



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 [Tuesday, 4 September 2012]

2 [Open session]

3 [The accused present]

4 [The court resumed at 9.11 a.m.]

5 JUSTICE DOHERTY: Good morning, can you hear me in Kigali?

6 THE COURT OFFICER: [In Kigali] Yes, we can.

7 JUSTICE DOHERTY: I'm sorry we're late starting. This time
8 it was me that caught up in the traffic. I'm told it's the first
9 day of school, so everybody is out in their cars. I'll take
10 appearances, please. Kigali?

11 MR HERBST: Good morning, your Honour. [Indiscernible] in
12 Freetown. Robert Herbst, independent counsel for the
13 Prosecution.

14 JUSTICE DOHERTY: Thank you, Mr Herbst.
15 Here in Freetown?

16 MR NICOL-WILSON: Good morning, your Honour. Melron
17 Nicol-Wilson for Hassan Papa Bangura.

18 JUSTICE DOHERTY: Thank you, Mr Nicole-Wilson.

19 CHIEF TAKU: May it please your Honour, Chief Charles Taku
20 for Samuel Kargbo.

21 JUSTICE DOHERTY: Thank you.

22 MR METZGER: Good morning, your Honour. Kevin Metzger for
23 Santiye Borbor Kanu here in Freetown. And good morning to all
24 of you in Kigali.

25 JUSTICE DOHERTY: Welcome back, Mr Metzger. I note that
26 Mr Serry-Kamal's papers are there but he isn't there. Presumably
27 he's somewhere around so we'll continue.

28 Chief Taku, you wanted to say something?

29 CHIEF TAKU: Yes, your Honour. It is certain, I have to

1 I leave today. All attempts to get me a place on the flight on the
2 5th, as your Honour directed, have failed. So I can only travel
3 today. I must be in the courtroom on [indiscernible] break. I
4 will travel. I would love to be here to the end, but the
5 circumstances compel me to travel today. And thank your Honour
6 for the directions you gave yesterday and thank everyone.

7 JUSTICE DOHERTY: Chief Taku, in the circumstances, we will
8 excuse your appearance, and obviously if there is any matter that
9 would impinge on the rights of your client, I will ensure that
10 you're contacted or that they're dealt with.

11 CHIEF TAKU: Thank you very much, your Honour.

12 JUSTICE DOHERTY: If there is no other matters, I will
13 remind the witness of his oath, and we will proceed with
14 cross-examination.

15 Good morning, Mr Bangura.

16 THE WITNESS: Good morning, your Honour.

17 JUSTICE DOHERTY: I want to remind you, as I did yesterday
18 afternoon, that you have taken the oath to tell the truth. The
19 oath is binding on you, and you're obliged to answer truthfully
20 in the questions put to you. Do you understand?

21 THE WITNESS: Thank you, your Honour.

22 JUSTICE DOHERTY: Mr Herbst, please proceed.

23 MR HERBST: Thank you, your Honour.

24 HASSAN PAPA BANGURA,

25 CROSS-EXAMINATION CONTINUED BY MR HERBST:

26 Q. Good morning, Mr Bangura.

27 A. Good morning, Mr Herbst.

28 Q. Mr Bangura, I'm going to remind you once again to try to
29 pause after each sentence of your answer so that the

1 interpretation may be heard. Will you try to do that for us
2 today?

3 A. Thank you, Mr Herbst.

4 Q. Mr Bangura, in November and December 2010, you knew that it
5 was a crime to try to persuade a witness like 334 to change his
6 testimony, correct?

7 A. I never knew it was a crime.

8 Q. No one ever told you that it was a crime to persuade - to
9 try to persuade 334 to recant his testimony?

10 A. No, nobody ever told me. It was when we went to lawyer
11 Mansaray and he explained, that I understood.

12 Q. Mr Bangura, you knew that it was a crime to try to persuade
13 334 to recant his testimony in return for money, right?

14 JUSTICE DOHERTY: Just a moment, Mr Herbst. Yes,
15 Mr Nicol-Wilson.

16 MR NICOL-WILSON: Your Honour, I have not seen the
17 foundation for this question because there is no evidence or
18 question put saying that Mr Bangura persuaded 334 before
19 Mr Herbst can do a follow-up question on whether he knew it was a
20 crime or not. So I think a foundation has to be laid to be fair
21 to the witness. Because Mr Herbst has not suggested to the
22 witness that he persuaded 334 in November and December of 2010.
23 And then started asking questions as to whether he knew that what
24 he was doing was a crime. The witness has testified under
25 examination-in-chief that he never persuaded 334.

26 MR HERBST: Well, your Honour, number one, there is
27 evidence to the contrary from two witnesses, number one. And
28 number two, it's perfectly appropriate to ask him whether he knew
29 that the conduct with which he is charged is criminal, whether or

1 not he committed it or not. Whether or not he says he committed
2 it or not. I think this is cross-examination, and I think there
3 is plenty of foundation for the question.

4 JUSTICE DOHERTY: This is cross-examination. An essential
5 element of the offense for which the witness is being charged is
6 whether he knew that his actions - that he undertook his actions
7 knowingly. It has been alleged that he did know by the
8 Prosecution, and he's entitled to respond by way of his
9 explanation that's now coming out in cross-examination. And in
10 the circumstances, I allow the question.

11 Please proceed.

12 MR HERBST:

13 Q. Mr Bangura, you --

14 MR SERRY-KAMAL: Sorry. Just a minute, Mr Herbst.

15 I'm sorry, your Honour. [Indiscernible] for the fourth
16 accused. I'm sorry I am late.

17 JUSTICE DOHERTY: You weren't alone, I was too.

18 Mr Serry-Kamal appears for Mr. Kamara.

19 Please proceed, Mr Herbst.

20 MR HERBST: Thank you, your Honour.

21 Q. Mr Bangura, you knew in November of 2010 that it was a
22 crime to offer money to a witness like 334 to persuade him to
23 change his testimony, correct? Yes or no?

24 A. No. I never gave him money or what.

25 JUSTICE DOHERTY: Mr Bangura, the question - just a moment,
26 Mr Herbst.

27 Mr Bangura, the question was not: Did you give him money?
28 The question was: Did you know it was a crime to offer money to
29 change his story?

1 THE WITNESS: No, your Honour. I didn't do that.

2 MR HERBST:

3 Q. You didn't know it was a crime to bribe a witness to change
4 his testimony?

5 A. No, I didn't know that.

6 Q. Now, you were asked some questions on direct examination by
7 your attorney about testimony that Mr Kargbo and 334 had given in
8 this trial. Do you remember that?

9 A. I don't recall. You have to remind me.

10 MR HERBST: I'm sorry, your Honour. I'm having difficulty
11 hearing the interpreter.

12 JUSTICE DOHERTY: I do not remember. You have to remind
13 me.

14 MR HERBST:

15 Q. Well, I'm going to ask you a series of questions about the
16 testimony that both men gave in turn, and I'm going to ask you
17 about that.

18 Now, you heard Mr Kargbo testify under oath that you and he
19 spoke by telephone during Mr Kargbo's first meeting with 334. Do
20 you remember that testimony?

21 A. Yes, I can remember it.

22 Q. Mr Kargbo testified that you told him you wanted to talk to
23 334. Do you remember that testimony?

24 A. Yes, I can remember it.

25 Q. And he also testified that when he gave the phone to 334,
26 he heard 334 tell you that he had heard and would think about
27 what he was being asked to do; do you remember that?

28 A. Yes, I can remember when he testified to that.

29 Q. Now, I put it to you that that testimony was true. What's

1 your response to that?

2 A. He lied. That's not true. I have 334's number. If I
3 wanted to talk to 334, I would have called him to talk to him.
4 Why would I call somebody else to talk to him? He's lying.

5 MR HERBST: Sorry, your Honour. The witness didn't pause,
6 and I didn't get the answer.

7 JUSTICE DOHERTY: The answer I noted was: A lie, a lie. I
8 have 334's number. If I wanted to talk to him, why would I call
9 someone else?

10 MR HERBST:

11 Q. Now, you heard Mr Kargbo testify that you were his close
12 friend and brother. Do you remember that testimony?

13 A. Yes.

14 Q. And that's true, right?

15 A. Yes, he was my friend.

16 Q. And he also testified that he had never had a previous
17 quarrel with you. That's true, too, isn't it?

18 A. Yes, he's correct.

19 Q. Now, Mr Kargbo also testified about the day that you and he
20 went to Mr Mansaray's office; do you remember that?

21 A. Yes, I can remember.

22 MR HERBST: I'm sorry, your Honour. I'm just changing
23 earphones so I can hear better. Thank you.

24 Q. And Mr Kargbo testified that Mr Mansaray said that he was
25 representing Mr Kamara and Mr Kanu, do you remember that
26 testimony?

27 A. Yes, I heard him say so.

28 Q. And he further testified that Mr Mansaray asked if you too,
29 you and Mr Kargbo, were the people those men in Rwanda sent and

1 asked if they could persuade 334, and Mr Kargbo said yes because
2 334 was his brother. Do you remember that testimony?

3 A. I heard him say so.

4 Q. And I put it to you that that testimony is true,
5 Mr Bangura; yes or no?

6 A. No, it's not true. Mr Mansaray never told us that. It's
7 not true.

8 Q. Now, Mr Kargbo also testified that on the way over in 334's
9 car, you asked 334 how much money he wanted the men in Rwanda to
10 offer him. Do you remember that testimony?

11 A. Yes, I can remember it.

12 Q. And I put it to you that testimony is true, Mr Bangura.
13 Yes or no?

14 A. No, it's not true.

15 Q. And Mr Kargbo also testified that when you and he returned
16 to Howe Street in the Sweissy area, where you found 334, you told
17 334 that he shouldn't be afraid to help the people in Rwanda, and
18 added if anyone should be afraid of, it's you and Mr Kargbo. Do
19 you remember that testimony?

20 A. Yes, I can remember it.

21 Q. Now, I know you've told us that that testimony is not true.
22 But I want to ask you this question, Mr Bangura: Mr Kargbo was
23 your close friend and brother, and he considered you a close
24 friend and brother. And if he had never previously had a quarrel
25 with you or said a negative word about you, how do you explain -
26 why would you think that Mr Kargbo would make up --

27 MR NICOL-WILSON: Your Honour --

28 MR HERBST: -- this story to --

29 JUSTICE DOHERTY: Just pause, Mr Herbst. There's an

1 objection, I think.

2 MR NICOL-WILSON: Your Honour, I have an objection. I
3 don't know whether Mr Herbst is making a statement or he's asking
4 a question. Because what he's saying to the witness is --

5 MR HERBST: Well, the question --

6 JUSTICE DOHERTY: The question, if you would let him
7 finish --

8 MR NICOL-WILSON: No, I'm looking at the previous statement
9 he made, that Mr Kargbo considers the witness a close friend and
10 brother, and we have no evidence to that effect. It's 334 who
11 testified that the witness is his close friend and brother.
12 Mr Kargbo never testified about that. So I don't know what the
13 independent counsel is doing, whether he's now making that
14 assertion based on some evidence which I don't know about.

15 JUSTICE DOHERTY: Mr Nicol-Wilson, I have a note here that
16 says the following sequence of questions just now:

17 You've heard Kargbo say that you, the witness, are his
18 close friend and brother?

19 Answer: Yes.

20 Is it true?

21 Answer: Yes, he was my friend.

22 He said you never quarreled with the witness?

23 Yes, he is correct.

24 So there is a foundation for asking if in the event that he
25 was a friend, et cetera, then to put the question that has - I
26 think we're leading up to but we haven't heard it.

27 MR NICOL-WILSON: Yeah, that's the foundation I'm
28 challenging, your Honour. Because Kargbo never testified that
29 the witness is his brother. He said he's my close friend. Those

1 words were used by 334. He said the witness is my close friend
2 and brother, but Kargbo never said so during his testimony.

3 JUSTICE DOHERTY: Well, the witness before us when it was
4 put to him did not deny it. So I'm allowing the question, which
5 I note has not been completed.

6 Mr Herbst.

7 MR HERBST: Thank you, your Honour. I refer
8 Mr Nicol-Wilson to the transcript 123 and 124, where he'll find
9 that testimony from Mr Kargbo.

10 Q. The question was, Mr Bangura: In light of the fact that it
11 is true that Mr Kargbo was your close friend and brother, never
12 previously had a quarrel or said a negative word about you, how
13 do you explain that Mr Kargbo would come in and falsely implicate
14 you in this criminal scheme if it wasn't true?

15 A. He was lying about me. He and I never talked about that,
16 we never had such talk. Who am I to tell someone that he
17 shouldn't be afraid of the Special Court but me? Who am I?

18 MR HERBST: Sorry, your Honour. I didn't get the answer.

19 JUSTICE DOHERTY: I have the following: He was lying about
20 me. We never talked about that. Who am I to say not to be
21 afraid of the Special Court? Who am I?

22 MR NICOL-WILSON: Sorry, your Honour. Who am I to tell
23 someone not to be afraid of the Special Court --

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

25 MR HERBST: I'm sorry, your Honour. I didn't hear
26 Mr Nicol-Wilson.

27 JUSTICE DOHERTY: He corrected the bit where he said, Who
28 am I to say to someone not to be afraid of the Special Court?

29 MR HERBST: I thank you, your Honour.

1 Q. Now, you heard 334 testify to essentially the same
2 information, a little different, but essentially the same
3 information about you that Mr Kargbo gave in his testimony,
4 correct?

5 A. No, it's not correct. It's never correct. It's a lie.

6 MR HERBST: I'm sorry, your Honour. I didn't get that.

7 JUSTICE DOHERTY: "No, it's not correct. It's never
8 correct. It's a lie."

9 MR HERBST:

10 Q. Let me go about it a different way. Mr Bangura, you heard
11 Mr Sesay testify that he had a long and close relationship with
12 both you and Mr Kargbo, correct?

13 A. I told you that Mr Sesay and I have a relationship and that
14 he's my friend, I told you that.

15 MR HERBST: Judge, I'm sorry. But my line is going in and
16 out, and I was not able to hear.

17 JUSTICE DOHERTY: I told you that Sesay and I have a long
18 relationship. He is my friend. I told you that.

19 MR HERBST:

20 Q. And you heard him testify that during his first meeting
21 with Mr Kargbo, Mr Kargbo gave him the phone, saying that you
22 wanted to talk to him. Do you remember that testimony?

23 A. Yes, I remember it.

24 Q. And he testified that you asked him if Mr Kargbo had told
25 him. And he said yes, Mr Kargbo had [i n d i s c e r n i b l e].

26 JUSTICE DOHERTY: Mr Herbst, your line has gone dead.

27 Please pause, and I will ask our Court Officer to see what's
28 wrong.

29 THE COURT OFFICER: We have lost them, your Honour. We

1 have lost the link. We'll get it sorted out.

2 MR HERBST: Your Honour, can you hear us now?

3 JUSTICE DOHERTY: I can hear you very clearly. Please
4 start your question again.

5 MR HERBST:

6 Q. Mr Bangura, you heard Mr Sesay testify that you asked him
7 if Mr Kargbo had told you. And he said yes that Mr Kargbo had
8 explained it to him. And you asked him what was going on,
9 meaning whether he was going to do it, and told him that you
10 wanted him to cooperate with the men in Rwanda and to help them.
11 Do you remember that testimony?

12 A. Yes, I remember when he said so.

13 Q. And I put it to you again that that testimony is true; yes
14 or no?

15 A. No, it's not true.

16 Q. Now, 334 also testified that he discussed with both you and
17 Mr Kargbo the difficulties that would be created for him if he
18 changed his testimony. Do you remember that?

19 A. I heard that when they said so, I heard.

20 Q. And then he testified that he was the one that drove you
21 and Mr Kargbo over to Robert Street to meet the lawyer Mansaray;
22 remember that?

23 A. Repeat the question.

24 Q. Mr Sesay testified that he was the one that drove you and
25 Mr Kargbo over to Mr Mansaray's office; do you remember that?

26 A. Yes, I remember that.

27 Q. Now, that's true, right?

28 A. It was Mr Sesay who drove us. I can remember that he drove
29 us.

1 MR HERBST: I'm sorry, your Honour, I'm having difficulty
2 hearing the interpreter. My line is going out.

3 JUSTICE DOHERTY: "It was Mr Sesay who drove us. I
4 remember that..."

5 MR HERBST:

6 Q. Now, Mr Sesay also testified that during that drive you
7 asked him how much he wanted out of the deal, meaning how much
8 money he wanted out of the deal. Do you remember that testimony?

9 A. Yes, I remember it.

10 JUSTICE DOHERTY: Just pause, Mr Herbst. MR Nicol-Wilson
11 wishes to say something.

12 MR NICOL-WILSON: Your Honour, the witness has answered the
13 question, but that was not Mr Sesay's testimony. Mr Sesay's
14 testimony was that during the drive, the witness asked him
15 whether he would want something like \$10,000, and that's the
16 testimony I can vividly remember Mr Sesay said. It was Kargbo
17 who said the witness asked Mr Sesay how much he would want for
18 the deal. When Mr Sesay came to the witness box, he said the
19 witness asked him whether he would want \$10,000.

20 JUSTICE DOHERTY: Mr Herbst --

21 MR HERBST: Your Honour, if Mr Nicol-Wilson looks at page
22 521 and 584 to 88 of the transcript, you will see the testimony
23 that I am reading to the witness --

24 [Overlapping speakers].

25 MR NICOL-WILSON: Mr Herbst, which transcript? Which date?

26 JUSTICE DOHERTY: Mr Herbst, the date for that transcript,
27 please. You said it was 584 to 585.

28 MR HERBST: 584 to 588 and 521. I'm sorry, your Honour.
29 My notes do not have the dates of the transcript.

1 JUSTICE DOHERTY: The pages are in sequence, so that's not
2 - should not be hard to identify the pages. I'll see we can
3 identify the date quickly.

4 MR HERBST: In any event, your Honour, this is
5 cross-examination, and I think the question is appropriate.

6 JUSTICE DOHERTY: I allow the question.

7 MR HERBST:

8 Q. Mr Bangura, do you remember Mr Sesay testifying that during
9 the drive over to Mr Mansaray's office, you asked him how much he
10 wanted out of the deal?

11 JUSTICE DOHERTY: The witness has already answered, "I
12 remember". It's been asked and answered.

13 MR HERBST: I'm sorry, I didn't hear that.

14 JUSTICE DOHERTY: That's quiet all right. Mr Nicol-Wilson
15 got to his feet. So it's been answered.

16 MR HERBST: Thank you.

17 Q. Now, Mr Sesay also testified - and I'm skipping now,
18 because there was more testimony along the lines that
19 Mr Nicol-Wilson said, but I'm skipping to something later - that
20 after Mr Sesay dropped you off at Mr Mansaray's office and after
21 the meeting with Mr Mansaray, obviously, that he met you and
22 Mr Kargbo again at Sweissy, where you both told him that they had
23 spoken with Mr Mansaray and that they had spoken with Kamara and
24 Kanu, who had faithfully promised that they were putting
25 everything in place and that you told 334 not to have any fear,
26 that if there is anybody to be afraid of in this country, it is
27 you and Mr Kargbo, but that he need not have any fear because
28 this was a clean mission. Now, do you remember that testimony?

29 A. Yes, I remember.

1 Q. Now, I know you told us that it's your position in this
2 trial that that is not true, correct?

3 A. It's a lie. That did not happen.

4 Q. Again I ask you, in light of the close friendship and close
5 relationship that you had with 334, can you explain why Mr Sesay
6 would falsely implicate you in this scheme if this were not true?

7 A. Mr Sesay lied about me. Mr Sesay has come to this Court
8 and lied about me, that I told him about \$10,000. That was in
9 fact a lie. So do you think he wouldn't lie again there? He
10 just lied about me. He's lying.

11 MR HERBST: Your Honour, may I have the answer? The two
12 men were speaking at the same time.

13 JUSTICE DOHERTY: Sesay lied about me. He came to Court
14 and lied about the \$10,000. That was a lie about me. It is a
15 lie.

16 MR HERBST:

17 Q. Now, I put it to you, Mr Bangura, that you only sought to
18 change your witness statement of 26 May 2012 when you saw
19 Mr Kamara's reaction to my questioning him about the statement in
20 Court, correct?

21 A. No, it's not correct.

22 Q. And I put it to you that you decided to change your
23 statement and substitute Mr Brima for Mr Kamara because Mr Brima
24 is not on trial here, and you thought that nothing that you said
25 about Mr Brima could damage him; yes or no?

26 A. No. I am here to satisfy my conscience. I can't tell lies
27 about anybody here. This Court wants the truth.

28 Q. Mr Bangura, in the year 2010 how often did you get a call
29 from the prison in Rwanda; that is, every day, every week, every

1 month? On average, generally, normally, ordinarily, how often?

2 A. I can't remember sincerely because those men, they normally
3 call me - when they call me in a month, it will be more than how
4 many months before they call me. They can call me in a week,
5 then it would be more than how many months before they call me
6 again. I can't remember.

7 MR HERBST: Sorry, your Honour, may I have that answer?

8 JUSTICE DOHERTY: Yes. I do not remember. Those men, when
9 they call in the month, it would be how many months before they
10 call again. They call in a week, it would be how many months
11 before they call again.

12 MR HERBST:

13 Q. When was the last time that you saw face to face Mr Brima?

14 A. I think if I can recall, 19 - I think it could be 2000 or 2
15 - in 2000 - I can't recall the year anyway.

16 MR HERBST: Your Honour, I thought I heard the year 2000
17 mentioned, but I just wanted [overlapping speakers].

18 JUSTICE DOHERTY: The witness, as I've noted it, is, I
19 think if I recall 2000 or - in 2000 - I do not recall the year.

20 Incidentally, counsel, Mr Court Officer has distributed
21 the transcripts of the pages referred to by independent counsel.

22 MR NICOL-WILSON: Your Honour, my position has been
23 supported by the transcript of 521, lines 23 to 24. "Then he
24 said, like, 'How much would you want? Would you want \$10,000?'
25 And I said that was small."

26 So that was the discussion Mr Sesay said he had with
27 Mr Bangura during the trip.

28 JUSTICE DOHERTY: Well, there is a previous line there,
29 Mr Nicol-Wilson. "Then Blast said, 'My man, tell us how much you

1 want.' And I said, 'No, tell me'", et cetera, et cetera. So
2 there is two parts to the answer, really, and I have no reason to
3 revoke my - that line of cross-examination.

4 Mr Herbst, you've heard the exchange. Please continue.

5 MR HERBST: I thank the Court.

6 Q. Mr Bangura, how about Mr Kamara; when is the last time you
7 saw him face to face?

8 A. Like I said, I can't remember the year. It's been a long
9 time since we saw each other face to face.

10 Q. Are we talking about approximately the same length of time
11 as with Mr Brima?

12 A. Yeah, I think so. Those times. I think 2000 - I can
13 remember. 2000 we were all in prison, yes. Mr Kamara, that was
14 the last time, I think.

