



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

-V-

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

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

1 [Wednesday, 5 September 2012]

2 [Open session]

3 [Accused present]

4 [The Court resumed at 9.09 a.m.]

5 JUSTICE DOHERTY: Good morning. Kigali, are you hearing me
6 clearly?

7 THE COURT OFFICER: [In Kigali] Yes, madam, we are.

8 JUSTICE DOHERTY: I'll take appearances.

9 MR HERBST: Good morning, your Honour and everybody in
10 Freetown. Robert Herbst, independent counsel for the
11 Prosecution.

12 JUSTICE DOHERTY: Thank you. And we have a lone
13 representative here in --

14 MR NICOL-WILSON: Good morning, your Honour. Melron
15 Nicol-Wilson for Hassan Papa Bangura. Mr Metzger said I should
16 convey his apologies for being late. He's stuck in traffic and
17 he's on his way to the Court.

18 JUSTICE DOHERTY: That's fine. Thank you, Mr Nicol-Wilson.
19 I notice that Mr Serry-Kamal is not here either. I presume that
20 same applies to him.

21 I don't see Mr Kargbo. What's happened to him?

22 THE COURT OFFICER: Your Honour, the officer from WWS is
23 here to explain Mr Kargbo's condition.

24 JUSTICE DOHERTY: Please let us know.

25 MR SAMMIE: Your Honour, Mr Kargbo reported sick this
26 morning and we are just about to take him to the hospital for
27 medication.

28 JUSTICE DOHERTY: Thank you. I will note that and if he's
29 able to come into Court then he can come into Court, but we

1 cannot force the issue. I note Mr Kanu and Mr Kamara appear in
2 custody and Mr Bangura.

3 I have two preliminary matters before we return to
4 the evidence, and I remind the nonpresent witness of his oath.

5 First, I can repeat these.

6 In the course of meeting in chambers, counsel Mr Metzger
7 had raised the issue about matters that should be referred to in
8 submissions and asked if I would identify - I had already
9 identified one, but asked if there was others. I have considered
10 this and I have identified three matters that I will seek brief
11 submissions on. First is the elements of the offence and when it
12 comes to the elements of the offence, I'm really looking more for
13 bullet points, not a full treatise.

14 Good, Mr Metzger, I'm just mentioning a matter that
15 you raised in chambers. Just to repeat, elements of the offence.
16 Secondly, the relevant, weight, admissibility, et cetera, of
17 evidence of events outside the indictment period. Again, there
18 is a fair bit of case law on this and I don't expect anything of
19 any great length.

20 Thirdly, as I have already mentioned, relevance, weight,
21 et cetera, of evidence adduced by one witness concerning another
22 when that other witness - when these matters were not put to that
23 other witness.

24 As I've said, obviously counsel themselves in their
25 discretion will be wanting to put particular matters. Those are
26 the three things that I will - when it comes to the law and the
27 evidence, I will be putting some emphasis on.

28 The next matter I wish to raise is a preliminary
29 issue. Mr Metzger, I don't know if you heard me.

1 MR METZGER: Your Honour, I'm coming apart as we speak.

2 JUSTICE DOHERTY: I noticed that.

3 MR METZGER: I think even the Court wear is feeling the
4 strain. My apologies for my tardy attendance this morning. I
5 had called to let my assistant know so that the Court could be
6 made aware there seemed to be a little more than usual traffic at
7 Congo Cross today which I will to get past and generally because
8 I come very heavily laden, I have to be let through the gates
9 rather than coming through the turnstiles, which kind of adds to
10 my time.

11 I'm sorry I didn't hear what your Honour says because
12 obviously I wasn't here. I suspect it was a ruling in relation
13 to some of the material that was raised yesterday and I --

14 JUSTICE DOHERTY: I haven't come to that yet.

15 MR METZGER: Well then --

16 JUSTICE DOHERTY: First of all, Mr Nicol-Wilson very kindly
17 advised me that you were in traffic.

18 MR METZGER: I'm grateful to him.

19 JUSTICE DOHERTY: Yes. And I just outlined following our
20 chambers meeting and a matter that we discussed and you in
21 particular raised, I have identified three matters which I would
22 like to have counsel address - or I will be looking for. They
23 don't have to address, but I will be looking for when it comes to
24 submission: First is a very, very brief outline of the elements
25 of the offence. I said bullet points would be enough.

26 Secondly is relevance, weight, admissibility, et cetera, of
27 evidence relating to events outside the indictment period. There
28 is, as you know, law in this jurisdiction on that matter. And
29 thirdly, evidence adduced concerning one witness that when that

1 particular matter was not put to the witness in question, the
2 rule in Brown v. Dunne.

3 Those are the three things. I do not expect a long
4 treatise on any of those matters, but I will be looking at them.

5 The second element - have a seat, Mr Metzger.

6 The second matter I wish to raise is I received last night
7 a response from Madam Registrar, who very promptly investigated
8 the issues that were raised concerning Mr Herbst's possible
9 presence in 2004. Counsel should now have copies of Madam
10 Registrar's response. I've also included my own direction to
11 Madam Registrar under 33B to ensure counsel that the two
12 organisations that were specifically mentioned by Mr Metzger were
13 included in my instructions. And counsel will see from that that
14 the personnel department and through the Registrar have confirmed
15 that Mr Herbst was not retained by the Court in any capacity
16 prior to 2011.

17 I'll let you absorb that for a few minutes, Mr Metzger,
18 because the issue arose in your cross-examination. So I will
19 therefore now turn and say --

20 MR METZGER: I have read it and absorbed it. If
21 your Honour wishes me to address you on it, I'm in a position --

22 JUSTICE DOHERTY: Yes, if we could dispose of it, that
23 would be very helpful.

24 MR METZGER: I'm grateful to the office of the Registrar
25 and its hardworking personnel who have clearly moved practically
26 heaven and earth in order to answer this query at very short
27 notice.

28 It gives me great pleasure to be able to say that on
29 the strength of this, I have to accept and do accept that on

1 behalf of my client, as he must - even though I haven't spoken to
2 him - that that is not an avenue that I wish to pursue.

3 So as far as the Defence for Kanu is concerned, one
4 can draw a definite line under that and the only, shall we say,
5 effect of that evidence will be in the second limb of the
6 material that your Honour asked counsel to address you on, i.e.,
7 something that happened outside the indictment period, the
8 relevance and weight of it insofar as it connects to or is
9 otherwise connected with the matter with which your Honour has to
10 decide.

11 JUSTICE DOHERTY: Thank you, Mr Metzger.

12 Mr Herbst, you have heard our exchange on this
13 matter. It arose in the cross-examination of Mr Bangura on
14 behalf of Kanu.

15 MR HERBST: Your Honour, I have heard it, and I've just
16 been handed the material, but I don't think I have to review it,
17 because the bottom line, of course, is not unexpected, certainly
18 by me.

19 I take it, then, that the cross-examination of
20 Mr Bangura is now complete? I wasn't clear on that.

21 JUSTICE DOHERTY: That was going to be my next question to
22 Mr Metzger. But before I ask Mr Metzger that question, I wanted
23 to be assured that you received the documentation and heard what
24 was said.

25 MR HERBST: Yes, your Honour, I did hear it and I have
26 received it, and I will read it. But as I've said, I don't think
27 it's necessary to delay the proceedings for me to read it now.
28 The conclusion is obvious.

29 JUSTICE DOHERTY: Thank you, Mr Herbst. I will join with

1 Mr Metzger in thanking Madam Registrar and her staff who answered
2 this so promptly and to help us move on.

3 Mr Metzger, it follows from this that your
4 cross-examination of Bangura was stood down pending this
5 information. Mr Bangura is still under oath pending the
6 completion of your cross-examination, and I would ask if you want
7 him back in the witness box in the event there are other elements
8 that you have not yet put to him.

9 MR METZGER: Your Honour, no, it seems to me that what
10 Mr Bangura has said - it may be of value to your Honour in due
11 course when we make submissions, but any such value would be of
12 necessity on the periphery of being marginal.

13 What Mr Bangura has said - and your Honour will recall,
14 there's been no cross-examination on matter - is that he was met
15 by someone at the King Harman Road. He believed it to be
16 Mr Herbst. The material before us suggests that it cannot be
17 Mr Herbst, but his evidence on that matter remains unchallenged.
18 It ill behoves me to seek to adduce further evidence about that
19 because I don't believe that your Honour will require any more
20 than that in terms of background material when it comes to
21 submissions as far as Mr Kanu's case is concerned when it relates
22 to Mr Bangura.

23 So I'm content that I do not have any further questions on
24 that topic. And as I indicated to your Honour that my
25 cross-examination was over, yes, Mr Bangura will face no more
26 questions from me.

27 JUSTICE DOHERTY: Just remind me, Mr Nicol-Wilson,
28 re-examination: We did deal with that, didn't we?

29 MR NICOL-WILSON: Yes, your Honour, and I have no further

1 questions in re-examination.

2 JUSTICE DOHERTY: In that case, I intend to release
3 Mr Bangura from his oath, and then he would be able to take full
4 instructions, et cetera, from counsel.

5 Mr Bangura, did you understand anything that has been
6 said? Or I will try and explain it simply to you.

7 ACCUSED BANGURA: Yes, your Honour.

8 JUSTICE DOHERTY: There are no more questions for you,
9 Mr Bangura. Therefore, you are no longer under oath, and
10 therefore you are at liberty to speak to your lawyer or others
11 about what you said. Do you understand me?

12 ACCUSED BANGURA: Yes, my Lord.

13 JUSTICE DOHERTY: Thank you. Mr Serry-Kamal, other counsel
14 will let you know, no doubt, what's happened. Basically, Madam
15 Registrar has given us a response concerning Mr Herbst. And
16 counsel for Kanu, Mr Metzger, has indicated he will not be
17 pursuing any further cross-examination of Mr Bangura and
18 Mr Bangura has been released from his oath.

19 I also outlined to counsel elements in the submissions, but
20 they can be made readily available for you during the break.

21 MR SERRY-KAMAL: Thank you, your Honour. Sorry I'm late.

22 JUSTICE DOHERTY: Now, your witness is conspicuously
23 absent, Mr Serry-Kamal. Do you know where he is so we can
24 recommence?

25 MR SERRY-KAMAL: Your Honour, I warned him yesterday to be
26 here at 9 o'clock.

27 MR METZGER: [Microphone not activated].

28 MR NICOL-WILSON: Your Honour, I saw him outside at 8.30
29 this morning when I came. He's outside.

1 JUSTICE DOHERTY: That's very good. Now, shall I ask
2 Mr Court Officer to find him or - because he's under oath and I
3 have to be cautious.

4 MR SERRY-KAMAL: I've sent somebody to call him.

5 JUSTICE DOHERTY: Fine, Mr Serry-Kamal.

6 I don't know who has got the musical instrument in Court,
7 but I would be grateful if they would turn it off.

8 MR METZGER: It's just one of my pieces of equipment that
9 requires recharging, and as I can't get it to the plug quick
10 enough, it's warning me. Hopefully now that it is receiving
11 power, it will stop doing that.

12 And whilst we're waiting to start, I shall try to arrange
13 myself so that I'm not in a constant state of dishabille in front
14 of your Honour.

15 JUSTICE DOHERTY: Yes, you're lucky you're not in Northern
16 Ireland.

17 Just to advise Kigali, the witness is being brought.
18 He is in the Court precincts.

19 While we're waiting, Mr Nicol-Wilson, have you had a chance
20 to - in the restricted impositions put on you - been able to
21 discuss with your client other witnesses?

22 MR NICOL-WILSON: No, your Honour, I will do so during the
23 first break this morning.

24 JUSTICE DOHERTY: Very good. Mr Court Officer, what's
25 happened to this witness? We've been waiting quite a while now.

26 THE COURT OFFICER: [In Kigali] Madam, I have just called
27 security and they tell me that the witness has entered and he's
28 on his way to the Court.

29 JUSTICE DOHERTY: Perhaps I could use this period when

1 we're waiting doing nothing, Mr Metzger, Mr Herbst, to ask if you
2 have identified the pages of the diaries that are to be tendered.
3 In your absence, Mr Metzger, there was a request by your client
4 to have the diaries returned to him. I said that I would wish to
5 entertain that in your presence. Have they been identified?

6 MR METZGER: It was my understanding, your Honour, that
7 Mr Herbst would indicate the pages that he wanted adduced, and
8 perhaps therefore I haven't liaised with him, anticipating that
9 he would communicate with me the pages that he wanted to refer
10 to.

11 I do have a list of pages of the diary that were used
12 extensively by Mr Herbst, which, it seems to me, that we couldn't
13 possibly object to being adduced as evidence or tendered as
14 exhibits if that were the Prosecution's intention. I am content
15 to give those pages to your Honour or to my learned friend.
16 Unfortunately, it's in my particular duck scrawl, so it would be
17 better if I were to read those pages and remind your Honour and
18 my learned friend of the relevant evidence if required.

19 JUSTICE DOHERTY: Well, what I will do is if it can be
20 scanned and sent to Kigali in a legible manner, I will ask
21 Mr Court Officer to do that to allow Mr Herbst to look at them
22 and address it in a break. If it can't be done, well, we'll just
23 have to read them out loud. As the witness is here, I'll proceed
24 with his evidence.

25 MR METZGER: I'm content to give my note to the Court
26 Officer. Unencumbered as I am by assistants, it means that to
27 put it in any other form - legible form would require my request
28 of someone else to do it in the next break. So I'm quite happy
29 to hand this to Mr Alpha and for him to scan and send it off to

1 Kigali, and if they can read it, then I have done better than I
2 usually do. But may I have that back at the end, please.

3 JUSTICE DOHERTY: Mr Herbst, you've heard what was said,
4 I'm sure. If you cannot read this handwritten note when it comes
5 up, we'll address the matter. But in the meantime, the witness
6 has come to the witness box. I'll going to remind him of his
7 oath, and we will proceed with cross-examination.

8 Good morning, Mr Kamara.

9 THE WITNESS: Good morning, Ma'am.

10 JUSTICE DOHERTY: Mr Kamara, I want to remind you that
11 yesterday you took the oath to tell the truth. The oath is still
12 binding on you, and you should answer questions truthfully. Do
13 you understand me?

14 THE WITNESS: Yes, Ma'am.

15 JUSTICE DOHERTY: Very good. Please proceed, Mr Herbst.

16 MR SERRY-KAMAL: Your Honour, before Mr Herbst proceeds, I
17 want to make an observation. I believe Mr Herbst is
18 cross-examining the witness on an exhibit which is before the
19 Court. I would have thought that in fairness to the witness, he
20 will make the MTN logs available to the witness so that he will
21 be seeing what telephone number he's referring to in his
22 cross-examination.

23 JUSTICE DOHERTY: But we had them before him yesterday.

24 MR SERRY-KAMAL: I don't believe they were before him. I
25 do not believe they were before him yesterday.

26 JUSTICE DOHERTY: [Microphone not activated].

27 MR SERRY-KAMAL: They were not before him yesterday. He
28 was being cross-examined in vacu about telephone numbers.

29 JUSTICE DOHERTY: Mr Court Officer has reminded me they

1 were before another one.

2 MR SERRY-KAMAL: Not this one.

3 JUSTICE DOHERTY: No.

4 MR SERRY-KAMAL: And he gave a particular number which he
5 said was his number, and the number quoted on the 19th, we do not
6 know whether it was his number.

7 JUSTICE DOHERTY: That's all right, Mr Serry-Kamal. I'll
8 direct they are put in front of the witness right now because the
9 witness can see them. They are an exhibit of the Court. They
10 are not a private document.

11 MR SERRY-KAMAL: As your Honour pleases.

12 JUSTICE DOHERTY: So they will be put in front of the
13 witness right this minute.

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

15 JUSTICE DOHERTY: We'll have them before the witness prior
16 to any further questions.

17 HAMI D KEH KAMARA,

18 CONTINUING CROSS-EXAMINATION BY

19 MR HERBST:

20 MR HERBST: Your Honour --

21 JUSTICE DOHERTY: Mr Herbst, the exhibit is in front of the
22 witness now.

23 MR HERBST: Yes, your Honour, I had actually concluded that
24 area of cross-examination, but I'm happy to go back and direct
25 the witness to one of the pages with respect to that phone
26 number.

