SPECIAL COURT MONITORING PROGRAM UPDATE # 101
TRIAL CHAMBER I – RUF TRIAL
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SUMMARY

This week, Trial Chamber One concluded its voir dire inquiry into the post-arrest custodial interrogation of first accused, Issa Sesay. Defense called three witnesses and the Chamber heard brief closing submissions from each party. On Friday morning, the Bench ruled against the Prosecution—excluding Mr. Sesay's statements as involuntary on the grounds that OTP investigators took them in breach of the fundamental rights of the accused. Immediately following the Trial Chamber's oral decision, the main trial resumed, Mr. Sesay returned to the stand, and the Prosecution began its cross-examination.

This voir dire marks the first time an international criminal tribunal has subjected the investigations section of its own prosecuting body to such close and thorough judicial scrutiny. By expounding upon the legal principle of voluntariness in the context of custodial interrogation, Trial Chamber I has made an important jurisprudential contribution to a very underdeveloped area of international law. Hopefully, the standards articulated in the detailed written decision (still forthcoming) will help inform future international criminal investigations and protect the procedural due process rights of accused persons detained by other international tribunals.

WITNESS PROFILES AT A GLANCE

ISSA SESAY: Mr. Sesay is the first accused in the RUF trial. He testified in Krio.

CLAIRE CARLTON HANCILES: Ms. Hanciles is Duty Counsel working in the office of the Principal Defender at the Special Court. She was employed in this capacity at the time of Mr. Sesay's arrest and custodial interviews in March and April of 2003. Ms. Hanciles testified in English.

NAEEM AHMED**:** Mr. Ahmed has been the Deputy Chief of Witness and Victim Support (WVS) since 2005. His unit oversees the management and protection of witnesses secured to testify in Special Court proceedings. Mr. Ahmed testified in English.

CONCLUSION OF THE *VOIR DIRE* (DEFENSE WITNESSES)

TESTIMONY OF MR. ISSA SESAY

Launching the second week of voir dire proceedings, Mr. Sesay took the stand Monday morning as the principle witness for the Defense. During a day and a half of direct and cross examination, Mr. Sesay gave evidence of serious procedural abuse and investigative misconduct. He testified about the use of coercion, tricks, and threats which he claims induced him to waive his rights and speak with investigators, unrepresented by legal counsel in March and April of 2003.

DIRECT EXAMINATION

Under direct examination, Mr. Sesay's testimony tracked the same timeline as events described by the four Prosecution witnesses last week. However, Mr. Sesay's version provided additional context by describing events just prior to his arrest and extending beyond his last custodial interview. Mr. Sesay also provided much greater detail about the day of his arrest and the ongoing off-the-record communications he had with various investigators during his weeks of custodial interrogation.

Counsel for the accused began direct examination by leading his client through events which occurred one month prior to Mr. Sesay's arrest, in February of 2003.[1] According to Mr. Sesay, the President of Sierra Leone called him into a meeting and advised him that there was going to be a special tribunal in the country. However, President Kabbah assured Mr. Sesay that the tribunal "will not arrest you or I because of the role we played in the peace process."[2] He reportedly echoed a promise President Obasanjo of Nigeria had made to Mr. Sesay toward the end of the peace process—that Sesay would be sent to Nigeria to be educated. Mr. Sesay explained that this was why he was so shocked and distraught at the time he was arrested. Between the 1st and the 5th of March, the Special Representative of the UN Secretary General in Sierra Leone reportedly called Mr. Sesay and confirmed that arrangements had been made through Presidents Kabbah and Obasanjo for Sesay and his family to go to Nigeria. However, less than one week later, on the 10th of March, Mr. Sesay was lured to Central Investigations Department (CID) Headquarters of the Sierra Leone Police (SLP) under false pretenses[3] and arrested in the office of the CID Director at the behest of the Special Court.

Story of the Arrest

Mr. Sesay's version of events, from his arrest forward, repeatedly challenged the veracity of Prosecution evidence. For instance, contrary to John Berry's testimony, the accused testified that Mr. Berry and "other white men" were in fact present in the CID Director's office at the time of Mr. Sesay's arrest. Moreover, Mr. Sesay testified that *three* ex-RUF were arrested that day in Mr. Daboh's office, not two or one as Morissette, Lamin, and Saffa claimed. Mr. Sesay testified in detail how he arrived at CID with Morris Kallon and several other men between 11:00am and noon on the 10th. He observed the same busy scene described by the Prosecution witnesses, with upwards of 70 uniformed and plainclothes police milling around and at least 15 land rovers parked outside the building. When they first went inside, Mr. Sesay and Mr. Kallon were reportedly told by Carew Kamara that the Director was busy, so they waited

[1] Mr. Harrison objected to the line of inquiry on the grounds of relevance, but the Bench was persuaded by Mr. Jordash's argument that these events prior to Mr. Sesay's arrest go to his state of mind at the time he was arrested and approached for cooperation.

[2] SCSL Transcript. 19 June 2007, Page 31 (Lines 24-25).

[3] Corroborating Mr. Lamin's original testimony, Mr. Sesay testified that he was called to CID on the day of his arrest by Mr. Daboh, the Director, to pick up $60,000 belonging to the newly formed RUF political party. Mr. Daboh reportedly claimed to have successfully settled a legal dispute over a failed real estate transaction. The warrant for Mr. Sesay's arrest was signed by Judge Thompson on the 7th of March. According to Mr. Sesay, Gibril Massaquoi brought a message to his house on March 8th, directing him to go to CID on the 10th to meet with the Director and pick up the money.

outside his office until they were invited in. Upon entry, they observed Director Daboh, Gibril Massaquoi, and "several white men." The accused claims John Berry was among these men. Mr. Sesay took a seat, expecting to conduct his business regarding the money, but almost immediately, Gibril Massaquoi and Morris Kallon were handcuffed and arrested right in front of him. Mr. Sesay was the last of the three to be arrested. He described his reaction just as the arresting officer, Mr. Lamin described it—Mr. Sesay became very distraught, expressed feelings of betrayal, and broke down crying immediately. Mr. Sesay also confirmed what Mr. Lamin admitted last week—that no one read the accused his rights at the time of his arrest, nor served him with his indictment.

Mr. Sesay's testimony about Gibril Massaquoi's arrest is corroborated by John Berry's April 2003 memo,[4] and directly challenges claims to the contrary made by Morissette, Lamin and Saffa. Also contrary to Mr. Lamin's version of events, Mr. Sesay testified that the three arrestees were "marched out into the corridor" within a matter of minutes and stood by the stairs. Before they descended to the waiting vehicles, Mr. Sesay claims that Gilbert Morissette appeared with Deputy Director of CID Carew Kamara, called Gibril Massaquoi over, removed his handcuffs in plain sight of the other two detainees, and took Massaquoi into the Deputy Director's office.[5] Mr. Sesay and Mr. Kallon were transported in the back of a van to Juri Barracks.

Promises, Inducements, and Threats

Mr. Sesay's account of his custodial interrogations flatly refutes the Prosecution contention that none of the investigators ever "uttered or heard uttered any promises, inducements or threats." The vast majority of Mr. Sesay's testimony was devoted to giving detailed evidence of repeated, coercive, off-the-record conversations involving Mr. Morissette, Mr. Berry and Mr. Saffa. According to Mr. Sesay, the first of these occurred at Juri barracks on March 10th, when the accused allegedly consented to cooperate with OTP investigators. Mr. Sesay described this exchange with Mr. Berry and Mr. Saffa quite differently from how the investigators portrayed it. According to Mr. Sesay, he was removed from his cell at Juri almost as soon as he was put into it, and taken to an office where Mr. Berry and Mr. Saffa were waiting. The accused testified that he was still handcuffed behind his back and remained distraught and in tears. Mr. Berry allegedly told him he had gotten himself into "serious trouble" for which he was going to have to spend the rest of his life in prison. Mr. Saffa then spoke to him in Krio, telling him this was "no time for tears" and that he must stop crying and listen closely to what Mr. Berry was telling him. Mr. Saffa reportedly reminded Mr. Sesay that Sierra Leonean courts have the death penalty, and told the accused in Krio that he should talk with Mr. Berry, because it was "the only way you will be saved out of this situation."[6] Mr. Berry told Mr. Sesay that cooperation with investigators would be for his own good—if he chose not to, "I'm sorry, that is your end." Mr. Sesay testified that he agreed to speak with investigators, saying, what could I do? "I'm in your hands, I'm in your hands."[7]

As corroborated by Prosecution evidence, instead of being transferred to the official court detention facility on Bonthe island, Mr. Sesay was taken straightaway to meet the Deputy Chief of Investigations at the OTP office on Spur Road in Freetown. Mr. Sesay testified that the threats and coercion continued at this location, during an unrecorded conversation just prior to beginning the official interview.[8] Mr.

[4] See Voir Dire Exhibit I. Interoffice Memorandum "Contacts with Issa Sesay." From John Berry to Brenda Hollis and Gilbert Morissette (April 13, 2003).
[5] Massaquoi was never actually indicted by the Special Court. He became a protected insider witness for the Prosecution, and chose to testify publicly in the trial of the AFRC accused.
[6] See SCSL Transcript. 19 June 2007, Page 38-39.
[7] SCSL Transcript. 19 June 2007, Page 39 (Line 9).
[8] This comports with Mr. Berry's testimony about the timing of the transfer, and would seem to explain what occurred during the approximately 30 unaccounted for minutes between Mr. Sesay's arrival at the OTP office and the beginning of the audio taped interview. At this point, Mr. Sesay had still not been advised of his rights yet or

Morissette reportedly told the accused that the Special Court would "never let [defendants] go scott-free" and it was in Mr. Sesay's interest to cooperate with the investigators and give them the information they sought. Mr. Sesay described the Deputy Chief of Investigations using tactics which very much resembled the insider witness interviews Mr. Jordash confronted Mr. Morissette with last week. By Mr. Sesay's account, Mr. Morissette informed the accused that the investigators were giving him this special opportunity to "save himself." Talking to them, he said, would be the only way for Mr. Sesay to avoid going to jail for the rest of his life. Mr. Morissette allegedly told Mr. Sesay that "they were ready to help me if I was ready to help myself."[9] On the stand, Mr. Sesay explained:

> During that time, I had no knowledge about the Special Court, its functioning, there was absolutely no idea. I have never appeared before any court of law in this country before. So, the people who have captured me, it wasn't even an hour, they turned around and telling me that that was the only way I could get myself free. That was why I did what they ask of me.[10]

According to Mr. Sesay, Mr. Morissette did not un-handcuff the accused until he said he was "in their hands" and agreed to cooperate with investigators. The Deputy Chief of Investigations subsequently brought in a stenographer, read the mandated rights advisement to the accused, and began to formally interview him from a sheet of questions composed in advance.

