

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

FRIDAY 15 JUNE, 2007
9.45 A.M.
TRIAL

TRIAL CHAMBER I

Before the Judges:	Bankole Thompson, Presiding Pierre Boutet Benjamin Mutanga Itoe
For Chambers:	Mr Matteo Crippa Ms Nicole Lewis
For the Registry:	Ms Advera Kamuzora Mr Thomas George
For the Prosecution:	Mr Peter Harrison Mr Vincent Wagona
For the accused Issa Sesay:	Mr Wayne Jordash Mr Tobias Berkman
For the accused Morris Kallon:	Mr Shekou Touray Mr Melron Nicol-Wilson Ms Francis Issa
For the accused Augustine Gbao:	Mr John Cammegh

1 [RUF15JUN07A - MC]

2 Friday, 15 June 2007

3 [Open session]

4 [The accused present]

5 [The witness entered court]

6 [Upon commencing at 9.45 a.m.]

7 WITNESS: JOHN VERNON BERRY [Continued]

8 CROSS-EXAMINATION BY MR JORDASH: [Continued]

9 PRESIDING JUDGE: Good morning, counsel. The trial is
10 resumed. We continue with the trial within a trial and
11 Mr Jordash, you'll continue your cross-examination of this
12 witness, not unmindful of your unqualified commitment to
complete
13 in 20 minutes.

14 JUDGE ITOE: No, he said 30, I'm his witness. He said
30
10:01:59 15 or more.

16 PRESIDING JUDGE: I accept that.

17 MR JORDASH: Even 45, I think.

18 Q. Good morning, Mr Berry.

19 A. Good morning.

10:02:09 20 Q. Could I ask Mr Berry --- for Mr Berry to be given a copy
of
21 the --

22 JUDGE ITOE: Just before we continue: Is Mr Berry still
23 within the service of the Special Court?

24 THE WITNESS: Yes, I am, Your Honour.

10:02:24 25 JUDGE ITOE: Are you still employed by the Special
Court?

26 THE WITNESS: I am, Your Honour.

27 JUDGE ITOE: You are still employed?

28 THE WITNESS: I am.

29 JUDGE ITOE: So you went and you came back?

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1 THE WITNESS: Yes.

2 JUDGE ITOE: Okay. All right. Thank you.

3 MR JORDASH: Can I have Mr Berry handed, please, the 14
4 March interview?

10:02:42 5 PRESIDING JUDGE: Mr Courtroom Officer, please assist.

6 MR JORDASH:

7 Q. If you turn, please, to 28839.

8 A. This is April, sorry.

9 Q. 28839?

10:03:16 10 A. Okay.

11 JUDGE ITOE: Mr Jordash, I thought -- well, you don't
want

12 to visit 28840 anymore because yesterday you wanted to visit.

13 MR JORDASH: Yes. I just want to go one page back.

14 JUDGE ITOE: I see. Okay. All right.

10:04:07 15 MR JORDASH: And deal with it but I'll come straight on
to

16 that.

17 JUDGE ITOE: All right; okay.

18 MR JORDASH:

19 Q. The bottom of page 28839. Do you accept, having seen
the

10:04:23 20 video yesterday, and looking at Mr Sesay's statement, "Yeah,
but

21 according to you I'm a suspect of, you know," he was asking a

22 question there. There isn't a question mark on the transcript

23 but it was a question?

24 A. You're asking me whether he was asking a question?

10:04:47 25 Q. Yes.

26 A. It would appear that a question was forming, yes.

27 Q. Yes. And he appeared to be querying something about
being

28 a suspect; do you accept that?

29 A. Yes.

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1 Q. And you then give that answer which is some form of
2 explanation; is that right?

3 A. I would say yes.

4 Q. But you didn't allow him to finish his question, so it
10:05:29 5 wasn't clear to you, I suggest, what the full import of the
6 question was going to be?

7 A. No, but what I viewed just from the forming of the
8 question, and this is only assumption because I'm not
listening
9 to the audio, but with the dashes there must have been a pause
10:05:49 10 and in that pause I tried to explain to Mr Sesay. I don't
think
11 I cut him off. I think I was, when there was a lull in the
12 forming of his question by the looks of it, I probably
13 interjected to say: Yes, you are a suspect and this is why
we're
14 advising of your rights.

10:06:08 15 Q. Right. And then over at -- onto the next page, Mr Sesay
16 says: "So, all these days I'm saying yes meaning yes I'm not
17 guilty." and you answered, "No, no, you're not admitting
18 Looking at this now, is your understanding of what Mr Sesay
was
19 saying there, different today than it was at the time of
10:06:37 20 interview.

21 A. In what context? I'm not quite getting your question.
I
22 can say what's on the transcript is on the transcript but --

23 Q. Well, Mr Sesay, I suggest, appeared to be saying: Well,
24 I've been saying yes to questions or the waivers, meaning
"yes,
10:07:05 25 I'm not guilty of the crimes," but then you appear to answer
"no,
26 no, you're not admitting guilt." And I'm suggesting your
answer

doesn't

27 doesn't fit with his question; do you accept that? Or it

28 fit with his statement?

29 A. I'm not sure if he's referring actually to the "yes yes"

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were

1 from the rights or in regards to his total comments that we

2 discussing.

a

3 Q. Right. But you accept that your statement cuts off, in

do

4 sense, any further exploration of what he in fact is saying;

10:07:55

5 you see what I mean?

you

6 A. Not a hundred per cent, I'm afraid, but I do go on as

you

7 note trying to explain further that you're being advised that

8 are a suspect and that as a suspect you're entitled to these

9 rights so I'm trying to explain that aspect of it.

10:08:17
referring

10 Q. Well, the point is this, isn't it: Whatever he's

it

11 to Mr Sesay's saying he's denying guilt but then you interpret

12 in some way as if Mr Sesay is saying that he's admitting

I'm

13 guilt; do you see the point I make? He's says, "I'm saying

The 14 not guilty," you say, "No, no, you're not admitting guilt."
10:08:44 15 two don't go together; that's the point. Do you accept that?
16 A. I guess I accept the fact that I say, "No, you're not
my 17 admitting guilt." That's yet to be determined. That's beyond
18 purview.
19 Q. Mr Sesay hadn't said he was admitting guilt, that's the
10:09:18 20 point. Is that the way you understood what he was saying at
the 21 time which -- is that why you answered in that way? Because
you 22 misunderstood what he was saying?
23 A. It's a possibility.
24 Q. Right.
10:09:27 25 A. I can't recall a hundred per cent in regards to the
26 specifics of that particular couple of lines at the moment.
27 JUDGE ITOE: It's a long time, Mr Berry, isn't it?
28 THE WITNESS: Yes, Your Honour it is.
29 JUDGE ITOE: It's a long time. It's memory failure too,
in

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1 these matters.

2 THE WITNESS: That's why the audio and the video always
3 helped, Your Honour.

4 MR JORDASH:

10:09:51 5 Q. What you then do is then explain or read the waivers; is
6 that right?

7 A. That's correct; that appears to be what's going on in
the
8 transcript here.

9 Q. And in the usual way Mr Sesay says "yeah" and "mm." Did
10:10:14 10 you not feel at that point, when Mr Sesay said, "So all these
11 days I'm saying yes, meaning yes, I'm not guilty" that perhaps
12 what was required was a little more than the bare minimum in
13 terms of exploring his confusion or apparent confusion?

14 A. Obviously, Mr Jordash, I must have missed his confusion
10:10:37 15 because I do go on, as I say, to -- trying to go through the
16 rights with him and explaining to him that -- what those
rights
17 are. Maybe I missed that subtle implication that you're
18 referring to; I'm not sure.

19 Q. Is there any reason why halfway down the page on 28840,
you
10:10:58 20 say: "Okay. So you understand you have the right to legal
21 assistance" rather than using the word "lawyer"?

22 A. No particular reason. I believe it's already on the
form.

23 Q. Because I suggest what is very telling about these
24 interviews is that the word "lawyer" doesn't appear. There is
10:11:33 25 reference to counsel, there is reference to legal assistance,
but
26 the word "lawyer" doesn't appear to figure in your interviews,
27 and I suggest that that was misleading to Mr Sesay, and

28 intentionally so?

29 A. Well, he met with a lawyer on the 13th.

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1 Q. Well, he met with duty counsel on the 13th?

2 A. Duty counsel not a lawyer?

3 Q. Well, I suggest that it was clear to you by the 14th of

4 because April that Mr Sesay didn't see duty counsel as a lawyer

10:12:08 5 he didn't understand they had a duty of confidentiality. Do
you

6 remember that exchange? I can take you to it if it's easier?

7 A. Okay.

8 please? Q. Could Mr Berry please be given 14 April interview,

9 A. Thank you.

10:12:45 10 Q. 29521, 14 April.

11 A. 29521?

12 Q. Yes.

13 A. Okay.

14 but Q. I'm not sure if you're in the interview at this point,

10:13:06 15 I think you are. Do you see 29521 at the bottom of the page,

be

16 Mr Sesay answers -- answer about whether duty counsel should

17 informed every time that he's interviewed by the OTP?

18 A. Where are you looking, Mr Jordash?

19 Q. Sorry, 29521 at the bottom of the page. This is the --

10:13:34 20 A. Line number?

21 Q. Line number 3 at the bottom.

22 A. Yes, I have it here.

23 Q. Yes, I thought you had.

24 A. Yes, I was waiting for your questions.

10:14:09 25 Q. The question simply is this: Do you remember this
exchange

26 whereby Mr Sesay indicated his understanding that duty counsel

27 might not keep the contents of the interview private?

28 A. Yes, this is the interview -- this is the portion where

29 Mr Morissette is speaking to Mr Sesay in regards to the
specific

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1 rights advisement?

2 Q. Yes.

3 A. Yes.

4 Q. And I suggest it must have been apparent to you, as it
must

10:14:42 5 have been apparent to Mr Morissette, that Mr Sesay was
confused

6 about the exact role of the duty counsel?

7 A. I didn't know if it was confusion myself or trusting. I
8 didn't know which.

9 Q. Well, it might have been a bit of both --

10:14:57 10 A. It may well have been.

11 Q. -- but the point is nobody sought clarification or
sought
12 to clarify, I suggest, in his mind. Do you recall the
exchange
13 and, if so, do you know why no one sought to clarify that key
14 misunderstanding?

10:15:22 15 A. Well, for myself, Mr Sesay had already spoken with duty
16 counsel on the 13th and the 24th, and from the context of what
I
17 heard Mr Morissette tell Mr Sesay about the letter from Mr
John
18 Jones, it had been obvious that he had also spoken with him.
And
19 I myself didn't want to get into any conversations, privy
20 conversations, that he would have had with his counsel. I
would
21 be honest, I guess I would have made the assumption that he
had
22 addressed some of these concerns with his counsel when he
spoke
23 with them.

24 Q. Right. Well, let's move to something else. The 31
March
10:16:13 25 interview, please. In fact, not the interview, sorry. I want
to
26 ask you, please, about the circumstances in which you came to
27 sign this document where you witnessed the document. Do you

28 recall the document?

29 A. Yes. I believe I was shown that document by Mr Harrison

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1 yesterday.

the

2 Q. Now, this duty counsel came to see Mr Sesay and was in

3 office; is that right?

4 A. That's correct, yes.

10:16:59 5 Q. And you were sitting outside waiting for them to finish.

6 A. I was standing outside on the boardwalk, so to speak.

7 Q. Why were you standing outside on the boardwalk?

8 A. Because I wanted to provide privacy to Mr Sesay and his
9 counsel.

10:17:19 10 JUDGE ITOE: That's what Mr Berry said. He said he
wanted

11 to give them some right to privacy. He said so.

12 MR JORDASH: I was getting at the something else, Your
13 Honour.

14 JUDGE ITOE: I see. Well, you know --

10:17:31 15 MR JORDASH:

you

16 Q. Let me put the question more specifically. Why didn't

17 go off and go anywhere else?

18 A. It was not a very big compound. I had no idea how long
19 Defence counsel would be. I really had nowhere else to go.
Most
10:17:47 20 of the offices were full with other people working, so I stood
21 outside.
22 Q. Right. And you were standing outside for ten, 15
minutes?
23 A. That's a possibility. I really can't recall the amount
of
24 time.
10:17:58 25 Q. Well, it certainly wasn't more than 30 minutes, was it?
26 A. I don't believe.
27 Q. When you were brought in to sign this document, that was
28 the end of Mr Sesay's meeting with the duty counsel?
29 A. To my recollection yes.

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1 Q. So however long it was, it wasn't so long for you to
feel a
2 need to go anywhere else, somewhere between 15 and 30
3 minutes; that would be a fair recollection?

4 A. That would be true. I really had no place to go.

10:18:35 5 Q. No, I'm not criticising you for not going anywhere. I'm

suggesting

6 not suggesting you had a glass at the door. I'm just

7 the consultation between Mr Sesay and duty counsel was quite
8 short; that's what I'm getting at.

9 A. They would have to speak on that themselves. I really
10:18:53 10 don't know how long I was. But you said --

around 11 Q. But you would say somewhere less than half an hour,
12 15, 20 minutes?

13 A. I could estimate that, but I can't say specific.

14 Q. That's enough for my purposes. Thank you.

10:19:11 15 JUDGE ITOE: Mr Jordash, that document 29649.

16 MR JORDASH: Yes.

17 JUDGE ITOE: It's an exhibit in court, isn't it?

18 MR JORDASH: I was desperately looking for the exhibit
19 numbers.

10:19:19 20 JUDGE ITOE: I just wanted to know if you have the
number.

21 MR JORDASH: It's --

22 JUDGE BOUTET: It's an exhibit in the main trial.

23 MR JORDASH: A4 as well.

24 JUDGE BOUTET: A4?

10:19:37 25 MR JORDASH: A4.

26 JUDGE ITOE: A4, yes.

the 27 MR JORDASH: That's my note, and I'm getting a nod from
28 expert, your legal officer. Could Mr Berry please be given a
29 copy?

mind 1 JUDGE ITOE: But I still have a lingering doubt in my
this 2 for this document. I'm not yet very clear as to who wrote
3 document.

4 MR JORDASH: It's --

10:19:58 5 JUDGE ITOE: I do not know -- Mr Berry wouldn't know. I
6 wouldn't put that question to him, because he just came and
met 7 the document, and he witnessed it. Mr Berry, would you know
who 8 wrote this document? Did you find out?

9 THE WITNESS: No, Your Honour. I don't know.

10:20:15 10 JUDGE ITOE: You didn't find out?

11 THE WITNESS: No.

12 MR JORDASH: I think we are just waiting to get a copy.

13 Q. Let me just ask while this is going on: You must have -
- 14 this lawyer, and I think there can be little dispute it's

10:20:48 15 Mrs Kah-Jallow from the Defence Office, she opened the door
and

16 she says to you, "Can you witness a document?" Is that right?

17 A. That's what I recall, yes.

18 Q. What does she say about the document? Did she describe
the 19 document in any way?

10:21:06 20 A. No, just looking for a witness to the document, asked if
I
21 could sign. That's what I recall. I don't recall any further
22 conversation.
23 Q. Well, did you -- when you looked at the document, you
could
24 see that it was a document which concerned Mr Sesay's choice
of
10:21:25 25 legal representation, choice of lawyer?
26 A. That's correct.
27 Q. Did you not, then, immediately inquire as to why it was
you
28 were being asked to sign it?
29 A. I was the only one standing on the outside walkway at
the

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me
1 time. I assumed that she opened the door, saw me first, asked
2 to sign it. I didn't inquire, no.
3 Q. Well, did you have in your mind why it was a Defence
lawyer
4 would be asking a Prosecution investigator to get involved
with,
10:22:02 5 even on this peripheral -- on a peripheral level, with issues
6 concerning legal representation?

7 A. I can't answer that. I have no idea why. I can only
8 assume that the lady was travelling by herself, from what I
could
9 see. She probably had no other person around that would be
able
10:22:28 10 to witness the document, and obviously felt that it had to be
11 witnessed.
12 Q. Did you not query why it was she couldn't witness the
13 document, since her signature doesn't appear on it?
14 A. That's a good question. No, I don't know.
10:22:43 15 Q. But what we can be sure about is this: That Mr Sesay
saw
16 you witness that document.
17 A. He should have, yeah. He was there.
18 MR JORDASH: Could I -- to answer Your Honour's inquiry,
19 Mr Sesay wrote this document.
10:23:09 20 JUDGE ITOE: Mr Sesay?
21 MR JORDASH: Yes. Yes.
22 Q. Did you know who Mr Robinson or Mr Okanya were? Do you
23 know who they were?
24 A. No. I do not, Your Honour.
10:23:26 25 Q. Could I suggest to you that it was - and see if you
would
26 accept this - inappropriate for you to sign that document in
the
27 circumstances of an accused making selections as to legal
28 representation?
29 A. I would say no, based on the fact that I wasn't present
for

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me,

any

10:24:03
after

what

possible"?

10:24:40
they

10:24:59

heart.

suggesting

1 the conversation that led up to that. And my only request to
2 Your Honours, was to witness the document. I was no party to
3 of the instructions or conversations that went on between the
4 duty counsel and Mr Sesay.

5 Q. Well, did you speak to Mr Sesay about that document
6 Mrs Kah-Jallow had left?

7 A. Not that I can recall at this time.

8 Q. Did you not seek clarification from him as to whether
9 he was saying was: "I'd like a lawyer now; as soon as

10 A. No. No one, duty counsel nor Mr Sesay, indicated that
11 weren't prepared to continue speaking with me and gave me no
12 indication that they were seeking to have any counsel present
13 during the continuation of our interview.

14 Q. You're aware of Rule 63, the Rules of Procedure and
15 Evidence?

16 A. I'm aware of them. I don't know them right off by

17 Q. No, no. I am not going to test you. What I'm

18 Rule 63 says, in part, is:

19 "If the accused subsequently expresses a desire to have
10:25:12 20 counsel, questioning shall thereupon cease and shall
only
21 resume when the accused's counsel is present."
22 And I'm suggesting that, given what you'd signed, the
duty
23 was on you to ask Mr Sesay what he was saying?
24 A. Like I said, I didn't know those, the names that you
10:25:40 25 mentioned, Mr Robinson and so forth.
26 Q. But you knew at that point he wanted a lawyer?
27 A. That he was requesting a specific lawyer.
28 Q. Yeah. Now, final subject. The arrest and what happened
in
29 the initial approach. What time -- well, you travelled from
Jui

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1 to Scan office in a convoy which had Mr Sesay in it?
2 A. I didn't actually travel with the convoy, but we did
follow
3 the same route.
4 Q. Right. Could you see the convoy in front of you, or was
it
10:26:27 5 out of sight?
6 A. Occasionally, depending on the roadway, you would still
see

7 the vehicle, yes. We came up over -- we call -- I call it the
8 mountain pass. It would be the roadway from Hastings, I
believe
9 it is, coming up over the mountain down through Hill Station,
I
10:26:44 10 think.

11 Q. Right. What time, approximately, did you leave Jui?

12 A. I can't recall the exact time.

13 Q. Well, you'd left Mr Sesay or you'd obtained the decision
14 from him that he would cooperate at 1.30; am I right about
that?

10:27:13 15 A. Yes you are, sir.

16 Q. How long after that was it before everyone set off to
Scan
17 office?

18 A. This is an estimation on my part. I'm thinking probably
19 within the half hour. Some time in that time frame.

10:27:27 20 Q. Right. And it takes about 30 minutes to get to Scan
office
21 from Jui?

22 A. That would be a good -- a fair estimate of time, I'd
say.

23 Q. So you'd have been arriving with the convoy and Mr Sesay
at
24 around 2.30, Scan office?

10:27:44 25 A. That could be an approximate time. It could be off
either
26 way.

27 Q. Yeah, approximate time. That was the time that Mr Sesay
28 then met Mr Morissette?

29 A. That's correct, Your Honour.

details.

1 Q. Thank you. Now, I just want to go through a few

that

2 You first arrived at the CID and are advised by Morissette

3 the arrest had already taken place?

4 A. That's correct. Either Mr Morissette or Mr White.

10:28:21
you

5 Q. And you entered the building where the accused was but

6 didn't have contact with him?

7 A. That's correct.

8 Q. Were you with Mr Saffa when you entered the building?

9 A. I can't remember whether Mr Saffa was with me or not.

10:28:44
correct?