27 JUSTICE DOHERTY: Very well. We'll limit it to that and
28 allow him to read it. What page of the exhibit is it, in case he
29 requires assistance in identifying it?

1 MR HERBST: Yes, I think the Court Officer would be
2 helpful. It's page 25 of 39. If the Court Officer could show
3 the witness that page.

4 Your Honour, I'm unable to see the witness.

5 JUSTICE DOHERTY: I would ask the video link to ensure the
6 witness's face and profile are displayed in order for independent
7 counsel to see him.

8 THE COURT OFFICER: Your Honour, may he kindly call the
9 page number again?

10 JUSTICE DOHERTY: [Microphone not activated]. Mr Herbst,
11 the witness has the page before him. Please proceed.

12 MR HERBST: Okay.

13 Q. Can you hear me?

14 A. Yes.

15 Q. On the page before you, about - more than three quarters of
16 the way down the page, you will see two phone numbers in the
17 second column in succession. The numbers end in 395, with the
18 assistance of the Court Officer and you. The numbers are in full
19 23276337395, and the first call is on 11.19 at 4.01.15 p.m., if
20 that helps the Court Officer identify where it is for you.

21 Mr Witness, do you see the number 23276337395?

22 A. Yes, I've seen the number.

23 Q. Now, there's been evidence in this Court that that number
24 was yours at the time, so I ask you was that number yours at the
25 time?

26 A. No, it's not my number.

27 MR HERBST: Thank you, your Honour. That's all I intended
28 to do with that witness. I'll move to my final area of
29 cross-examination, if that's all right.

1 JUSTICE DOHERTY: Yes, please proceed, Mr Herbst.

2 MR HERBST:

3 Q. Mr Witness, I heard you mention the Wilberforce Barracks in
4 your direct testimony; is that right?

5 A. I do not understand what you mean.

6 JUSTICE DOHERTY: You told the Court yesterday -

7 MR HERBST: In your testimony [overlapping speakers].

8 JUSTICE DOHERTY: Proceed, Mr Herbst.

9 MR HERBST:

10 Q. I thought you told the Court yesterday, Mr Witness, that
11 you were familiar with the Wilberforce Barracks; yes or no?

12 A. I'm familiar to Wilberforce Barracks. I was a soldier. I
13 was not born there, but I have a woman in the Wilberforce Village
14 at Lumley Road.

15 MR HERBST: Your Honour, I'm afraid we're afflicted with
16 the same problem we had yesterday. I wonder if I could hear the
17 answer.

18 JUSTICE DOHERTY: I am familiar. I am familiar with
19 Wilberforce Barracks. I was a soldier. I was not born there,
20 but I have a woman at Wilberforce at Lumley Road.

21 MR HERBST:

22 Q. Would you agree with me that in the years 2009 and 2010 and
23 2011, you were present in the area of the Wilberforce Barracks
24 with some frequency?

25 A. No, I was not frequently in the barracks. I was in the
26 village, because I am a taxi driver. After working, I normally
27 go there at Bottom Mango. It is different from the barracks.

28 Q. I'm not asking you about the barracks per se, Mr Witness.
29 I'm asking you about the area near and around the barracks?

1 A. Wilberforce Village.

2 Q. Yes. Now, Mr Witness, do you know a man by the name of
3 Leather Boot - his alias is Leather Boot?

4 A. I know two Leather Boots: The one is in Aberdeen, and the
5 other is in Wilberforce. I don't know which one you're referring
6 to.

7 Q. What is the name - the real name of the Leather Boot from
8 Wilberforce?

9 A. I've only heard about Leather Boot.

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

11 JUSTICE DOHERTY: I have only heard of Leather Boot.

12 MR HERBST:

13 Q. Are you familiar with the name Idriss Kamara, also known as
14 Leather Boot?

15 A. I only hear about Leather Boot.

16 MR HERBST: Did he say he always hears about Leather Boot?

17 JUSTICE DOHERTY: No, "I only hear about Leather Boot."

18 Mr Herbst, there were two persons with similar names, Idriss
19 Kamara and Idriisa Kamara. So we'll have to be careful here many
20 but you're referring to Idriss Kamara.

21 MR HERBST:

22 Q. Yes, I'm referring, Mr witness, to the Leather Boot who was
23 the former soldier? Do you know him?

24 A. Yes, I know the Leather Boot who was a soldier.

25 Q. And is he a friend of yours?

26 A. Yes, he is my comrade. He was my comrade in the army.

27 Q. Now, are you familiar with a bar in the area of the
28 Wilberforce Village or the Wilberforce Barracks that is owned by
29 a sister of this Leather Boot?

1 A. I used to pass there, but that was a long time now. When
2 I'm working my taxi, I usually pass there.

3 Q. Mr Witness, you're familiar with the bar that's known as
4 the dinking bar [sic], are you not, sir?

5 A. I do not understand.

6 Q. You're familiar with a bar near the entrance to the
7 Wilberforce Barracks that is known as dinking bar [sic], correct?

8 A. I am a taxi driver. I'm not familiar with the bar. I run
9 my transport except that when I'm tired, I will park my car there
10 and take one or two cold drinks and leave.

11 MR HERBST: Your Honour, I heard the witness say that he -
12 when he's tired he takes one or two cold drinks, but I couldn't
13 quite make out the rest [overlapping speakers].

14 JUSTICE DOHERTY: The witness said: I am a taxi driver.
15 I'm not familiar with it, except when I am tired, I park there
16 and take one or two cold drinks and leave.

17 MR HERBST:

18 Q. So Mr Witness, you have been at that bar, correct?

19 A. Yes.

20 Q. And you know that the bar is owned by Leather Boot's
21 sister, correct?

22 A. Yes.

23 Q. Now, I put it to you, Mr Witness, that you were in that bar
24 with Mr Bangura, also known as Bomb Blast, and Mr Kamara, also
25 known as Leather Boot, when the idea came up to talk to some
26 Prosecution witnesses to recant their testimonies; correct?

27 A. No, it's not correct. Negative.

28 Q. And I put it to you, Mr Witness, that there were other
29 former comrades of yours present at the bar when this happened

1 and that it came up when the convicts in Rwanda called you - I'm
2 sorry, called Bomb Blast on his telephone --

3 MR METZGER: Your Honour, I object to that question. It's
4 far too general. He's used the term convict. And as my lay
5 client is one of the convicts in Rwanda, I would like for him to
6 particularise his question, so that no one is led into confusion.

7 JUSTICE DOHERTY: Mr Herbst --

8 MR HERBST: Your Honour, may I reply?

9 JUSTICE DOHERTY: Yes, please reply.

10 MR HERBST: Your Honour, the information I have does not
11 specify which. It suggests that the convicts plural were on the
12 telephone. The information is the convicts in Rwanda who called.
13 So I cannot identify the specific person. That is why I put the
14 question the way I did.

15 MR METZGER: I'm grateful, your Honour. Considering that I
16 have had the opportunity, although I wasn't in Court, of hearing
17 Mr Bangura give evidence and did not necessarily hear that matter
18 being put, I wonder if this is a question that falls under Rule
19 66, which means that the Prosecution are obliged to disclose it
20 to us, as there is a continuing duty of disclosure if this is not
21 yet something that has been disclosed to the Defence - and I did
22 pull 66 off the top of my head, but I think that there is a
23 specific duty of disclosure on the Prosecution.

24 MR NICOL-WILSON: Your Honour, I support the objection by
25 Mr Metzger, and I will further add that Mr Herbst had an
26 opportunity to put this last question to Mr Bangura, but he did
27 not, and he cannot now ask this witness to verify an alleged
28 phone call that Mr Bangura received. The appropriate person to
29 have answered that question is Mr Bangura himself, not this

1 witness.

2 MR SERRY-KAMAL: And I would most respectfully --

3 MR HERBST: Your Honour --

4 JUSTICE DOHERTY: Just a minute, Mr Herbst. Mr Serry-Kamal
5 is addressing.

6 MR SERRY-KAMAL: I would also associate myself with the
7 points raised, particularly as Mr Herbst had the opportunity of
8 cross-examining Mr Kamara. He cross-examined him for a whole
9 week in Kigali, and there was no mention of what he now seeks to
10 put to this witness, and he's talking about convicts in Rwanda.
11 As far as convicts from Rwanda are concerned, there are only two
12 of them who are subject to the jurisdiction of this Court at the
13 moment.

14 JUSTICE DOHERTY: Mr Herbst, there's been two other
15 objections: One on the grounds of Rule 66, and the other is
16 basically the rule in Brown v. Dunne.

17 MR HERBST: Your Honour, first of all, the information came
18 to my attention after the cross-examination of Mr Kamara was
19 completed. The information came to my attention on 3 September,
20 number 1.

21 Number 2, I did ask Mr Bangura if he had ever discussed
22 this scheme with the witness Keh-For-Keh, either alone or with
23 others, and he said no. So in effect, it has been put to
24 Mr Bangura and with respect to the issue of whether this is Rule
25 66 information, it's not clear to me. It seems to me that this
26 is more Rule 70 information, and I've been sorting that out ever
27 since I received the information on - two days ago.

28 Therefore, I think it's appropriate cross-examination for
29 this witness, and I think any further conversation about how the

1 information or what the source of the information is should not
2 be conducted in open session, but I don't think this is the
3 appropriate time to do this. I think this is the appropriate
4 time to put the questions to the witness. He has denied it, and
5 now I'm putting it in detail to him, as I am now authorised to
6 put it in detail to him, which I was not before.

7 JUSTICE DOHERTY: Mr Metzger, you've had a reply. I'm not
8 giving you another one.

9 MR METZGER: No, it's my objection. It was my objection
10 supported by my learned friends. He's replied. I have the right
11 to respond.

12 JUSTICE DOHERTY: You don't really. Not in this Court.
13 I'm the only Judge that indulges points of law.

14 MR METZGER: Indeed.

15 JUSTICE DOHERTY: So points of law only.

16 MR METZGER: Points of law. And the point --

17 JUSTICE DOHERTY: Contrary to some of my learned
18 colleagues, I would add.

19 MR METZGER: Your Honour is as always most kind and I'm
20 grateful for that. But Rule 66 and Rule 70 has been raised by
21 the Prosecutor. The latter statement by the Prosecution in
22 relation to, "I have only just been authorised," is a matter
23 which is germane to being part of the secret society. I know
24 what he said, but I don't know what it means.

25 As far as Rule 66 is concerned, the Prosecution has a
26 continuing duty of disclosure in relation to material that is
27 pertinent to this case. It is even more pertinent where it is
28 not something that was within the Prosecution's pre-trial brief,
29 not something that the Prosecution has put throughout these

1 matters.

2 Now, if it turns out that the Prosecution is
3 interviewing or having witnesses interviewed on his behalf to
4 assist with cross-examination, then Rule 66 means that that
5 should be turned over to the Defence at the earliest opportunity.
6 If the Prosecutor is saying that he has an independent or some
7 other form of investigator who is making notes and feeding him
8 material as this matter is going on, then that fact itself should
9 be disclosed to the Defence before he can claim that he has Rule
10 70 material.

11 If he has Rule 70 material, as I read the Rules, the
12 Prosecution must inform the Court that he has Rule 70 materials
13 so that your Honour can know, in case he wants to make an
14 application ex parte, so that he can be then authorised by a
15 proper - a fit and proper person, and in this case that would be
16 your Honour, as to what to do about disclosure. None of that has
17 happened. In this particular case, therefore, it is only by
18 assessing the questions that my learned friend has asked over
19 time and looking for - because your Honour has kindly told us
20 that you will be considering the rule in *Brown v. Dunne* - that
21 one is left with the only conclusion one can come to, That there
22 are continuing investigations coming as the case is going on.
23 And if there are, are there witnesses - putative witnesses who
24 the Prosecution even think they might want to call in rebuttal?
25 Are there witnesses who the Prosecution don't want to call in
26 rebuttal but simply want to put the material to the witness in
27 the box?

28 But this does, in my respectful submission - and this
29 is the last thing I want to say about it - rather give a

1 different shade, colour, or tincture to the Prosecution's
2 assertion that he has conducted open-file disclosure as early as
3 last year in this case.

4 It is in those circumstances that I have responded to
5 that [i ndi scerni ble].

6 JUSTICE DOHERTY: Allow me to consider this. There's
7 objections to the question that has just been put to the witness
8 on basically two grounds. On the first question is whether this
9 particular line of cross-examination - or this specific line of
10 question in cross-examination was put to other accused, is, in my
11 view, a matter for submission at the end of the day.

12 I observe, but I make neither a finding, a ruling, or
13 anything other than an observation, that questions were put to
14 witnesses for the Defence concerning conversations that took
15 place relating to Prosecution evidence adduced in the AFRC trial.
16 So that is a matter for submission.

17 In relation to Rule 66 objections, I note that Rule
18 66A(ii) imposes on the Prosecutor a duty to continuously disclose
19 to the Defence copies of the statements of all additional
20 Prosecution witnesses whom the Prosecution intends to call to
21 testify.

22 As the Prosecution case has closed, additional witnesses
23 could only be in rebuttal with leave of the Court pursuant to
24 Rule 85. However, I consider that that provision and the right
25 to call - not the right to call leave - rebuttal evidence, but
26 the provision concerning rebuttal evidence, I consider that, plus
27 the spirit of the Rule 866 disclosure, mitigates against this
28 question, and therefore for that reason I do not allow it.

29 Mr Herbst, please proceed. Mr Herbst, did you hear me?

1 MR METZGER: It appears the light is on, your Honour, but
2 no one appears to be there. That is to say, he's there, but we
3 can't hear him.

4 MR HERBST: Your Honour, can you hear me?

5 JUSTICE DOHERTY: I can hear you now, Mr Herbst, yes. Did
6 you hear me?

7 MR HERBST: Yes, I did, and I had started to make an
8 application in light of your Honour's ruling.

9 JUSTICE DOHERTY: Uh-huh.

10 MR HERBST: Because in light of it I think that at this
11 point we ought to go into closed session in the absence of the
12 witness so I can more fully explain the circumstances. For
13 example, I did not yet have a witness statement for this putative
14 witness. I'm expecting to have one sometime during the day, but
15 I was going to raise - my understanding was that I would put the
16 questions to this witness, finish my cross-examination of him,
17 and then make an application to the Court with respect to a
18 rebuttal case after the Defence case had finished.

19 So I think at this point - because all of my further
20 questions to this witness relate to what happened at the bar and
21 what happened with this witness outside of the Court on the day
22 he appeared.

23 So my application now is to go into closed session,
24 more fully explain the circumstances so that your Honour
25 understands the circumstances.

26 JUSTICE DOHERTY: Well, Mr Herbst, I've made a ruling and I
27 don't think it's appropriate to go behind the ruling and re-open
28 the case. So for that reason, I'm not going to allow this. If
29 you have other questions to put to him concerning the meeting in

1 the bar or issues that arose prior to him coming to Court, then I
2 will certainly listen to them and I will rule on them one by one.

3 MR HERBST: I understand. I understand then, your Honour.
4 Let me proceed.

5 JUSTICE DOHERTY: Please do so.

6 MR HERBST:

7 Q. Now, Mr Witness, the last answer you gave last night in
8 cross-examination was that if you yourself had approached 334,
9 you would have been involving yourself because you were a Defence
10 witness to defend the AFRC case, and you said you could not
11 involve yourself in such things to talk to a Prosecution witness.
12 My question to you is: Isn't that precisely what you said to the
13 man in the bar on this occasion when you discussed --

14 MR METZGER: Your Honour, I object on the same ground as
15 before.

16 MR HERBST: Let me finish the question.

17 JUSTICE DOHERTY: Let counsel finish his question.

18 MR METZGER: I'm sorry.

19 MR HERBST:

20 Q. Isn't this precisely what you said to the man in the bar
21 when the idea arose to approach Prosecution witnesses like 334 to
22 recant their evidence?

23 MR METZGER: Your Honour, I object to the question on the
24 same grounds as before. I thought that by this session we knew
25 what the Prosecution case was against our clients. It seems as
26 if Mr Herbst wants to bring a completely novel case, one which
27 has not been closed to the Defence that now involves an
28 unindicted person who is a witness in this case.

29 Now, I know your Honour doesn't like the use of the word

1 "ambush" so I shan't use it. But it does appear as if one is
2 attending a magic show and the magician, in this case Mr Herbst,
3 is suddenly reaching into his sleeve and pulling out things that
4 are in fact larger than rabbits. In those circumstances, he has
5 put a very specific question on the basis of a witness statement
6 he expects to get which he has not disclosed to the Defence.
7 Respectfully, it is objectionable and he should not be allowed to
8 put it.

