

THE SPECIAL COURT FOR SIERRA LEONE

BEFORE:

**Judge Benjamin Itoe (Presiding)
Judge Bankole Thompson
Judge Pierre Boutet**

Registrar: Mr. Robin Vincent

Date filed: 1st November 2004

The Prosecutor

-v-

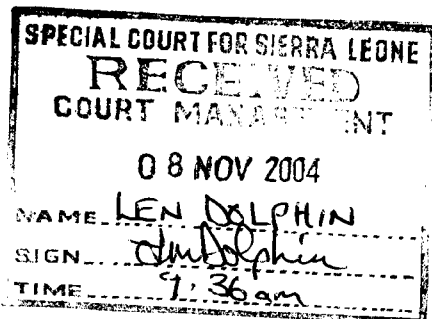
Issa Hassan Sesay

Case No: SCSL - 2004 - 05 - T

MOTION SEEKING DISCLOSURE OF THE RELATIONSHIP BETWEEN THE UNITED STATES OF AMERICA'S GOVERNMENT and/or ADMINISTRATION and/or INTELLIGENCE and/or SECURITY SERVICES AND THE INVESTIGATION DEPARTMENT OF THE OFFICE OF THE PROSECUTOR

Office of the Prosecutor

Lesley Taylor
Peter Harrison
Chris Santora



Defence

Wayne Jordash
Serry Kamal
Sareta Ashraph

1. On the 4th – 11th October 2004 General Tarnue gave evidence on behalf of the Prosecution in the case of Sesay et al. On the 5th October, in response to questions from the Prosecution and the Defence, General Tarnue asserted inter alia:
 - (i) that in the latter half of 2002 Dr Alan White (Chief of Investigations) had flown from the United States of America to Ghana “along with five FBI’s” to meet him.(Oct 5th pp. 162. line 11);
 - (ii) that subsequently himself, Dr White and the FBI personnel had gone to the US Embassy (Oct 5th pp.162. line 24 – 29) where the men introduced themselves (Oct 5th pp.174. line 18 – 19);
 - (iii) That they had subsequently been relocated to a hotel wherein the head of the Federal Bureau of Investigations (hereinafter the FBI) there present, led the questioning, which took place in the presence of and included contributions from Dr Alan White (Oct 5th pp.174 – 175). This interview process (at some stage) involved the use of a polygraph machine and had centred around Charles Taylor, the National Patriotic Front of Liberia and General Tarnue’s relationship to them (Oct 5th pp.184/5).(see also pp. 185 – 194).
 - (iv) That Dr White had confirmed he was working with the FBI. The FBI were there “to make sure that the investigation went through and that whatever he arrived at based on the decision from the State department, then he would be able to take an action” (Oct 5th pp.195).

- (v) That Dr White had asserted that he was willing to be part of the process wherein General Tarnue would seek asylum (Oct 6th pp.28 line 28/see also pp 28 – 41).
2. Additionally the Prosecution have disclosed to the defence that Dr Alan White used Office of the Prosecutor's finances as "Payment for lodging expenses in Accra, Ghana, pending FBI vetting. (See closed session – 6th October pp.37 – 40 for discussion and confirmation of this disclosure).

SUBMISSIONS

3. Article 15 of the Special Court Statute inter alia states: "The Prosecutor shall act independently as a separate organ of the Special Court. He shall not seek or receive instructions from any Government or from any other source".
4. It is the submission of the defence that the evidence given by General Tarnue (as summarised above) raises a prima facie case that the Prosecutor, through the agency of Dr White¹, has acted in breach of Article 15 insofar as he has worked with and/or at the behest of and/or in conjunction with the FBI.
5. Moreover the evidence discloses a relationship, financial and/or otherwise, which might suggest to the reasonable fair-minded observer a real risk of inter – dependence which would be inconsistent with the Prosecution's duties pursuant to Article 15.

¹ The defence do not suggest that the Prosecution as a team (or any of the Prosecution appearing in court) have acted with anything other than utmost good faith. The defence concerns are limited to the conduct of the specific investigator and/or any other aspect of the investigation (in relation to General Tarnue or any other witness) which has been tainted by the same connection, association or conduct.

6. The evidence disclosed by the Prosecution (and subsequently confirmed by General Tarnue) that Dr White had utilised OTP (and thereby Special Court) funds to assist the FBI with their “vetting” process also raises a prima facie case that the OTP (through Dr Alan White) has allowed the OTP’s independence to be compromised. The evidence (both that given by General Tarnue and that admitted by Dr White) is suggestive of a symbiotic relationship which is dependent to the extent disclosed on the use of shared funds.
7. Additionally the evidence given by General Tarnue suggests that Dr White played an integral role in the relocation and grant of asylum to General Tarnue through his interaction with various agencies.

