



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

-V-

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

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Before the Judge:	Justice Teresa Doherty
For Chambers:	Elizabeth Budnitz
For the Registry:	Elaine-Bola Clarkson 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 [Monday, 2 July 2012]

2 [Open session]

3 [Accused present]

4 [The Court resumed AT 9.00 a.m.]

08:56:34 5 JUSTICE DOHERTY: Good morning. Before I take appearances  
6 I will check if we have a connection with Freetown. Can you hear  
7 me?

8 MR NICOL-WILSON: Yes, Your Honour, we can hear you.

9 JUSTICE DOHERTY: [Indiscernible] I'll take appearances,  
08:56:53 10 please.

11 MR HERBST: Good morning Your Honour, Robert Herbst  
12 Independent Counsel for the Prosecution.

13 JUSTICE DOHERTY: Thank you. [Indiscernible]

14 MR NICOL-WILSON: Melron Nicol-Wilson for Hassan Papa  
08:57:06 15 Bangura.

16 JUSTICE DOHERTY: Mr Nicol-Wilson. Counsel.

17 MR METZGER: Kevin Metzger for Santigie Borbor Kanu.

18 MR SERRY-KAMAL: AF Serry-Kamal for Ibrahim Bazy Kamara.

19 JUSTICE DOHERTY: Thank you. I take it Chief Taku is not  
08:57:30 20 back yet [indiscernible]

21 MR NICOL-WILSON: Yes, Your Honour, he's not yet back.

22 JUSTICE DOHERTY: Mr Interpreter, can you hear us clearly?

23 THE INTERPRETER: Yes, we can hear you.

24 JUSTICE DOHERTY: Is Mr Saffa in the witness box? If he  
08:58:01 25 is, I'll remind him of his oath.

26 THE WITNESS: Yes, my Lord.

27 JUSTICE DOHERTY: Mr Saffa, you recall that you have taken  
28 an oath to tell the truth. The oath is still binding on you and  
29 you must answer questions truthfully.

1 THE WITNESS: Yes, my Lord.

2 JUSTICE DOHERTY: Thank you. Please proceed.

3 MR METZGER: I'm very much obliged.

4 Q. Mr Saffa, do you have in front of you the exhibits that you  
08:58:37 5 last had in front of you when we were last in session?

6 A. Not yet, my Lord.

7 Q. [Indiscernible] in which case may I ask in particular that  
8 exhibits P3, P4, P6, P8, P10 and P12 be put before the witness?

9 A. Yes, my Lord, I have the documents now.

08:59:36 10 Q. Thank you very much, Mr Saffa. Can you please have P3,  
11 which is the statement of Alimamy Bobson Sesay dated 9 December  
12 2010 and signed on said date.

13 A. Yes, my Lord.

14 Q. And can you go to the very last page, please, of that  
09:00:02 15 document?

16 A. Yes, my Lord, I'm there.

17 Q. Can you read to yourself the last paragraph on that page,  
18 just before the affirmation, to yourself?

19 A. I have read it, my Lord.

09:00:57 20 Q. This is the paragraph in Mr Bobson Sesay's evidence when he  
21 told you, I believe on 3 December, that there had been contact  
22 with the Vice-President of Sierra Leone?

23 A. Yes, my Lord.

24 Q. [Indiscernible] make contact with the Vice-President of  
09:01:27 25 Sierra Leone to follow this up?

26 A. I did not get the first word of the question.

27 Q. I'll say it again: Did you yourself make contact with the  
28 Vice-President of Sierra Leone in order to follow this up?

29 A. No, my Lord.

1 Q. And are you aware whether anyone from the Office of the  
2 Prosecutor did?

3 A. I'm not aware, my Lord.

4 Q. Thank you. Before we turn away from exhibit P3, can I ask  
09:02:23 5 you to go to the first page?

6 A. I'm there, my Lord.

7 Q. And if you look, please, at the second paragraph, three  
8 lines from the bottom of that, "I understood that Ragga wanted me  
9 to lie by recanting my in-Court testimony"?

09:03:16 10 A. Yes, my Lord.

11 Q. That, I think, you agree is an insertion into the 9  
12 December statement that wasn't in the previous draft of 1 and 3  
13 December; is that the case?

14 A. Yes, my Lord.

09:03:39 15 Q. Can you just explain to us the circumstances in which that  
16 sentence was inserted?

17 MR HERBST: At this point I need to interpose an objection.  
18 My notes reflect that on Saturday during Mr Metzger's examination  
19 he asked about this very phrase and it was fully explored and the  
09:04:07 20 witness explained the circumstances, so we're now going back over  
21 material already explored and I would object.

22 MR METZGER: Your Honour, I haven't had the benefit of  
23 perusing the transcript for Saturday, and I was asking it as a  
24 foundational question, since I want to put to him the  
09:04:33 25 alternatives, as I would say, based on the evidence given by  
26 Mr Alimamy Bobson Sesay on the subject.

27 JUSTICE DOHERTY: I'm looking at my notes, because I can  
28 recall some of this coming up on Saturday as well. But if it's a  
29 foundation for another question that didn't come up on Saturday,

1 I'll allow it.

2 MR METZGER: May I, for Your Honour's reference, give you  
3 the references in the transcript. This is the transcript for 27  
4 June 2012. My cross-examination of Mr Alimamy Bobson Sesay.

09:05:33 5 JUSTICE DOHERTY: No, I'm talking about this witness. I'm  
6 clear on what you asked Sesay. I've allowed the question as a  
7 foundation, so please proceed. Put the question again so as the  
8 witness hears it clearly.

9 MR METZGER: Thank you, Your Honour.

09:05:46 10 Q. I was asking you, Mr Bobson Sesay, to explain how it was  
11 that you inserted the line "I understood that Ragga wanted me to  
12 lie by recanting my in-Court testimony"?

13 A. Yes, my Lord.

14 JUSTICE DOHERTY: I understand the question is that you  
09:06:25 15 inserted it, but can you explain why you inserted it, is the  
16 fundamental question.

17 THE WITNESS: This portion was inserted because when 334  
18 told me that he was told to recant his testimony, I asked him  
19 whether he - what he understands by that. He told me that his  
09:06:47 20 understanding was that he wanted him to lie by recanting his  
21 testimony in Court.

22 JUSTICE DOHERTY: Proceed, Mr Metzger.

23 MR METZGER:

24 Q. Is it not the case, Mr Saffa, that what Mr Bobson Sesay  
09:07:15 25 said was in fact, "Maybe he wanted me to lie in my testimony"?

26 A. No, my Lord. I asked him a direct question, and he  
27 answered it directly to me.

28 Q. Could you be mistaken about that, Mr Saffa?

29 A. No, my Lord.

1 MR HERBST: [Indiscernible] I withdraw the objection.

2 MR METZGER: I'm most obliged to all concerned. For Your  
3 Honour's reference and that of interested parties, I put this  
4 question on the basis of the transcript at page 652 between lines  
09:08:06 5 10 to 12, the evidence of Alimamy Bobson Sesay.

6 JUSTICE DOHERTY: Continue, Mr Metzger.

7 MR METZGER: Thank you, Your Honour.

8 Q. Can we move on to P4, please, which is the Alagenda  
9 e-mail.

09:08:43 10 JUSTICE DOHERTY: Do you have that, Mr Saffa?

11 THE WITNESS: Yes, my Lord, I have it.

12 MR METZGER:

13 Q. Thank you, Mr Saffa. Now, can you tell the Court, please,  
14 at the time this e-mail was purportedly sent to the Prosecutor  
09:09:02 15 Brenda Hollis, where Ms Alagenda was located?

16 A. I don't know, my Lord.

17 Q. Thank you.

18 JUSTICE DOHERTY: Proceed.

19 MR METZGER:

09:09:20 20 Q. As OTP investigator in this case, have you ever seen an SMS  
21 or text message that was sent to Ms Alagenda?

22 A. Pertaining to this matter? No, my Lord.

23 Q. Thank you. Have you spoken to Ms Alagenda about this  
24 e-mail?

09:09:51 25 A. No, my Lord.

26 Q. Thank you. Now, can I ask you, please, to read to yourself  
27 the second paragraph of that e-mail, which commences "334 spoke  
28 to Five Five"?

29 A. I've read it, my Lord.

1 Q. Just remind us, please, when was the first time you saw  
2 this e-mail?

3 A. I saw this e-mail on 1 December 2010.

09:11:06 4 Q. Thank you, Mr Saffa. Now, can you confirm that that  
5 paragraph that you have just read is different from the statement  
6 that you took from Mr Sesay regarding the conversation with Five  
7 Five or Mr Kanu?

8 A. Yes, my Lord.

09:11:36 9 Q. This paragraph of the e-mail, the conversation purportedly  
10 that took place with Kanu simply says, "We are brothers and we  
11 will soon be released and we expect you to help us with the  
12 release"; is that correct?

13 A. Yes, my Lord.

09:11:59 14 Q. It doesn't say, in relation to that conversation, that  
15 Mr Kanu said modalities were being put in place to compensate  
16 this witness, Mr Sesay?

17 A. It's not recorded here.

09:12:33 18 Q. Thank you. And it also does not say on that document that  
19 he was asked whether Sammy Ragga had spoken to him about the  
20 request?

21 A. No, my Lord.

09:13:22 22 Q. Thank you. Finally, as far as this e-mail is concerned:  
23 Looking at paragraph 3 of that e-mail - and I'm not going to ask  
24 you much about this. I think you've already been asked. Is it  
25 correct to say that the terminology of the e-mail is about a  
26 generic promise by the AFRC accused?

27 JUSTICE DOHERTY: [Indiscernible]

28 MR METZGER: There's no mention of Mr Kanu or Five Five  
29 specifically.

1 THE WITNESS: All I have here is "the AFRC accused have  
2 promised. . ."

3 MR METZGER:

4 Q. To pay Mr Bobson Sesay large sums of money?

09:14:06 5 A. Yes, my Lord.

6 Q. During the course of your interviews or meetings with  
7 Mr Bobson Sesay, is it correct to say that he never once told you  
8 that Mr Kanu had personally promised to pay him large sums of  
9 money?

09:14:30 10 A. He did not tell me that, my Lord.

11 Q. Thank you. Can we please now go to exhibit P6, please.  
12 This is the notes of your further meeting dated 3 December 2010.

13 A. Did you say P3? I have P5.

14 Q. Exhibit P6, please. It's headed: "Follow-up contact with  
09:15:18 15 TF1-334."

16 A. Yes, my Lord.

17 Q. Thank you. In relation to this meeting, could you please  
18 look at paragraph number 5?

19 A. Yes, my Lord.

09:15:59 20 Q. Now, is it your understanding that the information provided  
21 in paragraph 5 relates to the telephone call between yourself -  
22 sorry, between Mr Bobson Sesay and Ragga that day [indiscernible]  
23 it wasn't a telephone call. When Mr Sammy Ragga visited him that  
24 morning?

09:16:49 25 A. Please ask that question again.

26 Q. Yes, sorry, that was my fault. Is it your understanding  
27 that that conversation, what you have recorded here, relates to  
28 the conversation between Sammy Ragga and Mr Bobson Sesay at  
29 Mr Bobson Sesay's house that morning, that is to say, the morning



1 of 3 December?

2 A. Yes, my Lord, that is my understanding.

3 Q. Thank you. Now can you look at the previous paragraph?

4 A. Yes, my Lord.

09:17:47 5 Q. Here is a reference to what Mr Bobson Sesay says about how  
6 he had been regarded by his AFRC counterparts; that's correct,  
7 isn't it?

8 A. Yes, my Lord.

09:18:18 9 Q. This section does not appear in the statement that he  
10 signed. Can you tell us why that was?

11 A. This was a conversation between 334 and myself which is not  
12 part of the statement that was recorded. It was due to a  
13 telephone conversation that I made to him when I wanted to report  
14 to him that the Office of the Prosecutor would like to report the  
09:19:06 15 matter to the Registrar of the Court. All these paragraphs were  
16 just conversation --

17 Q. [Overlapping speakers] sorry, I interrupted. Please  
18 continue, Mr Saffa?

09:19:28 19 A. All these paragraphs from 1, 2, 3 and 4 were just part of  
20 that conversation that I had with 334 on the telephone.

21 Q. But you do agree that this conversation in its entirety was  
22 recorded on this document?

23 A. On which document, please?

09:20:01 24 Q. Exhibit P6, paragraphs 4 and 5 do not come from another  
25 conversation, do they?

26 A. Yes, my Lord, it's here.

27 Q. Are you agreeing that this was discussed in the same  
28 conversation?

29 A. Yes, my Lord.

1 Q. Thank you. And would it be fair to try and summarise your  
2 answer as being it was you who thought it was unnecessary to  
3 record in his statement his comment that he had always been  
4 referred to by his AFRC counterparts as a betrayer?

09:20:44 5 A. Yes, my Lord. Because if you can see even the other - the  
6 previous paragraph to that, all that would have formed part of  
7 the statement. But I did not see it necessary for this case.

8 Q. Thank you, Mr Saffa. Now I want to ask you about the last  
9 sentence in that paragraph - the last two sentences. You were  
09:21:13 10 speaking to Mr Bobson Sesay about security issues, were you not?

11 A. Yes, my Lord, he brought up security issues to me.

12 Q. What were the security issues that he was bringing up as  
13 far as you can recall?

14 A. He told me that he has no objection for us to report the  
09:21:54 15 matter to the Registrar, but that he was concerned about his  
16 security because this matter will come to light and it will be  
17 known that he is the one who has given us this message and that  
18 he will be concerned about his own security.

19 Q. Yes, Mr Saffa, but in what way was he concerned about his  
09:22:24 20 security?

21 A. Well, according to the conversation, he said that being  
22 that he has testified in Court, he is often regarded as somebody  
23 who has betrayed their cause, the cause of the AFRC, and that he  
24 was very much concerned because if this issue come up again, even  
09:22:59 25 if the office do not say that he was the one who has supplied  
26 this information, obviously it will be known that he is the one  
27 who has given this information and his security would be at risk.

28 Q. Can you please point me to the paragraph in your note that  
29 says all that?

1 A. Paragraph 3 and paragraph 4, please.

2 Q. And where in those two paragraphs does it talk about his  
3 having given evidence in Court? [Indiscernible] Mr Saffa?

09:24:17 4 JUSTICE DOHERTY: Are you putting to the witness that he  
5 didn't give evidence in Court?

6 MR METZGER: Clearly not, Your Honour. I'm saying that it  
7 wasn't stated at this meeting. I am sure that it was stated in  
8 the December 7 discussions, but not on this December 3 and  
9 therefore the witness may be conflating --

09:24:35 10 JUSTICE DOHERTY: [Indiscernible] I think it's common  
11 knowledge that 334 gave evidence in Court.

12 MR METZGER: Your Honour, with the greatest respect I'm not  
13 contesting the fact that 334 gave evidence in Court. I'm  
14 contesting what the witness was saying about his security issues,  
09:24:49 15 particularly in light of evidence he has given on the same  
16 subjects as any complaint --

17 JUSTICE DOHERTY: Mr Metzger, that's not apparent to me  
18 from your questions, so please put that question more clearly.

19 MR METZGER: I'm obliged.

09:25:03 20 Q. I'm suggesting to you, Mr Saffa, that what you've just told  
21 us about 334 talking about having given evidence in Court was not  
22 said during this meeting on 3 December?

23 A. My Lord, it was not said word by word in this document, but  
24 because you asked me to tell you what were some of the concerns  
09:25:28 25 that he showed you, from this document you can clearly see that  
26 it is implied. I'm saying something that could be implied from  
27 what is documented here, my Lord.

28 Q. In due course I ask you about exhibit P8, it will be clear  
29 that that was fully documented, Mr Saffa. What --

1 MR HERBST: I object predicate, Your Honour. It's  
2 argumentative.

3 JUSTICE DOHERTY: It is, Mr Metzger. Please keep straight  
4 to the questions. You are entitled to put a lot in  
09:26:06 5 cross-examination, but comments don't really help.