10 Q. Let's just try to take you back in your mind to what's

11 going on. You arrive at the scene with Mr Saffa; am I

12 A. That's correct.

13 Q. And with Mr Morissette and Mr White?

14 A. That's correct.

10:28:53

15 Q. Mr Lahun?

16 A. That's correct.

17 Q. And there was a lady, I think, Peleman; is that right?

18 A. It's a gentleman, actually, Johan Peleman.

19 Q. Right. Okay. Thank you. Another OTP representative?
10:29:07 20 A. Yes.
21 Q. And, as you told us yesterday, you -- let me ask this
22 question: Were you all there for the same reason that you
were
23 there, as you expressed yesterday in court?
24 A. To my knowledge, that's the reason we were all there.
10:29:27 25 Q. Right.
26 A. Whether something specifically was said to any other
27 individuals, I'm not aware of.
28 Q. So, in a sense, you weren't all going -- once you'd
arrived
29 at the scene, in a sense, you were there to watch, that there
was

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1 no reason to go anywhere as such; is that right?
2 A. That's correct.
3 Q. So you would have, is this right, stayed pretty much
4 together as a group?
10:29:50 5 A. No. Mr Saffa obviously is in a different position than
6 myself and same with Mr Lahun, where they both had worked
within
7 the CID for years, and they would be more, much more familiar

once 8 with the building and the people than I am. I saw, and only
there 9 I went upstairs and was advised the arrests had been made,
10:30:13 10 was no sense in me staying within that area and causing any
11 confusion. I went back outside.
12 Q. But had you been in that building before?
13 A. I'd been in the building. Whether I was there before
this 14 event or not I can't recall. I'd been in the building though.
10:30:38 15 Q. Presumably though, you would have stuck with some of the
16 Sierra Leonean OTP representatives who could lead you into the
17 building to where you might want to go?
18 A. Yeah. Whether I went up with Mr White or Mr Morissette,
or 19 whether I went up on my own, I honestly can't recall.
10:30:50 20 Q. You genuinely do not have a recollection as to what you
did 21 at this stage; is that your evidence?
22 A. No. My recollection is that I did go into the building.
23 Who was specifically with me every step that I took, you're
24 correct, I don't have all of that. But I do know that I
entered 25 the building, I exited the building and I waited outside by my
26 vehicle.
27 Q. Well, I suggest if you have a recollection of going into
28 the building, you'd have a recollection of at least somebody
you 29 were with, or did you go in alone?

1 A. I can't recall specifically, sorry.

2 Q. Okay. When do you see Mr Saffa then, after entering the
3 building?

4 A. Back outside is when I first remember. Then we carried
on
10:31:51 5 to Jui.

6 Q. Do you travel with Mr Saffa back to Jui or to Jui?

7 A. Yes. My recollection, I was with Mr Saffa.

8 Q. And when you get to Jui -- well, let me ask you this:
When
9 the accused is escorted out to the van before his
transportation

10:32:15 10 to Jui Barracks, are you with Mr Saffa?

11 A. I'm guessing here to say he's with me. Like I said
there
12 was a large amount of people.

13 Q. Yeah, but there wasn't a large amount of people from the
14 OTP?

10:32:46 15 A. No.

16 Q. You can't remember?

17 A. I can't remember specifically, sir.

18 Q. Well, when you arrived at Jui Barracks, do you alight
from
19 your vehicle and stay with Mr Saffa?

10:32:57 20 A. Mr Saffa was standing around with me so was Mr Lahun, I

21 remember Mr Peleman.

with 22 Q. When you received the call from Mr Morissette, are you

23 Mr Saffa?

24 A. Yes, I believe he's with me.

10:33:14 25 Q. Do you then go with Mr Saffa, do you speak to Mr Saffa
and

26 ask him to come with you to see the accused, Mr Sesay?

27 A. I do.

access 28 Q. Do you arrange with CID alongside Mr Saffa to have

29 to Mr Sesay?

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time 1 A. Whether Mr Saffa was standing right beside me at that

2 I spoke to somebody from CID I can't recall.

your 3 Q. Do you speak to Mr Saffa and tell him the contents of

4 conversation with Mr Morissette?

10:33:43 5 A. Yes, that we were supposed to approach Mr Sesay, to ask
him

6 if he was interested in speaking with us.

7 Q. And then you go together, just you two, to the room?

8 A. That's correct.

9 Q. Did Mr Saffa speak Krio to Mr Sesay during that visit?

10:34:05 10 A. Not that I recall, no.

11 Q. Could I ask that Mr Berry is given Exhibit 222, please?

12 His memorandum. Whilst that's being handed to Mr Berry, can I

13 ask you: You said, you told us yesterday that the memorandum

14 contained the dates from your notes; is that right?

10:34:32 15 A. That's correct, yes.

16 Q. Did it -- is the memorandum pretty much a copy of your

17 notes?

18 A. No, it's in memory at the time.

19 Q. Right. And so is it fair to say that it's likely, if
what

10:34:52 20 you say is right, to be more accurate than perhaps this long

21 after, what you might say this long afterwards, this time

22 afterwards? Let me simplify that.

23 A. Thank you.

24 Q. It's likely to be as accurate a reflection of what was
said

10:35:16 25 concerning your meeting with Mr Sesay. It's going to be
pretty

26 accurate because it was close to the events?

27 A. Yes.

28 Q. Do you agree? So let's have a look at the second

29 paragraph:

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1 "At 1325 hours, while at Jui Police Barracks, John Berry
2 and Joseph Saffa spoke to Issa Sesay. During this brief
3 meeting John Berry advised Sesay that we were
investigators
4 from the Special Court."

10:35:52 5 The first question is: Is there any reason why this is
6 written in this form: "During this brief meeting John Berry"
7 rather than "during this brief meeting I advised." Did you
write
8 this document?

9 A. Yes, I did. Probably just my grammar, sir.

10:36:10 10 Q. Okay.
11 "During this brief meeting John Berry advised Sesay that
we
12 were investigators from the Special Court and that he
had
13 been arrested in relation to charges laid by the Special
14 Court."

10:36:23 15 Is that what you said to Mr Sesay?

16 A. That's what I would have wrote and that's what I recall.

17 Q. "I advised him that I could not promise him anything but
I
18 wanted to offer to him at this time the opportunity to
19 speak about his involvement during the war. I advised
him

10:36:38 20 to take his time as this was a very important decision
on
21 his part. He advised that he wanted to cooperate with
the
22 Court and was willing to speak to us".

23 Is that what you said?

24 A. Yes.

10:36:51 25 Q. "And then he advised that he wanted to cooperate with
the

26 Court and was willing to speak to us".

27 Is that what he said?

28 A. That's what I recall.

29 Q. Right. So if what you say is right, if this is
accurate,

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1 you in fact never told him you were from the OTP, did you?

2 A. No, Special Court, prior to the OTP. The OTP is part of
3 the Special Court.

You're 4 Q. I think it's a little different; don't you accept?

10:37:23 5 an investigator from the Special Court in general which also
6 involves the Defence?

7 A. True enough.

Office 8 Q. Yes. So you didn't tell him that you were from the

9 of the Prosecutor before obtaining his cooperation, if this is
10:37:37 10 right; do you accept that?

11 A. Yes, I do.

only
anything
about
10:38:08
12 Q. Now, is it really your evidence that you said to him
13 this: That "we wanted" -- that you couldn't promise him
14 but you wanted to offer him the opportunity to speak to you
15 his involvement, and that was the only thing you said?
16 A. Yes.
17 Q. Why did you advise him to take his time as it was a very
18 important decision?
19 A. Because he had just been -- he had just been arrested on
10:38:28 20 indictments from the Special Court, and I wanted him, you
know,
21 to make -- take his time to make the decision.
22 Q. But why did you say it was an important decision when
all
23 you were saying to him was: Why don't you talk to us?
24 A. I suppose I could have said that, sir, but I didn't. I
10:38:47 25 can't tell you why I said it the way I did. That's the way I
26 said it.
27 Q. No, what I'm asking is this: That if you've just asked
him
28 to talk to you why, in your mind, was it necessary to say to
him:
29 This is a very important decision you're being asked to make.

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1 Why was it important, in your mind, when all you were asking
him

2 to do was to talk to you?

3 A. Because he's also an accused and he would have to make
the

4 decision whether he wanted to participate in any conversations
10:39:18 5 with ourselves in regards his involvement.

6 Q. But why in your mind is that important? He's an
accused,

7 he can talk to you; why was that important, in your mind?

8 A. I felt it was an important decision on his part. That's
9 why I said the words.

10:39:50 10 Q. Yes.

11 A. I can't give you any other reason, other than to say
that,

12 like anything, any decision weighing upon himself is an
important

13 decision.

14 Q. But why was it important to you? Why did you say it was
10:40:04 15 important? Why did you feel it was important?

16 A. I can't honestly tell you why. I'm not quite sure. I
17 think I made myself clear as best I can in regards to it's an
18 important decision on his part, in regards to whether he is
19 willing to cooperate. It's -- that, to me, is important. And
I

10:40:47 20 think that's why maybe I utilised those words when I said it
to

21 him.

22 Q. Yes, but the -- I'm only asking though you to explain
why

23 you considered it to be an important decision on his part; the

24 reasons for that?

10:40:47 25
with

A. If I was in his position, and I had just been charged

26
whether

something, and I'm being asked to cooperate and find out

27
for

I wanted to speak to them, it would be an important decision

28 me to make, which way I'm going to go. Whether I'm going to

29 remain silent or whether I'm going to be willing to speak to

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1 them.

right?

2 Q. Important decision to remain silent or basically give
3 evidence and perhaps implicate himself and others; is that

4 A. That's correct.

10:41:15 5
you

Q. So, why did you not lay that out for him as clearly as

and

6 could? Why simply say: Please, would you like to talk to us

7 then you advise him it is an important decision?

million

8 A. Well, Mr Jordash, I suppose I could rephrase it a

9 different times and at different points. Those are the words

10:41:34 10

that I used; maybe I should have used other words.

I'm 11 Q. I'm not suggesting you should have used other words.
12 suggesting that if this was true, it would have been incumbent
to 13 upon you to go a bit further and say: What we're asking you
might 14 do is give us evidence. You might become a witness. This
10:41:56 15 be a problem in terms of you being an accused, and so on.
Just 16 something more; don't you accept that?
17 A. No. Your Honour, the --
18 PRESIDING JUDGE: Counsel is on his feet.
19 MR JORDASH: I'm sorry.
10:42:10 20 MR HARRISON: The question of whether it is incumbent
upon 21 him, that is the question of law that rests with the Court to
22 decide.
23 PRESIDING JUDGE: Mr Jordash, how do you respond to
that? 24 Do you think you're coming close to the borderline to what we
10:42:25 25 have to determine as a tribunal. Because the issue of whether
26 the question -- the decision was important has been fully
27 explored. He has given you his own perception of why he
thought 28 it was important, and pursuing further to that length, don't
you 29 think you are more or less encroaching upon the jurisdiction
of

1 the Court to determine some of those matters which would be
the
2 basis for address? Because I know it's a kind of delicate
line
3 here. But some of these issues are issues which the Court
will,
4 in fact, based on the evidence and the answers of the witness,
10:43:06 5 would have to explore further. I accept you can persuade us
6 otherwise.

7 MR JORDASH: I am happy to leave it [overlapping
8 speakers] --

9 PRESIDING JUDGE: Yes. Quite.

10:43:18 10 MR JORDASH: I'll just put my case and I'm finished
then.

11 PRESIDING JUDGE: Very well. All right.

12 MR JORDASH:

13 Q. Could I --

14 JUDGE ITOE: Mr Berry has said that this is a man who
had
10:43:24 15 just been -- he had just been arrested on an indictment for
16 offences before the Special Court. I think that goes as part
of
17 his explanation for what he considers important, in terms of
what
18 he has testified. Because there is -- he can't go further
than
19 that.

10:43:48 20 MR JORDASH: Well, he can go further than that.

21 JUDGE ITOE: He can't.

22 MR JORDASH: [Indiscernible].

23 PRESIDING JUDGE: I think you can invite us to draw
24 appropriate inferences.

10:43:57 25 JUDGE ITOE: Yes.

26 PRESIDING JUDGE: Which will guide us because you have
the

27 whole field now. You've got an answer and you can tell us how

28 you think the Court should deal with an answer like that,
given

29 the circumstances, and based on the antecedent evidence you
have

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1 been trying to elicit from him. It's a totality.

2 MR JORDASH: I have conceded the objection.

3 PRESIDING JUDGE: Yes. Look -- all right.

4 MR JORDASH:

10:44:28 5 Q. Mr Berry, could I suggest what in fact happened: You
and

6 Mr Saffa went to see Mr Sesay with a plan, a plan which had
been

7 devised several days before, at least; is that not right?

8 A. I know there is a plan for the arrest.

9 Q. And I'm saying a plan to seek Mr Sesay's cooperation.

10:44:59 10 A. Well, what I recall, Your Honour, is a conversation with
11 Mr Morissette after arriving at Jui Barracks. And being
12 requested to see if Mr Sesay was prepared to speak to us.
13 Q. And, actually, there'd been questions already planned,
14 hadn't there, focussed on, for Mr Sesay, plans which had led
to
10:45:22 15 questions being drafted in preparation for Mr Sesay coming for
16 interview?
17 A. Questions were drafted, but I don't believe that they
were
18 drafted before Mr Sesay was arrested.
19 Q. Well, let's have a look.
10:45:45 20 MR JORDASH: Could Mr Berry be given the 10 March
interview
21 please?
22 THE WITNESS: I believe it may already be here.
23 MR JORDASH: All right.
24 Q. If you would look at page 28346.
10:45:56 25 A. 28346?
26 Q. Yes.
27 A. Okay. I'm there.
28 Q. You will see there Mr Morissette, five lines down:
"Good.
29 Joseph Saffa and myself have a list of questions that we'd
like

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1 to ask you to begin with."

2 Could I suggest there were questions in existence prior
to

3 Mr Sesay's arrest?

4 A. I have no idea when those questions were put to paper.

10:46:21 5 Q. And thence those questions were part of the plan, a plan
to

6 obtain Mr Sesay's cooperation, lawfully or otherwise?

7 A. I have no idea when those questions were put to paper.

8 Q. There were questions, though?

9 A. Obviously, if this is what Mr Morissette says here that
he

10:46:45 10 has questions he'd like to ask him to begin with. When those
11 were drafted, I can't tell you, Mr Jordash.

12 Q. So you and Mr Saffa, I suggest, went to see Mr Sesay and
13 said to him, "We want your cooperation. If you don't
cooperate

14 this is the end of your life."

10:47:06 15 A. No.

16 Q. And, "If you don't cooperate, you'll remain in jail for
the

17 rest of your life."

18 A. No.

19 Q. And that Mr Sesay said, "What do you want me to do?"

10:47:21 20 A. No.

21 Q. And as part of that pre-conceived plan, he was then
taken

22 straight to Scan office, where Mr Morissette then continues
the

23 coercion; is that not right?

24 A. No.

10:47:39 25 Q. And Mr Sesay and Mr Saffa spent 30 or 40 minutes with
26 Mr Sesay before his first interview?

27 A. Mr Who?

28 Q. Mr Morissette and Mr Saffa spent about 40 minutes with
29 Mr Sesay before his first interview?

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1 A. On the 10th or the 11th?

2 Q. On the 10th.

3 A. Not that I'm aware of.

4 Q. What was Mr Sesay doing for the half an hour then before
10:48:13 5 his interview?

6 PRESIDING JUDGE: Yes, Mr Harrison.

7 MR HARRISON: Objection. That's a misrepresentation of
the

8 evidence. There were questions put as to when things happened

9 and answers were given. But they're always put with the
context

10:48:27 10 of them being appropriate, approximate times that were given
by

11 the witness.

12 PRESIDING JUDGE: Mr Jordash, what's your response to
that?

I'm 13 MR JORDASH: I never claimed they weren't approximate.
14 sure Mr Berry can remember his answers from 20 minutes ago. I
10:48:48 15 was never suggesting --
16 PRESIDING JUDGE: In other words, you're not really
17 misrepresenting the --
18 MR JORDASH: Well, I don't see it. The Prosecution
does, 19 but I wasn't suggesting that Mr Berry had a stop-clock on.
10:49:06 20 JUDGE ITOE: Mr Berry was --
21 PRESIDING JUDGE: What's your response?
22 MR HARRISON: The objection was because the question was
23 30 minutes. There was no qualification.
24 PRESIDING JUDGE: Yeah. Do you concede that?
10:49:19 25 MR JORDASH: I concede I didn't say 30 minutes or
26 thereabouts. I concede that.
27 PRESIDING JUDGE: Well, let's move on.
28 MR JORDASH: I think Mr Berry's an intelligent man. He
29 could have worked it out himself.

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1 PRESIDING JUDGE: Let's get on.

2 MR JORDASH:

3 Q. What was Mr Sesay and Mr Morissette doing for the
4 approximate 30 minutes?

10:49:47 5 A. You're talking at Scan Drive, are you?

6 Q. Yes, before the first interview.

7 JUDGE ITOE: On the 10th?

8 MR JORDASH: On the 10th.

9 JUDGE ITOE: Was he there?

10:49:55 10 MR JORDASH: I don't know, that's what I'm trying to
find
11 out.

12 THE WITNESS: Well, I wasn't present with Mr Morissette
and
13 Mr Sesay.

14 MR JORDASH: Right.

10:50:02 15 PRESIDING JUDGE: He went out.

16 JUDGE ITOE: He wasn't there --

17 PRESIDING JUDGE: He went out.

18 JUDGE ITOE: Okay, was not there.

19 PRESIDING JUDGE: That takes care of that.

10:50:18 20 MR JORDASH: Yes.

21 PRESIDING JUDGE: Unless you want him to speculate?

22 MR JORDASH: No, I wanted him to give the answer he
gave,
23 and I was happy then to move on.

24 PRESIDING JUDGE: Then move on.

10:50:27 25 MR JORDASH: I'm trying to.

26 Q. And I suggest on the 11th, when you were involved, you
are
27 aware of Mr Morissette continuing to threaten Mr Sesay; I'm
28 suggesting you're aware of that?

29 A. No, I'm not.

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the
any
1 Q. And I'm suggesting, in fact, you were part of it, not
2 muscle, which is what Mr Morissette was, but part of it, in
3 event?

4 A. No, I was not.

10:50:57 5 Q. And you were present when Mr White also came into the
6 picture and Mr White said to Mr Sesay, "Give us the story we
7 want. Make it right and you will be our witness."

8 A. No, I was not.

for
10:51:18 10 Q. And Mr White also said that he would arrange a lawyer
11 Mr Sesay at a later time.

12 A. I know nothing of that.

you
13 Q. And on 14 April, after the intervention of John Jones,
14 were present when Morissette shouted and abused Mr Sesay for
15 getting duty counsel and the Defence Office involved?

10:51:57 16 PRESIDING JUDGE: Yes.

17 MR HARRISON: Objection. This question has to do with
conduct of Mr Morissette and the question was not put to

contrary 18 Mr Morissette for him to respond to. It's, therefore,
19 to the rule in Browne v Dunn to put it to this witness.
10:52:15 20 MR JORDASH: Yes, it was put to Mr Morissette. I said
to
21 Mr Morissette that he blasted Mr Sesay on 14 April for getting
22 John Jones involved. So it doesn't breach any rule of Browne
v
23 Dunn.
24 PRESIDING JUDGE: What's your reply?
10:52:33 25 MR HARRISON: I'll review the transcript and if Mr
Jordash
26 is right, that's the end of the matter.
27 PRESIDING JUDGE: Very well.
28 MR JORDASH:
29 Q. Mr Morissette was not best pleased, was he, with Mr
Sesay

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1 getting John Jones involved?
2 A. I don't recall that.
3 Q. And neither were you, I suggest.
4 A. I -- Mr Sesay's choice in regards to his counsel, why
would
10:52:59 5 I be upset with that?

Sesay 6 Q. Because, by having intervention, there was a risk Mr
7 wouldn't keep talking?
8 A. Mr Jordash, Mr Sesay, at any time throughout this entire
9 process, if he had have told me he did not want to continue or
he 10:53:17 10 wanted to have legal counsel present, I would have honoured
that 11 request.
12 MR JORDASH: Those are my questions. Thank you. Thank
13 you, Mr Berry.
14 PRESIDING JUDGE: Thank you. Mr Prosecutor any
10:53:33 15 re-examination?
16 MR HARRISON: No, there isn't.
17 PRESIDING JUDGE: Thank you. Mr Prosecutor, do you
intend 18 to make any application?
19 JUDGE ITOE: Just a moment.
10:53:49 20 PRESIDING JUDGE: Very well.
21 JUDGE ITOE: Mr Berry, if you could --
22 THE WITNESS: Yes, Your Honour.
23 JUDGE ITOE: -- I know that this evidence was provided
by 24 Mr Morissette as well. On the day of the arrests of Mr Sesay,
10:54:03 25 there were two of them who were arrested, Sesay and Kallon; at
26 the same time, I would imagine?
27 THE WITNESS: Yes, Your Honour.
28 JUDGE ITOE: Yes. You say there was a big crowd around
29 there. What was this crowd?

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1 THE WITNESS: Well, it was a headquarters building, so
2 whether there were still other activities going on from
3 day-to-day work. The crowd were, from what I could tell,
police
4 officers. There were other people coming to the building,
those
10:54:30 5 I could see that were in uniform and others who --

6 JUDGE ITOE: The impression I have had all along is that
it
7 was a very anxious crowd, a big crowd, you know. What I'm
8 driving at, could it be a crowd that was attracted by these
9 arrests, by the arrests of these two people?

