

EXHIBIT E

1

1 UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 ESTHER KIOBEL, individually and on behalf : CIVIL
 4 of her late husband, DR BARINEM KIOBEL, : ACTION
 5 BISHOP AUGUSTINE NUMENE : NO. 02CV
 6 JOHN-MILLER, DORNUBARI ANSLEM : 7618

7 JOHN-MILLER, CHARLES BARIDORN WIWA,
 8 ISRAEL PYAKENE NWIDOR,
 9 KENDRICKS DORLE NWIKPO, ANTHONY B,
 10 KOTE-WITAH, VICTOR B WIFA, DUMLE J.
 11 KUNENU, BENSON MAGNUS IKARI,

12 LEGBARA TONY IDIGMA, PIUS NWINEE,
 13 SIMEON DEDDOA, KPOBARI TUSIMA individually
 14 and on behalf of his late father
 15 CLEMENT TUSIMA, and individually on behalf
 16 Of all others similarly situated:

Plaintiffs

17 Vs.
 18 ROYAL DUTCH PETROLEUM COMPANY;
 19 SHELL TRANSPORT AND TRADING
 20 COMPANY, p.l.c.

Defendants

21 KEN WIWA, individually and as
 22 Executor of the Estate of his
 23 deceased father KEN SARO-WIWA, and
 24 OWENS WIWA, and BLESSING KPUINEN
 25 Individually and as the Administratrix
 Of the Estate of her husband,
 JOHN KPUINEN, and JANE DOE

Plaintiffs

vs.
 ROYAL DUTCH PETROLEUM COMPANY and
 SHELL TRANSPORT AND TRADING COMPANY
 P.l.c.

Defendants

KEN WIWA, individually and as Executor
 Of the Estate of his deceased father
 KEN SARO-WIWA, AND OWENS WIWA
 And BLESSING KPUINEN, individually
 And as the Administratrix of the
 Estate of her husband, JOHN KPUINEN,
 and JANE DOE,

vs.

BRIAN ANDERSON,

Defendant

COPY

96 Civ.
 8386 (KMW)

01 Civ.
 1909 (KMW)

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DEPOSITION OF RAPHAEL KPONEE

Wednesday, 26th May May 2004

AT: 9.10 am

Taken at:

Benin Marina Hotel
Republique Du Benin
Afrique De L'Ouest
Boulevard De La Marina
BP 1901, Cotonou
Benin

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1 Q. Was it about Nigerian politics in any way?

2 A. Close to that but it is not important in our
3 discussion here, that is not important.

4 Q. What was the topic of the project?

5 A. That is what I am saying, it is not
6 important. The topic of my project is not important,
7 please.

8 MR MILLSON: Actually, I would like you to
9 tell me what the topic was?

10 A. I believe I may not give you an answer to
11 that because it has nothing to do with why I am sitting
12 here. I have told you when I left Shell what I do.
13 I attended the school, the level I got to and why I am
14 here now. I think that should give you some picture
15 of what you are looking for.

16 Q. And you did this project in political science
17 in the University of Port Harcourt until you took up
18 the class work, correct?

19 MR D'AVINO: Objection. Objection to the
20 form of the question.

21 A. I have finished my class work.

22 MR MILLSON: You mentioned earlier that you
23 had stopped doing this project when you started the
24 class work here, correct?

25 MR D'AVINO: Objection to the form of the

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1 question. Mr Millson, you are mischaracterising the
2 witness's testimony in very inflammatory ways.

3 MR MILLSON: Maybe we all hear what we want
4 to hear.

5 MR D'AVINO: Maybe so.

6 MR MILLSON: It is a good thing we have a
7 record. When did you stop doing your project at the
8 University of Port Harcourt?

9 A. I stopped doing it in December when I left
10 Nigeria.

11 Q. You left Nigeria in December 2003?

12 A. Yes, sir.

13 Q. To come to Benin, correct?

14 A. Yes.

15 Q. Did you bring your family with you?

16 A. My family are there in Nigeria.

17 Q. Your family are now in Nigeria?

18 A. Now in Nigeria.

19 Q. Are they still living in Ogoni?

20 MR D'AVINO: Objection.

21 A. Sorry, I can't tell you where they are for
22 security reasons. I can't tell you where they are, my
23 family.

24 Q. Your wife is still running your drinks
25 business in Nigeria?

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1 MR D'AVINO: Asked and answered.

