



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 [Wednesday, 4 July 2012]

2 [Open Session]

3 [Accused enter court]

4 [Upon commencing at 9.03 a.m.]

09:04:11 5 JUSTICE DOHERTY: Good morning. Before I take appearances,
6 I will first inquire if we have a decent audible connection with
7 Kigali.

8 Good morning, Kigali.

9 MR HERBST: Yes, we can hear. Good morning, Freetown.

09:04:34 10 Good morning, Your Honour. We can hear you.

11 JUSTICE DOHERTY: Very good.

12 Appearances, please.

13 MR HERBST: Robert Herbst, Independent Counsel for the
14 Prosecution.

09:04:45 15 JUSTICE DOHERTY: Thank you, Mr Herbst.

16 MR NICOL-WILSON: Your Honour, good morning and welcome
17 back. Melron Nicol-Wilson for Hassan Papa Bangura.

18 JUSTICE DOHERTY: Thank you, Mr Nicol-Wilson, both for the
19 appearance and the welcome back.

09:05:02 20 MS CARLTON-HANCILES: Good morning, Your Honour, and I want
21 to say not only welcome back, but it appears as if you were all
22 having a miracle to be here and not to be tired. Because my
23 counsel this morning, some of them are so tired, but they are
24 coming to Court. So they called me to stand in and apologise.

09:05:22 25 And I will apologise on behalf of both Mr Metzger, who had his
26 bags packed and had to sit down again to gain some breath, and
27 also Mr Serry-Kamal, who is here for the time being represented
28 by his legal assistant, Ms Serry-Kamal.

29 JUSTICE DOHERTY: Thank you, Ms Carlton-Hanciles.

1 We can proceed on. You've got a brief for the other
2 counsel; is that correct?

3 MS CARLTON-HANCILES: Yes, Your Honour.

4 JUSTICE DOHERTY: Very good.

09:05:58 5 Mr Herbst, is the witness in position, please?

6 [The witness enters court]

7 MR HERBST: Your Honour, he's in the courtroom. We're
8 going to ask him to take the witness chair.

9 And, Your Honour, while the witness is taking his chair, I
09:06:25 10 believe we have received - and all counsel --

11 JUSTICE DOHERTY: Yes, Mr Herbst, continue.

12 MR HERBST: I'm not sure, Your Honour. I'm sorry - okay.
13 [Overlapping speakers]. We have received from the Court a report
14 dated October 2 of 2011, from the Rwanda Correctional Service,
09:07:04 15 entitled "Report on General Searching of Delta Wing Inmates SCSL
16 at Mpanga Central Prison." It consists of a number of pages.
17 It's my understanding that this is what the Registrar of the
18 Court provided to Your Honour's Chambers, and I believe that all
19 counsel have now had chance to - that it's been distributed to
09:07:28 20 all counsel.

21 Unless Mr Sengaboover the last few days has found any
22 additional written reports - and Your Honour may want to ask
23 him - it seems to me that we should be permitted now to question
24 the witness with respect to the findings of the investigation
09:07:59 25 that he conducted. Your Honour will remember that we held off on
26 that issue pending the receipt of the searching reports.

27 JUSTICE DOHERTY: Yes, I do recall that. I'm getting an
28 echo of my own voice on my machine, so if I could ask AV to
29 please check and rectify that while we continue.

1 I have not seen the report. My instruction was, of course,
2 that it be given to counsel. I will ask the Principal Defender
3 if other counsel have received it, and I will not proceed on it
4 until Mr Metzger and Mr Serry-Kamal come into Court.

09:08:53 5 Ms Carlton-Hanciles, has it been received by counsel for
6 the Defence?

7 MS CARLTON-HANCILES: I have just inquired from
8 Mr Nicol-Wilson, and he says no.

9 JUSTICE DOHERTY: I see.

09:09:04 10 MS CARLTON-HANCILES: And I have also not been copied on
11 any such correspondence.

12 JUSTICE DOHERTY: I understand. I was going to ask him.

13 So it would appear, from what I'm informed, that it hasn't
14 been distributed to counsel here in Freetown, so I will stand
09:09:17 15 that matter down. I will ask, I think, Mr Court Attendant to
16 just check with the Registrar's office where the copies for the
17 Principal Defenders were sent to - for Defence counsel were sent
18 to. Or maybe more appropriate I ask my associate to do that,
19 just to check where they are, as obviously it's quite clear that
09:09:41 20 the Registrar acted upon it because Mr Herbst has it.

21 We will proceed, therefore, on the other matters.

22 Mr Sengabo, good morning, and again I'm grateful that you
23 have come here today to continue with the evidence as I know you
24 are very busy and have a lot of other commitments. I remind you
09:10:06 25 that the day before yesterday you affirmed to tell the truth. As
26 you know, that obligation is still on you to tell the truth. I
27 remind you, as I remind every witness, and we will now proceed.

28 WITNESS: HILLARY SENGABO [Continued]

29 JUSTICE DOHERTY: I notice, Madam Court Manager, you are on

1 your feet.

2 THE COURT OFFICER: [In Kigali] Yes, ma'am. I want to say
3 to say that the Registrar has acted upon the report. It has been
4 sent to me, and I know that Mr Metzger has a copy; I know
09:10:38 5 Mr Serry-Kamal has a copy. Can I ask Thomas Alpha to print out a
6 copy for Mr Nicol-Wilson. I will resend it now to Freetown and
7 if Thomas Alpha can print out a copy for Mr Nicol-Wilson, and I
8 shall copy the Principal Defender on the copy I'm sending now,
9 because I had not copied the Principal Defender initially.

09:11:06 10 JUSTICE DOHERTY: I understand. Counsel have heard and
11 understand. Again, I will not deal with the matter immediately.
12 We'll wait until other counsel come.

13 Mr Herbst, please proceed with your examination-in-chief.

14 I have before me the copies --

09:11:28 15 MR HERBST: Your Honour --

16 JUSTICE DOHERTY: Yes, please speak. You were saying
17 something, Mr Herbst?

18 MR HERBST: Your Honour, I just wanted to add that this
19 morning we copied and provided a more fuller copy of the page
09:11:49 20 from the call log book that contains the 30 November 2010 entries
21 that I had just started to ask the witness about. So hopefully
22 that has also been distributed.

23 What it does is, it's the same as the copies that had
24 already been distributed, except that it has the signature column
09:12:14 25 in the extreme right-hand side.

26 JUSTICE DOHERTY: Yes, I recall the original document --

27 MR HERBST: [Overlapping speakers]

28 JUSTICE DOHERTY: I recall seeing that.

29 Very well. Please proceed on with your questions.

1 Examination-in-Chief by Mr Herbst: [Continued]

2 MR HERBST:

3 Q. Now, Mr Sengabo, good morning.

4 A. Good morning.

09:12:42 5 Q. Would you look - would you take out the original book, log
6 book, and open it to the page containing the 30/11/2010 entries,
7 the top of which has Bazzy Kamara and brother and 13.11 p.m. Do
8 you have that before you?

9 A. Yes.

09:13:13 10 JUSTICE DOHERTY: Mr Nicol-Wilson, do you have a copy of
11 this document? Because if you don't, I'll ask that my copy be
12 made available to an extra copy.

13 MR NICOL-WILSON: I do, Your Honour.

14 JUSTICE DOHERTY: Oh, you're fine.

09:13:27 15 MR NICOL-WILSON: Yes.

16 JUSTICE DOHERTY: Mr Sengabo, can you please - I
17 interrupted your answer, so please proceed.

18 MR HERBST:

19 Q. Mr Sengabo, do you have that original page before you?

09:13:42 20 A. Yes, I have.

21 Q. Now in the time that Mr Kamara has been in your custody in
22 the Mpanga prison, have you become familiar with his handwriting?

23 A. Yes.

24 Q. And with his signature?

09:14:03 25 A. Yes.

26 Q. Would you tell the Court in whose handwriting the first
27 entry, 11/30/2010 is?

28 A. It's Bazzy --

29 MS SERRY-KAMAL: Objecti on. I understand.

1 JUSTICE DOHERTY: Just pause, Mr Sengabo [microphone not
2 activated]

3 MS SERRY-KAMAL: I understand that Mr Sengabo has been in
4 prison and he's not a handwriting expert and he's testifying to
09:14:34 5 what he says is Bazy Kamara's handwriting, but he's not an
6 expert. We don't know that that's Bazy handwriting at all.

7 JUSTICE DOHERTY: Mr Herbst, you heard the objection from
8 counsel for Kamara.

9 MR HERBST: Your Honour, in the rules of evidence that I'm
09:14:57 10 familiar with, a witness who is familiar with someone's
11 handwriting can testify to that fact. It does not require a
12 handwriting expert.

13 JUSTICE DOHERTY: Mr Sengabo, tell me, how long has
14 Mr Kamara been at Mpanga under your control as Director of that
09:15:20 15 facility?

16 THE WITNESS: Your Honour, since 2009, December 31st -
17 October 31st, that's the date he arrived in Rwanda, and I was
18 with them since then up to now.

19 JUSTICE DOHERTY: And during that period, have you seen his
09:15:55 20 handwriting?

21 THE WITNESS: Yes, Your Honour.

22 JUSTICE DOHERTY: I am satisfied that the witness is
23 familiar in his capacity as senior staff responsible for
24 Mr Kamara to have sufficient experience and competency to
09:17:21 25 recognise the signature of Kamara and this is not a situation
26 where an isolated signature is being recognised that would
27 require an expert.

28 Please proceed.

29 MR HERBST: I thank, Your Honour. The witness answered the

1 question but I'm not sure Your Honour heard it. Did you?

2 JUSTICE DOHERTY: No, I ruled on the objection first.

3 Mr Sengabo, how did you answer the question --

4 MR HERBST: [Overlapping speakers]

09:17:51 5 JUSTICE DOHERTY: -- please?

6 THE WITNESS: Your Honour, I said, yes, I am familiar to
7 his handwriting.

8 JUSTICE DOHERTY: Thank you.

9 Please proceed.

09:17:59 10 MR HERBST:

11 Q. And in whose handwriting is the first line of the first
12 entry, 30/11/2010, with the name Bazzy Kamara, the brother, the
13 time and the phone number? You may answer, Mr Sengabo.

14 A. Pardon?

09:18:37 15 Q. Did you hear my question? Do you want me to repeat it?

16 A. Yes.

17 Q. Okay. In whose handwriting is the first entry that says
18 30/11/2010, Bazzy Kamara, brother, 13.11 p.m., and the phone
19 number?

09:18:59 20 A. It is Bazzy Kamara handwriting.

21 Q. And are you familiar with Bazzy Kamara's signature?

22 A. Yes.

23 Q. And the signature in the right - the first signature at the
24 top of the page, it appears to be a squiggle. Whose signature is
09:19:20 25 that?

26 A. It's for Bazzy Kamara.

27 Q. Are you familiar with the handwriting of

28 Santi gie Borbor Kanu?

29 A. Yes.

1 JUSTICE DOHERTY: Mr Herbst, before you proceed with those
2 questions. Just pause. Because Mr Metzger is now in Court and
3 he may want to hear this. I also note his appearance.

09:20:01 4 MR METZGER: Good morning, Your Honour. My apologies for
5 my tardy attendance this morning. Kevin Metzger on behalf of
6 Santi gie Borbor Kanu with an objection to the question that the
7 Prosecution is about to put.

8 JUSTICE DOHERTY: I'll hear it in it's entirety and record
9 it and then hear your objection.

09:20:18 10 MR METZGER: Thank you, Your Honour.

11 JUSTICE DOHERTY: Mr Herbst, please put your question, and
12 Mr Sengabo, please do not answer until I deal with this
13 objection.

14 Mr Herbst, please repeat your question.

09:20:33 15 MR HERBST:
16 Q. My question is: In whose handwriting is the name on the
17 second line, Santi gie Borbor Kanu? Whose hand is that?

18 MR METZGER: I have an objection to that question, Your
19 Honour. There appears to be no foundation to the question. And
09:20:55 20 on the basis of the statement served to the Defence, it had not
21 been iterated therein that Mr Sengabo was an expert witness in
22 the area of handwriting.

23 MR HERBST: My response is that a handwriting expert is not
24 required if the witness states that he's familiar with --

09:21:28 25 MR METZGER: May he not give evidence again. With the
26 greatest respect to my learned friend, he has not asked the
27 foundational question. Either he asked the foundational
28 questions or he makes a submission to the Court in relation to
29 the abrogation of time honoured principals related to expert

1 witnesses.

2 JUSTICE DOHERTY: Mr Herbst, I asked the foundation
3 questions for the last witness. Please don't ask me to do them
4 again for this.

09:22:04 5 MR HERBST:

6 Q. Mr Sengabo, for how long have you had custody and control
7 of Mr Kanu at the prison? Since when?

8 A. Since 2009 up to now.

9 Q. And during that period of time, have you had occasion to
09:22:19 10 see his handwriting, Mr Kanu's handwriting, and his signature and
11 to become familiar with both?

12 MR METZGER: And again I object. First of all, that's two
13 questions in one.

14 JUSTICE DOHERTY: [Microphone not activated]

09:22:41 15 MR METZGER: Secondly, it seems to me, that, while, as I
16 say, he should take it slowly and then establish expertise. In
17 my respectful submission, the area of handwriting evidence is an
18 area that requires expertise; and therefore, the witness's
19 expertise in that area needs to be, as it were, examined or put
09:23:04 20 before Your Honour, and that hasn't happened.

21 MR HERBST: Did you hear the witness's answer?

22 JUSTICE DOHERTY: I was about to rule that you put two
23 questions in one. Please put them one at a time. I didn't hear
24 the answer.

09:23:26 25 MR HERBST:

26 Q. Between 2009 and present, Mr Sengabo, have you had occasion
27 to see Mr Kanu's handwriting?

28 A. Yes. Since 2009 up to now I have been watching and
29 following their handwritings.

1 Q. And have you had occasion during that same time to become
2 familiar with Mr Kanu's handwriting?

3 A. Yes.

4 Q. And with respect to his signature, have you had occasion
09:23:58 5 during that same period of time to see his signature?

6 A. Yes.

7 Q. And have you had occasion during that same period of time
8 to become familiar with his signature?

9 A. Yes.

09:24:10 10 Q. Would you tell us in whose handwriting on the second
11 line --

12 MR METZGER: Objecti on, Your Honour.

13 MR HERBST: [Overl appi ng speakers]

14 MR METZGER: Again, there is no foundati on. He has simply
09:24:25 15 established that Mr Sengabo has had the opportunity over a period
16 of time, however intimately or otherwise, to become familiar with
17 handwriting and with a signature. Respectfully, that does not
18 meet the requirement for an expert witness. He is asking the
19 witness to give an opinion. Now, that opinion is either based on
09:24:51 20 the witness's expertise or something else. And in my respectful
21 submission, the threshold in relation to expertise has not yet
22 been crossed.

23 MR HERBST: Briefly in reply, Your Honour, I have now asked
24 the foundational questions that I believe Your Honour asked with
09:25:08 25 respect to Mr Kamara, and I assert again that in the area of
26 handwriting, the rules of evidence do not require a handwriting
27 expert for a witness who is familiar with that handwriting to
28 testify to that person's handwriting.

29 MR METZGER: May I refer the Court to the Rule relating to

1 expert witnesses, or is Your Honour content?

2 JUSTICE DOHERTY: [Microphone not activated]

3 MR METZGER: Rule 94*bis* seems to be the area that covers
4 expert witnesses. And if the Prosecution is saying that this is
09:26:59 5 an expert witness and he wishes to rely on the testimony as an
6 expert, then in this particular occasion the Defence will have to
7 ask that the procedures be followed.

8 JUSTICE DOHERTY: To which section did you refer me to?

9 MR METZGER: I beg your pardon, 94*bis*.

09:27:20 10 JUSTICE DOHERTY: [Microphone not activated]

11 MR METZGER: And in all the circumstances, bearing in mind
12 the occasion on which the statement of Mr Sengabo was served upon
13 us, if he is to be relied upon as an expert, then the Defence
14 will ask that the Rules be complied with. If we have to deal
09:27:42 15 with this on an expert evidence basis, then we would wish to call
16 our own expert. We haven't had enough time to instruct the same.

17 JUSTICE DOHERTY: This is a ruling on an objection to
18 questions being put to a witness. The witness, Mr Sengabo, is
19 giving evidence not as an expert on identifying handwriting but
09:31:46 20 as an official familiar with the accused Kanu, who has, in his
21 capacity and control and care of Kanu, maintained records which
22 include records of Kanu's handwriting.

23 I am satisfied that in that capacity over the period of
24 time with which he has had control and care of Kanu, he is
09:32:12 25 sufficiently familiar to recognise the handwriting of Kanu. This
26 Court is not bound by national laws of evidence, but is charged
27 under Rule 89(B) to consider evidence that is consonant with the
28 spirit of the Statute of the Special Court, and I bear in mind in
29 particular Article 17 of the Statute under the general principles

1 of law, and may admit evidence where it is relevant. In the
2 circumstances, I overrule the objection and direct that the
3 question may be put.

09:32:56 4 MR METZGER: Your Honour, may I, then, make a second
5 objection, and that is that the Prosecution have not laid the
6 proper foundation to ask the specific question; i.e., the
7 question is asked in generic terms, and for the benefit of the
8 Court, it would be appropriate for the foundational questions to
9 include Mr Sengabo's knowledge of that particular document, and
09:33:19 10 his presence or otherwise at the time when it was in relation to
11 the occasion that is being discussed herein being completed or
12 otherwise.

13 JUSTICE DOHERTY: I was working on the, perhaps, erroneous
14 assumption that that was going to happen next. We've got his
09:33:40 15 recognition and we're next coming to the particulars. So I'm
16 assuming that that's going to happen.

17 MR METZGER: Perhaps I spoke too soon.

18 JUSTICE DOHERTY: Yes. If it doesn't happen then I will
19 entertain your objection again, but I'm assuming that that's
09:33:54 20 going to happen.

21 MR METZGER: I'm very much obliged, Your Honour.

22 MR HERBST: I'm sorry, Your Honour, I did not quite get the
23 second objection and what it is that counsel wants me to ask.
24 Could I have that repeated?

09:34:12 25 JUSTICE DOHERTY: It's not for Defence counsel to tell
26 Prosecution counsel, but the objection was that there wasn't a
27 proper foundation. It was that your questions were in generic
28 terms; in other words, going to this document, a foundation for
29 this document as opposed to the general recognition of the

1 handwriting of Kanu. So we're waiting for the next bit.

2 Mr Metzger, I trust I've paraphrased your --

3 MR METZGER: Your Honour has done me proud.

4 MR HERBST: [Overlapping speakers]

09:34:55 5 JUSTICE DOHERTY: Mr Herbst, yes.

6 MR HERBST: I thought I had laid the proper foundation
7 through the witness for this book, this original book, yesterday.

8 The witness testified about the book how it is maintained,
9 the fact that it is --

09:35:22 10 JUSTICE DOHERTY: Yes, we did all of that. We are talking
11 about the book. Now we are talking about specific entries - very
12 specific entries.

13 Mr Herbst, please continue.

14 MR HERBST:

09:36:07 15 Q. These two entries that we are talking about, Mr Sengabo,
16 would you tell the Court how you've become familiar with these
17 particular entries in this book?

18 A. Yeah, I do have that detail of supervising the call log.
19 And since I was there since 2009 up to now, I have often checked
09:36:43 20 this book whereby I know the handwriting of each prisoner there.