10:54:46 10 THE WITNESS: I think there was a huge number of people
all
11 the way along throughout the city, but I had just arrived and
had
12 only been there for a few months myself, and not used to the
13 volumes of people that exist within the city. But as far as
14 within the compound of the CID building, there was just lots -
- I
10:55:07 15 describe it as lots of activity, lots of people.

16 JUDGE ITOE: And whilst all this was going on at the Jui
17 station, Jui Police Station --

18 THE WITNESS: Yes, Your Honour.

much 19 JUDGE ITOE: -- where was Kallon? We have not heard
10:55:26 20 about what you were doing to Kallon, you know, neither from
you 21 nor from Mr Morissette.

22 THE WITNESS: I was doing nothing with Mr Kallon, Your
23 Honour.

24 JUDGE ITOE: You did nothing with Mr Kallon?

10:55:37 25 THE WITNESS: No, Your Honour.

26 PRESIDING JUDGE: Let me just follow that up. When you
say 27 this huge crowd, did it mean also that there was an
overwhelming 28 police presence there?

29 THE WITNESS: I don't know.

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1 PRESIDING JUDGE: Would you describe that as an
2 overwhelming police presence? I mean, one police officer, two
3 police officers would not be overwhelming?

4 THE WITNESS: After subsequent visits to the
headquarters 5 building, I think it's just a routine hub of activity.
10:55:59

6 PRESIDING JUDGE: But the presence, the police presence,
7 was it overwhelming? For example, I'm now comparing a riot

8 situation --

9 THE WITNESS: No.

10:56:13 10 PRESIDING JUDGE: Where you bring the police in great
11 numbers.

12 THE WITNESS: No, there was no riot police there, Your
13 Honour.

14 PRESIDING JUDGE: So it wasn't an overwhelming police
10:56:21 15 presence?

16 THE WITNESS: No.

17 PRESIDING JUDGE: All right. Thank you. Mr Harrison,
do
18 you intend to make any application in respect of the release
of
19 Mr Berry or -- in fact, I think, some late application came
for
10:56:40 20 the release of Mr Morissette, or something.

21 MR HARRISON: Yes, I'm prepared to do that now, if the
22 Court will allow me.

23 PRESIDING JUDGE: Yeah, I certainly -- because I think
24 before we began the trial within a trial, there was some
10:56:54 25 indication that they had some engagements and they were
prepared
26 to be around. I think it's appropriate, if you want to do
that
27 now.

28 MR HARRISON: Yes. The Prosecution then is asking that
the
29 Court release both Mr Morissette and Mr Berry.

response? 1 PRESIDING JUDGE: Very well. What would be your

2 MR JORDASH: Well --

3 PRESIDING JUDGE: Because we -- yes.

4 MR JORDASH: In relation to Mr Berry, I've no objection.

10:57:23 5 PRESIDING JUDGE: Yes.

6 MR JORDASH: But I do object to Mr Morissette --

7 PRESIDING JUDGE: In relation to Mr Morissette, yes.

68 8 MR JORDASH: -- being released before an issue of Rule

9 material is decided.

10:58:07 10 PRESIDING JUDGE: Yeah.

11 MR JORDASH: The evidence we've heard in the last few

days 12 raise some serious issues about Mr Morissette.

13 PRESIDING JUDGE: That may necessitate the possibility

of 14 hearing again from him?

10:58:07 15 MR JORDASH: Well, we -- I say --

16 PRESIDING JUDGE: With leave of the Court, of course.

17 MR JORDASH: I wanted to leave this until the end of the

18 Prosecution evidence, but there has been some serious

allegations 19 arising from evidence which has been admitted by Mr

Morissette,

10:58:08 20 adduced by us to cross-examine Mr Morissette and now,
latterly,
21 to some extent, confirmed by Mr Berry. We would submit and we
22 would renew our application for an order from the Court for
23 disclosure of material relating to Mr Morissette. The --
24 JUDGE BOUTET: Do you need to do that in the presence of
10:58:30 25 this particular witness?
26 MR JORDASH: No, no.
27 PRESIDING JUDGE: No, no. Let's -- I think we can,
since
28 you have no objection to the release of Mr Berry, we can
release.
29 The application is granted. And we can go into the question
of

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1 Mr Morissette at some point.
2 Mr Berry, you're released from these proceedings.
3 THE WITNESS: Thank you, Your Honour.
4 PRESIDING JUDGE: Thank you.
10:58:55 5 [The witness withdrew]
6 PRESIDING JUDGE: Do we want to -- do you want to
dispose
7 of this issue straightaway? Or do you think -- what is the
8 Prosecution's disposition? Can we dispose of this problem?

could 9 MR HARRISON: I was just wanting to ask if Mr Jordash
10:59:37 10 indulge us? We are not trying to prevent his application.
11 PRESIDING JUDGE: Yes.
12 MR HARRISON: And it can be brought any time he deems
13 appropriate.
14 PRESIDING JUDGE: Yes.
10:59:37 15 MR HARRISON: But what the Prosecution wanted the Court
to
16 know is that the next witness is here. He's a person from
17 Magburaka. He's a superintendent there, and we brought him
here
18 on Tuesday, on Monday, and he's getting a bit annoyed.
19 PRESIDING JUDGE: All right. Well, what we'll do, we'll
10:59:49 20 hold in abeyance any discussion about the release of
21 Mr Morissette and go straight on with your next witness. That
22 will be the best way to proceed. Right. Let's hear the --
let's
23 invite the next witness for the purpose of the trial within a
24 trial.
11:00:08 25 MR HARRISON: I can just indicate for the record that
the
26 name of the person is Superintendent Litho, L-I-T-H-O Lamin,
27 L-A-M-I-N. And he'll testify in English and in public.
28 PRESIDING JUDGE: Litho. Mr Courtroom Officer, please
29 administer the oath to the witness.

1 WITNESS: LITHO LAMIN [Sworn]

2 PRESIDING JUDGE: Counsel, proceed.

3 EXAMINED BY MR HARRISON:

4 Q. Could you please state your full name and spell your
11:02:23 5 last name? I'm sorry, you have to push that button again.
6 There, you've got it correct.

7 A. My name, sir, is Litho Lamin. Lamin, is spelt L-A-M-I-
N.

8 Q. And what is your current occupation?

9 A. I'm a superintendent of police.

11:02:53 10 Q. Now, I'm going to take you back to 10 March 2003. Do
you
11 recall if anything happened on that day?

12 A. Yes, My Lord.

13 Q. And please take the Court slowly through what you
remember
14 happening.

11:03:13 15 A. I recall on 10 March 2003 I was in the office.

16 Q. When you say you were in the office, what office are you
17 talking about?

18 A. At the Criminal Investigation Department headquarters,
19 Freetown.

11:03:36 20 Q. So you were in the office and what, if anything,
happened?

21 A. The then director of the CID Mr FUK Dabo called --

22 Q. Sorry, what was the name again?

23 A. Mr FUK Dabo.

24 Q. Is Dabo spelled D-A-B-O?

11:04:00 25 A. Yes, My Lord.

26 Q. Please continue.

27 A. He called me in his office and told me he had a task for
me

28 and I should be in preparedness.

29 Q. Was anything else said at that time?

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1 A. Nothing, absolutely.

2 Q. I think you may have to speak a little bit louder. Just
so

3 that you know, there's people here translating and
interpreting

4 every word you say, so they have to be able to hear you
clearly

11:04:44 5 so that they can make an accurate interpretation. So you had

6 this conversation with Chief Superintendent Dabo and what

7 happened next?

8 A. So I went back to my office. He was later --

9 JUDGE ITOE: Was he the chief superintendent or the

11:05:01 10 director of the CID? What did you say he was, Mr Lamin? Mr
Dabo

11 is what?

12 THE WITNESS: Mr Dabo was the director of the CID.

13 JUDGE ITOE: Yes, director of the CID.

14 THE WITNESS: Director of the CID.

11:05:17 15 MR HARRISON:

16 Q. And why did you call him chief superintendent?

17 A. No, that is his rank; Chief Superintendent of Police.

18 Q. All right. So please continue; what happened next?

19 A. So he later called me again into his office and gave me
a

11:05:38 20 document that there is a warrant of arrest for Issa Sesay.

21 Q. And was anything else said?

22 A. That I should effect the arrest.

23 Q. Are you able to say approximately what time of day this
24 was?

11:06:11 25 A. This was in the morning. I would say about 9.00, when I
26 was called upon.

27 Q. And what happened next?

28 A. So he told me to wait and that he was expecting Issa to
29 come to his office on that day.

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1 Q. And then what happened?

he

2 A. So, later in the day, Issa came to CID headquarters and
3 went to the director's office; that is Mr Dabo's office.

4 Q. Continue; what happened next?

11:07:08
I

5 A. So immediately he arrived in the office, I was notified.
6 went into the office and then told Mr Issa Sesay that I have a
7 warrant for his arrest.

8 Q. And just do your best to explain to the Court who, if
9 anyone, may have been present and exactly what took place.

11:07:37
you

10 A. There were a lot of other senior police officers in the
11 office. The director himself was there, Mr Dabo; we have the
12 assistant director of CID, then, Mr Alfred Carew Kamara; and

Mansaray;

13 have the assistant director of crime, the late Abubakar
14 and Assistant Superintendent of Police, John Alpha; and some
15 other junior police officers.

11:08:07

16 Q. And can you explain, in as much detail as you can --

17 JUDGE ITOE: Excuse me, what's the name of the deputy
18 director of the CID?

19 THE WITNESS: Alfred Carew Kamara.

11:08:31

20 JUDGE ITOE: Thank you.

would

21 MR HARRISON: I think Carew is C-A-R-E-W, and Kamara
22 be a name familiar to the court reporter.

23 Q. Again, if you could just, slowly, tell the Court exactly
24 what it is you did when you entered the room.

11:08:52

25 A. So I went in and approached Issa Sesay. I tapped him on
26 his back. I told him I have a warrant, issued by the Special
27 Court. I read the content of the warrant to him, and he broke

asked

28 down into tears, saying, "Is this the peace that they have
29 me to sign? Is this the peace?" But then he was crying,

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was

1 continuously.

2 Q. And what happened next?

3 A. Well, I handcuffed him and took him to a vehicle which
4 parked outside CID headquarters.

11:10:11 5 Q. This room where you say these events happened, can you
6 explain to the Court where that room was located in the CID
7 building?

You

8 A. The current CID headquarters is a two-storey building.

9 have the upper floor and the lower floor and the office of the
11:10:29 10 director is, was on the upper floor of the building.

spent

11 Q. Are you able to say approximately how much time you
12 in that room on the upper floor with Mr Sesay?

13 A. Well, approximately it would be -- say 20 to 30 minutes.

14 JUDGE ITOE: Did you say you read the warrant to him?

11:11:09 15 THE WITNESS: Yes, My Lord.

16 JUDGE ITOE: You read the warrant to him?

17 THE WITNESS: Yes, My Lord.

18 MR HARRISON:

19 Q. And you made mention of going to a car or a vehicle; can
11:11:30 20 you just explain how that happened?

21 A. There were official vehicles waiting for us. So
22 immediately I arrested him, I took him down to one of the
23 vehicles and then we proceeded to Jui.

24 Q. When you say "we proceeded," who are you talking about?

11:12:01 25 A. Myself and some colleague officers.

26 Q. And what about Mr Sesay?

27 A. I was with him in the vehicle.

28 Q. Please continue. What happened next?

29 A. We went to Jui, where he was detained. We were at Jui,

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1 say, for another -- an hour at Jui. Then we had another
2 instruction that we should take him to Scan Drive at
Wilberforce,

3 going towards Spur Road, so we boarded the vehicle.

4 Q. Just pause for a moment. And --

11:13:16 5 JUDGE ITOE: You had the instruction from who?

6 THE WITNESS: From Mr Dabo.

7 JUDGE ITOE: You had instructions from Mr Dabo?

8 THE WITNESS: Yes, Your Honour.

9 JUDGE ITOE: Your director?

11:13:30 10 THE WITNESS: My director.

11 MR HARRISON:

12 Q. While you were at Jui, did anything happen there?

13 A. Well, he was detained.

14 Q. And during that detention, did anything take place?

11:14:10 15 A. Well, not to my knowledge.

16 Q. So you received the instruction from Chief
Superintendent

17 Dabo?

18 A. Yes, My Lord.

19 Q. And what happened next?

11:14:28 20 A. We boarded the vehicle again and then we drove to Scan
there.

21 Drive. The office of Special Court by then took Mr Sesay
the

22 On arrival at Scan Drive I handed him over to personnels of
the

23 Special Court.

24 Q. Do you know the names of any of those people?

11:15:08 25 A. Joseph Saffa.

26 Q. Just for the clarity of the Court, how is it you know
27 Joseph Saffa?

28 A. He is a police officer but he is on secondment, working
at

29 the Special Court.

1 Q. And on that day had you seen Joseph Saffa at any earlier
2 point in time?

3 A. Yes, I saw him at Jui.

4 Q. And when you saw Mr Saffa at Jui, can you just tell the
11:16:03 5 Court how it is you saw him and what happened?

6 A. He was with other personnel and he was normal.

7 Q. So you say you've arrived at Scan Drive. And can you
just
8 take your time and explain what it is that happened at Scan
9 Drive?

11:16:29 10 A. At Scan Drive I handed over the responsibility to the
11 special duty personnel the custody of Issa Sesay, and I waited
12 out in the vehicle. They took him to a room. Well, to be
13 honest, I don't know what transpired between them in the room.

A

14 few hours later they told me again that, from the Special
Court

11:17:04 15 now at Scan Drive, that we should drive to Diamond Airline at
the
16 beach.

17 Q. And then what happened?

18 A. At Diamond Airline there was a helicopter waiting for
us.

19 JUDGE ITOE: Excuse me; you say a few hours later. Can
you

11:17:41 20 be specific about -- is it possible for you to be specific
about,

21 not exact, I mean?

22 THE WITNESS: Well, to be honest, it's quite a long time
23 now. I cannot give the duration.

24 JUDGE ITOE: Because when you said a few hours, after a
few
11:17:58 25 hours, it's --

26 THE WITNESS: Well, when we arrived there they took him
to
27 a room. Whether -- I don't know what transpired.

28 JUDGE ITOE: No, I'm not asking you of what transpired
29 there because we now know that you handed the subject to
Joseph

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1 Saffa and you retired to a vehicle outside and remained there.

2 THE WITNESS: Yes, My Lord.

3 JUDGE ITOE: After a few hours, as you say, they brought
4 him out and they said you should take him to the Diamond --

11:18:24 5 THE WITNESS: No, all of us.

6 JUDGE ITOE: Yes, yes. So how long would you -- you are
7 not able to estimate how long he was inside there.

8 THE WITNESS: No, that is -- well, it could not --

9 JUDGE ITOE: If you cannot answer, I don't want to press
11:18:40 10 you.

11 THE WITNESS: Yes, I cannot.

12 JUDGE ITOE: Let's continue.

13 MR HARRISON:

14 Q. So you mentioned Diamond Airlines?

11:18:49 15 A. Yeah.

16 Q. Just take your time and tell the Court what it is that
17 happened next?

18 A. We received, myself and the other officers, received
19 instruction from the Special Court representatives that we
should

11:19:03 20 take Issa Sesay to the beach, at Diamond Airline, where the
21 helicopter was waiting for us.

22 Q. And what happened next?

23 A. On arrival at the Diamond Airline we met the helicopter
and
24 we were told to board the helicopter for Bonthe, for Bonthe

11:19:40 25 Island.

26 Q. Did you board the helicopter?

27 A. Yes, My Lord.

28 Q. And was anyone else on the helicopter?

29 A. Yes, My Lord.

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1 Q. Just tell the Court who you recall being on the
helicopter?

2 A. Myself, Issa Sesay, a superintendent of police, John
Alpha,

3 Saffa, Joseph Saffa and some other people I cannot remember
now.

4 Q. Please continue with the events; what happened next?

11:20:43 5 A. So we flew to Bonthe Island and in the helicopter Issa
was

6 persistently saying he has been deceived by the authorities

7 because they asked him to sign the peace accord with the

8 understanding that everything was going to be normalised, not

9 knowing that he has been indicted. So he was in tears
explaining

11:21:10 10 to us and that is why he has agreed and more especially that
he

11 has two daughters, very young daughters, which he's not happy
to

12 leave them.

13 Q. Tell the Court what happened next?

14 A. So we arrived in Bonthe, and we took Issa to the
detention

11:21:49 15 centre at Bonthe, handed him over to the detention officers at

16 Bonthe. A few minutes later, a representative from Special
Court

17 came with a package of papers, documents, and handed them over
to

18 me to be given to Issa. Among those documents that were given
to

19 me there was one, the right of the detainee, the indictment,
and

11:22:36 20 another document which he was supposed to sign. So I handed
them

21 over to him, yet still he was not comfortable; he was in
tears,

22 repeating the same conversation as earlier, that he has been
23 deceived.

24 MR HARRISON: I'd ask if Court Management happens to be
11:23:14 25 able to give to the witness what is Exhibit 219.

26 Q. Now, if you look at that document, you will see that on
the
27 top right-hand corners there will be numbers. If you go to
the

28 next page, on the top right-hand corner, do you see a number?

29 A. Yes, My Lord.

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1 Q. Now, if you could go to what is page number 43, from the
2 top right corner, do you see that?

3 A. Yes, My Lord.

4 Q. And if you could just take a look at that document and
tell
11:24:24 5 the Court if you recognise it?

6 A. Page 43?

7 Q. Yes. On the top right-hand corner there should be a
8 number. The number should be 43 and I'm asking you if you
9 recognise that document?

11:24:41 10 A. Yes, My Lord.

11 Q. And please tell the Court how it is you recognise it?

12 A. This is the warrant of arrest.

13 Q. And the warrant of arrest of whom?

14 A. Issa Sesay.

11:24:58 15 Q. And is this the document that you've indicated you read
to

16 Mr Sesay at the CID headquarters?

17 A. Yes, My Lord.

18 Q. And then I'd ask you to go to the document which is

19 numbered 48 in the top right corner; do you see that?

11:25:34 20 A. Yes, My Lord.

21 Q. Do you recognise that document?

22 A. Yes, My Lord.

23 Q. And how is it that you recognise the document?

24 A. This is the right of the accused. As I mentioned
earlier,

11:25:45 25 it was given to me to be handed over to him. That's his
rights

26 as a detainee.

27 Q. And I'd ask you to look at the document that begins at
page

28 50; do you recognise that document?

29 A. Yes, My Lord.

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1 Q. And how is it that you recognise that document?

2 A. It was one of the document among the documents they gave
to

3 me.

4 Q. When you said it was a document that "they gave to me",
who

11:26:51 5 are you referring to?

6 A. They -- I said on arrival at Bonthe I was given a
package

7 of documents by representative of the Special Court.

8 Q. And with this document we've been looking at, the one
that

9 has 50 on the top right corner, what did you do with that

11:27:13 10 document?

11 A. The documents were given to Issa.

12 Q. And then if you could turn to the document which has 60

13 written in the top right corner?

14 A. Yes, My Lord.

11:27:38 15 Q. Do you recognise that document?

16 A. Yes, My Lord.

17 Q. And how is it that you recognise that document?

18 A. Well, as I was given it to append my signature and my
name

19 as the person who, personally, served Issa Sesay with the

11:28:02 20 document.

21 Q. And on the bottom of that page, where it says
"signature,"

22 do you recognise that signature?

23 A. Yes, My Lord. That is my signature.

24 Q. And, finally, if you could look at the document which
has

11:28:25 25 62 on the top right corner; do you recognise that document?
26 A. Yes, My Lord.
27 Q. And how is it that you recognise that document?
28 A. It was among the documents I gave to Issa Sesay.
29 Q. Now, can you just -- I've finished asking you questions

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1 about those documents, thank you. And I only have one or two
2 more questions for you.
3 JUDGE ITOE: But before you continue, Mr Harrison. You
say

4 the documents were given to you by someone from the Special
11:29:11 5 Court. Did you identify the person who gave you those
documents?

6 THE WITNESS: Yes, sir. Yes, sir. But, unfortunately,
he
7 was a foreign national and at that time I did not ask his
name.
8 I did not ask his name.

9 JUDGE ITOE: Did he tell you who he was?

11:29:34 10 THE WITNESS: Yeah. He told me he was part of the
11 investigating team at the Special Court.

12 JUDGE ITOE: He told you he was part the investigating
team
13 of the Special Court?

14 THE WITNESS: Yes, yes.

11:29:48 15 JUDGE ITOE: Thank you.

16 THE WITNESS: Thank you.

17 MR HARRISON:

18 Q. After handing over these documents to Mr Sesay, what did
19 you do next?

11:30:01 20 A. Well, I left the premises, the detention premises.

21 Q. And what did you do that evening?

22 A. I went to my guest house at Bonthe where I past the
night.

23 Q. And the following morning, did anything happen?

24 A. Yes, My Lord. We were expected the helicopter to come
that

11:30:35 25 night, the 10th, to bring us back to Freetown. But,
26 unfortunately, it did not materialise. So, on the following
day,

27 the helicopter went. Whilst we went to the helicopter
location,

28 I saw a van coming behind me. And when the passengers
alighted,

29 I recognised Issa Sesay among the passengers. He was dressed
in

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we
CID
1 white, white dress. And all of us boarded the helicopter and
2 flew down to Freetown at helipad, Diamond helipad. And from
3 there, he took another vehicle with some officers. I went to
4 headquarters.