9 JUSTICE DOHERTY: I am going to allow this question.
10 Mr Serry-Kamal.

11 MR SERRY-KAMAL: Your Honour, my objection is that my
12 learned friend seems to be going - trying to go around Your
13 Lordship's ruling. Your Lordship has said any matter relating to
14 evidence about the bar has not been properly disclosed to
15 Defence, as Mr Herbst is obliged by the Rules to do, and
16 therefore he should wait until he has properly done so before he
17 can ask any further questions on this. And now he's going back
18 to ask questions on what happened in the bar. I think that is
19 precisely what Your Lordship ruled against.

20 JUSTICE DOHERTY: I didn't actually say he's excluded on
21 the bar --

22 MR HERBST: Your Honour --

23 JUSTICE DOHERTY: Just a minute, Mr Herbst, I'm trying to
24 say something.

25 MR HERBST: I'm sorry.

26 JUSTICE DOHERTY: I didn't say he's excluded on the bar in
27 full. I said he's excluded on putting evidence that hasn't been
28 disclosed, and this question that he's putting now relates to
29 something this witness said. What I will do is not to limit it

1 to the bar.

2 Mr Herbst, this is what the witness said. I recall him
3 saying it very clearly. Mr Herbst, you will have to put your
4 questions challenging the statements of this witness in more
5 general terms to overcome any disclosure Rules that have not been
6 observed under Rule 66. He said it. He can be challenged upon
7 it.

8 MR HERBST: Let me put the question.

9 Q. Mr Witness, in November 2010, didn't you tell your former
10 comrades precisely what you said in response to the last question
11 yesterday - and by that I mean that you cannot involve yourself
12 in contacting 334 or other key Prosecution witnesses, because you
13 were a Defence witness in the AFRC trial and if you did it, you
14 would go to gaol?

15 MR METZGER: Your Honour, I have the same objection. The
16 question is far from general, and I put it in those terms.

17 MR HERBST: Your Honour, I wonder if I might reply briefly?

18 JUSTICE DOHERTY: Yes, please do.

19 MR HERBST: The question is as general as one can put it,
20 number 1. Number 2, this witness was present at the birth of
21 this conspiracy that we are --

22 JUSTICE DOHERTY: He's not indicted.

23 MR HERBST: [Indiscernible] about.

24 JUSTICE DOHERTY: This is a whole new ball game.

25 MR HERBST: I understand he is not indicted. But the
26 evidence only came to the attention of the independent counsel
27 two days ago. There was substantial issues to iron out before
28 one could even broach the subject. Having ironed out those
29 issues, I am broaching the subject at the first available

1 opportunity. And if we go into closed session with the witness
2 absent, I think I can satisfy the Court of that and explain more
3 fully. But in the absence of so doing, my only reply to this
4 particular question - objection to this question is that it is a
5 general question and complies with your Honour's dictates.

6 MR SERRY-KAMAL: May it please your Honour, I have to -
7 just be on record. Your Honour, we informed Mr Herbst even when
8 we were in Rwanda that we'll be calling Keh-For-Keh. And if he
9 had this information, he ought by the Rules to have disclosed
10 whatever case he had awaiting Mr Keh's arrival in the witness
11 stand. But he hasn't done so and he's now trying to - I don't
12 want to refer to certain - but he's shifting the goalposts as he
13 goes along, and that is not what these Rules require. He's under
14 a mandatory obligation to disclose his case to the Defence all
15 the time, and he has not done that.

16 MR NICOL-WILSON: Your Honour, I also wish to indicate
17 that --

18 MR HERBST: Your Honour, I wonder if I --

19 MR NICOL-WILSON: -- Mr Herbst's intention to --

20 JUSTICE DOHERTY: Mr Herbst, counsel is addressing.

21 MR NICOL-WILSON: Mr Herbst has stated that he wanted the
22 Defence case to close and then come in with an application for
23 rebuttal evidence. I wish to indicate that I will be putting a
24 very strong objection to whatever rebuttal evidence he will be
25 seeking to apply for, because this is a very, very serious
26 matter. My client was in the box yesterday and he got this
27 information two days ago. He ought to have put those questions
28 to my client so that I can cover those matters during my
29 re-examination. And now that the client is out of the witness

1 box, he's coming with potential evidence that might implicate him
2 further in this matter. So I want to indicate to Mr Herbst now
3 that I will be objecting to that rebuttal evidence.

4 MR HERBST: Your Honour, may I reply briefly to those two
5 comments?

6 JUSTICE DOHERTY: You may, but brief.

7 MR HERBST: First of all, I'm not sure Mr Serry-Kamal heard
8 me say that the information from the confidential source came to
9 my attention only on 3 September, two days ago. It was - it also
10 came to my attention that Rule 70 was implicated, which states
11 that notwithstanding the provisions of Rule 66, information is
12 not - of this sort is not subject to disclosure except under
13 certain circumstances that are then laid out in the rest of Rule
14 70.

15 Today, I respectfully submit, is the first time that I
16 could make a disclosure to the Court and counsel, and I can only
17 do it under certain circumstances that I can only lay out in the
18 closed session. That's my dilemma, and I will abide by whatever
19 Rules on this, of course. But it seems to me if one peruses
20 Rule 70, your Honour will - may understand what I'm suggesting.

21 But I want to add that there has been no delay, as I
22 understand the Rules and the procedure and my obligations, and
23 this is not an ambush. I only got this information two days ago.
24 It was brought to my attention two days ago, and there are thorny
25 issues that had to be worked out. So there's no delay.

26 Thank you very much for permitting me to reply.

27 JUSTICE DOHERTY: It's okay. Let me think about this.

28 This is a further ruling on a series of questions and
29 objections thereto.

1 The issues of prior overtures, I will call them,
2 [i ndiscernible] phone calls to persons other than the co-accused
3 in this trial have been consistently put in cross-examination to
4 each of the three accused who gave evidence. That is quite clear
5 to me.

6 But I consider too that the Article 17 rights of any
7 accused mean that an accused must know the case that he has to
8 meet.

9 Now at this juncture, all after the accused have given
10 evidence, and evidence has been put to them, the evidence they
11 gave addressed the case that was put to them; in other words, the
12 case they had to meet. I do not consider it fair to raise new
13 issues at this juncture.

14 There have been numerous questions about calls to
15 this witness and about the content of those calls and whether
16 they involved some planning and/or fundraising. That was put to
17 accused witnesses. Therefore, it will follow, in my view, that
18 this witness may be asked in cross-examination on those points
19 put to accused witnesses. He may also be asked if what he has
20 said in this Court under oath was a repetition of what he said
21 outside Court because he himself made this statement. But other
22 matters, there must be notice. There must be disclosure of new
23 evidence if it is to be brought before the Court.

24 I further consider that the provisions of Rule 90F charge
25 me with the duty to, and I quote, "Make the interrogation and
26 presentation effective for the ascertainment of the truth and
27 avoid the wasting of time."

28 I have said I will allow a question to be asked in
29 general terms of this witness whether the statement he made in

1 Court was made elsewhere and to allow him to be challenged in
2 that way, including that aspect. So I will allow that one
3 question.

4 I will not allow a line of questioning that I do not
5 consider assists me in accordance with the provisions of Rule
6 70F(i) and (ii). That question may be put but I am not allowing
7 a lot of more extraneous implicated evidence.

8 Both counsel are arising to their feet.

9 MR METZGER: I'm in your Honour's hands as to who you want
10 to hear from first.

11 JUSTICE DOHERTY: I don't really want to hear from anybody.
12 I want to hear from Mr Herbst and the witness, that's who I want
13 to hear from.

14 MR METZGER: I'm most disappointed. I rise because as I
15 say out of an abundance of caution, in view of what Mr Herbst had
16 said, in predicating one of his last few questions about this
17 witness being involved in the conspiracy from the start to flag
18 up Rule 42. He's either a suspect or he's a witness of whom
19 Mr Herbst is asking questions. If he's a suspect and Mr Herbst
20 is, as it were, asking questions that amount to an investigation
21 of his role in a conspiracy, there are certain rights that he has
22 under Rule 42, including a right to legal assistance --

23 JUSTICE DOHERTY: Mr Metzger, I know Rule 42, and I would
24 add that I have given some thought to Rule 70E. This is not your
25 witness.

26 MR METZGER: As I said, I rose ex abundanti cautela.

27 JUSTICE DOHERTY: You know I hate Latin [indiscernible].

28 MR METZGER: Out of an abundance of caution.

29 MR SERRY-KAMAL: Your Honour, that was precisely the point

1 I wanted to raise. In fact, I was going to look at the Sierra
2 Leone Constitution which guarantees him - which gives him
3 fundamental right to remain silent if there is any question
4 tending incriminate him. In America, it's called The Fifth
5 Amendment. You plead The Fifth. I refuse to answer. Rule 42
6 maintains that also.

7 JUSTICE DOHERTY: I've already pointed counsel out to Rule
8 90.

9 MR SERRY-KAMAL: My learned friend started out saying he
10 had heard of the conspiracy, and there was no such disclosure in
11 his disclosure statement.

12 JUSTICE DOHERTY: I've already noted that the questions put
13 - I have outlined, I recall, and I'm allowing this one question,
14 which I say is in general terms because this is a statement the
15 witness made. But I am not allowing conspiracy theories to be
16 put - no, I withdraw that ex tempore remark.

17 Put your question, Mr Herbst.

18 MR HERBST:

19 Q. Mr Witness, haven't you said precisely what you said in
20 Court yesterday to others; that is, that you cannot involve
21 yourself in approaching 334 to get him to recant his testimony
22 because you were a Defence witness to defend - you're a Defence
23 witness in the AFRC case?

24 JUSTICE DOHERTY: Mr Witness, did you hear the question
25 that counsel --

26 THE WITNESS: Yes, I heard the question. I was a witness
27 for the AFRC. A Defence witness.

28 JUSTICE DOHERTY: Mr Witness, that does not --

29 MR HERBST: Your Honour [Overlapping speakers].

1 JUSTICE DOHERTY: Mr Witness, that does not answer the
2 question that the counsel has asked you. You said yesterday that
3 you were a Defence witness in the AFRC, and therefore that would
4 be one reason why you would not involve yourself talking to
5 Prosecution witnesses. You said that. I heard it.

6 THE WITNESS: Yes, Ma'am.

7 JUSTICE DOHERTY: Now, the question is: Did you say that
8 same remark before you came to Court to other people?

9 THE WITNESS: No. No.

10 MR HERBST: Your Honour, I'll just ask one more question.

11 JUSTICE DOHERTY: Certainly, Mr Herbst.

12 MR HERBST:

13 Q. Isn't it true, Mr Witness, that Mr Bangura, Bomb Blast, and
14 Samuel Kargbo, Sammy Ragga, selected to approach 334 precisely
15 because they had not been Defence witnesses at the AFRC trial?

16 MR NICOL-WILSON: Your Honour, I have an objection.

17 JUSTICE DOHERTY: Yes, Mr Nicol-Wilson.

18 MR NICOL-WILSON: That question is asking the witness to
19 give an opinion which is completely unfair, because Mr Herbst is
20 now saying that Mr Bangura, in particular, whom I represent,
21 selected to approach 334 because he had not been a Defence
22 witness, and he wants the witness to comment on that. I think
23 it's an unfair question because it seeks the witness's opinion on
24 a very, very contentious issue.

25 JUSTICE DOHERTY: I consider that this question.

26 MR HERBST: Your Honour, this is cross-examination.

27 JUSTICE DOHERTY: [Overlapping speakers] I consider that
28 this question arises from the evidence that the witness himself
29 has given. It is cross-examination. I allow the question.

1 Please put the question again.

2 MR HERBST:

3 Q. Mr Witness?

4 A. Yes, Ma'am.

5 Q. Isn't it true that Bomb Blast and Sammy Ragga were selected
6 to approach 334 precisely because they had not been Defence
7 witnesses at the AFRC trial?

8 MR METZGER: Your Honour, I object to that question.
9 Because I don't know who it is on the ground of its vagueness.

10 Mr Herbst, I'm sorry, I have to object.

11 It seems to me he is saying they were selected. By
12 whom is it suggested? If there is a basis and that basis is the
13 very information which he told us about earlier that comes from
14 3rd of September, as we are told, then clearly that goes again -
15 it is an effort to worm behind your Honour's ruling. He may ask
16 questions, as your Honour has said, arising from answers that
17 this witness had given. But 334 and Bangura were selected -
18 presupposes that there was a selection process involving either
19 this witness or the --

20 THE COURT OFFICER: Your Honour, the witness wants to be
21 excused to use the washroom.

22 JUSTICE DOHERTY: Yes. He should be escorted because he is
23 under oath. If one of our WVS people is present, they should go
24 with him.

25 [Witness leaves courtroom]

26 JUSTICE DOHERTY: Yes, Mr Metzger, I've noted what you
27 said.

28 MR METZGER: I think that is it. I continue to fight with
29 my clothing.

1 JUSTICE DOHERTY: Mr Serry-Kamal.

2 MR SERRY-KAMAL: [Indiscernible].

3 JUSTICE DOHERTY: Yes, Mr Serry-Kamal. Sorry, I thought
4 Mr Serry-Kamal was going to make a submission, but that's not
5 correct. I note --

6 MR METZGER: He asked to be excused, your Honour.

7 JUSTICE DOHERTY: I note the appearance of the Principal
8 Defender Mrs Carlton-Hanciles. Welcome to the Court.

9 Your response, Mr Herbst? Mr Herbst, I don't hear
10 you.

11 MR HERBST: Can you hear me now, your Honour?

12 JUSTICE DOHERTY: Yes, I can hear you clearly.

13 MR HERBST: If my earlier expression of exasperation was
14 heard, despite the fact that my microphone was off, I request the
15 forgiveness of the Court.

16 JUSTICE DOHERTY: I didn't hear it. We won't worry about
17 it.

18 MR HERBST: Thank you. This question is as general as I
19 could put it and arose precisely out of the previous question.
20 And I think it's appropriate on cross-examination, your Honour.
21 I won't say more at this point.

22 [Witness returns to courtroom]

23 JUSTICE DOHERTY: The accused Bangura and the defendant
24 Kargbo are on trial because it is alleged they approached a
25 witness 334. There could have been a reason why it was them that
26 did this or allegedly did it. The witness has given some
27 explanation of why he would not become involved in any of the
28 alleged activities, and on that basis, I allow the question.

29 MR HERBST: Is the witness back, your Honour?

1 JUSTICE DOHERTY: He is indeed. He's back in the witness
2 box.

3 MR HERBST:

4 Q. All right. Mr Keh-For-Keh, one last time.

5 A. Yes, Ma'am.

6 Q. Isn't it true that Bomb Blast and Sammy Ragga were selected
7 to approach 334 precisely because they had not been Defence
8 witnesses at the AFRC trial?

9 A. I don't have any idea about that.

10 MR HERBST: Your Honour, I think the witness says he didn't
11 know about that. Am I correct?

12 JUSTICE DOHERTY: No, he said, "I do not have any idea
13 about that."

14 MR HERBST:

15 Q. Well, Mr Witness --

16 A. Yes, Ma'am.

17 Q. -- haven't you told others that Bomb Blast and Sammy Ragga
18 were selected to approach 334 because they had not been Defence
19 witnesses. I don't have any idea about that. I've never heard
20 such talks, in fact.

21 MR HERBST: May I have that answer, your Honour.

22 JUSTICE DOHERTY: I have no idea about that. I have not
23 heard such talks as that.

24 MR METZGER: "I've never had such talks, in fact."

25 JUSTICE DOHERTY: It's not quite what I heard
26 Mr Interpreter say, but two versions.

27 MR HERBST: I thank the Court. Actually, your Honour, I
28 think at this point. Let me try one or two other questions and
29 see.

1 Q. Mr Witness, you told us you attended one of the first days
2 of the trial; is that right?

3 A. Yes.

4 Q. How many days of the trial - of the early days of the trial
5 did you attend?

6 A. I came to the trial once.

7 Q. And on that day, did you come to the trial with anybody
8 else?

9 A. I came alone, but I met my friends around. I did not come
10 with someone.

11 Q. Did you say at the trial you met some other --

12 A. My friends.

13 Q. Which friends?

14 A. Well, they were the visitors who had come to witness the
15 Court. Some of them are soldiers and others are civilians,
16 ex-servicemen.