21 Q. Now I ask you, Mr Sengabo, in whose handwriting --

22 MR METZGER: Your Honour, I object.

23 MR HERBST: [Overlapping speakers]

24 MR METZGER: May I just adjust the standing objection.

09:37:05 25 JUSTICE DOHERTY: Mr Herbst, please pause. There is
26 another objection.

27 MR METZGER: Yes. I shan't use FE Smith again, but the
28 question has jumped from the generic to the specific. He has
29 told us specifically about what he does with the book and his

1 supervisory functions. I still have not heard the questions that
2 would permit him to ask the question that he has just asked, and
3 therefore the Defence does have objection to that.

09:37:42 4 MR HERBST: Your Honour, I think that all the foundational
5 questions have now been asked that permits this witness to
6 testify to the entries in this book. He's testified that he's
7 fully familiar with it, he's examined it on various occasions. I
8 really can't imagine what additional questions would be required.

09:38:04 9 And I also ask, in terms of procedure, whether Mr Metzger
10 has any other objections to be lodged or any other reasons for
11 his objections so that we can deal with them all at the same
12 time.

13 JUSTICE DOHERTY: Objections only arise when the question
14 comes out. We can't deal with objections in a vacuum, really.
09:38:22 15 So whilst it might be very nice to be able to do that, I'm afraid
16 that life doesn't work that way.

17 The question, I didn't get it all written down because I
18 noted the objection. What was the question again, just to make
19 sure that I --

09:38:42 20 MR HERBST: Your Honour, it is: In whose handwriting is
21 the entry on the second line under "name of prisoners", it says
22 "Santigie Borbor Kanu".

23 JUSTICE DOHERTY: In the circumstances I am satisfied that
24 the witness has testified that he checks the book, knows the
09:39:40 25 handwriting, and has a duty to control the book; therefore, the
26 question relating to this page can be put to the witness.

27 MR HERBST:

28 Q. Mr Sengabo, do you remember the question?

29 A. Yes.

1 Q. In whose handwriting are the words "Santigie Borbor Kanu"
2 on the second line under "name of prisoners" on the page of that
3 entry?

4 A. [Overlapping speakers]

09:40:17 5 JUSTICE DOHERTY: Could we have the dates and names of
6 things as well, Mr Herbst?

7 MR HERBST: Your Honour, you are talking about the second
8 line which has the date "30/11/2010", and --

9 JUSTICE DOHERTY: Mr Herbst, please don't put the answers
09:40:34 10 in the witness's mouth. Let the witness describe it.

11 MR HERBST: Your Honour --

12 JUSTICE DOHERTY: Mr Witness, you have the book, the
13 original in front of you. Please look at the page where the
14 first line is "30/11/2010" and the word "Bazzy Kamara." Please
09:41:04 15 read the line that comes under it.

16 THE WITNESS: Your Honour, the first column is "30th
17 November, 2010"; the second column is "Santigie Borbor Kanu"; the
18 third is the "brother"; the fourth is "13.11 p.m."; the fifth is
19 telephone number "+23233285697"; below there is +23233258898,
09:41:59 20 then the signature of the last.

21 MR HERBST:

22 Q. Okay. Now with respect to the name of "Santigie
23 Borbor Kanu" on that particular line, in whose handwriting is
24 that?

09:42:15 25 A. Santigie Borbor Kanu.

26 Q. And on "brother" adjacent to it in the third column, whose
27 handwriting is that?

28 A. The handwriting for "brother"?

29 Q. Yes. The handwriting for "brother" on the second line

1 adjacent to Mr Kanu's name?

2 A. Yeah, the handwriting for "brother", I dealt with it. But
3 for Santigie Borbor Kanu's name, I know it is for Borbor.

4 Q. Okay. And the signature - the second signature under
09:42:54 5 "signatures" column, whose signature is that?

6 A. Yeah, it's for Kanu.

7 Q. Thank you. Now let's - do you have the updated call list
8 before you?

9 JUSTICE DOHERTY: Mr Herbst, I am not sure if you're
09:43:31 10 speaking because I cannot see your monitor - your transcriber.
11 But if you are speaking, we don't hear you.

12 MR HERBST: Your Honour, I just asked the witness whether
13 in fact he had before him the updated call list which has been
14 admitted into evidence as P13.

09:43:51 15 JUSTICE DOHERTY: [Microphone not activated]

16 Please proceed. I think we can all hear.

17 MR HERBST: Yes, Your Honour, and I'm just waiting for the
18 witness to answer that question. He's looking through his
19 documents.

09:44:08 20 THE WITNESS: Yeah, I've got it.

21 JUSTICE DOHERTY: Please take your time, Mr Sengabo.

22 MR HERBST: Thank you. [Indiscernible] testified that he
23 had it. So I'm going to proceed if Your Honour permits me to do
24 so.

09:44:29 25 JUSTICE DOHERTY: Yes, please do so.

26 MR HERBST:

27 Q. If you could look, Mr Sengabo, on the third page of P13 in
28 the section that contains the names of those on the approved list
29 for Mr Kamara up in the top portion of the page. Do you have

1 that?

2 A. Yes, I have.

3 Q. How many brothers of Mr Kamara are listed on the approved
4 list?

09:45:00 5 A. There are just three.

6 Q. Did you say three brothers?

7 A. There are two.

8 Q. Two brothers. And would you read out - first of all, would
9 you tell us on what number lines those brothers are listed?

09:45:35 10 A. Yeah, they are on number 12 and 13.

11 Q. All right. And would you read out the name, the address,
12 and the approved phone number for the first brother on line 12?

13 A. It's Hamidu Kamara.

14 Q. And his address?

09:46:02 15 A. 47 Lumley [i ndi scerni bl e] Wilberforce Way [i ndi scerni bl e].

16 Q. And the number?

17 A. You mean telephone number?

18 Q. Yes, sir?

19 A. 033-722-843.

09:46:29 20 Q. And would you read out the same information on line 13 for
21 the second brother listed?

22 A. It is "Denis Hassan Kamara, brother, New York, USA",
23 001-34-76-28-36-02.

24 Q. Now would you go back to the entry, the two entries in the
09:47:06 25 logbook for November 30 - I mean 30/11/2010 that you described a
26 few minutes ago - and tell us whether any of the three numbers
27 listed are the numbers that you just read out for Mr Kamara's
28 brothers?

29 A. You mean to read the numbers in the call log?

1 JUSTICE DOHERTY: Just pause, Mr Herbst.

2 MR HERBST:

3 Q. Why not start with that.

4 JUSTICE DOHERTY: This is something I alluded to yesterday
09:47:52 5 and I'm alluding to it again now. There are - we've heard
6 evidence that Mr Kamara's name, the relationship, and the time
7 have been recognised. We've heard evidence that Kanu's name,
8 relationship, has been recognised. And if you draw your eye
9 across that line from "Kanu, brother", et cetera, there is a
09:48:20 10 number starting "232" and the word "first" in front of it. But
11 on the evidence before me, I haven't worked out which calls and
12 which numbers are attributable to Mr Kamara on the first line,
13 and which calls are attributable to Mr Kanu on the second line.
14 And I made this observation yesterday, that I would be expecting
09:48:52 15 to hear evidence on this.

16 The question that you are now asking appears to imply, but
17 not state, that the first three numbers are attributable to
18 Mr Kamara. But I wish to have this clarified, and I do so
19 because I consider the Court is entitled to seek this
09:49:11 20 clarification.

21 MR HERBST: Thank you, Your Honour. I asked the question
22 the way I did and I was going to move to Mr Kanu next because --

23 JUSTICE DOHERTY: No, Mr Herbst --

24 MR HERBST: [Overlapping speakers]

09:49:26 25 JUSTICE DOHERTY: -- you did not, with respect. And that's
26 why I intervened. It's not proper for the Court to be constantly
27 intervening when counsel, Prosecutor or Defence, is trying to
28 adduce entry. But you referred to all three.

29 I still say that I don't know which of these three numbers

1 are attributable to Mr Kanu and which are attributable to
2 Mr Kamara, and if - until I am clear on this, I think there is a
3 possibility that your question could be considered misleading,
4 and for that added reason I seek clarification.

09:50:50 5 MR HERBST: Before I ask that question, let me ask the
6 witness another series of questions that I think will obviate the
7 [overlapping speakers] --

8 JUSTICE DOHERTY: I would be grateful for that.

9 MR HERBST:

09:51:05 10 Q. Mr Sengabo, would you now turn to page 2 of the updated
11 list, P13, which contains the section on the approved people and
12 numbers for Mr Kanu at the top of that page. Do you see that?

13 A. Yes, I have.

14 Q. How many brothers are listed for Mr Kanu on that approved
09:51:43 15 list?

16 A. I can see one.

17 Q. And on what line is that one?

18 A. It's line 9.

19 Q. And would you read out, please, the name, address, and
09:52:07 20 phone number for that brother.

21 A. "Andrew Wright, brother, Savage Street, District Freetown,
22 03-041-47-267."

23 Q. Now, without regard to the question of which of the three
24 numbers are attributable to whom, my question is: Are any of
09:52:47 25 those first three numbers on the log, the numbers for the
26 brothers of either Mr Kamara or Mr Kanu?

27 A. I don't get your question. Is it to compare or to describe
28 the question in the call log?

29 Q. Yes. The question is with respect to the three numbers in

1 the call log; the first three numbers in the call log. Are any
2 of them the brothers for either Mr Kamara or Mr Kanu?

3 A. As I can see, this number for the brother is not recorded
4 in the call log.

09:53:39 5 Q. And if you go back to the third page where Mr Kamara's two
6 brothers' numbers are listed, are either of those two numbers
7 listed in the call log?

8 A. Yes.

9 Q. They are?

09:53:59 10 A. Only one, the first one. [Overlapping speakers]

11 Q. Are you talking - I'm sorry?

12 A. It is not there.

13 Q. All right. Now let me address the question that the Judge
14 asked. Can you tell from looking at this page of the call log

09:54:54 15 which of the three numbers are attributed to Mr Kamara, and which
16 are attributed to Mr Kanu?

17 A. As I can see on the call log, there is arrow showing the
18 first two numbers are for Bazy and then the third number is for
19 Kanu.

09:55:17 20 Q. Thank you.

21 JUSTICE DOHERTY: Thank you, Mr Herbst. I'm now clear on
22 that point. Please proceed.

23 MR HERBST:

24 Q. [Indiscernible] would you read out the first telephone
09:55:52 25 number under the column "Called Numbers" on this page of the call
26 log that you have been testifying about. Would you read out that
27 number?

28 A. You mean for Bazy?

29 Q. Yes, sir.

1 A. He's +24376337395.

2 Q. And would you read out the second number in that column
3 under "called numbers."

4 A. +232332850697.

09:56:27 5 Q. And would you please read out the third number in the
6 column under "called numbers."

7 A. It is +23233258898.

8 MR HERBST: Your Honour, at this point of my questioning of
9 the witness, I wanted to make inquiry as to whether he and
09:57:21 10 those - whether he and other staff members under his
11 investigation - well, without saying more and without saying some
12 of the findings and [Overlapping speakers]

13 JUSTICE DOHERTY: Put the question and let's hear it.

14 MR HERBST:

09:57:39 15 Q. Mr Sengabo, did you and staff under your supervision ever
16 conduct an investigation into how it was possible for
17 Mr Kamara --

18 MR METZGER: Your Honour, I object to the question. Quite
19 apart from the fact the way in which it is going, it has left me
09:58:10 20 with some difficulty in understanding it. It seems a general
21 wide-ranging question which is about to become a leading
22 question. I'd ask my learned friend to keep his ambit as narrow
23 as it can to object when necessary.

24 MR NICOL-WILSON: Your Honour --

09:58:34 25 MR HERBST: Let me rephrase the question.

26 JUSTICE DOHERTY: There is another objection. Please
27 pause.

28 MR NICOL-WILSON: Your Honour, I have not received a copy
29 of the document that Mr Herbst is about to give the witness.

1 JUSTICE DOHERTY: Oh, are you saying that this is to do
2 with the report?

3 MR NICOL-WILSON: Yes.

4 JUSTICE DOHERTY: Oh, I didn't know that. I had been
09:58:53 5 advised earlier this morning by our Court Officer that because
6 the Lotus Notes are not working here, that's why we didn't get.
7 So it's - how would I put it? - notionally distributed but it
8 hasn't reached us.

9 MR NICOL-WILSON: Thank you, Your Honour.

09:59:15 10 JUSTICE DOHERTY: So let me check whether this line of
11 questioning relates.

12 Mr Herbst.

13 MR HERBST: Your Honour, I have some additional information
14 from the Court officer. She informs me that she has resent all
09:59:32 15 the documents to the Court clerk in Freetown using his personal
16 e-mail. So if the Court Clerk in Freetown checks his personal
17 e-mail, he may be able to print out those documents and
18 distribute them thereby.

19 JUSTICE DOHERTY: Apparently it's just come in.

09:59:53 20 Now we've two objections. One is basically that this is a
21 wide-ranging and unspecific question that could become a leading
22 question, and I heard you say you were going to rephrase. So I
23 will wait until it's rephrased.

24 Now the second is a much more practical matter. Counsel
10:00:25 25 is, of course, entitled to see this document before there is - if
26 it's the document there is going to be some questions on it, they
27 are entitled to see it before the questions are asked.

28 So let me hear what this investigation is all about. If it
29 is, indeed, to do with a report that they have not reached, I

1 will pause to let me let Defence counsel see it.

2 Oh, Mr Serry-Kamal has another question.

3 MR SERRY-KAMAL: I'm sorry I'm late. But I am not very
4 clear in my mind whether the book had been tendered, accepted in
10:01:03 5 evidence, and also whether the [indiscernible] has been accepted
6 in evidence.

7 JUSTICE DOHERTY: Neither of those things has happened,
8 Mr Serry-Kamal. There has been no application to tender the
9 book.

10:01:13 10 MR SERRY-KAMAL: Your Honour, I am only concerned about him
11 referring to something that is not yet tendered in evidence.

12 JUSTICE DOHERTY: Well, in fairness to --

13 MR SERRY-KAMAL: Although you say that the best evidence is
14 not applicable, but one would think that in circumstances like
10:01:28 15 this, the book would be tendered in evidence so that reference
16 could be made to them in later detail.

17 JUSTICE DOHERTY: Well, I see your point. But whether it's
18 this Court or any other Court, but until most of the questions
19 are dealt with about the book, then it's tendered rather than
10:01:47 20 tender it first in a vacuum. So I was anticipating that
21 questions relating to its content, et cetera, would be asked, and
22 then after that it maybe would be tendered.

23 MR SERRY-KAMAL: Your Honour, I pause. The usual procedure
24 in my institution is that a document is to be tendered first
10:02:10 25 before questions are asked in detail, because you cannot look at
26 the document if it's not yet been tendered, strictly speaking,
27 and ask detailed questions as he's doing. And to compound it,
28 he's trying to introduce --

29 MR HERBST: [Overlapping speakers]

1 MR SERRY-KAMAL: -- another matter between the report, an
2 investigation and the report. He's just compounding the problem.

3 JUSTICE DOHERTY: Well, I'm not going to entertain a tender
4 on this book until I hear the questions about it. Well, I
10:02:42 5 wouldn't say I'm not going to entertain it. That's much too
6 dramatic a statement. I anticipated that there would be
7 questions and then a tender. If it's really giving you an awful
8 lot of concern, I don't know if counsel is going to tender it.
9 It's not for me to tell any counsel how to run their case, so I'm
10:03:03 10 not unduly concerned that these questions are being asked without
11 an exhibit.

12 The practice has grown up in this Court that many documents
13 are marked for identification until a witness finishes his
14 evidence, and then they're tendered with objections entertained
10:03:27 15 all at once. So I am not unduly concerned about it. You can
16 cross-examine on any part of this book before it's tendered,
17 Mr Serry-Kamal.

18 MR SERRY-KAMAL: As Your Honour please.

19 JUSTICE DOHERTY: Now, that's three matters dealt with, and
10:03:45 20 we'll now go to the rephrasing of the question. Then if there is
21 going to be questions on the report, I'm going to allow counsel
22 to look at them, because I see they have just been handed to
23 counsel.

24 So rephrase the question as you were going to do,
10:04:02 25 Mr Herbst, and then I'll deal with the next part as we proceed.

26 MR HERBST: Yes, Your Honour.

27 Q. Mr Sengabo, sometime in 2011, did you have occasion to
28 conduct an investigation of the telephoning of the --

29 JUSTICE DOHERTY: Investigation of the what? I'm sorry, I

1 didn't hear you.

2 MR HERBST: Of the telephone by the AFRC convicts in the
3 special wing and other convicts in the special wing.

4 MR METZGER: Well, I do object to that, Your Honour, on the
10:04:49 5 basis of the way the questions are asked. It is overtly
6 provisional, it's outside the timeframe of this document, and in
7 my respectful submission, the question of relevance to the
8 particular defendant I represent of those in this case, is yet to
9 be identified.

10:05:11 10 MR HERBST: Well, Your Honour, the relevance - well, first
11 of all, the first question was objected to as being too specific.
12 Now this one is being objected to as being too general. I'm
13 trying to elicit the fact that - well, withdrawn.

14 I'm trying to ask the witness about the investigation into
10:05:45 15 the telephone procedures that was conducted after this, and the
16 relevance of that -- [Overlapping speakers]

17 JUSTICE DOHERTY: First of all, Mr Herbst, the question you
18 asked was about conducting an investigation. I don't even know
19 what that investigation was into. Whether it was into telephones
10:06:09 20 or not. That's not been determined.

21 Secondly, I don't know which date. And there is an
22 objection to two things: One, to the date, whether it was
23 relevant to the time and issue which we've seen has been
24 ascertained on the document, which Mr Serry-Kamal has pointed out
10:06:29 25 has not been tendered yet. And so let's find out, first of all,
26 what this investigation was about; and secondly, what the date of
27 it was before I can hear and deal with Mr Metzger's objection.
28 If the date is an issue, then I will listen again to his
29 submission, and I will invite your reply.

1 MR HERBST:

2 Q. Mr Sengabo, what was the investigation about?

3 A. I would not make specific investigation for this case. We
4 only had the general search, and after we suspected that these
10:07:18 5 people might be using or abusing a telephone -- [Overlapping
6 speakers]

7 MR METZGER: Your Honour, at this point I would enter an
8 objection. And in specific regard that the Prosecution be
9 stopped from asking questions along the line. The witness's
10:07:37 10 answer was specific and clear that they did not make a specific
11 investigation into this case. They had a suspicion, obviously at
12 some future time, and it would appear to me that he was
13 indicating they investigated all the inmates at the Delta Wing.
14 In those circumstances, the Defence would submit there is no
10:08:02 15 relevance or, if you like, causal link, to the matter Your Honour
16 is trying.

17 JUSTICE DOHERTY: Well, first of all, it was --

18 MR HERBST: If I may?

19 JUSTICE DOHERTY: Yes, Mr Herbst.

10:08:17 20 MR HERBST: The witness has just testified that the
21 investigation - that there was a suspicion of abuse of the
22 telephone system --

23 JUSTICE DOHERTY: No, he did not say that.

24 MR HERBST: [Overlapping speakers]

10:08:32 25 JUSTICE DOHERTY: Mr Herbst, be careful, he did not say
26 that. Please.

27 MR HERBST: Your Honour, that's what I heard.

28 JUSTICE DOHERTY: Well, if he did. I'm afraid I didn't
29 hear it.

1 MR SERRY-KAMAL: Your Honour, did he not say that. He said
2 there was a general investigation.

3 JUSTICE DOHERTY: What he said was that we did not make a
4 specific investigation. We suspected these people and then
10:09:00 5 that's all I heard. Then there was an objection. I didn't hear
6 what they suspected these people of.

