

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

FRIDAY, 27 OCTOBER 2006
9.43 A.M.
STATUS CONFERENCE

TRIAL CHAMBER I

Before the Judges:	Bankole Thompson, Presiding Pierre Boutet Benjamin Mutanga Itoe
For Chambers:	Ms Candice Welsch Mr Matteo Crippa
For the Registry:	Mr Thomas George Mr Nikolaus Toufar
For the Prosecution:	Mr Peter Harrison Mr Mohamed Bangura Ms Tamara Peters (Case manager) Ms Amira Hudroge (intern)
For the accused Issa Sesay:	Mr Wayne Jordash Mr Jared Kneitel Mr Dumbuya
For the accused Morris Kallon:	Mr Melron Nicol-Wilson Ms Sabrina Mahtani
For the accused Augustine Gbao:	

1 [RUF27OCT06A- CR]

2 Friday, 27 October 2006

3 [The accused present]

4 [Status Conference]

5 [Open session]

6 [Upon commencing at 9.43 a.m.]

7 PRESIDING JUDGE: Good morning, counsel. This proceeding
8 is in the nature of a status conference. May I have
9 representations, please? Prosecution.

10 MR HARRISON: Harrison, initials PH, appearing for the
11 Prosecution and, also, Bangura, initial M.

12 PRESIDING JUDGE: Thank you. First accused.

13 MR JORDASH: For the first accused, myself, Wayne Jordash,
14 and Jared Kneitel.

15 PRESIDING JUDGE: Thank you. Second accused.

16 MR NICOL-WILSON: Your Honours, Melron Nicol-Wilson and
17 Sabrina Mahtani.

18 PRESIDING JUDGE: Thank you. Third accused.

19 MR JORDASH: I've been asked by Mr O'Shea to represent
20 Mr Gbao's interest.

21 PRESIDING JUDGE: Right. And you have been reinforced by
22 the Defence office. Do we take that as correct?

23 MR DUMBUYA: Yes, Your Honours.

24 PRESIDING JUDGE: Thanks. The records will reflect that.

25 MR JORDASH: Could I, whilst the preliminary matters are
26 being dealt with, deal with the issue of Mr Gbao's absence?
27 There seems to be some confusion.

28 PRESIDING JUDGE: Right, let's hear that.

29 MR JORDASH: There is a form which has been ticked, which

1 suggests he has not waived, and then there is an explanation
2 which suggests a reason for why he was waived. Mr Dumbuya was
3 pursuing the inquiries when Your Honours came into Court.
4 Perhaps if I can request Your Honours' leave for Mr Dumbuya to
5 continue those inquiries. I suspect it's not very complicated
6 and we'll have an answer quite quickly that Mr Gbao does or does
7 not want to come to Court.

8 PRESIDING JUDGE: Leave is granted.

9 MR DUMBUYA: Good morning, Your Honours.

10 PRESIDING JUDGE: Good morning.

11 MR DUMBUYA: I was shown this morning a paper by one of the
12 staff from the Registry that Mr Gbao has not waived his rights,
13 but I telephoned him this morning to inquire about it, and he
14 told me categorically that he has not signed any waiver this
15 morning, and it was at that point that you came into Court when I
16 took my seat. I was just telling Mr Jordash, that if I could be
17 given the opportunity, which I am asking Your Honours now, to go
18 into the detention, so that I can clarify that issue.

19 PRESIDING JUDGE: We can grant you leave and, of course,
20 this will not detract the Court from the business of the day.

21 MR DUMBUYA: Thank you, Your Honours.

22 PRESIDING JUDGE: Let's move on. Counsel, the agenda items
23 for today's status conference are as follows: 1. Health of
24 accused persons; 2. Detention issues; 3. Defence case
25 presentation; 4. Witness-related issues; 5. Filing of Defence
26 materials; 6. Statement of agreed and contested facts and
27 issues; 7. Opening statements; 8. Outstanding motions; and
28 9. Any other matters.

29 This status conference is being held pursuant to Rule 65bis

1 of the Rules of Procedure and Evidence to consider the
2 implementing modalities for the preparation and presentation of
3 the Defence case in the RUF trial. Rule 65bis reads as follows:
4 "A status conference may be convened by the designated judge or
5 by the Trial Chamber. The status conference shall: 1. Organise
6 exchanges between the parties so as to ensure expeditious trial
7 proceedings; 2. Review the status of his case, and to allow the
8 accused the opportunity to raise issues in relation thereto."

9 Mr Jordash, are there any health issues that you intend to
10 raise in respect of your client?

11 MR JORDASH: The same one, the issue of Mr Sesay's
12 outstanding operation.

13 PRESIDING JUDGE: Yes.

14 MR JORDASH: I can see a member of the Registry here.

15 PRESIDING JUDGE: Very well.

16 MR JORDASH: I don't know if they are here to deal with the
17 subject.

18 PRESIDING JUDGE: In other words, you are more or less
19 considering your right at this stage to talk about that, in the
20 light of the presence of someone from the Registry?

21 MR JORDASH: They know more than I.

22 PRESIDING JUDGE: Very well.

23 MR JORDASH: In fact, I think a number of people around the
24 Court know more than I.

25 PRESIDING JUDGE: I will not respond to that. Yes, we
26 advise that the Registry's legal adviser is here to update us on
27 the developments on the subject of, I think the phrase now is
28 medical evacuation, in respect of the first accused. Mr Toufar,
29 please report to the Court.

1 MR TOUFAR: Thank you, Your Honour. On behalf of the
2 Registry, I would like to report that, following the directions
3 of the Trial Chamber, the Registrar's office intensified its
4 efforts to ensure that the appropriate arrangements were put in
5 place to enable --

6 PRESIDING JUDGE: Please stand up for --

7 MR TOUFAR: I apologise.

8 PRESIDING JUDGE: Mr Toufar, the tradition is, when you
9 address the Bench, you stand up.

10 MR TOUFAR: I do apologise.

11 PRESIDING JUDGE: Very well. Just a reminder. Proceed.

12 MR TOUFAR: Okay. On behalf of the Registry, I would like
13 to report that, following the directions of the Trial Chamber,
14 the Registrar's office intensified its efforts to ensure that the
15 appropriate arrangements are put in place to enable the first
16 accused to receive medical treatment, locally or abroad, and the
17 Registrar's office took the necessary arrangements in this
18 regard.

19 At this point of time, we can report that arrangements have
20 been concluded with a particular state to enable the first
21 accused to receive treatment in that state. There are other
22 formalities and practicalities which are being worked out, as we
23 speak. Thank you.

24 PRESIDING JUDGE: Thank you very much for that report.
25 Mr Jordash.

26 MR JORDASH: I'm grateful to Mr Toufar for the indication
27 and I should say I spoke to him, I think about two weeks ago, and
28 he updated me with that information. Clearly, what isn't
29 indicated by the report is when the operation will take place.

1 PRESIDING JUDGE: Right. Yes.

2 MR JORDASH: I understand that it's pending, and it's
3 waiting on the operational modalities to be worked out.

4 PRESIDING JUDGE: Quite right. And these are subjects
5 which we cannot make any definitive pronouncements on, and also
6 any kind of -- all we can do, I think, at this stage, is to urge
7 them, again, to intensify their efforts to complete those aspects
8 of the matter.