15 Q. And how about Mr Kanu; would your answer be approximately
16 the same for him?

17 A. Just like I said, it's been a long time. It's been a
18 really long time when I saw them.

19 Q. Now, when you talked to - let's just take Mr Kanu first,
20 for example, in the prison - when you would talk with him, you
21 didn't have any difficulty recognising his voice, did you?

22 MR METZGER: Objection, your Honour.

23 JUSTICE DOHERTY: Just a minute.

24 Mr Metzger.

25 MR METZGER: The question is, when you talked, for example,
26 to Mr Kanu in the prison. Now, I may have missed something, but
27 I didn't hear this witness - nor does the transcript I've had the
28 opportunity of perusing between last night and today - suggest
29 that this witness has ever said he talked to Mr Kanu in the

1 prison. And as I represent Mr Kanu, I would expect there to be
2 some foundation before any question is asked about Mr Kanu.

3 For the avoidance of doubt and for completeness' sake, it
4 also seems to me that my learned friend Mr Herbst, with the
5 greatest of respect to him, did not seek to ask Mr Kanu, when he
6 had the opportunity over some three days, to ask him what he said
7 to Mr Bangura whilst they were in prison.

8 Now, of course that's a matter entirely for him. But
9 in my respectful submission cross-examination or no, he must
10 first of all raise the foundation before moving on.

11 JUSTICE DOHERTY: Mr Herbst.

12 MR HERBST: Your Honour, my recollection - my strong
13 recollection is that Mr Bangura said yesterday that while it was
14 Mr Kamara and Mr Brima that called him, that they did on occasion
15 say to Mr Kanu, "Come over here and talk to your man" while
16 Mr Bangura was on the phone, and Mr Kanu did come over and speak
17 to Mr Bangura. So that's the foundation.

18 MR METZGER: Your Honour, just very briefly, it may have
19 been that I misunderstood the question Mr Herbst was asking. If
20 what he was asking related to conversations between this witness
21 and Mr Kanu whilst Mr Kanu was in Mpanga Prison, then of course I
22 do recall the conversation that he said.

23 But my clear recollection of that which he was putting to
24 this witness appears to be - it appears to be what he's putting
25 to the witness when this witness was in prison. Now, if I'm
26 confused about that, I daresay the witness might have been
27 similarly afflicted.

28 I would have no objection if he's asking about when Mr Kanu
29 was in Mpanga Prison.

1 JUSTICE DOHERTY: Rephrase, Mr Herbst, and clarify which
2 prison you're talking about.

3 MR HERBST: For the enlightenment of Mr Metzger, I was
4 speaking about recognising his voice when he was speaking from
5 Mpanga Prison to Mr Bangura.

6 May I put that question, your Honour?

7 JUSTICE DOHERTY: Yes, you may.

8 MR HERBST:

9 Q. Mr Bangura, when you spoke to Mr Kanu by the prison cell
10 phone in Mpanga Prison, you didn't have any trouble recognising
11 Mr Kanu's voice, did you?

12 A. No, I did not have any problem.

13 MR HERBST: Sorry, your Honour, did the witness say he did
14 not have a problem?

15 JUSTICE DOHERTY: That is what he said. "No, I did not
16 have any problem."

17 MR HERBST: Your Honour, I have a note here from Mr Kamara
18 that he would like to use the restroom. Would he be permitted --

19 JUSTICE DOHERTY: Yes, Mr Kamara may be escorted out.

20 MR HERBST:

21 Q. Mr Bangura, you would agree with me that Mr Kanu has a
22 habit of speaking rapidly, correct?

23 MR METZGER: Your Honour, I'm terribly sorry. If this is
24 going to voice recognition, then I would ask to be heard.

25 What my learned friend may not know, because his
26 jurisdiction may treat this differently, is certainly in the
27 United Kingdom, and I believe in this Court, if it is sought to
28 bring about an issue of voice recognition, it is highly
29 recommended that there should be an expert involved, and I can

1 turn up an authority on that if required.

2 I think there is an authority in the United Kingdom,
3 certainly Court of Appeal in or around 2008, which urges everyone
4 to act with extreme caution where voice recognition is an issue,
5 but that no tribunal of fact may act on voice - on an assertion
6 of voice recognition without expert evidence, for very good
7 reason.

8 So if this is where my learned friend is going with this
9 witness, something which has not reared its head, whether it be
10 ugly or otherwise during the concurrence of this trial, it seems
11 to me that he's entering very dangerous territory, and I would
12 ask for us to have opportunity to address your Honour on the
13 issue of voice recognition.

14 I guess I'm objecting to him seeking to bring about voice
15 recognition as an important issue in this case, and I would like
16 to know quite where he's going with this so that I can properly
17 formulate any objection.

18 MR HERBST: Your Honour, if a response is necessary, I'd be
19 happy to give one.

20 JUSTICE DOHERTY: In actual fact, I have made a ruling on
21 voice recognition in this Trial Chamber and I have said - and I
22 do not have my exact wording in front of me, but there is a
23 ruling and that is when it comes to voice recognition, then the
24 warnings, I would put it, that are contained in R v. Turnbull
25 [1976] 2 All ER, which, the British courts have said, should
26 apply also to voice recognition, questions will apply. In other
27 words, identification by someone who knows is better than
28 recognition, but identification can also be erroneous.

29 So that is one - albeit it's my own - it's one precedent

1 that I do recall in this Court; and therefore, I have no reason
2 to prevent Mr Herbst putting the question in cross-examination,
3 which was, Do you agree that Kanu speaks rapidly?

4 MR HERBST: I thank the Court.

5 Q. Mr Bangura, do you agree with me that Mr Kanu has a habit
6 of speaking rapidly?

7 A. I know that he usually talks, but I am not an expert to say
8 that he talks rapidly. But I know him.

9 Q. And similarly, you had no difficulty recognising the voices
10 of Mr Kamara and Mr Brima when they talked to you on the phone
11 from Mpanga Prison, right?

12 JUSTICE DOHERTY: We'll do those one by one, Mr Herbst.

13 MR HERBST: Yes, your Honour.

14 Q. Similarly, Mr Bangura, you had no difficulty recognising
15 Mr Kamara's voice on the phone from Mpanga Prison when he spoke
16 to you, correct?

17 A. Yes, yes, I don't have any difficulty. When he talks to
18 me, I know that he's talking.

19 Q. And the same is true when you speak to Mr Brima from Mpanga
20 Prison, correct?

21 A. Yes, it's correct. I don't have any other way. I know all
22 of their voices. I know their voices, all of them.

23 Q. Now, yesterday, Mr Witness, you testified that you did not
24 call Mr Mansaray and make an appointment to see him. Do you
25 remember that testimony?

26 A. Yes.

27 Q. Now, I put it to you, Mr Bangura, that in the interview
28 with me on 20 April 2011, you told me that you were the one who
29 called and made an appointment with Mr Mansaray directing him to

1 his office; correct?

2 A. No, it's not correct. That never - I never told you that.
3 Mr Herbst, all this that you are bringing up, if you had read
4 this interview to me, I would have made corrections. But you
5 didn't read it out to me.

6 MR HERBST: I'm sorry, your Honour, I didn't get the -
7 apart from the "No", I didn't get the rest of the answer.

8 JUSTICE DOHERTY: No, I never told you that. I did not
9 tell you. If you read out that interview to me, I would have
10 made corrections.

11 MR METZGER: "But you did not read it to me."

12 JUSTICE DOHERTY: Yes, "But you did not read it to me."

13 Thank you, Mr Metzger.

14 MR HERBST:

15 Q. Mr Bangura, that's the same excuse you're using about your
16 own statement of 26 May, isn't it; that no one showed it to you
17 or read it out to you, correct?

18 A. Yes, they did not read that - they did not read that to me
19 as well.

20 Q. Now, yesterday on direct examination I believe you
21 testified that you spent approximately four years in the Pademba
22 Road Prison with 334 and about 12 or 13 others of your men; is
23 that correct?

24 JUSTICE DOHERTY: Which prison did you say, Mr Herbst?

25 MR HERBST: Your Honour, I mentioned the Pademba Road --

26 JUSTICE DOHERTY: Yes, that's correct. That's fine.

27 THE WITNESS: Yes, I was in the Pademba Prison for four
28 years.

29 MR HERBST:

1 Q. And during that time you went to church services and prayer
2 meetings, correct?

3 A. You mean in the Pademba Prison?

4 Q. Yes, in the Pademba Prison during the years 2000 to 2004,
5 approximately?

6 A. Yes, we used to go to church. We used to go to church
7 there.

8 Q. And I believe you identified Pastor Eddie as the person who
9 was the pastor who led the church services and the prayer
10 meetings, correct?

11 A. It was Pastor Eddie who was preaching to us in the block.
12 As for the church, it was a prison officer. We had two prison
13 officers there who are preaching to us. They did not allow a
14 prisoner to preach in that church. But when we keep service in
15 the blocks, it is Pastor Eddie who preaches to us.

16 MR HERBST: Your Honour, I heard the last part about Pastor
17 Eddie preaching to us, but I didn't hear the last part of the
18 answer. I would be grateful if your Honour would review it for
19 me.

20 JUSTICE DOHERTY: Pastor Eddie preached to us in the block.
21 As for the church, it was a prison officer. Two prison officers
22 preached in the church. They do not allow prisoners. It was
23 Pastor Eddie in the block.

24 MR HERBST:

25 Q. And wasn't 334 a deputy pastor to Pastor Eddie in the
26 block?

27 A. Yes, he was the deputy pastor at that time.

28 Q. And isn't it true that when Mr Kanu arrived at Pademba
29 Prison, that he attended prayer meetings with you and the other

1 men and Pastor Eddie and 334?

2 A. I can't remember because we are in different blocks. 334 -
3 I, 334 and the others were in the Wilberforce block while Kanu
4 and others were in the Clarkson block. So there were two
5 different blocks where we were, and I can't tell whether they
6 meet in the church. But I know that we used to go to church and
7 that church, it was not compulsory that everybody should go
8 there. If you were willing to go, then you'd go.

9 JUSTICE DOHERTY: Did you hear the answer, Mr Herbst?

10 MR HERBST: No, your Honour, because of the length of the
11 answer, I was giving you a little time to finish before asking.

12 JUSTICE DOHERTY: This is my note. It was a long answer,
13 you're right.

14 I cannot remember. We were in different blocks. I was in
15 the Wilberforce block. Kanu and others were in the Clarkson
16 block. And I do not know if they met in church. It was not
17 compulsory to go to church. I do not know.

18 MR HERBST:

19 Q. During the time you and Mr Kanu were in the prison
20 together, you talked to Mr Kanu, did you not?

21 A. Yes, we talked.

22 Q. And you had a cordial relationship with him while in the
23 prison together, correct?

24 A. It was in the prison that we made peace because we had had
25 a conflict. So it was in the prison that we made peace.

26 Q. And Mr Kanu made peace not only with you but with your men,
27 right?

28 A. No, he made peace with me. The two of us made peace.

29 MR HERBST: Sorry, your Honour. Could I have that answer?

1 JUSTICE DOHERTY: No, he made peace with me, the two of us.

2 MR HERBST:

3 Q. Mr Bangura, I put it to you that you saw 334 and Mr Kanu
4 talk on various occasions while they were in the Pademba Road
5 prison together, correct?

6 A. I can't remember. I can't remember that. But I don't
7 think they were in good terms really. They were not in good
8 terms.

9 MR HERBST: May I have that answer, your Honour?

10 JUSTICE DOHERTY: I cannot remember. I cannot remember
11 that really. But they were not - but I do not think they were on
12 good terms.

13 MR HERBST: I thank the Court.

14 Q. Now, in your direct testimony, Mr Bangura, you testified
15 that the only people to call you from Mpanga Prison were Mr Brima
16 and Mr Kamara and that Mr Kanu never actually placed a call to
17 you, but would only on occasion be called to the phone by
18 Mr Kamara or Mr Brima to speak to you. Do you remember that
19 testimony?

20 A. Yes, I remember it.

21 Q. And you also testified that you never called the prison
22 cell phone, you only waited for them to call you, do you remember
23 that testimony?

24 A. Yes, I never called him. They always called me.

25 Q. Now, Mr Bangura, I put it to you that during the interview
26 with me in the presence of Mr Akimbobola and Mr Serry-Kamal, you
27 said that Brima, Bazy, and Kanu all use that number to call you,
28 that is, the prison cell phone number. Do you remember that,
29 sir? That's correct, isn't it?

1 A. I can't remember that I told you that I ever called him. I
2 can't remember that I told you that. I told you that they called
3 me.

4 MR HERBST: My I have that answer, your Honour?

5 JUSTICE DOHERTY: I never remember telling you that I
6 called them. I said they called me.

7 MR HERBST:

8 Q. So didn't you tell me about an occasion where you called
9 Mr Brima by calling the cell phone number in Rwanda, and you
10 spoke to him when he answered the phone?

11 MR HERBST: I'm sorry, your Honour. I didn't hear an
12 answer from the witness.

13 JUSTICE DOHERTY: Mr Bangura, did you hear the question put
14 by Mr Herbst?

15 The witness has not heard the question.

16 Please repeat the question, Mr Herbst.

17 THE INTERPRETER: Excuse me, your Honour. There seems to
18 be some fault on that line because I'm listening to that line
19 myself, and there is just a long noise that's being heard. So
20 we'll check that.

21 JUSTICE DOHERTY: Mr Herbst, Mr Bangura, please pause while
22 we try and sort that out.

23 [Technical difficulties]

24 JUSTICE DOHERTY: Mr Herbst, please repeat the question and
25 Mr Bangura can tell me if he does not hear it. The question
26 relate - sorry, Mr Herbst, are you speaking?

27 MR HERBST: Yes, your Honour, I have the question in mind.

28 Q. Mr Bangura, didn't you tell me that there was an occasion
29 where you called the cell phone number in Rwanda and Mr Brima

1 answered the phone and you spoke to him?

2 A. No, I did not tell you that.

3 Q. Let me try to refresh your recollection. Didn't you tell
4 me in this interview in April of 2011 that at some time the
5 previous year that you could not pinpoint, that is some time in
6 2010, at Sweissy, 334 told you the Special Court did not do
7 anything for him. And you said, supposedly, that 334 told you
8 that he was not happy about the evidence he gave against Brima
9 and the others at the Special Court. Do you remember that? Do
10 you remember telling me that, sir?

11 A. No, I never told you that. I only told you that when I am
12 with 334, he always talks about his travel. That's what I told
13 you. He always told me that he wanted to go to France to his
14 sister's. I did not tell you what you just said.

15 MR HERBST: Your Honour, I heard the witness say no, that's
16 not what I told you, but then the rest was lost because of the
17 two men speaking at the same time.

18 JUSTICE DOHERTY: No, I never told you that. I only told
19 you that when I talked with 334, he always talks about his
20 travels and wants to go to France to his sister.

21 MR HERBST:

22 Q. I put it to you, Mr Bangura, that you told me that you told
23 334 that you would relay that information that I just summarised
24 to Mr Brima, and then one week later you did so by calling the
25 cell phone number in Rwanda and speaking to Brima who answered
26 the phone. Did you tell me that, sir, or not?

27 A. No, sir, I did not tell you that, sir.

28 Q. All right. Now, the last area of my cross-examination, I
29 would like to review some of the calls that were made to you that

1 are reflected in the prison cell phone record.

2 Your Honour, may I have Prosecution Exhibit 14, the MTN
3 records, placed before the witness?

4 JUSTICE DOHERTY: Mr Court Officer, could you put those
5 records before the witness.

6 MR HERBST: Would your Honour be kind enough just to let us
7 know when he has that in front of him.

8 JUSTICE DOHERTY: Mr Herbst, the witness has the documents,
9 all four sets, in front of him now.

10 MR HERBST: Your Honour, I was talking about the MTN
11 records, and I would like him first to turn to page 17 of 39.

12 Q. Mr Bangura, about three-quarters of the way down that page
13 you'll find a call made to your number, 23233810173, made on
14 November 12, 2010, at 7.07 p.m. for about 11 minutes, 655
15 seconds. Do you see that call? The number ends in 173.

16 A. Yes, I've seen it.

17 Q. And that's your cell number, right?

18 A. That's correct, it's my phone number.

19 Q. Now, who called you on November 12 and spoke to you for 11
20 minutes or so?

21 A. Like I said, I can't remember who called me at that time,
22 but the people who normally called me there are these men and
23 Bazzy. They used to call me. But I cannot remember the right
24 one who called me.

25 Q. And do you remember anything about what was said during the
26 conversation?

27 A. No, I can't remember what we talked about because normally
28 when we are talking, it's just greetings and sometimes I would
29 pray for them. That's the only thing that we talk about.

1 MR HERBST: May I have that answer?

2 JUSTICE DOHERTY: I do not recall. When they call, it's
3 just greetings, and I say that I will pray for them. I do not
4 recall.

5 MR HERBST:

6 Q. You don't recall any specific subject matter being
7 discussed, that is something you were asked to do in mid November
8 2010, Mr Bangura?

9 A. No, I cannot remember anything. They did not tell me
10 anything. They did not tell me to do anything.

11 Q. Thank you, Mr Bangura. Now, if you could look at page 29
12 of 39. Let me know when you have page 29 of 39 before you,
13 Mr Bangura.

14 JUSTICE DOHERTY: Mr Court Officer, please assist the
15 witness to identify that page.

16 MR HERBST: Page 29 of 39. And I'm also going to ask him
17 some questions about 28 of 39. If we could have those two pages
18 handy. The first page I want to ask him about is page 29 of 39.

19 THE WITNESS: Yes, your Honour. I have seen 29.

20 JUSTICE DOHERTY: Proceed, Mr Herbst.

21 MR HERBST: Thank you, your Honour.

22 Q. Now, the 5th call down is another call to you, Mr Bangura,
23 do you see that, made November 22nd at about 11.25 a.m. for about
24 two minutes. Do you see that call?

25 A. Yes, I've seen it.

26 Q. And do you recall who called you on that occasion; yes or
27 no?

28 A. I can't remember who called me. Like I told you a while
29 ago, the two people who called me there are Bazzy and Brima. So

1 I can't remember the right one. Normally, I would talk to them
2 when they called me.

3 Q. You don't remember what was discussed, the subject matter,
4 whether any business was discussed or whether it was just
5 greetings?

6 A. Yes, that was it, just greetings. We did not - we never
7 discussed anything concerning this matter.

8 Q. Now, you were in Court when I reviewed some of these other
9 calls made just before yours, and I'm not going to go over them
10 again, but I just want to ask you about two calls at the bottom
11 of page 28 of 39, two calls to the number identified for
12 Keh-For-Keh. Do you see those two calls at the bottom of page 28
13 of 39, the one at the very bottom and then three calls above it,
14 to the number 23276337395.

15 A. Yes, I've seen it.

16 Q. Were you talking to Keh-For-Keh at all around this time
17 about any matter of mutual interest?

18 A. No, I do not even know this number. I don't know this
19 number that is being shown to me. I don't know it.

20 Q. Okay. The next page is 31 of 39, that's another call to
21 you. The 4th call on the page made the next day on November
22 23rd, 2010, for 472 seconds, that's about eight minutes. Do you
23 see that call, sir?

24 A. I have seen it.

25 Q. And is your testimony that you also don't remember who
26 called you, and you don't remember anything being discussed
27 except greetings?

28 JUSTICE DOHERTY: Mr Herbst, is this the page on page 29 of
29 39? I'm not sure where this one is.

1 MR HERBST: Page 31 of 39. Page 31 of 39.

2 HER LADYSHIP: Thank you, Mr Herbst. I'll find it.

3 MR HERBST: It's the 4th call on that page, on page 31 of
4 39.

5 JUSTICE DOHERTY: I've seen it, yes. Thank you.

6 MR HERBST: I thank the Court.

7 Q. Mr Bangura, is your testimony the same with respect to that
8 call, that you don't remember who called you, and you don't
9 remember anything being discussed except greetings?

10 A. I have told you just now when I talked with those men, I
11 pray for them and told them to endure. That's the only thing I
12 talked to them. We do not have any further discussion concerning
13 this case.

14 Q. Thank you, Mr Bangura. Now, would you turn to page 34 of
15 39 which has the next call made to you, three days later, on
16 November 26, 2010, at 3.05 p.m. for 291 seconds or almost five
17 minutes. Do you see that call? That's the second call on page
18 34 of 39. Do you see that?

19 A. Yes, I've seen it.

20 Q. And is your testimony the same about that call, that you
21 don't remember who called you, and you don't remember anything
22 being discussed except greetings?

23 A. Like I told you, except at the time that Tamba called me to
24 go to that lawyer, that was the only time that I can remember
25 that they told me to go to a lawyer. They told me.

26 MR HERBST: May I have that answer, your Honour?

27 JUSTICE DOHERTY: Like I told you, except at the time that
28 Tamba told me to go to that lawyer, they told me.

29 MR HERBST: I thank the Court.

1 Q. Would you turn next to page 2 of 10, Mr Bangura, the next
2 call, 4th call on that page, made on December 1, 2010, at 6.12
3 p.m. 502 seconds or a little more than eight minutes. Do you see
4 that call?

5 JUSTICE DOHERTY: Mr Herbst, Mr Serry-Kamal and I didn't
6 quite - didn't hear the page reference.

7 MR HERBST: I'm happy to repeat it, your Honour. This is
8 page 2 of 10. Your Honour will remember there was a 39-page set
9 immediately followed by a 10-page set, so we're now in the
10 10-page set, page 2 of 10.

11 JUSTICE DOHERTY: Thank you.

12 MR HERBST:

13 Q. Mr Bangura, have you been able to locate that call?

14 A. Yes, sir. I have seen it, sir.

15 Q. Is your testimony the same that you don't remember who
16 called you on that call, nor why they called, nor any discussion
17 other than greetings?

18 MR NICOL-WILSON: Your Honour, I don't know how many
19 questions Mr Herbst is putting to the witness at the same time.
20 I think for clarity it would be better for him to put one
21 question at a time.

22 JUSTICE DOHERTY: The witness doesn't appear to have had a
23 problem so far with it. But since counsel has raised an
24 objection, there is more than one aspect to the question.

25 So please break it up, Mr Herbst.

26 MR HERBST:

27 Q. Mr Bangura, is your testimony the same with respect to this
28 call, that is, that you do not remember who called you?

29 A. Just like I said, those men and I do talk, but I did not

1 know - did talk, but I do not know who was directing that call to
2 me. But we normally talk.

3 MR HERBST: May I have that answer, your Honour?

4 JUSTICE DOHERTY: Certainly. "Just like I said, those men
5 and I did talk," but I do not know who called me.

6 MR HERBST: I thank the Court.

7 Q. And is it also your testimony with respect to this call,
8 Mr Bangura, that you don't remember what was discussed and you
9 don't remember anything except greetings?

