



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

WEDNESDAY 20 JUNE 2007
9.52 A.M.
TRIAL

TRIAL CHAMBER I

Before the Judges:

Bankole Thompson, Presiding
Pierre Boutet
Benjamin Mutanga Itoe

For Chambers:

Mr Matteo Crippa
Ms Nicole Lewis

For the Registry:

Ms Advera Kamuzora

For the Prosecution:

Mr Peter Harrison

For the accused Issa Sesay:

Mr Wayne Jordash

For the accused Morris Kallon:

Mr Shekou Touray
Mr Melron Nicol-Wilson

For the accused Augustine Gbao:

Mr John Cammegh

OPEN SESSION

1 [RUF20JUNE07A- MC]

2 Wednesday, 20 June 2007

3 [Open session]

4 [The accused present]

5 [The witness entered court]

6 [Upon commencing at 9.52 a.m.]

7 PRESIDING JUDGE: The trial is resumed and we'll continue
8 with the trial within a trial and, Mr Harrison, please continue
9 with your cross-examination of the witness.

09:52:24 10 WITNESS: ISSA HASSAN SESAY [Continued]

11 [The witness answered through interpreter]

12 CROSS-EXAMINED BY MR HARRISON: [Continued]

13 MR HARRISON:

14 Q. I have a document that I'd ask Court Management pass to you
09:52:42 15 and there's also three copies available for the Defence counsel
16 and copies have been given to the judges, I think. If I could
17 give this to you. This document is actually, or was intended to
18 be part of Exhibit I, which was the confidential memo written to
19 the Presiding Judge by the Registrar, and when Defence counsel
09:53:29 20 made it an exhibit it may simply have been inadvertent that it
21 wasn't included or it may be their view that they just did not
22 want to tender it as an exhibit, but I will be wishing to be
23 relying upon this. But that's the origins of this document
24 because, on its face, it is not at all clear but this is appendix
09:53:49 25 7 or, sorry, annex 7 to the report of the Registrar?

26 PRESIDING JUDGE: But at some stage you will be seeking to
27 exhibit it?

28 MR HARRISON: Yes.

29 PRESIDING JUDGE: Very well.

1 JUDGE BOUTET: You say the report of the Registrar; can you
2 clarify that? I don't have the exhibits before me.

3 MR HARRISON: Exhibit I was a report done, as I understood
4 it, at the request of the Presiding Judge back in, I think, May
09:54:16 5 of 2003 where he was seeking from the Registrar certain
6 information.

7 JUDGE BOUTET: I have, okay. Thank you.

8 MR HARRISON:

9 Q. I doubt that you would have seen this document before, but
09:54:32 10 I'm just wanting you to take a look at the first page and you
11 will see at the top it has a date 12 March 2003; do you see that?

12 A. Yes, I've seen it.

13 Q. If you were to look, just about two-thirds of the way down
14 the page, you will see an annotation for 9.55 in the far left
09:55:01 15 column; do you see that?

16 A. See what?

17 JUDGE BOUTET: I don't think it is -- are you talking the
18 very first numbers on the top of the page, Mr Harrison?

19 MR HARRISON: No, about two-thirds of the way down.

09:55:23 20 JUDGE BOUTET: Okay.

21 MR HARRISON: It should say 0955.

22 JUDGE BOUTET: I see.

23 PRESIDING JUDGE: That's the first column --

24 MR HARRISON: Yes.

09:55:34 25 PRESIDING JUDGE: -- of the document.

26 MR HARRISON:

27 Q. Do you see that now?

28 A. 0599? 0955.

29 Q. Yes.

1 A. Yes, I've seen it.

2 Q. And the handwritten note beside it is "Breakfast served to
3 MKHN and TB;" do you see that?

4 A. I don't understand.

09:56:05 5 Q. Just beside the 0955, just to the right of it, in the next
6 column, there's a handwritten note that says "Breakfast served to
7 MKHN and TB"?

8 A. Yes, I've seen it.

9 Q. And, just below that, there's another note and
09:56:30 10 unfortunately the time is somewhat obscured but it appears to be
11 10 and then something, and the handwritten note is "IS out of
12 cell in rigid handcuffs into custody of J Kyle for transfer to
13 airfield accompanied by L Koroma."

14 THE INTERPRETER: Your Honours, can counsel go slow.

09:56:56 15 PRESIDING JUDGE: Take the advice, counsel.

16 MR HARRISON:

17 Q. The handwritten note is "IS out of cell in rigid handcuffs
18 into custody of J Kyle for transfer to airfield."

19 Do you see that note?

09:57:17 20 A. Yes, that's what I've seen here.

21 Q. And the note below that is 10.31; do you see that?

22 A. Yes, I've seen 10.31.

23 Q. So I'm suggesting to you that it was somewhere between 10
24 in the morning and 10.31 in the morning that you were taken out
09:57:48 25 of your cell on 12 March 2003; do you see that?

26 A. Well, I can't accept this because when it was written down
27 I was not there and Mr John Berry, and Geoff man were -- they
28 were involved in this.

29 Q. I'm sorry, maybe for the benefit of the court reporter,

1 could you say the second name, Geoff something?

2 A. Well, I just said Geoff, that was the name they used to
3 call him in Bonthe. I don't know his second name. He was the
4 chief of the detention.

09:58:32 5 Q. So what I'm suggesting to you is that it's clear that you
6 would have had up to 10.00 a.m. in the morning to read whatever
7 you wanted to read on 12 March 2003; do you accept that?

8 A. I disagree because Geoff and Morissette were all in this,
9 were involved in this. Sometimes they would take me out at 8.30
09:59:03 10 and they would write it at 10, so why should I agree with this?

11 Q. Well, that's perfectly fair. If you don't agree you're
12 allowed to say so, Mr Sesay. And if you turn over to the next
13 page, the fourth line down has an notation of 1710; do you see
14 that?

09:59:27 15 A. Yes, I've seen it.

16 Q. And it says "IS returned to the hotel by Geoff Kyle," do
17 you see that?

18 A. That's what I've seen on the paper.

19 Q. And then the next annotation is 1711, "IS request to use
09:59:49 20 toilet. He is removed to toilet. Returned to cell at 1716;" do
21 you see that?

22 A. Yes, I've seen the handwriting.

23 Q. So I'm suggesting to you that from 5.16 in the evening
24 onwards you would have had time to read whatever it was that you
10:00:13 25 wanted to read; do you accept that?

26 A. I don't accept that because I told you yesterday that after
27 5 cell 3, where I was, it would be dark because of the windows;
28 there was zinc behind it. There was no light.

29 Q. And if you turn over to the next page, and at the very top,

1 I want to advise you that the Prosecution simply cannot confirm
2 what date is that's written there. It appears to be a date in
3 March, and it may be March 2003, and the first numeral of that
4 date appears to be a 1, but whether the second one, the second
10:01:08 5 numeral is a zero, 3 or 5, I cannot give you any definitive
6 remark.

7 JUDGE ITOE: Mr Harrison, I would like to understand. This
8 cross-examination is related or has a nexus with wanting to prove
9 that he had all the time to read the indictment. That is what
10:01:34 10 you're driving at.

11 MR HARRISON: That's correct.

12 JUDGE ITOE: That is the focus of this. After it was
13 served on him by Mr Lamin. Thank you.

14 MR HARRISON:

10:01:45 15 Q. And if you look down you will see what --

16 A. But, My Lords, sir --

17 JUDGE ITOE: Yes, Mr Sesay.

18 THE WITNESS: Yes, sir. Mr Lamin gave me a bundle of
19 documents.

10:02:06 20 JUDGE ITOE: No, don't you -- Mr Sesay --

21 THE WITNESS: Yes, sir.

22 JUDGE ITOE: -- it doesn't call for any observations on
23 your part. I've just clarified an issue.

24 THE WITNESS: Yes, sir.

10:02:17 25 JUDGE ITOE: We know what your stand is. We have the
26 evidence as to how these papers were given to you; do you
27 understand?

28 THE WITNESS: Yes, sir.

29 JUDGE ITOE: You've given an explanation and that is it.

1 So you don't need to, unless you had something else to add to
2 what you have said before, in which event I wouldn't cut you off,
3 you know, in the explanations you want to make. Do you have
4 anything new to say that you have not said before on this issue
10:02:45 5 as to how and what Mr Lamin gave to you?

6 THE WITNESS: Well, Mr Lamin gave me documents only. He
7 did not tell me what that meant or what that means. He just gave
8 me the documents.

9 JUDGE ITOE: I see. That is what you wanted to add?

10:03:05 10 THE WITNESS: Yes, sir.

11 JUDGE ITOE: Thank you. Mr Harrison, you may proceed,
12 please.

13 MR HARRISON:

14 Q. And on that next page that I just referred to you, you will
10:03:17 15 see that six lines down there is an annotation for 8.15, and it
16 says, "IS given breakfast and water;" do you see that?

17 A. Yes, I've seen that.

18 Q. And if you go down to seven lines up from the bottom of
19 that same page, you will see at 9.59, "J Kyle cuffed, I, Sesay
10:03:54 20 for transport." So you had at least up until 9.59 in the morning
21 to review any documents that you wanted to on that day; do you
22 accept that?

23 A. Well, I don't accept that because what was going on, Geoff
24 was a part of this, and Morissette too. He would write anything.

10:04:27 25 Q. And when you say "Geoff was a part of this," what are you
26 referring to?

27 A. Well, the way he would order me out of -- in my cell, he
28 would blindfold me, handcuff me on my back and the other time I
29 complained that I was not feeling well and he told me that he did

1 not want to hear that; that I should come out of the cell.

2 Q. And if you look at the next annotation on that page, it
3 says, "I Sesay moved by J Anthony out of hotel. He refused
4 covering for his head. He is carrying" --

10:05:18 5 THE INTERPRETER: Would the attorney kindly read back the
6 question. The interpreter cannot follow exactly what he is
7 saying.

8 MR HARRISON:

9 Q. The next line down on the same page reads, "I Sesay moved
10:05:37 10 by J Anthony out of hotel. He refused covering for his head. He
11 is carrying his black diary in upper left pocket of coveralls;"
12 do you see that?

13 A. Yes, but this has never happened. That I denied -- at that
14 time I could not deny those people. After they handcuffed me on
10:06:22 15 my back, would I tell them not to -- to blindfold me when Geoff
16 was with a pistol and Anthony with a pistol? I could not deny
17 them.

18 Q. You see, that's precisely what the Prosecution is
19 suggesting because there was only one pistol at the Bonthe
10:06:46 20 detention centre. That pistol was a Glock and it was kept locked
21 in an office?

22 JUDGE ITOE: Are you proffering evidence, Mr Harrison?

23 MR HARRISON: If I can put the question.

24 Q. I'm suggesting that, to you --

10:07:00 25 JUDGE ITOE: You are crossing the borderline, because this
26 is evidence which you should have proffered through your
27 witnesses, if you wanted -- if you thought it was material to
28 your case.

29 MR HARRISON: I can certainly put it to the witness, what

1 it was.

2 JUDGE ITOE: Go ahead. I just drew your attention to it
3 because you were crossing over -- you have already crossed the
4 line of answering the question and proffering evidence into the
10:07:24 5 proceedings. You may go on, please.

6 MR HARRISON:

7 Q. I'm suggesting to you that there was never a pistol used in
8 the detention area where the cells were; do you accept that?

9 A. I disagree. Mr Harrison, you were not there. Even the
10:07:44 10 Mongolians who searched, they would stand on top of the toilet
11 and point the AK guns. This was not even a pistol. You were not
12 there.