Contrary to Mr. Berry and Mr. Morissette's accounts, Mr. Sesay testified that he was subjected to the same manner of inducements, threats and promises just prior to his interviews on subsequent days as well. On the morning of March 11th, the Chief of Investigations, Alan White, reportedly came into the room to secure Mr. Sesay's cooperation by telling the accused, "Issa, there is no hope left for you. This is the only way forward. You talk to us. This is the only way out, you will free out of this… This is the safest side…We are trying to make some arrangements for you."[11] Mr. Sesay also claims that, on the morning of the 12th (again, contrary to Berry and Morissette's testimony), Morissette and White informed Mr. Sesay prior to his third custodial interview, "We have accepted you as our witness, so you have to speak, talk about things we do not know of. You have to confirm them to us so that you will beef up our case to use you as a witness."[12] They also reportedly talked to Mr. Sesay off the record (as Mr. Morissette confirmed on the stand) about plans to take Mr. Sesay's family into protective custody and provide material support to them so long as Mr. Sesay continued to talk and agreed to be their witness. The accused testified that the Chief of Investigations and his Deputy assured Mr. Sesay that they would get him a lawyer (to "assist" him as a witness) by the end of March and he would be freed.

Mr. Sesay disputed Mr. Morissette's claims that he never promised more than the judges "taking into consideration" the cooperation of the accused. By Mr. Sesay's account, Mr. Morissette represented the OTP as a powerful organ within the court—capable of effectively acting unilaterally with respect to charges. After the Chief and Deputy Chief of Investigations told him on the 12th that they had accepted him as their witness, Mr. Morissette allegedly told the accused, "Issa, now things are fine for you… Because whatever these people tell the judges, it's final. They had a case against you, so if they told the judges -- if they told the judges they have no case against you, then that's the end of it."[13] When Mr. Morissette returned again on the morning of the 13th, Mr. Sesay claims he greeted the accused, "Mr.

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informed of the specific charges against him. According to Mr. Sesay, Mr. Morissette addressed him exclusively in English and never asked if he wished to have translation assistance.

[9] See SCSL Transcript, 19 June 2007, Page 39-41.

[10] SCSL Transcript. 19 June 2007, Page 40 (Lines 19-24).

[11] SCSL Transcript. 19 June 2007, Page 46 (Lines 23-26).

[12] SCSL Transcript. 19 June 2007, Page 49 (Lines 25-28).

[13] SCSL Transcript. 19 June 2007, Page 50 (Lines 21-24).

Witness, good morning."[14] Mr. Sesay took the agreement to be settled based on Mr. Morissette and Mr. White's assurances. They told him he should "feel free to continue [talking]… there's no problem." Mr. Sesay testified that he was promised on the 13th that he would be allowed to speak with his wife by telephone the next day. He was also told that, in exchange for his cooperation, the OTP would see that his family was taken into protective custody. On March 14th he was indeed put in touch with his wife briefly via Gilbert Morissette's cellular telephone. As Morissette confirmed on the stand, Mr. Sesay was instructed to advise his wife that Special Court personnel would be coming to the house to take the family into protective custody, and that she should cooperate and not be afraid.[15]

In addition to the evidence he gave of coercive pre-interview conversations, the accused confirmed Mr. Morissette's testimony about frequent conversations off-tape during breaks. However, Mr. Sesay was far more explicit about the content of those conversations. According to him, Mr. Morissette was indeed engaged in a campaign to keep him "on-side" using the same coercion and threats he had used to secure Mr. Sesay's cooperation in the first place. Whenever Sesay gave information which displeased the investigators, he would hear about it from Morissette during the breaks. The Deputy Chief of Investigations would allegedly warn the accused that he was "wasting his opportunity." Mr. Morissette would "pile on the pressure" for Mr. Sesay to be more forthcoming whenever the investigators felt his account didn't match information they were getting from other sources. According to Mr. Sesay:

> He would come and say, 'Issa, we are just trying to help you. But what we have been hearing, if you don't confirm these things, how will we be able to help you?' He said, 'So you have to confirm the things that we have heard. That's the only way we'd be able to help you, so that you will be out of this problem.'"[16]

According to Mr. Sesay, he began to tell "half-truths" in the interviews, because Mr. Morissette so frequently came to him during the breaks and told him that his version of events was not "measuring up to their expectations." Mr. Morissette reportedly warned the accused that he would be dropped as a witness and left to face the consequences if he did not confirm the information the investigators wanted him to confirm. This pressure became particularly acute, Mr. Sesay testified, during an hour and forty-five minute lunch break on the 31st of March. Mr. Morissette and Mr. Berry both confirmed speaking with the accused off-tape during this break about the substance of his answers, but they described the interaction in more innocuous terms. By Mr. Sesay's account, he spent a solid hour alone with Mr. Morissette, during which time he was put under a great deal of pressure, and told that he was not giving investigators the information they wanted. According to Mr. Sesay, he was told that if he didn't accept and corroborate certain specific allegations they were putting to him, then the OTP would not accept him as a witness. In particular, they wanted him to corroborate certain information they had from Johnny Paul Koroma's wife. Mr. Morissette reportedly pressured the accused to "help himself" by admitting to an alleged crime. Mr. Sesay testified that he didn't want to be dropped as a witness, so he felt compelled to lie and accept the allegations brought by Morissette and Berry. *Immediately* after that lunch break, Mr. Sesay can be heard on tape confessing to a crime he had previously repeatedly denied.

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[14] SCSL Transcript. 19 June 2007, Page 54 (Line 13).

[15] Mr. Sesay claims he was denied access to his wife by Mr. Morissette thereafter. He was told that his family had been collected from their home and secure housing was being arranged. Mr. Sesay was not told where they had gone, and when he asked Mr. Morissette to be allowed to see his wife, Mr. Morissette reportedly told Mr. Sesay he would have to wait. The next time Mr. Sesay was allowed to contact his wife was after his final custodial interview on the 15th of April when both of them were brought to the OTP offices for lunch. Family visits for all other detainees were arranged through the Defense office and took place at the detention facility on Bonthe.

[16] SCSL Transcript. 19 June 2007, Page 47 (Lines 28-29) and Page 48 (Lines 1-4).

Insufficient Notice of Charges

Through direct examination and contemporaneous video footage of Mr. Sesay's initial appearance, Mr. Jordash adduced compelling evidence that Mr. Sesay underwent his first five custodial interviews without having any knowledge of the charges against him. Counsel for the accused exhibited the video and transcript of Mr. Sesay's initial appearance from the 15th of March 2003. Mr. Jordash called the Court's attention to the moment when Judge Itoe asked the accused if he had read his charges and decided whether or not he wanted a lawyer. Mr. Sesay answered, through an interpreter, that he did not have the opportunity to read the charges against him, "Because for the whole of the day I was not in Bonthe. And, during the night, there was no light in the room, in the cell, where I was."[17] When challenged as to the relevance of this evidence, Counsel for the accused explained, "Voluntariness is not simply about force. Voluntariness is about being properly informed of your charges, promptly, so that you can make an informed choice about whether to be interviewed. And there is case law which we will rely upon… which says you can't consent to an interview unless you know what the charges are."[18] Based on this contemporaneous corroboration of the conditions of Mr. Sesay's detention, Mr. Jordash argued that his client's ignorance to the charges was "purely the fault of the Prosecution" on the 10th of March[19] and "a fault of circumstance combined with the fault of the Prosecution" on the 11th, 12th, 13th, and 14th of March.[20] This fact alone, Mr. Jordash maintained, should be enough to exclude those five interviews from evidence.

Mr. Jordash also used the video of Mr. Sesay's initial appearance to adduce further evidence of the coercion and pressure Mr. Sesay claims was being put on him by investigators behind the scenes. The video shows Mr. Sesay appearing frightened and rather distracted, craning his neck to the left (toward the public gallery), gaze fixed on one particular spot. He repeats this gesture after each of Judge Itoe inquires whether he understands the charges against him and whether he wishes to obtain a lawyer. As Mr. Sesay explained on the stand, he was looking to the left repeatedly because the Chief of Investigations, Al White, was in the public gallery watching his initial appearance from the back of the crowd. According to Mr. Sesay, he was very confused and uncertain how to answer the Judge's questions, because he had just spent the last five days interviewing with OTP investigators and being told he would be a witness and be set free, but then he was brought to court to face charges on the 15th. Before taking a plea of not guilty from the accused, Judge Itoe had to walk Mr. Sesay through his indictment (with the help of an interpreter) in painstaking detail, because this was the first time Mr. Sesay was hearing the charges against him. Mr. Sesay's detention log notes that he "returned angry" from his initial appearance.

When Mr. Sesay spoke with Mr. Morissette before his next interview on the 17th, he expressed his confusion from the initial appearance. As he explained it, he didn't understand why he was facing charges in court after the investigators had told him the case would be dropped because he was cooperating. According to Mr. Sesay, when he sought clarification, the investigators continued to assure him that he would be released if he cooperated with them, but in the meantime, they claimed they couldn't do anything to avoid his having to appear in court. Mr. Morissette reportedly told Mr. Sesay that the OTP was not done speaking to him, and that's why they hadn't released him yet. Mr. Sesay says he continued speaking with the investigators that day because Mr. Morissette led him to believe it was his only option. On the stand last week, neither Mr. Berry nor Mr. Morissette acknowledged having discussed Mr. Sesay's initial appearance with the accused.