9 MR JORDASH: Yes. Could I also request that information be
10 passed to me so I can pass that to Mr Sesay?

11 PRESIDING JUDGE: Very well.

12 MR JORDASH: People have gone into the detention centre to
13 take his photograph for a passport. They've taken other measures
14 to ensure this happens, but, at no stage, and this has been an
15 ongoing issue, has anyone come to me with any official report and
16 said, "Mr Jordash, this is happening. Please report this to your
17 client." I've had an informal contact with somebody in the
18 Court, who reports meetings happening with various section heads;
19 information about Mr Sesay's private medical details are
20 discussed; operational steps are discussed and, yet, nobody sees
21 fit to pass that to his Defence team, who can pass that
22 information to Mr Sesay. More importantly, of course, no one
23 sees fit to pass that information to Mr Sesay.

24 PRESIDING JUDGE: Speaking for myself, that sounds very
25 much like an unfortunate trend of things. I would, in fact, take
26 the view that these are matters which are of concern, given the
27 right that you are, in fact, representing your client in every
28 respect. Perhaps the best thing to do is, when you leave the
29 Chamber today, to put this in writing to the Registrar, making

1 these observations quite clearly, and clearly deploring, because
2 that's the way I would say this breakdown in communication -- I'm
3 particularly intrigued to hear that such arrangements would be
4 afoot, and the lawyer who is the bona fide, and the credited
5 representative of the client, is more or less kept in the dark.

6 MR JORDASH: Yes.

7 PRESIDING JUDGE: So I'm really shocked, and I think you
8 need to write a strong letter of protest.

9 MR JORDASH: I will make sure that it is done. But can I
10 say that it was no criticism of the representative in Court who
11 has done his best, as far as he can, to inform me what is going
12 on.

13 PRESIDING JUDGE: I can tell you what I think. Once more,
14 when little organisations try to be very bureaucratic, these are
15 some of the lapses. But they need some of us, like you, to keep
16 reminding them that they're dealing with human beings.

17 MR JORDASH: Thank you, Your Honour. I appreciate those
18 comments.

19 JUDGE BOUTET: Mr Presiding Judge, if I may. It's not to
20 defend anybody, and you raise the issue that the health condition
21 of your client are being discussed. We have commented in the
22 past, not necessarily about your own client, about the privacy,
23 but at the same time, I think you will also recognise that his
24 health condition has been raised in Court publicly. So whether
25 or not he has a medical problem, he is fairly well known, so how
26 extensive is the problem, I don't know. I only know what you
27 have informed us, but I'm not a doctor. I don't know how and to
28 what extent now that this has been discussed in meetings. I
29 would ask you, as well, when you write about this particular

1 matter, to urge whoever it is to be careful about the privacy of
2 your client, as such. I don't know, there might be other medical
3 conditions associated with it that I'm not aware, and it is not
4 the business of other people, unless there is a consent. The
5 mere fact that one is detained does not make it an open case for
6 publication of whatever health condition that person may have.
7 So, there is discretion that needs to be maintained, but I say
8 this with a caveat that some of that information is in the public
9 domain. I think it is important, because you have raised the
10 issue, that his conditions and his health conditions are being
11 discussed without your knowledge or without his consent, but
12 there is some of it that may be discussed, because, as I say,
13 it's public knowledge, but not all of it.

14 MR JORDASH: Your Honour, I'm grateful for those comments
15 as well.

16 PRESIDING JUDGE: As I say, for me, what is particularly
17 troubling is the fact that you are probably left out of the
18 picture. It's unacceptable. It's certainly unacceptable.

19 MR JORDASH: Thank you.

20 PRESIDING JUDGE: You're on record as representing him and
21 you've been doing your best to do that with all the diligence,
22 and no administrative lapse should justify that. I think they
23 need to be reminded of that. That's my own position.

24 MR JORDASH: A letter will be sent. Thank you.

25 PRESIDING JUDGE: Let's move on. Second accused, anything
26 to report on the health of the accused?

27 MR NICOL-WILSON: Your Honours, the second accused is in
28 good health.

29 PRESIDING JUDGE: Thank you. Mr Jordash, anything you want

1 to say in respect of the third accused?

2 MR JORDASH: I've had no issues reported to me by Mr O'Shea
3 in relation to Mr Gbao's health.

4 PRESIDING JUDGE: Very well. Detention issues. Any there
5 any detention issues that you want to raise, getting back to you,
6 Mr Jordash?

7 MR JORDASH: I would like to raise something, but I'd like
8 to do that in a closed session.

9 PRESIDING JUDGE: Very well. At the end of the status
10 conference.

11 MR JORDASH: Yes, please.

12 PRESIDING JUDGE: Or before we conclude the status
13 conference.

14 MR JORDASH: Yes, please.

15 PRESIDING JUDGE: All right.

16 JUDGE BOUTET: If I may, Mr Jordash, is that for the
17 detention issue? Do you wish people from detention to be here or
18 a representative from the Registrar?

19 MR JORDASH: Not to continue Mr Toufar's -- not to detain
20 him for too long, but it might be useful if he remained.

21 JUDGE BOUTET: I'm just asking that because I don't know
22 what you will be raising, but it might be of interest to us to be
23 able to convey some of these messages to whoever, I don't know.

24 MR JORDASH: I think it would be certainly useful for him
25 to remain. It is an issue for the Registry, as I see it.

26 PRESIDING JUDGE: Not for the detention facility?

27 MR JORDASH: Not for detention; related to them, but the
28 issue will relate to a decision, a mechanism to be put into place
29 with the Registry.

1 PRESIDING JUDGE: Very well. Then, Mr Toufar, we will ask
2 you to stay. This is not likely to be a very gruelling
3 proceeding, so I'm sure that you can forego your time.
4 Mr Nicol-Wilson, any issue in respect of your client?

5 MR NICOL-WILSON: None, Your Honours.

6 PRESIDING JUDGE: Mr Jordash, in your capacity on behalf of
7 the third accused, anything?

8 MR JORDASH: Nothing for Mr Gbao, either.

9 PRESIDING JUDGE: Well, let's move on to the Defence case
10 preparation. As we all recall, the trial of the RUF case
11 commenced on the 5th of July 2004, and the Prosecution closed its
12 case on the 2nd of August 2006, after 182 days of trial. On the
13 25th of October 2006, this Trial Chamber delivered its oral
14 decision on Defence motions for judgment of acquittal, pursuant
15 to Rule 98 of the Rules. Each of the Defence motions was
16 dismissed, although the Trial Chamber found that no evidence had
17 been adduced by the Prosecution in relation to several
18 geographical locations pleaded in the indictment in various
19 counts. Consequently, each accused has been put to his election
20 to call evidence, if he so desires.

21 This status conference has been called pursuant to the
22 scheduling order for status conference, issued on the 25th
23 of October 2006, for the purpose of working out the implementing
24 modalities for the preparation and presentation of the Defence
25 case. In that order, the Chamber indicated various issues that
26 the parties, and, in particular, the Defence, should be prepared
27 to address in Court today. We can begin straightaway with the
28 witness-related issues and focusing specifically on the number of
29 Defence witnesses. Can the Defence for the first accused

1 indicate the number of witnesses it intends to call, and also
2 whether there will be any common witnesses with other Defence
3 teams, and whether there are going to be character witnesses.
4 Mr Jordash, here, we are urging that you give us some hard
5 figures, even if they are by way of estimations or
6 approximations, merely for the purpose of constructive planning.

