

Case No. SCSL-2004-15-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
ISSA SESAY
MORRIS KALLON
AUGUSTINE GBAO

FRIDAY, 03 MARCH 2006
9.47 A.M.
TRIAL

TRIAL CHAMBER I

Before the Judges:	Pierre Boutet, Presiding Bankole Thompson Benjamin Mutanga Itoe
For Chambers:	Mr Matteo Crippa Ms Samantha Davies
For the Registry:	Mr Geoff Walker Ms Maureen Edmonds
For the Prosecution:	Mr Peter Harrison Mr Mark Walbridge (Case Manager)
For the Principal Defender:	No appearance
For the accused Issa Sesay:	Mr Wayne Jordash Ms Sareta Ashraph Ms Chantal Refahi
For the accused Morris Kallon:	Mr Shekou Touray Mr Melron Nicol-Wilson
For the accused Augustine Gbao:	Mr Andreas O'Shea Mr John Cammegh

1 [RUF03MAR06A - SGH]
2 Friday, 03 March 2006
3 [Closed session]
4 [The accused present]
09:38:07 5 [Upon commencing at 9.47 a.m.]
6 WITNESS: TF1-113 [Continued]
7 [At this point in the proceedings, a portion of the
8 transcript, pages 2 to 37, was extracted and sealed under
9 separate cover, as the session was heard in camera.]
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

1 [Open session]

2 PRESIDING JUDGE: Thank you. So, Madam Witness, for your
3 information, we are now back in open session. It means that
4 there are members of the public in the public gallery. So when
15:58:43 5 you answer questions, please do not mention names that have been
6 discussed in the closed session. Thank you.

7 THE WITNESS: Okay. Thank you.

8 MR JORDASH:

9 Q. So the G5 were expected to --

15:59:07 10 PRESIDING JUDGE: There's a lot of echo now. We still have
11 that. Let's try it again.

12 MR JORDASH:

13 Q. The G5 were -- can you hear me, Madam?

14 A. I'm listening.

15:59:41 15 Q. You were saying about the G5 investigating crimes against
16 civilians. Can you remember what you were going to say?

17 A. Yes.

18 Q. Do you want to say it, slowly?

19 A. Relating to what? The question that you asked, ask it
16:00:19 20 again. Ask the question that caused me to talk what I was
21 saying. Ask it again.

22 Q. Would the G5s investigate? Was it their job to organise
23 the investigation?

24 A. Yes.

16:00:55 25 Q. And the MP commanders to impose the punishment?

26 A. No. MP commanders, they were dealing with the soldiers.
27 The RUF -- they dealt with the RUF rebels.

28 Q. So G5 imposed the punishment?

29 A. If it were a civilian who made the report to them and they

1 investigated, if they found out that it was his doing, they would
2 punish him. They had the right to punish soldiers because they
3 were their colleague soldiers.

4 Q. Thank you.

16:01:51 5 A. Thank you too.

6 Q. Now, the Kamajor -- the alleged Kamajors who were killed,
7 Mosquito gave the order to Joe Fatoma, according to what
8 Joe Fatoma told you; yes?

9 A. Those people who were killed, I did not know them as
16:02:29 10 Kamajors. They were civilians. They were civilians.

11 Q. We'll come to that in a minute. But the order went from --

12 A. Okay.

13 Q. -- Bockarie to Fatoma?

14 A. Yes.

16:02:48 15 Q. And, as a result of the order, Fatoma rounded up or
16 collected the civilians from their various villages and brought
17 them to be detained?

18 A. Joe Fatoma was not the only one who was given that order.
19 It was the G5s who themselves went and collected the people and
16:03:11 20 brought them to the office.

21 Q. And, as you understood it, Mosquito suspected all newly
22 arrived people in Kailahun of being Kamajors?

23 A. I think so. That was what he had on his mind, because he
24 did say that they should be investigated and screened for
16:03:49 25 Kamajors.

26 Q. And at this time in 1998 there was a lot -- lots of new
27 people arriving in Kailahun returning home to their villages?

28 A. Yes, people were returning to their villages but he was the
29 one who went and told them that the war was over, there was no

1 war in the Kailahun District and they should return there.

2 Q. Yes, and they were returning to their homes and their land
3 and their farming; is that right?

4 A. Yes.

16:04:36 5 Q. And it was the newly, recent arrived civilians only who
6 were arrested and brought in for screening for whether they were
7 Kamajors?

8 A. Yes, those who just entered who went to their villages, he
9 said they should be arrested. Those of us who were settled there
16:05:09 10 were not the ones. Those who just came.

11 Q. Right, and Fatoma obviously didn't disobey Mosquito because
12 when Mosquito gave an order it was under pain of death that you
13 carry it out?

14 A. All of them who were there, because at that time he was
16:05:41 15 their leader, whatever he said you wouldn't deny to do, apart
16 from Joe Fatoma. You wouldn't ever say anything about it.

17 Q. I want to ask you about your statement again. The first
18 statement you made.

19 MR JORDASH: Your Honours page 10751, second paragraph. It
16:06:46 20 says this: "Of the 13 family of mine" -- let me miss this out.
21 Well, I don't know if the Prosecution have a problem with that
22 sentence being read out. If I could ask Mr Harrison for an
23 indication. Well, I'll read it.

24 Q. "Of the 13 family of mine who were killed, they were taken
16:07:34 25 from Sakiema and Mende Baoma, both villages in Luawa Chiefdom, I
26 don't know if any of them were Kamajors. Some commented that
27 they were but I don't know."

28 Did you tell the Prosecution that you actually didn't know
29 whether some of those arrested were Kamajors or not?

1 A. Those people who were arrested, all of them, I did not know
2 that they were Kamajors. Even today I do not know if they were
3 Kamajors.

4 Q. Thank you. Going over the page - Your Honours, 10752 -
16:08:46 5 this is the first account I suggest you gave to the Prosecution
6 about who was present at any stage during this incident involving
7 the alleged Kamajors. I beg your pardon, can we go back to
8 10751, the same paragraph, which says: "Mosquito did not return
9 the next day. Other commanders were there but I can't recall
16:09:18 10 their names." Then over the page to the final paragraph:
11 "Augustine Gbao was the highest level commander in Kailahun
12 at that time. He was also the liaison between the soldiers and
13 the civilians. He was a Vanguard who'd started the war. He was
14 in Kailahun when the 67 were killed. I saw him on the scene when
16:10:02 15 the first 10 people were killed. Mosquito also met him. Gbao
16 was present when the 10 were killed, he was standing next to
17 Mosquito."
18 Do you remember giving that account of what had happened
19 and who was present in March 2003? Do you remember?

16:10:37 20 A. Yes. Augustine Gbao was there.

21 Q. No mention in March 2003, was there, of Issa Sesay being
22 present? Do you accept that?

23 A. Issa Sesay was there. Augustine Gbao was there.

24 Q. You didn't tell the Prosecution, did you, in March 2003
16:11:04 25 that Issa Sesay, who you'd known since 1991 --
26 A. I did say it. Every day I will say it. Even where I am, I
27 will say it.

28 Q. You'd known Issa --
29 A. Even yesterday I did say it.

1 Q. You'd known Issa Sesay since 1991/1992, had you not?

2 A. Yes, I know Issa Sesay.

3 Q. So if he'd been there you'd have noticed him and remembered
4 him, wouldn't you, if he'd been there during this alleged

16:11:52 5 incident with the alleged Kamajors?

6 A. He was there. He was there. In fact, he and Mosquito went
7 to Pendembu and returned to Kailahun together with their
8 bodyguards. He was there.

9 Q. We shall see. You then see the Prosecution, I suggest, in
16:12:16 10 February 2004 - Your Honours, page 10753 - and you say -- the
11 notes from that which we referred to earlier when there's the
12 Asian woman called Sharan Parmar.

13 "At the time I saw the killing of 65 people who were
14 accused of being Kamajors in Kailahun Augustine Gbao was the
16:12:55 15 commander on the ground."

16 You didn't mention, did you, on your second meeting with
17 the Prosecution, the time when you went through your first
18 statement, that Issa Sesay was present in Kailahun at the time of
19 the killings, did you?

