



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

-V-

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

Before the Judge:	Justice Teresa Doherty
For Chambers:	Elizabeth Budnitz
For the Registry:	Elaine-Bola Clarkson Thomas Alpha
For WVS:	Tamba D. Sammie
For the Prosecution:	Robert L. Herbst
For the accused Hassan Papa Bangura:	Melron Nicol-Wilson
For the accused Samuel Kargbo:	Charles Taku
For the accused Santigie Borbor Kanu:	Kevin Metzger
For the accused Brima Bazy Kamara:	Abdul Serry-Kamal Wara Serry-Kamal
For the Principal Defender:	Claire Carlton-Hanciles

1 [Sunday, 30 June 2012]

2 [Open Session]

3 [Accused enter court]

4 [The witness enters court]

09:54:16 5 [Upon commencing at 9.54 a.m.]

6 JUSTICE DOHERTY: Good morning. Before I ask for
7 appearances, I note two things. I don't see Defence counsel
8 here, but I'll ask that when I come to take appearances.

9 First, have we a connection with Freetown? Freetown, can
09:54:37 10 you hear me?

11 THE COURT OFFICER: Yes, Your Honour. I can hear you.

12 JUSTICE DOHERTY: Are we ready to proceed? I'll take
13 appearances. I will now take appearances.

14 MR HERBST: Good morning, Your Honour. Robert Herbst for
09:54:56 15 the Prosecution. And I note that apparently now I only have one
16 button to push rather than two, and I'm grateful. I'm also
17 grateful seeing all of you here joining me.

18 JUSTICE DOHERTY: Thank you.

19 Mr Metzger, we have a connection with Freetown. They tell
09:55:15 20 us they are ready to go.

21 Appearances, please.

22 MR METZGER: I note it's not yet 12.00. May I sit to
23 address the Court?

24 JUSTICE DOHERTY: In that case I can only say that I
09:55:31 25 thought I set my watch with the BBC and it's 12.00, but I'm
26 wrong - but you can sit by all means.

27 MR METZGER: Kevin Metzger for Santi g e Borbor Kanu. Good
28 morning, Freetown.

29 JUSTICE DOHERTY: I note counsel for Kamara is not present.

1 Mr Metzger, can you assist me in any way as to what's
2 happened?

3 MR METZGER: I last saw him taking advantage of the
4 facilities, and I think he was in the process of doing something
09:56:03 5 no one can do for him.

6 JUSTICE DOHERTY: Thank you. In that case, I will wait few
7 moments for him to come.

8 Can I put on record again my gratitude both to counsel and
9 to all our support staff for sitting today, which is a Saturday.
09:56:26 10 I'm also very grateful to the authorities here in Rwanda, who
11 have gone out of their way to work an extra day. Normally we
12 wouldn't ask this of anyone, but because we have a short time and
13 because in fairness to all the accused this case has to be
14 settled, it's been outstanding for far too long, we are taking
09:56:49 15 advantage.

16 So I note Mr Serry-Kamal is present.

17 THE COURT OFFICER: [In Kigali] Your Honour --

18 JUSTICE DOHERTY: Yes, Madam Court Attendant?

19 THE COURT OFFICER: Your Honour, is it possible that you
09:56:59 20 could confirm that the court reporters are hearing everything
21 that's being said?

22 JUSTICE DOHERTY: I will do so.

23 Freetown, can you assist us in checking whether: (a), the
24 court reporters; and (b), the interpreters are hearing us
09:57:16 25 clearly?

26 THE INTERPRETER: The interpreters can hear you clearly,
27 Your Honour.

28 JUSTICE DOHERTY: Thank you. And if someone can please
29 check with the transcribers.

1 THE COURT OFFICER: Your Honour, may I speak to the Court,
2 please?

3 JUSTICE DOHERTY: Please do so.

4 THE COURT OFFICER: We seem to be having a bit of technical
09:57:50 5 difficulties here, and the technicians here are asking if you can
6 give them a few minutes so that they can sort that out. The
7 reporters are having difficulty hearing the counsel, and so if we
8 can have a few minutes to sort that out, please.

9 JUSTICE DOHERTY: I can allow a few minutes,
09:58:09 10 Mr Court Attendant, but could you also ask if counsel for Bangura
11 and the other co-accused are present. I want to take those
12 appearances when you have sorted that problem out.

13 THE COURT OFFICER: Very well, Your Honour.

14 JUSTICE DOHERTY: So I'll take a few minutes. We'll just
09:58:31 15 sit and wait.

16 THE COURT OFFICER: Thank you, Your Honour.

17 Also, Your Honour, the reporters are asking kindly that
18 when counsel on that side are speaking, we get the AV people over
19 there to pan in on them so that they can see who is speaking at
09:59:35 20 the time, because they have to record who is speaking.

21 JUSTICE DOHERTY: First of all, I would ask our people to
22 do that. And I think that in order for clarity --

23 [Overlapping music]

24 THE INTERPRETER: Your Honour, all we can hear is music in
10:00:03 25 the background.

26 JUSTICE DOHERTY: I hope that Freetown and everyone else
27 can hear me, but apparently --

28 THE INTERPRETER: Your Honour, we can't hear you. The
29 interpreters cannot hear you. All we are hearing is some music

1 in the background.

2 [Technical difficulties]

3 [Break taken at 10.01 a.m.]

4 [The witness withdrew]

10:01:52 5 [Upon resuming at 10.49 a.m.]

6 JUSTICE DOHERTY: Freetown, can you hear us clearly now?

7 THE COURT OFFICER: Yes, Your Honour.

8 JUSTICE DOHERTY: Mr Melron Nicol-Wilson, I think I see you
9 getting to your feet.

10:49:46 10 MR NICOL-WILSON: Yes, Your Honour. I wanted to indicate
11 that I can hear you loudly and clearly, and I also want to
12 announce my representation for Mr Hassan Papa Bangura.

13 JUSTICE DOHERTY: That's most helpful. We will try and
14 proceed. But I note the time, and I also note that the accused
10:50:07 15 persons have been here since early in the morning and they are
16 entitled to their lunch-time break, as everybody else.

17 So the best I can do in the few minutes before we adjourn
18 to allow everyone to have a break is to check the situation with
19 the Prosecution witness who is part heard.

10:50:31 20 MR HERBST: Your Honour, I think you were referring to
21 Mr Saffa in Freetown. And I haven't heard anything, but
22 hopefully we can be advised from Freetown as to whether he is
23 present in the courtroom where you testify.

24 I have one preliminary matter to raise with the Court when
10:50:48 25 the Court feels it appropriate.

26 JUSTICE DOHERTY: I can see Mr Saffa putting his headphones
27 on.

28 Good morning, Mr Saffa. I would first of all remind you of
29 your oath. But before I actually do that formally, I will first

1 deal with the preliminary matter to be raised by counsel for the
2 Prosecution.

3 So Mr Herbst, please proceed.

4 MR HERBST: Your Honour, I think we have all received the
10:51:14 5 amicus brief relating to the Principal Defender's testimony in
6 the issues of privilege there. I wanted to advise the Court, as
7 I have earlier this morning Defence counsel here - I don't think
8 Mr Nicol-Wilson is aware of this yet.

9 But yesterday I was reviewing my Rule 66 disclosures made a
10:51:41 10 year ago and noticed I have disclosed the fact that Mr Kamara had
11 actually disclosed a significant part of the communications that
12 he had and apparently others had. Obviously, because my
13 understanding is that they were the same communications together
14 with the Principal Defender - although I would need confirmation
10:52:08 15 of that before the Court relies on that - but that there had been
16 a disclosure on page 25 and 26 of that document of a significant
17 part of the communications with the Principal Defender.

18 I had not realised that before when I argued the cause.
19 But having realised that, I consulted again Rule 97, section
10:52:50 20 (ii), which indicates that communications between lawyer and
21 client are privileged unless, and (ii) says that the client has
22 voluntarily disclosed the content of the communication to the
23 third party, and the third party then gives evidence of that
24 disclosure.

10:53:06 25 So it seems to me that the third party is myself. And by
26 the way, Mr Kamara did that in the presence of his attorney then
27 and who's representing all the defendants at that time - all the
28 suspects, rather, at that time: Mr Serry-Kamal. No privilege
29 was invoked at the time, and so there was a disclosure to me, and

1 I have subsequently disclosed it in this official Court document,
2 the Rule 66 disclosures.

3 So I advance that as an additional ground for permitting
4 the Principal Defender to testify.

10:53:42 5 Now, in addition, I've had a chance to review the amicus
6 brief filed by the learned law professor who drafted it and filed
7 it, and I saw a number of helpful things in it. One is that
8 there is, in the rules of the International Tribunal of Lebanon,
9 specifically an exception to the crime fraud exception. I had
10:54:15 10 not noted that before. I don't think any counsel here had. So
11 that is an additional support for the notion.

12 Secondly, the amicus suggests that it is not clear that the
13 Principal Defender should be accorded the same attorney-client
14 privilege and he suggests a sui generis privilege which I find
10:55:01 15 no basis for - no authority for. I did not find that persuasive.

16 I did find helpful in the brief his notion that there is no
17 reason not to apply a crime fraud exception to a public - to a
18 Principal Defender as much as it applies to any other lawyer, and
19 I agree with that perception; however, I think he goes on to
10:55:29 20 suggest that because I had announced in a filing that I thought
21 my case was strong --

22 JUSTICE DOHERTY: We are not putting any emphasis on that
23 [Overlapping speakers] --

24 MR HERBST: Okay. And --

10:55:49 25 JUSTICE DOHERTY: Whether the case is strong or weak is a
26 matter to be decided at the end of the trial.

27 MR HERBST: Yes, Your Honour, it was exactly the point I
28 was going to make, and I had the same point for his observation
29 that the communications themselves, in his view, provided flimsy

1 additional evidence. And if Your Honour is taking the same view
2 towards that, I will not further address it.

3 JUSTICE DOHERTY: I can only rely on the briefs before me,
4 and I have read that. Paragraph - I think it's paragraphs 49 and
10:56:23 5 50 of your brief is what is being referred to.

6 Sorry, anything else?

7 MR HERBST: Yes, I would just add that the communications
8 in question from the Principal Defender provide, in my view,
9 substantial evidence, because it - there is a discussion of a
10:56:47 10 review just prior to the time of the approach to 334. It
11 implicates Mr Kanu in the plan. Because while Mr Daniels only
12 talked to Kanu - and Kamara and Brima, the Principal Defender
13 talked to all three. Finally, it lays the groundwork to show the
14 connection with Mr Mansaray and the evidence relating to the
10:57:11 15 meeting at Mr Mansaray's office which the Court has already
16 heard.

17 So that's all I wanted to state, and the summary of my
18 position is that the position remains the same, and I think the
19 testimony should be heard.

10:57:29 20 JUSTICE DOHERTY: You do realise that your preliminary
21 matter was to make submissions on the amicus. Because my
22 intention was to hear this witness through before I address that
23 issue. I have, in fact, read the amicus brief and thought of
24 points. I will stand it down, and I go back to what I said
10:57:52 25 earlier.

26 It's 1.00 here. I know it's 11.00 in Freetown. But I have
27 got the bear in mind that the two accused, Kamara and Kanu, have
28 been here since 8.00 and they are entitled to their lunch-time
29 break. And although it is disruptive, I have to think of that

1 entitlement, and I want them to have their meals before we
2 proceed. It's only reasonable - unless, of course, their counsel
3 has something else to put on their behalf to persuade me
4 otherwise. But I would prefer to respect their entitlement.

10:58:38 5 MR METZGER: On behalf of Mr Kanu, I am most grateful to
6 Your Honour for respecting their entitlement, because it assists
7 my entitlement.

8 JUSTICE DOHERTY: Mr Serry-Kamal, I don't have to ask you.
9 Because a decision has been made by one, it will apply to both.

10:58:51 10 MR SERRY-KAMAL: Yes, Your Honour.

11 JUSTICE DOHERTY: I know we've had a lot of trouble getting
12 this reconnection, but we've got it now, and I'm going to take a
13 break to allow Mr Kanu and Mr Kamara to have their lunch, because
14 they have been here since 8.00, and we will resume - the normal
10:59:17 15 time is three-quarters of an hour. Is that what we need? Is
16 three-quarters of an hour what we need? Do I see them nod in the
17 affirmative.

18 MR METZGER: I understand that to be correct. I haven't
19 checked with the officials, but I believe that they believe that
10:59:37 20 three quarters of an hour is sufficient. I have no idea, of
21 course, as far as we are concerned.

22 JUSTICE DOHERTY: I will adjourn for three quarters of an
23 hour unless there's something that counsel can deal with in the
24 absence of the accused. But you know very well Article 17 says
10:59:53 25 they should hear everything, and they should hear everything. So
26 we'll adjourn for three-quarters of an hour.

27 Mr Herbst.

28 MR HERBST: Yes, Your Honour, at some point I was going to
29 discuss scheduling because I was informed today --

1 JUSTICE DOHERTY: In Chambers.

2 MR HERBST: Okay.

3 JUSTICE DOHERTY: I don't know if you want to do that now,
4 but liaise with counsel for the Defence. I am not going to do it
11:00:16 5 without mutual agreement.

6 MR METZGER: I am content to do everything that we can to
7 assist the Court, but I - Your Honour may know that we got up
8 early today as well, and for my part, because of preparation and
9 so on, all I've had is coffee. I would appreciate --

11:00:39 10 JUSTICE DOHERTY: Very well, we will adjourn for three
11 quarters of an hour.

12 [Break taken at 11.01 a.m.]

13 [Upon resuming at 11.51 a.m.]

14 JUSTICE DOHERTY: Good afternoon, Freetown. Can you hear?

11:51:32 15 MR NICOL-WILSON: Yes, Your Honour.

16 THE INTERPRETER: Yes, the interpreters can.

17 JUSTICE DOHERTY: Thank you, Mr Interpreter. That's fine.

18 Going to continue with Mr Saffa's evidence. I'm not going
19 to deal with this amicus matter until I've got to the end of his
11:51:53 20 evidence.

21 So Mr Saffa, I see you in the witness box. I again remind
22 you, you are under both, that you are obliged to answer questions
23 truthfully, and I ask Mr Herbst to proceed with [inaudible].

24 THE WITNESS: Yes, My Lord.

11:52:22 25 WITNESS: JOSEPH SAFFA [Continued]

26 Examination-in-Chief by Mr Herbst: [Resumed]

27 Q. Good afternoon to you, Mr Saffa.

28 MR HERBST: I believe Your Honour, we had admitted into
29 evidence P8 of December 7 [inaudible] and we had actually a P9

1 December 14th, 2010 memorandum. We held off questions relating
2 to those documents.

3 Q. So first, Mr Saffa, with respect to P8, the December 7th
4 memorandum to Jim Johnson from Magnus Lamin with a copy to you,
11:53:02 5 do you have that document before you?

6 A. No, My Lord.

7 MR HERBST: Can it please be placed before the witness.

8 JUSTICE DOHERTY: Mr Saffa, do you see the document?

9 THE WITNESS: Not yet, My Lord. My Lord, I have now
11:54:20 10 received the document.

11 MR HERBST:

12 Q. Mr Saffa, the information contained in this memorandum, was
13 that obtained in a meeting or in a telephone call?

14 A. This information was given on the telephone.

11:54:39 15 Q. Were you a party to the conversation or was it just
16 Mr Lamin?

17 A. It was just Mr Lamin.

18 Q. Then I'm going to move on. I now want to ask you about P3,
19 the actual signed statement of 334 dated 9 December 2010. Do you
11:55:14 20 have that document before you?

21 A. Not yet, My Lord. I have the document before me now,
22 My Lord.

23 Q. Would you tell the Court how that document was prepared?

24 A. On the 9th December, I called 334 to the office because I
11:55:52 25 wanted to formalise the statement he had made to me before. So
26 on that day in his presence I recorded his statement.

27 Q. All right. Now were you the one who drafted the statement
28 initially?

29 A. Yes, My Lord.

1 Q. What did you use to draft the statement initially?

2 A. I used the witness management template to draft the
3 statement of December 1 and December 3. On December 9, 2010, I
4 also used a witness statement template to compile these notes.

11:57:03 5 Q. You're referring to the document in evidence as P7. I
6 don't know if you have that document before you.

7 MR HERBST: Could we have that document placed before the
8 witness.

9 THE WITNESS: Yes, My Lord. I have the document in front
11:58:02 10 of me now.

11 MR HERBST:

12 Q. And is that the four-page document you have described last
13 week in your testimony and described today as the witness
14 statement template?

11:58:18 15 A. Yes, My Lord.

16 Q. What changes, if any, did you make in this document when
17 preparing P3, the statement that was to be signed by the witness?

18 A. My Lord, the first changes I made was the first paragraph
19 of the statement of December 1 and December 3. That one I did
11:58:49 20 not include on the second document, which is - which was prepared
21 on the 9th of December, 2010.