7 MR JORDASH: Certainly. I'll do my best.

8 PRESIDING JUDGE: Do the best you can.

9 MR JORDASH: They are estimates, because we are still
10 investigating, and we are still seeing the witnesses we have. I
11 think we will have an overall list of approximately 300, with a
12 core list of about 100, and I would hope to call approximately
13 100 witnesses. We will take our lead from the Prosecution and
14 have a back-up list and a core list.

15 PRESIDING JUDGE: Right. Any further details on that, at
16 this stage? Or that's just what we can content ourselves with
17 for the time being?

18 MR JORDASH: Well, in relation to the other questions --

19 PRESIDING JUDGE: For example, whether there will be any
20 common witnesses with any other Defence teams, do you have any
21 estimate?

22 MR JORDASH: We haven't, in our investigations, worked with
23 the other teams, and as far as I am concerned, my tendency is not
24 to, but I wouldn't rule it out.

25 PRESIDING JUDGE: So, in other words, for the time being,
26 you're not likely to do that?

27 MR JORDASH: No, not likely, either as joint factual
28 witnesses or joint experts. I don't intend to do that.

29 PRESIDING JUDGE: Thank you.

1 JUDGE BOUTET: If I may, Mr Presiding Judge. I know you
2 are doing your own investigation with your own people, your
3 staff. At this stage, you've not shared any of this information,
4 from what I hear, with other teams. But, as we move along, is it
5 likely that you're going to share some of your decisions with
6 other teams? I'm just raising that as a possible issue that may
7 achieve some positive result in a sense that -- I don't know if
8 you're calling witnesses about factual issues, as such, in one
9 particular location, as such, presumably. As I say, witnesses
10 are likely to be called by accused number two and number three on
11 that factual scenario, as such. That's what I mean.

12 MR JORDASH: Certainly.

13 JUDGE BOUTET: Now, I know you're the first one to lead
14 this evidence, so it's difficult for you to know if the other
15 ones are common or not. It's more for the other ones to inform
16 the Court, I would imagine, of their common grounds with you,
17 rather than the opposite. But can we accept, and think that
18 there will be some co-ordination, if I can use this word, between
19 your team and the other teams. We are some time away from
20 starting your case, but especially the case for the second
21 accused or the third accused, but any effort made in that
22 direction will certainly be of assistance not only to you, but to
23 us as well.

24 MR JORDASH: Certainly. I can say at this stage, I see no
25 value in -- I see value in brevity in presenting a Defence case,
26 for sure, and I have no intention of leading a case which is
27 long, simply for the sake of leading a case which is long. I can
28 see that there are areas which there are common interests, and I
29 have in mind, particularly, December '98 in the Bombali,

1 Tonkolili District through parts of 1999, and certainly during
2 the disarmament period, but there are parts of this case, which
3 there certainly could not be joint witnesses. I have in mind the
4 Kono crime base, particularly. I can assure the Court I will do
5 everything I can to negotiate with my co-accused to present the
6 briefest of cases. Having spoken to Mr O'Shea, I know he's
7 unable to give any certainty one way or the other, but he
8 certainly expressed his interest also in proceeding with joint
9 witnesses, if it is at all possible. Again, I think the Bombali,
10 Tonkolili 1998, 1999, Makeni 2000, perhaps, again lends itself to
11 some sort of joint co-ordination with the third accused as well.

12 PRESIDING JUDGE: Before you sit down, and I move on to the
13 next accused, at this point in time, do you envisage calling any
14 character witnesses?

15 MR JORDASH: Yes. I would certainly want to call live
16 certain character witnesses.

17 PRESIDING JUDGE: Yes, but you don't have any hard figures
18 at this time, or do you have approximations?

19 MR JORDASH: I think character witnesses, I would estimate
20 at around -- well, let me put it this way: I would like to call
21 about ten live, but I can envisage applying pursuant to 92bis in
22 relation to, say, perhaps 30 or 40 more.

23 PRESIDING JUDGE: Very well.

24 MR JORDASH: They, though, were not included, the 30 or 40
25 92bis wouldn't be included in the 100 core list.

26 PRESIDING JUDGE: Thank you. Counsel for the second
27 accused, I put to you the same question. In other words, can you
28 indicate the number of witnesses at this stage, again, asking
29 merely for approximations and estimations, total number of

1 witnesses.

2 MR NICOL-WILSON: Yes, Your Honours. At the moment
3 investigations are still ongoing. The numbers I would give would
4 be by means of approximation. We have about 150 witnesses, and
5 then we intend to categorise them into 75 core witnesses and 75
6 back-up, but we certainly do not intend to call more than 75
7 witnesses. Then on the issue of common witnesses, we've not yet
8 compiled our witness list yet.

9 PRESIDING JUDGE: But is that a real --

10 MR NICOL-WILSON: There is a possibility --

11 PRESIDING JUDGE: -- real option for you?

12 MR NICOL-WILSON: Yes, we would very much want to, but then
13 we have not seen the witness list of the other [indiscernible]
14 and so we don't know whether we have common witnesses at this
15 stage. I'm sure as we get along, we'll be able to find out. We
16 also intend to call character witnesses, but no --

17 PRESIDING JUDGE: No figures yet.

18 MR NICOL-WILSON: -- at the moment.

19 PRESIDING JUDGE: On the high side or the low side, just
20 off the cuff.

21 MR NICOL-WILSON: Between ten and 50.

22 PRESIDING JUDGE: All right. Thank you. Mr Jordash, for
23 the third accused.

24 MR JORDASH: On behalf of Mr Gbao, they have 50 witnesses
25 so far. They envisage more, given the lateness of their
26 instructions, and the late commencement of their investigation.

27 PRESIDING JUDGE: Any specific instructions on common
28 witnesses, at this stage? Would they also be categorising those
29 witnesses into core and back-up, probably this would be the

1 pattern?

2 MR JORDASH: I suspect so, but I don't have instructions on
3 that.

4 PRESIDING JUDGE: Quite.

5 MR JORDASH: In terms of joint witnesses, the issue is an
6 open one and, again, I think, if at all possible, in order to
7 ensure judicial economy.

8 PRESIDING JUDGE: Yes, and character witnesses is also a
9 possibility.

10 MR JORDASH: That, I don't have instructions on.

11 PRESIDING JUDGE: Very well. We probably might have Mr --
12 the representative from the Defence office fill in those gaps
13 when he comes.

14 In addition, the Chamber notes that Rule 85(C) of the Rules
15 provides that the accused persons, may, if they desire, appear as
16 witnesses in their own Defence, because the Rule states clearly
17 that the accused may, if he so desires, appear as a witness in
18 his own defence. If he chooses to do so, he shall give evidence
19 under oath or affirmation, and, as the case may be, thereafter
20 call his witnesses. The question now is, Mr Jordash, will your
21 client be testifying at the trial?

22 MR JORDASH: No final decision has been made.

23 PRESIDING JUDGE: Probabilities?

24 MR JORDASH: The wind is blowing in the direction of him
25 testifying.

26 PRESIDING JUDGE: A high probability.

27 MR JORDASH: A probability, moving towards the high
28 probability.

29 PRESIDING JUDGE: Right. We'll take that.

1 JUDGE ITOE: A probability being what? The high
2 probability being what?

3 MR JORDASH: That he will testify. Somewhere between
4 probable and highly probable.

5 PRESIDING JUDGE: Highly probable. All right. I ask the
6 same question in respect of the second accused. What is the
7 probability?