17 Q. Okay. Who were the ex-servicemen that --

18 JUSTICE DOHERTY: Relevance, Mr Herbst. What is the
19 relevance of this line of questioning? If you're going to make a
20 submission concerning Rule 90B, what is the significance of this
21 relevance?

22 MR NICOL-WILSON: And, your Honour, I want to be recorded
23 as objecting --

24 MR HERBST: Your Honour, at this point [overlapping
25 speakers].

26 JUSTICE DOHERTY: Just a minute. Mr Nicol-Wilson is saying
27 something.

28 MR NICOL-WILSON: I want to be recorded as objecting to
29 those questions on grounds of relevance, your Honour.

1 JUSTICE DOHERTY: Yes, what is the relevance of this.

2 MR HERBST: Your Honour, at this point, your Honour, I will
3 withdraw the question. I will tender the witness for
4 re-examination.

5 JUSTICE DOHERTY: He did say what day he was here. He said
6 it was when Bangura - but I'm not at all clear exactly which day,
7 so I would like to be clear on this point. I will ask him.

8 Mr Kamara, exactly what day were you in Court? Can
9 you remember, first of all, the year and the month?

10 THE WITNESS: At this particular trial?

11 JUSTICE DOHERTY: Yes.

12 THE WITNESS: I cannot remember.

13 JUSTICE DOHERTY: Was it this year or last year?

14 THE WITNESS: This year.

15 JUSTICE DOHERTY: Was it in June or was it in August?

16 THE WITNESS: Well, I can't remember the right month.

17 JUSTICE DOHERTY: Mr Herbst, I think I heard you say you
18 had completed your cross-examination. I did intervene to ask the
19 question which followed from something you had asked and also
20 followed from something I had asked. In the light of the
21 answers, did you want to pursue that, or are you closing your
22 cross-examination?

23 MR HERBST: [Indiscernible] your Honour.

24 JUSTICE DOHERTY: Thank you.

25 MR HERBST: Can your Honour hear me?

26 JUSTICE DOHERTY: Yes, I did. Thank you, Mr Herbst, I
27 heard you. You said you were closing your cross-examination.

28 Mr Nicol-Wilson, any questions for the witness?

29 MR NICOL-WILSON: Yes, your Honour.

1 JUSTICE DOHERTY: Proceed.

2 CROSS-EXAMINATION BY MR NICOL-WILSON:

3 Q. Mr Witness, you said you occasionally visits the bar at
4 Wilberforce belonging to the sister of Leather Boot?

5 A. Yes, sir.

6 Q. Now, have you ever been at that bar in which - during which
7 discussions were held about approaching 334 for him to recant his
8 testimony?

9 A. Never. No idea. I've never heard of that even.

10 Q. Now, have you ever heard from anyone that Bomb Blast should
11 be selected to approach 334 to recant his testimony?

12 A. No, I've never heard that.

13 Q. Now, Mr Witness, I also put it to you that Bomb Blast is
14 not a frequent member at the bar at Wilberforce?

15 A. Yes, that's true. Because I'm a taxi driver. Most of the
16 time when I'm passing and I stop by to take my drink, I don't see
17 him there most of the time.

18 Q. I also want to suggest to you that at no time --

19 MR HERBST: [Overlapping speakers] Mr Nicol-Wilson, if I
20 may.

21 JUSTICE DOHERTY: Yes, Mr Herbst. I can't hear you.

22 Have we got connection with Kigali, Mr Court Officer? I
23 don't see anyone moving there.

24 THE COURT OFFICER: I'll check, your Honour.

25 JUSTICE DOHERTY: Thank you.

26 MR HERBST: [Indiscernible].

27 JUSTICE DOHERTY: Mr Herbst, we didn't hear you. Could you
28 repeat what you were saying? There was a break in transmission.

29 MR HERBST: [Indiscernible].

1 MR METZGER: The screen seems to have informed us that it's
2 disconnected. At least that's what came up a minute ago. It
3 does look like we've lost them now.

4 JUSTICE DOHERTY: Mr Herbst, I can see you.

5 MR HERBST: Your Honour, we lost the link twice. I had
6 requested that your Honour review the witness's last answer with
7 me, because I did not hear it.

8 JUSTICE DOHERTY: The witness answered: True. I am a taxi
9 driver. Most of the time I stop there to take my drink. I do
10 not see him there.

11 Mr Nicol-Wilson, your next question, please.

12 MR NICOL-WILSON: Actually, my last question.

13 JUSTICE DOHERTY: Oh, good.

14 MR NICOL-WILSON:

15 Q. Now, I also want to put it to you that at no time did Bomb
16 Blast discuss with you the issue of getting 334 to recant his
17 testimony?

18 A. Never. No. No, never.

19 MR NICOL-WILSON: That will be all for this witness,
20 your Honour.

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

22 Mr Metzger, have you got questions of the witness?

23 MR METZGER: I have a few questions, yes.

24 JUSTICE DOHERTY: If there are a few - because we're just
25 about on the break. But it would be good to clear them up. So
26 if there are just a few, I will allow them.

27 MR METZGER: How long does your Honour --

28 JUSTICE DOHERTY: Five minutes. You'll be amazed how much
29 you can get --

1 MR METZGER: I will see what you can do, yes.

2 CROSS-EXAMINATION BY MR METZGER:

3 Q. Mr Kamara --

4 A. Yes, sir.

5 Q. -- is it correct that Mr Kanu, also known as Five Five,
6 never called you personally from Rwanda?

7 A. Yes. You are correct to say so.

8 Q. Is it also true that sometimes when you were speaking to
9 others --

10 MR HERBST: Excuse me, Mr Metzger. Excuse me, Mr Metzger.
11 Excuse me, your Honour, could I hear the answer.

12 JUSTICE DOHERTY: "Yes, you are correct to say so."

13 MR METZGER:

14 Q. Is it also true, Mr Kamara, that sometimes when you were
15 talking to others from Rwanda, Mr Kanu would be put on the line
16 to say hello to you?

17 A. Yes.

18 Q. And that at no time did you discuss with Mr Kanu any matter
19 relating to witnesses recanting their evidence?

20 A. We never had such a discussion.

21 Q. Or a review of Mr Kanu's conviction or sentence?

22 A. No.

23 Q. Thank you, Mr Kamara. Now, you've told us that when you
24 were in prison - I'm just going to ask you a few questions about
25 that - that you were in maximum prison. Is that what is
26 sometimes referred to as steady batten?

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

28 Q. Of course. When you were in Pademba Road Prison, you said
29 you were in maximum prison. I'm simply asking you if that is

1 what is sometimes referred to amongst people who have been in
2 prison as steady batten?

3 A. Well, the maximum prison is a central headquarters for all
4 the prisons. It has a steady batten. When you get in there, you
5 are locked in there and you would have no freedom.

6 JUSTICE DOHERTY: Can we have a spelling of the batten
7 part, Mr Metzger, please, for record.

8 MR METZGER: It is Krio, but --

9 JUSTICE DOHERTY: That's all right.

10 MR METZGER: The best way of pronouncing it, the batten
11 part would be B-A-T-T-E-N.

12 JUSTICE DOHERTY: Thank you. Proceed.

13 MR METZGER:

14 Q. So is it therefore correct, Mr Kamara, that when you were
15 under those conditions in prison, you did not have regular
16 association with other prisoners?

17 A. Not at all.

18 Q. And that all persons who were at Pademba Road Prison who
19 were under that regime had no regular contact with other
20 prisoners?

21 A. Yes, sir.

22 Q. Now, Mr Kamara, is it true that you are a man who doesn't
23 keep mobile phones very long?

24 A. There is no mobile phone in the prison.

25 Q. Sorry, my fault. I'm now asking you in general when you
26 were released --

27 MR HERBST: Excuse me, Mr Metzger. May I hear the answer?
28 I did not catch that one.

29 JUSTICE DOHERTY: He said he didn't have a mobile phone in

1 prison, and counsel is now directing him as to the import of his
2 questi on.

3 Mr Metzger, put your questi on again.

4 MR HERBST: Thank you.

5 MR METZGER: Your Honour, I think that what with the
6 di ffi cul ties with the line and everything, I will be a little bit
7 longer with this witness. I'm moving on to - let me just get my
8 - you'll be pleased to hear - mini matrix. I now want to ask him
9 about telephones and his use of telephones, which may take in
10 itself anything from 5 to 10 minutes.

11 JUSTICE DOHERTY: Try.

12 MR METZGER: So be it.

13 Q. Mr Kamara, I'm now --

14 A. Yes, sir.

15 Q. -- going to ask you about a time after you had been
16 released from prison. When you were released from prison,
17 sometime later did you get a mobile phone?

18 A. Yes, when I was released from prison, when I was in town
19 then.

20 Q. Are you a man - since that time have you kept on to one
21 mobile phone, or do you sometimes change?

22 A. I have changed mobile phones because they get missing.

23 Q. Is it correct to say that certainly in or around late 2010
24 you were known for losing mobile phones?

25 A. Yes.

26 JUSTICE DOHERTY: Pause, Mr Metzger. The tape needs to be
27 changed.

28 THE COURT OFFICER: The tape has been changed, your Honour.

29 JUSTICE DOHERTY: Yes, Mr Metzger, proceed.

1 MR METZGER:

2 Q. Mr Kamara, when you were being asked questions by Mr Herbst
3 you told him that you have a telephone number, and you gave the
4 number as 076942355; do you remember that?

5 A. Yes, sir, I remember that. That's my phone number.

6 Q. Thank you. Is that the number of your current - is that
7 your current telephone number?

8 A. Yes, at that time. I don't have a phone right now.

9 Q. Have you lost your phone again?

10 A. It's been a long time that it got lost, so ...

11 Q. Towards in November/December of 2010 --

12 MR HERBST: Excuse me, Mr Nicol-Wilson.

13 MR METZGER: Metzger, even.

14 MR HERBST: Your Honour - Mr Metzger, could I hear that
15 answer, your Honour? Sorry, I heard him say it's my current
16 phone at that time. I do not have a phone now, and I didn't hear
17 what followed.

18 JUSTICE DOHERTY: A long time it had got lost.

19 MR HERBST: Thank you.

20 MR METZGER:

21 Q. Mr Kamara, in November/December 2010, how many mobile phone
22 numbers did you have; one, or more than one?

23 A. Just one.

24 Q. And was it on that phone that you were contacted and you
25 yourself contacted the people in Rwanda?

26 A. Yes, I contacted Bazzy.

27 Q. Is it also the case that on occasions when you needed to
28 sort out family issues with Mr Bazzy Kamara, that you may have
29 used one of a number of phones to speak to them, being phones

1 that may have belonged to either your mother-in-law or the mother
2 of your daughter Habibatu?

3 A. No. No, they called Bazzy. It is Bazzy's mother who would
4 call. Because when there is a dispute between myself and the
5 family, Bazzy would call me.

6 Q. What I'm asking --

7 MR HERBST: Your Honour, I didn't hear the answer. May I
8 have that answer, your Honour?

9 JUSTICE DOHERTY: Two things have happened: I have to
10 repeat the answer for Mr Herbst, and the transcriber's machine
11 has crashed. So I'll say it --

12 MR METZGER: [Overlapping speakers] have a break.

13 JUSTICE DOHERTY: And obviously the machine needs a cup of
14 coffee more than the rest of us.

15 But the answer, Mr Herbst, was, "No, they called Bazzy."
16 Then the witness went on to say something else, but because of
17 the remarks, I didn't get it.

18 So what I'm going to do is because the transcriber's
19 machine has crashed and we're over the time anyway for the Rwanda
20 break, I'm going to adjourn until 12 o'clock.

21 Mr Interpreter, do you recall the last part of that answer?
22 We can get it down on record if you have it.

23 THE INTERPRETER: No, your Honour, I can't remember.

24 JUSTICE DOHERTY: We'll have to clarify that answer when we
25 come back. We'll adjourn.

26 MR METZGER: Your Honour, I will do that when we come back.

27 JUSTICE DOHERTY: We'll adjourn Court.

28 MR HERBST: Your Honour --

29 JUSTICE DOHERTY: Yes, Mr Herbst.

1 MR HERBST: Since it appears we're getting towards the end
2 of this witness's testimony, I know during the break
3 Mr Nicol-Wilson was going to consult his client about additional
4 witnesses. But before we break would it be possible for
5 your Honour to make that inquiry of the other two counsel?

6 JUSTICE DOHERTY: Yes, I'll do that.

7 Counsel, Mr Nicol-Wilson, you're going to consult.

8 Mr Serry-Kamal, your other witnesses other than the witness
9 before us now?

10 MR SERRY-KAMAL: Your Honour, I'm sorry, I was not able to
11 get the other witness, because by the time I got to the office he
12 had left my office. He had gone. He was there at 4 o'clock
13 [i ndi scerni ble] about 6 and he left. And of course I was banned
14 not to talk to Mr Keh-For-Keh to contact him, so I wasn't able to
15 contact him again. I'm afraid I do not have a witness today.

16 JUSTICE DOHERTY: Mr Metzger, how many witnesses?

17 MR METZGER: Your Honour, I'm expecting three people to
18 turn up at Court today. They have been spoken to by my
19 associate, Mr Sherry. He has provided some material for me to
20 look at. I would like to - I had hoped to be here early enough
21 myself and for them to be here early enough for us to go through
22 their evidence. We haven't been able to do that. There are
23 certain aspects that I want to investigate with them. It is even
24 more so important now in the light of the continuing
25 investigation and apparent lack of disclosure by the Prosecution
26 in this case.

27 I hope to call at least one, possibly two of those
28 witnesses. Your Honour will know my concern about the daughter -
29 she is now, however, 18 years old - and I need some time to get

1 that ready. I unfortunately - if called upon immediately after
2 this witness, I cannot say at this point in time that I am ready
3 to call that evidence.

4 I don't anticipate, from the Defence point of view, that
5 any witnesses called on Mr Kanu's behalf will be long. But I
6 cannot speak for my learned friend Mr Herbst, who has become a
7 rather - who has become a rather good technician at asking
8 questions over a great length of time in relation to matters like
9 phone calls and whatever else it may be that is conjured up by
10 sources that obviously refer to him on a continuing basis.

11 But if witnesses are called on behalf of Mr Kanu, they are
12 going to be very short. I do want the opportunity to consider
13 what has gone on thus far. I do want the opportunity to be able
14 to digest what we have learned today about the continuing
15 investigations that are going on so I can make up my mind.

16 THE COURT OFFICER: Your Honour, I believe we have lost the
17 link with Kigali.

18 JUSTICE DOHERTY: We'll adjourn Court until 12 o'clock.
19 Please adjourn Court.

20 [The Court adjourned at 11.15 a.m.]

21 [The Court resumed at 12.00 p.m.]

22 JUSTICE DOHERTY: I have just received a medical report in
23 relation to the accused, Mr Samuel Kargbo, which notes that he's
24 showing symptoms of malaria. He's being treated. He won't be
25 able to be here. He's only been referred to once in the course
26 of the present evidence - or twice, in fact, because the same
27 evidence was repeated, and that was in conjunction with the other
28 accused, Bangura. So I don't think his interests are being
29 prejudiced. So we will continue.

1 Mr Metzger, you were asking some questions.

2 MR METZGER: I was.

3 JUSTICE DOHERTY: We're lacking a witness.

4 MR HERBST: Your Honour --

5 JUSTICE DOHERTY: Yes, Mr Herbst.

6 MR HERBST: Your Honour, we lost the link before the
7 adjournment for the lunch break at the point where Mr Metzger was
8 talking about witnesses, and he said something about three
9 witnesses and the daughter who is 18, and that's where we lost
10 it. We didn't hear who the witnesses were he was planning to
11 call or anything else he said after that.

12 JUSTICE DOHERTY: He did not name the witnesses. He said
13 he hadn't met them yet. His associate has compiled a statement
14 that he hasn't had a chance to look at. So he has not made any
15 form of commitment, nor has he given names until he has had an
16 opportunity to review the statements.