13 Q. So, you are saying that there was AK guns?

14 A. I said there were pistols and even when they were ready to
10:08:10 15 search they would go with AK guns into the detention and they
16 would stand on the toilets and point the guns on ourselves. Even
17 the security that had been in Bonthe would confirm that.

18 Q. And who had the AKs?

19 A. The Mongolians, they would go there. Sorry, not the
10:08:31 20 Mongolians, the contingent of UNAMSIL that were based in Bonthe.
21 I've forgotten the name of the country. The UNAMSILs who
22 deployed in Bonthe at the detention. When they would search us
23 they would go into detention on the exercise with AK-47 guns.

24 MR HARRISON: The Prosecution is applying that this
10:08:58 25 document, if it's deemed appropriate by the Court, it could be
26 included as part of what is already Exhibit I because this is
27 annex 7 to Exhibit I. If the Court feels it's inappropriate then
28 we simply ask that it be given the next number.

29 PRESIDING JUDGE: One would prefer the latter to avoid any

1 complication. At least there would a nexus anyway in your
2 addresses if you -- in your legal submissions you can make the
3 linkage that this document is part of an earlier exhibit and we
4 would be able to apply our minds so when we come to deliberate on
10:09:46 5 the material before us, both viva voce evidence and also
6 documentary evidence, but I rather prefer the latter. So we
7 will -- Mr Jordash, do you have any objection to this document
8 being received in evidence?

9 MR JORDASH: No objection.

10:10:02 10 PRESIDING JUDGE: The document will be admitted in evidence
11 and marked exhibit?

12 MS KAMUZORA: A18, Your Honour.

13 [Exhibit No. A18 was admitted on the voir dire]

14 PRESIDING JUDGE: A18. Perhaps just to meet your situation
10:10:16 15 we will have some kind of indication on the document to establish
16 the nexus between it and the earlier exhibit. So, Madam
17 Courtroom Officer, you could help us with that.

18 MS KAMUZORA: I will, Your Honour.

19 PRESIDING JUDGE: Yes. Devise some creative method so as
10:10:30 20 to facilitate that kind of indication. Right.

21 JUDGE ITOE: Did you say A18?

22 MS KAMUZORA: Yes, Your Honour.

23 JUDGE ITOE: Thank you.

24 PRESIDING JUDGE: Continue, counsel.

10:10:41 25 MR HARRISON: I would ask if Exhibit I could be shown to
26 the witness now.

27 Q. So, I'm asking you to turn to what is annex 6. So you have
28 to flip through the document and it's about two-thirds of the way
29 through and at the very top you will see annex 6 in handwriting

1 on the document?

2 A. The first page?

3 Q. No. I said if you go through the document, about
4 two-thirds of the way through, you should look for a page that at
10:12:57 5 the very top has annex 6 written?

6 A. Yes, I've seen it.

7 Q. So, just so that you're not under a misunderstanding, at
8 the top it has a name of Haddijatou Kah-Jallow and it appears to
9 be an email written to Ibrahim Yillah, Claire Carlton Hanciles,
10:14:17 10 Beatrice Ureche and Marianna Goetz; do you see that at the top?

11 A. Yes, I've seen them.

12 Q. I'm asking you to turn to the very next page --

13 JUDGE ITOE: Mr Harrison, this email was from who?

14 MR HARRISON: It's from Haddijatou Kah-Jallow and it's
10:14:40 15 addressed to a number of people.

16 JUDGE ITOE: Thank you. Okay.

17 MR HARRISON: And there's a date on the email. It's
18 13/03/2003 at 1847 and there's actually a heading which "In
19 confidence memorandum" and the subject matter is "Visit to the
10:15:03 20 detainees' detention facility."

21 Q. And I'm going to draw your attention to the second page
22 under the heading "Issa Hassan Sesay;" do you see that?

23 A. Yeah, I've seen it.

24 Q. And this is what the passage reads there: It reads that:

10:15:28 25 "This detainee was not interviewed at the 'site' but I was
26 accorded the privilege to interview him in privacy. He was
27 extremely emotional and broke down into tears several times
28 during the interview. He said that he had a bout of
29 malaria but had received medication and was recovering.

1 Mr Sesay also stated that he is well treated at the
2 detention facility. He expressed his" -- "to see his
3 family".

4 And if I can simply add, the word is missing there, and it
10:16:31 5 may simply be "he expressed his wish or desire to see his
6 family." And it continues on:

7 "He specifically stated that he wished to be represented by
8 a Nigerian, American or European. I presented him with the
9 list of Defence counsel with their resumes. He retained
10:16:56 10 the resumes of the Nigerian and American counsel."

11 Do you accept, first of all, that this interview with
12 Ms Kah-Jallow was in privacy.

13 A. Well, it was once, I saw Ms Jallow once, and I can't recall
14 the date, and it was not privately. John Berry was in there and
10:17:27 15 I saw him.

16 Q. And when it says that Mr Sesay also stated that he is
17 well-treated at the detention facility, do you accept that?

18 A. I disagree with that. I have never told Ms Jallow that
19 because, even the mosquito net they put in our cells, in my cell,
10:18:04 20 when I asked the security that the mosquitoes were many in the
21 cells, John Anthony said I should -- I should use the mosquito
22 net as a cover. They were unable to hang it. So, in that kind
23 of situation, how would I say I was being treated well?

24 Q. And where it says that you -- sorry, let me read it for
10:18:34 25 you, the third line from the bottom of that passage: "He
26 specifically stated that he wished to be represented by a
27 Nigerian, American or European." Do you accept that as being
28 true and accurate?

29 A. No. That was not how I said it.

1 Q. And where it says that, "I presented him with the list of
2 Defence counsel with their resumes, he retained the resumes of
3 the Nigerian and American counsel," do you accept that as being
4 accurate?

10:19:30 5 A. Well, they give me a list in which Morissette told me that
6 I should choose a white man whose name was Robinson from that
7 list, and that was the man I chose.

8 Q. Now, I'm going to show you some other documents, the first
9 of which is Exhibit F. Now, Exhibit F is a letter dated 14 April
10:21:12 10 2003 and it's from John Jones, Defence adviser, and it's
11 addressed to David Crane, Prosecutor. And in the first paragraph
12 Mr Jones advises that he's writing in his capacity as Acting
13 Chief of the Defence Office. And in the next paragraph, if you
14 go down to the sixth line, the sentence begins, "As a result I
10:22:03 15 have discussed this matter with him" -- if I can add the "him" is
16 referring to Mr Sesay, "and asked him to consider whether he
17 wishes to have further contact with the OTP. In light of this
18 consideration I would ask that the OTP not conduct any further
19 interviews with Mr Sesay until he has made a final decision and
10:22:36 20 as to his position in this regard, which he has indicated he will
21 provide within a week or two."

22 Then it goes on to say, in the last full paragraph, that:

23 "Given Mr Sesay's apparent past interviews the Defence
24 Office's duty to safeguards his rights while duty is" --

10:23:14 25 THE INTERPRETER: Your Honours, can counsel take the
26 question again.

27 MR HARRISON: Maybe I'll just skip that paragraph.

28 Q. What I'm going to suggest to you, Mr Sesay, is that you
29 were having meetings with Mr Jones at that time and that at no

1 point did you suggest to Mr Jones that anyone from the
2 investigations of the OTP was uttering threats or making promises
3 to you; do you accept that?

4 PRESIDING JUDGE: Well, let's take it one-by-one. Threats
10:23:56 5 first and then you go to the other one because, clearly, it's
6 important that we keep them separate.

7 MR HARRISON:

8 Q. I'm suggesting to you that at this time, and this letter is
9 dated 14 April 2003, you had been having meetings with Mr Jones;
10:24:18 10 do you accept that?

11 A. Yes.

12 Q. And at no point in time did you ever suggest to Mr Jones
13 that anyone from the OTP had been making threats to you?

14 A. Well, if I -- if I was not feeling bad about what was
10:24:51 15 happening between Morissette and I, I would not have complained
16 to Jones, John Jones, and even John Jones advised the men, he
17 said, he told them to go far from me on this. On the same -- on
18 the 14th I was under threat by Morissette. So when John Jones
19 said that they should stop talking to me, and they should move
10:25:23 20 away from me, if they had accepted what John Jones told them,
21 then it would not have been a threat or as though they were
22 playing a trick.

23 Q. I'm suggesting to you that at no point in time, in March or
24 April 2003, did you suggest to Mr Jones that anyone from the OTP
10:25:54 25 had made any threats to you; do you accept that?

26 A. I don't accept that. That's why I told you, because of
27 what was transpiring, what was happening, that's why I complained
28 to John Jones that Mr Morissette, they were not treating me well;
29 they were playing games with me.

1 MR HARRISON: And I have a document that I'd ask be
2 distributed. There's enough copies for the Court and for the
3 witness. If it could be distributed.

4 Q. This document is dated 16 April 2003 --

10:27:05 5 PRESIDING JUDGE: Just a minute. We haven't received our
6 copies yet. You can proceed now.

7 MR HARRISON:

8 Q. Dated 16 April 2003. It has a title "Extremely urgent and
9 confidential request of Defence Office for order regarding
10:27:31 10 contact with accused."

11 And I should advise the Court that there is some
12 underlining in the document. I don't know how that got there
13 but, at any rate, it's the only copy we have.

14 Q. If you could turn to, first of all, paragraph 5. And the
10:28:11 15 second sentence of paragraph 5 advises that, on 13 March 2003,
16 Mr Sesay signed a request for legal assistance and the power of
17 attorney appointing Mrs Claire Carlton-Hanciles, Mr Ibrahim Sorie
18 Yillah and Mrs Haddijatou Kah-Jallow as his attorneys. Do you
19 remember signing those documents on 13 March?

10:29:00 20 A. No, I can't recall. I signed a document with the lawyer
21 but I don't think it was on the 13th of March.

22 Q. So, I'm going to show you those documents.

23 MR HARRISON: If I could ask Court Management to -- and if
24 you could just leave the current document with the witness as
10:29:43 25 well. Actually, I do have an extra copy here for Mr Jordash, if
26 he would like it.

27 Q. So, you see on one page -- well, first of all, on page 585
28 in the top right corner it says, "Request for legal assistance,"
29 do you see that?

1 A. Yes, what is the person's name, the legal assistant, that
2 gave me this document?

3 Q. All I can tell you is what Mr Jones wrote in this motion
4 and it says that, on 13 March 2003, Mr Sesay signed a request for
10:30:55 5 legal assistance and a power of attorney appointing Mrs Claire
6 Carlton-Hanciles, Mr Ibrahim Sorie Yillah and Mrs Haddijatou
7 Kah-Jallow as his attorneys. That's the only information I have.
8 At any rate, do you recognise that document?

9 A. Yes. That's why I'm asking you. On the 13th who was the
10:31:29 10 legal person that gave me this document which you claim that I
11 signed on the 13th? What was the person's name?

12 Q. No, I'm trying to make it clear to you that I don't know.
13 The only information I have is what I read out. But if you turn
14 over to the next page it may be a little bit clearer to you. And
10:31:53 15 this has Court Management page number 586 and this is a power of
16 attorney.

17 JUDGE BOUTET: No copies have been given to the Court.

18 PRESIDING JUDGE: Yes. You better -- we don't have that at
19 all.

10:32:44 20 MR HARRISON:

21 Q. And if you look at this document which is numbered 586,
22 which is described as a power of attorney, you see that your
23 signature is there under the word "signed;" do you see that?

24 A. Yes, I've seen that.

10:33:01 25 Q. And then you will see that in witness thereof, there is a
26 name Malcolm Hutchinson; do you see that?