16:13:25 20 A. Since the time I started giving statement I said Issa Sesay
21 was there. Even when I'm talking now I will say Issa Sesay was
22 there. Probably those who wrote the statement failed to write it
23 there, but I am saying he was there.

24 Q. Okay.

16:13:52 25 A. That's why I took the oath yesterday.

26 Q. And the first time, I suggest, madam, that you mentioned
27 Issa Sesay being present at this incident was in fact in April of
28 last year which was the first time when you were supposed to
29 testify in this Court. April, just a matter of days before you

1 were expected to testify. That's correct, isn't it? I'm
2 referring to, Your Honours, page 11215. Is that right, madam?
3 April 2005 before you were about to testify last year first
4 mentioned Sesay present?

16:15:13 5 PRESIDING JUDGE: You said 8th April. On the statement it
6 seems to be 17th.

7 MR JORDASH: 17th. If I can perhaps put that to her a bit
8 more clearly.

9 Q. You came, didn't you, to the Special Court last April
16:15:29 10 expecting to give evidence in this Court. Am I right?

11 A. Yes. Since I started giving statements Issa Sesay was
12 there. He was there when those people were killed. He was
13 there.

14 Q. Well, now you tell us that Issa Sesay was present and when
16:16:08 15 you came on the scene you saw Sam Bockarie with a gun in his hand
16 and two corpses on the floor; am I right? That's what you said
17 yesterday?

18 A. Yes.

19 Q. And then you watched when Mosquito shot eight of the people
16:16:48 20 in the head; correct?

21 A. Yes.

22 Q. And you saw the eight people fall to the ground dead?

23 A. All of them died. They left the bodies there and went to
24 Buedu. Two people and eight people together, 10 people were left
16:17:16 25 lying at that roundabout.

26 Q. But you watched Mosquito go from one to the eighth person
27 to complete the 10 dead. You watched that, didn't you?

28 A. I was there seeing everything. No other person fired the
29 shot there. He was the only person. All those who were there

1 never fired the shot. He was the only person who did it.

2 [RUF03MAR06C - EKD]

3 Q. Well, let's have a look at what you told the Prosecution in
4 March 2003?

16: 17: 53 5 MR JORDASH: Your Honours, page 10750, paragraph 3.

6 Q. This is the March 2003 statement which you had read back to
7 you so you could check its accuracy, and this is what it says --

8 PRESIDING JUDGE: What is the page again, Mr Jordash?

9 MR JORDASH: Sorry, Your Honour. Page 10750.

16: 18: 26 10 JUDGE ITOE: What paragraph?

11 MR JORDASH: Third paragraph. Second complete paragraph
12 starting with "Then one day". I am reading from five lines down.

13 Q. "Later that day I went to a section in Kailahun called
14 Kissy Town section to buy pepper around 4 p.m. and I
16: 18: 56 15 started hearing gunshots. I heard 10 gunshots. I ran
16 home, thinking that enemy forces were attacking. At the
17 roundabout at the centre of town, I saw eight dead bodies.
18 In my presence I saw Mosquito kill two others."

19 A. That was not what I said. Probably the person who wrote it
16: 19: 35 20 wrote that one. But when I went there, I met two corpses. I was
21 there when the others were killed. The first two I was not there
22 when they were killed. I never knew the person who killed them.
23 But the others, I was there. That is what I know.

24 Q. Okay. Well, let's have a look what you told the
16: 19: 58 25 Prosecution last April.

26 MR JORDASH: Your Honours, page 11291.

27 Q. 28th April you met the Prosecution, do you remember? A few
28 days before you were expected to give evidence.

29 A. When? Repeat your question.

- 1 Q. At the end of April last year. Do you remember?
- 2 A. I came here, yes.
- 3 Q. Did you meet someone who spoke Krio, someone who spoke
4 English who took you through and read through with you your
16:20:57 5 previous statements?
- 6 A. All what I said they explained to me. Those that were the
7 truth, I answered to them. Those that I didn't say, I told them
8 that was not what I said in their presence.
- 9 Q. This is what a note says, which was -- this is what the
16:21:34 10 Prosecution wrote down as something you said: "I saw Mosquito
11 when he killed 7 of the 10 men suspected of being Kamajors at the
12 roundabout. 3 had already been killed before I arrived at the
13 scene."
- 14 A. Since I started giving statement, I have not changed my
16:22:09 15 statement. I met two people -- two corpses lying. In my
16 presence, eight people were killed.
- 17 Q. Okay, let's have a look what you told the Prosecution in
18 May 2005.
- 19 MR JORDASH: Your Honours, page 12142.
- 16:22:33 20 Q. 23rd May there is a note taken of another meeting you had
21 with the Prosecution, Madam. Do you remember meeting them about
22 a month after you'd arrived in Freetown? The last note we looked
23 at was from the end of April, this note is from the end of May.
24 Do you remember that?
- 16:23:07 25 A. What? Perhaps we met, but I can't recall the days we met
26 because I didn't go to school.
- 27 Q. Let me read what another note says about what you said.
28 Paragraph 1: "I saw Mosquito when he killed 2 of the 10 men
29 suspected of being Kamajors at the roundabout in Kailahun town.

1 8 had already been killed before I arrived at the scene". That's
2 what you told the Prosecution then, wasn't it?

3 A. I said I met two corpses there. Then I was in -- I was
4 there in presence when eight people were killed. Well, are you
16:24:12 5 saying that the Prosecution wrote a different thing? I have said
6 only one thing to them. I met two corpses at the turntable.
7 Then I was there when eight people were killed with a gun.

8 Q. Okay, that's your answer.

9 PRESIDING JUDGE: For the record, Mr Jordash, I want to
16:24:36 10 make sure that the statement at the top two lines are spelled
11 out. That statement and the proofing and the one before, the
12 caveat is it was not read back to the witness at the time.

13 MR JORDASH: Yes.

14 PRESIDING JUDGE: I mean the one of 28 and the one of --

16:24:57 15 MR JORDASH: Yes, they're proofing notes.

16 PRESIDING JUDGE: They're proofing notes.

17 MR JORDASH: Yes.

18 PRESIDING JUDGE: Some have been read but this one says
19 there is a note that says --

16:25:06 20 MR JORDASH: None of the proofing notes have been read
21 back.

22 PRESIDING JUDGE: Not the proofing notes, but the
23 statements per se by opposition to proofing notes. I think the
24 first one was, wasn't it?

16:25:17 25 MR JORDASH: No, the Prosecution, I think, have adopted the
26 procedure of --

27 PRESIDING JUDGE: Not the proofing. I mean the first
28 statement, the one on 27 March 2003. Was it a different
29 procedure?

1 MR JORDASH: The first statement of March was the statement
2 and I believe, from what the witness has said, this one was read
3 back to her. But when we moved to the --

4 PRESIDING JUDGE: It was read back to her and she was asked
16:25:48 5 to sign it and she signed it is basically what she said. But the
6 proofing statements were not read back?

7 MR JORDASH: No, none of them.

8 Q. You claim Issa Sesay was present during the killing of
9 these 10 alleged Kamajors. Where did he go after this killing?

10 A. No sooner Mosquito killed those people, himself and
11 Mosquito and the others went to Buedu.

12 Q. Did Sesay and Mosquito travel together in the same car?

13 A. They travelled together in the same vehicle. They used to
14 travel together. As long as they were together, they used to
16:27:12 15 travel together.

16 Q. That was their practice, to travel together. Let's have a
17 look what you said or what is written in a proofing note, same
18 date 23rd May --

19 A. Well, the Prosecutor --

16:27:32 20 Q. Well, I suggest it is you, Madam Witness, and the
21 Prosecutor has actually done a good job in recording what you
22 have said.

23 PRESIDING JUDGE: So what is the one, Mr Jordash?

24 MR JORDASH: Paragraph 5, Your Honour.

16:27:47 25 PRESIDING JUDGE: Of which page?

26 MR JORDASH: 12142.

27 Q. Let me read it to you.

28 "After the shooting and after ordering Joe Fatoma to kill
29 the remaining civilians being held by the rebels, Mosquito

1 left in a car for Buedu. Issa Sesay left separately
2 heading in the direction of Buedu."

