



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

-V-

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

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

1 [Thursday, 21 June 2012]

2 [Open Session]

3 [Accused enter court]

4 [Upon commencing at 9.00]

09:00:48 5 JUSTICE DOHERTY: Good morning.

6 Before I take appearances, I will check if we've got a link
7 to Kigali because I'm not seeing anything to Kigali.

8 Good morning, Kigali. Can you hear me?

9 THE COURT OFFICER: [In Kigali] Yes, Your Honour. We can
09:01:07 10 hear you. Good morning, Your Honour. We can hear you.

11 JUSTICE DOHERTY: That's good, because I can't actually see
12 you.

13 I will ask the booth to have a visual as well as a verbal
14 connection.

09:01:46 15 I can see you now. Thank you.

16 I'll take appearances.

17 For the Prosecution.

18 MR HERBST: Robert Herbst, Independent Counsel for the
19 Prosecution.

09:02:02 20 JUSTICE DOHERTY: Thank you.

21 For the Defence.

22 MR HERBST: Good morning, Your Honour.

23 JUSTICE DOHERTY: Good morning, Mr Herbst.

24 I note also that the accused Mr Kanu and Mr Kamara are in
09:02:15 25 the Court.

26 Counsel.

27 MR NICOL-WILSON: Your Honour, Melron Nicol-Wilson for
28 Hassan Papa Bangura.

29 CHIEF TAKU: May it please the Court, Chief Charles Taku

1 for Mr Samuel Kargbo. I will be here until the break, when I
2 I leave, Your Honour.

3 JUSTICE DOHERTY: That's noted, Chief Taku.

4 MR METZGER: Good morning, Your Honour. Kevin Metzger
09:02:42 5 present and correct for Santi gie Borbor Kanu.

6 JUSTICE DOHERTY: Thank you.

7 MR KAMAL: Good morning, Your Honour. AF Serry Kamal for
8 Ibrahim Bazy Kamara.

9 JUSTICE DOHERTY: Thank you.

09:02:57 10 Incidentally, Mr Herbst, I meant to pick up on one matter
11 yesterday. In the course of your submissions and opening
12 statement you referred to Brima. For purposes of clarity, I
13 would prefer that you refer to Kamara by his surname. I say that
14 because there is also a convicted person with the surname Brima
09:03:42 15 and it can be a little confusing.

16 MR HERBST: Your Honour, the surname being - [Overlapping
17 speakers].

18 JUSTICE DOHERTY: The surname of Kamara is "Kamara", the
19 family name. There is another co-convicted person whose surname
09:04:09 20 is Brima, and when you refer to "Brima", I automatically - my
21 brain tends to switch in to that co-accused, rather, but I am
22 clear you are referring to Kamara. But for purposes of record,
23 it would be wiser to use "Kamara." Do you understand?

24 MR HERBST: I do now, Your Honour. Let me clarify. When I
09:04:38 25 referred to Mr Brima, I was referring to the third convicted AFRC
26 convict; in other words, there were the times when he, as well as
27 the other two accused, were on the telephone. And so when I did
28 refer to Mr Brima, I was referring to the third convict.

29 Let me also report to the Court that there are times when

1 the video freezes so that we lose the video connection and the
2 last image that is transmitted is frozen on the screen. I don't
3 know whether that can be fixed, but it is a little disconcerting
4 for us here because we can hear what is transpiring, but we
09:05:40 5 cannot see until it kicks in again.

6 JUSTICE DOHERTY: The only way I can think of dealing with
7 that problem is that if we have some indication from you, I will
8 stop the proceedings to allow the video to resume. I will also
9 note that the name - and that you were referring to - 'Brima' who
09:06:07 10 has been also as 'Alex Tamba Brima' in your submissions. I am
11 actually grateful for that clarification because I would have
12 been under a delusion otherwise.

13 If there is no other matter, I will ask the Independent
14 Counsel to call his first witness.

09:06:39 15 MR HERBST: Your Honour, we call Mr Samuel Kargbo, also
16 known as Samuel Ragga.

17 JUSTICE DOHERTY: Very well. What language will the
18 witness speak in?

19 MR HERBST: The witness will testify by way of a Krio
09:07:03 20 interpreter, Your Honour.

21 JUSTICE DOHERTY: Thank you.

22 Mr Kargbo, you should leave the dock where you are sitting
23 and come and take your place at the witness box, please.

24 Can the technicians advise if Kigali will be able to see
09:07:44 25 the witness box and the witness speaking?

26 MR HERBST: Your Honour, let me advise you at this point
27 that we again have lost the video connection. Now it's been
28 restored. And we can, indeed, see the witness in the witness
29 box.

1 [The witness enters court]

2 [Technical difficulties]

3 MR HERBST: Your Honour, let me report that there is a lull
4 here, that the video is out more often than it is in
09:11:11 5 [Overlapping speakers].

6 JUSTICE DOHERTY: At the moment, Mr Herbst, nothing is
7 happening because we are now attempting to get the Krio channel.

8 It's now in position and the witness is about to be sworn.
9 As for the connection, you're going to have to either ask me to
09:11:32 10 have evidence repeated if you haven't heard it or seen it.
11 That's the only solution - unless somebody can come up with a
12 better solution.

13 WITNESS: TF1-334

14 THE COURT OFFICER: Sworn, Your Honour.

09:12:23 15 THE WITNESS: My Honour, I greet you in the name of the
16 Lord. I am here to testify this morning.

17 JUSTICE DOHERTY: Thank you, Mr Kargbo. We will listen
18 carefully to your evidence, and I will now ask Mr Herbst to lead
19 you through your evidence.

09:13:01 20 THE WITNESS: Yes, ma'am.

21 MR HERBST: Thank you, Your Honour.

22 Examination-in-Chief by Mr Herbst:

23 Q. Good morning, Mr Kargbo.

24 A. Good morning, sir.

09:13:12 25 Q. I want to direct your attention to late in 2010. Did you
26 have occasion to have a telephone call from Mr Bazy Kamara?

27 A. Yes, sir.

28 JUSTICE DOHERTY: Mr Herbst, can I say from the outset,
29 please avoid leading. There are other ways of asking those

1 questions, and leading is to be avoided in this trial.

2 MR HERBST: I will do that, Your Honour. Thank you.

3 Q. Will you tell the Court what Mr Kamara said to you on the
4 telephone?

09:14:02 5 A. Yes, sir.

6 JUSTICE DOHERTY: Continue.

7 THE WITNESS: I remember Bazy Kamara called me in late
8 November and early December. He called me on my cell phone, and
9 I asked who was calling, and he said, It's me, Bazy. Then I
09:14:48 10 said, From where? Then he said from Mpanga Prison. Then I said,
11 Why? He said, he's expecting me and others to assist them in the
12 Rwanda prisons. Then I said, Why?

13 [Technical difficulties]

14 JUSTICE DOHERTY: Pause, Mr Kargbo, because I didn't hear.
09:15:52 15 There was a lot of static on the line.

16 Mr Interpreter, can you repeat the last sentence? The line
17 is clearer now.

18 THE INTERPRETER: The witness may have to repeat the last
19 line.

09:16:05 20 JUSTICE DOHERTY: Mr Kargbo, we didn't hear what you said
21 just now and I would like you to repeat it.

22 You said that you asked Kamara why, and then continue from
23 there.

24 THE WITNESS: He said - when I asked him why, he said he
09:16:27 25 wanted me and others to help them --

26 THE COURT OFFICER: Your Honour, may we ask Mr Herbst to
27 intermittently turn off and on his mic. It seems his mic is
28 permanently on.

29 JUSTICE DOHERTY: Mr Herbst, could you turn off your

1 microphone? It seems it's interfering. Good.

2 Continue, Mr Kargbo.

3 THE WITNESS: He said he would like me to talk to 334.

4 JUSTICE DOHERTY: Continue.

09:17:08 5 THE WITNESS: For him to recant his statement.

6 JUSTICE DOHERTY: Yes.

7 THE WITNESS: Then I asked him why.

8 JUSTICE DOHERTY: Continue.

9 THE WITNESS: Then he said because his lawyer in Ghana had
09:17:37 10 told him if they can talk to 334, for him to recant his
11 statement, they will reduce their sentences or set them free.

12 JUSTICE DOHERTY: Yes.

13 MR HERBST: Your Honour --

14 THE WITNESS: Then I asked him why he was saying that.

09:18:27 15 JUSTICE DOHERTY: Yes.

16 THE WITNESS: Then he said because the promise that was
17 made by the Special Court, the promise to 334.

18 JUSTICE DOHERTY: Continue.

19 THE WITNESS: Has not been fulfilled. So he would like to
09:18:53 20 raise some funds for 334 for him to recant his statement. Then I
21 called 334.

22 MR HERBST: Can I interrupt for just a minute?

23 JUSTICE DOHERTY: Yes, Mr Herbst.

24 MR HERBST: There is so much static on the line that I am,
09:19:28 25 myself, having difficulty understanding what the witness is
26 saying. I made out most of it except for the last portion of his
27 testimony before he said that he called 334. I wonder if I could
28 have that repeated, please.

29 JUSTICE DOHERTY: I will repeat from my notes. Counsel

1 will intervene if I have it wrong.

2 "I asked him why he was saying that, and he said the
3 Special Court had made a promise had been made to 334 has not
4 been fulfilled. He would like to raise funds for 334 to recant
09:20:09 5 his statement. I said, Okay. I called 334."

6 Did you hear me, Mr Herbst?

7 MR HERBST: I did, Your Honour, and I thank you. I don't
8 know whether anything can be done about the static, but it is
9 difficult, but we'll continue.

09:20:34 10 JUSTICE DOHERTY: Thank you, Mr Herbst.

11 MR HERBST: Thank you, Your Honour.

12 Q. Mr Kargbo, you were about to tell us that you called 334.
13 Would you please continue and tell us what happened when you
14 called 334?

09:20:55 15 A. When I called 334, he picked up his phone, then he asked,
16 Why? Then I told him that I wanted to see him, that I wanted to
17 talk to him. It was not to be on the phone. I said I'd like to
18 see him in person. Then he said, Well, I am at Congo Water by
19 the Bai Bureh Highway. Come and meet me there. Then I said,
09:21:40 20 Okay, I am coming.

21 Then I went and met him there. By then he was going along
22 Newton. Then I said, okay, let me go with you. On our way to
23 Newton I said, The message that I have for you is that Bazy,
24 Five Five, called me and told me that I should talk to you
09:22:26 25 because the promise that was made to you by the Special Court has
26 not been fulfilled. So they want to raise funds for you so that
27 you can recant your statement.

28 Q. What did 334 say to you in reply?

29 A. Then 334 said, if I know what I was saying. I said, I

1 don't know what I am saying. Then he said if I should recant my
2 statement, that would be a problem for me. It would be a
3 contempt of Court.

4 Q. What then did you do or say?

09:23:47 5 A. Then he said - he said that would be a problem. Then I
6 told him that those men are saying that we should help them.
7 Then I said, even Papa wants to talk to you. Then he said, Okay,
8 let me talk to him. Then he took the phone from me. Then he
9 spoke to Papa. Then Papa said, Sam, that is what those men said.
09:24:34 10 Then 334 said, Okay, I've heard and I will think about it. Then
11 334's countenance changed in the car. He changed his looks and
12 he did not respond to me well any longer. Then he gave me the
13 phone.

14 MR HERBST: I'm sorry, Your Honour. I have to interrupt
09:25:08 15 and say that I am having great difficulty understanding because
16 of the static, and I would ask --

17 THE COURT OFFICER: [In Kigali] Your Honour.

18 MR HERBST: -- the answer to be repeated.

19 THE COURT OFFICER: [In Kigali] Your Honour, would it be
09:25:24 20 possible to get CITS to check the interpreter's mic? Because we
21 are having a lot of static from Kelson's mic.

22 JUSTICE DOHERTY: I am having a lot of static from
23 everybody's mic, so I am going to do two things. First of all,
24 Mr Court Attendant, please contact our technical experts and see
09:25:48 25 if they can check the various booths to do something about this
26 static. That's the first thing.

27 And secondly, I'm going to read what I've noted of the last
28 part of the evidence:

29 "334 said he was going to think about it. Then his

1 countenance changed, his looks changed, he gave me the phone."

2 MR HERBST: Your Honour, I wonder if you could go back a
3 little bit, because I really didn't get the answer from the
4 previous question or the last question was asked about what he
09:26:42 5 then did or said.

6 JUSTICE DOHERTY: Very well. I am going read what I've
7 noted --

8 MR HERBST: [Overlapping speakers].

9 JUSTICE DOHERTY: I want to stress that it is not
09:26:54 10 absolutely exact. And one of the witness - counsel for Kamara,
11 in particular, will leap to his feet and interrupt if I have it
12 wrong.

13 You asked the question:

14 "What did you do or say?" The answer was as follows:

09:27:10 15 "He said that would be a problem. I said to him, those men
16 are saying we should help them. Even Papa wants to talk to you.
17 He took the phone from me. He spoke to Papa. He said - Papa
18 said, son, that is what those men said. Then he said he would
19 think about it. His countenance changed, his looks changed. He
09:27:50 20 gave me back the phone."

21 MR HERBST: Thank you, Your Honour.

22 JUSTICE DOHERTY: I'm going to stop for a moment whilst
23 they try and sort this problem out because everyone is having
24 difficulty hearing.

09:28:05 25 Mr Metzger.

26 MR METZGER: Slight point of correction. It may be because
27 of the all the static, but I think that what the witness said
28 Papa said was not "son" but "Sam."

29 JUSTICE DOHERTY: Oh Sam, not "son." Thank you,

1 Mr Metzger, that's much more sensible.

2 Mr Herbst, did you hear that correction.

3 MR HERBST: I heard "Sam" as opposed to "son."

4 JUSTICE DOHERTY: Correct. I am going to pause now and see
09:28:41 5 if this noise can be eliminated.

6 THE INTERPRETER: Your Honour, are you still getting that
7 noise?

8 JUSTICE DOHERTY: Mr Interpreter, I'm not getting the noise
9 now, and I'm going to ask if anyone else is getting it. There is
09:29:40 10 a bit of noise, and I believe - I'm informed that the weather may
11 not be helping this whole situation.

12 Mr Herbst, is your line any clearer? I notice you nodding
13 in agreement.

14 MR HERBST: Yes, it is, Your Honours. Thank you.

09:29:56 15 JUSTICE DOHERTY: Counsel? They are also nodding in
16 agreement.

17 Please proceed on, Mr Herbst.

18 MR HERBST: Thank you, Your Honour.

19 Q. Mr Kargbo, you mentioned a man named Papa. Would you tell
09:30:19 20 the Court who Papa is?

21 A. Bomb Blast.

22 Q. And are you referring to anyone in the courtroom here
23 today?

24 A. Yes, sir.

09:30:45 25 Q. Would you point him out, please.

26 A. The accused.

27 JUSTICE DOHERTY: For purposes of record, the witness
28 raised his arm and indicated to the back of the court, where the
29 accused Hassan Papa Bangura and two security personnel are

1 sitting.

2 MR HERBST:

3 Q. Now, let me ask you what your relationship was with the
4 accused Mr Bangura - or Bomb Blast, or Papa - at the time of the
09:31:31 5 telephone call - of the time of the telephone call that you just
6 told the Court about?

7 A. Papa is my friend and brother. We hadn't any quarrel. We
8 hadn't any quarrel.

9 Q. Thank you. Now, in your answer - your previous answers -
09:32:06 10 one of your previous answers, you noted that you notice a change
11 in 334's countenance. Would you tell the Court what that change
12 indicated to you?

13 A. It was like when someone was not happy about something that
14 he was told.

09:32:39 15 Q. Thank you. Now, did you have occasion to meet with 334
16 again after the meeting that you just described to the Court,

17 A. Yes, sir.

18 Q. And would you tell the Court about that meeting, please.

19 A. I called 334 at another time. He said he was at the
09:33:12 20 Sarolla Hospital.

21 Q. Please continue.

22 A. I met him at the Sarolla Hospital, and he told me he was
23 going to the PWD junction to his sister. Then I said, Okay,
24 let's go. On our way going, we got to the PWD junction. When we
09:34:06 25 got there --

26 Q. Before you got to P - I'm sorry. Continue.

27 A. When we got to PWD junction, then Ibrahim Bazy Kamara
28 called on the phone. When he called me I said, 334, these men
29 have called me. Bazy has called me. Then I picked up the call.

1 I and Bazzy Kamara were talking. Then he said, Sammy, have you
2 spoken to 334 for me? Then I said yes. Then I told 334 - then I
3 told Bazzy that I was with 334 right now. Then he said, Let me
4 talk to him. Then 334 refused. He said he was not going to talk
09:35:20 5 to Bazzy. He didn't want to have contact with them.

6 Then I told Bazzy that that man said he was not going to
7 talk to you. He doesn't want to have contact with you. Then he
8 told me that he was going to drop his phone so that Five Five and
9 Gullit, so that all of them can find a way to call him back to
09:35:51 10 talk to them so that he would put his phone on speaker so that
11 all of them would hear what they would be discussing. Then I
12 said, Okay, no problem.

13 MR HERBST: Your Honour.

14 JUSTICE DOHERTY: Yes, Mr Herbst.

09:36:09 15 MR HERBST: I'm sorry to interrupt, Your Honour. The
16 static has returned, and, frankly, I'm not sure how much all of
17 us here heard of the answer that the witness has given from the
18 time of the question.

19 JUSTICE DOHERTY: I will ask the technicians to look at it
09:36:29 20 again and we'll pause, and then I will read out my record.

