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

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

TRIAL CHAMBER I

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

[RUF27OCT06A- CR]
Friday, 27 October 2006
[The accused present]
[Status Conference]
09:20:19 [Open session]
[Upon commencing at 9.43 a.m.]

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

09:43:46 MR HARRISON: Harrison, initials PH, appearing for the Prosecution and, also, Bangura, initial M.

PRESIDING JUDGE: Thank you. First accused.

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

09:44:01 PRESIDING JUDGE: Thank you. Second accused.

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

PRESIDING JUDGE: Thank you. Third accused.

MR JORDASH: I've been asked by Mr O'Shea to represent
09:44:15 Mr Gbao's interest.

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

MR DUMBUYA: Yes, Your Honours.

PRESIDING JUDGE: Thanks. The records will reflect that.

09:44:28 MR JORDASH: Could I, whilst the preliminary matters are being dealt with, deal with the issue of Mr Gbao's absence? There seems to be some confusion.

PRESIDING JUDGE: Right, let's hear that.

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

suggests he has not waivered, and then there is an explanation which suggests a reason for why he was waivered. Mr Dumbuya was pursuing the inquiries when Your Honours came into Court. Perhaps if I can request Your Honours' leave for Mr Dumbuya to
09:44:58 continue those inquiries. I suspect it's not very complicated and we'll have an answer quite quickly that Mr Gbao does or does not want to come to Court.

PRESIDING JUDGE: Leave is granted.

MR DUMBUYA: Good morning, Your Honours.

09:45:10 PRESIDING JUDGE: Good morning.

MR DUMBUYA: I was shown this morning a paper by one of the staff from the Registry that Mr Gbao has not waived his rights, but I telephoned him this morning to inquire about it, and he told me categorically that he has not signed any waiver this
09:45:24 morning, and it was at that point that you came into Court when I took my seat. I was just telling Mr Jordash, that if I could be given the opportunity, which I am asking Your Honours now, to go into the detention, so that I can clarify that issue.

PRESIDING JUDGE: We can grant you leave and, of course,
09:45:49 this will not detract the Court from the business of the day.

MR DUMBUYA: Thank you, Your Honours.

PRESIDING JUDGE: Let's move on. Counsel, the agenda items for today's status conference are as follows: 1. Health of accused persons; 2. Detention issues; 3. Defence case
09:46:17 presentation; 4. Witness-related issues; 5. Filing of Defence materials; 6. Statement of agreed and contested facts and issues; 7. Opening statements; 8. Outstanding motions; and 9. Any other matters.

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

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

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

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

PRESIDING JUDGE: Yes.

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

PRESIDING JUDGE: Very well.

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

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

MR JORDASH: They know more than I.

PRESIDING JUDGE: Very well.

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

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

MR TOUFAR: Thank you, Your Honour. On behalf of the Registry, I would like to report that, following the directions of the Trial Chamber, the Registrar's office intensified its efforts to ensure that the appropriate arrangements were put in
09:48:58 place to enable --

PRESIDING JUDGE: Please stand up for --

MR TOUFAR: I apologise.

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

09:49:25 MR TOUFAR: I do apologise.

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

MR TOUFAR: Okay. On behalf of the Registry, I would like to report that, following the directions of the Trial Chamber, the Registrar's office intensified its efforts to ensure that the
09:49:39 appropriate arrangements are put in place to enable the first accused to receive medical treatment, locally or abroad, and the Registrar's office took the necessary arrangements in this regard.

At this point of time, we can report that arrangements have
09:49:59 been concluded with a particular state to enable the first accused to receive treatment in that state. There are other formalities and practicalities which are being worked out, as we speak. Thank you.

PRESIDING JUDGE: Thank you very much for that report.
09:50:20 Mr Jordash.

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

PRESIDING JUDGE: Right. Yes.

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

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

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

PRESIDING JUDGE: Very well.

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

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

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

MR JORDASH: Yes.

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

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

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

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

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

matter, to urge whoever it is to be careful about the privacy of your client, as such. I don't know, there might be other medical conditions associated with it that I'm not aware, and it is not the business of other people, unless there is a consent. The
09:55:07 mere fact that one is detained does not make it an open case for publication of whatever health condition that person may have. So, there is discretion that needs to be maintained, but I say this with a caveat that some of that information is in the public domain. I think it is important, because you have raised the
09:55:30 issue, that his conditions and his health conditions are being discussed without your knowledge or without his consent, but there is some of it that may be discussed, because, as I say, it's public knowledge, but not all of it.