6 MR METZGER: I'm so sorry, Your Honour and to my learned  
7 friend, I simply was trying to help the witness. Unfortunately,  
8 it seems that my help is seen as being more of an encumbrance  
9 than a help. I shall try not to assist in that way in the  
09:26:27 10 future.

11 Q. Then let me go on to ask the next question on this topic.  
12 What was it - what suggestions did Mr Bobson Sesay make about his  
13 security?

14 A. Well, I think I have to read it verbatim from the document.  
09:27:00 15 I don't want to insert any other thing again. "However, he did  
16 not make any suggestion as to what should be done to his security  
17 issues but said that whatever measure the OTP takes to protect  
18 him will be all right with him."

19 Q. Thank you for that, Mr Saffa. Can you tell us whether you  
09:27:29 20 suggested any security measures that the OTP could take to  
21 protect him?

22 A. No, my Lord.

23 Q. So summing up this part of the conversation: Security  
24 concerns were mentioned, but Mr Bobson Sesay had no  
09:28:01 25 recommendations or suggestions as to how he could be helped, and  
26 neither did you. Is that an accurate summary of what you've just  
27 said?

28 A. No suggestion was made to him, my Lord.

29 Q. Can you please have before you exhibit P8, which is an

1 interoffice memoranda from Magnus Lamin to Jim Johnson and copied  
2 to yourself on December 7, 2010?

3 A. Yes, my Lord, I have it.

4 Q. We were afraid we'd lost you there. You've explained that  
09:29:41 5 this was a memorandum offered by Magnus Lamin, who works for you;  
6 is that the position?

7 A. Yes, my Lord.

8 Q. And this is a document that would have been communicated,  
9 for example, to the people updating the database; is that not  
09:30:11 10 correct?

11 A. Yes, my Lord.

12 Q. Were you made aware of this conversation before it was  
13 reduced into writing by Mr Lamin?

14 A. It was reduced into writing, my Lord, before I - before I  
09:30:45 15 became privileged to it.

16 Q. Thank you. Did you have cause to have any conversations  
17 with either Mr Lamin or Mr Johnson about it?

18 A. Yes, my Lord.

19 Q. And did you speak to Mr Bobson Sesay also about it?

09:31:14 20 A. The only thing we told 334 was that the matter has been  
21 reported to WVS and that he should contact WVS.

22 Q. Thank you. Now, this was a discussion involving, shall we  
23 say, what was going to happen in this case and what Mr Bobson  
24 Sesay expected to receive from Mr Samuel Kargbo; is that not  
09:32:21 25 right?

26 A. Yes, my Lord.

27 Q. You understood that Mr Sesay held high hopes that Mr Kargbo  
28 was going to come back to him with concrete information; is that  
29 the case?

1 A. Yes, my Lord.

2 Q. [I ndi scerni bl e] possi bl y money?

3 A. Yes, my Lord.

4 Q. In fact, you are aware that no money was ever given to  
09:33:10 5 Mr Bobson Sesay?

6 A. I don't know.

7 Q. Let's just examine that for a moment. You have just said  
8 you don't know whether any money was given to Mr Bobson Sesay; is  
9 that correct?

09:33:36 10 MR HERBST: Your Honour.

11 MR METZGER: [I ndi scerni bl e]

12 MR HERBST: Your Honour, that was just asked and answered.

13 JUSTICE DOHERTY: It was.

14 MR METZGER: So be it, Your Honour. I just don't want to  
09:33:48 15 be mistaken. I'll now ask the second question.

16 Q. Mr Saffa, the effect of your answer - is the effect of your  
17 answer, rather, that you believe Mr Bobson Sesay may have been  
18 given money, but he hasn't told you?

19 A. He hasn't told me.

09:34:14 20 MR HERBST: I object.

21 JUSTICE DOHERTY: This is cross-examination and I think I'm  
22 going to allow it.

23 MR METZGER: Thank you, Your Honour.

24 Q. Mr Saffa, you're free to answer the question  
09:34:30 25 [i ndi scerni bl e] my records?

26 JUSTICE DOHERTY: What I heard the witness say was he has  
27 not told me, which does not go to his belief, which is what  
28 you're putting.

29 MR METZGER: Yes.

1 Q. Now, you say he hasn't told you, but why did you answer the  
2 first question in the way you did, "I don't believe so"? What is  
3 the basis of your belief, Mr Saffa?

09:34:57 4 MR HERBST: I object, Your Honour. The answer was that he  
5 did not know, not that he did not believe.

6 MR METZGER: I'm sorry with the greatest respect to my  
7 learned friend can he read the question and answer that came  
8 before that, when he then objected to my clarifying the answer  
9 that the witness had given.

09:35:16 10 JUSTICE DOHERTY: Just a moment, please. Let me look at  
11 this record as I have noted it. The question was no money was  
12 given to Sesay. Answer: I do not know. And the question was:  
13 Isn't in effect your answer is you believe he may have been given  
14 so the belief question - the question of belief is your question,  
09:35:34 15 Mr Metzger.

16 MR METZGER: Your Honour, no. There was a question before  
17 the "I don't know" answer and that was the one I was trying to  
18 clarify the word believe to the best of my knowledge --

19 JUSTICE DOHERTY: In actual fact the previous question had  
09:35:52 20 two questions in it, now when I come to look at it critically,  
21 which was Sesay had high hopes that Sammy Ragga would come back  
22 with concrete information and possibly money. So there's two  
23 parts to that question. And when I think about it I should have  
24 stopped you and put them into two at that point.

09:36:13 25 MR METZGER: Your Honour, there was a question after that  
26 but before the one that my learned friend is objecting to and it  
27 is imperative, since I wasn't allowed to clarify it, the word  
28 [indiscernible] that I heard on that question that we should go  
29 to the actual record.

1 JUSTICE DOHERTY: We'll get - can the transcribers give us  
2 this. Mr Court Attendant in Freetown, can the transcribers help  
3 us. Basically it is who used the word "belief" - was it counsel  
4 or was it the witness?

09:36:59 5 MR METZGER: In fairness, if it's possible we should have  
6 that string of questions before the objection.

7 THE COURT OFFICER: Your Honour, may I ask that you kindly  
8 pause for a moment so that - and nobody speak so that we can read  
9 that if Your Honour wishes that.

09:37:19 10 JUSTICE DOHERTY: [Indiscernible] very helpful. We'll all  
11 keep quiet here and it would be helpful if it's read out.

12 THE COURT OFFICER: I'm reading.

13 [Relevant portion of shorthand notes read]

14 JUSTICE DOHERTY: Very helpful. So it is clear from that  
09:40:50 15 exchange that the word "belief" came from Mr Metzger, not the  
16 witness. So I again repeat what I said, Mr Metzger.

17 MR METZGER: I'm very much obliged and I can ask now the  
18 question based on that.

19 Q. Mr Saffa, you said: "You don't know" as we've heard from  
09:41:09 20 that exchange as to whether Mr Bobson Sesay received any money in  
21 relation to these proceedings. Can you tell us why you said "I  
22 don't know"?

23 A. He did not tell me, my Lord.

24 Q. Is that the only reason you say you don't know whether he  
09:41:35 25 received money?

26 A. My Lord, that is the only reason. He did not tell me and  
27 he did not show me money that he has received from anybody.

28 Q. Did you think that he would have received money and not  
29 told you?



1 MR HERBST: Your Honour, I object. Because I don't think  
2 this witness's belief or state of mind on that issue is at all  
3 relevant. It's a question of what was reported to him, not his  
4 state of mind or beliefs as to what occurred.

09:42:32 5 MR METZGER: I asked the question Your Honour because he's  
6 an investigating officer and it seemed curious for him to have  
7 answer "I don't know" in the subsequent answers. But only he can  
8 tell us what was going on in his own mind and why he gave that  
9 answer.

09:42:47 10 JUSTICE DOHERTY: Mr Metzger, this is a borderline issue.  
11 If you're putting this witness's assessment of the credibility of  
12 334, which it appears to me you are basically doing, then that is  
13 for me to assess that credibility on the evidence before me not  
14 to seek a second opinion. So I think the witness's state of mind  
09:43:13 15 is not part of the evidence and I will not allow it.

16 MR METZGER: I made an assumption that Your Honour wouldn't  
17 be affected thereby. I shall move on.

18 JUSTICE DOHERTY: Proceed.

19 MR METZGER: I'm in the process of doing so, Your Honour.

09:43:39 20 Q. We are still on exhibit P8. I now want to ask you,  
21 Mr Saffa, about the issue of Mr Bobson Sesay's request to  
22 relocate to France. You will find the discourse on that in this  
23 document from about the middle of that memorandum. Basically  
24 bullet point 8 onwards. Can you just locate that for yourself?

09:44:30 25 A. Yes, my Lord.

26 Q. At this time and on this date, it would appear that  
27 Mr Bobson Sesay went into some detail about his security  
28 concerns; is that correct?

29 MR HERBST: Your Honour, excuse me, but I believe that the

1 subject of relocation has been explored on cross-examination by  
2 Mr Nicol-Wilson, and I think we're getting into an area which - a  
3 line of questions which has already been explored by other  
4 counsel. That is the reason for my objection.

09:45:13 5 JUSTICE DOHERTY: It was gone into by Mr Nicol-Wilson,  
6 Mr Metzger. So if you have a new point that was not put by  
7 Mr Nicol-Wilson, you should put it.

8 MR METZGER: I would be assisted by the transcript, which I  
9 haven't looked at. I thought that Mr Nicol-Wilson touched upon  
09:45:33 10 it as opposed to went into it. I could be wrong.

11 JUSTICE DOHERTY: I have invited you to put something  
12 different. I've not precluded you.

13 MR METZGER: Thank you, Your Honour. Let me just check  
14 something very quickly.

09:47:27 15 Thank you, Your Honour.

16 Q. Mr Saffa, did you personally make any inquiries about  
17 Mr Sesay's potential relocation to France?

18 A. No, my Lord.

19 JUSTICE DOHERTY: [Indiscernible] of the witness or of  
09:47:50 20 someone else? That's very wide, Mr Metzger. Did you mean --

21 MR METZGER: It is wide because I want to ask him in  
22 general first.

23 JUSTICE DOHERTY: Very well. It's on record. The reply is  
24 on record. It was "no".

09:48:06 25 MR METZGER: It shortens my cross-examination because on  
26 that wide basis, I don't have to [indiscernible]

27 Q. The next question, please: Are you aware if anyone else in  
28 the OTP made such inquiries?

29 A. No, my Lord.

1 Q. Next question on this point: Are you aware whether anyone  
2 in WVS made such inquiries?

3 A. No, my Lord.

4 Q. Thank you, Mr Saffa. As at today's date, are you aware  
09:49:06 5 whether Mr Sesay has a visa now to go to France?

6 A. No, my Lord.

7 Q. And would it be fair to say that you have not discussed the  
8 matter with Mr Sesay since you had your meetings with him  
9 preparing for this case?

09:49:31 10 A. No, my Lord.

11 Q. Thank you. Can I ask now, please, that you turn to exhibit  
12 P10, which is your declaration dated 17 December 2010?

13 A. Yes, my Lord, I have it.

14 Q. Mr Saffa, why did you think it necessary to make this  
09:50:13 15 declaration?

16 A. My Lord, I thought it necessary to make this declaration  
17 because when Magnus Lamin had this conversation with 334, I also  
18 called 334 and he told me what he has told Magnus Lamin. So I  
19 thought I would be in a place to make this declaration, my Lord.

09:50:44 20 Q. As a long-standing investigator, is it not your  
21 understanding that the evidence comes from the witness who gives  
22 it?

23 A. Yes, my Lord.

24 Q. You were declaring. Who was the witness providing the  
09:51:09 25 information?

26 A. My Lord, the witness provided this information to the two  
27 of us, Magnus Lamin and myself.

28 Q. [Indiscernible] was Mr Alimamy Bobson Sesay then referred  
29 to as witness TF1-334; is that correct?

1 A. My Lord, when you asked the question the witness, I thought  
2 you were referring to 334.

3 MR HERBST: Your Honour, I would object to this line. It's  
4 patently obvious that there's no direct witness statement from  
09:51:54 5 334 on these events and this is what we have. I just don't  
6 understand the relevance of the line.

7 MR METZGER: Does Your Honour want me to respond to that?

8 JUSTICE DOHERTY: Yes, because the line of questioning  
9 is --

09:52:11 10 MR METZGER: I'm content to respond. If Your Honour wants  
11 me to respond, then I shall do so. It seems to me that the Court  
12 is entitled - and indeed ought to take into account the reason  
13 why no statement was taken from Mr Alimamy Bobson Sesay. It is  
14 an undisputed fact. I'm most grateful to the learned Prosecutor  
09:52:41 15 for putting on record that there is no statement from 334 on this  
16 point, although there are some issues evidentially regarding  
17 that. And I can take Your Honour and my learned friend to the  
18 relevant portions of the transcript where his witness, who has  
19 not been impeached, Mr Alimamy Bobson Sesay, stated that he did  
09:53:05 20 make a second statement which he signed. That is why I am asking  
21 this witness questions about this declaration and the apparent  
22 lack of a second signed statement.

23 JUSTICE DOHERTY: Very well. Put the question, please.

24 MR METZGER: I'm so very much obliged.

09:53:30 25 Q. Mr Saffa, why was it that you saw fit to make a declaration  
26 about Mr Bobson Sesay's evidence in this 17 December document?

27 A. My Lord, Mr Sesay was not in the office to make statement,  
28 and that was the day that the contempt motion was to be filed, so  
29 there was need to make a declaration from what he has spoken to

1 us. That was why this declaration was made.

2 Q. Mr Sesay was not in the office. Have you since, in the 18  
3 months or so between this date and today's date, approached  
4 Mr Sesay and asked him to make a statement as to these facts?

09:54:42 5 A. No, my Lord.

6 JUSTICE DOHERTY: [Indiscernible] question? Do we have  
7 connection with Freetown?

8 THE COURT OFFICER: Yes, Your Honour, we can hear you.

9 JUSTICE DOHERTY: Thank you. Mr Saffa, did you hear the  
09:55:29 10 question?

11 THE WITNESS: No, my Lord, I don't think any question comes  
12 up.

13 MR METZGER:

14 Q. Mr Saffa, can you tell us why, in the more than 18 months  
09:55:49 15 since this declaration to today's date, you haven't sought to  
16 take a statement from Mr Bobson Sesay about these matters?

17 A. My Lord, I did not see it necessary, because the  
18 declaration will be enough for this purpose.

19 JUSTICE DOHERTY: Proceed, Mr Metzger.

09:56:27 20 MR METZGER:

21 Q. Can you tell this Court whether, pursuant to her Honour's  
22 request last week, any searches have been made of the OTP files  
23 to see whether there was in fact a second statement?

24 JUSTICE DOHERTY: [Indiscernible]

09:56:53 25 MR METZGER: From Mr Alimamy Bobson Sesay. The transcript  
26 reference is page 633 lines 10 to 17.

27 THE WITNESS: Is that a question for me, my Lord?

28 JUSTICE DOHERTY: [Indiscernible]

29 MR METZGER: [Indiscernible] may I ask it again in case we

1     lost --

2             JUSTICE DOHERTY:   Indeed.   Please [i ndi scerni bl e]

3             MR METZGER:

4     Q.     Mr Saffa, can you tell the Court whether, in accordance  
09:57:35 5     with the request by her Honour the judge in this case,  
6     investigators made a search of OTP files to see whether there was  
7     a second statement from witness 334, Mr Alimamy Bobson Sesay?

8     A.     My Lord, in the first place, I am not aware of that  
9     information, but I'm also saying that 334 did not make a  
09:58:09 10    statement in respect of this declarati on.

11    Q.     Now, Mr Saffa, I'm going to ask you to get the contact  
12    summary - what we've been calling the contact summary, exhibit  
13    P12, ready, but please don't relinqui sh hold of exhibit P10 just  
14    yet.

09:58:51 15    A.     Yes, my Lord, it's before me.

16    Q.     Thank you.   Just so we can be clear, would it be - I'll  
17    start from the very beginni ng.   Have you yourself ever entered  
18    information on the contact database?

19    A.     No, my Lord.

09:59:18 20    Q.     The information that is entered on the contact database  
21    must be provided to the person entering it; is that not correct?