21 THE COURT OFFICER: Can Kigali hear us? Kigali, can you
22 hear us better?

23 MR HERBST: Yes, we can.

24 THE COURT OFFICER: Your Honour, Kigali says they can hear
09:38:23 25 us better.

26 JUSTICE DOHERTY: Clear enough, Mr Herbst?

27 MR HERBST: Well, yes, Your Honour. With one voice it is
28 clear. Yes.

29 JUSTICE DOHERTY: It's shifted to my machine now. But I

1 will read out to what I have recorded, and again counsel for the
2 Defence can intervene. Because, as has been said many times in
3 this Court, I am not a computer.

09:39:09 4 Did you get the part where the witness said he met 334 at
5 Sarolla Hospital and said he was going to PWD; did you hear that
6 part of the evidence? Yes. Very well then.

7 MR HERBST: Yes, I did, Your Honour.

8 JUSTICE DOHERTY: Did you get to the point when:

9 When we got to PWD, then Ibrahim Bazy Kamara called me.
09:39:27 10 He said, Those men have called me. Bazy and I were talking. He
11 asked me if I spoke to 334 for him. I said, Yes. I said to
12 Bazy 334 was here. Bazy asked to speak to 334. 334 refused.
13 He said he did not want to talk. He did not want contact. I
14 told Bazy that man does not want contact. Bazy said so he
09:40:02 15 would drop his phone so Gullit and Five Five could hear. He
16 would put his phone on speaker so all would hear.

17 Did you hear me, Mr Herbst?

18 MR HERBST: I did loud and clear, Your Honour. Thank you.

19 Shall we try to continue?

09:40:28 20 JUSTICE DOHERTY: Please do so on.

21 MR HERBST:

22 Q. Mr Kargbo --

23 A. Yes, sir.

24 Q. -- will you continue to tell the Court what happened?

09:40:37 25 A. Yes, sir.

26 JUSTICE DOHERTY: Continue, Mr Kargbo.

27 THE WITNESS: Then Ibrahim Bazy Kamara called again. When
28 he called, then he said, Sammy, that man, we want to beg him. We
29 want to talk to him so that 334 can help us.

1 THE INTERPRETER: Your Honours --

2 MR HERBST: Let me interrupt, because I think I have a
3 solution. I think the problem is that the interpreter is jumping
4 in to interpret when Mr Kargbo is talking. If we could have
09:41:38 5 Mr Kargbo speak a clause or a sentence and pause, because he is
6 speaking slowly and clearly, if the interpreter could wait until
7 he pauses and then interpret, the static problem would probably
8 go away.

9 JUSTICE DOHERTY: Mr Interpreter, did you hear?

09:42:05 10 THE INTERPRETER: I heard, Your Honour, but that would pose
11 some problems for me.

12 JUSTICE DOHERTY: What is the problem, so I can see if we
13 can find a solution?

14 THE INTERPRETER: You know, we will tell him to pause after
09:42:20 15 a clause, but he will soon start speeding and I would lose track
16 of the way he's speaking and the structure would all be
17 confusing. I wouldn't - sometimes I wouldn't make sense because
18 of the way he's speaking.

19 JUSTICE DOHERTY: Would it help if I sort of gave the
09:42:44 20 witness an indication of when to stop, or would that make any
21 difference?

22 THE INTERPRETER: Let's try it, Your Honour, and see how
23 far we get.

24 JUSTICE DOHERTY: Very well.

09:42:55 25 Mr Kargbo, can you hear me?

26 THE WITNESS: Yes, Ma'am.

27 JUSTICE DOHERTY: Mr Kargbo, there is a problem about
28 interpreting and everybody hearing clearly. So I am going to put
29 my hand up like this, and when I put my hand up like this, you

1 stop speaking, and when I wave to you, you start again; do you
2 understand?

3 THE WITNESS: Yes, Ma'am.

4 JUSTICE DOHERTY: We are going to try this for a little bit
09:43:30 5 and see if it works.

6 So you have just said "Bazzy wanted to beg me..." Please
7 continue from there.

8 THE WITNESS: Bazzy said, Sammy, I beg. Let us talk to 334
9 to do what we are telling him to do. Then he passed on the phone
09:44:08 10 to Five Five. Then Five Five continued saying the same thing.
11 Then Five Five again passed the phone to Gullit. They were
12 saying the same thing. Then I said, 334, I said, Please, I am
13 begging you. I said, Those men are harassing me too much. They
14 are talking to me to talk to you.

09:44:55 15 I said, Please, talk to these men for me today so that I'll
16 be at peace now. Then 334 said, Sammy, he said, I don't want to
17 have any contact with those men. I said, Please, 334, talk to
18 them for me. Then he took the phone. But when he started
19 talking to them, he went a distance - some distance away from me
09:45:58 20 and he talked to them. He came closer to me afterwards. Then he
21 passed on the phone to me. Then Bazzy said, Sammy, he said, We
22 have spoken to that man. He said, But we are trying to raise the
23 money to send it. Then I said, Now you know that I have passed
24 on the message to 334, and he said yes.

09:47:13 25 MR HERBST:

26 Q. How were you able to speak to more than one of the accused
27 in Rwanda at the same time? How technically --

28 MR METZGER: I do have an objection to that question.

29 MR HERBST: [Overlapping speakers].

1 JUSTICE DOHERTY: Just a moment, Mr Herbst. There is an
2 objection.

3 What?

4 MR METZGER: It is a generic question. And may I please
09:47:37 5 ask if the Independent Prosecutor could specify if he is asking
6 about this conversation, or if it is a generic question. If it
7 is about this conversation, then the evidence has not been that
8 he has been speaking to three people, in view of the last answer
9 he gave.

09:47:55 10 JUSTICE DOHERTY: Mr Herbst, you've heard the objection. I
11 think if you could be specific about the call you're referring
12 to.

13 MR HERBST:

14 Q. In this particular call, Mr Kargbo, how were you able to
09:48:14 15 speak to more than one of the Rwanda convicts at the same time?

16 A. Okay. When this [sic] talks to me, he will tell me that he
17 was passing on the phone to this other person for me to talk to
18 that person. Then he will say, Five Five, talk to Sammy. Then I
19 and Five Five will talk. Then he will say - he would say --

09:49:13 20 JUSTICE DOHERTY: Mr Interpreter, I've lost you. Did you
21 interpret there?

22 THE INTERPRETER: I didn't. Because Mr Herbst was coming,
23 so I didn't get everything that he was saying.

24 JUSTICE DOHERTY: Oh, I didn't see Mr Herbst's light on.

09:49:29 25 Mr Herbst, did you intervene?

26 MR HERBST: Yes. Well, I thought the witness had finished
27 the answer and I was going to ask a more direct question. But if
28 the witness is not finished, I will wait.

29 JUSTICE DOHERTY: Very well.

1 Mr Kargbo, we did not hear the last bit of your answer. At
2 least, I did not hear it. You started saying:

3 "Then I and Five Five talked. Then he said ..."

4 Continue that part.

09:50:01 5 THE WITNESS: Yes, Ma'am.

6 When Five Five and I talk, he will call this person and
7 say, Well, I am passing on this phone to Gullit. So I knew
8 that - I would know that when I am talking, I would be talking to
9 Gullit. In the same way, when he wanted to pass on the phone, he
09:50:36 10 would tell me he is passing on the phone to Bazzy. Then I would
11 know that I was talking to Bazzy.

12 MR HERBST:

13 Q. Okay. Let me ask another question. In the same
14 conversation with Bazzy Kamara that you have just described on
09:51:09 15 this same day, did Mr Kamara ask you about the whereabouts of any
16 other person?

17 A. Yes, sir.

18 Q. And would you tell the Court what Bazzy - Mr Bazzy Kamara
19 asked you?

09:51:35 20 A. Then he said - then Bazzy Kamara told me, he said, Sammy,
21 we've spoken to 334. Ask him for a guy called --

22 Q. Wait a minute. We should use [Overlapping speakers]
23 pseudonym.

24 A. A guy called --

09:52:01 25 JUSTICE DOHERTY: Mr Herbst, you've got your light on. Is
26 there --

27 MR HERBST: Yes, Your Honour. I think it's important to
28 ask Mr Kargbo to use the numbered pseudonyms or pseudonym instead
29 of the initials of the person's name. Either that, or we should

1 hear this portion of the testimony in closed session.

2 JUSTICE DOHERTY: I think I might be happier hearing this
3 in closed session.

4 Mr Kargbo, I think you - Mr Herbst anticipates - or you
09:52:49 5 have mentioned some initials. That person is protected, so I'm
6 going to go into closed session.

7 This is, for members of the public who are listening and
8 watching the Court, for the protection of a witness who has
9 protective measures, we are going to have a closed session. That
09:53:11 10 means you can see inside the Court, but you cannot hear what is
11 said.

12 Mr Court Attendant, there is no need to draw the curtains.

13 [Closed session]

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1 [Open Session]

2 JUSTICE DOHERTY: We're now in public session.

3 Please continue, Mr Herbst.

4 MR HERBST: Thank you, Your Honour.

10:12:11 5 Q. Mr Kargbo, before we leave this day I want to direct your
6 attention back to the time when you and 334 were driving to PWD
7 Junction; that is, during the drive before you got there. And I
8 want to ask you whether during that drive you had a conversati on
9 with 334 on this subject of 334 recanting his testimony in return
10:12:51 10 for money?

11 A. No, sir. It was when we got to PWD Junction and those men
12 called, that was the time that we brought up that topic again.

13 Q. Well, did you tell 334 that the men in Rwanda were prepared
14 to give you money as well as --

10:13:31 15 MR KAMAL: Objection, Your Honour. Again leading.

16 MR HERBST:

17 Q. [Overlapping speakers]

18 JUSTICE DOHERTY: Mr Herbst, that's a leading questi on.
19 Please rephrase.

10:13:40 20 MR KAMAL: I don't like to interrupt, Your Honour.

21 JUSTICE DOHERTY: There has been an objection, and I'm
22 upholding it.

23 MR HERBST: Yes, Your Honour.

24 THE COURT OFFICER: Your Honour, we have lost the link.

10:13:55 25 JUSTICE DOHERTY: I can see Mr Herbst quite clearly.

26 Mr Herbst, can you speak so as I know?

27 MR HERBST: Yes, I was just formulati ng - trying to
28 formulate the questi on again.

29 JUSTICE DOHERTY: Please pause. There are a few counsel on

1 their feet.

2 MR METZGER: Counsel can't see Mr Herbst. We thought
3 perhaps the force of the objection may have caused a problem. We
4 can't see him.

10:14:30 5 JUSTICE DOHERTY: I think the fault must be here, because I
6 can see him quite clearly. Let's find out.

7 [Technical difficulties]

8 JUSTICE DOHERTY: Mr Herbst, I understand the connection is
9 now working for counsel, so please proceed with your questions.

10:17:24 10 MR HERBST: Thank you, Your Honour.

11 At this time I would like to have the witness's statement
12 placed before him. I believe a copy of his signed --

13 JUSTICE DOHERTY: Very well. Mr Court Attendant --

14 MR METZGER: I'm sorry, Your Honour. I think that my
10:17:43 15 learned friend would have to make a proper application.

16 He's called his evidence, and respectfully I am not sure of
17 the basis upon which he seeks to now have the witness's statement
18 put before him. So I object on that basis.

19 MR HERBST: I could explain that basis.

10:17:58 20 JUSTICE DOHERTY: Please.

21 MR NICOL-WILSON: Your Honour, I want to associate with the
22 objection as well with my learned colleague.

23 JUSTICE DOHERTY: Mr Herbst --

24 MR KAMAL: So do I.

10:18:11 25 JUSTICE DOHERTY: Mr Herbst, three counsel have objected to
26 the putting. Could you please either lay foundation, or explain.
27 Also, I'd like to know which statement we are referring to.

28 MR HERBST: Well, to answer Your Honour's second question
29 first, it is the witness's 6 May 2011 statement, which consists

1 of four pages. That is supposed to be in the courtroom.

2 And the reason for the - for placing the statement before
3 him is I want to refresh the witness's recollection - see if I
4 can refresh the witness's recollection with respect to the answer
10:18:55 5 he gave before, in which he said that the subject of 334's
6 recanting his testimony in return for money was raised during the
7 drive to PWD Junction.

8 MR KAMAL: May it please Your Honour.

9 JUSTICE DOHERTY: Yes.

10:19:21 10 MR KAMAL: My learned friend put the question to the
11 witness and the witness has answered. I don't think he can
12 cross-examine his witness. I am sure the Rules do not allow him
13 to cross-examine his own witness who is testifying, unless he
14 wants to challenge his credit.

10:19:43 15 JUSTICE DOHERTY: Mr Herbst, I agree with that. If the
16 witness has answered the question, the answer is on record. If
17 that is the purpose for putting the statement, I disallow it.

18 MR HERBST: Very well, Your Honour.

19 Q. Mr Kargbo, was the subject of your receiving money ever
10:20:17 20 discussed with anyone?

21 A. Yes, sir.

22 Q. Would you tell the Court about that.

23 A. After we had left PWD Junction, I went to 334 at his house
24 and I told him that Bazzy Kamara, Five Five, said they would
10:21:11 25 raise money to give him. I told him that at his house.

26 Q. [Microphone not activated] the subject of your getting
27 money as well from the --

28 MR KAMAL: [Microphone not activated].

29 JUSTICE DOHERTY: No, no. Mr Serry Kamal, that was the -

1 that was a question that had been asked. He's only repeating the
2 question that's been asked.

3 Please put the question again, Mr Herbst.

4 I will ask the question.

10:22:11 5 Mr Kargbo --

6 MR HERBST: Your Honour --

7 JUSTICE DOHERTY: -- you answered a question put by the
8 Prosecution - Independent Counsel: Was you getting money
9 discussed with anybody? You said "Yes." I want you to explain
10 your answer "Yes."

10:22:37

11 THE WITNESS: Bazy Kamara, Five Five, they told me that
12 they would send the money to give to 334.

13 JUSTICE DOHERTY: Continue, Mr Herbst.

14 MR HERBST:

10:23:11 15 Q. Did Mr Kamara or Mr Kanu discuss with you your getting
16 money as well?

17 MR KAMAL: Your Honour, again I have to object, because the
18 witness has said there was no mention. The sum total of his
19 evidence, there was no mention of any money to him. It was money
20 for 334. He said it two or three times already, and I think that
21 that is the end of the matter.

10:23:32

22 MR METZGER: The objection is supported by counsel on
23 behalf of Kanu.

24 JUSTICE DOHERTY: Well, I am not satisfied that the witness
25 has fully understood the question, and possibly I do not fully
26 understand the question.

10:23:50

27 MR METZGER: And it seems to me that my learned friend for
28 the Prosecution is asking the question because the only other way
29 you can ask it is to lead the witness. It is an attempt to go

1 behind leading the witness. He wants to evince some evidence;
2 it's not forthcoming; and at some point he should stop asking the
3 same question and accept what the evidence is from his witness or
4 impugn the witness. It's a matter for him.

10:24:29 5 JUSTICE DOHERTY: I am going to clarify this situation.

6 MR HERBST: Your Honour, please --

7 JUSTICE DOHERTY: -- because I want to be clear what the
8 question is. Because the question can go two ways.

9 Was you receiving money ever discussed?

10:24:47 10 Mr Herbst, are you asking the question: Was the money just
11 money received; or was the money for a benefit of a particular
12 person? Because the witness is answering the question in a way
13 that conveys to me that he doesn't understand the question.

14 MR HERBST: Your Honour, the witness's prior statement
10:25:18 15 clearly reflects the promise [Overlapping speakers] --

16 MR KAMAL: That is not in evidence.

17 JUSTICE DOHERTY: That is not in evidence. That is not in
18 evidence, and that has to come directly from the witness. My
19 problem is this: I want to understand what the question - are
10:25:36 20 you talking about a benefit to the witness himself, or him being
21 used as a conduit for other people? That is the point that I
22 want clear in my mind.

23 MR HERBST: I am asking the witness whether he was promised
24 a benefit himself for his role in contacting 334 and getting
10:26:03 25 [Overlapping speakers] --

26 MR KAMAL: Your Honour --

27 JUSTICE DOHERTY: Just a --

28 MR METZGER: [Overlapping speakers].

29 JUSTICE DOHERTY: Just a moment. Not everybody talking at

1 once, please.

2 The interpreter has to cope with three voice. We will deal
3 with it one at a time.

4 Mr Herbst, have you finished your submission?

10:26:25 5 MR HERBST: If I was fully heard through the interruption,
6 yes. My point was that I was asking the witness whether he
7 himself was to be the beneficiary of financial benefit for his
8 role here.

9 JUSTICE DOHERTY: Now I will hear Mr Serry Kamal.

10:26:52 10 MR KAMAL: Your Honour, it applies so far. Suggests that
11 it was only going to be used as a conduit. He would receive the
12 money and hand it over to 334. The question of benefit to
13 himself has not arisen, unless my learned friend wants to raise
14 it now.

10:27:12 15 JUSTICE DOHERTY: I will allow - I will allow Mr Herbst to
16 put that question, because in my view that involves a yes and a
17 no answer. It's not necessarily a leading question; nor does it
18 carry an implication who, if anyone, was going to make the
19 payment. I will therefore allow the question.

10:27:37 20 Please put that question.

21 MR HERBST:

22 Q. Mr Kargbo, did anyone --

23 A. Yes, sir.

24 Q. -- tell you you would receive money for attempting to
10:27:56 25 persuade 334 to recant his testimony?

26 JUSTICE DOHERTY: No, no. No, Mr Herbst. The question is
27 would you receive money for his benefit. The purpose is a
28 different issue.

29 MR HERBST: Okay.

1 Q. Did anybody promise you a financial benefit?

2 A. Yes, sir.

3 JUSTICE DOHERTY: Continue.

4 MR HERBST:

10:28:33 5 Q. Can you tell us who promised?