7 MR HERBST: [Overlapping speakers] there were additional
8 words we all heard here about suspicion of abuse of the
9 telephone.

10:09:14 10 MR METZGER: Which were post my objection, Mr Herbst.

11 MR HERBST: I understand because of the link that not all
12 the words necessarily come through when there is an objection
13 that's being tendered, but that's what the witness said.

14 JUSTICE DOHERTY: I --

10:09:34 15 MR HERBST: And I was going to then ask what timeframe - I
16 was then going to ask what timeframe the suspected abuse was and
17 to see if it was during the relevant period of time. And then I
18 was going to elicit from him what investigation was done and what
19 the timeframe of the investigation was. I think those are all
10:09:53 20 appropriate questions. And if there is any doubt about what the
21 witness said, I could ask him to repeat his answer.

22 JUSTICE DOHERTY: That part of the answer was - the
23 objection was registered before we heard that answer. If that
24 answer was made, then it's not on our record. Or at least it's
10:10:18 25 not on mine.

26 I consider that the witness can testify to an investigation
27 that was held. He has indicated to us in his evidence that he
28 was responsible for all of the people in what is referred to as
29 Delta Wing. Therefore, he, in my view, can give evidence of

1 investigations that were held at Delta Wing and I would allow him
2 to answer the question. If, following on from that, there are
3 matters relating specifically to the accused, he can answer
4 questions specifically relating to the accused, but let's get
10:11:14 5 what the investigation was about and then there will be a
6 question of when it was held, and at that point we will deal with
7 the relevance.

8 So there are three aspects I'm waiting to hear evidence
9 about.

10:11:37 10 MR HERBST: Okay. Let me ask this question.

11 Q. What suspicions - because everybody heard you testify about
12 suspicions - what suspicions led to the investigation?

13 A. We had a suspicion of telephone abuse by hearing that these
14 people might have talked to journalist in Freetown and we were
10:12:04 15 not aware of this, and as other people then, we hurried to
16 conduct a general search in their premise. And then from there
17 we found some exhibits, like there is a room that we found there,
18 a telephone air time, and telephone charger in different rooms.
19 And then we decided even from there to suspend their telephone
10:12:41 20 correspondence for about one month. And then we even laid some
21 measures to protect this again. We started changing the system
22 where - that's all about my reply to this question.

23 MR METZGER: Your Honour, I'm sorry. Before we continue,
24 it has just been brought to my attention that Mr Kanu - and I
10:13:23 25 believe Mr Kamara - have not had sight of the document that has
26 been provided to counsel.

27 JUSTICE DOHERTY: [Microphone not activated]

28 MR METZGER: May I ask, please, for them to be provided
29 with same. And then obviously we will do the best that we can,

1 in order to take instructions from them, at the next convenient
2 break.

3 JUSTICE DOHERTY: Yes, I will direct.

4 Madam Court Manager in Kigali, can you please show this
10:13:50 5 document to the two accused persons. It's a document headed
6 "Rwanda Correctional Service", then there is a shield or emblem,
7 and underneath "Mpanga Central Prison." Myself, I have not read
8 the document and I do not intend to do so, until it's been dealt
9 with in evidence.

10:14:17 10 Mr Herbst --

11 THE COURT OFFICER: [In Kigali] [Overlapping speakers]

12 JUSTICE DOHERTY: -- I apologise for the interruption,
13 please continue.

14 MR HERBST:

10:14:34 15 Q. Did your investigation uncover or make any determinations
16 about whether the telephone system had been abused in the
17 timeframe that we are talking about, which is inclusive of
18 November and December of 2010?

19 JUSTICE DOHERTY: Just pause. Just pause, Mr Herbst. If
10:15:00 20 we are talking about a report that you were seeking to put before
21 this Court, and if, indeed, it is a report entitled "Report on
22 general searching of Delta wing inmates Special Court for
23 Sierra Leone at Mpanga Central Prison". The date shown on that
24 document in front of me is 20/10/2011, so I would like to know
10:15:23 25 when this investigation took place that led to report dated, and
26 I would also like to know what the exact date of the report is in
27 case it's not what I think it is.

28 MR SERRY-KAMAL: Your Honour, the date is very important
29 because you see it's one year after. One year after. It's 2010,

1 almost one year after.

2 JUSTICE DOHERTY: Well, that's why I'm asking the
3 questions, Mr Serry-Kamal.

4 MR HERBST: Your Honour, I wasn't going to ask specific
10:16:00 5 questions about the report that you have just identified because
6 it's my understanding that --

7 JUSTICE DOHERTY: No, I - I Mr Herbst, please listen to
8 what I said. I am talking about the investigation. And if the
9 investigation led up to this report, then I am interested in that
10:16:24 10 date. If, and I say "if" again, the evidence that has just come
11 from Mr Sengabo is about a different investigation, then we need
12 to know the dates. The dates are important.

13 MR SERRY-KAMAL: Your Honour, quite apart from that, not
14 that we are unduly opposed to the report being tendered, but my
10:16:49 15 learned friend cannot go outside what is reported. There is a
16 report and the report speaks for itself. Yes.

17 JUSTICE DOHERTY: Well, I stress again I haven't read this
18 report - and counsel are well aware of my modus operandi when it
19 comes to evidence - but I can see from just very quickly looking
10:17:17 20 inside the first couple of pages, there isn't a date of when the
21 search was actually carried out, and that is what I need to
22 ascertain. For all I know, it could have been quite a historical
23 document. But one thing I do know, it's not something that
24 happened in the future. So let's get the dates right.

10:17:45 25 Mr Herbst, you've heard my --

26 MR HERBST: [Overlapping speakers]

27 JUSTICE DOHERTY: -- observations.

28 MR HERBST: [Indiscernible] yes, Your Honour.

29 Q. Mr Sengabo, when was your investigation conducted?

1 A. I said it was in 2011 after searching. In 2011, in October
2 20th. Before this, I think I told you, before that we are not
3 aware of what was happening because this was all done in the
4 manoeuvre way. We didn't make any investigation regarding these
10:18:37 5 incidents by the time it was happening, because we are not aware
6 of it.

7 Q. When did you become aware of what you just called the
8 manoeuvring and -- [Overlapping speakers]

9 MR METZGER: With the greatest of respect, Your Honour, I
10:18:51 10 now object.

11 JUSTICE DOHERTY: Wait, Mr Herbst.

12 MR METZGER: Thank you. I object because the witness has
13 clearly stated this investigation took place in October 2011.
14 Now, I think both Mr Serry-Kamal and myself have a little bit of
10:19:09 15 knowledge outside of this case about what the witness is talking
16 about, and the witness gave us the flavour of that because he
17 told us they believed that outside journalists were contacted.

18 This is a completely different event. It is completely out
19 of context, and, respectfully, the Prosecution hasn't laid
10:19:34 20 groundwork for that investigation or the suspicions in relation
21 to that investigation to be applied to something that happened at
22 the very latest, on the Prosecution case, on the 30th of November
23 of 2010.

24 In those circumstances, we do - I do apply on behalf of
10:19:56 25 Mr Kanu that the Prosecution be restrained from continuing along
26 this line and any reference to this record be expurgated. Thank
27 you.

28 MR HERBST: What evidence counsel was giving or referring
29 to when he was talking about some journalists. I know nothing

1 about that. The question was --

2 JUSTICE DOHERTY: I am only realising on what the witness
3 himself said. My note:

4 "We had suspicions of telephone abuse by hearing that these
10:20:35 5 people were talking to journalists in Freetown."

6 This is what the witness said. And he has said that the
7 date of this investigation was October 2011, and they had not
8 made investigations before.

9 Again, without going evidence either from the bar or from
10:20:56 10 the Bench, I think most of us are aware that a power of search
11 and investigation is a general power within most prison
12 authorities, but the witness has clearly stated we did not do
13 one. We had not made an investigation. So that's - so the
14 question of the relevance of the report --

10:21:20 15 MR HERBST: [Overlapping speakers]

16 JUSTICE DOHERTY: -- comes into question.

17 MR HERBST: Your Honour, there is an investigation
18 involving searches. I am not sure that's the same investigation
19 that involves what he was just talking about in his last answer
10:21:35 20 relating to abuse of the phone system and the manoeuvring

21 [Overlapping speakers]

22 JUSTICE DOHERTY: Well, then we need to get - if there is
23 such a search, then we need to hear about it. But it's not in
24 this report --

10:21:52 25 MR METZGER: Your Honour, if there is some other --

26 MR HERBST: [Overlapping speakers] --

27 JUSTICE DOHERTY: -- the transcriber is not a magician and
28 cannot do the impossible.

29 So let's start.

1 Now, Mr Herbst, you were saying something. We didn't hear
2 it. Then I'm going to deal with Mr Metzger's objection.

3 MR HERBST: Yes, Your Honour. May I - am I heard now?

4 JUSTICE DOHERTY: Yes, I do hear you clearly.

10:22:22 5 MR HERBST: What I was saying to the Court was that there
6 was an investigation that related to searches, but I am not sure
7 that that is the same investigation that the witness alluded to
8 in his last answer when he described abuse of the phone system
9 leading to an investigation of the procedures or the manoeuvring,
10 I think is what he said.

11 JUSTICE DOHERTY: Well, now --

12 MR HERBST: [Overlapping speakers]

13 JUSTICE DOHERTY: -- we are back to a question of dates.

14 Dates.

10:23:10 15 MR METZGER: May I now make my objection?

16 MR HERBST: [Overlapping speakers]

17 JUSTICE DOHERTY: Mr Metzger has got an objection.

18 MR HERBST: I am not finished.

19 JUSTICE DOHERTY: Oh, sorry, Mr Herbst. I thought you had.
10:23:23 20 Please finish what you are saying.

21 MR HERBST: [Indiscernible] said to the witness was
22 designed to ascertain - was designed to ascertain, to conduct the
23 searches of the rooms that was described in the report that we
24 all have. That is a different area that I am attempting to
10:23:51 25 inquire about and whether - and when that was done.

26 Now, if it turns out that that was done at the same time,
27 okay. But that's when I'm talking about, and counsel knows this
28 because it's in the witness statement. The witness describes
29 some of the findings about the investigation of the telephone

1 procedure and how the abuse of the system was able to be done.
2 That is what I'm - and I've seen no reports of that. But that's
3 what I'm attempting to elicit from the witness.

4 MR SERRY-KAMAL: Your Honour --

10:24:31 5 JUSTICE DOHERTY: I understand now, Mr Herbst, please.

6 Mr Serry-Kamal.

7 MR SERRY-KAMAL: Your Honour, I stand corrected. My
8 observation is that the witness did say that they did not conduct
9 an investigation in relation to this case.

10:24:45 10 JUSTICE DOHERTY: No, he --

11 MR SERRY-KAMAL: The only investigation they conducted was
12 after they had found they had suspicion that they were talking to
13 journalists in Freetown.

14 JUSTICE DOHERTY: Well, Mr Serry-Kamal, I didn't hear that
10:24:58 15 as clearly as you did --

16 MR SERRY-KAMAL: [Overlapping speakers]

17 JUSTICE DOHERTY: So I'm going to allow some questions.

18 To avoid any doubt, it appears that this document is not
19 relevant to this case.

10:25:11 20 Am I correct, Mr Herbst? The document dated 20/10/2011, is
21 it relevant or is it not?

22 MR HERBST: Your Honour, it's relevant in so far as the
23 search of two rooms and some telephone material is found. But
24 that's different. That is a different subject matter. I do not
10:25:33 25 know yet, because I haven't had a chance yet to elicit from the
26 witness, whether, as either part of the same investigation or as
27 an earlier investigation, there was an investigation of the
28 telephone procedure and the suspected abuse of the procedure and
29 what happened pursuant to that.

1 Now, that is what I'm - and I wasn't trying to elicit the
2 telephone searches, because Your Honour had indicated it had not
3 yet been distributed to people. So I was attempting to inquire
4 into the other aspects of either that investigation or an earlier
10:26:07 5 investigation. That is what I'm trying to do.

6 JUSTICE DOHERTY: I understand, Mr Herbst. Thank you.

7 MR METZGER: May I be heard now, Your Honour, on the point?

8 JUSTICE DOHERTY: Yes. What's your point?

9 MR METZGER: Simply this: It's my understanding that when
10:26:25 10 one prosecutes a case, one generally asks questions to which one
11 expects that the answer that will be elicited is an answer that
12 has been provided or information has been provided about.

13 So I'm a little concerned when Mr Herbst says, "I don't
14 know yet because I haven't elicited an answer." The witness has
10:26:46 15 been very clear on the evidence that he's given. Respectfully,
16 it is my submission that the report - the so-called report for
17 the 20th of October, 2011, is irrelevant. Any such material that
18 the Prosecution seek to rely on has been found relates to persons
19 other than the persons in this indictment. It is a year later.
10:27:10 20 And perhaps, if, as Your Honour suggests, we can look at dates
21 and searches and so on, it would assist us all. Because then I
22 can know whether I am objecting in the entirety to evidence about
23 investigations which postdate this event or not.

24 JUSTICE DOHERTY: Mr Herbst has indicated --

10:27:37 25 MR HERBST: Your Honour --

26 JUSTICE DOHERTY: -- the evidence about the search. The
27 evidence did not specify. He did say there was a search done on
28 the 20th of October 2011. He did specify that. And he did also
29 say they were not aware before that of what was the manoeuvring.

1 He also, in my hearing, said he did not make an investigation.
2 But I accept Mr Herbst's observation that that entire answer may
3 not be on record.

4 I will therefore ask the witness to - or possibly it was
10:28:21 5 Mr Serry-Kamal's observation. I correct myself.

6 Mr Sengabo, you were interrupted when you were making an
7 answer just now. You told us that you - there was an
8 investigation on the 20th of October, 2011, and before that you
9 weren't aware of manoeuvring. Then you started saying something,
10:28:46 10 We did not make investigation, and I didn't hear the rest of that
11 answer.

12 So can I hear the rest of that answer before I make a full
13 ruling on these various procedural objections?

14 THE WITNESS: Your Honour, I said we did not make any
10:29:05 15 specific investigation over this case because we didn't know it
16 when it was occurring.

17 JUSTICE DOHERTY: I now thank you, Mr Sengabo, for that
18 clear answer.

19 Mr Herbst, please continue with your questions.

10:29:39 20 MR HERBST:

21 Q. Did you make - after this case came to light, did you make
22 any investigation of how the prisoners in the special wing were
23 making telephone calls?

24 A. Yeah. In 2011, November 20th, I said we conducted a
10:30:05 25 general search.

26 Q. Apart from the general search, did you make any inquiry --

27 MR METZGER: Objection, Your Honour, asked and answered.
28 It is his witness. I think it is the third time he's asking
29 him - yeah.

1 JUSTICE DOHERTY: Mr Metzger, you're right. But just let's
2 get this clear, because I want to make sure that the witness
3 fully understands the question.

4 Mr Herbst, put the question again, please.

10:30:42 5 MR HERBST:

6 Q. After this case came to light, did you make any
7 investigation, analysis, or inquiry into how the prisoners were
8 able to make phone calls or the procedure that was in place that
9 permitted them to make the phone calls? Did you make any inquiry
10 of that kind?

10:31:08

11 MR METZGER: I object to the question on the basis that I
12 don't really understand it.

13 JUSTICE DOHERTY: Mr Herbst, I'm having difficulty. The
14 witness has said twice that they made an investigation on the
15 20th of 2011. They didn't make any specific investigation over
16 this case because they were not aware of it. So when you're
17 talking about when after this case came to light, are you
18 saying - I'm trying to be clear what the questions are about.

10:31:23

19 The witness has clearly stated they weren't aware of the
20 case at the time, so they were now making an investigation. Are
21 you now asking some form of general questions about procedures
22 following allegations that arose in this case, a sort of a
23 general type of internal regulation and procedure adopted; or
24 what exactly are you asking?

10:31:48

25 MR HERBST: The witness has already testified that they
26 instituted new procedures in 2011 as a result of this. I am
27 trying to ask him what occasioned that; what investigation or
28 inquiry or analysis they made into the old procedures to see why
29 they were defective and why they needed changing. That's what

10:32:13

1 I'm asking.

2 JUSTICE DOHERTY: Well, Mr Herbst, with respect --

3 MR HERBST: Because the witness statement --

4 JUSTICE DOHERTY: I don't have the witness statement. And
10:32:46 5 it seems to me if new procedures --

6 MR HERBST: Your Honour --

7 JUSTICE DOHERTY: -- were put in place in 2011, and the
8 indictment relates to a period in or about the 20th of November,
9 2010 or a period from 27 November 2010 to the 16th of December
10:33:14 10 2010, procedures that were put in place in 2011 following an
11 investigation in October 2011, a question of relevancy occurs in
12 my mind, and therefore I want to be sure what we are talking
13 about here.

14 MR HERBST: I understand that. I understand the witness
10:33:48 15 has testified that while these events were going on, no
16 investigation was made because they were not aware of it.

17 JUSTICE DOHERTY: Indeed.

18 MR HERBST: But I'm trying to elicit what inquiry they did
19 make after they came to light. I am talking about inquiry about
10:34:05 20 the procedures at the relevant time. Because he's already
21 testified that they changed the procedures to deal with it, so --

22 JUSTICE DOHERTY: Well, you're in danger - I am not
23 inviting any comment from the Defence counsel at the moment
24 because I am trying to get in my mind clear what happened here.
10:34:36 25 Your witness has clearly stated that in an earlier answer they
26 did not make investigation over this case. So questions of, for
27 example, similar fact evidence, how could it apply to something
28 that happened in the future? That could only happen in the past.
29 So if you're saying the new procedure came in in 2011 as a result

1 of something that happened in 2011, I need to be clear in my mind
2 why we're - how it applies to events in 2010.

3 MR HERBST: [Indiscernible] trying to elicit that answer
4 and still follow all the Rules that Your Honour has asked me to
10:35:31 5 follow. I am attempting to do it. Maybe let me go about it a
6 different way -- [Overlapping speakers]

7 JUSTICE DOHERTY: It would help, yes.

8 MR HERBST: -- another series of questions.

9 Q. Mr Sengabo, in 2011, did you have occasion to change the
10:35:49 10 entire staff that had been dealing with the prisoners in the
11 special wing?

12 A. Yes.

13 Q. Would you tell the Court why you changed the entire staff?

14 A. Yeah, it's of a different kind. We normally change our
10:36:10 15 staff. They deploy them to other prisons, and the - either to -
16 other issues relating to this wing and so. We changed them maybe
17 to give them new instructions and to have a refresh in the
18 administration.

19 Q. Did it have anything to do with your findings of --

10:36:38 20 MR METZGER: Objection, Your Honour, that sounds like a
21 leading question.

22 JUSTICE DOHERTY: It is. It is. Mr Herbst, that's
23 leading.

24 Mr Herbst, I think we've frozen; have you?

10:37:03 25 MR HERBST: Your Honour, I'm just trying to formulate my
26 next question.