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[17] SCSL Transcript. 19 June 2007, Page 66 (Lines 28-29).
[18] SCSL Transcript. 19 June 2007, Page 63 (Lines 11-17).
[19] For failing to serve Mr. Sesay with his indictment until *after* his first custodial interview.
[20] When the OTP was responsible for taking Mr. Sesay from Bonthe during daylight hours, and the lack of electricity on the island at night prevented Mr. Sesay from being able to read his indictment.

Deliberate Interference with Mr. Sesay's Choice of Counsel

During last week's proceedings, Mr. Berry and Mr. Morissette both flatly denied having spoken with Mr. Sesay about specific legal representation or having influenced his specific choice of counsel. Mr. Berry acknowledged that he was asked to sign a request for counsel obtained by Mrs. Haddijatou Kah-Jallow during a brief visit with Mr. Sesay on the 24th of March 2003.[21] However, Mr. Berry insisted that Mrs. Kah-Jallow met with Mr. Sesay in confidence. Mr. Sesay told a very different story—one supported by the documentary evidence filed in the voir dire. According to Mr. Sesay, first thing in the morning on the 24th of March, Mr. Morissette and Mr. Berry told him that someone would be coming to see him about selecting a lawyer. Mr. Sesay testified that Mr. Morissette was very aggressive and told him he should not take any Sierra Leonean lawyer. In particular, he should not request Mr. Okanya, Foday Sankoh's lawyer who was located locally. Mr. Morissette told the accused that he should pick a white man named "Robertson" as a lawyer. When Duty Counsel arrived midway through the morning, Mr. Berry suspended the interview, but according to Mr. Sesay, he remained in the room, by the door. Mrs. Kah-Jallow reportedly greeted Mr. Sesay and said, "I heard you wanted Mr. Roberson as a lawyer…the white man?" Mr. Sesay affirmed. They meeting lasted a total of roughly 15 minutes, during which time Mr. Sesay hand wrote on a piece of paper, "I Issa H. Sesay I want Mr. Robinson to represent me and not Mr. Edo Okanya." As Mr. Berry confirmed last week, he read this document and signed it as a witness. After Mrs. Kah-Jallow left, Morissette reportedly came in and told Sesay he did the right thing by telling her he didn't want a Sierra Leonean lawyer.

In light of Mr. Sesay's testimony and the documentary evidence on file, it would appear that Mr. Berry testified to a false version of events on the stand last week. In an internal OTP memo authored by Mr. Berry on 17 April 2003, he described the visit from Mrs. Kah-Jallow as follows: A female Gambian lawyer came to see Mr. Sesay on March 24th, 2003. She "spoke with him privately and had me witness a note which she had prepared indicating that Issa Sesay did not want a local lawyer to represent him but instead was requesting that they get him an American or a British lawyer by the name of Robertson."[22] If Mr. Berry were telling the truth about remaining totally uninvolved in Mr. Sesay's choice of counsel, it is unclear how he could possibly have known the details he included in his 2003 memo. These details were not discernable from the one sentence, hand written note Mr. Berry signed as a witness.[23] If, as he claimed, he and Morissette never suggested particular counsel to Mr. Sesay, he could not have known anything about Mr. Sesay's nationality preferences, and he would never have heard the name "Robertson" or "Roberson" suggested. The only name he would have known would be "Robinson"—the name Mr. Sesay actually wrote on the March 24th note which Mr. Berry claims is his sole source of information on the matter. The additional information Mr. Berry provided in his memo would tend to indicate that he was either present during the meeting with Duty Counsel (as Mr. Sesay claimed in his testimony) or had previously heard Mr. Morissette instruct Mr. Sesay to request a lawyer by the name of "Robertson" (a fact Mr. Sesay insists upon and Mr. Morissette denies).

[21] Mr. Sesay maintains that he wasn't aware Mrs. Kah-Jallow was a lawyer and he didn't know what her role was as "Duty Counsel." All he had seen her do up to that point was take his address and arrange detainee family visits to on Bonthe. He testified that he assumed she and Mr. Berry were connected within the OTP, since she asked Mr. Berry to sign the document requesting a lawyer. In fact, prior to Mrs. Kah-Jallow's visit, Mr. Sesay claims Mr. Morissette gave him explicit instructions not to say anything at all about what they were discussing in the interviews. See SCSL Transcript. 19 June 2007, Page 77 (Lines 14-15).

[22] Voir Dire Exhibit I, Interoffice Memorandum from John Berry to Gilbert Morissette and Brenda Hollis, "Contacts with Issa Sesay" (17 April 2003).

[23] See *Prosecutor v. Sesay et al*, "Authorities to be Relied Upon in Oral Motion to Exclude Custodial Interviews of Mr. Sesay." (Annex B), SCSL-04-15-T-792 (1 June 2007).

Inadequate Rights Advisement and Coercive Interference with Mr. Sesay's Right to Counsel
The inducements and threats described by Mr. Sesay would appear to be particularly objectionable insofar as they were linked directly to waiver of his fundamental rights as an accused. According to Mr. Sesay, he was initially unaware that he had a right to immediate assistance of counsel during the interviews.[24] Moreover, Mr. Morissette allegedly made representations to the accused that he was forbidden from divulging the content of the interviews to Duty Counsel when she visited Mr. Sesay briefly on the 24th of March. Once Mr. Sesay finally spoke to the Acting Principle Defender in April, he became aware that he had that right to immediate assistance of Counsel in custodial interviews. However, the accused claims that, as he began trying to assert his Defense rights, OTP investigators led him to believe that demanding legal representation and cooperating with the Prosecution were mutually exclusive options. By mid-April it had become very clear to the accused that the OTP was only willing to take Mr. Sesay as a witness and continue to speak with him if he agreed to be interviewed without a lawyer.

Mr. Sesay testified that, before commencing the March 10th interview, Mr. Morissette told him that there would be papers read to him and put in front of him to sign at the beginning of the interview, and he should just say "yes" to the questions they asked. When the rights advisement was read to him, he did as he had been told, and answered "yes" to all the questions, even though he didn't fully understand what they meant. Mr. Sesay testified that he had never heard the English term "waive," so he wasn't aware that he was giving up any of his rights. He also testified that he misunderstood the word "Counsel" to mean "Consul," (an English phrase he had come across before only because he participated in the Abidjan peace talks) so he had no idea the rights advisement had anything to do with a lawyer. According to the accused, Mr. Morissette repeated his advice to disregard the waiver on the 11th—"John will be reading a document to you. Don't mind them… Those documents are just procedures."[25]—and Mr. Berry allegedly said words to this effect on the 12th, as well.

Mr. Sesay's testimony comports with the observable behavior of the investigators on the videotaped portions of the interviews played by the Prosecution in Court last week. Even if the investigators never explicitly told the accused to disregard the waivers as an unimportant formality, that was certainly the attitude they conveyed while administering the rights advisement. On video, one can plainly observe a sharp contrast between the tone Mr. Berry used to read the rights advisement and the tone he used during the substantive interview. The former hardly reflected what Mr. Berry claimed was his "very best" effort to ensure the accused understood his rights. On the 24th of March, for instance, Mr. Berry can be observed rattling off the language from the rights advisement quickly and with a decidedly flat, unpunctuated affect. Immediately after the waivers have been signed, his demeanor changes markedly. He suddenly takes care to speak slowly and make eye contact with the accused as he emphasizes how imperative it is that Mr. Sesay understands the need to be truthful and entirely forthcoming in his answers.[26] On the stand, Mr. Sesay confirmed that he never understood that his signature and his "yes" answers on the waiver meant he agreed to give up rights. Rather, he believed he was asserting his innocence. Defense Counsel illustrated this point by leading his client through the rights advisement portion of the interview transcript from the 14th of March. On the recording, Mr. Sesay can be observed indicating his affirmative answers to the waiver questions and explaining to Mr. Berry, "All these days when I'm saying 'yes,' I'm saying 'yes, I'm not guilty.'"[27] Mr. Berry does nothing to clarify the meaning of the waiver to the accused.

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[24] This claim is corroborated by contemporaneous evidence from Mr. Sesay's initial appearance before Judge Itoe on the 15th of March 2003. During this appearance, the accused articulated his confusion about the difference between immediate assistance of counsel and legal representation at trial. See Transcript of Initial Appearance, *Prosecutor v. Issa Hassan Sesay*, Case No. SCSL-2003-05-1, Page 6 (Lines 10-13).
[25] SCSL Transcript. 19 June 2007, Page 46 (Lines 6-7).
[26] See Voir Dire Exhibit A5, Interview Transcript, 24 March 2003, Page 2.
[27] SCSL Transcript. 19 June 2007, Page 59 (Lines 1-2).