MR JORDASH: Your Honour, I'm grateful for those comments
09:55:45 as well.

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

MR JORDASH: Thank you.

09:55:55 PRESIDING JUDGE: You're on record as representing him and you've been doing your best to do that with all the diligence, and no administrative lapse should justify that. I think they need to be reminded of that. That's my own position.

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

09:56:18 PRESIDING JUDGE: Let's move on. Second accused, anything to report on the health of the accused?

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

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

to say in respect of the third accused?

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

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

09:56:48

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

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

09:56:56

MR JORDASH: Yes, please.

PRESIDING JUDGE: Or before we conclude the status conference.

MR JORDASH: Yes, please.

09:57:01

PRESIDING JUDGE: All right.

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

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

09:57:14

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

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

09:57:29

PRESIDING JUDGE: Not for the detention facility?

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

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

09:58:09 MR NICOL-WILSON: None, Your Honours.

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

MR JORDASH: Nothing for Mr Gbao, either.

PRESIDING JUDGE: Well, let's move on to the Defence case
09:58:25 preparation. As we all recall, the trial of the RUF case commenced on the 5th of July 2004, and the Prosecution closed its case on the 2nd of August 2006, after 182 days of trial. On the 25th of October 2006, this Trial Chamber delivered its oral decision on Defence motions for judgment of acquittal, pursuant
09:58:56 to Rule 98 of the Rules. Each of the Defence motions was dismissed, although the Trial Chamber found that no evidence had been adduced by the Prosecution in relation to several geographical locations pleaded in the indictment in various counts. Consequently, each accused has been put to his election
09:59:23 to call evidence, if he so desires.

This status conference has been called pursuant to the scheduling order for status conference, issued on the 25th of October 2006, for the purpose of working out the implementing modalities for the preparation and presentation of the Defence
09:59:48 case. In that order, the Chamber indicated various issues that the parties, and, in particular, the Defence, should be prepared to address in Court today. We can begin straightaway with the witness-related issues and focusing specifically on the number of Defence witnesses. Can the Defence for the first accused

indicate the number of witnesses it intends to call, and also whether there will be any common witnesses with other Defence teams, and whether there are going to be character witnesses. Mr Jordash, here, we are urging that you give us some hard
10:00:41 figures, even if they are by way of estimations or approximations, merely for the purpose of constructive planning.

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

PRESIDING JUDGE: Do the best you can.

MR JORDASH: They are estimates, because we are still
10:01:01 investigating, and we are still seeing the witnesses we have. I think we will have an overall list of approximately 300, with a core list of about 100, and I would hope to call approximately 100 witnesses. We will take our lead from the Prosecution and have a back-up list and a core list.
10:01:45 PRESIDING JUDGE: Right. Any further details on that, at this stage? Or that's just what we can content ourselves with for the time being?

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

PRESIDING JUDGE: For example, whether there will be any
10:01:59 common witnesses with any other Defence teams, do you have any estimate?

MR JORDASH: We haven't, in our investigations, worked with the other teams, and as far as I am concerned, my tendency is not to, but I wouldn't rule it out.
10:02:15 PRESIDING JUDGE: So, in other words, for the time being, you're not likely to do that?

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

PRESIDING JUDGE: Thank you.

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

MR JORDASH: Certainly.

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

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

Tonkolili District through parts of 1999, and certainly during the disarmament period, but there are parts of this case, which there certainly could not be joint witnesses. I have in mind the Kono crime base, particularly. I can assure the Court I will do
10:05:00 everything I can to negotiate with my co-accused to present the briefest of cases. Having spoken to Mr O'Shea, I know he's unable to give any certainty one way or the other, but he certainly expressed his interest also in proceeding with joint witnesses, if it is at all possible. Again, I think the Bombali,
10:05:32 Tonkolili 1998, 1999, Makeni 2000, perhaps, again lends itself to some sort of joint co-ordination with the third accused as well.

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

10:05:53 MR JORDASH: Yes. I would certainly want to call live certain character witnesses.