22    A.     Yes, my Lord.

23    Q.     Is that done by way of, for example, the interoffice  
24    memoranda that we've seen examples of in this case?

09:59:54 25    A.     Yes, my Lord.

26    Q.     Can it be done in any other way? From the OTP, in other  
27    words?

28    A.     No, my Lord.

29    Q.     Now, you will have noticed that the meeting with TF1-334

1 referred to in exhibit P10 is not reflected on the contact  
2 summary P12. Can you explain why that is?

3 A. It's not there, my Lord. Like I told you, somebody was  
4 responsible for entering those information into the database, but  
10:01:03 5 he does it periodically and it's not every information that was  
6 put into that database. But I don't really know why this  
7 particular information was not inserted into that document, and  
8 like you can see so many other contacts also, because I could see  
9 that there is always time lapse in the entries that are made  
10:01:29 10 here.

11 Q. Thank you, Mr Saffa. Can I just ask this: As far as the  
12 contact summary that we have before us, exhibit P12, was it you  
13 personally who extracted it from the database and prepared it in  
14 this format?

10:01:56 15 A. Yes, my Lord, I only printed it off from the database.

16 Q. Did you cut out certain portions?

17 A. No, my Lord.

18 Q. Can you please look at the very first paragraph, a contact  
19 summary added by Stephanie Hussey?

10:02:33 20 A. Yes, my Lord.

21 Q. [Indiscernible] before the line "the writer requested that  
22 J Saffa follow up the same", do you see that?

23 A. Yes, my Lord.

24 Q. Does that mean that you did not include in your printout  
10:03:04 25 the material relating to September 1, 2010?

26 A. I did not print off all the information before this  
27 information.

28 Q. Does it mean you did not print off the information relevant  
29 to September 1, 2010?

1 A. Yes, my Lord.

2 Q. Does it also mean that you did not print off the full  
3 information relating to the entry on 15 November 2010?

4 A. My Lord, that is the entry we have in the database for 15  
10:04:06 5 November 2010. That is all about it, that the writer requested J  
6 Saffa follow up with same on September. No response received.

7 Q. Does the database not indicate who the writer is that is  
8 being referred to?

9 [Mr Nicol-Wilson leaves Court]

10:04:41 10 A. Sometimes it refers to the writer; sometime it is just an  
11 information.

12 Q. See, it just seems to me, and I could be wrong, I've not  
13 seen the full extract, that there should be something of that  
14 which will tell us who the writer that is being talked about here  
10:05:03 15 is?

16 A. No, my Lord.

17 MR HERBST: I object to that [indiscernible] assumptions in  
18 that question because in fact Mr Metzger has seen the full  
19 extract within the dates mentioned, because the witness has just  
10:05:20 20 testified that he removed nothing. He didn't include anything  
21 above the September 1 entry, but all the other entries that start  
22 "contact detail" he has testified that he did not remove  
23 anything. So in fact, Mr Metzger has seen the exact extract.  
24 Each entry starts, he has testified, with "contact detail".

10:05:46 25 MR METZGER: That wasn't my understanding of the witness's  
26 answer in relation to September 1.

27 JUSTICE DOHERTY: He said he did not print off all the  
28 information before this in relation to September 1.

29 MR HERBST: Yes, Your Honour. What he's saying is that



1 that entry --

2 JUSTICE DOHERTY: No, no, no. It's coming from him. I'm  
3 not having it interpreted by anyone.

4 Mr Witness, did you hear the question? Can you answer it,  
10:06:13 5 please?

6 THE WITNESS: My Lord, I said no. I did not remove  
7 anything because the previous - in the previous - in my previous  
8 answer I said sometime the writer's name will be indicated on  
9 this database; sometimes it will not be indicated. But in this  
10:06:38 10 case I did not remove anything whatsoever.

11 MR METZGER:

12 Q. Are you saying that the entry for September 1 is - that's  
13 exactly how it is on the database? There is nothing between  
14 "contact detail" and "the writer requested"?

10:07:07 15 A. No, my Lord, that is not what I'm saying. I thought your  
16 question was related to November 15, 2010, and I told you that  
17 that was the exact entry in the database. For September 1, 2010,  
18 I told you that all the information for that entry is not here  
19 because this is another page which I did not see it necessary to  
10:07:37 20 print before this period. So you can see that the actual  
21 information for September 1, 2010, is not here. But for that -  
22 for November 15, 2010, this is the information we have in the  
23 database, my Lord.

24 Q. Thank you, Mr Saffa, that was indeed my understanding of  
10:08:06 25 the answer he had first given me which is why I was surprised  
26 that my learned friend jumped -

27 JUSTICE DOHERTY: [Indiscernible]

28 MR METZGER: Indeed. Indeed.

29 Q. Mr Saffa, can you make available for us the summary - or

1 rather, the entries on the database from September 1, 2010, to  
2 what we have here, November 15, 2010? Can that be made  
3 available, please, for the Defence today?

10:08:44 4 JUSTICE DOHERTY: [Indiscernible] it's outside the  
5 indictment period. Why did you require it, Mr Metzger?

6 MR METZGER: Can I take it in this way: I'm asking if it  
7 can be made available. I will then ask a series of questions  
8 which I believe will make it crystal clear why it becomes  
9 pertinent to the circumstances of this case. Might I just add  
10:09:05 10 that the Prosecution has called a significant amount of evidence  
11 that is outside the indictment period.

12 JUSTICE DOHERTY: Very well. I'll allow the question on  
13 that basis.

14 MR METZGER: Thank you, Your Honour.

10:09:16 15 Q. Mr Saffa, over to you.

16 A. Yes, my Lord.

17 Q. Thank you. Next question: Do you recall Mr Bobson Sesay  
18 reporting to the OTP his dissatisfaction about a DVD relating to  
19 his evidence at the Special Court?

10:09:49 20 A. Yes, my Lord.

21 Q. Can you recall when that complaint was made?

22 A. My Lord, I cannot recall now.

23 Q. Would such complaint be recorded on the contact database?

24 A. My Lord, it is very possible that it might be contained in  
10:10:27 25 the database. But like I told you, it's not every contact that  
26 will be included in this database. But I would think something  
27 like that would be in the database about that report.

28 MR METZGER: Your Honour, may I ask if Your Honour would  
29 permit me to ask the witness to check those records for that? I

1 am, of course, referring to the claim made by Mr Alimamy Bobson  
2 Sesay when he gave evidence and was examined on this matter.

3 JUSTICE DOHERTY: Mr Saffa will you be able to check after  
4 your evidence is concluded [i ndi scerni ble]

10:11:19 5 THE WITNESS: Yes, my Lord, I'll be able to check whatever  
6 information I have available on that issue. Then I will let the  
7 Court have it.

8 [Mr Nicol -Wilson returns to Court]

9 JUSTICE DOHERTY: Thank you, Mr Saffa.

10:11:39 10 MR METZGER: Your Honour will see perhaps now the relevance  
11 of the 1 September --

12 JUSTICE DOHERTY: Mr Metzger [i ndi scerni ble] please proceed  
13 with the questi ons [i ndi scerni ble]

14 MR METZGER: I thought there was some concern about why I  
10:11:52 15 was asking earl ier questi ons.

16 JUSTICE DOHERTY: Please proceed with your questi ons.

17 MR METZGER: Indeed, Your Honour.

18 Q. Mr Saffa, do you still have exhibit P10 available?

19 A. Yes, my Lord.

10:12:10 20 Q. Can you tell us whether there was ever an interoffice  
21 memorandum from Mr Lamin about the 16 December 2010 contact with  
22 Mr Bobson Sesay?

23 A. My Lord, I cannot remember now.

10:12:53 24 MR METZGER: May I seek Your Honour's assistance on where I  
25 go from here? The Defence have not been disclosed with such an  
26 interoffice memorandum. I seek to suggest that it doesn't exist,  
27 but because of the witness's last answer, I must make inquiry,  
28 that is, if such a memorandum exists, if it could be disclosed to  
29 the Defence.

1 MR HERBST: Your Honour, I will say what I said again on  
2 several previous occasions. I asked for production of all the  
3 material, memos and so forth, relating to all the relevant  
4 evidence in this case --

10:13:33 5 MR METZGER: I do object to this explanation, Your Honour.

6 MR HERBST: -- and I was told there was none.

7 JUSTICE DOHERTY: [Indiscernible] Mr Herbst that is on  
8 record.

9 Mr Saffa, when you said you cannot remember, does that mean  
10:13:45 10 one wasn't made or you just don't remember if one was made?

11 THE WITNESS: My Lord, it is not to my knowledge that a  
12 memorandum was prepared for this conversation.

13 JUSTICE DOHERTY: Thank you. Proceed, Mr Metzger.

14 MR METZGER:

10:14:15 15 Q. If no memorandum was prepared, Mr Saffa, with your  
16 experience at the OTP, can you tell us why it would be - or why  
17 it was that no memorandum was prepared?

18 JUSTICE DOHERTY: [Indiscernible] by Lamin [i ndi scerni bl e]

19 MR METZGER: Your Honour, yes, the man who works for him.

10:14:40 20 JUSTICE DOHERTY: Yes.

21 THE WITNESS: I do not know why he did not prepare a  
22 memorandum for this.

23 MR METZGER:

24 Q. Does the fact that no memorandum was prepared comply with  
10:15:12 25 the procedure at the OTP for investigation and preparation of  
26 cases?

27 MR HERBST: Your Honour, again I see no --

28 JUSTICE DOHERTY: Mr Metzger, Mr Herbst, as far as I see  
29 P10 is a memorandum prepared by the investigators.

1 MR METZGER: Thank you, Your Honour.

2 Q. Mr Saffa, her Honour has just said that P10 is a  
3 memorandum. Why is it therefore now not included on the contact  
4 summary?

10:15:48 5 A. My Lord, I have said I don't know. Because some other  
6 information also like we have seen before is not included in this  
7 witness management database. So I don't really know.

8 Q. [Indiscernible] it is suggested that Mr Sesay was given  
9 information about what occurred at Lawyer Mansaray's office. Do  
10:16:26 10 you consider that to be an important aspect of this - as an  
11 investigator - this contempt investigation?

12 MR HERBST: Your Honour, I object. I think we've fully  
13 flogged this horse and I don't think this question has any  
14 further relevance.

10:16:47 15 JUSTICE DOHERTY: It's a different aspect of the witness's  
16 evidence of 334 and Samuel Kargbo's evidence. I'll allow the  
17 question.

18 MR METZGER: Thank you, Your Honour.

19 Q. Mr Saffa?

10:17:00 20 A. Yes, my Lord.

21 JUSTICE DOHERTY: Why was the information given to 334  
22 concerning a meeting at Lawyer Mansaray's office not recorded on  
23 the database, is a correct paraphrase.

24 MR METZGER: I think - yes. Yes, I'm obliged.

10:17:38 25 Q. Mr Saffa?

26 A. I said I don't know why it was not inserted into the  
27 witness management database, but further than that I also said  
28 that as I see the database, it's not every information that has  
29 been included. But I don't really know why was this particular

1 information not inserted into that database, my Lord.

2 Q. Then I asked you this, I think, as a follow-up question,

3 Mr Saffa: As an experienced investigator, did you not think

4 information about that meeting was important evidence in the

10:18:37 5 contempt investigation?

6 A. It was important, my Lord.

7 Q. Likewise, did you not think information about who Mr Bobson

8 Sesay should be afraid of was important evidence in the contempt

9 investigation?

10:19:06 10 A. I thought it was important.

11 MR HERBST: [Indiscernible]

12 JUSTICE DOHERTY: [Indiscernible]

13 MR METZGER: Thank you, Your Honour. Just give me a moment

14 just to review my matrix. I think I have no further questions,

10:19:32 15 but let me just ascertain that I haven't missed any. I think

16 there is one final mopping-up question, which is this:

17 Q. Mr Saffa, do you recall Mr Bobson Sesay ever telling you

18 that he discussed with Samuel Kargbo that recanting his, or let

19 me put it this way, that changing his story would even affect the

10:21:00 20 evidence he gave in the Charles Taylor case?

21 A. No, my Lord.

22 Q. Thank you very much, Mr Saffa.

23 MR METZGER: Your Honour, I have no further questions for

24 this witness.

10:21:24 25 JUSTICE DOHERTY: Thank you, Mr Metzger. Mr Serry-Kamal,

26 your questions, if any, for the witness.

27 MR SERRY-KAMAL: Just one or two.

28 Q. Mr Saffa?

29 A. Yes, my Lord.

1 Q. Was 334 the only witness you took - you obtained  
2 information from in this matter?

3 A. Yes, my Lord.

4 Q. During the first of these various - the various discussions  
10:22:05 5 you had with him over the phone and in person, you mentioned  
6 other persons [indiscernible] but did you interview Ragga too?

7 A. No, my Lord.

8 MR HERBST: Sorry, Your Honour, I didn't quite hear or  
9 understand the question.

10 JUSTICE DOHERTY: I'm afraid, Mr Serry-Kamal, I didn't  
11 either. Apologies. The tail end of your question over the phone  
12 or in person, did he mention, and I didn't hear the rest.

13 MR SERRY-KAMAL:

14 Q. Samuel Kargbo alias Ragga but did you interview Ragga?

10:22:45 15 A. No, my Lord.

16 Q. How many of you had contact with 334 [indiscernible] the  
17 OTP?

18 A. As far as this matter is concerned, I would think me, Jim  
19 Johnson, Magnus Lamin. So far, those are the people I remember.

10:23:35 20 Q. And none of them interviewed Sammy Ragga?

21 A. No, my Lord.

22 Q. And you will agree with me that as an investigator, your  
23 role was to note down what the witness said to you?

24 A. Yes, my Lord.

10:24:08 25 Q. [Indiscernible] statement?

26 A. Please repeat the question. You are coming in broken.

27 Q. I said you were not to edit any part of that statement.  
28 You were to take it verbatim?

29 A. Yes, my Lord.

1 Q. That is the accepted practice?

2 A. Yes, my Lord.

3 Q. [Indiscernible] it is edited it does not become the  
4 statement of the witness?

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

6 Q. But you chose to edit them - the statements?

7 A. No, my Lord.

8 Q. Didn't you add [i ndi scerni bl e] 334 made?

9 A. No, my Lord.

10:25:43 10 Q. Let me [i ndi scerni bl e] polish it - polish the statement?

11 A. I did not polish, my Lord.

12 Q. Did you remove some words from the statement?

13 A. My Lord, I did remove some words from the statement.

14 Q. Thank you, Mr - now I just want to ask you one or two

10:26:21 15 questions. P12.

16 A. Yes, my Lord.

17 Q. You will agree with me that P12 that we have here is not a  
18 complete record of the contact summary?

19 MR HERBST: [I ndi scerni bl e] fully explored by Mr Metzger.

10:26:46 20 Objection.

21 JUSTICE DOHERTY: Yes, it is clear, Mr Serry-Kamal, that  
22 [i ndi scerni bl e] on record.

23 MR SERRY-KAMAL:

24 Q. Now, apart from the - what is recorded here, you had other  
10:27:01 25 meetings with 334?

26 MR HERBST: [I ndi scerni bl e] fully explored, Your Honour.

27 The witness has testified to that, that there were many other  
28 contacts that were not fully recorded in the contact summary.

29 JUSTICE DOHERTY: Mr Serry-Kamal, if you have a precise



1 meeting please put it to the witness.

2 MR SERRY-KAMAL: Your Honour, I was going to refer the  
3 witness to my cross-examination of 334 in which he said he had  
4 several meetings with OTP.

10:27:30 5 JUSTICE DOHERTY: Yes, please put those precisely,  
6 Mr Serry-Kamal.

7 MR SERRY-KAMAL:

8 Q. Now, Mr Saffa --

9 A. Yes, my Lord.

10:27:38 10 Q. -- you recall that [i ndi scerni bl e] you had several other  
11 meetings with 334 even before the Charles Taylor trial and after  
12 the Charles Tayl or trial?

13 A. Yes, my Lord.

14 Q. Did you have any other meetings after 7 December with 334?

10:28:24 15 A. My Lord, I don't - I don't recall. I don't recall. Yes.  
16 Yes, I can say yes, because on December 9, 2010, I recorded his  
17 signed statement. That's P3. December 9, my Lord.