By April, Mr. Sesay claims he was finally beginning to have contact with Defense Counsel at the detention facility on Bonthe, and starting to exercise some of his rights. However, according to him, by this point the investigators had become much more explicit about making his continued "cooperation" conditional upon him waiving his rights. Sometime before the 14th of April, Mr. Sesay met with Acting Chief of the Defense Office, John Jones, at the detention facility. Mr. Sesay told Mr. Jones about the series of interviews he had had with the Prosecution. In response, Mr. Jones served a letter on the Prosecutor, David Crane, explaining that he was "extremely concerned about the circumstances surrounding the apparent waiver of Mr. Sesay's right to remain silent and to have a lawyer present during his investigation by your office."[28] Mr. Jones asked the OTP to refrain from interviewing Mr. Sesay, effective immediately, so as to allow him time to discuss matters with legal counsel and make an informed decision about whether to continue speaking with the Prosecution. The Prosecution did not refrain. Instead, they interviewed Mr. Sesay on the 14th and the 15th of April and had Mr. Sesay sign additional waivers. As Mr. Morissette confirmed last week, the Prosecution received Mr. Jones' letter while Mr. Sesay was at the OTP interviewing on the 14th, and Mr. Morissette confronted Mr. Sesay with letter midway through the day. However, contrary to Mr. Morissette's account, Mr. Sesay claims that the initial confrontation happened off-record, during a break. The accused testified that Mr. Morissette entered the room, furious with him for speaking with a lawyer about his OTP collaboration:

> He was vexed, saying that -- why I should tell John Jones what transpired between I and them. He was angry. He hit the table. He was walking around the room… I want my Honors to excuse me for the words. He said, 'Issa, this is not John Jones' fucking business. He had no fucking business in your case.' He said-- he was just crazy. 'In fact, the case is not his business.' He blasted John Jones' name. He said I had no right to tell John Jones what transpired between I and them."[29]

Mr. Sesay testified that Morissette's response made him feel confused and panicked because, by speaking with defense counsel, he had so angered "the man who said he was going to free me."[30] Mr. Morissette produced a sheet of paper entitled "Specific Rights Advisement,"[31] and Mr. Sesay once again signed a document agreeing to waive his rights. He testified that Morissette told him he would be dropped as a witness if he did not sign the waiver and proceed with the interview. Mr. Sesay claims the Deputy Chief of Investigations was very explicit about threatening the accused that he would have to proceed with trial if he were dropped as a witness. This could mean spending six or seven years in detention awaiting a verdict. Mr. Sesay proceeded to initial the form denying that he had told John Jones he wanted to reconsider collaboration with OTP, affirming that he wanted to keep talking to investigators, and denying that he wanted duty counsel to be present.[32] The form he filled out never once used the word lawyer. It made reference to "counsel" or "duty counsel" six times, but Morissette can be observed on tape confirming the accused's belief that Duty Counsel was not his lawyer.

Mr. Sesay's had his final custodial interview with the OTP on the 15th and claims that Mr. White and Mr. Morissette contacted him by telephone one additional time, in May. Mr. White allegedly gave Mr. Sesay one last opportunity to "cooperate" with the Prosecution, offering to drop the indictment if he agreed to be a witness against Charles Taylor. By this time, Mr. Sesay had retained a Canadian lawyer who was

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[28] Voir Dire Exhibit F. Letter from Acting Chief of Defense, John Jones to Prosecutor, David Crane (14 April 2003).
[29] SCSL Transcript. 19 June 2007, Page 85 (Lines 10-19). John Berry denied this ever happened, testifying under cross examination last week "I don't recall that." SCSL Transcript, 15 June 2007, Page 29 (Line 2).
[30] SCSL Transcript. 19 June 2007, Page 85 (Line 22).
[31] Voir Dire Exhibits E. "Specific Rights Advisement" (14 April 2003). See also Voir Dire Exhibit G, "Precision on Questions 7 and 8" (15 April 2003).
[32] See Annex of Special Court Monitoring Program Update #100 for reproduction of this "Specific Rights Advisement." The document is rife with typographical errors and was plainly drafted in a rush.

present in Freetown. Having not seen the OTP deliver on its promises, Mr. Sesay testified that he was suspicious. He reportedly told Mr. White that he would only continue speaking with OTP if his lawyers were involved. He gave Mr. White their names and said OTP should approach them about his cooperation. Mr. White ended the phone call and never contacted Mr. Sesay again. Mr. Berry had one last contact with Mr. Sesay thereafter, through Sesay's wife. Shortly after the detainees were transferred to the detention facility at the present Special Court complex in Freetown, Mr. Sesay claims Mr. Berry approached his wife and asked her to help convince Mr. Sesay to cooperate with OTP on the Taylor trial. She, like the accused, told Mr. Berry that her husband had a lawyer now, and they should contact him through counsel. He reportedly never did.

Conditions of Detention

Throughout the weeks of custodial interrogation, Mr. Sesay testified that the conditions in detention on Bonthe were stressful. It was extremely hot; they had no lights, no fans, and no way to hang mosquito netting for the beds. The discomfort made it very difficult to sleep. Mr. Sesay had the bundle of documents given to him by Lamin on the night of the 10th, but he hadn't been told what they were, and in any event he testified that he had no way to read them because there were no lights in the cells and the detainees were not allowed to have candles or lighters. Moreover, as his medical records confirm, Mr. Sesay was suffering numerous physical and psychological ailments at the time, and he was very upset about being held incommunicado while his family was ignorant of his whereabouts. Mr. Sesay's account of his extremely poor condition is corroborated by his detention medical log, which catalogs numerous, grave health problems. His detention medical records for March and April denote malaria, depression, anxiety, "extreme and inappropriate" suicidal thoughts, confusion, frequent bloody stools, dysentery which kept him up in the night and pain from tooth decay which led to a tooth extraction operation. Furthermore, medical staff noted, "concern about his parents and the fact that he has not got a lawyer at present."[33] Mr. Sesay explained on the stand that he talked to the doctor about his legal representation because he felt so confused and anxious about it. His medical notes indicate that by April 21, 2003, one week after his final custodial interview, Mr. Sesay's physical and mental health were extremely poor:

> Some outburst yesterday morning with staff. Abusive language from both sides. Reassured with some effect. Issa needs to be assessed by a psychiatrist. He's very confused and needs to be looked after by appropriately trained personnel for the benefit of both staff, himself and other inmates. He appears to have a lot of problems, both psychological and physical, and he needs to be looked after."[34]

Despite all this, Mr. Sesay was reportedly never given the choice at the detention facility to decline traveling to Freetown for an interview with the OTP. By his account, on the interview days, detention staff would come to his cell and simply say "Issa, you are instructed to put on your clothes. You are going to be taken away."[35] On the stand, Mr. Sesay described the cell extraction process he went through each morning, whereby an officer wielding a truncheon ordered him to remove his shoes, face the wall, and put his hands behind his back for cuffing. As the prosecution witnesses confirmed, he was subsequently hooded with a cloth tied over his face. The hood was removed inside the helicopter. It was replaced upon landing for Mr. Sesay to be taken from the helicopter to the office. This process was repeated every time Mr. Sesay went for an interview. Mr. Morissette testified last week that the head covering was done in such a way as to ensure the accused could see where he was going but could not be recognized. Mr. Sesay disputed this fact, testifying that he was completely blindfolded each time. At one point, while hooded and handcuffed, Mr. Sesay claims he tripped as he stepped down from the helicopter

[33] SCSL Transcript. 19 June 2007, Page 94 (Lines 17-19).
[34] SCSL Transcript. 19 June 2007, Page 95 (Lines 21-29).
[35] SCSL Transcript. 19 June 2007, Page 49 (Lines 8-10).

onto the tarmac. He fell hard on his hip and hurt his rib. The OTP personnel escorting the detainee reportedly proceeded with him to the vehicle without removing his blindfold or attending to his injury.

CROSS EXAMINATION

On cross-examination, Mr. Harrison tried, with little effect, to mitigate the gravity of Mr. Sesay's medical notes by focusing on the few points in the record where only minor ailments were noted or where neutral or positive annotations were made. He led Mr. Sesay through a handful of days, mostly in April, where the only annotation mentioned athlete's foot, or insomnia, or "meals taken very well" or "pain better but worse at night." On the 9th of April, the annotation described Sesay as "cheerful this morning. No pains or toothache." Mr. Sesay explained that this entry merely referred to the fact that he had had his tooth extracted, received medication, and was more comfortable as a result. He further explained that other notations were misleading, such as, "Not aggressive. Promise to eat lunch" on the 23rd of April. Mr. Sesay explained he felt very poorly that day, and the notation was made after he told staff he had no appetite for breakfast, but maybe he would try to eat lunch later. Any support the more positive entries might have lent the Prosecution case rang hollow in the broader context of what Judge Thompson called the "voluminous" and troubling medical records. Somewhat innocuous notations highlighted by the Prosecutor came literally side-by-side with much more grave entries, selectively ignored, describing serious chronic psychological and physical ailments. Mr. Harrison questioned Mr. Sesay about the fact that, on the 3rd of April, his chart noted that his toothache had improved, he continued taking his prescribed medication, and he was pleased about having had a haircut. Mr. Sesay confirmed these things were true, but undermined the implication of the Prosecutor's inquiry by pointing out that Mr. Harrison was skipping over the April 4th notation. This subsequent entry, as adduced on direct examination, read: "Extremely depressed. Crying. Diazepam, 5mgs given. Reassured with very little effect."[36]

Mr. Harrison's cross-examination on the topic of Mr. Sesay reading his indictment was likewise only marginally effective. In order to make the point that Mr. Sesay had the time and ability to inform himself of the charges against him, Mr. Harrison took Mr. Sesay through entries on the official detention log. These indicated he was generally removed from his cell for transport to OTP offices around 10:00 in the morning, and returned just after 5:00pm, which ostensibly gave him time in the morning, and again in the evening, to read through his indictment. Mr. Sesay expressed skepticism about the truth of certain times recorded on the log, although he didn't give the Court any particular reason (besides general mistrust for detention staff) to doubt the accuracy of the log. His direct answers to the substance of Mr. Harrison's suggestion were more compelling. Mr. Sesay noted that he was not well and was at times visiting the doctor. He also repeatedly explained to Mr. Harrison that that the sole window in his cell was small, placed high on the wall, and covered in zinc on the outside, making it too dark to read anything in the late afternoon, even assuming the logged times were accurate. He further testified that there were no working electrical lights in the cells until some time later when CDF first accused Sam Hinga Norman went on a hunger strike, and members of Parliament came to visit Bonthe. Conditions improved after that date, but before then, the environment was very uncomfortable and not conducive to reading. Mr. Sesay also repeated his prior testimony that, in any event, Mr. Lamin had not advised him of the significance of the bundle of documents served upon him on the night after his arrest. He was not aware that the bundle contained a document known as an indictment which would outline the charges against him. Besides, he testified, he was under the impression from his conversations with Mr. Morissette that whatever he might be charged with would be dropped if he cooperated with investigators as a witness.