11:31:29 5 Q. And did you have any further dealings with Mr Sesay
after

6 that?

7 A. Nothing, absolutely.

8 MR HARRISON: That concludes the questioning.

9 PRESIDING JUDGE: Thank you. Mr Jordash, when we return
11:31:47 10 from the break you will begin your cross-examination. We'll
now
11 take the usual morning break.

12 [Break taken at 11.30 a.m.]

13 [RUF15JUN07B - CR]

14 [Upon resuming at 12.08 a.m.]

12:09:46 15 PRESIDING JUDGE: Mr Jordash, you'll proceed.

16 MR JORDASH: Thank you.

17 CROSS-EXAMINED BY MR JORDASH:

18 Q. Mr Lamin, I've just got very few questions. There was a
19 third man arrested on the day of Mr Sesay's -- well, there
were

12:10:08 20 three men arrested on the day of Mr Sesay's arrest; am I
right?

21 A. Three. About that.

22 Q. Well, was there three or was there not three? I mean,
it's

23 not every day war crime suspects get arrested. Was it three?

24 A. On that specific day, when I went to Bonthe, I saw late
12:10:38 25 Chief Hinga Norman.

about 26 Q. No, sorry, there may be some confusion. I'm talking
arrested, 27 at the CID headquarters, on 10 March, when Mr Sesay was
28 two other men were also arrested --
29 A. I arrested Issa Sesay.

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arrested 1 Q. Well, I know that. But were there two other men
2 from the RUF?
3 A. Not to my knowledge.
other 4 Q. Not to your knowledge. You have never heard of two
12:11:11 5 men being arrested when Mr Sesay got arrested; is that your
6 evidence?
7 A. Not to my knowledge. That is what I'm saying.
station? 8 Q. No one has ever spoken to you from your own police
9 A. No.
12:11:20 10 Q. No one told you before that Mr Sesay was arrested?
11 A. No.
12 Q. You never saw the two other men?
13 A. No.
14 Q. Is that the truth?

12:11:29 15 A. I'm telling the truth.

16 Q. Could I ask you about this: Is it right that Mr Sesay
was
17 told to come to the CID headquarters on a personal matter in
18 order to pick up some money; is that right?

19 A. Yes.

12:11:48 20 Q. Yes. He was effectively tricked to come to the CID
21 headquarters to be arrested?

22 A. Well, I don't know whether he was tricked.

23 Q. Well, in truth, he wasn't coming to pick up the money,
was
24 he, he was coming to be arrested; is that right?

12:12:04 25 A. Go over your question again.

26 Q. In truth, he wasn't coming to pick up money, he was
coming
27 to be arrested by you.

28 A. Let me go a little bit. I knew that Issa Sesay had a
29 [indiscernible] at CID.

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1 Q. What, sorry? I missed that.

2 A. Sesay had a matter at CID.

3 Q. Right.

the

4 A. I knew of that. That's like the day of his arrest, in

12:12:35 5 morning I was called upon by the director of CID, who said, "I
6 have a warrant, you should execute it."

7 Q. Right. So he was coming for one reason --

8 A. Well, I don't know whether it was arranged or what. I
9 don't know.

12:12:47 10 Q. You don't know what?

11 A. The question you are saying. You say whether he was
12 tricked or not. I don't know.

13 Q. Was he under the impression he was coming to pick up
money?

14 A. I cannot tell.

12:12:57 15 Q. You can't tell?

16 A. I can't tell.

17 JUDGE ITOE: Was he told that he was coming to pick up
18 money?

19 THE WITNESS: I don't know.

12:13:05 20 JUDGE ITOE: You don't know?

21 THE WITNESS: Yes, My Lord.

22 MR JORDASH: Well, he was --

23 PRESIDING JUDGE: So let's get it clear, because there
was

24 a previous answer that you, in fact -- that it's true Mr Sesay

12:13:20 25 was told that he was to pick up some money at the CID.

26 THE WITNESS: Right.

27 PRESIDING JUDGE: That was your initial answer.

28 JUDGE ITOE: That is what I got.

29 THE WITNESS: No, I did not say so.

1 JUDGE ITOE: That is what I got.

2 THE WITNESS: I said I knew Mr Sesay had a matter at
CID.

3 PRESIDING JUDGE: No, no, there was -- the very first
4 answer was a clear answer, unless of course the transcript
would

12:13:39 5 govern that it was true that Mr Sesay was told to come to the
CID
6 headquarters to pick up some money.

7 THE WITNESS: That was --

8 PRESIDING JUDGE: And then he developed it, and when you
9 pursued it, now we're having variations to that earlier
response.

12:13:52 10 THE WITNESS: If I can go over that.

11 PRESIDING JUDGE: Let us hear the truth, anyway.

12 THE WITNESS: I said, I knew Mr Sesay had a matter at
CID.

13 PRESIDING JUDGE: Yes.

14 THE WITNESS: But I never knew whether he was -- the day
he

12:14:03 15 was arrested, whether he was invited for money or not.

16 PRESIDING JUDGE: So that is your final answer now?

17 THE WITNESS: Yes, sir. I don't know. Because, in the
18 morning, I was contacted by my director and he gave me the

19 warrant.

12:14:18 20 PRESIDING JUDGE: Yes, it is a little problematic here.

21 Because counsel -- it was when you gave that answer that I

22 referred to that counsel came in with the concept of trick,
and

23 then there was this idea whether, in other words, was he
tricked.

24 And then we had this following altercation between you and

12:14:35 25 counsel, but we'll take down what you -- the records will
reflect

26 what you're saying. We'll proceed, counsel.

27 MR JORDASH:

28 Q. When you arrested Mr Sesay, he was surprised, wasn't he?

29 Shocked, in fact.

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1 A. When he -- go over again.

2 PRESIDING JUDGE: Mr Lamin, think carefully before you

3 answer these questions; right.

4 THE WITNESS: Yes, sir.

12:15:05 5 PRESIDING JUDGE: Thank you.

6 MR JORDASH:

7 Q. Was Mr Sesay shocked and surprised at his arrest.

8 A. I said, when I presented the warrant to him, he made a

9 statement that: "Is this the peace they asked us to sign."

12:15:33 10 Q. Well, did he appear shocked and surprised at his arrest?

11 A. I cannot determine that.

12 Q. You can't determine that. Did he seem extremely
distressed

13 by his arrest?

14 A. He was just making the same statement: "Is this the
peace

12:16:00 15 they asked us to sign."

16 Q. I'm not asking what he said. I'm asking: Did he appear
17 extremely distressed?

18 A. Well --

19 JUDGE ITOE: Was he happy?

12:16:13 20 THE WITNESS: No, he was not happy.

21 JUDGE ITOE: [Overlapping speakers]

22 PRESIDING JUDGE: Perhaps we should abandon the concept
of

23 extremely distressed, because that can be controversial from -
- a

24 psychologist can say you have a gradation of distresses. But
the

12:16:32 25 question "was he happy" will probably give us a better
insight,

26 you know, as from the perspective of a police officer, rather
27 than distressed, extremely distressed.

28 MR JORDASH: I think they're probably more experienced
with

29 distressed than happiness.

1 PRESIDING JUDGE: No, counsel, I'm probably importing my
2 own knowledge of psychology here that you do -- can --
sometimes
3 your face can reflect a level of distress, sometimes it may
not.
4 Whether it's extreme or not depends. Let's stick to the
actual
12:17:09 5 empirical kind of thing that he may be able to -- was he happy
or
6 was he not?

7 MR JORDASH: He's a police officer who's trained to
8 observe.

9 PRESIDING JUDGE: Well, I'm not sure --

12:17:15 10 MR JORDASH: [Overlapping speakers] is he extremely
11 distressed, whatever extremely distressed --

12 PRESIDING JUDGE: [Overlapping speakers] psychologistic.

13 MR JORDASH: -- is it difficult --

14 JUDGE BOUTET: I agree with you, Mr Jordash. I think it
is
12:17:26 15 a question a police can answer. I mean they deal with people
16 that are often in a distressful situation.

17 PRESIDING JUDGE: Well, I will yield. The only thing I
18 thought that it raises a little more of some degree of
19 [indiscernible] to least distressed, extremely. But go ahead.

12:17:42 20 JUDGE BOUTET: But you may try, too, a different road,
21 Mr Jordash. The witness has testified as to some attitude of

22 Mr Sesay afterwards. I mean, you know -- you're experienced
23 enough to know how you may obtain this answer.

24 MR JORDASH: Certainly.

12:17:58 25 Q. He broke down into tears straightaway, didn't he?

26 A. Yeah, he broke down into tears.

27 Q. And he continued in tears during your time with him at
the

28 CID, didn't he?

29 A. He was in tears.

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1 Q. During the time at the CID.

2 A. In the office, you mean?

3 Q. Yes.

4 A. Yes, for some time.

12:18:24 5 Q. And was he still in tears when you left and went to Jui?

6 A. No.

7 Q. No. But he was back in tears when you picked him up on
the
8 way to Bonthe?

9 A. In the plane, in the helicopter, I'm sorry.

12:18:35 10 Q. For most of that -- what is it, a half an hour journey?

11 A. From here to Bonthe.

12 Q. Yes.

13 JUDGE ITOE: Do you want me to tell you how long it is?

14 MR JORDASH: I've been on that helicopter, but I can't
12:18:49 15 remember, actually.

16 JUDGE ITOE: I think it is about 40 minutes.

17 JUDGE BOUTET: Forty minutes.

18 JUDGE ITOE: Thirty-five, 40 minutes.

19 MR JORDASH: I think I had my eyes closed. I was too
12:18:58 20 frightened.

21 Q. Was he in tears most of that journey?

22 A. Well, for a short period. Like, when he was explaining
to
23 us that he was the pioneer for our peace in Sierra Leone, and
24 look how they have treated him. You know, tears were running
12:19:17 25 down his face.

26 Q. Did he look frightened?

27 A. No, he was not frightened.

28 Q. Just upset?

29 A. Well, if you call that upset.

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1 Q. Well, what do you call tears?

2 A. Well --

3 Q. Okay, let's leave it there. You don't want to go there.

4 We don't have to. Do you recognise this?

12:19:45 5 A. Yes.

6 Q. What is it, please?

7 A. It's a police notebook.

8 Q. What do you use it for?

9 A. What do I use it for?

12:19:52 10 Q. What do police officers use that notebook for in Sierra

11 Leone?

12 A. Well, in the absent of a police -- we have diary. This

is

13 a working diary.

14 Q. Right. And am I right that --

12:20:08 15 JUDGE BOUTET: Will you produce that in evidence?

Because,

16 I mean now you have the transcript, "I'll show you this."

What

17 is this? I mean, how are we to assess the "this," in the

future?

18 MR JORDASH: Can I just describe it as -- perhaps I can

ask

19 the witness to describe what it is, because it belongs to

someone

12:20:26 20 who might want it back, I think.

21 Q. Could you describe what this is, please, Mr Witness,

what

22 I'm holding up.

23 A. It's a police diary.

24 Q. Do police -- do -- who has them?

12:20:41 25 A. Police officers.

26 Q. Do you have one?

27 A. With me now, here?
28 Q. Generally, when you're working.
29 A. Not in all cases.

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1 Q. Generally, when you're working.
2 A. Not at all times.
3 Q. Generally, when you're working.
4 A. That is what I'm saying.
12:21:05 5 JUDGE ITOE: When you're investigating.
6 THE WITNESS: When I'm investigating.
7 JUDGE ITOE: Yes, do you have one? Or when you're
8 conducting an arrest or investigating, do you have one?
9 THE WITNESS: No.
12:21:18 10 MR JORDASH:
11 Q. Sorry. Is this a tricky question?
12 A. Yes, I don't understand the question.
13 Q. Well, let's try it again. Do you generally have a
police
14 notebook when you're investigating? Tricky question?
12:21:35 15 A. No, not in all cases I do carry a police diary, that
one.

usually.

16 Q. Generally. You know the word generally? It means

17 A. That is what I'm saying.

18 Q. Well --

19 A. So not usually.

12:21:47 20 Q. So you don't usually have one; is that right?

21 A. Yes.

22 Q. Well, let me put to you some suggestions --

not

23 JUDGE BOUTET: Before you go further on this issue, I'm

24 clear as to this issue, because you used the word "notebook."

12:22:05 25
the

25 The witness is answering to you it's a police diary. I think

26 witness has also referred to notebook, or something like that.

what

27 I'm not sure. Can you explain, in your own words, Mr Lamin,

the

28 this is to you, as a police officer? Because you have used

29 word "police diary." So it means that every day you write

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1 something in this?

uniform

2 THE WITNESS: Yes. This is more -- it's given to

3 police officers who are mostly engaged in beat patrol. So, at

whatever, 4 times, when they -- they come across any activity, or
12:22:49 5 it is recorded and they will bring it down to the police
station 6 and then they will inform their appropriate authorities.
7 JUDGE BOUTET: But, at your level, you don't normally
carry 8 these notebooks, as a superintendent? Because your
subordinate 9 may do that, but not necessarily you?
12:23:08 10 THE WITNESS: Well, I, as a senior investigating
officer, I 11 have other books which are kept.
12 JUDGE BOUTET: Not this type of book?
13 THE WITNESS: Not this one.
14 JUDGE BOUTET: Okay. The witness has just said,
12:23:27 15 Mr Jordash, that, as senior investigating officer, he has a
16 different type of book.
17 MR JORDASH: Right.
18 JUDGE BOUTET: But not that book.
19 MR JORDASH: Thank you.
12:23:34 20 Q. Is that different type of book supposed to be used to
write 21 down statements made by arrestees; people you've arrested?
22 A. No.
23 Q. What's it supposed to be used for then? What do you use
it 24 for?
12:23:51 25 A. Like policies. Policy decisions.
26 Q. Policy decisions.
27 A. Yes.
28 Q. Well, it's normal, isn't it, that people arresting
suspects

29 have a book in which they're supposed to write down details of

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1 the arrest.

2 A. Go over your question again.

3 Q. Think carefully about your answer, Mr Lamin. You are on
4 oath.

12:24:22 5 A. I know I'm on oath.

6 Q. Is it normal for police officers from the CID, who are
7 arresting suspects, to have a diary or notebook in which they
8 write down details of the arrest?

9 A. No.

12:24:41 10 Q. It's not normal? Well, would you like to have a look at
11 this book and read what it says on the inside cover?

12 JUDGE BOUTET: Mr Jordash, you may lose that book.

Because

13 if you are to use it any more, I mean, you have to produce

that

14 in evidence in some way as an exhibit. You have to speak to

your

12:25:04 15 friend about his book, about buying another one.

16 MR JORDASH: I'll do it in a different way seeing as I

17 can't afford to buy one.

18 Q. Does it say this on these kind of notebooks:
19 "Judges rules. Short caution: You are not obliged to
say
12:25:24 20 anything unless you wish to do so, but what you say may
be
21 put into writing and given in evidence."
22 Is that something that you're familiar with? That's
what
23 this book says. That's what police officers' books say on the
24 inside cover, police officers' diaries; am I right?
12:25:48 25 A. Yes.
26 Q. And that caution is supposed to be given to people who
are
27 arrested; am I right?
28 A. Yes.
29 Q. And then there is -- the next entry is a formal caution:

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1 "Do you wish to say anything. You are not obliged to
say
2 anything unless you wish to do so, but whatever you say
3 will be taken down in writing and may be given in
4 evidence."
12:26:09 5 Is that something you're familiar with?
6 A. Yes.

7 Q. Is that what you said to Mr Sesay?

8 A. Yes, in this office.

9 Q. So what were -- did you take down what he said in
writing?

12:26:19 10 A. No, I did not take it down in writing.

11 Q. Why not?

12 A. Well, the question was you can say whatever you say will
be

13 taken in cognizance and if I'm called upon, I can explain what

14 you said.

12:26:37 15 Q. Why did you not take down what --

16 A. Well, when you are -- when you are obtaining a
cautionary

17 statement, you administer those words, that if I'm obtaining a

18 statement from Issa, I have to administer that in the

19 statement.
it,

12:26:59 20 that whatever you say at this moment now will be noted.

21 Q. I think we can agree on that.

22 A. Yes.

23 Q. Did you note it, is the question: Did you note what he

24 said?

12:27:07 25 A. Yeah, that is what I'm saying.

26 Q. So where are the notes?

27 A. No, I did not write it down.

28 Q. Right.

29 A. I did not write it down.

1 Q. Any reason for that?

2 A. No reason for now.

3 Q. No reason. And it's right, isn't it, arresting officers
4 are supposed to make the notes and then they can be allowed by

12:27:53 5 the Court to produce and refresh their minds from such a book;
am

6 I right?

7 A. A document was given to me as an arresting officer,
which I

8 signed.

9 Q. No. What I'm saying is, when you -- it is usual for
12:28:07 10 arresting officers, in Sierra Leone, to write down what is
said

11 by an arrestee and then, if necessary, produce that notebook
in

12 court to enable them to refresh their memories, isn't it?

13 A. The notebooks, at times, is to assist the police
officers,

14 but it is not a fastened rule.

12:28:53 15 Q. No one is suggesting it's a rule. I'm suggesting that
this

16 happens routinely: Police officers producing notebooks to
17 refresh their memory in Court; is that right?

18 A. Yes, it is right.

19 Q. Thank you. And it's also right, isn't it, that when an

12:29:08 20 arrestee is at a police station, there's such a thing as a
21 custody diary; is that not right?
22 A. Yes.
23 Q. And that custody diary is supposed to record the events
24 relating to an arrestee's custody; is that right?
12:29:32 25 A. Yes.
26 Q. Is there a custody diary in relation to Mr Sesay.
27 A. The custody diary?
28 Q. Yes.
29 A. The custody diary should be at Jui.

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1 Q. But you haven't brought it.
2 A. Well, I was not asked.
3 Q. Well, have you given it to the Prosecution?
4 A. I cannot volunteer to say, "Look at the book." They
have
12:30:00 5 to request.
6 Q. Who has to?
7 A. The Court.
8 Q. What does the diary say?
9 A. Which diary are you referring --
12:30:09 10 Q. The custody diary.

11 A. It's a record where, in the log -- I mean particulars of
12 somebody that has been arrested.

13 Q. Well, what does it say about where Mr Sesay was held
14 straight after his arrest? Where was he?

12:30:38 15 A. When he was arrested?

16 Q. Yes, Mr Lamin, when he was arrested.

17 A. He was arrested at CID --

18 Q. Where was --

19 A. They took him to Jui.

12:30:47 20 Q. Where was he held at the CID?

21 A. He was arrested at CID. He was not placed in cell at
CID.

22 We took him to Jui.

23 Q. Who took him to Jui?

24 A. Myself and others.

12:31:00 25 Q. Where did you take him to in Jui?

26 A. Jui --

27 Q. When you arrived, where did you take him?

28 A. To the police station.

29 Q. Where was he held?

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1 A. In the police at Jui.

Jui? 2 Q. Yes, in the police at Jui, but where in the police at

3 A. There is a place there.

4 Q. There's a police station, is there?

12:31:21 5 A. Yes.

6 Q. Where was he held in the police station?

7 A. In the detention area.

8 Q. What do you mean detention area? Was it a cell or what?

9 A. A cell.

12:31:31 10 Q. On his own or with other people?

11 A. On his own.

12 Q. Are you sure?

13 A. Yes.

14 Q. What happened after he'd been held on his own?

12:31:53 15 A. I tell you, when we went to Jui, we handed him over to
the
activity,

16 officers we met at Jui, then that was the end of my own

17 until when I was also instructed -- further instructed to take

18 him to Scan Drive.

19 Q. So you can't give evidence to this Court about anything

12:32:15 20 between the time he arrives at Jui and is put into a police
cell

21 and the time he's at Scan office; am I right?

22 A. Yes.

23 Q. You don't know what happened, but you do know this:
When

24 you arrested him, you had a package, didn't you?

12:32:38 25 A. A package?

26 Q. A package of documents --

27 A. No.
28 Q. -- is that right?
29 A. No.

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of 1 Q. When you arrested him, did you simply read the warrant

2 arrest to him?

3 A. The warrant, yes.

4 Q. Did you read anything else to him?

12:32:52 5 A. The warrant, the face value of the warrant.

6 Q. The warrant.

7 A. Yes.

8 Q. Did you read anything to him other than the warrant?

9 A. The warrant.

12:33:00 10 Q. So the answer is no, you didn't?

11 A. No.

is 12 Q. Right. And then the next time you read anything to him

13 at Bonthe --

14 A. I did not read.

12:33:10 15 Q. -- when you gave various documents to him?

16 A. Yes.

sent 17 Q. And so -- were you aware that other documents had been

18 to the CID as an arrestee arresting package, or not?