10 JUSTICE DOHERTY: It appears there is a problem with the
11 witness's earphones.

12 Mr Bangura, did you hear the question put by Mr Herbst?

13 THE WITNESS: No, your Honour.

14 JUSTICE DOHERTY: Well, I will wait until it's fixed, and
15 then he should put the question again.

16 MR HERBST: I'm happy to, your Honour. Just let me know
17 when you would like me to do that, if you would.

18 JUSTICE DOHERTY: Certainly.

19 It seems that the problem is sorted out, Mr Herbst, so
20 please put the question again.

21 MR HERBST: I thank the Court.

22 Q. Mr Bangura, with respect to this call, is it also your
23 testimony that you don't remember anything that was discussed,
24 any subject matter, except the general greetings that you
25 testified to earlier?

26 A. Yes.

27 Q. Thank you, Mr Bangura. Now, the last call is on page 10 of
28 10, the third call on the page made on December 7, 2010, at
29 approximately 4.02 p.m. for 370 seconds, or about 6 minutes. Do

1 you see that call?

2 A. Yes, I've seen it.

3 Q. Can you tell us what the subject matter was of that call?

4 Or was it just general greeting?

5 A. Like I told you, when those men called me, I would pray for
6 them. I would talk and I would tell them to exercise patience.

7 That's the only talk that we talk. We had no discussion
8 concerning this case.

9 Q. Now, Mr Bangura, the very next call made shortly after the
10 call to you, that is the fourth call on the page, is a call to
11 Mr Kargbo's phone number; do you see that? 23233255597; do you
12 see that?

13 A. Yes, I've seen it.

14 Q. You know that that's Mr Kargbo's phone number, right, that
15 he was using at the time?

16 A. I don't know if this is his number. I don't know. Like I
17 told you, I don't have Mr Kargbo's number in my head.

18 Q. You had his number at the time, either in your head or in
19 the phone - in your phone, right?

20 A. His number was in my phone.

21 Q. And now that you see the number, you know that that's
22 Mr Kargbo's number, right?

23 MR NICOL-WILSON: Your Honour, objection; the witness has
24 answered the question. He said he has seen the number, but he
25 does not know whether it is Mr Kargbo's number. There has to be
26 finality if we must make progress with these proceedings.

27 JUSTICE DOHERTY: Mr Herbst.

28 MR HERBST: We're on the last set of questions. Your
29 Honour, the last set of questions he said it's in his phone. I

1 think I'm entitled to ask him whether, now that he sees it, he
2 knows that that's Mr Kargbo's phone number.

3 JUSTICE DOHERTY: I think there is a subtle difference
4 there. Do you know Kargbo's number? I do not know it. I do not
5 know if it is his number. I do not have that number in my head.

6 I will allow the question. It's a borderline issue.

7 MR HERBST: Thank you, your Honour.

8 JUSTICE DOHERTY: Phrase it as, "Now that you see it".

9 MR HERBST:

10 Q. Now that you see it, you know that that's Mr Kargbo's
11 number, right?

12 A. No, I don't know if this is his number.

13 Q. Well, you called Mr Kargbo's phone often in 2010 and he
14 called your phone often, right?

15 A. Yes.

16 Q. Now, what business did you and Mr Kargbo have together that
17 might be of interest to the Rwanda convicts on December 7, 2010
18 or thereabouts, Mr Bangura?

19 THE INTERPRETER: Your Honour, counsel's line was breaking
20 up. The interpreter did not get the last question.

21 JUSTICE DOHERTY: Mr Herbst, since the interpreters did not
22 hear all your question, please repeat it.

23 MR HERBST: Thank you.

24 Q. Mr Bangura, what business did you have with Mr Kargbo in or
25 around December 7, 2010, that would be of interest to the Rwanda
26 convicts?

27 A. We had no business. Mr Kargbo and I had no business
28 concerning the Rwandan convicts. No business.

29 Q. I put it to you, Mr Bangura, that the business you had

1 between you and Mr Kargbo and the Rwanda convicts is that you
2 both had agreed and were engaged in a plan to have insider
3 witnesses like 334, who had testified against them at the AFRC
4 trial, recant their testimony in return for money. What's your
5 response to that, sir?

6 A. That is a big lie. It's a lie. It's not true.

7 MR HERBST: Thank you, your Honour. I have no further
8 questions of the witness.

9 JUSTICE DOHERTY: Thank you, Mr Herbst.

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

11 MR SERRY-KAMAL: Just a minute. I don't think I have any
12 questions for the witness.

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

14 Mr Metzger?

15 MR METZGER: Yes.

16 CROSS-EXAMINATION BY MR METZGER:

17 Q. Good morning, Mr Bangura.

18 A. Good morning, sir.

19 Q. Just a few questions. I think during the course of your
20 evidence you've told us that the interview notes by the
21 independent investigator were never read back to you; is that
22 correct?

23 A. Yes, he never read it out to me.

24 Q. So we're talking about the time in 2011. I think it was
25 April 2011. Were you ever given any document to sign by the
26 independent investigator?

27 A. No, he never gave me any document for me to sign.

28 Q. After that meeting, and at any point before you were
29 charged with these matters, were you ever sent a note of the

1 interview between yourself and the independent investigator?

2 A. No, sir, they gave me no notes.

3 Q. What did you think that meeting - you - what did you think
4 that meeting with the independent investigator was all about?

5 A. Like I said, I was really surprised when I came in here.
6 In my thoughts, I was thinking that they were going to interview
7 me about the war. I had no other thoughts concerning this.

8 Q. I think you also gave evidence that you recalled meeting
9 Mr Herbst on a previous occasion some years before; is that
10 correct?

11 A. Yes, we had met previously.

12 Q. And I think that you said that you had met previously
13 somewhere in or off King Harman Road?

14 A. Yes, we met at King Harman Road.

15 Q. How was that meeting set up, please, Mr Bangura?

16 A. Well, he called me and told me he wanted to talk to me.
17 Then I told him that I'd like us to meet at King Harman Road.
18 Then he said, "No problems." Then we scheduled a time. Then he
19 called me and I told him that I was there. Then he came and met
20 me there and we talked.

21 Q. When you say he called you, was that on the telephone?

22 A. Yes, he used a telephone. He called me on my telephone
23 number, the number that I'm using, this present number. Because
24 this is my original number. He called me on this number at that
25 time.

26 Q. Had you ever spoken to this man before that call?

27 A. No, I never spoke to him before that. That was the first
28 time - was only the first time that we talked.

29 Q. Were you not surprised to have somebody call you on your

1 mobile phone that you'd never spoken to before, to ask about the
2 war or whatever it was he wanted to ask about?

3 A. Yes, I was surprised at that time. I was surprised when I
4 got the call because I never knew him. When we met and he told
5 me how he got my number.

6 Q. And could you tell us what was it that he said to you about
7 how he got your number?

8 A. Well, he told me that it was 334, Bobson Sesay, who gave
9 him my number for him to get on to me.

10 Q. And are we still talking about 2004 or thereabouts?

11 A. Yes, at the time that we were released, yes.

12 Q. Did you ever talk to 334 about this man who had called and
13 met you?

14 A. No. No, 334 and I never talked about that.

15 Q. And what was it that Mr Herbst wanted from you in 2004?

16 A. He wanted me to testify against the AFRC men. That is what
17 - that is why he met me and told me. But I told him that Five
18 Five and I have a problem, so I can't testify because of that,
19 because if I testify, they might use that against me. So that
20 caused me not to accept it.

21 Q. Were you given any --

22 JUSTICE DOHERTY: Mr Metzger, just a moment.

23 MR HERBST: Excuse me.

24 JUSTICE DOHERTY: Yes, Mr Herbst.

25 MR HERBST: I wonder if I could hear that answer.

26 JUSTICE DOHERTY: Mr Herbst, you're not coming over
27 clearly. Could you repeat?

28 MR HERBST: I'm sorry, your Honour. I was asking if I
29 could get that answer because I was not able to hear or

1 understand it.

2 JUSTICE DOHERTY: He wanted me to testify against the AFRC.
3 That is what he told me. But I told him I had - Five Five and I
4 had a problem, so they would use that against me. So I refused.

5 CHIEF TAKU: [Indiscernible].

6 JUSTICE DOHERTY: Yes, he may be escorted out, of course.

7 Mr Metzger, you're cross-examining on behalf of the accused
8 Kanu. What does this got to do with him? What's the relevance
9 of this to Mr Kanu?

10 MR METZGER: The last time I checked, Mr Kanu was on this
11 indictment, your Honour.

12 JUSTICE DOHERTY: I don't need a facetious reply. What is
13 the relevance of this line of questioning of this matter in 2004
14 to Kanu?

15 MR METZGER: Mr Herbst has sought to adduce questions from
16 a time when he was acting qua independent investigator in this
17 case. I don't know what application he is going to make to your
18 Honour in due course about the status of any material that may
19 have been evinced from those times.

20 It appears to me that this witness has suggested a prior
21 involvement with Mr Herbst qua investigator which has not been
22 prior disclosed me. It happened, as your Honour will know, while
23 I was not at Court yesterday with your very kind permission.

24 I read through the transcripts, saw it, and I think I need
25 to investigate to understand what, if any, role Mr Herbst had in
26 garnering witnesses for the AFRC case, as per the defendant in
27 this case, to know whether or not there were any discussions
28 between himself and this witness between 2004 and 2011, when he
29 next saw him; whether, during the course of the 2011 scenario

1 that that interview, Mr Herbst. Or anybody acting on Mr Herbst's
2 behalf, recalled that there had been a prior meeting.

3 And I note, just in passing, it has not been suggested to
4 this witness by the Prosecution that what he says about 2004 is
5 inaccurate so far.

6 So in those circumstances, I must go to the next stage and
7 investigate also - as I say, up until April 2011 investigation -
8 whether there was any further contact with him by agents of the
9 Prosecution, and up until this present day whether there has been
10 continued contact or attempts to contact this witness and whether
11 he has been encouraged, pressured, threatened, or promised
12 anything, in relation to a potential change in his evidence.
13 Because as I understand it, Mr Herbst's cross-examination of this
14 witness is suggesting that there has been a change in his
15 evidence for one reason or another. I can't remember now exactly
16 the basis upon which he suggested --

17 JUSTICE DOHERTY: Well, would you get to the point,
18 Mr Metzger. Please get to the point.

19 MR METZGER: Yes. Has the Prosecution been interfering
20 with people in the course of this case --

21 JUSTICE DOHERTY: No, the point of your question. Please
22 get to the issue that you're telling me about and put that issue
23 to the witness.

24 MR METZGER: Your Honour, I'm quite happy to do that. I
25 just wanted to cover the groundwork so that nobody would accuse
26 me, as it were, of making a quantum leap in time without benefit
27 of tardis. May I continue?

28 JUSTICE DOHERTY: Yes, put the issue.

29 MR METZGER: Much obliged.

1 Mr Bangura, have you ever been encouraged by the
2 Prosecution to plead guilty to the matters currently before this
3 Court?

4 JUSTICE DOHERTY: Let us just be a little careful here.
5 When you say the "Prosecution", you mean the independent counsel,
6 rather than the office of the --

7 MR METZGER: I don't know who it is. You can't do it
8 [overlapping speakers] from Kigali, can you?

9 JUSTICE DOHERTY: Very well. Prosecution. We'll make it
10 as general as possible.

11 MR METZGER: I have to ask it as general as possible. I
12 might get --

13 MR HERBST: Your Honour.

14 JUSTICE DOHERTY: Mr Herbst.

15 MR HERBST: Your Honour, in light of Mr Metzger's comments,
16 I really would like to reply very briefly. I thought that it was
17 so obvious that the witness was mistaken about my involvement in
18 2004, it was not necessary for me to say anything further about
19 it. But I want the record to be clear that I've had - that I've
20 had absolutely no involvement in this matter until I was
21 appointed to investigate this case in 2011.

22 Now, I thought that that was so crystal clear it didn't
23 have to be stated. But the premise of all these questions
24 Mr Metzger is putting to the witness is absolutely without basis.
25 And there should be records reflecting who was involved in the
26 AFRC case, all the lawyers, all the staff of the Prosecution.
27 And it is ludicrous to suggest that I had any involvement with
28 the Court, with the Prosecution, or any investigation or anything
29 relating to this case or any other case in this Court prior to my

1 appointment as independent counsel to investigate these
2 allegations in, I think, March of 2011. So perhaps that will
3 dispense with the questions that are being put to the witness.

4 MR METZGER: I hear what my learned friend has to say, and
5 I do recognise that your Honour is in a difficult situation
6 because your Honour must listen to the evidence in the case. The
7 evidence in the case is what I have been investigating with the
8 witness, and whilst Mr Herbst may comment and may do his best to
9 assist us by telling us what he can, he - I'm sure - does not
10 purport to give evidence in this case.

11 I'm, therefore, left in a position where I must either
12 explore the matter on the basis of instructions from my lay
13 client and a complete overview of the case, or not. And it seems
14 to me that in the circumstances - well, I don't know whether your
15 Honour was proposing to take the Kigali break. Is that at 11.30?

16 JUSTICE DOHERTY: No, it's usually 11. We've gone over the
17 time, partly because we started late, which is because I was so
18 late getting here, although I left early today. And also,
19 because we were into a line of questioning which I didn't
20 particularly want to interrupt.

21 I can say now first I'm going to - Chief Taku?

22 CHIEF TAKU: Your Honour, respectfully, I don't have any
23 questions to ask. He hasn't said anything that will make special
24 application to inquire. However, the issue that has been raised
25 about the prior involvement of Mr Herbst in the AFRC trial goes
26 to the very foundation of the orders he made for the appointment
27 of independent counsel in these proceedings. It raises a matter
28 of law and matter for public interest. It goes to the heart of
29 the administration of justice of this Court, and I would ask the

1 Court to ask the Registrar to make submissions on this issue
2 about impact on the investigators made prior to making the
3 appointment and Registrar, your order Registrar to make
4 submissions on this as a formal part of the proceedings of this
5 case.

6 JUSTICE DOHERTY: First, I'm going to take the break.
7 Before I do, I want to put on record that two issues in relation
8 to Mr Herbst have been causing me considerable concern since they
9 came out in evidence. One is this present situation and the
10 other is the allegations emanating from Kanu's evidence
11 concerning Herbst and Sengabo.

12 I have asked myself whether Mr Herbst should be allowed to
13 give evidence and because of the implications, and whether that
14 would be by way of rebuttal or what. I'm going to adjourn now.
15 And I'm going to ask you, Mr Metzger, if in the light of what is
16 being said by Mr Herbst, you wish to take instructions and you
17 wish to - or what way you were going to go about it because I'm
18 going to have to address - it's not that I haven't noticed. I
19 have noticed.

20 MR METZGER: Your Honour, I certainly want to take
21 instructions because once I heard this, I made my own inquiries,
22 and I do understand that certainly at around that time that it is
23 possible that there may have been some extraneous teams working.
24 Because of the certainty with which the witness has giving
25 evidence - let me not prejudge --

26 JUSTICE DOHERTY: Let us remember R v. Turnbull.

27 MR METZGER: Your Honour knows that voice recognition has
28 gone --

29 JUSTICE DOHERTY: I'm talking about Blackstone and the case

1 - it wasn't Aaron Smith - I can't recall the name of the case off
2 the top of my head which adopted Turnbull. But the only reason I
3 mention Turnbull because there is a line in it in which it is
4 said that even a witness who feels emphatic and sure can still be
5 mistaken in his identification.

6 MR METZGER: Honest mistaken.

7 JUSTICE DOHERTY: Yes. And that's why I mention it. We
8 will break. I will ask counsel involved to consider this
9 situation, including the proposal put by Chief Taku. And we will
10 resume at five to 12 our time. That's 40 minutes because we've
11 lost time this morning, I want to try and make it up.
12 Mr Herbst, I have not invited you to reply yet because we're
13 still thinking what's happening here, but you do have a right of
14 reply, particularly, to my observations.

15 Please adjourn until 11.55 Freetown time.

16 (The Court adjourned at 11:09 a.m.)

17 [The Court resumed at 11.55 a.m.]

18 JUSTICE DOHERTY: Mr Metzger, if you are pursuing this line
19 of cross-examination, I have decided to refer this to the
20 Registrar for information concerning personnel employed and
21 retained by this Court at the relevant time pursuant to Rule 33.
22 So if you are going to pursue it, I am standing it down for that.
23 So can you indicate to me, please, what you're going to do.

24 MR METZGER: I took some time to consider all that had been
25 said before the break, and clearly it creates the sort of dilemma
26 that one --

27 THE INTERPRETER: Your Honour --

28 JUSTICE DOHERTY: Mr Interpreter, yes, you wanted to say
29 something.

1 THE INTERPRETER: Yes, the telephone line has been
2 disconnected. We can would like Kigali to call us on the
3 telephone line to reconnect.

4 JUSTICE DOHERTY: Have a seat, Mr Metzger.
5 Mr Court Officer, please implement that.

6 THE COURT OFFICER: [In Kigali] Yes, Ma'am, we're doing
7 that now.

8 JUSTICE DOHERTY: That's fine. I can hear you very
9 clearly.

10 THE INTERPRETER: Yes, your Honour, we can go on now.

11 JUSTICE DOHERTY: Mr Metzger, you were saying that this is
12 a dilemma. It certainly is.

13 MR METZGER: Your Honour, yes, certainly it is. Shall I
14 put it in this way, I find the situation effectively a conundrum
15 that places me in a dilemma, bearing in mind I wish to put my
16 client's case forward and to take all possible points.

17 I noted - and that is why I started pursuing the matter in
18 the way I did from the transcript - that evidence was before the
19 Court in this regard and that that evidence appeared to be
20 unchallenged and in those circumstances made certain inquiries,
21 with the purpose of putting before the Court as much evidence on
22 that matter as possible.

23 Now, it seems to me that what I should - I should
24 first of all say to your Honour the area that I was proposing
25 next to ask about. But bearing in mind the questions or the
26 inquiry that your Honour has commenced, it may be prudent simply
27 to add those matters to that inquiry, because I would assume that
28 the Registrar would be in a position to obtain that information.

29 I am, I believe, reliably informed, that there were

1 at least two other agencies working in Sierra Leone during the,
2 shall we say, preparation for the Special Court trials. One, I'm
3 told, was called the Canada Fund, which put together funding for
4 people, I presume - although I could be wrong - of Canadian
5 origin or perhaps of Canadian citizenship, although they may not
6 have necessarily been Canadian - to assist in investigative
7 matters. They would not have been funded directly by the Special
8 Court. But I presume that in order to work with the Special
9 Court, any agency must have an agreement with the Registrar and
10 there must be open disclosure between them at that level.

11 So I'm also told that because of the close
12 cooperation with their cousins, the Canadians and the Americans
13 work together. So it may be that there was some Americans who
14 were seconded to or formed part of the team that were involved in
15 the investigations.

16 Secondly, I'm told that there was a US Senate fund that may
17 have been involved in investigations or sensitisation or
18 awareness, and that too would have operated, shall we say, just
19 without the auspices or the umbrella of the Special Court or the
20 OTP.

21 So in those circumstances, having mulled over the matter as
22 much as one could in the break that we've had, it seemed to me
23 prudent to mention these matters to your Honour so that if there
24 is an inquiry made, they can be added and the other proviso: If
25 there are other parties that worked, as it were, with the Special
26 Court for Sierra Leone, whether a full and thorough investigation
27 can be made.

28 I am in those terms then content to leave that matter
29 there, the evidence being what it is thus far; the questions that

1 I have put being what they are thus far; the information that I
2 have provided to you based on that which has been provided to me
3 thus far; and we can pick up the threads of that matter if
4 required in due course.

5 JUSTICE DOHERTY: I infer, from what you have said, that
6 you are not accepting Mr Herbst's statement in Court, given that
7 he is a professional and at the moment an officer of the
8 Court --

9 MR METZGER: Your Honour, for my part of course I accept
10 what Mr Herbst says. I cannot, however, extend my acceptance of
11 what is said to my lay client, and it is he whom I represent in
12 these proceedings.

13 JUSTICE DOHERTY: Very well. I will now briefly as I can
14 formulate an inquiry of the Registrar. Normally we do these
15 things by proper writing and a proper inquiry or directive
16 pursuant to Rule 33, but in the circumstances of this case I'm
17 going to ask the Registrar to accept an e-mail inquiry in order
18 to expedite the proceeding.

19 MR METZGER: Your Honour has certainly my full support in
20 approaching the matter in that manner.

21 JUSTICE DOHERTY: If counsel would have a seat and just let
22 me quickly formulate a question.

23 Mr Herbst, I know you want to speak, and I'm not
24 precluding you from speaking, but please proceed.

25 MR HERBST: Your Honour, I want to be crystal clear so that
26 everybody understands the representations that I've made as an
27 officer of this Court.

28 I know nothing of a Canada Fund. I know nothing of a US
29 Senate Fund. Prior to my appointment in this case as independent

1 counsel, I had nothing to do with the Special Court, Office of
2 the Prosecution, any investigative agency, anything directly or
3 indirectly having to do with the Court.

4 I'm happy for your Honour to have that confirmed by e-mail
5 inquiry of the Registrar, but I have to point out that I would
6 not have been appointed as an independent counsel by the
7 Registrar to this position if I had had any prior involvement in
8 the AFRC case or any prior association with the Office of the
9 Prosecutor, even as a Prosecutor or investigator, either directly
10 or indirectly. It seems to me that it is one thing for
11 Mr Bangura to suggest otherwise, but it is another thing for
12 Defence counsel to adhere to such a suggestion despite my
13 representations.

14 I'm happy to have the matter clarified or confirmed
15 by the Registrar, and I fully support your Honour's e-mail
16 inquiry. But it seems to me that it's just a waste of time, but
17 I'm happy to do it, I'm happy to confirm.

18 The same, by the way, can be said about the alleged
19 manipulation that your Honour also mentioned. I don't know if
20 your Honour intended to give me a right to reply on that.

21 JUSTICE DOHERTY: I was intending to raise it, yes.
22 Obviously - perhaps the thing to do would be to let me get this
23 draft to the Registrar now, and then return to that subject after
24 I get this matter away to the Registrar. So if you could just
25 pause in that.

26 Mr Metzger did say on record that he accepted what you say,
27 but he's acting - basically he's acting on his instructions.

28 In the light of the evidence, incidentally, I am limiting
29 this to 2004. I am limiting this to 2004 after 21 August because

1 we have on record the witness saying that it was after he was
2 released from Pademba Road and the date he gave was 21 August.

3 I'm also couching this in terms of the fact that this was
4 for the Prosecution testify in the AFRC and I'm therefore
5 limiting it to the AFRC Prosecution, Canada Fund, and the other
6 ones, not to the Principal Defender. Is that agreed by Defence
7 counsel?