The Prosecution sought to undermine Defense's investigative misconduct allegations by cross-examining Mr. Sesay on several contemporaneous documents which failed to mention the accused complaining about threats or inducements in March and April of 2003. Notations on Mr. Sesay's detention medical

[36] SCSL Transcript. 19 June 2007, Page 95 (Line 7-9).

record, for example, indicate he discussed feeling "let down by ECOWAS peacemaker and the President." Mr. Harrison suggested that the omission of any complaint about OTP or its investigators was significant, but Mr. Sesay explained that he didn't say anything to the doctor about the way the investigators were treating him because Mr. Morissette had expressly told him not to talk about the interviews with anybody. Mr. Harrison also questioned Mr. Sesay about the contents of the John Jones letter. Counsel for the Prosecution suggested that because Mr. Jones did not raise any concerns about alleged inducements, threats, or promises in the letter, the accused must not have ever discussed it with him. Mr. Sesay rejected this logic, explaining to the Court that the impetus for talking to Jones in the first place was the "games" the investigators were playing with him and confusion and frustration over the way they were treating him. He insisted that he indeed told Jones what was going on: "I explained what they said and I explained my stress."[37] Mr. Sesay pointed out to the Court that it was Mr. Jones, not him, who composed the letter. He could not speculate why Counsel chose to include or exclude the particular details he discussed in the two page document.

In a separate line of inquiry, Mr. Harrison relied upon two other contemporaneous documents which appeared to contradict testimony Mr. Sesay gave about the number of times he met with representatives from the Defense Office. However, the documents also contradicted one another, leaving a confused record of what in fact transpired and when. Mr. Harrison first cross examined Mr. Sesay about a request for legal counsel and power of attorney form dated March 13th. It was signed by the accused, detention center staff member Malcom Hutchinson, and Mrs. Kah-Jallow from the Defense Office.[38] The document would tend to support Mr. Berry's assertion that Mr. Sesay saw Mrs. Kah-Jallow on March 13th. However, Berry's account never mentioned anyone other than a female Gambian defense counsel visiting Sesay that day, so it remains unclear how and why Mr. Hutchinson's signature made it onto the paper as a witness. Mr. Sesay accepted that the signature on the form was his own, but testified that he didn't remember meeting with anyone on the 13th besides Mr. Berry and Mr. Morissette, so "If I signed this document it means, then, that it came from John Berry or Morissette, because even though the lady that came from the Registry, I was not allowed to see her at the initial stage."[39]

The second document was an email memorandum apparently sent to Registry and Defense Office personnel by Mrs. Kah-Jallow on the 13th of March. In the email, she reported having met with Mr. Sesay on the 12th, in private, away from the detention facility. Her memo mentioned that Mr. Sesay "was extremely emotional and broke down into tears several times during the interview."[40] She reported that Mr. Sesay told her he was being "well treated," was recovering from malaria, and that he was concerned about his family. She also claimed to have shown Mr. Sesay a list of Defense counsel, reporting that he "retained the resumes of the Nigerian and American counsel."[41] On cross-examination, Mr. Sesay testified, that he only met with Mrs. Kah-Jallow once, not twice as Mr. Berry testified. He denied he ever told her he was being "well treated" in detention. He insisted that Mr. Berry was present in the room the one time he spoke with Mrs. Kah-Jallow about legal representation. Curiously, although the Prosecution relied upon Mrs. Kah-Jallow's memo to challenge Mr. Sesay's account, Mr. Harrison choose not to call her as a witness. She was never put on the stand to clarify the meeting dates or explain the circumstances under which each signature made it onto the power of attorney form.

[37] SCSL Transcript. 20 June 2007, Page 21 (Lines 6-7).
[38] Form mentioned in paragraph 5 of the "Extremely Urgent and Confidential Request of Defence Office for Order Regarding Contact with Accused." (16 April 2003). Copy of signed form annexed to Request. For reference to document, *see* SCSL Transcript. 20 June 2007, Page 15.
[39] SCSL Transcript. 20 June 2007, Page 17 (Lines 21-24).
[40] See Voir Dire Exhibit I, Annex 6. "In Confidence Memorandum" from Haddijatou Kah-Jallow (13 March 2003).
[41] Ibid.

The Prosecutor gained very little traction on several other lines of questioning where he would suggest that Mr. Sesay's version of events was untrue, but fail to bring evidence, either testimonial or documentary, to controvert the witness' words. For example, Mr. Harrison challenged Mr. Sesay's claims that the UNAMSIL contingent on Bonthe carried AK-47s or that the detention staff wielded pistols during Mr. Sesay's daily cell extraction. The Prosecutor suggested Mr. Sesay's testimony was untrue "because there was only one pistol at the Bonthe detention center." However, he was interrupted and chastised by Judge Itoe for attempting to proffer evidence through statement of counsel which he should have adduced through a witness if he intended to rely upon it as fact. Mr. Harrison rephrased and finished out the line of questioning, but with little effect, because Mr. Sesay gave testimony consistent with what he said under direct examination. Without contrary Prosecution evidence, the accused remained substantively unchallenged on the point.

Generally speaking, Mr. Sesay's testimony came across as credible and consistent under cross examination. In contrast to Mr. Morissette's testimony, his overall demeanor was earnest and calm. Unlike Mr. Saffa and Mr. Lamin, Mr. Sesay answered questions straightaway and with a great deal of conviction. The closest Mr. Harrison came to uncovering internal inconsistency in Mr. Sesay's testimony was when he suggested Mr. Sesay was lying about Mr. Saffa's Krio threats on the 10th of March 2003. When challenged, Mr. Sesay repeated approximately the same testimony as the day before, but elaborated on the Krio words that Mr. Saffa allegedly used to secure Sesay's cooperation. Mr. Harrison put to the witness that this elaboration was an inconsistency which showed him to be lying about what was said. Mr. Sesay responded, "Well Mr. Harrison, I want you to know something. Anyone who drinks and eats would make a mistake." He then explained that these events happened nearly five years ago, and only this week did he begin to talk about them in Court. After direct examination, he said, he recalled more details overnight about what Mr. Saffa had said to him, and that was why he answered Mr. Harrison's cross as such.

Counsel for the Prosecution concluded his cross examination with a series of questions suggesting to Mr. Sesay that he was lying, inventing and "doing an acting job" on the stand to save himself. Mr. Sesay remained calm and unwavering in his insistence that what he told the Court was the truth. He affirmed that he had said some things under interrogation in 2003 which were lies to satisfy the investigators, but he rejected the Prosecutor's suggestion that this meant he was a skillful actor under pressure and was lying to the Court right now. According to Mr. Sesay, Morissette expressly warned him not to show any signs of distress on the tape during his interviews. "I was just like a captive," Mr. Sesay explained to Mr. Harrison. "I had nothing to do. Whatever they told me to do, that was what I had to do. What Morissette told me to do was what I did… [but] what I said in this Court is the true story."[42]

TESTIMONY OF MS. CLAIRE CARLTON HANCILES

Duty Counsel, Claire Carlton Hanciles, briefly gave testimony about her knowledge of the Bonthe detention facility and her very limited contact with the accused in March and April of 2003. On direct examination, Defense Counsel adduced that Ms. Hanciles was instructed by the Registrar[43] to visit all the detainees on Bonthe—with the exception of Mr. Sesay—on March 17th 2003. According to Ms. Hanciles, the Deputy Registrar, Mr. Robert Kirkwood, told her as she was on her way out of the Court bound for Bonthe, "By the way Claire, don't bother with Mr. Issa Sesay. He signed a waiver to Duty Counsel." Ms. Hanciles visited all the detainees that day, but only passed Mr. Sesay on the helipad. He was unrecognizable due to hooding, so she only knew it to be him when some of the detention staff told her. On cross examination, Mr. Harrison asked a handful of questions aimed at undermining Mr. Sesay's

[42] SCSL Transcript. 20 June 2007, Page 35 (Lines 10-12, 18).
[43] The three Duty Counsel in the Defense Office were taking instructions from the Registrar's office until John Jones later came as Acting Principal Defender.

account of the poor detention conditions. Ms. Hanciles agreed with the description in Mrs. Kah-Jallow's March 13th email that the cells were "spacious and clean" and agreed that her own recollection of the state of affairs at the detention facility was that none of the detainees, save one AFRC accused, complained about the food or the detention staff. Mr. Harrison did not ask about the heat, provision of mosquito netting, or the availability of electrical or natural light in the cells. On re-direct, Mr. Jordash asked Ms. Hanciles one more question about the detention conditions. She confirmed that the detainees were all generally anxious to see their family members, with whom they had not yet been permitted to speak or visit.

TESTIMONY OF MR. NAEEM AHMED

Mr. Jordash called his final voir dire witness, Mr. Naeem Ahmed, in relation to a controversial disclosure motion Defense raised early in the week.

Motion for Compelled Disclosure of Gilbert Morissette's Ongoing Contacts with TF1-046 (Gibril Massaquoi)

On June 19th, Trial Chamber I compelled the OTP to disclose information about the Chief of Investigations taking Gibril Massaquoi[44] on a Sunday trip to Franco's Restaurant (an establishment described by Judge Itoe as "rather luxurious") for lunch. Throughout the motion, Counsel referred to the witness anonymously through his witness number (TF1-046), because there was some confusion as to whether he remained subject to witness protective measures for the RUF trial. However, when the Court ultimately decided to compel disclosure, the Bench took formal notice that TF1-046 (readily identifiable from open session AFRC trial transcripts as Gibril Massaquoi) was not subject to protective measures because he willingly testified publicly in the AFRC trial, and protective measures were later lifted in the trial of the RUF accused. The Bench confirmed, "As of June 15 2007 he was no longer a protected witness."[45]

Counsel for the first accused raised the issue of Mr. Massaquoi and Mr. Morissette's Sunday outings, because this particular Prosecution witness has allegedly been approaching an extremely important insider Defense witness, at the behest of the Prosecution, for cooperation in the Taylor trial. Mr. Jordash laid before the court the chronology which gave rise to Defense concerns about the propriety of Mr. Morissette and Mr. Massaquoi's outing: "On 20 April 2007, we disclosed DIS-281 to the Prosecution. We disclosed his *name* to the Prosecution. On 6 May, Mr. Morissette is having lunch with TF1-046. At some stage before 11 June, TF1-046 is approaching one of our most important witnesses and trying to persuade him to come over and help prosecute Mr. Taylor."[46]

Mr. Jordash advised the Court that he was raising this issue for a number of reasons, including its relevance to the voir dire and its urgent import as a matter of witness protection for one of the "top five" witnesses to be called by the Sesay Defense. On the face of it, he argued, the outing would appear to be further evidence of irregular investigative protocol by the Chief of Investigations. Counsel submitted that, if Defense information is correct, Mr. Morissette's outing amounts to "more of the same" of what Defense is arguing in the voir dire— The Chief of Investigations engaging in off-the-record inducements and communications with an insider witness, including inducements which are subject to disclosure obligations, and communications which ought to be formally recorded. Counsel for the Prosecution did not respond to the request for disclosure, nor did the Court seek his input. After hearing the Defense submission, the Bench ordered Mr. Harrison to make necessary enquiries with Mr. Morissette and disclose information about the outing to the Defense in open court.