27 A. I've seen that.

28 Q. And then you also see below that the name Haddijatou
29 Kah-Jallow; do you see that?

1 A. I've seen that.

2 Q. So I'm not wanting to mislead you, I don't know, but an
3 assumption might be drawn that it was Haddijatou Kah-Jallow who
4 would have been present and given you the documents; do you
10:33:36 5 accept that?

6 A. But, Mr Harrison, this document dated 29th April --

7 Q. I think what that means is that's the date that it's
8 accepted by the Special Court, and what I'm suggesting to you is
9 what I'd read to you earlier from Mr Jones's motion, where he
10:34:02 10 says on 13 March 2003 Mr Sesay signed a request for legal
11 assistance and a power of attorney.

12 A. Well --

13 Q. So I'm putting it to you that this was signed on 13 March
14 2003?

10:34:26 15 A. Well, except they gave this document to John Berry or
16 Morissette but, on the 13th, I did not see any extra person
17 except John Berry and Morissette.

18 Q. Now, I'm trying to --

19 A. I know that this is my signature because one is the date,
10:34:51 20 because on the 13th of March I did not see any extra person
21 except those people that were with me. If I signed this document
22 it means, then, that it came from John Berry or Morissette
23 because, even though the lady that came from the Registry, I was
24 not allowed to see her at the initial stage.

10:35:12 25 Q. Do you know who Malcolm Hutchinson is?

26 A. No, I don't know, no.

27 THE INTERPRETER: The interpreter is sorry. There is a
28 confusion there. When an expression is made in Krio, [speaks
29 Krio] can be a male or a female so the interpreter doesn't know

1 the person referred to, the sex of the person.

2 PRESIDING JUDGE: Well, unless the questioner gives you
3 some indication, but the answer undoubtedly stays in the neutral
4 gender. Did you want to clarify that or is it necessary?

10:35:59 5 MR HARRISON:

6 Q. I think I can just tell you, witness, that the name I read
7 out was Malcolm Hutchinson. That's a male. I think you
8 indicated that you don't know him; is that right?

9 A. Well, I'm not used to those names. Even if I say the name,
10:36:18 10 I cannot recall the person.

11 Q. And what I'm suggesting to you is that there is actually
12 just an innocent mistake you may have made. Malcolm Hutchinson
13 is a person who would have worked at the detention facility; does
14 that -- do you recall that?

10:36:41 15 A. Well, at that time there were different international
16 personnel there; they would come and go. So I cannot recall that
17 on the 13th I did not see any person that was extra except John
18 Berry and Morissette and the people that were in Bonthe.

19 Q. And I'm going to suggest to you that Malcolm Hutchinson is
10:37:09 20 also a white man who's bald and somewhat overweight and may look
21 like John Berry; do you accept that?

22 A. I don't know. I don't know.

23 Q. Now, I'm going to take you to the same log book which is
24 Exhibit 18; do you accept that --

10:37:48 25 JUDGE ITOE: It's A18?

26 MR HARRISON: A18, yes. Perhaps I can do this without
27 troubling the Court Management officer. If you could just wait
28 for one moment.

29 Q. Do you accept that the Defence Office staff made regular

1 visits to the Bonthe detention facility?

2 A. Well, from the -- from the 11th, it was on the 15th I spoke
3 with them in Bonthe, the day that I should appear, in the morning
4 but, from the 10th to the 14th, I did not speak with -- I spoke
10:38:30 5 with -- I didn't speak with any Defence in Bonthe because in
6 those days, in the morning, they would bring me to Freetown and
7 in the evening they will take me back, before I appeared in
8 court.

9 Q. And what I'm suggesting to you is that after the 14th,
10:38:49 10 sorry, after the -- or on the 15th and after 15 March regular
11 visits were made by the detention staff to the Bonthe facility?

12 JUDGE ITOE: By the Defence staff.

13 MR HARRISON: Yes.

14 JUDGE ITOE: You said the detention staff.

10:39:08 15 MR HARRISON: Sorry.

16 Q. By the office of the Acting Principal Defender?

17 A. Yes, I can recall. There was a day when they went,
18 Ms Hanciles talked to me but at that time, as they were going
19 there, as they were arriving, and I was brought down to Freetown
10:39:29 20 so both of us were unable to have a talk. Defence used to go
21 there while the people were bringing me down to Freetown so the
22 Defence that went there were unable to have a talk with me.

23 Q. And what I'm suggesting to you is that not only did you
24 meet with Mr Jones in March and April, but you also met with
10:39:52 25 other members of the Defence Office staff at the detention
26 facility.

27 A. Well, that's what I told you. I said the Defence went
28 there. Ms Hanciles and others. As the lady arrived the flight
29 that took them there was the same flight that they used to bring

1 me down to Freetown, so they were unable to have any discussion
2 with me. So when -- when you had stopped bringing me down to
3 town, that was the time they were able to talk to me in Bonthe.
4 That was after the 15th of April.

10:40:34 5 Q. Just so that you're not under a misunderstanding, I'm
6 suggesting to you that on the days when you did not travel to
7 Freetown by helicopter, persons from the Defence Office staff
8 travelled to the detention facility; do you accept that?

9 A. Well, Mr Jones went there. Then I made a complaint to
10:40:58 10 Mr Jones. When Mr Morrisette started abusing me and he abused
11 the man that I made my complaint to.

12 Q. Now, what I'm going to suggest to you is that in the motion
13 filed by Mr Jones on the 16th of April 2003, which is in front of
14 you, no suggestion whatsoever is made of the OTP in any way
10:41:38 15 threatening you; do you accept that?

16 A. Well, I explained that to John Jones. I feel he was the
17 one that did not write it. That is the first thing. And,
18 secondly, he advised the people that --

19 THE INTERPRETER: The interpreter is sorry. Can the
10:42:00 20 witness go a little --

21 PRESIDING JUDGE: Mr Sesay, can you repeat the last part of
22 your answer, slowly.

23 THE WITNESS: Yes, sir My Lord. I said sir, John Jones,
24 the letter he wrote to Mr Harris, his people, he wrote that they
10:42:18 25 should stop going to pick me from -- pick me up from Bonthe and
26 they should distance themselves away from me, but they did not
27 take his advice. It meant then that they were harassing me and
28 they used to threaten me and therefore they did not take the
29 man's advice.

1 PRESIDING JUDGE: Thank you.

2 MR HARRISON:

3 Q. And I'm suggesting to you that at no point in time did you
4 ever say to Mr Jones that the Prosecution was making any promises
10:42:54 5 to you; do you accept that?

6 A. Well, I said it. I explained what they said and I
7 explained about my stress. I explained to Mr Jones. And even
8 Morissette, when he came on the witness stand, he was angry
9 because the truth was put to him. That was why he was angry.

10:43:35 10 MR HARRISON: The Prosecution would apply to exhibit the
11 document which is a pleading, the one dated 16 April 2003.

12 PRESIDING JUDGE: That's the one entitled "Extremely urgent
13 and confidential request?"

14 MR HARRISON: Yes.

10:43:53 15 PRESIDING JUDGE: Very well. Mr Jordash, what is your
16 response?

17 MR JORDASH: No objection.

18 PRESIDING JUDGE: The document will be admitted in evidence
19 and would be marked exhibit?

10:44:02 20 MS KAMUZORA: A19, Your Honour.

21 PRESIDING JUDGE: A19. Thank you.

22 [Exhibit No. A19 was admitted on the voir dire]

23 PRESIDING JUDGE: Mr Harrison, are you proposing to exhibit
24 the one designated 586 by Court Management?

10:44:46 25 MR HARRISON: I was going to suggest that but if I --

26 PRESIDING JUDGE: Very well.

27 MR HARRISON: -- could just have a moment?

28 PRESIDING JUDGE: Okay.

29 MR HARRISON:

1 Q. I've asked that another document be given to you and this
2 one is dated 29 May 2003?

3 PRESIDING JUDGE: Yes, we have it.

4 MR HARRISON:

10:45:26 5 Q. This one is titled, "Defence counsel's extremely urgent and
6 confidential motion requesting permission to intervene regarding
7 the Defence Office's extremely urgent and confidential motion."
8 Do you see that?

9 A. Yes, I've seen that.

10:46:00 10 Q. And if you look at the very back page, you will see this is
11 signed by Mr William Hartzog and Alexander Marcel?

12 A. Yes.

13 Q. And you remember those two people to be your appointed
14 lawyers?

10:46:20 15 A. I can recall, but I fired them, and I can explain the
16 reasons why I sacked them.

17 Q. Don't think I'm asking that question, and that may be
18 something that ought not to be pursued for reasons of
19 confidentiality? At any rate, if it's a topic that --

10:46:47 20 JUDGE ITOE: Particularly because he says he fires them,
21 there may be a lot in that.

22 MR HARRISON:

23 Q. If your -- if Mr Jordash feels that that is something that
24 could be pursued, he could have that opportunity, I think, but
10:47:04 25 I'm not going to ask you.

26 A. But I'm pleading with the judges, before I could answer to
27 this particular lawyer, Mr William Hartzog [sic], I would want to
28 explain what made we parted company because he was -- I would
29 explain what made me to dismiss him.

1 Q. As I said, Mr Sesay, I'm not asking the question and
2 Mr Jordash, should he deem it appropriate, he can pursue that.
3 What I'm suggesting to you is that this is your counsel's motion
4 to deal with the issue of contact between the Prosecution and
10:48:01 5 yourself; do you accept that?

6 JUDGE ITOE: Mr Harrison, I think we are in a very delicate
7 situation because if, as he has said, if I had this particular
8 counsel and you're suggesting that he was properly representing
9 him that this document which you've shown him is regular, that
10:48:36 10 the counsel mentioned therein was properly representing him,
11 don't you think it has the potential of his going back to that
12 same subject, you know, of why he fired him?

13 MR HARRISON: Well, that, of course, is for the witness to
14 decide; I don't know what his answer will be.

10:48:59 15 JUDGE ITOE: I see.

16 MR HARRISON: The question I was asking was not seeking to
17 encourage the witness to comment upon why he fired his prior
18 counsel.

19 JUDGE ITOE: You say it has a potential?

10:49:13 20 MR HARRISON: Yes, it may well.

21 JUDGE ITOE: Right.

22 MR HARRISON: I don't know what the witness will say.

23 MR JORDASH: Sorry, could I object to this because the
24 question is encouraging Mr Sesay to comment on issues which
10:49:27 25 relate to legal privilege. Not only legal privilege but also
26 look into the minds of why a particular lawyer would put his case
27 in a particular way in a legal document. And I'm not sure that
28 Mr Sesay can comment on that. Mr Harrison's asking Mr Sesay to
29 say why is it, if you instructed your lawyers in one way, they

1 didn't put the argument in that way? So, we are certainly
2 treading very close to legal privilege, and we're most definitely
3 treading close to asking a lay person why a lawyer pitches an
4 argument in a particular way. Those are my submissions.

10:50:16 5 PRESIDING JUDGE: Mr Harrison, if counsel has framed the
6 issue correctly, what would be your response, if that -- the way
7 he framed it, what would be your response to his objection?

8 MR HARRISON: There may be some merit to it but I don't
9 accept that that was the question.

10:50:35 10 PRESIDING JUDGE: Right. Educate us a bit.

11 MR HARRISON: The question never was: Why. The question
12 was: Do you accept that nothing was put in the document.

13 PRESIDING JUDGE: To indicate what?

14 MR HARRISON: Nothing was in the document to show or
10:50:51 15 suggest that the Prosecution, in any way, had threatened
16 Mr Sesay.

17 PRESIDING JUDGE: Mr Jordash --

18 MR HARRISON: It's on the face of document.

19 PRESIDING JUDGE: Yes. Mr Jordash, if it is framed that
10:51:07 20 way, what is harmful or prejudicial about that formulation if an
21 answer is elicited?