8 MR METZGER: I'm content with that, your Honour.

9 JUSTICE DOHERTY: We will stand that matter down,
10 Mr Metzger.

11 Mr Herbst, you did mention the other matter which I in fact
12 raised, which was the matters impugning your professional
13 integrity by Kanu. Perhaps it would be easiest if we completed
14 this cross-examination of this witness, since he was not directly
15 involved, and then I'll return to that subject.

16 Mr Metzger, I've stood down this line of questioning.

17 MR METZGER: Indeed, your Honour. In which case I have
18 just one more area relating to 2004 but directly unrelated to
19 this until I come to the present time.

20 CROSS-EXAMINATION BY MR METZGER:

21 Q. Good afternoon, Mr Bangura.

22 A. Good afternoon, Mr Metzger.

23 Q. I wanted to ask you this: In 2004, just the general
24 question for the moment, were you aware that the Prosecution in
25 the Special Court were speaking to Mr Bobson Sesay as a potential
26 witness for the Prosecution?

27 A. Yes.

28 Q. When did you become aware of this, before or after you were
29 released from prison?

1 A. It was when we were in prison. That was when I became
2 aware of that.

3 Q. How did you become aware of that when you were in prison?

4 A. They told us when they were taking them. They used to take
5 them out. Then they will return them in. So they told us that
6 they were coming to testify.

7 Q. And that was before your release --

8 MR HERBST: Your Honour, I wonder if I could hear that
9 answer again, please.

10 THE WITNESS: Yes, you are correct.

11 JUSTICE DOHERTY: The answer was: They told us when they
12 were taking them out. When they returned them in, they told
13 us.

14 And I did not hear the question that followed. Please
15 repeat the question.

16 MR METZGER: The question was, if I recall, that was this
17 whilst he was still in prison.

18 JUSTICE DOHERTY: I heard the answer "yes".

19 MR METZGER: Yes, you're correct, your Honour, yes.

20 Q. Was there, Mr Bangura, anything else that you noticed? For
21 example, did they come with food or other things after they had -
22 people like Mr Bobson Sesay, when they had spoken to the
23 Prosecution?

24 A. Yes, I used to see them bring parcels that included food,
25 chicken, and other things. They used to bring them in.

26 JUSTICE DOHERTY: Mr Metzger, what's the relevance of this
27 line of questioning?

28 MR HERBST: Your Honour, I'm sorry --

29 JUSTICE DOHERTY: [Overlapping speakers] to 2004 of actions

1 in 2004 to the present indictment?

2 MR METZGER: Your Honour, I'm confirming from another
3 witness that which my client gave evidence of whilst we were in
4 Kigali. Mr Kanu gave evidence that they used to take them out
5 and bring them back in.

6 JUSTICE DOHERTY: I don't remember him talking about
7 chickens.

8 MR METZGER: No, he may not have. I didn't - that's why I
9 specifically didn't put the question. I said did they come back
10 with anything, food and so on. As you will know, one has
11 instructions [overlapping speakers].

12 JUSTICE DOHERTY: Very well.

13 MR METZGER: [Overlapping speakers] simply seeking to bring
14 out evidence that I expected to be before the Court and I have it
15 from this witness now.

16 MR HERBST: Your Honour, I didn't hear the answer, but
17 [indiscernible].

18 JUSTICE DOHERTY: The answer was: Yes, I used to see them
19 bring parcels, food, chicken and other things.

20 And then I raised relevance and counsel replied.

21 Proceed, Mr Metzger.

22 MR METZGER: Thank you, your Honour.

23 Q. I want to move, please, now to 2011. I had asked you some
24 preliminary questions about the interview with Mr Herbst. From
25 that time up until the present day, have you been approached by
26 anyone from the Prosecution about your case?

27 JUSTICE DOHERTY: This is the instant case, is it?

28 MR METZGER: Your Honour, yes, this one, the contempt case.

29 THE WITNESS: No, nobody ever met me except when

1 Mr Serry-Kamal brought me to the Court here.

2 MR METZGER:

3 Q. Thank you. So from that time when Mr Serry-Kamal brought
4 you to the Court here - by that do you mean the time when you
5 spoke to the independent counsel in the presence of
6 Mr Serry-Kamal and Mr Akimbobola?

7 A. Yes, you are correct.

8 Q. Has anyone from the Prosecution asked you to consider
9 changing your plea to guilty?

10 A. No, nobody asked that of me.

11 MR METZGER: Thank you, your Honour, I'll leave the matter
12 there.

13 JUSTICE DOHERTY: I will not consider your
14 cross-examination completed until Madam Registrar has been in a
15 position to reply.

16 MR METZGER: Thank you, your Honour.

17 JUSTICE DOHERTY: So that cross-examination is stood down.

18 I now ask - I've nobody else to ask except you,
19 Mr Nicol-Wilson, if you have re-examination. I would preface my
20 invitation to re-examination by saying that if matters arise
21 following the Registrar's report, you will be at liberty to
22 re-examine on that.

23 MR NICOL-WILSON: Yes, your Honour.

24 THE COURT OFFICER: Sorry to interrupt, your Honour, we
25 have that noise again on the Krio channel.

26 JUSTICE DOHERTY: Yes, we have it on the English one as
27 well. Do your best and Mr Nicol-Wilson is going to soldier on
28 here.

29 Mr Nicol-Wilson.

1 CROSS-EXAMINATION BY MR NICOL-WILSON:

2 Q. Now, Mr Bangura, I have a few questions for you. During
3 the cross-examination by Mr Herbst, he said to you that you only
4 decided to change your statement from saying it was Bazzy who
5 instructed you to go over to lawyer Mansaray to saying it was
6 Brima. Do you remember Mr Herbst saying that to you?

7 A. Yes, I remember.

8 Q. And Mr Herbst also said to you it is because - you decided
9 to change because of the way Bazzy responded to him during
10 cross-examination. Do you remember Mr Herbst saying that to you?

11 A. Yes.

12 Q. Now, my question to you is during your interview with
13 Mr Herbst in April 2011, who did you tell him instructed you to
14 go over to lawyer Mansaray?

15 A. I told him it was Brima who gave me the instruction.

16 Q. Now, also during the cross-examination by Mr Herbst he
17 suggested to you that in November and December 2010 you were
18 communicating frequently with Mr Kargbo. Do you remember him
19 saying that to you?

20 A. Yes, I remember.

21 Q. Now, my question to you is: Before November and December
22 2010, were you communicating frequently with Mr Kargbo?

23 A. Yes, we used to communicate.

24 Q. So the frequent communication was not only in November and
25 December 2010?

26 A. Yes, that's correct.

27 Q. Now, also Mr Herbst suggested to you - he actually asked a
28 question. He said whether in November 2010 you knew that
29 persuading a witness to change his testimony was a crime. Do you

1 remember him saying that to you?

2 A. Yes, I remember.

3 Q. Now, my question to you is did you persuade any witness to
4 change his testimony before the Special Court?

5 A. No, I never persuaded anybody.

6 MR NICOL-WILSON: Your Honour, that will be all.

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

8 Mr Bangura, I do not have any questions to ask you. There
9 may be more questions from Mr Metzger. We are waiting for a
10 report from Madam Registrar. Therefore, I'm not going to release
11 you from the oath, but you should now return to the dock and wait
12 and see what will transpire.

13 Just a moment, Mr Nicol-Wilson wishes to say something.

14 MR NICOL-WILSON: Yes, your Honour, not releasing him from
15 the oath, does that mean I cannot have access to him until --

16 JUSTICE DOHERTY: Strictly it doesn't. I appreciate that
17 that does - how do I put it - limit you if there's another
18 witness called, for example, if you want to take instructions.

19 MR NICOL-WILSON: Exactly.

20 JUSTICE DOHERTY: So I think what I'll do is this: I will
21 leave him under oath until all of the evidence is completed.
22 However, in the event of a witness giving evidence that you
23 require instructions upon, I will certainly entertain a relevant
24 application by you, Mr Nicol-Wilson. I think that's in fairness
25 to all concerned.

26 MR NICOL-WILSON: As your Honour pleases.

27 JUSTICE DOHERTY: Mr Herbst, you've heard what I said, and
28 I trust that you will - I have no doubt you will trust
29 Mr Nicol-Wilson's professional integrity in that matter.

1 MR HERBST: I will indeed, your Honour, thank you.

2 JUSTICE DOHERTY: Mr Bangura - Mr Court Officer, please
3 assist Mr Bangura to return to his normal position.

4 Whilst that is happening, my understanding from what was
5 said yesterday is the next - sorry.

6 Mr Nicol-Wilson, your evidence is now being adduced. You
7 did indicate to us the possibility of other witnesses. You were
8 indefinite - as you needed to make investigations.

9 MR NICOL-WILSON: Your Honour, what I wanted to do is to
10 sit with Mr Bangura and then look at the pros and cons of such a
11 decision and then make a professional judgment. But I think I'm
12 happy to wait until the end the day and see what comes in from
13 the Registrar and then from the next witness. I'll be able to
14 advise you first thing tomorrow morning, your Honour, as to my
15 position, but I won't --

16 JUSTICE DOHERTY: That's cutting it a bit fine, but let's
17 see how things go with Madam Registrar.

18 MR NICOL-WILSON: Yes, because I certainly think I will
19 need to discuss the issue with Mr Bangura.

20 JUSTICE DOHERTY: Yes, I can appreciate that.

21 Now then, Mr Serry-Kamal, you had indicated that Mr -
22 one of your witnesses whose pseudonym was Keh-For-Keh would be
23 available. In the light of what you said, I did ask that he be
24 allowed to come within the Court precincts and wait to be called.
25 If he can be called, please.

26 You are still calling him; that's the first thing I
27 must ascertain.

28 MR SERRY-KAMAL: [Microphone not activated]. Yes, your
29 Honour.

1 JUSTICE DOHERTY: So can you please call him now.

2 MR SERRY-KAMAL: He was outside and I've sent the officer
3 to go and --

4 JUSTICE DOHERTY: We will --

5 MR SERRY-KAMAL: It will be some ten minutes because he's
6 really out of the compound.

7 JUSTICE DOHERTY: He's way, way out. I did ask them to
8 allow him to be - how would I put it - allowed to sit in --

9 MR SERRY-KAMAL: He elected to stay out.

10 JUSTICE DOHERTY: This is his choice. Now that you're on
11 your feet, I can also ask you: You had other witnesses or --

12 MR SERRY-KAMAL: Well, I just concentrated on Keh-For-Keh
13 yesterday [i ndi scerni ble] lead him in evidence today. Today I
14 will see other witnesses, but I might [i ndi scerni ble] end of it.

15 JUSTICE DOHERTY: There's little to be achieved with us all
16 sitting here looking at each other. So Mr Court Officer, as soon
17 as Keh-For-Keh comes, please call counsel and myself. In the
18 meantime, we'll just adjourn briefly to allow the witness to be
19 brought in.

20 Mr Serry-Kamal, what language will the witness speak?

21 MR SERRY-KAMAL: Krio, your Honour.

22 JUSTICE DOHERTY: I think we have our Krio interpreters in
23 position; is that right?

24 THE INTERPRETER: Yes, your Honour.

25 JUSTICE DOHERTY: Yes, they will be ready to go. We'll
26 adjourn briefly to allow the witness to be brought in. Please
27 adjourn Court.

28 [The Court adjourned at 12.30 p.m.]

29 [The Court resumed at 12.48 p.m.]

1 THE COURT OFFICER: I'd just note that just a moment ago we
2 had slight technical difficulties. We want to be sure Kigali is
3 able to hear both the English and the Krio translations.

4 Kigali, can you hear us?

5 [Technical difficulties]

6 JUSTICE DOHERTY: Before we swear the witness in, I just
7 want to explain something to Mr Bangura, because I made a ruling
8 about your evidence, Mr Bangura.

9 Normally your lawyer would be allowed to speak to you
10 after your evidence is finished. But because Mr Metzger was
11 asking some questions that need information from the Registrar,
12 it is possible that you will have to give more answers. Until I
13 get a reply from the Registrar and show it to Mr Metzger, I do
14 not know whether there will be questions. So that is why I said
15 to you you are still under the oath. However, I've also told
16 Mr Nicol-Wilson that if something comes up in the course of the
17 next witness's testimony, I will listen to any application he
18 makes to speak to you.

19 Do you understand the situation, Mr Bangura?

20 ACCUSED BANGURA: Yes, my Lord.

21 JUSTICE DOHERTY: Good. Now, Kigali, I think you - excuse
22 me, I understand the connection has been restored. There is a
23 witness in the witness box, and I'm going to have that witness
24 sworn, and then we will proceed.

25 Mr Court Officer, please swear the witness.

26 AHMED KEH KAMARA,

27 EXAMINATION-IN-CHIEF BY MR SERRY-KAMAL:

28 JUSTICE DOHERTY: Mr Serry-Kamal, please proceed. After
29 you have adduced the name of the witness and those personal

1 particulars, I have one question of him before you proceed on.

2 So please open your - I lead your evidence.

3 MR SERRY-KAMAL: Thank you, your Honour.

4 Q. Mr Witness, can you please give us your name in full,
5 including any aliases you may have?

6 A. My name is Ahmed Keh Kamara.

7 Q. Do you have any alias?

8 A. Alias Keh-For-Keh.

9 Q. You live at Fourah Bay Road, Freetown?

10 A. Yes, sir.

11 JUSTICE DOHERTY: That was Fourah Bay?

12 MR SERRY-KAMAL: Fourah Bay Road.

13 Q. In Freetown here?

14 A. Yes, sir, the east end part of the Western Area.

15 Q. You are presently a taxi driver?

16 A. Yes, sir.

17 MR HERBST: Your Honour, I have an objection to the
18 leading, as this is the defence case and every question so far
19 has been leading.

20 MR SERRY-KAMAL: These are introductory matters.

21 JUSTICE DOHERTY: Yes, we normally allow a little bit of
22 leeway on introductory matters, but since you have raised the
23 issue then I must bring it to counsel's attention that he's
24 leading.

25 MR SERRY-KAMAL: Your Honour, [i ndi scerni bl e] which really
26 are not strictly relevant to --

27 JUSTICE DOHERTY: I accept what you say, Mr Serry-Kamal,
28 but there is an objection on record, so I have to deal with it.

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

1 JUSTICE DOHERTY: Have you completed your introductory
2 matters?

3 MR SERRY-KAMAL: I won't be long. I thought you had one
4 questi on.

5 JUSTICE DOHERTY: Yes, I had one questi on once we had
6 established hi s name, et cetera.

7 Mr Kamara, I wanted to ask you --

8 THE WITNESS: Yes, Ma'am.

9 JUSTICE DOHERTY: -- did you come into Court during an
10 earlier part of this trial and listen to one or more of the
11 witnesses? Not today, not yesterday, but some time ago.

12 THE WITNESS: Well, the first appearance I appeared. Since
13 then I have not appeared.

14 JUSTICE DOHERTY: When you say first appearance, Mr Kamara,
15 do you mean in - last year or this year?

16 THE WITNESS: The first appearance of Hassan Papa Bangura
17 alias Bomb Blast.

18 MR HERBST: I'm sorry, your Honour. I did not hear the
19 answer.

20 JUSTICE DOHERTY: I was asking the witness if he had been
21 in the Court before, and the witness said at the first
22 appearance. I asked for clari fication, and he said the first
23 appearance of Hassan Papa Bangura, also known as Bomb Blast. And
24 not since. That was the witness's answer.

25 MR HERBST: I thank the Court.

26 JUSTICE DOHERTY: This will be a matter of submission, so
27 I'll leave it at that point. Counsel has heard the counsel.
28 Counsel is aware of the Rules.

29 Please proceed, Mr Serry-Kamal.

1 MR SERRY-KAMAL:

2 Q. Before you became a taxi driver, did you have any other
3 occupation?

4 A. Yes, sir.

5 Q. What was your occupation?

6 A. I was a military personnel.

7 MR HERBST: Sorry, your Honour. I couldn't quite make out
8 what the interpreter said.

9 JUSTICE DOHERTY: Yes, "I was a military personnel."

10 MR HERBST: Thank you.

11 MR SERRY-KAMAL:

12 Q. Mr Kamara, could you please allow the interpreter to
13 interpret before you answer. Now, when did you join the
14 Sierra Leone Army?

15 A. I joined the Sierra Leonean Army in 1988.

16 Q. Were you given a number when you joined?

17 A. Yes, sir.

18 Q. What was your number?

19 A. 18165510, Sgt Kamara.

20 Q. Where did you train?

21 A. I was taken from the Wilberforce and trained in Daru. Then
22 I came back to Wilberforce.

23 Q. Now, do you know the first accused Hassan Papa Bangura?

24 A. Yes, sir.

25 Q. How do you come - where did you know him?

26 A. Well, I knew him since the NPRC days.

27 MR SERRY-KAMAL: I think when we talk about the NPRC we're
28 talking about the National Provisional Ruling Council of Maada
29 Bio and others.

1 JUSTICE DOHERTY: Yes.

2 MR SERRY-KAMAL:

3 Q. Now, from the NPRC days - when you say from the NPRC days,
4 was he in the forces or was he a civilian?

5 A. He was a soldier.

6 Q. Was he attached to any person during those days?

7 A. Yes, sir.

8 Q. Who was he attached to?

9 A. He was attached to Maada Bio, the Vice-President.

10 Q. What year was this --

11 MR HERBST: Your Honour, I didn't get the name.

12 JUSTICE DOHERTY: "He was attached to Maada Bio, the
13 Vice-President."

14 MR SERRY-KAMAL: The full name was Julius Maada Bio.

15 MR HERBST: Thanks.

16 MR SERRY-KAMAL: [Indiscernible].

17 Q. As what?

18 A. As a corporal.

19 Q. Doing what duties?

20 A. He was a bodyguard, personal security.

21 Q. During the NPRC days, where were you attached?

22 A. I was attached to Maada Bio too as a personal security.

23 Q. Would it be fair to say --

24 MR HERBST: Sorry, your Honour. I didn't hear -
25 [overlapping speakers].

26 JUSTICE DOHERTY: "I was attached to Maada Bio too as
27 personal security."

28 MR HERBST: I thank the Court.

29 MR SERRY-KAMAL:

1 Q. Would it be fair to say you know him very well? You know
2 the first accused very well?

3 A. Yes, I know him very well.

4 Q. And do you know the second accused, Samuel Kargbo?

5 A. Yes, sir, I know Samuel Kargbo alias Ragga.

6 Q. Do you know what he did for a living in 1992?

7 A. He was a military personnel too.

8 Q. Do you know his attachment?

9 A. Yes, sir.

10 Q. Where was he attached in 1992?

11 A. He was attached to Colonel Mamadi Keita.

12 Q. What was his area of deployment?

13 MR HERBST: Excuse me, Mr Serry-Kamal. I didn't hear to
14 whom he was attached, your Honour, the answer.

15 JUSTICE DOHERTY: We will need the spelling of that name,
16 please, Mr Serry-Kamal, so we can deal with both bits. If you
17 could spell it for us.

18 MR SERRY-KAMAL: Colonel Mamadi, M-A-M-A-D-I, Keita,
19 K-E-I-T-A.

20 JUSTICE DOHERTY: Thank you. Proceed.

21 MR SERRY-KAMAL:

22 Q. What was his area of deployment at the time, Mamadi Keita?

23 A. He was a Military Police and they later sent him to Tongo.

24 MR HERBST: Your Honour, I'm sorry but I'm having grave
25 difficulty hearing the interpreter even when he's not speaking at
26 the same time as the witness.

27 JUSTICE DOHERTY: He was in the Military Police and later
28 sent to Tongo - Tongo.

29 MR SERRY-KAMAL: Tongo, T-O-N-G-O.

1 JUSTICE DOHERTY: Tongo. It's a district, not the country.

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

3 JUSTICE DOHERTY: Mr Court Officer, if you can again
4 approach our IT people to see if we can assist on this line
5 that's going to Kigali.

6 Proceed, Mr Serry-Kamal.

7 MR SERRY-KAMAL:

8 Q. Who was Military Police? Was it Keita, or both of them, or
9 just Sammy alone?

10 A. It was Colonel Mamadi Keita who was a Military Police.
11 Samuel Kargbo alias Ragga was a bodyguard.

12 Q. Do you know the third accused, Santigie Borbor Kanu?

13 A. Yes.

14 Q. Alias Five Five?

15 A. Yes, sir.

16 Q. Where did you know him?

17 A. I know him as a comrade in the military force.

18 MR HERBST: I'm sorry, your Honour. I heard --

19 JUSTICE DOHERTY: "I knew him as a comrade in the military
20 force."

21 MR HERBST: Thank you.

22 MR SERRY-KAMAL:

23 Q. In 1992 was he attached to any person in the military?

24 A. Well, he was attached, but it's above my knowledge to know
25 the right commander he was attached to.

26 Q. Now, what about --

27 MR HERBST: Sorry, your Honour [overlapping speakers].

28 I'm sorry, Mr Serry-Kamal, but I couldn't hear the answer.

29 JUSTICE DOHERTY: He was attached, but it is above my

1 knowledge to know who he was attached to.

2 MR SERRY-KAMAL:

3 Q. What about the fourth accused, Ibrahim Bazzy Kamara; do you
4 know him?

5 A. Yes, sir. I know him very well. He was attached first to
6 Pa Gooding, then at Cockerill headquarters, the military
7 headquarters.

8 THE INTERPRETER: Your Honour, can I learned counsel kindly
9 wait for the interpretation.

10 JUSTICE DOHERTY: Mr Serry-Kamal --

11 MR SERRY-KAMAL: I'm very sorry. I was just trying to
12 clarify when he said Pa Gooding. There is another Pa Gooding I
13 know, but I was just trying to...

14 MR HERBST: Your Honour --

15 JUSTICE DOHERTY: Yes, Mr Herbst.

16 MR HERBST: Your Honour, I could not hear what was
17 [i ndi scerni bl e] stati c [overl appi ng speakers].

18 JUSTICE DOHERTY: The witness said he was attached first to
19 Pa Gooding, then Cockerill, and we did not get the rest of the
20 answer because Mr Serry-Kamal was seeking to clarify something.