22 Q. Did you say the fourth or the first paragraph?

23 A. The first. The first, My Lord.

24 Q. The first. All right. And did you make any other changes
11:59:17 25 that you can tell the Court about?

26 A. Yes, My Lord.

27 Q. Please continue. Tell us about the changes.

28 A. The other changes I made was in the second paragraph,
29 beginning with the - the second-to-last sentence, which reads -

1 well, actually, I am going to read the whole paragraph.

2 "On Friday the 26th November, 2010, I received a call from
3 Sammy Kargbo, also known as Sammy Ragga, stating that he,
4 Sammy Ragga, wanted to see me as he has a very important thing to
12:00:14 5 discuss with me."

6 In particular about this sentence:

7 "Sammy Ragga was a member of the AFRC and was amongst those
8 convicted in the West Side Boys case, but was pardoned and
9 released from Pademba Road prisons by the President."

12:00:39 10 Sometime in this statement it was "early this year" but it
11 was changed to "sometime 2009."

12 Q. [Inaudible] change made.

13 A. Please ask your question again.

14 Q. Certainly. Why was that change made?

12:01:16 15 A. This particular change was made because when I prepared the
16 statement, the previous statement to 334, he said it was not
17 early this year but it was sometime in 2009.

18 Q. Thank you. Now can you tell us about the next change that
19 was made?

12:01:57 20 A. Yes, My Lord. The next change I made on this document
21 was - I am searching the place.

22 Q. [Inaudible]

23 A. The next change was I changed the word "recount" to
24 "recant." The word on the first statement, 1 December and 3
12:03:09 25 December was "recount." That was changed to "recant."

26 Q. [Inaudible] Change made, that that change was made?

27 A. I did not get the first word, please.

28 THE INTERPRETER: Your Honour, I learned friend counsel is
29 breaking in. We are not getting his complete question.

1 MR HERBST:

2 Q. How did it come to pass or how did it happen that that
3 change was made?

4 A. My Lord, the reason was that when I recorded the statement
12:04:02 5 on the 1st and 3rd December, I did not actually know the spelling
6 of "recount" - "recant."

7 Q. And who provided the correct spelling to you?

8 A. My Lord, when I recorded that statement, before 334 could
9 come on the 9th, it was Jim Johnson who corrected me to say the
12:04:37 10 actual spelling is "recant."

11 Q. Thank you. And was there anything else that constituted a
12 change in that second paragraph of both the 1st and 3rd December
13 2010 statement and the 9 December 2010 signed statement?

14 A. Yes, My Lord.

12:05:21 15 Q. Please tell us about that one.

16 A. And that is the - that is the - the area I am looking for,
17 but I could still remember there was changes made, but I am
18 looking for it now. But before we deal with that, let me come to
19 the other changes that I realised on this document. Maybe I will
12:05:57 20 come to that later.

21 Q. Go ahead.

22 A. Yeah.

23 Q. [Inaudible] ahead.

24 A. If you look at the statement of December 9, on the second
12:06:16 25 page, the last paragraph, and compare that one to the statement
26 of December 1 and 3, December 1 and 3, page 3, the third
27 paragraph, you see on the statement of December 1 and 3 I said:

28 "I again received a call from Sammy, who told me to meet
29 him downtown Freetown."

1 On the statement of the 9th, which is on the last paragraph
2 of the second page, stated:

3 "On the 1st of December I again received a call from Sammy,
4 who told me to meet him downtown Freetown."

12:07:20 5 This was made for clarity purposes. I asked him and he
6 said it was December 1. So that was changed to December 1
7 instead of just saying "And again I received call ..."

8 Q. All right. Are there - can you tell us about the other
9 changes, if you can identify them?

12:08:02 10 A. Yes. The statement of December 1 and 3, the third
11 paragraph, and the - the third paragraph, please, and the
12 second-to-the-last sentence there was changes made. Let me just
13 look at the - oh, no. The changes that was made was on the
14 statement of December 1 and 3, the third paragraph - the third
12:09:24 15 paragraph, the first paragraph on that page, and also second to
16 the last and the last. On the signed statement, it's recorded:

17 "I was able to recognise the voice of Five Five on the
18 phone at the time I spoke to him."

19 Here it is stated:

12:09:53 20 "I was able to recognise the voice of Five Five on the
21 phone."

22 So that was also made for clarity purpose, wherein he told
23 me that he was able to recognise his voice at that time he spoke
24 to him. And also on that same line, in the first statement he
12:10:23 25 stated:

26 "The phone conversation took place between 11.00 and 12.00
27 a.m., but I was not able to take the phone number from which I
28 spoke to Five Five."

29 "I was not able to take the phone number from which I spoke

1 to Five Five" was dropped out from the statement of December 9.
2 It was dropped out because I didn't see it very important to this
3 narration.

4 Those were the changes that were made on this document.

12:11:20 5 JUSTICE DOHERTY: Mr Saffa, [inaudible] last bit where you
6 said you deleted:

7 "I am not able to take the phone number from which I spoke
8 to Five Five because ..." and I didn't hear your reason. Could
9 you repeat it, please?

12:11:37 10 THE WITNESS: Because I did not see it very important to
11 this particular story.

12 JUSTICE DOHERTY: Please proceed, Mr Herbst.

13 MR HERBST: Thank you.

14 Q. Let me direct your attention to one additional change in
12:11:52 15 the first page in each document and let me ask you about it. In
16 the December 9, 2010 statement, there in the third line from the
17 bottom of the second paragraph - that's the paragraph that begins
18 "On that day I was going to Newton," in the third line from the
19 bottom there is a sentence that reads:

12:12:30 20 "I understood that Ragga wanted me to lie by recanting my
21 in-court testimony."

22 I don't see that line in the third paragraph of 1, 3,
23 December 2010. Let me ask you to look at those two paragraphs -
24 those two separate paragraphs in those two different documents,
12:12:55 25 and tell me first am I correct that that sentence was added in
26 the signed statement on 9 December?

27 A. Yes, My Lord. You are correct.

28 Q. Can you tell us how that sentence came to be added?

29 A. Yes, My Lord. It came to be added because I wanted to have

1 more clarification of what he had told me. Then he told me this,
2 that his understanding was that Ragga wanted him to lie to recant
3 his Court testimony.

4 Q. Thank you, Mr Saffa.

12:13:45 5 MR HERBST: I believe I am done with those two statements.

6 Q. The next document I want to direct your attention to is a
7 document that's in evidence P9, a December 14, 2010 memorandum
8 from Mr Lamin to Johnson with a copy to Joseph Saffa. Do you
9 have that document before you?

12:14:29 10 A. Yes, My Lord, I have it.

11 Q. Would you tell the Court how that document came to be
12 written?

13 A. This document was a memo prepared by Magnus Lamin,
14 investigator, of which he was instructed to call 334 on the 14th
12:14:58 15 of December, 2010, to inform him that --

16 JUSTICE DOHERTY: Mr Saffa, please pause. Mr Saffa, can
17 you hear me?

18 THE WITNESS: Yes, My Lord.

19 JUSTICE DOHERTY: Please pause. Please pause, as I have an
12:15:20 20 objection before me. Please pause.

21 THE WITNESS: Yes, My Lord.

22 MR METZGER: Your Honour, the objection is based on the
23 fact that if the witness is about to give evidence about an
24 instruction to a third party, we have no evidence about his
12:15:33 25 knowledge about that instruction.

26 JUSTICE DOHERTY: Mr Herbst.

27 MR HERBST: Well, Your Honour, it is - it is hearsay, but I
28 think it is admissible. My understanding is that Mr Saffa - that
29 Mr Lamin worked for Mr Saffa and Mr Saffa was knowledgeable about

1 certain --

2 MR METZGER: Your Honour, I object to that explanation
3 again.

4 JUSTICE DOHERTY: You are giving evidence from the bar
12:16:04 5 table.

6 MR HERBST: Well, shall I put some for questions then, Your
7 Honour?

8 JUSTICE DOHERTY: I think it would appropriate.

9 MR HERBST: All right.

12:16:17 10 Q. Mr Saffa, first of all --

11 A. Yes, My Lord.

12 Q. -- did this document come to be written as a result of a
13 meeting with 334, or a telephone call?

14 A. My Lord, this memo was written as a result of a telephone
12:16:33 15 call.

16 Q. [Inaudible] call with 334?

17 A. Yes, My Lord. And I was present when Jim Johnson
18 instructed 334 - Magnus Lamin to call 334.

19 Q. Okay. And after you heard that instruction, did you -
12:17:02 20 what's the next thing that you heard or saw?

21 A. After Magnus Lamin made the call to 334 I was not present,
22 but he prepared this memo and copied it to me.

23 Q. [Inaudible] were you copied on the memo?

24 A. Yes, My Lord.

12:17:29 25 Q. Why was it that you were copied on the memo?

26 A. I was copied on this memo because Mr Magnus Lamin works for
27 me.

28 MR HERBST: Your Honour, I think there is sufficient
29 foundation now to admit the document.

1 MR METZGER: I have to object [overlapping speakers].

2 MR HERBST: Yes, it's already in evidence. But I think the
3 witness now can describe what - his understanding of what
4 occurred now based on the report that he got from Mr Lamin.

12:18:17 5 MR METZGER: Your Honour, I provided the appropriate
6 foundation for questions, and Mr Herbst asks - well, he asked
7 those, there would be no objection. My objection will be to
8 anything the Prosecution seek to adduce about the accuracy of the
9 content of this. Since the Prosecution has chosen to call the
12:18:42 10 evidence in this way, the Defence will not be able to ask
11 questions of the man who took the telephone call, and therefore
12 anything that goes to the accuracy or otherwise of this document
13 cannot be adduced through this witness.

14 JUSTICE DOHERTY: I don't see - the witness has said
12:19:01 15 categorically I was not present. So he didn't hear the
16 conversation. And therefore it is hearsay and it is admissible
17 only as hearsay, but he cannot attest to its accuracy. But
18 reservation exists.

19 MR HERBST: Well, let me ask this question.

12:19:33 20 Q. After this telephone call - well, yes. After this
21 telephone, what, if anything, happened in terms of the
22 investigation?

23 A. My Lord, after this telephone conversation, a contempt
24 motion was prepared for this matter.

12:20:17 25 Q. All right. Well, let me ask this: The last bullet point
26 of the memo says --

27 MR HERBST: Your Honour, it's in evidence, and I'd like to
28 read it out as the predicate for the next question.

29 JUSTICE DOHERTY: You can read it out because the evidence

1 is in evidence.

2 MR HERBST: Yes.

3 Q. It says:

4 "TF1-334 therefore advises to put a hold on the filing
12:20:59 5 until Thursday to see what will be offered to get stronger
6 evidence," Thursday being December 16, two days from the date of
7 the telephone conversation with 334 reflected in this memo.

8 Was the contempt motion filing delayed --

9 MR METZGER: Objection, Your Honour. That is a leading
12:21:35 10 question.

11 JUSTICE DOHERTY: It's leading.

12 MR HERBST:

13 Q. Do you remember when the filing actually occurred?

14 A. The filing occurred on the 17th December, 2010.

12:22:04 15 Q. Do you know why - well, first, do you know of your own
16 knowledge of whether the filing was delayed from December 15 to
17 December 17?

18 MR METZGER: I think that was a leading question. The
19 first - the proper --

12:22:26 20 JUSTICE DOHERTY: First of all, it's leading. And
21 secondly, it's on public record when it was filed --

22 MR HERBST: And may --

23 JUSTICE DOHERTY: The best he can answer is did he know
24 why. That's the best that can be done.

12:22:43 25 MR HERBST: That was my question, actually.

26 JUSTICE DOHERTY: But it wasn't the one that you put.

27 MR HERBST: Okay. I'll rephrase it.

28 Q. What was the reason, if you know - reason or reasons why
29 the matter was filed on December 17th?

1 A. My Lord, I don't know.

2 Q. The next document I want to ask you about is a document
3 that's dated December 17th, 2010. It has you as the declarant.
4 It consists of one page.

12:23:27 5 MR HERBST: And may we have that put before the witness,
6 please.

7 THE WITNESS: I don't have that document, My Lord.

8 JUSTICE DOHERTY: Mr Court Attendant, [inaudible] the
9 document in question. If so, show it to counsel and I would ask
12:23:58 10 Madam Court Manager if she has the document to be shown to
11 counsel who are here.

12 MR METZGER: I believe I know what Mr Herbst is talking
13 about, the 17th of December 2010 document declared by Joseph
14 Saffa, signed by him as senior investigator in the case, starts
12:24:16 15 with the word "I, Joseph Saffa ..." and ends in "this
16 declaration."

17 THE WITNESS: Yes, My Lord. I have the document in front
18 of me now.

19 MR METZGER: May it please Your Honour, I propose to object
12:25:42 20 to this document being put in evidence. If it is of assistance,
21 I can elaborate on my objection now to save time.

22 JUSTICE DOHERTY: Well, the document - it hasn't been
23 recognised by the witness, so it's not been tendered. So are you
24 objecting to having it put before him because he's been told he
12:26:03 25 declared it?

26 MR METZGER: Yes. I am going to object to it on the basis
27 that the whole of the document, apart from the declaration
28 itself, is hearsay. And there is in existence, as far as I
29 understand it, the maker of the statement, that is to say, the

1 hearsay material, and that witness hasn't been called or attested
2 to the material that my learned friend wishes to inquire - wishes
3 to rely on.

4 JUSTICE DOHERTY: Well, our Rules of Evidence permits the
12:26:46 5 admission of hearsay. We do not adopt the best evidence rule. I
6 will allow the document to go before the witness, I will hear
7 what has been said, and in due course weight and reliability will
8 be addressed in, if in fact, the document is admitted.

9 Please proceed, with your questions.

12:27:14 10 MR HERBST: Thank you, Your Honour.

11 Q. Mr Saffa, what is the document that is now before you.
12 Will you tell us what that is?

13 A. Yes, My Lord. This was a declaration that I made on the
14 17th December, 2010.

12:27:36 15 Q. What happened in the investigation that caused you to make
16 this document?

17 A. My Lord, Magnus Lamin, an investigator, told me that he
18 contacted 334 and 334 gave him this information in this document,
19 but I also called 334 and he told me the same thing Magnus Lamin
12:28:12 20 had told me, and I made this declaration, My Lord.

21 MR HERBST: Your Honour --

22 MR METZGER: On that basis I object to this material - on
23 the basis that the Defence have never been disclosed any
24 information, to the best of my knowledge, that suggests that this
12:28:36 25 witness spoke personally with 334. Could we please be provided
26 with the relevant contact information?

27 MR HERBST: You want the relevant contact information for -
28 I'm sorry, Your Honour, to address counsel directly. I didn't
29 quite understand what he was requesting of me.

1 Are you looking for the contact information of Mr Lamin?

12:29:19 2 MR METZGER: The contact information, Your Honour, between
3 Mr Saffa and 334. Mr [inaudible] the person in point. As I
4 understand the evidence as it stands now, the Prosecution case,
5 through the evidence of Mr Saffa, is that he, himself, spoke to
6 334.

7 JUSTICE DOHERTY: To be clear on record, the witness said:
8 "I also contacted 334 and he told me the same thing."
9 Is Defence counsel saying that that particular conversation
12:29:40 10 [inaudible] wants disclosed?

11 MR METZGER: Yes, Your Honour. Can I make it plain, the
12 document which is the declaration does confirm what Mr Saffa has
13 said but it does not contain within the contact summary that has
14 been provided by the Prosecution to the Defence in this case, and
12:30:38 15 that is the point at which I am making an objection or indicating
16 what the position is.

17 JUSTICE DOHERTY: You mean a written document showing that
18 there was a contact?

19 MR METZGER: Your Honour, yes.

12:30:51 20 MR HERBST: You --

21 JUSTICE DOHERTY: First of all, I need to ascertain that
22 there was such a document.

23 MR HERBST: Your Honour, I think counsel is referring to a
24 three-page computerised set of entries that we have been
12:31:09 25 referring to as the contact summary. That document --

26 JUSTICE DOHERTY: Is not before me and I don't know
27 anything about it. So let's find out if Mr Saffa wrote anything
28 down, because the documents I have in front of me all were
29 compiled prior to the 17th of December. For all I know, he may

1 or may not have written something.

2 MR HERBST: May I inquire of the witness?

3 JUSTICE DOHERTY: Please ask him.

4 MR HERBST:

12:31:46 5 Q. Mr Saffa, other than this one page declaration, this
6 one-page declaration dated 17th December, 2010, did you make any
7 other memo or entry relating to this conversation? In other
8 words, do you have anything else in writing of - not the
9 conversation but that relates to the events that were recorded in
12:32:07 10 this memorandum? Do you have any other writing that reflects
11 your conversation with 334 in which he related this to you?