22 MR JORDASH: Well, if it's there on the face of the
23 document, and Mr Harrison doesn't want a response to explain why
24 it's not on the face of the document, then he can deal with it in
10:51:26 25 submissions. Mr Harrison can say: Look, it's in the document --
26 it's not in the document. These are my submissions as to why
27 not. But putting it to Mr Sesay to say: Is it there in the
28 document? No --

29 PRESIDING JUDGE: Even though prima facie it's not there.

1 MR JORDASH: Well, if Mr --

2 PRESIDING JUDGE: So, in other words, the document speaks
3 for itself?

4 MR JORDASH: It speaks for itself. Or, the Prosecution are
10:51:48 5 seeking Mr Sesay to speak for the document, and that necessarily
6 elicits a response which --

7 PRESIDING JUDGE: Can become argumentative and also go to
8 privilege.

9 MR JORDASH: It drifts into privilege.

10:52:00 10 PRESIDING JUDGE: Yes.

11 MR JORDASH: It drifts into commenting again why a lawyer
12 puts a document in -- put an argument in a particular way.

13 PRESIDING JUDGE: I'm attracted by the argument that if the
14 document speaks for itself, then ought your kind of line of
10:52:15 15 cross-inquiry not to be a matter for you to ask the Court to draw
16 some inferences of law from that? I'm attracted by that
17 argument. How do you respond?

18 MR HARRISON: Yes, that would be one approach, but I just
19 want to remind the Court that he has already talked about his
10:52:39 20 discussions with Mr Jones. So whether or not privilege is still
21 remaining is, I would suggest, not likely.

22 PRESIDING JUDGE: It's just that we may be getting to the
23 boundary of permissibility and impermissibility here, and
24 probably for the purpose of a trial within a trial the Court can
10:52:52 25 be invited to draw certain inferences from the state of the
26 records, and I think we would prefer to go that way. That's our
27 collective disposition, is it?

28 JUDGE BOUTET: Well, I do have some problem with that but,
29 however.

OPEN SESSION

1 PRESIDING JUDGE: All right. Very well. Let's hear --

2 JUDGE BOUTET: For the very reason that Mr Harrison is
3 pointing out. I mean, the witness has been asked questions about
4 meetings he's had with Defence Office, on many occasions with
10:53:15 5 Jones and so on, and why is this now all of a sudden different
6 than what was happening before? I mean, there has been no issue
7 to asking the witness if he has met with lawyers, Defence
8 counsel, Defence Office and all of a sudden it becomes an issue.
9 I'm really unable to understand the difference between this one,
10:53:35 10 when the accused is not asked to speak about why this or not
11 that; he's simply asked to confirm yes or no. I fail to see the
12 difference, Mr Jordash. I know you will hopefully provide some
13 clarification to my enquiries.

14 MR JORDASH: The difference is this: That it's clear on
10:53:53 15 the face of the document that Mr Sesay didn't regard the Defence
16 Office as his lawyers. So, in that sense, we don't submit that
17 any issue of privilege arises in relation to Mr Sesay's
18 conversations with the Defence Office at that time. But this
19 document is his actual previous lawyers, from overseas, who he'd
10:54:21 20 been anticipating would be his lawyers. And that is the
21 distinction I would seek to make. And I know -- I was present
22 during the conversations between Mr Hartzog and Mr Sesay on these
23 issues so I know issues of privilege arise. I went to Bonthe
24 with Mr Hartzog.

10:54:53 25 PRESIDING JUDGE: We'll go on a two-to-one basis, and leave
26 the matter for address for Mr -- did you want to intervene?

27 MR CAMMEGH: Not on this, Your Honour. Just to ask if I
28 may please leave the room for literally two minutes.

29 PRESIDING JUDGE: Leave granted. Take whatever time you

1 want. Mr Harrison, go ahead.

2 MR HARRISON: That being the case, the Prosecution is
3 asking that this be the next exhibit in the proceedings.

4 PRESIDING JUDGE: Right. Before we receive it in evidence
10:55:26 5 you have exhibited one confidential document and this is going to
6 be another one, not so? Now that you've exhibited them, it would
7 seem to me that they are automatically declassified unless we
8 have any reason to keep them under seal. I mean, in a public
9 hearing setting, a trial within a trial is in the context of a
10:55:56 10 public hearing so I don't see -- is there any difficulty from the
11 Prosecution's perspective?

12 MR HARRISON: No, there isn't.

13 PRESIDING JUDGE: Right. All right. Well then, let's --
14 Mr Jordash, what is your response to the request to have this
10:56:08 15 exhibited?

16 MR JORDASH: No objection.

17 PRESIDING JUDGE: We will receive it in evidence and mark
18 it exhibit?

19 MS KAMUZORA: A20, Your Honour.

10:56:18 20 PRESIDING JUDGE: A20.

21 [Exhibit No. A20 was admitted on the voir dire]

22 PRESIDING JUDGE: For procedural tidiness, did you also say
23 you were about to make a decision about the order document
24 numbered 586 or 585 whichever.

10:56:28 25 MR HARRISON: Yes. And in view of --

26 PRESIDING JUDGE: It is not yet received in evidence.

27 MR HARRISON: -- in view of the Court's comments on the
28 previous matter --

29 PRESIDING JUDGE: Yes.

1 MR HARRISON: -- what I would suggest is that I will not
2 ask any more questions but perhaps it should be exhibited.

3 PRESIDING JUDGE: Right.

4 JUDGE ITOE: And you can use the contents for submissions.

10:56:49 5 PRESIDING JUDGE: Precisely.

6 MR HARRISON: I think that would be the appropriate --

7 PRESIDING JUDGE: The appropriate way to go.

8 JUDGE ITOE: That's right.

9 PRESIDING JUDGE: Mr Jordash, your response to the -- that
10:56:54 10 we receive this also in evidence, 585. 585, the two parts of it;
11 585, 586. Two different documents but on the same paper.

12 JUDGE BOUTET: It's the power of attorney and the
13 request --

14 PRESIDING JUDGE: Request for legal assistance and power of
10:57:11 15 attorney.

16 MR JORDASH: No objection.

17 PRESIDING JUDGE: Okay. We'll admit that and we are
18 admitting both sides, are we?

19 MR HARRISON: I suggest for convenience it would just be
10:57:23 20 one exhibit with -- -

21 PRESIDING JUDGE: Yes, it will, but on the understanding
22 that both sides are being exhibited.

23 MR HARRISON: Yes.

24 PRESIDING JUDGE: All right. Madam Courtroom Officer, what
10:57:32 25 is the exhibit number for this?

26 MS KAMUZORA: Your Honour, it's A21.

27 PRESIDING JUDGE: A21.

28 [Exhibit No. A21 was admitted on the voir dire]

29 MS KAMUZORA: I beg your pardon, your Honour, are the last

1 three documents, confidential or under seal?

2 PRESIDING JUDGE: Yeah, they're not. We declassified them.

3 MR HARRISON:

10:58:56

4 Q. Yesterday, Mr Jordash played for you a brief videotape of
5 the appearance on 15 April 2003; do you remember that?

6 A. Yes, Mr Harrison, I can recall.

7 Q. And the transcript of that became Exhibit A14.

11:00:46

8 MR HARRISON: If A14 can be shown to the witness, I'm going
9 to ask one or two brief questions. I misspoke. It's A16; it's
10 the transcript.

11 Q. While the document is being retrieved, do you recall that
12 that was the first appearance you made before the Special Court
13 on 15 March 2003? And do you recall that you had asked for an
14 interpreter to be present?

11:01:23

15 A. Yeah.

16 Q. Perhaps I'll just continue on while the Court Management is
17 looking. Do you accept that you, at that time, were able to
18 understand the proceedings in English?

11:02:12

19 A. Well, there were many English words that were read and,
20 even now, words that are involved in that interview, some of them
21 I don't understand.

22 Q. And if you turn to page 29 of the transcript, the typed
23 page number is 29, and the handwritten number is 86; do you see
24 that?

11:02:53

25 A. I've seen page 29.

26 Q. And it begins at the top, "Mr Yillah," and then at line 6
27 it's you intervening, and the accused says, "As of most of these
28 attacks a man like me, I'm completely innocent, you know, January
29 6 in the Kenema District, the Bo District and the Karina areas,

1 no, I never participated in those acts." And Judge Itoe, "Well,
2 I now understand, you know, that, well, even though you wanted to
3 play safe by getting a translator you understand English very
4 well." Do you accept that to be true, that you understood

11:03:44 5 English very well at that time?

6 A. Yes, I understood some, but the specialist John Berry, when
7 he used to read to me, for instance the Article 3 of the Geneva
8 Convention, that Article 3, even when I'm sitting here I don't
9 understand it.

11:04:28 10 Q. Now, I'm going to suggest certain things to you, Mr Sesay.

11 A. Yes.

12 Q. You understand that while I'm suggesting it, I'm actually
13 trying to elicit an answer?

14 A. Okay, sir, Mr Harrison.

11:04:45 15 Q. I'm suggesting to you, first of all that, when you were at
16 Jui, Joseph Saffa did not speak to you; do you accept that?

17 A. He spoke to me and he spoke in Krio. He spoke to me in
18 Krio. He said, "Issa, do you know that in Sierra Leone here, the
19 Court here has the death sentence, and this is above the Court of
20 Sierra Leone." That was what he told me. And he said, "You know
21 what had happened with officers in this country." So I was aware
22 that they killed 24 officers. That was exactly what he was
23 recounting to me.

11:05:19 24 Q. And I'm suggesting to you that the answer that you've just
11:06:13 25 given is inconsistent with the one you gave yesterday. Reading
26 from the transcript from yesterday, page 37 lines 25 and on, of
27 what is a draft transcript, not a final transcript, what you
28 described Mr Saffa as having said is the following:

29 "Issa, listen to what this man is telling you. This is no

1 time for crying. That you know the Court in Sierra Leone
2 can sentence you to -- can sentence somebody to death. So
3 if this man wants to talk to you -- if this man is trying
4 to talk to you listen to him and accept what he's telling
11:07:09 5 you. This is -- this is because this is the only way you
6 will be saved out of the situation."

7 I'm suggesting to you that, in fact, Mr Saffa did not say
8 anything, which I understand you deny, but that he certainly did
9 not make any reference to the 24?

11:07:44 10 A. Well, Mr Harrison, I want you to know this: That when
11 anybody who drinks and eats would make a mistake, and these
12 things have happened for a long time. It's only yesterday that I
13 started to talk about them. So if I had to think, overnight,
14 this man spoke about this, and he even mentioned about the
11:08:04 15 killing of those officers, so I can't recall. I could not recall
16 everything.

17 THE INTERPRETER: Your Honours, can the witness take that
18 last bit again?

19 PRESIDING JUDGE: Mr Sesay, please repeat the last part,
11:08:21 20 slowly.

21 THE WITNESS: Yes, sir, My Lord. I said, any person who
22 eats and drinks would forget, is liable to forget. So when he
23 said that I did not say this yesterday, that's why I said this
24 thing has happened for a long time.

11:08:42 25 PRESIDING JUDGE: Thank you.

26 THE WITNESS: Thank you, sir.

27 MR HARRISON:

28 Q. And just so that there's no confusion in your mind,
29 Mr Sesay, I'm suggesting to you that you are simply making all of

1 these allegations up regarding threats or promises to you in
2 order to save yourself; do you accept that?

3 A. I disagree with that.

4 Q. And I'm suggesting to you that at Jui, all that Mr Berry
11:09:22 5 said to you was a question of whether or not you wished to
6 cooperate with the OTP; do you accept that?