21 MR SERRY-KAMAL:

22 Q. Which Pa Gooding are you referring to?

23 A. The former Attorney-General.

24 JUSTICE DOHERTY: Spelling of Gooding, please.

25 MR SERRY-KAMAL: G-O-O-D-I-N-G.

26 JUSTICE DOHERTY: Please proceed.

27 MR SERRY-KAMAL: He's actually AJB Gooding.

28 Q. Do you have any relationship with the fourth accused
29 Mr Ibrahim Bazzy Kamara?

1 A. He's not my relative, but he's my in-law. I have a child
2 by his sister, a daughter called Hamida Keh Kamara.

3 Q. By which sister?

4 MR HERBST: May I have that answer, your Honour?

5 JUSTICE DOHERTY: "He is not my relative, but my in-law. I
6 have a daughter by his sister, Hamida Kamara.

7 MR SERRY-KAMAL: [Microphone not activated] his daughter is
8 called Hamida Keh Kamara.

9 Q. I was going to ask what is the name of the sister.

10 A. The sister's name is Habibatu Kamara.

11 JUSTICE DOHERTY: The spelling, please, Mr Serry-Kamal.

12 MR SERRY-KAMAL: H-A-B-I-B-A-T-U, Kamara, K-A-M-A-R-A.

13 JUSTICE DOHERTY: Hamida is H-A-M-I-D-A?

14 MR SERRY-KAMAL: Yes, Your Honour.

15 JUSTICE DOHERTY: Please proceed.

16 MR SERRY-KAMAL: Hamida Keh Kamara, K-E-H, Kamara.

17 Q. [Microphone not activated].

18 THE INTERPRETER: Learned counsel's microphone is not
19 switched on.

20 MR SERRY-KAMAL:

21 Q. In 1997 May something happened in Sierra Leone, not so?
22 1997, May. To be precise, May 29. Do you remember?

23 A. Yes, sir.

24 Q. What happened?

25 A. Well, the Armed Forces Revolutionary Council overthrew the
26 SLPP government.

27 MR HERBST: Sorry, Judge. I couldn't hear that answer
28 either.

29 JUSTICE DOHERTY: Yes, "The Armed Forces Revolutionary

1 Council overthrew the SLPP government."

2 Proceed.

3 MR SERRY-KAMAL:

4 Q. Who was the head of that junta?

5 A. The head of the junta was Sgt Zagalo. Abu Zagalo.

6 Q. Did the junta form a government?

7 A. Yes, sir.

8 Q. What was the name of that government?

9 A. The name is Armed Forces Revolution Council, AFRC.

10 Q. Mr Bazzy, did he have any position in that Armed Forces
11 Revolutionary Council?

12 A. Yes, sir.

13 Q. What was his position?

14 A. He was the PL03.

15 MR HERBST: Sorry, your Honour, I didn't get that.

16 JUSTICE DOHERTY: PL03.

17 MR SERRY-KAMAL: [Microphone not activated]. Public
18 Liaison officer. I think we've had that before.

19 JUSTICE DOHERTY: It's been on record.

20 MR SERRY-KAMAL:

21 Q. In February 1998, did ECOMOG do anything to the AFRC?

22 A. Yes, sir.

23 Q. What happened?

24 A. Well, what happened was that ECOMOG intervened. They did
25 an intervention.

26 Q. And was the - what became of the AFRC?

27 A. Well, the AFRC, we decided to withdraw tactically from the
28 city so that no casualties would take place, because the country
29 is our country.

1 MR HERBST: Your Honour, I didn't hear that answer, I'm
2 sorry.

3 JUSTICE DOHERTY: They did - "What happened?" ECOMOG
4 intervened. "They did an intervention." We decided to withdraw
5 tactically from the city so that no casualties would be caused,
6 because the country is our country.

7 MR SERRY-KAMAL:

8 Q. When you withdrew, where did you go to?

9 A. We withdrew through the peninsula to Tumba.

10 JUSTICE DOHERTY: I've got two spellings: T-U-M-B-A or
11 T-U-M-B-O. And there's a spelling for Abu Zagalo.

12 MR SERRY-KAMAL:

13 Q. Can you give us his full name? Abu Zagalo, what is his
14 full name? His real name, not the football name? Does the name
15 Abu --

16 A. Abu Sankoh. He was called Abu Sankoh alias Zagalo.

17 MR SERRY-KAMAL:

18 Q. Z-A-G-A-L-O, the name of a Brazilian footballer.

19 [Indiscernible].

20 JUSTICE DOHERTY: Thank you, Mr Serry-Kamal. Proceed.

21 MR SERRY-KAMAL:

22 Q. Now, you said you went to the bush. Now, let me just --

23 JUSTICE DOHERTY: No, he said he went to Tumba. That's not
24 the bush.

25 MR SERRY-KAMAL:

26 Q. After that you went to where? You went where?

27 A. From Tumba - after Tumba we went to Fogboh across the
28 river. From Fogboh we went to Masiaka; and from Masiaka we went
29 to Makeni and then to Kabala; and from Kabala we went to the end

1 of Kabala, a place called Kurubonla by Karafaya.

2 MR SERRY-KAMAL: K-U-R-U-B-O-N-L-A.

3 JUSTICE DOHERTY: He said "by" and there was another name.

4 THE WITNESS: Kurubonla, the village there called
5 Karafaya.

6 MR SERRY-KAMAL: K-A-R-A-F-A-Y-I-A.

7 JUSTICE DOHERTY: And Fogboh is F-O-G-B-O-H.

8 MR SERRY-KAMAL: Yes, your Honour.

9 Q. Let's come to January 1999. Did the forces come back to
10 Freetown?

11 A. Yes.

12 Q. Again January 6 did the forces come down to Freetown?

13 A. Yes, all of us came. At that time I was with the five-star
14 general SAJ Musa.

15 Q. Did anything happen to SAJ Musa in Benguema?

16 A. Yes, sir.

17 Q. What happened?

18 A. That was where the five-star general SAJ Musa lost his
19 life.

20 Q. Did the troops come down to Freetown again?

21 A. Yes.

22 Q. [Microphone not activated]?

23 A. We worked with command of the man - the command structure
24 that he had put on paper.

25 Q. Now, on this occasion you were led by whom?

26 A. Who led us? We did not have a commander any longer because
27 we had lost our five-star general. We were with FAT and Tamba
28 Brima and other commanders.

29 Q. Okay. Tamba Brima, do you know his full name?

1 MR HERBST: Excuse me, your Honour --

2 THE WITNESS: Yes, sir.

3 MR SERRY-KAMAL:

4 Q. What is his full name?

5 JUSTICE DOHERTY: Just a minute, Mr Herbst.

6 MR HERBST: I'm sorry.

7 JUSTICE DOHERTY: Mr Herbst, I'm listening to you now.

8 Yes, Mr Herbst.

9 MR HERBST: Your Honour, I only heard "we were led by", and
10 then I was not able to follow the answer.

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

12 JUSTICE DOHERTY: We were led by FAT. I think actually the
13 name is FAT Sesay, but I'm not --

14 MR SERRY-KAMAL: I know your Honour is familiar with those
15 names. FAT Sesay. Colonel FAT Sesay.

16 JUSTICE DOHERTY: And Tamba Bri ma.

17 MR SERRY-KAMAL: Tamba Bri ma.

18 JUSTICE DOHERTY: Counsel was asking about Tamba Bri ma's
19 name.

20 MR SERRY-KAMAL:

21 Q. Do you know the full name of Tamba Bri ma?

22 A. Alex Tamba Bri ma.

23 Q. Alias what?

24 A. Alias Gullit.

25 MR SERRY-KAMAL: Your Honour, this is a Dutch footballer
26 this time.

27 JUSTICE DOHERTY: Just continue [overlapping speakers].

28 MR SERRY-KAMAL:

29 Q. Eventually was the invasion thwarted by ECOMOG again? You

1 were driven out of Freetown again?

2 A. Yes, when we came to Freetown - because when they
3 intervened we invaded, and they came back on the offensive. They
4 repelled the attack, but we fought them still and we retreated
5 tactically to Benguema barracks, BTC. From --

6 MR HERBST: Your Honour, I did not hear the answer.

7 THE WITNESS: From BTC we withdrew to the West Side,
8 Magbeni, West Side.

9 JUSTICE DOHERTY: Let me repeat this for counsel -
10 independent counsel. We only came because when they intervened,
11 we attacked back. They repelled back. We fought still and
12 retreated tactically to Benguema to BTC. From BTC we retreated
13 to Magbeni, West Side.

14 Mr Serry-Kamal, I note the time.

15 MR HERBST: [Indiscernible].

16 JUSTICE DOHERTY: Sorry, Mr Herbst.

17 MR HERBST: Could I just ask what the general date or time
18 is that we're now at? Just a year and a month or whatever.

19 JUSTICE DOHERTY: A timeframe, Mr Serry-Kamal, is
20 requested. Timeframe of this particular evidence?

21 MR SERRY-KAMAL: [Microphone not activated] all told I
22 estimate it to be about two hours.

23 JUSTICE DOHERTY: No, counsel is asking the date of this
24 particular - these particular incidents that are being recounted
25 by the witness.

26 MR SERRY-KAMAL: January 6, 1999, I said. January 6, 1999.
27 That was the invasion.

28 JUSTICE DOHERTY: We're now talking about the retreat.

29 MR SERRY-KAMAL: They retreated after January 9.

1 JUSTICE DOHERTY: Yes. Very well, the evidence is coming
2 from the Bar table. January 9, 1999.

3 Mr Serry-Kamal, have you many questions on this line? As
4 I'm looking at the Freetown break, and it should be around now.

5 MR SERRY-KAMAL: [Microphone not activated] [Indiscernible]
6 because there is only one really important thing I would like him
7 to talk about.

8 JUSTICE DOHERTY: Would this be a convenient point if
9 you've led your introductory --

10 MR SERRY-KAMAL: I would have thought so, your Honour.

11 JUSTICE DOHERTY: Very well. We will adjourn until
12 2 o'clock for the Freetown break.

13 Mr Witness, you have now taken the oath. We are taking the
14 break and whilst we were - until all your evidence is finished
15 you must not talk to any other person about your evidence. Did
16 you understand? Mr Witness, can you hear me? Mr Kamara - oh,
17 you can't hear. The witness cannot hear.

18 Mr Court Officer --

19 THE WITNESS: Yes, I can get you now.

20 JUSTICE DOHERTY: Mr Witness, what I said was that you've
21 taken the oath to tell the truth. This is the break for - until
22 2 o'clock. Because you have taken the oath, you must not talk
23 about your evidence to anyone else until it is all finished. Did
24 you understand?

25 THE WITNESS: Yes, Ma'am.

26 JUSTICE DOHERTY: Adjourn Court - wait a minute. Was
27 Mr Metzger about to say something?

28 MR METZGER: No. No, your Honour, I was just fiddling with
29 the equipment in front of me.

1 JUSTICE DOHERTY: We will adjourn until 2 o'clock. Please
2 adjourn --

3 MR HERBST: Your Honour --

4 JUSTICE DOHERTY: Just a minute.

5 MR HERBST: Your Honour, yes, I was hoping to ask the
6 assistance of the - through the Court of the technical staff to
7 see whether there's any possibility of doing something about the
8 difficulty of hearing the interpreter - the English interpreter
9 here in Kigali. There's lots of static and it's faint.

10 JUSTICE DOHERTY: Mr Court Officer, can you alert our
11 technicians to this problem and see if there can be anything
12 done? Because counsel is entitled to hear the evidence.

13 THE COURT OFFICER: Very well, your Honour.

14 JUSTICE DOHERTY: On that basis I will now adjourn until 2.

15 [The Court adjourned at 1.25 p.m.]

16 [Court resumed at 2.00 p.m.]

17 JUSTICE DOHERTY: We seem to be missing the star player.
18 Kigali, Mr Herbst, can you hear me? We're just waiting for the
19 witness to be brought in. But has the sound improved any?

20 MR HERBST: Your Honour, I can hear you loud and clear, but
21 until I hear the interpreters speak, I will not be able to tell.

22 THE INTERPRETER: Can you hear me, Mr Herbst? Can you hear
23 me? This is the interpreter speaking.

24 MR HERBST: No, your Honour, the sound has not improved.
25 There is static and white noise on the line makes it very
26 difficult to hear the interpreter.

27 JUSTICE DOHERTY: Two things. First, your voice is not as
28 clear as it was just now. The interpreter is very clear this
29 end. So it really is something to do with the technology. I

1 know I spoke to our staff over the break, and they have been
2 doing all they can. I just don't know what the solution is.

3 MR HERBST: I understand, your Honour. We'll just have to
4 do the best we can. I appreciate your indulgence.

5 JUSTICE DOHERTY: Mr Court Officer, can you go and see if
6 we can locate the witness? Yes, Mr Herbst, you were going to
7 make use of our time?

8 MR HERBST: Well, I was going to ask first whether we had
9 heard anything from the Registrar in response to your inquiry,
10 and second I could use the time by putting on record what I was
11 going to say with respect to the second issue your Honour had
12 raised if you think this is the time.

13 JUSTICE DOHERTY: That would be good. I'm just looking to
14 see if the person I see who has just walked into the gallery is
15 the witness. Oh, no, the witness is here. Would you mind very
16 much deferring that issue?

17 MR HERBST: Not at all, your Honour. We could do that at
18 the end of the day.

19 JUSTICE DOHERTY: That would be very convenient. It might
20 even be wise to do it in the absence of the two accused persons.

21 Mr Serry-Kamal, please proceed.

22 And Mr witness, I remind you you're under oath and should
23 answer questions truthfully.

24 Proceed, Mr Serry-Kamal.

25 MR SERRY-KAMAL: Thank you very much, your Honour.

26 Q. Mr Witness, we left off where you said you went to the West
27 Side and set up camp. To be precise, Magbani; M-A-G-B-A-N-I.

28 JUSTICE DOHERTY: Thank you, Mr Serry-Kamal. Proceed.

29 MR SERRY-KAMAL:

1 Q. Now, do you know whether peace was negotiated between the
2 warring factions, the government and the warring factions, the
3 RUF, the SLA, the Kamajors?

4 A. Yes. Yes, sir.

5 Q. Was an agreement reached between the warring parties?

6 A. Yes, there was an agreement to go. There was a Lome Peace
7 Agreement.

8 Q. As a result of that agreement, were you assigned any task?

9 A. Well, at that time through the agreement I was a battalion
10 commander.

11 Q. What happened? Did you have counsel come to Freetown?

12 JUSTICE DOHERTY: Just pause.

13 THE WITNESS: Yes.

14 MR HERBST: Excuse me, your Honour.

15 JUSTICE DOHERTY: Mr Herbst.

16 MR HERBST: May I have the previous answer? I did not hear
17 it.

18 JUSTICE DOHERTY: Well, at that time through agreement I
19 became a battalion commander. And counsel is now asking about
20 Freetown.

21 Proceed, counsel.

22 MR SERRY-KAMAL:

23 Q. Did you come to Freetown?

24 A. Yes, sir, I came to Freetown, sir.

25 Q. [Indiscernible] military personnel.

26 A. Well, I did not come alone. I came with some senior
27 personnel.

28 Q. Please run through the names.

29 MR HERBST: I'm sorry, your Honour. But he came with who?

1 THE INTERPRETER: "Senior personnel". He's about to name
2 them, Mr Herbst.

3 THE WITNESS: One was Honourable Bio Gbao; (2), Honourable
4 Five Five; (3), Colonel Saki do; (4), Ahmed Keh Kamara, alias
5 Keh-For-Keh. We came on the agreement with some UN, United
6 Nations who went for us. It was not our enemies that went for
7 us, that is the ECOMOG forces. It was the UN who went for us.
8 That is why we decided to come.

9 Q. And when you came, did you hold any meetings in Freetown?

10 A. Yes, sir.

11 MR HERBST: I'm sorry, excuse me, Mr Serry-Kamal, but I did
12 not hear --

13 JUSTICE DOHERTY: We did not come alone. I came with
14 senior personnel: (1), Honourable Bio Gbao; (2), Honourable Five
15 Five; (3), Honourable Saki to; (4), Honourable Ahmed Keh Kamara,
16 Keh-For-Keh. We came on agreement with the UN. They came for
17 us. Not our enemies, the ECOMOG. That is why we came.

18 MR SERRY-KAMAL:

19 Q. Did you hold any meetings whilst you were here in Freetown?

20 A. Yes, sir.

21 Q. Who with?

22 A. With the first in command of ECOMOG. That is General
23 Maxwell Kobe [indiscernible].

24 Q. General, yeah.

25 A. First in command, General, yes. Second, Wurri Musa. Then
26 we had a lot of different UN white guys who were all at the
27 meeting at Cockerill headquarters.

28 Q. Did you hold any other meetings with then government in
29 power?

1 A. Well, the government of the day, at that time that we came,
2 they too had people among the United Nations and ECOMOG, that is
3 the SLA surrendered soldiers. They were with the government.

4 Q. Did you go anywhere - did you go back anywhere?

5 MR HERBST: Excuse me, Mr Serry-Kamal.

6 A. Well, after the meeting --

7 JUSTICE DOHERTY: Pause, Mr Witness. Did you hold
8 meetings? At the government, the day they had people. Did you
9 get the earlier answer - sorry, Mr --

10 MR SERRY-KAMAL: [Indiscernible] represented in a meeting
11 and surrendered soldiers.

12 HER LADYSHIP: [Overlapping speakers] we met with the
13 government. I'm just looking at the one before.

14 Mr Herbst, did you get that answer?

15 MR HERBST: I didn't hear that. [Indiscernible] government
16 of the day and that was it.

17 JUSTICE DOHERTY: Well, he was asked who he met with. He
18 said first in command, ECOMOG. General Maxwell Kobe. Wurri
19 Musa, then a lot of UN white guys, they were all at a meeting at
20 Cockerill headquarters. And he said it was a government of the
21 day had people and the SLA surrendered soldiers who were with the
22 government.

23 Mr Serry-Kamal, please put your last question again so the
24 witness can answer it.

25 MR SERRY-KAMAL:

26 Q. After the meeting, did you go back anywhere?

27 MR HERBST: I can't hear Mr Serry-Kamal.

28 THE WITNESS: After the meeting, we were taken to the Solar
29 Hotel. That is where we were.

1 Q. The question is: After all of these meetings, did you go
2 back anywhere to report?

3 A. Yes, we sent a situation report to the West Side.

4 Q. Did you write and send it, or did you go yourself and
5 report to them?

6 A. I stayed behind. Honourable Bio went.

7 MR HERBST: I'm sorry, your Honour.

8 JUSTICE DOHERTY: Just a minute, Mr Herbst. Did you ask
9 something?

10 MR HERBST: I heard him say someone went, but I didn't hear
11 who.

12 JUSTICE DOHERTY: Honourable Bio went. I stayed behind.
13 Now, Mr Serry-Kamal, I think - are we --

14 MR SERRY-KAMAL: [Indiscernible] I'll finish it.

15 Q. Were you at any time a guest of the president at Pademba
16 Road prison? Were you arrested at any time after all of the
17 peace was restored?

18 A. Yes. They arrested me. They arrested me.

19 Q. When were you arrested, do you remember the date?

20 A. They arrested me in 2002 after the peace. They were just
21 arresting us.

22 Q. Were you in Pademba Road prison?

23 A. Yes, I was at the maximum prison at Pademba Road.

24 Q. Which block?

25 A. I was at Howard.

26 Q. Now, you said you knew Hassan Papa Bangura. Did you see
27 him there at Pademba Road?

28 A. Yes, I met him in Pademba Road.

29 Q. What about the second accused, Sammy Ragga?

- 1 A. I met him too at the maximum prison at Pademba Road.
- 2 Q. The third accused, Hassan Borbor Kamara - Kanu, sorry, Five
- 3 Five?
- 4 A. Five Five met me there.
- 5 Q. Whilst you were - what about Tamba Brima, Alex Tamba Brima,
- 6 Gullit?
- 7 A. Alex Tamba Brima alias Gullit met me there.
- 8 Q. What about the fourth accused, Brima Bazzy Kamara?
- 9 A. He met me there.
- 10 Q. Now, how long were you in Pademba Road prison for?
- 11 A. I was in the Pademba Road prisons for five years, eight
- 12 months, without any conviction, just in remand. At the end I was
- 13 set free.
- 14 Q. Did you give evidence at the AFRC trial after you were
- 15 released from prison?
- 16 A. Yes, sir. I was one of the potential witnesses to defend
- 17 the AFRC.
- 18 Q. Did you give evidence?
- 19 A. Yes, sir.
- 20 Q. On whose side did you give evidence?
- 21 A. I testified for Bazzy, Ibrahim Bazzy Kamara.
- 22 Q. Now, you agree with me that they were found guilty and
- 23 sentenced to various terms of imprisonment, AFRC fellows and sent
- 24 to Rwanda.
- 25 A. Yes, sir.
- 26 Q. This was in 2009.
- 27 A. Yes, sir.
- 28 Q. At that time they were sent to Mpanga Prison, where were
- 29 you living?

1 A. I was living with Bazy's family at their house, Bazy's
2 sister, his younger sister.

3 Q. [Indiscernible].

4 A. Abibatu Kamara.

5 JUSTICE DOHERTY: Just a moment, Mr Witness. I think we've
6 lost connection. I don't see anything on the screen.

7 Mr Serry-Kamal, please have a seat while I try and sort this out.

8 Mr Court Officer, have we a connection with --

9 THE COURT OFFICER: Your Honour, I have just talked to the
10 technicians. I'm told it's from the Kigali end.

11 MR HERBST: I think we have you back now, your Honour. The
12 last thing I heard was I was living with Bazy Kamara's younger
13 sister. I don't know if anything else --

14 JUSTICE DOHERTY: No, there has been nothing since then.
15 But the witness did give a name, I think. Let's have the name
16 again for record, please, because I interrupted him when I saw
17 the screen blank.

18 MR SERRY-KAMAL:

19 Q. You said you were living with Bazy's family in --

20 THE INTERPRETER: Your Honour, we would need to be
21 reconnected on the telephone line.

22 JUSTICE DOHERTY: The interpreters are not connected.
23 Please advise me when you are, Mr Interpreter.

24 THE INTERPRETER: I will, your Honour.

25 THE COURT OFFICER: Kigali, please drop the receiver so the
26 interpreters here can call.

27 MR METZGER: May I take this opportunity of a lull in
28 proceedings to absent myself for a matter of moments?

29 JUSTICE DOHERTY: Yes. Please do so, Mr Metzger.

1 THE COURT OFFICER: [In Kigali] Madam, we can proceed.

2 JUSTICE DOHERTY Mr Interpreter --

3 THE INTERPRETER: Yes, your Honour, let's proceed.

4 JUSTICE DOHERTY: -- we were just getting the name of the
5 sister of Bazy.

6 MR SERRY-KAMAL:

7 Q. What is the name of the sister? Bazy's sister with whom
8 you were living.

9 A. Her name is Abibatu Kamara.

10 Q. Can we have the spelling of Abibatu, please?

11 MR SERRY-KAMAL: A-B-I-B-A-T-U.

12 JUSTICE DOHERTY: Thank you, Mr Serry-Kamal. Please
13 proceed.

14 MR SERRY-KAMAL:

15 Q. Whilst you were living there, and Bazy had been
16 transferred to Mpanga Prison, did you have any contact with Bazy
17 whilst he was at Mpanga Prison?