PREJUDICE TO THE DEFENCE/INTERESTS OF JUSTICE

8. The defence submits that the matters raised by the aforementioned evidence raises serious questions which go to the heart of the integrity of the investigation conducted. A prima facie showing of a breach of Article 15 raises issues which relate (i) directly to an evaluation of the evidence and (ii) to an assessment of whether the Prosecution has complied with its ongoing duties pursuant to Rule 68 of the Rules of Procedure and Evidence.

Evaluation of the Evidence

9. At some stage the Honourable Trial Chamber will have the difficult task of evaluating the evidence given by General Tarnue (and other witnesses whose testimony may be affected by a breach of Article 15). In the absence of a clear indication from the Prosecution as to the extent of Dr White’s (and the investigation team as a whole) relationship with the American administration/government and/or security services and/or FBI, the task of establishing the veracity or reliability of the evidence subsequently and consequently obtained is likely to be thwarted and incomplete.

10. In other words it is crucial to the Trial Chambers deliberations to ascertain whether the evidence produced by the investigation was obtained in breach of Article 15 of the Statute of the Special Court. At the very least the role of the FBI and/or any outside agency needs to be properly understood to ascertain whether their role in the investigatory process has affected or influenced the nature of the evidence obtained (and if so to what extent). This evaluation can (and should) only be made by the Trial Chamber when it is in full possession of all the evidence which pertains to the relationship between the OTP investigatory team and any outside agency including the FBI.
11. In order to be able to assess the veracity of the evidence given by General Tarnue it is also important that Dr White disclose the full extent of his involvement with any outside agencies in assisting in the relocation of General Tarnue and his family. This assistance is capable of being an inducement which needs to be properly considered by the Honourable Chamber so as to consider whether it played any part in the willingness of the witness to implicate the accused. Moreover General Tarnue stated that he had felt obligated to Dr White for his assistance. It is the submission of the defence that Dr White therefore discloses what assistance was given.

RULE 68

12. The Prosecution (through Dr White) will be able to establish whether General Tarnue's evidence was truthful insofar as, prima facie, it establishes that Dr White was working with or alongside the FBI and/or the assistance offered to him. In the event that the evidence given by General Tarnue was untruthful the Prosecution ought to disclose this fact to the defence insofar as it "tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence" (Rule 68 of the Rules).

13. The evidence of General Tarnue suggests that there were previous interviews with both Dr White and the FBI. The interview(s) (or corresponding notes, tapes etc) have not been disclosed to the defence. The issue was raised by the defence prior to General Tarnue giving evidence. Dr White did not produce any record or notes of the interviews. In particular there is reference by General Tarnue to a previous interview with Dr White². It is unclear whether this interview was on behalf of the OTP or the FBI. Dr White has provided no explanation in this regard nor has he offered an explanation as to the whereabouts of any record of the interview(s).

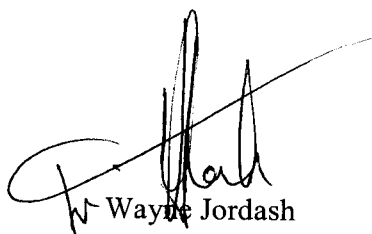
CONCLUSION

14. The defence respectfully request that the OTP disclose:
- (i) Dr White's and/or the investigation team's relationship with the United States of America's government and/or administration and/or security services and/or FBI.
 - (ii) In the alternative the extent to which General Tarnue's evidence in this regard is untrue or unreliable (pursuant to Rule 68 of the Rules).
 - (iii) Whether any other investigatory work has been conducted with OTP investigators working alongside any outside agency;
 - (iv) Whether any fruits of joint investigation have been shared with any outside agency;
 - (v) What assistance was offered and given to General Tarnue by Dr White and/or any other investigator;

² See 9- 10 April 2003 interview with Alan White; pp.129.

- (vi) Any information in the possession of, or known to the OTP which discloses any activity (which prima facie discloses either illegal activity or activity in breach of the Statute or Rules of the Special Court) by any investigator working for the OTP including but not limited to Dr White and including but not limited to any involvement in an alleged attempt to arrest Benjamin Yeaten in Togo between 2000 - 2004.³

Dated this 1st day of November 2004



Wayne Jordash

Serry Kamal

Sareta Ashraph

³ The defence submit that this incident discloses activity which is prima facie illegal and ought to be properly understood in order to assess the credibility of the investigatory team and its consequential impact on the credibility of the evidence obtained.