17 Mr Metzger, I trust I have paraphrased your --

18 MR METZGER: Your Honour puts it so much better than I
19 could.

20 JUSTICE DOHERTY: Now, Mr Metzger, you asked a question and
21 because of interference on my line, I did not hear the full
22 answer. The question related to the need to sort out family
23 issues. You used other phones. Your mother-in-law or your
24 mother's - the daughter - the mother of your daughter, and the
25 witness answered no, they called Bazzy. And I have not been able
26 to get the rest of that answer. So I would like to get the rest
27 of that answer.

28 MR METZGER: I'll take it from there.

29 Q. Mr Kamara, just before the break you told us that, in your

1 words, "they called Bazy". First question: Who are you talking
2 about when you say, "They called Bazy"?

3 A. Bazy's mother.

4 Q. And would it be fair to say that when Bazy's mother called
5 Bazy, you were not present?

6 A. I was not present.

7 Q. And would it be fair to say that you would get to know that
8 she had called Bazy, either through the mother or through Bazy
9 himself?

10 A. It is Bazy who told me that they called him - his mother
11 called him.

12 Q. And just before we move off this subject, the calls that
13 Bazy told you about relating to his mother calling him were all
14 explaining about you?

15 A. Yes, sir.

16 Q. Thank you. Now, let's move on. You've told us that you've
17 had a number of phones over the years but that you lose them; is
18 that correct?

19 A. Yes, sir.

20 Q. Can you now remember all the telephone numbers that you had
21 from those phones that you've lost?

22 A. Yes, except the only phone number that I have given to you:
23 0769432355.

24 Q. That's the only number that you can now remember?

25 MR HERBST: Excuse me, your Honour. Excuse me, Mr Metzger.

26 MR METZGER: You're excused, Mr Herbst.

27 JUSTICE DOHERTY: Yes, Mr Herbst.

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

29 JUSTICE DOHERTY: The witness says yes, except only the

1 phone number 076943255. Counsel was about to clarify that
2 answer.

3 Mr Metzger, proceed.

4 MR METZGER:

5 Q. Mr Kamara, were you just telling this Court that the only
6 number you can remember off the top of your head is the one that
7 you have given to us.

8 A. Yes, sir.

9 Q. Another thing, please. For example, now that you do not
10 have a phone, how do people contact you?

11 A. Nobody calls me. Except if I feel like - not that I do not
12 have a phone. If I have somebody's number, I'll go to a phone
13 booth.

14 Q. Is it also not the case --

15 JUSTICE DOHERTY: Mr Herbst, the answer was: Nobody calls
16 me. Except if I feel like calling, I go to a phone booth.

17 MR METZGER:

18 Q. Is it also the case, Mr Kamara, that you have in the past
19 given telephone numbers of, let us say, female associates of
20 yours to your friends and associates if they wanted to call you
21 and you didn't have a phone?

22 A. No.

23 Q. All right. I shall move on. Now, the last area I want to
24 ask you about, you may recall Mr Herbst, the prosecutor, asking
25 you yesterday about two calls, one on 30 November - or a number
26 of calls related to 30 November and another relating to 19
27 November.

28 JUSTICE DOHERTY: Yes, Mr Metzger.

29 MR METZGER: 2010. I'm so sorry, your Honour, 2010.

1 Q. You have told us in relation to a series of conversations
2 with yourself and some ex-soldiers, including Mr Ragga and people
3 in Rwanda, that that occurred firstly on 30 November; is that
4 correct?

5 A. That's true.

6 Q. And that you remember that date because you had a car
7 accident with a motorcyclist; is that correct?

8 A. Yes, sir.

9 Q. Now, you were asked effectively the same questions by
10 Mr Herbst as regards 19 November, and you gave similar answers in
11 relation to people who spoke to the people in Rwanda. Could you
12 be mistaken about the date 19 November?

13 A. Well, yesterday I looked really - I was in doubt, because
14 the right date is 30 December 2010. When I discussed with those
15 men and the other men here --

16 Q. So is it your evidence therefore --

17 MR HERBST: Excuse me. I'm sorry to interject, but I think
18 it would be good for me to hear that answer, if I may.

19 JUSTICE DOHERTY: Yes. The answer was yes, yesterday I was
20 in doubt. The right date is 30 November 2010.

21 MR METZGER: Thank you, your Honour.

22 Q. So, Mr Kamara, is it your evidence therefore that this
23 situation where you spoke to the men in Rwanda and you had, as
24 you say, the other men here who spoke at the same time, involving
25 Mr Ragga, only occurred on one occasion?

26 A. Yes, sir.

27 Q. And is it your evidence therefore that that one occasion
28 was 30 November 2010?

29 A. Yes, sir.

1 Q. Thank you very much, Mr Kamara.

2 MR METZGER: Those are all the questions I have for this
3 witness, your Honour.

4 JUSTICE DOHERTY: Thank you, Mr Metzger. Re-examination,
5 Mr Serry-Kamal?

6 MR SERRY-KAMAL: No re-examination.

7 JUSTICE DOHERTY: Thank you, Mr Serry-Kamal. I have no
8 questions of the witness. Therefore, Mr Kamara, I thank you for
9 your evidence. There is no other questions you're going to be
10 asked here today and you are free to leave the witness box and
11 the Court and we thank you for coming. So Mr Court Officer,
12 please assist the witness to leave the Court.

13 Mr Serry-Kamal, we're still on your case. You have told us
14 you don't - haven't had contact --

15 MR SERRY-KAMAL: Mr Kamara is my contact with those people
16 and in his absence yesterday there was very little I could do.

17 JUSTICE DOHERTY: So what I'm not clear is if you're
18 closing your case now and --

19 MR SERRY-KAMAL: No, your Honour, I would like to talk to
20 them before. Just one more witness I'll call.

21 JUSTICE DOHERTY: In that case, I should have asked the
22 witness to remain in the wings somewhere - until the next break,
23 I mean.

24 Now, Mr Bangura's witnesses, Mr Nicol-Wilson, I think that
25 would be the appropriate one to ask about next. Have you had an
26 opportunity to, now that your client has been released from his
27 oath?

28 MR NICOL-WILSON: Yes, your Honour, I spoke with my client
29 during the break and his preferred option at the moment is not to

1 call any further witness.

2 JUSTICE DOHERTY: Thank you, Mr. Nicol-Wilson. I will note
3 that Mr Bangura has closed his evidence.

4 Now that leaves you, Mr Metzger. You were reviewing your
5 statements over the break. What is your situation?

6 MR METZGER: Your Honour, I have seen what my learned
7 associate has done. The witnesses have not attended today. I
8 have been given reasons. One of them is at a job interview,
9 that's Ms Samura, and will be here once she is finished. I think
10 she's a teacher by profession.

11 The other witness is not here as yet, but I was expecting
12 her any time, presumably lunchtime is when she can come here;
13 this is Mr Kamara's daughter. And I have yet to hear about the
14 whereabouts of Mr Kanu's sister who in fact I saw briefly
15 yesterday.

16 The process that I intend to take, having seen the material
17 that has been collated for me by Mr Sherry, is that I
18 particularly in light of the questions that may have been asked
19 by Mr Herbst in the course of this case which he may not have
20 been privy to or taken on board in our conversations, I would
21 like certain areas clarified and then I was hoping to call no
22 more than two witnesses, as I think I said earlier. Although in
23 fairness I should say that I am in two minds at present. I
24 wanted to clarify content of conversation inasmuch as I can,
25 although I take the view that as it is the Prosecution who brings
26 the case and the Prosecution who must prove the case, that any
27 questions that have been asked that may already have been
28 answered by Mr Kanu, the Defence would not be obliged to deal
29 with. The issue of corroboration, therefore, doesn't apply. And

1 the only areas in which assistance can be given to this Court
2 would be in relation to telephone conversations and that which
3 was put either on a hypothetical basis whether as it were that
4 hypothetical basis was itself ensconced in either euphemism or
5 hyperbole is an matter I suppose for submission.

6 JUSTICE DOHERTY: Very much so. If there is no evidence to
7 rebut, there is no evidence to rebut.

8 MR METZGER: Indeed, your Honour. But in fairness to my
9 client, his instructions and the case in general, I must ask for
10 a little time and I would hope that certainly by the time we
11 finish today to say to your Honour definitively which witnesses I
12 am going to call, if any.

13 JUSTICE DOHERTY: Well, Mr Metzger, I want to remind all
14 counsel that we are - tomorrow is our last day, 2.30, and we've
15 already gone over the scheduled time. I have a duty to all
16 accused and to the justice system not to waste time and I am
17 aiming to get this evidence closed tomorrow.

18 MR METZGER: Your Honour, I hear that, I appreciate that
19 those words and the exhortation to all counsel to act --

20 JUSTICE DOHERTY: All counsel.

21 MR METZGER: I did say all counsel.

22 JUSTICE DOHERTY: Indeed, I am emphasising your words
23 because I have not lost track of the fact we have five counsel in
24 this case.

25 MR METZGER: Indeed, your Honour. And it is with great
26 regret that I find myself in this situation because clearly we
27 had made plans and continued to, as it were, revisit those
28 plans --

29 JUSTICE DOHERTY: I'm just reminding counsel that this has

1 to be done. Now, what I've got in mind at this moment, this very
2 moment, is to release Mr Serry-Kamal to follow up with this
3 witness before he loses him; then also to ask you and Mr Herbst
4 if you've come to any resolution on the exhibits. As always, if
5 they're not gone in by consent, I will make a ruling on them,
6 goes without saying.

7 I will release Mr Nicol-Wilson if it would assist him in
8 the furtherance of his case. I will deal only with your matter.
9 I will adjourn then for - I'll take the Freetown adjournment
10 early, and I will resume and by that time I will really exhort,
11 urge, if not order counsel to have their next witness in or tell
12 me that that witness is on their way.

13 So Mr Serry-Kamal, I'm going to release you now for the
14 practical reasons you've heard. If you want to stay in Court,
15 you're at liberty to do so.

16 MR SERRY-KAMAL: Your Honour, please.

17 JUSTICE DOHERTY: And Mr Nicol-Wilson, likewise. So
18 Mr Metzger, have you and Mr Herbst sorted out this - sorry,
19 Mr Nicol-Wilson?

20 MR NICOL-WILSON: Your Honour, I also ask that the client
21 be allowed to leave so I can have some further consultations with
22 him at the detention.

23 JUSTICE DOHERTY: Yes, indeed, these matters do not affect
24 him. If they do, I will stop them. And Mr Bangura, I would ask
25 that you be escorted out so as that you can consult with your
26 counsel now that you've been released from your oath.

27 Now, Mr Metzger, it's between you and Mr Herbst, and
28 Mr Serry-Kamal is at liberty to leave to find his witness.

29 MR METZGER: Your Honour, before my brother counsel I leave,

1 may they have an indication of when they need to be back because
2 if your Honour is taking the usual break, I'm sure your Honour
3 will be kind enough to make sure that I benefit from that, too.

4 JUSTICE DOHERTY: Let's be realistic. Let's set a time.
5 It's 25 past 12 Freetown time. I think it's going to take 5 to
6 10 minutes to do this exhibit. Let us resume Freetown time 2.00.
7 And that is to allow both of you to interview your witnesses.

8 MR METZGER: Thank you, your Honour.

9 JUSTICE DOHERTY: So we'll just deal with this exhibit
10 matter.

11 MR HERBST: Your Honour.

12 JUSTICE DOHERTY: Yes, Mr Herbst.

13 MR HERBST: Your Honour, it will only take one minute.

14 JUSTICE DOHERTY: What will only take a minute?

15 MR HERBST: What I'm about to say with respect to - can you
16 hear me?

17 JUSTICE DOHERTY: Loud and clear.

18 MR HERBST: Can your Honour hear me?

19 JUSTICE DOHERTY: I can hear you very clearly.

20 MR HERBST: It will only take one minute, not 5 or 10
21 minutes. I have reviewed about half of the transcript during the
22 last break, I expect to review the rest of the transcript in the
23 next half hour of this break, and I hope to have a list of
24 exhibits a little more extensive than Mr Metzger's, but I'm
25 working from the transcript and therefore I think I'll have an
26 accurate list of the pages that should go into evidence and then
27 your Honour can rule at that time.

28 JUSTICE DOHERTY: That sounds reasonable. It will also
29 allow Mr Metzger to get to his witnesses quickly. What

1 essentially I've done is allow an hour and a half for counsel to
2 consult with their witnesses and to have their break. So we'll
3 resume at 2.00 and we'll raise the issue of these exhibits when
4 we don't have a witness. We'll make as best use of our time.

5 MR METZGER: Thank you, your Honour. In the circumstances
6 it may be prudent if your Honour can be given a copy of what I've
7 sent to Mr Herbst as well. I suspect from what Mr Herbst is
8 saying that he's looking for additional material rather than
9 disagreeing with me on the matters which I have put forward as
10 being those matters which it seems as if he cross-examined on.

11 JUSTICE DOHERTY: I have the list before me, but as always,
12 rather than be seen to pre-determining issues, I will hear
13 counsel. We'll adjourn until 2 and I will expect counsel to have
14 a witness available at that time. I don't mind which of the two,
15 either Kanu witness or Kamara witness, but there will be a
16 witness. Please adjourn Court until 2.00.

17 [The Court adjourned at 12.22 p.m.]

18 [The Court resumed at 2:00 p.m.]

19 JUSTICE DOHERTY: Can you hear us, Kigali?

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

21 JUSTICE DOHERTY: Thank you, we'll proceed.

22 MR NICOL-WILSON: Your Honour, I have a preliminary matter
23 to discuss.

24 Your Honour, I have conferred further with my client during
25 the short break and whereas his position is still the same; that
26 is, he does not intend to call any further witness, yet there is
27 an issue which he wants this Trial Chamber to clarify and which
28 he thinks is very, very important as far as his credibility and
29 his testimony is concerned.

1 My client has insisted that somebody met him after 21
2 August 2004 and represented himself as working for the Special
3 Court and, to be very specific, the Office of the Prosecutor. I
4 have told him that Mr Herbst has spoken that he was not that
5 individual, and I have no reason to doubt that statement. I am
6 personally convinced that it wasn't Mr Herbst, but my client is
7 insisted yes, somebody met him who looked like Mr Herbst, and in
8 that vein we want some sort of direction to be given to the
9 Office of the Prosecutor or the Registrar to provide further
10 information to this Trial Chamber as to who met Mr Bangura after
11 21 August 2004 with a view of getting him to serve as a witness
12 in the AFRC trial.

13 My client believes that that clarification is very, very
14 important, because when he said that Mr Herbst met him in 2004,
15 that was a very honest statement. But he may be mistaken. It
16 might be somebody else. But definitely somebody from the Office
17 of the Prosecutor met him and had a discussion with him at King
18 Harman Road.

19 In view of that instruction, your Honour, I am craving your
20 indulgence for a further instruction to be given to the office of
21 the Registrar to seek clarity as to who met my client in August -
22 after 21 August 2004.

23 Your Honour, I further wish to say - my apologies for
24 coming in a second time. I further wish to say that you may be
25 correct about the Turnbull warning and situation with regards to
26 the statement made by my client when he was testifying. It's
27 possible he made a mistake and it wasn't Mr Herbst, but somebody
28 met him, and he believes that that issue is very crucial as far
29 as weighing the credibility of his testimony is concerned.

1 JUSTICE DOHERTY: One thing I mustn't do at this point is
2 to make a general decision about his credibility. That is not
3 the appropriate place - this is not the appropriate place or the
4 proper time to do that.

5 But if it's any consolation to your client, first of all, I
6 don't think it was ever put in issue at all that he met someone.
7 That's not being challenged, to my mind. And obviously from what
8 we have heard in this trial and what we have heard in other
9 trials, I have no doubt at all that people were interviewed with
10 a view to having them brought as Prosecution and Defence
11 witnesses. There is no doubt.

12 I refer in this trial to the evidence of 334 that he was
13 interviewed; I refer to the evidence of Mr Bangura himself that
14 people were going in and out of the prison being taken in and
15 out; and I heard very similar evidence in the AFRC and the recent
16 Taylor trial.

17 So I have no - it's not been challenged, it's not been
18 rebutted, and I have no reason to doubt that someone spoke to him
19 after August 2004. It shows a consistent pattern of
20 investigation that we've heard from several witnesses here and in
21 other trials.