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

MR JORDASH: I think character witnesses, I would estimate
10:06:09 at around -- well, let me put it this way: I would like to call about ten live, but I can envisage applying pursuant to 92*bis* in relation to, say, perhaps 30 or 40 more.

PRESIDING JUDGE: Very well.

MR JORDASH: They, though, were not included, the 30 or 40
10:06:33 92*bis* wouldn't be included in the 100 core list.

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

witnesses.

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

PRESIDING JUDGE: But is that a real --

MR NICOL-WILSON: There is a possibility --

PRESIDING JUDGE: -- real option for you?

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

PRESIDING JUDGE: No figures yet.

MR NICOL-WILSON: -- at the moment.

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

MR NICOL-WILSON: Between ten and 50.

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

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

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

pattern?

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

PRESIDING JUDGE: Quite.

10:08:57 MR JORDASH: In terms of joint witnesses, the issue is an open one and, again, I think, if at all possible, in order to ensure judicial economy.

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

10:09:13 MR JORDASH: That, I don't have instructions on.

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

In addition, the Chamber notes that Rule 85(C) of the Rules 10:09:39 provides that the accused persons, may, if they desire, appear as witnesses in their own Defence, because the Rule states clearly that the accused may, if he so desires, appear as a witness in his own defence. If he chooses to do so, he shall give evidence under oath or affirmation, and, as the case may be, thereafter 10:10:07 call his witnesses. The question now is, Mr Jordash, will your client be testifying at the trial?

MR JORDASH: No final decision has been made.

PRESIDING JUDGE: Probabilities?

MR JORDASH: The wind is blowing in the direction of him 10:10:23 testifying.

PRESIDING JUDGE: A high probability.

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

PRESIDING JUDGE: Right. We'll take that.

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

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

10:10:43 PRESIDING JUDGE: Highly probable. All right. I ask the same question in respect of the second accused. What is the probability?

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

10:11:01 PRESIDING JUDGE: So, in fact, put it as a certainty?

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

PRESIDING JUDGE: So probability here, too. And you don't

10:11:16 want to go the way Mr Jordash did?

MR NICOL-WILSON: No.

PRESIDING JUDGE: Low to high.

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

PRESIDING JUDGE: Mr Jordash, speaking on behalf of the

10:11:29 third accused, what's your information to the Court?

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

PRESIDING JUDGE: Right, an intention to testify. Right. Well, let's go back. Let's cover Rule 92*bis* witnesses. You've

10:11:57 already indicated -- but do you have any estimates for us? Rule 92*bis*, or is it too early for you to give us any firm indications, but definitely, yes, you will be calling 92*bis* witnesses?

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

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

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

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

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

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

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

MR NICOL-WILSON: Definitely.

PRESIDING JUDGE: Mr Jordash, speaking for third accused?

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

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

MR JORDASH: I think about four.

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

MR JORDASH: Certainly. One would be anthropological.

PRESIDING JUDGE: Anthropological.

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

PRESIDING JUDGE: Yes, anthropological.

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

10:14:48 PRESIDING JUDGE: Very well.

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

PRESIDING JUDGE: A medical expert, yes.

MR JORDASH: Certainly the first three I indicated are

10:15:08 certainties. I should hesitate to use that word, but as certain as I can be about that it's going to happen.

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

10:15:40 MR JORDASH: If I can put it this way, and I don't want to jump back on to my old hobby horse, but there have been a number of factual allegations served throughout the Prosecution case. The reality is that, until the end of the Prosecution case, it has not been possible to have a full understanding of the

10:15:57 Prosecution case. It's therefore not been possible to instruct experts until the end of the Prosecution case, and we are racing against the clock to do that now. We've identified them, we've approached them, and it's simply an issue of getting them going with their work. I anticipate that, in relation to the child

10:16:24 psychologist, the anthropological expert, and the military expert, probably we could be in a position to serve the reports in about two to three months.

PRESIDING JUDGE: Very well.

MR JORDASH: I would certainly want to be settled with

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

10:17:03 PRESIDING JUDGE: Thank you. Mr Nicol-Wilson, I ask the same questions of you.

MR NICOL-WILSON: Your Honours, we will be calling two expert witnesses. One will be an expert on command position and command within the structure of a guerilla army, as opposed to a

10:17:37 regular army, with specific reference to the RUF.