6 A. Ibrahim Bazy Kamara and Five Five promised me that they
7 would give me money as well as 334.

8 Q. Thank you.

9 Now you told us that you went to 334's house. What did you
10:29:23 10 tell 334 when you went to his house?

11 A. I told him, I said, 334, those men said they will send the
12 money for you and they will compensate me. They will send the
13 money for me, too.

14 Q. Now in directing your attention to mid-December of 2010,
10:30:33 15 were you asked to go anywhere or do anything in connection with
16 this matter?

17 A. Yes, sir.

18 Q. Would you tell the Court who asked you and what that person
19 asked you to do?

10:30:56 20 A. Bazy Kamara called me again and told me that I and Papa,
21 Bomb Blast, should go to one of the their defence lawyers. And
22 he's called lawyer Mansaray. He said he was living by Robert
23 Street.

24 Q. And did you go, you and Mr Bangura, Bomb Blast, did you go
10:32:26 25 to Mr Mansaray's office?

26 A. Yes, sir.

27 Q. Please tell the Court how you went to Mr Mansaray's office?
28 How did you - how did you get there?

29 A. Luckily for us on our way, we saw 334 in his car by the

1 Howe Street Junction.

2 Q. So what happened -

3 A. Then we told him that. When we saw 334, we told him to
4 take us to Brook Street at the Robert Street Junction. Then we
10:34:06 5 boarded his car. On our way going, Bomb Blast asked 334, he
6 asked, How much money? How much money would he want those men to
7 offer him. 334 did not say the amount of money.

8 Then he took us to Robert Street Junction at Brook Street.
9 He drove off, then I and Bomb Blast went to the lawyer. Then the
10:36:13 10 lawyer called Bomb Blast to find out where we were. Then he
11 said, Pa, we are on our way. Then we went and met him at his
12 office. Then he introduced himself, saying that he was defending
13 Bazy Kamara and Five Five. He said he is lawyer Mansaray.

14 Having introduced himself, he then asked, Are you the
10:37:27 15 people those men sent? Then we said, Yes, sir. Then he invited
16 us to sit down. Then he said if we can persuade 334. Then I
17 said, Yes, sir. Then he asked how. Then I said, 334 is my
18 brother. And Bazy Kamara and Five Five have promised us - have
19 promised me that they will send money for 334, and they will send
10:39:07 20 for me too.

21 Then he said, but that will be difficult for 334 to come to
22 the Court, the Special Court --

23 MR METZGER: Your Honour, I have an objection. The
24 objection is based on this: It seems to me my learned friend had
10:39:41 25 indicated he did not propose to call Ibrahim Mansaray. The
26 primary utterer of the words that this witness is about to give
27 is Mr Mansaray. He is the witness.

28 The Prosecution is therefore seeking to introduce hearsay
29 evidence from this witness from another witness that the

1 Prosecution chooses not to call because it considers it
2 inconvenient. Respectfully, I think anything said by lawyer
3 Mansaray should be stricken from the record unless the
4 Prosecution propose to call him as a witness.

10:40:20 5 Those are my objections.

6 JUSTICE DOHERTY: The Rules on hearsay differ from the
7 Rules on direct evidence. A witness is repeating what he
8 directly heard. It's not hearsay. It's what he heard in his
9 presence with his own ears. If you are suggesting or implying
10:40:46 10 that it was not what was said in his presence and in his hearing,
11 then you can cross-examine. But I do not consider this hearsay
12 and I do not disallow it.

13 MR METZGER: Your Honour, may I clarify for the record.

14 JUSTICE DOHERTY: I am clear also on the point that you're
10:41:06 15 saying it should be Mansaray himself who gives this evidence.

16 MR METZGER: Yes, I --

17 JUSTICE DOHERTY: In that case I am not prepared to
18 disallow this evidence on those grounds because if the witness is
19 not called by the Prosecution, it is open to you to subpoena that
10:41:30 20 witness and call him and take it that his direct evidence on the
21 question.

22 MR METZGER: The objection is made on the grounds of
23 fairness to the Defence.

24 Up until Saturday the Defence were not aware the
10:41:50 25 Prosecution were not going to call Mr Mansaray. Saturday was the
26 first occasion on which we were told this was the position. We
27 have never had, so to speak, a fully fledged statement from him,
28 but we had been provided with disclosure. Unless I am wrong, it
29 was prudent for the Defence, first of all, to assume that

1 Mr Mansaray was a potential Prosecution witness; and secondly,
2 not to approach Mr Mansaray on the basis that he was on the
3 potential list of Prosecution witnesses.

4 Now in those circumstances, the Defence was hampered in the
10:42:28 5 preparation of their case by what people would call a late
6 tactical decision by the Prosecution in this case. Now, if the
7 Prosecution intend to rely on words spoken by Mr Mansaray that
8 amount to legal advice at a time when he was instructed by at
9 least one of the defendants in this case, we are back to Rule 97.

10:43:00 10 And whilst Your Honour has ruled, subject to anything that
11 may happen that Rule 97 is not absolute, it remains for Your
12 Honour to decide after legal submissions what, if any of the
13 conversation that was heard in the office of Lawyer Mansaray was
14 given qua counsel, pro bono counsel instructed by the
10:43:25 15 Special Court for Sierra Leone in respect of this matter.

16 And it is perhaps in those terms that I very strongly make
17 the objection at not just the question of hearsay, the fact that
18 words we are about to hear apparently came from someone who was
19 instructed at the time as counsel and whom, just to conclude,
10:43:54 20 while it is quite correct to say that if the Prosecution decide
21 they want to give up a witness they may do so, to give them up,
22 as it were, at the eleventh hour, may just give the impression
23 that perhaps, as it were, adjusting the scales of justice in such
24 a manner that the side on which the Defence is to be weighed has
10:44:21 25 been interfered with.

26 MR KAMAL: In addition to that, Your Honour, I believe that
27 when my learned friend was opening his case, I did indicate that
28 anything bordering on professional privilege I would be objecting
29 to. And this is precisely what I would like to object to,

1 because Mr Mansaray was then pro bono counsel and he was asked to
2 give advice and that advice, in my humble submission, should be
3 privileged.

10:45:07 4 JUSTICE DOHERTY: Mr Herbst, I have ruled on the hearsay
5 aspect. As far as I'm concerned this is res, it's direct
6 evidence of what a witness heard. But a further ground of
7 objection has been put forward which you have heard. I can have
8 your response on that further ground of objection.

9 MR HERBST: Thank you, Your Honour.

10:45:41 10 With respect to the objection of privilege, we under our
11 jurisprudence, would consider that objection frivolous because
12 the communications that are privileged are only those
13 communications between the client and the attorney. The
14 communications being offered are between the lawyer and two
10:46:22 15 non-clients who were enlisted to participate in an unlawful
16 scheme by the clients. There is no privilege. Were there to be
17 a privilege, in our view the crime fraud exception would void the
18 privilege.

19 To my learned friend Mr Metzger's suggestion that there was
10:47:00 20 some tactical advantage in taking Mr Mansaray off the witness
21 list - or keeping him on the witness list or taking him off the
22 witness list, in order to discourage counsel from speaking to
23 Mr Mansaray, I will again say to you and to my learned friends
24 that under our jurisprudence the fact that someone is on one
10:47:36 25 side's witness list never precludes counsel on the other side
26 from attempting to communicate with the witness, especially a
27 lawyer. But it would apply to any witness. To ask what that
28 witness would say.

29 And when I turned over in detail everything that

1 Mr Mansaray had told us to the Defence a year ago, I had no
2 inkling whatsoever that the Defence would be discouraged or
3 unable in some fashion to communicate with Mr Mansaray. So I say
4 that to put to rest any suggestion that we kept Mr Mansaray on
10:48:31 5 the list to discourage contact because I had no idea that under
6 English or UK or European or any other jurisprudence it was
7 inappropriate to speak to a witness who was nominated a
8 perspective or potential witness for one side.

9 I hope I have fully responded to the objection.

10:49:10 10 JUSTICE DOHERTY: Thank you. I will consider it.

11 THE COURT OFFICER: Your Honour, I am informed that the
12 Defence side has lost the links again. They can't see.

13 JUSTICE DOHERTY: [Microphone not activated]

14 THE INTERPRETER: Your Honour's microphone is switched off.

10:49:55 15 JUSTICE DOHERTY: Can you please ask the technicians to
16 help. In the meantime, I'm formulating my ruling on these
17 objections.

18 THE COURT OFFICER: Very well, Your Honour. Thanks.

19 MR METZGER: I wonder, Your Honour, if there is additional
10:50:11 20 material that arises simply because of my learned friend's reply,
21 which I was loathe to mention, but I did ask about the prospect
22 of speaking to Mr Mansaray in September of last year just before,
23 as it were, the contracts were suspended, and tried to reach the
24 Prosecutor through the Public Defender's Office in order to be
10:50:34 25 allowed to speak with Mr Mansaray.

26 Because there was no response, we didn't carry through with
27 that, but it would have been part of our investigations.

28 MR HERBST: Well, Your Honour, I have a reply to that.

29 JUSTICE DOHERTY: What is it, Mr Herbst?

1 MR HERBST: If Your Honour will permit me.

2 JUSTICE DOHERTY: Yes.

3 MR HERBST: Thank you.

4 JUSTICE DOHERTY: Normally I don't allow these exchanges on
10:51:05 5 interlocutory running rulings, but let me have it.

6 MR HERBST: I received no communication from Mr Metzger or
7 anyone else suggesting in any way that he wished to contact
8 anyone, including Mr Mansaray. Moreover, Mr Metzger and I
9 communicated by e-mail because I had tendered disclosures to him
10:51:40 10 and I believe we had e-mail contact, if my recollection serves me
11 accurately, prior to September. In which case Mr Metzger, if he
12 had wanted to ask me anything, could have communicated with me
13 directly. I received no communication.

14 That's all I wish to say, Your Honour. Thank you.

10:52:02 15 JUSTICE DOHERTY: Thank you.

16 MR METZGER: It's a question of integrity, Your Honour.

17 JUSTICE DOHERTY: Mr Metzger.

18 MR METZGER: He has just accused me of not contacting him.

19 JUSTICE DOHERTY: He has not.

10:52:13 20 MR METZGER: It's [overlapping speakers] --

21 JUSTICE DOHERTY: It's not. He said virtually the
22 opposite. He said you had been in communication. You have
23 already explained that you contacted the principal --

24 MR METZGER: The Principal Defender's Office.

10:52:29 25 JUSTICE DOHERTY: Principal Defender Office.

26 MR METZGER: No. I was in Sierra Leone. He should
27 understand the logistics about this.

28 JUSTICE DOHERTY: Yes. He's the not quibbling about the
29 logistics. I am not going to have a battle about this in my

1 Court.

2 MR METZGER: He's too far away from me. I have nothing
3 further to say.

4 JUSTICE DOHERTY: No. Well, I am going to put it on record
10:52:48 5 that I am satisfied that you communicated with the
6 Principal Defender. He did not receive the communication. You
7 had communicated on other matters independently of this one. You
8 did not raise this one in your - those other extraneous matters
9 because of the steps you'd already taken, which in the
10:53:07 10 circumstances were proper. He would have responded if he was
11 aware. And that's the situation that I accept from both of you.
12 I impute no lack of integrity to either of you.

13 MR METZGER: Much obliged.

14 JUSTICE DOHERTY: Just before I start giving this ruling, I
11:00:59 15 am informed that the power at the Defence side of the court has
16 been lost. So if counsel cannot hear me, I will speak very
17 loudly. You can hear? Okay. It will take time to fix it, but
18 in any event we are up to the normal break time.

19 This is an objection on several grounds to the hearing of
11:01:26 20 evidence. The objection on hearsay has already been dealt with
21 and I will not revisit it. A further ground under Rule 97 of our
22 Rules, that is, the privilege provisions between a client and a
23 lawyer, have already also been raised. That Rule says:

24 "All communications between a lawyer and client shall be
11:02:01 25 regarded as privileged."

26 This witness is not a client, so the privilege vested in
27 Rule 97 does not apply to him or to the conversation he had with
28 Mansaray. On that ground, I am allowing this evidence to
29 continue.

1 On the problem or exchange concerning the contact or the
2 calling of Mr Mansaray, I observe, both for Defence and
3 Prosecution, it is for counsel to decide what witness he calls to
4 present his evidence in a fair and efficient open manner if he
11:02:55 5 has decided not to call a witness while he has already disclosed
6 a statement without even being required to do so under
7 Rule 66(A)(ii).

8 I have quickly perused our Rules and our code of
9 professional conduct, and I cannot find any exact Rule on the
11:03:24 10 contact between an unprotected witness, and I stress
11 "unprotected," and a member of the Defence. In any event,
12 Independent Counsel has made clear that he has no objection to
13 Defence counsel contacting Mansaray. I am not aware of other
14 rules in other international tribunals which would be persuasive.
11:04:05 15 Under our Rules we can look to the ICTR. Hence, it appears to me
16 it is open to Defence to contact Mansaray and, if it is
17 appropriate, to make any application thereafter to the Court that
18 they require. Hence, I am allowing the answer to remain on
19 record and for the witness to continue what he was saying.

11:04:30 20 However, it is now up to the two-hour break period, and we
21 are going to take the break. Yesterday, Kigali requested that we
22 extend the 45 minutes originally set in order to allow everyone
23 there to eat properly. I have particularly in mind the two
24 convicted persons. I consider it's important that they are
11:05:01 25 catered for.

26 So the times I set were provisional, depending upon what
27 happens, and therefore I'm going to extend for one hour now and
28 we will resume Court at 12.10. That's ten minutes past 12.00.

29 Please adjourn Court.

1 Just before you do, Mr Court Officer.

2 Chief Taku, my understanding was that you would have to now
3 go for compassionate reasons.

4 CHIEF TAKU: Yes, My Lord. Thank you very much for that.

11:05:41 5 JUSTICE DOHERTY: Well, we wish you a safe journey and the
6 Court will proceed in your absence. If there is a problem, I
7 will ensure that the Principal Defender contacts you to ensure
8 that the interests of your client is protected.

9 CHIEF TAKU: Thank you, My Lord. Thank you so much. Thank
11:06:05 10 you, Your Honour. I'm sorry.

11 JUSTICE DOHERTY: Yes. I am a bit touchy about that
12 Lordship as counsel in Sierra Leone are well aware.

13 If there is no other matters, I will adjourn the Court to
14 10 minutes past 12.00.

11:06:43 15 Please adjourn court.

16 I omitted to say, Mr Kargbo, you have now taken the oath to
17 tell the truth. You must not discuss your evidence with any
18 other person; that's the story you are telling in Court. You
19 understand?

11:06:55 20 THE WITNESS: I understand. Thank you, Ma'am.

21 JUSTICE DOHERTY: Thank you.

22 [Break taken at 11.07 a.m.]

23 [Upon resuming at 12.14 p.m.]

24 JUSTICE DOHERTY: First I'm going to check if Kigali can
12:14:45 25 hear me clearly and see what's going on.

26 THE COURT OFFICER: [Kigali] Yes, Your Honour. We can
27 hear you clearly and see what's going on.

28 JUSTICE DOHERTY: Thank you.

29 MR HERBST: Your Honour, I have a suggestion.

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

2 MR HERBST: Your Honour, I've been thinking whether it
3 would be feasible to lengthen the court day a bit and I have
4 asked to see whether what I'm about to suggest is feasible. Of
12:15:22 5 course this would be up to the Court and whether it makes sense.

6 I was going to suggest that we work two and a half hours
7 instead of two and then we all take a lunch break at 11.30, 1.30,
8 which would be a little early for you folks in Freetown and a
9 little late for us, but it would enable us to only have an hour
12:15:56 10 break and work five hours a day instead of I guess four.

11 JUSTICE DOHERTY: Mr Herbst, I'm not sure if you finished
12 addressing on that point because the line has gone dead. At
13 least I don't hear anything. Please wave if you hear me
14 speaking. I'm saying had you finished on that point?

12:16:31 15 MR HERBST: I believe I had, Your Honour. The last thing I
16 said was that I didn't know whether this would be of interest,
17 but I thought I would suggest it in light of the fact that we've
18 had our problems, some of which are the result of my own
19 situation.

12:16:55 20 JUSTICE DOHERTY: Before I ask for comments by Defence
21 counsel, I'm going to remark that our tapes are usually two hours
22 and that's why we tend to sit for two hours, so I can ask some
23 representative of the transcribers to advise if that could be
24 possible. Also the interpreters have a certain length that they
12:17:14 25 can only work to. So I'm going to ask both the transcribers and
26 the interpreters how feasible that would be - a two and a half
27 hour session.

28 Let me hear first from the transcribers if they are
29 prepared to say something. I understand the transcribers say

1 it's fine. Mr Interpreter, you've heard the suggestion. What is
2 your view on that?

3 THE INTERPRETER: If I can work two hours, two hours plus
4 30 minutes won't be bad. I'll try and cope with that.

12:18:05 5 JUSTICE DOHERTY: And your fellow interpreters?

6 THE INTERPRETER: I'm sure they will do fine as well.

7 JUSTICE DOHERTY: Counsel --

8 MR HERBST: I can't get rid of that static.

9 JUSTICE DOHERTY: Mr Serry Kamal, any comments?

12:18:30 10 MR KAMAL: [Microphone not activated]

11 JUSTICE DOHERTY: Sorry.

12 MR KAMAL: [Microphone not activated]

13 JUSTICE DOHERTY: [Microphone not activated]

14 MR KAMAL: I would prefer that the present status remains.

12:18:44 15 We continue in the present mode of operating.

16 MR METZGER: It seems to me that in view of the conditions
17 and the static and the technical difficulties we have, it's
18 better to have a shorter span of concentration which we can
19 extend than the longer one that we cannot.

12:19:09 20 MR NICOL-WILSON: I have no comment.