22 It's also a lapse now of eight years. There were many
23 investigators and counsel involved in both the AFRC and the RUF
24 trials. Some of them were American. It's on record, some of the
25 names of the American investigators. I say that because it was
26 raised several times in Taylor. I'm not an expert on American
27 accents, and I suspect Mr Bangura isn't either. So it could be
28 that over a lapse of time, those accents are merging.

29 And I have no reason to doubt at the moment that the

1 un rebutted and unchal lenged evidence that he was interviewed by
2 someone is not correct.

3 I am satisfied also on the Registrar's instruction that
4 that person wasn't Mr Herbst, and I accept that with the lapse of
5 time, the witness to be mistaken in his identification.

6 MR NICOL-WILSON: I'm grateful for those comments, your
7 Honour.

8 JUSTICE DOHERTY: I feel I - I'm just having a look at Rule
9 33, and I bear in mind also the operations of Rule 70, and I do
10 feel I am restricted in the powers I have to give directions to
11 either the Registrar or to the Office of the Prosecution to
12 adduce the type of evidence that you are looking for.

13 Also, of course, there is a fundamental question of
14 relevance.

15 So with that statement - and I trust, Mr Herbst, you accept
16 that I'm making no findings of fact or credibility as a whole
17 when I make that observation that I have just made.

18 MR HERBST: I do indeed accept that, your Honour.

19 JUSTICE DOHERTY: And I hope that will allay Mr Bangura's
20 fears and concerns. You can take instructions, Mr Nicol-Wilson,
21 at a time convenient to yourself.

22 Now, I think I have to start with you, Mr Serry-Kamal,
23 because you haven't had an opportunity to complete your Defence
24 case.

25 MR SERRY-KAMAL: Your Honour, I have diligently tried to
26 contact all the people that I wanted to interview. But as things
27 turned out, I will really need the rest of the evening to contact
28 them and decide again tomorrow morning whether in fact I would
29 call one or just - I'll call two, or one, or I won't call anyone

1 at all. I will need until the evening. I really crave your
2 Honour's indulgence to allow me until the evening. We have had a
3 very long time - long [indiscernible], but I'm afraid few of us
4 will help us solve the - make the final decisions that will end
5 the case for the fourth accused.

6 JUSTICE DOHERTY: Mr Serry-Kamal, you've heard what I said
7 this morning. The obligation's on me to have this trial
8 completed, the obligations imposed on me by the Rules and by the
9 statute, and we have to close this evidence.

10 I am not laying any blame on you.

11 I will see what's happening with Mr Metzger's witness who
12 he was expecting to see, and if it's agreed, we may even excuse
13 your appearance to go and look for your witnesses.

14 Mr Metzger.

15 MR METZGER: I'm grateful to your Honour.

16 Your Honour will see, and I'm very happy to say, that I am
17 in front of your Honour today assisted by my learned friend
18 Mr Hassan Sherry of counsel, who has been of great assistance to
19 me in the --

20 JUSTICE DOHERTY: I'll note Mr Sherry on the record as
21 appearing and welcome him to the Court.

22 MR METZGER: Thank you, your Honour. Despite his best
23 endeavours, and although I cannot now explain why it is that I am
24 in a different position - when I say different position, I'm in
25 the same position in the future from the past when I made the
26 observations to your Honour as to where we are or where we were.

27 I still haven't been able to make contact with the
28 witnesses, although we have been assured that one is definitely
29 on her way. One of the witness is definitely out of the way,

1 because we haven't been able to reach her cell phone. I don't
2 know, as I say, whether it's an issue of the phone not being
3 charged or anything like that exactly.

4 But that places me very much in the same position as
5 Mr Serry-Kamal. I would, out of duty to my client, and
6 considering that which has gone before, ask for your Honour's
7 indulgence so that we may return tomorrow. I can understand if
8 your Honour has then to exercise the power of guillotine, so to
9 speak. I do understand that this case must proceed, and it must
10 proceed as swiftly as we can possibly make it. But being as
11 swift as we can and with the limited resources we have available,
12 I cannot put any evidence before the Court at this time.

13 So my submission at this point is really that your Honour
14 not, as it were, bring the guillotine down on the case for
15 Mr Kanu now, but rather leave it until after that of
16 Mr Serry-Kamal's, at which point in time we may be in a better
17 position because he may have a witness in the witness box.

18 JUSTICE DOHERTY: Well, if you say one is on her way --

19 MR METZGER: She has been on her way for some considerable
20 time. So I suppose I am being - when I say she's on her way, I
21 am saying, effectively, what I said to your Honour before the
22 break, because that was the information that I had then. It
23 hasn't changed.

24 JUSTICE DOHERTY: You explained it very clearly that she
25 was at a job interview.

26 MR METZGER: That one, it seems, can't make it today, I can
27 tell your Honour. It looks as if - I don't know what the
28 procedure is. Certainly I've been given the impression that
29 there are a number of potential candidates for a job who are all

1 sitting somewhere waiting for their respective turns. I could,
2 of course, be wrong. She cannot leave that situation because she
3 would like to get the job, and I don't think that there is
4 anything that can be done to allow her to be extricated from that
5 position.

6 JUSTICE DOHERTY: She could be extricated if I issued a
7 subpoena and sent someone down to serve it on her.

8 MR METZGER: Well, yes of course. As counsel, one tends to
9 shy clear of subpoenas unless absolutely necessary, particularly
10 in a case where one wants to deal with a very discrete part of
11 the evidence.

12 As I say to your Honour, I can understand if your Honour
13 were to say to me - excuse the use of perhaps the more common
14 form of the language - put up or shut up, but I would ask for
15 your Honour - I'm not suggesting that your Honour would use that
16 terminology. But were it to be that your Honour had to be very
17 firm and direct in getting the Defence case for Kanu to press on,
18 I am not able to assist the Court at this point in time.

19 JUSTICE DOHERTY: Well, given that you think this lady may
20 come, I'm going to - and Mr Serry-Kamal is still looking for his
21 possible witness - he's been careful not to either give me a
22 name - and Mr Serry-Kamal, this causes me to remember that
23 counsel for the Prosecution requires the name of your possible
24 witness. So I'm going to ask you for that.

25 I'm going to defer until 3 o'clock and give you both a
26 chance to find out what's happening.

27 Mr Serry-Kamal, you've got until tomorrow morning. You're
28 going to interview your witness now. What are the possible names
29 of these witnesses? As counsel for the Prosecution - I'm now

1 ordering that it be disclosed.

2 MR SERRY-KAMAL: I have given him the names before. They
3 are V-Boy, Manga, and Pastor.

4 JUSTICE DOHERTY: That's Pastor Eddie Maf.

5 MR SERRY-KAMAL: Otherwise called Maf.

6 JUSTICE DOHERTY: Yes, very well.

7 MR SERRY-KAMAL: I spoke to Pastor about four days ago. He
8 went to the office the other day, but we were still here. He
9 left. I have to call him back again. He's now a Pastor. It's
10 difficult.

11 JUSTICE DOHERTY: Well now, what I'm going to do is I'm
12 going to adjourn until 3 on the basis that Mr Metzger's witness
13 is hopefully en route. I'm going to excuse your appearance until
14 tomorrow, Mr Serry-Kamal, to sort out your witness.

15 MR SERRY-KAMAL: Most grateful, your Lordship.

16 JUSTICE DOHERTY: And you're both aware of my attitude,
17 what I've said, and both the statute and the Rules.

18 Mr Nicol-Wilson, you too may be excused appearance if you
19 need to prepare other matters. Because as I understand the
20 submissions of Mr Metzger, your client's name may not arise in
21 the course of this particular part of the evidence. Again, you
22 are, of course, at liberty to remain to protect your client's
23 interests.

24 So that's that situation for the moment: 3 o'clock.

25 I now refer Mr Metzger and Mr Herbst to the situation
26 concerning the exhibits, and other counsel may leave if they so
27 wish.

28 MR HERBST: Your Honour --

29 JUSTICE DOHERTY: Yes, Mr Herbst? Yes, I'm listening to

1 you, Mr Herbst.

2 MR HERBST: Before the other counsel leave, if they are
3 going to leave, I would like to ask the Court for some guidance.

4 It was my understanding that we were going to try to get
5 the summations in before the - the final submissions in before we
6 left tomorrow. I'm on a plane which would require me to leave
7 here around 4.30 or so my time. I'd like to ask - I'm not going
8 to make any statements about the time with which your Honour has
9 given the two remaining defendants to close their case, but I
10 would like to ask whether it is your Honour's wish to hear the
11 closing submissions if there will not be witnesses tomorrow. And
12 if so, in what order your Honour will proceed to request such
13 submissions.

14 JUSTICE DOHERTY: It was my indeed my intention to get
15 submissions in. As I have mentioned once or twice before in the
16 course of these proceedings, under our Rules the Prosecutor is
17 obliged - mandatory provision - to make a submission, and to make
18 it first. Defence counsel are not under an obligation to make a
19 submission, but may do so should they wish.

20 I was anticipating the normal procedure that we have in
21 many courts where submissions are made as soon as the evidence
22 closes. I would therefore hope to have at least your
23 submissions. But now that I see this time is leaking past, I'm
24 worried about it. So I have in mind that I may have to have
25 written submissions, in which case they would be limited in
26 length.

27 I see Mr Nicol-Wilson's light is on. Before I go any
28 further, I'd better hear what he says.

29 MR NICOL-WILSON: Your Honour, Mr Bangura would like to be

1 excused for the rest of the day.

2 JUSTICE DOHERTY: Yes, he may be taken back. Very well, he
3 may be taken back. Because these matters are procedural, they
4 don't affect him and he is represented. If that is his wish,
5 he's entitled to do that. I will note that he's absent, and in
6 accordance with his own wish under - I think it's Rule 60. Rule
7 60.

8 Now, Mr Herbst, as I said, I was hoping to have it - you
9 have to address. I'm not looking for a long, complicated
10 address. So I would be asking for it orally at the close of
11 evidence.

12 I'm beginning to see it may not happen, in which case I
13 would ask for a brief submission in writing which can be sent
14 electronically. Is this the type of indication you are seeking?

15 MR HERBST: I am, your Honour. May I ask one further
16 question of procedure of your Honour?

17 JUSTICE DOHERTY: Certainly.

18 MR HERBST: If we do proceed orally and I go first, and one
19 or more of the defendants chooses to make a responsive oral
20 submission, is there a right of responsive submission orally? Or
21 does the defendant just get the last word?

22 JUSTICE DOHERTY: The defendant gets the last word. There
23 is no response under our rules, and that includes even points of
24 law.

25 That's provided: (a), by the Rule 86; and (b), that has
26 been the practice that's been adopted. So that is both the Rules
27 and the procedure.

28 MR HERBST: Your Honour, I am grateful for that advice and
29 guidance.

1 I guess the only other question would be your Honour
2 indicated that you might have some time limits in mind for such
3 submissions, either - if they are oral. In light of the
4 timeframe that we would have, would your Honour like to set some
5 time limits both for me and any Defence counsel who wishes to
6 make oral submissions tomorrow?

7 JUSTICE DOHERTY: Well, it's not my usual practice to do
8 that. You have to - I have to leave here by 2.30 and, counsel,
9 you have to leave by 4.30. So I suspect if Mr Serry-Kamal is
10 calling a witness and Mr Metzger is calling a witness, that's
11 going to take us up to 2.30. I would then set a time, having
12 consulted with counsel how long they require. There is time
13 limits in the Rules, and this is not a crime against humanity.
14 It's not a war crime; it's a contempt. It's not the same as the
15 other trials.

16 So I would be looking at maybe two days each, but I would
17 hear what people have to say. I would not.

18 MR HERBST: Your Honour, two days --

19 JUSTICE DOHERTY: To file a brief submission.
20 Mr Nicol-Wilson is trying to speak. I'm going to let him.

21 MR NICOL-WILSON: Yes, your Honour. I have conferred with
22 my client on the issue of closing submissions, and his preferred
23 choice and my own preferred choice as well is to do it orally.

24 JUSTICE DOHERTY: It's certainly the practice in all our
25 jurisdictions that we've learned to speak on our feet, so that
26 would be my preference. Counsel has heard the restrictions upon
27 us, and we will do the best we can tomorrow. I'm going to let
28 Mr Serry-Kamal go. He's been sitting patiently waiting for me
29 to --

1 MR SERRY-KAMAL: Your Honour, I should say that I would
2 ideally prefer an oral submission.

3 JUSTICE DOHERTY: So would I. Yes, I would prefer that.

4 MR SERRY-KAMAL: Especially after hearing Mr Herbst, maybe
5 it will just be necessary to say a few things.

6 JUSTICE DOHERTY: Gentlemen, that would be by far the best
7 solution.

8 I've undertaken to reconvene at 3 o'clock to allow
9 witnesses be found and brought in and be started. I can't do any
10 more than that. I'm still waiting to deal with the exhibits
11 arising from the Kanu diaries. If those --

12 MR HERBST: I can help with that.

13 JUSTICE DOHERTY: Very good. Mr Metzger has indicated that
14 some will not be objected to. It really depends on what they
15 are. If you're both ready to proceed with that, please do so.

16 MR METZGER: Your Honour, can we deal with this as well at
17 3? We can deal with it more shortly then, because I have a note
18 from Mr Herbst that was passed to us as we sat down. Of course,
19 we were considering other things at the time, and I really
20 haven't had the opportunity to look at these, because he says
21 they are in addition to the matters that I've raised. I thought
22 some of them were exactly the same thing, but I could be wrong.
23 If they are --

24 JUSTICE DOHERTY: We'll stand that down as well. We'll
25 stand the whole thing down to 3.00 in hopeful anticipation we
26 have a witness with us.

27 Adjourn Court until 3 o'clock, please.

28 MR HERBST: Your Honour?

29 JUSTICE DOHERTY: Sorry, Mr Herbst. Yes, I'm listening.

1 MR HERBST: May I just enlighten both the Court and
2 Mr Metzger as to the list that I passed and apparently I asked be
3 transmitted. Apparently it has to both counsel and the Court.

4 These were all taken from the August 29 transcript, which I
5 had assumed, perhaps mistakenly, until I looked at Mr Metzger's
6 notes, were all of the diary entries. Because I thought I had
7 discussed all of the diary entries with Mr Kanu on that first day
8 of cross-examination, but it appears from Mr Metzger's note that
9 other pages were referenced on a subsequent date because of his
10 transcript references in his note of transcript 1912, 1941, and
11 1915.

12 So that's why I said at the top they're in addition to.
13 There may well be some duplications, and I don't have the other
14 transcripts with me, so I couldn't review them. But I'm content
15 to rest on these - the pages that are reflected in both of our
16 notes, because I think that that will probably do it.

17 In any event, the record is clear what the pages were
18 because they're all in the transcript, but I just wanted to
19 provide that clarification. I think we should have them on this
20 list, at least for the most part.

21 JUSTICE DOHERTY: I'll leave that for Mr Metzger. He's not
22 moving these; you're moving them. But let him check and see
23 which ones he's objecting to.

24 And I'm grateful to all counsel for their indication on
25 submissions, by far the best, and let us hope it can be achieved.

26 I'll resume at 3 o'clock and see how the situation is.
27 Please adjourn Court until 3.

28 [The Court adjourned at 2.30 p.m.]

29 [The Court resumed at 3:00 p.m.]

1 JUSTICE DOHERTY: Can Kigali hear me?

2 THE COURT OFFICER: [In Kigali] Yes, we can, your Honour.

3 JUSTICE DOHERTY: Thank you.

4 Mr Metzger, any success?

5 MR METZGER: May it please your Honour, I received a
6 message some way into the period of the recess for this purpose
7 that Dorinda, the daughter, had arrived. I have had the
8 opportunity of seeing her for about two and a half minutes. I
9 have asked for her to be sent round to the outside of Court and
10 when Mr Sherry approaches, I hope it will be to tell me that
11 she's outside Court.

12 One caveat: She was, of course, a young lady, now an
13 adult, having attained the age of 18 years old, who is clearly
14 anxious to come and give evidence in support of her father. I
15 had hoped that if I were calling evidence, that she would not be
16 the first witness I was calling, so that she would be there in
17 order that I could tender her if required. And trying as hard as
18 I can - will your Honour bear with me one minute and let me just
19 check with Mr Sherry?

20 JUSTICE DOHERTY: Certainly.

21 MR METZGER: Your Honour, as I suspected, she is here. She
22 is outside, and of course she is willing to give evidence. I
23 hadn't finished going through the proof with her, and I am
24 anxious to do the best I can, as it were, not to bring a lamb
25 into the lion's den.