3 Separately, together; together, separately. Which is the
4 case, Madam?

16:28:51 5 A. I saw them with only one vehicle. Both of them travelled
6 in that vehicle. I would not lie about that vehicle. What I
7 said is what I'm saying.

8 Q. Let me make my client's case clear to you, Madam Witness:
9 the inconsistency exists because you are lying.

16:29:29 10 A. That's why I've taken an oath. If I'm telling lies, that's
11 the reason why I've taken an oath on the Koran.

12 PRESIDING JUDGE: Can I ask you when you say the witness is
13 lying, as to this last question?

14 MR JORDASH: About Sesay being present.

16:29:46 15 PRESIDING JUDGE: In the car?

16 MR JORDASH: At all. I can make that clearer.

17 PRESIDING JUDGE: That is why I am asking the question,
18 because it is not clear to me what that question was directed to.

19 MR JORDASH: Certainly, Your Honour.

16:29:58 20 Q. I suggest that your first statement, which completely
21 misses out Issa Sesay as being anything to do with this Kamajor
22 incident is in fact a reflection of the fact that he wasn't there
23 in Kailahun at this time, was he?

24 A. If Issa Sesay was not there where Mosquito fired that shot,
16:30:44 25 if I am saying -- if you are saying I'm saying -- I'm not saying
26 the truth, I know I'm saying the truth. Commanders were many in
27 Kailahun. Those that I saw are the ones I've mentioned.

28 Q. Okay, let's move on. I suggest this happened, this
29 rounding up of alleged Kamajors and this killing, before

1 Johnny Paul Koroma arrived in Kailahun; is that correct?

2 A. Johnny Paul Koroma went to Kailahun, we slept there, he
3 went to Buedu. When he was taken to Kangama --

4 THE INTERPRETER: Your Honours, can the witness go back to
16:31:38 5 her last bit.

6 PRESIDING JUDGE: Can you just go back again to the last
7 part of your answer about JPK, when he arrived in Kailahun. And,
8 please, go slowly.

9 THE WITNESS: Johnny Paul Koroma went to Kailahun first,
16:31:59 10 slept there. In the morning he was taken to Buedu to -- and to
11 Kangama. And after two weeks, when the Kamajors started
12 threatening them along the Segbwema route, it was the time they
13 came when Mosquito gave the order that those people should be
14 gathered together. He needed them.

16:32:28 15 MR JORDASH:

16 Q. So you're saying then the gathering together of the alleged
17 Kamajors did not take place until after Johnny Paul Koroma had
18 arrived in Kailahun? The arrest of the alleged Kamajors happened
19 after Johnny Paul Koroma had arrived in Kailahun. Is that what
16:32:43 20 you're saying?

21 A. No. When Johnny Paul Koroma arrived in Kailahun, those
22 people were already in the cells.

23 Q. How long had they been in the cells?

24 A. They were there for quite some time. More than three
16:33:07 25 months. Because when the overthrow took place, it was the time
26 Mosquito and Issa went to Daru and told people that the war was
27 over and that they should return. They said they went and held a
28 very large meeting.

29 Q. But at the time then of these arrests where was

1 Sam Bockarie based?

2 A. When those people were arrested, they were in Kailahun. By
3 then Sam Bockarie used to come to Kenema and then return. He
4 will come to Kenema and then return to Kailahun. He was based in
16:33:54 5 Kenema until the intervention took place.

6 Q. You have just given us two contradictory answers, I think.
7 One is that he used to travel to Kenema, and another that he was
8 actually based in Kenema. Was he based in Kenema or was he based
9 in Kailahun at the time of the arrest of the alleged Kamajors?

16:34:16 10 A. During -- when the overthrow took place, when they were
11 called to come to Freetown, when --

12 THE INTERPRETER: Your Honours, the witness --

13 MR JORDASH:

14 Q. Slowly, slowly, Madam Witness.

16:34:35 15 THE INTERPRETER: Can she go back.

16 MR JORDASH:

17 Q. Take your time?

18 A. I told you I do speak fast. That's what --

19 PRESIDING JUDGE: We [Microphone not activated] after the
16:34:49 20 overthrow and --

21 THE WITNESS: Unless you teach me how to speak.

22 When the overthrow took place.

23 PRESIDING JUDGE: Yes.

24 THE WITNESS: Mosquito went, he was settled in Kenema.

16:35:12 25 MR JORDASH:

26 Q. Where was he based when the arrests of the alleged Kamajors
27 took place?

28 A. During the time those people were arrested, when he said
29 people should return, sooner he held that meeting in Daru, he

1 went to Kenema and based there.

2 Q. So at the time of the arrest of the alleged Kamajors, you
3 say he was based in Kenema?

4 A. When those people were arrested, when they were in
16:36:06 5 Kailahun, all those periods he was in Kenema. Even when he was
6 in Kenema, he used to give orders. Wherever RUFs were there he
7 gives the order.

8 Q. And you claim that they'd been then -- well, how long were
9 the alleged Kamajors held in detention?

10 A. They were there for up to two months, going to three
11 months. It was during that time they were killed.

12 Q. And so how long after the intervention were they killed?

13 A. When the intervention took place, they took two weeks,
14 going to three weeks. The third week they were killed.

15 Q. I think -- let me just put something to you then which has
16 been written about what you've said.

17 MR JORDASH: Your Honours, page 16980.

18 PRESIDING JUDGE: Which statement?

19 MR JORDASH: Sorry, it's the November 2005 proofing notes.

20 JUDGE ITOE: What's the page again?

21 PRESIDING JUDGE: 039.

22 MR JORDASH: 1697 -- sorry, 16980, the very last.

23 PRESIDING JUDGE: Yes, yes.

24 MR JORDASH: Second to last.

25 PRESIDING JUDGE: So that's 5th November?

26 MR JORDASH: Your Honour, yes, paragraph 6. And it is the
27 5th line from the bottom.

28 Q. This is what the note says, madam, referring to the killing
29 of the 67, "This killing happened two months after the

1 intervention. We had calendars in Kailahun Town and I was
2 keeping track of the time."

3 A. They were arrested and then it took two months before the
4 intervention.

16:38:45 5 Q. Did you tell the Prosecution the killing had taken place
6 two months after the intervention and you had a calendar so you
7 were able to know that fact? Sorry?

8 A. I didn't go to school. How can I carry a calendar? I
9 didn't go to school.

16:39:07 10 Q. Well, my five-year-old niece hasn't been to school but she
11 knows --

12 PRESIDING JUDGE: Mr Jordash, please, no arguments with the
13 witness.

14 MR JORDASH: Sorry, apologies.

16:39:22 15 Q. Did you tell the Prosecution that it happened two months
16 after the intervention; yes or no, please?

17 A. I said those people are arrested and placed in the cells
18 for two months before the intervention took place. It was there
19 I mention two months.

16:39:42 20 Q. Let me just move on from this and just put what I suggest
21 is the truth. Sam Bockarie is based in Kenema until the
22 intervention when he comes to Kailahun with a number of RUF. Am
23 I right?

24 A. Please repeat your question.

16:40:11 25 Q. Sam Bockarie is based in Kailahun until the intervention --
26 sorry, Sam Bockarie is based in Kenema until the intervention
27 when he comes to Kailahun with a number of RUF and bases in the
28 Kailahun District. Is that correct?

29 A. That was what I said. It was that intervention that

1 brought them.

2 Q. Upon his arrival in Kailahun District he was extremely
3 paranoid about Kamajors coming into the Kailahun District. Is
4 that correct?

16:40:45 5 A. What? I never knew he was afraid of them. I don't know.
6 I never knew he was afraid of them. I was not somebody who was
7 fighting.

8 Q. He arrests or has arrested a number of people who he
9 suspected to be Kamajors and he had them killed before the
16:41:13 10 arrival of Johnny Paul Koroma in town or in the
11 Kailahun District. Please tell the truth.

12 A. You said what? Please repeat.

13 Q. Sam Bockarie had the alleged Kamajors killed before the
14 arrival of Johnny Paul Koroma into the Kailahun District?

16:41:44 15 A. If that what Sam Bockarie told you, that was not what I
16 saw. Sam Bockarie returned first, then Johnny Paul Koroma went.
17 They took him to Kangama before those people were killed.