7 A. I disagree with that, sir.

8 Q. And I'm suggesting that you have told similar lies with
9 respect to Mr Morissette; that at no point in time did
11:10:02 10 Mr Morissette make any threats to you. Do you accept that?

11 A. I disagree with that, Mr Harrison. You, yourself, saw how
12 Mr Morissette behaved in court. That proved to you that that's
13 how he behaves. I cannot tell a lie on Mr Morissette.

14 Q. And I'm suggesting to you that you were inventing and lying
11:10:34 15 about any role which you have attributed to Al White; do you
16 accept that?

17 A. Say again. You did not -- repeat the last part.

18 Q. It has to do with Al White, and I'm suggesting to you that
19 you have invented and lied about the involvement that you say
11:11:08 20 Mr White had in speaking to you?

21 A. Mr Harrison, that is not a lie. I said the truth. I say
22 the truth. Every day, you would -- you would see --

23 THE INTERPRETER: Your Honours, I didn't get that part.

24 PRESIDING JUDGE: Go over that part again. This time,
11:11:28 25 carefully and slowly also.

26 THE WITNESS: My Lords, sir, I said I would not lie. I did
27 not tell a lie against Mr Alan White. Mr Alan White spoke to me
28 on two different occasions, on the 11th and on the 12th of March,
29 and the third time was through the telephone in Bonthe. And even

1 that day, in Bonthe, I was -- I was looking at him directly when
2 I appeared the first time in Bonthe, so I would not tell a lie.

3 MR HARRISON:

4 Q. And yesterday, when Mr Jordash was asking you questions,
11:12:20 5 you said that you told the Prosecution half truths; do you
6 remember saying that?

7 A. Yes, that was what I said. I said I told half truth.

8 Q. And all of that was recorded; do you accept that?

9 A. Well, there were some that was not recorded because they
11:12:58 10 were speaking to me and the video and tape was not on and at that
11 time I had no authority over them; they were in control. They
12 were controlling me. When they were ready they would put the
13 tape on and talk to me. Morrisette would talk to me. When Alan,
14 Dr Alan White came on the 11th and 12th, but there was no tape
11:13:24 15 on, no video on. So I would not force them to record everything
16 we -- we said. They were in control.

17 Q. And I'm suggesting to you that when you're telling the
18 Court that you told half truths, those would have been recorded;
19 do you accept that?

11:13:56 20 A. That what?

21 Q. That when you were telling these half truths, they would
22 have been recorded?

23 A. Well, that's what I have been saying; there were some
24 things they recorded. There were some discussions they would not
11:14:22 25 record. For a number of times they did not record it.

26 Q. So what are the things that you say were half truths then?

27 A. Well, if you look into it and you ask me, then I will tell
28 you.

29 Q. Well, are you saying it was a half truth that this incident

1 involving Makuta, JPK's wife, when you were talking about that,
2 that was a half truth?

3 A. That was a lie because, as a result of the pressure that
4 Morissette piled on me. He was telling me that they wanted to
11:15:13 5 help me but if I did not accept, they would not use me as a
6 witness, so he made me say that. You have confused this whole
7 thing. You would have just left me in the detention and pursue
8 your case, so that I could build up my case but, at the moment,
9 I'm confused in this case.

11:15:42 10 Q. So what you're saying is that the Court could look at that
11 and at the recording and see an incident where you're lying; is
12 that what you are saying?

13 A. Well, you wanted the lies. That's why you rushed, because
14 you had made a decision that before you -- before you arrested
11:16:07 15 me, you had already made that decision that you would do that to
16 me. Why did you not take a decision for the other accused but
17 you took a decision to arrest me?

18 Q. I'll put that question to you, Mr Sesay. I'm going to
19 suggest to you that you wanted to cooperate with the Prosecution,
11:16:35 20 and that's the answer to all of this.

21 A. That's a big lie. You were not there and you did not do
22 that. The man who did that, when -- even when he came to court,
23 his behaviour proved that.

24 Q. And talking about this lie that you admit to, if the judges
11:17:02 25 were to look at that recording, how would they be able to tell
26 that you were lying then?

27 A. Well, when Morissette told me that when the video was on I
28 should not show any signs of distress, that was what Morissette
29 told me. He said, "Please, whenever you are speaking, because we

1 have to assess you through that, that you are good witness for
2 us. When you are talking, don't make any signs of distress." So
3 what they told me, that was what I went by.

4 Q. So while you were under this distress you were able to do
11:17:48 5 an acting job; is that what you're saying?

6 THE INTERPRETER: Counsel, please repeat the question.

7 MR HARRISON:

8 Q. While you were under this distress, you were able to do an
9 acting job; is that right?

11:18:11 10 A. Well, I was just like a captive. I had nothing to do.
11 Whatever they told me to do, that was what I had to do. What
12 Morissette told me to do was what I did.

13 Q. So I'm suggesting to you, witness, that, in fact, your
14 testimony in court has been an acting job and it has been a lie
11:18:38 15 from the beginning to the end; do you accept that?

16 A. Well, what I said in this Court, I said Sierra Leoneans,
17 people out of Sierra Leone who know -- who know about the
18 conflict in Sierra Leone, would confirm that what I said in this
19 Court is the true story.

11:19:06 20 MR HARRISON: That concludes the Prosecution questions.

21 PRESIDING JUDGE: Thank you. Mr Jordash, you can now
22 exercise your right of re-examining the witness, mindful of the
23 scope of re-examination.

24 MR JORDASH: If I may just pick up on a few issues relating
11:19:25 25 to Exhibit I.

26 PRESIDING JUDGE: Yes.

27 MR JORDASH: And the -- sorry, it's not Exhibit I, it's the
28 exhibit which is the log from the Bonthe --

29 PRESIDING JUDGE: That's Exhibit A18, is that it? 18?

1 MR JORDASH: Yes, that's the one, sorry.

2 PRESIDING JUDGE: The log from the Bonthe Prison Detention
3 Centre.

4 MR JORDASH: Yes, please. Could Mr Sesay please be

11:19:51 5 given --

6 PRESIDING JUDGE: Madam Courtroom Officer, please assist.

7 RE-EXAMINATION BY MR JORDASH:

8 Q. If you turn, please, Mr Sesay, to the third page. The
9 Prosecution took you to the bottom of that page, where it says

11:20:31 10 "Issa Sesay moved by John Anthony out of the hotel." Do you see
11 that? There was a suggestion being made on the basis of this
12 document that you had time to read your papers. So can I just
13 pick up on the entry above that? "Issa Sesay returned to cell.

14 He's presented with his final papers by Geoff Kyle, signed and
11:21:04 15 witnessed by John Anthony at 9.40 a.m.." Which papers were
16 these?

17 THE INTERPRETER: The interpreters are sorry, the
18 interpreters are getting problem with the attorney. Could the
19 attorney go a little bit slower for the interpretation?

11:21:19 20 MR JORDASH: I'm sorry.

21 Q. I just want to ask Mr Sesay what papers he referred to at
22 9.35. Do you see that entry? Third page, Mr Sesay, the bottom
23 of the page. "Issa Sesay returned to cell. He is presented with
24 his final papers." Do you know what final papers they were? If
11:22:02 25 you don't know, you don't know.

26 A. No, I can't recall. Can't recall.

27 Q. Can you see 1632?

28 A. Yes.

29 Q. "Ibrahim Yillah, J Kyle and L Koroma leave hotel for

1 airfield." Okay; do you see that?

2 A. Yes.

3 Q. And then look at the bottom, 1654: "J Kyle returns with
4 Issa Sesay escorted by somebody captain to the entrance to the

11:23:02 5 hotel. Issa Sesay's placed in cell. Issa Sesay," reading on --
6 sorry. "OIC John Antony issues IS with his notice of hearing
7 form reference 66 as requested by Ibrahim Yillah."

8 Do you recall whether you saw Ibrahim Yillah on that -- on
9 this occasion, whether at the hotel or outside of the hotel?

11:23:42 10 A. Well, what I can recall that they went to Bonthe with
11 Ms Hanciles but they went at the helipad; as they were taking me
12 to the detention they were coming to Freetown.

13 Q. Right. Well, do you remember John Anthony giving you your
14 notice of hearing form; do you remember that?

11:24:10 15 A. Yes. John Anthony told me.

16 Q. Do you remember whether John Anthony told you who he had
17 got the form from, who he'd received the form from?

18 A. From the people who came from Special Court who went to
19 Bonthe, who were Yillah and others.

11:24:37 20 Q. And there is no dispute Yillah was duty counsel.

21 A. Yeah, yes.

22 Q. Let's go over the page, and I'll miss out the next two
23 pages because there is no reference to any legal representative
24 on those two pages. Let's go to the next day, which is Monday,

11:25:03 25 something of March 2003, and I think we can safely conclude
26 that's the 17th of March because the 15th of March was the
27 Saturday. And go, please, to --

28 A. Monday?

29 Q. Sorry, can you see at 8.47 --

1 A. Which line?

2 Q. On the left column, 8.47. "IS escorted in handcuffs to the
3 airfield by J Anthony, J Kyle and L Koroma. 9.00 Kirkwood, JB
4 Jenkins, Johnson, Ibrahim Yillah, C Hanciles and J Jalloh entered
11:25:57 5 hotel." Do you recall if your paths crossed that day?

6 A. If I can recall?

7 Q. Whether your paths crossed Jalloh and Hanciles that day?

8 A. Well, at that time, that particular moment you're referring
9 to, I was unable to see them because I was blindfolded but they

11:26:34 10 were at the helipad in Bonthe when they -- I boarded the
11 helicopter and I came. So on the next time --

12 Q. So on the next time?

13 A. -- it was the next time that I knew that they had gone
14 to -- to Bonthe, the day I was returning, and they asked of me
11:26:57 15 and they told me -- told them that I had come to Freetown.

16 Q. Okay. Now, go over the page, please, Mr Sesay. Now, it's
17 unclear whether -- actually, no. It's a bit unclear which date
18 this relates to so, yeah, it's a bit unclear. Okay. That's
19 sufficient for my purposes.

11:27:37 20 MR JORDASH: Thank you. I've got nothing further, Your
21 Honours.

22 PRESIDING JUDGE: Thank you. We will take the break at
23 this point and then, when we return, you will call your next
24 witness. Thank you.

11:27:54 25 [Break taken at 11.28 a.m.]

26 [Upon resuming at 12.07 p.m.]

27 PRESIDING JUDGE: Mr Jordash, please call your next
28 witness.

29 MR JORDASH: Before I call my next witness, which is

1 Ms Claire Carlton-Hanciles, can I read a brief statement from
2 Dr Harding.

3 PRESIDING JUDGE: Very well.

4 MR JORDASH: I gave copies to your learned legal officer
12:07:10 5 and I have given a copy to Mr Harrison for the Prosecution.

6 PRESIDING JUDGE: Yes.

7 MR JORDASH: And there's no dispute on this, I don't think.
8 "I, Dr Harding, medical officer for the Special Court for Sierra
9 Leone, confirm that Carbolewe is a medical drug used for the
12:07:31 10 treatment of stomach ulcers."

11 PRESIDING JUDGE: Thank you.

12 MR JORDASH: And I would ask that to be filed as --

13 PRESIDING JUDGE: An exhibit?

14 MR JORDASH: -- an exhibit, please.

12:07:45 15 PRESIDING JUDGE: Excuse me. Mr Harrison, any objection?