8 MR NICOL-WILSON: Well, the second accused has expressed an
9 intention to testify.

10 PRESIDING JUDGE: So, in fact, put it as a certainty?

11 MR NICOL-WILSON: No, well, it is a probability, because we
12 are still studying this position and we will provide necessary
13 advice to him, and then come to a conclusion.

14 PRESIDING JUDGE: So probability here, too. And you don't
15 want to go the way Mr Jordash did?

16 MR NICOL-WILSON: No.

17 PRESIDING JUDGE: Low to high.

18 MR NICOL-WILSON: No. The chances are 50/50.

19 PRESIDING JUDGE: Mr Jordash, speaking on behalf of the
20 third accused, what's your information to the Court?

21 MR JORDASH: Apparently Mr Gbao has indicated an intention
22 too, but the issue is an open one.

23 PRESIDING JUDGE: Right, an intention to testify. Right.
24 Well, let's go back. Let's cover Rule 92bis witnesses. You've
25 already indicated -- but do you have any estimates for us? Rule
26 92bis, or is it too early for you to give us any firm
27 indications, but definitely, yes, you will be calling 92bis
28 witnesses?

29 MR JORDASH: Yes. The ones I've indicated in relation to

1 character witnesses. Perhaps I can't be very accurate, but I can
2 say that I see a value in using the 92bis to shorten the
3 proceedings.

4 PRESIDING JUDGE: Very well. In other words, to reduce the
5 back-up and the core, or something?

6 MR JORDASH: Yes. And having seen the difficulty of
7 cross-examining TF1-334, I can see the forensic value in it as
8 well.

9 PRESIDING JUDGE: Okay, fine. Mr Nicol-Wilson, what's your
10 position regarding 92bis witnesses?

11 MR NICOL-WILSON: Your Honours, we do not have any definite
12 figures at the moment.

13 PRESIDING JUDGE: But you intend to make use of that
14 machinery?

15 MR NICOL-WILSON: Definitely.

16 PRESIDING JUDGE: Mr Jordash, speaking for third accused?

17 MR JORDASH: I don't have instructions on that, I'm afraid.

18 PRESIDING JUDGE: Thanks. Now, expert witnesses, back to
19 you, Mr Jordash. Do you intend to call expert witnesses, and
20 about how many?

21 MR JORDASH: I think about four.

22 PRESIDING JUDGE: About four experts, okay. In terms of
23 the nature of their proposed testimony, do you anticipate giving
24 us some kind of overview?

25 MR JORDASH: Certainly. One would be anthropological.

26 PRESIDING JUDGE: Anthropological.

27 MR JORDASH: In terms of the RUF as an organisation, and
28 the nature of the conflict.

29 PRESIDING JUDGE: Yes, anthropological.

1 MR JORDASH: Two would be a military expert; three would be
2 a child psychologist; and four, and this is more tentative than
3 the others, an expert in the diamond mining industry. There is a
4 fifth, but this is very, very much an issue which is unsettled.

5 PRESIDING JUDGE: Very well.

6 MR JORDASH: Which is medical evidence dealing with
7 Mr Sesay's injury sustained at Bo.

8 PRESIDING JUDGE: A medical expert, yes.

9 MR JORDASH: Certainly the first three I indicated are
10 certainties. I should hesitate to use that word, but as certain
11 as I can be about that it's going to happen.

12 PRESIDING JUDGE: But you have no thoughts yet on when the
13 reports will be disclosed? You've not given that a thought at
14 all?

15 MR JORDASH: If I can put it this way, and I don't want to
16 jump back on to my old hobby horse, but there have been a number
17 of factual allegations served throughout the Prosecution case.
18 The reality is that, until the end of the Prosecution case, it
19 has not been possible to have a full understanding of the
20 Prosecution case. It's therefore not been possible to instruct
21 experts until the end of the Prosecution case, and we are racing
22 against the clock to do that now. We've identified them, we've
23 approached them, and it's simply an issue of getting them going
24 with their work. I anticipate that, in relation to the child
25 psychologist, the anthropological expert, and the military
26 expert, probably we could be in a position to serve the reports
27 in about two to three months.

28 PRESIDING JUDGE: Very well.

29 MR JORDASH: I would certainly want to be settled with

1 expert evidence, in terms of what we will be presenting, before
2 the beginning of the case for the Defence, but obviously it is
3 dependent, to a certain extent, on when they can come to do their
4 work, and their professional commitments.

5 PRESIDING JUDGE: Thank you. Mr Nicol-Wilson, I ask the
6 same questions of you.

7 MR NICOL-WILSON: Your Honours, we will be calling two
8 expert witnesses. One will be an expert on command position and
9 command within the structure of a guerilla army, as opposed to a
10 regular army, with specific reference to the RUF.

11 PRESIDING JUDGE: Yes.

12 MR NICOL-WILSON: And the second expert will be on age
13 verification of alleged child combatants.

14 PRESIDING JUDGE: Yes.

15 MR NICOL-WILSON: We hope to have both expert reports ready
16 by the end of January next year, which is about three months.

17 PRESIDING JUDGE: Thank you. Mr Jordash, for the third
18 accused.

19 MR JORDASH: I think they haven't yet appointed any
20 experts. At least that's the position -- but I can say that I
21 think they're waiting, to a certain extent, to see what happens
22 with the first and second accused.

23 PRESIDING JUDGE: Let's move on to protective measures.
24 The Chamber is advised that the Defence for the first accused has
25 filed a motion for protective measures for its witnesses. Do the
26 other Defence teams intend to seek protective measures for their
27 witnesses?

28 MR NICOL-WILSON: Yes, Your Honours, we do on behalf of the
29 second accused.

1 PRESIDING JUDGE: And you will be filing a motion in due
2 course?

3 MR NICOL-WILSON: In due course.

4 PRESIDING JUDGE: Mr Jordash, do you have any knowledge
5 about that issue in respect of the third accused?

6 MR JORDASH: They will seek the same protection as those
7 enjoyed by the Prosecution witnesses.

8 PRESIDING JUDGE: Very well. Special defences. Pursuant
9 to Rule 67 of our Rules, the Defence shall notify the Prosecutor
10 of its intent to enter the defence of alibi and/or any special
11 defence, including that of diminished or lack of mental
12 responsibility. The second accused, in his defence pre-trial
13 brief of 1 July 2004, indicated that he reserves the right to
14 enter, and I quote here "any special defence it hopes to rely
15 on." The other Defence teams did not make any reference to
16 special defences so far. Can we have your position now? First
17 accused?

18 MR JORDASH: No special defences.

19 PRESIDING JUDGE: No special defences. Second accused?

20 MR NICOL-WILSON: Your Honours, I cannot say at this stage,
21 but this is a position we will look into.

22 PRESIDING JUDGE: You took a position in your pre-trial
23 brief. Didn't you take a position in the pre-trial brief that
24 you reserve the right, but you've not done anything?

25 MR NICOL-WILSON: Yes, Your Honours.

26 PRESIDING JUDGE: You still want to reserve the right.

27 MR NICOL-WILSON: We still want to do that and get back to
28 the Chamber in due course.

29 PRESIDING JUDGE: Mr Jordash, you have nothing in respect

1 of the third accused? Is he going to raise any special defence?