21 JUSTICE DOHERTY: Before I make a decision on that, I come
22 to a different but somewhat related question: I've been asked
23 this morning during the break if it's intended or thought we
24 should carry on during Saturday. If we are, I can tell you now
12:20:02 25 it's not going to be all day Saturday at my age. Would Kigali be
26 able to sit or willing or comfortable doing some hours on
27 Saturday morning?

28 THE COURT OFFICER: [Kigali] Your Honour, Kigali can sit
29 on a Saturday. I will double-check with the head of mission down

1 in Kigali, but I'm sure he can accommodate us on Saturday.
2 Because I have canvassed for the 30th, but I will canvass for
3 this Saturday as well, and I will come back to you before close
4 of business today.

12:20:39 5 JUSTICE DOHERTY: Mr Herbst, you have medical health issues
6 and I don't want to press you too hard.

7 MR HERBST: Your Honour, I'm happy to sit on Saturday. The
8 only issue I have is whether I will have witnesses, and the
9 reason I say that to the Court is that really the major witnesses
10 in my case beside Mr Kargbo, are 334, the Principal Defender,
11 Mr Daniels. Mr Saffa is available and can testify to the report
12 and to the admission of certain memos that were prepared.

13 So the question of sitting Saturday - if there's work to be
14 done, I would be happy to sit. I don't know when Your Honour was
12:21:06 15 thinking of - or would be able to issue - actually, I had not
16 actually heard from the amicus or heard about the amicus and what
17 the schedule is with respect to the Principal Defender. I think
18 Mr Daniels is scheduled to come early next week, so that's my
19 only thoughts.

12:22:16 20 JUSTICE DOHERTY: A point of information received during
21 the break was that Mr Daniels is travelling on Sunday so we'd be
22 in Court on Monday, and the point you make about witnesses being
23 available is a very practical one. So we're talking theory now.
24 Counsel for the Defence, if we have to try to make up time
12:22:39 25 Saturday morning --

26 MR KAMAL: Your Honour, it will depend on how many hours
27 you're prepared to work for.

28 JUSTICE DOHERTY: It would be until lunch time. I
29 definitely would not ask people to work the whole day. They have

1 worked hard enough already.

2 MR KAMAL: Some of us are getting to be on the older side.

3 JUSTICE DOHERTY: Mr Serry Kamal, I think you are beginning
4 to work out a competition here to work out which of us is on the
12:23:11 5 older side.

6 MR KAMAL: I believe I am.

7 JUSTICE DOHERTY: Mr Metzger.

8 MR METZGER: I had anticipated that we would be sitting
9 Saturday week rather than this Saturday, and I would rather not
12:23:25 10 sit this Saturday if possible. But of course if the Court
11 requires to make up time, we're quite happy to, as it were, throw
12 our oar in as well.

13 MR NICOL-WILSON: Your Honour, I am available on Saturday.

14 JUSTICE DOHERTY: Thank you very much for that very helpful
12:23:48 15 cooperation. We'll have to leave it at that because of the very
16 pertinent matter Mr Herbst raised which was we may not even have
17 witnesses. I will inform our administrative officers that we may
18 sit for a little bit on Saturday, dependent on availability of
19 witnesses.

12:24:07 20 That brings me back to the point raised by Mr Herbst on the
21 timing. I'm prepared to try it tomorrow. If 334 is called, in
22 the light of his previous illness, I would not expect him to sit
23 for a long period. I would have to think of it. So I will try
24 it once tomorrow, because Mr Metzger has a point: All of this
12:24:50 25 static going through our heads is not good for calmness of spirit
26 or headaches. So we'll give it a try tomorrow. We'll sit for
27 two and a half hours. If it works out, we'll look at it. If it
28 doesn't work out, we'll go back to the previous.

29 So we'll continue on now. I notice the witness is not in

1 the witness box, so I would ask for him to be brought in, please.

2 MR HERBST: Your Honour, while we're waiting for the
3 witness, I wonder if the Court would allow me to report that when
4 the interpreter was speaking in response to Your Honour's

12:25:41 5 question, there continued to be significant static on the line.

6 I don't know what can be done or whether it will be able to be
7 done, but I did want to report that.

8 I also, as a result of the static, am not exactly sure
9 where in the answer Mr Kargbo left off. So I'm not sure exactly
10 what his testimony was about the actual meeting itself up to now.
11 If that could be reviewed I would be most grateful.

12:26:10

12 JUSTICE DOHERTY: I will in fact read what I have written
13 before the objections, and again I would ask counsel for the
14 Defence for any corrections.

12:26:33

15 I realise I did not address one question, and that was
16 about the amicus. I was told informally by The Hague that the
17 amicus brief would be ready sometime next week, but I haven't got
18 a definite date. Obviously as soon as it comes in, it will be
19 made available to everyone.

12:26:55

20 I'm now going to read what I have recorded for the
21 witness's last answer prior to the objections and the ruling.

22 The witness had said he asked how I knew, and I said 334 is
23 my brother. And Bazzy Kamara and Five Five have promised they
24 would send money for 334 and for me also. He said that would be
25 difficult to come to Court, and that is the last I have recorded.

12:27:28

26 Mr Witness, I again remind you that you are under oath and
27 you must tell the truth. Do you understand?

28 MR METZGER: Just a point very quickly. I agree with what
29 Your Honour said in terms of the recollection of the witness's

1 statement. I hadn't, probably because I was on my feet, noted
2 that would be difficult to come to Court.

3 JUSTICE DOHERTY: Definitely. I'm very clear on that
4 point, Mr Metzger.

12:28:09 5 MR METZGER: I don't take any issue on that. For the
6 record, I wanted Your Honour to bear in mind, as it were
7 retrospectively, and I'm sure Your Honour bore it in mind,
8 Article 17(C)(iii) in particular of the code of conduct for
9 counsel.

12:28:34 10 JUSTICE DOHERTY: Mr Herbst, please continue with your
11 questions as best you can and with all the static around us.

12 MR HERBST: Thank you, Your Honour, I will.

13 Q. Mr Kargbo --

14 A. Yes, sir.

12:28:52 15 Q. Can you continue with your answer as to what the lawyer
16 Mr Mansaray said?

17 A. After I had told Mr Mansaray that that was what those men
18 said, he said that will be difficult. And I said, Well, those
19 men had told me - Buzzy and Five Five - had told me that they
12:29:18 20 would raise the amount that they would send for 334 and myself.
21 Then he said, Well, if that is what they have said, they are
22 going to raise another amount for me as well to pay me. Then he
23 said, If that is what they have decided, then that will be no
24 problem. Let them go ahead.

12:29:46 25 MR HERBST: Your Honour, on behalf of us in Kigali we have
26 to report that we heard nothing of the substance of the answer as
27 a result of the static. I don't know - I hesitate to ask
28 Your Honour to repeat it, but unfortunately we heard nothing that
29 we could understand of that lengthy answer.

1 JUSTICE DOHERTY: I'm having exceptionally bad static as
2 well, but I did hear the answer. I have not recorded it ad
3 verbatim, so this is not an ad verbatim record. The witness said
4 words more or less as follows: After I had told Mansaray, and he
12:30:55 5 said it would be difficult, I said Bazzy and Five Five said they
6 would raise money for 334 and for me. Mansaray said that would
7 be no problem, go ahead.

8 MR METZGER: He then went on to say --

9 MR HERBST: Mr Mansaray [Overlapping speaker].

12:31:18 10 JUSTICE DOHERTY: Just a minute, Mr Herbst. There's a bit
11 I didn't note that Mr Metzger fortunately has.

12 MR METZGER: He then went on to say, as far as I could
13 hear, the lawyer said if that is the case they would have to pay
14 him; i.e., the lawyer, too.

12:31:32 15 JUSTICE DOHERTY: Thank you, Mr Metzger, I didn't hear that
16 bit.

17 Mr Herbst, you heard it all?

18 MR HERBST: Yes, Your Honour. And I thank you again.

19 THE COURT OFFICER: Your Honour, the witness is having
12:31:55 20 trouble hearing, so let me adjust his mic.

21 JUSTICE DOHERTY: Mr Herbst, please pause. The witness
22 also is having problems hearing because of.

23 [Technical difficulties]

24 THE WITNESS: Yes, I can hear.

12:32:29 25 JUSTICE DOHERTY: Mr Herbst, please continue with your next
26 question.

27 MR HERBST: Thank you, Your Honour.

28 Q. Mr Kargbo, after the meeting with the lawyer, where did you
29 and Mr Bangura go?

1 A. We returned to Howe Street.

2 Q. And upon your - is Howe Street in the Sweissy area?

3 A. Yes, sir.

4 Q. While in the Sweissy area, did you have occasion to see 334
12:33:27 5 again there?

6 A. Yes, sir. We found 334 there, sir.

7 Q. And what happened?

8 A. When we met 334 there, Bomb Blast again spoke to him. He
9 said 334 should not be afraid to help those people in Rwanda. If
12:33:55 10 he has to be afraid, it is I. He should be afraid of me and
11 Sammy, but he should not be afraid to assist them.

12 MR HERBST: I'm afraid I have to report that the
13 Court Officer and myself did not hear all of the answer. I
14 myself heard what I think is part of the answer, but to make sure
12:34:29 15 that --

16 JUSTICE DOHERTY: I'll read what I have, Mr Herbst. When
17 we met 334, Bomb Blast spoke to him. Bomb Blast said 334 should
18 not be afraid of helping those people in Rwanda. If he was to be
19 afraid, he should be afraid of Sammy and him.

12:34:59 20 MR HERBST: Thank you, Your Honour.

21 Q. Now, Mr Kargbo, I want to direct your attention to March of
22 2011. That would be some months after this meeting with lawyer
23 Mansaray that you described. Did you have occasion to be
24 contacted again by Mr Kamara?

12:35:23 25 A. Yes, sir.

26 Q. Would you tell the Court what Mr Kamara said to you?

27 A. When Mr Kamara called me again, he told me - he said Sammy,
28 just in case anybody comes to ask you or to make any inquiries
29 whether you and I were talking on the phone, you should deny. Do

1 not answer to anybody.

2 Q. Was there any mention of money in that conversation?

3 A. Yes, sir.

4 Q. And what was said about money?

12:36:21 5 A. He said if I deny that statement, if I do not say anything,
6 he said he will send money to Serry Kamal so that he will give it
7 to me.

8 Q. Mr Kargbo, earlier in the morning you mentioned - you gave
9 the name Gullit, if I heard you correctly. Could you tell me to
12:36:56 10 whom you were referring by the name Gullit?

11 A. Tamba Brima.

12 Q. Now, you earlier described your relationship with
13 Mr Bangura. What is your - what was your relationship with 334?
14 How close or how - what was the nature of that - of your
12:37:26 15 relationship with him?

16 A. 334, my relationship with him is on my father's side. His
17 father and my father come from the same hometown. My father
18 always used to tell me that he is his brother. He's a relative.

19 Q. Would you tell the Court what is your relationship with
12:38:00 20 Mr Bazy Kamara? How did you know him and how close a
21 relationship did you have with him?

22 A. Well, at the time that I joined the army, that was when I
23 became close to Mr Bazy Kamara as a friend. But we - there was
24 no quarrel between us. There is no must understanding between
12:38:27 25 us. We had known each other for long years ago.

26 Q. And could you tell us - give us the same information with
27 respect to Mr Kanu?

28 A. It's the same with Mr Kanu. We built up our relationship
29 in the army. We hadn't any quarrel. He didn't do anything bad

1 to me. He never did.

2 MR HERBST: I'm sorry, Your Honour, I have to ask you to
3 tell us again what was said, because of the static.

4 JUSTICE DOHERTY: The witness said it was the same for
12:39:19 5 Mr Kanu. We built up our relationship in the army. He never did
6 anything bad to me.

7 MR HERBST:

8 Q. And finally with respect to Gullit, Mr Brima?

9 A. Well, those men, I won't tell lies, because they never did
12:39:47 10 anything bad to me. Nor did I do anything bad to them since I
11 knew them or they knew me.

12 MR HERBST: And again I have to ask what was said.

13 JUSTICE DOHERTY: The answer was:

14 "Well, those men, I will not tell lies. They never did
12:40:15 15 anything bad to me, and I never did anything bad to them."

16 MR HERBST:

17 Q. Mr Kargbo, what was your cell phone number at the time of
18 these communications that you have testified to with the convicts
19 in Rwanda?

12:40:41 20 A. 033-25-5597.

21 MR HERBST: Your Honour, I would ask that the witness's
22 plea agreement be placed before the witness.

23 JUSTICE DOHERTY: I don't have this document. Has it been
24 given to CMS?

12:41:31 25 THE COURT OFFICER: [Kigali] The Court Officer has the
26 document.

27 JUSTICE DOHERTY: Thank you.

28 MR HERBST: I'm advised that the Court
29 [Overlapping speakers] --

1 JUSTICE DOHERTY: Mr Herbst, your microphone. Can you
2 switch it off, please.

3 Please show the document to counsel for the Defence.

4 THE COURT OFFICER: He has a number of documents that have
12:41:53 5 been given to me. Let him help me identify which one it is,
6 please.

7 JUSTICE DOHERTY: Let me see it first before we show
8 anything to witnesses for identification. I'll see if I can
9 identify it.

10 THE COURT OFFICER: [In Kigali] Your Honour?

11 MR HERBST: She doesn't have her earphones on.

12 JUSTICE DOHERTY: I've tried to assist the Court Officer
13 with the documents he's been supplied, and I cannot readily
14 distinguish an agreement from the various bundles that he has.
12:46:14 15 Just hold on a moment, please. There seems to be some other
16 document coming up.

17 I have been shown, but not read, a document headed
18 "Confidential Plea Agreement". I'm now going to go to the back
19 page and see if there's a name. Your name is on it, Chief Taku's
12:46:47 20 name is on it, but there's no actual signature. And the
21 witness's name is on it, but again there's no signature. This
22 may be the document you're referring to.

23 I would think it is, and I'm going to ask the
24 Court Attendant to show it to counsel for the Defence. My first
12:47:13 25 thought is that they are going to remark that there's no
26 signatures, but let me hear what they say.

27 MR HERBST: Your Honour, if I could just be heard in
28 clarification.

29 JUSTICE DOHERTY: I would be grateful for that.

1 MR HERBST: It might help the Court.

2 JUSTICE DOHERTY: That would be most helpful, yes.

3 MR HERBST: Your Honour, the document that you're looking
4 at was a document that I asked earlier today the Court staff here
12:47:47 5 to scan in and e-mail over, but it is my understanding that
6 Mr Akinbobola had the signed copy of the plea agreement and that
7 he had furnished it to the Court Officer along with some of the
8 other exhibits. So --

9 JUSTICE DOHERTY: He is nodding in the negative. Maybe I
12:48:16 10 can ask him to reply on record.

11 Mr Akinbobola, have you got a signed document?

12 MR AKINBOBOLA: No, My Lord, I don't have it with me. All
13 the document that was given to me I handed over to the Court
14 Officer.

12:48:34 15 JUSTICE DOHERTY: When you say you don't have it with me,
16 you mean you don't have it at all?

17 MR AKINBOBOLA: No, My Lord.

18 JUSTICE DOHERTY: He says he doesn't have it. I'm still
19 going to show the other document to counsel
12:48:50 20 [microphone not activated].

21 MR METZGER: I, for my part, can say that there is no need
22 for me to see the document. I understand Your Honour is
23 proposing to pass to me; that is, the unsigned confidential plea
24 agreement. It was obviously served as a confidential annexed to
12:49:11 25 a public document, and I'm aware of that document. We're just
26 waiting to see what the purpose of this line of questioning is
27 and, you know, bearing in mind that the document we have is
28 unsigned. I assume there's a signed one somewhere, but we
29 haven't seen it.

1 JUSTICE DOHERTY: Mr Herbst, do you want to stand down this
2 question so I can ask for a search to be made, or do you want to
3 proceed on with the unsigned version being shown to the witness
4 and then letting me deal with any comments?

12:49:58 5 MR HERBST: Your Honour, this was the last area of my
6 inquiry on direct examination. I was going to ask the witness to
7 look at the document and affirm that, in fact, this is the
8 agreement he had with Independent Counsel. I thought it would be
9 appropriate to lay before the Court the full extent of the
12:50:24 10 agreement, and of course I would prefer - and I had thought that
11 we would have the signed copy. But it seems to me that the
12 unsigned copy could do as well until we find the signed copy and
13 have it substituted for the unsigned copy, but I'm happy to
14 proceed in whatever way the Court feels best.

12:50:51 15 JUSTICE DOHERTY: In the light of the fact that we're going
16 to have to search and in the light of the fact that this is the
17 last question for the - the last part of this witness's evidence,
18 I will have him shown the unsigned copy. I will ask him if he
19 can identify it, and I will then act upon what answers he gives.

12:51:14 20 Mr Court Attendant, please show it to each counsel for the
21 Defence before it is shown to the witness.

22 Mr Herbst, the document is before the witness.

23 MR HERBST:

24 Q. Mr Kargbo, would you please look at the document. Take
12:52:47 25 your time and review it, and tell us whether you can identify
26 what that document is and tell the Court what it is?

27 JUSTICE DOHERTY: Yes, Mr Kargbo, I note that you have read
28 the document and spent some time reading it and you have now
29 closed it. I will therefore ask you to answer Mr Herbst's

1 question, which was after looking and reviewing the document, to
2 tell the Court what it is.

3 THE WITNESS: My Honour, I made this plea agreement with
4 Mr Bob. He did not force me. I did it peacefully and we did not
13:00:02 5 have any agreement for any other activity.

6 MR HERBST: I [microphone not activated] hear all of that.

7 JUSTICE DOHERTY: I will repeat what was said.

8 "Yes, I made this plea agreement with Mr Bob. He did not
9 force me. I did it peacefully and we did not have any agreement
13:00:42 10 for any other activity."