19 A. I don't know.

12:33:32 20 Q. Right. All you knew was there's a warrant of arrest.

21 A. Of arrest.

22 MR JORDASH: Can I just take instructions? I think I've

23 finished.

24 PRESIDING JUDGE: Leave granted.

12:34:18 25 MR JORDASH: Yes. Just one last thing.

had 26 Q. I'm going to suggest Mr Sesay didn't say to you that he

27 two daughters; he's in fact got two sons.

28 A. [Microphone not activated].

29 Q. Well, yes.

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1 A. Two kids, and daughters.

he 2 Q. The problem is you don't have any notes, and I suggest

3 said he had two sons, not two daughters.

way 4 A. That was what he said in the helicopter whilst on the

12:34:51 5 to Bonthe.

6 Q. He never mentioned daughters?

7 A. He said two daughters.

8 Q. Yeah, but I'm suggesting he didn't say daughters because
he
9 doesn't have daughters.

12:35:03 10 A. But that was what he said. [Indiscernible] he does not
11 have it.

12 Q. All right.

13 PRESIDING JUDGE: Prosecution, any re-examination?

14 MR HARRISON: No, there isn't.

12:35:33 15 PRESIDING JUDGE: Prosecution, you will call your next
16 witness.

17 MR HARRISON: With respect to this witness, can he be
18 released by the Court?

19 PRESIDING JUDGE: Yes, okay. We formally release him.

12:35:44 20 Mr Lamin, you're released.

21 [The witness withdrew]

22 MR HARRISON: I should just indicate I'd understood
23 Mr Jordash wanting to make an application.

24 PRESIDING JUDGE: I was going to leave that to -- do you
12:36:02 25 want to make it now?

26 MR HARRISON: I can just explain that it would not
27 inconvenience the Prosecution --

28 PRESIDING JUDGE: If we hear the application now.

29 MR HARRISON: The witness is here.

1 PRESIDING JUDGE: Yes.

minutes,
The
travel
12:36:22

2 MR HARRISON: I would be finished in probably 20
3 but that's a witness who could be here at any point in time.
4 only difficulty was this witness, who had -- who wanted to
5 away from the area.

hold
your

6 PRESIDING JUDGE: I think we need to -- we'll keep on
7 the issue about the release of Mr Morissette. Let us hear
8 next witness and see if we can make some further progress.

12:36:56

9 MR HARRISON: I can indicate for the record that this
10 witness, too, will testify in English and testify in public.

11 WITNESS: JOSEPH WADAM SAFFA [Sworn]

12 EXAMINED BY MR HARRISON:

13 Q. Could you please state for the record your full name,
14 spelling your last name.

12:38:05

15 A. My full names are Joseph Wadam Saffa.

16 Q. And is the spelling of your last name S-A-F-F-A?

17 A. Yes, Your Honours.

18 Q. Could you tell the Court a bit about your employment
19 background?

12:38:34

20 A. I am detective assistant superintendent of police,
21 presently attached to the Office of the Prosecutor, Special

22 for Sierra Leone.

23 Q. I'm going to take you to 10 March 2003. Do you recall
24 anything happening on that day?

12:39:12 25 A. Yes, Your Honours.

26 Q. Please tell the Court what it is you remember taking
place.

27 A. On that day, Your Honours, I was on duty at the Office
of

28 the Prosecutor, Scan Drive, off Spur Road, Freetown.

29 Q. What do you remember happening?

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1 A. I was instructed by the then chief of investigations,
2 Dr Alan White, to go with him to CID headquarters in Freetown,
3 together with other staff members.

4 Q. What happened next?

12:40:16 5 A. We then proceeded to CID headquarters in Freetown.

6 Q. Please continue.

7 A. At CID headquarters, I noticed that accused persons were
8 arrested.

9 Q. Just try to explain to the Court what it is that you saw
12:40:55 10 happen at the CID headquarters?

and
Sesay

11 A. At CID headquarters, Your Honours, I stayed downstairs,
12 I saw police officers came down with accused persons, Issa
13 and Morris Kallon.
14 Q. And after seeing that, what happened next?
12:41:35 15 A. I was also instructed to go with Mr John Berry to follow
16 the police officers who were in charge of these accused
persons
17 to Jui.
18 Q. Please continue on. What happened next?
19 A. They drove ahead of us.
12:41:57 20 JUDGE ITOE: Sorry, sorry, who instructed you? Who
21 instructed you, Mr Saffa?
22 THE WITNESS: I was instructed by the chief of
23 investigations, by then, Dr Alan White.
24 MR HARRISON:
12:42:13 25 Q. After getting these instructions, what happened next?
26 A. I drove with Mr John Berry. We drove behind the police
27 officers who were with the accused persons. We went to Jui.
28 Q. Did you arrive at Jui?
29 A. Yes, Your Honours.

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1 Q. Please continue on. What happened next?

2 A. At Jui, Mr John Berry spoke to the police officers and
told

3 them that we were interested in speaking to Mr Issa Sesay.

4 Q. What happened next?

12:43:23 5 A. Mr Issa Sesay was brought from the cells into an opened
6 space within the same building, and John Berry and I spoke to

7 him.

8 Q. Describe what took place.

9 A. John Berry introduced us to Mr Issa Sesay as
investigators

12:44:03 10 from the Office of the Prosecutor, and that we are interested
in

11 talking to him about his involvement in the war in Sierra
Leone.

12 Q. Please continue.

13 A. He further asked him whether he was willing to speak to
us

14 and he said -- Mr Issa Sesay said yes.

12:44:35 15 Q. What happened next?

16 A. At that junction, Mr John Berry said to Mr Issa Sesay
that

17 we speak to him later.

18 Q. Please continue. What's the next thing that takes
place?

19 A. He was then taken back to the cells and we left and went

12:45:17 20 outside.

21 Q. What happened next?

22 A. Mr John Berry told me we were to proceed to Scan Drive
at

23 the Office of the Prosecutor.

24 Q. And what is it you do next?

12:46:03 25 A. Mr Issa Sesay was also brought, and they drove -- he
drove
26 with the officers ahead of us while we followed them. We went
27 through the back --
28 Q. Just for the sake of clarity, you first of all referred
to
29 officers and then you said, "We drove after them." Who are
the

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1 officers and when you used the word "we," who are you talking
2 about?
3 A. The police officers in charge of Mr Issa Sesay. And
when I
4 say "we," John Berry and I, from the Office of the Prosecutor.
12:47:04 5 Q. What happened next?
road,
6 A. We drove through the back road, through the peninsula
7 we went to Scan Drive.
8 Q. And describe what takes place, if anything, at Scan
Drive.
9 A. At Scan Drive, also, I was instructed by the deputy
chief
12:47:32 10 of investigations, Mr Gilbert Morissette, to join him to
conduct
11 an interview with Mr Issa Sesay.

what 12 Q. Tell the Court where, if anywhere, this took place and
13 procedure may have been used.
used 14 A. The interview took place in one of the rooms that was
12:48:06 15 by investigators. And in the interview room, Mr Gilbert
Stacey 16 Morissette was there; I was there; and the court reporter,
17 Donison was there.
18 Q. And did anything take place in that interview room?
19 A. Yes, Your Honours.
12:49:03 20 Q. Tell the Court what it is you observed taking place.
started 21 A. Mr Gilbert Morissette conducted the interview. He
showed 22 by introducing us to Mr Issa Sesay. He then read to Mr --
23 and read to Mr Issa Sesay a copy of the warrant of arrest. He
the 24 also read -- showed and read to Mr Issa Sesay the rights of
12:49:55 25 accused person and the rights of a suspect.
in 26 Q. Are you able to say approximately how long you remained
27 the interview room?
28 A. We were there from at about 3.00 p.m. up to about
29 5.00 p.m..

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1 Q. Did the interview come to an end?

2 A. Yes, Your Honours.

3 Q. And what happened when the interview came to an end?

4 A. At the end of the interview, Your Honours, I was also

12:51:12 5 instructed by the chief of investigations to join a team to go
to

6 Diamond airline in Lumley.

7 Q. And did you do that?

8 A. Yes, Your Honours.

9 Q. Tell the Court what happened next.

12:51:40 10 A. At Diamond Airlines, Mr Sesay was brought by the
officers

11 and we joined a helicopter and went to Bonthe.

12 Q. These officers you've referred to, do you know the names
of

13 any of them?

14 A. Yes, Your Honours.

12:52:18 15 Q. Please tell the Court.

16 A. There was Mr Litho Lamin. He was an assistant
17 superintendent of police. There was also Mr John Alpha, who
also

18 was an assistant superintendent of police. And some other
junior
19 police officers, whose name I cannot remember now.

12:53:01 20 Q. Just continue on. You've gone down to the helicopter.
21 What happened next?

22 A. Then we flew to Bonthe Island.

23 Q. And what did you do when you got to Bonthe Island?

24 A. At Bonthe Island, Mr Sesay was taken to the detention

12:53:29 25 facility there.

26 Q. And did you see anything take place there?

27 A. Yes, Your Honours.

28 Q. What did you see?

29 A. I saw Mr Litho Lamin gave a package of documents to Mr
Issa

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1 Sesay.

2 Q. And what happened after you saw that package being given
to

3 Mr Sesay?

4 A. Mr Sesay accepted the papers and he was taken to cells.

12:54:31 5 Q. What is the next thing that you do?

6 A. The next thing I do, Your Honours, was I joined the
other

7 officers. We left the facility, we went to a guesthouse where
we

8 put up for the night.

9 Q. And the next morning, does anything happen?

12:55:00 10 A. Yes, Your Honours.

11 Q. Tell the Court what happened.

12 A. Mr Issa Sesay was taken to the helipad, and we all

13 joined the heli -- I was in the group that joined the helipad

14 and, we flew back to Freetown.

12:55:24 15 Q. And after arriving back in Freetown, did you have any
16 further dealings with Mr Sesay?

17 A. At Freetown, in the helipad, we drove to Scan Drive.
After
18 that, I did not have any dealings with Mr Issa Sesay.

19 MR HARRISON: Those were all the questions the
Prosecution
12:56:12 20 was going to ask.

21 PRESIDING JUDGE: Mr Jordash, you want to make a start?

22 MR JORDASH: Yes, I do. Thank you.

23 PRESIDING JUDGE: Let's proceed.

24 CROSS-EXAMINED BY MR JORDASH:

12:56:26 25 Q. You heard the warrant of arrest read to Mr Sesay during
his
26 first ever interview with the OTP; is that right?

27 A. Yes, Your Honours.

28 Q. May I just remind you of part of it. This is, I think,
29 Exhibit 219. I'll just read out page 2C:

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1 "To cause to be served on the accused at the time of his
2 arrest, or as soon as is practicable immediately
following

language 3 his arrest, in English, or have read to him in a
arrest, 4 he understands, a certified copy of the warrant of
12:57:18 5 a certified copy of the indictment, a statement of the
6 rights of the accused, and to caution the accused,"
7 et cetera.
8 Can you think of any reason, Mr Saffa, why Mr Sesay's
9 indictment was not served or read to him until after the first
12:57:44 10 interview?
11 A. I am not aware of the fact that it was not read to him
12 before that time. I am saying that when we conducted the
13 interview with him, we read a copy of the warrant of arrest to
14 him.
12:58:08 15 Q. Well, you might have read a copy of the warrant, but the
16 warrant said that his indictment had to be served or read, and
17 can you confirm this: That his indictment was not read to him
18 during the first interview.
19 A. No, Your Honours.
12:58:29 20 Q. It wasn't. Can you confirm that you didn't serve it on
him
21 after the first interview?
22 A. I did not, My Lord.
23 Q. No, it wasn't served on him until he arrived at Bonthe
at
24 night; am I right?
12:58:48 25 A. Yes, Your Honours.
26 Q. And, yet, you'd be able to confirm this, won't you:
That
27 from the time of his arrest, he was with police officers, in
28 their custody, all the way to Scan office; yes?

29 A. Yes, Your Honours.

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1 Q. There was you and a number of other OTP representatives
2 with him at Scan office?

3 A. Yes, Your Honours.

4 Q. None of them read this indictment to him or served it on
12:59:15 5 him, did they?

6 A. Not to my knowledge.

7 Q. Did it not concern you that Mr Sesay was having an
8 interview without having the indictments served upon him or
read 9 to him?

12:59:30 10 A. No, Your Honours.

11 MR JORDASH: I don't know if this is a good time.

12 PRESIDING JUDGE: We'll take the lunch break.

13 JUDGE BOUTET: If I may, just before, Mr Jordash, when
you 14 asked the question about the interview, you mean the
interview,

12:59:44 15 not in Scan Drive, you mean the first time they met Mr Sesay
at

16 Jui?

17 MR JORDASH: No, I mean the interview of 10 March. Our

18 case is that it's clear from the evidence that he was
19 interviewed -- Mr Sesay was interviewed on 10 March by the OTP
13:00:03 20 without having seen his indictment.
21 JUDGE BOUTET: Yes, but the questions you were asking
the
22 witness were directed to the interview at Scan Drive, not the
23 first time that this witness met with Sesay at Jui.
24 MR JORDASH: Your Honour, yes.
13:00:18 25 JUDGE BOUTET: Okay. I'm just trying to understand.
26 MR JORDASH: I'll clarify that.
27 Q. That was your understanding what we were talking about,
the
28 Scan office interview?
29 A. Yes.

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1 PRESIDING JUDGE: We'll break for lunch and resume at
2 2.30 p.m..
3 [Luncheon recess taken at 1.00 p.m.]
4 [RUF15JUN07C - MC]
14:20:21 5 [Upon resuming at 2.45 p.m]
6 PRESIDING JUDGE: Mr Jordash, your witness.
7 MR JORDASH: Thank you.

8 Q. Good afternoon, Mr Saffa.

9 A. Good afternoon.

14:55:03 10 Q. You worked at the CID for how many years?

11 A. I've worked at CID for 13 years.

12 Q. And which police officers have notebooks at the CID?

13 A. All police officers have notebooks.

14 Q. All of them?

14:55:29 15 A. Yes.

notebooks? 16 Q. Whatever their rank or position, they all have

17 A. They all have, Your Honours.

18 Q. Thank you. Did you use your notebook when you were

19 involved in this arrest and interview procedure?

14:55:49 20 A. No, Your Honours.

21 Q. Was there any reason for that?

22 A. I did not have my notebook at that time.

23 Q. Why not?

could 24 A. Because I was involved in operations that morning, I

14:56:14 25 not carry my notebook.

26 Q. When were you first told you were going to go to CID to

be 27 involved in the arrest of Mr Sesay?

28 A. Please ask the question again.

29 Q. Take yourself back to 10 March: When was the first time

1 you were told, prior to or on 10 March, that you were going to
go
2 and be involved in the arrest of Mr Sesay?
3 A. I was only to proceed to CID on 10 March and that was
4 around about 11.00 a.m.
14:57:06 5 Q. And what were you told?
6 A. I was told that we were going on duty.
7 Q. Who were you told by?
8 A. Dr Alan White, the chief of investigations, told me
that.
9 Q. Did he tell you that personally or in a meeting with
other
14:57:24 10 people?
11 A. We were in a meeting when he told me that.
12 Q. Who was in the meeting?
13 A. The deputy chief of investigations was there.
14 Q. Anyone else?
14:57:34 15 A. Mr John Berry was there.
16 Q. Anyone else?
17 A. Some other officers were there, if my memory serve me
well.
18 I think Thomas Lang [phon] was there too.
19 Q. Can you think of anyone else who was there?
14:57:56 20 A. I can't remember other names.
21 Q. And at that meeting did Mr White refer to a decision to
22 approach Mr Sesay for his cooperation?
23 A. No, Your Honours.

24 Q. Did he say anything about Mr Sesay?
14:58:22 25 A. Not to my knowledge, Your Honours.
26 Q. What did he say you were to go and do at the CID?
27 A. He only told me that we are going to the CID on duty;
28 investigative duties.
29 Q. So you set off to the CID only knowing you were going

for

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1 investigative duties?
2 A. Yes, Your Honours.
3 Q. What did that mean to you?
4 A. As chief of investigations, he has the right to assign
me
14:58:57 5 to perform any duty.
6 Q. But what were you, you personally then, expected to do
when
7 you got to the CID?
8 A. I was expecting that at CID, he would have told me
exactly
9 what I was supposed to do.
14:59:18 10 Q. And when you got to CID did he tell you exactly what you
11 were supposed to do?
12 A. It was at CID that I was informed that Mr Issa Sesay and

13 Mr Morris Kallon had been arrested.

14 Q. So, according to you, you never even knew that they were
14:59:37 15 going to be arrested until you arrived at the CID?

16 A. No, Your Honours.

17 Q. Well, when you arrived at the CID, were you told what
you
18 were expected to do in relation to the arrests?

19 A. I was just told to do a specific thing. What I was told
14:59:58 20 was that when he told me that Issa Sesay and Morris Kallon
would

21 be arrested, that I should escort the team to Jui.

22 Q. What did it mean to escort the team?

23 A. Well, that I should follow them as an investigator from
the
24 Office of the Prosecutor.

15:00:21 25 Q. For what purpose?

26 A. I was told to go and see for myself Issa Sesay and
Morris
27 Kallon and, when we arrived there, John Berry and I spoke to
28 Mr Issa Sesay.

29 Q. I know what you did, but what were you told to do at the

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1 CID besides follow?

2 A. I was not told any other thing.

3 Q. So what did you do then; you just followed?

4 A. As I -- I was in a team that went to Jui.

15:01:10 5 Q. So, is this right: You went to the CID, you didn't know
were
6 what you were going to do. You went from CID to Jui and you
you
7 just simply told to follow, and that was what you did, until
8 got to Jui?

9 A. I was not given any specific instruction to carry out.

15:01:29 10 Q. Well, at what point were you given a specific
instruction?

11 A. At Jui, Mr John Berry told me that we should speak to
Issa
12 Sesay. That was the very first time I was told to do
something.

13 Q. Did you travel to Jui with Mr Berry?

14 A. Yes, Your Honours.

15:01:47 15 Q. Did you stay with Mr Berry at Jui before he told you
that
16 you were going to speak to Mr Sesay?

17 A. Yes, Your Honours.

18 Q. Just moving back for one question: Were there lots of
19 police officers at the CID?

15:02:03 20 A. Yes, Your Worship.

21 Q. How many?

22 A. I don't know their number but there were more than five.

23 Q. Well, were there more than 20, more than 50, more than
100?

24 A. You mean those involved in the arrest?

15:02:27 25 Q. No, those who were around the place that you could see?

26 A. There were more than 20.

27 Q. More than 30?
28 A. More than 20, not up to 30.
29 Q. Okay. And lots of other people mingling around
interested

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1 in what was going on?
2 A. The people I saw were CID officers.
3 Q. Well, you didn't see any non-police officers there,
around
4 the CID headquarters?
15:02:57 5 A. I didn't take notice of non-police officers.
6 Q. What, you didn't see that there weren't any or you just
7 can't remember or you didn't notice any?
8 A. I can't remember seeing any non-police officers.
9 Q. Do you remember a third man arrested? Don't give his
name,
15:03:30 10 if you know it.
11 A. No, Your Honours.
12 Q. Are you suggesting that you don't know that there was a
13 third man arrested?
14 A. No, Your Honours.
15:03:34 15 Q. See, I suggest you do know and that man was a man who
had

16 already collaborated and was a witness?

17 A. No, Your Honours.

18 Q. Have you subsequently discovered that there was a third
man
19 who was already a witness?

15:03:45 20 A. No, Your Worship.

21 Q. Now, what was it that occurred, just before Mr Berry
told
22 you that you were going to approach Mr Sesay; did anything
occur?

23 A. No, Your Worship. As soon as we arrived at Jui, then he
24 told me we were going to speak to Mr Issa Sesay.

15:04:24 25 Q. Do you know why Mr Berry decided that at that point?

26 A. I don't know.

27 Q. But you were there beside him, weren't you, when he
turned
28 around to you and said: This is what we're going to do?

29 A. Yes, Your Worship.

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1 Q. You hadn't been out of his -- away from his side, had
you?

2 A. I was with him all the time.

3 Q. Right. So he -- it looks as though he just decided he
was

4 going to do this and communicated it to you?

15:04:55 5 A. He told me that he was under instruction to talk to Issa
6 Sesay and I should be with him to talk to him.

7 Q. Are you sure that's what he said?

8 A. Yes, Your Honours.

9 Q. So he said to you that he was under instruction and
that's
10 what you two were going to do together?

15:05:16 10 what you two were going to do together?
11 A. Yes, Your Honours.

12 Q. Did he tell you where he got the instructions from?

13 A. He did not tell me. He only told me he was instructed
to
14 do that.

15:05:28 15 Q. Are you sure he wasn't instructed at the meeting you'd
had
16 before you left?

17 A. No, Your Honours.

18 Q. But clearly, to you, if what you say is right, he knew
that
19 this is what he was going to do and he knew that on the way to
20 Jui?

15:05:46 20 Jui?
21 A. I don't know, Your Honours.