18 A. Yes, I had contact with him.

19 Q. How?

20 A. Through communication.

21 Q. What means of communication?

22 A. We used to talk on family issues.

23 [Overlapping speakers]

24 THE INTERPRETER: I didn't get you clearly.

25 MR SERRY-KAMAL:

26 Q. I said by which means?

27 A. Well, it was through the phone.

28 Q. Who was the originator of the calls when Mr Bazy was
29 transferred to Mpanga Prison?

1 A. Repeat it. I didn't get you clearly.

2 Q. When Bazzy was transferred to Mpanga Prison, who started
3 calling who?

4 A. Well, I started calling Bazzy through the office of the
5 prisons. The prison office.

6 Q. How often did you call him?

7 A. Well, I used to call him because I was at their house. I
8 was at their house, and I was with his sister and we used to talk
9 about family issues.

10 MR HERBST: Your Honour, could I hear that answer?

11 JUSTICE DOHERTY: "I used to call him because I was at
12 their house." We'd talk of family issues. That followed on from
13 his answer I started calling Bazzy through the prison office.

14 MR SERRY-KAMAL:

15 Q. Did he call you back? Would he call you back?

16 A. Yes, sir. When he calls me, I would encourage him and urge
17 him to be patient and wait for God's bidding.

18 MR HERBST: Sorry, your Honour, may I have that answer?

19 JUSTICE DOHERTY: When he calls me, I urge him to be
20 patient and wait for God's bidding.

21 MR SERRY-KAMAL:

22 Q. Let us fast forward now and go to November/October 2010,
23 almost a year after you were taken to Mpanga Prison. Did you
24 have any problems in October of 2010 with anybody in that
25 compound at Wilberforce?

26 A. Yes, sir.

27 Q. Who?

28 A. Bazzy's sister and his mother.

29 Q. Did you, during this period, make any calls to Bazzy?

1 A. Yes, sir.

2 Q. Did he in turn call you?

3 A. Yes, sir.

4 Q. What about Bazy's mother, do you know whether she called
5 Bazy?

6 A. Yes, sir, she used to call him to make a report to him
7 about me that I was causing disturbance in the compound.

8 Q. Now, I want to pin you down to a particular day in November
9 2010 - on 30 November 2010. Do you remember that day?

10 A. Yes, sir, I remember that day.

11 Q. Around midday, around midday?

12 A. Yes, sir. I remember that day.

13 Q. Where were you around that time?

14 A. I was at Sweissy.

15 Q. Were you alone?

16 A. No, sir.

17 Q. Could you tell this Court who was with you?

18 A. Yes, sir.

19 Q. Yes, who were with you?

20 A. One, Eddie; two, Sammy Ragga - Samuel Kargbo, alias Ragga;
21 three, Saki do and other men.

22 Q. Do you know Churchi II?

23 A. Yes, sir. We were all there.

24 MR HERBST: Excuse me, your Honour. Excuse me. I'm not
25 sure I heard Mr Serry-Kamal's question, but it seemed to be
26 leading.

27 JUSTICE DOHERTY: Well, I suppose that's open - it's open
28 to interpretation. The question was, "Do you know Churchi II?"
29 There is a yes/no answer to that, so it's not really leading.

1 But the answer was, "Yes, we were all there." So it went a
2 little further. But that was the question.

3 Mr Serry-Kamal, please proceed.

4 MR SERRY-KAMAL:

5 Q. [Microphone not activated].

6 MR HERBST: I can't hear Mr Serry-Kamal.

7 MR SERRY-KAMAL: All right, Mr Herbst, perhaps you can hear
8 me now.

9 Q. Now, this place called Sweissy, can you explain to us where
10 it is in town - Freetown here?

11 A. Yes, sir. I can explain to you. Sweissy is in the centre
12 of Freetown, Howe Street, by city council. That is where Sweissy
13 is. Howe Street, Lightfoot Boston Street.

14 Q. What sort of place is it? What is peculiar about it?

15 A. Well, Sweissy is a place that is a business centre. They
16 sell gold, silver; they change dollar. Important people in the
17 country know about that place. 80 per cent of the country knows
18 about Sweissy.

19 Q. In relation to the ex-servicemen, could you tell us a bit
20 about Sweissy and the ex-servicemen?

21 A. Yes. Because every evening when they have moved around,
22 that is where we settle. That is where we, the ex-soldiers, meet
23 and discuss.

24 MR HERBST: Your Honour, may I have that answer, please?

25 HER LADYSHIP: Yes. Every evening, that is where we move
26 around. That is where we settle, where we met and discuss.

27 MR SERRY-KAMAL:

28 Q. Is it only in the evening --

29 MR METZGER: Sorry, your Honour, my note is after moving

1 around, that is where we settled. In fact, every evening when we
2 had moved around. Sorry.

3 MR SERRY-KAMAL:

4 Q. It's restricted only to the evening, or just any time you
5 feel like coming around to settle?

6 A. Well, it's at any time because it's a business centre.
7 Everybody is looking for money. Any hour, as long as it is day
8 time, you see.

9 Q. On this day, 30 November, Sammy Ragga was in the company of
10 all the ex-servicemen including your good self?

11 A. Yes, sir.

12 Q. Now, could you tell us what happened whilst you were there,
13 if anything happened at all?

14 A. Yes, sir.

15 Q. Please tell.

16 A. Okay. When I came, I drove my car to Sweissy. I met my
17 colleague ex-soldiers there, and I parked my car and alighted.
18 Then I met with them and we discussed. Then I called Bazzy.
19 Then Bazzy picked up the phone. During the discussion, the phone
20 was crackling. Then I told Bazzy that all our men were here,
21 that we're all here. A man like Eddie was here, Sammy Ragga was
22 here, Churchill, et cetera. But because the phone is crackling,
23 I would - really wanted to talk to them. Then Sammy Ragga asked
24 me whom I was talking with. Then I said I was talking to Ibrahim
25 Bazzy Kamara.

26 Q. Go slowly and watch, because it has to be interpreted and
27 written down. So go slowly. It's very important.

28 MR HERBST: Your Honour, as long as we're stopped, what I
29 heard was: I came, I drove my car, I met my ex-soldiers there,

1 parked my car and met with them and discussed, and I called Bazzy
2 Kamara and he took the phone. During the discussion the phone
3 was something.

4 JUSTICE DOHERTY: Crackling.

5 MR HERBST: And I said - crackling, thank you. And I said,
6 All the men are here. And I didn't hear who he identified. I
7 heard Mr Ragga, but I --

8 JUSTICE DOHERTY: He identified Ragga, Churchi II,
9 et cetera, because the phone was crackling.

10 MR SERRY-KAMAL:

11 Q. [Microphone not activated]. You know [indiscernible]?

12 A. Yes, I know Manga.

13 MR COURT OFFICER: Mr Serry-Kamal, please put your
14 microphone on and repeat the question. The interpreter didn't --

15 MR SERRY-KAMAL:

16 Q. Do you know Manga?

17 A. Yes, sir. I know Manga, sir. We were there, sir.

18 Q. Maf?

19 A. Eddie. Eddie Maf. I know Eddie Maf.

20 MR HERBST: Excuse me, your Honour?

21 JUSTICE DOHERTY: Yes, Mr Herbst.

22 MR HERBST: I believe that Mr Serry-Kamal, instead of
23 asking the witness who else was there, if anyone, is now leading
24 him into naming names, and I object to the leading nature of the
25 way he's proceeding.

26 JUSTICE DOHERTY: Yes, there was an isolated identification
27 there earlier on, Mr Serry-Kamal. So what do you say to this
28 objection?

29 MR SERRY-KAMAL: [Microphone not activated]. Sorry, Your

1 Honour. If I had said, "Was Maf present?" that would have been a
2 leading question. "Was Vamboi present?" That would have been a
3 leading question. But I just said, "Do you know Maf?" And he
4 said, Yes, Maf was present.

5 JUSTICE DOHERTY: Well, there is a certain prompting of the
6 memory there by asking these questions. But the way it's been
7 put is not exactly leading, but it's certainly prompting the
8 memory of the witness.

9 We do need to ascertain who is there. There's already been
10 evidence on it. I think we - you must avoid leading or prompting
11 his memory, so let's see how many people he remembers. I didn't
12 think it was that - well, I suppose it could be controversial.
13 But avoid leading, Mr Serry-Kamal.

14 MR SERRY-KAMAL: I'm surely not leading. I was just trying
15 to let him refresh his memory by mentioning certain names. I
16 could have said if I mention these names, would they make - would
17 you be able to place them: Vamboi, V-Boy --

18 MR HERBST: Your Honour --

19 THE WITNESS: Yes, sir.

20 [Overlapping speakers]

21 MR HERBST: Excuse me, your Honour.

22 JUSTICE DOHERTY: Yes, Mr Herbst.

23 MR HERBST: Respectfully, I think the way to go about this
24 is to ask him who he remembers was present. And if he exhausts
25 his recollection, then he exhausts his recollection and then
26 perhaps further questions can be put. But I object to the way
27 this is being done. And I think it is important, because the
28 witness said he remembers the day and that, of course, is
29 something to be explored on cross.

1 MR SERRY-KAMAL: Let me do it Mr Herbst's way. Perhaps
2 that will put his mind at ease.

3 HER LADYSHIP: I think that's --

4 MR SERRY-KAMAL:

5 Q. Now, do you remember all those who were there with you on
6 that day?

7 A. Well, I can't remember all of them.

8 Q. Tell us now those you remember.

9 A. I can remember Samuel Kargbo alias Ragga; I can remember
10 Eddie alias Maf; I can remember Churchill, Idriisa Serry Kargbo,
11 alias Churchill; I remember V-Boy; I remember Manga. I can't
12 recall - I can't remember the other men.

13 Q. How many - there were many other officers present -
14 ex-soldiers present?

15 A. Yes, sir.

16 Q. You said you called, you came, and you spoke to him for a
17 while, and you said your phone was crackling. That's where we
18 got. What happened after that?

19 A. Well, I tried to offer words of courage to keep him cool.
20 And after that when my phone was crackling, then Samuel Kargbo
21 asked me, alias Ragga, he said, "Keh, who are you talking to?" I
22 said I was talking to Bazzy. Then he said, "Eh, bo."

23 JUSTICE DOHERTY: Continue, Mr Serry-Kamal.

24 MR SERRY-KAMAL:

25 Q. Yes, he said, "Eh, bo"?

26 A. He said, "this man, since the time I was in prison until I
27 came out, I have never communicated with him." Then I said,
28 "Well, Bazzy - I said my phone was crackling. Then he said,
29 "Well, you wait." Then Samuel Kargbo - then he called. When he

1 called, Bazy did not know that that was his number. Then Bazy
2 called. Then he talked to us. We offered words of courage to
3 him. He spoke to all of us. Then we asked for the other
4 brothers.

5 JUSTICE DOHERTY: Yes, Mr Herbst. Just pause, Mr
6 Serry-Kamal.

7 MR HERBST: I didn't hear the last two - I didn't hear the
8 last two answers.

9 JUSTICE DOHERTY: I tried to offer [Overlapping speakers].

10 MR HERBST: That's all I heard, I tried to keep cool.

11 JUSTICE DOHERTY: I tried to keep him cool. The phone was
12 crackling. Ragga asked, Who is talking? I said Bazy. "Eh,
13 bo", he said. The last - I did not speak to that man. Since I
14 was in prison until I came out, I never spoke to him. Then
15 Kargbo called. Bazy did not know it was Kargbo. Bazy called.
16 We offered encouragement.

17 Proceed.

18 MR SERRY-KAMAL:

19 Q. Proceed with your narrative.

20 JUSTICE DOHERTY: Sorry, Mr Serry-Kamal, I didn't hear you
21 clearly.

22 MR SERRY-KAMAL: I said, "Proceed with your narrative."

23 JUSTICE DOHERTY: Proceed, Mr Witness.

24 THE WITNESS: Then Bazy called. When Bazy called, then
25 we picked up the phone and offered encouragement. But Samuel
26 Kargbo alias - when Samuel Kargbo alias Ragga was talking, he was
27 offering encouragement and we all started encouraging him. He
28 spoke to all of us. Then we said we wanted to talk to the other
29 brothers. Then his credit finished.

1 MR HERBST: Excuse me, Mr Serry-Kamal, but could I ask the
2 Court for the answer from the point of "we offered
3 encouragement"? I think it was, When Bazzy Kamara called, and
4 after that I didn't hear.

5 JUSTICE DOHERTY: When Bazzy called, then we took off the
6 phone and offered encouragement. When Ragga called, he offered
7 encouragement. We asked for the other brothers. Then his credit
8 finished.

9 MR SERRY-KAMAL:

10 Q. Now, which brothers were you referring to? Who are you
11 referring to as your other brothers?

12 A. Five Five and Tamba Brima.

13 Q. Now, after that call did anybody make another call again?

14 A. Yes, sir.

15 Q. Who called?

16 A. Bazzy called.

17 Q. Can you tell us what happened when he called?

18 A. Yes, sir. When he called, then we picked up the phone.
19 Then we said he should call the other brothers so that we can
20 talk to them. So at that time Alex Tamba Brima was there. He
21 picked up the phone. Then we talked to him for some time. Then
22 he said - then we asked for Five Five. Then he said Five Five
23 was out in - out - was on the field. But from the prison to the
24 field is a distance, so we were unable to get Five Five. So it
25 was Tamba Brima who ended up talking with us until the credit
26 finished.

27 Q. Now, after that call - or after those calls on that day --

28 A. It was on the same day.

29 Q. -- did anything happen between you and Bazzy?

1 A. Yes. Bazzy spoke to my men that they should tell me his
2 mother was made a complaint to him. So my men spoke to me,
3 saying, "Keh-For-Keh, now that Bazzy not present, you should
4 replace him in any shape or form. You should be patient, if his
5 sister, his family, does anything, bear it." I said, "Yes, that
6 man is my man and he's my brother-in-law."

7 MR HERBST: Your Honour, may I have that answer, please?

8 JUSTICE DOHERTY: I think I got most of it down. Bazzy
9 spoke to my man that his mother had made a complaint about me.
10 The man said Bazzy is not there. You should replace him. You
11 should be patient. I said, Yes, he is my brother-in-law.

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

13 Q. I want you to direct yourself to later that day. Did you
14 receive any call from anybody?

15 JUSTICE DOHERTY: I think Mr Metzger was trying to say
16 something.

17 MR METZGER: Yes. I'm so sorry, your Honour, but I find
18 myself, I think, rather like Mr Herbst did some time ago. I'm
19 finding it very, very warm down here. I conferred with
20 Mr Nicol-Wilson to make sure that it wasn't me feeling untowardly
21 unwell, and I was wondering if anything can be done at all. It
22 is extremely warm, and I'm having great difficulties with the
23 heat.

24 JUSTICE DOHERTY: We'll have to try and remedy that.

25 Mr Court Officer, can you contact the FMU staff and ask if
26 the air conditioning can be put on.

27 THE COURT OFFICER: Madam, we have times when they have
28 worked on the conditioning, and we have other people in the
29 courtroom complain that it's too cold and there are others who

1 are not in gowns like we are, so I don't know how to advise them.

2 JUSTICE DOHERTY: Well, at the moment there is the accused
3 and the witness without a gown, and we'll find a jacket for them
4 if they're excessively cold. See if we can do something for
5 counsel.

6 THE COURT OFFICER: Very well, your Honour.

7 JUSTICE DOHERTY: Incidentally, I have said to some of your
8 counterparts in the national courts if they want to take their
9 jackets off, they're at liberty to do so.

10 Mr Serry-Kamal, you directed the witness to later that day.

11 MR SERRY-KAMAL:

12 Q. Later that day did you receive any call from anybody else?

13 A. Yes, I received a call from Bazzy.

14 Q. What was the discussion about?

15 A. Well, he tried to advise me towards the family, that I
16 should be patient. Whatever they do to me, I should be patient
17 for his sake. Because I have a child with his sister, that I
18 should bear it up; that when a woman has gotten old, she becomes
19 stubborn. Now the mother has become old, so that's what she
20 would become. Then I said okay, I'll be patient.

21 MR HERBST: I'm sorry to interject again, your Honour, but
22 may I have that answer when you get a chance?

23 JUSTICE DOHERTY: Yes. Did you receive a call? Yes, from
24 Bazzy. He tried to advise me towards the family. He said
25 whatever they do to me, be patient for his sake. His sister has
26 a child from me. When a woman becomes old, she becomes stubborn.
27 That is what has happened to his mother. She has become old and
28 become stubborn.

29 Proceed.

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

2 Q. Now, Mr Kamara, you said you live in a place at
3 Wilberforce, the compound of Bazzy's family. Do you know the
4 name of the street where this compound is at Wilberforce?

5 A. Yes, sir.

6 Q. What is the name of the street?

7 A. Lumley Road. Number 47 Lumley Road, Wilberforce Village.

8 Q. Now, is it anywhere near Bottom Mango?

9 A. Yes, sir.

10 Q. How far is it from Bottom Mango?

11 A. Up to 400 to 500 metres.

12 Q. Up to 500 metres. On Spur Road or on Regent Road,
13 Wilberforce; which is it?

14 JUSTICE DOHERTY: That was Bottom Mango, wasn't it?

15 MR SERRY-KAMAL: [Microphone not activated]. The
16 roundabout at Wilberforce is called Bottom Mango. The
17 roundabout.

18 JUSTICE DOHERTY: Yes.

19 MR SERRY-KAMAL:

20 Q. I'm asking if you go the distance is measured, is it along
21 Spur Road or through the village?

22 A. Well, the village, that's the measurement I've called.
23 When you pass by Spur Road, it is around 350 metres from my
24 assessment.

25 Q. Let us say you're coming from Spur Road?

26 MR HERBST: Could I have that answer, your Honour, please.

27 Excuse me, Mr --

28 JUSTICE DOHERTY: When you finish the village, when you
29 pass by Spur Road, it's around 350 metres by my assessment.

1 Proceed.

2 MR SERRY-KAMAL:

3 Q. If you go by Spur Road, what part of the road is that
4 compound?

5 A. Well, when you're coming from Spur Road, it's on the
6 left-hand side. When you're coming from the British High
7 Commission, coming up, as soon as you get to Lumley Road
8 junction, by the right-hand side, they call that Dirty Road, and
9 by the left-hand side, they call it Lumley Road Village,
10 Wilberforce Village.

11 Q. Down Spur Road from the British High Commission --

12 MR HERBST: Excuse me, Mr Serry-Kamal. I'm sorry again to
13 interrupt, but could I have that answer? I was unable to hear
14 it.

15 MR SERRY-KAMAL: Go over it again, Mr Kamara. If you're
16 coming from British high commission.

17 MR HERBST: No, I don't - I was hoping the Court --

18 THE WITNESS: From the British high commission to Bottom
19 Mango, there is a junction called Lumley Road junction. There is
20 a speed hump there. From the right hand side - the right-hand
21 side is called Dirty Road/Lumley Road. And the left is Lumley
22 Road/Wilberforce village.

23 MR HERBST: I wonder whether your Honour can assist me
24 with --

25 JUSTICE DOHERTY: Yes, I will do my best to. [Overlapping
26 speakers] From the British high commission, you come to Bottom
27 Mango, the junction. On the left - on the right is Lumley Road.
28 At the right of Lumley Road is Dirty Road, and on the left is
29 Lumley Road Village --

1 MR SERRY-KAMAL: Wilberforce. I believe it's going towards
2 Bottom Mango from Spur Road going towards Bottom Mango. Not at
3 Bottom Mango. It's going towards Bottom Mango.

4 JUSTICE DOHERTY: It's not at the roundabout. It's toward
5 the roundabout known as Bottom Mango.

6 MR SERRY-KAMAL: [Microphone not activated] I left.

7 MR HERBST: Your Honour, excuse me. Excuse me.

8 JUSTICE DOHERTY: Yes.

9 MR HERBST: I wasn't quite sure whether your Honour said
10 from the British High Commission you come to Bottom Mango, and on
11 the right is Lumley Road. I couldn't quite hear.

12 MR SERRY-KAMAL: Going towards Bottom Mango. From the
13 British High Commission going towards Bottom Mango.

14 JUSTICE DOHERTY: On the right is Lumley Road.

15 MR SERRY-KAMAL: On the right is Lumley Road. On the left
16 is --

17 MR HERBST: There was some other road mentioned?

18 JUSTICE DOHERTY: Lumley - Spur Road towards Bottom Mango.

19 MR SERRY-KAMAL: The right is Dirty Road.

20 MR METZGER: Your Honour, may I see if my note assists?
21 I think it is very much as your Honour has read it out. If you
22 go by Spur Road, if you come from the British High Commission, by
23 the right they call it Dirty Road/Lumley Road, and by the left
24 they call it Lumley Road/Wilberforce village.

25 JUSTICE DOHERTY: Thank you, Mr Metzger.

26 MR SERRY-KAMAL:

27 Q. Let us concentrate on the left going to Wilberforce
28 village.

29 JUSTICE DOHERTY: Incidentally, why are we concentrating on

1 all this geography?

2 MR SERRY-KAMAL: Your Honour, because Sammy Ragga gave
3 evidence about the location of this house. That is why we are
4 giving evidence about that. So you will know where the house is.

5 Q. Now, when you say you bend left, you're going into
6 Wilberforce village/Lumley Road. When you go up the road, how
7 many houses do you pass before you get to that compound?

8 A. Four houses. You go past four houses. As soon as you
9 climb the hill, you will see the compound.

10 Q. Four houses. Is it just one house, or is it several houses
11 in the compound?

12 A. There are other houses there.

13 Q. Now, do you know the procedure for making calls at Mpanga
14 Prison has now been changed, not so?

15 MR HERBST: Your Honour, object to the leading.

16 MR SERRY-KAMAL: Your Honour, it's already in evidence that
17 they have changed the procedure for making calls in Mpanga
18 Prison. It was my learned friend Mr Herbst who led Mr Sengabo to
19 give that evidence.

20 JUSTICE DOHERTY: Yes, I know that is the evidence, but you
21 are actually leading him. Anyway, the question has been asked
22 and I can't withdraw it, so let it stand.

23 MR SERRY-KAMAL:

24 Q. Now, are you on the mailing list? Can you make a call to
25 him now like you used to in the past?

26 A. No, no, no, no. It's been a long time.

27 Q. That will be all for this witness.

28 JUSTICE DOHERTY: Thank you very much, Mr Serry-Kamal.

29 Your cross-examination, Mr Herbst.

1 MR HERBST: Thank you, your Honour.

2 AHMED KEH KAMARA,

3 CROSS-EXAMINATION BY MR HERBST:

4 Q. Now, Mr Witness when you testified at the AFRC trial on
5 behalf of Mr Kamara, were you in a relationship with Mr Kamara's
6 sister at that time?

7 A. Ever since. She was even pregnant from me then.

8 Q. When you were asked at the AFRC trial if you had a
9 relationship with Mr Kamara's sister, you denied it, did you not?

10 A. Yes.

11 MR HERBST: Your Honour, may I just have one minute.

12 JUSTICE DOHERTY: Yes.

13 MR HERBST:

14 Q. When did you leave the army, Mr Keh-For-Keh?

15 A. Well, I left the army when I was released from prison. I
16 decided that - I decided to leave the army. I decided to leave
17 the army.