2 MR JORDASH: I don't know in relation to that. I am sorry.

3 JUDGE BOUTET: Mr Jordash, you indicated that you do not
4 intend to raise any special defence in your use of special
5 defence, you would include alibi for that purpose? I say this,
6 because in the Rules, it's under 67(A)(ii)(a), the defence of
7 alibi and (b) is special defence, so they're separated. So the
8 indications are there is alibi, and then special defence separate
9 and apart. I took your comment to be you do not intend to raise
10 any defence of alibi, or any other special defence. I just want
11 to have the matter clear, if possible.

12 MR JORDASH: Well, two aspects of the defence jump to mind
13 in relation to alibi: One is the dispute in relation to whether
14 we were present at the Kono crime base from around February 1998
15 until our return in December 1998. The thrust of the Prosecution
16 case seems to be that we weren't there, but there are witnesses
17 who say we were. We say we were never there. That's one aspect.

18 PRESIDING JUDGE: In that regard, you may rely on the
19 alibi, the technical defence of alibi? You may.

20 MR JORDASH: It's an inconsistent Prosecution case. They
21 say, overall, we were not there, and we agree with them.

22 PRESIDING JUDGE: That's the point. What do you say?

23 MR JORDASH: We say we were not there. They say -- well,
24 they say lots of things, wear lots of shoes.

25 JUDGE BOUTET: But you say you are there, not there. They
26 are not saying you're not there. They are saying both.

27 MR JORDASH: Well, they also say there is an Issa Camp at
28 the Guinea Highway. I don't intend to call evidence to disprove
29 that allegation. The majority of witnesses say we're not there,

1 according to the Prosecution.

2 PRESIDING JUDGE: So, in other words, they've raised the
3 alibi for you, wouldn't you say?

4 MR JORDASH: In a sense. It may be something that we can
5 deal with by way of agreed facts, although I suspect the
6 Prosecution would rather have both positions.

7 PRESIDING JUDGE: It may be something, too, that comes
8 under the rubric of reasonable doubt.

9 MR JORDASH: Well, I wouldn't certainly say that, but -- to
10 cut this short, I would say that I don't intend to file an
11 alibi --

12 PRESIDING JUDGE: Very well.

13 MR JORDASH: -- unless that is raised by the Prosecution,
14 and they want to see one, then I would be happy to do it.

15 PRESIDING JUDGE: Okay.

16 MR JORDASH: Then in relation to the second issue, would be
17 whether Mr Sesay was present at the abduction of peacekeepers in
18 Makeni. Again, it would seem the thrust of the Prosecution case,
19 aside from TF1-366, would be that we're not there. TF1-117, I
20 think, also said we were there. I think the UNAMSIL peacekeepers
21 didn't appear to see us there. Again, the same position.
22 Overall, the Prosecution would suggest we're not there, and we
23 agree.

24 PRESIDING JUDGE: Of course, when it comes to diminished
25 responsibility or lack of [indiscernible]. That's not on.

26 MR JORDASH: I think that might be something for counsel
27 rather than the accused.

28 PRESIDING JUDGE: You have given your position on this?

29 MR NICOL-WILSON: Yes.

1 PRESIDING JUDGE: Right. Now, let's move on to the length
2 of the Defence case. The inquiry now is what is the anticipated
3 length of the Defence case for each accused person. Mr Jordash,
4 do you want to, again, give us an approximation?

5 MR JORDASH: Yes. I've had in my mind, for some time, to
6 try to do the Defence case in between three to four months.
7 Again, I do not see the value in dragging out a Defence case,
8 simply to make it long. I can see a definite value in trying to
9 get everything done within four months.

10 PRESIDING JUDGE: Mr Nicol-Wilson, is your anticipated
11 length?

12 MR NICOL-WILSON: Your Honours, we're looking at 90 trial
13 days.

14 PRESIDING JUDGE: Ninety trial days. Mr Jordash, what are
15 your instructions in respect of the third accused, if any?

16 MR JORDASH: Too early to say, I think, is their position.

17 PRESIDING JUDGE: Next item is filing of Defence materials.
18 It is the Chamber's disposition to require each Defence team to
19 file certain materials concerning the presentation of Defence
20 case. In particular, the Chamber intends to order the Defence to
21 file a list of witnesses that the Defence intends to call,
22 containing, for instance, a detailed summary of the witnesses'
23 intended testimony; the points of counts of the indictment to
24 which each witness will testify, as well as a list of exhibits.
25 Are there any comments from the parties concerning this? This is
26 usually, based on one experience, the experience of the CDF,
27 usually an area of intense controversy. We might just hear your
28 thoughts, both sides. You first, Mr Jordash.

29 MR JORDASH: I will make sure the materials are as complete

1 as the Prosecution's.

2 JUDGE ITOE: As what?

3 MR JORDASH: As complete and as comprehensive as the
4 Prosecution's.

5 JUDGE ITOE: That's our concern, as a matter of fact, and
6 when the Presiding Judge raises the issue of that domain being
7 controversial, it is because the general complaint by the
8 Prosecution is that the materials in the summaries, you know, are
9 not sufficient to enable them to apprehend the case that the
10 Defence intends to present. So that is why the Chamber has had
11 to use the word "detailed," you know. We've qualified it to be
12 detailed, because we don't want the experiences -- we want to
13 limit the contentions, you know, between the Defence and the
14 Prosecution, at least to a great extent. As you very well know,
15 it is not an obligation for you to disclose the statements of
16 Defence witnesses to the Prosecution, unless, of course, it comes
17 to a stage where the Trial Chamber has to use its discretion to
18 compel you to do so. So I think that I would not get to that
19 level if what is disclosed to the Defence, or, rather, to the
20 Prosecution, is as detailed as it can be. So they can be able to
21 appreciate the nature of the evidence that you intend to call
22 through your witnesses.

23 MR JORDASH: Certainly.

24 JUDGE BOUTET: Mr Jordash, before you respond, as alluded
25 to by my brother, Justice Itoe, it has been the practice in the
26 other trial, and our approach, not to order the Defence to
27 disclose witness statements, save and except when there were some
28 difficulties, as such. It is still our intent not to order the
29 disclosure of statements to the Prosecution. We expect along the

1 lines, as Justice Itoe has mentioned, that the information will
2 be sufficient in the summary provided to allow the Prosecution,
3 in this case, to know, essentially, what a witness is about to
4 speak, and that includes, obviously, matters that you contended
5 with all along about locations and whatever it is. I mean, the
6 essential feature of the testimony or the content of the
7 testimony of a particular witness. We say this, because we have
8 some experience now, but in spite of that experience, it's been
9 positive, and we have not ordered a disclosure of a full and
10 complete statement in more than 95 per cent of the cases.

11 MR JORDASH: Certainly.

12 PRESIDING JUDGE: Clearly, to sum it up, this experience
13 has taught us that this is an area, because of the intense
14 controversy that has surrounded this particular practice, one of
15 the familiar accusations is that this is an area which has a high
16 potential of trial by ambush, and we probably, of course, have
17 dispelled that, that we don't think that any side at any one
18 particular time, in terms of exchange of materials is in any way
19 guilty of mala fides, but we just want you to know that the lack
20 of specificity in some of these summaries can lead to such
21 accusations being leveled. But we have always dealt with them in
22 the finest traditions of the profession that, clearly, no one has
23 such intentions in terms of the judicial process. It is just
24 worth raising the issue.