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[44] This is the same man Mr. Sesay claims to have been arrested with on the 10th of March 2003, whom he saw released from handcuffs and taken into an office at CID by Gilbert Morissette.
[45] SCSL Transcript. 19 June 2007, Page 21 (Lines 23-24).
[46] SCSL Transcript. 19 June 2007, Page 5 (Lines 9-14).

Public Scrutiny of the Allegations

In the course of arguing the motion, there was an application made by the Prosecution—encouraged by the Bench and forcefully resisted by Defense Counsel—to go into closed session. Mr. Jordash insisted that witness identity protection should not raise concern, because all parties involved could be referred to by their TF1 and DIS numbers. Moreover, when allegations go to the heart of the integrity and fairness of the process, the public has a particularly strong interest in hearing them raised and answered in open court. The Bench initially resisted Defense Counsel's arguments, apparently concerned about dealing with such "delicate" matters in a public forum. The Presiding Judge suggested:

> The public doesn't have an interest at this stage in just hearing allegations that are yet to be established and proven… Allegations that reflect on the integrity of the process are not to be taken lightly. Ought we not, out of an abundance of caution, to hear them in a closed session setting?"[47]

Judge Boutet expressed particular misgivings about the public airing of these accusations against Mr. Morissette, pointing out that an accused in a trial "is allowed to defend himself with all the means possible that are available to you. When you're making allegation of that nature, as such, the same means do not exist for that particular organization or individual."[48] Mr. Jordash countered that Mr. Morissette and the Prosecution have every opportunity to respond publicly to the allegations, and should in fact do so, because the public have a right to hear them answer these charges of investigative impropriety.

The Bench backed off the idea of going into closed session only once Mr. Jordash suggested that the Court was illegitimately giving weight to concerns which had nothing to do with witness protection and everything to do with shielding members of the OTP from potentially embarrassing disclosures: "If it's to do with protecting the reputation of investigators, who we say are engaged in wrongdoing, then I would resist [going into closed session] completely."[49] The Presiding Judge hastily assured Mr. Jordash that no one on the Bench sought to shield Mr. Morissette from scrutiny. Counsel for the Prosecution withdrew the motion for closed session—agreeing to simply write down any protected information—and the Court proceeded to hear Mr. Morissette's disclosure in open session.

Mr. Harrison reported that Mr. Morissette told him the trip was part of a regular outing program administered by WVS for Gibril Massaquoi: "On occasion, WVS does not have enough staff to take this person on this Sunday drive and so, on the occasion that has been referred to and, as I understand it on prior occasions… Mr. Morissette and Mr. Haddad took 046 on this Sunday drive, away from his residence, and decided to stop and have lunch at the location that was indicated."[50] Mr. Harrison disclosed to the Court that the Chief and Deputy Chief of WVS happened to witness the meal because they were both at Franco's by coincidence that day. Counsel for the Prosecution further informed the Court, "As I understand it there was no discussion of evidentiary matters."[51]

Rule 79 allows the Trial Chamber to order a closed session only for reasons of national security, witness protection (as provided in Rule 75), or "protecting the interest of justice." To the author of this report, attempts by members of the Bench to move the hearing into closed session to "protect the integrity of the process" did indeed have the appearance of impropriety. It seemed the Judges wished to shield certain people or sections within the Court from public scrutiny. "The interest of justice" is always best served

[47] SCSL Transcript. 19 June 2007, Page 8 (Lines 27-29) and Page 9 (Lines 22-24).
[48] SCSL Transcript. 19 June 2007, Page 9 (Lines 9-13).
[49] SCSL Transcript. 19 June 2007, Page 10 (Lines 20-22).
[50] SCSL Transcript. 19 June 2007, Page 23 (Lines 22-28).
[51] SCSL Transcript. 19 June 2007, Page 23 (Lines 28-29).

by the most transparent process possible. Defense Counsel's motion was simply seeking candid disclosure from the Prosecution. If such disclosure reveals a perfectly legitimate rationale for the suspicious behavior, then the interests of justice will have been served because the allegations will have been refuted and the process shown to be a fair one. If disclosure reveals improper investigative behavior, then the interests of justice will also have been served, because unfairness to the accused will have been exposed and can subsequently be remedied. When the Trial Chamber deals with suggestions of investigative impropriety behind closed doors, the public is left to imagine the worst, and that potentially hurts the integrity of the process more than the truth ever could. The Trial Chamber made the right decision remaining in open session to hear the original motion. Unfortunately, the following day, the Court made a disappointing follow-up decision refusing to inquire further into the matter when serious questions of impropriety were raised anew.

Attempted Testimony from Mr. Naeem Ahmed

On Wednesday, June 20th, Counsel for the first accused attempted to bring evidence which had come to light overnight, that Mr. Morissette's disclosure to the Court was, in fact, a fabrication. Defense called Mr. Naeem Ahmed, Deputy Chief of WVS (the unit through with Mr. Morissette reported the Sunday outings with TF1-046 had been arranged). However, as soon as Mr. Jordash posed his first question to Mr. Ahmed, Prosecution objected on the grounds of relevance. After hearing arguments from both parties outside the presence of the witness, the Court sustained the objection. Mr. Ahmed was not permitted to deliver any evidence about the truth or deceit of Mr. Morissette's disclosure.

According to Mr. Jordash, Mr. Ahmed wished to testify that the Chief of Investigations deliberately misled the Court in response to compelled disclosure about his dealings with an insider witnesses. Counsel argued, to no avail, that this testimony was relevant insofar as it spoke volumes about Mr. Morissette's reliability. "Are Your Honors not going to ask the question, as to whether Mr. Morissette told the truth yesterday about his handling of this witness?"[52] Moreover, Mr. Jordash argued, the Court should be willing to hear testimony which showed a senior OTP official to be willfully in breach of a disclosure order. "If Your Honor orders disclosure on the basis, I presume, of Rule 68, the Court is then misled, then isn't the Court, and I ask rhetorically, interested in having the most accurate version of events, straight from the horse's mouth, the Witness and Victims Unit?"[53] In response, Counsel for the Prosecution invoked a slippery slope argument. Mr. Harrison suggested that pursuit of this issue would necessitate the calling of additional witnesses and rebuttal witnesses on the question of Morissette's credibility. Mr. Jordash countered that the slippery slope was a seductive argument, but one without merit, because all that would be required, at most, would be a recall of Mr. Morissette, should he wish to publicly counter Mr. Ahmed's testimony.

Speaking for the Bench, the Presiding Judge dismissed the issue of Mr. Morissette's credibility as "entirely collateral" to the core inquiry of the voir dire. However, he did not explain how information relevant enough to the voir dire to merit compelled disclosure on the 19th of June had become "collateral" by the 20th of June. All three judges appeared eager to conclude the voir dire, and expressed concern that inquiry into this issue would divert the Trial Chamber by opening what Judge Itoe referred to as a "Pandora's Box."

PROSECUTION CLOSING SUBMISSIONS

Mr. Harrison began his closing arguments with a review of the legal standards he argued the Court must follow in making its decision. He submitted that the standard for exclusion of evidence under Rule 95 is "strong and clear evidence of unlawful conduct." Absent such a finding, Counsel argued, "there can be no

[52] SCSL Transcript. 20 June 2007, Page 54 (Lines 9-13).
[53] SCSL Transcript. 20 June 2007, Page 53 (Lines 10-12).

serious disrepute," because the statements are only to be used for impeachment. The trial chamber is free to admit them and then give them zero weight. Mr. Harrison continued to categorically insist that "There is no such evidence, and the Court can be satisfied by looking at the videotapes and by reviewing the evidence that you have heard."[54] Counsel for the Prosecution also raised the standard from *Ntahobali* again, arguing that the Court ought to embrace the standard that evidence is excludable only if it was "obtained by methods casting substantial doubt on its reliability" or if admission would be "antithetical to and would seriously damage the integrity of the proceedings." Mr. Harrison further addressed the Rule 92 standard for presumptive voluntariness; Counsel insisted that the "Prosecution does not abandon" its belief that the Special Court standards are "less onerous" than the ICTR and ICTY standards, because Rule 92 requires only that Rules 63 and 43 be "complied with"—not "strictly" complied with.

Mr. Harrison refuted Defense suggestions that Prosecution investigators were under an obligation to go beyond the text of Rule 42 when advising the accused of his rights. Mr. Harrison cited to *Delalic*, and argued that that the obligation under Rule 42 extends only to reading the rights in a language the suspect understands. After that, Mr. Harrison insisted, the question of waiver "is neither ambiguous nor difficult to understand" and the Prosecution has fulfilled its obligations, full stop. Counsel for the Prosecution also took issue with Defense suggestions that the used of trickery in Mr. Sesay's interrogation might render his waivers and statements involuntary. Mr. Harrison submitted that courts generally condone and accept police trickery, but at the same time, he categorically denied any police trickery occurred in the Sesay interrogation. In support of the general rule, Mr. Harrison quoted from *Regina v. Oickle* (Supreme Court of Canada): "The investigation of crime on the detection of criminals is not a game to be governed by the Marque of Kingsbury rules. The authorities in dealing with shrewd and often sophisticated criminals must sometimes, of necessity, resort to tricks or other forms of deceit and should not, through the rule, be hampered in their work."[55] Mr. Harrison also relied on passages from *Regina v. Oickle* in support of the investigative practice of confronting an individual with contrary or inconsistent evidence during a custodial interview. Mr. Harrison maintained that OTP investigators engaged in lawful confrontation with the accused over the truthfulness of his account, and never crossed the line into the realm of impermissible threats or inducements during the interrogation.