27 JUSTICE DOHERTY: Yes, please take your time.

28 MR HERBST: Let me try to go about it this way.

29 Q. How did you change the system in 2011?

1 A. By changing the system, we first of all had to remake the
2 call list. We applied the list to the Special Court and they
3 made a new vetting to the telephone numbers that the prisoners
4 had offered, and then we took this call list again to MTN as
10:38:12 5 service provider to have this in their database such that if you
6 dialed any different number from the accepted call list, it
7 shouldn't go through. And, of course, for monitoring. So today
8 we are using that telephone system. And the prisoners are now
9 obliged to be in the room, security room, not moving like before,
10:38:41 10 in the open area to attend the - the security on duty, to
11 facilitate that telephone. And, of course, we changed some
12 staff, not to get familiar with prisoners, in order to avoid all
13 those that happened before.

14 Q. And what is it that had happened before that caused you to
10:39:12 15 change the staff?

16 A. Yeah, it is telephone abuse and the dialings the different
17 numbers, as we found out later on in the call log that there were
18 some numbers registered in this book were not on the call list.

19 Q. Okay. Now before the system was changed, did you ever have
10:39:46 20 occasion to observe Mr Kanu, Mr Brima, Mr Kamara making calls
21 together?

22 A. Yeah, because they have friends. They tell us that they
23 have close friends that they share, so passing telephone to their
24 colleague. We didn't see it as a problem --

10:40:09 25 JUSTICE DOHERTY: Sorry, Kigali, we've lost you. I note
26 Mr Sengabo's light is on.

27 Mr Sengabo, please pause. We have lost connection.

28 [Technical difficulties]

29 THE COURT OFFICER: Your Honour, I'm informed that Kigali

1 went out of electricity, so that's why we had the problem.

2 JUSTICE DOHERTY: Is it back on line yet,
3 Mr Court Attendant?

4 THE COURT OFFICER: I am told that they have reinstalled
10:41:40 5 power. They are trying to reconnect.

6 JUSTICE DOHERTY: Fine, we'll wait.

7 THE COURT OFFICER: Your Honour, I'm told they lost power
8 again and so they are reinstalling or reconnecting.

9 JUSTICE DOHERTY: I'll just note that there is a problem
10:45:56 10 with connection to Kigali. I'm just checking how long we will
11 need.

12 [Court Officer and Judge confer]

13 JUSTICE DOHERTY: Counsel, apparently there is a problem
14 with the machinery and the contact. Our technicians are working
10:48:38 15 hard on it, but they are not sure what the problem is. I have
16 made inquiries about an early lunch break, but that may not be
17 entirely practical either. Just give it a minute or two and if
18 it's not reconnected in the next, say, few minutes, then I think
19 we will just have to take a bit longer than usual for lunch break
10:49:08 20 for Kigali.

21 [Court Officer and Judge confer]

22 JUSTICE DOHERTY: Counsel, we're not really - apparently,
23 we haven't any concrete information about reconnection with
24 Kigali. We are coming very close to the time that Kigali
10:51:37 25 normally have their lunchtime break of three quarters of an hour,
26 and I think we could all use our time more productively.

27 If we take these extra few minutes, adjourn, and reconvene
28 at 12.45 to allow the - yes, 12.45. Our - we're almost up to
29 12.00 - no, 11.00.

1 MR METZGER: 11.00, Your Honour. It's the time zones. I'm
2 suffering from the same thing, Your Honour.

3 JUSTICE DOHERTY: I'm getting very confused. That is why I
4 like digital clocks. So we'll take it up to 11.45. That will
10:52:22 5 allow both our hard-working AV people to try to get our
6 reconnection and also to let the Kigali have their lunch break.
7 I will ask Mr Court officer to transmit this information to
8 Kigali by phone as they may not be hearing us.

9 Please adjourn Court to 11.45.

10:53:07 10 [Break taken at 10.53 a.m.]

11 [Upon resuming at 11.50 a.m.]

12 JUSTICE DOHERTY: Good morning or afternoon, Kigali. Can
13 you hear us now?

14 MR HERBST: Yes, Your Honour, we can hear you; we can see
11:51:16 15 you. All of the power went out and so everything was down for
16 some time, but apparently it's been restored.

17 JUSTICE DOHERTY: That's fine. We'll continue on with the
18 evidence, please.

19 MR HERBST: Your Honour, the last question had to do with
11:51:38 20 whether -- [overlapping speakers]

21 JUSTICE DOHERTY: The witness stated --

22 MR HERBST: [Overlapping speakers]

23 JUSTICE DOHERTY: The witness stated that passing the
24 phone, they did not see it as a problem. That's the last part of
11:51:54 25 the answer I recorded in my notes. Continue, please --

26 MR HERBST: [Overlapping speakers] the question I think was
27 whether he observed the three gentlemen, Mr Brima, Mr Kamara and
28 Mr Kanu making a call or calls together and I'm not sure whether
29 there was an actual "yes" answer that actually got into the

1 transcript on that.

2 JUSTICE DOHERTY: I have a note of a reply --

3 MR HERBST: [Overlapping speakers]

4 JUSTICE DOHERTY: -- which I'm sure the transcriber got.

11:52:29 5 It was, Yes, they said they had friends in common. They would
6 pass the phone and we did not see it as a problem, is the answer
7 I have. Continue from there, please.

8 MR HERBST: [Overlapping speakers] Your Honour, and I'll
9 move on. I'll just move on.

11:52:58 10 Q. Mr Sengabo, I'm going to hand you a set of telephone
11 records. I'll going to have the Court attendant hand it to you.
12 Sorry, Your Honour. I'm going to first ask the witness after
13 he's had a chance to look at it whether he has seen these records
14 before. I'll stop there.

11:53:49 15 A. Yes, I have.

16 Q. And would you tell the Court what that exhibit is?

17 A. This call record is from MTN.

18 Q. And for which telephone?

19 A. The telephone used in the Delta Wing for prisoners.

11:54:22 20 Q. And is that at the telephone number that you earlier
21 testified to as what that phone number was?

22 A. Yes.

23 MR HERBST: Your Honour, it's my understanding, from the
24 colloquy we had when all counsel were here, there's not going to
11:54:47 25 be an objection to this exhibit. So I'm going to move its
26 admission, unless counsel wants - or Your Honour wants some
27 further foundation.

28 JUSTICE DOHERTY: I haven't seen the document, so -
29 Mr Metzger?

1 MR METZGER: May I just ascertain, Your Honour, that this
2 is the document which has 39 - I beg your pardon, it starts with
3 page 1 of 39, and then it appears that there's a further document
4 which starts with page 1 of 10, so in total, 49-odd pages. I
11:55:29 5 don't object to the Prosecution using it to assist the pursuance
6 of this case, but make no admissions as to its content.

7 JUSTICE DOHERTY: Mr Herbst, is this the document you're
8 referring to described by Mr Metzger?

9 MR HERBST: It is. Those are the pages, and I can further,
11:55:57 10 for the record, give the dates; in other words, from when to
11 when.

12 JUSTICE DOHERTY: First of all let me hear what other
13 counsel have to say.

14 MR HERBST: [Overlapping speakers]

11:56:08 15 JUSTICE DOHERTY: Mr Nicol-Wilson, you heard the
16 application.

17 MR NICOL-WILSON: Your Honour, I have no objection.

18 JUSTICE DOHERTY: Thank you. Mr Serry-Kamal?

19 MR SERRY-KAMAL: I have no objection. We discussed it.

11:56:20 20 JUSTICE DOHERTY: Very well, Mr Serry-Kamal, thank you. I
21 will ask Mr Court Officer to let me have a copy of this document
22 so I can, if necessary, refer to it. It's being admitted as
23 Prosecution exhibit P14, I think is the last number.

24 MR HERBST: That is correct, Your Honour.

11:57:12 25 JUSTICE DOHERTY: I have these documents.

26 MR METZGER: For clarification purposes there are two sets
27 of documents and I was wondering whether they would all be
28 collectively entitled P14 or whether they are going to be 14 and
29 15.

1 JUSTICE DOHERTY: I was going to ask the same question,
2 because, without going through them bit by bit, I'm not sure how
3 they work out. Are they in some sort of sequence? Are they two
4 different documents that I need to give - mine, in fact, are
11:57:45 5 three different documents, but I can see that they are all part
6 of the same. Is it one number, or are they two separate
7 documents, Mr Herbst, that need two separate exhibit numbers?

8 MR HERBST: Your Honour, it's my respectful view that it
9 only needs one number because, in fact, the records are
11:58:07 10 consecutive. In other words, the first set of pages 1 to 39,
11 goes from November 1 to November 30; and then the second set,
12 even though they are numbered 1 to 10, pick up on December 1. I
13 don't know if Your Honour sees that. So in effect, it's one
14 chronological record from November 1 to December 7, but again I
11:58:35 15 yield to Your Honour's preference in that regard.

16 JUSTICE DOHERTY: It appears to me from looking at this,
17 that the documents I've been given start page 10 of 39, 11 June,
18 2010. More correctly, 11/6/2010. Then 39 finishes at
19 11/30/2010, which I guess is 30 November 2010 written in the more
11:59:38 20 American way. And the next one starts at 1/12/2010, which I
21 understand to be 1 December. So on the surface, it appears to be
22 a continuous record, although there is a break between - a gap in
23 the November. When I say a gap, there is a piece of paper left
24 blank, so it appears to be consecutive. So I'm going to mark it
12:00:03 25 as one exhibit number, exhibit P14.

26 MR HERBST: Your Honour is missing some of the initial
27 pages then apparently. Can Your Honour hear me?

28 JUSTICE DOHERTY: [Microphone not activated] I can hear
29 you, Mr Herbst. And from what you said it sounds as though I'm

1 missing pages 1 to 10 of the first set. But it will come soon
2 enough because it appears those earlier pages precede the time in
3 question. So there may be questions of relevance. So please
4 continue and I will ensure that I get a proper record in due
12:00:46 5 course. Please continue.

6 MR HERBST: The Court attendant has advised me that the
7 documents were scanned in pieces, so the Court attendant in
8 Freetown should be able to locate the first pages that Your
9 Honour doesn't have before her.

12:01:10 10 JUSTICE DOHERTY: Well, as it happens, all our servers are
11 down in Freetown, so he may well have a problem. But don't worry
12 about continuing without them. Once our server is up and
13 reading, we'll get it. Continue, Mr Herbst.

14 MR HERBST: Thank you, Your Honour.

12:01:33 15 Q. Mr Sengabo, have you had a chance to review these phone
16 records?

17 A. I have them before me, but I haven't checked inside.

18 Q. My question was have you had a chance before today - before
19 your testimony today to look at and review these records?

12:02:06 20 A. From MTN?

21 Q. Yes, these records from MTN that you have before you?

22 A. Yes.

23 Q. Now I want to direct your attention to pages 38 of 39 and
24 39 of 39 in those records. Would you turn to those two pages,
12:02:32 25 please. I would ask that you turn to two specific pages in those
26 records: Pages 38 of 39 and 39 of 39, and I would also ask you
27 to have in front of you the manual call log on the page that
28 we've discussed this morning that starts "30/11/2010". Now,
29 directing your attention to the last phone entry on page 38 of

1 39, would you read out the number called and tell us the date and
2 time of that call?

3 A. I beg your pardon, is it in the column or in the MTN --

4 JUSTICE DOHERTY: Mr --

12:04:00 5 MR HERBST: [Overlapping speakers] that's a good question.

6 JUSTICE DOHERTY: -- Herbst, please ask Madam Court
7 Attendant to point - indicate to her, and she in turn can
8 indicate to the witness.

9 Have you seen it, Mr Sengabo?

12:05:06 10 MR HERBST: Having difficulty locating it.

11 Q. Okay, I'm asking you the number that is - was called - not
12 the number of the cell phone, but the number --

13 JUSTICE DOHERTY: Oh, Mr Herbst, please, I need to know who
14 is calling who. There's a whole list with the same number. I
12:05:29 15 don't know who it is.

16 MR HERBST: Okay. Would you read out the line - the whole
17 last line.

18 A. 2250788966848.

19 Q. Let me interrupt you there. What number is that?

12:06:08 20 A. It is the number used to call in Freetown.

21 Q. Would you read out the second number?

22 A. It is 23276337395.

23 Q. And what is that number? Is that the number that --

24 JUSTICE DOHERTY: Don't lead.

12:06:35 25 MR HERBST:

26 Q. What is that number?

27 A. It is a Freetown number.

28 JUSTICE DOHERTY: Continue.

29 Q. Going back to the first page - going back to the first page

1 of the document, page 1 of 39, look at that?

2 A. Yes, I have it before me.

3 Q. The numbers in the second column under "called number",
4 what are those numbers?

12:07:23 5 A. Freetown number.

6 Q. Okay. My question is: In all of these records in the
7 numbers that are in that second column, are those the numbers
8 called?

9 A. Yes.

12:07:44 10 Q. Now I would like you to go back to page 38 of 39 and ask
11 you similarly, even though there's no heading at the column on
12 that number, whether that number that you just read out,
13 23276337395, was the number called?

14 A. Yes.

12:08:13 15 Q. And what is the date and time of that call listed in the
16 fourth column?

17 A. It is 11/13/2010, 12 and 45 seconds.

18 Q. P.m., right? Okay?

19 A. P.m.

12:08:56 20 Q. Now I would like you to look at the phone log - the manual
21 phone log. Put those pages aside for a minute from the phone
22 records and look at the manual phone log and tell us what the
23 first number under "called numbers" is that is listed in the
24 first entry of that page at 1311 p.m.?

12:09:31 25 A. It is +232276337395.

26 Q. And is that the same number that's listed at the bottom of
27 page 38 of 39 in the phone record that you just read out?

28 A. Yes.

29 Q. Now I would like you to look at the first three numbers at

1 the top of the next page of the MTN phone records; that is, 39 of
2 39?

3 A. At the call log or MTN records?

4 Q. The MTN records?

12:10:22 5 A. Which line, excuse me?

6 Q. Page 39 of 39, the first three lines. Page 39 of 39, the
7 first three lines. The first three calls?

8 A. Just that line?

9 Q. The first line - let's take the first line first.

12:11:03 10 JUSTICE DOHERTY: Could Madam Court Manager be close to the
11 witness and point out what is required. Proceed.

12 MR HERBST:

13 Q. Do you have the first call at the top of page 39 of 39 --

14 A. Yes.

12:11:38 15 Q. -- before you?

16 A. Yes.

17 Q. Would you read out the number called, that is, the called
18 number from the second column of the first line?

19 A. It is 23233495715.

12:12:09 20 MR HERBST: [Microphone not activated]

21 JUSTICE DOHERTY: Mr Herbst, I can't hear you. Are we
22 talking about page 39 of 39?

23 MR HERBST: Yes, we are. I don't think the witness had
24 that page in front of him so I'm going to ask the Court attendant
12:12:29 25 to do that, put it in front of him again.

26 THE WITNESS: Yes, I can see it.

27 MR HERBST:

28 Q. The second number on the first line, would you read out
29 that number. That is, the number from the second column of the

1 first line?

2 A. It is 23233255597.

3 Q. Thank you. And what is the time - date and time of that
4 call?

12:13:10 5 A. It is 9 past 1 p.m.

6 Q. On same day, November 30?

7 A. Yes.

8 Q. Now I would like you to go to the second call listed on
9 that page, the very next call listed on that page. Would you

12:13:39 10 read out that number called, please?

11 A. It is 23233255597.

12 Q. And is that the same number of the previous call that you
13 just read out?

14 A. Yes.

12:13:59 15 Q. And what is the date and time of that second call to that
16 number on the second line? What is the date and time listed for
17 that second call on that page, the number of which you just read
18 out in the fourth column on the second line of that page?

19 A. It is 30/11/2010.

12:14:27 20 Q. What time?

21 A. That is 7 past 1 p.m.

22 Q. Thank you. And the third call on that page, the very next
23 call, would you read out that number called?

24 A. It is 23233255597.

12:14:51 25 Q. And is that the same number called as the last two calls
26 you just read out?

27 A. Yes.

28 Q. And what is the date and time of that third call to that
29 same number?

1 A. It is 30/11/2010, 49 past 1 p.m.

2 Q. Thank you. Now I would like you to look at the call log at
3 that very same page that we've been discussing before. The call
4 log now, Mr Sengabo. Do you see among the next two numbers on
12:15:35 5 that page from the first one you read out - in other words, the
6 numbers on the second line and the third line under the column
7 "called numbers", are either of those numbers - the numbers that
8 you just read out from the first three calls on page 39 of 39 of
9 the MTN phone records for the prison cell phone?

12:16:04 10 JUSTICE DOHERTY: Mr Herbst, I don't know if it's a prison
11 cell phone. I've absolutely no idea in God's good earth what
12 this number ending in 848 is, where it is or who uses it or
13 anything about it.

14 MR HERBST: The witness testified as to what that number
12:16:33 15 was earlier but I'll ask him to repeat it. There was testimony
16 [microphone not activated] repeat it.

17 JUSTICE DOHERTY: Please refer me to it. Maybe I've got it
18 wrong.

19 MR HERBST:

12:16:45 20 Q. [Microphone not activated] Mr Sengabo, the number in the
21 first column of all these pages of the MTN phone records, that is
22 the number 250788966848, what is that telephone number?

23 A. It is the telephone number used by prisoners at Mpanga
24 Prison to call in Sierra Leone.

12:17:20 25 Q. And are you referring me - what you earlier testified to
26 was the cell phone and cell phone number used at the special wing
27 in November and December 2010?

28 A. Yes.

29 Q. Now to go back to my question. You've already testified

1 that the first number listed in the phone log, that is
2 23276337395, was the number listed on the call at the bottom of
3 page 38 of 39 that you read out a few minutes ago. Do you recall
4 that testimony?

12:18:14 5 A. Yes.

6 Q. Now, I'm asking you about the next two numbers which you
7 earlier read out from the manual phone log. Are those numbers
8 [microphone not activated]?

9 A. I can see them.

12:18:36 10 Q. Are those numbers the same or different from the numbers at
11 the top of the - of page 39 of 39, the phone number which you
12 read out which was called on the first three calls on that page?

13 A. Yes, they are different.

14 Q. They are different. Now I want you to look at the second
12:19:06 15 number on the manual call log on the second line under "called
16 numbers." It says "23233285697." If you compare that to the
17 number called on the first three calls at the top of 39 of 39,
18 how many digits are the same and how many digits are different?

19 A. From 2 to 33, they are similar; but from 2 to 5 are not
12:20:24 20 similar - to 7 are not similar.

21 Q. All right, thank you.

22 MR HERBST: Your Honour, if you could just bear with me for
23 one minute, please.

24 JUSTICE DOHERTY: Certainly.

12:21:19 25 MR HERBST: Your Honour, I believe the proper foundation
26 has been laid, so I would like to introduce - move to introduce
27 into evidence the manual phone log.

28 JUSTICE DOHERTY: Mr Herbst, there was some discussion
29 yesterday about retention, et cetera. You're putting in the

1 whole original book now, are you? Just to make sure I have my
2 records correct.

3 MR HERBST: Your Honour, in light of Mr Sengabo's testimony
4 yesterday that it would be possible for the Court to retain the
12:22:02 5 original book through the conclusion of appellate proceedings, I
6 think the easiest thing to do is just to move into evidence the
7 original.

8 JUSTICE DOHERTY: Thank you for that clarification. I'll
9 seek --

12:22:18 10 MR HERBST: [Overlapping speakers]

11 JUSTICE DOHERTY: I'll seek responses now.

12 Sorry, Mr Nicol-Wilson, I didn't address you properly.
13 Have you any comment on this tender?

14 MR NICOL-WILSON: I have no objections, Your Honour.

12:22:46 15 JUSTICE DOHERTY: Thank you. Mr Metzger?