25 MR JORDASH: The difficulty would appear to be that if one
26 takes the Prosecution's approach and takes their word as correct,
27 that the witnesses would appear to, during the process of
28 clarification, be prone to producing lots of new factual
29 assertions. We, taking the Prosecution at their word, would

1 therefore anticipate the same happening with our witnesses.
2 While I don't intend to be facetious or difficult, as
3 Your Honours know, I have complained at length about notice and
4 lost practically all my complaints and we have now a clear guide
5 as to what is appropriate notice of our respective cases.

6 PRESIDING JUDGE: The other thing, of course, is that we
7 will accord, as the Bench is clearly obliged to do in the
8 interest of even-handed justice, accord to Defence witnesses the
9 same degree of latitude which we accorded the Prosecution under
10 the doctrine of orality. The only thing is that we are, in fact,
11 enjoining the Defence to provide the Prosecution with as
12 comprehensive summaries, as far as you can go.

13 MR JORDASH: May I say this finally: I see a value in
14 getting witnesses, finding out what they have to say, knowing
15 your case before you go to Court.

16 PRESIDING JUDGE: Yes, quite right. Well, we appreciate
17 that, certainly.

18 JUDGE ITOE: And, Mr Jordash, I think we would also advise,
19 you know, the members of the Defence teams to ensure they record
20 statements, you know, from these witnesses and that they have
21 them handy in the event of the Chamber seeking recourse to those
22 statements if it ever comes to that level. Because we have had
23 experiences, as you now know, of the Prosecution going beyond the
24 summaries and asking, and applying to us, for the Defence to be
25 asked to produce a statement of a particular Defence witness. I
26 think it is a recognised practice now, that in the course of your
27 investigations, of course, you will be requested, or, rather, you
28 will be required to record statements from your respective
29 Defence witnesses, for you to have them handy, in case, in the

1 event of the Tribunal seeking recourse to those statements,
2 should it become extremely necessary. Like Honourable Justice
3 Boutet has stated, we have hardly done this, but we have done
4 this in a few instances. It could well be at your level that we
5 also exercise this privilege, this discretion, to order the
6 production of one or two statements from one of your Defence
7 witnesses. And what I'm saying holds good for the other Defence
8 teams as well.

9 PRESIDING JUDGE: May we hear the Prosecution's
10 contributions to this issue? It's a very important issue, and
11 it's important to hear your side.

12 MR HARRISON: Yes. The concern is related to the timing as
13 well as the content. Just doing a quick addition of the
14 potential witnesses, it appears as if there are over 400 possible
15 witnesses. If the timing of the production of the list of
16 witnesses is such that one simply would not realistically have
17 the sufficient amount of time to carry out some kind of
18 preliminary investigation of the witnesses, then the purpose of
19 the list somewhat loses its utility. So it's a question of the
20 earlier the production of the list, the more useful the list
21 becomes, because whatever questioning or whatever process the
22 Prosecution would undertake to look into the evidence that's
23 likely to be adduced, can only be done with sufficient time to
24 carry out that task.

25 PRESIDING JUDGE: Thank you. The next item is
26 statements -- go ahead with your own contribution on this issue.

27 MR NICOL-WILSON: Yes, Your Honours, we intend to disclose
28 detailed summaries of statements, but then I want to seek a
29 clarification at this stage, as to whether the disclosure

1 obligation is only to the Prosecution, or to the other co-accused
2 persons, because we think, as a matter of procedure, we will be
3 entitled to cross-examine witnesses summoned by the first accused
4 and the third accused, and it is very possible that the first and
5 the third accused may have witnesses whose testimonies will have
6 an impact on the second accused. So we're basically saying, even
7 though there is no legal obligation for disclosure, that could be
8 done --

9 PRESIDING JUDGE: Well, let's hear if Mr Jordash wants to
10 intervene on that.

11 MR JORDASH: It's the subject of the special measures
12 application. We've applied for non-disclosure to the co-accused
13 on the same terms as applies to the Prosecution. So we'll be
14 seeking -- I forget the number of days we want to --

15 JUDGE BOUTET: You're not objecting. What you're
16 suggesting is whatever time line is in place for the disclosure
17 of the information, as such, would apply to the co-accused. In
18 other words, if it is disclosed, let's see, I think it is 21
19 days, I may be wrong in the numbers, but if it is 21 days, you're
20 saying that -- you're not objecting to disclosing to co-accused,
21 you're objecting as to the time limits of it.

22 MR JORDASH: Yes, exactly. I appreciate, from
23 Mr Nicol-Wilson, that he was applying for a decision now, whereas
24 I think it's subject to the special measures application.

25 JUDGE BOUTET: I understood his application, Mr Jordash, to
26 be more, in a sense, of if there is disclosure to the
27 Prosecution, to the same extent, there should be disclosure to
28 the co-accused of the summary, not only of the list of witnesses,
29 but the summary of what they are about to say so they can prepare

1 their own cross-examination. The same will apply to you,
2 obviously for witnesses they may call, because you will be
3 entitled to cross-examine these witnesses and, therefore, you
4 should know what they are to say about your client, for example.

5 MR JORDASH: I agree.

6 PRESIDING JUDGE: I think the position should be that there
7 should be disclosure to the other accused persons.

8 MR JORDASH: Yes, I agree.

9 PRESIDING JUDGE: It's good practice. Do you have anything
10 to say in respect of the third accused, Mr Jordash?

11 MR JORDASH: I don't have instructions on that. But I
12 suspect their position will be the same. I suspect.

13 PRESIDING JUDGE: What you have articulated for the first
14 accused?

15 MR JORDASH: Yes. Can I just inform the Court, Mr Gbao
16 does waive his right to be present. There was some
17 misunderstanding between the detention staff and Mr Gbao. He has
18 ticked the right box.

19 PRESIDING JUDGE: Right. The document will, in fact, be --

20 MR JORDASH: That's the box to waive his right to be
21 present.

22 PRESIDING JUDGE: -- accepted with the necessary
23 corrections. Yes, Mr Nicol-Wilson.

24 MR NICOL-WILSON: I just want to give an indication as to
25 the time line in terms of filing of the Defence materials. As
26 in, we are suggesting first week of February. We are subject to
27 a decision by the Court, but we just want to give an
28 indication --

29 PRESIDING JUDGE: In other words, your proposal?

1 MR NICOL-WILSON: Exactly, Your Honour.

2 PRESIDING JUDGE: Mr Jordash.

3 MR JORDASH: It would have been nice if Mr Nicol-Wilson had
4 discussed it with us, but it will depend, I submit, on when the
5 trial is to commence. If it's not starting until May,
6 then February is much too early.

7 PRESIDING JUDGE: We'll just make a note of that proposal.
8 The next item is the statement of agreed and contested facts and
9 issues. Pursuant to Rule 73ter of the Rules, the Trial Chamber
10 may order the parties to file before the commencement of the
11 Defence case a statement of admissions and matters not in
12 dispute, as well a statement of contested matters of fact and
13 law. Let's hear your comments, Mr Jordash, on that.