PRESIDING JUDGE: Yes.

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

PRESIDING JUDGE: Yes.

10:17:57 MR NICOL-WILSON: We hope to have both expert reports ready by the end of January next year, which is about three months.

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

MR JORDASH: I think they haven't yet appointed any

10:18:36 experts. At least that's the position -- but I can say that I think they're waiting, to a certain extent, to see what happens with the first and second accused.

PRESIDING JUDGE: Let's move on to protective measures. The Chamber is advised that the Defence for the first accused has

10:19:03 filed a motion for protective measures for its witnesses. Do the other Defence teams intend to seek protective measures for their witnesses?

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

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

MR NICOL-WILSON: In due course.

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

10:19:34

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

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

10:19:56

10:20:28

MR JORDASH: No special defences.

PRESIDING JUDGE: No special defences. Second accused?

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

10:20:51

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

MR NICOL-WILSON: Yes, Your Honours.

10:21:08

PRESIDING JUDGE: You still want to reserve the right.

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

PRESIDING JUDGE: Mr Jordash, you have nothing in respect

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

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

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

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

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

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

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

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

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

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

according to the Prosecution.

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

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

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

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

PRESIDING JUDGE: Very well.

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

PRESIDING JUDGE: Okay.

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

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

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

PRESIDING JUDGE: You have given your position on this?

MR NICOL-WILSON: Yes.

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

10:25:23 MR JORDASH: Yes. I've had in my mind, for some time, to try to do the Defence case in between three to four months. Again, I do not see the value in dragging out a Defence case, simply to make it long. I can see a definite value in trying to get everything done within four months.

10:25:52 PRESIDING JUDGE: Mr Nicol-Wilson, is your anticipated length?

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

PRESIDING JUDGE: Ninety trial days. Mr Jordash, what are

10:26:08 your instructions in respect of the third accused, if any?

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

PRESIDING JUDGE: Next item is filing of Defence materials. It is the Chamber's disposition to require each Defence team to file certain materials concerning the presentation of Defence

10:26:28 case. In particular, the Chamber intends to order the Defence to file a list of witnesses that the Defence intends to call, containing, for instance, a detailed summary of the witnesses' intended testimony; the points of counts of the indictment to which each witness will testify, as well as a list of exhibits.

10:27:05 Are there any comments from the parties concerning this? This is usually, based on one experience, the experience of the CDF, usually an area of intense controversy. We might just hear your thoughts, both sides. You first, Mr Jordash.

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

as the Prosecution's.

JUDGE ITOE: As what?

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

10:27:37 JUDGE ITOE: That's our concern, as a matter of fact, and when the Presiding Judge raises the issue of that domain being controversial, it is because the general complaint by the Prosecution is that the materials in the summaries, you know, are not sufficient to enable them to apprehend the case that the 10:28:03 Defence intends to present. So that is why the Chamber has had to use the word "detailed," you know. We've qualified it to be detailed, because we don't want the experiences -- we want to limit the contentions, you know, between the Defence and the Prosecution, at least to a great extent. As you very well know, 10:28:34 it is not an obligation for you to disclose the statements of Defence witnesses to the Prosecution, unless, of course, it comes to a stage where the Trial Chamber has to use its discretion to compel you to do so. So I think that I would not get to that level if what is disclosed to the Defence, or, rather, to the 10:28:58 Prosecution, is as detailed as it can be. So they can be able to appreciate the nature of the evidence that you intend to call through your witnesses.

MR JORDASH: Certainly.

JUDGE BOUTET: Mr Jordash, before you respond, as alluded 10:29:15 to by my brother, Justice Itoe, it has been the practice in the other trial, and our approach, not to order the Defence to disclose witness statements, save and except when there were some difficulties, as such. It is still our intent not to order the disclosure of statements to the Prosecution. We expect along the

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

MR JORDASH: Certainly.

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

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

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

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

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

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

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

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

10:34:53

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

10:35:19

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

10:35:42

10:36:01

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

10:36:25

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

obligation is only to the Prosecution, or to the other co-accused persons, because we think, as a matter of procedure, we will be entitled to cross-examine witnesses summoned by the first accused and the third accused, and it is very possible that the first and
10:37:03 the third accused may have witnesses whose testimonies will have an impact on the second accused. So we're basically saying, even though there is no legal obligation for disclosure, that could be done --

PRESIDING JUDGE: Well, let's hear if Mr Jordash wants to
10:37:20 intervene on that.