11 MR HERBST: I think that's sufficient foundation. I'll
12 move to admit the document, Your Honour.

13 JUSTICE DOHERTY: Counsel, there is an application to
14 tender the document into evidence.

13:01:05 15 MR METZGER: When it's signed.

16 MR KAMAL: [Microphone not activated]... position is still
17 the same. Same as Mr Metzger.

18 MR NICOL-WILSON: [Microphone not activated]

19 MR KAMAL: Nobody has signed it.

13:01:28 20 JUSTICE DOHERTY: Mr Herbst, there is an objection -
21 there's a half a sort of guarded objection, which basically is it
22 could be tendered when signed. I can take one of two approaches:
23 I can ask you to question further on the unsigned document; or I
24 can mark this document for identification and have a signed copy
13:01:53 25 if it's found. I ask you what approach you wish to take in the
26 light of Defence counsel's statements.

27 MR HERBST: Your Honour, I would like to put one or two
28 additional questions to the witness. But I would also like to
29 ask the Court - or the Court Officer to request of Mr Akinbobola,

1 if he is still in the courtroom, to leave the courtroom and
2 attempt to find a signed copy of the document to bring back to
3 Court. I've also asked the Court staff here whether it would be
4 possible for them to search the records, because I believe that a
13:02:44 5 signed copy was filed at one point. But to expedite the
6 proceedings and so that we can begin the cross-examination at
7 this point I would like to ask the witness an additional question
8 or two [overlapping speakers].

9 JUSTICE DOHERTY: Please proceed. And also I would ask
13:03:10 10 anyone who is in contact with CMS to have the records searched.

11 MR HERBST:

12 Q. Mr Kargbo, did you sign an identical copy of the document
13 that you have just reviewed, on page 8 of the document? If you
14 would just look at page 8 of the document and page 6 of the
13:03:40 15 document? And tell us whether you actually -

16 A. Yes, sir.

17 Q. And did your counsel, Chief Taku, sign the document on page
18 7 and page 8 of the document?

19 A. Yes, sir.

13:04:06 20 Q. And was that done in July 2011, the month --

21 A. Yes, sir.

22 Q. -- set forth in the document? Your Honour, I would move to
23 tender the document with the understanding that when we get a
24 signed document, we would substitute it for the unsigned
13:04:30 25 document. But I believe there's a sufficient foundation now that
26 has been laid to admit even the unsigned one.

27 MR METZGER: There is no objection in principle to the
28 introduction of this document. However, it is missing a vital
29 and my learned friend might think most important factor: The

1 date. It is generically said to have taken place in July 2011.
2 Was it before 15 July 2011? Or was it after 15 July 2011? I
3 don't really want to invite speculation. Quite happy to admit
4 the document. Let's just have the signed copy.

13:05:22 5 JUSTICE DOHERTY: Are you speaking for other counsel?

6 MR METZGER: I would rather they speak for themselves. I'm
7 sure.

8 JUSTICE DOHERTY: Very wise.

9 MR METZGER: I wouldn't want to assume that everybody sort
13:05:35 10 of follows that line. It may be the case, but we shall see.

11 JUSTICE DOHERTY: It's just I noticed nobody was leaping to
12 their feet.

13 MR KAMAL: Your Honour, as far as I'm concerned, the
14 document is incomplete. It's incomplete in many ways. It's
13:05:54 15 unsigned, undated, and it's not usual to admit such documents
16 that have no date, no signatures, as exhibits.

17 MR NICOL-WILSON: Your Honour, I have no objection. I have
18 no objection.

19 JUSTICE DOHERTY: Thank you. I consider that the witness
13:07:58 20 has sufficiently identified the document as an identical copy of
21 the one he signed. I admit it as exhibit - Prosecution exhibit
22 P1. If a signed document is found and identified, it may also be
23 tendered. If it is not found, I will deal with the issues as to
24 weight, et cetera, that have been raised by both counsel. That
13:08:25 25 document will become P1.

26 ADMITTED AND MARKED EXHIBIT P1

27 MR HERBST: Your Honour, I have no further questions of the
28 witness and I tender him for cross-examination.

29 JUSTICE DOHERTY: Thank you very much, Mr Herbst.

1 Mr Nicol-Wilson, you're first on the list. Thank you.

2 CROSS-EXAMINED BY MR NICOL-WILSON:

3 Q. Mr Witness, I'm going to ask you some few questions and
4 please answer me as clearly and accurately as you can.

13:09:33 5 MR NICOL-WILSON: Your Honour, I did not get the --

6 JUSTICE DOHERTY: Please proceed, Mr Nicol-Wilson. I'm
7 sure the witness heard you.

8 MR NICOL-WILSON:

9 Q. Mr Witness, on 19 April last year you met the
13:09:51 10 Independent Counsel for the first time in connection with these
11 contempt proceedings; is that correct?

12 A. I can't remember.

13 Q. Do you remember meeting with Independent Counsel sometime
14 last year in connection with these proceedings? Or you still do
13:10:22 15 not remember?

16 A. Who is the Independent Counsel?

17 Q. Do you remember meeting with the lawyer who led you in
18 evidence just now, Mr Bob, as you referred to him, sometime last
19 year?

13:10:46 20 A. Yes, sir.

21 Q. And do you also remember saying to him that you want
22 protection a few minutes after you met him?

23 A. No, I can't remember that.

24 Q. Did you give Mr Bob any condition for your discussions with
13:11:39 25 him in connection with these contempt proceedings the first time
26 you met him?

27 A. I did not give him any condition.

28 Q. Did you, in the course of your discussions with him, speak
29 about the need for protection?

1 A. Well, I'm not aware of that. I can't remember ever telling
2 him that.

3 Q. You can't remember, or you did not say that to Mr Bob?

4 A. I did not tell him.

13:12:47 5 Q. So if Mr Bob had disclosed information to this Court saying
6 you asked for protection, that would not be correct?

7 A. I'm not aware of that.

8 Q. Mr Witness, please try to answer my questions clearly and
9 as truthful as you can. The question is this: If Mr Bob had

13:13:32 10 indicated to lawyers --

11 MR HERBST: Objection.

12 JUSTICE DOHERTY: Just a moment. Just a moment. There's
13 an objection.

14 Yes, Mr Herbst.

13:13:39 15 MR HERBST: I object to the predicate of counsel
16 instructing the witness to answer as truthfully as he can and so
17 forth. I don't think that's appropriate.

18 JUSTICE DOHERTY: Mr Nicol-Wilson, he's taken the oath, and
19 it's not as truthfully as he can. It's truthfully. And there

13:14:05 20 isn't --

21 MR NICOL-WILSON: I'll rephrase the question.

22 JUSTICE DOHERTY: Thank you.

23 MR NICOL-WILSON:

24 Q. Mr Witness, if Mr Bob has indicated to lawyers on this side
13:14:24 25 that you asked for protection the first time you met him, that
26 would not be correct?

27 A. I never asked him for protection.

28 Q. Have you received any money from this Court since the day
29 you decided to cooperate with the Independent Counsel?

1 THE INTERPRETER: Your Honour, can the witness be audible?
2 I didn't get his answer clearly.

3 JUSTICE DOHERTY: Mr Kargbo, could you speak more loudly so
4 the interpreter can hear you clearly, please. Please answer the
13:15:20 5 question again.

6 THE WITNESS: No, sir.

7 MR NICOL-WILSON:

8 Q. And you did not receive --

9 MR HERBST: Your Honour, I'm going to - excuse me. This
13:15:36 10 may be a little belated, but it occurs to me that I ought - I
11 need to object to that question, because it does not identify -
12 to the extent that it requests information about the terms of
13 protection that have been provided the witness, that I don't
14 think should be disclosed. If there are any additional benefits,
13:16:04 15 that's something else. But it's unclear from the question that
16 was asked, and I do think it intrudes into the terms of
17 protection that the WVS has provided.

18 JUSTICE DOHERTY: The question actually was, "Did you
19 receive any money from the Court since the date you decided to
13:16:28 20 cooperate?" I do not think that impinges on protection, and I
21 think it is an appropriate question for cross-examination. It
22 has been answered and it's on record now, and I think it's an
23 appropriate - I would have allowed it as an appropriate question
24 in any event.

13:16:51 25 Mr Nicol-Wilson, please continue.

26 MR NICOL-WILSON:

27 Q. Mr Witness, are you employed?

28 THE INTERPRETER: That answer again is not clear.

29 JUSTICE DOHERTY: Mr Witness, again the interpreter is

1 having trouble hearing you. If you could, when you answer, come
2 a little closer to the microphone when you answer, that might
3 help. Please repeat your answer.

4 MR NICOL-WILSON:

13:17:27 5 Q. Are you employed, Mr Witness?

6 A. No, sir.

7 Q. How long have you been unemployed for?

8 A. Since 2010.

9 JUSTICE DOHERTY: Mr Nicol-Wilson, if you could just have a
13:18:20 10 seat for a moment, because we need to change the tape.

11 Please continue.

12 MR NICOL-WILSON:

13 Q. Now let me take you to the alleged conversation between
14 Bomb Blast and 334. If I am correct, when you were proceeding
13:19:29 15 to - from Congo Water, when you were with 334 to Congo Water?

16 JUSTICE DOHERTY: To where, Mr Nicol-Wilson?

17 MR NICOL-WILSON: There is a conversation he alleged that
18 took place between 334 and Bomb Blast. The first conversation.

19 JUSTICE DOHERTY: Yes, I recall that. But you named a
13:19:51 20 place. I think you said Congo Water.

21 MR NICOL-WILSON: Yes, that's what he said. He said he was
22 going to Newton. He was driving to Newton.

23 Q. Mr Witness, the mobile phone was not on speaker at the time
24 you allege Bomb Blast was talking to 334?

13:20:41 25 A. It was on loud speaker.

26 Q. I suggest to you that the mobile phone was not on
27 loudspeaker?

28 MR HERBST: Objection, Your Honour. I think that's
29 argumentative.

1 JUSTICE DOHERTY: It's already been answered,
2 Mr Nicol-Wilson.

3 MR NICOL-WILSON: As Your Honour pleases.

4 Q. Did you make a statement to the Independent Counsel in July
13:21:09 5 last year?

6 JUSTICE DOHERTY: Again, that's Mr Bob we're talking about.

7 MR NICOL-WILSON: Yes, yes.

8 JUSTICE DOHERTY: Just to be sure.

9 MR NICOL-WILSON:

13:21:19 10 Q. Mr Bob. Did you make a statement to Mr Bob sometime last
11 year?

12 A. Yes, sir.

13 MR NICOL-WILSON: Your Honour, I will respectfully apply
14 that that statement be put to the witness in order to prove
13:21:40 15 previous inconsistency.

16 JUSTICE DOHERTY: Can you identify it for me? Is it --

17 MR NICOL-WILSON: The statement dated the 6th of May 2011.

18 JUSTICE DOHERTY: Mr Court Attendant, could you pass me up
19 those documents? Did you give notice to CMS that you would
13:22:12 20 require a copy of this to be put to the witness?

21 MR NICOL-WILSON: Well, the need just arose due to the
22 answer he gave.

23 JUSTICE DOHERTY: I see. Well, let me see if we've got a
24 copy that's unmarked that can be shown to the witness.

13:22:46 25 Mr Herbst, Mr Court Attendant has shown me a document. I
26 think it's a few pages, but it is dated 6th of May. Have you got
27 a copy readily available?

28 MR HERBST: [Microphone not activated] Witness statement of
29 Mr Kargbo, and it is dated the 6th of May 2011. However,

1 Your Honour, perhaps I should interpose an objection. I don't
2 see anything inconsistent in the statement.

3 JUSTICE DOHERTY: Well, we'll have to hear the question to
4 rule on that. Please put your question.

13:24:12 5 MR NICOL-WILSON:

6 Q. Mr Witness, today in Court you said that Bomb Blast said to
7 334 that is what those men said; correct? During the telephone
8 conversati on.

9 A. Yes.

13:24:39 10 Q. Good. Now, in your statement of 6th of May 2011, you said
11 something completely di fferent.

12 MR NICOL-WILSON: Your Honour, I will read out the
13 portions, but I will leave out the name because it is subject to
14 protective measures.

13:25:02 15 Q. Starting from the last line of the first page of your
16 statement, you said:

17 "Bomb Blast wanted to talk to 334, so I passed the phone to
18 334, who told Bomb Blast that he has heard the message and he
19 will think about it."

13:25:34 20 MR HERBST: I think the word was "heard" the message. He
21 had heard the message.

22 MR NICOL-WILSON:

23 Q. Yes, that he has heard the message and he will think about
24 it. You never in your statement mentioned what Bomb Blast said
13:25:47 25 on the other side of the line?

26 A. Let me just clari fy that area.

27 Q. Please answer. You did not in your statement say
28 Bomb Blast told 334 that that is what the men have said. You
29 said something completely di fferent in your statement on the

1 11th of May 2011, and that is why the statement is before you?

2 A. I did not say anything different.

3 JUSTICE DOHERTY: Mr Nicol-Wilson, I'm getting a bit
4 confused here. Are you saying that the evidence today, "that is
13:26:37 5 what the man said," is not recorded, or that Bomb Blast saying he
6 heard the message and would think about --

7 MR NICOL-WILSON: Your Honour, during his testimony in
8 chief he said while Bomb Blast was talking to 334. Bomb Blast
9 was on the other side far away from where they were at that time,
13:27:05 10 said to 334, That is what the men have said. And I already asked
11 a question that it is not possible for the witness to know what
12 Bomb Blast was saying. And the correct account is what I am now
13 putting to him, which is what he said in his statement on 6 May.
14 He heard what 334 said, but he did not hear what Bomb Blast said
13:27:34 15 on the other side.

16 JUSTICE DOHERTY: [Microphone not activated]. That
17 actually is clearer to me, so maybe if you put it in those terms.
18 I want to ensure that the witness is clear also what you mean.

19 MR NICOL-WILSON: Okay, your Honour.

13:27:52 20 Q. Now, Mr Witness, when Bomb Blast - as you allege when Bomb
21 Blast was talking to 334, 334 said, according to you, that he has
22 heard the message and would think about it; correct?

23 A. Yes, it's correct.

24 Q. Mr Witness, you did not hear what Bomb Blast said to 334,
13:28:42 25 because they were speaking on a mobile phone?

26 A. I did not hear what Bomb Blast said, but 334's response to
27 me, he said, I've heard and I'll think about that. Then his
28 countenance changed immediately.

29 Q. Thank you very much. Thank you very, very much. We'll

1 proceed?

2 MR HERBST: I'm sorry, your Honour, because of the static,
3 I was unable to hear the witness's answer. I would ask that
4 whatever the witness said in substance, not necessarily verbatim,
13:29:28 5 be given to us here in Kigali.

6 JUSTICE DOHERTY: Mr Witness, I actually did not hear
7 clearly the first part of your answer, so I would like to have
8 that. I heard the second part of your answer clearly.

9 Mr Kargbo, do you understand me?

13:30:02 10 THE WITNESS: Yes, ma'am.

11 JUSTICE DOHERTY: I missed the first bit of your answer
12 when you spoke about Bomb Blast. Can you tell me what you said
13 again?

14 THE WITNESS: Yes, ma'am. After I had spoken to 334 --

13:30:22 15 MR NICOL-WILSON:

16 Q. Mr Witness, sorry, could you just repeat the answer you
17 stated just now - the answer you stated just you now?

18 MR HERBST: Your Honour, I object to counsel interrupting
19 when he [overlapping speakers] --

13:30:40 20 THE WITNESS: After I had spoken to 334 I called Bomb
21 Blast on my cell phone, and I told 334 that even Bomb Blast wants
22 to talk to you. Then 334 held the phone and spoke to Bomb Blast.
23 Then later he responded that Okay, I've heard. Straightaway his
24 countenance changed in the car.

13:31:04 25 JUSTICE DOHERTY: Mr Herbst, did you hear that? Because
26 that was what he did say the response to - 334 would think about
27 it, and his countenance changed in the car and that Bomb Blast
28 was called.

29 MR HERBST: I did hear it, your Honour. I guess what I did

1 not hear was the first answer, and I was wondering the portion of
2 the answer that your Honour did not hear, would the court
3 reporter have received it? I don't know.

4 MR METZGER: I could assist.

13:31:44 5 JUSTICE DOHERTY: Thank you.

6 MR METZGER: And that answer was, "I did not hear what Bomb
7 Blast said." If my learned friend would like it in the Krio, I
8 can give it to him as well.

9 JUSTICE DOHERTY: We've enough problems hearing. Continue.

13:32:19 10 MR NICOL-WILSON:

11 Q. Mr Witness, Bomb Blast never gave you any money for you to
12 give to 334 for him to change his statement?

13 A. He never gave me money.

14 Q. As far as you know also, he never gave 334 any amount of
13:32:48 15 money for him to change his statement?

16 A. I never knew that.

17 Q. As far as you know, he did not. As far as you know.

18 A. Yes.

19 Q. As far as you know, Mr Witness, he did not offer 334 any
13:33:20 20 amount of money for him to change his statement?

21 A. No, sir.

22 Q. He did not?

23 A. Yes, sir.

24 Q. Now, Mr Witness, this area called Sweissy is a place where
13:34:00 25 a number of people normally hang out, this Sweissy area?

26 A. It's a business place.

27 Q. So it's not like a private house?

28 A. No, sir.

29 Q. It's a public place?

1 A. Yes, sir.

2 Q. And this is a place where you normally go to; 334 is
3 normally there; and Bomb Blast is also normally there?

4 A. Yes, sir, sometimes. Sometimes.

13:34:51 5 Q. And this is the place where, you have stated in your
6 testimony, that 334 met Bomb Blast and yourself and gave you a
7 ride to the office of Lawyer Mansaray?