18 Q. Now, you have claimed in evidence that -- yesterday you
19 claimed that Issa Sesay was the overall commander in Giema - I
16:42:44 20 think what you said - at the time you were captured?

21 THE INTERPRETER: Can I learned counsel take it slowly again?

22 PRESIDING JUDGE: Can you take that back again, Mr Jordash.

23 MR JORDASH:

24 Q. Did you say yesterday that Issa Sesay was the overall
16:43:10 25 commander in Giema at the time you were abducted?

26 A. At the time that I was captured, Issa Sesay was not the
27 commander. I was captured in 1991. In 1993 to 1994, that was
28 when Issa Sesay was commander. At that time the soldiers had
29 chased us out and we are all in Giema. Can I repeat that?

1 PRESIDING JUDGE: That's fine, thank you.

2 MR JORDASH:

3 Q. So you say now in 1993 Sesay was the overall commander?

4 PRESIDING JUDGE: In Giema.

16:43:55 5 MR JORDASH: In Giema, yes.

6 THE WITNESS: In Giema.

7 MR JORDASH:

8 Q. Let's have a look what you told the Prosecution in March

9 2003.

16:44:02 10 MR JORDASH: Your Honours, page 10746. First page of the

11 statement.

12 Q. This statement having been read back to you. Third

13 paragraph and this I suggest is an inconsistency, madam.

14 A. Read it for me to hear.

16:44:40 15 Q. Third line down, the third paragraph: "In 1993 there was a

16 big government of Sierra Leone offensive which drove us up to

17 Giema where we stayed for about one year. There General Issa, CO

18 Foday, now dead, and others were around and in commanding roles."

19 Is that what you told the Prosecution in March 2003?

16:45:16 20 A. CO Foday was in Giema, but it was Issa who was the overall

21 commander. Apart from CO Foday there were others. It was CO

22 Issa who was the overall commander.

23 Q. Well, it's --

24 A. Two people could not give command at the same time. There

16:45:40 25 must be one person as leader.

26 Q. Well, the point is, madam, I --

27 PRESIDING JUDGE: Yes, Mr Harrison.

28 MR HARRISON: The actual handwritten version is different

29 from the typed version. I have just noticed it. If you were to

1 Look at page 10734, the 5th line down on 10734 is the similar
2 passage that was just read out. I will allow the Court and
3 Mr Jordash to read it themselves.

4 PRESIDING JUDGE: You said the third line down?

16:46:17 5 MR HARRISON: No, I am sorry, it starts on the 5th line
6 down on 10734 and goes for about six lines.

7 PRESIDING JUDGE: "In 1993 there was."

8 MR JORDASH: I accept that.

9 PRESIDING JUDGE: Thank you.

16:47:10 10 MR JORDASH:

11 Q. Could I suggest to you, madam, that Issa Sesay became the
12 commander of Giema -- just a moment, please?

13 A. I'm not going to talk.

14 Q. Can I suggest, madam, that Issa Sesay became the commander
16:47:37 15 of Giema in 1994?

16 A. Are you asking me or you're telling me; which one?

17 Q. It's a question.

18 A. Okay.

19 Q. That's why I said "suggestion".

16:48:09 20 A. Apart from 1994, up to the time we were in Giema, he was
21 the commander there when I knew him. At the time when we were in
22 the jungle, he was the one who selected us.

23 Q. Is the answer to the question -- what is the answer to the
24 question? Was he overall commander beginning in 1994 is the
16:48:42 25 question.

26 A. He was the military overall commander in Giema.

27 Q. Starting in 1994 to the end of -- or November 1995?

28 A. Yes. At the time that the soldiers dislodged us from
29 Pendembu, Kailahun, when we were in Giema, he was the commander

1 there. I do not know the date, I do not know the year, but he
2 was the commander there.

3 Q. Okay, that's fine. Now, you claimed that you saw
4 Issa Sesay with small boys till the end of the war. Do you
16:49:46 5 recall saying that yesterday?

6 A. That's true. Since that time -- from that time he hadn't
7 got adults behind him. He only had the kids behind him.

8 Q. What was the name of these kids behind him?

9 A. I do not know their names because I never asked them their
16:50:34 10 names. We were afraid of them, because they would be very quick
11 to strip you naked and disgrace you.

12 Q. So you've never known the names of these small boys that
13 you saw Mr Sesay with till the end of the war?

14 A. I do not know their names.

16:51:04 15 Q. And you've never known their names, have you?

16 A. No.

17 Q. Well, let's have a look what you've told the Prosecution.

18 A. The only person whose SBU's name I know, I know the person.

19 Q. Who is it?

16:51:27 20 A. You've not asked me that. You were talking about Issa.

21 Q. Well, I'm asking you about the names of Issa Sesay's Small
22 Boys Unit. If you're as bored as I am, then please answer the
23 question and we can get this over with.

24 PRESIDING JUDGE: [Microphone not activated] Mr Jordash,
16:51:51 25 that she doesn't know any names.

26 THE WITNESS: You've asked me and I've said I do not know
27 their names. If there is a name there, I did not give that name.
28 There are so many of them. At that we were afraid of them. You
29 wouldn't even go close to them if you do not want them to

1 di sgrace you.

2 MR JORDASH:

3 Q. Well, let's just go through the usual process. Let's have
4 a look at the notes taken of a meeting you had with the
16:52:17 5 Prosecution in November 2005.

6 PRESIDING JUDGE: Which November?

7 MR JORDASH: This November 5th, page 16 --

8 THE WITNESS: Maybe somebody stated a name there, but not
9 me. I did not state any name.

16:52:29 10 PRESIDING JUDGE: Which page?

11 MR JORDASH: 16979.

12 PRESIDING JUDGE: 79, thank you. Which paragraph?

13 MR JORDASH: Paragraph 1, Your Honour. I think it is five
14 lines down.

16:52:50 15 Q. "In 1998 Issa Sesay had SBUs as bodyguards. Two were named
16 Musa, about 14, and Joseph about 12."

17 A. Uh-huh.

18 Q. Uh-huh. You didn't, is this right, is this what you're
19 going to tell us -- you didn't tell the Prosecution that they
16:53:14 20 were called Musa and Joseph? Is that right?

21 A. I did not tell him that. Because it was in that other
22 document. I did not tell him that I do not know the name of the
23 boys. I did not say that.

24 Q. Did you mention at all two boys called Musa and Joseph to
16:53:37 25 the Prosecution? Any idea how they might have written down Musa
26 and Joseph?

27 A. Whenever they asked me I would tell them that I do not know
28 their bodyguards.

29 Q. Did you ever mention Musa and Joseph to the Prosecution

1 when you met them in November 2005?

2 A. Issa Sesay's bodyguards, I did not say that.

3 Q. Right. The reason, madam, that it is written on this piece
4 of paper that I'm looking at is because you made it up,
16:54:15 5 fabricated evidence against Issa Sesay. That's the truth?

6 A. I wouldn't pay my fares to come here just to tell lies.
7 What happened is what I'm talking about. And stop telling me
8 that I'm telling lies. A lot of things have happened during this
9 war. I wouldn't just pay my fares to come from there to this
16:54:38 10 point to tell lies. What I have said and what I have said and
11 what I keep saying is what I think is the truth. That's why I
12 took an oath on the Koran.

13 Q. Well, you haven't paid your fares to get here, have you,
14 madam? You haven't paid your own fares. You're paid by --

16:54:56 15 A. As I was sitting in the vehicle, if that vehicle had had an
16 accident what would have happened? Would I have come here just
17 to tell lies? Let's forget about the money.

18 Q. Well, let's not forget about the money. You have received
19 from the witness and victims unit over a million leones, have you
16:55:15 20 not, in witness attendance allowance and other expenses;
21 transportation, for example?

22 A. That I've received that sum? Don't tell me that.

23 Q. Who bought that dress you're wearing?

24 A. Don't tell me that. My father was not an idler when he
16:55:46 25 died. I too am a businessperson. If you tell me that I would be
26 very angry.

27 Q. Who bought the dress that you're wearing?

28 A. My father had a plantation.

29 THE INTERPRETER: Your Honours, can she take that again?

1 MR JORDASH:

2 Q. Slowly, Madam Witness.

3 A. This dress that I'm wearing has nothing to do with this
4 Court. It has nothing to do with this Court. Even if somebody
16:56:12 5 bought it for me, you don't need to know that. It has nothing to
6 do with this Court.