In order to distinguish improper inducements from legally acceptable incentives, Counsel cited to another Canadian Supreme Court case, *Regina v. Spencer*, Which Mr. Harrison submitted represents an understanding of the law "consistent in all jurisdictions." The Decisions says:

> What occupies 'centre stage' is not the quid pro quo but voluntariness. It is the overarching subject of the inquiry and this should not be lost in the analysis. As discussed above, while a quid pro quo may establish the existence of a threat or promise, it is the strength of the alleged inducement that must be considered in the overall contextual inquiry into voluntariness.[56]

According to the Prosecution, the strength of the overall inducement must be determined by a consideration of the "totality of the circumstances." When taken all together, Mr. Harrison argued, the evidence suggests that Mr. Sesay was not induced to waive any rights by quid pro quo promises or threats. The Prosecution stood by its claims that the daily reading of the rights advisement and Mr. Sesay's repeated signing of the waiver are sufficient indicia of voluntariness.

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[54] SCSL Transcript. 21 June 2007, Page 5 (Lines 5-7).
[55] SCSL Transcript. 21 June 2007, Page 7 (Lines 22-27), quoting *Regina v. Oickle*, 2000 SCC 38.
[56] *Regina v Spencer*, 2007 SCC 11. Quoted by Counsel for the Prosecution at SCSL Transcript. 21 June 2007, Page 8 (Lines 15-21).

Mr. Harrison advanced no substantive counter-arguments to the Defense case that events occurring *off*-the-record undermine the reliability of the apparent waivers obtained *on* the record. As Mr. Harrison noted, Defense filed a closing skeleton brief in which it detailed 42 points of evidence—adduced from the face of the transcripts and the testimony given during the voir dire—which indicate breaches of the rules and/or improperly coercive off-the record conduct supporting a finding of involuntariness. Defense called these 42 pieces of evidence the "Prosecution case at its highest… the facts which the Prosecution rely upon as being true or have not disputed (or could not reasonably dispute)."[57] The parties were time limited in their oral submissions, so Mr. Harrison advised the Court that "the Prosecution has tried to respond [in writing] to many of those accusations and allegations" enumerated in Defense Counsel's closing written brief. Mr. Harrison did not file this brief publicly with Court Management (so it was not available for review to assist in writing this report), but Counsel gave a cursory description of the Prosecution response in his oral submissions. He argued that the Defense misstated some of the adduced evidence outlined in paragraph 56 of its final brief. Other pieces of testimony, according to Mr. Harrison, are misrepresented because they were taken out of "the appropriate context in which the text should be read."[58]

In conclusion, Mr. Harrison argued, "the Prosecution says that Rule 89(C) governs. There is no violation of Rule 95. And, in addition, this Court can make a finding that the statement is voluntary and the Prosecution should be permitted to cross-examine, for the limited purpose of which the Court is aware."[59]

DEFENSE CLOSING SUBMISSIONS

Counsel for the accused gave a much more emotionally charged closing statement than the Prosecution did. Before launching into the substantive legal aspect of his closing submissions, Mr. Jordash framed the broader issue for the court, suggesting, "This argument has become bigger than just the statement. It's about what kind of conduct is acceptable. What kind of investigative protocol is permissible and ought to be permissible in an international court."[60]

In his written closing skeleton brief (filed publicly with Court Management), Mr. Jordash submitted that the accused's statements are inadmissible pursuant to Rules 89 and 95 because the evidence shows they were taken in violation of Articles 17(4)(a) and 17(4)(g) of the Statute as well as Rules 42, 43, and 63. Based upon the evidence adduced in the voir dire, Defense argued four separate grounds upon which the Court could justify exclusion of the evidence—(1) Overall oppressive course of conduct by investigators (2) Involuntariness: Breach of 17(4)(g) guarantee against compelled self incrimination (3) Breach of the right to counsel and (4) Breach of the 17(4)(a) guarantee that the accused be informed "promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her." Any *one* of these grounds satisfied alone, Counsel argued, would merit exclusion of the evidence.

In oral submissions, Counsel emphasized that admissibility turns on voluntariness. Mr. Jordash drew his legal definition of voluntariness from the same Canadian Supreme Court jurisprudence the Prosecution quoted in its closing submissions. Citing to *Regina v. Oickle*, Mr. Jordash submitted that:

> A statement will be involuntary if it is the result of either 'fear of prejudice' or 'hope of advantage' held out by persons in authority…the pressure of intense or prolonged questioning may convince a suspect that no one will believe his or her protestations of

[57] *Prosecutor v. Sesay et al*, "Skeletal Argument: Exclusion of Mr. Sesay's Statements to the OTP Obtained in Breach of Article 17 of the Statute." Case No. SCSL-04-15-T-801 (20 June 2007), ¶56.
[58] SCSL Transcript. 21 June 2007, Page 9 (Line 29).
[59] SCSL Transcript. 21 June 2007, Page 10 (Lines 4-8).
[60] SCSL Transcript. 21 June 2007, Page 10 (Lines 28-29) and Page 11 (Lines 1-2).

> innocence, and that a conviction is inevitable. In these circumstances, holding out the possibility of a reduced charge or sentence in exchange for a confession would raise a reasonable doubt as to the voluntariness of any ensuing confession. An explicit offer by the police to procure lenient treatment in return for a confession is clearly a very strong inducement, and will warrant exclusion in all but exceptional circumstances.[61]

Quoting from Kauffman, *The Admissibility of Confessions*, the Court in *Oickle* recognized that, "Threats come in all shapes and sizes. Among the most common are words to the effect that 'it would be better' to tell, implying thereby that dire consequences might flow from a refusal to talk." With this in mind, the Court reasoned that "the most important consideration in all cases is to look for a *quid pro quo* offer by interrogators, regardless of whether it comes in the form of a threat or a promise."[62]

In light of the standards articulated in *Oickle* and the facts of the Sesay interrogations, Defense submitted that "this is not a borderline case. This is way, way over the line."[63] Mr. Jordash agreed with the Prosecution submission that the Court ought to consider the question of voluntariness based upon the "totality of the circumstances." Doing so, he argued, would inevitably lead to exclusion of the evidence, because even taking the prosecution case at its most favorable, "this Court could not be satisfied beyond a reasonable doubt that, in this environment, anyone could consent properly and in an informed way."[64] By way of illustration, Counsel surveyed some of the key evidence adduced in the voir dire, including: (1) the overwhelming police presence at the time of arrest; (2) Mr. Sesay's clear distress upon being detained; (3) the incommunicado detention Mr. Sesay endured through his first four days of custodial interviews;[65] (4) the failure to advise Mr. Sesay of his rights at the point of arrest; (5) the failure to read Mr. Sesay his indictment before OTP approached the accused for cooperation and began interviewing him;[66] (6) the fact that the accused purportedly agreed to "cooperate" with OTP without knowing what "cooperation" entailed; (7) the fact that the accused was transferred (in breach of the instructions on the warrant) from SLP custody into OTP custody before going to the SCSL detention facility at Bonthe like *all the other* detainees;[67] (8) Mr. Morissette's off tape conversations with Sesay and the inducements he offered, to which he made no reference on tape; (9) Mr. Morissette's admitted off-tape pressure on Sesay to confess to a crime, which he then does on tape after an hour and a half blackout time; (10) Mr. Sesay's invocation of right to counsel on three separate occasions and the investigators' decision, in contravention to Rule 63, to keep interviewing; (11) Mr. Sesay's exceedingly poor mental health condition, necessitating psychiatric care up to a week after his final interview with OTP; and (12) the complete failure of the OTP investigators to keep even a single note of these ongoing interactions with the accused.

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[61] *Regina v. Oickle*, 2000 SCC 38. Referenced by Counsel for the accused at SCSL Transcript. 21 June 2007, Page 10 (Line) and Quoted in *Prosecutor v. Sesay et al*, "Skeletal Argument: Exclusion of Mr. Sesay's Statements to the OTP Obtained in Breach of Article 17 of the Statute." Case No. SCSL-04-15-T-801 (20 June 2007), ¶38.

[62] *Regina v. Oickle*, 2000 SCC 38, ¶ 53, 57.

[63] SCSL Transcript. 21 June 2007, Page 11 (Lines 11-12).

[64] SCSL Transcript. 21 June 2007, Page 11 (Lines 16-18).

[65] Mr. Jordash became particularly exercised at this point: "I use this term advisedly: What kind of *inhumanity* not to inform an accused's family where he is for four days?" SCSL Transcript. 21 June 2007, Page 11 (Lines 25-26).

[66] Mr. Jordash further pointed out that, even when indictment is delivered on the night of the 10th, it's given to the accused in a bundle of documents without any explanation or notice that the bundle contains a legal document with the charges against him. "Served, but never explained," Counsel points out, and written in the third language of a man who has been formally educated only through the 7th grade. Is it reasonable, Mr. Jordash challenged, to expect *that* to be sufficient notice of the charges against an accused? Particularly when the document is full of legal terminology and when the indictee is being taken from his cell during daylight hours to be flown to Freetown for interviews with the OTP investigators, none of whom take it upon themselves to check that he's understood the charges against him?

[67] The accused was, Mr. Jordash argued, "Outside judicial control, outside any control, outside of Registry control into Prosecution control." SCSL Transcript. 21 June 2007, Page 13 (Lines 27-29).