16 MR HARRISON: No.

17 PRESIDING JUDGE: Received in evidence and marked exhibit?

18 MS KAMUZORA: A22, Your Honour.

19 PRESIDING JUDGE: Thank you. Please indicate that it is
12:07:59 20 linked to a previous exhibit.

21 MS KAMUZORA: I will, Your Honour.

22 [Exhibit No. A22 was admitted on the voir dire]

23 MR JORDASH: Could I call please, as my second witness,
24 Ms Claire Carlton-Hanciles.

12:08:31 25 PRESIDING JUDGE: Yes, go ahead.

26 MR JORDASH: Thank you.

27 PRESIDING JUDGE: Madam Courtroom Officer, let the witness
28 be sworn.

29 WITNESS: CLAIRE CARLTON-HANCILES [Sworn]

1 EXAMINED BY MR JORDASH:

2 Q. First of all just to say thank you. I know you have duties
3 next door and so I will be as brief as I can be. Please give
4 your full name to the Court and your role at the Court?

12:09:50 5 A. I'm Fatmata Claire Carlton-Hanciles, a duty counsel
6 attached to the Office of the Principal Defender.

7 Q. When did you start in that role?

8 A. I started on 17 February 2003.

9 Q. Do you know what you were doing on 17 March 2003?

12:10:07 10 A. On the 17th of March 2003 I was instructed by the Registry,
11 especially the Registrar and his deputy, to make a visit to the
12 detainees who were on Bonthe Island.

13 Q. Were you told anything about who to visit?

14 A. I was told to visit all the detainees with the exception of
12:10:34 15 Issa Hassan Sesay who had signed a waiver to duty counsel.

16 Q. Who told you about that?

17 A. The then Deputy Registrar, Mr Robert Kirkwood, on my way
18 out to Bonthe.

19 Q. Do you recall what words he used to say?

12:10:54 20 A. He informed me that it was his understanding that the
21 detainee Issa Hassan Sesay did sign a waiver to duty counsel. So
22 I was not to bother to visit him whilst I was on the Bonthe
23 detention facility.

24 Q. Could you just explain to the Court, please, how it was
12:11:23 25 that arrangements were made to visit. Who did you generally
26 receive instructions from?

27 A. We generally received the instructions from the Registrar
28 because by then there were only three of us in the office.
29 Ms Haddijatou Kah-Jallow, Mr Ibrahim Yillah and myself as duty

1 counsel, and we were visiting on a rotational basis, based on
2 instructions from the Registrar.

3 Q. And when in relation to a particular day would you receive
4 the instruction?

12:11:55 5 A. At times we would know in the morning because that was just
6 a few days after the arrest and a system was not in place so --

7 PRESIDING JUDGE: Ms Carlton-Hanciles, you will have to
8 slow down a bit.

9 THE WITNESS: I'm sorry, Your Honour.

12:12:10 10 MR JORDASH:

11 Q. Just go over that last sentence, if you would, please?

12 A. Those were the initial days after the arrest and there was
13 not a visitation system in place for duty counsel to be visiting
14 a detention facility. So in the morning, when we were in the
15 office, that's the time we would know who was supposed to go to
16 Bonthe.

12:12:24 15

17 Q. When you went to Bonthe on the 17th, did you physically or
18 visually see Mr Sesay?

19 JUDGE ITOE: Was it on the 17th or on the 16th? When was
12:12:49 20 it? Can you take us back to the date, please?

21 THE WITNESS: I visited Bonthe on the 17th.

22 JUDGE ITOE: 17th?

23 THE WITNESS: Yes.

24 JUDGE ITOE: Was that your first visit?

12:12:57 25 THE WITNESS: Yes, there was my -- that was my second
26 visit.

27 MR JORDASH:

28 Q. Did you see Mr Sesay at any stage on that day?

29 A. I saw on the tarmac the helicopter which took me, actually

1 brought one of the detainees back to Freetown, but the head of
2 the detainee was covered with white cloth and by then I didn't
3 know it was Mr Sesay. But when I got to the detention facility,
4 upon entering I inquired from the guards who were on duty, and I
12:13:37 5 was informed that Mr Sesay left on board the helicopter which
6 brought you and, of course, I paid customary visits on all the
7 detainees and he was not around.

8 Q. Did that circumstance, you crossing the path of Mr Sesay,
9 happen at all any other days?

12:13:56 10 A. It happened on two occasions when I visited Bonthe.

11 Q. Do you know if the Defence Office duty counsel, aside from
12 you, had received any instructions around this time from the
13 Registry?

14 A. Of three of us who were in the office then got the
12:14:20 15 instruction from the Registry that he had signed a waiver to duty
16 counsel until the coming of Mr John Jones, who was our first
17 legal adviser.

18 MR JORDASH: Thank you. I've got nothing further. If
19 you'd wait there, Ms Carlton-Hanciles.

12:14:40 20 PRESIDING JUDGE: Thank you. Mr Harrison,
21 cross-examination.

22 CROSS-EXAMINED BY MR HARRISON:

23 Q. I'm sorry, I didn't quite hear your last answer. I think
24 the question had to do with: Did the Defence Office get
12:14:53 25 instructions from the Registry. Could you just state your answer
26 again?

27 A. Yes. By then the Registrar was the head of the Defence
28 Office. They -- a substantive [indiscernible] of that office had
29 not been recruited, so we virtually were part of the Registry.

1 Q. Was there some instruction that you did receive from the
2 Registry? Is it the Registrar or the Registry that you received
3 them from?

4 A. Well, basically we interacted with both the Registrar and
12:15:23 5 the deputy in the Registry.

6 Q. And were you saying that there was an instruction that you
7 received from them in particular?

8 A. Well, in particular it was the Deputy Registrar. I took it
9 by way of information, because I was on my way out of the Special
12:15:42 10 Court when, as a last word, he said, "By the way, Claire, don't
11 bother with Mr Issa Sesay. He signed a waiver to duty counsel."
12 And I left.

13 Q. So this is your recollection of a very brief verbal
14 conversation?

12:15:58 15 A. A very brief verbal conversation.

16 Q. And do you recall subsequently whether anything was put on
17 paper to confirm that?

18 A. I did -- I did a kind of affidavit, sometime in May.

19 MR HARRISON: I'd ask if the witness could be shown what is
12:16:28 20 Exhibit I.

21 Q. And if you were to go -- I think it's maybe easiest going
22 from the back -- I think it's ten pages in from the back, from
23 the last page?

24 A. From the back?

12:17:19 25 Q. Yes. If you were to go to the very last page that you
26 have, and then count forward nine pages, and I think that may be
27 the affidavit that you were just referring to?

28 A. Yes.

29 Q. And just to make sure you're looking at it, or we're

1 Looking at the same thing, I think at the very top it says,

2 "Annex 4."

3 A. Yes.

4 Q. That's the affidavit that you just mentioned?

12:17:49 5 A. Yes.

6 Q. And if I could just ask you to go to the very last
7 document, the very last page of that document in front of you?

8 A. Yes.

9 Q. I'm asking if you could just -- I just took you to that
12:18:09 10 briefly, just to have you confirm that was the affidavit you were
11 referring to. Now, if you could go to the very last page of the
12 document, and then if you could move forward two pages, you
13 should see a document which is called "Annex 6" at the top?

14 A. Yes.

12:18:31 15 Q. And is this something that you remember receiving? It
16 appears to be an email from Haddijatou Kah-Jallow?

17 A. Uh-huh, yes.

18 Q. Addressed to Ibrahim Yillah, yourself and others?

19 A. Yes.

12:18:42 20 Q. And the date is 13 March 2003?

21 A. Yes.

22 Q. And if you go to the second page, at the very bottom, there
23 is a paragraph with a heading called "Findings;" do you see that?

24 A. Yes.

12:18:55 25 Q. And the findings are that:

26 "I had the opportunity to inspect the cells at the
27 detention facility. I found them spacious and clean.

28 There was a bed in each cell with a thick mattress. None
29 of the detainees complained about the food, except Brima

1 who complained that his breakfast portion was small. All
2 the detainees, with the exception of Brima, spoke highly of
3 the security personnel."

4 Is that consistent with your recollection of the state of
12:19:39 5 affairs at the detention centre?

6 A. Yes, Your Honour.

7 MR HARRISON: Thank you. Those are the only questions.

8 PRESIDING JUDGE: Thank you.

9 THE WITNESS: Thank you, Your Honour.

12:19:52 10 JUDGE BOUTET: That's okay. I have one question, if I may.
11 You said that, when you were asked questions by Mr Jordash, if
12 this was the visit on the 17th. You firstly said yes, and then
13 you said no, it was my second. When was it, if that was your
14 second, you first visited Bonthe?

12:20:10 15 THE WITNESS: It's the day after the arrests, I visited.

16 JUDGE BOUTET: Thank you. Yes.

17 THE WITNESS: And then we, because there were three of us,
18 we rotationally went to Bonthe, at times twice a week after, so I
19 was there, almost twice a week, every week.

12:20:39 20 JUDGE BOUTET: When you say "after," you mean after the
21 17th or after --

22 THE WITNESS: Yes, after the 17th, after the 17th.

23 JUDGE BOUTET: Thank you.

24 PRESIDING JUDGE: Any re-examination, Mr Jordash?

12:20:50 25 MR JORDASH: Yes, please.

26 PRESIDING JUDGE: Proceed.

27 RE-EXAMINATION BY MR JORDASH:

28 Q. You have been asked about the concern of the detainees.

29 Can you recall around this time, 10th, 11th, 12th, up to the 17th

1 and thereabouts, in March, whether there were complaints by the
2 detainees about the conditions?

3 A. Their only issue was they wanted to see family members,
4 that I can recall.

12:21:21 5 Q. Did you see Mr Sesay?

6 A. I, subsequent, after the 17th, I saw him on some other
7 occasions.

8 Q. Do you recall when?

9 A. I can't recall the date but all of us used to go at least
12:21:46 10 twice a week.

11 MR JORDASH: I've got nothing further.

12 PRESIDING JUDGE: Thank you. You are released,

13 Ms Carlton-Hanciles.

14 THE WITNESS: Thank you, Your Honour.

12:22:04 15 [The witness withdrew]

16 PRESIDING JUDGE: Counsel, you will now call your next
17 witness.

18 MR JORDASH: Could I call, as the final witness, Mr Ahmed,
19 please, from the witness and victims unit?

12:22:28 20 PRESIDING JUDGE: Yes. Could the witness come forward,
21 please? Courtroom Officer, please administer the oath.

22 WITNESS: NAEEM AHMED [Sworn]

23 EXAMINED BY MR JORDASH:

24 Q. Again, thank you for coming. I know you're busy and were
12:23:35 25 busy next door, and I apologise and I'll be brief. Please give
26 your name and function at the Court?

27 A. My name is Naeem Ahmed. N-A-E-E-M. Naeem Ahmed, A-H-M-E-D,
28 and I am deputy chief of Witness Victims Section.

29 MR JORDASH: Now, I want to be careful because I don't want

1 to trample on any protective measures, but I want to discuss with
2 Mr Ahmed issues raised yesterday in relation to Franco's.

3 PRESIDING JUDGE: Yes, Mr Harrison.

4 MR HARRISON: The Prosecution objects to this. This is
12:24:24 5 entirely a collateral matter to the issue on the voir dire, which
6 is the question of voluntariness of the statement, and there
7 ought not to be any further inquiry.

8 JUDGE ITOE: Indeed, I think so. We have done with that.
9 We've given a ruling on this. I think [indiscernible] turn,
12:24:40 10 turn, turn around the issues. That's my view on this point.