7 Q. Have you received 672,000 Leones as witness attendance
8 allowance from the witness and victims unit of this Court, madam?
9 Have you?

16:56:37 10 A. Since I started coming here, when I am returning they would
11 give me money for food on the way but they would have not given
12 me money up to that sum. Never. If they had given me that kind
13 of money I should be in my village doing business. They would
14 give me food to eat and when I'm going back they would give me my
16:57:03 15 fee. But they have not given me up to that sum.

16 Q. And you've received, I suggest, in medical and
17 transportation expenses 427,000 Leones from the witness and
18 victims unit of the Special Court?

19 A. Did I write that? Did I say that?

16:57:28 20 Q. Does it have to be false because you didn't say it?

21 PRESIDING JUDGE: Mr Jordash, please, please.

22 MR JORDASH: I will ask for this to be --

23 THE WITNESS: Well, I've not told you that.

24 MR JORDASH:

16:57:39 25 Q. I am telling you that because I have received this from the
26 witness and victims unit who tell me that. You've received over
27 a million in Leones --

28 A. Okay. Maybe they've summed it up, but they've not given me
29 in bulk sum. They've given me in bits. But they have given me

1 in bulk sum, no. But I have not sat down to really sum it up,
2 no.

3 Q. Okay. Let's --

4 A. They give you -- they are the ones giving it. Maybe they
16:58:08 5 sit down and sum it up. As for me, they give it to me, I eat it.

6 Q. Well, the point I am making is simply this, madam: You
7 haven't paid for your way to get here. It has been paid for you,
8 hasn't it, and more?

9 A. No, no.

16:58:26 10 Q. Okay, well, I will ask for the expense sheet to be
11 exhibited in due course.

12 A. Look at that kind of money you're talking about.

13 PRESIDING JUDGE: I think she agrees with you, doesn't she,
14 that she did not pay, if that is what you're arguing.

16:58:46 15 MR JORDASH: That's it. I can move on.

16 PRESIDING JUDGE: She has said it has been paid.

17 MR JORDASH: Yes, I can move on.

18 PRESIDING JUDGE: I don't think there is a dispute on that.

19 MR JORDASH: But the amount I will ask [overlapping
16:58:58 20 speakers] at the end of my cross-examination.

21 MR HARRISON: If I can just indicate, if counsel would
22 allow me ask witness and victims services to revise it because
23 this witness has testified in two trials. So there would be an
24 allocation between two separate proceedings. If he can just wait

16:59:16 25 I can ask witness and victims services to divide the costs if
26 there is some way of doing that.

27 PRESIDING JUDGE: Mr Jordash?

28 MR JORDASH: If my learned friend wants to do that. The
29 point remains that --

1 PRESIDING JUDGE: She would still have received a total of.
2 MR JORDASH: Exactly.
3 JUDGE ITOE: She is not denying the fact. All she is
4 saying is she was receiving it in bits, she didn't have any
16:59:45 5 particular -- she didn't keep any particular account of what she
6 received and she told you even if it is somebody who bought the
7 dress she is wearing on her now, to quote her, what's your
8 business? So you see --
9 PRESIDING JUDGE: But she said --
17:00:03 10 JUDGE ITOE: There are many things which --
11 PRESIDING JUDGE: When you gave her finally the amount she
12 said if the witness protection unit says so, well, they have
13 added it up, maybe so. So she does not appear to be disputing
14 this. She has just said I never made a calculation myself.
17:00:21 15 MR JORDASH: Certainly.
16 Q. And so you understand, madam --
17 A. No.
18 Q. -- I suggest that's part of your motivation for coming
19 here.
17:00:31 20 PRESIDING JUDGE: Yes, Mr Harrison.
21 MR HARRISON: This is the third time we are revisiting
22 this. I had understood the Court's order from 11th April 2005 to
23 be that as far as payments on witness and victims services units,
24 that questions with respect to the motivation to lie or mislead
17:00:50 25 the Court cannot be put. It could of course be put for payments
26 with respect to the Office of the Prosecutor, but the transcript
27 from 11th April 2005 at page 23, being the comments of the Court
28 passing a ruling on an earlier objection, I think make the point
29 that defence counsel cannot go so far as to put questions that

1 would call in to the motivation of a witness to come before the
2 Court. Would you like me to read the passage?

3 PRESIDING JUDGE: I would like, because I have a
4 recollection that we have commented upon that, but not that
17:01:36 5 recollection that you are making.

6 MR HARRISON: It is Mr Justice Thompson speaking for the
7 Court. I'm reading from line 6 on page 23.

8 PRESIDING JUDGE: But you say it is the transcript of 11th
9 April 2005?

17:01:49 10 MR HARRISON: Yes, that's right.

11 "Right, we take your assurance. I think the position as I
12 see it is that the objection will be sustained and learned
13 counsel for the second accused will put the question -- "

14 THE WITNESS: The clothes I am wearing. You think I only
17:02:12 15 started putting on dresses today? I am not illiterate but I can
16 earn money too.

17 JUDGE THOMPSON: Learned counsel for the Prosecution could
18 you advise the witness to restrain herself because she is
19 interposing a lot of comments whilst you're reading.

17:02:26 20 MR HARRISON: If you would like me to do it, I can do it.

21 JUDGE THOMPSON: It is your witness. I don't seem to
22 understand this kind of conduct. I take objection to it, that
23 you're reading, we're trying to concentrate, and we are having
24 interventions by the witness. I think the witness ought to be
17:02:52 25 advised on the decorum of the Court, and it is your witness.

26 That is why I ask you to do that.

27 MR HARRISON: If Defence counsel isn't objecting, then I
28 will go ahead and do it.

29 Please do not make any comments while the Court is

1 considering this matter, Madam Witness.

2 If I could resume.

3 JUDGE THOMPSON: Thank you, counsel.

4 MR HARRISON:

17:03:15 5 "Right, we take your assurance. I think the position, as I
6 see it, is that the objection will be sustained and I learned
7 counsel for the second accused will put the question in
8 such a way as not to raise any innuendo or imputation
9 relating to the order of this Court in respect of
17:03:31 10 protective measures and witness allowances. You are
11 entitled to inquire as to what expenses or allowances he
12 has received, but not to ask any question that raises some
13 imputations that you are in fact impeaching the order of
14 this Court or any statute or practice direction in that
17:03:51 15 regard."

16 It then continues on the Presiding Judge making a comment
17 about Defence counsel reserving certain rights during their
18 addresses.

19 PRESIDING JUDGE: I have indeed a copy of that page in
17:04:05 20 front of me but I would like to see the previous page, 22,
21 because obviously Justice Thompson makes that comment there.

22 MR HARRISON: Would you like me to read out 22?

23 PRESIDING JUDGE: At least I would like to see the problem
24 how it was posed. I know the answer given, but what the
17:04:28 25 objection was is not clear to me.

26 MR HARRISON: The objection is actually voiced on page 11.

27 PRESIDING JUDGE: Eleven?

28 MR HARRISON: Yes. So if I can begin with reading --

29 PRESIDING JUDGE: That was an objection that you made at

1 the time?

2 MR HARRISON: Yes, and it is an objection in the context of
3 Mr Touray putting questions to that witness. The objection is
4 stated this way at page 11, line 15:

17:04:54 5 "The Prosecution objects to these questions with respect to
6 payments made by the Victim and Witness Services Unit. No
7 objection is taken with respect to payments from the office
8 of the Prosecution. The basis of the objection is this:

9 those payments are made pursuant to an order of this Court
17:05:13 10 in a practice direction of this Court. Any questions
11 related to an order of the Court or a practice direction of
12 the Court from which an adverse inference or any kind of
13 inference against a witness can be taken is in effect an
14 attempt to undermine an existing order of the Court and is

17:05:33 15 undermining the authority of the Court. This witness does
16 not ask for the money, he does not stipulate an amount.
17 That is directed by the Court and any inference" --

18 And then Judge Thompson makes a comment: "Shall we ask the
19 witness to take off his headphones? Court Management,
17:05:52 20 would you let him take off the head phone."