Counsel for the accused elaborated on this last point, arguing that:

> The officers deprived the Court of what was, in all likelihood, the most cogent evidence as to what took place during the process of obtaining Mr. Sesay's cooperation and what induced him to confess. The Trial Chamber is pro tanto disabled from having the full knowledge on which to base its decision. The Trial Chamber is entitled to ask itself why the investigators did not take notes. Was it mere laziness or something more devious? [68]

Mr. Jordash reminded the Court once again that the burden lay with the Prosecution to prove voluntariness beyond a reasonable doubt. Citing to British case law, he suggested that opposing Counsel's inability to produce any contemporaneous investigative notes into evidence "may well tip the balance in favor of the defendant in these circumstances and make it impossible for the Trial Chamber to be satisfied beyond a reasonable doubt, and so require it to reject the evidence."[69]

The Defense conceded that in certain circumstances, according to the jurisprudence of certain domestic jurisdictions, investigators may not be required to go beyond a perfunctory reading of an accused person's rights. However, Mr. Jordash made the point that the Special Court does not operate under ordinary circumstances. "We have to ask ourselves, should we have expected more from the Prosecution? Did they have an obligation to go further than reading the rights as they bundled an accused from pillar to post, without doing anything more than the bear minimum?"[70] In defense of a higher standard, Counsel reminded the Court of its own previous holding in *Prosecutor v. Norman, et al*, where Trial Chamber I ruled that VWS, rather than OTP, should be the ones to approach defense witnesses for interviews, because the neutrality of the former put them in the best position, "to explain to a witness his or her right to refuse to be interviewed and to make sure that a proper consent for an interview was obtained from the witness."[71] The Trial Chamber reached this decision in light of the fact that "this Country has been through many years of armed conflict and that the social and political situation in Sierra Leone is such that it might reasonably lead to apprehension within the general population as to the role and power of the police."[72]

Mr. Jordash argued that an accused person before the Special Court for Sierra Leone is likely to have all the same apprehensions as a witness about the role and power of the police, but finds himself in a considerably more vulnerable position—physically detained, handcuffed, isolated, without legal advice, and facing potential life imprisonment at the hands of a recently established, international criminal tribunal, whose authority and procedures the accused could not possibly fully understand from a single reading of a rights advisement script. "What the Prosecution are asking you to do is say that the kind of [procedural] protection due to a witness should not be given to an accused."[73] Counsel for the accused zealously advocated the opposite conclusion: under these circumstances, he insisted, officers of the Court must be called upon to take even *greater* care to ensure proper consent, and to protect the accused person's right to refuse an interview. If it is to be left to the Office of the Prosecution to approach an

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[68] SCSL Transcript. 21 June 2007, Page 15 (Lines 22-29) and Page 16 (Lines 1-2).
[69] *Prosecutor v. Sesay et al*, "Skeletal Argument: Exclusion of Mr. Sesay's Statements to the OTP Obtained in Breach of Article 17 of the Statute." Case No. SCSL-04-15-T-801 (20 June 2007), ¶ 31. Referenced in SCSL Transcript. 21 June 2007, Page 15 (Line 20).
[70] SCSL Transcript. 21 June 2007, Page 13 (Lines 12-16).
[71] *Prosecutor v. Norman et al.*, "Decision on Joint Defence Motion Regarding the Propriety of Contacting Defence Witnesses, SCSL-04-14-T-629 (20 June 2006), ¶ 23.
[72] Ibid.
[73] SCSL Transcript. 21 June 2007, Page 12 (Lines 24-25).

accused person in detention, Mr. Jordash argued, this partisan organ of the Court must be held to the most exacting procedural standards before the Trial Chamber is willing to deem a confessional statement voluntary and admissible. "There couldn't have been," Mr. Jordash concluded, "a more clear example of egregious behavior… This Court cannot rule these statements admissible. Rule 95 was made for this type of wrongdoing and I would respectfully submit the Court should give a detailed ruling which this type of conduct ought to be clearly condemned."[74]

JUDGMENT ON THE MATTER OF VOLUNTARINESS

Court reconvened on Friday morning and the Trial Chamber pronounced its finding "that the alleged statements obtained from the first accused during the interviews by the Prosecution [as well as his alleged waiver to his rights to counsel][75] were not voluntary, in that they were obtained by fear of prejudice and hope of advantage, held out by persons in authority… In the light of these findings, the Chamber accordingly rules that the alleged statements are inadmissible under Rule 95 and cannot be used, even for the limited purpose advanced by the Prosecution of cross-examining the first accused in order to impeach his credibility."[76]

RESUMPTION OF THE MAIN TRIAL: CROSS-EXAMINATION OF THE FIRST ACCUSED

Immediately following its Friday morning judgment in favor of exclusion, the Bench called upon the Prosecutor to commence his cross examination of the first accused. Stripped of a major tool for witness impeachment, Mr. Harrison spent a good deal of this first day of questioning allowing Mr. Sesay to make statements which went onto the record entirely unchallenged by contrary Prosecution evidence. At times, it appeared to be less an exercise in cross examination than it was an opportunity for the accused to reaffirm and further clarify the details of his own prior testimony from direct examination. Mr. Harrison repeatedly suggested alternate formulations of the facts to the accused on the stand, but Mr. Sesay invariably refuted Mr. Harrison's suggestions and stated the facts consistently with how he testified under direct examination. Because Mr. Harrison never confronted Mr. Sesay with evidence corroborating his alternate version of events, the exercise seemed largely futile. For the first several hours of cross examination, Mr. Harrison had little success adducing evidence favorable to the Prosecution or impeaching the credibility of the accused.

One of the topics Mr. Harrison devoted considerable energy to was the command structure of the RUF. In order to make the point that the accused could be held responsible as a senior RUF commander, Mr. Harrison asked the accused to confirm his high ranking command titles during different time periods. Mr. Sesay confirmed various titles and promotions, but always qualified his answers with descriptions of a practical function which minimized his command authority over certain factions of the RUF. This was sometimes due to poor communication capabilities and other times due to willful insubordination of lower raking commanders. Mr. Harrison also inquired into arms shipments between Liberia and Sierra Leone, but got very little information out of the accused, who either answered, "Not to my knowledge," or flatly contradicted the truth of the Prosecutor's suggestions.

Midway through the morning, Mr. Harrison finally began confronting Mr. Sesay with evidence which challenged the Defense case and/or required further explanation by the accused. One such confrontation centered around a disputed piece of documentary evidence. Mr. Harrison questioned Mr. Sesay at length on the contents of a 27 December 1999 Salute report bearing a signature the accused claims does not match his own. The Prosecution sought to rely on the salute report to establish certain facts about to

[74] SCSL Transcript. 21 July 2007, Page 18 (Lines 6-15).
[75] As added in a separately concurring opinion from Judge Itoe.
[76] See SCSL Transcript. 22 July 2007, Pages 2-3.

command structure, promotions, and orders given to attack certain areas. Mr. Sesay confirmed the description of certain events in the report and flatly denied others. The strength of this particular line of questioning will rely entirely upon the Trial Chamber's findings about the authenticity of the document. Also related to command structure, Mr. Harrison confronted the accused about his membership in the RUF-AFRC Supreme Governing Council. Mr. Sesay claims to have joined the body no earlier than September of 1997, but Mr. Harrison confronted him with the minutes of a meeting from August of 1997 which list him as a member. Counsel for the Prosecution also used these minutes to cross examine the accused about the importance of diamonds to the ongoing existence of the AFRC junta. Mr. Sesay confirmed that diamonds were a discussed source of funding, but testified that it was not the only source (the minutes also list petroleum sales and import-export duties). He repeatedly claimed he could not testify about how much diamond mining funded the junta because he was not in the diamond mining areas at that time nor involved in mining operations. Mr. Sesay rejected Mr. Harrison's suggestion that he sat on the "highest Council in the land" when he was a member of the AFRC Supreme Governing Council. The accused sought to clarify that, while he was on the AFRC Council, "you had the decision-making body, who sat in front of the meetings."[77] Mr. Sesay testified he was never a part of that group.

Another focal point of Mr. Harrison's cross examination was the general practice of RUF looting as evidenced by the February 1998, "Operation Pay Yourself." Counsel for the Prosecution suggested to the accused that "all RUF fighters knew that whenever there was a battle, and it ended, they could then go out looting."[78] Mr. Sesay rejected this, testifying that February 1998 was the first he ever heard of the phrase "operation pay yourself." Under the AFRC, Mr. Sesay testified that fighters were paid 50 million Leones per month and also given food, so there was no need and no policy for soldiers to fend for themselves after attacking a town. Prior to 1997, Mr. Sesay confirmed that Foday Sankoh did not pay RUF fighters, but he insisted, "From 1991 when RUF started fighting, up to February 1998, never did we have anything called Operation Pay Yourself within the RUF."[79] The accused reiterated that in those earlier years he was not involved in any RUF activities beyond Kailahun. There was no looting where he was in command, and he explained that he had no knowledge of capture practices or accusations of looting in places outside Kailahun, on the front lines of the conflict. Moreover, when he came across looting in Bo in February of 1998, he testified that he tried to stop it and this was when he was shot.

The witness was fairly successful at frustrating Mr. Harrison's many attempts to cross examine on the degree of communication between different RUF posts and Counsel's suggestions that Mr. Sesay must have had knowledge of various attacks and other violent incidents. Counsel for the Prosecution suggested that it was implausible for Mr. Sesay to have held such a high rank and yet remained so out of the loop for certain periods of time while he was assigned to Pendembu. "It must have been a pretty lonely existence you were living out at Pendembu, was it?"[80] However, Mr. Sesay simply repeated the explanation he gave under direct examination. "Well, Mosquito marginalized me because of the diamonds that I'd lost, so he said I should only be responsible for the -- Kuiva, Mobai, Baima and later, Ngiema, but I heard nothing about the Kono operations; I wasn't involved."[81] He confirmed that he was a Battlefield Commander, but maintained that this was "just a name," and in practice he didn't have control or information about areas beyond those Mosquito assigned to him.

Before the Trial Chamber adjourned for the weekend, Mr. Harrison informed the Court that he expects to conclude cross examination of the accused within the next day's session.

[77] SCSL Transcript. 22 July 2007, Page 55 (Lines 6-7).
[78] SCSL Transcript. 22 July 2007, Page 63 (Lines 7-9).
[79] SCSL Transcript. 22 July 2007, Page 63 (Lines 10-11).
[80] SCSL Transcript. 22 July 2007, Page 75 (Lines 28-29).
[81] SCSL Transcript. 22 July 2007, Page 76 (Lines 1-4).

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