12 A. My Lord, I cannot remember.

13 MR HERBST: Your Honour, I will represent that I have --

14 JUSTICE DOHERTY: No. If there is evidence from the bar
12:32:38 15 table, it will not be represented to me. I am going to make a
16 ruling on this now.

17 The witness has said, "I also contacted 334 and he told me
18 the same thing." The witness does not recall if he recorded
19 something in writing. Therefore, if there is nothing in writing,
12:32:56 20 and he's in doubt as to whether there is anything in writing, it
21 could not have been disclosed. I am satisfied that he made the
22 document based on his conversation on the 17th of December, that
23 he can look to the content of it now and tell me what is in it.

24 MR METZGER: Your Honour, may I make a supplementary point
12:33:18 25 following Your Honour's ruling? That is that as the witness has
26 stated that "I cannot remember," can I ask the witness or the
27 Office of the Prosecutor to use their best endeavours to check
28 the records that are available to them? Because "I cannot
29 recall" may mean that there is a record, and if there is one it

1 ought properly, respectfully, to be disclosed.

2 MR HERBST: Your Honour --

3 JUSTICE DOHERTY: Yes, that's correct.

4 Yes, Mr Herbst. I apologise.

12:33:51 5 MR HERBST: I apologise for interrupting you.

6 JUSTICE DOHERTY: No, I should have allowed you to reply.

7 MR HERBST: I just want to make clear to the Court and all
8 counsel that I have inquired on a number of occasions now of the
9 OTP as to whether there is anything else in writing relevant to
10 these events. I have been advised that there is not. Now I also
11 have been advised of certain things about the records or record
12 keeping at OTP which could shed some light on why - why these are
13 all, but I am hesitant, in light of Your Honour's direction to me
14 not to - not to give evidence.

12:34:30 15 JUSTICE DOHERTY: That --

16 MR HERBST: I --

17 JUSTICE DOHERTY: I'll say what has been said in various
18 trials in the Special Court, which is that there is a continuing
19 obligation to disclose. If there is anything that comes up, then
12:34:47 20 there is a provision in Rule 66, I think it's Rule 66(ii) that
21 allows an application to be made on the showing of good cause to
22 disclose. I am satisfied on the evidence before me that
23 everything that could be disclosed has been disclosed, and I am
24 not going to take any longer on this. I note that if it is found
12:35:12 25 it will be disclosed and good cause will have to be shown to this
26 Court before it can be admitted - or dealt with.

27 MR METZGER: I am grateful to Your Honour. As I said,
28 I'm - I don't take issues with disclosure. I am merely asking
29 for a check to be made because it may be that it has been missed.

1 And I don't want to blame the Prosecution for the issue of
2 non-disclosure because of something that they missed.

3 JUSTICE DOHERTY: I accept that if it's not here it is by
4 inadvertence. I accept that. I attach blame to no one. And let
12:35:51 5 us face facts - it was 18 months ago.

6 Proceed.

7 MR HERBST: May I proceed Your Honour? Thank you.

8 Q. Now, Mr Saffa, would you look at the content yourself, the
9 content of the document, and tell us whether this document, to
12:36:06 10 the best of your recollection, accurately summarises what you
11 learned from 334 on 16 December, 2010?

12 A. Yes, My Lord. This document is a true reflection of what
13 334 told me when I spoke to him on the 17th December, 2010.

14 MR HERBST: Your Honour, I moved to admit the document as
12:36:48 15 P10.

16 JUSTICE DOHERTY: Counsel? I haven't seen the document so
17 I don't know which of the accused it refers to.

18 So Mr Serry-Kamal, you're the most senior counsel.

19 MR SERRY-KAMAL: No objection, Your Honour.

12:37:08 20 JUSTICE DOHERTY: Mr Metzger. Mr Metzger, do you --

21 MR METZGER: Your Honour has ruled on the matter. Far be
22 it for me at this point in time to seek to go against your
23 ruling.

24 JUSTICE DOHERTY: Thank you, Mr Metzger.

12:37:23 25 Mr Nicol-Wilson?

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

27 JUSTICE DOHERTY: [Inaudible] counsel. That becomes
28 Prosecution Exhibit P10. I will now look at the document.
29 Please pause.

1 EXHIBIT P10 ADMITTED AND MARKED

2 JUSTICE DOHERTY: I have read the document. Please
3 proceed.

4 Can I take care in communications between Madam Court
12:38:29 5 Attendant and Prosecutor if they are not - I want to avoid any
6 arguments that things have been said that aren't --

7 MR METZGER: I have no objection to Madam Court attendant
8 speaking to my learned friend.

9 THE COURT OFFICER: [In Kigali] Madam, I just want to
12:38:47 10 clarify what I was telling the Prosecutor. I have made it clear
11 to counsel that any exhibits that are to be used during the
12 trial, they need to give it to me during the morning so that we
13 can communicate to Freetown and Kigali. So I just was making
14 sure that he wasn't going to use anything else that Freetown has
12:39:03 15 not got.

16 JUSTICE DOHERTY: Thank you for that clarification. It's
17 just for purposes of transparency one always must make these
18 notes. But counsel for the Defence hasn't raised any issues so
19 that's fine.

12:39:20 20 Prosecution Exhibit P10.

21 MR HERBST: Your Honour, I want to add that I was going
22 to - just for the sake of completeness - add the two remaining
23 documents and discuss them with the witness. But my
24 understanding is that both documents that have been previously
12:39:39 25 tendered to the Court Attendant for transmission to Freetown. So
26 if Your Honour gives me one minute. [Inaudible] I was just
27 trying to retrieve some additional copies that I could give to
28 Court Attendant to transfer.

29 JUSTICE DOHERTY: That's fine.

1 MR HERBST: Your Honour, there will be a slight delay while
2 we transmit those, the remaining two documents to Freetown.
3 It's - it would be faster just to transmit them rather than to
4 try to locate the copies already in the Court.

12:41:58 5 JUSTICE DOHERTY: These have been shown to counsel for the
6 Defence [inaudible].

7 MR HERBST: Yes, Your Honour. They are a Lamin memo to
8 Saffa dated 1/21/2011 and then a three page contact summary that
9 counsel has mentioned. To provide you copies, Mr Serry-Kamal.

12:42:42 10 Your Honour, whenever the first document arrives, which is
11 this one page document, dated 1/21/2011, from Magnus Lamin to
12 Joseph Saffa, I would just ask it to be placed before the
13 witness.

14 JUSTICE DOHERTY: Mr Court Attendant in Freetown, do you
12:43:05 15 have a copy to show the witness?

16 THE COURT OFFICER: No, Your Honour. I'm waiting to
17 receive it.

18 Your Honour, the document has been shown to the witness and
19 counsel.

12:45:26 20 JUSTICE DOHERTY: Please proceed.

21 MR HERBST: Thank you, Your Honour.

22 Q. Mr Saffa, would you tell us what the document is that's
23 been placed before you? And I'm speaking now of the e-mail that
24 starts in the middle. There is an e-mail and a forwarding. So
12:45:50 25 I'm really talking about the e-mail that's dated 1/21/2011, 12.14
26 p.m., from Magnus Lamin to Joseph Saffa, subject: "334."

27 A. Yes, My Lord. This was an e-mail that was sent to me by
28 Magnus Lamin on the 21st January, 2011.

29 Q. [Inaudible] the contempt filing; is that right?

1 A. Yes, My Lord.

2 Q. [Inaudible] occasioned the writing of this memo?

3 A. Please ask the question again.

4 Q. Yes. What happened before this memo was written that
12:46:47 5 caused Mr Lamin to write this memo to you?

6 A. Mr Lamin was asked to call 334, and through that contact he
7 prepared this memo to me.

8 Q. And was this a memorandum you received in the ordinary
9 course of business in your capacity as senior investigator at
12:47:25 10 OTP?

11 A. Yes, My Lord.

12 Q. The ordinary and usual and regular practice for you to make
13 and keep documents like this?

14 A. Yes, My Lord.

12:47:44 15 MR HERBST: I move the admission of the document, Your
16 Honour, as a business record.

17 MR METZGER: I object to it, Your Honour. I object to it
18 on the basis that the questions asked by the Learned Prosecutor
19 relate to ordinary business records.

12:48:01 20 As I have stated before, Mr Lamin played a, if not pivotal,
21 certainly a very large role in the investigation of this matter.
22 We've already heard that he spoke with him on three other
23 occasions. The Prosecution, for whatever reason, have chosen not
24 to call him. Whilst I accept that these courts have taken
12:48:27 25 evidence where they can, effectively, the Prosecution has not
26 compiled with Rule 92^{quater}. In my respectful submission, that
27 the rule should be followed if the Prosecution wish to rely upon
28 that evidence.

29 And in all the circumstances of this case, it seems to me

1 that simply speaking to admit it as a business record is a way of
2 going behind the position where they need to call Mr Lamin. Now,
3 in these proceedings in this jurisprudence, as in many others, he
4 who alleges must prove. The Prosecution make their allegation
12:49:18 5 and they can prove the case in any which way they wish to wish
6 relevant defendant. The rules considering this to be the
7 position, have allowed under the provisions of Rule 92 *ter* for a
8 position for all the parties to agree for a document to be placed
9 before the Court, whatever weight the Court wishes to put on it,
12:49:55 10 in circumstances where, actually, the witness is present in
11 Court, the witness is available to be cross-examined, and any
12 questions the Judge may have for it, and the statement or
13 transcript. None of these apply in this case and in the face of
14 *92ter, 92quater*. It seems to me that there is no other basis for
12:50:22 15 putting this evidence before the Court. Therefore, the Defence,
16 on behalf of Santi gie Borbor Kanu, objects to the admission of
17 this document into evidence.

18 Oh, sorry, I should also add this is another document that
19 I don't seem to have an indication exists in the contact summary
12:50:44 20 as per date.

21 JUSTICE DOHERTY: Mr Herbst, your response.

22 MR HERBST: Yes, Your Honour. First as to the last point,
23 when we come to the contact summary, which is the next to be
24 introduced, I believe the Court and counsel will hear evidence
12:51:08 25 from the witness as to why it's not in the contact summary and
26 what the contact summary represents.

27 With respect to the - the other objections, first of all
28 the only rule on documentary evidence that I could find in the
29 Rules is Rule 89, the general provisions, which say generally

1 that the Chamber may admit any general evidence. There is no
2 rule about documents and records. I find that interesting, but
3 unless I am missing something I could find no other rule. The
4 other rules deal with witnesses and witness statements and so
12:51:52 5 forth.

6 First of all, Mr Lamin is, of course, available to the
7 Defence if they wish to call him for any further clarification.
8 There are - I think we've heard evidence of four different OTP
9 staff members, perhaps five, who were involved at various stages
12:52:15 10 of interaction with 334. I don't believe it's incumbent upon the
11 Prosecution to call all five.

12 We called Mr Saffa and we disclosed that we would call
13 either Mr Lamin or Mr Saffa in our disclosures. I don't think
14 it's incumbent upon the Prosecution to call every single member
12:52:36 15 of OTP to provide the relevant documentary evidence as to what
16 was generated in the course of the investigation with respect to
17 334.

18 So we've already heard that Magnus Lamin worked for
19 Mr Saffa. He obviously was under an occupational duty, so to
12:53:01 20 speak, to record accurately, to the best of his ability to do so,
21 the official communications he had with witnesses like 334, and I
22 think it's perfectly appropriate --

23 MR METZGER: I was hoping I wouldn't have to formally
24 object. My friend is again regrettably, and I understand it is
12:53:29 25 the different legal culture, seeking to give evidence from his
26 position as counsel which he ought not to do.

27 JUSTICE DOHERTY: [Inaudible] can - the comment is that the
28 witness himself has said that Mr Lamin works for him. That he
29 did say under oath. That was the only thing I can - that's the

1 only thing I've recorded.

2 MR HERBST: Yes. I was saying the second because I thought
3 it was implicit, but I can certainly ask the question. I thought
4 it was implicit in the relationship but I can ask if the Court
12:54:10 5 wants me to ask an additional foundational question.

6 JUSTICE DOHERTY: Let me have a look at these Rules. Is
7 there any other point you wish to make, Mr Herbst?

8 MR HERBST: No, Your Honour.

9 MR METZGER: Short response on the law, Your Honour. I
12:54:29 10 acknowledge the existence of Rule 89 and remind myself, if not
11 the Court, that Rule 89 is not a mandatory provision. It says
12 the Court may "which clearly, therefore, Rule 89 is subservient
13 and must pay - abeyance or pay attention to Rules 92 *ter* and
14 92 *quater*, which I've already cited to Your Honour.

12:54:56 15 Respectfully, it is for the Prosecution to call whatever
16 case it wishes, but when it relies on evidence from a particular
17 witness it is not for the Prosecution to say, I have sitting in
18 the wings Mr Lamin, if you want to call him as your witness.
19 Because certainly the Prosecution ought not to dictate what
12:55:19 20 witness the Defence is to call. If Mr Lamin is sitting in the
21 wings, well, we have no problem because he can be called as a
22 witness for the Prosecution and we can cross-examine him.

23 In present terms I acknowledge that certain of this
24 evidence to this certain extent has been asked of 334. He's been
12:55:38 25 cross-examined on that and I'm content with the state of the
26 questions that have been asked on his cross-examination.
27 However, if the Prosecution wish to adduce this from another
28 angle, that is to say this angle, respectfully, the Defence would
29 be at a disadvantage because we do not have the opportunity. I

1 repeat, we do not have the opportunity to cross-examine Mr Lamin
2 on behalf of Mr Kanu, and it's his right under Article 17 to have
3 witnesses against him asked questions.

4 MR HERBST: Your Honour, on the law, just one other --

12:56:26 5 JUSTICE DOHERTY: There has to be an end, Mr Herbst.

6 MR HERBST: All right. Okay. Never mind.

7 JUSTICE DOHERTY: Mr Saffa, you said in evidence Mr Lamin
8 was asked to call 334. Who asked him to call 334?

9 THE WITNESS: I asked him, My Lord, because I got
12:57:04 10 instruction from Jim Johnson.

11 JUSTICE DOHERTY: This is a ruling on an objection to admit
12 a document into evidence. The Defence objects, basically, excuse
13 me, Defence for Mr Kanu objects. I haven't actually heard from
14 other counsel but I'll hear from them. And perhaps it would be
13:02:33 15 more correct to hear other counsel before I make any ruling,
16 because I have to consider all of the objections and I will then
17 make a ruling. I should not do it at this point.

18 Mr Serry-Kamal, counsel for Prosecution has moved a
19 document, as you have heard, adhered to by this witness. Have
13:02:57 20 you --

21 MR SERRY-KAMAL: I am grateful to Your Honour. I am
22 adopting my learned friend's objection.

23 JUSTICE DOHERTY: Thank you, Mr Serry-Kamal. And I
24 apologise for not asking you earlier.

13:03:11 25 MR SERRY-KAMAL: No problem.

26 JUSTICE DOHERTY: Mr Nicol-Wilson, I, too, overlooked to
27 ask you for your views on this document.

28 MR NICOL-WILSON: Your Honour, I associate with the
29 objections Mr Kevin Metzger.

1 JUSTICE DOHERTY: Yes.

2 The Defence objects to the admission into evidence of a
3 document, basically, because the witness in question is not the
4 author of the document. The author is available and should give
13:04:37 5 evidence on it; hence, in their submission the document does not
6 fall within the provisions of Rule 92 quater ^ ; that is, this:

7 Witness, the author is not an unavailable person, and Rule
8 92 *ter* they have not agreed to the admission of the document and
9 the other conditions in that Rule are not met.

13:05:10 10 I would say that it is not for the Court to dictate what
11 witnesses a party calls. The Court is its own jurisdiction
12 provided in Rule 85(A)(iv), to call, but that does not permit
13 them to dictate to a party.

14 The evidence before me is that this document was compiled
13:05:34 15 on the instruction of the witness who is now giving evidence, and
16 following that instruction the document was prepared and came
17 into the custody and control of the witness. It is hearsay.
18 However, given that it was on his instruction and it came within
19 his control, I will admit it for that reason but I note that
13:06:05 20 since it is hearsay, weight, et cetera, is a matter that I
21 reserve.

22 So I haven't read or seen the document yet, but it will
23 become Prosecution Exhibit P8.

24 MR SERRY-KAMAL: I just want some clarification. Will
13:06:34 25 I learned counsel be allowed to comment on the document once it is
26 admitted in evidence?

27 JUSTICE DOHERTY: That's why I say that weight, et cetera,
28 means that you can comment very much so because the fact that the
29 document is in doesn't mean to say that its credibility, weight,

1 et cetera, is not a matter for submission.

2 MR SERRY-KAMAL: No I mean --

3 JUSTICE DOHERTY: [Overlapping speakers]

4 MR SERRY-KAMAL: I mean the Prosecution. Not the Defence.

13:07:04 5 I mean the Prosecution.

