. I think I'm  
8 going to now stand Mr Saffa down. We will continue his evidence  
9 on Saturday morning from Kigali. I will arrange to have this  
10 link put in place on Saturday.

12:01:08

11 Gentlemen, I wish you a safe journey. We may run into each  
12 other at the airport.

13 MR METZGER: The very same to Your Honour.

14 JUSTICE DOHERTY: Thank you.

12:01:22

15 Mr Saffa, as you appreciate, we are unable to finish your  
16 evidence today unfortunately. I think we've progressed fairly  
17 well. I'm therefore going to say that we will finish it on  
18 Saturday morning, and I would remind you that you are now under  
19 oath and you should not discuss your evidence until it is

12:01:44

20 finished completely. Did you understand me?

21 THE WITNESS: Yes, My Lord.

22 JUSTICE DOHERTY: Thank you. You're free to leave the  
23 witness box and we will see you by video link on Saturday.

24 THE WITNESS: Thank you.

12:02:00

25 JUSTICE DOHERTY: As counsel are leaving, before  
26 Mr Nicol-Wilson gets to his feet, Mr Herbst asked me yesterday  
27 about the amicus brief. I have contacted our officers in The  
28 Hague and requested that they politely follow that up because it  
29 had not been filed. I merely give this as information.



1 [The witness withdrew]

2 JUSTICE DOHERTY: Now, Mr Herbst, Mr Nicol-Wilson indicated  
3 he has an application in respect of his client, Mr Bangura.

4 MR NICOL-WILSON: Your Honour, I wish to renew my  
12:02:45 5 application for bail in respect of Mr Hassan Papa Bangura.

6 JUSTICE DOHERTY: Yes.

7 MR NICOL-WILSON: Your Honour, during your last ruling on  
8 my application, you indicated that there has been no material  
9 change in circumstance and therefore you will not be disposed to  
12:03:11 10 granting my application.

11 Your Honour, I wish to submit that there is now a material  
12 change in the circumstances of this case. Your Honour, the basis  
13 upon which his bail was instituted is because of an allegation  
14 made by the Independent Counsel, that he had interfered with a  
12:03:56 15 witness who was about to give testimony before this Trial  
16 Chamber. Your Honour, to be very specific, that is witness  
17 TF1-334. Your Honour, that witness has completed his testimony  
18 before this Trial Chamber, and therefore there will be no need  
19 anymore for that witness to be contacted by my client if it is  
12:04:34 20 true that he once contacted him prior to his in-court testimony.

21 Your Honour, I also wish to state that the remainder of the  
22 witnesses that will be coming to this Court are not witnesses  
23 that can be interfered with by my client. The reason being that  
24 the last witness who has just started his testimony is a formal  
12:05:18 25 witness and an investigator, and by no stretch of my client's  
26 imagination will he attempt to interfere with that witness.  
27 Similarly, my client will not be able to interfere with witnesses  
28 for the Prosecution based in Kigali, Rwanda. Nor would he be  
29 able to interfere with the Principal Defender should he be

1 summoned to serve as a witness before those proceedings.

2 Your Honour, my second submission relates to the trip to  
3 Rwanda, Kigali. Your Honour, today you will be leaving for  
4 Rwanda and the rest of my colleagues have actually left for  
12:06:13 5 Rwanda. And I do know what the status of these proceedings will  
6 be once you people get to Rwanda and once we get to 4 July, a  
7 decision will have to be taken by Your Honour as to the  
8 continuation or otherwise of these proceedings. And Your Honour,  
9 it will not be in the interests of justice for my client to be  
12:06:53 10 incarcerated indefinitely, because at the moment, we cannot say  
11 with any degree of certainty when these proceedings will be  
12 completed.

13 Your Honour, I also have a problem with accessibility to my  
14 client. Your Honour, if my client is on bail he will become  
12:07:22 15 readily accessible to me, especially as we are about to complete  
16 the Prosecution's case and I need to do some investigations with  
17 regard to opening of the Defence case. If my client is out, Your  
18 Honour, it will assist in the preparation of the Defence case  
19 through the location and identification of Defence witnesses.  
12:07:50 20 This is not the case at the moment when he is still incarcerated.