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

10:37:43 JUDGE BOUTET: You're not objecting. What you're suggesting is whatever time line is in place for the disclosure of the information, as such, would apply to the co-accused. In other words, if it is disclosed, let's see, I think it is 21 days, I may be wrong in the numbers, but if it is 21 days, you're
10:38:03 saying that -- you're not objecting to disclosing to co-accused, you're objecting as to the time limits of it.

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

10:38:21 JUDGE BOUTET: I understood his application, Mr Jordash, to be more, in a sense, of if there is disclosure to the Prosecution, to the same extent, there should be disclosure to the co-accused of the summary, not only of the list of witnesses, but the summary of what they are about to say so they can prepare

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

10:38:50 MR JORDASH: I agree.

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

MR JORDASH: Yes, I agree.

PRESIDING JUDGE: It's good practice. Do you have anything

10:39:06 to say in respect of the third accused, Mr Jordash?

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

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

10:39:18 MR JORDASH: Yes. Can I just inform the Court, Mr Gbao does waive his right to be present. There was some misunderstanding between the detention staff and Mr Gbao. He has ticked the right box.

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

10:39:35 MR JORDASH: That's the box to waive his right to be present.

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

MR NICOL-WILSON: I just want to give an indication as to

10:39:48 the time line in terms of filing of the Defence materials. As in, we are suggesting first week of February. We are subject to a decision by the Court, but we just want to give an indication --

PRESIDING JUDGE: In other words, your proposal?

MR NICOL-WILSON: Exactly, Your Honour.

PRESIDING JUDGE: Mr Jordash.

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

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

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

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

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

PRESIDING JUDGE: Yes.

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

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

an agreement of what is and what is not disputed, as such, to focus more on your examination-in-chief of your witnesses, and the witnesses you are intending to call. I know in the number of witnesses, the number you have given, you're going wide at this
10:42:33 particular moment. Obviously the Prosecution agrees to many of the issues for which are, at this particular moment, your potential witnesses. That list should be reduced. Your estimate of three to four months hearing of your case will depend, obviously, to a large extent, on some of these matters, matters
10:42:51 that, at this time, are not clear, but if you come to an understanding as to it is or it is not in dispute, then your examination-in-chief will be more focused and everybody will gain from it. I can only, again, too, suggest that any movement in that direction, and meeting, would bring positive results. They
10:43:15 are not only welcome, but strongly encouraged by the Bench.

MR JORDASH: I completely agree. May I say, for the record, and it doesn't concern Mr Harrison or Mr Bangura, because they weren't here, but I was somewhat astonished that the Prosecution didn't proceed with specific and sensible suggestions
10:43:33 about agreed facts in their case at the beginning of this trial. We may not have been here two years later if that had been done at that stage. There was a suggestion, but the suggestion was: Will you agree that you're guilty of the offences on the indictment, which, clearly, is not a negotiating position. The
10:43:51 agreed facts we will seek from the Prosecution will, hopefully, be sensible and, hopefully, based largely upon their own evidence.

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

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

10:44:17 PRESIDING JUDGE: Right.

MR NICOL-WILSON: And then just to briefly go back and revisit the indication I gave as to the time, at which we will be in a position to file our Defence materials, I gave that indication so as to assist the Court in a determination as to

10:44:32 when the trial should start, rather than the other way around, because all we have at the moment are just rumours.

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

10:44:49 MR JORDASH: I'm afraid I don't have instructions on that.

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

MR HARRISON: No, we would be --

PRESIDING JUDGE: More than happy.

10:45:05 MR HARRISON: Yes, pleased to review any suggestions that any of the accused may have.

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

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

10:45:16 PRESIDING JUDGE: On the issue of opening statements, the records show that the second accused took the opportunity of making an opening statement at the start of the trial, in accordance with Rule 84 of the Rules. Will the Defence for the first accused avail itself of that Rule 84 option?