26 As I have indicated throughout, particularly in relation to
27 this witness, it does cause me professionally great concern,
28 because I am of the view that the only evidence she can give is
29 of her conversations with her father. I don't think at this

1 point in time, not having finished looking at her proof with her,
2 that I would be inclined to call her.

3 After I've spoken to her, I may take a different view. I
4 stress the word "may". From where I stand at this point in time,
5 it is unlikely that I would - unless after I have spoken to her
6 there is something that she could add to this picture - that I
7 would want to call her to either prolong this trial, or to
8 increase the agony that someone in her position would feel.

9 JUSTICE DOHERTY: As you know, our Rules are different from
10 the UK on speaking to witnesses, and you are entitled to speak to
11 the witness prior to calling her if you so decide and to enable
12 you to make that decision.

13 I can say now from the outset that I can see there could
14 well be reasons - matters of privacy relating to this witness,
15 given the - her youth and family relationship and her age at the
16 time the alleged communications were made.

17 We have the screen available. I will bear in mind the
18 provisions of Rule 75 if you do decide to call her and her right
19 to privacy.

20 I think in fairness I've got to let you speak to her, and
21 I'll just say to Mr Herbst.

22 Mr Herbst, I'm going to - I think it's fair to allow
23 Mr Metzger to speak to this prospective witness in order to allow
24 him to make a decision as to whether he's going to call her. If
25 he does do so, I may well use the provisions that I'm endowed
26 with under Rule 75 to have her evidence heard in private because
27 of the family situation and her age at the time.

28 Have you any comment on that before I make a decision?

29 MR HERBST: [Indiscernible] about the conditions under

1 which the witness testifies. It's not clear to me that - from
2 what I've heard my learned friend say that he is ultimately going
3 to call the witness.

4 JUSTICE DOHERTY: That is correct. He has to interview her
5 and make that decision.

6 MR HERBST: Yes. And I'm basically going to let Your
7 Honour make all these decisions without input from me, save I
8 would just like to make one comment, which is that it seems to me
9 that there has been time for Defence counsel to - and their
10 associates to both contact witnesses, especially family witnesses
11 or witnesses who were identified at the outset of the defendants'
12 case in Mr Serry-Kamal's case, and to make decisions as to
13 whether to call. But that's all I'm going to say. I'm not - I'm
14 going to leave all of these decisions in the Court's hands
15 without further comment.

16 JUSTICE DOHERTY: Thank you, Mr Herbst.

17 Mr Metzger, I'm going to ask you to go and interview your
18 witness. Our Rules permit that, and I'm not going to interfere
19 with that. Then I'm going to expect you to come and advise my
20 Associate through the Office Of The Principal Defender when
21 you're ready to address that. I would like to deal with that
22 this afternoon, because if she's not going to -

23 MR METZGER: I understand that.

24 JUSTICE DOHERTY: So we'll adjourn temporarily for counsel
25 to inform us when he's ready.

26 MR METZGER: I can say, your Honour, that certainly I
27 should be in a position to let your Honour know by 3.30. I'm
28 conscious that if I do decide to call her, Mr Kanu ought to know
29 and ought to be present. So I will also take the opportunity if

1 he can be held for a few minutes in the Court precincts in Kigali
2 so that we can - I can speak to him directly before 5.20 their
3 time, which gives me about five minutes.

4 JUSTICE DOHERTY: Yes, that was going to be my next point.
5 The detained persons have to leave. So I will ask Madam Court
6 Officer to ask the authorities there with her in Kigali if
7 Mr Kanu can just remain within easy reach of the telephone for a
8 little bit longer so that his counsel can speak to him quickly.

9 Madam Court Manager, would you be able to facilitate that?
10 If it's necessary to get a response to us, in the affirmative or
11 in the negative, please do so through the Court Officer here.

12 THE COURT OFFICER: [In Kigali] Yes, Madam [indiscernible].

13 JUSTICE DOHERTY: That's fine. I'll adjourn quickly now to
14 save as much time as possible. Adjourn to resume as soon as is
15 practical. Please adjourn.

16 [The Court adjourned at 3:09 p.m.]

17 JUSTICE DOHERTY: The Court is now in session. Please be
18 seated.

19 [The Court resumed at 3:32 p.m.]

20 JUSTICE DOHERTY: Mr Metzger.

21 MR METZGER: Your Honour, can we make sure that Kigali can
22 hear us?

23 JUSTICE DOHERTY: Mr Herbst - the two accused are in Court
24 still? I thought they had to be brought back to the detention
25 centre.

26 MR METZGER: I was under the understanding they had left or
27 was going to leave.

28 JUSTICE DOHERTY: I see someone. Maybe it's not them.

29 THE COURT OFFICER: [In Kigali] No, it is them. I was

1 waiting for the go ahead to tell them to leave. I did tell
2 Mr Alpha and asked if he could - if I could let them know.

3 MR METZGER: In those circumstances, I shall be very quick.
4 I have spoken to the young lady. I have sought to prepare her
5 for what she should expect in Court. She has promised me she
6 will be here tomorrow between 8 and 8.15, at which time with the
7 leave of the Court, before the Court sits necessarily, I would
8 want her to be allowed to come into Court so that she can see the
9 environment is like here, and we can explain to her the
10 protective measures that are available. I have, however, and
11 your Honour will know have heard my misgivings and concerns. I
12 have, however, explained to her the circumstances of giving
13 evidence and have told her to sleep on her decision and indicated
14 that I will do so as well so that tomorrow morning we will all
15 know what we are in for.

16 JUSTICE DOHERTY: That's fine, Mr Metzger. I have checked
17 and the screen is available, so if she's called - and I do know
18 that our WVS do bring witnesses into the Court to show them
19 what's available. So if it can be conveyed, Mr Court Officer,
20 that WVS officer will be available to show the witness what is
21 involved. And I note that Mr Kamara and Mr Kanu are still here.
22 I am very grateful to the Rwanda authorities for this indulgence,
23 and I assure them it will not happen again.

24 We'll adjourn then until tomorrow. I'm reluctant to start
25 earlier than the usual time because of the traffic, but if
26 counsel assures me they can be here, I'll make it 8.45. I don't
27 know what --

28 MR METZGER: I don't know if it can be early. Certainly I
29 said 8 to 8.15, knowing that there is a penchant for being

1 approximate as to time.

2 JUSTICE DOHERTY: Well, she does have to be shown around
3 the Court. So let's stick to the normal time because everybody
4 else is geared to that. Mr Herbst, it is likely that I will use
5 the provisions of Rule 75 to allow this witness to give evidence
6 behind a screen and possibly in private when it comes to personal
7 details, but I will not make the order until I know she's
8 actually being called because that would be an exercise in
9 futility. Mr Kamara and Mr Kanu can now be taken back to the --

10 MR HERBST: They have gone.

11 JUSTICE DOHERTY: So they have. That's fine.

12 MR HERBST: Can I be heard just before you adjourn?

13 JUSTICE DOHERTY: Oh, no, we haven't dealt with these
14 exhibits yet. I'm not sure what's happening to them. Yes, you
15 can be heard.

16 MR HERBST: Well, I wanted to ask, in light of the fact
17 that we're only going to have until 4.30 our time and 2.30 your
18 time tomorrow, in the hope that we might get the oral submission
19 that is everybody is hoping for, I was going to ask your Honour
20 if it would be possible to start early. However your Honour
21 resolves that issue, I would request as a matter of courtesy from
22 Defence counsel to be advised sometime this evening, tonight, as
23 to whether additional witnesses will be called. I'm not speaking
24 now of the daughter because I heard Mr Metzger say that he wanted
25 to sleep on that, and he wanted her to sleep on that. But I
26 would request as a matter of courtesy that if any other witnesses
27 are going to be called, that I be advised of that sometime this
28 evening or tonight, either by email and cell phone to me or
29 through the offices of the Court Officer, who also has both my

1 email and my cell phone. I know counsel have my cell phone -- my
2 email. I don't know whether they have my cell phone. But I
3 would ask that - that courtesy so I will have some understanding
4 as to what's going to happen tomorrow.

5 JUSTICE DOHERTY: Mr Metzger.

6 MR METZGER: I'm not sure that Mr Herbst would have seen
7 that in the trenches of the Defence today stands only one - well,
8 I am assisted, and I believe that there is the legal assistant
9 for Mr Nicol-Wilson here. I cannot speak for them.

10 JUSTICE DOHERTY: I'm asking only about your --

11 MR METZGER: I'm very obliged. Mr Herbst knows what my
12 position is. I was proposing to call a maximum of two witnesses.
13 We're waiting on the young lady. I haven't seen any of the other
14 witnesses today. One of them is at a job interview, as I've
15 indicated. I shall send out messages tonight that this is a
16 matter of the utmost importance, and as Mr Herbst will know from
17 his own preparation, not having had the opportunity to meet the
18 witnesses for preview preparation purposes, I am unlikely to call
19 any witness. If I am required to call witnesses that I haven't
20 had an opportunity of speaking with beforehand. There are only
21 two other possible witnesses. Mr Herbst, I've given you
22 their details already. It's not going to change. So that's the
23 position as far as Kanu is concerned.

24 JUSTICE DOHERTY: Mr Herbst, is that satisfactory? And
25 Mr Serry-Kamal has already said he's trying to find one of three
26 witnesses - in other words, he's trying to locate, and they were
27 Maf, otherwise known as Pastor Eddie, V-Boy, and Manga. And
28 whether one or any of them comes to the witness box is still in
29 the lap of the Gods.

1 MR HERBST: I thank the Court. I won't press the matter
2 further.

3 JUSTICE DOHERTY: Now, exhibits.

4 MR HERBST: The exhibits. Your Honour, I don't know
5 whether Mr Metzger has had a chance to look at my handwritten
6 list, but as I said before this last adjournment, from what I can
7 tell of the transcript that is available to me today, these
8 handwritten entries as to the exhibits that were used by me on
9 the first day of the cross-examination of Mr Kanu on August 29
10 are these here. The Court has copies of all of these and all
11 counsel have copies that were earlier transmitted, although they
12 would have to be picked out. In other words, for example, the
13 fourth entry is the entry for Monday, September 15, from the 2008
14 diary. It has Ms Hanciles's name on it. So one would have to go
15 through the 2008 diary and exhibits that were earlier sent to
16 Freetown and just pick that one out. Similarly for the other six
17 entries --

18 MR METZGER: I wonder if Mr Herbst will permit me to
19 interject. I can perhaps shortcut this process.

20 JUSTICE DOHERTY: If you could.

21 MR METZGER: I have spoken to the Court Officer, Mr Alpha,
22 having looked at Mr Herbst's list and my list, and I agree with
23 all of the material put before us apart from a few matters, which
24 I'm going to mention in just a moment, and the reason why I don't
25 agree with those.

26 I believe also that between the papers that the Court has
27 had available, that is, with Mr Alpha, and papers that I've
28 brought with me from Kigali, we should have a full set of the
29 material that Mr Herbst has referred to.

1 I don't know if your Honour is in possession of the
2 handwritten document from Mr Herbst. Thank you.

3 JUSTICE DOHERTY: These are the documents that are to be
4 tendered, and I now have the handwritten list before me.

5 MR METZGER: Your Honour will have had my one.

6 JUSTICE DOHERTY: Indeed, I have.

7 MR METZGER: And I think Mr Herbst said was these were in
8 addition to the ones I submitted. In fact, there is some
9 duplication, but we needn't worry about that.

10 I have - if your Honour looks at the 2008 diary, I would
11 take issue with the last two items there on the basis that in my
12 respectful submission, although there may have been reference to
13 these matters, it seems to me that your Honour will have to
14 consider the issue of relevance.

15 Now, one, for example, December 24 to January 3 of the 2008
16 diary refers to some torn pages, as I understand it, where there
17 was some questions about - and Mr Kanu kept referring to the
18 entry on December 25 that shows some figures.

19 Respectfully, the torn pages, such as they may be, are not
20 easily capable of being seen from the photocopies. The originals
21 are in Kigali and therefore, in my respectful submission, this
22 does not assist your Honour. Certainly the other page that is
23 photocopied there has got Ms Kanu's number, or part thereof, and
24 some other writing that has no bearing on this case.

25 In my respectful submission, therefore, this is material or
26 page that I would say ought not to be admitted as an exhibit.

27 Then there is the telephone directory, which was one page
28 which has got a number of numbers on it. If the purpose is
29 simply to adduce that on that particular sheet there is Mr Hassan

1 Bangura's number, well, then it seems to me that that is in
2 evidence, he's accepted that it is there, and it doesn't assist
3 your Honour to have it in, because it's just a list of different
4 telephone numbers given, and the evidence he has given is: I
5 write out names when I get a new diary. I use a diary as a rough
6 work piece of paper. Respectfully, again, I would say it doesn't
7 unduly assist your Honour.

8 Finally the 2000 --

9 JUSTICE DOHERTY: Before you move on, you said the
10 telephone directory.

11 MR METZGER: Page.

12 JUSTICE DOHERTY: Now, I've got these two - I'm going to
13 hold them up. They were the typed lists that were from the
14 Special Court for Sierra Leone. One was a bit battered by age,
15 and the other is the more up to date. Is that what you're
16 talking about? Or are you talking about the list that's in the
17 diary?

18 MR METZGER: No, I'm talking about in the diary. Those
19 battered pages, I think we agreed - forgive me if I now don't
20 remember are defense Kanu 5 and 6, or whichever they are - we
21 agreed when the Prosecution wanted the other one to go in as
22 well, that it would be best to put them together as Defence
23 exhibits and --

24 JUSTICE DOHERTY: They are D Kanu 6A and 6B.

25 MR METZGER: Indeed, your Honour. So those are already -
26 your Honour has admitted as exhibits.

27 The telephone directory page I'm talking about is just
28 another one where there is an example of the name Mr Hassan
29 Bangura. It may be that one. Unfortunately, I have lost that

1 page due to the photocopying process.

2 JUSTICE DOHERTY: "Bangura" is the last entry on the second
3 of the two pages.

4 MR METZGER: That is my recollection.

5 JUSTICE DOHERTY: Mr Herbst, have you got the document
6 before you that counsel is referring to?

7 MR HERBST: If I can briefly respond to what I heard
8 Mr Metzger say --

9 JUSTICE DOHERTY: I'll just let him go through the whole
10 list, and then you can respond one by one.

11 Continue, Mr Metzger.

12 MR METZGER: Yes. And then there is the 2011 diary. I
13 think - we don't have any issues as regards the 2006 diary.

14 The 2011 diary, there were a number of pages which I don't
15 necessarily or particularly take any issue with. We've got the
16 first page, January 11 and 12. Because that contains my personal
17 mobile number, I would prefer for it to be confidential. I'm
18 happy that Mr Herbst may want my number to be immediately
19 available for more work to be thrown my way, but perhaps that's
20 not the way to do it.

21 JUSTICE DOHERTY: I didn't actually know it was there. Is
22 that - there was evidence about a number that was called out and
23 Tamba Brima wrote it down, but I never did find out whose number
24 it was.

25 MR METZGER: No, your Honour, you didn't. It clearly was a
26 number that may have been relevant at the start of these
27 proceedings in one of the former lives of the Prosecution case,
28 but is no longer relevant.

29 And I think the only real questions asked about this page

1 was my number on it, and your Honour will recall the stance I
2 took on that. But as I say, if Mr Herbst thinks it must go in,
3 then I would ask for it to either go in confidentially, or for my
4 personal number to be redacted. It's the first one on the top of
5 page 12. I know Your Honour won't use it.

6 MR HERBST: If that is all, is it time for me to respond to
7 those three items?

8 MR METZGER: Be a little patient, Mr Herbst, I'm not quite
9 finished with the 2011 diary yet.

10 Then there are a number of other numbers, some of which -
11 at least three of which were looked at on the following page.
12 Then there are the lists of four of the convicts in Rwanda and an
13 apparent meeting, which he was asked about and answered.

14 And then the last page, Saturday, July 23, a doctor who -
15 we know Mr Kanu was seeing him, I'm not sure whether that can
16 have any possible relevance in this case on even the case that
17 the Prosecution is advancing at present. It may have some
18 relevance tomorrow, and perhaps that's why Mr Herbst wants it in.
19 But it seems to me that we should refrain from simply putting
20 pages in because they were referred to in evidence if nothing
21 turns on them.