14 MR JORDASH: I intend to apply to the Prosecution to agree,
15 hopefully, a large number of facts in the next two months,
16 provided Your Honours don't set a more limited timetable, and I
17 hope it will be able to shorten the trial. I'm quite happy to
18 indicate contested facts, although I hope it's clear from the
19 nature of our cross-examination --

20 JUDGE ITOE: And any issues relating to Bo as well, I
21 suppose.

22 MR JORDASH: Exactly. Yes, I intend, without an order of
23 the Court, to apply for some agreed facts.

24 PRESIDING JUDGE: Yes.

25 MR JORDASH: And, with an order of the Court, I would be
26 more than content to indicate contested facts.

27 JUDGE BOUTET: This is, certainly, a good area where
28 co-operation, to an extent, without compromising your position,
29 is more than welcome and encouraged in that direction to come to

1 an agreement of what is and what is not disputed, as such, to
2 focus more on your examination-in-chief of your witnesses, and
3 the witnesses you are intending to call. I know in the number of
4 witnesses, the number you have given, you're going wide at this
5 particular moment. Obviously the Prosecution agrees to many of
6 the issues for which are, at this particular moment, your
7 potential witnesses. That list should be reduced. Your estimate
8 of three to four months hearing of your case will depend,
9 obviously, to a large extent, on some of these matters, matters
10 that, at this time, are not clear, but if you come to an
11 understanding as to it is or it is not in dispute, then your
12 examination-in-chief will be more focused and everybody will gain
13 from it. I can only, again, too, suggest that any movement in
14 that direction, and meeting, would bring positive results. They
15 are not only welcome, but strongly encouraged by the Bench.

16 MR JORDASH: I completely agree. May I say, for the
17 record, and it doesn't concern Mr Harrison or Mr Bangura, because
18 they weren't here, but I was somewhat astonished that the
19 Prosecution didn't proceed with specific and sensible suggestions
20 about agreed facts in their case at the beginning of this trial.
21 We may not have been here two years later if that had been done
22 at that stage. There was a suggestion, but the suggestion was:
23 Will you agree that you're guilty of the offences on the
24 indictment, which, clearly, is not a negotiating position. The
25 agreed facts we will seek from the Prosecution will, hopefully,
26 be sensible and, hopefully, based largely upon their own
27 evidence.

28 PRESIDING JUDGE: Right. Thanks. Mr Nicol-Wilson, your
29 position.

1 MR NICOL-WILSON: Your Honours, we intend to hold
2 consultations with the Prosecution in order to have certain facts
3 agreed upon and state our position on certain issues that we do
4 contest.

5 PRESIDING JUDGE: Right.

6 MR NICOL-WILSON: And then just to briefly go back and
7 revisit the indication I gave as to the time, at which we will be
8 in a position to file our Defence materials, I gave that
9 indication so as to assist the Court in a determination as to
10 when the trial should start, rather than the other way around,
11 because all we have at the moment are just rumours.

12 PRESIDING JUDGE: We will factor it appropriately where we
13 think it is necessary to have it factored. Mr Jordash, do you
14 have anything new to say in respect of the third accused?

15 MR JORDASH: I'm afraid I don't have instructions on that.

16 PRESIDING JUDGE: What's the disposition of the Prosecution
17 on this issue of agreed facts? Any short response that you have?

18 MR HARRISON: No, we would be --

19 PRESIDING JUDGE: More than happy.

20 MR HARRISON: Yes, pleased to review any suggestions that
21 any of the accused may have.

22 PRESIDING JUDGE: In other words, this is an area which is
23 fertile for cooperation between the Prosecution and the Defence.

24 MR HARRISON: Yes, I think you're right.

25 PRESIDING JUDGE: On the issue of opening statements, the
26 records show that the second accused took the opportunity of
27 making an opening statement at the start of the trial, in
28 accordance with Rule 84 of the Rules. Will the Defence for the
29 first accused avail itself of that Rule 84 option?

1 MR JORDASH: Yes. In relation to the third accused --

2 PRESIDING JUDGE: We remember that, in the case of the
3 third accused, there was an opportunity to make an opening
4 statement. At some point in time, because of the way that the
5 third accused was proceeding, that opportunity was aborted,
6 because it veered away from making a statement relating to the
7 evidence in response to the Prosecution's position, and rather
8 became almost a statement which was of a political nature, and
9 the Bench was certainly not prepared to listen to a political
10 statement. The question, of course, is if you're speaking for
11 the third accused now, how do you see us navigating this
12 particular -- did he really afford himself of the opportunity to
13 make a statement, and an opening statement, in respect of his
14 case, or did he not? Let's hear your thoughts on that. I know
15 you haven't considered this, but your random thoughts can be of
16 assistance.

17 MR JORDASH: Well, he had the opportunity, and he was going
18 to avail himself of the opportunity, but, I would submit, didn't,
19 because it was an approach which didn't find favour with the
20 Court.

21 PRESIDING JUDGE: And wasn't within the compass of Rule 84.

22 MR JORDASH: Exactly. And I would submit on his behalf
23 that he ought to be able to give one, concentrating on the
24 evidence, as is the requirement.

25 PRESIDING JUDGE: Well let me hear the Prosecution on that.
26 You remember the sequence of events. I don't know whether you
27 were here, but I remember very vividly, because we thought,
28 really, the statement was heavily political and was not
29 appropriate within the context of Rule 84. What would be your

1 response to Mr Jordash's?

2 MR HARRISON: He may be right. I don't know. I'd have to
3 review the trial transcript.

4 PRESIDING JUDGE: I recall very vividly the sequence of
5 events, because I think at some stage I intervened to say we are
6 not a Court of politics, we are a Court of law. Of course, we
7 will take a position on that, and we'll take it under advisement.
8 I just wanted to hear what your thoughts are.

9 MR HARRISON: The Prosecution would certainly take the view
10 that Mr Jordash has been, perhaps, caught off the cuff to make a
11 response, and should Mr Cammegh or Mr O'Shea wish to, either in
12 writing or orally, address the Court, if we had some notice, we
13 could then give the Court some guidance on what the Prosecution's
14 position might be. As I'm speaking to the Court right now, I
15 can't tell you with any clarity precisely what happened that day,
16 what was uttered, the extent of what was uttered and what the
17 consequences of such utterances should be.

18 PRESIDING JUDGE: Right.

19 JUDGE BOUTET: Mr Jordash, when you were speaking about
20 that, are you -- we're not making any decision on that, we'll
21 see, but if he were given the opportunity, are you suggesting he
22 will avail himself of that opportunity and make an opening
23 statement? Are these the instructions you have?

24 MR JORDASH: Yes. The words used by Mr O'Shea were, "In
25 principle, yes" they would avail themselves of that opportunity.

26 JUDGE BOUTET: Thank you.

27 JUDGE ITOE: Mr Harrison, you are expressing some doubts.
28 I think that what the Presiding Judge has stated was the truth of
29 the situation, and that is that he was interrupted, because he

1 went hyper political in the presentation of his opening
2 statement. I remember; I was the Presiding Judge then. We
3 stopped him, and he didn't go into the substance of what he was
4 supposed to say within the confines of Rule 84, so I think that,
5 with this, we should be able to situate ourselves on whether he
6 should be given the opportunity to come back and take advantage
7 of the provisions of Rule 84. I think the Chamber will come to a
8 decision on that.

9 PRESIDING JUDGE: Thank you. Before we go on to
10 outstanding motions and appeals, and then any other business,
11 perhaps, Mr Jordash, we can, from the Bench perspective, at this
12 point we can ask you and your colleagues the million-dollar
13 question: When do you want to start?