18 Q. That is not recorded [i ndi scerni bl e]

19 A. No, my Lord.

10:29:24 20 MR SERRY-KAMAL: That will be all for this witness.

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

22 Re-exami nati on, Mr Herbst?

23 MR HERBST: Yes, your Honour, if I may have a moment.

24 Re-exami nati on by Mr Herbst:

10:30:26 25 MR HERBST:

26 Q. Good morni ng, Mr Saffa?

27 A. Good morni ng, my Lord.

28 Q. On Mr Metzger's cross-exami nati on he asked you to compare  
29 some entries: One in P3 and one in P4. I would like you to take

1 those two documents again [i ndi scerni ble] bri efly?

2 A. Yes, my Lord, I have them.

3 Q. Mr Metzger asked you to look at the second paragraph of the  
4 Al agenda e-mail, and you read out that Five Five told him,  
10:31:25 5 quote, "We're brothers and we will soon be released and we expect  
6 you to help us with the release."

7 A. Yes, my Lord.

8 Q. Do you see that in the Al agenda e-mail and you remember  
9 testi fying - reading that out?

10:31:40 10 A. Yes, my Lord.

11 Q. Now I would like you to look at the second page of P3 in  
12 the thi rd paragraph where the signed wi tness statement of 334  
13 relates the conversation he had with Five Five and Mr Kanu, in  
14 the middle of the thi rd paragraph?

10:32:12 15 A. Yes, my Lord.

16 Q. What's the first thing that is recorded in the wi tness  
17 statement of the conversation that 334 told you he had with Five  
18 Fi ve?

19 MR METZGER: Objection, Your Honour. Asked and answered.

10:32:31 20 It's been fully explored at this point. I'm dealing with it in  
21 exactly the same way Mr Herbst has done.

22 JUSTICE DOHERTY: You haven't located the bit in this page  
23 2, paragraph 3. What line is it so I can check.

24 MR HERBST: Yes, eight. It starts in the middle of the 8th  
10:32:54 25 line where he begins to relate the conversation with Five Five.

26 Mr Metzger pointed out some di fferences on redi rect. I think I'm  
27 enti tled to point out some si mi lari ti es.

28 JUSTICE DOHERTY: Yes, please put them.

29 MR HERBST:

1 Q. Do you see recorded in that statement that portion of the  
2 conversation that is contained in the Alagendra e-mail that I  
3 just directed your attention to?

4 A. Yes, my Lord.

10:33:38 5 Q. Would you read that out, please?

6 A. "Five Five said that we were all brothers and that they  
7 were counting on me to assist them."

8 JUSTICE DOHERTY: Mr Herbst, could you turn off your  
9 machine when you're --

10:34:32 10 MR HERBST:

11 Q. Mr Saffa, you were asked on cross-examination many  
12 questions about your long experience as an investigator?

13 A. Yes, my Lord.

14 MR METZGER: Objection on predicate, Your Honour.

10:34:48 15 MR HERBST:

16 Q. In your experience, do witnesses sometimes inadvertently  
17 mistake the dates --

18 MR METZGER: Leading the witness, Your Honour.

19 JUSTICE DOHERTY: Speculative and it is leading.

10:35:00 20 MR METZGER: [Indiscernible] Your Honour.

21 JUSTICE DOHERTY: Can rephrase it.

22 MR HERBST:

23 Q. Has it ever been your experience that witnesses mistake the  
24 dates of events that they describe to you?

10:35:21 25 MR METZGER: Your Honour, it's still a leading question.

26 MR HERBST: I don't believe that's leading. It calls for a  
27 yes or a no equally.

28 MR SERRY-KAMAL: My objection is this is re-examination,  
29 not evidence-in-chief.

1 JUSTICE DOHERTY: It's re-examination and these issues were  
2 put in cross-examination and that's why he's allowed to ask them  
3 in re-examination, to clarify them, not put them. Clarify them.  
4 So it has to be a clarification and not a speculation and not  
10:35:49 5 leading. Re-examination cannot be leading any more than  
6 examination-in-chief can be leading.

7 MR SERRY-KAMAL: As Your Honour pleases.

8 JUSTICE DOHERTY: I'm kind of - I've noted it. It's been  
9 put again. You've said there's a yes/no answer. Put the  
10:36:10 10 question again so I'll hear it and get it recorded this time.

11 MR HERBST:

12 Q. Have you ever had the experience, Mr Saffa, of witnesses  
13 inadvertently getting the dates of events wrong?

14 A. Yes, my Lord.

10:36:31 15 MR METZGER: That was what I was objecting to, because it  
16 was actually taking the horse to the water, which I thought was  
17 dead, by the way.

18 JUSTICE DOHERTY: Proceed, Mr Herbst.

19 MR HERBST: If Your Honour bears with me, I'm not sure I  
10:37:20 20 have any other questions. I'll just check my notes.

21 JUSTICE DOHERTY: [Indiscernible]

22 MR METZGER: Before we move on from this point, I did want  
23 to object to that last question and answer and ask for it to be  
24 stricken from the record. It calls for speculation and I cannot  
10:38:01 25 see the particular purpose of this witness answering that  
26 question other than for counsel to comment in due course.

27 JUSTICE DOHERTY: It was not actually speculation. The  
28 question was preceded by the terms "have you ever had experience  
29 of a witness..." so it was exceptionally --

1 MR METZGER: Yes, getting dates - getting dates wrong.

2 JUSTICE DOHERTY: Yes.

3 MR METZGER: Yes, in the particular circumstances of this  
4 case, this has become quite a point, a bone of contention between  
10:38:32 5 the Prosecution and the Defence.

6 JUSTICE DOHERTY: Well, there's going to be lots of  
7 submission on that, I can see that coming.

8 MR METZGER: Yes, Your Honour.

9 MR HERBST: I do have one more question, I think, Your  
10 Honour.

11 Q. Mr Saffa, you were asked on cross-examination whether to  
12 your knowledge 334 ever told anyone that he had been asked to  
13 lie?

14 A. Yes, my Lord.

10:39:19 15 Q. Direct your attention to the first page to the Alagenda  
16 e-mail again, P4.

17 A. Yes, my Lord.

18 Q. And the first paragraph of the e-mail, and I would like you  
19 to read two sentences - the last two sentences on the first  
10:39:47 20 paragraph.

21 MR METZGER: I object to this line of questioning, Your  
22 Honour. It seems as if the witness is being asked to look at  
23 Ms Alagenda's e-mail, who is the author of the document and  
24 gives the impression of what it is she had been told that she  
10:40:05 25 recorded.

26 MR HERBST: No. I'm asking the witness merely to read out  
27 two sentences which bear on that question that was put to him on  
28 cross-examination and which he answered. I think it's  
29 appropriate re-direct examination - or re-examination, as we say.

1 JUSTICE DOHERTY: I allow the question.

2 MR HERBST:

3 Q. Would you read out the two sentences that begin on the end  
4 of the fourth line of the first paragraph of the Alagenda e-mail  
10:40:32 5 starting with "the AFRC accused"?

6 A. Yes, my Lord. "The AFRC accused are requesting that 334  
7 make a statement that his statement to OTP and his testimony to  
8 the Court was a lie."

9 Q. Would you read the second - the next sentence, please?

10:40:59 10 A. "He was told to say that he was released from the prison by  
11 OTP so that he would lie in order to convict them. That OTP had  
12 paid him money to provide his false testimony."

13 MR HERBST: No further questions, Your Honour, thank you.

14 JUSTICE DOHERTY: Thank you. Mr Saffa, I do not have any  
10:41:34 15 questions. I would thank you for your evidence, and you're now  
16 free to leave the witness box, thank you.

17 THE WITNESS: Thank you, my Lord.

18 [The witness withdrew]

19 JUSTICE DOHERTY: You have a further witness, I understand.

10:41:51 20 MR HERBST: I do, Your Honour. Your Honour indicated  
21 yesterday - or Saturday at the conclusion of this witness Your  
22 Honour wanted to read out an opinion - a decision, but you want  
23 me to call the witness first.

24 JUSTICE DOHERTY: I would prefer to get the witness  
10:42:07 25 underway. I have that very short brief outline and I will read  
26 it before the end of the day. But I would like to get the  
27 witness started.

28 MR HERBST: Thank you, Your Honour. Your Honour, we call  
29 Mr Hillary Sengabo.

1 JUSTICE DOHERTY: What language will the witness give his  
2 evidence in, Mr Herbst?

3 MR HERBST: Your Honour, I believe he will testify in  
4 English, but perhaps we could ask when he comes in.

10:42:56 5 JUSTICE DOHERTY: Very well.

6 THE COURT OFFICER: [In Kigali] Your Honour, I would like  
7 to report to the Court that the witness will be five minutes.

8 JUSTICE DOHERTY: In that case I'll read out this very  
9 brief outline of my decision whilst he's coming. Please alert us  
10:43:09 10 when he comes in.

11 This is a very brief outline of a decision on an  
12 application by the Independent Counsel to call Claire  
13 Carlton-Hanciles as a witness in this matter. I am particularly  
14 grateful to Professor Schabas for his comprehensive amicus brief.

10:44:13 15 I also note that since that brief the Independent Counsel has  
16 made a further submission that - and I quote, "The Prosecutor is  
17 not a third party to these proceedings." That witness - excuse  
18 me, the accused Kamara had said matters attributed which were  
19 attributed to the Principal Defender and which are referred to in  
10:44:40 20 the Prosecution pre-trial brief. This amounts to a disclosure to  
21 a third person and therefore it is an exception under Rule 97  
22 subrule 2 and that what was said by Kamara is not a communication  
23 between Kamara and the Principal Defender so as to apply Rule 97.

24 First, I, in my decision, which I will - do more  
10:45:15 25 comprehensively, I recognised that the Principal Defender has a  
26 confidential relationship with accused persons and suspects which  
27 produces a reasonable expectation of privacy and non-disclosure.  
28 I further consider that when a Principal Defender acts in a  
29 peculiar lawyer-client relationship, such as may occur when the

1 Principal Defender acts as duty counsel, then there may - that  
2 could be privileged in accordance with Rule 97 and the provisions  
3 of Rule 97 and the Code of Conduct apply, notwithstanding that  
4 the Principal Defender is not mentioned in the Code of Conduct,  
10:46:20 5 and it will follow that in the event of a communication in  
6 furtherance of a crime, the exception I have already pronounced  
7 for such communication may apply.

8 I have considered the further submission of the Independent  
9 Counsel that statements were made by Kamara to the Principal  
10:46:52 10 Defender. I have addressed - or will address more fully whether  
11 the Principal Defender in these circumstances, or Kamara himself  
12 in these circumstances, when he spoke to the Independent Counsel,  
13 was a third party who then gives evidence of the disclosure. If  
14 there is a third party, it appears to me there must be a first  
10:47:23 15 and a second party, and in this case I think that the first party  
16 is the Independent Counsel. He is not a third party within the  
17 meaning of Rule 97(ii). Further, it is not a third party who  
18 then gives evidence. The Independent Counsel is not giving  
19 evidence. If the communication was with Kamara, then Kamara is  
10:47:54 20 not a third party either. He is an accused person.

21 For that reason, I do not consider there was an application  
22 under Rule 97(ii) to the situation before me, and I further  
23 consider that on the factual evidence put before me in the  
24 pre-trial brief of the independent counsel, I do not see from  
10:48:37 25 that that a communication in furtherance of a crime has been  
26 shown because paragraphs 49 and 50 of the independent counsel's  
27 pre-trial brief filed on 16 May 2012 shows that the accused  
28 sought advice from the Principal Defender on the applications of  
29 Rules 120, 123, and 124 of the Rules of Evidence and Procedure



1 which disclose and describe legitimate matters that any convicted  
2 person may raise with his legal advisers, i.e., the procedures  
3 for review or commutation or early release. In my view, they do  
4 not reveal a communication in furtherance of a crime.

10:49:43 5 For this further factual reason, I would refuse a subpoena  
6 in relation to Claire Carlton-Hanciles.

7 A fuller and more comprehensive decision will be rendered  
8 when I have the opportunity to draft it.

9 MR SERRY-KAMAL: As your Honour pleases.

10:50:27 10 MR METZGER: [Indiscernible].

11 MR SERRY-KAMAL: Your Honour, may I be excused, please?

12 JUSTICE DOHERTY: Yes.

13 MR HERBST: Your Honour, I notice that it is almost the  
14 time of a break, unless I'm misinformed.

10:50:37 15 JUSTICE DOHERTY: So did I.

16 MR HERBST: And I wondered whether you want to start the  
17 witness after the break or --

18 JUSTICE DOHERTY: If we could even have the witness sworn,  
19 et cetera, it would be very helpful.

10:50:47 20 MR HERBST: Okay.

21 JUSTICE DOHERTY: In that case, we will adjourn for our  
22 usual three quarters of an hour.

23 MR METZGER: Food wins. I was smiling because it seemed  
24 food won the contest.

10:51:09 25 MR HERBST: Your Honour, could I just - just before we  
26 adjourn, on the matter on which your Honour just spoke, it's  
27 possible that your Honour - and I'm not at all intending to argue  
28 the point, but it's possible that your Honour may have  
29 misapprehended one of my contentions earlier on, because

1 your Honour said - your Honour said that the principal defender  
2 has a confidential relationship with the accused persons and  
3 suspects, which, of course, is true.

10:51:41 4 It was my submission, I believe on the initial Saturday  
5 when we first discussed this, that at the time of the  
6 communication, the men were neither. They were neither accused  
7 persons nor suspects in any crime, so I just --

8 JUSTICE DOHERTY: But they are a suspect in this case.  
9 That's the whole point.

10:51:54 10 MR HERBST: Yes.

11 JUSTICE DOHERTY: To my mind, that's the whole point at  
12 issue. They are suspects in this case. They are convicted  
13 persons, but they are now charged with the second offence. Have  
14 I got - is that the point you're making?

10:52:06 15 MR HERBST: No, your Honour. What I was saying was that  
16 the question of whether there's a confidential relationship  
17 should be determined at the time the communications are made  
18 and --

19 MR METZGER: [Indiscernible].

10:52:22 20 MR HERBST: Excuse me. At the time the communications were  
21 made, it was my submission that the accused here now were neither  
22 accused of a new crime, this crime, nor were they suspects in any  
23 investigation.

24 That's the only point I'm making to the Court. I wasn't  
10:52:41 25 sure your Honour had apprehended that, that's all.

26 JUSTICE DOHERTY: When I come to really comprehensively  
27 write this decision, I'm obviously going to have transcripts in  
28 front of me. At the moment I'm working off my notes.

29 MR HERBST: I understand.

1 JUSTICE DOHERTY: I'm going to adjourn until 1.45 my time,  
2 which I think is 11.45 in Freetown.

3 Mr Court Attendant in Freetown, did you hear me and am I  
4 correct on the time?

10:53:17 5 THE COURT OFFICER: I heard you, your Honour, but I am just  
6 looking at the time and yes, it would seem your Honour is  
7 correct.

8 JUSTICE DOHERTY: We will adjourn for 45 minutes, and let  
9 us not quibble about the exact hours.

10:53:44 10 [The Court adjourned at 10.58 a.m.]

11 [Upon resuming at 11.49 a.m.]

12 JUSTICE DOHERTY: Freetown, can you hear?

13 THE COURT OFFICER: Yes, Your Honour. We can hear you.

14 JUSTICE DOHERTY: We're now going to go to the next  
11:49:52 15 witness.

16 Please call your next witness, Mr Herbst.

17 MR HERBST: Your Honour, we call Hillary Sengabo.

18 MR METZGER: Though the Defence has an objection.

19 [The witness enters court].

11:50:05 20 MR METZGER: According to Rule 66, the Prosecution must  
21 serve the Defence with a statement of the witness before the  
22 witness is called. This has not happened in this case. And in  
23 the circumstances, we rely on the defendant's Article 17 right to  
24 know the case that he has to meet. It would be proper under  
11:50:32 25 66(ii) for the Prosecution to have obtained a statement and to  
26 have served it on the Defence.