18 Q. What year was that, Mr Witness?

19 A. In the year 2005.

20 Q. What did you do for work after you left the army in 2005?

21 A. Well, the first work that I was doing was that I was a
22 businessman, I was a petty trader. I had my kiosk where I was
23 selling cigarettes and sublogistics at Fourah Bay Road, 120
24 Fourah Bay Road in front of cottage.

25 MR HERBST: May I have that answer, your Honour?

26 JUSTICE DOHERTY: The first work I was doing, I was a
27 businessman, a petty trader. I had my kiosk selling cigarettes
28 and sublogistics at Fourah Bay Road in front of cottage, I think
29 it was.

1 MR HERBST:

2 Q. What year did you get your taxi?

3 A. Well, I got my taxi after the election.

4 MR NICOL-WILSON: Your Honour, Mr Kargbo wants to be
5 excused.

6 JUSTICE DOHERTY: Yes, certainly, he may be escorted out.

7 MR HERBST: I'm sorry, your Honour, the witness may have
8 answered, but I didn't hear a year.

9 JUSTICE DOHERTY: I didn't hear - the answer was I got my
10 taxi after the election. A year was not mentioned.

11 MR HERBST:

12 Q. In what year, Mr Witness, did you get your taxi?

13 A. I got my taxi in 2006.

14 MR SERRY-KAMAL: The witness would like to excuse himself.

15 JUSTICE DOHERTY: Oh, I see. Is there anybody could
16 accompany the witness? He's under oath.

17 THE INTERPRETER: Your Honour, the interpreters would like
18 to step out for the same reason.

19 JUSTICE DOHERTY: Yes, we'll do it all at once. Mr Court
20 Officer will escort the witness. He's under oath and should be
21 with someone.

22 The witness is back in the witness box. Mr Interpreter,
23 have you been able to --

24 THE INTERPRETER: Yes, the interpreter is back. Thank you,
25 your Honour.

26 JUSTICE DOHERTY: Everyone is in position. So please
27 proceed, Mr Herbst.

28 MR HERBST: I'm grateful, your Honour.

29 Q. Mr Keh-For-Keh, on what charge were you arrested in

1 [i ndi scerni bl e].

2 A. The charge for which I was arrested in 2002 - when we came
3 out from the jungle they were afraid of us, so they were trying
4 to levy all sorts of allegations against us to keep us behind
5 bars. They said - at the end, they said I had arms and
6 ammunition. And when that was investigated, there was nothing
7 like that. They charged me with aggravation. At the end I knew
8 that it's a political stress that they were putting on me because
9 I was a fighter for the SLA. I fought to reinstate the army. I
10 am a well-known man in the country, a well-recognised man. I was
11 at my house. There are five of us at the house. Then I saw two
12 truckloads of OSD and CID personnel, well armed. They went to my
13 house and they met me there. Then they arrested me, and they
14 said I was one of the men who fought to come in here on 6 January
15 and they will do everything to get us in trouble. At the end I
16 was charged to Court, and when they found out that they had no
17 grounds on me, they charged me with robbery with aggravation
18 because there was no arms, there was no potential witness, no
19 implements. They just arrested me and sent me to prison. I
20 would appear in Court every week. At the end, they didn't see
21 any grounds against me. I suffered a lot in prison. At that
22 time human rights had no say. If they had a say, they would have
23 taken up my case that this was an allegation. What's the proof
24 that this man is so, so and so? But I'm not a convicted man. At
25 the end, to coincide with the last election, I was released in a
26 funny way. I was not expecting to be released at that time, so
27 they warned me that I shouldn't be among four to five people; and
28 secondly, by 8.00 I should have gone to bed. Then I asked what
29 kind of slavery was that. I said, "Are you afraid of me?"

1 MR HERBST: Your Honour --

2 JUSTICE DOHERTY: Yes, Mr Herbst.

3 MR HERBST: [Indiscernible].

4 JUSTICE DOHERTY: I missed a few parts, so I will do the
5 best I can. The charge for which they arrested me in 2002 - when
6 we came out from the jungle they were afraid of us. In the end -
7 there was a bit there I didn't get. In the end they said I had
8 arms and ammunition. The charge was arms and ammunition. They
9 did not find any. I was charged with aggravation. At the end I
10 knew they were putting political stress on us. It was because I
11 was in the army. I was a well-known man in the country. There
12 were five of us in the house. The trucks with OSD and OCD came.
13 They were well armed. They arrested us and said I was one of the
14 men who came on 6 January. There was a bit I didn't get. There
15 was nothing to charge, so they charged me with armed robbery.
16 But there was no arms, there was no witness. I appeared in Court
17 every week. I did not see any grounds. I suffered greatly in
18 prison. At the time, the human rights had no say. If they had a
19 say, they would say what is this man - I missed the next bit. I
20 am not a convicted man. To coincide with the last election I was
21 released. It was a funny way. They warned me to be not among
22 four or five people, to be in bed by 8 o'clock. What kind of
23 slavery is that? It was because they were afraid of me.

24 MR HERBST:

25 Q. And what four or five people did they tell you not to be
26 around?

27 A. Not four to five people. I said those who I was with were
28 five in number, but I was the only person who was arrested. When
29 they arrested me, they took me directly to the CID, and from

1 there they sent me to the maximum prison. For how long? In
2 spite of all the suffering, they couldn't find me guilty because
3 there was no implement, there was no witness who was a potential
4 witness, no exhibits. At the end they just left me like that.
5 From there, from the army - I was not dismissed from the army. I
6 went to the military headquarters because whoever is convicted,
7 the army would no longer want you. When I went there and checked
8 the records, my salary was running. First of all, when my woman
9 was pregnant, she went on the operations at the military hospital
10 at 34. That was where the operation was done.

11 Q. Now, Mr Witness, I'm not going to ask for your answer. I
12 simply asked you for the four or five names of the people that
13 you were warned not to be around. I'm not - that's all I ask
14 for, and I'd appreciate it if you would answer my question. Who
15 were the [Overlapping speakers] --

16 A. Not four or five people. It's the Court.

17 JUSTICE DOHERTY: You said they told you --

18 THE WITNESS: It's the magistrate.

19 JUSTICE DOHERTY: Mr Witness, listen to what I'm saying.
20 You said you were warned not to be among four or five people; to
21 be in bed by 8 o'clock. What sort of slavery is that? Counsel
22 is asking who are these four or five people you're talking about?

23 THE WITNESS: Well, the four to five people I'm trying to
24 talk about, that was the day of my arrest at 120 Fourah Bay Road
25 at my father's house.

26 JUSTICE DOHERTY: Let's have their names.

27 THE WITNESS: Well, one is called Mamie Labie; the other
28 Ishmael; and the other Manjavy; and another called Sheik Maknu.
29 We were there when I was arrested at my house. It was not on the

1 streets. In my bedroom.

2 JUSTICE DOHERTY: Mr Witness, I'm clear on that point now.
3 Just pause.

4 Mr Herbst, did you hear the answer?

5 MR HERBST: Your Honour, I heard it. I'm not going to ask
6 for the names - for your Honour to give me the names. I'll just
7 wait for the transcript. But I'm advised by the court officer
8 that I should tell your Honour that --

9 JUSTICE DOHERTY: I'm very much aware that it's 20 past and
10 it's time for the accused Kamara and Kanu to leave the Court
11 precincts.

12 Mr Serry-Kamal, this is your witness. Do you want to
13 proceed on?

14 MR SERRY-KAMAL: Sorry?

15 JUSTICE DOHERTY: I said the accused Kamara and Kanu have
16 to leave the court to go back to the detention area. It's the
17 time limit for them. I'm asking - this is your witness. Do you
18 want this cross-examination to proceed?

19 MR SERRY-KAMAL: I will have to consult with my learned
20 friends. If they're willing to cooperate, we'll can push on like
21 yesterday.

22 JUSTICE DOHERTY: In the meantime, Mr Kamara and Mr Kanu
23 should be taken back. It is the time limit for their transport.

24 MR SERRY-KAMAL: Your Honour, I think we can go on to 3.30.

25 JUSTICE DOHERTY: Continue on, Mr Herbst, please. You said
26 you were not pursuing the names, you would see the transcript.
27 Your next question, please. I think I may have inadvertently
28 switched off the witness's microphone.

29 Proceed, Mr Herbst.

1 MR HERBST: Thank you, your Honour.

2 Q. Now, Mr Witness, when did you start having problems with
3 your sister - with Mr Kamara's sister and Mr Kamara's mother?

4 JUSTICE DOHERTY: Mr Witness, did you hear the question?

5 THE WITNESS: No, I did not hear the question.

6 HER LADYSHIP: I will repeat the question. The question
7 was, "When did you start having problems with Mr Kamara's sister
8 and Mr Kamara's mother?" In actual fact, there are two
9 questions. We will start with the sister. When did you start
10 having problems with the sister?

11 THE WITNESS: Well, I started having problems with his
12 sister since 2010.

13 JUSTICE DOHERTY: And problems with his mother?

14 THE WITNESS: Both of them.

15 JUSTICE DOHERTY: Proceed, Mr Herbst.

16 MR HERBST:

17 Q. When in 2010?

18 A. Around about December.

19 Q. What happened around December to start causing the
20 problems?

21 A. Because of the problem, was that when we were together my
22 family took - handed me \$5,000. They said I should not be
23 involved in any military programme. I bought my land and we were
24 doing petty business. One day my vehicle was giving me some
25 problems. You know that when you have an old vehicle, when it
26 takes one year, it will start developing problems, so I started
27 spending money on it. So there was a day that I ran short. Then
28 I went and met her and tried to ask her for some money that I
29 would use to live my life for that day as a young man. But in

1 the end she refused. When she refused, then I relaxed. Then I
2 bounced back. I quarreled with her. I said because now that I
3 had run short, you want to contest? Then I hit her in the face.
4 Then the mother came. But I had built a structure on their land,
5 a flat. When the mother came, she told me - she said, "Mr Man,
6 do you know what I'm telling you? This is my child's father's
7 plot. Take away your house and your vehicle so that you won't
8 kill my child." And I said, "Mom, the house is for your daughter
9 and your grandchild, because I know I wouldn't want them to be in
10 the streets. So you take the house." Then I entered my car,
11 switched on the ignition. Then I moved. Since I moved out of
12 there, I never returned to go and stay there. After four, five
13 to six months, I started going back to the house to visit my
14 child. I kept visiting my child. At the end - I am staying at
15 Aberdeen right now. That was the cause that I separated from
16 them. But still Bazzy is my brother because of being in the Army
17 together. His sister has a child from me. I had become a
18 potential witness for him since the AFRC. I defended him because
19 I know what the game is. So that's it. You see? So I'm now
20 staying at Aberdeen. I'm now staying at Aberdeen right now.

21 JUSTICE DOHERTY: Proceed, Mr Herbst.

22 MR HERBST: Your Honour, you may imagine that I did not
23 hear the answer. [Overlapping speakers].

24 JUSTICE DOHERTY: Well, I'm going to do my best. Bits of
25 it I didn't get, so I'm going to do my best. Because of the
26 problem. Because when we were together. My family handed me
27 \$5,000. They said I should not be involved in the military. I
28 bought land to start a business. The vehicle started giving me
29 problem. You know when an old vehicle when it starts, after one

1 year. I spent money on it. Then the money ran short. I asked
2 her for money. She refused. I stopped being a young man then.
3 And then there was a bit I missed. I quarreled with her because
4 I had run short. I wanted to contest it. I hit her on the face.
5 The mother came. I had built a flat on their land. The mother
6 said, My child's - this is my child's father's plot. Take your
7 house and take your vehicle. I said, Mom, the house is for your
8 daughter and your grandchild. I do not want them to be on the
9 street. So I got into the vehicle and I left. I did not come
10 back. After four or five or six months, I would go and visit my
11 child. I stay in Aberdeen now. Bazzy is still my brother. I
12 became a potential witness in the AFRC. I defended him. I know
13 the game. I am now in Aberdeen.

14 Mr Serry-Kamal appears to nod in agreement.

15 MR HERBST: Thank you. I thank the court.

16 Q. Now, Mr Witness, I'm going to ask you a specific question.
17 I would appreciate if you would give me a short, specific answer.
18 When did you leave Mr Kamara's sister and mother's house? You
19 said you left. When?

20 A. I have told you - I have told you it was in December of
21 2010. I have told you that. Don't you recall?

22 JUSTICE DOHERTY: Proceed.

23 MR HERBST: I didn't hear the answer, your Honour.

24 JUSTICE DOHERTY: It was when you said about the problems,
25 Mr Herbst. You said when in 2010, and he said around about
26 December. I think that's what he's referring to.

27 MR HERBST:

28 Q. Mr Witness, I asked you when the problems started earlier
29 on, and I thought you said in December 2010. Now you're telling

1 me that you left in 2010 also - in December 2010; is that right,
2 or not?

3 A. Well, I told you a problem between a woman and a man never
4 ends. It happens every day. But the final day that I left there
5 was in December.

6 MR HERBST: I heard him say, your Honour, that he left in
7 December, but I didn't hear what came before that.

8 JUSTICE DOHERTY: "Well, I told you, a problem between a
9 man and a woman never ends. It happens every day." But I left
10 in December.

11 MR HERBST:

12 Q. Now, you said on direct examination that you were causing a
13 disturbance at the compound. What were you doing to cause a
14 disturbance at the compound?

15 A. The way I was disturbing - it was through jealousy. When a
16 man and a man are staying together, the man would be jealous of
17 the woman and the woman would be jealous of the man. It's
18 nothing else.

19 MR HERBST: May I have that answer, your Honour?

20 JUSTICE DOHERTY: "It was through jealousy." When a man
21 and a woman stay together, the woman gets jealous and the man
22 gets jealous. It was through jealousy.

23 MR HERBST:

24 Q. I don't think you answered my question, Mr Witness. You
25 said you were causing a disturbance. What were you doing to
26 cause a disturbance?

27 A. From jealousy, violence.

28 MR HERBST: I thought I heard the witness say "violence",
29 your Honour.

1 THE WITNESS: That's the disturbance.

2 JUSTICE DOHERTY: "From jealousy." From jealousy through
3 violence. That's what was the disturbance.

4 MR HERBST: I thank the Court.

5 Now, I heard Mr Serry-Kamal say I had no problem if I
6 continued to 5.30. I guess that's 3.30 your time.

7 HER LADYSHIP: Oh, yes, 3.30 your time - 5.30 your time. I
8 thought for a minute you were going to keep going to 5.30
9 Freetown town.

10 Mr Serry-Kamal, a few more questions, or not?

11 MR SERRY-KAMAL: My learned friend Mr Metzger is not
12 disposed to continue.

13 JUSTICE DOHERTY: Does that mean he's outvoted, or what?

14 MR SERRY-KAMAL: He's still recovering from the trip.

15 JUSTICE DOHERTY: I see.

16 Mr Metzger, let's have two questions and then stop.
17 Compromise.

18 MR METZGER: I'm grateful.

19 JUSTICE DOHERTY: Two more questions, Mr Herbst, please,
20 and then we'll adjourn - we'll stop the cross-examination
21 temporarily.

22 MR HERBST:

23 Q. Now, Mr Keh-For-Keh, your telephone number at the time --

24 A. Yes, sir.

25 Q. -- what was the telephone number at the time, sir?

26 A. Well, my telephone number at that time - it's a long time
27 now. I was using 076942355.

28 Q. Well, let me ask you, Mr Keh-For-Keh, did you have this -
29 this number and were you receiving calls from the prison on this

1 number: 23276337395?

2 A. I didn't get you. I didn't get you well.

3 Q. I'm asking, sir, if you recognise this phone number as
4 yours: 23276337395.

5 A. I'm in doubt of that number. Over my knowledge. I don't
6 know that number.

7 Q. So are you tell us your memory is not very good; that it
8 might be your number, but you just don't remember?

9 A. Well, I'm trying to tell you that at that time the number
10 that you asked me for is a number that I have tried to put to
11 you, 076942355. So this number that you've called, it's over my
12 knowledge.

13 JUSTICE DOHERTY: Mr Witness, what does "over my knowledge"
14 mean?

15 THE WITNESS: I don't have any idea about that number
16 because it's a strange number to me. That's what I mean.

17 MR HERBST: Your Honour, I wonder if I could ask the Court
18 to review for me what the witness's answer was before your Honour
19 put that last question to the witness.

20 JUSTICE DOHERTY: There was a series of answers. Maybe
21 I'll just go through them. I am in doubt. It is over my
22 knowledge. I do not know this number. Then you asked was his
23 memory not good. And he said that number, I do not know. This
24 number you call, it is over my knowledge. So I asked him what
25 that "over my knowledge" meant, and he replied I have no idea
26 about the number. It is strange to me.

27 MR HERBST:

28 Q. Mr Witness, the reason I asked you about that number is
29 because there has been evidence in this trial from witnesses in

1 Rwanda that they called you on this number that I read out to
2 you, 23276337395. So I'm asking you does that refresh your
3 recollection that that was a telephone number that people in
4 Rwanda called you on; yes or no?

5 A. Let me tell you, my number that I was using is what I have
6 told you about. Secondly, this particular number that you are
7 trying to put to me, the way you spoke, it was as if it's my
8 number. It's not my number, and I don't have any idea about that
9 number.

10 MR HERBST: Your Honour, before we finish this part of the
11 cross, may I just ask your Honour for some assistance on the full
12 answer. I heard him say at one point he didn't know anything
13 about the number, but I know he said some other things.

14 JUSTICE DOHERTY: Let me tell you, that number - I told you
15 my number. The number I told you is my number. This number you
16 put to me, it is if it is my number. I have no knowledge of this
17 number.

18 MR HERBST: Thank you, your Honour. So I think I overdid
19 myself and asked more than two questions. I think this would be
20 an appropriate time to suspend the cross-examination.

21 MR METZGER: I'm content to go to 4 if your Honour would
22 like.

23 JUSTICE DOHERTY: Mr Metzger is going to indulge us to
24 4:00, so we'll just keep going. But if you yourself, Mr Herbst,
25 are beginning to wane, we'll maybe have another compromise.
26 We'll just keep going to 4. Counsel for the Defence would like
27 to try and get this evidence finished.

28 MR HERBST: I would too, your Honour.

29 Q. Now, Mr Witness --

1 A. Yes, sir.

2 Q. -- you remembered very well the telephone call that you
3 described or series of calls that occurred on November 30. What
4 is the next time after November 30 that you called Mr Kamara or
5 anyone else in the Rwanda prison or Mr Kamara or anyone else in
6 the Rwanda prison called you? What's the next day or date after
7 November 30?

8 A. Well, after November 30, I did not make any calls. They
9 did not make any call to me. In the first place, I don't have
10 any phone. I have lost my phone. I don't have a phone. I did
11 not make a call, and they did not call me.

12 MR HERBST: May I have that answer, your Honour?

13 JUSTICE DOHERTY: After November 30 I did not call. They
14 did not call me. I lost my phone. I did not have a phone. I
15 did not make calls after November 30.

16 MR HERBST:

17 Q. All right. Let's go backwards in time from November 30.
18 On what day in November, previous to November 30, did you call
19 the men in Rwanda or they called you?

20 A. Before November 30 or November 30?

21 JUSTICE DOHERTY: [Microphone not activated].

22 THE INTERPRETER: Your Honour's microphone is not on.

23 JUSTICE DOHERTY: Excuse me. Mr Witness, the Court is up
24 this way. Stop looking that way. Mr Witness, look, I'm up here.
25 I'm the one who has to listen to what you say. I'm not over in
26 that corner. Stop looking over there. You've been doing it for
27 about 10 minutes now. Answer the question, please.

28 THE WITNESS: Repeat it.

29 JUSTICE DOHERTY: Mr Herbst, please repeat your question.

1 MR HERBST:

2 Q. Going back in time from November 30, that is, earlier than
3 November 30, on what day previous to November 30 did you call the
4 men in Rwanda or they call you?

5 A. Before November 30 - well, before November 30 I used to
6 call, but after November 30 I did not call anymore. It was Bazzy
7 that I used to call.

8 MR HERBST: Your Honour, the only part of that answer that
9 I heard was, I did not call anyone. "It was only Bazzy that I
10 used to call." Was there anything else?

11 JUSTICE DOHERTY: Yes. The witness said, "Before November
12 30, I used to call. After November 30, I did not call any more.
13 It was only Bazzy I used to call."

14 MR HERBST:

15 Q. Well, did you call on 29 November?

16 A. I said before that I can't tell you a specific day or date
17 or time before that.

18 MR HERBST: May I have that answer, your Honour?

19 JUSTICE DOHERTY: Before that. I cannot give you a
20 specific day or time before that.

21 MR HERBST:

22 Q. What was the number that you earlier gave as the number you
23 did remember for yourself? Please give that to me again.

24 A. Which number?

25 Q. You gave me - I thought you gave me a number that ended in
26 55 that you said was your phone number. Would you please give me
27 the whole phone number?

28 A. Yes, sir. Should I give it to you?

29 JUSTICE DOHERTY: Please do, Mr Witness.

1 MR HERBST:

2 Q. Yes, please.

3 JUSTICE DOHERTY: Mr Witness, do you have something in your
4 hand?

5 THE WITNESS: Nothing.

6 JUSTICE DOHERTY: I see. That's fine. I just couldn't see
7 and there seemed to be something. Please answer the question.

8 THE WITNESS: Repeat it.

9 MR HERBST:

10 Q. The telephone number that you gave us before which you said
11 was your phone, would you give it to us again?

12 A. Yes, sir: 076942355.

13 Q. Thank you. Now, you just said that November 30 is the only
14 day that you can remember that you specifically called Mr Kamara
15 or Mr Kamara called you. I want you to tell us how you were able
16 to remember the call that you just described on direct
17 examination and why you know that it happened on November 30.

18 A. November 30 I called. I called Ibrahim Bazy Kamara. Then
19 he received the call. Then we started discussing, but my phone
20 was crackling. But at that time --

21 JUSTICE DOHERTY: Mr Witness. Mr Witness. Mr Witness,
22 listen to what I want to explain. We are clear on what you said
23 before. You're saying what you said before.

24 The question is this: Why do you remember the specific
25 day, 30 November, that that was the day when you called Mr Kamara
26 or Mr Kamara called you? Now, why do you remember that day?

27 THE WITNESS: Well, the reason I can remember that day is
28 because I was involved in an accident when I hit a bike - a motor
29 bike. That's why I can remember that day.