11 PRESIDING JUDGE: We concur. I concur on that.

12 MR JORDASH: Could I have an opportunity to address Your
13 Honours?

14 PRESIDING JUDGE: Well, go ahead, and just shortly on that.

12:24:54 15 MR JORDASH: The version of events put forward --

16 PRESIDING JUDGE: Yes. Let's hear his response to your
17 objection.

18 MR HARRISON: I have no problem with the response but I'm
19 just looking at the number of people in the gallery and --

12:25:04 20 PRESIDING JUDGE: We don't know who they are.

21 MR HARRISON: No. And I'm just concerned about protecting
22 witnesses.

23 PRESIDING JUDGE: Yes; quite right.

24 MR HARRISON: And it's just a request that if there is
12:25:13 25 going to be any concern for that, if there could be an immediate
26 movement to a closed session.

27 PRESIDING JUDGE: Yes. Well, let's ask -- this is
28 something that you really require to address the Court fully on,
29 legally, is that what you say?

1 MR JORDASH: I can be --

2 PRESIDING JUDGE: Because an objection has been taken and
3 we merely expressed our spontaneous responses. There's no ruling
4 yet.

12:25:41 5 MR JORDASH: Yes.

6 PRESIDING JUDGE: But do you want to argue, legally?

7 MR JORDASH: Well, I want to put -- I simply want -- yes.

8 PRESIDING JUDGE: Yes.

9 MR JORDASH: Yesterday, Your Honours --

12:25:51 10 PRESIDING JUDGE: Well, let us ask the witness to leave the
11 courtroom for a brief while, and then also I think we can hear
12 this in closed session.

13 MR JORDASH: Your Honour, there is -- I don't need to refer
14 to any names in order to --

12:26:08 15 PRESIDING JUDGE: Are you sure you may not? Sometimes
16 these things happen inadvertently, counsel.

17 MR JORDASH: Well, I won't.

18 PRESIDING JUDGE: Well, you are going to be abundance of
19 caution? Do you take that assurance?

12:26:19 20 MR HARRISON: Yes, of course.

21 PRESIDING JUDGE: Well, right. Let's go on.

22 MR JORDASH: Thank you. Yesterday, Your Honours ordered

23 the Prosecution to inquire and disclose what it is they knew

24 about Mr Morissette and visits to Franco's with a particular

12:26:37 25 witness. The answer that came was that Mr Morissette was,

26 effectively, taking that witness to Franco's or out, at least, on

27 a Sunday, at the behest of the witness and victims unit. It

28 isn't true.

29 Your Honours ordered that disclosure, I presume, because

1 Your Honours considered it to be relevant and important. The
2 explanation given by Mr Harrison, and we don't in any way say
3 Mr Harrison misled the Court, we say the instructions he received
4 misled the Court. And it's only right and proper in those
12:27:25 5 circumstances that we be allowed to correct the misapprehension
6 which this Court is under. It is relevant, as Your Honours found
7 it relevant yesterday, but it's particularly relevant because it
8 goes to the issue of Mr Morissette's credibility.

9 If it isn't true, what he has obviously instructed
12:27:48 10 Mr Harrison yesterday, then you will have a clear example of him
11 misleading this Court. And, from that, you can make whatever
12 inferences you feel appropriate when judging his evidence in
13 relation to this voir dire. It couldn't be more relevant, in my
14 submission.

12:28:15 15 PRESIDING JUDGE: Right. Well, let me --

16 MR JORDASH: Could I just add one thing?

17 PRESIDING JUDGE: Yes, quite.

18 MR JORDASH: At the very least, the Court ought not to be
19 misled, inadvertently or otherwise, into accepting a state of
12:28:31 20 affairs which is not true.

21 PRESIDING JUDGE: Let me see if I get you right, so that we
22 get the issue properly framed. You are virtually saying, if I
23 get you rightly, that you have a different version of the truth
24 in respect of this incident, as represented by the information
12:28:55 25 disclosed to this Court yesterday by Mr Harrison.

26 MR JORDASH: Yes.

27 PRESIDING JUDGE: Right.

28 MR JORDASH: I spoke to this witness yesterday --

29 PRESIDING JUDGE: So, in other words, that's your position.

1 I understand.

2 MR JORDASH: I spoke yesterday --

3 PRESIDING JUDGE: You have a different version of the truth
4 which means that you are contesting the truth of what we have
12:29:10 5 before us. Very well. Right.

6 MR JORDASH: Absolutely.

7 PRESIDING JUDGE: Mr Harrison, your response?

8 MR HARRISON: Yes. The Prosecution says it is a collateral
9 matter. And, in fact, if the Court is interested in pursuing it,

12:29:23 10 there is likely to be some other witnesses who would have to
11 testify, and you would have to make a determination based upon
12 the credibility of all of these witness. If I can just tell the
13 Court what was said in court yesterday. It says -- it's myself
14 speaking, and again, I should say it's from the draft transcript,

12:29:41 15 page 22: "I made enquiries," and if I could just indicate it was
16 very brief enquiries, and I have no notes, "I made enquiries and
17 I can inform the Court of the following: Through Witness and
18 Victims Services there had been arranged a regular Sunday trip
19 provided to TF1-046." Now, if I can just pause there. The
12:30:14 20 operative words are "had been." My understanding is that they
21 simply did not have the staff to facilitate it, and the quote
22 continues on:

23 "There had been arranged a regular Sunday trip provided to
24 the witness, TF1-046, because of, as I understand it, the
12:30:35 25 lengthy period of time that he had been in with WVS and
26 provided with the services that they can provide. And on
27 occasion WVS does not have enough staff to take this person
28 on this Sunday drive and so, on the occasion that has been
29 referred to and, as I understand it on prior occasions,

1 it's also happened. But on the occasion referred to
2 Mr Morissette and Mr Haddad took 046 on this Sunday drive,
3 away from his residence, and decided to stop and have lunch
4 at the location that was indicated."

12:31:19 5 I understand that to be slightly different from what
6 Mr Jordash is suggesting; that there was some ongoing expectation
7 that WVS would do this every Sunday. And I don't think that was
8 what was conveyed in what I said yesterday, because they didn't
9 have the staff to do it.

12:31:45 10 PRESIDING JUDGE: What is your response to that?

11 MR JORDASH: I'm lost. I don't understand the distinction.
12 My understanding of what was said yesterday was that the witness
13 and victims unit had an ongoing commitment to taking this witness
14 out. They didn't have enough staff on the particular Sunday in
12:32:04 15 question so Mr Morissette stepped into the breach. That was my
16 understanding, and I suspect it was the understanding of most
17 people in this Court.

18 Upon inquiry with Mr Ahmed, the situation is somewhat
19 different to that. There was a commitment by WVS, over a year
12:32:26 20 ago, to taking this witness out. They stopped that commitment.
21 Mr Morissette urged them to continue it. They refused, on the
22 basis that it wasn't, one, what they did; and, two, that they
23 didn't have enough staff to do it even if it was.

24 Mr Morissette picked up the baton and ran with it on his
12:32:51 25 own volition, and on the OTP's volition, and so since August or
26 September last year, Mr Morissette and the Prosecution's
27 management unit have been taking this witness out on regular
28 outings.

29 I suspect, again, it's a very different understanding to

1 what most people in this Court arrived at yesterday, and it ought
2 not to be obscured by some very skillful lawyering but,
3 nevertheless, it is different to what was said yesterday.

12:33:33 4 PRESIDING JUDGE: In summary, is that what your witness
5 will be coming to say.

6 MR JORDASH: Yes. It's exactly what he was coming to say.
7 And he will say more; that a meeting was held with Mr Morissette,
8 Mr Vahidy, the chief of the witness and victims unit and himself,
9 in which Mr Morissette expresses disapproval with the witness and
10 victims unit for not conducting that exercise with the witness,
11 and he was told: Well, that's what it is; that's up to you. And
12 Mr Morissette then picked it up and did it himself.

13 This is an important issue, I would suggest.

14 PRESIDING JUDGE: And, speaking for myself, how is that
12:34:10 15 germane and central to the issue of voluntariness which we are
16 now investigating? In other words, how is it not a collateral
17 issue?

18 MR JORDASH: Did Mr Morissette lie about his handling of
19 this witness when he instructed Mr Harrison yesterday? Did
12:34:33 20 Mr Morissette lie about his handling of the way -- of his
21 handling of Mr Sesay? The two questions are exactly the same; we
22 are just dealing with a different person. And if Your Honours --
23 if Your Honours don't find that it's relevant that Mr Morissette
24 misled the Court about the way he treated this witness, you don't
12:34:52 25 find it relevant to whether Mr Sesay's telling the truth about
26 the way he was treated, or whether Mr Morissette is telling the
27 truth, then I'll sit down. But, to my mind, it is clear and
28 obvious what the relevance is, but I'm not sure I can make my
29 arguments more forcefully. The issues are there on the table.

1 Your Honours --

2 PRESIDING JUDGE: In other words, you're saying it's a
3 central issue, it's not collateral.

4 MR JORDASH: Well, Your Honours have to make a -- Your
12:35:21 5 Honours have a deliberation. Much of what we put before you will
6 not be an issue of credibility because what we'll say to you is:
7 Whether you believe the Prosecution's evidence or not, they can't
8 discharge the burden. But it may be that you will come to the
9 next question and say: Well, what if we believe Mr Morissette's
12:35:38 10 evidence over Mr Sesay's? Are Your Honours not going to ask the
11 question, as to whether Mr Morissette told the truth yesterday
12 about his handling of this witness? I would have thought that
13 that question would come into Your Honours' hands, or minds,
14 almost immediately.

12:35:54 15 JUDGE BOUTET: But isn't it a collateral issue? The
16 question that you're being asked, isn't it, that, a collateral
17 issue?

18 MR JORDASH: Well, credit can always be called a collateral
19 issue.

12:36:03 20 JUDGE BOUTET: Well, I'm asking you: Is it or not a
21 collateral issue, this issue here in court, this matter? I mean,
22 the credibility of witnesses is exactly what we're here for, to
23 make this assessment, based on what you -- what is led as
24 evidence including your cross-examination of these witnesses and
12:36:21 25 the representations you made. I mean, if we pursue that line,
26 Mr Jordash, we may as well open a second issue of trial, as such,
27 and deal with credibility of witnesses all along. I mean, we'll
28 never see the end of the day. This is why we don't embark upon
29 collateral issues.

1 MR JORDASH: Well, if Your Honours --

2 JUDGE BOUTET: Credibility, I agree with you, and I'll
3 concede that to you entirely, is always part of a trial. I mean,
4 this is everything that we are here about; to determine if we
12:36:44 5 believe a witness, in totality, in part, or not at all. I mean,
6 this is what this function is all about. And in hearing
7 witnesses through the witness box, giving their evidence and
8 assessing if we think what they're saying is the truth or not.

9 MR JORDASH: Well, if Your Honour orders disclosure on the
12:37:05 10 basis, I presume, of Rule 68, the Court is then misled, then
11 isn't the Court, and I ask rhetorically, interested in having the
12 most accurate version of events, straight from the horse's mouth,
13 the witness and victims unit? I would suggest the answer must
14 clearly be "yes." And if it's -- it can be termed "collateral,"
12:37:30 15 it can be called "credit." It can be called "peripheral," but it
16 matters not what it's called. It's the impression that's been
17 left in this Court and the impression that Mr Morissette has
18 sought to leave before this Court.

19 PRESIDING JUDGE: So, are you suggesting that by not
12:37:46 20 hearing this witness, if we so decide, this Court is, in fact,
21 handicapped in arriving at the whole truth in respect of the
22 voluntariness or involuntariness of the alleged statements? In
23 other words, will we be missing out some important element in the
24 jigsaw puzzle when working out the equation of voluntariness or
12:38:15 25 involuntariness of the alleged statements?