22 Your Honour, those are the matters that I would bring to
23 your Honour's attention in this list. I agree with everything
24 else.

25 JUSTICE DOHERTY: Mr Herbst, you've heard the objections to
26 your application. So if you can respond, please.

27 MR HERBST: As I understand it, Mr Metzger refers to only
28 four items on my list: The last two in the 2008 diary, and the
29 first and last ones in the 2011 diary.

1 With respect to the first one, I'm happy to have it
2 received in confidence - confidentially. I think that disposes
3 of that one.

4 I have to say first generally with respect to the others,
5 it was my understanding that we had an agreement, when the
6 application to admit all of the original diaries was rejected,
7 that we would just admit those items which I had specifically
8 addressed with the witness. And I think we should adhere to
9 that, but I want to address specifically, for example, the
10 December 24 to January 23 of next year, which is obvious from the
11 questioning in the record - because these exhibits have to be
12 assessed in conjunction with what's in the transcript, that -
13 and it's clear that the pages between December 24 and January 3
14 are torn. There are a few pages, and they are torn.

15 There is testimony about Mr Kanu saying there are a lot of
16 torn pages in his diaries. And the objection that the Xeroxed
17 sheet itself doesn't assist the Court, I don't think is an apt -
18 or an objection that has merit, because again it has to be read
19 in conjunction with the testimony.

20 The same thing with the telephone directory page. I don't
21 have before me either the transcript - I've commuted over the
22 lunch break to get this one now - and noted it in the transcript
23 and put it on the list. But the frequency with which Mr Hassan
24 Bangura's name and his phone number in the diary is relevant.
25 Everything else is a matter for weight. And there were other
26 items on the page, as I recall, in terms of the writing. Again,
27 I don't have it in front of me. But it seems to me that the
28 items which were specifically identified ought to go in.

29 I don't - again, I don't have the last item that Mr Metzger

1 addressed, the Saturday, July 23 item. Again, I don't have
2 before me either the questioning that related to that entry, nor
3 do I have in front of me the actual entry. So I can't more
4 specifically address it, but it seems to me that all of these
5 items are admissible. Whatever weight your Honour chooses to
6 give to it, your Honour chooses to give to it. But I think they
7 ought to go in.

8 Again, I haven't looked at Mr Metzger's list, but I'm just
9 content to admit all of the items on it and go home so I can work
10 on either cross-examination of the witnesses, or my closing
11 submission. I thank the Court.

12 JUSTICE DOHERTY: Just a moment, Mr Herbst. You referred
13 to a January torn page. I'm just looking for it here. What year
14 is that? Is that still 2008?

15 MR HERBST: Yes, your Honour. It's the second - the
16 penultimate entry, the one that reads December 24 to January 3.
17 The fifth one down, 5 of 6, January 4th to - December 24th to
18 January 3 of next year on my handwritten list. And there will be
19 - on the Xeroxed page probably visible will be the January 3
20 date, if I recall correctly. Mr Metzger maybe able to assist me
21 [overlapping speakers].

22 JUSTICE DOHERTY: The pages I have are December 24, 25;
23 then week 53, Wednesday, without a date, but it follows from the
24 previous one; and then Thursday. I don't find January.

25 I'm going to ask Mr Court Officer to come up and look at
26 what I have in front of me to make sure I know what I'm talking
27 about.

28 MR HERBST: Your Honour, I'm confident that that is the
29 one. It may not actually say "January 3" on it, but if it's 50

1 whatever - if it encompassed the December 24, 25 period through
2 the early part of the following year, that would be the one.

3 MR METZGER: Your Honour, that is correct. The difficulty
4 is, of course, your Honour will not appreciate easily by looking
5 at the photocopy what has been torn out, because obviously it
6 goes from week 52 to week 53. It follows in sequence, and there
7 is a half a page torn out which - actually, your Honour, there
8 should be two photocopies.

9 Let me show or pass this up through the Court attendant,
10 because clearly on one of those pages what has happened is the
11 photocopier, or the person carrying out the photocopying, has
12 tried to align everything and it's absolutely normal looking.
13 But there is a page immediately before that which I've just
14 handed to Mr Alpha - and I know because I've looked at the
15 original, whereas your Honour wouldn't have by now - which
16 indicates when you look at the 2 of 25, that it's been torn out.

17 And so there is a page, I believe, that has been torn out
18 at that stage. But before the previous date was the 23rd, or
19 whatever that date was - yes, the 23rd - it's torn out of
20 position where the "2" goes on top of the other "2" on the page,
21 and so it looks like it's "25". But what we're seeing there is
22 probably the "21" of the previous page merging with the "25" of
23 that page. That's what's been cut off or torn out. But then one
24 goes on to see it follows: Week 53, week 53, week 53, regardless
25 of that.

26 JUSTICE DOHERTY: I've been given the page, and I did in
27 fact have it. I just didn't appreciate that it's been partly
28 torn. I can see that there is a break in the alignment, and this
29 must be the bit you're speaking about.

1 MR METZGER: Yes. But the reason why I'm saying this is
2 that to exhibit this photocopy page - and with respect, whatever
3 Mr Herbst says about it - and he may want to make submissions -
4 does not help your Honour or anybody in the future who is looking
5 at it unless they have the original. Regrettably.

6 MR HERBST: Your Honour, as I said, it has to be looked at
7 in conjunction with the testimony in the transcript. And the
8 transcript, I think, reveals what Mr Metzger said, and I think
9 there was more testimony relating to it.

10 Again, I don't think it's a major point, but as long as it
11 was referred to, and as long as it's referred to in the
12 transcripts, again it seems to me to be admissible, and for
13 whatever weight or assistance it gives the Court, it gives. And
14 if it doesn't, it doesn't. But I don't want to spend more time
15 on it, because I don't think it's that significant.

16 JUSTICE DOHERTY: The pages of 24, 25 December 2008 were
17 referred to in evidence, and I recall the witness talking about
18 them. In the circumstances, I will admit them.

19 I will also admit the telephone directory, and I note the
20 entries. They will - that means that the 2008 entries will
21 become P Kanu - let me see - I think they become P Kanu 2,
22 because the 2006 diaries was P Kanu 1, and it was at that point
23 when we were going through those pages - or I was going through
24 those pages that counsel said they would look at them and try and
25 agree what was going in.

26 So 2008 becomes Exhibit P Kanu 2. Incidentally, that was
27 originally MFI-P3, so as to correlate them for our CMS records.

28 THE COURT OFFICER: Your Honour, did you say "P Kanu 2"?

29 JUSTICE DOHERTY: Yes.

1 THE COURT OFFICER: Thank you, Your Honour.

2 The next one I appear to have - and I'd better make sure
3 I'm doing this correctly, MFI-P4 - is the 2011 one.

4 I agree, and by consent redact the name and the telephone
5 number of Mr Metzger.

6 I also, without consent, but I order that the name of the
7 doctor be redacted from week 30, as that is a professional
8 relationship and I don't - although it's been mentioned in
9 evidence, I do not think it's the type of matter that should be
10 put on the public records.

11 So the 2011, which was MFI-4, becomes exhibit P Kanu 3,
12 redacted as directed.

13 I notice the 2007 hasn't been marked and chronologically it
14 should have come before the others, particularly as it was MFI-2.
15 But since I've made rulings on the others, I'm not going to start
16 changing the numbers at this point in time.

17 So the 2007, which has not been the subject of either
18 consent or objection, becomes exhibit P Kanu 4.

19 And that, I think, leaves me with the notebook - or what
20 was referred to as a notebook, which were various pages.

21 MR HERBST: Is your Honour now referring to the sole entry
22 on my handwritten list under "2006 diary"?

23 JUSTICE DOHERTY: I am, indeed.

24 MR METZGER: Your Honour, I think by these notes Mr Herbst
25 was conceding that we needn't exhibit the other two, but that was
26 my understanding.

27 JUSTICE DOHERTY: If he's agreeing to that, then - I didn't
28 - I thought - I've got on his note "2006 diary, two pages headed
29 'notebook', four entries" --

1 MR HERBST: Your Honour, it was my understanding that
2 Mr Metzger did not object to that one.

3 MR METZGER: I've got no issue with that. I think what in
4 fact he was saying was that is the page he wants exhibited rather
5 than the whole of the 2006 diary.

6 JUSTICE DOHERTY: Yes. It was a few pages, that's all.

7 MR METZGER: And I've got no problem with that whatsoever.

8 JUSTICE DOHERTY: It was originally MFI-P5. So that
9 becomes exhibit P Kanu 5.

10 What I've got left here is --

11 MR METZGER: Your Honour, sorry, I'm a little confused. I
12 thought when your Honour said P Kanu 1 was the 2006 diary --

13 JUSTICE DOHERTY: No, not the entire document. I'm only
14 talking about the extracts that we admitted some time ago. We
15 admitted that a few days ago.

16 MR METZGER: Right. So the extra one would be those two
17 pages from the 2006 diary, which your Honour now says is P
18 Kanu --

19 JUSTICE DOHERTY: I'm going to pass down this thing that
20 I've got marked MFI-P5 to make sure that we're all talking about
21 the same thing. Because it doesn't have a date on it; it's got a
22 ring binder. So I may not even be talking about the same thing.

23 Mr Court Officer, please show this to counsel.

24 MR METZGER: I suspect, your Honour, these are from the
25 note pad, and they have been copied. There were a number of
26 questions about the note pad, and your Honour will recall Mr Kanu
27 kept saying, You mean the Mende writing. Look at the Mende
28 writing on the back. But I don't recall that Mr Herbst really
29 made anything of it, or of there being any relevance whatsoever.

1 So from my understanding - and what I did was knowing that your
2 Honour tasked us with this duty on Saturday before I left Kigali,
3 and also hearing that whilst I was absent from Court with your
4 permission on Monday that it had been raised, I put together a
5 list so that when your Honour asked I was able to deal with it,
6 although originally, as it's a Prosecution application, it is the
7 Prosecution who generally puts forward those matters which he
8 wants to be exhibited.

9 So my understanding was the entirety of this series of
10 exhibits is that which is contained between my note, which
11 Mr Herbst agrees in its entirety, and his note, which we agreed
12 save for the provisos I had on the two matters on which your
13 Honour has already ruled.

14 JUSTICE DOHERTY: Well, it may be that I'm misinterpreting
15 what's written and because it was marked for identification, it
16 does not have to be moved as an exhibit. So if it's not - if
17 these pages are not being moved and I've misunderstood the
18 situation, then I will scrub any reference to Kanu 5. But I
19 would like Mr Herbst to know what I'm talking about as well
20 because he is the mover of the exhibits. These are Prosecution
21 MFIs.

22 Mr Herbst, do you know what I'm talking about or am I just
23 - do you know which document I'm talking about?

24 MR HERBST: Your Honour, I can't see them, but I understand
25 from Mr Metzger that they were the note pad items. And I don't
26 recall asking Mr Kanu specifically about any items in the note
27 pad. Now, I haven't reviewed any transcript except the first day
28 and it seems apparent to me that Mr Metzger has because he has
29 three items on his list apparently from the 2008 diary that I did

1 not see in the transcript of the first day, my cross, and those
2 are the 20-21 February 2008, 19 March 2008, and July 7, 2008.
3 The other items on this list are duplicative of the items on my
4 list.

5 So I don't want to take up any more time. I realise I
6 haven't been able to - unfortunately I didn't bring the other two
7 days of cross of Mr Kanu with me, those transcripts, so I haven't
8 been able to review them. I'm just going to take Mr Metzger at
9 his word and I'm just going to rely on those three additional
10 items and --

11 JUSTICE DOHERTY: In that case I will revoke the exhibiting
12 of what was MFI P5. I will revoke that direction and that will
13 not be admitted, it's not been moved. It's just because the word
14 notebook was used in your note, Mr Herbst.

15 And that leaves actually these pages that you've just
16 referred to, February 20, March 19, and July 7, which were in the
17 2008 diary and may already be in, I'm not sure. Could someone
18 please check for me whilst I check myself?

19 MR HERBST: Your Honour, since they were not on my list, I
20 don't think they were moved in. I do [indiscernible] now solely
21 in reliance on Mr Metzger's note. I think they should just be
22 added to the P Kanu 2 exhibit.

23 JUSTICE DOHERTY: They are not in the existing P Kanu 2
24 exhibit. Mr Kanu's evidence showed them as an explanation for
25 his sometimes using old diaries for notes. There is writing in
26 them. They have been referred to in evidence. Nobody is going
27 to move them into evidence and I'm not going to volunteer to move
28 them into evidence. So they haven't even been marked as an MFI,
29 so they're not in.

1 MR METZGER: I thought your Honour asked us to look at
2 diaries and we agreed that what was asked about and I certainly
3 re-examined on those matters, yes, but they were re-examined
4 because they had been cross-examined by Mr Herbst. And it seems
5 what Mr Herbst is saying in relation to P Kanu 2, if we keep all
6 the entries from one diary together, he accepts that they could
7 be included in P Kanu 2 and moves for them so to be done on the
8 basis that clearly I've looked at that part.

9 And I would understand if Mr Herbst goes away and comes
10 back tomorrow and says oh, actually on day 3 I cross-examined him
11 about something else, because I can't guarantee that I have
12 looked at everything. I prepared my list in order to see what
13 the Prosecution was going to produce because he was moving for
14 the exhibits as I saw it.

15 JUSTICE DOHERTY: Well, what I'll do is I'll add them to
16 the 2008 for the fullness of the record because they were
17 referred to, definitely. And perhaps just to make sure we're all
18 singing from the same hymn sheet on this, I'm going to go through
19 the pages that now encompass Exhibit P Kanu 2 to make sure we all
20 know what we're talking about.

21 First page is Monday, 4, without a month, and "Keh-For-Keh"
22 and a phone number. Lower part has got "Andrew".

23 Second page is September 12, Friday, with a list of phone
24 numbers. Saturday, 13, with a number. Next is without a month,
25 it's Monday, 15, Tuesday, 16, refers to Ms Hanciles came.

26 Then the page that had some content on which is December
27 24/25 with an entry for a phone number and another piece of
28 arithmetic which we've already ruled - discussed and ruled upon.

29 Then the page which is called 2008 Financial Summary which

1 has a long series of phone numbers and other writing.

2 Then the page headed Telephone Directory which again has a
3 list of phone numbers and names.

4 Then these three-odd pages which are February 20 with a
5 reference to Rwandan francs, RW francs, and some other
6 arithmetic.

7 Then there is March 19 and Thursday, 20, with a lot of
8 writing. And then there is 2008, Monday, 7, without a month
9 being mentioned --

10 MR METZGER: It's July.

11 JUSTICE DOHERTY: -- headed "incident 2010", and the
12 writing proceeds on on 6 August. That is now P Kanu 2. So if
13 that's --

14 MR HERBST: Your Honour, forgive me.

15 JUSTICE DOHERTY: Yes.

16 MR HERBST: The only item I did not hear mentioned, but I
17 may have missed it, was the first one on my handwritten list
18 which is denominated 2008 Financial Summary with 810173 on it,
19 Mr Bangura's number.

20 MR METZGER: Your Honour mentioned it directly before the
21 telephone directory page because it appears in that order, I
22 think.

23 JUSTICE DOHERTY: Yes. I did mention that page, Mr Herbst,
24 Financial Summary page. But the document I have with Mr Hassan
25 Bangura's phone number is headed Telephone Directory, which is
26 the last page. But in any event, Mr Bangura's number is listed
27 and it's part of Exhibit Kanu P 2.

28 Now, I'm going to pass these down to Mr Court Officer to be
29 entered and then I'm going to adjourn Court and I look forward to

1 seeing you all tomorrow at 9 o'clock. I thought about what you
2 said about starting a bit earlier, Mr Herbst, but regrettably the
3 weather is bad here, the roads are bad, it's school time, there
4 has been a lot of hold ups, and it's not just us, it's also our
5 support staff. If everybody is here, we'll do our best, but I
6 cannot order - I feel it's unfair at this late time to ask staff
7 to come in earlier than they already have arranged. So I'm going
8 to stick to 9 o'clock and we'll start promptly. Please adjourn
9 Court to 9.

10 [The Court adjourned at 4.19 p.m. until 9.00 a.m.

11 The following day]

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