22 Q. Well, you saw him. He didn't speak to anyone on the way
to
23 Jui, did he?

24 A. I spoke to him but we were discussing some other things.

15:06:01 25 Q. Yes. But he didn't speak to anyone else though, did he?
26 A. No, Your Honours.

27 Q. So he must have had the instruction before he arrived at
28 Jui?
29 A. I would imagine so.

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wanted
spoke
in

1 Q. Yeah. Now, when you -- when he said to you that he
2 to -- when he wanted to go and speak to Mr Sesay, Mr Berry
3 to some police officers and told them that he was interested
4 speaking with Mr Sesay; is that right?

15:06:55 5 A. Yes, Your Honours.

6 Q. And did he explain to you why he wanted to speak to
7 Mr Sesay?

to

8 A. He told me that he was instructed to speak to Mr Sesay,
9 ask him whether he was willing to talk to us.

15:07:11 10 Q. Talk to you about what?

11 A. To talk to us about his involvement in the war in Sierra
12 Leone.

13 Q. For what reason?

14 A. He further told me that the reason for that was to see
15:07:29 15 whether he would cooperate with us.

16 Q. For what purpose?

17 A. In order to tell us what he knows.

18 Q. Cooperate to tell you what he knows; for what purpose?

19 A. To have his story and present it to the Prosecutor.
15:07:55 20 Q. Yeah, but what was your understanding as to why -- what
21 would be done with that story, once presented to the
Prosecutor?
22 A. Ask your question, please.
23 Q. Once the story had been presented to the Prosecutor,
what
24 was the point of having the story sent to the Prosecutor?
What
15:08:22 25 was going to happen with it, as you understood it?
26 A. So that the Prosecutor can present it in -- in evidence.
27 Q. In what form?
28 A. In court.
29 Q. But what, as a statement or to use against him? For
what

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1 point? For what purpose? What's your understanding?
2 A. Just to -- to present his case.
3 Q. So it's for his benefit to present his case?
4 A. I would not know if it's for his benefit or not.
15:09:12 5 Q. So you don't know; is that what it comes down to? You
just
6 went along to see Mr Sesay to get his story for some reason to

7 present it in court somehow; is that what it boils down to?

8 A. It could even be for his benefit.

9 Q. You just didn't know one way or another, according to
you?

15:09:37 10 A. Say that again?

11 Q. You didn't know one way or another, according to you;
for

12 his benefit, not his own benefit, someone else's benefit?

13 A. It's for his benefit, definitely.

14 Q. Right. So you went along to approach Mr Sesay for his

15:09:53 15 benefit; yeah?

16 A. At least to tell us what he knows.

17 Q. For his benefit; is that right?

18 A. So that it could be presented.

19 Q. You just said for his benefit; is that right or not?

15:10:12 20 A. No, I did not tell him that.

21 Q. No. Was that in your mind as the purpose of approaching

22 him so he could tell his story for his benefit?

23 A. Well, if he tells his story, it will be presented to the

24 Court and --

15:10:29 25 Q. Not necessarily for his benefit though; that's the point

26 I'm making. Was it in your mind that this was for his

27 benefit; yes or no?

28 A. We wanted him to tell his story so that it could be

29 presented. It might be for his benefit.

1 Q. Was that in your mind that it might be for his benefit?

2 A. It was in my mind, Your Honours.

3 Q. How did you think it would be in his -- for his benefit?

4 A. Because if he -- if he says the truth, and the Court
gets

15:11:15 5 to know about it, then I think that would be for his benefit.

6 Q. How?

7 A. Because some other things might be said about -- against
8 him, or about him, but if he also says something, then I think
9 the judges will be in place to look at the stories.

15:11:55 10 Q. Wasn't he approached to be a witness for the
Prosecution?

11 A. At that time, no.

12 Q. How do you know?

13 A. Because we never indicated that to him.

14 Q. What, did Mr Berry say that to you at any stage, prior
to

15:12:15 15 talking to him?

16 A. He did not tell him that he was going to be a witness.

17 Q. Did you want Mr Sesay to be properly apprised of his
18 choices when you spoke to him?

19 A. Can you please explain that question?

15:12:51 20 Q. Did you want him to be fully aware of his choices when
you

21 spoke to him?

22 A. Yes, Your Honours.

23 Q. Did you explain his choices to him?

24 A. At that time, no.
15:13:08 25 Q. Why not?
26 A. Because Mr John Berry just briefly spoke to him.
27 Q. Did Mr Berry not explain his choices to him?
28 A. No, Your Honours.
29 Q. Were you aware that Mr Sesay spoke English as his third

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1 language; Temne first, Krio second, English third?
2 A. Yes, Your Honours.
3 Q. So why didn't you speak to him in Krio?
4 A. Because he showed indication that he could understand
15:13:51 5 English.
6 Q. You know -- did you speak to Mr Sesay in Scan Drive?
7 A. Yes, Your Honours.
8 Q. Did you speak to him in English?
9 A. Yes, Your Honours.
15:14:09 10 Q. Did you speak to him on the way to Bonthe?
11 A. No, Your Honours.
12 Q. Do you know how he knows you speak Krio?
13 A. I did not speak Krio to him.
14 Q. But you do speak Krio, don't you?

15:14:33 15 A. Yes, Your Honours.

16 Q. Can I suggest that Mr Sesay knows you speak Krio because
17 you spoke to him in Krio at Jui?

18 A. I did not even speak to Mr Sesay at Jui.

19 Q. Well, I suggest that's the only way he could have known
you

15:14:55 20 speak Krio, because you spoke to him in Krio and you told him
21 that he better cooperate or else his life was over?

22 A. I did not speak to him even.

23 Q. Can I suggest that -- well, before I suggest that, what
24 exactly did Mr Berry say when he went in to speak to Mr Sesay?

15:15:29 25 A. Mr Berry said that we were interested in talking to
26 Mr Sesay. I mean --

27 Q. Sorry?

28 A. -- basically wanted him to give us his story about what
his
29 involvement in the war in Sierra Leone.

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1 Q. So just to --

2 A. -- and that we were not making promises to him.

3 Q. And did Mr Berry say that as a single conversational
piece,

4 without interruption?

15:16:00 5 A. Yes, Your Honours.

6 Q. What did Mr Sesay say, right away, after that?

7 A. He said, "Yes, I'm ready to speak to you."

8 Q. Did Mr Berry say anything about the decision?

9 A. After that, Mr Berry only said, "Okay, we'll see later".

15:16:23 10 Q. So he never said anything about the decision about
11 whether -- what kind of decision it was. Did he say anything
12 about what kind of decision it was that Mr Sesay was being
asked
13 to make?

14 A. No, he was [indiscernible] to that at the moment.

15:16:41 15 Q. So what he said was, "I want you to cooperate. Do you
want
16 to cooperate," sorry, "Do you want to tell us about your
17 involvement?" And Mr Sesay said, "Yes." That's all that was
18 said; is that right?

19 A. Yes, Your Honours.

15:17:05 20 Q. And then what was -- what happened after Mr Sesay said
21 "yes"?

22 A. We went outside. The officers were left in charge of
23 Mr Sesay.

24 Q. Did Mr Sesay not say anything about the OTP not making
any
15:17:24 25 promises?

26 A. Ask the question again, sorry.

27 Q. Well, Mr Berry, according to you, said, "We're not
making
28 any promises"?

29 A. Yes, Your Honours.

1 Q. Mr Sesay never responded to that?
2 A. No, Your Honours.
3 Q. So the only word that Mr Sesay spoke in the whole of
that
4 meeting was, "Yes, I'll cooperate." Is that it?
15:17:45 5 A. He said, "Yes, I will talk to you."
6 Q. Anything else?
7 A. And later on we said good-bye. He said, "Okay, we'll
see
8 you later." That's all.
9 Q. That's it?
15:17:57 10 A. Yeah.
11 Q. Could I suggest that that's a fabrication, Mr Saffa.
12 Mr Berry said, "This is the end of your life" and kept
repeating
13 comments such as that; is that right?
14 A. I do not remember him saying that.
15:18:15 15 Q. And you said, "This is the end of your life" in Krio?
16 A. No, Your Honours.
17 Q. Well, how did you know -- how did you conclude from
those
18 five or six words that Mr Sesay spoke good English?

19 A. I didn't say he speak good English, but there was
15:18:41 20 indication that he can speak English.
21 Q. And then Mr Sesay said to you two, "What do you want me
to
22 do?" And Mr Berry said, "Yes or no, do you want to
cooperate?"
23 That's what happened, didn't it?
24 A. No.
15:19:03 25 Q. Did you have anything to do with the interview process
26 after 10 March?
27 A. No, Your Honours.
28 Q. Were you watching the transcript this morning, watching
29 Mr Berry giving evidence?

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1 A. No, Your Honours.
2 MR JORDASH: I've got nothing further. Thank you.
3 PRESIDING JUDGE: Counsel for the Prosecution, any
4 re-examination?
15:19:46 5 MR HARRISON: No, there's not. The Prosecution is
asking
6 if this witness could be released?
7 PRESIDING JUDGE: Mr Jordash, any --
8 MR JORDASH: No objections.

9 PRESIDING JUDGE: Mr Saffa, you're released from this
15:20:07 10 proceeding.
11 THE WITNESS: Thank you, sir.
12 [The witness withdrew]
13 PRESIDING JUDGE: Yes.
14 MR HARRISON: There's no other evidence to be called by
the
15:20:26 15 Prosecution on the voir dire.
16 PRESIDING JUDGE: We'll now go to phase two. Is the
17 Defence presenting evidence?
18 MR JORDASH: Well, two things.
19 PRESIDING JUDGE: We've finished phase one.
15:20:39 20 MR JORDASH: Well, first of all I'd like to make an
21 application for the Rule 68 material.
22 PRESIDING JUDGE: At this point?
23 MR JORDASH: Yes, please.
24 PRESIDING JUDGE: Let's hear your application then.
15:20:50 25 MR JORDASH: The application is for Rule 68 material
26 relating to Mr Morissette -- Rule 68 states -- Rule 68(B):
27 "The Prosecutor shall, within 30 days of the initial
28 appearance of the accused, make a statement under this
Rule
29 disclosing to the Defence the existence of evidence
known

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1 to the Prosecutor which in any way tends to suggest the
2 innocence or mitigate the guilt of the accused or may
3 affect the credibility of the Prosecution evidence. The
4 Prosecutor shall be under a continuing obligation to
15:21:53 5 disclose any such exculpatory material."
6 Well, the application is in fact in relation to two
people:
7 Number one is Mr White. Mr Morissette gave evidence that
8 Mr White, with persons unknown, but not from the Prosecution,
9 went to Togo to arrest Benjamin Yeaten. That evidence prima
15:22:27 10 facie is evidence of the chief of investigations acting
outside
11 the authority invested in him as the chief of investigations.
12 Number one, acting with persons unknown outside of the
13 Prosecution personnel, thereby prima facie infringing upon the
14 independence of the Prosecution. Acting with persons unknown
on
15:23:05 15 prima facie, Prosecution business, that is, trying to arrest
an
16 important person who figures and looms large in the
Prosecution
17 cases, in relation to both the RUF and Mr Taylor.
18 Secondly, it, prima facie, would indicate unlawfulness,
19 since Mr Morissette wasn't aware of it, or wasn't aware of the
15:23:39 20 details of the operation. Wasn't aware and hadn't become
aware
21 of any authorisation for the operation. And we would
22 respectfully submit that evidence goes to the legality of the
23 Prosecution investigations at that time.

24 Put simply, there is prima facie evidence that a senior
15:24:10 25 member of the Prosecution crossed into Togo without authority
and
26 attempted, in simple terms, to kidnap a resident of Togo. In
my
27 respectful submission, that affects the credibility of the
28 Prosecution evidence which we've heard from Prosecution
29 investigation team.

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your 1 JUDGE BOUTET: What is your evidence on this? What is
2 evidence on this: Morissette didn't testify that he went over
3 to --

4 JUDGE ITOE: To kidnap.

15:24:43 5 JUDGE BOUTET: -- to arrest him or to kidnap anybody. I
6 mean, he said he was not there. He doesn't know. He knows
7 that -- why they went there but, I mean, to my recollection,
he
8 has not admitted to anything. All he said is: I wasn't
there.
9 I don't know who he was, but I wasn't there.

15:24:57 10 JUDGE ITOE: And there is no evidence either that he
didn't
11 have authority to do whatever. This is --

Morissette 12 MR JORDASH: Well, there is evidence because Mr

13 never became aware of any authorisation for it.

14 JUDGE BOUTET: Yeah, but White, to my recollection, was
the

15:25:13 15 boss of Morissette. So why would Morissette necessarily be
made

16 aware of every single authorisation that White had or didn't

17 have? I mean why would, necessarily, Morissette know about

18 White's whereabouts?

19 MR JORDASH: Well, Your Honours, I cannot give you
chapter

15:25:29 20 and verse on this. This is why I'm making the application.
What

21 I'm suggesting --

22 JUDGE BOUTET: You asked -- I mean you're suggesting --

23 you're saying there is evidence. I'm asking you, what's the

24 evidence? To say so is one thing.

15:25:43 25 MR JORDASH: Well I'm just finding the evidence given by

26 Mr Morissette. And I'm looking at the 12 June transcript.

27 JUDGE BOUTET: I would like, also, in your submission to

28 be -- to be informed as to what's the relationship of this.

29 We're just reminding you that we're on a voir dire on the

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1 admissibility of certain documents, as such. I'd like to know
2 what's the relationship between what you're submitting now and
3 your obligation under 68 for the purposes of this application.
4 We are in a voir dire on the admissibility of some documents.
15:26:22 5 That's what we're dealing with at this particular moment.

- I

he

that

15:26:42 10

6 I'm just trying to see the connection you're trying to -
7 don't understand or see the connection between White, whatever
8 may have done and what we are dealing with today. Maybe I'm
9 missing something, Mr Jordash. I'd like you to try to make
connection to me. I don't see it.

what

15:27:02 15
which

11 JUDGE ITOE: I also -- you know, I'm trying to make this
12 connection. I think what we're asking for is the relevance of
13 this probing, of this submission on 68 to the voir dire
14 proceedings that we have before us. I mean, how relevant is
you want to explore to the voir dire proceedings, you know,
are before us now? This is it.

to

course,

15:27:31 20

17 PRESIDING JUDGE: Let me put it my own way: We are
18 investigating the issue of the voluntariness or otherwise of
19 certain statements, allegedly made by the first accused to the
Prosecution, in a custodial context. And, also, we're trying
20 find out whether an alleged waiver of right to counsel to be
21 present in that custodial context was voluntary. And, of
22 in the light of some of your earlier submissions that the
23 statements were not voluntary because you allege that, at the
24

15:28:02 25 time that he made the statement, certain inducements and
promises
26 were made to him, and that his will was overborne. These are
the
27 issues that are of importance to this Tribunal in this
particular
28 exercise.
29 We're called upon to determine whether the presumption
of

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1 regularity, as put forward by the Prosecution, there's any
2 evidence, based on what we've heard from the Prosecution, to
3 displace that presumption of regularity and replace it by a
4 presumption of irregularity.

15:28:52 5 Your side of the case is, do you have any evidence that
you
6 can bring forward in phase two to reinforce the allegations
that
7 you made and the submissions that you made as to
involuntariness
8 of those alleged statements and, also, the involuntariness of
the
9 waiver.

15:29:20 10 The issues are clearly defined. To go into Rule 68 and
to

for 11 raise issues about some arrest in Togo, which was either made
12 want of authority or lack of authority, even if it has some
13 relevance, would, in my own judgment at this stage, seem to be
so 14 oblique and opaque, and that's why I join my two brothers in
15:29:52 15 saying that ought we not to go back to the issue, which is
16 really -- and we're not going to lose focus of that or lose
sight 17 of that -- the alleged voluntariness or otherwise of those
18 statements. Persuade us that we're wrong in our perception of
19 the exercise, or that we've missed something.

15:30:15 20 MR JORDASH: Well, I haven't really said that much yet.

21 PRESIDING JUDGE: What have we missed out?

22 JUDGE ITOE: Mr Jordash, I mean, the issues are clear.
23 They're very clear before us. You know what you're looking
for.

24 We know what the Prosecution is looking for. They want the
15:30:36 25 statements in, you want them out. Do you really think that
26 getting into a kidnapping exercise in Lome or the illegality
of 27 whatever may have happened in Lome, you know, serves us any
28 purpose here, unless you want to carry us into another inquiry
as 29 to the conduct of Morissette and Alan White in Lome, in this

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1 alleged process of an attempt to kidnap Benjamin Yeaten. That
2 would be very much out of the scope of the inquiry that we are
3 making here.

4 I would very -- I would like to raise this and to ask
you
15:31:27 5 to appreciate that it is really for purposes of the relevance
of
6 our exercise here, not very proper for us to overstep, you
know,
7 certain lines. I think you're crossing a certain bar, you
know,
8 which will be very difficult for us to come on board with.
It's
9 difficult.

15:31:53 10 PRESIDING JUDGE: And to put it in shorthand judicial
form:

11 We may risk multiplying the issues.

12 MR JORDASH: [Microphone not activated].

13 JUDGE ITOE: Do you want to go to Lome, Mr Jordash, or
to
14 call Benjamin Yeaten, who we've not been able to lay hands on?

15:32:14 15 MR JORDASH: Well, I suspect he may get here before I
get a
16 chance to speak.

17 JUDGE ITOE: We've seen much of Benjamin Yeaten, you
know
18 that. So, should we go to Togo now to see the security
19 authorities in Togo? You know what it is? No. I think,

like,
15:32:34 20 the way others put it, I think there must be an end to
litigation
21 somewhere. This is an aspect of this litigation --

22 MR JORDASH: If I may --

23 JUDGE ITOE: There must be an end, you know, to the
24 litigation.

15:32:44 25 MR JORDASH: If I may respond?

26 PRESIDING JUDGE: Yes.

27 JUDGE ITOE: [Overlapping speakers] the finality, you
know,
28 of litigation, this is it.

29 PRESIDING JUDGE: Yes, please respond.

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1 MR JORDASH: The issues are clear. I accept that. But
2 there isn't, I want to make this clear, there isn't a
presumption
3 of regularity: There is a presumption of irregularity because
4 the burden is on the Prosecution.

15:33:12 5 PRESIDING JUDGE: No, we say the Prosecution side, what
6 they've done, they raise then the presumption of regularity.

7 MR JORDASH: Well --

8 PRESIDING JUDGE: It's you who are now saying that what
9 you, your side, your case is, is a presumption of
irregularity.

15:33:30 10 So we have two presumptions.

11 MR JORDASH: No, there is a presumption of irregularity
12 because the burden is on the Prosecution to prove that the
13 waivers were voluntary. That's the presumption that exists in
14 this voir dire.

15:33:41 15 JUDGE ITOE: It is only when you raise the issue of an
16 irregularity that there the presumption of irregularity comes
in.

17 PRESIDING JUDGE: That's right.

18 JUDGE ITOE: Otherwise 92 --

19 PRESIDING JUDGE: Yes, presumption of regularity.

15:33:50 20 JUDGE ITOE: -- as it is written, it presupposes a
21 presumption of regularity.

22 PRESIDING JUDGE: Unless --

23 JUDGE ITOE: Provided, you know, there is conformity
with
24 42, 43 and the rest of them. So there is a prima facie

15:34:04 25 presumption of regularity as far as 92 is concerned.

26 PRESIDING JUDGE: I mean, I thought --

27 JUDGE ITOE: It is when you raise the point, you know,
that
28 you raised that we then start looking into, oh, there is --
there
29 might be a presumption of irregularity here. That's why we're

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1 investigating it in this voir dire.

2 MR JORDASH: Well, I don't want to get, in a way, side
3 tracked by that. We would submit, in any event, there is
plenty
4 of evidence before this Court which --

15:34:26 5 JUDGE BOUTET: But, Mr Jordash, we don't want to hear
6 arguments about that.

7 MR JORDASH: I do not --

8 JUDGE BOUTET: It may be you argue that, then not call
any
9 evidence. I mean --

15:34:33 10 PRESIDING JUDGE: Well, that's --

11 MR JORDASH: If I was allowed to develop my point, I
might
12 be able to clarify.

13 PRESIDING JUDGE: But my -- I was going to confront you.
I

14 was going to present you with two options. One, the option of
15 determining at this stage whether you intend to call evidence
to
16 support your position or whether you intend to say to us: We
17 will address you by way of closing legal submissions.

18 MR JORDASH: And I thought what had happened was --

19 PRESIDING JUDGE: The two options which [Overlapping
15:35:04 20 speakers].

21 MR JORDASH: -- well, there are three options because --
22 and I thought we'd decided on the third, was that I could
raise
23 the Rule 68 point. If I can't, then I'm happy to move on and
24 address you on whether we are going to call evidence or
whether

15:35:15 25 we want to make submissions.

26 PRESIDING JUDGE: But remember that we indicated that we
27 were going into this exercise with a global telescope that we
are
28 not going to compartmentalise things into rule this, rule that
or
29 rule that. We said that was the approach. In fact, it was in

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1 the interest of time and also the overall interest of justice.