6 JUSTICE DOHERTY: How do you mean the Prosecution can
7 comment? I don't understand that.

8 MR SERRY-KAMAL: [Inaudible] invites comments from his
9 witnesses. It seems to be the practice.

13:07:15 10 JUSTICE DOHERTY: Well, if there is a question put that is
11 objectionable, I will deal with it at the time.

12 MR SERRY-KAMAL: As Your Honour pleases.

13 MR METZGER: Your Honour, before we continue, may I also
14 ask for clarification. Your Honour has admitted the document.

13:07:29 15 Would that be under Rule 89 or under some other Rule?

16 JUSTICE DOHERTY: It's under Rule 89.

17 MR METZGER: Thank you, Your Honour.

18 JUSTICE DOHERTY: I have read the document, and I will just
19 remark about making any rule on it. It's not only a hearsay,

13:08:29 20 it's a hearsay upon a hearsay, and it express views which a
21 witness has conveyed. That's all I will say.

22 Please proceed, Mr Herbst.

23 MR HERBST: Your Honour, I am going to go onto the last
24 document.

13:08:49 25 JUSTICE DOHERTY: [Overlapping speakers]

26 MR HERBST: I'm not going to [inaudible] in light of Your
27 Honour's comments.

28 JUSTICE DOHERTY: They were only comments. They do not at
29 all preclude you from asking a question.

1 MR HERBST: I'm not at all suggesting that Your Honour is
2 precluding me. This is a voluntarily decision on my part.

3 JUSTICE DOHERTY: Thank you.

4 MR HERBST: I would like to have the final document placed
13:09:10 5 before the witness. This is the three-page - it's actually two
6 pages and four lines which my learned friend, Mr Metzger, during
7 334's cross-examination, referred to as the contact summary. And
8 I will adopt the name of the document and I will ask if the
9 witness has it before him.

13:09:42 10 THE WITNESS: No, My Lord.

11 MR HERBST: It appears that we have lost the video-link.

12 JUSTICE DOHERTY: I heard the witness reply quite clearly.

13 MR HERBST: Yes, we still have audio but not video.

14 THE COURT OFFICER: Your Honour, may I proceed and pass the
13:09:58 15 document?

16 JUSTICE DOHERTY: [Overlapping speakers] [inaudible]
17 tendered that would be most helpful.

18 THE COURT OFFICER: The document is before the witness.

19 MR HERBST: If I may, Your Honour.

13:11:04 20 Q. Mr Saffa, you have before you what we have called the
21 contact summary. Would you tell the Court what this document is?

22 A. My Lord, this is a contact summary of contacts we made to
23 witnesses, sources, and other people.

24 Q. And can you tell us a little bit about how it was prepared;
13:11:46 25 in other words, was a computer used; is it generated in some
26 other fashion? How was it made and kept at the time of these
27 entries on the document?

28 A. My Lord, this contact summary is usually made by the
29 Witness Management Unit within the Office of the Prosecutor.

1 They are also investigators, but when we make contact, they will
2 make these entries into the witness management database. And
3 before this time, there was one investigator, Stephanie Hussey
4 was responsible for making these entries into the witness
13:12:53 5 database. Then she left and it was taken over by Aiah Komeh. He
6 also is an investigator currently at the Office of the
7 Prosecutor.

8 JUSTICE DOHERTY: Before you proceed, Mr Saffa, please give
9 me the spelling of the surname, the lady you named as Stephanie
13:13:19 10 and the other.

11 THE WITNESS: H-U-S-S-E-Y, Stephanie Hussey.

12 JUSTICE DOHERTY: And someone called Aiah.

13 THE WITNESS: The other name is Aiah. And the last anyway
14 is Komeh, K-O-M-E-H. This contact --

13:13:53 15 JUSTICE DOHERTY: Thank you. Please proceed.

16 THE WITNESS: -- is usually done periodically by the person
17 in charge who is Aiah Komeh now. The contacts are entered here
18 based on the contacts we made to witnesses and sources.

19 MR HERBST:

13:14:44 20 Q. Let me ask you this question: You mentioned a witness
21 management unit within the OTP. Was that a different unit than
22 the investigative unit in which you were a senior investigator?

23 A. My Lord, it's not a different unit as such, because this
24 database is usually maintained by investigators. It's just a
13:15:18 25 unit within the investigations section of the OTP.

26 Q. This document appears to contain entries starting in -
27 well, full entries starting in November 15, 2000 --

28 MR METZGER: Your Honour, I object. Well, I don't object,
29 I would - I suppose the point I am making is I would like the

1 witness to tell us why this document starts working and how it
2 was compiled.

3 MR HERBST: That's what I was trying to elicit as well.

4 Q. Tell us --

13:16:21 5 MR HERBST: Let me just ask: Are you going to object to
6 this document?

7 JUSTICE DOHERTY: I don't think you should ask that
8 question until we hear some evidence.

9 MR HERBST: All right.

13:16:31 10 Q. Mr Saffa, [inaudible] was this contact summary compiled?

11 A. Yes, My Lord, it was compiled. And as I can say, the
12 document there by Stephanie Hussey and Aiah Komeh.

13 Q. Yes. You told us by whom it was - these entries in this
14 period were compiled, but how did they go about making the
15 entries, recording them? What did they do to do this?

13:17:10

16 A. My Lord, when we have contact with witnesses, then the
17 people in that unit can record the contact of those witnesses and
18 sources on that database, but it is done periodically.

19 Q. What is the period of time that this contact summary
20 covers?

13:17:50

21 A. My Lord, you can see that the entries are made
22 periodically, and it's not on a daily basis. It's not every day
23 that they do these entries on the database. Sometimes it would
24 take like two weeks, three weeks, before they can make some
25 entries into the witnesses management database.

13:18:24

26 JUSTICE DOHERTY: Witness, what period of time is covered
27 by this paper or document?

28 THE WITNESS: If we can look at the second paragraph, the
29 last entry was made on the 15th November, 2010, and coming down,

1 the next entry was made on November 30, 2010. If you go further
2 than that, the next entry was made on December 7, 2010. And the
3 other entry after that was made on January 11, 2011; and the last
4 one here was made on January 24, 2011.

13:19:47 5 JUSTICE DOHERTY: Mr Saffa, I thought I heard you say the
6 last entry was 15th of November. Could you please clarify that
7 word?

8 THE WITNESS: My Lord, I did not say the last entry. I
9 said if you look at the document - in fact, I left out the first
13:20:07 10 paragraph and the first paragraph - yes, on that document. Let
11 me just start: The first entry on this document was made on the
12 1st September, 2010. I was saying if you look at that document,
13 the second entry was made on 15th November, 2010, My Lord.

14 JUSTICE DOHERTY: Thank you. [Inaudible] on that point
13:20:37 15 now.

16 MR HERBST: Let me ask a clarifying question.

17 Q. The two lines that relate to September 1, 2010 --

18 MR METZGER: That might be leading.

19 MR HERBST: No, I don't think it is.

13:20:55 20 MR METZGER: It might be.

21 MR HERBST:

22 Q. -- where is that entry?

23 A. That entry is also in the witness management database, but
24 it is related not to this matter before the Court now. And also
13:21:09 25 the second paragraph, 15 November 2010, is related to some other
26 contacts we had made with 334 before now.

27 Q. All right. So is it fair to say that based on the answer
28 to your prior question, the first entry relating to this case is
29 the entry that you described on - as being entered on November

1 30, 2010?

2 A. Yes, My Lord.

3 Q. Now, you've earlier testified to a number of things that
4 happened on days other than the days in which these entries exist
13:22:17 5 in this contact summary. Can you explain to the Court why - why
6 the document is - is incomplete, that it doesn't contain
7 everything that occurred with respect to the investigation?

8 A. My Lord, like I said --

9 MR METZGER: [Overlapping speakers].

13:22:39 10 THE WITNESS: -- that this particular --

11 JUSTICE DOHERTY: Mr Saffa, please wait a moment. There is
12 an objection.

13 MR METZGER: Yes. I know my learned friend didn't mean to
14 lead when he said that this document is incomplete. I don't
13:22:52 15 think we have had evidence on this document being incomplete. I
16 don't think we have had evidence on, basically, how this document
17 was put together, on whether the database covers everything that
18 the Prosecution does, and so on and so forth. If it is a
19 collated document or simply an excerpt taken, as it were, on
13:23:15 20 block from the so-called witness database, obviously it's a
21 matter for my learned friend if he wishes to do that or not. But
22 it would greatly assist if we don't, as it were, make assumptions
23 that the document is incomplete, because I don't think he has
24 given that evidence yet.

13:23:35 25 MR HERBST: Well, he --

26 JUSTICE DOHERTY: I must say that I would like to get more
27 evidence. Because we have got on record that there was an entry
28 for the 1st of September, but it's not on the document he's got
29 before him. He's also said it relates to other contact. So by

1 implication there is other contact, and it's not in this - it
2 would appear by implication it's not in this document.

3 So this leads me - particularly in relation to certain
4 matters put in cross-examination by both Defence counsel here and
13:24:12 5 by Mr Nicol-Wilson - that by implication there may have been
6 other contact that could go to questions of credibility of other
7 witnesses.

8 So if there is something missing or this is a selective
9 database, I'd like to be clear on this point. Because I'm going
13:24:40 10 to have to rule on some credibility issues in due course.

11 MR HERBST: Your Honour, that was the point of my question.
12 Perhaps I didn't phrase it artfully, but it's been obvious
13 through his testimony that there are things that happened that
14 weren't on there. So I was going - I was going to --

13:24:59 15 JUSTICE DOHERTY: Yes, well, perhaps - I would like - I am
16 loathe to take over the examination-in-chief, but this - the
17 implications are there, but not the actual facts. So can I work
18 out what this database is all about and how it's compiled, and
19 then if it's by way of - well, I am not going to put words in
13:25:29 20 anybody's mouth.

21 MR SERRY-KAMAL: Your Honour, I just want a clarification.
22 Has this document been admitted in evidence?

23 JUSTICE DOHERTY: No, but there has been a lot of talk
24 about it.

13:25:40 25 MR SERRY-KAMAL: That is my concern.

26 MR HERBST: And there was a lot of cross-examination on it,
27 so that's why I'm putting --

28 MR SERRY-KAMAL: That - that's notwithstanding, with
29 respect. It has to be admitted in evidence first before we can

1 [inaudible].

2 JUSTICE DOHERTY: Well, in order to decide whether it's
3 admissible or not, I'd like to find out how and why it's prepared
4 and what's usually in it.

13:26:05 5 MR SERRY-KAMAL: [Inaudible] form the basis for admitting
6 it in evidence.

7 JUSTICE DOHERTY: That's what I'm going to try and find
8 out. Let's have some evidence on this.

9 MR METZGER: I am content with that approach, Your Honour,
13:26:17 10 for the record.

11 MR HERBST: Well, I had asked - I'd asked that question
12 before, but I guess I didn't elicit all the information.

13 Q. Mr Saffa, can you tell us how and why this database was
14 maintained? What's the purpose of this database?

13:26:37 15 A. My Lord, this database was maintained or is maintained for
16 all investigators at the Office of the Prosecutor to enter
17 contact information on this database.

18 Q. Well, is it the purpose to record every contact that every
19 investigator makes with every witness, or is there some --

13:27:16 20 JUSTICE DOHERTY: Leading.

21 MR HERBST: I --

22 JUSTICE DOHERTY: No, no. For all I know, it could be
23 contact with the man in the moon. [Inaudible].

24 MR METZGER: I wonder if I could help here. It may be of
13:27:36 25 assistance if the witness were to direct his line as to how the
26 information that is entered by the third party becomes a part of
27 this database.

28 MR HERBST: Let me try to go about it in a different way.

29 Q. You've testified that Stephanie Hussey, when she had the

1 responsibility, and Aiah Komeh, later, when she left and he took
2 on the responsibility, had the responsibility to make the entries
3 in this database.

4 A. My --

13:28:22 5 Q. [Inaudible] getting the information to place in this
6 database?

7 A. My Lord, I was coming in. I did not get the last part of
8 your question, please.

9 Q. My question is that you earlier testified that Stephanie
13:28:43 10 Hussey and then later Aiah Komeh had the responsibility for
11 making certain entries into this database. How did they go
12 about - what was the procedure by which they went about making
13 entries into this database?

14 A. My Lord, the procedure was whenever contacts were made they
13:29:05 15 will get information from the other investigators, and that
16 information will be included in this database. But it was not
17 necessarily that every contact that we made to sources and
18 witnesses were entered into this database, because there was also
19 active investigations wherein we did not put that kind of
13:29:39 20 information in the database.

21 Q. Okay. That's what I was trying to understand. How did one
22 distinguish between matters under active investigation which did
23 not go into the database, and other contacts with witnesses and
24 sources that did go into the database?

13:30:04 25 A. My Lord, like, if a matter is reported - like in this case
26 now, it was reported to us and we were looking into it, that was
27 an active investigator - investigation, and it does not
28 necessarily mean that all the information that we have would have
29 to go into the witness management database. But, like, if -

1 like, we - we speak to somebody, a witness or a source, most
2 times those information - those contact information will be
3 included in the witness management database.

13:31:18 4 Q. [Inaudible] January 10 to January 24th, 2011, without any
5 omissions or deletions? In other words, is it a complete
6 rendering of the entries during that period of time?

7 A. My Lord, as I can see, this is not a complete entry of all
8 the contacts at that time.

13:31:56 9 Q. Are you saying that the database does not contain all of
10 the contacts that you had with the witnesses at that time, or are
11 you saying that the database - the printout of the database is
12 missing certain entries from the database that were actually put
13 into the database during that period of time?

14 A. My Lord, what --

13:32:15 15 Q. [Overlapping speakers]

16 A. -- I am saying is that the database does not have all the -
17 the contacts that were made during that time.

18 Q. I understand you've testified to that, but that was not my
19 question.

13:32:32 20 A. Yes, sir.

21 Q. My question had to do with the integrity of the database
22 entries itself. I want to know --

23 MR METZGER: Your Honour, I object. I object. My
24 objection is on this basis: In order for this witness to be in a
13:32:47 25 position to tell us about the integrity or otherwise of the
26 database, we need to know what relationship he had with the
27 database, and I don't believe that that has been established as
28 yet.

29 MR HERBST: Your Honour, I think I've asked him. He said

1 it was maintained by this separate unit and these people, but I
2 think my question is proper.

3 JUSTICE DOHERTY: Let me just say, in a previous answer the
4 procedure whenever contacts were made on information from other
13:33:18 5 investigators, it was put - put in, contact resources or
6 witnesses. So he's an investigator. It would appear he knows
7 something of it. But he gave the - I'll allow the question.

8 MR HERBST: At this point I would normally ask the court
9 reporter read back the question, but I will try to repeat it.

13:33:50 10 Q. Mr Saffa, you've looking at the document. You have
11 testified to the entries in chronological order, starting from a
12 partial entry of September 1, and then November 15, and then the
13 entries that follow. My question is: Did you or anybody else
14 eliminate any entries from the database when this was printed
13:34:14 15 out, or did you give me a copy of all the entries in the database
16 from that period of time?

17 MR METZGER: Your Honour, I object. Can the witness
18 refrain from answering the question while I object?

19 The simple point is this: We still do not know if this
13:34:34 20 witness has access to the complete database. That is the basis
21 of my objection. Because if he relies on the third party who has
22 access to the database, he will not be able to answer that
23 question. So for the record, it would seem to me that that is at
24 least a foundational question that needs to be asked before we
13:34:52 25 can go to this stage.

26 JUSTICE DOHERTY: I am not clear how this database is
27 compiled or what it's for. What is not clear to me is whether
28 there is some sort of big master database for every contact or
29 whether there are separate databases for separate witnesses,

1 separate sources, and so on. So I don't know that and therefore
2 I don't know if this is an extract from an enormous, great
3 database, and until I am clear on this I'm finding some of this
4 evidence inconclusive.

13:35:31 5 MR HERBST: Your Honour, I am happy for Your Honour to ask
6 the questions if you wish.

7 JUSTICE DOHERTY: I am not taking over --

8 MR HERBST: All right.

9 JUSTICE DOHERTY: -- but I will over this one because I want
13:35:44 10 to be clear how this works.

11 MR HERBST: I would like Your Honour to be clear. Thank
12 you.

13 JUSTICE DOHERTY: Mr Saffa, I am trying to clarify exactly
14 what this database is all about. You have told us it's to do
13:35:57 15 with, and I quote, "contact to sources and witnesses and it's
16 entered but not every contact. It depends on whether they're
17 active." Now, is this contact database a great big list that
18 covers every contact that investigators make with every witness
19 and/or every source? That's the first part of my question.