2 Objection.

3 A. I have answered you before.

4 MR MILLSON: How many children do you have?

5 A. I have four children.

6 Q. Are they all still living in Nigeria?

7 A. Their position is not important, the position
8 of my children for security reasons, I can't tell you
9 where my children are.

10 MR MILLSON: Are they still in Nigeria?

11 MR D'AVINO: Objection, asked and answered.

12 A. Where my children are I can't disclose it to
13 you for security reason.

14 MR MILLSON: Are your children working in
15 Nigeria?

16 MR D'AVINO: Objection, please move on,
17 Mr Millson.

18 A. They are not working, they are small.

19 Q. They are living with your wife?

20 A. They are with my wife.

21 Q. Is your wife sending you money from your
22 drinks business?

23 A. Of course.

24 Q. Who else is providing you money while you are
25 living in Benin?

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1 MR D'AVINO: Objection.

2 A. The women of, the women in the village, the
3 Zion, they provide me some money, and some of my
4 brothers in the United States, my Ogoni brothers in the
5 United States provide me money to eat with.

6 MR MILLSON: Who are your Ogoni brothers in
7 the United States who are providing you money?

8 A. They are many, they are many.

9 Q. How do they provide you money?

10 A. They send the money to me here and I get the
11 money.

12 Q. Do they just send you a check?

13 MR D'AVINO: Objection.

14 A. No, they have, I have not seen a check.

15 MR MILLSON: Who is the person who is giving
16 you the money, the actual handing over it to you?

17 A. I get the money from a friend.

18 Q. Who is the friend?

19 A. His name is Lattee.

20 Q. How many times has he given you money?

21 A. I can't remember if it is two or three,
22 I can't remember but I have gotten some money from him
23 from the United States. He has.

24 Q. From the Plaintiffs in this case?

25 A. Yes.

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1 Q. Have you gotten any money from the lawyers in
2 this case?

3 A. No.

4 Q. Let me mark this as the next exhibit, if you
5 could.

6 (Marked for identification Kponee Exhibit 7).

7 Do you recognise Exhibit 7?

8 A. Yes, I do.

9 Q. What is Exhibit 7?

10 A. It is a receipt of the amount I receive.

11 Q. How much did you receive?

12 A. 265,000 Ceefa.

13 Q. What was that for?

14 A. Say again.

15 Q. What was that for?

16 A. This is money from my brothers in the United
17 States, sent to me.

18 Q. What was the purpose of their sending you the
19 money?

20 A. For my feeding, I have to eat.

21 Q. How much did they send you for the feeding
22 and how much for the medical?

23 A. The medical was 17,000.

24 Q. So was that in addition to the 265,000?

25 A. Yes.

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1 Q. So you got 282,000?

2 A. No, I got this two money that is all.

3 Q. That was 285,000?

4 A. I got this money, 17,000 for my medical when
5 I was sick.

6 Q. You had been sick?

7 A. Yes, I have been sick.

8 Q. Did your brothers in the United States
9 provide you with money at any other time?

10 A. Any other time?

11 Q. Right.

12 A. They have sent some other money.

13 Q. When did they do that?

14 A. When?

15 Q. Yes.

16 A. I can't remember, my brothers, my brothers.

17 Q. This is the Plaintiffs in this litigation,
18 right?

19 A. The Plaintiff, yes, they have sent some money
20 but I can't remember the date.

21 Q. Now did they also provide you with housing?

22 A. Housing?

23 Q. Yes.

24 A. I have my own accommodation, I provide my own
25 accommodation.

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1 Q. And you pay for it yourself?

2 A. I pay for it myself.

3 Q. You continue to pay for it yourself?

4 A. I continue.

5 Q. So they are not giving you a house?

6 A. No.

7 Q. Are you aware that they are giving some of
8 the other witnesses a house?

9 A. I am not aware, I am not aware.

10 Q. Are you aware -- withdrawn. Do you live
11 close to where the other witnesses live?

12 A. I know two of them, I know two. I know two,
13 but we don't stay close. We are not close. They live
14 very far from me but I know, I know two of them.

15 Q. Have you talked to them since you have been
16 in Benin?

17 A. One is the person who gave me this to sign.

18 Q. Who is that?

19 A. Lattee, the Lattee I told you off.

20 Q. Do you know any of the other people who are
21 in the Ogoni Class Action project?

22 A. Yes, I know --

23 MR D'AVINO: Objection to form.

24 MR MILLSON: Who do you know?

25 A. I know Vincent.

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1 Q. Vincent who?