21 Judge Thompson: "Go ahead counsel."
22 Harrison, on page 12 at line 1: "So that any information
23 solicited on this point with respect to payment from only
24 the Witness and Victims Services Unit is in fact a

17:06:10 25 collateral attack against an existing order of the Court
26 and a practice decision or direction promulgated by this
27 Court as a whole."

28 And then the Presiding Judge invites Mr Touray to make a
29 response, and then there is about eight pages of comments from

1 various Defence counsel and comments from the Court before we get
2 to the ruling, which is at page 23.

3 PRESIDING JUDGE: Thank you. Mr Jordash.

4 MR JORDASH: Your Honour, I think the -- if I just may find
17:06:54 5 on page 22 -- just give me a moment, please. The section which
6 was first read out by Mr Harrison concerning comments by His
7 Honour Judge Thompson has to be read, I would submit, alongside
8 the comments by Your Honour Judge Boutet, which notes, "When the
9 time comes, we will be open to hearing arguments from the Defence
17:07:40 10 on issues of motivation." And so when the question of whether
11 there is being or has been a collateral attack on an order of the
12 Court is being considered, it has to be considered in light of
13 Your Honours' ruling or order that the issue of motivation is one
14 that you are in due course going to consider. And so --

17:08:08 15 JUDGE ITOE: And I think we also said, you know, that this
16 would be the subject matter of an address --

17 MR JORDASH: Yes.

18 JUDGE ITOE: -- by the respective defence teams --

19 MR JORDASH: Yes.

17:08:20 20 JUDGE ITOE: -- to address the Court on the motivation
21 aspect of these payments that were made, but, you know, that
22 there should be no imputation on the witnesses at that time.

23 MR JORDASH: No imputation on the orders of the Court.

24 JUDGE ITOE: Yes, of an impropriety or they're acting
17:08:43 25 because they've received these monies. That is why -- and that
26 is where your question comes in. If she has come here just
27 because she has received these payments. I think that is where
28 we are now. If I understand our earlier position on this, it is
29 that your question appears to be against the ruling, you know, of

1 the Court. But it does not preclude you, in due course, to
2 address the Court on the motivation of the respective witnesses
3 who have been here to give evidence and who may have received
4 certain payments, albeit exorbitant as you wish to consider them.

17:09:35 5 MR JORDASH: The issue is I can only make submissions on
6 evidence and if I was in Mr Harrison's position and Defence
7 counsel hadn't put anything to a witness concerning their
8 motivation, my response to any submissions on motivation would be
9 you didn't give the witness the chance to respond to that
17:09:59 10 allegation, you simply make the allegation at this stage without
11 giving the witness the opportunity to deal with it. I can't make
12 suggestions about a witness's motivation unless the witness has
13 had the opportunity to deal with the imputation. I simply put
14 the imputation as is put in relation to many different forms of
17:10:26 15 motivation. You have lied because you do not like Mr Sesay; you
16 have lied because you are a rebel and you are scared of being
17 prosecuted; you have lied because you have been given money. I
18 don't quite understand my learned friend's objection as to why it
19 is money could not be a motivating factor, but other things
17:10:49 20 could. In one of the poorest countries in the world, one would
21 have reasonably thought that money could in fact be a greater
22 motivator than in most other countries.

23 PRESIDING JUDGE: We are not saying it is or it is not.
24 All we are saying is this is not the time to raise these
17:11:04 25 arguments. Obviously you have the witness who has acknowledged
26 now receiving an amount of money. You have a specified amount of
27 money. What we were saying in that decision, if I am not
28 mistaken, is this would be quite proper for you to raise that in
29 argument, not at this stage of the process; that to suggest that

1 the witness may be seeking to testify because we are in
2 Sierra Leone and because it is a poor country and so on. Yes,
3 these kinds of submissions and arguments would be quite proper
4 and appropriate in due course. We are saying not now. So that
17:11:40 5 is the essence of that decision. What you are saying now does
6 not seem much different from what I am reading or what you raise
7 at the time at page 12.

8 MR JORDASH: TF1-366 --

9 JUDGE THOMPSON: Before you go on, perhaps you can
17:11:54 10 enlighten me further to keeping an open mind on matters of this
11 nature. Suppose the question were ruled as permissible, and
12 suppose I put it this way: that if a question like that is
13 permissible, then one can reasonably draw the conclusion that in
14 the context of that kind of payment, there is - to use some
17:12:28 15 strange language here - an inducer and there is an inducee, the
16 Court being the inducer and the witness being the inducee.
17 Wouldn't that suggest some kind of contractual relationship
18 between a court as an inducer and the witness as an inducee to an
19 arrangement to come and testify here as a result of
17:13:04 20 consideration, which is money.

21 MR JORDASH: But the key, Your Honour --

22 JUDGE THOMPSON: In that context of an inducer/inducee
23 relationship, the consideration being money, wouldn't there be an
24 imputation -- assuming that we characterise that arrangement as
17:13:25 25 illegal, wouldn't there be an imputation that the Court itself is
26 engaged in something which is illegal? I want you to confine
27 yourself to that kind of analysis.

28 MR JORDASH: The key issue is that in that relationship the
29 only focus that there is is the intention of the witness. The

1 intention of the Court doesn't come into it. So the Court may be
2 an inducer, but if its intent is not to induce, then there is no
3 pejorative connotation.

4 JUDGE THOMPSON: But wouldn't it be contrary to public
17:14:08 5 policy and to the administration of justice for a court to place
6 itself in that position where, by implication, it becomes an
7 inducer in terms of procuring witnesses to come and testify for
8 consideration?

9 MR JORDASH: But are we to deny it if it is the fact?

10 JUDGE THOMPSON: I would have thought perhaps another way
11 of looking at it would say that if the witness answers questions
12 that she received payments from the Court and there is some
13 documentary evidence to suggest that she did receive payments,
14 whatever their characterisation - allowances, expenses or not -
17:14:48 15 if that is in evidence, then it provides some evidentiary
16 foundation for counsel to address the Court and say, "Ah, those
17 amounts may well have provided motivation." I am just trying to
18 process it as best as I can without depriving you of the right to
19 question a witness's motivation, which of course I don't think
17:15:11 20 our ruling does. What our ruling does is to go further than that
21 and to say if the imputation leaves the impression that this
22 Tribunal is knowingly engaged in some kind of illegal arrangement
23 to buy witnesses with money to come and testify, then the entire
24 process is tainted and tainted extremely badly.

17:15:45 25 MR JORDASH: And it can be tainted notwithstanding the fact
26 that the Court is properly engaged in its function. In other
27 words, it can be tainted because, notwithstanding the reasonable
28 operation of the Witness and Victims Unit - and I say now it is
29 in my respectful submission acting reasonably - nevertheless,

1 that money can be a motivation for witnesses. I will answer it
2 in this way as well: TF1-366, the last session, when asked this
3 question about what his motivation was, whether he was motivated
4 by the money, he said, "Before the Special Court found me I was
17:16:42 5 suffering. Now I have what I want," or words to that effect. "I
6 was suffering", and they were his words. And so the question --

7 JUDGE THOMPSON: Good point. Would that be an unintended
8 consequence?

9 MR JORDASH: Exactly.

10 JUDGE THOMPSON: But the suggestion there would not be that
11 the Court itself is a party to what is undoubtedly an arrangement
12 which would certainly be contrary to the administration of
13 justice and to public policy.

14 MR JORDASH: There is no suggestion by question --

15 JUDGE THOMPSON: Or his imputation.

16 MR JORDASH: But that cannot reasonably be inferred from a
17 question you are motivated by the money. How could that possibly
18 be an attack on the Court? I have not once suggested the
19 Prosecution are paying their witnesses in order to get them to
17:17:32 20 say things. I have not once suggested that --

21 JUDGE THOMPSON: But it is not put in the sense of
22 suggesting possibly an unintended consequence, but the imputation
23 is there. Remember we are not talking about actuality here, we
24 are talking about imputation.