13:36:30 20 THE WITNESS: My Lord, the witness management database is a
21 big database but it is also divided into sources and witnesses we
22 contact. One source has his own area, wherein all the
23 information, all the contact would make to that source or witness
24 is recorded which is not included in any other source or witness
13:37:02 25 area.

26 JUSTICE DOHERTY: Without putting words in your mouth but
27 to make sure I'm clear, there is a database for each witness or
28 source rather than a chrono - no, leave it at that. There is a
29 database for each witness or source, is that what you're saying.

1 THE WITNESS: The database is for all our sources and all
2 our witnesses, but in that database we also - it is also divided
3 that each and every witness or source has his own area, and
4 whatever information we have pertaining to that witness or that
13:37:52 5 source will go into his own folder.

6 JUSTICE DOHERTY: So there is, in effect, two databases:
7 One master one and one for each witness and source; is that what
8 you're saying?

9 THE WITNESS: My Lord - well, we can say it's two, but it's
13:38:31 10 actually one divided among the sources and witnesses. So if we
11 are to take the witness management database separately, then we
12 can say it's two, but it's actually one but divided into sources
13 and witnesses and so on.

14 JUSTICE DOHERTY: Thank you. I hope I understand it now.
13:38:53 15 And if my perception is not clear, I've not doubt it will be
16 picked up in either examination-in-chief or cross-examination.

17 Please proceed, Mr Herbst.

18 MR HERBST:

19 Q. Now my question is this: These two pages and four lines,
13:39:08 20 do they accurately represent all of the entries in the portion of
21 the witness and sources database relating to Witness 3 - and
22 source 334?

23 MR METZGER: I object.

24 THE WITNESS: Yes, My Lord.

13:39:32 25 MR HERBST:

26 Q. [Overlapping speakers] entries between the date of November
27 15, 2000 --

28 MR HERBST: Oh, but I hadn't completed my question. I'm
29 sorry.

1 JUSTICE DOHERTY: [Microphone not activated]

2 MR METZGER: I object because again my learned friend uses
3 the terminology [indiscernible] profession "does it accurately
4 reflect." I think we are still dealing with the question of what
13:39:57 5 it actually reflects. Is it a continuous part of the database
6 absent anything else or not?

7 MR HERBST: That was exactly the question I was asking.

8 JUSTICE DOHERTY: Well it - what you're seeing is that
9 these two pages and four lines and then you say what they
13:40:15 10 contain. Perhaps we could avoid objection if we ask: These two
11 pages and four lines, what are they.

12 MR HERBST:

13 Q. These two pages and four lines, what are they?

14 A. Repeat that question and make mention of the pages you are
13:40:38 15 talking about.

16 Q. The entire exhibit, these three pages.

17 A. Ah, yes. Three.

18 Q. Are they the complete - are they complete database from
19 November 15th, 2010, to January 24th, 2011?

13:41:04 20 A. Yes, My Lord.

21 MR HERBST: Your Honour, I move the admission of the
22 document.

23 JUSTICE DOHERTY: [Microphone not activated]

24 MR HERBST: Sorry, Your Honour. I can't hear you. I
13:41:33 25 apologise.

26 JUSTICE DOHERTY: You gave data. I didn't record properly.
27 15th of November to?

28 MR HERBST: The full entries go from November 15, 2010, to
29 January 24th, 2011. As the witness testified, there is the end

1 two lines of an entry that doesn't really appear here that were
2 recorded on September 1, 2010.

3 JUSTICE DOHERTY: Let me hear what - counsel for the
4 Defence, both counsel have seen this.

13:42:02 5 Mr Serry-Kamal, you are the more senior of the two counsel.
6 What is your - you've heard the tender of this document. You've
7 got the advantage of seeing it before you.

8 MR SERRY-KAMAL: Well, now, I don't have one.

9 JUSTICE DOHERTY: Mr Metzger.

13:42:24 10 MR METZGER: I am content for the document to be admitted
11 without making any admission whatsoever about its completeness,
12 accuracy, or otherwise.

13 JUSTICE DOHERTY: Mr Nicol-Wilson.

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

13:42:43 15 JUSTICE DOHERTY: And I look at the document, and as I'm
16 doing so, I've been very helpfully reminded by my associate that
17 there should be a break for people in Freetown normally about
18 this time. If Freetown could tell me if this is a good time to
19 break to give them some chance for lunch-time as well.

13:43:11 20 THE COURT OFFICER: Yes, Your Honour. It would be a good
21 time to break so that all of us here can have some lunch.

22 JUSTICE DOHERTY: I'm going look at this document. We've
23 had quite a few breaks in the course of today, everyone in
24 Freetown. Is half an hour long enough or do you need
13:43:42 25 three-quarters?

26 THE COURT OFFICER: Yes, Your Honour. Half an hour. I
27 have indication from counsel that half an hour is okay.

28 JUSTICE DOHERTY: We adjourn until - well, it's 20 past the
29 hour, whichever hour it is in Freetown, whatever hour it is here.

1 Until 20 past the hour.

2 MR HERBST: I said unless my digital clock is wrong, I have
3 50, 51 minutes past the hour.

4 JUSTICE DOHERTY: The adjournment is until 20 past the next
13:44:31 5 hour.

6 MR HERBST: Oh, I see.

7 JUSTICE DOHERTY: And I'll take this document and have a
8 look at it.

9 MR HERBST: This is admitted as P12, then?

13:44:39 10 JUSTICE DOHERTY: Yes, it's P12.

11 MR HERBST: All right.

12 JUSTICE DOHERTY: Prosecution Exhibit P12. Until - it's 20
13 past 4.00 our time, which I think is 20 past 2.00 Freetown town.

14 Please adjourn Court.

13:45:22 15 [Break taken at 1.45 p.m.]

16 [Upon resuming at 2.20 p.m.]

17 [Witness present in Court]

18 [Accused present]

19 JUSTICE DOHERTY: Apologies, I didn't have my - I read this
14:20:35 20 document and I'm asking counsel to proceed.

21 MR HERBST:

22 Q. Mr Saffa, are you in the witness chair?

23 A. Yes, My Lord.

24 Q. Now I want to direct your attention to the first page of
14:20:58 25 P12, this contact summary now in evidence. I want to direct your
26 attention to the entry for Tuesday, November 30, 2010 which
27 starts "contract detail" and goes down --

28 MR METZGER: Can the witness please tell us when the entry
29 starts.

1 JUSTICE DOHERTY: Which entry, Mr Metzger?

2 MR METZGER: Whichever entry it is my learned friend is
3 referring to. Can he get the witness to tell us in relation to
4 that date, when it starts.

14:21:32 5 JUSTICE DOHERTY: I think counsel is directing him to a
6 particular entry.

7 MR HERBST: Right. Right.

8 JUSTICE DOHERTY: So I just don't have a great deal of
9 problem with him directing him to a particular entry, Mr Metzger.

14:21:44 10 MR METZGER: Not at all. The problem is we do have
11 objection to it being put on the basis that I direct you to this
12 entry which starts. If he wants to direct him to a body of shall
13 we say --

14 MR HERBST: I'll just put another question to the witness.

14:22:05 15 MR METZGER: Thank you.

16 MR HERBST:

17 Q. Mr Saffa, the entry that was entered on Tuesday, November
18 30, 2010, would you tell the Court where that entry starts?

19 A. My Lord, that entry starts from second paragraph of that
14:22:39 20 document, the last sentence on that second paragraph. You can
21 see contact details, starting from there.

22 Q. His entries start with "contact detail"; is that right?
23 That's where it begins?

24 A. Yes, My Lord. Yes.

14:23:06 25 Q. The first line below that indicates that the contact was
26 made by Mustapha Koroma. Tell the Court who Mustapha Koroma was?

27 A. My Lord, Mustapha Koroma was an investigator at the office
28 of the Prosecutor. He was also working for me, but he is
29 deceased now.

1 Q. There then follows about six lines of material that
2 describes the contact with 334; do you see that?

3 A. Yes, My Lord.

4 Q. Would you read the last three lines starting with "he
14:24:13 5 intimated to me"?

6 JUSTICE DOHERTY: I don't think there's any need to read
7 it, Mr Herbst, because the document is now in evidence and
8 counsel and I have read it.

9 MR HERBST: All right.

14:24:24 10 Q. But this contact was made at 1552 on Tuesday, November
11 30th; is that right?

12 A. Yes, My Lord.

13 Q. It's in the database. And that's 3.52 p.m., Freetown time,
14 right?

14:24:42 15 A. Yes, My Lord.

16 JUSTICE DOHERTY: Do you mean it was entered in the
17 database or contact was made at that time.

18 MR HERBST: No, I asked --

19 JUSTICE DOHERTY: You used both.

14:24:51 20 MR HERBST: I meant the latter, I was asking.

21 MR METZGER: Your Honour, then that would be leading. Can
22 the witness please tell us what the times and dates relate to as
23 opposed to being invited to agree that it was at the time when
24 contact was made or the contact was entered.

14:25:21 25 MR HERBST:

26 Q. Was the contact made or was the contact entered in the
27 database at 3.52 p.m.?

28 A. This was the time when the contact was entered into the
29 database.

1 Q. Now, I would like you to look at P3, the witness statement
2 that you prepared and then took from 334.

3 A. Yes, My Lord. It's in front of me.

14:26:28 4 Q. I direct your attention to page 2 of that document. In the
5 third paragraph, there is mention of 334 talking to Five Five and
6 Mr Kanu; do you see that?

7 A. Yes, My Lord.

8 Q. How many times did 334 tell you in all the information he
9 gave you he had talked directly with Mr Kanu? To refresh your
14:27:17 10 recollection, you can read the entire statement.

11 A. One time.

12 Q. In the statement that you prepared for him and that he
13 signed, the date of that event is given as Monday, 29th of
14 November 2010, right?

14:27:40 15 A. Yes, My Lord.

16 Q. At the time you finalised this statement on 9 December
17 2010, you had received the - you had already received on a prior
18 occasion the e-mail from Ms Alagenda, that is P4. Is that
19 correct? Do you have that in front of you?

14:28:14 20 A. No, My Lord.

21 Q. Can the document be placed before the witness?

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

23 Q. Do you have the e-mail that starts "Dear Brenda" on the
24 first page of that document?

14:29:07 25 A. Yes, My Lord.

26 Q. Had you read, when the e-mail came in, the second paragraph
27 of that e-mail?

28 A. Yes, My Lord.

29 Q. And particularly the language that says "334 spoke to Five

1 Five today on Ragga's phone", had you read that?

2 A. Yes, My Lord.

3 Q. You noted that the date of the e-mail was is 11.30,
4 November 30th, 2010, and dated at 5.15 p.m.?

14:30:06 5 A. Yes, My Lord.

6 Q. Did you at any time in the course of - on December 9 when
7 you were preparing and finalising and taking the written
8 statement and the signed statement from 334, did you at any time
9 draw his attention to the evidence in that e-mail as to the
10 date --

14:30:30

11 A. No, My Lord.

12 Q. [Overlapping speakers] Mr Kanu? Why not?

13 A. It did not really occur to me to ask him on that document
14 because the document was not in front of me when I was adopting
15 the statement.

14:30:57

16 Q. Mr Saffa, I have no further questions.

17 MR HERBST: And I tender the witness, Your Honour.

18 JUSTICE DOHERTY: Thank you, Mr Herbst.

19 Mr Nicol-Wilson [indiscernible] questions of the witness?

14:31:18

20 MR NICOL-WILSON: Yes, Your Honour.

21 THE COURT OFFICER: Your Honour, we report the court
22 reporter cannot hear you, so we need to try and fix that for the
23 transcript to be correctly recorded.

24 JUSTICE DOHERTY: I asked Mr Nicol-Wilson if he had
25 witnesses - questions of the witness, and he replied yes.

14:31:38

26 MR NICOL-WILSON: We got that, Your Honour. Thank you.

27 Cross-examination by Mr Nicol-Wilson:

28 MR NICOL-WILSON:

29 Q. Mr Witness --

1 JUSTICE DOHERTY: Proceed.

2 MR NICOL-WILSON:

3 Q. Mr Witness --

4 A. Yes, My Lord.

14:32:10 5 Q. -- you have been an investigator at the Office of the
6 Prosecutor since 2002?

7 A. Yes, My Lord.

8 Q. And prior to that assignment, what was your occupation?

9 A. My Lord, I was an investigator, a police officer attached
14:32:42 10 to CID.

11 Q. Now, I want you to take a look at Exhibit P10. You will
12 agree with me that you said under --

13 A. I do not have it in front of me. Let me search, please.

14 Q. Okay.

14:33:21 15 JUSTICE DOHERTY: Mr Court Attendant if I --
16 [overlapping speakers]

17 THE WITNESS: Yes, I have the document now.

18 JUSTICE DOHERTY: [Indiscernible]

19 MR NICOL-WILSON:

14:33:40 20 Q. Now, during your examination --

21 JUSTICE DOHERTY: Mr Nicol-Wilson [overlapping speakers].

22 MR NICOL-WILSON: Sorry, Your Honour. I did not get the
23 statement you just made.

24 JUSTICE DOHERTY: I was just saying that the witness should
14:33:51 25 have all the documents he tendered, and I was inviting you to
26 proceed with your question because he has P10.

27 MR NICOL-WILSON: As your Honour pleases.

28 Q. Now, Mr Witness, you remember during your
29 examination-in-chief you said P10 is an accurate reflection of

1 what was said to you by Witness TF1-334?

2 A. Yes, My Lord.

3 Q. And you will also agree with me that as a qualified and
4 experienced investigator, you will write down exactly the
14:34:38 5 information you received while conducting investigations?

6 A. Yes, My Lord.

7 Q. Now, I want you to look at the second paragraph of exhibit
8 P10 and the last sentence, which starts with the word "Bomb
9 Blast". I want you to read that sentence to yourself or you can
14:35:18 10 read it to the Court, sorry. You can read that sentence to the
11 Court.

12 A. Did you say starting from the --

13 Q. From the word "Bomb Blast." "Bomb Blast also asked".

14 A. "Bomb Blast also asked TF1-334 how much money did he want
14:35:40 15 for the deal."

16 Q. Continue, please.

17 A. "TF1-334 told Bomb Blast that this is a big deal. You
18 decide what you want to give me."

19 Q. So Mr Witness, am I correct to say that at no time did 334
14:36:03 20 tell you that Bomb Blast asked him whether he wants \$10,000?

21 A. No, My Lord.

22 Q. Thank you. Now let us go to Exhibit P4, which is the
23 e-mail. Now --

24 A. Please, I don't have the document yet.

14:36:59 25 Q. P4.

26 MR NICOL-WILSON: When - Your Honour has asked that all the
27 exhibits be put before the witness.

28 THE WITNESS: Some documents are before me which are not
29 marked.

1 JUSTICE DOHERTY: Mr Court Attendant in Freetown, can you
2 put all the documents that this witness has testified to in front
3 of the witness for ease of reference, please.

4 THE WITNESS: Yes, My Lord. I have the document now.

14:37:30

5 MR NICOL-WILSON:

6 Q. This is an e-mail from Shayamala to Brenda, the Chief
7 Prosecutor; is that correct?

8 A. Yes, My Lord.

14:37:53

9 Q. And this e-mail was - this e-mail is dated the 11th - the
10 30th of November, 2010?

11 A. Yes, My Lord.

12 Q. Now can you look at the first paragraph of this e-mail and
13 the second sentence. Can you read out the second sentence?

14:38:19

14 A. "He informs me that he was contacted by Sammy Ragga, who
15 was recently released from prison. He was with the West Side."

16 Q. Can you look at the third paragraph and the last - the
17 second-to-last sentence which starts with the words "he says."

18 A. "He says Bomb Blast is aware of this and maybe they have
19 contacted him."

14:38:46

20 Q. So Mr Witness, would I be right to say that the complaint
21 from Shayamala to Brenda was against Sammy Ragga based on the
22 content of this e-mail? You can have a look at the e-mail
23 again and take your time.

24 MR HERBST: I'm going to object to the question.

14:39:13

25 JUSTICE DOHERTY: [Indiscernible]

26 MR HERBST: One doesn't follow from the other in terms of
27 complaint against a particular person.

28 JUSTICE DOHERTY: This is cross-examination and he's
29 entitled to put certain interpretations or propositions, so I'm

1 going to allow the question. Did you hear the question,
2 Mr Witness?

3 THE WITNESS: I may like him to ask the question again.

4 MR NICOL-WILSON:

14:39:49 5 Q. Now, this e-mail was forwarded to you by Jim Johnson?

6 A. Yes, My Lord.

7 Q. And it was forwarded to you in order for you to take
8 action?

9 A. Yes, My Lord.

14:40:12 10 Q. And from your reading of the e-mail, the complaint was from
11 334 against Sammy Ragga?