1 MR HERBST: May I have that answer, your Honour?

2 JUSTICE DOHERTY: The reason I remember that day is because
3 that day I was involved in an accident. I hit a bike.

4 MR HERBST:

5 Q. And what's the name of the person who was riding the bike
6 that you hit?

7 A. Well, something Hassan on the Beach Road. I can't remember
8 his surname anymore because it was a long process.

9 Q. Did you say it was a long process?

10 JUSTICE DOHERTY: That's what Mr Interpreter said.

11 MR HERBST:

12 Q. What do you mean, "it was a long process"?

13 A. It's a lot of talk. It's been a long time. We have solved
14 that problem. It's been a long time. I cannot remember his
15 surname.

16 MR HERBST: Your Honour, I didn't hear the answer.

17 JUSTICE DOHERTY: There was a lot of talk. It was a long
18 time. We solved the problem. I don't remember the surname.

19 MR HERBST:

20 Q. You solved what problem?

21 A. The accident that I was involved in.

22 Q. Was the man on the bike injured?

23 A. You should know that it was an accident. The motorbike had
24 no guard. The vehicle had a guard. The one on the motorbike
25 felt it. He was bruised on his knee and his elbows, and he broke
26 my headlight.

27 Q. Mr Keh-For-Keh, we've heard evidence in this case that
28 Mr Kamara [indiscernible] 2010. Do you remember being called by
29 Mr Kamara on November 19, 2010?

1 A. Well, I have told you that that man and I, before that he
2 used to call me and I used to call him. So there is no doubt
3 about that. Because he is my brother-in-law. We don't talk
4 about bad things. We talk about family affairs.

5 Q. My question was do you remember Mr Kamara calling you on
6 November 19?

7 A. I can't remember the date. But I told you that we used to
8 talk. He would call me and I would call him, but I can't
9 remember the date.

10 Q. Well, do you remember where you were when he called you on
11 November 19?

12 A. Where I was?

13 Q. Yes.

14 A. I was in Freetown. I was in the city, the western area.

15 Q. And were any ex-soldiers with you?

16 A. Yes.

17 Q. And which ex-soldiers were with you that day?

18 A. The soldiers and some civilians were with me: Manga,
19 V-Boy, Churchi II, Idriisa Serry Kargbo, alias Churchi II, and some
20 other men, and Samuel Kargbo alias Ragga.

21 Q. And they were all with you in the western area on November
22 19?

23 A. We met. Not that wherever I go, we'd meet there.

24 JUSTICE DOHERTY: Mr Witness, I've already told you stop
25 looking in that corner. This is where you face the Court.

26 Your question, Mr Herbst.

27 MR HERBST: Thank you, Your Honour.

28 Q. Mr Witness, where in the western area were you when
29 Mr Kamara called you and you were with Manga, V-Boy, Churchi II,

1 and Sammy Ragga? Where?

2 A. At Sweissy, the central part of Freetown.

3 Q. I thought you just told us you were in the western area,
4 not the central part of Freetown?

5 JUSTICE DOHERTY: Western area is the whole province - the
6 whole peninsula, Mr Herbst.

7 MR HERBST: I see. I withdraw the question.

8 Q. Well, on 19 November did they all get on the phone with
9 Mr Kamara?

10 A. Yes, sir.

11 Q. And was the line crackling?

12 A. Yes, on my phone, the line was crackling.

13 Q. And did Mr Kargbo have to call you back on another line?

14 JUSTICE DOHERTY: Kargbo or Kamara?

15 MR HERBST: Kamara, your Honour. I'm sorry.

16 MR SERRY-KAMAL: I wonder what date the witness has been
17 asked to talk about.

18 JUSTICE DOHERTY: It's still the 19th of November. We've
19 moved from 30th of November.

20 MR HERBST: Now, your Honour --

21 JUSTICE DOHERTY: Yes, Mr Herbst.

22 MR HERBST: Your Honour, that is a speaking objection that
23 prompts the witness. I object to it.

24 MR SERRY-KAMAL: I object to my learned friend making such
25 disparaging remarks about someone much older than him, both at
26 the bar and as a person. And a former attorney general of this
27 republic.

28 JUSTICE DOHERTY: Yes. Gentlemen. I have answered the
29 question. We have moved from 30th, that's been dealt with, we

1 are dealing with 19th of November. And the question was --

2 MR HERBST: Yes. Now - well, the witness, as I recollect,
3 the witness said the phone was crackling, and I'm asking him
4 whether Mr Kamara had to call him back on someone else's phone
5 that day.

6 JUSTICE DOHERTY: Mr Witness, did you hear the question?

7 THE WITNESS: Yes, I heard the question.

8 JUSTICE DOHERTY: Answer it now.

9 THE WITNESS: When the phone was crackling, then Samuel
10 Kargbo, alias Ragga, called my man, but my man did not know it
11 was him. Bazzy did not know it was him. Then Bazzy called.
12 Then the discussion was still on. When we were giving him
13 encouragement so that he won't feel bad, so that he can calm
14 down. That was what God destined.

15 MR HERBST:

16 Q. Now, Mr Witness, there has been evidence in this case that
17 Mr Kamara called you on November 22nd, 2010. Did he call you on
18 November 22nd, 2010?

19 A. I have told you that that man is my brother-in-law. He
20 would call me and I would call him. I cannot remember the date,
21 you see.

22 Q. Well, on how many days in November 2010 did Mr Kamara call
23 you?

24 A. I can't remember. I can't give you the number of times
25 that we discussed. How many times we talked. I can't give you
26 the right number.

27 Q. I'm not asking you for an exact number, Mr Witness. Let me
28 ask it to you this way: Besides November 19 and November 30,
29 besides those two instances, how many other times did Mr Kamara

1 call you - and when I say "how many", are we talking about more
2 than five or less than five other times?

3 A. Before November 30th, I can't tell you the right number but
4 we were discussing. Not once, not twice, not three times. We
5 used to talk.

6 Q. Now, I put it to you that in November of 2010 one of the
7 things you were talking about with Mr Kamara was contacting
8 witnesses to persuade them to recant their testimony; yes or no?

9 A. No, no, it's not possible because if I do that --

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

11 JUSTICE DOHERTY: Mr Serry-Kamal, I am afraid I couldn't
12 hear you clearly.

13 MR SERRY-KAMAL: I said, my learned friend is in full flow
14 but we just seem to - new topic and it's past 4:00.

15 JUSTICE DOHERTY: It was just a minute past.

16 MR SERRY-KAMAL: I think it's a convenient time for him to
17 go back and reconsider and come back.

18 JUSTICE DOHERTY: Who go back?

19 MR HERBST: [Microphone not activated].

20 MR SERRY-KAMAL: My learned friend. We did say to end at
21 4.

22 JUSTICE DOHERTY: Yes, yes, we did. I'm trying to write
23 down the answer that he's already given and then I will adjourn.
24 The witness says no, no - Mr Witness, repeat your answer. I
25 didn't hear it.

26 THE WITNESS: I did not get you.

27 JUSTICE DOHERTY: Mr Herbst, repeat your question.

28 MR HERBST:

29 Q. My question, Mr Witness, was: I put it to you that one of

1 the subjects that you discussed with Mr Kamara in November 2010
2 was persuading witnesses, like 334, to change their testimony to
3 assist Mr Kamara and the other convicts in Rwanda to reduce their
4 sentences or be released; yes or no?

5 A. No. If I did that, I'll be involving myself because I was
6 a Defence witness to defend the Armed Forces Revolutionary
7 Council. So I can't involve myself in such things to talk to a
8 Prosecution witness. I will go to gaol, I will spend time in
9 gaol more than the man who is in gaol because I know what I'm
10 doing because I have testified here. I was a Defence witness. I
11 don't need to talk with a Prosecution witness.

12 MR HERBST: Your Honour, I think for the last time today,
13 when your Honour gets a chance, if you could review that answer
14 with me, I'd be grateful.

15 JUSTICE DOHERTY: Yes. There was one part I didn't get
16 written down. No, no, if I did that, I would be involving
17 myself. I was a Defence witness for the AFRC. I will not
18 involve myself with the Prosecution - with Prosecution witness.
19 I was a Defence witness. I have no need to talk to a Prosecution
20 witness.

21 MR SERRY-KAMAL: Be held in.

22 JUSTICE DOHERTY: I will be longer in gaol than the man who
23 is there.

24 Mr Herbst, I think this is appropriate point to adjourn the
25 cross-examination or adjourn for the day. We've gone over our
26 normal time, and I'm very grateful to all counsel who have
27 indulged the Court in this way.

28 Mr Kamara - Mr Herbst, I'm going to remind the witness of
29 his oath, and then I'm going to let him go, and then we're going

1 to go to this other matter. In fact, I'm in mind that maybe this
2 other matter shouldn't be discussed in the presence of any of the
3 accused.

4 Mr Witness, you have taken - you've taken the oath today.
5 You have promised to tell the truth. That oath is still binding
6 on you. You are not to discuss your evidence with any other
7 person until all your evidence is finished. You understand?

8 THE WITNESS: Yes, ma'am.

9 JUSTICE DOHERTY: Very good. I want you to come back to
10 this court at 9 o'clock tomorrow morning. Mr Court Officer will
11 assist to you leave.

12 And Mr Nicol-Wilson, I've been giving some thought to your
13 problem. I have not yet received - well, I'm in court. So I
14 cannot very well receive a reply from Madame Registrar who I know
15 will act promptly. So I will allow you some leeway to discuss
16 this witness's evidence with Mr Bangura, and I'll trust your
17 professionalism not to overstep that.

18 Now, Mr Bangura and Mr Kargbo should leave the Court. I've
19 got one other matter to deal with. Please escort the accused
20 out.

21 Mr Herbst, there are people in the public gallery. If you
22 consider that it's appropriate to deal with this matter not in
23 public and in a private session, then I will so direct.

24 MR HERBST: Your Honour, just so I know, make sure we're on
25 the same wavelength, the matter that we're talking about is the
26 second issue that I wanted to address earlier?

27 JUSTICE DOHERTY: That's correct. Yes, that is correct.
28 It is the matter involving yourself.

29 MR HERBST: Well, I'm content to discuss it either way,

1 your Honour. Either in public session or closed session,
2 whichever your Honour thinks is best.

3 JUSTICE DOHERTY: Well, for transparency, et cetera, we'll
4 have it in open session. The issue, as I've already indicated,
5 is one that has caused me concern inasmuch as statements have
6 been made, and there is a right, to my mind, a right to rebut or
7 to have your say. This could be dealt with either by way of
8 submission or you may have other views in mind. So I will allow
9 you to address on the matter.

10 MR HERBST: I thank the Court very much. I am content to
11 represent as an officer of the Court and make the following
12 representations to the Court, just as I made representations as
13 an officer of the Court with respect to the first issue.

14 With respect to this issue, I can say that the suggestion
15 that I manipulated the prison log is ludicrous. And I say that
16 for several reasons, and I also encompass within my remarks the
17 suggestion that Mr Sengabo somehow manipulated the log, the
18 prison log.

19 I note that when Mr Sengabo testified, Mr Kanu's counsel,
20 Mr Metzger, did not put the question to Mr Sengabo. So the
21 suggestion or allegation, whatever it is, in my view has no
22 weight. But to put it to rest, and I've said this before in open
23 Court when we were discussing the issue of Mr Sengabo as a
24 witness, I was not the first lawyer in this case to review the
25 prison logbook. To my knowledge, the first lawyer that reviewed
26 the prison logbook was Mr Metzger. I only became aware of the
27 existence of the prison logbook when Mr Metzger delivered
28 Mr Sengabo's statement and his --

29 MR METZGER: I did not serve my learned friend with a

1 statement. I'm sorry to interject.

2 JUSTICE DOHERTY: Mr Herbst, Mr Metzger said he didn't
3 serve you with a statement, and I don't recall one on file, but I
4 do know there was some form of exchange in Court.

5 MR METZGER: Your Honour, I'm very sorry to interrupt my
6 learned friend, but I thought I needed to say this because there
7 has been issues about the statement and I went to the point of
8 asking Mr --

9 JUSTICE DOHERTY: Mr Herbst is trying to say something. He
10 may be correcting. So let's see what he wants to say.

11 MR METZGER: So be it. I don't want him to fall into
12 unnecessary error.

13 MR HERBST: Yes. I appreciate. Let me correct - let me
14 correct my remarks to this extent. It was when Mr Sengabo
15 provided to me the statement that Mr Metzger had obtained from
16 him as well as --

17 JUSTICE DOHERTY: I'm beginning to ask myself if I should
18 be hearing some of this.

19 MR METZGER: At this point, your Honour, I would ask that
20 we adjourn for the day, my learned friend thinks about what he is
21 saying. It's too late in the day to have a discussion like this.
22 We are getting into a very, very serious area because your Honour
23 may recall questions I put to Mr Sengabo when he gave his
24 evidence. I specifically asked him if he had given my statement
25 to my learned friend. In evidence the answer was "no".

26 JUSTICE DOHERTY: Well, really the crux of what this is
27 about is not vindicating or otherwise. What I am saying is this.
28 In this Court in which I'm presiding, an allegation going to
29 professional integrity has been made. It was also put as

1 evidence. There is two aspects to it.

2 On the integrity and in the evidentiary aspect of it,
3 counsel can either seek leave to call rebuttal or make
4 submissions - something as you are doing now, Mr Herbst - in
5 which case I would suggest that the most appropriate place to
6 make submissions would be at the final part of it. But I think
7 maybe it would be wise if we deal with it when we're all a bit
8 less, how would I put it, it's at the end of a long day and it
9 might be wiser to mull it over.

10 MR METZGER: When gravity has not quite taken its toll.

11 MR HERBST: Excuse me, Mr Metzger. I appreciate what your
12 Honour is saying, but I just want to complete my representation
13 to the Court. I did nothing to the book. That's the fundamental
14 point. I did nothing to the book. And I have no knowledge that
15 anyone else did - Mr Sengabo or anybody else. And I will add
16 that when Mr Kanu who laid the allegation was asked what his
17 basis was, the only basis that he could muster was the fact that
18 he saw Mr Sengabo and I speaking.

19 JUSTICE DOHERTY: Well, I'm grateful for that. I think
20 your stance on it cannot be any clearer. And unless you make
21 some application under the rules to actually adduce sworn
22 evidence, and it would have to be your own, and we then enter
23 into a code of conduct and all sorts of other things, I am
24 prepared to note this on record and the matters that you are now
25 saying concerning the questions and the answers given by Kanu can
26 be certainly dealt with when it comes to making submissions on
27 credibility and weight.

28 So I am going to put the matter to rest. I accept your
29 integrity on the point and I will wait for the submissions. And

1 I'm grateful for the clarification because - not the
2 clarification, I mean the statement, as I wish to ensure that
3 you've had an opportunity to have your say. Mr Metzger is on his
4 feet.

5 MR HERBST: I thank the Court.

6 JUSTICE DOHERTY: Let Mr Herbst speak.

7 MR HERBST: I thank the Court. Before we adjourn, I would
8 just like to say I don't expect the cross-examination of this
9 witness to last more than another half hour to an hour at most,
10 and so I would be grateful to know what is planned for the rest
11 of tomorrow so that I can, A, prepare, and B, ascertain for
12 scheduling purposes where we are.

13 JUSTICE DOHERTY: Right. Now, I will deal with, first of
14 all, with what Mr Metzger's saying, and you've made a fair
15 application about scheduling, I will then address it.
16 Mr Metzger, your first point.

17 MR METZGER: Just before - I know that your Honour has put
18 the matter to rest, having heard from the Prosecution. I want to
19 state for the record that in his submissions to you, Mr Herbst
20 included me. I would respectfully submit he should not have done
21 so because I have not personally made it an issue in this case,
22 but he has by suggesting I reviewed that record before him.

23 I don't want to give evidence in this case. I have never
24 sought to give evidence in the case in my life. But I would
25 refute any allegation made by the Prosecution in this case that I
26 have seen the book in the condition that it was put before the
27 Court.

28 JUSTICE DOHERTY: Mr Metzger, if it's of any consolation to
29 you, I implied no impropriety on you at all. My understanding of

1 the words that Mr Herbst was laying out a historical record of
2 how the book came to be in Court.

3 MR METZGER: I accept that from you, your Honour, and I
4 don't take the matter any further. I'd appreciate it if
5 Mr Herbst also took the same approach. That's about the third
6 time he said it.

7 JUSTICE DOHERTY: Now, Mr Herbst, you've heard my remarks
8 and Mr Metzger's remarks. Is there anything you wish to say?

9 MR HERBST: I don't know whether your Honour heard me, but
10 I did say I'm happy to take that approach in reply to Mr Metzger.

11 JUSTICE DOHERTY: Good. Now, the next matter we will need
12 to address is the next witnesses. Mr Serry-Kamal has given us an
13 indication that this may be his only witness.

14 Mr Serry-Kamal, since we're dealing fundamentally with your
15 evidence, what is the situation?

16 MR SERRY-KAMAL: Well, I did indicate this afternoon that I
17 will be talking to one more witness when I go back to my
18 chambers. Depending on the cross-examination tomorrow, I will
19 decide. Because really it's only one incident, one or two
20 incidences that concern me. The rest of the case has been very
21 clearly put by various witnesses.

22 JUSTICE DOHERTY: Who is this witness going to be? We've
23 got to have some --

24 MR SERRY-KAMAL: Just somebody that was with them on the
25 30th.

26 JUSTICE DOHERTY: One of the persons that's already been
27 named?

28 MR SERRY-KAMAL: Yes, your Honour. If I can't find him,
29 then I will - because my problem is main witness I wanted to call

1 is a student at the university in Njala in the Mo campus and this
2 is exempt. I don't think I will be able to get him.

3 JUSTICE DOHERTY: I understand. The sum total, Mr Herbst,
4 you heard yourself, it may be one of the persons already named if
5 he can be located.

6 Mr Nicol-Wilson, I've given you some leeway to speak to
7 your client on that limited basis. Are you able to say anything
8 or do you need to speak to him first?

9 MR NICOL-WILSON: Your Honour, I think I need to speak to
10 him firstly before I give an indication as to whether I will be
11 calling any other witness.

12 JUSTICE DOHERTY: First thing tomorrow, then,
13 Mr Nicol-Wilson.

14 MR NICOL-WILSON: Speaking for myself, I don't think I will
15 need to, but I need to discuss it with my client.

16 JUSTICE DOHERTY: Yes, I can appreciate your point. That
17 leaves yourself, Mr Metzger. You had given us an indication
18 before you left Kigali.

19 MR METZGER: Indeed, your Honour. And working in the best
20 way we can, without necessarily the same kind of support that the
21 Prosecution has, I have with the able assistance of Mr Sherry who
22 has been working his socks off, if you excuse the vernacular,
23 arranged three witnesses to come to this complex today so that he
24 can proof them.

25 Unfortunately, the way in which the clock operates
26 sometimes in this country seems to be different from that which
27 we have in mind when we set these things down. And so by the
28 last - by the time I came in for the last session, only one of
29 those witnesses had turned up and been proofed to a particular

1 extent. I have asked Mr Sherry to go on and widen the scope that
2 he believed I had given him so that he could cover the area that
3 I wished to have covered and I hope to have a result by the close
4 of business - well, when I leave here.

5 If the witness is still here, I will then be able to assess
6 that particular situation. I cannot now tell the Court whether
7 any or both of the two other witnesses have attended Court. I'm
8 afraid that my inquiries in the Regent area have been fruitless
9 thus far. But of course we still continue to inquire.

10 I am conscious of the amount of time that is available to
11 us. I am working as fast as I can with the facilities - not that
12 are available to me but that I have created for the purposes of
13 being able to assist this Court in the speediest possible time.

14 And I remind the Court, of course, that as far as the case
15 from Mr Kanu is concerned, I had indicated at a very early stage
16 that if I were to call witnesses other than Mr Kanu, it is likely
17 that I would be doing so because I felt that a case had been
18 raised or that the Prosecution had brought issues out and would
19 be loathe to be criticised for not dealing with them.

20 It is in the spirit of doing that that I find myself forced
21 to try and get witnesses who may answer certain questions. If I
22 can't, then I can't. But this is what has been happening as far
23 as the Defence for Kanu is concerned.

24 JUSTICE DOHERTY: Well, I have to bear in mind that these
25 accused are entitled to a trial within a reasonable period, and a
26 reasonable period is fast expiring.

27 MR METZGER: Had we not spent so long in Kigali - I
28 hesitate to lay blame, but far be it from me to, as it were, hide
29 behind the tree at Bottom Mango.

1 HER LADYSHIP: Not a particularly big tree.

2 MR METZGER: Well, once upon a time it was. Or any other
3 tree. Mr Herbst, doing the best he could, did a marvellous job
4 of taking a great deal of time with witnesses in this case, a
5 matter for him. But the courtesy that your Honour has extended
6 to the Prosecution in this case clearly must extend to the
7 Defence, particularly where the Defence are scrabbling about to
8 try and meet a case effectively which is put by the Prosecution.
9 And in my respectful submission in Mr Kanu's case none of the
10 material that was put to Mr Kanu in terms of the suggestion of
11 who he was talking to or why he was talking to them on those
12 telephone calls was ever raised in the Prosecution case. So it
13 could not have been anticipated.

14 JUSTICE DOHERTY: Mr Metzger, I thought myself that I was
15 giving the witnesses in Kigali in chief a very, very wide
16 spectrum. At no point did I intervene and ask what some of the
17 questions on relevancy went because I subscribe to the school of
18 judicial thinking that an accused person must have a leeway and I
19 don't think it's altogether fair to say that the accused were
20 curtailed in their examination.

21 MR METZGER: No, no, your Honour, I didn't say that at all.
22 I'm so sorry if that is the impression your Honour got. I simply
23 said we tried to stick to the map or, rather, to give evidence on
24 what we consider to be relevant matters considering the case the
25 Prosecution had disclosed to us. But in cross-examination - as
26 of course Mr Herbst is entitled to do - he did open the field,
27 not just in any minor way, but in a significant and all-consuming
28 fashion.

29 It is that, I'm saying, which has brought about the need

1 for the Defence to consider dealing with some of the matters
2 raised which had not been raised either in the Prosecution case
3 or in the pre-trial brief for the Prosecution. And there was no
4 hint of it, let alone flavour, in the pre-trial disclosure.

5 So we're doing our best to deal with what has come by way
6 of cross-examination almost ex improviso.

7 JUSTICE DOHERTY: I urge and remind all of you the time
8 constraints upon us. I will adjourn now until tomorrow at 9
9 o'clock and that is I think the only proper thing I can say
10 without making any implications of --

11 MR METZGER: I don't think it's wise, your Honour, to say
12 anything and I'm sorry if I have put on the Court the constraints
13 that we have been working under, but I certainly do not invite
14 any comment from --

15 JUSTICE DOHERTY: It's only proper that I am aware of them
16 in order to explain the delay, if there is any, when I come to
17 bear in mind the rights of an accused person to a trial within a
18 reasonable time.

19 I will adjourn Court until tomorrow at 9 o'clock. Please
20 adjourn Court.

21 [The Court adjourned at 4.23 p.m. until 9.00 a.m. the
22 following day]

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