14 MR JORDASH: I say this with some mild embarrassment,
15 because we don't want to start until April.

16 PRESIDING JUDGE: Mr Nicol-Wilson?

17 MR NICOL-WILSON: This is one of the few positions in which
18 we are in agreement. We also want to start in April.

19 PRESIDING JUDGE: Now, Mr Jordash, speaking for the third
20 accused, would your position change? What are your instructions?

21 MR JORDASH: Words used were, "Agreeable to April."

22 PRESIDING JUDGE: That's helpful.

23 MR JORDASH: Their position was that they had to play
24 second fiddle to the first accused.

25 PRESIDING JUDGE: Very well. Does the Prosecution want to
26 factor in any proposal here? Remember we're all interested in
27 the concept of effective trial management and such concepts that
28 have come to hunt us in our judicial processes, judicial economy,
29 and trial efficiency, and all that. What is your response to

1 their own proposal?

2 MR HARRISON: Well, the short answer is that we had thought
3 that Defence counsel wanted to start in January, by virtue of
4 comments made prior to the start of the last session.

5 PRESIDING JUDGE: Yes.

6 MR HARRISON: It was the Prosecution's hope that the trial
7 would start in January, at some point in time. I didn't know,
8 and perhaps others did, but I certainly didn't know that the
9 Defence was now looking at an April date.

10 PRESIDING JUDGE: From the Chamber's perspective, we had
11 nothing firm, in terms of our own thoughts, because there were
12 other competing interests and assignments and so we had kept an
13 open mind on this, but what we wanted to do was to dispel this
14 rumourmongering, just to have some indications what you might
15 think would be appropriate. You say you'd hoped that it would
16 start January, and they're proposing they're proposing April. We
17 just want some kind of --

18 MR HARRISON: The Prosecution isn't trying to barter over
19 this.

20 PRESIDING JUDGE: No.

21 MR HARRISON: We simply had thought the Defence was wishing
22 to start in January, and we were trying to organise things to be
23 consistent with that. If they are now suggesting April, again,
24 if it is at all possible, in the Court's view, to start the trial
25 earlier than April -- if the Defence does think that it is
26 possible to start earlier than April, that is the Prosecution's
27 very firm wish.

28 PRESIDING JUDGE: Right. Okay.

29 MR HARRISON: If the Defence is not ready, then the Defence

1 is not ready.

2 PRESIDING JUDGE: Well, there are so many factors that are
3 going to be computed into this very complex equation, but these
4 are all thoughts and ideas.

5 JUDGE BOUTET: Mr Jordash, when you are suggesting April
6 being what you are aiming for, Easter is in April some time. I'm
7 not sure if it's the first week or second week, and we normally
8 have a break. April, you mean after the Easter recess? That's
9 basically what you're aiming at. I don't have a calendar in
10 front of me, but I think Easter is fairly early in April.

11 PRESIDING JUDGE: I think Easter would probably use up
12 about two weeks of April, according to my own understanding of
13 when the Easter recess will be declared.

14 MR JORDASH: Yes. I anticipate we would be ready for the
15 beginning of April, but, obviously, it would have to be
16 practically --

17 PRESIDING JUDGE: That's why I say there are so many
18 factors. The recess comes in. The records will reflect these
19 suggestions and proposals, and hopes and expectations.

20 MR JORDASH: Yes. I am sorry about any misleading of --

21 PRESIDING JUDGE: No, no. I don't think we, in fact, ever
22 thought about that. We just felt that because we had a vacuum
23 here, and we were pre-occupied with the other case, and also
24 trying to get the Rule 98 situation quickly out of the way, we
25 didn't have time to ourselves to focus on any definitive
26 position, and so that caused a lot of rumourmongering, but we
27 don't hold anybody responsible.

28 MR JORDASH: I obviously would have preferred to start
29 in January, because Mr Sesay has been in custody for a long time,

1 but there are certain things which have to be done to get ready,
2 and we're racing against time.

3 PRESIDING JUDGE: Okay. Well, outstanding motions/appeals.
4 Outstanding motions, there is one. The Sesay Defence motion for
5 immediate protective measures for witnesses and victims and for
6 non-public disclosure. There is also an application for leave to
7 appeal the decision on Defence motion to request the Trial
8 Chamber to rule that the Prosecution moulding of evidence is
9 impermissible. There is also the Prosecution application for
10 leave to appeal majority decision on oral objection taken by
11 counsel for the third accused to the admissibility of portions of
12 the evidence of witness TF1-371. There is also an application
13 for leave to appeal decision, given on the 3rd of August 2006, on
14 Defence motion for clarification and for a ruling that the
15 Defence has been denied cross-examination opportunities, and
16 there is also one confidential motion to vary protective
17 measures.

18 The Chamber is also seized of a confidential and expert
19 application. All I can say, at this stage, these pending motions
20 are under active deliberation and decisions will issue in due
21 course. According to the records, there's no outstanding motion
22 pending before the Appeals Chamber. Are there any other matters
23 which counsel wish to raise for the good of the Special Court,
24 for the interests of justice in general?

25 MR JORDASH: Only the issue I mentioned earlier concerning
26 the Registry.

27 PRESIDING JUDGE: The Registrar. Yes, well, your intention
28 is that we go into closed session; is that your wish?

29 MR JORDASH: Yes, please. I don't think it's a matter

1 which concerns either the co-accused or the Prosecution. If I
2 indicate it concerns the ill health of a member of Mr Sesay's
3 family, perhaps that indicates to everyone it's an issue which is
4 solely concerned with the first accused.

5 PRESIDING JUDGE: Yes. Let me take you through it a
6 little. Do you want to disclose specifics?

7 MR JORDASH: I'd rather not.

8 PRESIDING JUDGE: Yes. Well, if you don't want to disclose
9 specifics, let me just throw this out as a possible way of
10 approaching this issue: Is it a matter upon which you are
11 requesting some judicial pronouncement, or directive, or order,
12 or is it something for the information of the Bench?

13 MR JORDASH: Information.

14 PRESIDING JUDGE: Information of the Bench. So it means
15 that if you gave the Bench the information in the presence of the
16 public, you might be divulging something that you don't think --

17 MR JORDASH: It's for Mr Sesay's privacy. [Overlapping
18 speakers].

19 PRESIDING JUDGE: Well, in that regard, we'll have to move
20 into closed session. Learned counsel for the other accused
21 persons, do you have any issues that you want to bring to our
22 attention under the rubric of any other matters?

23 MR NICOL-WILSON: No, Your Honour.

24 PRESIDING JUDGE: Prosecution, is there any other thing
25 that you want to bring to our attention?

26 MR HARRISON: No, thank you.

27 PRESIDING JUDGE: In that regard, then, we'll release you
28 and then constitute a closed session to hear what Mr Jordash
29 wants to bring to the attention of the Bench. So you're

1 released. Members of the public are released, too.

2 [At this point in the proceedings, a portion of the
3 transcript, pages 40 to 43, was extracted and sealed under
4 separate cover, as the proceeding was heard in a closed session]

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1 [Open Session]

2 PRESIDING JUDGE: This concludes the status conference
3 proceeding.

4 [Whereupon the Status Conference adjourned
5 at 11.10 a.m.]

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