8 A. Yes, sir.

9 Q. This event occurred sometime in 2010, about two years ago.
13:35:56 10 This trip from Sweissy to the office of Lawyer Mansaray, it
11 happened about two years ago?

12 A. Maybe, yes.

13 Q. Now, Mr Witness, you cannot remember exactly the words that
14 transpired between Bomb Blast and 334 at Sweissy at that time
13:36:46 15 when you returned from the office of Lawyer Mansaray. You cannot
16 remember exactly what Bomb Blast said, because this is a public
17 place and it's very noisy?

18 A. No, I can remember.

19 Q. Okay, Mr Witness, if you can remember, let us go back to
13:37:03 20 your statement. The last page of your statement, the very first
21 paragraph, the last two lines, your Honour, Mr Witness, you said,
22 "I do not remember whether Bomb Blast said that if there's
23 anybody that" --

24 THE INTERPRETER: Your Honour, can I learned counsel please
13:37:27 25 take it slowly for the interpreter to keep up with him?

26 JUSTICE DOHERTY: Two things, Mr Nicol-Wilson: First of
27 all, please remember to switch off your machine when you're not
28 speaking in it. It causes problems with others; and secondly,
29 the interpreter requires you to speak more slowly so he may

1 interpret.

2 MR NICOL-WILSON:

3 Q. Mr Witness, in your statement to Mr Bob you said, "I do not
4 remember Bomb Blast said that if there is anybody that 334 should
13:38:05 5 be afraid of, it is Bomb Blast and Ragga." That is what you said
6 in your statement, that you do not remember. You cannot
7 remember?

8 A. No, sir.

9 THE INTERPRETER: Your Honour, can the witness repeat his
13:38:23 10 answer more audibly.

11 JUSTICE DOHERTY: Mr Witness, please come a bit closer to
12 the microphone and repeat what you said to allow the interpreter
13 to hear you.

14 THE WITNESS: Thank you very much, my Lord. When we had
13:38:42 15 contact with 334 --

16 MR NICOL-WILSON:

17 Q. Mr Witness, please don't start another story.

18 JUSTICE DOHERTY: No, let the witness answer.

19 MR NICOL-WILSON: As your Honour pleases.

13:38:55 20 JUSTICE DOHERTY: [Microphone not activated].

21 THE WITNESS: When we had contact with 334, Bomb Blast
22 told 334 he should not be afraid to assist his men in Rwanda and
23 he should have no fear. If he was to be afraid, it's either I or
24 Sammy Ragga or Bomb Blast that 334 should be afraid of.

13:39:24 25 MR NICOL-WILSON:

26 Q. Mr Witness, we are not going to go away from this
27 particular statement until we clarify it. Do you have a copy of
28 the statement before you? Can you please look at the last - the
29 second-to-last paragraph on the last page. I realise you can

1 read, because you were reading the plea bargaining agreement. So
2 please look at that paragraph. I don't want you to mention any
3 name. Can you read out what the last two - the last sentence on
4 the second-to-last paragraph says?

13:40:07 5 A. Okay. It is said the last two. Let me start here. "And
6 Bomb Blast told 334 that he should not be afraid to render
7 assistance to the men in Rwanda. I do not remember whether Bomb
8 Blast said that if there is anybody that 334 should be afraid of,
9 it is Bomb Blast and Ragga."

13:40:33 10 Q. So my question to you is you cannot remember whether those
11 were the exact words of Bomb Blast at Sweissy, this noisy and
12 crowded place?

13 A. This other paragraph, yes.

14 Q. Thank you. So you cannot remember. Mr Witness, you cannot
13:40:59 15 remember?

16 A. No, sir.

17 Q. Thank you.

18 JUSTICE DOHERTY: Mr Nicol-Wilson, I note the time, and
19 normally we would have adjourned for a break now a little before
13:41:13 20 this. I just wanted you to finish your line of questioning.

21 We're going to take a break, because we've been - it's our lunch
22 break now. I'm going to resume Court. I'm going to take the 45
23 minutes I had originally planned for before and we will resume
24 Court at 2.30. Please adjourn Court.

13:41:36 25 Mr Witness, you're under oath. Please do not discuss your
26 evidence with anyone else. Please adjourn Court.

27 [Whereupon the Court adjourned at 1.42

28 p.m. until 2.30 p.m.]

29 [Accused enter court]

1 [The witness takes the stand]

2 [Upon resuming at 2.37 p.m.]

3 JUSTICE DOHERTY: My apologies for the delay, but I was
4 involved in administrative matters that took up my time.

14:38:18 5 Now, Mr Witness, I want to remind you that you're still
6 under oath.

7 I also want to check if we're having clear contact with
8 Kigali.

9 Mr Herbst.

14:38:36 10 THE COURT OFFICER: [In Kigali] Madam, we can see and hear
11 you clearly.

12 JUSTICE DOHERTY: Thank you. [Microphone not activated]

13 MR NICOL-WILSON:

14 Q. Now, Mr Witness, you have known 334 for a very long time.

14:39:14 15 A. Yes, sir.

16 Q. And he has been like a brother to you.

17 A. Yes, sir.

18 Q. In fact, when you were released from prison in 2009, he was
19 gracious enough to allow you to stay in his house?

14:39:43 20 A. No, sir.

21 Q. Where did you move to when you were released from prison?

22 A. I had a fiancée who was staying in the same place.

23 Q. And that is where?

24 MR HERBST: I'm sorry, Your Honour. I didn't hear the
14:40:09 25 answer.

26 JUSTICE DOHERTY: The answer was:

27 "I had a fiancée who was staying in the same place."

28 But I haven't worked out where the same place was.

29 THE WITNESS: I was staying in Wellington.

1 MR NICOL-WILSON:

2 Q. And I don't want you to be specific in your answer, but
3 that - your house was very close to where 334 stayed?

4 A. No. It was not close to it. It was far off.

14:40:43 5 MR HERBST: Objection, Your Honour.

6 JUSTICE DOHERTY: Yes, Mr Herbst.

7 MR HERBST: Objection, Your Honour.

8 JUSTICE DOHERTY: What is your objection.

9 MR HERBST: The question was in the present tense, "where
14:41:00 10 334 stays," and I don't think that's an appropriate question.

11 JUSTICE DOHERTY: Mr Nicol-Wilson, if you're intending to
12 follow-up where he stayed after prison, please put it in the past
13 tense.

14 MR NICOL-WILSON: As Your Honour pleases.

14:41:29 15 Q. Now you normally have conversations with 334 -

16 JUSTICE DOHERTY: Just before we move on to a new topic I
17 am going to clarify, the house in Wellington, was that after you
18 left prison and you stayed with your fiancée?

19 THE WITNESS: Yes, My Lord.

14:41:45 20 JUSTICE DOHERTY: And at that time was that house close to
21 334's house?

22 THE WITNESS: No, My Lord.

23 JUSTICE DOHERTY: Proceed, Mr Nicol-Wilson.

24 MR NICOL-WILSON:

14:42:04 25 Q. You've never stayed with 334? You've never stayed in the
26 same house as 334, is that what you're saying?

27 JUSTICE DOHERTY: That's not what he's saying. If that's
28 the question please put it in the affirmative because when we use
29 negatives in a Krio sentence we get real problems.

1 MR NICOL-WILSON: As Your Honour pleases. I will rephrase
2 the question.

3 Q. Have you ever stayed in the same house with 334?

4 A. Yes.

14:42:27 5 Q. And during the period you stayed in the same house you had
6 frequent conversations about some issues of concern to 334
7 regarding the Special Court?

8 A. No, no My Lord.

9 Q. You knew that 334 travelled out of Sierra Leone to testify
14:43:14 10 in the Charles Taylor trial?

11 A. No. By then I was in prison. I was in prison. I was not
12 aware of that.

13 Q. But 334 later told you he travelled to the Netherlands to
14 testify?

14:43:39 15 A. He did not tell me outside.

16 MR HERBST: The answer?

17 MR NICOL-WILSON:

18 Q. You got the information from someone.

19 A. Yes.

14:43:54 20 MR HERBST: Excuse me, Your Honour. I was unable to hear
21 the answer.

22 JUSTICE DOHERTY: The answer was:

23 "He did not tell me outside."

24 MR NICOL-WILSON: No. I will clarify that, Your Honour.

14:44:08 25 Q. You got that information from somebody else besides 334?

26 A. Yes.

27 Q. And you also got information that 334 was not happy to have
28 returned back to Sierra Leone?

29 A. I did not.

1 MR HERBST: I couldn't make out that - excuse me, Your
2 Honour. I could not make out the question in its entirety, so
3 could I have that repeated.

4 JUSTICE DOHERTY: Perhaps I should ask counsel to ask
14:45:04 5 again.

6 MR NICOL-WILSON:

7 Q. You know for certain that 334 wasn't happy about being
8 returned back to Sierra Leone?

9 A. I don't know. I never knew about that.

14:45:24 10 MR HERBST: Your Honour, could I ask counsel to speak a
11 little closer to his microphone. I think that may be the
12 problem.

13 JUSTICE DOHERTY: Indeed. I know we all think on our feet
14 in our profession, but in the circumstances it might be better to
14:45:40 15 sit down in order to get your voice transmitted clearly, Mr
16 Nicol-Wilson.

17 MR NICOL-WILSON: As Your Honour pleases.

18 JUSTICE DOHERTY: If you find that difficult, we'll try and
19 get the machine up higher and closer to you, but really --

14:46:00 20 MR NICOL-WILSON: Your Honour, it's just very strange for
21 me to ask questions sitting down.

22 JUSTICE DOHERTY: I know. I am well aware of what you
23 mean.

24 MR HERBST: Your Honour, I share his pain.

14:46:18 25 JUSTICE DOHERTY: Sorry, Mr Herbst. Did you?

26 MR HERBST: I only said that I share my learned friend's
27 pain at having to be seated.

28 MR NICOL-WILSON:

29 Q. Now, Mr Witness, this is not the first time you are being

1 charged with offences in Sierra Leone.

2 A. This is the second time.

3 Q. Am I right to say you are --

4 MR HERBST: Excuse me, Your Honour, I am going to interpose
14:47:11 5 an objection. I do not know that the prior charge is at all
6 relevant or admissible. I haven't been put on notice that
7 counsel would attempt to introduce a prior charge. Under
8 American federal law there are restrictions on the use of such
9 evidence. I interpose an objection.

14:47:57 10 MR NICOL-WILSON: Your Honour, cross-examination has a very
11 wide latitude. You can cross-examine on the issue and you can
12 cross-examine on credit, and these questions are directed at the
13 credit of the witness, and I don't see the relevance of the
14 objection, Your Honour. With respect, this is not the
14:48:16 15 United States.

16 JUSTICE DOHERTY: But don't we have something in our Rules
17 on this?

18 MR NICOL-WILSON: Your Honour, I don't know whether the
19 Independent Counsel will want to phrase his objection based on
14:48:48 20 provisions within the Rules rather than conditions within the
21 federal laws.

22 MR HERBST: Your Honour, I only pointed to - I only - I
23 guess the best way to say it is, I don't know where in the Rules
24 this is addressed. I am hopeful that there is a provision. I am
14:49:19 25 looking for one right now.

26 JUSTICE DOHERTY: There is. I am looking for it, too.
27 Basically, there is a provision that a person can be asked
28 questions of this type, but there is also a general inherent
29 jurisdiction relating to relevancy. So I don't know if this is

1 relevant.

2 Counsel has said that it goes to credibility. The question
3 has actually been answered, and if there is to be further
4 questions on it, I will raise the question of relevance.

14:50:25 5 Have you any other questions in this line of questioning,
6 Mr Nicol-Wilson?

7 MR NICOL-WILSON: Yes, Your Honour, I do. But taking the
8 cue from what you have just said, I will refrain from asking
9 further questions on it.

14:50:41 10 JUSTICE DOHERTY: Incidentally, by the way, I noticed the
11 term you used was "charged." I didn't hear the word
12 "conviction".

13 MR NICOL-WILSON: That's the next question.

14 JUSTICE DOHERTY: Well, I'll allow it.

14:50:55 15 MR NICOL-WILSON: As Your Honour pleases.

16 Q. Were you convicted by the Special Court of Sierra Leone for
17 the offences for which you were charged?

18 A. Yes.

19 Q. And were you sentenced to a term of imprisonment?

14:51:08 20 JUSTICE DOHERTY: Just before we go any further, if you are
21 putting in prior similar conduct, then we should know what he was
22 convicted of.

23 MR NICOL-WILSON: Your Honour, the first set of questions
24 are just foundational. I intend to build up on those questions,
14:51:28 25 Your Honour.

26 JUSTICE DOHERTY: Okay.

27 MR NICOL-WILSON:

28 Q. And you were sentenced to a term of imprisonment?

29 A. Yes.

1 Q. Can you tell the Court what you were convicted for?

2 A. I was convicted because I was not guilty, to be convicted.

3 MR HERBST: Judge, firstly, I didn't hear the answer; and
4 secondly, I was attempting to interpose an objection. Because my
14:52:14 5 objection is that some offences are relevant to credibility, and
6 some are not. I think the appropriate procedure would have been
7 to notify counsel of their intent to admit a prior conviction,
8 and as to what it is so that we can determine whether there is
9 any relevance to credibility from the offences. And if not, they
14:52:54 10 should not be admitted.

11 JUSTICE DOHERTY: Mr Metzger, there is no point in you
12 getting to your feet because this is not your battle.

13 MR METZGER: I was going to object to the objection and
14 refer Your Honour and my learned friend to Rule 89, which doesn't
14:53:12 15 contain any such rules.

16 JUSTICE DOHERTY: I know we don't have the Rule, and I've
17 also found the relevant matter, which is Rule 90(E), which is
18 questions of incrimination, not of past conduct.

19 But my point again, Mr Nicol-Wilson, is if you are trying
14:53:40 20 to show some pattern of behaviour - prior pattern of behaviour,
21 then the Court should be aware of what count he was either
22 charged with or convicted of. His protestations of innocence
23 don't help me.

24 Mr Kargbo, what were you charged with?

14:54:14 25 THE WITNESS: I was charged with offences that I was not
26 aware of, Ma'am.

27 MR HERBST: Your Honour, I'm sorry, I did not hear the
28 answer.

29 JUSTICE DOHERTY: The witness said, I was charged with

1 offences with which I was not aware of. In other words, I -
2 [microphone not activated].

3 What do you mean by that answer, Mr Kargbo?

4 THE WITNESS: I did not do them and I was innocent of those
14:54:44 5 charges. That's why I answered that question, Ma'am.

6 JUSTICE DOHERTY: All right. I will try and get a clearer
7 question.

8 When you went into the court and the magistrate or the
9 judge read out the charge, what did the charge say?

10 THE WITNESS: Conspiracy. Conspiracy to commit body harm
11 and conspiracy to commit murder. Conspiracy with robbery and
12 aggravation. Those are the charges they read out to me.

13 JUSTICE DOHERTY: Thank you. I am clear. And questions of
14 relevance will in due course be submitted.

14:55:35 15 Please continue.

16 MR NICOL-WILSON: Your Honour --

17 JUSTICE DOHERTY: And Mr Herbst, for purposes of
18 clarification, in many common law jurisdictions, including yours
19 and the UK, for example, prior convictions are not put. But I am
14:55:58 20 well aware that there are some jurisdictions, including my own,
21 where they can be, and our Rules are not very clear on this
22 point, and it has arisen where incriminating questions have been
23 asked and have been allowed. So there is leeway in
24 cross-examination. I've borne in mind what you said.

14:56:24 25 Continue, Mr Wilson.

26 MR NICOL-WILSON:

27 Q. Were you also charged for kidnapping of British soldiers?

28 JUSTICE DOHERTY: And we're down into war time. I think
29 that this line, it's now becoming irrelevant.

1 MR NICOL-WILSON: As Your Honour please.

2 Q. Now can we go to your statement - the second page of your
3 statement, and the third paragraph - sorry, the second paragraph,
4 and please tell me whether this statement is a correct reflection
14:57:20 5 of what you said to Mr Bob on the 6th of May, 2011? The
6 statement reads:

7 "I knew when I tried to persuade 334 to recant his
8 testimony for money that I was assisting Bazzy, Gullit, and Five
9 Five in committing an offence before the Special Court. And 334
14:57:54 10 later told me, specifically, that it was an offence. If the case
11 goes forward, I would be willing to plead guilty to the offence
12 in return for a recommendation for a lenient sentence from the
13 Prosecutor."

14 Is that what you told Mr Bob?

14:58:19 15 A. Yes.

16 Q. So you knew it was a crime for you to persuade 334 to
17 recant his testimony?

18 A. After 334 had told me, it was then that I knew that it was
19 a crime.

14:58:48 20 Q. You knew it was a crime before 334 told you it was,
21 according to your statement.

22 A. No, I did not know. I did not know. It was after 334 had
23 told me that I became aware that it was a crime, an offence.

24 Q. And after 334 told you it was an offence, you still
14:59:42 25 continued in your acts of persuading him to recant?

26 A. Yes.

27 Q. Now, do you have a copy of the plea bargaining agreement?
28 I just need to refer to a few areas in that agreement.

29 Now let me ask you a question. Was it your idea to get a

1 guilty plea signed, or it was a suggestion from some other party?

2 A. It was my idea.

3 Q. So you knew about agreements of this nature before you
4 negotiated one?

15:01:39 5 A. Yes.

6 Q. Can you tell the Court how?

7 A. When the independent investigator came, he tendered
8 evidences against me that proved that this was an act that took
9 place. I immediately knew that I was guilty of the offence.

15:02:06 10 Then I just had to agree that, yes, indeed, it was something that
11 happened. I wouldn't deny that it happened.