12 A. Yes, he is one of the people who the complaint was against.

13 Q. Now, as far as you can see from the e-mail, the only time
14 the name Bomb Blast was mentioned is with regards to the fact

14:40:41 15 that he may have knowledge about this issue; not that Sammy - not
16 that 334 was making a complaint against him?

17 A. No, My Lord. If you can read that sentence, you are just
18 concentrating on the last part of it. But it says, "He says Bomb
19 Blast is aware of it."

14:41:01 20 Q. So Mr Witness, being an investigator of long-standing, what
21 do you understand by the word "aware"?

22 A. Aware is to know about something.

23 Q. Exactly. So the e-mail does not say Bomb Blast is the one
24 who had confronted 334 for him to recant. It merely says he has
14:41:26 25 knowledge.

26 A. That is what the e-mail is saying.

27 Q. Okay. Now also before we complete this exhibit, there is
28 one more question I have. Now, Shayamala was saying something to
29 Brenda also in that same paragraph starting from the words "the

1 AFRC". Can you read out that sentence, please?

2 A. Which one?

3 Q. "The AFRC accused have promised ..." The third paragraph
4 under P4, the e-mail.

14:42:17 5 A. "The AFRC accused have promised to pay 334 large sums of
6 money and to do what the Special Court were supposed to do but
7 did not do for him, which is to take care of his security and
8 relocate him and his family."

9 Q. So Mr Witness, the question now is: Are you aware of any
14:42:42 10 promise that was made by the Special Court to 334 to relocate him
11 before these allegations were made?

12 A. I am not aware, My Lord.

13 Q. Okay. Would you also agree with me that the phrase "the
14 AFRC accused have promised to pay 334 large sums of money" does
14:43:06 15 not apply to Bomb Blast because he is not part of the AFRC
16 accused persons?

17 A. Yes.

18 Q. Thank you. Now, Mr Witness, let's look at exhibit P11 and
19 P12. But let's start with P11?

14:44:03 20 A. P11 is what?

21 Q. P11 is the - it's an e-mail forwarded by Joseph Saffa and
22 then to - by Magnus Lamin. It's an e-mail compiled by Magnus
23 Lamin. But then it was forwarded to you which starts with the
24 word "spoke to TF1-334"?

14:44:41 25 A. Yes, I have it in front of me.

26 Q. That's exhibit P11. Now I want you to look at the entire
27 exhibit P11, which is dated 21 January 2011, and tell me whether
28 Bomb Blast was mentioned in that e-mail. Now, am I correct to
29 say his name is not mentioned in that e-mail?

1 A. Yes, my Lord.

2 Q. Okay. Now look at the second paragraph starting from
3 "TF1-334 still expresses his insecurity." Have you seen that
4 second sentence in the second paragraph?

14:45:51 5 A. Yes, my Lord.

6 Q. Can you read out that sentence, please?

7 A. "TF1-334 still expresses his insecurity and fear over their
8 silence on the issue Sammy Ragga brought up to him to recant his
9 testimony against the AFRC convicts."

14:46:17 10 Q. Okay. So you will agree with me that that statement means
11 that it was Sammy Ragga who came up with the idea of recanting of
12 the testimony of TF1-334?

13 A. Yes, my Lord.

14 Q. Okay. Now let us look at exhibit P12. That is this
14:46:51 15 contact summary we have spoken about extensively today and even
16 during one of the - today - which we have spoken about today.
17 Now, can you look at the contact summary added by Aiah Komeh,
18 which I think is the fourth paragraph starting with the bullet
19 point which reads "the witness advises"?

14:47:24 20 A. Yes, my Lord.

21 Q. Can you read out that sentence?

22 A. "The witness advises that Sammy Ragga has not called him
23 yet since the last contact."

24 Q. So you will agree with me that during the contact which led
14:47:40 25 to the input of this summary, TF1-334 again mentioned Sammy Ragga
26 and did not mention Bomb Blast?

27 A. Ask that question again, because there's something here I
28 want to --

29 Q. Now, you will agree with me that before the input of this

1 contact summary there must have been a contact session; is that
2 correct?

3 A. Yes.

4 Q. And the contact summary is based on what was discussed
14:48:15 5 during the contact session?

6 A. Yes.

7 Q. So now my question is that based on this input, you will
8 agree with me that during that contact session the witness did
9 not mention anything about Bomb Blast. That is why his name is
14:48:33 10 not in the contact summary?

11 A. He did not make mention of his name in the contact summary.

12 Q. You will also agree with me that the witness was more -
13 TF1-334 was more particular about Sammy Ragga?

14 A. This was the information he gave about Sammy Ragga.

14:48:56 15 Q. Okay. Now, Mr Witness, when was the first time you spoke
16 directly with TF1-334? When was the first time in connection
17 with these allegations?

18 A. My Lord, it was on 1 December 2010.

19 Q. And what advice did you give to him after he told you about
14:49:37 20 the contact he has had with Sammy Ragga and others?

21 A. I told him that we're taking his matter seriously and that
22 we will get WVS informed about his security and that we'll also
23 get our authorities informed about it.

24 Q. Now, based on concerns for his security, did you advise him
14:50:03 25 to stay away from having further discussions with Sammy Ragga?

26 A. No, my Lord.

27 Q. So why was he not advised to stay away based on concerns
28 for his security?

29 A. I did not just advise him on that.

1 Q. So in other words, indirectly you told him to be getting
2 closer to Sammy Ragga and to be giving you feedback on their
3 discussions?

4 A. I didn't tell him that either.

14:50:44 5 Q. So you neither advised him to stay away from Sammy Ragga
6 and at the same time you did not advise him to get close to him?

7 A. No, my Lord.

8 Q. After you spoke with him for a second time, which I assume
9 was around the 9th - when he made his statement on the 9th of
14:51:13 10 December, what advice did you give to him after making his
11 statement?

12 MR HERBST: [Indiscernible] the assumptions or facts stated
13 in the question don't accord with the evidence.

14 JUSTICE DOHERTY: The question was what advice did you give
14:51:36 15 him after making the statement on 9 December.

16 MR HERBST: Yes, but the predicate was that that was the
17 second time he had talked to him, the 1st of December being the
18 first time but in fact the witness testified to [overlapping
19 speakers]

14:51:51 20 MR NICOL-WILSON: Yes, your Honour, I accept Mr Herbst's
21 observation. I will rephrase the question.

22 Q. After you took a statement from - you compiled a statement
23 for witness TFI-334 and he signed it on 9 December, did you give
24 him any advice about his contacts with the accused persons in
14:52:17 25 this case?

26 A. I just told him to be careful about his own security.

27 Q. Did you tell him not to continue to visit the Sweissy area?
28 Because that is one of his claims.

29 A. No, my Lord.

1 Q. You did not. Okay. You did not tell him to stay away from
2 the accused persons?

3 A. No, my Lord.

4 Q. Am I correct to say you did not tell him to stay away from
14:52:57 5 them because you wanted to get more information to build up a
6 case?

7 A. No, my Lord.

8 Q. So why did you not tell him to stay away, knowing fully
9 well that he would likely be at risk?

14:53:09 10 A. I did not only tell him to stay away because he has a mind
11 of his own.

12 Q. Now you also mentioned during your examination-in-chief
13 that you were about to file in for contempt on 15 December 2010;
14 is that correct?

14:53:47 15 A. Yes, my Lord.

16 Q. And then you were advised by 334 to hold on and not to file
17 because there is possibility that the promise that has been made
18 to him will be fulfilled?

19 A. Yes, my Lord.

14:54:04 20 Q. And you did not file because you wanted to wait for the
21 promise to be fulfilled?

22 A. No, my Lord.

23 Q. You did not file on the 15th?

24 A. We did not file on the 15th.

14:54:17 25 Q. You did not file on the 16th as well?

26 A. We did not file on the 16th.

27 Q. Why?

28 A. I don't know. That was purely administrative.

29 Q. I'm putting it to you that you did not file on the 16th and

1 on the 16th because you were advised by 334 to wait and see
2 whether the promise made to him will be fulfilled?

3 A. Not because we were told by 334 to wait, but like I have
4 told you before, I don't know what happened.

14:54:58 5 MR NICOL-WILSON: Your Honour, that will be all for this
6 witness.

7 JUSTICE DOHERTY: Mr Metzger, I think your client is next
8 on the indictment. Do you have questions of the --

9 MR METZGER: Oh, yes, Your Honour.

14:55:09 10 JUSTICE DOHERTY: Very well. Please proceed.

11 Cross-examination by Mr Metzger:

12 MR METZGER:

13 Q. Good afternoon, Mr Saffa.

14 A. Good afternoon, my Lord.

14:55:20 15 Q. Mr Saffa, you are a well respected - highly respected and
16 long-standing investigator at the OTP; is that not correct?

17 A. Yes, my Lord.

18 Q. You just said in answer to my learned friend

19 Mr Nicol-Wilson that you had some years before that as an

14:55:49 20 investigator for the criminal investigation department of the
21 Sierra Leone police?

22 A. Yes, my Lord.

23 Q. So you are no stranger to investigations and how they are
24 conducted?

14:56:06 25 A. No, my Lord.

26 Q. You are fully aware of the need to record all
27 communications with sources and witnesses, are you not?

28 A. I'm aware of that.

29 Q. And to the best of your ability, you tried to make sure

1 that this in fact happened in this investigation?

2 A. Yes, my Lord.

3 Q. Thank you. Is it also correct that in the OTP this was the
4 protocol to record all contacts?

14:56:55 5 A. Yes, my Lord.

6 Q. And we've looked at exhibit P12. I will come to that in
7 due course. But just as a general question for now, the material
8 that ends up in P12 is always recorded somewhere else first; is
9 that not the case?

14:57:21 10 A. Yes, my Lord.

11 Q. Indeed, in this particular case before us we have some
12 examples of interoffice memoranda; is that not correct?

13 A. Yes, my Lord.

14 Q. But it would appear that some of the material didn't end up
15 in the contact summary; is that correct?

14:57:50

16 A. Yes, my Lord.

17 Q. And some of the material in the summary doesn't appear to
18 be supported by this sort of interoffice memoranda; correct?

19 A. Yes, my Lord.

14:58:24 20 Q. Now, can you explain in general terms how that happened?

21 A. Which one are you talking now; the one that do not appear
22 on this contact information, or the other way around?

23 Q. Let's take them both one at a time, please, and please
24 choose whichever one you wish to answer first?

14:59:00

25 A. Some of the contact information is not recorded in this
26 contact summary because, like I told you in my evidence-in-chief,
27 there was somebody responsible for entering some of the contacts
28 into this database, but he was doing it periodically. He does it
29 periodically, so I don't know why all the information is not

1 here.

2 JUSTICE DOHERTY: Pause, Mr Metzger. Mr Herbst.

3 MR HERBST: I decided not to press the issue since the
4 witness responded.

14:59:52 5 MR METZGER: Thank you.

6 Q. Just to recap, Mr Saffa, you're saying this was the
7 responsibility of the person who had the job of updating the
8 database; that is was done periodically; but you yourself cannot
9 explain why some matters do not appear on the database?

15:00:11 10 A. Yes, my Lord.

11 Q. Is there someone in the OTP who can?

12 A. Who can do what, my Lord?

13 Q. Someone in the OTP who can explain why things weren't put
14 in the contact database?

15:00:36 15 A. Probably the only person would be the one who entered this
16 information into that database.

17 Q. Thank you very much. Now can we go to the second part of
18 the question: Material which is not supported by some form of
19 memoranda; how that comes to be in the database?

15:01:09 20 A. This one I would like the learned counsel to point at it,
21 please. What probably I will see here is like the information on
22 the second page, going down after the first contact information,
23 you see contact detail, and it's written there "4". Number 4,
24 TF1 2, 3, 4 and so on and so forth. My memory cannot serve me
15:02:08 25 well, but I would think that is the area probably that is not
26 reflected in the other memorandums that have been put in evidence
27 of this case. And if that is the case, this one happened because
28 Aiah Komeh, who is the person responsible for entering the
29 information into the database, used another document which

1 contained information of various witnesses and he just cut and
2 pasted this information here. That's why you can see it's
3 numbered 4 and there's no 3, there's no 5, there's no other
4 thing. But this was a previous document that contained
15:02:58 5 information about witnesses - about 334 and some other witnesses
6 and he only cut that one pertaining to 334 and pasted it in this
7 document. That is what I can see that might not be reflected in
8 the other documents that have been produced before this Court.

9 Q. Thank you, Mr Saffa. Is that something you know of your
15:03:32 10 own knowledge or something that you - or is it an educated guess?

11 A. My Lord, I am not guessing. I know it for sure, because I
12 have seen the document and I know that contacts were made to
13 witnesses including 334.

14 Q. And can you confirm that that document has not been served
15:04:00 15 on the Defence in this case?

16 A. Well, that is the area - I would like you to help me,
17 because I am thinking that is the only area that might have not
18 been served in this process.

19 Q. Yes, I'm just asking simply, with the exception perhaps of
15:04:29 20 this little piece of it, can you confirm that the document from
21 which you say this sentence was culled was not served on the
22 Defence in this case?

23 A. No, it wasn't, my Lord.

24 MR HERBST: Being objective, I don't believe I received it
15:04:52 25 either.

26 MR METZGER:

27 Q. Can you also confirm that that document was not served on
28 Mr Herbst, the Independent Prosecutor?

29 A. Yes, I can confirm that.

1 Q. Thank you. Who made [i ndi scerni bl e] as to what was
2 di s cl o s e d to Mr Herbst as relevant in this case?

3 A. It was Jim Johnson.

4 Q. Thank you. I'll come back to this document, please,
15:05:45 5 Mr Saffa. Can I ask you to make sure that you have available,
6 please, in front of you, exhibit P4, exhibit P6, and I believe
7 the witness statement is P7?

8 JUSTICE DOHERTY: The witness statement that is signed is
9 P3.

15:06:22 10 MR METZGER: Sorry, the witness statement that is P3 and
11 P7.

12 JUSTICE DOHERTY: [I ndi scerni bl e] Mr Metzger - do you wish
13 me to confirm - Mr Saffa, have you got the documents that counsel
14 wishes to refer to?

15:06:58 15 THE WITNESS: Yes, my Lord.

16 MR METZGER: Thank you.

17 Q. Now, you have already identified for us the differences
18 between P3 and P7. I want to ask you about some of these. First
19 of all, I think you've told us that the first time you spoke to
15:07:36 20 Mr Alimamy Bobson Sesay was on 1 December 2010; that's right?

21 A. Yes, my Lord, 1 December 2010.

22 Q. You told us that you used the witness template in compiling
23 the document we see before us, both P3 and P7?

24 A. Yes, my Lord.

15:08:06 25 Q. Is the document - sorry, the witness template on a
26 computer?

27 A. Yes, my Lord.

28 Q. And did you type your - the document directly as you were
29 speaking to Mr Bobson Sesay?

1 A. No, my Lord.

2 Q. In that case, where did you first record the material that
3 is on the document template?

4 A. My Lord, I was just taking notes.

15:08:58 5 Q. Have those notes been disclosed to Mr Herbst?

6 A. No, my Lord.

7 MR METZGER: Your Honour, at this time I would move
8 disclosure of the original notes of the meeting between this
9 witness and TF1-334 as he was then known.

15:09:27 10 JUSTICE DOHERTY: Your response.

11 MR HERBST: Well, Your Honour, I think we should first find
12 out if the notes still exist.

13 JUSTICE DOHERTY: That is a relevant point.

14 MR METZGER: So be it.

15:09:42 15 Q. Mr Saffa, when you concluded your notes, what did you do
16 with them?

17 A. My Lord, those notes were only taken to actually get what
18 TF1-334 was telling us but in actual fact, these notes were typed
19 immediately after that and in his presence. He was called to
15:10:13 20 look at it and we'll go over it so we took this one to be the
21 original notes that were taken.

22 Q. Mr Saffa, what happened to the original handwritten notes
23 that you took?

24 A. My Lord, I don't have those notes any longer. I don't know
15:10:35 25 their whereabouts.

26 Q. When you completed those notes, what did you do with them?

27 A. My Lord, those notes were only used to make sure that this
28 note is properly compiled and the witness to confirm that those
29 were his words.

1 Q. Now can you answer my question, please, Mr Saffa?

2 A. Ask your question again.

3 Q. When you completed the handwritten notes, what did you do
4 with them?

15:11:33 5 A. I made use of those handwritten notes to type them into a
6 statement template. On the same day and we let 334 look at it
7 and confirm that that was his statement.

8 Q. And after you had typed out the document that - well, for
9 the avoidance of doubt, what document did you type out on 1

15:12:14 10 December, exhibit P4 [overlapping speakers]?

11 A. My Lord, 1 December was P7.

12 Q. Can you please look at exhibit P4, Mr Saffa?

13 MR HERBST: P4 is [indiscernible] Mr Metzger.

14 MR METZGER: There is a document that says meeting with 334
15:12:51 15 which was put into evidence and I have that marked as P4.