17:17:53 25 MR JORDASH: But if witness after witness -- let me start
26 that again. I have absolutely no doubt in my mind that some
27 witnesses for both Prosecution and Defence are interested in
28 giving evidence because it involves some kind of financial
29 benefit. I think anyone who works in the --

1 PRESIDING JUDGE: Mr Jordash, if I may stop you.

2 MR JORDASH: -- Prosecution or works in the Defence who
3 denies that would be denying the obvious.

4 JUDGE ITOE: I would be very loath to arriving at that
17:18:25 5 conclusion at this moment in time. I mean, we are dealing with
6 people who have been asked to come forward with whatever they
7 have to assist the Tribunal in arriving at the truth. I find
8 myself in a very uncomfortable situation to say that they are
9 coming forward primarily because they have a financial
17:18:48 10 motivation. Do they even know what the specific amount promised
11 to them before they came to give their evidence and so on and so
12 forth?

13 MR JORDASH: If Your Honour travelled in Sierra Leone to
14 any of the provinces and asked potential witnesses whether
17:19:03 15 they're interested in giving evidence, often - not always, but
16 often - the question is, from them, what benefit? I have people
17 knocking on my office door daily looking for benefit.

18 JUDGE ITOE: But Mr Jordash, if they are asking for those
19 benefits, are they asking for those benefits in order to come and
17:19:28 20 lie in court?

21 MR JORDASH: But that is the question. The Court has to --

22 JUDGE ITOE: Is it a systemic device by the Prosecution or
23 the Witness Protection Unit to pay witnesses in order to come
24 here. I mean, is it the system to come here to lie or so?

17:19:47 25 MR JORDASH: I am not saying that is what the Court does in
26 order to get witnesses. I am saying the Court reasonably
27 provides expenses to witnesses. Witnesses, some of them, come to
28 give evidence because they want to tell the truth, some come
29 because they want the benefit. And any inquiry which --

1 JUDGE ITOE: They want the benefit for coming to tell the
2 truth.

3 MR JORDASH: No, they want the financial benefits and
4 they're willing to lie for it.

17:20:11 5 JUDGE ITOE: I see. That's your version anyway. I am sure
6 the --

7 MR JORDASH: I am hoping it becomes Your Honours'. But
8 even if it doesn't become Your Honours' --

9 JUDGE ITOE: And it is something which we have to look at
17:20:22 10 because we are caught up somewhere as to where we are going to.
11 And that is why we thought, you know, that we will get along and
12 then listen to your addresses on this issue at the appropriate
13 time.

14 MR JORDASH: But Your Honour's reluctance to accept that
17:20:42 15 witnesses may come here for other reasons than to tell the
16 truth --

17 JUDGE ITOE: We wouldn't want to arrive prematurely at
18 certain conclusions, Mr Jordash. You are not expecting us to
19 arrive at conclusions prematurely. We have to go through the
17:20:56 20 whole arch of this case to be able to arrive at something.

21 MR JORDASH: But I am, with due respect, hoping --

22 JUDGE ITOE: We are just mid-stream and we cannot --

23 MR JORDASH: Sorry. I am, with all due respect, hoping
24 that Your Honours will apply the presumption of innocence which
17:21:14 25 involves, logically, assuming that the accounts are not true
26 before concluding they are. And one of the reason they may not
27 be true when one applies the presumption of innocence is because
28 witnesses have received benefits. Any --

29 PRESIDING JUDGE: We are not saying you cannot raise that

1 as part of the arguments, but this is not the issue. We are
2 saying that this is not the time at this particular moment. You
3 have evidence now clearly that the witness has received a certain
4 amount of money. Now, if you want to use that to ask this Court
17:21:47 5 to infer that this witness, given the particular circumstances,
6 has come here for that purpose, you are perfectly entitled to
7 raise this as an argument. We are not disputing this at all.

8 MR JORDASH: What my learned friend's objection is designed
9 to do is prevent the Defence from exploring motivations to cast
17:22:07 10 light on witnesses who have not told the truth. And this Court
11 with all due respect has to assume that these accounts are not
12 true. That is the starting point. That is the burden of proof
13 the Prosecution have. And by trying to deny the Defence --

14 PRESIDING JUDGE: I am not sure on this -- I don't want to
17:22:21 15 embark upon philosophical discussion here on this issue. But I
16 don't think we can assume -- you are asking this Court to
17 assume first that witnesses are not telling the truth. This is
18 basically what you are suggesting. I am not prepared to accept
19 that.

17:22:35 20 MR JORDASH: That's the presumption of innocence. Mr Sesay
21 is presumed to be innocent. Which means that witnesses --

22 PRESIDING JUDGE: Well, I have to presume witnesses are
23 telling the truth unless otherwise -- I mean, they have taken an
24 oath to tell the truth. I cannot assume that witnesses are
17:22:47 25 lying.

26 MR JORDASH: Well, then, Your Honours are presuming that he
27 is guilty then. Because Your Honour's presuming the accounts
28 that are given, that accuse Mr Sesay of a huge amount of crime,
29 are true. And the burden of proof suggests --

1 PRESIDING JUDGE: I am not assuming they are true, I am not
2 assuming they are untrue.

3 MR JORDASH: Your Honours must assume they are not true,
4 because Your Honours must assume he is innocent.

17:23:07 5 PRESIDING JUDGE: To assume that he is innocent does not
6 mean that we must assume that what the witnesses are saying is
7 untrue. I disagree strongly with that perspective.

8 MR JORDASH: If Your Honours presume that the --

9 PRESIDING JUDGE: I don't presume anything. We are just
17:23:18 10 listening to the evidence and we will make our decision and
11 assess the evidence as it comes out. We are not assuming that
12 the witness is not telling the truth. We are not assuming the
13 witness is telling the truth either. We are not assuming
14 anything. We just take the evidence as it comes out.

17:23:33 15 MR JORDASH: Your Honours have to presume Mr Sesay is
16 innocent.

17 PRESIDING JUDGE: And we do.

18 JUDGE ITOE: We do. Mr Sesay and every one of them is
19 innocent.

17:23:41 20 MR JORDASH: That, therefore, necessarily means that
21 accounts that you hear, you start off with saying this is not
22 correct, this is not reliable, let me explore and look at it and
23 decide whether I arrive at that conclusion after [Overlapping
24 speakers].

17:23:54 25 PRESIDING JUDGE: I do not share your way of assessing the
26 evidence.

27 MR JORDASH: But Your Honour [Overlapping speakers].

28 JUDGE THOMPSON: Learned counsel, I think the presumption
29 of innocence in the context of the technical application in

1 international criminal justice and national criminal justice
2 implies two components: One, that there is a burden on the
3 Prosecution to prove their case against the accused person. And
4 the second is that the Prosecution proves their case beyond a
17:24:31 5 reasonable doubt. In other words, they prove their case to the
6 hilt. And I understand the presumption of innocence as saying
7 that the Court is not allowed to presume the guilt of the accused
8 person. In other words, the burden on the Prosecution is a very
9 heavy one, the persuasive burden. I do not understand the
17:24:59 10 presumption of innocence to mean that the Court begins by saying
11 that what witnesses are saying from the witness stand is untrue.
12 That is not what the conventional interpretation of the burden is
13 or the presumption of innocence is. It means that no accused
14 person here is supposed to come and lead evidence to prove that
17:25:26 15 he is innocent. Your clients can sit there and say nothing and
16 the burden remains throughout on the Prosecution to satisfy the
17 Court of their guilt.

18 So I don't see why if the Prosecution bring witnesses to
19 this Court, the presumption of innocence is necessarily
17:25:52 20 misapplied. If the Court is supposed to hear what the witnesses
21 are saying in support of the Prosecution's case, but then reserve
22 its judgment as to whether they're speaking the truth or not
23 until the totality of the evidence is before the Court, having
24 listened to the Defence if they have any evidence and evaluating
17:26:19 25 it at that stage. And really to suggest that at this preliminary
26 stage we evaluate anything is against my own understanding of the
27 administration of justice. I don't make up my mind at any stage
28 until after all the evidence is in.