2 MR JORDASH: I've not said anything to dispute that.

3 PRESIDING JUDGE: Yes.

4 MR JORDASH: What I have done is try to address you on
Rule

15:35:41 5 68.

6 PRESIDING JUDGE: Yes. I would have thought that
perhaps
7 you would have elected either to say: Yes, we have some
evidence
8 that could further shed light on this difficult issue or we
will
9 in fact rely on our legal submissions which we will ably
present

15:35:58 10 in closing argument. That's what I thought. I mean,
remember,

11 time is of the essence, Mr Jordash.

12 JUDGE ITOE: I was expecting you to call the evidence of
13 your client, for him to give us his own version of the story.
I
14 mean, this is what I was expecting. In fact, Mr Jordash, let
me
15:36:17 15 be very forthright with you. I'm not going to go along with
you
16 in your Rule 68 application because it has a potential of
17 multiplying the issues, and I think we have to come to an end
18 somewhere.

19 MR JORDASH: Rule 68 cannot simply be abandoned as an
issue
15:36:36 20 by the Court.

21 PRESIDING JUDGE: Well, let me also say, Mr Jordash,
22 because time is of the essence. We have done so well. We've
all
23 worked very harmoniously to get this thing over within the
24 constraints of time. You were not focused, from my
perspective,
15:36:55 25 speaking for myself, from making legal submissions on Rule 68
26 because I said we have a global universal discourse here. The
27 question at this point in time is whether you are electing to
28 call evidence.

29 MR JORDASH: But the question isn't. I'm trying to
explain

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1 why I'm making the Rule 68 application now. Because if the
2 Prosecution do the right thing --

3 PRESIDING JUDGE: Yes.

4 MR JORDASH: -- and disclose the Rule 68 material in
15:37:18 5 relation to Mr Morissette, it may be we want to seek
6 Mr Morissette's recall.

7 PRESIDING JUDGE: Well, all right. We will tolerate up
to
8 a certain point your tenacity. Go ahead. Make the
application.

9 MR JORDASH: It's not --

15:37:31 10 PRESIDING JUDGE: Make it.

11 MR JORDASH: -- it's not about tenaciousness. It's
12 about --

13 PRESIDING JUDGE: No, but it -- but there is nothing
wrong
14 with being tenacious as a lawyer, is there? Stick to your
point

15:37:35 15 if your point, you think, you can canvass it --

16 MR JORDASH: It's --

17 PRESIDING JUDGE: -- so I'm giving you the leave now to
go
18 ahead.

19 MR JORDASH: It's about the fact that the Prosecution
have
15:37:45 20 the material and we are --

21 JUDGE ITOE: What material? We would like the material
to
22 be revealed to us.

23 MR JORDASH: Well, I would like it revealed to us,

24 actually.

15:37:59 25 PRESIDING JUDGE: Let me see if we can --

26 JUDGE ITOE: What specific materials are you putting
your

27 finger on, Mr Jordash?

28 PRESIDING JUDGE: Let me see if we can make some
progress.

29 Can we hear your application -- can you do it in five, ten

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creativity 1 minutes? I mean, you have the -- you usually have the

2 of compressing things in a short compass, so we'll hear it.
Of

3 course, what we'll do when we hear it, we'll go and rule on
it,

4 quite. Let's hear it. We won't deprive you of that.

15:38:27 5 MR JORDASH: The issues are clear. The issues are
clear.

6 Voluntariness is the principal issue. The way in which Your
7 Honours are going to have to decide that, in some part
perhaps,

8 is looking at the credibility of witnesses. And the Rule 68
9 application is about the credibility of the witnesses.

15:38:52 10 Rule 68 material, we say, exists and must exist which
goes

11 to the evidence given by Mr Morissette, and given by Mr Berry.
12 Now, the Prosecution, we submit, must be aware of Mr White
going
13 to Togo. They must be aware of Mr Morissette and any acts and
14 conduct of his in Sierra Leone of a similar nature which bears
on
15:39:20 15 his credibility; whether it's other investigative breaches
such
16 as that detailed by Mr Berry; whether it's that detailed by
17 Mr Morissette and so on.
18 Your Honours, there is prima facie evidence before this
19 Court that Mr Morissette is responsible for significant
breaches
15:39:47 20 of investigative protocol. And if that's right, and if the
21 evidence, more evidence exists which clarifies the evidence
22 already given, and the Prosecution have it, then they ought to
23 disclose it, because it may be it's that evidence which
enables
24 Your Honours to decide that you cannot rely upon Mr Morissette
15:40:08 25 and you cannot rely upon that investigation team that was
working
26 at that time.
27 If it's right Mr White went to Togo without authority,
and
28 if the Prosecution have evidence which confirms that, and if
it
29 involves other members of the Prosecution, then that goes to
the

1 heart of what was going on in this Prosecution investigation
team
2 at the time of the arrests.

3 If Mr Morissette was responsible, as Mr Berry suggests,
for
4 acting on a frolic of his own, outside of proper Prosecution
15:40:47 5 conduct, as suggested by Mr Berry, and if there is a
confirmation
6 of other acts and conduct of Mr Morissette of a similar
nature,
7 it goes right to the heart of what Mr Morissette was doing
with
8 Mr Sesay, when he was inveigling him to cooperate. I don't
think
9 that's controversial.

10 I think the evidence which has been led by the
15:41:08 Prosecution
11 investigation stinks to high heaven when it comes to
12 Mr Morissette. And that's not coming from Mr Sesay and his
13 suggestions; that's coming from Mr Berry. That Mr Morissette
was
14 behaving outside of Prosecution investigative protocol,
somehow
15 acting as a rogue investigator, and that evidence is coming
15:41:28 from
16 Mr Berry.

17 Now, if there is other evidence --

18 JUDGE ITOE: As a rogue investigator?

19 MR JORDASH: Yes. Well, he certainly wasn't telling

15:41:42 20 Mr Berry what he was doing. He certainly wasn't involved in

21 conduct which Mr Berry approves of.

22 JUDGE ITOE: That sounds very hard.

23 MR JORDASH: I think making promises and assurances and
24 offering exchanges to an accused behind the scenes, and not
15:41:56 25 telling your fellow investigators, is pretty serious. It is
as
26 serious as it can be.

27 JUDGE BOUTET: Again, you're -- I mean, I don't know how
we
28 can rule on this, Mr Jordash, without hearing all of your
29 evidence. You may be right. I'm not saying you're right but
you

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1 may be wrong as well. I mean, it goes to the very matter that
2 this Court has to decide. I mean, if we accept Mr Berry's
3 evidence, maybe we agree with you. If we don't accept it,
well,
4 maybe we don't agree with you, but these witnesses have been
15:42:22 5 called to support the Prosecution's position. If we don't
6 believe them well that's the end of the day on this matter.
So,
7 if we believe them in part, I mean, this is exactly why we are
8 sitting on the voir dire.

9 Now, you're asking us to make a decision before, I mean,
if
15:42:38 10 this is your argument, fine, we're going to hear the argument
on
11 this matter and you're not calling any evidence. I mean --
12 MR JORDASH: This is not about the voir dire per se;
this
13 is about the Prosecution's obligations pursuant to Rule 68 and
it
14 matters not in the end if that evidence is relevant to the
voir
15:42:55 15 dire. What matters is that the Prosecution have material
16 obligations --
17 PRESIDING JUDGE: But clearly, that cannot be right.
That
18 cannot be right. The present judicial inquiry is a voir dire,
is
19 a trial within a trial, and it's focused on determining the
15:43:08 20 voluntariness or involuntariness of the alleged statements.
And
21 we cannot, in a way, risk, as I said before, multiplying the
22 issues.
23 The question now for me is this, to you: If granted the
24 Prosecution is in possession of that material, and for some
15:43:28 25 reason were persuaded by your argument that we should order
the
26 Prosecution to disclose that, what is your methodology then?
27 Because, remember, we are in phase II, calling upon you to
elect
28 to call evidence or in fact agreeing to make your closing
29 submissions so that we can decide this very limited issue
without

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1 further ado. So what then would be your methodology? Let us
2 know. If you get the documents, if they come from the
3 Prosecution, if there's anything they have to give, and we are
4 minded to agree that you have made a case for the disclosure,
15:44:13 5 what would be your methodology?

respectful

6 MR JORDASH: It is not me making a case. In my
7 submission there is ample evidence before this Court of
8 wrongdoing by Mr Morissette.

heard?

9 PRESIDING JUDGE: From the testimonies that we have

15:44:27 10

JUDGE ITOE: According to you.

11 PRESIDING JUDGE: Is that what you are saying?

12 MR JORDASH: No, not according to me, according to
13 Mr Berry.

15:44:30 15

14 JUDGE ITOE: That's according to you because we have not
arrived at that. That's your submission.

16 PRESIDING JUDGE: Yes. In your submission you mean that
17 already --

18 JUDGE ITOE: In your submission there is evidence of
19 wrongdoing, yes. That's what you --

15:44:33 20

21 PRESIDING JUDGE: You mean from the testimonies we have
heard?

22 MR JORDASH: Yes.

23 JUDGE ITOE: We have not arrived at that conclusion as
yet,

24 as to whether there is wrongdoing.

15:44:43 25 MR JORDASH: What Your Honours have to do with Rule 68
is

26 ask whether there is prima facie evidence of Rule 68 material,

27 and we've led evidence of Operation Neki in Rwanda. We've led

28 evidence and had evidence adduced of prima facie evidence from
--

29 by Mr White. There has been evidence concerning Mr Morissette

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1 and, moreover, and if I can just complete this, if I could

2 please?

3 PRESIDING JUDGE: Yes, quite.

4 MR JORDASH: And moreover, there is a finely written
letter

15:45:15 5 from the Prosecution in which, when requested to deal with
Rule

6 68 material, and requested to deal with it in an open manner,
and

7 asked to deal with it in a wide manner relating to breaches of

8 protocol, wrongdoing or illegal acts during the course of
their

9 professional careers, we have a finely tuned response: I can
15:45:45 10 advise you that Mr Morissette has no criminal record nor have
any
11 civil proceedings been initiated against him.
12 Legally, completely correct I'm sure, but anybody
reading
13 that letter is left in no doubt it is carefully worded so that
14 other aspects of his conduct are not disclosed. This is not
the
15:46:07 15 Defence pushing for something; this is Defence just asserting
our
16 right to Rule 68 material when there is prima facie evidence
of
17 wrongdoing. Amnesty report. Mr Morissette's allegation
against
18 Mr White. Mr Berry's allegations against Mr Morissette. How
19 much more evidence does the Court want?
15:46:29 20 PRESIDING JUDGE: The mystery about this whole thing is
21 this: Whether what you are seeking to have this Court order
22 disclosure of is in the possession of the Prosecution --
23 MR JORDASH: Well, what I'm asking --
24 PRESIDING JUDGE: That's what -- I mean, in other words,
if
15:46:45 25 it is not at this point in time, are you inviting the Court to
26 order, in the familiar language, a fishing expedition?
27 MR JORDASH: Well, I've just detailed the aspects of
28 character which have arisen during the voir dire. That's not
a
29 fishing expedition.

1 PRESIDING JUDGE: Not, but what I'm saying is that if
the
2 material is not in the possession of the Prosecution at this
3 point in time, are we being invited to call an exercise in
4 futility?

15:47:15 5 MR JORDASH: Simply order the Prosecution to disclose
what
6 they have in relation to the evidence which has been given on
7 related matters. I don't think that's a controversial
request.
8 I don't think it's an unusual request, and it's certainly not
an
9 unusual order for domestic or international courts.

15:47:33 10 If your Honours don't want to ask the Prosecution to
open
11 up the locked compound up there and disclose what they have,
then
12 I'll sit down. But it's on the record, I've applied for it,
I've
13 asserted this prima facie evidence of wrongdoing. It's coming
14 from the Prosecution witnesses and the Prosecution say they
rely
15:47:52 15 upon them. That is prima facie --

16 PRESIDING JUDGE: No, the Court has a settled
jurisprudence
17 as to when we can make that.

18 MR JORDASH: Yes.

19 PRESIDING JUDGE: Quite right. In other words -- of

15:48:00 20 course, also, it is also necessary to show the -- to provide
some

21 specificity --

22 MR JORDASH: Well --

23 PRESIDING JUDGE: And also to indicate the targeted
24 material.

15:48:11 25 MR JORDASH: [Overlapping speakers].

26 JUDGE ITOE: You have been involved in one of those
27 decisions.

28 MR JORDASH: I've indicated. Operation Neki, Operation
29 Arrest Benjamin Yeaten.

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and 1 JUDGE ITOE: You want us to investigate Operation Neki

2 the rest of them?

what 3 MR JORDASH: No. I want the Prosecution to disclose

they 4 they know of it. I want the Prosecution to disclose of what

15:48:31 5 know of Mr White's foray into Togo, and I want the Prosecution
to

character, 6 disclose any evidence which relates to Mr Morissette's

7 especially in Sierra Leone.

8 PRESIDING JUDGE: Suppose we take the judicial position
9 that, even if there's merit in your position that these
matters
10 are so tangential, they're so peripheral they don't go to the
11 core issues which we are called upon in this judicial inquiry.
12 MR JORDASH: Rule 68 is not qualified in that way. Rule
68
13 deals with evidence which suggests the innocence or mitigates
the
14 guilt of the accused, or may affect the credibility of the
15 Prosecution evidence, may evidence of Mr Morissette's
15:49:08 wrongdoing
16 in Sierra Leone or bad character affect the credibility of his
17 evidence?.

18 JUDGE BOUTET: What does this have to do with the
19 culpability or non-culpability of the accused?

15:49:24 MR JORDASH: Well, maybe it does or maybe it doesn't.
But
20
21 what it does do, it relates to the credibility of the
Prosecution
22 evidence. It's a three-pronged arm.

23 JUDGE BOUTET: Right.

24 PRESIDING JUDGE: We will hear very briefly -- are you
15:49:37 done?
25

26 MR JORDASH: Yes.

27 PRESIDING JUDGE: We'll hear very briefly the
Prosecution
28 and then we'll take this matter on advisement and we'll in
fact
29 be taking our afternoon break unusually early. Quite.

1 MR HARRISON: The Prosecution's position is that the
2 request is entirely collateral to the issues before the Court.
I
3 know references were made by Mr Jordash to certain things.
It's
4 difficult for me to respond because I know that he's
suggesting
15:50:15 5 that there is prima facie evidence, but the Prosecution,
frankly,
6 doesn't agree that there is any prima facie evidence. And we
7 understood -- I didn't bring any case with me on the topic,
but I
8 understood that to be the jurisprudence of this Chamber and I
9 think from Trial Chamber II, is that there has to be some
15:50:36 10 demonstration of a prima facie case prior to the Court
11 contemplating an order.

12 PRESIDING JUDGE: Thank you. Anything new to add to
13 your --

14 MR JORDASH: Well, I'm happy that the Prosecution have
15:50:48 15 acknowledged they haven't demonstrated a prima facie case.

16 PRESIDING JUDGE: In fact, I think I'm going to amend
what
17 I said earlier. We're not now taking our afternoon break,
we're
18 just standing the Court down.

19 [Break taken at 3.50 p.m.]

15:51:20 20

[Upon resuming at 4.00 p.m.]

21 PRESIDING JUDGE: The ruling of the Chamber is that the
22 application on behalf of the first accused is meretricious.

23 We're firmly of the view that the issue is a classic example
of
24 what the law regards as collateral. To grant the application

16:03:38 25 would be tantamount to a multiplication of the issues. The

26 application is accordingly refused. Mr Morissette is,

27 accordingly, formally released from the proceedings. So we
now
28 move on to phase two.

29 MR JORDASH: Could I seek clarification on an issue.

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1 PRESIDING JUDGE: Yes.

2 MR JORDASH: The application I made is one of general
3 application and I want to know whether I need to make the
4 application again after the voir dire is finished, or I'm
16:04:09 5 estopped from making the application --

6 PRESIDING JUDGE: Well, again, that would a professional
7 judgment call. When it comes at another time, you probably

would

8 tell us why, the only time we will react is if we think we've

9 already ruled on a matter and that the attempt is being made
to
16:04:27 10 relitigate it. Then we can come in. I don't want to
preemptive
11 here. I don't know what you will come on with after the trial
12 within a trial.
13 MR JORDASH: Well, I will make my position clear for the
14 record.
16:04:39 15 PRESIDING JUDGE: Yes.
16 MR JORDASH: That I won't be making the application
again
17 because it's not an application which is based on, firstly,
any
18 connection to a particular issue. It's a connection to the
19 credibility of the Prosecution witness --
16:04:51 20 PRESIDING JUDGE: Actually, what we've done is to rule
for
21 the purposes of the trial within a trial.
22 MR JORDASH: Well --
23 PRESIDING JUDGE: This ruling relates to the trial
within a
24 trial. We're not going outside that parameter at this stage.
16:05:04 25 MR JORDASH: Well, if I can leave that issue then, on
the
26 record, there's an issue of general application. As a matter
of
27 efficiency, I won't seek to make the application --
28 PRESIDING JUDGE: That's notice to us.
29 MR JORDASH: -- again. But it's there, on the record.

1 PRESIDING JUDGE: It's noted. So, we can now proceed.
2 Phase two is your election.

3 MR JORDASH: Well, it's -- my application first and
4 foremost is for the Court to call Mrs Kah-Jallow, and we would
16:05:42 5 submit the interests of justice lie in the Court calling
6 Mrs Kah-Jallow, and not the alternative, which is that the
7 Defence call Mrs Kah-Jallow.

8 PRESIDING JUDGE: No. Well, we would want to do things
in
9 a procedurally tidy way. The option now, according to our
16:06:08 10 process, and we don't want to derail this process, and we'll
11 resist any attempt to derail it -- of course, I'm not
suggesting
12 you want to do that, because in processes of this nature, one
13 needs to be very careful as to the propriety of the steps that
we

14 take. We've heard the Prosecution, the testimonies of the
16:06:31 15 witnesses. We're now giving you the option to elect, either
to
16 call a witness as your witness, Defence witness, or to say to
us:

17 Well, we don't intend to call a witness --

18 MR JORDASH: But at this --

19 PRESIDING JUDGE: Shall I finish? We've got to get it
16:06:53 20 right, and we must.

21 MR JORDASH: What I'm suggesting --

22 PRESIDING JUDGE: No. Shall I finish? And, counsel,
23 please adjust your demeanour to harmonise with the usual
decorum
24 of this Court. The option you now have is either to lead
16:07:12 25 evidence to reinforce your submissions, whether it's a
26 presumption of irregularity, and to support some of the
27 allegations you make. If you're not electing to call
evidence,
28 then we will ask you to decide whether you want to make your
29 closing submissions. We'll ask the Prosecution first and then
go

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1 back to you.
2 The question of whether to call the Gambian duty counsel
3 who was present at the interview is something that you can
decide
4 to do if you want to call her as a witness or, as you say, you
16:07:58 5 can persuade the Court to call her as a witness of the Court.
6 But we do not think that we, at this stage, are ready to hear
a
7 court witness. We want to hear your side. Because we're
called
8 upon to adjudicate this issue between both sides.

9 MR JORDASH: But this is what I'm trying to explain.
What

16:08:23 10 we're seeing is Mrs Kah-Jallow to be called by the Court. The
11 Prosecution say Mrs Kah-Jallow supports their case. And, in
12 those circumstances, we would ask the Court to call
13 Mrs Kah-Jallow so that we can cross-examine her.

14 PRESIDING JUDGE: But Prosecution has not called her.

16:08:41 15 MR JORDASH: No.

16 PRESIDING JUDGE: So that, of course, is neither here
nor

17 there. Of course, we can draw the conclusion that the
18 Prosecution does not think that she adds anything to their
case

19 which they've put forward here through their witnesses. But
we

16:08:55 20 want to make sure that the procedure remains intact and as
tidy

21 as we can. If you have any witness to call, at this stage, we
22 would prefer, and that's the disposition of the Bench, that
you

23 call your witness so that we can hear your witness on behalf
of

24 the first accused.

16:09:15 25 MR JORDASH: Well --

26 PRESIDING JUDGE: Then later on entertain any
application

27 for the Court to call a witness, as a court witness. Then
we'll

28 have to decide that.

29 MR JORDASH: Yes. What I'm submitting is that

1 Mrs Kah-Jallow could be called by the Court and then the Court
2 could be asked to rule as to whether the Prosecution have
3 discharged their burden of proof. And if they haven't, then
that
4 would be the end of it.

16:09:47 5 PRESIDING JUDGE: We're not going to follow you down
that

6 path at all. We're definitely not going to follow you down
that
7 path.

8 MR JORDASH: Your Honours, then, in my respectful
9 submission, at the stage which is comparable to the Rule 98
16:10:05 10 stage, and it ought to be that the Defence can make
submissions
11 analogous to Rule 98, and say the Prosecution have not adduced
12 sufficient evidence capable of discharging their burden of
proof.