12 Q. How did you know about plea bargaining agreements?

13 A. Because I normally know. At times when certain matters
14 came up and how they ended up with them, I used to follow the
15:02:44 15 law. That's how I knew.

16 MR HERBST: I think that one I would like to hear.

17 JUSTICE DOHERTY: The answer, Mr Herbst?

18 MR HERBST: Yes, Your Honour.

19 Just so Your Honour knows, we are continuing to have
15:03:09 20 significant problems every time the interpreter speaks. It's
21 compounded by the fact that the interpreter is often speaking
22 over the witness who is speaking at the same time, but just
23 trying to concentrate on what the interpreter is saying because
24 of the static on the line is difficult enough.

15:03:29 25 JUSTICE DOHERTY: I'll read the answer and I will also
26 address the witness.

27 First of all he said the last answer was:

28 "Normally I used to know there were certain things. I used
29 to follow the law. That is how I knew."

1 And Mr Witness, I would ask you to go back to what you were
2 doing well this morning, which is pausing and allowing the
3 interpreter to interpret.

4 MR NICOL-WILSON:

15:04:10 5 Q. Mr Witness, if someone comes before this Court and says
6 that you received financial benefits between the first encounter
7 with Mr Bob and the signing of this agreement, would that be
8 correct or incorrect?

9 JUSTICE DOHERTY: Is this a theoretical question? ?

15:04:35 10 MR NICOL-WILSON: No, Your Honour. It is a question in
11 relation to the issue of protection which I earlier on asked the
12 witness.

13 JUSTICE DOHERTY: Who received the benefit?

14 MR HERBST: Your Honour [Overlapping speakers]

15:04:47 15 MR NICOL-WILSON: The witness, Your Honour.

16 JUSTICE DOHERTY: Yes, Mr Herbst. Please put in your
17 statement.

18 MR HERBST: Yes, Your Honour. I would interpose the same
19 objection I made last time. In addition, I would add that I
15:04:59 20 believe the question has been asked and answered.

21 JUSTICE DOHERTY: He did say before lunchtime that he
22 didn't receive any payment. I'm sure I heard that. But you can
23 ask him if he --

24 MR NICOL-WILSON: No, I was not specific, Your Honour.
15:05:18 25 This time I am very specific. It was a general question.

26 Q. Now have you ever received any form of financial support
27 from the Court between your first encounter with Mr Bob and the
28 signing of the plea agreement?

29 A. I never received any amount of money in the Court.

1 JUSTICE DOHERTY: Just pause.

2 Mr Herbst, I see your light on.

3 MR HERBST: No question about the fact that as part of the
4 witness's protection he has received a --

15:06:10 5 JUSTICE DOHERTY: I didn't hear you.

6 MR HERBST: I'm saying as a part of the protection by the
7 Court, he's obviously been - there have been provisions made for
8 him, both housing and subsistence. But I don't think it's
9 appropriate to get into the specifics of those matters. The only
10 relevant question is whether apart from a provision that has been
11 made for him by the Court in connection with his protection,
12 whether he's received any additional benefit. [Overlapping
13 speakers]

14 JUSTICE DOHERTY: Well he was asked financial support.

15:07:01 15 MR NICOL-WILSON: Your Honour, I want you to take judicial
16 notice of the explanation that has been provided by the
17 Independent Counsel, which is at variance with what the witness
18 has said.

19 JUSTICE DOHERTY: You said "financial support." I don't
15:07:14 20 know if he got money.

21 MR NICOL-WILSON: Your Honour, that's what the Independent
22 Counsel is implying, that he received subsistence and that is
23 definitely money. Because he mentioned housing and subsistence.
24 So it means money. Unless the Independent Counsel have a
15:07:37 25 different idea. But you're referring to money.

26 Is that correct, Mr Independent Counsel?

27 JUSTICE DOHERTY: You're not allowed to ask questions of
28 counsel.

29 MR HERBST: [Overlapping speakers]

1 JUSTICE DOHERTY: Only of the witness.

2 Please proceed and question the witness.

3 MR NICOL-WILSON: Your Honour I did not intend to ask the
4 counsel a question. I just wanted clarification for the benefit
15:08:13 5 of the Court whether when the Independent Counsel spoke about
6 subsistence he's referring to financial benefits. Because this
7 could be a crucial issue in the determination as to whether the
8 witness has spoken the truth or not in response to my question.

9 JUSTICE DOHERTY: Ask the witness.

15:08:43 10 MR HERBST: Your Honour.

11 JUSTICE DOHERTY: Yes, Mr Herbst.

12 MR HERBST: Your Honour, what I was going to say was that I
13 am not specifically informed about the specifics of the
14 protection that has been provided. However, it's my general
15:09:04 15 understanding that when WVS provides protection, it provides a
16 housing benefit of some kind and a subsistence benefit. What
17 happened in this particular case, I don't have that information.
18 That would be with WVS. But it seems to me that that is not
19 relevant. The question is whether any payments have been made to
15:09:41 20 the witness, apart from his protection, and my understanding of
21 that is that the answer is no.

22 So that's the clarification that I wanted to provide in the
23 interest of expediting this matter.

24 JUSTICE DOHERTY: Well, I don't want to protract it either.

15:10:09 25 So --

26 MR NICOL-WILSON: I'll proceed, Your Honour.

27 JUSTICE DOHERTY: You are entitled to put questions. I am
28 not stopping you.

29 MR NICOL-WILSON: I will proceed, Your Honour.

1 JUSTICE DOHERTY: And if you wish to seek clarification,
2 you are entitled to do so.

3 MR NICOL-WILSON: No. I will proceed Your Honour.

4 Q. Mr Witness, have you received any protection from this
15:10:28 5 Court?

6 A. Yes.

7 Q. In terms of this protection, have you been provided with
8 accommodati on?

9 A. Yes.

15:10:51 10 Q. Have you received payments from the Court for subsistence?

11 A. No, no.

12 Q. So am I correct to say all what the Court has done for you
13 is to provide an accommodati on?

14 A. The Court never gave me accommodati on.

15:11:37 15 Q. Have you been provided any payment for transportation to
16 come to Court and go back to your house or for food?

17 A. From which area?

18 Q. From WVS, have you received any payment?

19 A. Yes.

15:11:59 20 Q. This is what I was trying to get you to answer since this
21 morning. Are you in a position to tell the Court how much you
22 have received in terms of transportati on allowance or food
23 allowance?

24 JUSTICE DOHERTY: Two questions in one. Take them one at a
15:12:22 25 time.

26 MR NICOL-WILSON:

27 Q. Can you tell the Court how much you received in terms of
28 transportati on allowances?

29 A. No.

1 Q. Can you tell the Court when you started receiving
2 transportation allowances?

3 A. When the Court started.

4 MR HERBST: Sorry, Your Honour. I didn't hear that answer.

15:12:59 5 JUSTICE DOHERTY: When the Court started.

6 MR NICOL-WILSON:

7 Q. And are you in a position to give an approximation in terms
8 of how much you may have received?

9 A. Maybe if you will give me time, but right now I can't give
15:13:23 10 you a correct figure.

11 Q. And also you have received some payments for food
12 allowance?

13 A. No.

14 Q. So you've not been given either food - or money for food by
15:13:53 15 the Court?

16 A. No.

17 Q. And you are still unemployed?

18 A. Yes, sir.

19 Q. By be correct if I say that by participating in this
15:14:41 20 process, your economic situation has changed a little bit?

21 A. No.

22 Q. Meaning before you had no source of income, now you have at
23 least some payments for transportation?

24 A. No. Let me tell you. I was doing my personal business
15:15:19 25 without contact with this Court. People can testify to that.

26 And I have elders who assist me. It is not this Court that
27 caused my status to change or anything else. People can testify
28 to that. Except if people don't want to say the truth. I am
29 responsible for myself.

1 MR HERBST: Your Honour. Excuse me, Your Honour. I
2 apologise, but I could not hear the answer.

3 JUSTICE DOHERTY: The answer was:

4 "No, let me tell you. I was doing my personal business.
15:15:53 5 People will testify for that. Elders help me. People will
6 testify to that. I am responsible for myself."

7 MR METZGER: He also added:

8 "Unless they don't want to come and tell the truth."

9 JUSTICE DOHERTY: He did indeed say that.

15:16:18 10 MR METZGER:

11 Q. So in actual fact, you don't need any form of protection
12 from this Court?

13 JUSTICE DOHERTY: A big difference between keeping body and
14 soul together and food and protection.

15:16:31 15 MR NICOL-WILSON: Well --

16 JUSTICE DOHERTY: Rerword it.

17 MR NICOL-WILSON: Let's see what his response will be.

18 Q. Mr Witness, would I be correct to say you are not expecting
19 any protection by participating in this process?

15:16:52 20 A. I have no expect protection.

21 Q. Okay. That's you came forward. I see.

22 MR HERBST: I'm sorry, Judge. I didn't hear the answer
23 before the comment, "That's you came forward."

24 JUSTICE DOHERTY: "I have to expect protection."

15:17:15 25 MR NICOL-WILSON:

26 Q. And by protection, are you expecting relocation out of
27 Sierra Leone?

28 A. No, no, no.

29 Q. In fact, you don't want to be relocated?

1 A. Maybe they would offer me, but I have not thought about
2 that.

3 MR NICOL-WILSON: Your Honour, I have no further questions.

4 JUSTICE DOHERTY: Thank you.

15:17:42 5 Mr Metzger, I think you're next counsel on the list.

6 MR METZGER: So it would appear, Your Honour.

7 With Your Honour's leave?

8 JUSTICE DOHERTY: Yes. Please proceed.

9 Cross-examination by Mr Metzger:

15:17:57 10 Q. Mr Kargbo, the personal business that you've been telling
11 us that you're doing, when did that start?

12 A. I started it since 2010.

13 Q. 2010. And what is --

14 A. Yes.

15:18:22 15 Q. -- the nature of that business?

16 A. Eh?

17 Q. What kind of business is it?

18 A. I was doing gold business. I will go up-country and buy
19 and return.

15:18:36 20 Q. So you were a retailer of gold. What sort of quantities?

21 A. Sometimes, like, I'll have 8 or 9 kilos of gold.

22 Q. On what sort of regularity basis?

23 A. Well, I'll go up-country two to three days, I'll buy, and
24 return to town and sell.

15:19:13 25 Q. So let me just see if I get this clear. Your evidence is
26 that from around 2010 you went to the provinces, you would get

27 gold, something in the region of 8 to 9 kilos every - twice every
28 week; would that be about right?

29 A. Well, when I go, what I'll make is what I would get to come

1 to town with. It is not fixed number, that when I go this is
2 what I will get.

3 Q. And how did you fund --

4 MR HERBST: I'm sorry, Your Honour.

15:19:56 5 Excuse me, Mr Metzger.

6 MR METZGER: You're excused.

7 MR HERBST: I could not hear that answer.

8 JUSTICE DOHERTY: What we go for and what we get, it is not
9 a fixed amount.

15:20:16 10 Proceed, Mr Metzger.

11 MR METZGER: Thank you.

12 Q. But you would be going for 8 to 9 kilos when you went to
13 look for gold; is that correct?

14 A. Yes.

15:20:30 15 Q. And how much were you paying per kilo for gold?

16 A. By then the gram --

17 MR HERBST: [Overlapping speakers].

18 JUSTICE DOHERTY: Just pause, Mr Witness.

19 Yes, Mr Herbst, did you say something?

15:20:52 20 MR HERBST: I would like to interpose a relevance. Yes, I
21 did. I would like to interpose an objection on grounds of
22 relevance. I see none.

23 JUSTICE DOHERTY: Relevance, Mr Metzger?

24 MR METZGER: I was hoping I would be given the latitude for
15:21:05 25 him to answer this question. This is a witness who has already
26 previously said was unemployed and, presumably, giving the
27 impression he was impecuniate. At this current point in time he
28 is talking about on a fairly regular basis going to the provinces
29 looking for 8 to 9 kilos of gold. Now, I can tell this Court

1 that I couldn't afford that business, but I just wanted the
2 witness to see - how he was funding it.

3 JUSTICE DOHERTY: Well, I will allow that question, but
4 there is a question of relevance here. I will allow that
15:21:49 5 question since it goes to credibility, but then we will have to
6 move on.

7 MR METZGER: Thank you, Your Honour.

8 Q. Mr Witness, how much were paying per kilo for gold?

9 A. Excuse me for me to check the gram. Because 5 grams make a
15:22:09 10 kilo, so I would have to check. We would buy a kilo for 42,000
11 or 40,000, so the 5 is 200 - roughly 240,000.

12 Q. 240,000?

13 A. Roughly.

14 Q. What units, please? In what units? What currency, please?

15:22:33 15 A. Leones.

16 Q. 240,000 Leones for --

17 A. Roughly.

18 Q. For a kilo of gold?

19 A. No, for a gram.

15:22:53 20 MR METZGER: The next question I was going to ask, Your
21 Honour, was where he was getting the money from.

22 MR HERBST: Excuse me, Your Honour, I was trying to keep my
23 request for a rework or a - I did not hear the witness --

24 MR METZGER: I hadn't noticed.

15:23:17 25 MR HERBST: I did not hear the witness's answer to the
26 previous question - or whatever that long explanation was and the
27 calculations. I heard "gram," I heard "240 Leones," but I did
28 not really understand his answer. I didn't hear it.
29 [Overlapping speakers].

1 JUSTICE DOHERTY: Well, I was a bit confused, I have to
2 admit. For me it is 5 grams for kilo, and that is 40,000. So 1
3 kilo is 240,000 roughly - roughly - and then the currency is
4 leones for a gram. And I am allowing the question:

15:23:57 5 "Where did you get the money to buy it from?"

6 Incidentally, I find the mathematics very strange, but
7 that's irrelevant.

8 MR METZGER: We, for the Defence, are wholly unsurprised.

9 Q. Mr Witness, the last question, I'm sorry, was: Where were
15:24:18 10 you getting the money from, please, for the purchase of these 5
11 grams per kilo?

12 A. I had an elder brother who assisted me with a sum of money
13 that he gave to me to start my life. That's where I got the
14 money that I started my own business with.

15:24:41 15 MR METZGER: Your Honour, the next question - sorry.

16 MR HERBST: [Overlapping speakers].

17 JUSTICE DOHERTY: Yes, Mr Herbst. Mr Herbst, I didn't hear
18 you.

19 MR HERBST: I asked if you could tell me what the witness's
15:24:57 20 answer was.

21 JUSTICE DOHERTY: I had an elder brother who helped me with
22 money. He helped me start my life.

23 MR HERBST: Thank you, Your Honour.

24 JUSTICE DOHERTY: Mr Metzger, please proceed.

15:25:09 25 MR METZGER: The next question was going to be: Part 1,
26 who the elder brother is; part two, how much money.

27 JUSTICE DOHERTY: I think we've exhausted this Mr Metzger,
28 really.

29 MR METZGER: Well, can I explain why I am asking these

1 questions? Because we are in 2010, a period of time, he has
2 already stated, he was unemployed when he was asked these
3 specific questions; a period in time when he is being, as it
4 were, invited to change his testimony for money; a period of time
15:25:45 5 in time --

6 JUSTICE DOHERTY: [Microphone not activated].

7 MR METZGER: Well, that seems to me to be the foundation of
8 the Prosecution case. And a period in time when, if he was doing
9 very well in the business --

15:25:58 10 JUSTICE DOHERTY: No, no, it wasn't his testimony. It's
11 334's testimony.

12 MR METZGER: Yes, but he was trying to persuade 334 for
13 money. That was what was introduced by the Prosecution today.

14 JUSTICE DOHERTY: That's --

15:26:09 15 MR METZGER: That it was for money.

16 JUSTICE DOHERTY: Yes, but you said it was changing his
17 testimony.

18 MR METZGER: Yes, the testimony he gave was that he was
19 unemployed. The testimony he gave just recently is that he was
15:26:20 20 self-employed in business.

21 It is a matter that goes to the weight of the evidence that
22 he's given that I'm sure Your Honour would like to put in the
23 balance. I'm just seeking, as it were, to deal in a perfectly
24 proper way so that in due course if Defence comment on it, it
15:26:42 25 will not be because the witness has not been given the
26 opportunity to answer that point. But that's all I will say on
27 that.

28 JUSTICE DOHERTY: Very well. If it's a question of
29 credibility and prior statements, I will allow it.

1 MR METZGER: I am very much obliged. Question 1 and 2 I
2 will indicate as I go along. If there is anything I anticipate
3 Mr Herbst might be particular about, I will first of all state to
4 Your Honour, without asking the witness, what that question is
15:27:07 5 going to be.

6 Q. Mr Witness, question one of two, which I've been allowed to
7 ask you: Who is this elder brother? Name him, please.

8 A. Mr Foday Bangura.

9 Q. And secondly, how much money are we talking about? How
15:27:30 10 much money did he give you?

11 A. He gave me the sum of 10 million leones.

12 Q. Thank you. Now, I am proposing to leave that matter there
13 for the moment, unless something else arises, and to ask him
14 about his state of impecuniousness, I think is the proper term,
15:28:07 15 at around the time when these arrangements were purportedly made.

16 JUSTICE DOHERTY: [Microphone not activated].

17 MR METZGER: I am very much obliged.

18 Q. So, Mr Kargbo, in or around November 2010 you've told us
19 that you spoke to people from Rwanda. I'll leave it that basic
15:28:26 20 for the moment. That's correct, isn't it?

21 During the course of your - I'll ask it this way first of
22 all: How did the people of Rwanda get your number?

23 A. Good. I never knew.

24 Q. So when you got a telephone call, you must have been
15:28:54 25 surprised to hear that these people from Rwanda were calling you?

26 A. Indeed I was surprised.

27 Q. Right. And would you agree with me - well, first of all,
28 were there a lot of calls - a number of calls from Rwanda over a
29 period of time? Not just these two or three calls that you are

1 telling us about where a plan was hatched, you say.