27 JUSTICE DOHERTY: For purposes of the record, an objection  
28 has been lodged to the calling of the witness in relation to  
29 Article 66(A)(ii); is that correct Mr --

1 MR METZGER: Your Honour is quite right. Rule 66(A)(ii)  
2 juxtaposed with the defendant's Article 17 rights.

3 JUSTICE DOHERTY: Mr Herbst, can I have your reply, please?

4 MR HERBST: Yes, Your Honour. First of all, let me say  
11:52:02 5 that at the lunch break, about 20, 25 minutes ago, Mr Metzger  
6 first asked me whether I had served a witness statement, and by  
7 that I'm sure he meant signed by the witness. And I told him  
8 that I had not; that I did not think one was required. And I  
9 also mentioned to him that I had fully disclosed in the e-mail  
11:52:31 10 disclosures that I had made what I believed to be the substance  
11 of the witness's testimony.

12 And in light of the fact that the decision to call  
13 Mr Sengabo was made when Mr Metzger determined not to call him,  
14 and in light of the fact that Mr Metzger and all Defence counsel  
11:53:06 15 have had access to Mr Sengabo, interviewed Mr Sengabo, saw the  
16 materials that Mr Sengabo has had and is going to be testifying  
17 about today, hopefully, I don't think that a witness statement  
18 signed by the defendant - I mean signed by the witness is  
19 requisite.

11:53:38 20 I've taken a quick look at Rule 66. I don't think it says  
21 a statement signed by the witness, but I could be wrong because,  
22 again, I'm - despite my best efforts to familiarise myself with  
23 the Rules, I am not an expert on the Rules. If a signed witness  
24 statement is required before a witness testifies under the Rules,  
11:54:16 25 then I will request leave to withdraw him as a witness today,  
26 furnish a witness statement by the close of business - or, I  
27 guess, we are not sitting tomorrow, so I would say sometime  
28 tomorrow, incorporating it and have him sign it, but I don't  
29 think it's required under the Rules.

1 JUSTICE DOHERTY: What exactly did you give to the Defence  
2 in relation to the evidence of this witness? Because I at least  
3 have seen some papers.

4 MR HERBST: Yes, Your Honour. Like in terms of documents,  
11:55:19 5 I have disclosed first the telephone records of the MTN - the MTN  
6 telephone records of the prison cell phone that was used to make  
7 calls. I have disclosed e-mails from the MTN official to the  
8 Commissioner of Prisons.

9 JUSTICE DOHERTY: Who to who?

11:55:51 10 MR HERBST: Of the MTN official provided the MTN telephone  
11 records to the Rwanda Commissioner of Prisons at the time, who  
12 was the official to whom the Registrar of this Court addressed  
13 the request for the records; the e-mails going from the  
14 Commissioner of Prisons to both the Registrar of the  
11:56:25 15 Special Court for Sierra Leone and the Principal Defender who  
16 provided the records for both sides. So the string of e-mails  
17 authenticating records has been fully disclosed to the Defence.

18 With respect to other documents, I have disclosed the  
19 updated telephone list, updated in 2010; that is, the list of  
11:57:10 20 people approved for each prisoner in the special wing to call.  
21 And for each of those prisoners, at least with respect to the  
22 AFRC, the three convicts, Mr Kanu, Mr Kamara, and Mr Brima, the  
23 list contains the names of each person on the approved list, the  
24 relationship of that person to the particular convict - in most  
11:57:53 25 cases those are relatives but in some cases they are also  
26 friends. It contains, I guess where available, the address of  
27 the person, and it contains the phone number and phone numbers  
28 for each person for whom such calls were supposed to be approved.  
29 That is what we're all calling the updated telephone list.

1 I disclosed the portions of the manual phone log which the  
2 witness has had in Court for the last several days, the original  
3 of. I've disclosed a number of sheets from that log, including  
4 the most significant one for the calls on November 30 of 2010.

11:59:10 5 And that log contains the date of the call - and it's handwritten  
6 - the date of the call, the name of the prisoner or prisoners  
7 making the call, the person to whom the call was supposedly made,  
8 usually denominated as "wife," "son," "wife and son," "brother";  
9 the time that the call was supposedly made; the number or numbers  
12:00:02 10 called; and the signature or mark/initials of the convict making  
11 the call or calls.

12 And I said in my disclosure e-mails which I will turn to  
13 shortly that counsel could review the original log which, as I  
14 say, has been here with Mr Sengabo over the last couple of days  
12:00:41 15 we've been here.

16 JUSTICE DOHERTY: Mr Herbst, could you switch off your  
17 microphone, please.

18 MR HERBST: I'm sorry, there was more but I'll - yes, Your  
19 Honour, sorry.

12:01:08 20 Finally there were e-mails --

21 MR METZGER: I have an objection, Your Honour.

22 MR HERBST: -- from me.

23 JUSTICE DOHERTY: There is an objection.

24 MR METZGER: My learned friend will be aware that e-mail  
12:01:19 25 communications between counsel are not normally brought to the  
26 attention of the Judge. I am content to accept that I have  
27 received his e-mails. I have no complaint about that. And we  
28 can discuss whatever it is he likes about it. But I would object  
29 to him seeking to give evidence of the content of those e-mails.

1 The complaint, on behalf of the Defence, is that Rule 66(A)(ii)  
2 requires when a witness is called, in my respectful submission,  
3 for there to be a statement of that witness.

4 All that Mr Herbst can say about the content of the e-mail  
12:01:57 5 relates to what he did when he saw the witness; the  
6 investigations he carried out; which is all well and good, but  
7 there should be a statement from the witness and there is not.  
8 And that is the issue that's been taken.

9 If it assists the Court, in so far as the records are  
12:02:15 10 concerned, I can say in relation to the telephone records that,  
11 respectfully, they are not properly proved according to the  
12 standards of the Special Court for Sierra Leone in relation to  
13 the e-mails that are provided, but we would be prepared for them  
14 to be admitted in the form they are as a record for the  
12:02:39 15 assistance of a witness if called.

16 In relation to the updated list, again, it is not proved  
17 without being appended to the statement of a witness who will  
18 normally annex that as his exhibit. But in the circumstances of  
19 my having seen Mr Sengabo, I would not, de bene esse, object to  
12:03:02 20 that. Similarly, in relation to portions of the manual log,  
21 these are records used in Mr Sengabo's business, the business of  
22 Mpanga. Once there is a statement from the witness, I will not  
23 object to their being adduced in evidence.

24 The situation is the defendant is entitled to know the case  
12:03:23 25 he is to meet. Mr Herbst, from my understanding of the e-mails,  
26 will probably want to lead evidence that falls outside the terms  
27 simpliciter of these documents. The defendant is entitled, under  
28 Article 17, to know the case he has to meet, and in those  
29 circumstances there ought to be a statement in the hands of his

1 representatives so that we know what evidence is going to be led  
2 by the Prosecution and can prepare for cross-examination of same.

3 JUSTICE DOHERTY: Tell me, Mr Metzger. It is now a week  
4 since you knew that Mr Herbst interviewed Mr Sengabo and you  
12:04:08 5 lodged a very vehement objection.

6 MR METZGER: That's correct, Your Honour.

7 JUSTICE DOHERTY: And you also indicated at that point that  
8 you were reconsidering calling Mr Sengabo as a witness.

9 MR METZGER: That's correct, Your Honour.

12:04:23 10 JUSTICE DOHERTY: And I indicated that if neither of you  
11 are calling him the Court may well consider using its provisions  
12 of Rule 85.

13 MR METZGER: That's correct, Your Honour.

14 JUSTICE DOHERTY: Why Mr Metzger, have you waited until the  
12:04:36 15 witness has walked into Court to raise this objection.

16 MR METZGER: With the greatest of respect, it is not for me  
17 to teach the Prosecution how to run its case. The Rules are very  
18 clear, and I am prepared not to stick by the Rules to ask for 60  
19 or 30 days beforehand. I just want, as Mr Kanu is entitled to, a  
12:04:57 20 statement containing the ambit of that which the Prosecution

21 seeks to prove through the witness. Presumably I assume it will  
22 not be a long statement. If I had it - if it were a long  
23 statement even - I wouldn't ask the Court to delay itself by even  
24 an hour. Mr Kanu is entitled to that, and respectfully I thought  
12:05:19 25 that a statement had been taken and it was an oversight by the  
26 Prosecutor that he hasn't served it, which is why I asked him  
27 about it during the luncheon break, which would have given me  
28 enough time to have perused it or to have asked Your Honour for a  
29 little more time just so that I could assimilate that material.



1 I didn't anticipate it was going to take a long time, and,  
2 frankly, I was surprised to learn that a statement had not been  
3 taken. For the Prosecution, then, to seek to rely on e-mail  
4 communications coming from, as it were, the fingers of counsel,  
12:05:53 5 in my respectful submission, doesn't meet the full circumstances  
6 of the case and certainly doesn't assist us in dealing with  
7 questions that I might want to be able to ask the witness.

8 MR HERBST: Your Honour, would you like to hear a brief  
9 reply?

12:06:20 10 MR SERRY-KAMAL: Your Honour, I believe I have a right of  
11 audience.

12 JUSTICE DOHERTY: Yes, you do.

13 MR SERRY-KAMAL: My position is the same as Mr Metzger. We  
14 pointed it out to Mr Herbst that he had not disclosed - I mean,  
12:06:33 15 filed the witness statements, and we don't know the nature of the  
16 evidence which Mr Sengabo is going to give. We cannot properly  
17 advise our clients or even prepare our Defence.

18 MR HERBST: May I now briefly reply, Your Honour?

19 JUSTICE DOHERTY: [Microphone not activated].

12:07:14 20 MR HERBST: Your Honour, on June 24th, either the day or  
21 the next day after I - the information was requested of me by  
22 Mr Metzger, I disclosed the information that I had received from  
23 Mr Sengabo. I think it's clear from the pattern of the  
24 disclosures that I have made in this case that in virtually every  
12:07:46 25 case I have made disclosure of documents and the substance of  
26 information provided to me by witnesses virtually immediately  
27 after I received it.

28 I offer that information in light of the comments that were  
29 made that they were surprised to learn today - that counsel was

1 surprised to learn today that I had not served a witness  
2 statement, that I had actually had one and not served it.

3 I understand that normally e-mails between counsel are not  
4 to be shared, but the perusal of the e-mails that I sent to  
12:08:24 5 counsel will, in my respectful submission, suffice to demonstrate  
6 that the essence of the information, the summary of the  
7 information that I intended to elicit from this witness, was  
8 disclosed as early as June 24th to the Defence. I believe there  
9 is an earlier e-mail containing some disclosures of telephone -  
12:08:55 10 specific telephone calls that I had intended to adduce and prove  
11 up, including the three Kargbo - three calls to Mr Kargbo and  
12 calls to Mr Bangura.

13 On Friday, June 29th, I supplemented the disclosure of  
14 those phone calls by adding two additional calls made from the  
12:09:24 15 prison cell phone to Mr Bangura, and I also referenced  
16 the documents that I expected to receive that I just earlier  
17 described to the Court.

18 So the Court had asked me what disclosures I made to the  
19 Defence, and it's impossible for me in this case to fully  
12:09:55 20 describe these disclosures that I made to the Defence without  
21 either handing up the e-mails or reading the e-mails out. I'm  
22 happy to do that if the Court wishes, either with Mr Sengabo in  
23 the room or out.

24 But again, it was not my understanding that a signed  
12:10:21 25 witness statement had to be provided, and that's the reason I  
26 didn't provide one. But I think it's clear - it was clear long  
27 before today, based on the pattern of disclosures that I made,  
28 that I did not have such a witness statement and did not think it  
29 was necessary in order to have Mr Sengabo testify.

1 MR METZGER: Your Honour, may I say, in case it assists  
2 you, that I don't take issue with what we've been served. I  
3 thought I made that clear at the outset. I do accept what  
4 Mr Herbst says about what we've been served. But we do not have  
12:11:02 5 a witness statement from the witness which will prove all these  
6 things, which is not a problem. I am sure that can be done. But  
7 over and above that, we do not have a witness statement which  
8 states in it, from the witness's mouth, that which the  
9 Prosecution seeks to prove. And it may be that Mr Herbst is  
12:11:25 10 saying that the e-mails he sent to us will suffice.  
11 Respectfully, under the Rules, they don't.

12 I'm sorry, there is one thing I forgot to say, Your Honour;  
13 that is, that it is my understanding that a statement that we had  
14 taken from Mr Sengabo was obtained by the Prosecution and is in -  
12:12:22 15 when he was meant to be a Defence witness and is in the  
16 possession of the Prosecution. So it becomes all the more  
17 important that we have a full account by way of witness statement  
18 about the matters that the Prosecution seek to prove,

19 JUSTICE DOHERTY: I take a very dim view that this issue  
12:19:15 20 has been raised just as a witness comes to the stand, a very  
21 senior member of the public service of the Government of Rwanda  
22 who has been taken away from his work to give evidence in this  
23 Court, when the Defence knew they did not have a written  
24 statement from him, but they themselves have a written statement  
12:19:39 25 from him, and a disclosure of all the records to be tendered  
26 through him have already been - has been made.

27 Emotive terms have been used in this Court several times  
28 over the last two weeks, including, emanating from the Defence,  
29 the terms "trial by ambush" have been voiced more than once. The

1 Rules of this Court are to serve and ease the administration of  
2 justice. They are not to be used to trip it up. I'm therefore  
3 going to direct that the Prosecutor make a handwritten statement  
4 of the witness to show how he can produce the documents that they  
12:20:32 5 will in due course seek to rely on. Records, I am informed, both  
6 from the Defence and the Prosecution, are within the hands of the  
7 Defence, and I say that because they were waved around in Court.

8 The Defence can then take instructions. Each side now has  
9 20 minutes to do this and that is my ruling.

12:20:57 10 MR METZGER: [Overlapping speakers]

11 MR HERBST: Your Honour, may I just add for clarification  
12 of the Court that if - my office is right upstairs. I can type  
13 faster than I can handwrite. I --

14 JUSTICE DOHERTY: Very nice. If it is typed it is all the  
12:21:13 15 better.

16 MR HERBST: I'm going --

17 JUSTICE DOHERTY: Because it will be much others for all of  
18 us to read.

19 MR HERBST: I am going to take Mr Sengabo upstairs with me  
12:21:22 20 and I am going to prepare a witness statement for him. And it  
21 will include not just how he knows the documents which he will be  
22 authenticating but it will also include, if Your Honour gives me  
23 just a little more time, the substance of what I have disclosed  
24 to the Defence that his substantive testimony will include.

12:21:50 25 JUSTICE DOHERTY: Twenty-five minutes, each side.

26 MR METZGER: Your Honour, may I just say for the record,  
27 whether I take umbrage or not of the dim view that Your Honour  
28 has indicated, that the concern of the Defence is not insofar as  
29 the production of the records is concerned. Our concerns relate

1 to what my learned friend has just alluded to, which I understand  
2 the Prosecution want to put as evidence in this case which goes  
3 beyond the production of documents.

4 JUSTICE DOHERTY: Mr Herbst, you've heard counsel for the  
12:22:26 5 Defence. He wants something that apparently you are going to  
6 adduce. I am not going to ask you what it is, but that is the  
7 going to be the thrust of the statement.

8 MR HERBST: Your Honour, I --

9 JUSTICE DOHERTY: Court adjourns for 50 minutes.

12:23:27 10 MR HERBST: Thank you, Your Honour.

11 [Break taken at 12.23 p.m.]

12 [Upon resuming at 2.13 p.m.]

13 JUSTICE DOHERTY: Mr Herbst, I set a time limit for this  
14 and it seems to have been extended by you without any prior  
14:13:45 15 notification. What is --

16 MR HERBST: I'm very sorry, Your Honour. It took longer  
17 than I anticipated, including the portion of the witness  
18 reviewing and making sure the statement was an accurate one that  
19 he could subscribe to, and I very much apologise to the Court.

14:14:10 20 I have given the statement which is now fully subscribed by  
21 the witness to Defence counsel, and it's my understanding that  
22 they have had an opportunity to have instruction from their  
23 clients and we should be ready to go and the witness is outside  
24 just awaiting notification. Again, my apologies to all  
14:14:33 25 concerned.