26 MR JORDASH: Well, frankly, my view is that you can decide
27 in favour of the Defence without it.

28 PRESIDING JUDGE: Well, that's the point I -- in other
29 words, how vital is this? I mean, looking at it from the point

1 of view of a jigsaw puzzle, how vital is this? In other words,
2 if we don't hear the witness, are you saying that some important
3 component of the final equation will be missing and the Court
4 may, in fact, be taking a judicial misstep in its conclusion? In
12:38:58 5 other words, do we already have enough material before us upon
6 which we can reach, objectively and impartially and
7 dispassionately, a determination whether the statements were made
8 voluntarily or not?

9 JUDGE ITOE: Mr Jordash does not feel that way. If he felt
12:39:22 10 that way, he wouldn't be giving this application.

11 PRESIDING JUDGE: Well, that's why I want to be --

12 JUDGE ITOE: He wouldn't be bringing the application.

13 PRESIDING JUDGE: That's why I want to be persuaded. I

14 want to be persuaded -- no, I want to be persuaded on the issue

12:39:32 15 whether the -- if we don't hear this witness there is going to be
16 a vital missing link.

17 MR JORDASH: Well, Your Honour, I don't know.

18 PRESIDING JUDGE: That's my own position.

19 MR JORDASH: I don't know the way that Your Honours will

12:39:45 20 approach this issue.

21 PRESIDING JUDGE: But I will tell you how we will. We are
22 enjoined by law to look at the evidence that has been led by both
23 sides so far and also advise ourselves on the law relating to
24 statements, and also the tests that we apply when we determine
12:40:09 25 whether alleged statements made by accused persons in custodial
26 settings were voluntary or not. Applying the law to the evidence
27 we have here, and the totality of the circumstances, as they have
28 been presented by both sides, and of course taking into
29 consideration the legal submissions and inferences which you

1 invite us to draw, we come to a final determination of the issue.
2 That would be our methodology and that will be the standard
3 methodology.

12:40:45 4 JUDGE IT0E: Mr Jordash, you know, as far as I am
5 concerned, I think what underlies a determination of the issues
6 you have raised is the status of that issue; is it a collateral
7 issue or not? I think that, from all indications, it is, indeed,
8 a collateral issue and that, to me, is not that relevant for the
9 determination of the voluntariness of the waiver or of the
12:41:15 10 statements which are in issue.

11 However, I think that that is -- that's the point, you
12 know, where you need to be advised. Because, if we go into this,
13 it means that we would be opening another trial to call some more
14 evidence because you would have put -- you would have put the
12:41:37 15 character of Mr Morissette, you know, and of course of the
16 Prosecution, you know, into question, and it would divert us.
17 And I tell you, you yourself know, that we would never come to
18 the end of this process.

19 I think we need to move along and make sure that we bring
12:42:00 20 an end to this particular issue. I think we are virtually at an
21 end and we see how we treat the evidence and submissions that are
22 going to be made available to us by the parties.

23 This is the way, you know -- I think we are extending this
24 to -- I mean, we have heard the arguments, but I don't think I am
12:42:23 25 convinced, personally, that this witness, if this witness is
26 called for just that purpose, I think it for a collateral issue
27 that does not need to receive such importance. Evidence has been
28 led on the core issues in this matter, and I think it is for us
29 to consider that evidence and not that which is collateral to the

1 determination of this case.

2 MR JORDASH: Well, I'm not going to press the point
3 further, but I make the point for the record: Rule 68 is a
4 procedural right. It's not --

12:42:59 5 JUDGE ITOE: Mr Jordash, we know what -- we have heard all
6 the arguments on Rule 68. We know what is in Rule 68. And when
7 we are talking, you know, we know that we have Rule 68 in mind.
8 I don't think I need to be addressed further, you know, on this
9 because the issue is just what I have put across to you, and you
12:43:21 10 understand we understand you very, very well.

11 I, for one, you know, would take the view, you know, that
12 it is, indeed, a collateral issue and, I mean, that's my opinion
13 on this matter, and I think it's good to put that across to you.
14 It's not to ask you to sit down, but it's just to let you know
12:43:41 15 that you have made your point, and that is my position on this.
16 I don't know what my learned brothers, you know, think about it
17 but we have to move on.

18 MR JORDASH: In my respectful submission, then I'll sit
19 down, is that it could never be a collateral issue that the
12:44:01 20 Prosecution are allowed to make assertions in court, and then
21 evidence is found which refutes that assertion and that they're
22 termed collateral. It could never be collateral. Because what's
23 left on the record is unsubstantiated assertion by the
24 Prosecution, and a clear knowledge by the Court that evidence
12:44:25 25 exists and reliable evidence exists.

26 JUDGE ITOE: Mr Jordash, if we had to create this opening
27 for you, do you admit that we would be opening a Pandora's box
28 for the Prosecution to also justify its position by calling more
29 witness, and to maintain its stand that Mr Morissette himself

1 would need to call witnesses on this issue, and that it would
2 know no end?

3 MR JORDASH: Well, it would involve at most --

4 JUDGE ITOE: Because it's a question of credibility and
12:44:58 5 integrity.

6 MR JORDASH: It would involve at most Mr Ahmed. If
7 Mr Morissette disagrees with what Mr Ahmed says then he could be
8 recalled. It would require nothing more than that. It's a very
9 seductive argument my learned friend put across but in fact it

12:45:15 10 doesn't hold water. It would take two witness to deal with this
11 issue; an issue which goes to the heart of how Mr Morissette
12 deals with witnesses. And it's -- time and time again I'm put
13 into this situation. I'm asking for what is candour from the
14 Prosecution concerning a state of affairs and time and time again

12:45:37 15 it's painted as if I'm the one pushing for it. I am simply
16 asserting that if the Prosecution asserts something and we know
17 it not to be true, that we be allowed to answer that assertion.
18 I'm not asking for anything controversial. Just an adversarial
19 process which allows allegation and answer; nothing more.

12:45:55 20 PRESIDING JUDGE: Speaking for myself, what matters at the
21 end of the day, and leaving aside whether this issue is
22 characterised as collateral or not collateral, and of course
23 there cannot be a rule of thumb, an inflexible rule of thumb
24 which may be collateral or core or central issues may vary from
12:46:15 25 case to case in terms of the particular facts and circumstances,
26 and the distinction between core and collateral is merely a
27 general legal distinction but in particular concrete
28 circumstances what may be collateral in case A may, in fact, be
29 principal or central in case B. But I don't want to get to that.

1 My concern is that I need to be satisfied that without this
2 evidence this Court is not already seized of enough evidentiary
3 material, and also guided by the law applicable to voluntariness,
4 to be able to reach an objective, impartial and fair
12:47:01 5 determination of the issues in controversy between the parties.
6 That is my own focus of it.

7 MR JORDASH: Yes.

8 PRESIDING JUDGE: And that up to this point in time I am
9 not satisfied that we do not have enough material before us.

12:47:17 10 MR JORDASH: Well, I don't think my point will get any
11 better with repetition. I've made my point. It's on the record
12 and I can see I have lost a losing battle.

13 PRESIDING JUDGE: Thank you, Mr Jordash. So the position
14 is that --

12:47:33 15 JUDGE ITOE: Battles are fought to be won, not to be lost
16 at times.

17 PRESIDING JUDGE: That's the nature of the beast.

18 JUDGE ITOE: That's the nature of the job.

19 PRESIDING JUDGE: We will recall the witness. There's
12:47:43 20 nothing else, is there?

21 MR JORDASH: No, there is nothing else.

22 PRESIDING JUDGE: Well, we will probably just issue a
23 formal release for the witness.

24 MR JORDASH: Yes. I think he is probably jumping at the
12:47:54 25 bit to get next door.

26 PRESIDING JUDGE: Very well. Right. And I take it this
27 will bring to a close your -- the side of your case. Leaving
28 the -- we in fact will allocate but I think that will have to be
29 tomorrow morning now -- we'll allocate ten but not more than 15

1 minutes to each side for closing submissions tomorrow morning.

2 MR JORDASH: 15 minutes?

3 PRESIDING JUDGE: One five, because already we are
4 overwhelmed, I'll tell you, I use the word "overwhelmed"

12:48:29 5 advisedly, with the amount of evidential material on both sides
6 that should enable us to reach a fair determination. Tomorrow,
7 we would like you to make closing submissions, legal, guiding us
8 on the evidence. But if you feel 15 minutes is being a
9 demonstration of judicial meanness, we are ready to say 20 each.

12:48:54 10 MR JORDASH: Well, Your Honours, I've -- I'm about --

11 PRESIDING JUDGE: In 20 minutes, you can, I mean, I know
12 how much you get in this Court when it comes to submissions in
13 three or five minutes. If we give you 20, we know what you will
14 do.

12:49:08 15 MR JORDASH: Well, Your Honour -- Your Honour --

16 JUDGE ITOE: Mr Jordash, let me -- let me leak a Chamber
17 deliberation to you. We were ten minutes, but we looked at
18 Mr Jordash and looked at Mr Harrison and said well, well, well,
19 we could climb up to 15 minutes.

12:49:29 20 MR JORDASH: Oh, I'm overwhelmed.

21 JUDGE ITOE: Now we are 20, so --

22 MR JORDASH: I'm overwhelmed --

23 JUDGE ITOE: -- you can understand.

24 MR JORDASH: -- by the generosity. Well, the Prosecution
12:49:36 25 may feel somewhat disadvantaged because I'm about to file a
26 20-page skeleton.

27 PRESIDING JUDGE: Well, let us see what comes tomorrow but
28 let us keep it at 20 minutes for the time being, a minimum. And
29 if the situation dictates an extension of the time, we will make

1 a determination. But for now, let us understand that as our
2 guidelines.

3 MR JORDASH: Well, if it assists, there is a filing coming
4 into court.

12:50:03 5 PRESIDING JUDGE: Very well. Well, we certainly will, at
6 this point in time, we are going to adjourn the trial to tomorrow
7 morning.

8 MR JORDASH: Is Mr Ahmed being released, Your Honour.

9 MS KAMUZORA: Excuse me, Your Honour, we are bringing the
12:50:16 10 witness for -- we are bringing back the witness for --

11 PRESIDING JUDGE: Bring the witness to be formally
12 released, yeah.

13 [The witness entered court]

14 PRESIDING JUDGE: Mr Ahmed, is that -- did I get your name
12:50:57 15 rightly? Mr Ahmed, is that the name?

16 THE WITNESS: Correct, sir. Ahmed is my surname.

17 PRESIDING JUDGE: Yes. And Naeem is your first name.

18 Well, you're released formally and we thank you for coming. You
19 can get back to work.

12:51:19 20 THE WITNESS: Thank you.

21 [The witness withdrew]

22 PRESIDING JUDGE: The trial is adjourned to tomorrow, 21
23 June 2007 at 9.30 a.m.

24 [Whereupon the hearing adjourned at 12.55 p.m.,
25 to be reconvened on Thursday, the 21st day of
26 June, 2007, at 9.30 a.m.]

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28

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EXHIBITS:

Exhibit No. A18	10
Exhibit No. A19	21
Exhibit No. A20	27
Exhibit No. A21	28
Exhibit No. A22	39

WITNESSES FOR THE VOIR DIRE:

WITNESS: ISSA HASSAN SESAY	2
CROSS-EXAMINED BY MR HARRISON	2
RE-EXAMINATION BY MR JORDASH	36

WITNESS: CLAIRE CARLTON-HANCILES	39
EXAMINED BY MR JORDASH	40
CROSS-EXAMINED BY MR HARRISON	42
RE-EXAMINATION BY MR JORDASH	45

WITNESS: NAEEM AHMED	46
EXAMINED BY MR JORDASH	46