21 Your Honour, there is a presumption of innocence which my  
22 client is entitled to throughout the duration of these  
23 proceedings. And that presumption makes bail the rule, rather  
24 than the exception. And Your Honour, he is not entitled to the  
12:08:30 25 presumption of guilt, which presumes him to be guilty until  
26 proven otherwise. As far as we know at the moment, Your Honour,  
27 he's still entitled to the presumption of innocence until a final  
28 determination of this matter is done by Your Honour.

29 In view of the foregoing, Your Honour, I am still craving

1 your indulgence for my client to be admitted to bail. He has  
2 been of good conduct whilst in detention, and Your Honour has not  
3 received any complaint from the detention staff that he has not  
4 been of good conduct. He has also conducted himself well in  
12:09:25 5 Court and Your Honour, most significantly, he owns a business for  
6 which he is the sole proprietor, and that business has presently  
7 been severely affected with adverse effects on his financial  
8 wellbeing and that of his family. Your Honour, I will ask you to  
9 temper justice with mercy and to seriously consider the granting  
12:10:05 10 of bail to Hassan Papa Bangura at this stage. That will be all,  
11 Your Honour.

12 JUSTICE DOHERTY: Thank you, Mr Nicol-Wilson. Mr Herbst,  
13 you've heard the application.

14 MR HERBST: Your Honour, I have, and I want to commend my  
12:10:23 15 I learned friend Mr Nicol-Wilson for having put together every  
16 conceivable argument, many of which have some force in favour of  
17 his client. I do recognise there has been what one could  
18 conceive to be a change in circumstances which makes at least  
19 this bail application ripe. I do recognise that 334, which is  
12:10:54 20 the witness with whom Mr Bangura unfortunately earlier had an  
21 unlawful contact, has now completed his testimony. I do think  
22 that is a change in circumstance. I also recognise that the  
23 remaining witnesses, at least on the Prosecution side, are  
24 witnesses that are probably not going to be contacted by  
12:11:33 25 Mr Bangura in an inappropriate way. So I understand his  
26 argument.

27 The question really in my mind is how the Court should  
28 treat clear evidence that was now testified to, not just by  
29 representation by the Prosecutor, but we all heard 334 talk about

1 the two contacts and one of which was quite substantive in asking  
2 334 to deny when he testified communications with Mr Bangura.  
3 That is still of concern to me for all the reasons previously  
4 stated. So that that is not a change in circumstance and I will  
12:12:37 5 leave it to the Court how to weigh the changed circumstances  
6 against the circumstances that have not changed.

7 JUSTICE DOHERTY: Certainly Mr Nicol-Wilson has been very  
8 persuasive and very sincere in his submissions. In that I do  
9 agree.

12:17:19 10 The two matters that have been uppermost in my mind before  
11 today's submission and again now were the aspect of interference  
12 with 334 and the risk of flight. The evidence of interference  
13 is, if anything, stronger than the matters put before me by the  
14 Independent Counsel before 334 was called to give evidence.

12:17:54 15 I say that, fully aware of the fact that we have not heard  
16 Mr Bangura's side of the story or his evidence on the matter  
17 which may come in rebuttal.

18 I cannot see any change on the flight risk, and for those  
19 two reasons I'm going to maintain Mr Bangura in remand.

12:18:24 20 The situation on 4 July and what follows thereafter will  
21 have to be dealt with on 4 July - or 5 July when we actually know  
22 how far on we are and what state of play the case is in.  
23 Certainly on 4 or 5 July, if we are not finished I will  
24 definitely entertain this again.

12:18:55 25 Mr Nicol-Wilson, you've heard my decision.