26 JUSTICE DOHERTY: I'll hear from Defence what they have to  
27 say.

28 MR METZGER: Well, insofar as I am concerned, I have not  
29 completed taking instructions from my client. I assume that the

1 document has been provided to the Court. If the document has not  
2 been provided to the Court, then far be it for me to now say what  
3 is in the document. I know that Your Honour likes to hear it  
4 from the witness, but it seems to me that it is now - it is  
14:15:05 5 disclosed to us that there was an investigation by Mpanga Prison  
6 which postdated these events, which the Prosecution seek to rely  
7 on.

8 I was seeking to get as much instructions as I could from  
9 my client in relation to that matter. I've dealt with the  
14:15:26 10 substantive matters in relation to the entry on the phone - I'm  
11 sorry, on the manual log, but I am not in a position where I have  
12 received full instructions when I was asked to come back into  
13 Court.

14 JUSTICE DOHERTY: I am aware from matters totally unrelated  
14:15:43 15 to this case, i.e., matters that arose during the Judge's plenary  
16 that there was a search predating this. Or at least my  
17 understanding was that the search was predating this. Maybe it's  
18 an unrelated matter. Are you saying there was one postdating  
19 this?

14:16:09 20 MR METZGER: Your Honour, that seems to be the effect of  
21 this statement because it actually refers to the allegations in  
22 this case after which there was an investigation.

23 JUSTICE DOHERTY: Are they relevant to this case?

24 MR HERBST: Well, Your Honour, there are some  
14:16:32 25 relevant information was derived which, again, was on previous  
26 occasions disclosed to counsel in terms of what we found in the  
27 rooms of some of the convicts in Rwanda but also the fact that  
28 after the investigation the system involved was changed because  
29 of what their findings were. So it's not - it's not the

1 smoki ng --

2 JUSTICE DOHERTY: [Overl appi ng speakers]

3 MR HERBST: It's not the smoki ng gun evi dence but it's  
4 rel evant, i n my submi ssi on.

14:17:12 5 JUSTICE DOHERTY: Mr Metzger --

6 MR SERRY-KAMAL: Your Honour, Your Honour the persons  
7 i nvolved are not charged wi th any offences.

8 JUSTICE DOHERTY: Well i f the persons i nvolved are not  
9 charged wi th any offence, what are we taki ng about?

14:17:33 10 MR SERRY-KAMAL: Perhaps when the document goes i n, you'll  
11 see there are names menti oned whi ch do not appear i n the document  
12 yet.

13 JUSTICE DOHERTY: Well Mr Metzger appears to require time,  
14 notwi thstandi ng your observati on.

14:17:49 15 MR METZGER: Your Honour, what I was seeki ng to do was to  
16 ask my cli ent from hi s perspecti ve about hi s knowl edge of the  
17 speci fic matters relati ng to thi s i nvesti gati on whi ch have been  
18 di scl osed, and whi l st my l earned fri end i s ri ght about the fact  
19 of the i nvesti gati on and i tems bei ng found, there are perhaps one  
14:18:16 20 or two other matters whi ch may have been clari fi ed whi l st he was  
21 speaki ng wi th the wi tness earl ier for the producti on of thi s  
22 statement.

23 It may well be that my cli ent cannot gi ve me any  
24 i nformati on, but I need to expl ore i t before we get to thi s  
14:18:35 25 wi tness. And al so, i t would seem to me, that i f the Prosecuti on  
26 are rel yi ng on an i nvesti gati on and evi dence from an  
27 i nvesti gati on, then the i nvesti gati on i tsel f or documentati on  
28 relati ng to that i nvesti gati on shoul d be di scl osed. I don' t  
29 thi nk that woul d prevent the wi tness from bei ng called, but

1 certainly, in as far as cross-examination is concerned, if that  
2 evidence is allowed in, the Defence ought to be entitled to see  
3 record of the investigation so that we can deal with it  
4 appropriately.

14:19:15 5 JUSTICE DOHERTY: I want to check also if - Freetown, I did  
6 ask if Mr Nicol-Wilson received a copy and I was informed that he  
7 did receive a copy.

8 Mr Nicol-Wilson, I'm told you got your copy of this  
9 statement; is that correct?

14:19:34 10 MR NICOL-WILSON: Yes, Your Honour. That is correct.

11 MR HERBST: Your Honour, in the e-mail --

12 JUSTICE DOHERTY: E-mails -- I am talking about statements.

13 MR HERBST: -- very --

14 JUSTICE DOHERTY: E-mails are something else. I am not  
14:19:49 15 going to go into e-mails.

16 MR HERBST: I was just talking about the disclosures that  
17 were made on June 24th to Defence counsel because it included the  
18 information that an investigation had been conducted, and this is  
19 the first time, now on 2nd July, that they were asking about  
14:20:06 20 additional information about that disclosure.

21 JUSTICE DOHERTY: I'm not entirely clear what Mr Metzger -  
22 I understand what you've said, I'm not saying I'm not entirely  
23 clear what you said. But what I'm not sure is what in view of  
24 your last few remarks, can the witness be called or that's --

14:20:29 25 MR METZGER: Oh, yes, I've got no problem with that. I  
26 just wanted a little more time to clarify from my client's  
27 perspective. But what I'm saying in relation to the  
28 investigation and the Prosecution's apparent reliance on it, if  
29 that material is allowed in, the Defence should have full



1 disclosure of the investigation.

2 JUSTICE DOHERTY: So there are really two different issues.

3 MR METZGER: Indeed. And I'm quite happy to deal with that

4 matter when I come to it, or even if it were allowed in, then one

14:20:54 5 would just have to reserve examination on that point. But I'm

6 setting so that in due course, especially in view of what I

7 consider to be the harsh way in which this application was

8 received so that no one would then accuse me of trying to ambush

9 the Prosecution. It has not been my intention. I really

14:21:20 10 believed that there was a statement that had just been omitted to

11 be served to us.

12 JUSTICE DOHERTY: So, first of all, this report which you

13 all agree postdated the complaint that was the foundation of the

14 indictment, has that report, following whatever happened, been

14:21:47 15 disclosed if it is intended to produce it?

16 MR HERBST: Your Honour, I'm not sure what, if any, report

17 exists. The information that I received from Mr Sengabo and

18 others was oral. As to what the nature of the investigation was,

19 what changes they made, what was found, and everything that I

14:22:13 20 learned, I disclosed to the Defence.

21 JUSTICE DOHERTY: So there is no actual formal report on

22 which counsel can take instructions --

23 MR HERBST: I do not --

24 JUSTICE DOHERTY: -- is that what you're saying?

14:22:25 25 MR HERBST: I do not know whether there is a formal report

26 because I did not request access to any formal report because

27 there are just a few items of fact that I thought were relevant.

28 But that certainly is something that could be asked on

29 cross-examination and if we don't get to it, I could ask at the

1 end of the Court day of the witness. Although, I would need  
2 special leave of the Court in order to do that because, of course  
3 I am not allowed --

4 JUSTICE DOHERTY: Once he's under oath --

14:22:54 5 MR HERBST: Right. I am not allowed to ask.

6 JUSTICE DOHERTY: You know the Rules.

7 MR SERRY-KAMAL: Mention of the report should precede any  
8 reference to --

9 JUSTICE DOHERTY: Well, we'll take a few minutes.

14:23:06 10 Mr Herbst, if there is a written report it should be  
11 disclosed. Number one. So first of all, you're going to have to  
12 find out if there is a written report in existence, and if it's  
13 to be raised in evidence, then it should be disclosed. That's  
14 number one, practical matter.

14:23:28 15 And Mr Metzger, was it to do with this report that you  
16 needed the further instructions, if any, if it exists?

17 MR METZGER: Your Honour, yes. I simply wanted to ask my  
18 client from his perspective. Seeing it as the least important  
19 thing I left it to the last, and I just wanted to ask my client  
14:23:47 20 from his perspective, what he knew of such investigation and so  
21 on.

22 JUSTICE DOHERTY: So a few minutes to each of you because I  
23 do want to get started on this witness. We are very short of  
24 time and this is the only opportunity to hear this man in person.

14:24:08 25 MR METZGER: I can say, Your Honour, once I get into the  
26 room I anticipate it will take me no longer than five minutes. I  
27 was at the point where I had to leave so as not to keep the Court  
28 waiting.

29 JUSTICE DOHERTY: Very well. Five minutes each please.

1 MR METZGER: Thank you, Your Honour.

2 JUSTICE DOHERTY: Freetown did you hear? And just before  
3 we rise then, I know that obviously we've all heard the evidence  
4 about phone calls from Mpanga, whether it's credible or not  
14:24:39 5 credible, I am not going to go into it, but have you had a chance  
6 to take instructions on this statement?

7 MR NICOL-WILSON: Yes, Your Honour. I have.

8 JUSTICE DOHERTY: Five minutes each, please. And this time  
9 I mean it.

14:24:55 10 MR METZGER: Thank you, Your Honour.

11 [Break taken at 2.24 p.m.]

12 [Upon resuming at 2.32 p.m.]

13 MR METZGER: Very much obliged to Your Honour, we're ready.

14 MR HERBST: And am I, Your Honour.

14:32:54 15 JUSTICE DOHERTY: Thank you.

16 MR HERBST: As am I, Your Honour. I have just spent my  
17 five minutes with the witness. He has informed me as follows:  
18 The Special Court did not request him or anybody else that he is  
19 aware of to make a written report of the investigation that was  
14:33:10 20 done. He believes that no written report of the investigation  
21 was ever done. There were oral internal administrative findings  
22 that he does not believe were adduced to writing which were  
23 resolved through changes in the rules and the changes in the  
24 system that he has alluded to in his witness statement.

14:33:46 25 However, he does believe that a report of the searches that  
26 were described in the witness statement, that is turned up the  
27 telephone paraphernalia and in the two rooms was made to the  
28 Special Court, to the Principal Defender, and to the Registrar.  
29 That is his understanding.

1 JUSTICE DOHERTY: Does it follow from his belief he doesn't  
2 know and there is no report within his control?

3 MR HERBST: That is my understanding of what he said to me.

4 JUSTICE DOHERTY: Mr Metzger, you've heard the explanation  
14:34:34 5 tendered.

6 MR METZGER: Indeed, Your Honour. May I give indication of  
7 my intention to object to therefore any material that comes as a  
8 result of a report that postdates the matters before the Court.

9 JUSTICE DOHERTY: I will deal with any evidence as and when  
14:34:47 10 it arises in the normal way.

11 MR HERBST: Can I just say, Your Honour, that I have no  
12 objection whatever to counsel inquiring to the Principal Defender  
13 for any report about the searches that she requested - that she  
14 may have received.

14:35:07 15 MR SERRY-KAMAL: But Your Honour --

16 JUSTICE DOHERTY: Defence counsel are at liberty to do so.  
17 Yes.

18 MR SERRY-KAMAL: Your Honour, with respect, if Mr Herbst  
19 wants to adduce this evidence, I think it is his responsibility  
14:35:19 20 to adduce it. It's not for us to final --

21 JUSTICE DOHERTY: But he has been told by his witness that  
22 the witness is not aware of any written report and that's as far  
23 as we can take it.

24 MR HERBST: Well, Your Honour, with the exception of the  
14:35:40 25 report about the two searches that he believes was made to the  
26 Principal Defender and the Registrar. He thinks there may have  
27 been some written report there.

28 JUSTICE DOHERTY: Well, in that case, I, as provided by  
29 Rule 85, will direct my associate to write formally to the

1 Registrar and inquire if the Registrar has within her custody and  
2 control any form of written report. In the event of the  
3 Registrar having any form of written report, it is to be  
4 disclosed to all counsel. In the event of some matters within  
14:36:22 5 that written report being of a confidential nature going to  
6 security or other issues, they will be redacted and, if counsel  
7 require them, then we may have to go into closed session in order  
8 to look at them. That will be done in the course of this  
9 afternoon and all counsel will be informed of the Registrar's  
14:36:44 10 reply.

11 That's the best I think I can do, and I do that under Rule  
12 85.

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

14 MR HERBST: Thank you, Your Honour.

14:36:54 15 MR METZGER: Thank you, Your Honour. Very much obliged.

16 MR HERBST: Now my learned friends on the other side of the  
17 table have not had their five minutes to instruct or to take  
18 instruction. I don't know if you --

19 MR METZGER: [Overlapping speakers]

14:37:08 20 JUSTICE DOHERTY: Counsel has indicated they are ready to  
21 proceed. Please call the witness and I'll ask the witness to be  
22 sworn.

23 MR HERBST: Your Honour, we now call Hillary Sengabo.

24 [The witness enters court]

14:37:43 25 JUSTICE DOHERTY: Before Mr Sengabo is sworn, I would like  
26 to thank him for his patience in waiting and I know that he has  
27 an important job and has taken a lot of time out for our benefit.

28 Mr Sengabo, we're grateful, both myself and counsel.

29 Please swear the witness.

1 WITNESS: HILLARY SENGABO [Affirmed]

2 JUSTICE DOHERTY: Mr Sengabo, as I normally do with every  
3 witness, I ask what language you wish to give your evidence in.

4 THE WITNESS: Honourable Judge, pardon for previous missing  
14:39:33 5 - sorry.

6 JUSTICE DOHERTY: I was - we always ask witnesses what  
7 language they wish to give their evidence in. This is important  
8 because our interpreters need to know.

9 THE WITNESS: Honourable Judge, English.

14:39:50 10 JUSTICE DOHERTY: Thank you, Mr Sengabo.

11 Mr Herbst, please proceed.

12 MR HERBST: Thank you, Your Honour.

13 Examination-in-Chief by Mr Herbst:

14 Q. Good afternoon, Mr Sengabo.

14:39:58 15 A. Good afternoon, sir.

16 Q. What is your business position or occupation?

17 JUSTICE DOHERTY: Can we have the gentleman's full name  
18 first, please.

19 MR HERBST:

14:40:18 20 Q. Mr Sengabo, please state your full name?

21 A. Pardon?

22 Q. Please tell us your full name?

23 A. Yes. I am called Sengabo, Hillary.

24 Q. And Mr Sengabo, what do you do for a living?

14:40:33 25 A. I am a deputy director for Mpanga Prison.

26 Q. And do you have any other position with respect to the  
27 Special Court of Sierra Leone?

28 A. Yes. I am a liaison officer between Mpanga Prison and the  
29 Special Court for Sierra Leone.

1 Q. Would you tell the Court, please, generally what your  
2 duties and responsibilities are in those two positions?

3 A. Yes. I deputise the director in his process and in charge  
4 of administration, supervising the staff and the - looking after  
14:41:20 5 the welfare of prisoners, and even in charge of finance. Yeah.  
6 Chief budget manager, for prison.

7 Q. And do your responsibilities - well, in November and  
8 December of 2010, did your responsibilities include anything with  
9 respect to the special wing, now known as Delta Wing of the  
14:41:55 10 prison housing the convicts in Rwanda? The convicts of this  
11 Court in Rwanda.

12 A. Yeah. Initially when the prisoners from Special Court  
13 arrived in Rwanda, I was by then acting as a legal officer and  
14 close supervisor for the staff attached in special wing by then,  
14:42:23 15 now the Delta Wing, by which after I was promoted to deputy  
16 director up to now.

17 MR HERBST: Your Honour, just to possibly eliminate some of  
18 the static, if we could have Mr Sengabo turn off his microphone  
19 after he completes his answer.

14:42:52 20 JUSTICE DOHERTY: Please.

21 MR HERBST:

22 Q. Mr Sengabo, would you describe for the Court, please, how  
23 the system for telephone communication by the Special Court  
24 prisoners in the special wing worked in November and December  
14:43:14 25 2010?