16 MR METZGER: I have no further comment.

17 JUSTICE DOHERTY: Mr Serry-Kamal?

18 MR SERRY-KAMAL: No objection.

19 JUSTICE DOHERTY: Just before I rule on this admission, I
12:23:07 20 wish to have some clarification. I possibly - unnecessarily so,
21 in light of evidence - but I just want to make sure, Mr Sengabo,
22 you have told us that you recognised writing, et cetera. Who
23 actually wrote those phone numbers that are in the column called
24 "called numbers".

12:23:34 25 THE WITNESS: It is written down by the caller, because I
26 can see the handwritings for the callers.

27 JUSTICE DOHERTY: Thank you for that clarification. I will
28 now admit the entire book of - we will call it the manual phone
29 call register for purposes of identification, and it will become

1 Exhibit P15.

2 Now, it will be retained by the Special Court until the end
3 of appellate proceedings, if any appellate proceedings should
4 come about, and then it will be returned to the Government of
12:24:21 5 Sierra Leone - to the Government of Rwanda. Exhibit P15. Is it
6 intended to also move, in light of the conversations yesterday,
7 any of the photocopies? We will need to have a historical
8 document.

9 MR HERBST: Yes, your Honour. I was just about to address
12:24:47 10 that. I believe that the photocopy provided this morning of the
11 page containing the specific entries we've discussed today on
12 30 November 2010 - and it does contain the signature column at
13 the end - should be marked as P15A or P15(1) so it's clear
14 there's a relationship between that photocopy and the original.

12:25:22 15 JUSTICE DOHERTY: So you are moving the tender of that copy
16 as well.

17 MR METZGER: I object to that, your Honour. The original
18 document has been exhibited. There's no need for a copy to
19 become an exhibit. The only reason why we have the copies, as I
12:25:35 20 understand it, and I would be grateful for one that has a
21 signature on it, is so that we can follow the case. There's no
22 need to duplicate the - and confuse, in my respectful submission,
23 the issue by having 15 and 15A. It's the same document, as far as
24 I understand it.

12:25:58 25 JUSTICE DOHERTY: I can appreciate your point, Mr Metzger.
26 The original document is always the best. We don't have a best
27 evidence rule, but it is the best. I'm really only thinking of
28 historical purposes. There is a copy with the signatures and I'm
29 not thinking of it in its evidentiary role. On the basis of a

1 purely historical record. So the original is returned and there
2 has to be something, then we have this page and it's purely for
3 that reason.

4 MR METZGER: So be it, your Honour.

12:26:35 5 JUSTICE DOHERTY: I will call it - Mr Serry-Kamal.

6 MR SERRY-KAMAL: Your Honour, I have no objection to it
7 being called P15A.

8 JUSTICE DOHERTY: Very well, Mr Serry-Kamal. That's most
9 helpful. We'll call this one page 15 - Exhibit P15A, however,
12:26:54 10 everyone acknowledges that the exhibit is in fact the original
11 book.

12 Please continue, Mr Herbst.

13 MR HERBST: Your Honour, I think the only other area of
14 direct examination for the witness now has to do with the search
12:27:12 15 reports - search report that we earlier alluded to before we lost
16 power, and I just want to inquire whether now everybody has had a
17 chance to see it and look at it before I question the witness
18 about it.

19 JUSTICE DOHERTY: Which search report is this, Mr Herbst?
12:27:36 20 So as I know what I'm talking about.

21 MR HERBST: It's headed "Rwanda Correctional Service" dated
22 20/10/2011 consisting of eight pages.

23 JUSTICE DOHERTY: I'll allow questions but if they are
24 objected to, I'll have to deal with them.

12:28:06 25 MR METZGER: May I indicate my objection to the whole of
26 this, because --

27 JUSTICE DOHERTY: Just because, Mr Herbst. Yes, please.

28 MR METZGER: It seems to me on any logical perusal of this
29 document and consideration of the evidence before the Court, the

1 only thing that the Prosecution can do is to try and ask the
2 witness to link this report to what happened in November or
3 December of 2010. There is no basis for that link, and therefore
4 I object to the entire line of questioning on behalf of Mr Kanu.
12:28:45 5 I'm prepared to object to specific questions if that is the way
6 that Your Honour wishes to proceed. But that's my stance on the
7 entire line of questioning.

8 JUSTICE DOHERTY: Thank you. I'm clear on that point.
9 Mr Serry-Kamal.

12:28:58 10 MR SERRY-KAMAL: I agree with what my learned friend has
11 said. I want to add that as far as I'm concerned, this report is
12 irrelevant. There's no nexus between it and the events of the
13 previous [i ndi scerni ble].

14 MR NICOL-WILSON: Your Honour, I support both counsel.

12:29:34 15 JUSTICE DOHERTY: Thank you.

16 MR HERBST: Does your Honour wish to hear from me at this
17 point?

18 JUSTICE DOHERTY: Yes, Mr Herbst. Your response, please.

19 MR HERBST: On the issue of relevance.

12:29:48 20 JUSTICE DOHERTY: Yes, please.

21 MR HERBST: Your Honour, in response to an objection of
22 this kind we would normally make a proper showing of what we
23 believe the relevance of the information is. I hesitate to do
24 that for fear of being accused of mentioning what the evidence
12:30:10 25 is, and again I understand the legal cultures are different, but
26 I don't want to put my foot in a prohibited place again, so can I
27 do this outside the presence of the witness who could be excused,
28 if that would assist my learned friends and the Court in
29 permitting me to explain the relevance. And it is limited. It

1 would take me about a minute to do it. But there's no way for me
2 to actually do it without explaining.

3 JUSTICE DOHERTY: Well, there has been a pertinent
4 objection raised. If you have an equally pertinent reply, in
12:30:51 5 fairness I would like to consider it.

6 So Mr Sengabo, could I ask you to retire temporarily from
7 the courtroom so that some procedural matters relating to
8 evidence - not to you personally - can be heard and a ruling
9 made.

10 [The witness withdrew]

11 MR HERBST: [Microphone not activated] I will explain if
12 your Honour wishes at this point - permits me to do so.

13 JUSTICE DOHERTY: Yes, please explain.

14 MR HERBST: Your Honour will remember, in my opening
12:31:40 15 statement I said that after these events, there was a search of
16 the quarters of the residents of the special wing, and in the
17 case of two of those convicted, there were found telephone
18 paraphernalia which suggested that the prisoners generally had
19 available to them another cell phone or cell phones for use other
12:32:18 20 than the official prison one - prison cell phone that they were
21 supposed to use, which Your Honour has now heard has the number
22 in the MTN telephone records.

23 The document in question - this report - documents the
24 discovery of those two elements. In Mr Tamba Brima's room there
12:32:52 25 was air time in the amount of 1,000. That's on page 7 of this
26 report. And on page 8, the description of what was found in
27 Morris Kallon's quarters included a telephone charger - one
28 telephone charger. That's also recorded on line 16 of page 8 and
29 the air time was recorded on line 16 of page 7 from Mr Brima.

1 Now, it's not the Prosecution's submission that anything
2 was found on the - of this nature in the premises of [microphone
3 not activated]

4 JUSTICE DOHERTY: I've lost you, Mr Herbst, I'm afraid.

12:33:53 5 [Technical difficulties]

6 JUSTICE DOHERTY: Mr Herbst? Mr Court Attendant, could you
7 check, please.

8 Mr Herbst, can you hear me?

9 MR HERBST: I'm sorry.

12:34:10 10 JUSTICE DOHERTY: You were cut off for a moment there. You
11 were saying it is not the Prosecution's submission that something
12 of this nature was found, and that's when you cut off.

13 MR HERBST: Okay, let me try to repeat that. It's not our
14 submission that any telephone paraphernalia was found in the
12:34:34 15 rooms of either Mr Kamara or Mr Kanu, the accused here. It is
16 merely a showing to demonstrate that there may have been other
17 telephones available for calling, in which telephone calls,
18 pertinent phone calls that do not show up in these records -
19 there's an alternative explanation. And that's the limited
12:35:04 20 purpose of the offer.

21 I'm just anticipating some of the objections we've heard
22 earlier that, in fact, the - that the - either the air time or
23 the telephone charger didn't come from the rooms of the two
24 accused, and I fully acknowledge that. But I think it's relevant
12:35:27 25 nevertheless as an alternative explanation for how it could be
26 that other phones - other phone calls from the prison - from the
27 prisoners, that Your Honour has heard testimony about, may not
28 show up in these particular phone records.

29 MR METZGER: May it please Your Honour --

1 JUSTICE DOHERTY: Mr Sengabo can be brought back in.

2 MR METZGER: May it please Your Honour, I did not want to
3 disturb your Honour's cognitions but I should say that the
4 explanation given by my learned friend for the Prosecution does
12:40:49 5 found the basis, in my respectful submission, for even stronger
6 objection under Rule 95. But of course, I understand that Your
7 Honour's cognitions were probably because you were writing a
8 ruling, and I don't know if it is an appropriate point in time
9 for me to address Your Honour on it. So.

12:41:11 10 JUSTICE DOHERTY: I've made a decision.

11 MR METZGER: Okay. This report was made following a search
12 of the Delta Wing of Mpanga Prison on 20 October 2011, which is
13 approximately eleven months to a year after the events at issue
14 in this case.

12:41:38 15 The witness Mr Sengabo testified that there it followed
16 from abuse, that is, abuse of talking to journalists, and as a
17 result the system was changed. But they did not make an
18 investigation following the allegations that are in issue in this
19 case. So for that reason, I do not consider that this report is
12:42:06 20 relevant to the proceedings before me.

21 Further, I have considered if this report - or the evidence
22 relating to it - could fall within the provisions of Rule 93,
23 that is, similar factor, similar pattern evidence, since these
24 events took place afterwards, I'm not at all sure that it shows -
12:42:34 25 could go to prove - a consistent pattern is a debatable point.
26 But I do not consider that it falls within Rule 93A, given both
27 the time, and in the case of one of the personnel involved, who
28 is alleged to be a person who has not been named in evidence in
29 this case. So for that reason, mainly of relevance, I do not

1 admit the - I do not hear evidence on this report.

2 [Witness returns to courtroom]

3 JUSTICE DOHERTY: Mr Sengabo, welcome back. Mr Herbst,
4 please continue.

12:43:17 5 MR HERBST: That was my last area of inquiry and since Your
6 Honour has excluded the subject matter of the inquiry, if Your
7 Honour just gives me one minute, I'm prepared to hand the witness
8 over for cross-examination.

9 JUSTICE DOHERTY: Thank you, Mr Herbst. Please take your
12:43:31 10 time.

11 MR HERBST: No further questions.

12 JUSTICE DOHERTY: Thank you. Counsel for the Defence?
13 Yes, Mr Nicol-Wilson, please proceed.

14 Cross-examination by Mr Nicol-Wilson:

12:44:07 15 MR NICOL-WILSON: Good afternoon, Mr Sengabo.

16 A. Afternoon, sir.

17 Q. You are a trained and qualified lawyer, correct?

18 A. Yes.

19 Q. You are not an expert in telecommunications data; is that
12:44:53 20 correct?

21 A. Yes.

22 Q. As such, you are not in a position to verify the
23 authenticity of exhibit P14, which is the telephone logs?

24 A. I can by experience.

12:45:23 25 Q. You cannot say with absolute certainty that the records
26 provided by MTN is correct?

27 MR HERBST: I object to that question on the grounds that
28 absolute certainty is not required for authentication.

29 JUSTICE DOHERTY: That's true, Mr Nicol-Wilson.

1 MR NICOL-WILSON: I'll proceed, Your Honour.

2 Q. The records, Exhibit 14, were prepared by both the police
3 and MTN in Rwanda?

4 A. Yes.

12:46:25 5 Q. And as such, it's not records coming directly from MTN?

6 A. Directly from MTN to Special Court, or directly from Rwanda
7 to Sierra Leone?

8 Q. You said just now that you agree with me that the records,
9 Exhibit 14, were prepared both by the police in Rwanda and MTN in

12:47:03 10 Rwanda. I am now asking that as a result of your last answer,
11 you will agree with me that the records exhibit P14, is not
12 coming to the Court from MTN?

13 MR HERBST: Your Honour, [microphone not activated] that
14 question on the grounds that it was asked and it was answered
15 contrary to what counsel just put to the witness.

12:47:28 16 JUSTICE DOHERTY: I don't recall mention of the police.
17 When was this? When was this put, Mr Herbst?

18 MR HERBST: Your Honour, counsel asked in the penultimate
19 question whether the records came both from MTN and the police
12:48:00 20 [overlapping speakers] --

21 JUSTICE DOHERTY: And the witness asked for clarification.

22 MR HERBST: [Overlapping speakers]

23 JUSTICE DOHERTY: And I was about to point out that that's
24 actually two questions in one, so I will allow the question
12:48:14 25 because I want to hear the answer.

26 THE WITNESS: [Microphone not activated] came from MTN.

27 MR NICOL-WILSON:

28 Q. Mr Sengabo, I did not get the entire answer?

29 JUSTICE DOHERTY: I heard Mr Sengabo say "they came from

1 MTN".

2 MR NICOL-WILSON:

3 Q. Now look at the first page of exhibit P14, which says
4 "Confidential - for Police Use Only".

12:49:02 5 MR HERBST: Your Honour [microphone not activated] to this
6 - to this attempt to - well, I'll just say in addition to that,
7 the records also contain an MTN logo, so it's not inconsistent at
8 all with what the witness has said --

9 JUSTICE DOHERTY: Mr Herbst, please, this is
12:49:23 10 cross-examination. You are at liberty to put those things in
11 re-examination if you consider it appropriate. But for the
12 moment, we're dealing with cross-examination.

13 Mr Nicol-Wilson, put your question.

14 MR NICOL-WILSON:

12:49:35 15 Q. Have you seen at that portion of the records, the first
16 page 1 - page 1 of 39?

17 A. The first page. I have seen it.

18 Q. Yes. Do you see the portion which reads "Confidential -
19 for Police Use Only"?

12:50:06 20 A. Yes, sir.

21 Q. So you will agree with me that these records did not come
22 directly from MTN to the Court?

23 JUSTICE DOHERTY: Mr Nicol-Wilson, that is not entirely
24 fair, because they're being tendered through a witness. They
12:50:29 25 didn't come direct from the Court. They must have come via a
26 witness, so the question should really relate to how they got to
27 be tendered.

28 MR NICOL-WILSON:

29 Q. Now, Mr Witness, who did you receive these records from?

1 A. From the Prosecutor.

2 Q. Now, as of November 2010, the Delta Wing had no system in
3 place for recording of telephone conversations; is that correct?

4 A. You mean audio or call log?

12:51:33 5 Q. Audio. Voice recording of telephone conversation. You had
6 no system in place to record conversations, the discussions?

7 A. Yes. Yes.

8 Q. You will therefore agree with me that you are not in a
9 position to say what was discussed between Rwanda and Freetown?

12:52:05 10 A. Yes.

11 MR NICOL-WILSON: That will be all for this witness, Your
12 Honour.

13 JUSTICE DOHERTY: Thank you, Mr Nicol-Wilson. Who is next
14 now in our line of seniority? Yourself, Mr Metzger? Well, no, I
12:52:19 15 don't know about you. I think you're next on the indictment.

16 MR METZGER: I'm next on the indictment, but I'm ready to
17 ask questions at any point in time which the Court sees
18 appropriate.

19 JUSTICE DOHERTY: That would be good.

12:52:30 20 MR METZGER: Would Your Honour like Mr Serry-Kamal to ask
21 questions first, or shall I go next?

22 JUSTICE DOHERTY: Please proceed, Mr Metzger.

23 MR METZGER: Thank you very much.

24 Cross-examination by Mr Metzger:

12:52:41 25 Q. Mr Sengabo, good afternoon to you.

26 A. Good afternoon to you, sir.

27 Q. Can you help me with a few things, please, Mr Sengabo. If
28 we look, please, at P15, or, more properly, P15A, you've been
29 asked questions about those three telephone numbers that appear

1 against two names on the 30th of November; do you see them?

2 MR HERBST: I don't think the witness has 15A before him.

3 MR METZGER: I would be grateful if it could be placed
4 before him.

12:53:30 5 JUSTICE DOHERTY: Yes, Mr Herbst, please ask Madam Court
6 Officer to put 15 - the original document, in front of
7 Mr Sengabo.

8 MR HERBST: The original log?

9 JUSTICE DOHERTY: Yes. The situation is, we here in
12:53:55 10 Freetown are looking at a photocopy, whereas you have the
11 original document.

12 MR METZGER: I'm very much obliged. If there's a copy of
13 the original document he can have both of them at the same time.

14 Q. Mr Sengabo, have you at least got Exhibit 15 in front of
12:54:21 15 you now?

16 A. Maybe you are using different terminology.

17 Q. All right, the call records; the manual log; have you got
18 that?

19 A. Yes, thank you.

12:54:36 20 Q. Can you go to the page for 30 November 2010?

21 A. Yes, I have.

22 Q. First of all, just to ask you about procedure, is it
23 correct that in recording this log in November/December 2010, the
24 prison expected the prison officers to actually complete this
12:55:03 25 log?

26 A. Yes, sometimes when spelling this - the names of the
27 foreign - you see our people are not used to the names from
28 Sierra Leone. Sometimes they would request them to fill the
29 book.

1 Q. Exactly. So because of the difference in the spellings and
2 the strange names, from time to time a system was employed where
3 the staff asked for the assistance of the prisoner in writing
4 names down; is that correct?

12:55:54 5 A. Yes.

6 Q. Now, what about in relation to the telephone numbers that
7 were called; was it expected that the numbers would be written by
8 the staff?

9 A. Yes.

12:56:15 10 Q. Right. And in fairness to them, the way of checking the
11 number called was by looking at the telephone and checking the
12 last number dial led; is that something that you can say?

13 A. I beg your pardon, sir?

14 JUSTICE DOHERTY: Is this by the staff member, Mr Metzger?

12:56:38 15 MR METZGER: Your Honour, yes.

16 Q. Mr Sengabo, what I'm suggesting is, when the staff member
17 was going to write down the number that was called, he could
18 check it by interrogating the mobile phone that was being used;
19 is that not the case?

12:56:58 20 A. Yes. But then, you see, by virtue of using this telephone
21 mobile, it is movable and it can be dialled and it can be changed
22 at any time.

23 Q. Yes.

24 A. So that's why I told you before that it was a challenge for
12:57:13 25 us to use this mobile phone. People who have different --
26 [overlapping speakers]

27 Q. Indeed. But the point about it --

28 MR HERBST: [Overlapping speakers]

29 MR METZGER: I'm sorry, I think I hear Mr Herbst. I'll

1 stop, because it may be an objection.

2 JUSTICE DOHERTY: Mr Herbst, we're getting --

3 MR HERBST: My only objection --

4 JUSTICE DOHERTY: Please address --

12:57:44 5 MR HERBST: Your Honour, my request is that the witness be
6 permitted to complete his answer before the next question is put
7 to him.

8 JUSTICE DOHERTY: Very well. I thought he had answered,
9 but I will make sure. He must be allowed to finish his answer
12:58:01 10 before another question is put, both for his sake and for the
11 fact that two people speaking at once, it's impossible for the
12 transcribers to deal with.

13 Proceed, Mr Metzger.

14 MR METZGER: I'm waiting for the end of answer.

12:58:17 15 JUSTICE DOHERTY: Did you finish your answer, Mr Sengabo?
16 Could you please pick up from where you said: So it was a
17 challenge for us. Continue from there, please.