16 Probably my mistake.

17 MR HERBST: That is P5.

18 MR METZGER: As an English [indiscernible].

19 MR HERBST: Your Honour, as long as Mr Metzger is

15:13:07 20 interrupted, could I ask whether it's possible to have the
21 air-conditioning put up a notch? I notice it's much warmer today
22 than it has been over the past week and I'm quite warm.

23 JUSTICE DOHERTY: Sorry, Ms Clarkson, I didn't hear.

24 THE COURT OFFICER: [In Kigali] We will. Just a little
15:13:38 25 bit.

26 JUSTICE DOHERTY: Please proceed.

27 MR METZGER: Thank you, Your Honour. I do apologise if I
28 made an error. This is probably because P4 was introduced at a
29 time when I wasn't in Court and I mixed that up between P4 and

1 P5.

2 Q. In which case, Mr Saffa, can I ask you to look at P5 then?

3 A. Yes, My Lord.

4 Q. [Indiscernible] document that you mean you typed up with
15:14:32 5 the exception of the last two paragraphs?

6 A. Yes, My Lord.

7 Q. At the time when [indiscernible]. Thank you. And for the
8 avoidance of doubt, P7 must have been completed after 3 December;
9 would you agree with that?

15:14:53 10 A. No, My Lord.

11 Q. No? What do you say about P7, please?

12 A. It was completed on 3 December 2010.

13 Q. Thank you. Now, so looking, therefore, at P5, once you had
14 typed that up, what did you do with the original notes?

15:15:25 15 A. These were the original notes, because I only used the
16 handwritten as a guide to get these notes, and this was done in
17 the presence of 334.

18 Q. What did you do with the handwritten material which you had
19 produced, please, Mr Saffa?

15:16:00 20 A. I don't know where the handwritten materials are now.

21 Q. Now can you answer my question?

22 A. I don't know where the handwritten materials are at the
23 moment.

24 Q. Let's take you back, please, to 1 December 2010, at a time
15:16:35 25 when you have the witness Mr Bobson Sesay sitting in front of you
26 and you have typed up what - the part of P7 that relates to that
27 interview and P5 that relates to that interview. What did you do
28 at that time with the original handwritten material?

29 A. My Lord, at that time those notes will stay in my notebook.

1 Q. Did you ever take those notes out of your notebook?

2 A. No, My Lord.

3 Q. Do you still have your notebook?

4 A. No, My Lord. I don't have any notebook now.

15:17:42 5 Q. Can you please explain to us what the OTP procedure is in
6 relation to investigator's notebooks?

7 A. The OTP procedure is that when we talk to somebody, be it a
8 witness or a source, sometime we either write the notes on a
9 notebook and put it on the witness or source document for the
10 witness or source to sign; or sometime if you know you are fast
11 enough to type, you can type the information straight up. But
12 the procedure is that we usually at the OTP once it is - once it
13 is a typed document, you only get the person making that
14 statement to sign it, which is always regarded as the original
15 statement. The notes that we take sometimes by handwriting is
16 just kept and we don't make use of it any longer.

15:18:45 17 Q. Yes, this is the question I was going to ask you. Is it
18 correct that those original notes or the original handwritten
19 material is kept with the case file?

15:19:18 20 A. No, My Lord.

21 Q. So when you complete your notebook, does it go into the
22 dustbin or the trash?

23 A. Sometimes they go into the dustbin after we've got a lot of
24 used notebooks, because we always have this information on the
15:19:41 25 database, we always have typed version on the database of those
26 notes.

27 Q. Now, you're an investigator - I'm sorry. You're an
28 investigator with a lot of experience, Mr Saffa?

29 A. Yes, My Lord.

1 Q. You also worked in the police?

2 A. Yes, My Lord.

3 Q. You do know, do you not, that the original note taken - if
4 it is taken in handwriting - is the original note, don't you?

15:20:11 5 MR HERBST: Your Honour, I would interpose an objection at
6 this point. That's an argumentative question, but more
7 significantly, I believe this issue has been fully explored. The
8 witness has fully testified to this subject and the notes and
9 what happened to the notes and so on and so forth.

15:20:38 10 MR METZGER: Does Your Honour require me to respond to
11 that.

12 JUSTICE DOHERTY: I'll have a response. Because I see
13 there's - yes, respond.

14 MR METZGER: In my respectful submission, there's a
15:20:49 15 divergence of opinion as to what is original material. Clearly,
16 this witness took notes - handwritten notes while TF1-334, or
17 otherwise known as Mr Bobson Sesay, was explaining to him the
18 circumstances surrounding the reason he had contacted the OTP.
19 During the course of taking those notes, there may have been
15:21:14 20 mistakes or corrections, and those would not be evident in a
21 document that is later formulated to reflect the end position of
22 the witness as opposed to the witness taking process. It is in
23 those circumstances that I am seeking to deal with the, as it
24 were, the chain of evidence in this case.

15:21:44 25 MR HERBST: Your Honour, the point is the notes no longer
26 exist so we're just flogging, in the words of Mr Metzger on a
27 prior occasion, a dead horse.

28 MR METZGER: I was simply borrowing Her Honour's.

29 JUSTICE DOHERTY: What I have not fully ascertained from

1 this line of questioning is whether the witness can recall if
2 this particular notebook went into the dustbin, to use the
3 terminology used, or it didn't go into the dustbin. Whether he's
4 experienced or not is not entirely relevant. But if it went into
15:22:21 5 the dustbin, that's the end of it, obviously. He cannot produce
6 something that's been disposed of.

7 MR METZGER: I understand that, Your Honour, but I would
8 respectfully submit that his experience is important when
9 considering original material in terms of the submission that I
15:22:38 10 just made to Your Honour, and that is what I was trying to elicit
11 from the witness. If, of course, I'm not permitted to ask that
12 question I shall move swiftly on.

13 JUSTICE DOHERTY: You have said to him you ascertained he's
14 experienced, now let us ascertain what exactly happened to that
15:22:59 15 notebook.

16 MR METZGER:

17 Q. Mr Saffa, did that notebook go into the dustbin, or not?

18 A. Yes, My Lord.

19 Q. Sorry, was your answer yes, it went into the dustbin?

15:23:15 20 A. Yes, My Lord.

21 Q. Why when I asked you about it previously, you said "I don't
22 have it anymore" instead of "I threw it away"?

23 MR HERBST: Your Honour, I object.

24 JUSTICE DOHERTY: He said "I don't have it anymore."

15:23:34 25 MR METZGER: Your Honour, I'm entitled to ask him why he
26 chose that terminology instead of saying I've thrown it away.
27 And that is why I'm asking him. I have predicated that by
28 talking about experience and talking about the chain of evidence.

29 JUSTICE DOHERTY: Very well. Ask him. It's

1 cross-examination.

2 MR METZGER: Thank you.

3 Q. Mr Saffa, did you get my question?

4 A. Please ask your question.

15:23:55 5 Q. Why, when I originally asked you about the notebook, didn't
6 you say, "I'm sorry, I've thrown it away," as opposed to "I don't
7 have it anymore"?

8 A. I said I don't have it anymore because it cannot be
9 available. It has been thrown away.

15:24:23 10 Q. You do agree that you didn't add the words "it cannot be"?

11 JUSTICE DOHERTY: [Indiscernible]

12 THE WITNESS: I did not.

13 JUSTICE DOHERTY: [Indiscernible] respond, please.

14 MR METZGER: Right.

15:24:42 15 Q. Can you recall in the process of taking those notes whether
16 you had to alter anything?

17 JUSTICE DOHERTY: [Indiscernible] Mr Metzger.

18 MR METZGER:

19 Q. Between the making of the - between the original
15:24:53 20 handwritten document and the typed document?

21 A. No, My Lord.

22 Q. Is that no, you can't remember; or no, nothing was altered?

23 A. Nothing was altered.

24 Q. Whilst you were writing your original notes, did you have
15:25:19 25 cause to cross through anything that you had written because the
26 witness made a different explanation?

27 A. Which notes are you referring to? Which statement?

28 Q. The notes that you wrote with your hand before putting them
29 on computer?

1 A. No.

2 Q. So you are saying that your handwritten notes were
3 completely clean without the need to alter anything?

4 A. My Lord, the handwritten notes were just sort of pointers.
15:26:11 5 The actual note, as it is the practice at the OTP, is this one I
6 took, which I typed, and that was what TF1-334 made to me.

7 JUSTICE DOHERTY: [Indiscernible]. So I've just heard,
8 Mr Serry-Kamal [indiscernible].

9 Mr Saffa, I saw - I think you maybe have said something but
15:27:07 10 we didn't hear it. Could you please [overlapping speakers].

11 THE WITNESS: Yes, My Lord.

12 JUSTICE DOHERTY: [Overlapping speakers] if you said --

13 THE WITNESS: I said the notes that were taken were just
14 pointers to the actual statement, which is here before me, which
15:27:27 15 is the practice of the OTP as well that we - they were not as
16 detailed as this note here. This was the actual note, and that
17 is why it was read before the witness, and he said that was his
18 statement.

19 MR METZGER:

15:27:57 20 Q. Is it therefore your evidence that the statement - rather,
21 the document we have as our Exhibit P5 was an expansion on the
22 original handwritten notes clarifying evidence given by a
23 witness?

24 A. Yes, My Lord.

15:28:20 25 MR HERBST: I think that was answered and this area has
26 been fully explored and he's answered, so I'll withdraw the
27 objection.

28 JUSTICE DOHERTY: I didn't hear the answer. What was the
29 answer?

1 MR HERBST: Yes.

2 JUSTICE DOHERTY: Thank you.

3 MR METZGER: Thank you.

4 Q. Can I ask this generic question: Is that the same
15:28:38 5 procedure you adopted in relation to other material that ended up
6 in the statement exhibit P3?

7 A. P3 is which one?

8 JUSTICE DOHERTY: [Indiscernible] statement from TF1-334
9 dated 9 December 2010.

10 [Ms Serry-Kamal leaves courtroom]

11 THE WITNESS: This was slightly different.

12 JUSTICE DOHERTY: Mr Saffa, did you hear the question?

13 THE WITNESS: No, my Lord.

14 JUSTICE DOHERTY: [Indiscernible] explain what you mean.

15:30:29 15 THE WITNESS: When I said different, it means in the first
16 statement of December 1 and December 3, wherein I used a notebook
17 to get the information first and expand on it in the notes, here
18 it was not like that because I did not have to use any notebook
19 that time, because already the information was there. It was
15:30:54 20 just to go over it with the witness also and to finalise it. So
21 that's the difference, my Lord.

22 JUSTICE DOHERTY: Thank you.

23 MR METZGER:

24 Q. Thank you, Mr Saffa. You've answered my next question.

15:31:16 25 Which is therefore if we look at P7 you used the same, if you
26 like, method with the notebook and then added it to the December
27 1 and 3 statement; that's correct, isn't it?

28 A. Yes, my Lord.

29 Q. Now, you have looked at the differences between the

1 December 1 to 3 statement and the December 9 statement, for want
2 of a better way of putting it, P3 and P7; that's correct, isn't
3 it?

4 A. Yes, my Lord.

15:31:55 5 Q. Now, firstly, can you look at P7 and the first difference
6 that you point out, being that in the P7 document it is suggested
7 that Ragga had been pardoned and released from Pademba Road
8 Prison from the President sometime early this year; is that
9 correct?

15:32:27 10 A. Yes, my Lord.

11 Q. Where did you get the information from that you put into
12 that December 1 to 3 statement?

13 A. The information came from 334.

14 Q. And you accordingly entered it on to the document?

15:32:59 15 A. Yes, my Lord.

16 Q. And yet on 9 December it was changed to sometime in 2009?

17 A. Yes, my Lord.

18 Q. That was information that also came from Mr Bobson Sesay?

19 A. Yes, my Lord.

15:33:17 20 Q. So you would agree that he had given you effectively two
21 different versions as to the time that Mr Kargbo had been
22 released from prison?

23 A. According to these two documents, yes, my Lord.

24 Q. [Indiscernible] your evidence, is it, that at no time did
15:33:47 25 you suggest a date for Mr Kargbo's release to the witness Alimamy
26 Bobson Sesay?

27 A. My Lord, I did not suggest it to him. But when I was
28 reading his statement on the 9th, then he said it was in this
29 year; it was 2009.

1 Q. And similarly, on the December 1 to 3 statement, had you
2 read that to him beforehand?

3 A. Yes, my Lord.

4 Q. And --

15:34:26 5 JUSTICE DOHERTY: Before what? Before what? Because this
6 1 to 3 Exhibit 7 we're talking about, is it?

7 MR METZGER: Your Honour, yes.

8 JUSTICE DOHERTY: It's not signed [overlapping speakers]

9 MR METZGER: At the conclusion of the Exhibit 1, Exhibit 7,
15:34:40 10 did the witness read this to Mr Alimamy Bobson Sesay. I think
11 the answer was yes.

12 Q. But Mr Saffa, would you just confirm that for us again,
13 please?

14 A. Yes, my Lord, I read it to him.

15:34:58 15 Q. Would you also confirm for us that at that time you read it
16 to him on 3 December, Mr Bobson Sesay did not say to you: No,
17 no, it was 2009?

18 A. No, he did not say to me that.

19 Q. [Indiscernible] question of recant - the word "recant". If
15:35:27 20 we start first of all with exhibit P7, third line of paragraph 3,
21 it's written as "recount" and you've explained to us that that
22 was your error and you changed that in the P3 document; is that
23 correct?

24 A. Yes, my Lord.

15:35:55 25 Q. [Indiscernible] in the P7 document?

26 A. Did he ask the question, my Lord?

27 JUSTICE DOHERTY: Yes, he did. He said why did you use the
28 word "recount" in the P7 document?

29 THE WITNESS: I used the word "recount" because, like I

1 told you in my evidence-in-chief, I honestly did not know the
2 spelling of recant. But I actually meant to write "recant".

3 MR METZGER:

15:36:42 4 Q. Thank you, Mr Saffa. But why did you use that word at all
5 if you didn't know the spelling of it? From where did the word
6 come?

7 A. The word came from 334 when he said that he has been asked
8 to change his testimony and to change his testimony means to
9 recant what he has said.

15:37:10 10 Q. Thank you, Mr Saffa. So I'm just trying to establish that
11 the word "recant" itself or that terminology did not come from
12 the witness 334; or did it?

13 A. No, my Lord, it did not come from him. He was speaking
14 Krio.

15:37:29 15 Q. Thank you. So it was about changing testimony
16 [i ndi scerni bl e] thought that using the word recant or recount as
17 you did was a better way of capturing the expression
18 [i ndi scerni bl e]?

19 A. Yes, my Lord.

15:37:46 20 Q. And was that a word that you had spoken to other colleagues
21 about before you came to take evidence from 334 on 1 December?

22 A. It is a word that I've used before, probably erroneously,
23 because I did not even know the spelling. But I know that it
24 means to reject one's previous statement. So I've used it before

15:38:27 25 and I've discussed it with other people before, not for this
26 purpose, but I thought when he said - when he gave me the
27 information, he actually meant to recant his testimony.

28 Q. Thank you, I shall move on. Can you confirm that in these
29 meetings with Mr Bobson Sesay at no stage did he tell you that he

1 was asked to lie?

2 A. He told me that on December 9.

3 Q. [Indiscernible] go to the December 9 statement and to the
4 relevant point, and that is the second paragraph, third line from
15:39:14 5 the bottom of said paragraph. Have you got there?

6 A. What's the --

7 Q. [Indiscernible] that is to say the 9 December statement?

8 A. Yes, I have it.

9 Q. Thank you. These are the words that you told us earlier

15:39:48 10 when answering questions to Mr Herbst: That you introduced into
11 the 9 December statement because you wanted to clarify the issue;
12 is that correct?

13 A. Yes, my Lord.

14 Q. [Indiscernible] for the record. I understand that Ragga
15:40:13 15 wanted me to lie by recanting my in-Court testimony."

16 A. Yes, my Lord.

17 Q. Do you agree with me that this was introduced because you
18 explored the matter?

19 A. No, my Lord.

15:40:36 20 JUSTICE DOHERTY: With [indiscernible] witness [overlapping
21 speakers]

22 A. No, my Lord.

23 MR METZGER: With Mr Bobson Sesay.

24 JUSTICE DOHERTY: The witness has answered "no" Your
15:40:50 25 Honour. I don't know if you heard it.

26 MR METZGER:

27 Q. In fairness to you, Mr Saffa, I thought you said that you
28 asked him because you wanted to clarify the matter. Is that a
29 wrong understanding of your evidence?

1 A. Yes, because I wanted to understand what he meant when he
2 said he's being asked to change his testimony.

3 Q. He said change his story rather than testimony; isn't that
4 the position?

15:41:28 5 A. Well, his actual testimony.