26 A. Yes, well, when the prisoners arrived at Mpanga Prison late  
27 2009, they didn't come - they came with an incomplete list  
28 whereby we later came to request the Special Court to update it.  
29 They brought the current list whereby it was supposed to guide us

1 throughout the activity of telephone calls. And this was a new  
2 system to a prison where - yeah, we used the telephone mobile to  
3 facilitate this system. And we used it to - when prisoners want  
4 to call, they come out of their rooms and come to the visiting  
14:44:20 5 hall compound for telephone call, and then after the staff  
6 attached to their own detail for the scratch air time and insert  
7 in air time, and then the prisoner could call. After calling,  
8 another one comes to call. Yeah. The exercise could take the  
9 whole day for the prisoners all to complete their core  
14:44:47 10 activities.

11 Q. Okay. Now you mentioned the mobile telephone. Who was the  
12 service provider for that mobile telephone?

13 A. Yeah, it is MTN Rwanda.

14 Q. And as you sit here now, do you recall what the number was  
14:45:10 15 of that telephone, that mobile phone that was used by the  
16 convicted prisoners in Rwanda in the special wing?

17 A. Yeah. It is 07-88-966-48-96 - I'm sorry, I repeat  
18 07-88-96-68-48.

19 Q. Thank you. And was the cell phone equipped with a speaker  
14:45:50 20 phone?

21 A. Yeah. When need to switch a loud voice, one could do it.

22 Q. Now prior to the time that a telephone system was put in  
23 place at the Mpanga Prison for the Special Court convicts, had  
24 there ever been a system in place at the prison whereby any  
14:46:26 25 prisoners could call their families by telephone?

26 A. No, sir.

27 MR HERBST: Did Your Honour hear that answer?

28 JUSTICE DOHERTY: [Microphone not activated]

29 MR HERBST: Thank you.



1 Q. Now you mentioned a list and then you mentioned an updated  
2 list. I'm going to show you - or I'm going to ask that a  
3 telephone list be placed before the witness by the Court Officer.

4 Mr Sengabo, take a look at this document that has been  
14:47:42 5 placed before you and let me know if that is a copy of the list  
6 or updated list that you mentioned a few moments ago in response  
7 to one of my questions.

8 JUSTICE DOHERTY: Wait a moment please, Mr Sengabo. I saw  
9 Mr Metzger's light on. Has this document been shown to --

14:48:07 10 MR METZGER: Yes, yes, yes. I am familiar with the  
11 document. I was just concerned about leading and I thought the  
12 witness might be best placed to tell us what this document is  
13 rather than --

14 JUSTICE DOHERTY: The witness should describe the document,  
14:48:18 15 please.

16 Mr Sengabo, you have the paper before you?

17 THE WITNESS: Yes, Your Honour.

18 MR HERBST:

19 Q. What is that document, Mr Sengabo?

14:48:29 20 A. Yeah. This is a Special Court call list forwarded us at  
21 Mpanga Prison to guide us while conducting telephone calls for  
22 prisoners.

23 Q. And is this the original list or the updated list?

24 A. Yeah, it is original but updated.

14:48:55 25 Q. Okay. What do you mean by "updated"?

26 A. Yeah. This was not - yeah, the first list we received. It  
27 was through e-mail, not manually. But the first list that I  
28 received was not correct whereby some prisoners were not  
29 inclusive and the prisoners complain of some people missing so we

1 had to request the new one.

2 Q. And is this the new one?

3 A. Actually, this is the new one for the - for 2010 because we  
4 have latest one which is now in the MTN database.

14:49:49 5 Q. Okay, we'll come to that a little later. But as I  
6 understand your testimony, this was the list that was updated in  
7 2010 that was in effect in November and December 2010; is that  
8 right?

9 MR METZGER: Your Honour, the witness did not say that. He  
14:50:04 10 said this was a new list - a new one for 2010.

11 JUSTICE DOHERTY: He said.

12 MR HERBST:

13 Q. Was this the list in effect --

14 MR METZGER: Objection, Your Honour. "When."

14:50:17 15 JUSTICE DOHERTY: Don't lead the witness, Mr Herbst. There  
16 is quite a long time there's twelve months and 52 weeks in 2010,  
17 so I am sure the witness is more than capable of --

18 MR HERBST: Was when [inaudible] this updated list received  
19 in 2010?

14:50:46 20 THE COURT OFFICER: Your Honour, I believe we missed some  
21 of what Mr Herbst just said, so we would need that repeated for  
22 the benefit of the transcriber.

23 JUSTICE DOHERTY: Please put that again, Mr Herbst.

24 MR HERBST: Yes, Your Honour.

14:51:00 25 Q. When in 2010 was this updated list received?

26 A. I don't remember exactly the date, but it is in 2010 -  
27 early 2010.

28 Q. Did you say "early 2010"?

29 A. Yes.

1 Q. So was this the list that was in effect in November and  
2 December 2010?

3 A. Yes, yes.

14:51:34 4 MR HERBST: Thank you. I move the admission of this list  
5 as Prosecution Exhibit 13.

6 JUSTICE DOHERTY: Can I have the document? And is there  
7 any objection to this tender?

8 MR METZGER: There is no objection to the tender. There  
9 may be some questions on it, but, yeah.

14:51:51 10 JUSTICE DOHERTY: Very well. May I have a look at this  
11 document, please.

12 MR HERBST: Your Honour, to make sure we are talking about  
13 the same document, the document consists of four pages.

14 JUSTICE DOHERTY: What I have before me is a four-page  
14:52:20 15 document with the logo and the title of the Special Court for  
16 Sierra Leone. It is broken into categories, and in each category  
17 there is a subheading of a name, and I admit the document as  
18 Exhibit P13.

19 Admitted and marked "Exhibit P13"

14:52:50 20 JUSTICE DOHERTY: Please proceed, Mr Herbst.

21 MR HERBST: Thank you, Your Honour.

22 Q. Now looking at the document which has been admitted into  
23 evidence as P13, Mr Sengabo, could you tell the Court the  
24 information that this list contains?

14:53:12 25 A. The list contains the names of the relatives of the  
26 prisoner and the relationship, their address, and the phone  
27 number.

28 Q. And what was the functional purpose of this list in  
29 November and December 2010?

1 A. Yeah, it is - it was to - to give limitation to only close  
2 relative for the prisoners and friends. Yeah, actually for  
3 social affairs.

14:54:10 4 Q. And I believe you used the word "limitation", if I heard  
5 you correctly. What did you mean? What was the - what was the  
6 limitation on this list; limitation for what?

7 A. Yeah, they are not allowed to call. There are some  
8 unauthorised people. That's why they give limited list of people  
9 to call.

14:54:33 10 Q. So if I understand you correctly, for each prisoner listed,  
11 this was the list of approved callers?

12 A. Yes.

13 JUSTICE DOHERTY: Callers or --

14 MR HERBST: Call recipient, Your Honour. I apologise.

14:55:00 15 Q. Call recipients?

16 A. Yes.

17 Q. And were these the names - again for each prisoner, were  
18 these the names and phone numbers that were authorised to be  
19 called?

14:55:16 20 A. Pardon?

21 Q. For each prisoner on the list, were these the names and  
22 phone numbers that the prisoners were authorised to call?

23 A. Yes.

14:55:36 24 Q. Were they authorised to call anyone else on this list or at  
25 telephone numbers other than the phone numbers on this list?

26 A. Yeah. Yeah. After we heard of these incidents, we came to  
27 find that there are some unauthorised numbers were called --

28 MR METZGER: Your Honour, I object to the introduction of  
29 evidence after this - the investigation in this case.

1 MR HERBST: Your Honour, I think --

2 JUSTICE DOHERTY: Don't. Just a moment, please. I didn't  
3 quite understand the objection.

4 What are you saying?

14:56:03 5 MR METZGER: Unless it is identified that the  
6 investigations that are being referred to relate to the  
7 indictment period, in the light of the possibility of material  
8 being - possibly being provided to us, I object to the  
9 Prosecution adducing evidence of a postdated investigation.

14:56:28 10 MR HERBST: Your Honour, the witness was about to describe  
11 what had been discovered about the relevant period, and I don't  
12 think the objection is apt.

13 JUSTICE DOHERTY: In actual fact, the question was:

14 "Were they authorised to call anyone else on the list..."

14:56:55 15 And the answer was:

16 Yes, after this incident ...

17 I am not sure how that answer follows from "Were they  
18 authorised to call anyone else on the list..." There has to be a  
19 bit more foundation than, Yes, after this incident ...

14:57:15 20 MR HERBST: Your Honour, because the witness was  
21 interrupted, I don't think that's what he was saying. He wasn't  
22 answering "yes" to that question. I think he was trying to  
23 explain.

24 JUSTICE DOHERTY: I think he was too, and that's why I  
14:57:31 25 would like it --

26 MR HERBST: Let me clarify.

27 JUSTICE DOHERTY: Let's again get the foundation right and  
28 the sequence right.

29 MR HERBST: Okay.

1 JUSTICE DOHERTY: First of all, a clear answer: Were they  
2 allowed to call anyone else on the list?

3 MR HERBST: Yes.

4 Q. Prior to any change in procedure that was instituted at the  
14:57:54 5 prison as a result of these allegations coming to light, that is,  
6 I am talking about the timeframe of November and December 2010,  
7 were the prisoners permitted to call anyone who - in other words,  
8 were they permitted, or were they supposed to, or were they  
9 allowed to call anyone who was not on this approved list?

14:58:21 10 A. No.

11 Q. And were they allowed - again at the same timeframe, in  
12 November and December 2010, were they allowed to call even the  
13 people on this list at a telephone number other than what was  
14 listed on the list?

14:58:39 15 A. No.

16 Q. Okay. Where there was a telephone number listed. Is your  
17 answer still "no"?

18 A. Can I have that back?

19 Q. Well, as an example, take a look - take a look at the third  
14:59:09 20 page of the document, the one that has "Mr Kamara" at the top.

21 A. I see.

22 Q. You see that for each person on the list there are either  
23 one or two approved telephone numbers on the list, and actually  
24 in one case it looks like there were three.

14:59:45 25 A. Yes.

26 Q. You see that?

27 A. Yes.

28 Q. My question was --

29 [Technical difficulties]

1 THE COURT OFFICER: [In Kigali] Madam, the link is now back  
2 up.

3 JUSTICE DOHERTY: In this instance I think it would be best  
4 to start the question again so that Freetown can hear it.

15:01:02 5 MR HERBST: Yes, Your Honour. I'll try and do that.

6 Q. Mr Sengabo, on this list for Mr Kamara there are 15 names,  
7 and for each name there is either one phone number or two or  
8 three listed for each; do you see that?

9 A. You have 15 numbers?

15:01:29 10 Q. There are 15 names, and for each name in the right-hand  
11 column there are one or more telephone numbers listed, correct?

12 A. Yes.

13 Q. My question is: In November or December 2010, were these  
14 the only authorised phone numbers at which the prisoner was  
15:01:53 15 supposed to call the persons on the list?

16 A. Yes.

17 Q. And the same is true for Mr Brima, whose calls are listed  
18 on the bottom of page 3 and onto page 4?

19 A. Yes.

15:02:12 20 Q. Okay. And going back to page 2, is the same true of  
21 Mr Kanu? Page 2 of the list.

22 A. Yes.

23 Q. Okay. Now there are some names on Mr Kanu's list, for  
24 example, where there is no phone number listed. Do you see that?

15:02:41 25 A. Yes.

26 Q. And was there any restriction on those - on the number or  
27 numbers to be called to try to reach those persons for whom no  
28 phone number was listed?

29 A. Actually, this is how we received it.

1 Q. All right. Now, you mentioned in your answer to a question  
2 a few minutes ago that when the prisoners wished to make a call,  
3 they would come out of their rooms and go to a visiting hall. Do  
4 you remember that?

15:03:33 5 A. Yes.

6 Q. And was that where they would request the telephone? Or  
7 how would the prisoner request the phone to be - well, first of  
8 all, who generally maintained custody of the telephone that was  
9 used, the number that you earlier describe? Who maintained  
10 possession of that phone?

11 A. Yeah. It is the prisoner guards who are attached in the  
12 Delta Wing, but they keep on changing, depending on their duties.

13 Q. All right. So in your answer where you said that the  
14 prisoner would come out of their - out of his room to request  
15 that a call be made, how - how would he request the telephone to  
16 be brought to him? How did that happen?

17 A. It is just a prisoner consent, come and inform the guard on  
18 duty, and then they conduct that call.

19 Q. And in terms of the general procedure at the Special Wing  
15:04:46 20 or the Delta Wing as it's now called, was there any requirement  
21 that the prisoners stay in their rooms or were they generally  
22 allowed access to other areas of the prison? Of the special wing  
23 of the prison?

24 A. Today we are using rooms but at first we are not using  
15:05:08 25 rooms. It was just in the opening - visiting hall.

26 Q. And again I am talking about the period in question in this  
27 case, November and December 2010. Did the prisoners, were they  
28 generally required to stay in their own rooms or would they  
29 generally have - were they generally permitted to come out of



1 their rooms and be in other areas of the special wing?

2 A. Yeah. It was conducted in visiting hall.

3 Q. Okay. And where was the visiting hall?

4 A. Just at the entrance of the premise.

15:05:49 5 Q. Would you describe that hall to the Court. Was it in  
6 close, was it open? What was the area that you're describing as  
7 the visiting hall?

8 A. It has just a roofing and it is open.

9 Q. And were more than one prisoner permitted to make a - to  
15:06:19 10 participate in a call or make a call at the same time?

11 A. Yeah. It is one by one because it is only a single mobile  
12 phone used but at times they can pass over the telephone to their  
13 colleagues.

14 Q. All right. Now you brought to Court with you today a  
15:06:55 15 handwritten book or log, have you not?

16 A. Yes.

17 Q. Would you take that out, please, and put it before  
18 yourself. First would you tell the Court what that book is?

19 A. It is used for registering the names the people called, the  
15:07:30 20 numbers, and date, and time, and signature for the caller.

21 Q. And what was that book called? How did the staff and the  
22 prisoners refer to that book?

23 A. It is a call log.

24 Q. A call log. All right. Now with respect to the call log,  
15:08:04 25 could you tell us what the procedure was for filling out the call  
26 log, again in the period that we are talking about, November and  
27 December 2010?

28 A. The procedure is that after prisoner requesting for the  
29 call and is served the call, after, he fills the book by

1 recording the name of the person called, the relationship, and  
2 the numbers, and his signature.

3 Q. Okay. And were there columns in the book?

4 A. Yes.

15:08:46 5 Q. And what, if you could look at a page of the book, could  
6 you tell us what columns there were in the book to be filled?

7 A. First we have the date; the name of a prisoner; the name of  
8 call - the relative called, brother or friend; time; the number  
9 called; and signature.

15:09:39 10 Q. And the signature of whom?

11 A. [Overlapping speakers]

12 Q. The prisoner.

13 A. Yes.

14 Q. And was there also a place further to the right for a  
15:09:50 15 signature of staff or not?

16 A. Yeah, it is there also.

17 Q. All right. And in whose possession or custody was this  
18 logbook generally kept in November/December 2010 when it was not  
19 being used?

15:10:25 20 A. In security office.

21 Q. And was there a staff member there who maintained  
22 possession of it?

23 A. Yeah, staff on duty.

24 Q. Now you've already described the procedure by which the  
15:10:42 25 prisoner would request to make a call and receive the phone. How  
26 and where was the log filled out by the prisoner after the call  
27 or calls that were made?

28 A. Immediately after the call, the staff or a prisoner could  
29 fill the call log.

1 Q. Could what the call log? I'm sorry, I didn't quite hear.

2 A. After making call, they could fill the book and then sign  
3 to mark the end of the call.

4 Q. Thank you.

15:11:29 5 JUSTICE DOHERTY: Who filled the book, Mr Sengabo?

6 THE WITNESS: Yeah, it is either the prisoner or the staff  
7 on duty.

8 JUSTICE DOHERTY: Thank you.

9 Proceed.

15:12:05 10 MR HERBST:

11 Q. Now, Mr Sengabo, I'd like you to open the logbook to the  
12 log entries for November 30, 2010, the first of which entries has  
13 a time of 13.11 I believe. Give me just one minute. Yes, 13.11  
14 p.m. Do you have that entry? It starts at the top of the page  
15 there.

15:13:05

16 MR HERBST: Oh, by the way, Your Honour, I don't believe  
17 I've moved the admission of this document yet but I think that  
18 sufficient foundation has been laid.