18 THE WITNESS: Yeah, I said this. It was a challenge for
19 the staff to manage this mobile phone with prisoners where they
12:58:41 20 had different intentions of changing their numbers and dialling
21 different numbers. Whereby the staff would go to read after the
22 call and find out there is different numbers and they will record
23 that. Because you find that the names and numbers that are
24 listed sometimes are different from the numbers were called from
12:59:05 25 MTN log.

26 MR METZGER:

27 Q. Thank you, Mr Sengabo. What I asked you was in relation to
28 the staff member who was completing this log. What were his or
29 her instructions about getting the number in order to write it

1 down?

2 A. To read the numbers from the telephone and record them.

3 Q. So that the number written down in the "called numbers"
4 section ought to be a number picked up from the telephone?

12:59:55 5 A. Yes.

6 Q. And you would agree with me that, in relation to the three
7 instances here where we see the telephone numbers, these are all
8 written by the same person on 30 November call log?

9 A. Yes.

13:00:11 10 Q. And the person who wrote those numbers was a staff member?

11 A. I don't think so.

12 Q. You don't think it was a staff member?

13 A. Yes.

14 Q. Well then, let me put it this way to you: The person who
13:00:39 15 wrote those numbers down, I'm submitting, was not Mr Kanu?

16 A. I hope so, because that is his handwriting before the
17 numbers.

18 Q. I meant the numbers themselves under the "called numbers"?

19 A. The numbers I think are being by Kanu, because the
13:01:15 20 handwriting is for Kanu.

21 Q. Let me ask you, Mr Sengabo, about handwriting. Are you a
22 graphologist?

23 JUSTICE DOHERTY: What's that?

24 THE WITNESS: No.

13:01:33 25 MR METZGER: The answer is no. For the record of the
26 Court, a graphologist is generally an expert who not only
27 compares handwriting, but also uses a scientific method of doing
28 so by measuring curves, the angle of curves, the length of
29 straight lines, and comparing them in order to make a scientific,

1 as it were, analysis of two different specimens.

2 JUSTICE DOHERTY: Thank you, Mr Metzger. I did mishear the
3 word you were saying, but I'm also very glad, for purposes of
4 record, we've got it clearly defined now.

13:02:13 5 MR NICOL-WILSON: Your Honour, Mr Bangura would like to be
6 excused.

7 JUSTICE DOHERTY: Proceed, Mr Metzger.

8 MR METZGER:

9 Q. Mr Sengabo, are you a handwriting analyst?

13:02:27 10 A. No.

11 Q. In fairness to you, you have been asked by the Prosecution
12 today firstly to give an opinion of whose writing is in this
13 document; is that not the case?

14 A. As I said, by experience I'm familiar to this handwriting.
13:02:53 15 I say it is for Kanu.

16 Q. All right. I'll leave that series of questions there for
17 the moment. Can you go to the signature, please. You say that
18 this is Mr Kanu's signature?

19 A. Yes.

13:03:16 20 Q. Now, bear with me one moment. I want to refer you to
21 another page that does have Mr Kanu's signature. Could you
22 please go to the - to an entry on 26 November 2010.

23 MR METZGER: Your Honour, I'm just looking to see if I can
24 find the documents served by the Prosecution. Does Your Honour
13:04:06 25 have the first attempt with something like six pages from the
26 logs that were photocopied for us?

27 JUSTICE DOHERTY: Mr Metzger, it would appear that what I
28 have starts at 30/11/2010 and continues through to various dates
29 in December 2010.

1 MR METZGER: Well, then might I ask for the copy that was
2 provided to us by the Prosecution starting with the 30th of
3 November 2010, but with selected pages, whose dates I cannot now
4 exactly tell, but going, it seems, backwards to 25 November 2010.
13:05:08 5 Because it would be of assistance to Your Honour. The witness,
6 of course, has the original book. I shall see if I can identify.

7 [Ms Serry-Kamal leaves Court]

8 MR METZGER: Unfortunately, I cannot identify it in that
9 document, Your Honour.

13:06:17 10 JUSTICE DOHERTY: [Microphone not activated] seen Mr Kanu's
11 name a few times just flicking backward.

12 MR METZGER: Yes. What I'm going to ask is that the
13 witness be shown a document that was appended to a statement that
14 he made on 15 May of this year headed "HS/2" and I will see if I
13:06:47 15 can make a copy available for Your Honour. It would appear, Your
16 Honour, that I don't have a spare copy of this and it would
17 probably be best if the Court Manager can photocopy these. This
18 is a copy of the document that I served on Mr Herbst - what seems
19 like eons ago now - before his rapid departure for Kigali.

13:08:20 20 JUSTICE DOHERTY: He has the document you're going to refer
21 to.

22 MR METZGER: Mr Herbst does have the document that I'm
23 going to refer to. Copies were made. I think my learned friends
24 sought copies of that document.

13:08:35 25 JUSTICE DOHERTY: If you could identify it for him so he
26 can have it and be prepared.

27 MR METZGER:

28 Q. Mr Sengabo, do you have the photocopy from the book
29 entitled "HS/2" appended to the statement you made on 15 May this

1 year?

2 A. I don't have it now.

3 Q. Do you recall that a copy was left in your possession on 15
4 May 2012 together with a copy of a statement that you made on
13:09:12 5 that day?

6 A. [Microphone not activated]

7 Q. I'm sorry, was that a "yes"?

8 JUSTICE DOHERTY: [Microphone not activated]

9 MR METZGER: Thank you.

13:09:24 10 THE WITNESS: Yes.

11 MR METZGER:

12 Q. Can you tell us what happened with those documents, please?

13 A. We had to make a photocopy from original book and then we
14 signed on it. We even had a statement with you.

13:09:43 15 Q. Yes, thank you, Mr Sengabo. But there were two original
16 copies. One was left in your possession, your statement and a
17 document entitled "HS/2" and sorry, also a document entitled
18 "HS/1" which has now been produced to this Court as exhibit P13;
19 isn't that correct?

13:10:18 20 A. Yes, but I don't have the copy. I don't know where it is.
21 The statement maybe I can find it.

22 Q. You say you don't know where it is. You kept all these
23 documents together. Did you give them to the Prosecutor,
24 Mr Herbst?

13:10:33 25 MR HERBST: Your Honour --

26 THE WITNESS: No.

27 MR METZGER: Your Honour, I'm asking a direct question of
28 the witness. If there's an objection --

29 JUSTICE DOHERTY: Mr Herbst, are you making an objection or

1 what? I can't hear you clearly.

13:11:00 2 MR HERBST: [Microphone not activated] Your Honour, the
3 communication is different from here. What I'm saying is, I have
4 a photocopy of the four pages that were served that I got from
5 Mr Metzger. Could I ask that a copy be scanned or copied here,
6 if that's possible, by the Court attendant and she can put that
7 before the witness? I think that might be -- [overlapping
8 speakers]

13:11:18 9 JUSTICE DOHERTY: Mr Herbst, that might be helpful in the
10 long run, but at the moment we're dealing with - what would you
11 say in a chain of custody. So I'm not going to make a ruling on
12 that, helpful though it may be.

13 MR METZGER: Thank you, Your Honour.

14 Q. Now, Mr Sengabo, did you give those documents to Mr Herbst
13:11:35 15 when he came to Kigali in - was it June this year?

16 A. No, no.

17 Q. Did you - what did you do? Did you show him a copy of the
18 documents?

19 A. No, I didn't do that. He did not even request it.

13:11:56 20 Q. What about the statement that you made, Mr Sengabo, did you
21 show him a copy of that?

22 A. No.

23 MR METZGER: Bear with me, Your Honour.

24 Q. Would it surprise you, Mr Sengabo, to learn that Mr Herbst
13:13:01 25 has told Defence counsel that he's obtained a copy of the
26 statement that you gave to the Defence in this case?

27 A. Pardon?

28 Q. Would it surprise you to learn that the Prosecutor,
29 Mr Herbst, has told the Defence that he has obtained a copy of

1 the statement you gave to the Defence on 15 May 2012?

2 A. No. What I know when I meet him, he told me he has a
3 statement from you, that we had with you, so --

4 Q. Are you saying Mr Herbst told you that he had in his
13:13:51 5 possession a statement that had been taken from - by the Defence
6 from you?

7 A. Yes.

8 Q. And in due course, did you provide him with a copy of the
9 one that was in your possession?

13:14:13 10 A. I don't remember. But I had to make a photocopy of the
11 call log - original call log, especially the page of 30 November
12 2010. I remember giving him that copy.

13 Q. Are you saying that you don't remember giving him a copy of
14 the statement that you had given to the Defence on 15 May 2012?

13:14:44 15 A. Yes. Yes, I don't remember.

16 Q. Thank you, Mr Sengabo. In any event, I don't know what
17 arrangements have been made for you to have available the
18 document formerly known as HS/1, but I was inviting you to look,
19 please, for - at an entry for 26 November 2010. I'm hoping Your
13:15:31 20 Honour can find it in that bundle of papers. The first line
21 starts with "Morris Kallon".

22 JUSTICE DOHERTY: Just make sure, you were speaking to the
23 witness about a statement. Are you now looking at this manual
24 log?

13:15:52 25 MR METZGER: I am, Your Honour. Yes, the one that should
26 be marked "HS/2".

27 JUSTICE DOHERTY: [Microphone not activated]

28 THE COURT OFFICER: Your Honour, I have scanned and sent a
29 copy to Madam Court Manager in Kigali. So if she can check her

1 e-mail, that might help.

2 JUSTICE DOHERTY: Thank you. For purposes of record,
3 Ms Madam Court Manager, top right-hand corner is the word "HS/2".
4 That's the document you're referring to, Mr Metzger, is it?

13:16:26 5 MR METZGER: Your Honour, yes.

6 THE COURT OFFICER: [In Kigali] Yes, ma'am, I'll check my
7 e-mails now.

8 MR METZGER: It may be that we can proceed, because, of
9 course, Mr Sengabo has the original document.

13:16:43 10 JUSTICE DOHERTY: That would be very helpful if we could do
11 that.

12 MR METZGER:

13 Q. Mr Sengabo, can you go to the page of 26 November 2010 and
14 at the top of the page should be an entry for Morris Kallon,
15 followed by Bazzy Kamara, and then Allieu Kondewa?

16 A. I have got it.

17 Q. The seventh, if you want to put it that way, on the list is
18 Santiage Kanu; is that correct?

19 A. Yes.

13:17:00 20 Q. Do you recognise that as being done in Mr Kanu's
21 handwriting?

22 A. No.

23 Q. I'm going to suggest to you that when Mr Kanu has to enter
24 his name, he always spells his name K-H-A-N-U. Is that something
13:17:47 25 you're aware of?

26 A. The handwriting I'm seeing now, be it - I don't know
27 whether it is his or somebody's.

28 Q. All right. But I'll therefore ask you a supplementary
29 question: Do you know that when Mr Kanu enters his name on the

1 book, he would write K-H-A-N-U, the spelling of his surname?

2 A. Yes.

3 Q. Thank you. And if you go to the right-hand column, the
4 penultimate one, the one before the last, the signature there,
13:18:35 5 that is Mr Kanu's signature, isn't it?

6 A. Yes.

7 Q. Thank you. Now, I take it you still have Exhibit 15A in
8 front of you - P15A. Look at the signature in respect to 30
9 November 2010. Would you agree with me that the signature you
13:19:31 10 have ascribed to Mr Kanu there is different from the one we can
11 see on 26 November 2010?

12 A. I can see that the first signature as of the 26th is bigger
13 than that one of 30 November 2010, but has some similarities.

14 Q. I'm suggesting to you that the 30 November is a completely
13:20:11 15 different signature. The loops [overlapping speakers] --

16 A. [Microphone not activated] completely different --

17 Q. The loops relating to that signature --

18 MR HERBST: [Overlapping speakers]

19 MR METZGER: I'm sorry, I think there's an objection.

13:20:27 20 MR HERBST: No, there's no objection. But I'm asking
21 whether - the answered the question, but because Mr Metzger
22 started to put his next question, I'm not sure that the answer
23 was heard.

24 JUSTICE DOHERTY: I heard the witness say "not completely".

13:20:50 25 Was there something else?

26 MR HERBST: Yes, there was. He started talking about
27 similarities, and he was interrupted by counsel.

28 JUSTICE DOHERTY: Mr Sengabo, can you please answer fully
29 the question.

1 THE WITNESS: Yes. I said the difference is that the first
2 signature of the 26th and the 30th November is from the size.
3 The first one is bigger than the last one. But there is just
4 slight difference.

13:21:33

5 MR METZGER:

6 Q. Can you tell us what the difference is, please, Mr Sengabo?

7 A. The size.

8 Q. In that case, Mr Sengabo, can I ask you to go to the next
9 page of - well, for us the next page of HS/2, but for you, if

13:22:05

10 you've got the original book, please, 27 November 2010, where the
11 first name recorded is "Augustine Gbao"?

12 A. I've seen.

13 Q. The fourth entry, in terms of names, there is Santigie
14 Borbor Kanu?

13:22:32

15 A. [Microphone not activated]

16 Q. And there's a signature next to the two telephone numbers
17 that appear to relate to his call. You agree that that is
18 Mr Kanu's signature?

19 A. Yes.

13:22:54

20 Q. And that signature accords with the signature on the
21 previous page, 26 November 2010?

22 A. Yes.

23 Q. But I submit does not with the signature on 30 November
24 2010?

13:23:28

25 A. To me they are similar.

26 Q. Mr Sengabo, have you ever given evidence before in a Court
27 in relation to the identification of handwriting?

28 A. No.

29 Q. Thank you. Before I leave this topic entirely, can I ask

1 you to look at our exhibit P15A. The entry on 30 November 2010?

2 A. Pardon?

3 Q. If you look, please, at 30 November 2010, the three
4 telephone numbers you have been referred to by Mr Herbst, there
13:24:30 5 are some arrows. Can you tell us what your understanding of
6 those arrows is in relation to the texts?

7 A. They are just to show - to divide the numbers of Bazy
8 Kamara and the number called by Santi gie Borbor Kanu.

9 Q. So according to those arrows, the number attributed to
13:25:05 10 Mr Kanu is the last of those three numbers; is that correct?

11 A. Yes.

12 Q. And is it also correct that there are no further timings on
13 the page until after 1700 hours?

14 A. Yes.

13:25:29 15 Q. So that we cannot, from looking at this manual log, tell
16 how long each of these calls lasted for; is that correct?

17 A. Yes, that one I cannot tell [overlapping speakers] --

18 Q. From looking at this record, can you identify the prison
19 staff or officer?

13:26:02 20 MR HERBST: Again excuse me, Your Honour.

21 JUSTICE DOHERTY: Oh, Mr Herbst. Yes?

22 MR HERBST: Again the witness was trying to complete his
23 answer and was interrupted by counsel, who I'm sure is doing it
24 inadvertently, because he is in a different place. I understand
13:26:23 25 that. I would just ask that he try to make sure that the witness
26 is not in the middle of an answer before. If he just gives some
27 pause so that the witness can fully answer the question.

28 JUSTICE DOHERTY: Yes, Mr Herbst, I'll direct Mr Metzger on
29 this point, because we have said there has to be a break. This

1 was one of the technological points made at the beginning - at
2 the beginning of this trial, there must be a pause for the
3 interpreters and the technical workings of the - so if you could
4 pause, Mr Metzger.

13:27:08 5 MR METZGER: Indeed, Your Honour.

6 JUSTICE DOHERTY: And I will ask --

7 MR HERBST: [Overlapping speakers] his answer.

8 JUSTICE DOHERTY: I will ask Mr Sengabo to complete your
9 answer, please.

13:27:19 10 THE WITNESS: Yes. I said I cannot tell the time spent on
11 this telephone because it is not recorded here.

12 JUSTICE DOHERTY: Thank you. Proceed.

13 MR METZGER:

14 Q. Can you tell from looking at this document who the prison
13:27:39 15 officer was or staff member who was responsible for handing over
16 the phone at this time?

17 A. He is also not recorded. I can't tell the one.

18 JUSTICE DOHERTY: Proceed.

19 MR METZGER:

13:28:10 20 Q. Can we please go to page 39 of 39 of exhibit P14?

21 JUSTICE DOHERTY: Do you have that before you, Mr Sengabo?
22 That's the MTN log.

23 Kigali, have we got a connection? Can you hear?

24 UNIDENTIFIED SPEAKER: You are currently the only
13:29:21 25 participant in the conference.

26 MR METZGER: May I be excused while this is going on?

27 JUSTICE DOHERTY: Mr Metzger, I was hoping we would come to
28 a sort of natural pause in your line of questioning, but it is
29 actually the normal time for the Freetown break. So I'm going to

1 take our lunchtime adjournment now, and we'll reconvene at 2.15.
2 And I would ask that that message is passed on to Kigali, please,
3 when the line --

13:30:11 4 MR HERBST: Your Honour, I think we can hear you now. Can
5 Your Honour hear us?

6 JUSTICE DOHERTY: Yes, I can hear you. We had a breakdown
7 in the line - in the connection. It's just after the normal time
8 for our break here in Freetown for staff and counsel and the
9 detainees, and therefore I'm taking the break and we're resuming
13:30:33 10 at 2.15. Hopefully --

11 MR HERBST: The only thing was that - could your Honour
12 just tell us what the last thing was before we lost the link, the
13 last thing your Honour heard.

14 JUSTICE DOHERTY: The last thing I got was a question by
13:30:55 15 Mr Metzger asking the witness to go to page 39, item - of 39 of
16 prosecution Exhibit 14, and that's as far as we got.

17 MR HERBST: I thank the Court. We'll see you at 2.15.

18 JUSTICE DOHERTY: Thank you, counsel. Please adjourn Court
19 until 2.15.

13:32:19 20 [Break taken at 1.32 p.m.]

21 [Upon resuming at 2.21 p.m.]

22 JUSTICE DOHERTY: Apologies for the delay. I got caught up
23 in some administrative matters. It took longer than - I was
24 going to say they deserve, but that would not be the correct
14:21:44 25 thing to say.

26 Mr Metzger, you were in midst of cross-examination before
27 we lost our link with Kigali, and you were dealing with Exhibit
28 14, page 39 of 39.

29 MR METZGER: Indeed. I'm very much obliged.

1 Q. Mr Sengabo, do you now have page 39 of 39 in front of you?

2 A. Not yet. Yes, yes.

3 Q. Thank you. Now, can I just go through those first three
4 entries with you. First of all, you've already answered in

14:22:40 5 relation to Mr Nicol-Wilson that nothing was recorded. There was
6 no audio recording of those calls. That's correct, isn't it?

7 JUSTICE DOHERTY: Nothing was recorded. What does that
8 mean, Mr Metzger?

9 MR METZGER: There was no audio recording, Your Honour.

14:23:00 10 JUSTICE DOHERTY: Audio recording. Yes, yes. I agree that
11 was said.

12 MR METZGER:

13 Q. Now I wanted you, please, to look at the first line, and we
14 see after the date and time recorded the number "175"; is that
14:23:18 15 correct?

16 A. Yes.

17 Q. And that is 175 seconds; is that correct?

18 A. I don't think that they are seconds. Is it? They are
19 serial numbers of, I think, telephone numbers.

14:23:51 20 Q. All right. Let me ask you to look. It's really the sixth
21 column, which would be under the heading "Duration" if they had
22 tabulated the first page properly. So I'm asking you to look at
23 the "duration" column, please, Mr Sengabo.

24 A. On which line?

14:24:31 25 Q. If you're on page 39, the very first line. It's the
26 seventh item immediately after the date and the time which you've
27 recorded as 11.30 - sorry, the 30th of November, 2010, at 1.09
28 and 13 seconds p.m. After that there is the number 175. Do you
29 see that?