26 MR NICOL-WILSON: As Your Honour please.

27 JUSTICE DOHERTY: Thank you.

28 MR HERBST: Your Honour.

29 JUSTICE DOHERTY: Yes, Mr Herbst.

1 MR HERBST: I'm sorry. Your Honour's comment about  
2 schedules lead me to ask, because I have not been - I actually  
3 don't know what the plan is after July 5 if the case is not  
4 completed and for my own scheduling purposes, I would like to  
12:19:38 5 know whether --

6 JUSTICE DOHERTY: It's all up in the air. I don't know  
7 either. I'm going to hear from everybody and see how far we are  
8 on. I'm not going to speculate at this point. It's far too  
9 premature. Obviously the intention in the planning of this case  
12:19:56 10 was to have this case well and truly, evidence and even  
11 submissions and a decision, well and truly finished by now. But  
12 we've lost time because of things outside everyone's control. We  
13 lost three whole days and we've lost a lot of time because of the  
14 logistical problems with the video link. So I'm going to invite  
12:20:23 15 people to speak before I make any sort of thoughts about what  
16 happens if we're not completed. But I'm going to try to be  
17 optimistic that we will be completed.

18 MR HERBST: I guess, Your Honour, what I did not know is  
19 whether there's an absolutely bar because of someone's schedule  
12:20:47 20 to continuing to complete the trial in the days immediately after  
21 July 5.

22 JUSTICE DOHERTY: There definitely is. I'm in the court in  
23 The Hague on the 6th and I have other commitments that are very  
24 long-standing. And I'm almost hesitant to say what they are on  
12:21:06 25 public record, but let me put it this way: If I don't meet them,  
26 I may not be meeting any of you. I'm going to adjourn the Court  
27 until Saturday morning. I again apologise to everyone and try  
28 and appreciate how hard they have worked by coming in on  
29 Saturday. I'm hoping this will be a once-in-a-lifetime

1 experience for all of us to have to work so frequently on the  
2 weekend.

3 MR NICOL-WILSON: I wish Your Honour a safe trip to Kigali.

4 JUSTICE DOHERTY: Mr Nicol-Wilson, that is very kind of you  
12:21:47 5 and I appreciate it very much.

6 We'll adjourn until Saturday morning.

7 MR HERBST: Your Honour, I was - excuse me, Your Honour. I  
8 was going to say the same and also add my thanks.

9 JUSTICE DOHERTY: We lost you there, Mr Herbst. Kigali has  
12:22:13 10 frozen. Can Kigali hear me? We lost you.

11 MR HERBST: Yes, we can, Your Honour. We lost both the  
12 video and the audio link and now it's back, and we actually  
13 thought you had adjourned. I don't know whether Your Honour  
14 heard any of the comments that I had tried to make.

12:23:00 15 JUSTICE DOHERTY: I did hear you wishing --

16 MR HERBST: [Overlapping speakers]... Link was lost.

17 JUSTICE DOHERTY: And you were just about to record your  
18 thanks, and I think it was to our support staff, but if you could  
19 finish that I would appreciate it.

12:23:17 20 MR HERBST: Yes, Your Honour. I wanted to commend and  
21 thank the Court staff in both locations, not only working on  
22 Saturdays and working late, but for all their efforts throughout  
23 in making this trial possible in both places.

24 JUSTICE DOHERTY: Thank you. And I hope they hear and know  
12:23:38 25 that we are appreciative of their efforts. I'm going to adjourn  
26 the Court until Saturday at 9 o'clock Freetown time and is  
27 11 o'clock Kigali time.

28 Gentlemen, Mr Bangura, you will be brought in. You will  
29 hear and see on the video, just as your co-accused in Kigali are

1 hearing and seeing. You'll be able to give instructions to your  
2 counsel for question of anybody who is brought to give evidence.  
3 And if there are problems in communication or hearing, just tell  
4 us as you've done before, and I will try and make sure you hear  
12:24:18 5 and see everything that is happening and is being said. I will  
6 now adjourn Court until Saturday morning.

7 Please adjourn Court.

8 [Whereupon the Court adjourned at 12.24 p.m.  
9 until 9.00 a.m. Saturday, 30 June 2012]

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29