6 Q. Let's deal with testimony then. Are you saying that the
7 word used by the witness speaking in Krio was "testimony"?

8 A. Yes, my Lord.

9 Q. I see. All right. We'll move on. Now, what exactly did
15:42:02 10 you ask him; can you recall?

11 A. I asked him what he understands when he was told to change
12 his testimony. He said that means he was told - he wanted him to
13 tell lies.

14 Q. Thank you, Mr Saffa. Now can you confirm for me, please,
15:42:33 15 that at no stage does Mr Sesay say he was actually told to tell
16 lies by Mr Kargbo?

17 MR HERBST: I think that's an argumentative question in
18 light of answer we've just heard.

19 JUSTICE DOHERTY: Let me have the question again.

15:42:54 20 MR METZGER: I'm suggesting that nowhere in the witness
21 statement does it state that Mr Sesay was told by Mr Kargbo to
22 tell lies.

23 JUSTICE DOHERTY: I think I will allow the question. It's
24 arising from cross-examination and directly reflects what the
15:43:09 25 witness said.

26 THE WITNESS: No, there was nowhere in the statement.

27 MR METZGER:

28 Q. [Indiscernible] reflected as it were is the witness's
29 understanding of what he was being asked to do?

1 A. From this statement, yes.

2 Q. Now, let me just spend a short amount of time asking you
3 about dates in the witness statement. As an experienced
4 investigator, did you pay particular attention to the dates that
15:43:59 5 were provided by the witness Alimamy Bobson Sesay?

6 A. Yes, my Lord.

7 Q. Did you take care to ascertain that he was giving you
8 accurate information to the best of his ability about the dates
9 he was informing you about?

15:44:22 10 A. Yes, my Lord.

11 Q. So if we look, for example, at the first paragraph, where
12 we see Friday, 26 November. Were you satisfied that Mr Sesay had
13 regard to what day he was talking about?

14 A. Yes, my Lord.

15:44:49 15 Q. And you went so far as to make sure that you put not only
16 the day of the week, but the date in full; is that correct?

17 A. Yes, my Lord.

18 Q. Continuing to use your extensive investigatory skills, do
19 you then go on to ask him about what happened that day which
15:45:20 20 forms the basis of the first three paragraphs [i ndi scerni ble]
21 over the page?

22 A. No, my Lord.

23 Q. Were you certain he was talking about the same day?

24 A. My Lord, yes.

15:45:56 25 Q. [I ndi scerni ble] your best to make it as clear as possible?

26 A. Say that again, my Lord.

27 Q. Did you do your best to make it as clear as possible as to
28 what day he was talking about?

29 A. Yes, my Lord.

1 Q. So you identified the 26th and 27th November with the
2 witness, and then he talks about events on 29 November; is that
3 correct?

4 A. Yes, my Lord.

15:46:39 5 Q. You were satisfied that he was talking about events that
6 occurred on Monday, 29 November 2010; is that correct?

7 A. Yes, my Lord.

8 Q. [Indiscernible] as the - using your investigative skills,
9 you have checked the calendar to make sure that Monday was in
15:47:06 10 fact 29 November 2010?

11 A. My Lord, on that day I did not check the calendar, but I
12 knew he was giving me something that was - that happened on that
13 day he called.

14 Q. I beg your pardon? What do you mean about on what day he
15:47:34 15 called?

16 A. On the day he said the incident happened, I was sure he was
17 telling me what happened on that day.

18 Q. [Indiscernible] looking at page 2, the day is Monday, 29
19 November 2010?

15:47:51 20 A. Yes, my Lord.

21 Q. [Indiscernible] have you since looked at the calendar for
22 2010 to ascertain whether 29 November 2010 was a Monday?

23 A. My Lord, I did not look at the calendar on that day.

24 Q. Have you since that day looked at a calendar to check that
15:48:17 25 the 29th of November 2010 was a Monday?

26 A. No, my Lord.

27 Q. Can you confirm that as far as Mr Bobson Sesay was
28 concerned, he told you about two telephone calls from Rwanda that
29 he was aware of to Samuel Kargbo's phone?

1 A. Yes, at least he told me about two. I don't know if it's
2 more than that in the statement. I don't know, but yes, I'm
3 aware of two.

15:49:13 4 Q. Mr Witness, I wouldn't want to be accused in due course of,
5 you know, doing anything that is [indiscernible] you took the
6 statement. In the course of the statement he talks about two
7 calls. Did he tell you about any other telephone calls on 29
8 November 2010?

15:49:34 9 A. The ones he told me about is recorded in his statement, my
10 Lord.

11 Q. Thank you. Now let's go on to the next matter, which is in
12 paragraph 3 of page 2, Prosecution exhibit P3. You very
13 helpfully identified for us that at the end of that paragraph the
14 words "but I was not able to take the phone number from which I
15:50:18 15 spoke to Five Five" that were in exhibit P7 were deleted?

16 A. Yes, my Lord.

17 Q. I think you also told us that it was your decision - your
18 personal decision to delete them; is that correct?

19 A. Yes, my Lord.

15:50:50 20 Q. [Indiscernible] being that you didn't consider those words
21 to be relevant to the current investigation or case; is that
22 correct?

23 A. Yes, my Lord.

15:51:17 24 Q. Can you give us some insight as to how you came by that
25 decision; why you thought it wasn't relevant?

26 A. Yes, I thought it was not important and I told him - I told
27 334 that this is not important, that I'm going to drop it.

28 Q. Yes, and can you tell us why you thought it wasn't
29 important?

1 A. Well, as far as the case is concerned, I did not see why it
2 was so important to this matter; therefore, I dropped it and I
3 did not only drop it. I told him --

4 Q. Mr Saffa, this witness was claiming that the telephone
15:52:20 5 calls were coming from Rwanda, were they not?

6 A. Yes, my Lord.

7 Q. And if a telephone call is received on a mobile or cell
8 phone, it can be the case that the number is displayed on the
9 screen of the receiving cell phone to your knowledge; is that not
15:52:46 10 the case?

11 A. Yes, my Lord.

12 Q. So would you agree with me that far from being unimportant,
13 it was important to ascertain whether the witness had in fact
14 seen a foreign number displayed on the phone that he was speaking
15:53:03 15 into?

16 A. Ask that question again, please.

17 MR HERBST: I fail to see the relevance of this. What this
18 witness thought was important to the investigation is no longer
19 relevant. It's what 334 said that is relevant.

15:53:31 20 MR METZGER: Does your Honour want me to [i ndi scerni bl e]

21 JUSTICE DOHERTY: Yes.

22 MR METZGER: Yes, I am responding to the open door that I
23 encountered when listening to the evidence-in-chief or direct
24 evidence, as Mr Herbst was taking this witness through. He
15:53:55 25 offered voluntarily the explanation which we hadn't heard until
26 today that that is the reason why those words were missing from
27 the final signed statement. The witness also went on to say
28 simply he did not think that it was necessarily important.

29 JUSTICE DOHERTY: I think I will allow the question,

1 because we have here some evidence given by 334 [i ndi scerni bl e]
2 that he was challenged on and an explanation as to why a document
3 - a piece of evidence that turns out a witness has been
4 subsequently challenged on was removed. And it could be removed
15:54:41 5 for one of several reasons, and - which I'm including
6 [i ndi scerni bl e] the instruction emanated from and for that reason
7 I think there is a relevance here, so I'm going to allow it.

8 MR METZGER: I'm grateful, Your Honour.

9 Q. Mr Saffa, I think you may want the question again?

15:55:00 10 A. Yes, my Lord.

11 Q. I'm asking - you've told us that you formed the impression
12 it wasn't important, and I'm asking this. As an investigator
13 with your experience, did you not think it important to find out
14 whether Mr Bobson Sesay could tell from looking at the display on
15:55:33 15 the phone whether the call was an international call or not?

16 A. In this circumstance, no.

17 Q. Thank you.

18 MR METZGER: Your Honour, I don't propose to take the
19 matter further than that.

15:55:50 20 JUSTICE DOHERTY: [I ndi scerni bl e] he's given an opinion and
21 what more can we say about it.

22 MR METZGER:

23 Q. Thank you, Mr Saffa.

24 MR METZGER: What I would like to do now, please, is to go
15:56:19 25 to the material that was added, I think, on the 3rd of December -
26 pardon me, probably slightly before 3 December.

27 Q. Can you read that paragraph to yourself, please, "Sammy
28 Ragga also asked", second paragraph on the third page of P3?

29 MR HERBST: [I ndi scerni bl e] done in closed session because

1 the name of the protected witness is mentioned in that paragraph.

2 MR METZGER: I don't need to go into closed session. I
3 think I'm skilled enough to do it without.

4 MR HERBST: You asked him to read the paragraph.

15:57:07 5 MR METZGER: To himself.

6 MR HERBST: Oh.

7 MR METZGER: To himself.

8 JUSTICE DOHERTY: I must admit, Mr Metzger, I missed that
9 as well.

15:57:15 10 MR METZGER: Can I say it again.

11 MR METZGER: Can you read that paragraph which starts
12 "Sammy Ragga also asked me" to yourself, Mr Saffa.

13 A. I have read it, my Lord.

14 Q. [Overlapping speakers] did you hear me the first time?

15:57:32 15 JUSTICE DOHERTY: It's not relevant. It's been answered.

16 MR METZGER: I'm just checking the connection, Your Honour.

17 Q. Mr Saffa, the simple question is this: In relation to that
18 paragraph, is it correct that Mr Bobson Sesay did not mention
19 Mr Kanu, either by his name Santigie Borbor Kanu, or the nickname
15:57:55 20 Five Five, or in any other way?

21 A. Their names are not mentioned here, but if you can look at
22 the second sentence, I think there is indication of that.

23 Q. I'm not skilful enough.

24 MR HERBST: Your Honour. Shall we go into closed session,
15:58:32 25 please.

26 JUSTICE DOHERTY: Yes.

27 Madam Court Manager, can you please put us in closed
28 temporarily. To those people who may be listening from - from
29 Freetown or here who are not members of the Court, the Court

1 will - this next evidence will not be heard because it is for the
2 security of a witness, and can I ask those members who are not
3 Court officials who are present here in Court, they are not to
4 repeat anything they now hear [i ndi scerni bl e].

15:59:15 5 THE COURT OFFICER: [In Kigali] Madam, the Court will now
6 go into closed session, but it will take about five minutes.
7 Just bear with me.

8 MR HERBST: Would it be okay for me to advise the next
9 witness he will not be needed today? He has been here all day
15:59:56 10 and it looks like we will not get to him. May I just excuse
11 myself for two minutes and just tell him?

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

13 THE COURT OFFICER: Your Honour, the Court is now in closed
14 sessi on.

16:01:56 15 [Cl osed sessi on]

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1 [Open session]

2 JUSTICE DOHERTY: Thank you. Please proceed.

3 MR METZGER: Very much obliged, Your Honour.

4 Q. Now, Mr Saffa, in relation to the next paragraph, that is,
16:05:03 5 paragraph 3 of page 3, the statement records that the witness
6 said that Sammy Ragga went to his house to tell him that he had
7 received another call from the convicts; is that correct?

8 A. Yes, My Lord.

9 Q. [Indiscernible] correct that in giving his statement to
16:05:33 10 you, Mr Sesay did not name the persons he was referring to as the
11 convicts in relation to that incident?

12 A. No, My Lord.

13 Q. [Indiscernible] that he was informed again by Samuel Kargbo
14 about two things: Mr Kamara's brother and the vice-president of
16:06:22 15 Sierra Leone, yes?

16 A. Yes, My Lord.

17 Q. In relation to that aspect, can you confirm that
18 Mr Bobson Sesay did not mention Santi gi e Borbor Kanu's name?

19 A. No, My Lord.

16:07:10 20 MR METZGER: Your Honour, just before I move on to a
21 different subject, it appears to me that there is some material
22 contained in confidential annex 4 of the Prosecutor's pre-trial
23 disclosures, and I wanted to ask this witness, it occurs to me,
24 about his knowledge, if any, of that part of the Prosecution
16:07:41 25 investigation.

26 JUSTICE DOHERTY: Someone will have to refresh my memory or
27 I'm going to have to find that document.

28 MR METZGER: It's easier if I just pass up my copy. It's
29 highlighted, but not otherwise, marked for identification by

1 Your Honour.

2 MR HERBST: Could you just let me know what page you're
3 speaking of [i ndi scerni ble]?

4 MR METZGER: The very last one in your Rule 66 disclosures.

16:08:11 5 JUSTICE DOHERTY: I have found my version of what may be
6 the correct [i ndi scerni ble]. Which document was this annexed to?
7 Was this the actual --

8 MR METZGER: Pre-trial disclosures, confidential annex 4.
9 I don't know if those are supplied to Your Honour. I assumed
16:08:47 10 that they were all, because they were part of the disclosure in
11 this case.

12 MR HERBST: Are we talking about this document?

13 JUSTICE DOHERTY: Is this actually part of the defendant
14 counsel's original report to the Court?

16:09:06 15 MR HERBST: This is part - this was referred to. The
16 material in this was referred to in the report. I don't recall
17 whether the actual memorandum of interview was attached. But
18 this was attached to our confidential disclosures, and I would
19 say, for the sake of saving time and clarifying, that I don't see
16:09:32 20 any way that this witness would have been privy to this at all.

21 JUSTICE DOHERTY: In fairness I have to let counsel ask
22 that. I have to confess I don't recognise this document. I have
23 document number 017, the public pre-trial brief dated 16 May
24 2012, but I don't know that this is attached - it only goes up to
16:10:00 25 annex 1 that I have, so I don't know where this is attached to.

26 MR HERBST: This was attached to the Rule 66 confidential
27 disclosures, but I will just say for the benefit of my learned
28 friend that no one in OTP was involved in this aspect of the
29 investigation, so he can ask, but I can't imagine there will be

1 any different answer. But I will, if Your Honour feels it
2 appropriate --

3 JUSTICE DOHERTY: I will leave counsel to make that
4 assessment. Obviously, I can't prevent the questions if they are
16:10:43 5 counsel's cross-examination. I'm just a little concerned because
6 the accused persons have to be taken back and --

7 MR METZGER: Can I take it under advertisement then,
8 Your Honour? It think it may be something that my learned friend
9 and I can talk about and see how best we can resolve this. I
16:11:05 10 would like to evince some evidence from that material for
11 Your Honour's consideration in view, obviously, of the
12 allegations that have been made in this case.

13 JUSTICE DOHERTY: I will leave you to do that before
14 Monday. I want to allow the two accused to be taken back. There
16:11:24 15 are restrictions on their movement, et cetera, that I have to
16 bear in mind, and I intend to adjourn.

17 Can I say by way of - I was going to give a short ruling on
18 the questioning of the calling of the Principal Defender. If you
19 wish I can give it now, but it will be in the accused's absence.
16:11:44 20 And what I could do is indicate that having considered both the
21 amicus brief and the extra submissions, I'm not going to call
22 upon Defence counsel to make extra submissions, but I have
23 decided for several reasons which I will outline on Monday
24 morning that the Principal Defender cannot be called.

16:12:09 25 So I will adjourn Court on that note. But I will elaborate
26 on my reasons on Monday in the presence of all the accused
27 persons.

28 MR METZGER: I'm grateful.

29 JUSTICE DOHERTY: But I want to give counsel notification

1 to avoid spending a lot of time on things.

2 MR METZGER: Would Your Honour want to see us in Chambers
3 in relation to scheduling before we leave today?

4 JUSTICE DOHERTY: If we can do it briefly, yes, it would be
16:12:39 5 a good idea.

6 Freetown, can you hear me?

7 MR NICOL-WILSON: Yes, Your Honour.

8 JUSTICE DOHERTY: I'm grateful that you spent so long today
9 in Court. I remind you you are still under oath. There are some
16:13:00 10 more questions and you're not to discuss your evidence with any
11 other person.

12 Can I thank everyone again for coming in and working on a
13 Saturday. We are going to adjourn now until Monday morning at
14 the usual time, and I'm seeing counsel in Chambers.

16:13:19 15 Mr Nicol-Wilson, there's a scheduling question. I know
16 you're not physically present, and if there's anything you want
17 to say to have - be made on your behalf by your colleagues, would
18 you be - I can ask Mr Court Attendant to assist you to use the
19 telephone whilst we withdraw and speak to one of your colleagues
16:13:43 20 if you should wish that to be done.

21 MR NICOL-WILSON: Your Honour, let the will of the majority
22 prevail this time.

23 JUSTICE DOHERTY: [Indiscernible] kind of you. We will
24 adjourn until Monday morning at the usual time, which is 11
16:13:58 25 o'clock here, 9 o'clock Freetown. Please adjourn Court.

26 [Whereupon the Court adjourned at 4.14 p.m.
27 until 9.00 a.m. Monday, 2 July 2012]

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