2 A. The only calls that I got from Rwanda were from the Rwandan
3 prisoners. Those are the only calls.

4 Q. Your evidence is that it's not just from, shall we say, the
15:29:43 5 16th of November or whatever the date was. They had been calling
6 you beforehand; is that correct, or not?

7 A. No, sir.

8 Q. So the first telephone call you got from the convicts or
9 any one of them in Rwanda you've already told us about, and that
15:30:02 10 was in or around November of 2010; is that right?

11 A. Yes, sir.

12 Q. Now, that first call, it wasn't from
13 Mr Santi gie Borbor Kanu, was it?

14 A. No, sir.

15:30:21 15 Q. When was the last time in relation to November 2010 that
16 you had seen Mr Santi gie Borbor Kanu?

17 A. I never saw him.

18 Q. Well, you said you knew him, don't you?

19 A. I had known him before for long years.

15:30:43 20 Q. How long ago? Give us an approximation; 15, 20, 2, 6
21 years, months?

22 A. Let me see. If I am right, over 15 to 20 years I had known
23 him.

24 Q. So 15 - we need to get this clear. Sorry if I'm being - or
15:31:11 25 seeming to be pedantic. You had last seen him 15 to 20 years
26 before November 2010; is that correct?

27 A. Yes.

28 JUSTICE DOHERTY: The witness's answer was over 15 to 20
29 years I knew him.

1 MR METZGER: Yes.

2 JUSTICE DOHERTY: So there was - they knew each other. But
3 your question was: "Is it correct that you last saw him 15 to 20
4 years ago?" Is that what you --

15:31:50 5 MR METZGER: I am as perplexed as Your Honour. I am trying
6 to establish the last contact he had with Mr Kanu, or Five Five,
7 as he may or may not have known him.

8 But the question he asked - he answered his own question, I
9 thought, which is why I sought to ask him: Was that the last
15:32:09 10 time you saw him? I got the answer in the positive, but I am
11 content either to try and to get it as clear as possible, or for
12 Your Honour to deal with it.

13 JUSTICE DOHERTY: Yes, I may well deal with it.

14 MR METZGER: Thank you.

15:32:22 15 JUSTICE DOHERTY: You continue.

16 MR METZGER:

17 Q. Mr Kargbo, you can see there might be some confusion about
18 what you're saying and it may be a language difficulty, so let me
19 try and put it in another way. You had known Mr Kanu for a long
15:32:40 20 time. That's correct, isn't it?

21 A. Yes, sir.

22 Q. But the two of you had not seen each other also for a long
23 time?

24 A. Yes, sir.

15:32:51 25 Q. What I am trying to establish is how long it had been since
26 you had seen him in the flesh, person to person.

27 A. From 2002.

28 Q. 2002?

29 A. Sorry, 2000. 2000.

1 Q. So some ten years before, yes? Roughly. I won't hold you
2 to exact dates.

3 A. Yes, sir.

4 Q. And when was the last time you had spoken to him, before we
15:33:24 5 come to November 2010?

6 A. Well, I last spoke with him in 2000 when they were arrested
7 for treason trial at the Pademba Road prisons. That is the end,
8 when I spoke to him.

9 Q. And when you spoke to him, you spoke to him face-to-face?

15:33:48 10 MR HERBST: Excuse me Your Honour. Sorry, excuse me, Your
11 Honour, but I could not get that answer and I would like to have
12 that answer.

13 JUSTICE DOHERTY: What I have recorded. We last spoke in
14 2000 when they arrested us for treason trial.

15:34:09 15 And then the question arose as to Pademba Road, and I have
16 not recorded that yet.

17 MR METZGER: I think he said when they were taken to
18 Pademba Road.

19 JUSTICE DOHERTY: Oh, taken to Pademba what road.

15:34:24 20 MR METZGER: In fact, I understood he was saying that "when
21 they were arrested," but it may be that they were all arrested.
22 I had no idea. I was just trying to establish last contact.

23 Q. During that time, Mr Kargbo, when you say you last spoke to
24 him, was that a physical encounter where he was in front of you
15:34:42 25 when you were speaking to him and you could hear his voice in
26 your presence?

27 A. Yes, sir.

28 Q. Is it correct that since that time - and I'm stopping for
29 the moment at present purpose - November 2010, you had never

1 spoken to Mr Santi g i e Borbor Kanu?

2 A. Say that again.

3 Q. Since 2010 when you last saw and spoke to him, you had
4 not - since 2000, sorry. Between 2000 and November 2010, you had
15:35:21 5 not spoken at all to Mr Santi g i e Borbor Kanu; is that correct?

6 A. It's not correct.

7 Q. Okay. What are the circumstances? Why do you say it's not
8 correct, first of all?

9 A. Because I remember the first call that Bazzy Kamara called
15:35:41 10 me, he was with Five Five and Gullit in the Rwandan prison. And
11 when I spoke to Bazzy, Bazzy said talk with Five Five. And when
12 I spoke --

13 JUSTICE DOHERTY: Mr Kargbo, face me and not the audience
14 in the back, number one. And remember to pause at each sentence
15:36:04 15 to allow the interpreters to do the interpretation.

16 So our last call was from Bazzy was with ...

17 Continue from there.

18 THE WITNESS: When I talked with Bazzy Kamara, he passed on
19 the phone to Five Five. He said, Talk with Five Five. Then when
15:36:39 20 I talked with Five Five, he passed on the phone to Tamba Brima.
21 He said talk with Tamba Brima, Gullit.

22 JUSTICE DOHERTY: Yes.

23 THE WITNESS: And I talked to all of them. That's all,
24 My Lord.

15:37:02 25 MR METZGER:

26 Q. Thank you, Mr Kargbo. It was probably my mistake.

27 MR HERBST: [Overlapping speakers]. I hate to interject.
28 I'm sorry to interject.

29 JUSTICE DOHERTY: Yes, Mr Herbst.

1 MR HERBST: But part of the answer before Your Honour
2 interjected, I did not hear, and a good chunk of the answer
3 thereafter I did not hear. Again, my apologies, but I think I
4 would like to hear that answer.

15:37:32 5 JUSTICE DOHERTY: It was put to him that before November
6 2010 he did not speak to Kanu. He said it was not correct
7 because I remember the last call. Bazzy was there, and he passed
8 the phone to Five Five, he said he was passing the phone, to
9 speak so Five Five. Then he passed the phone to Tamba Brima,
10 Gullit. He said to speak to Gullit. He passed the phone. I
11 talked to all of them.

12 MR HERBST: Thank you, Your Honour.

13 JUSTICE DOHERTY: Mr Metzger, gentlemen, I note the time,
14 and we did say we would finish around 3.30 because of the time
15:38:18 15 difference and the need for people to be transported. I also
16 have another decision to hand down.

17 Mr Metzger, if you could ask your next question and then I
18 will have to adjourn for today.

19 MR METZGER: I am very much obliged.

15:38:33 20 I dare say we may be in pretty much the same position after
21 I ask the next question, but I'll try.

22 Q. Mr Kargbo, are you saying that was the last time that you
23 had spoken to Mr Kanu since 2000? That was the next time since
24 2000, that you had spoken to Mr Kanu, that incident that you were
15:39:02 25 just telling us about?

26 A. Which incident, I did not understand?

27 MR METZGER: I rather thought that that's where we would
28 be. Perhaps when the witness is fresher tomorrow morning and we
29 are all fresher, he might be able to answer the question.

1 JUSTICE DOHERTY: Yes, because sometimes these questions
2 also when they get interpreted can be a little confusing.

3 MR METZGER: I do understand.

4 JUSTICE DOHERTY: As you know, particularly Krio or Pigeon
15:39:34 5 questions with a negative, I know there was no negative there
6 but -

7 Mr Witness, I am going to close for today because there is
8 a difference in Kigali and I also have one other case to deal
9 with. You will continue your evidence tomorrow, and between now
15:40:04 10 and tomorrow you are not to discuss your evidence with any other
11 person.

12 I have not heard any application from Mr Herbst concerning
13 your status so I am going to ask him has he got anything to say
14 before I release you.

15:40:21 15 Mr Herbst, the accused is on bail.

16 MR HERBST: I have none, Your Honour.

17 JUSTICE DOHERTY: Very well. I have no reason to change
18 your status quo. Therefore, I am going to release you on bail
19 and you are not to discuss your evidence. Do you understand me?

15:40:43 20 THE WITNESS: Yes, Ma'am.

21 JUSTICE DOHERTY: Please assist the witness to
22 leave the witness box.

23 [The witness withdrew].

24 JUSTICE DOHERTY: Mr Nicol-Wilson, unless you can produce
15:40:57 25 some new fact that I need to consider, the status quo question
26 arises.

27 That document should be left.

28 MR NICOL-WILSON: Your Honour, I wish to reapply for bail
29 to be admitted for Mr Hassan Papa Bangura, to be admitted to

1 bai l .

2 JUSTICE DOHERTY: Fundamentally I am looking for a change
3 of circumstances.

4 MR NICOL-WILSON: Yes. The change is that we have had a
15:41:52 5 witness today, and the witness has started to testify, and to my
6 mind the evidence so far does not implicate my client in any
7 material in particular. I was going to wait, Your Honour, to do
8 an application after the testimony of 334. But I will say since
9 334 is ill and cannot make himself available to the Trial Chamber
15:42:28 10 at the moment, Mr Bangura should not continue to stay in custody
11 on the basis of having made a contact with 334.

12 Your Honour, I will continue to reemphasize the fact that
13 this contact has still not been proven to be correct. It's like
14 me coming to Court and saying Mr Kargbo had contacted one of our
15:43:11 15 Defence witnesses without any proof, and then Mr Kargbo is
16 immediately incarcerated. That's exactly what the Independent
17 Counsel did.

18 In fact, he mentioned that the contact lasted for 42
19 seconds, and I wonder what an accused can say to a witness in 42
15:43:33 20 seconds. And even the telephone number is not that of the
21 accused.

22 So, Your Honour, I feel very much aggrieved about this
23 particular situation, especially in view of the arguments
24 proffered by the Independent Counsel, that there had been a
15:43:51 25 contact and so the liberty of an individual must be restricted.

26 So I am in your hands, Your Honour. You take your
27 decision, Your Honour.

28 JUSTICE DOHERTY: Thank you.

29 Mr Herbst.

1 MR HERBST: Well, Your Honour, first of all I'd like to
2 just correct one thing my learned friend said. The duration of
3 the call, which was the second recent contact, was a minute and
4 42 or 46, not 42 or 46.

15:44:24 5 But I would just like to respond to counsel's suggestion
6 that the Court has heard no evidence implicating Mr Bangura. The
7 Court heard from Mr Kargbo, and of course we have not yet heard
8 from 334, but the Court has heard from Mr Kargbo that in one of
9 the meetings Mr Bangura asked 334 if he had heard the message,
15:45:02 10 and 334 told him he would think about it. The message, of
11 course, was that the Rwanda convicts wanted 334 to recant his
12 testimony for money. That suggests knowledge --

13 MR NICOL-WILSON: Your Honour.

14 MR HERBST: -- and participation. Thereafter --

15:45:29 15 JUSTICE DOHERTY: [Microphone not activated].

16 MR NICOL-WILSON: Objection, Your Honour.

17 JUSTICE DOHERTY: Continue. Continue, Mr Herbst.

18 MR HERBST: Thank you, Your Honour. Thereafter we heard
19 evidence that Mr Bangura participated in a meeting with lawyer
15:45:44 20 Mansaray, along with Mr Kargbo, in which both Mr Bangura and
21 Mr Kargbo discuss with Mr Mansaray the plan to offer 334
22 financial benefit so that 334 could change his testimony before
23 the Special Court which is direct evidence of significant
24 knowledge and participation in the scheme. And thereafter we
15:46:19 25 heard evidence that prior to that meeting that Mr Bangura asked
26 334 how much money he wanted for the deal - a third piece of
27 direct evidence implicating Mr Bangura.

28 And finally we have, after the meeting, evidence that
29 Mr Bangura told 334 that he should not be afraid to render

1 assistance to the men in Rwanda. So we've heard, in my
2 respectful submission, substantial evidence of Mr Bangura's
3 participation.

15:47:16 4 I only say that in reply to counsel's suggestion. But more
5 fundamentally, I don't think there has been a change in
6 circumstance and therefore our position, I am constrained to say,
7 has not changed.

8 JUSTICE DOHERTY: Yes, Mr Nicol-Wilson.

15:47:43 9 MR NICOL-WILSON: Your Honour, I want to correct the
10 submissions of Independent Counsel, and I will emphasize that at
11 the end of these proceedings Your Honour will not be deciding
12 guilt or innocence based on what was said by a witness during
13 examination-in-chief.

15:48:02 14 The witness, for instance, Your Honour, had admitted under
15 cross-examination that he cannot remember what Mr Bangura has
16 said at the meeting at Sweissy. The witness has also admitted
17 under cross-examination that he did not hear what Mr Bangura said
18 on the other side of the mobile phone.

15:48:21 19 So I don't understand what the Independent Counsel is
20 saying about evidence having been led that Mr Bangura said to 334
21 whether he has got the message, when the witness had already
22 indicated to this Court and had accepted that he cannot tell what
23 Mr Bangura said, because he was with 334. He can only hear 334's
24 statements and not that of Mr Bangura. He said that under
15:48:47 25 cross-examination.

26 And he also said under cross-examination that when they
27 were at the Sweissy area, he cannot exactly remember what
28 Mr Bangura said to 334. So I do not know what the Independent
29 Counsel is saying about sufficient and abundant evidence has been

1 Ied, you know, showing that Mr Bangura is culpable.

2 And also, Your Honour, we have the opportunity --

3 JUSTICE DOHERTY: He didn't use the word "culpable."

4 MR NICOL-WILSON: Well, he said that evidence had been led,
15:49:19 5 you know, sufficient evidence. I don't know whether he was not
6 listening to the answers given under cross-examination.

7 Your Honour, I will basically emphasize again that this is
8 the first time in the history of the Special Court that someone
9 has been incarcerated during a contempt proceeding. Somewhere
10 with an investigator, he was indicted by the Special Court and he
11 was not detained. This is the first time.

12 JUSTICE DOHERTY: Mr Nicol-Wilson, please do not lose your
13 temper with me.

14 MR NICOL-WILSON: I am not, Your Honour. I am just, you
15 know, perhaps, overemphasizing a point, Your Honour. But I am -
16 like I said, we are all listening to your decision on this.

17 JUSTICE DOHERTY: Mr Nicol-Wilson --

18 MR NICOL-WILSON: Yes, Your Honour.

19 JUSTICE DOHERTY: -- if there were to be points for trying
15:50:16 20 extremely hard, you would be getting almost ten out of ten.
21 There is very little you have not done for your client, I must
22 grant you that.

23 But at the end of the day, first of all, there is some
24 evidence against him. I am not saying whether it's prima facie
15:50:39 25 evidence. I am not even saying whether I believe it or I don't
26 believe it. The evidence of this witness is not completed. I am
27 concerned about what other matters have been put before me.

28 I do not see a change of circumstances, and therefore the
29 accused Hassan Papa Bangura will be remanded.

1 MR NICOL-WILSON: As Your Honour please.

2 JUSTICE DOHERTY: I am going to adjourn this Court in front
3 of me now until 9.00 tomorrow morning.

4 I have another decision to give. Mr Herbst has agreed to
15:51:22 5 take that decision on behalf of other counsel. I will have to
6 adjourn to allow another remandee to be brought in for decision,
7 so I am going to adjourn for - I think half an hour would be
8 reasonable.

9 Mr Herbst, would you be able to accommodate that?

15:51:51 10 MR HERBST: Your Honour, I will accommodate the Court in
11 any way that the Court asks.

12 I would, before Your Honour adjourns Court, make one
13 request. Apparently, the technical staff in Freetown has not
14 been able to remedy the problem of a combination of static and
15:52:23 15 the interpretation that follows so immediately upon the words
16 being spoken by the witness, that the combination of hearing the
17 interpretation, and the words of the witness, and the static,
18 makes it exceedingly difficult to hear. I am wondering whether
19 some technical assistance or consultants can be --

15:52:58 20 JUSTICE DOHERTY: And whoever has got their radio on,
21 switch it off.

22 MR NICOL-WILSON: Independent Counsel, Your Honour.

23 MR HERBST: Yeah, I'm sorry, Your Honour. I don't even
24 know how to turn off my phone. But I've taken it away from the
15:53:15 25 microphone.

26 MR METZGER: That was probably the cause of all the static.

27 MR HERBST: My plea is that we try, at least, overnight to
28 remedy that problem.

29 JUSTICE DOHERTY: As soon as the --

1 MR HERBST: And I just want to say to the Court that I am
2 also ready whenever Your Honour is ready to hear the motion for
3 interlocutory appeal.

4 JUSTICE DOHERTY: Thank you for that reminder. Could we
15:53:56 5 slot that in at the end of Mr Kargbo's evidence tomorrow? Would
6 that suit everyone?

7 MR METZGER: As Your Honour pleases.

8 JUSTICE DOHERTY: Thank you.

9 Mr Herbst, we will slot it in at the end of Mr Kargbo's
15:54:09 10 evidence tomorrow.

11 I am going to adjourn this Court until tomorrow at 9.00,
12 and at 4.30 I am going to open another court, the accused of
13 which Mr Nicol-Wilson, is in remand charged with contempt and
14 remanded before your client, so you weren't technically correct.

15:54:42 15 MR NICOL-WILSON: I see, Your Honour. So maybe he's -
16 that's the second time.

17 JUSTICE DOHERTY: Please adjourn Court until tomorrow at
18 9.00.

19 [Whereupon the Court adjourned at 3.54 p.m.
15:54:51 20 until 9.00 a.m. the following day]

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