29 MR JORDASH: But the question --

1 PRESIDING JUDGE: And I would add on that --
2 JUDGE THOMPSON: I don't do that.
3 PRESIDING JUDGE: -- fairness and impartiality precludes me
4 from making any presumption as to the credibility of a witness.
17:26:47 5 That would be --
6 JUDGE THOMPSON: At this point in time.
7 PRESIDING JUDGE: [Overlapping speakers] based on their
8 evidence as we see and in consideration of the totality of the
9 evidence, I make no assumption either in a positive way or a
17:27:01 10 negative way.
11 MR JORDASH: Well, Your Honours describe a situation where
12 the Prosecution have a story, the Defence have a story.
13 PRESIDING JUDGE: It is not a story. They have an
14 obligation to prove beyond reasonable doubt. That's the
17:27:18 15 obligation.
16 MR JORDASH: Their account through their witnesses is one
17 side of the scales, the Defence is the other and somehow
18 Your Honours sit in the middle. I respectfully submit that is
19 not true.
17:27:24 20 PRESIDING JUDGE: We are not sitting in the middle. The
21 Prosecution always has that burden.
22 MR JORDASH: But the burden of proof is -- Your Honours, it
23 should be at the side of the Defence to start with.
24 PRESIDING JUDGE: Absolutely not.
17:27:36 25 MR JORDASH: It is because it is the presumption of
26 innocence.
27 JUDGE ITOE: No, no. No, Mr Jordash, no. We are sitting
28 in between and holding a balance. The balance should never --
29 MR JORDASH: Not the starting point.

1 JUDGE ITOE: -- at any time should be tilted on one side.

2 MR JORDASH: The starting point for Your Honours is not in
3 the middle of the two version of events. The starting point for
4 Your Honours is to assume Mr Sesay's innocence.

17:27:58 5 JUDGE THOMPSON: Well, that's the starting point.

6 MR JORDASH: That is the presumption of innocence; that is
7 what it says. And if you presume the innocence then you have to
8 presume that anything which says he is not isn't reliable or
9 correct.

17:28:11 10 JUDGE ITOE: No, no. Mr Jordash, in presuming -- the
11 presumption of innocence is a different matter. It is clear, it
12 is certain. Mr Sesay is presumed innocent until the contrary is
13 proved by the Prosecution. But given that presumption of
14 innocence, we cannot go further to presume that all that a
17:28:29 15 prosecution witness is saying is a lie, because it has to be
16 linked with the presumption of innocence which is the
17 constitutional and statutory right of an accused person.

18 MR JORDASH: But what does it mean to be presumed innocent?
19 It means that you are not guilty of what is said by the
17:28:54 20 Prosecution. And Your Honours must presume he is not guilty of
21 what is said by the Prosecution.

22 PRESIDING JUDGE: Well, the allegations against any accused
23 are what has been proffered in the indictment. They have to
24 prove beyond any reasonable doubt that these essential
17:29:12 25 ingredients of those allegations have been proven beyond that
26 standard, as such. And you do so by assessing the evidence that
27 has been adduced, and it may include and will include obviously.
28 Because once the Prosecution case is concluded, as you know,
29 there is a possibility of a judgment of acquittal at this stage

1 if they have not met a certain threshold. It is at the end of
2 all of that that we assess the totality of evidence to determine
3 if they have met that standard of beyond a reasonable doubt.
4 There is no other way to do it.

17:29:39 5 MR JORDASH: I don't take an issue with when that analysis
6 takes place. The analysis takes place when all the evidence is
7 in, I accept that. But how that evidence is analysed is what I
8 make submissions about.

9 JUDGE THOMPSON: Mr Jordash, let me interject and say no
17:29:54 10 analysis or evaluation goes on at this stage.

11 MR JORDASH: I am not asking it to.

12 JUDGE THOMPSON: Precisely, it cannot. Because this is
13 purely the stage of admission of evidence, reception of evidence.
14 All we are doing now is to receive evidence. And it would be
17:30:13 15 wrong to say whatever questions we ask or whatever objections are
16 raised and replied to, it would be wrong to say that at this
17 point in time we are evaluating anything or we are presuming
18 anything in favour of the Prosecution. The presumption of
19 innocence remains until we get to the stage where the entire
17:30:38 20 evidence is in and on the totality of that evidence we begin the
21 evaluation process, having heard both sides.

22 MR JORDASH: From the point of presuming it's not correct.
23 That's my point.

24 JUDGE THOMPSON: But the question really is I am yet to be
17:30:59 25 enlightened where this presumption of innocence, which is where
26 we are supposed to start with, which is logically and legally a
27 starting point, includes a presumption, in fact, to ignore
28 prosecution evidence at this stage.

29 MR JORDASH: Not ignore.

1 JUDGE ITOE: Let me put it this way. Includes a
2 presumption that the testimony given by the prosecution witnesses
3 should be presumed to be -- should be disregarded or should not
4 be taken for the truth.

17:31:32 5 JUDGE THOMPSON: That's the point. Because my difficulty
6 is -- and it is not a difficulty for me. I am not evaluating
7 anything at stage and I am sure my learned brothers are not. We
8 cannot evaluate any evidence at this stage for the purposes of
9 the application of the presumption of innocence or the burden on
17:31:54 10 the Prosecution to prove their case beyond a reasonable doubt.
11 We are not there yet.

12 MR JORDASH: I am not asking Your Honours to --

13 JUDGE THOMPSON: We are not there yet.

14 MR JORDASH: I am not asking Your Honours to evaluate
17:32:06 15 evidence at this stage. I am asking Your Honours to start off at
16 a certain place when Your Honours come to do the evaluation.

17 JUDGE THOMPSON: I think all we can do is to allow you,
18 through cross-examination, to poke as many holes in the
19 Prosecution's case as possible. That is your function now. That
17:32:23 20 is what you are doing in cross-examination. Of course also since
21 you have chosen to present the case for the Defence, you are not
22 just poking holes in the Prosecution's case but also presenting
23 your own side of the story. But my point is that at this stage
24 we cannot evaluate.

17:32:43 25 MR JORDASH: I'm not asking Your Honours to evaluate.

26 JUDGE THOMPSON: We cannot assess anything.

27 MR JORDASH: I am not talking about when Your Honours
28 evaluate. Of course Your Honours cannot evaluate until all the
29 evidence has been collected but it's the process, the starting

1 point of that evaluation --

2 PRESIDING JUDGE: Mr Jordash, can you -- please, we will
3 hear these arguments and we will give you the time full time to
4 argue this extensively in due course. And you are the first one
17:33:07 5 to admit now that this is not something that we should be
6 proceeding with at this stage.

7 MR JORDASH: I agree, but --

8 PRESIDING JUDGE: I know you have that card and we'll
9 listen to you at that particular time. But, having said that, I
17:33:21 10 don't think we'll resolve this issue today and you will be given,
11 as I say, all the time you need whenever we get there.

12 JUDGE THOMPSON: And do not feel that I put any roadblock
13 in your way to express the legitimate concerns of your client at
14 any time. It is your duty to do that and I find it extremely
17:33:41 15 refreshing.

16 PRESIDING JUDGE: But it is 5.30. It's Friday afternoon
17 and we normally adjourn at this time.

18 There has been an objection but, before we make a decision
19 on that, I want to read the transcript of what has been referred
17:33:55 20 to. I was looking through it while you were speaking so it is
21 difficult to follow two lines of thought at the same time. But I
22 could see that much of the arguments -- I am not talking about
23 the last part of the arguments, Mr Jordash, but the first part is
24 what you had stated at the time, but I want to look at it before
17:34:13 25 we come back and take a decision on that. So we'll be back
26 Monday morning first thing. Yes, Mr O'Shea.

27 MR O'SHEA: Yes, thank you, Your Honour. I am not going to
28 take up the proceedings, I know we have to adjourn now, but I
29 would just like to make the Court aware of the fact that I also

1 have a difficulty with Mr Harrison's objection. I would be
2 grateful if before Your Honours rule I be allowed to say a few
3 words on Monday morning in relation to it because it affects us
4 all.

17:34:42 5 PRESIDING JUDGE: Very well. So on this matter we will
6 adjourn the Court to 9.30, Monday morning. Court is adjourned.
7 Thank you.

8 [Whereupon the hearing adjourned at 5.35 p.m.,
9 to be reconvened on Monday, the 6th day of
17:35:15 10 March 2006, at 9.30 a.m.]

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

WITNESSES FOR THE PROSECUTION:

WITNESS: TF1-113

2

CROSS-EXAMINED BY MR JORDASH

5