1 A. Yes.

2 Q. And I'm suggesting to you the number "175" stands for the
3 number of seconds for which the call was open.

4 A. I don't know.

14:25:15 5 MR HERBST: Your Honour, the Prosecution will so stipulate
6 with the Defence if it wishes.

7 MR METZGER: I'm very much obliged.

8 Q. So that call lasted a total of just under three minutes.
9 The next call is made some 25 minutes later, would you agree with
10 that?

11 A. Okay.

12 Q. And that call lasts for 654 seconds, just short of 11
13 minutes; would you agree with that?

14 A. Yes. I can see it there.

14:26:05 15 Q. At the conclusion of that call, another call is apparently
16 made at 1.49 and 46 seconds.

17 A. Yes [Overlapping speakers].

18 Q. That is in total 222 seconds, so just over three and a half
19 minutes.

14:26:37 20 A. Yes.

21 Q. Now if we go back, please, to Prosecution Exhibit 15A,
22 would you agree that you cannot tell us where the defendants were
23 at the time those calls were being made?

24 JUSTICE DOHERTY: Which calls? Is this the one on the MTN,
14:27:12 25 page 39, Mr Metzger?

26 MR METZGER: The three calls that the Prosecution referred
27 the witness to at 1.09, 1.37, and 1.49.

28 THE WITNESS: Is the request made to mention the location
29 where they are at the time by then?

1 MR METZGER:

2 Q. I am just saying that by perusal of this document, you
3 cannot say where Mr Kanu was at the time those calls were being
4 made; is that correct?

14:27:54 5 A. He was at Mpanga Prison.

6 Q. Yes, of course. I mean where within Mpanga Prison.

7 A. Yes.

8 MR METZGER: Maybe, Your Honour, that's a matter now for
9 submission. Just bear with me while I just check my notes.

14:28:51 10 Q. Just a couple of things I wonder if you can help me with,
11 please, Mr Sengabo. Can I ask you to take P13 and go to the
12 second page.

13 JUSTICE DOHERTY: Mr Sengabo, have you found the document?

14 THE WITNESS: Yes, yes.

14:30:13 15 JUSTICE DOHERTY: Please proceed, Mr Metzger.

16 MR METZGER: Indeed, Your Honour. Thank you.

17 Q. Mr Sengabo, can you go to the second page of that and look
18 for the entries relating to Mr Kanu.

19 A. [Indiscernible].

14:30:36 20 Q. Do you see that?

21 A. Yes.

22 Q. And can you confirm that Mr Kanu's name is spelt there
23 K-H-A-N-U?

24 A. Yes. It is K-H-A-N-U.

14:31:06 25 Q. Thank you. And this is a document that was sent to you, I
26 think, from the Special Court, I think you told us, in 2010.

27 A. [Indiscernible].

28 MR METZGER: I'm sorry, I didn't hear an answer from the
29 witness, although he may have answered.

1 THE WITNESS: Yes, yes.

2 MR METZGER:

3 Q. Thank you, Mr Sengabo. Now, in this list there are three
4 names for which there are no telephone numbers. Do you agree
14:31:57 5 with that?

6 A. [Indiscernible]

7 MR HERBST: Your Honour, if Your Honour [indiscernible]
8 wanted to instruct Mr Sengabo to speak up just a little bit so
9 that his answers can be heard.

14:32:17 10 JUSTICE DOHERTY: Mr Sengabo, we didn't hear an answer. So
11 if you could give us your answer, and also make sure you press
12 the transmission button.

13 THE WITNESS: Yes. I said there are three numbers missing.

14 MR METZGER: For the record, that is number 5, Mr Conteh;
14:32:47 15 number 8, Yatteh Kamara; and number 13, Ulo Jackson.

16 Q. Is that correct?

17 A. [Indiscernible].

18 JUSTICE DOHERTY: Mr Sengabo, did you hear the question?

19 THE WITNESS: Yes, Your Honour.

14:33:17 20 JUSTICE DOHERTY: And your answer, please?

21 MR HERBST: The witness answered "yes," Your Honour, but I
22 don't think it was heard.

23 JUSTICE DOHERTY: Thank you.

24 MR METZGER:

14:33:26 25 Q. Mr Sengabo, what was your understanding, bearing in mind
26 this list had been provided by the Special Court, if, for
27 example, Mr Kanu wanted to call Mr Ulo Jackson, who was an
28 approved person, what was the procedure in this November/December
29 2010?

1 A. The procedure we used, at first the prisoner could request
2 for the call and then decide the person to call. So - so they
3 would choose among them the members on the list and call.

14:34:21 4 Q. Yes, Mr Sengabo, but in a case where there was no telephone
5 number on the list, how would you resolve that problem? Would
6 the prisoner provide a telephone number for you?

7 A. No, no. They were obliged to call the preset numbers on
8 the [i ndi scerni bl e].

9 Q. All right. I shall leave that matter there. I don't think
14:34:46 10 I'll get any further on it.

11 Are you aware that Mr Kanu has got, I think it is a diary
12 and a planner, in which he has a list of telephone numbers
13 relating to people he wants to have contact with?

14 A. I don't know, because I am not interested in that. I only
14:35:12 15 have that current list that came from Special Court, and that's
16 what I gave to our staff for it.

17 Q. Have you, during the course of any investigation, looked
18 through Mr Kanu's books or notebooks to check telephone numbers?

19 A. No, no, no. I have never did this.

14:35:48 20 Q. And can you confirm that you have never been requested by
21 someone for the Prosecution to check for any written material in
22 Mr Kanu's possession for the number that we can see on Exhibit
23 P14, pages 39 of - page 39 of 39 that you've been referred to?

24 A. Excuse me, repeat the question?

14:36:24 25 Q. Quite right. Sorry. Can you confirm that no one from the
26 Prosecution has asked you to look through Mr Kanu's possessions
27 to see if you can identify this telephone number, the one ending
28 "597"?

29 A. I've never checked this call - this MTN call records and

1 call log in comparison to the call list by Prosecutor.

2 Q. Thank you, Mr Sengabo. I'm --

3 JUSTICE DOHERTY: Mr Metzger, I understood your question to
4 relate to personal materials?

14:37:16 5 MR METZGER: Your Honour, yes. I am going to can ask the
6 question in a way - I understand that with the distance and all
7 sorts of difficulties, I'm going to ask the question, I hope, in
8 a clearer way.

9 Q. If you look, please, Mr Sengabo, at page 39 of 39, in
14:37:32 10 Exhibit 14, P14, you see the telephone number in the third column
11 23233255597. That telephone number. Have you specifically been
12 asked to check Mr Kanu's personal belongings to see if that
13 number is written down anywhere?

14 A. No.

14:38:09 15 Q. Thank you, Mr Sengabo. Finally this please, Mr Sengabo.
16 When you were giving evidence two days ago in answer to
17 Mr Herbst, you stated that the mobile phone, the cell phone, had
18 a speakerphone; is that correct?

19 A. Yes.

14:38:56 20 Q. By that do you mean the normal loudspeaker function on the
21 prison cell phone?

22 A. Yes, yes.

23 Q. And therefore, in order to activate the function, one would
24 have to use the facilities provided on the mobile phone to put
14:39:23 25 the call on speaker; is that correct?

26 A. I beg your pardon?

27 Q. In order to use the speakerphone, the person using the
28 mobile phone would have to use the functions on the mobile phone
29 for that purpose?

1 A. I don't know because it was business between the staff and
2 the prisoner. But what I know is that that telephone has that
3 function.

4 Q. Have you ever used that function on that particular phone?

14:40:08 5 A. Yes.

6 Q. What buttons do you have to press in order to utilise that
7 function on that phone?

8 A. You mean that specific telephone of the prisoners or mine
9 or on another telephone?

14:40:31 10 Q. I - that specific phone or one that is identical to it.

11 A. I don't know the exact button, but it is there.

12 Q. Do you know whether you have to press one specific button
13 or more than one in order to engage the speakerphone?

14 A. It must be one.

14:41:04 15 Q. Do you know that for yourself?

16 A. For my telephone or that one?

17 Q. Do you know for a fact that it is just one button to press
18 or are you guessing?

19 A. [Indiscernible] I hope.

14:41:36 20 Q. I didn't get your answer, Mr Sengabo. There was a
21 technical problem. Could you repeat, please.

22 A. I guess it is one.

23 Q. Thank you. Now just to close up this particular topic,
24 from the records available to us, in relation to those three

14:42:04 25 calls on the 30th of November, there is nothing to tell us that a
26 speakerphone was used, is there?

27 A. It depends on the questions asked me by then.

28 Q. What I'm asking, Mr Sengabo, is if we take the two
29 documents, P14, page 39 of 39 that I was asking you about, there

1 is no evidence on this document that shows that a speakerphone
2 was in use, is there?

3 A. Yes.

14:43:02 4 Q. Does that mean that you're agreeing with me, Mr Sengabo,
5 for the record?

6 A. Yes.

7 Q. Thank you, Mr Sengabo. Can I ask you to carry out the same
8 exercise now looking at P15A, or the entries relating to the call
9 log from the prison of the 30th of November, 2010?

14:43:48 10 A. Excuse me, which page?

11 Q. The page with - for the 30th of November, 2010, which the
12 first name is Bazzy Kamara, followed by Santi gie Borbor Kanu.

13 A. Yes, I've got it.

14 Q. Again, can you confirm that there is nothing on this record
14:44:12 15 which suggests the use of a speakerphone?

16 A. There is no sign of speakerphone.

17 Q. Thank you. And the last question on this topic, just in
18 case I didn't make it clear when I asked you before, there is
19 also nothing on this document which assists us as to which staff
14:44:40 20 member was responsible for the custody of the phone at the time
21 of these calls, is there?

22 MR HERBST: Your Honour, that's been asked and answered.

23 JUSTICE DOHERTY: [Microphone not activated]

24 MR METZGER: I didn't ask it in quite that way and I'm
14:44:58 25 seeking clarification, but if my learned friend --

26 JUSTICE DOHERTY: No, no --

27 MR METZGER: -- has objection, I won't ask it again.

28 JUSTICE DOHERTY: No, it's cross-examination.

29 Please answer the question, Mr Sengabo.

1 THE WITNESS: Yeah, we can't identify any.

2 MR METZGER:

3 Q. Mr Sengabo, thank you very much.

14:45:21 4 MR METZGER: Your Honour, those are all the questions I
5 have for this witness.

6 JUSTICE DOHERTY: Thank you, Mr Metzger.

7 Mr Serry-Kamal, do you have questions of the witness?

8 MR SERRY-KAMAL: Yes. Just a few questions.

9 Cross-examination by Mr Serry-Kamal:

14:45:43 10 MR SERRY-KAMAL: Now, is it Exhibit P13? P13?

11 JUSTICE DOHERTY: [Microphone not activated]

12 MR SERRY-KAMAL:

13 Q. Now, Exhibit P13, what is the exact date you got Exhibit
14 P13, the exact date? Exact date.

14:46:10 15 A. I received this copy?

16 Q. Yes.

17 A. I don't remember exact date. Keep it [indiscernible]

18 Q. But was it after the investigation which you did in 2011
19 that you received Exhibit 13?

14:46:46 20 A. It is before.

21 Q. Before?

22 A. We received this in 2010.

23 Q. I don't know, but my - my - whose signature appears in
24 Exhibit 13? Because mine - the document I have used to date as
14:47:16 25 13 of May, 2012.

26 JUSTICE DOHERTY: It would be helpful for the witness if
27 you specify where this signature is.

28 MR SERRY-KAMAL: At the front - the first page, Your
29 Honour.

1 JUSTICE DOHERTY: [Overlapping speakers] Mr Serry-Kamal,
2 he's not able to see when you hold it up, so you should be more
3 specific, please.

4 MR SERRY-KAMAL: Oh, I have just been corrected by my
14:47:41 5 learned friend, that, in fact, he made him sign it on that day.
6 So I will not press that point.

7 Q. So you --

8 JUSTICE DOHERTY: As a matter of fact there is a signature
9 and an initial on each page.

14:47:55 10 MR SERRY-KAMAL: Yes, there is an initial on it and that
11 [indiscernible]

12 JUSTICE DOHERTY: So anyway, we move on from there, please.

13 MR SERRY-KAMAL:

14 Q. So are you sure it is not after the investigation that the
14:48:06 15 Registrar insisted that she should give you a new list? Because
16 you remember, Mr Sengabo, that you said after discovery they had
17 spoken to - there is an allegation that one of them may have
18 spoken to a journalist in Sierra Leone - their calls were
19 suspended for one month. Do you recall that?

14:48:41 20 A. Yes, yes.

21 Q. Now after that, the Registry here conducted a further
22 investigation to verify each and every number that they gave.
23 Each and every number given by Bazy. Everyone here, the
24 Registry verified the numbers. They just didn't accept them but
14:49:07 25 they actually verified and telephoned people to make sure that
26 the numbers were correct.

27 JUSTICE DOHERTY: When you say telephoned the people,
28 Mr Serry-Kamal --

29 THE WITNESS: Yes, yes.

1 JUSTICE DOHERTY: -- do you mean the prospective recipients
2 of the calls?

3 MR SERRY-KAMAL: Yes, yes, Your Honour. That is exactly
4 what I mean. Before this list was prepared, so that is why I
14:49:28 5 took the long time to get it.

6 JUSTICE DOHERTY: Your answer, Mr Sengabo, I think I did
7 answer --

8 THE WITNESS: [Overlapping speakers] The list I was
9 meaning --

14:49:41 10 JUSTICE DOHERTY: Yes, Mr Sengabo.

11 THE WITNESS: The list I was meaning after making
12 [Indiscernible]. We came to find that these people had abused
13 the call list, I mean the initial call list. Then we had to make
14 a review on it by requesting prisoners to write it down the new
14:50:08 15 numbers, or their updated numbers, and then we take it back for
16 vetting it in Sierra Leone bring it back. So the list we have
17 today, the current list, is in the database of MTN. So this list
18 is no longer used today.

19 MR SERRY-KAMAL:

14:50:30 20 Q. So, in fact, --

21 A. [Overlapping speakers]

22 Q. -- P13 is no longer in use. Is that what you're telling?

23 MR HERBST: Again, Mr Serry-Kamal, Your Honour, has jumped
24 on the witness's answer. And I don't think, Your Honour, all of
14:50:55 25 the answer was heard although we heard it here.

26 JUSTICE DOHERTY: Just pause.

27 Mr Sengabo, the last part I said, that the numbers were
28 vetted by Sierra Leone. Then they were entered by MTN. The list
29 is not used today. Was there another part of your answer we did

1 not hear?

2 THE WITNESS: Yes. This current list we are using is not
3 this one on the table.

4 JUSTICE DOHERTY: Thank you.

14:51:26 5 THE WITNESS: This one was for 20/10/2011.

6 MR SERRY-KAMAL: That is the answer I needed, Your Honour.
7 I am sure Mr Herbst is now satisfied that P13 is no longer in
8 use.

9 Q. Now I want you to look at Exhibit 15 - P15A. Can you
14:51:53 10 explain to me - or do you agree with me, let me say this, that
11 the first entry involving Mr Bazzy, line 1, and the next through
12 three lines on the column of the number called were gone over
13 more than one time?

14 JUSTICE DOHERTY: When you say "gone over more than one
14:52:27 15 time," what does that mean, Mr Serry-Kamal?

16 MR SERRY-KAMAL: Well, there - there is something written
17 there, and then, you know, emboldened so, more or less.

18 JUSTICE DOHERTY: Ah. So did you understand the question,
19 Mr Sengabo?

14:52:43 20 MR HERBST: Your Honour, Mr Sengabo is trying to find P15
21 and the page in P15 that corresponds to 15A, so I don't think he
22 fairly heard either --

23 MR SERRY-KAMAL: That the document that was given today
24 which has the signature - signature of the caller --

14:53:07 25 THE WITNESS: [Overlapping speakers] repeat the page.

26 MR SERRY-KAMAL: -- or purported callers.

27 MR HERBST: Your Honour, Mr Sengabo has the right page on
28 15 opened, and I think if Mr Serry-Kamal permits him to use that
29 page while Mr Serry-Kamal uses 15A, I think the witness will

1 understand.

2 MR SERRY-KAMAL: I have no problem with that if that will
3 expedite matters.

4 JUSTICE DOHERTY: Yes. Please put the question again,
14:53:49 5 Mr Serry-Kamal.

6 MR SERRY-KAMAL:

7 Q. I said the entry there is emboldened on the first line
8 involving Bazzy Kamara?

9 A. Yes.

14:54:05 10 Q. I know you - you are not usually in control of the ledger.
11 You give it to your juniors to do that for you; not so?

12 A. Yes, yes.

13 Q. Yes. So - but you agree with me that somebody must have
14 gone over what was originally written? Somebody. I'm not
14:54:34 15 accusing anybody. I'm just saying somebody went over what was
16 written?

17 A. Yeah, I don't know whether it is, but - but I just
18 witnessed the handwriting.

19 Q. Now let's leave the handwriting. I'm just saying the
14:54:58 20 handwritings on the first line. Anyway, let's go back four -
21 four names down. The fifth one for the 30th of November is
22 another Bazzy Kamara; not so? On the same page; do you see it?

23 A. I see it, sir.

24 Q. That is not --

14:55:33 25 A. Yes, yes.

26 Q. That is not emboldened. In fact, the only one that is
27 emboldened is the line on line 1, the first entry; yes?

28 A. Yes, sir.

29 Q. Now, further you said at the beginning you did not keep

1 proper records, is that right, of all calls made.

2 A. At the beginning, do you mean [overlapping speakers] --

3 Q. The system of keeping records is different from what now
4 obtains?

14:56:31 5 MR HERBST: I'm sorry, Your Honour. Perhaps Mr Serry-Kamal
6 didn't hear the witness ask the question which date
7 Mr Serry-Kamal is talking about when he asked the question about
8 in the beginning.

9 MR SERRY-KAMAL: Your Honour, there are only two periods:
14:56:46 10 Post-newspaper suspected newspaper calls and pre-newspaper calls.
11 Maybe I should put it in a more practical way. I am talking
12 about the period pre the calls and the censure action taken by
13 the Registry.

14 Q. At the period before you sent --

14:57:17 15 A. [Overlapping speakers].

16 Q. -- the numbers to MTN, that was a different procedure?

17 A. The procedure was this: To -- [Overlapping speakers] --

18 Q. I didn't want you to answer that.

19 JUSTICE DOHERTY: No, please let him answer. Please let
14:57:38 20 him answer.

21 Answer the question, Mr Sengabo.

22 THE WITNESS: The procedure we are using is this call log.

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

24 MR SERRY-KAMAL:

14:57:57 25 Q. Now what I'm saying is that after - after the Registry
26 intervened and sent you new numbers, the procedure adopted now is
27 different from what obtained before. Now the numbers are with
28 MTN. If you give a number which is not with MTN, the call does
29 not go. In the past, you did not have that procedure?

1 A. Yes. It is yes.

2 Q. Thank you, Mister. Now my learned friend was showing you
3 that 39 of 39 for the 30th. Now, you agree with me in looking at
4 39 of 39 and all the calls that were alleged to have been made,
14:59:13 5 you cannot tell who made those calls; correct?

6 A. You mean the use of MTN records?

7 Q. No, even looking at MTN - yes. Looking at MTN records, it
8 doesn't say who made the calls.

9 A. Yeah, from MTN records we can't tell the past call.

14:59:55 10 Q. Thank you, Mr Sengabo. I have no further questions for
11 you.