13 And why -- I'm not going to belabour the point about
14 Mrs Kah-Jallow -- why, I would submit, it would be in the
16:10:27 15 interests of justice for her to be called, would be that Your
16 Honours would have the totality of the evidence that the
17 Prosecution say enables them to discharge their burden and, at
18 that point, we would seek to make an application saying that,
in
19 law, they cannot discharge their burden.

16:10:43 20 PRESIDING JUDGE: But at this stage we wouldn't preclude

21 you from making any submissions of law.

22 MR JORDASH: Well, I'll make --

23 JUDGE ITOE: I want to get -- I think the Bench wants to
24 have it clearly on record. From the articulation of your

16:11:02 25 arguments, do we understand you to mean that you are not
calling

26 the first accused to testify?

27 MR JORDASH: We're very happy to call the first accused.

28 But what we wanted to do was try to be efficient and say, in

29 accordance with the general principles which underpin Rule 98,

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proof, 1 that if the Prosecution haven't discharged their burden of

he 2 then the first accused does not have to give evidence, because

3 ought not to --

and 4 JUDGE ITOE: Like the Presiding Judge has pointed out,

16:11:35 5 that is our opinion, you know, that you can go on 98, if you
so

6 wish. After all, it's the trial.

7 MR JORDASH: If --

fine. 8 JUDGE ITOE: If you feel safe to go that way, that's

9 MR JORDASH: Well, if Your Honours then ruled and said
the

16:11:50 10 Prosecution -- their evidence is capable of discharging -- of
11 enabling the Prosecution to discharge their burden, at that
stage
12 we'd call the first accused.

13 JUDGE BOUTET: I'm not sure we'll follow you on that.
I'm

14 speaking from my personal point of view. You either make your
16:12:03 15 decision now or not. If you want to argue the case, we'll
hear

16 you and we'll dispose of it, based on the arguments of the
17 evidence we've heard.

18 JUDGE ITOE: Yes.

19 MR JORDASH: We don't have --

16:12:12 20 JUDGE ITOE: I also -- I would go with Justice Boutet on
21 this, because I think we need to -- we need to hear from you.

22 It's as though you're making the final submissions now, you
know,

23 that they have not made a showing of regularity in order to --
24 or, you know, you proceed and call the evidence that is
necessary

16:12:32 25 so that we get done with this matter.

26 PRESIDING JUDGE: Yes, I would come in and say that, in
the

27 interests of time -- I keep saying time is of the essence --
if

28 you're now confronted with a professional judgment call, in
other

29 words, you're not sure whether at this point in time you want
to

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1 call your client to testify or you just want to make
submissions
2 of law, that is another option. Because it means that,
perhaps,
3 you need some time to advise yourself from a purely
professional
4 judgment angle whether in fact this is the way you want to go
or,
16:13:19 5 as you say, whether you want to persuade this Court that it
must,
6 in this trial within a trial, use a Rule 98 analogy and give
you
7 a chance to make submissions on the Rule 98 model simpliciter.
8 MR JORDASH: Well, it's -- with respect, it's a decision
9 which ought not to be placed in my lap. It's a decision for
the
16:13:48 10 Court to look at the evidence and say, have the Prosecution,
11 pursuant to Rule 42 and Rule 92, discharged their burden? And
it
12 would be unfair, if they haven't, to then have the first
accused
13 give evidence, be cross-examined and any evidence which comes
out
14 which is adverse to the Defence, to then be used to allow the
16:14:10 15 Prosecution to discharge their burden.

16 PRESIDING JUDGE: Okay.

17 MR JORDASH: That's the purpose --

18 PRESIDING JUDGE: Granted there's merit in what you say.

19 But here we've been -- we've not been acting all along -- this

16:14:19 20 Court has not been acting all along suo motu. We have been

21 acting at the instance of the parties. You initiated this

22 process and then we came along and gave a decision on your

23 application. We said, ah, we're not satisfied that we should
in

24 fact make a pronouncement one way or the other on merely the

16:14:38 25 basis of the transcript and the videos. We said we want a
voir

26 dire. And here, we have been acting at the instance of the

27 parties. At this point in time, if you invite us to act suo
motu

28 why would we want to do that? We need to be moved.

29 MR JORDASH: Well, that's what the application to -- the

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Court 1 legal application would be about. It would be to move this

2 to say that the evidence adduced is not capable of discharging

3 the burden of proof. If that forecloses me from then calling

4 evidence, it's no choice at all.

16:15:14 5 JUDGE BOUTET: Mr Jordash, in your national system, as

6 such, when you have a voir dire, how do you proceed? You hear
7 evidence about the admissibility of evidence on a voir dire,
and,
8 at the conclusion of the evidence by the Prosecution, you
either
9 call evidence or you address on whatever. You have the
choice,
10 the professional choice, to make at that time -- advise your
16:15:32 11 client as to how you want to proceed. You may decide that
they
12 have failed and it is sufficient for me to address the Court
13 because they've not met the standard, or you think there might
be
14 some doubts and you prefer to call some evidence; and you call
16:15:48 15 evidence and you argue at the end of that. I mean, I don't
see
16 the difference here.

17 MR JORDASH: That's not the way it works in my
18 jurisdiction.

19 JUDGE BOUTET: Well, it's the way it works in mine, I
can
16:15:58 20 tell you that.

21 MR JORDASH: Well, Your Honour asked me about my
22 jurisdiction and in my jurisdiction, the Defence can move the
23 Trial Chamber, the judge, at any time, to rule, as a matter of
24 law, that on a particular issue where the burden lies on the
16:16:12 25 Prosecution, the evidence isn't capable. [Overlapping
speakers].

26 JUDGE BOUTET: We are saying the same thing. That's
what
27 I'm telling you.

28 MR JORDASH: It wouldn't then foreclose the Defence from
29 calling evidence. That's the difference.

we
in
16:16:39

1 PRESIDING JUDGE: The difficulty we're having, whether
2 can tailor made the Rule 98 analogy to suit the trial within a
3 trial process. Because there is no express rule in our Rules
4 authorising us to do this. But, of course, we can do what is
5 the best interests of justice.

saying
Is

6 MR JORDASH: Yes.
7 PRESIDING JUDGE: And not foreclosing it. I'm just
8 that the pressures of time and judicial economy are upon us.

9 this a matter which we can dispose of expeditiously by getting
16:16:53 10 you either to say, well, let my client come into the witness
box
11 and tell his own side of the story, or let me just rely on my
12 legal submissions based on what the Prosecution themselves
have
13 presented, that their evidence doesn't add up to anything.

14 MR JORDASH: But --
16:17:09 15 PRESIDING JUDGE: So it's the professional judgment of
the
16 Court.

17 JUDGE ITOE: And you end it there.

18 PRESIDING JUDGE: It's the professional judgment of the
19 Court.

16:17:15 20 MR JORDASH: But then I don't get the chance to call
21 evidence. That's the problem. I've got no problem in calling
22 Mr Sesay, but the burden of proof is on the Prosecution.

23 JUDGE ITOE: You see, the point is you're problem is you
24 want to send feelers, you know, to know -- you want to send
16:17:29 25 feelers to know how the Court --

clearly 26 JUDGE BOUTET: Mr Jordash, I want you to know very
your 27 from me that this is your call. Whether you call -- this is
You 28 decision to determine if the accused is to be called or not.
saying 29 may call whatever evidence. I'm not insisting -- I'm not

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wish 1 I want to hear the accused. You call whatever evidence you
2 to call. I mean, I am totally of the opinion on this that
3 whether your client is called or not, if you feel it is
required, 4 fine. If you feel it's not required, that's fine with me. If

16:18:02 5 you want to call other evidence, that's fine by me. I'm not
6 saying we should hear him. Absolutely not.

7 MR JORDASH: Well, I'm not suggesting --

8 JUDGE ITOE: But if we can hear him, that would be fine.
9 We're not insisting. If we can hear him, that would be fine.

16:18:14 10 MR JORDASH: What I'm submitting is that I ought to be
able
11 to make a submission. If Your Honours were with me, we could
all
12 be out of here by 5.00.

13 JUDGE ITOE: We have always been with you.

14 MR JORDASH: And we could start the --

16:18:22 15 JUDGE ITOE: You don't like this dialogue?

16 MR JORDASH: We could start the trial proper on Tuesday.

17 PRESIDING JUDGE: Well, that's precisely what I was
leading
18 to, and I thought I had a crystal balance ball to look
through.

19 MR JORDASH: It's not choice at all for the Defence to
be
16:18:39 20 told, well, call your evidence now. If you don't, then that's
21 the end of it.

22 PRESIDING JUDGE: Well, if --

23 MR JORDASH: If you make a legal submission, you can't
call
24 evidence. That's no choice for the Defence. Why cannot both
be
16:18:51 25 done? We make a brief submission: If Your Honours' with us,
26 we're all back to getting on with this interminable trial on
27 Tuesday, or, I have to call Defence evidence of Mr Sesay and
28 Mrs Kah-Jallow, and then Mrs Carlton-Hanciles from the Defence

say,

29 Office, and we're here until Wednesday. Then Your Honours

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1 well, actually, after hearing from the Prosecution, we didn't
2 think they'd discharged their burden of proof, and we've all
3 wasted --

4 JUDGE ITOE: What's wrong with that? We're here for
that.

16:19:17 5 Even if it takes us one month for us to say that they have not
6 discharged their burden, I think we would only have been doing
7 the job for which we are paid. It doesn't matter how long it
8 takes us to arrive at what you think we should short-circuit,
you
9 know, to arrive at a decision.

16:19:33 10 PRESIDING JUDGE: And to add to what Justice Itoe has
said,

11 I mean, this particular phase of the trial is a very important
12 phase. I mean, serious allegations have been made and, on
your
13 side, and also that's one of the reasons why we're able to
say,

14 well, look, should we just determine this thing on the basis
of

16:19:53 15 transcript and videos? We said no, let's lift the veil. And

we
16 we've lifted the veil and we -- we've seen what we've seen and
17 need to be able to come to a decision that's clearly in the
18 interests of justice. And we're not losing the focus of that.
19 The only reason we're saying -- we're taking this position is
16:20:15 20 that how much more do we need to travel down the road.

21 MR JORDASH: Well, that's what I'm asking Your Honours.

22 PRESIDING JUDGE: Quite right.

the
23 MR JORDASH: How much further do we have to travel down
24 road?

16:20:28 25 JUDGE ITOE: It is not for us to say. It is not for us
to
26 say. It's your call, Mr Jordash. It is for you to -- to know
27 the length of the road, you know, you want to travel. If you
--

28 JUDGE BOUTET: As an aside, if you intend to call these
29 witnesses that you mentioned, Mrs Kah-Jallow and the other
one, I

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releasing
1 would like to be reassured that the accused agrees that the
2 solicitor/client privilege is not applicable; that he's
3 that authority. I mean, they have a very -- they are

and
16:20:58 4 professional, acting within professional duties at the time,
you 5 this is a very delicate issue. I mean, we -- the fact that
6 assign somebody who is a lawyer to come and testify in the
is 7 performance of their solicitor/client relationship, as such,
without 8 not something that we are -- we are capable of going into
9 some very, very serious consideration.

16:21:17 10 MR JORDASH: Well, I can reassure the Court that I --

-- 11 JUDGE BOUTET: And the client being your client, so I'm

be 12 MR JORDASH: I can reassure the Court that Mr Sesay will
13 very happy to waive any privilege in relation to those two
14 lawyers. Nothing was said between them which she's not
perfectly 15 prepared to say in open court or have said in open court.

can, 16 JUDGE BOUTET: My question is not whether it has, it
17 or there's nothing very, very special. The relationship is a
18 very privileged one, as you know, and we cannot go into this
19 unless the client is agreeable that it can be looked into; the
16:21:52 20 client being the same client that you have. But if you say he
21 has and he's waiving that, that's fine with me.

22 MR JORDASH: Well, it's our case that nothing was said
23 because of the --

24 JUDGE BOUTET: Well, Mr Jordash, that's --

16:22:04 25 MR JORDASH: Well, I'm not going to delay the Court any
26 further --

you 27 PRESIDING JUDGE: Let me say: Is this something that

28 want to take the weekend to reflect on and come back and
29 jumpstart this thing again with much vigour?

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1 MR JORDASH: No, it's not.

it's

2 PRESIDING JUDGE: Because we -- I don't know whether

for

3 fair, in fact, to call upon you now to organise your thoughts

go,

4 your closing submissions, because if that's where we want to

16:22:33

5 we probably can give you time.

6 MR JORDASH: I cannot take the chance of not calling my
7 client, given Your Honours' position.

8 PRESIDING JUDGE: Yes.

to

9 MR JORDASH: So I cannot make legal submissions. I have

16:22:43

10 call [overlapping speakers] --

11 PRESIDING JUDGE: At this stage. Yes, quite right.

that

12 MR JORDASH: But I want it on record that any evidence

13 is called by the Defence ought not to be used to assist the

14 Prosecution to discharge their burden of proof if they cannot

16:22:59

15 discharge it at this time.

converted,

16 JUDGE ITOE: Mr Jordash, you're preaching to the
17 if I may borrow the sayings of one of my colleagues. I think
18 we're here for that. The Defence, the Prosecution, has its
19 burden, its burden which it carries and which it has to
16:23:22 20 discharge. And it is not for the evidence, you know, that you
21 will adduce that we would use, you know, to buttress their
22 certainly not. We know where to make the professional
23 distinction as to how to go in this particular matter. And I
24 think you should have a lot of reliance on us as professional
16:23:46 25 judges in this regard.

understand

26 JUDGE BOUTET: I would like to hear what you may
27 what you mean by this.

is a

28 MR JORDASH: What I mean by this is: Is that if there
29 burden on the Prosecution, and once they close their aspect of

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end

1 their case, they haven't discharged it, that ought to be the
2 of the matter. They haven't discharged it.

you,

3 JUDGE BOUTET: Also you, we are prepared to listen to

evidence. 4 or if you're calling evidence, I mean, you're calling

16:24:09 5 We are prepared to listen to you. If you feel that they've
not,

6 fine, we'll hear your arguments.

7 MR JORDASH: But Your Honours' putting me in a position
8 where I cannot take the risk.

9 JUDGE BOUTET: Yeah, but, Mr Jordash, this is what
you're

16:24:22 10 paid for. You're a professional. You have experience, as
such,

11 and you're making a professional decision as to how to
proceed.

12 I mean, the evidence you're going to be leading is evidence on
13 the voir dire, and you will be there to be assessed against
the
14 whole of the evidence.

16:24:34 15 MR JORDASH: But Your Honours cannot use it to discharge
16 the burden of proof.

17 JUDGE BOUTET: Well, we'll use it as part of the voir
dire
18 to determine the admissibility of the waiver. This is what
it's
19 all about.

16:24:43 20 MR JORDASH: Well, no, it's not all about that. It's
about
21 whether the Prosecution have discharged their burden, and if
they
22 haven't at this stage, that ought to be the end of it.

23 JUDGE BOUTET: Mr Jordash --

24 PRESIDING JUDGE: We're not as cross-purposes at all.
We

16:24:55 25 are not at cross-purposes at all. What we find difficult is
this

say 26 inventiveness on your part to use the Rule 98 analogy and to
to 27 that we must transplant that into the voir dire process, and
28 say if we rule against you on the issue of whether the
29 Prosecution has discharged its burden or not, then you should

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That's 1 have the option to fall back upon the evidential aspect.
2 the difficulty that I am -- I'm not -- my mind is open on it.
3 I'm not saying that the Rule 98 analogy cannot be transplanted
4 into this process. I'm saying I need some time to organise my
16:25:49 5 thoughts and to see whether it would be procedurally
appropriate,
6 or if it would be in the overall interests of justice.

my 7 MR JORDASH: But, Your Honour -- Your Honour, I've made
that 8 point. I can see that the overall approach of the Bench is
9 we have to call evidence or make submissions, but not both.

So 16:26:10 10 [overlapping speakers] --

for 11 PRESIDING JUDGE: Well, as I said, I told you, speaking
12 myself, it's the first time I'm trying to process this Rule 98

13 analogy into the voir dire process. I'm not saying that it
14 doesn't fit. I'm not saying that, you know. I'm just saying
16:26:29 15 that I need some time to process it intellectually and to see
16 whether we are on safe ground. That's all I can say.

17 MR JORDASH: Well, I'm ready to call Mr Sesay whenever
the
18 Court is ready.

19 JUDGE ITOE: We have time. It's 4.00 now. We can
start.
16:26:50 20 Why not?

21 PRESIDING JUDGE: Perhaps this would be a good time to -
-

22 JUDGE ITOE: Unless, and like the Presiding Judge, you
23 know, mentioned, if you want to organise yourself and see how
you
24 plan your -- I think you are perfectly entitled.

16:27:05 25 PRESIDING JUDGE: We'll come back on Tuesday and then
we'll
26 get [indiscernible] over the process.

27 MR JORDASH: I'm desperately trying not to lose time.
I'd
28 like to --

29 PRESIDING JUDGE: No, well, don't be so --

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1 MR JORDASH: I'm ready to go.

2 PRESIDING JUDGE: No. I mean, we are in control of
time,

3 certainly. Time is not our master, he's our servant, and --

4 MR JORDASH: It feels like it's my master.

16:27:22 5 JUDGE ITOE: If he's ready to go on, fine.

6 PRESIDING JUDGE: It's just that we --

7 JUDGE BOUTET: I'm prepared to hear you. I'm prepared
to,

8 fine.

9 JUDGE ITOE: Yes.

16:27:27 10 PRESIDING JUDGE: But perhaps it's a good time at which
we

11 can take our usual break, and gives you time to think about it

12 and see whether you want to strike the iron while it's hot.

13 MR JORDASH: Hot.

14 PRESIDING JUDGE: Okay.

16:28:01 15 [Break taken at 4.28 p.m.]

16 [RUF15JUN07D - MD]

17 [Upon resuming at 5.05 p.m.]

18 PRESIDING JUDGE: Mr Jordash, we will proceed.

19 MR JORDASH: Can I make an application to adjourn,
please?

17:05:58 20 PRESIDING JUDGE: Go ahead, yes.

21 MR JORDASH: The application to adjourn is on two bases.

22 Number one, perhaps this is an optimistic basis on my part,
but

23 there was some indication that, perhaps, at least as regards
the

24 Presiding Judge, that there was some possibility that the

17:06:26 25 procedure I suggested might find favour, and I submit perhaps
the

26 weekend might enable Your Honours to consider that
possibility,
27 and for the Presiding Judge to persuade the wing members of
the
28 Bench. But secondly --
29 JUDGE ITOE: They are extremists; they are left-wingers.

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1 MR JORDASH: And secondly, to enable myself to take
further
2 instructions from Mr Sesay on the evidence from the police
3 officers, and it was the first time we'd heard from the police
4 officers, and it's the first time we'd heard their evidence.
We
17:07:09 5 didn't get statements from them. And also to discuss with
6 Mr Sesay that, if Your Honours do say on Tuesday that an
7 application at that stage would foreclose further evidence,
that
8 I have the opportunity to properly discuss the ramifications
of
9 that with Mr Sesay. So that's my application.
17:07:32 10 PRESIDING JUDGE: Thank you. And, Mr Prosecutor, what
is
11 your response to that?
12 MR HARRISON: We have no position.

13 PRESIDING JUDGE: Thank you.

14 JUDGE ITOE: If I may just make a suggestion here: I think

17:07:49 15 it's good to come also with an open mind so that if the Judges
16 don't change their minds, you know --

17 MR JORDASH: Certainly.

18 JUDGE ITOE: -- you go along with the way you want to go
in
19 this matter.

17:08:00 20 MR JORDASH: We will be ready to go, one way or another.

21 PRESIDING JUDGE: Yes, right.

22 MR JORDASH: Could I just add this: If my demeanour was
23 offensive, I apologise.

24 PRESIDING JUDGE: That is okay. All right. Mr Jordash,
17:08:09 25 you can be sure that when we respond here, it's a preemptory
26 response, it's a spontaneous and that is all.

27 MR JORDASH: It is the second Friday I have had to
28 apologise. I will try not to do it next Friday.

29 PRESIDING JUDGE: That's fine. Thank you.

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1 JUDGE BOUTET: I would like also to state that I, for
one,

2 expect that you will be ready to proceed on Tuesday in calling

3 your evidence.

4 MR JORDASH: No doubt about it.

17:08:29 5 JUDGE BOUTET: Thank you.

Tuesday, 6 PRESIDING JUDGE: Well, the trial is adjourned to

7 18 June 2007. Or 19, I'm sorry, 2007.

p.m., 8 [Whereupon the hearing adjourned at 5.08

9 to be reconvened on Tuesday, the 19th day of
10 June 2007, at 9.30 a.m.]

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WITNESSES ON THE VOIR DIRE:

WITNESS: JOHN VERNON BERRY 2

CROSS-EXAMINATION BY MR JORDASH 2

WITNESS: LITHO LAMIN

34

EXAMINED BY MR HARRISON

34

CROSS-EXAMINED BY MR JORDASH

45

WITNESS: JOSEPH WADAM SAFFA

62

EXAMINED BY MR HARRISON

62

CROSS-EXAMINED BY MR JORDASH

67