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

PRESIDING JUDGE: We remember that, in the case of the third accused, there was an opportunity to make an opening statement. At some point in time, because of the way that the 10:46:12 third accused was proceeding, that opportunity was aborted, because it veered away from making a statement relating to the evidence in response to the Prosecution's position, and rather became almost a statement which was of a political nature, and the Bench was certainly not prepared to listen to a political 10:46:42 statement. The question, of course, is if you're speaking for the third accused now, how do you see us navigating this particular -- did he really afford himself of the opportunity to make a statement, and an opening statement, in respect of his case, or did he not? Let's hear your thoughts on that. I know 10:47:13 you haven't considered this, but your random thoughts can be of assistance.

MR JORDASH: Well, he had the opportunity, and he was going to avail himself of the opportunity, but, I would submit, didn't, because it was an approach which didn't find favour with the 10:47:31 Court.

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

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

10:47:48 PRESIDING JUDGE: Well let me hear the Prosecution on that. You remember the sequence of events. I don't know whether you were here, but I remember very vividly, because we thought, really, the statement was heavily political and was not appropriate within the context of Rule 84. What would be your

response to Mr Jordash's?

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

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

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

PRESIDING JUDGE: Right.

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

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

JUDGE BOUTET: Thank you.

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

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

10:50:17

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

10:50:50

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

10:51:16

PRESIDING JUDGE: Mr Nicol-Wilson?

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

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

10:51:35

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

PRESIDING JUDGE: That's helpful.

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

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

10:52:00

their own proposal?

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

10:52:48 PRESIDING JUDGE: Yes.

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

10:53:20 PRESIDING JUDGE: From the Chamber's perspective, we had nothing firm, in terms of our own thoughts, because there were other competing interests and assignments and so we had kept an open mind on this, but what we wanted to do was to dispel this rumourmongering, just to have some indications what you might

10:53:54 think would be appropriate. You say you'd hoped that it would start January, and they're proposing they're proposing April. We just want some kind of --

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

10:54:10 PRESIDING JUDGE: No.

MR HARRISON: We simply had thought the Defence was wishing to start in January, and we were trying to organise things to be consistent with that. If they are now suggesting April, again, if it is at all possible, in the Court's view, to start the trial

10:54:22 earlier than April -- if the Defence does think that it is possible to start earlier than April, that is the Prosecution's very firm wish.

PRESIDING JUDGE: Right. Okay.

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

is not ready.

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

10:54:48 JUDGE BOUTET: Mr Jordash, when you are suggesting April being what you are aiming for, Easter is in April some time. I'm not sure if it's the first week or second week, and we normally have a break. April, you mean after the Easter recess? That's basically what you're aiming at. I don't have a calendar in

10:55:13 front of me, but I think Easter is fairly early in April.

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

MR JORDASH: Yes. I anticipate we would be ready for the

10:55:27 beginning of April, but, obviously, it would have to be practically --

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

10:55:46 MR JORDASH: Yes. I am sorry about any misleading of --

PRESIDING JUDGE: No, no. I don't think we, in fact, ever thought about that. We just felt that because we had a vacuum here, and we were pre-occupied with the other case, and also trying to get the Rule 98 situation quickly out of the way, we

10:56:09 didn't have time to ourselves to focus on any definitive position, and so that caused a lot of rumourmongering, but we don't hold anybody responsible.

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

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

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

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

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

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

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

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

10:58:55 PRESIDING JUDGE: Yes. Let me take you through it a little. Do you want to disclose specifics?

MR JORDASH: I'd rather not.

PRESIDING JUDGE: Yes. Well, if you don't want to disclose specifics, let me just throw this out as a possible way of

10:59:08 approaching this issue: Is it a matter upon which you are requesting some judicial pronouncement, or directive, or order, or is it something for the information of the Bench?

MR JORDASH: Information.

PRESIDING JUDGE: Information of the Bench. So it means

10:59:37 that if you gave the Bench the information in the presence of the public, you might be divulging something that you don't think --

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

PRESIDING JUDGE: Well, in that regard, we'll have to move

10:59:54 into closed session. Learned counsel for the other accused persons, do you have any issues that you want to bring to our attention under the rubric of any other matters?

MR NICOL-WILSON: No, Your Honour.

PRESIDING JUDGE: Prosecution, is there any other thing

11:00:18 that you want to bring to our attention?

MR HARRISON: No, thank you.

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

released. Members of the public are released, too.

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

11:01:29

[Open Session]

PRESIDING JUDGE: This concludes the status conference proceeding.

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