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

13 MR METZGER: Your Honour, may I just have briefly - I
14 forgot. I did ask Mr Sengabo about the document they call HS/2.

15:00:09 15 I would like to tender that in evidence, because I did ask two
16 questions relating to the signatures and the handwriting. It may
17 be the first Defence exhibit. I'm in Your Honour's hands as to
18 what it should be called.

19 JUSTICE DOHERTY: Please pause, Mr Metzger. You referred
15:00:25 20 to two pages --

21 MR HERBST: [Overlapping speakers].

22 JUSTICE DOHERTY: -- and I have four pages, so do you wish
23 to tender the four or the two pages?

24 MR METZGER: I am content, Your Honour, for such pages as
15:00:40 25 the Court thinks fit. Perhaps just the two pages, as they were
26 the ones that I asked questions about, and it was only so that we
27 could see the spelling and the different signatures.

28 JUSTICE DOHERTY: Thank you. I will ask Mr Herbst.

29 Mr Herbst, you have heard Mr Metzger seek to tender this

1 document. What is your response, please?

2 MR HERBST: Your Honour, I have no objection to the two or
3 the four pages, either one.

4 JUSTICE DOHERTY: Thank you. That is a two-page
15:01:23 5 handwritten document which has at the top of the page the name
6 "Morris Kallon" followed by the name "Adelma." I will admit the
7 two pages which show records going from an unclear date in 2010
8 to the 26th of the 11th, 2010, with the final name on the list
9 "Fofana". That becomes Defence Exhibit D1.

15:02:01 10 ADMITTED AND MARKED "D1"

11 MR METZGER: Thank you, Your Honour.

12 JUSTICE DOHERTY: Mr Herbst, have you any re-examination of
13 the witness, Mr Sengabo?

14 MR HERBST: I do have a few questions, Your Honour, the
15:02:12 15 first of which deals with actually that exhibit which has just
16 been introduced.

17 JUSTICE DOHERTY: Yes. I have it before me.

18 Re-examination By Mr Herbst:

19 Q. Mr Sengabo, look at the second page of that exhibit which
15:02:38 20 was shown to you in your cross-examination with Mr Metzger, and
21 it's the page that starts with August, the fourth one down which
22 is what Mr Metzger directed your attention to, the fourth one
23 which --

24 THE COURT OFFICER: Your Honour, Mr Kargbo wants to use the
15:02:57 25 restroom.

26 THE WITNESS: Yes, I have the page.

27 MR HERBST:

28 Q. Now, in Mr Metzger's questioning of you about the
29 signature, in the last column he indicated that that was, in

1 fact, Mr Kanu's signature. Do you remember that?

2 A. Yes.

3 Q. And I would just ask you, going back to the second column
4 where the name is, is there an "H" in "Kanu" or is there no "H"

15:03:34 5 in "Kanu"? Again, on that same page, on the fourth entry down --

6 A. The first page?

7 Q. No, the second page of the document.

8 A. There is no "H" here, and the second page there is "H".

9 Q. I didn't hear correctly. Would you just give him --

15:04:10 10 MR HERBST: Ms Court Attendant, could you just put the page
11 that I was directing his attention to before him, that is, this
12 one.

13 Q. Do you see the fourth entry down, Mr Sengabo, with the name
14 "Kanu" in the second column?

15:04:30 15 A. I've seen it. There is no "H".

16 Q. Thank you.

17 JUSTICE DOHERTY: Any further questions, Mr Herbst?

18 Please proceed.

19 MR HERBST: Yes, Your Honour. Yes, Your Honour, just a
15:04:58 20 few. I apologise for the delay. I'm just going back over my
21 notes.

22 Q. Now, looking at the first page of the MTN records in
23 evidence, P14, page 1 of 39, what is that logo on the right-hand
24 side - upper most in the right-hand corner of the page?

15:05:35 25 A. It is MTN.

26 Q. And do you recognise that as MTN's official logo?

27 A. Yes.

28 Q. Now, do you know how - do you know who requested the
29 records of this --

1 MR METZGER: Objection, Your Honour. It doesn't arise from
2 cross-examination.

3 JUSTICE DOHERTY: It does. It arises from
4 Mr Nicol-Wilson's whose question the police thing, et cetera. So
15:06:18 5 it does arise.

6 Put your question again, Mr Herbst, sorry. I was just
7 making a ruling while you spoke.

8 MR HERBST: Yes, Your Honour. Thank you.

9 Q. Mr Sengabo, do you know who requested these records from
15:06:39 10 MTN?

11 A. I understand it is Special Court requested the Rwanda
12 Correction Service, and then Rwanda Correction Service requested
13 this to MTN. After getting it, they forwarded this to
14 Special Court.

15:07:07 15 MR HERBST: Your Honour, I don't have any further questions
16 of the witness. But I do have the e-mail traffic that I would
17 like to introduce, or have the Court take judicial notice of,
18 since they are official Court e-mails showing the train of the
19 transmission of the documents from the MTN official to the --

15:07:39 20 JUSTICE DOHERTY: I don't know that that would be necessary
21 because it's already an exhibit so that's the end of the matter.
22 It's in evidence as an exhibit.

23 MR NICOL-WILSON: And I will object to any attempt to
24 introduce that e-mail.

15:07:53 25 JUSTICE DOHERTY: Well.

26 MR METZGER: And I would buttress the same.

27 MR HERBST: [Overlapping speakers]

28 JUSTICE DOHERTY: The document is in as an exhibit. It
29 speaks for itself.

1 MR METZGER: If I may remind my learned friend that we
2 agreed that the document would be put in. I preface that by
3 saying that I do not accept that he has provided us with material
4 which allows it to go in but we were prepared to concede the
15:08:15 5 document as, I think, the record will show. But if he seeks to
6 introduce it via these e-mails, I would object because for proper
7 purposes they do not serve to produce the document.

8 MR HERBST: Your Honour, I was responding to the
9 cross-examination of Mr Nicol-Wilson, which attempted to suggest
15:08:39 10 that there was - that the records may not be genuine, may not be
11 the genuine records.

12 JUSTICE DOHERTY: That hasn't been put to this witness.
13 If in the event of someone being produced from MTN to challenge
14 the authenticity of this document, then - and it hadn't been put,
15:09:03 15 I will look at such matters and I will hear application at the
16 time, either by submission, or an application under Rule 85. But
17 for the moment, the document is in and it speaks for itself, or
18 it doesn't speak for itself, depending on whose submission I am
19 going to listen to.

15:09:32 20 MR HERBST: That's fine and I have no further questions of
21 this witness.

22 JUSTICE DOHERTY: Thank you, Mr Herbst.

23 Mr Sengabo, I'm very grateful, as I've already said, for
24 all the time you've spent and - and for the government of Rwanda,
15:09:46 25 for making both these records and yourself available to come and
26 give your evidence today. And you are at liberty to now leave
27 the Court or, if you wish, to remain within the Court precincts.
28 You are also at liberty to do that. Thank you, Mr Sengabo.

29 THE WITNESS: Thank you, Your Honour.

1 JUSTICE DOHERTY: Mr Herbst, do you have any further
2 witnesses?

3 MR HERBST: No, Your Honour. I just wish to point out to
4 the Court that the Court has heard evidence already that the
15:10:23 5 phone number in the first three calls on 39 of 39 was Mr Kargbo's
6 phone number [Overlapping speakers] --

7 JUSTICE DOHERTY: Submissions, submissions, submissions. I
8 mean, the Defence may want to call evidence, and after they do so
9 will be an appropriate time to consider these submissions.

15:10:46 10 So may I take it now that you - when you say you're not
11 calling further evidence that you are closing your case,
12 Mr Herbst?

13 MR HERBST: [Indiscernible] Your Honour, we are closing our
14 case.

15:11:04 15 JUSTICE DOHERTY: Thank you, Mr Herbst.

16 Okay. The Prosecution have closed their case. I don't
17 think, in the circumstances, it's necessary to go through the
18 whole provisions of a pre-Defence Conference, but let me look at
19 the Rule.

15:11:49 20 MR NICOL-WILSON: Your Honour, Mr Bangura wants to be
21 excused.

22 JUSTICE DOHERTY: Certainly. He may be escorted out.

23 [Accused Bangura exits courtroom]

24 MR SERRY-KAMAL: Rule 73 *ter*.

15:12:07 25 JUSTICE DOHERTY: Oh, thank you. That's very helpful,
26 Mr Serry-Kamal.

27 The Rule is not mandatory, and in the circumstances since
28 it is fairly discreet issues before us, I don't think it's
29 necessary to hold a Pre-Defence Conference.

1 Gentlemen, Mr Nicol-Wilson, will you be calling evidence,
2 as your client, of course, is not obliged to call evidence. I
3 don't for a moment suggest he is. However, if he is calling
4 evidence and he himself is giving evidence, he is obliged under
15:12:46 5 the Rules to proceed first before he calls any witnesses.

6 MR NICOL-WILSON: Your Honour, I want to seek clarification
7 as to whether we will proceed along Rule 98.

8 JUSTICE DOHERTY: To put it mildly, the ball is in your
9 court. However, I would point out that the provision of Rule 98
15:13:19 10 is after the close of the Prosecution case there is no evidence
11 capable of supporting, et cetera. So the matter is a
12 discretionary matter and there is no mandatory obligation to make
13 it and, as you know yourself, in our national jurisdictions, the
14 no case submission or national equivalent is not entirely common.
15:13:44 15 That's as best I can put it. .

16 MR NICOL-WILSON: Your Honour --

17 JUSTICE DOHERTY: So it's a matter for counsel's
18 discretion.

19 MR NICOL-WILSON: Your Honour, that's entirely what I
15:13:54 20 intend to do. The discretion is mine and I intend to exercise
21 it. We intend to do all your submissions on Rule 98.

22 JUSTICE DOHERTY: Well, please proceed and I will hear you
23 out. Thank you. Please proceed with your Rule 98 submission.

24 MR NICOL-WILSON: Your Honour, certainly not today.

15:14:12 25 JUSTICE DOHERTY: What do you mean certainly not today?
26 I've just said go ahead.

27 MR NICOL-WILSON: Your Honour, I cannot do the submissions
28 now because I need to prepare the submission if I do it orally,
29 Your Honour.

1 JUSTICE DOHERTY: Mr Nicol-Wilson, I'm not sure how long
2 you've been in practice but I know it's a fair old while, and I
3 know you may stand up in a court down at the cotton tree and you
4 make your no case submission as we all have done over the years.

15:14:43 5 MR NICOL-WILSON: Your Honour, I have indicated to Court
6 that I will be making a no case submission, not that I intend to
7 do it now.

8 JUSTICE DOHERTY: Well, if I tell you to do it now, you may
9 find yourself -- Mr Metzger.

15:14:54 10 MR METZGER: May it please Your Honour, it is the intention
11 also to make a submission in the terms of Rule 98 and it was our
12 intention also to ask for time to prepare it. This case has not
13 been exactly the kind of case that we have been able to proceed
14 with like any other case. There have been technical
15:15:23 15 difficulties, there are issues in relation to transports, there
16 have been logistical problems in relation to transport, and
17 whilst it may be possible to make a simple submission for
18 judgement of acquittal according to Rule 98, I think Your Honour
19 would thank me more if I would be able to take Your Honour to
15:15:51 20 specific passages in the transcript, as I have sought to do,
21 where I've been asking questions, and to formulate my argument in
22 a way that will be, shall we say, much easier to digest for all
23 concerned.

24 And it was in those circumstances that one had anticipated
15:16:09 25 that we wouldn't be asked to bring together something like I
26 believe over 1,000 pages now of evidence, despite the discreet
27 matters that this Court has to deal with on the hoof, immediately
28 after the Prosecution has closed his case.

29 Even Mr Herbst, when he travelled from here to Rwanda, had

1 some time to, as it were, collect his thoughts. I understand he
2 wasn't feeling well. I think Your Honour knows that we've done
3 what he did twice over and - well, we've gone there, we've come
4 back, and we've only stopped, as it were, for travel and purposes
15:16:50 5 of resting the human carcass that we carry with us. I wouldn't
6 want to say that I am in a fit state to do justice to Mr Kanu's
7 case by making submissions to Your Honour, and I don't think Your
8 Honour will thank me for saying that there is no evidence on
9 either count 1 or count 2 without, as it were, seeking to take
15:17:15 10 Your Honour to the reasons why I say that this case is absent.

11 So I support Mr Nicol-Wilson's submissions.

12 JUSTICE DOHERTY: Well, I think in the circumstances, since
13 the Prosecution is closed, we will be - have a seat Mr Metzger.
14 The Defence are exercising the discretion vested in them to make
15:17:44 15 the submission which I obviously will not either predetermine or
16 comment upon. As you all know - and I'm sure you all know - the
17 history of this Rule. It is now an oral submission. But I think
18 in the circumstances, since we're all in different jurisdictions,
19 two are in one, one of you in another, me in a third, and the
15:18:11 20 Prosecutor a fourth, the more sensible approach would be to have
21 it in writing, notwithstanding the amendment to the Rules that
22 were made following the AFRC decision.

23 So I will, instead of inviting oral submissions, I would
24 ask for written submissions. Would ten days be enough time, and
15:18:37 25 ten days to respond, would that be a reasonable period?

26 MR NICOL-WILSON: Your Honour, we've just conferred and we
27 think 14 days would be enough.

28 JUSTICE DOHERTY: I'm looking at my famous calendar here.
29 Mr Herbst, I haven't invited you to speak on this just yet.

1 I will do in due course.

2 Mr Herbst, you have heard both Mr Nicol-Wilson and
3 Mr Metzger make applications, and I'm going to ask Mr Serry-Kamal
4 if he is joining in those applications.

15:19:34 5 MR SERRY-KAMAL: Yes, Your Honour. Very much so. I am
6 extremely tired.

7 JUSTICE DOHERTY: Counsel for the Defence have requested 14
8 days in which to make written submissions. The written is as a
9 result of indications from me and not from the Rules.

15:19:58 10 First of all, Mr Herbst, have you any comment on the time
11 period; and then secondly, a reply from you. Time period,
12 please.

13 MR HERBST: Your Honour, I did want to comment on the
14 question of oral versus written submissions, because it was my
15:20:25 15 understanding that submissions would be oral, and I understand
16 that there has been travel and I understand that people may be
17 tired, but I have to say that my entire case was fully disclosed
18 quite some time ago. There have been surprises about the case.
19 The case has gone in just the way - and the facts have gone in
15:21:00 20 basically the way it was described in the opening statement, with
21 the exception of the witnesses, and in a few cases certain
22 evidence which was excluded by the Court - and I'm speaking of
23 the Principal Defender and, for example, the issues with respect
24 to the 2011 report which was excluded.

15:21:23 25 But I really see no reason why oral submissions cannot be
26 made. There have been no surprises and frankly, I had hoped that
27 oral submissions would be made. We would respond to them this
28 afternoon. And whatever case remained would remain. And then we
29 could hear from the Defence, frankly, before we adjourned for a

1 lengthy period of time, what case or cases we were going to get
2 from the Defence, so we could judge as to how long the next round
3 of trial in this case would be.

4 Yes, I am fully apprised of the fact that there have been
15:22:20 5 technical difficulties that have made the case longer than we
6 anticipated. But the flip side of that is that the case, the
7 outline of the case, has been clear for quite some time. So my
8 comment is that the oral submissions should go forward in the
9 time we have left. However, if Your Honour --

15:22:51 10 JUSTICE DOHERTY: But the facts of life are, Mr Herbst, is
11 that we've got four minutes left.

12 MR HERBST: Okay. That I didn't realise. All right.
13 Look, I have no comment on the 14 days.

14 JUSTICE DOHERTY: My intention is this: I am --

15:23:20 15 MR HERBST: [Overlapping speakers]

16 JUSTICE DOHERTY: -- as anxious as everybody else to
17 complete the hearing in an expeditious matter. That's a duty
18 imposed on the Court. This has taken longer for many reasons,
19 most of which were outside our control. Normally I would expect,
15:23:43 20 as you may have noted from my exchange with Mr Nicol-Wilson, to
21 have an oral hearing. I'm only looking at a written one in order
22 to make as much use of the time between now and reconvening that
23 I can possibly make.

24 So my intention is to have them in, to have your response,
15:24:05 25 and to render an oral decision - excuse me, I correct myself. To
26 render a written decision as soon as I possibly can. I was as
27 anxious as everybody else --

28 MR HERBST: Thank you, Your Honour.

29 JUSTICE DOHERTY: -- to have this finished. So that is -

1 I'm looking at both the legal, the fair trial rights, and the
2 logistical limitations put upon us.

3 So what I'm going to do is I think 14 --

4 MR HERBST: Can I --

15:24:48 5 JUSTICE DOHERTY: -- days is a bit generous. I'll allow
6 Defence counsel 12 days, to the 16th of July. And --

7 MR METZGER: May I just address, Your Honour.

8 JUSTICE DOHERTY: Yes.

9 MR METZGER: As Your Honour may know, some of us do have a
15:25:10 10 life outside these proceedings.

11 JUSTICE DOHERTY: My husband thinks that I should have a
12 life outside these proceedings as well, but he's beginning to
13 think there isn't any.

14 MR METZGER: As indeed does my wife.

15:25:21 15 Now when I return to the UK, which will be on Friday, I
16 will be outside the jurisdiction of the UK between the 10th and
17 the 16th on a long-standing arrangement, which is why I was quite
18 happy for the 14 days because I could conclude and send the
19 material to Your Honour immediately upon my return to the
15:25:42 20 United Kingdom.

21 JUSTICE DOHERTY: Very well. In that case I'll not
22 challenge it any further because --

23 MR METZGER: Thank you.

24 JUSTICE DOHERTY: -- I too have a long-standing commitment
15:25:55 25 which I have been reminded, forcibly, has been broken twice
26 because of my Court commitments, and I better not make it a third
27 time.

28 MR METZGER: I'm sure Your Honour's reminders are at least
29 as forceful as the reminders I receive.

1 JUSTICE DOHERTY: So we'll leave it at the two weeks, and
2 that brings us to the 18th of July. And Mr Herbst, you are
3 entitled to the same consideration as counsel and you should file
4 your response by the 1st of August.

15:26:25 5 If, of course, either counsel files it early, all well and
6 good. I have no problem with that.

7 So Defence, by close of business on the 18th of July,
8 Prosecution by close of business 1st of August. I'm not setting
9 a page limit, either minimum or maximum. But counsel are
10 professional enough to know that the more succinct and to the
11 point the better.

12 That will bring me now to the second point that we have to
13 determine and that is the reconvening of this Court.

14 MR HERBST: Well, Your Honour, could I ask an intervening
15 question which I think is relevant to that, but which has not yet
16 been asked, but I think - well, it was asked with respect to one
17 Defence counsel, but not the others. I think it entirely
18 appropriate to ask counsel at this point, assuming that a case
19 against their clients remain, whether they intend to put a case
15:27:51 20 on, and if so whether they have any additional witnesses that
21 they intend to call, other than those that have been tendered, so
22 that we could then get a better idea of how long the second phase
23 of the trial will take.

24 JUSTICE DOHERTY: Counsel, Mr Nicol-Wilson, it would be
15:28:29 25 helpful to have such information on the very clear caveat that
26 (a), it is dependent on the outcome of Rule 98; and (b), the
27 Defence are never obliged to call evidence and are at liberty to
28 make decisions once a Rule 98 decision is rendered. With those
29 two caveats in mind, can you indicate if you will be calling