19 JUSTICE DOHERTY: Which document?

15:13:19

20 MR HERBST: This is the log book, and my intention, Your  
21 Honour, is to introduce the log book, but I've made copies.  
22 Mr Metzger had some copies made and I had some additional copies  
23 made of pages, and those are the pages that I guess I'm going to  
24 be asked to be marked as well so that the original log book does  
25 not have to be maintained here.

15:13:52

26 JUSTICE DOHERTY: Even if Defence counsel haven't got any  
27 questions, I've got one or two questions before I would have it  
28 moved in. So I think continue with the questions and if mine  
29 aren't satisfied or factually clarified, I will ask them before I

1 consider a tender.

2 MR HERBST: All right, Your Honour.

3 Q. First of all, was this --

4 JUSTICE DOHERTY: You said the date was the 30th of

15:14:33 5 November, was it? And the time was 11.00 something?

6 MR HERBST: 13.11.

7 JUSTICE DOHERTY: 13.11.

8 MR HERBST: Which I'm going to ask the witness what his

9 understanding of that time means.

15:14:47 10 Q. First of all, Mr Sengabo, what is your understanding of the

11 time 13.11 p.m.? To what time does that refer?

12 A. It is you mean to describe the time or --

13 Q. Yes. How much time afternoon is that?

14 A. 1.11.

15:15:20 15 Q. Okay. 1.11 p.m.?

16 A. Yes.

17 Q. Now, was this log book maintained as a business record of

18 the prison and of the special wing?

19 A. Yes.

15:15:36 20 Q. And was it the usual and ordinary procedure of the special

21 wing to maintain that log book?

22 A. Come again?

23 Q. Was it the usual and ordinary procedure at the special wing

24 to maintain that log book for the purposes that you mentioned -

15:15:56 25 just testified about?

26 A. Yes.

27 MR HERBST: So, Your Honour, I'm going to move its

28 admission as a business record.

29 JUSTICE DOHERTY: Counsel for the Defence, you've heard the

1 appli cation.

2 MR METZGER: As I said earlier when submitted to Your  
3 Honour, I don't oppose the material being introduced, but it  
4 seems to me that if the log book becomes an expert in the case  
15:16:31 5 the log book must stay with the case papers. So in strict terms  
6 it may be for practical purposes better for the copies to be made  
7 exhibits with access to the log book should Your Honour require  
8 to see it.

9 JUSTICE DOHERTY: That was one matter that was causing me  
15:16:48 10 concern. This is obviously an official record kept in a prison  
11 or --

12 MR HERBST: Your Honour, let me ask one question. It may  
13 well be, Your Honour, that we could mark the original. Let me  
14 just ask the witness.

15:17:02 15 Q. Mr Sengabo, is that particular log book still used at the  
16 prison; that is, the one that you have in front of you? Or is  
17 there a newer log book that is now currently used?

18 A. Yeah. This one was used up and we continued with another  
19 book.

15:17:19 20 Q. All right.

21 MR HERBST: Your Honour, I have no problem with just  
22 marking the book if the --

23 JUSTICE DOHERTY: Mr Sengabo, do you need this document -  
24 this book to be kept for prison records, for your full records?

15:17:38 25 THE WITNESS: Yes.

26 JUSTICE DOHERTY: You see, Mr Herbst, I just can't imagine  
27 a prisoner handing over a big record like this. If --

28 MR HERBST: Yes, Your Honour. I - the problem is that when  
29 Your Honour looks at it once it's admitted, if it is admitted,

1 and I understand there is no objection, Your Honour will see that  
2 it's quite fragile. The pages are fragile and it's quite  
3 difficult to --

4 JUSTICE DOHERTY: Well, what I think --

15:18:15 5 MR HERBST: -- to Xerox all of the pages. And in fact on  
6 the Xerox pages that we have not all of the columns are present  
7 on the xerox copies that were made.

8 MR METZGER: They were on the ones that I made.

9 JUSTICE DOHERTY: Better machine there, Mr Metzger. I can  
15:18:32 10 see that now.

11 MR METZGER: It may well be the case.

12 JUSTICE DOHERTY: I have one question before this is going  
13 to come in and then we'll look at it from a practical aspect.

14 Mr Sengabo, in answer to an earlier question, you said that  
15:18:47 15 either the prisoner or the staff member could fill in the book.  
16 Now if a prisoner filled in the book, could he put down any  
17 number he wanted and could he put down any name he wanted?

18 THE WITNESS: Actually, the instructions to our staff is to  
19 fill the book, but we came to find that sometimes they were - I  
15:19:16 20 don't know, they give issues of saying that --

21 MR METZGER: Your Honour, this is an area that -- I'm  
22 sorry, Mr Sengabo, please wait.

23 MR HERBST: [Overlapping speakers]

24 JUSTICE DOHERTY: [Microphone not activated]

15:19:27 25 MR METZGER: Mr Herbst, I'm in the process of making an  
26 objection to the introduction of evidence. I'm sorry if it  
27 causes you some concern, but it causes my client more concern.

28 Your Honour, the objection is based on - I think I have a  
29 fair understanding of what Mr Sengabo is about to say and I do

1 sympathise with him, but I suspect that what he's about to say  
2 refers to the investigation that we've heard of that post-dates  
3 these matters. And if we are to keep within the time-frame, it  
4 seems to me that he will have to limit himself to the what the  
15:20:14 5 instructions were and what the available position was in November  
6 or December 2010, unless, of course, Your Honour gives permission  
7 for him to go beyond that.

8 JUSTICE DOHERTY: Well, what I will do is this. I will not  
9 follow-up my question. It may well be a question I will return  
15:20:27 10 to. I will have the book brought up. It will be shown to - all  
11 counsel has seen the original of this book, and I have to think  
12 of Mr Nicol-Wilson in Freetown. He has a right to see this book,  
13 too. And then I am prepared to look at the book for purposes of  
14 record, and I have in mind until I look at it, until counsel  
15:20:55 15 looks at it, it's premature to say what can be admitted.

16 This book I think will eventually have to go back to the  
17 prison because it is an official record of the prison and should  
18 not be extracted from it. So we may hold it possibly for a short  
19 time and then return it, but in the meantime let's have a look at  
15:21:18 20 the pages, see if the reproduction is clear because counsel has  
21 indicated that they will not object to copies, and then I will  
22 ask Mr Nicol-Wilson in Freetown what he needs to do before he can  
23 either object or consent to admission.

24 Mr Nicol-Wilson, have you seen this original book?

15:21:41 25 MR NICOL-WILSON: Your Honour, I've not seen the original  
26 but I have copies with me and I am fine with the copies.

27 JUSTICE DOHERTY: I will now look at the book, I'll look at  
28 the copies, and I'll see where we go from there.

29 MR NICOL-WILSON: As Your Honour pleases.

1 MR HERBST: Your Honour, while Your Honour is doing that,  
2 can I just say that I did not understand because we have  
3 ascertained that there are no written reports except for the  
4 reports about the items and two rooms that were searched. It was  
15:22:26 5 not my understanding this witness could not testify to what was  
6 discovered about procedures that were supposed to be in place  
7 which were not followed as of November/December 2010 --

8 JUSTICE DOHERTY: Mr. Herbst, please don't say anymore. I  
9 don't know what procedures were in place and I don't know what  
15:22:50 10 procedures - whether they were followed or not. So please,  
11 please be careful not to be giving evidence from the bar table.

12 On the question of reports, et cetera, I have received an  
13 e-mail. My associate very, very promptly took this matter up  
14 with the Registrar, who has very promptly responded, saying, and  
15:23:10 15 I read it out verbatim:

16 "Thank you for forwarding this request. Please inform the  
17 Judge that we do have in our custody such a report and I will  
18 send it to you just now. It will be served to all parties."

19 Obviously it goes without saying that I haven't seen it and  
15:23:27 20 it will be dealt with when it's furnished.

21 Now I'm going to look at this book, I am going to look at  
22 the copies, and then I'm going to decide the way forward.

23 MR HERBST: I am going to hand Your Honour two sets of  
24 copies. The two sets have copied different dates. One was  
15:23:58 25 Mr Metzger's copying, the other was the copies that I had  
26 requested. Mr Metzger has got - only consists of four pages and  
27 mine is the larger set of pages.

28 I only marked in the book the one page that's on top of  
29 mine that - that deals with 11.30, 2010. If Your Honour wishes I



1 could over the break, or over the evening, mark the others for  
2 Your Honour's ease of review.

3 Also Your Honour will see that on the first page of mine,  
4 my copy, it does not have all the columns on the right hand page,  
15:24:39 5 but that is something that if we had access to a Xerox machine we  
6 might be able to remedy, but I think - my understanding is that  
7 we do not have access to a Xerox machine.

8 JUSTICE DOHERTY: [Microphone not activated].

9 MR METZGER: May I just ask, I have seen - I think the  
15:24:57 10 page - I've seen the page in relation to the 30th of November,  
11 and it may be an administrative difficulty, but I haven't seen  
12 the other of the pages of the log recently. Obviously, I may  
13 have seen them at the time that I was in Rwanda but I don't have  
14 physical copies of them. I'd be grateful for the copies that the  
15:25:14 15 Judge has just been given.

16 MR HERBST: Yes. These were given to the Court Officer and  
17 I believe she has a set of them for everybody.

18 MR METZGER: [Microphone not activated]

19 MR SERRY-KAMAL: Your Honour, I was only given one page.  
15:25:34 20 Only one page. The other pages I have not seen.

21 MR METZGER: As is stated, it may well have been an  
22 administrative but the Defence have only got the 30th of November  
23 bunch.

24 JUSTICE DOHERTY: [Microphone not activated]

15:25:52 25 MR HERBST: I'm sorry, Your Honour. We can't hear you  
26 because you --

27 JUSTICE DOHERTY: For purposes of clarity and record, the  
28 witness has attested to an entry on the 30th of November,  
29 13.11 p.m., and I see - as you correctly say - part of it is not

1 all there because the signature page - the signature column is  
2 not copied. And I would like a bit more explanation of this  
3 document before I admit it.

4 Just for purposes of an example, this entry that has been  
15:26:41 5 referred to, 30/11/2010, Bazy Kamara, brother, 13.11 p.m. There  
6 is then at least two full numbers. Then there is another entry,  
7 30/11/2010, Santigie Borbor Kanu, brother, no time, and there is  
8 about five numbers until we come to the next one, which is  
9 Issa Sesay - no, excuse me --

15:27:22 10 MR HERBST: [Overlapping speakers]

11 JUSTICE DOHERTY: -- I'm wrong, it's Augustine Gbao, wife,  
12 brother, and friend. And then there is a series of numbers. And  
13 I'm trying to correlate the entries with the list of numbers.

14 MR HERBST: Can I just correct one thing that Your Honour  
15:27:40 15 said. I believe that Your Honour has said that before Mr Sesay  
16 or before Mr Gbao there were more than three numbers.

17 JUSTICE DOHERTY: Well that's what I'm finding confuse.

18 MR HERBST: Yeah. So --

19 JUSTICE DOHERTY: It could be that some of those numbers  
15:27:58 20 relate to Gbao, some of them relate to Sesay, and the reason I  
21 say this is because there is only one time entered.

22 MR HERBST: Did Your Honour want me to ask further  
23 questions about that of the witness?

24 JUSTICE DOHERTY: Yes, I would want further time, but I am  
15:28:17 25 watching the time also. I over stayed my welcome on Saturday and  
26 I am aware that the - we have to pay due respect to the systems  
27 for transport of convicted persons. It's important that those  
28 are duly - we have proper regard for them.

29 So I have no - I think in the circumstances I must bear

1 those in mind and I'm going to have to stand the case over.

2 MR HERBST: Your Honour, before Your Honour - could I just  
3 ask Mr Sengabo one additional question about whether he could -  
4 whether it would be possible to provide additional Xerox copies  
15:29:02 5 of the pages he was kind enough to provide - in other words, in  
6 the set to me earlier - that might be more inclusive, that might  
7 have - might have all of the columns, in fact something if his --

8 MR METZGER: I have no objections.

9 MR HERBST: -- that his Xerox machine could accommodate to  
15:29:23 10 us and then he could bring those back on Wednesday.

11 JUSTICE DOHERTY: If we could - yes, we could ask the  
12 gentleman, but if our own facilities should relieve them from the  
13 expense, then our facilities should be the ones that are used.

14 Madam Court Manager, is it possible that we could assist  
15:29:42 15 rather than put the Rwandan government through all this expense  
16 and trouble?

17 MR HERBST: I thought we only had a scanner, not a Xerox  
18 machine.

19 THE COURT OFFICER: [In Kigali] Madam, we can photocopy  
15:29:58 20 once ICTR staff are back in the office. We asked for a  
21 photocopier in this VTC room, but I said, No, it would cause too  
22 much noise. So there is a photocopier on site, but we have to go  
23 use it. It's not in the room here.

24 JUSTICE DOHERTY: We cannot admit this document until this  
15:30:20 25 is all clarified.

26 So Mr Sengabo, may I request that we take control of your  
27 book until the copies are made?

28 THE WITNESS: Yes, Your Honour.

29 JUSTICE DOHERTY: Thank you. I'm grateful for that. And I

1 will now hand it over, both the copies - well, I'll keep these  
2 copies and I will hand the book over to Madam Court Manager for  
3 her care and control.

15:30:54 4 MR HERBST: Your Honour, would it be possible just to ask  
5 Mr Sengabo one more question, and that is whether it would be  
6 possible for the Court to retain the original book just for the  
7 weeks or whatever time it takes for the case to conclude?

8 JUSTICE DOHERTY: That is a very common procedure, usually  
9 until the end of the appeal period.

15:31:16 10 Mr Sengabo, I had in mind to ask you that question, whether  
11 we could have this book during this hearing until the end of the  
12 trial and to the end of any appeal, if any?

13 THE WITNESS: Yes, Your Honour.

14 JUSTICE DOHERTY: Very well. It will be retained by the  
15:31:32 15 Special Court in the original, and in due course it will be  
16 released back to the appropriate authorities in Rwanda.

17 MR SERRY-KAMAL: Your Honour, but it's not yet in evidence.

18 JUSTICE DOHERTY: I appreciate that. That's why I haven't  
19 marked it. I haven't even - we've got a lot of questions to go,  
15:31:53 20 Mr Serry-Kamal.

21 MR SERRY-KAMAL: As Your Honour pleases.

22 JUSTICE DOHERTY: The question that might follow logically  
23 from this is whether we should take it with us to Freetown.  
24 Actually, on consideration, it is only logical that it stays here  
15:32:11 25 while the witness is going through examination-in-chief and,  
26 depending on what happens, it can be put into the custody of  
27 Madam Court Manager when we find out how far on we've got.

28 MR SERRY-KAMAL: Your Honour, won't we be put at a  
29 disadvantage of not seeing the pages?

1 JUSTICE DOHERTY: We have some excellent technicians,  
2 Mr Serry-Kamal. I am sure they can hold them up for us and get  
3 them to us. We'll do our best.

15:32:49 4 MR SERRY-KAMAL: Will it be just a few pages or the whole  
5 book?

6 MR HERBST: No, I don't propose to copy the whole book. It  
7 seems to me that the relevant pages have been Xeroxed. But, of  
8 course, if in the course of cross-examination any other pages are  
9 mentioned, we could, of course, Xerox those as well.

15:33:07 10 MR METZGER: Your Honour, might I ask on behalf of Mr Kanu,  
11 as far as the pages relating to the 30th of November --

12 [Technical difficulties]

13 COURT OFFICER: Your Honour, may I interrupt from Freetown.  
14 We have encountered a technical problem. The stenographer has  
15 lost - his machine seems to have gone out of power or something,  
16 so we need to pause a little bit for that to be fixed.

17 JUSTICE DOHERTY: Freetown, we are about to close for today  
18 and there will not be a need to record anything more. All I'm  
19 going to ask is that whatever can be done to make these  
20 photocopies be done.

21 [Whereupon the hearing adjourned at  
22 4.30 p.m., to be reconvened on Wednesday,  
23 the 4th day of July, 2012, at 9.00 a.m.]

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