2 A. Nwiyoh.

3 Q. You knew him when he was in the force, right?

4 A. Yes.

5 Q. Have you talked recently?

6 A. Recently?

7 Q. Right.

8 A. Not seen him recently, we don't live in the
9 same place.

10 Q. When did you last see him?

11 A. About three weeks ago.

12 Q. Did you discuss your testimony with him?

13 A. If I have discussed my testimony with him, I
14 can discuss my testimony with him, I can do that. I did
15 that. I discuss the testimony with him.

16 Q. So what did you say to him and what did he
17 say to you?

18 A. I have answered the question. I discussed
19 the testimony, my testimony with him.

20 Q. What did he say to you and what did you say
21 to him?

22 A. I cannot remember what he told me but
23 I discussed my testimony with him.

24 Q. What did you tell him?

25 A. My experience.

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1 Q. What was your experience?

2 A. What you are asking me questions on now.

3 Q. Have you discussed your testimony with anyone
4 else?

5 A. Like who?

6 Q. Anyone?

7 A. Yes, I have spoken to my lawyer.

8 Q. Who is your lawyer?

9 A. Mr Carrie D'Avino.

10 Q. Did you speak to anyone else? Did you speak
11 to anyone else about your testimony?

12 A. No, only Carrie.

13 Q. Let's go back a few questions about what
14 happened, procedures at Shell. You mentioned this
15 procedure for signing in at the gate, do you remember
16 that?

17 A. Yes.

18 Q. Were you ever assigned to work in either of
19 the Ingoing or Outgoing gate?

20 A. My duty, no.

21 Q. So your duty was always in the road, correct?

22 A. Correct.

23 Q. And so you never wrote anything down in the
24 log book that was at --

25 A. No.

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1 Q. And you actually don't know what they wrote
2 down in the log book, correct?

3 A. I don't see it but I have an idea of what
4 they do there, of what they do there, the type of job
5 they are doing there. I know the type of job they are
6 doing there.

7 Q. When you worked at the RA -- withdrawn. In
8 the station you think that maybe once you worked on the
9 big notebook to record all the events that happened
10 during the day on the beat, do you remember that
11 testimony?

12 A. Yes.

13 Q. And the charge room officer would tell the
14 person who was the writer what to write down, correct?

15 A. When there is a report I said when there is a
16 report, whoever comes with the report has to report to
17 the charge room officer and the charge room officer,
18 based on his own little investigation there, he will
19 not, he will not maybe put it down with his own writing
20 on the piece of paper and give it to the writer to
21 write it, or he will go tell him, maybe he's going to
22 dictate; go ahead and write, this is the way it
23 happened, put it down that way, that is all. The
24 instruction on what to write in that station diary must
25 come from the charge officer.

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1 roundabout you can go straight and use the last road,
2 the last road before the Green Belt. The name of this
3 street is Olebri, Olebri that goes round the camp,
4 street. So you can get to, when you go forward you
5 can get to Olebri and turn to your left and go to
6 Upkpong's house.

7 MR MILLSON: Now did you ever work at the
8 Shell RA at one of the gates at the time somewhere
9 between 05 and 10 o'clock at night?

10 A. 05?

11 Q. So that is 17.00 hours to 22.00 hours, did
12 you ever work on either of those gates?

13 A. Yes, I have.

14 Q. Isn't it true that Mr Okuntimo came along in
15 that occasion in that timeframe every night after
16 closing time?

17 MR D'AVINO: Objection.

18 A. I never gave you that story.

19 MR MILLSON: I don't have any further
20 questions.

21 MR D'AVINO: We would like to take a two or
22 three minute break then we will have very few redirect.

23 THE VIDEOGRAPHER: Off the record at 15.44.

24

25 (Short Adjournment).

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1 THE VIDEOGRAPHER: Back on the record at

2 15.55

3

4

5 Re Direct Examination by MR D'AVINO.

6 Q. I would like to clarify the record on a few
7 points. You mentioned that in December you came to
8 Benin from Nigeria, is that true?

9 A. Yes, I said so.

10 Q. Why did you come to Benin?

11 MR MILLSON: Object to the form of the
12 question.

13 A. I came to Benin because I was to testify in
14 this case and my life was insecured in Nigeria if I am
15 to do that in Nigeria.

16 MR D'AVINO: Why do you think your life was
17 not secure in Nigeria.

18 MR MILLSON: Object to the form of the
19 question.

20 A. In Nigeria if you tell the truth you get
21 killed for saying the truth.

22 MR D'AVINO: Have you seen the other
23 witnesses in this case since you have come to Benin?

24 MR MILLSON: Object to the form of the
25 question.

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1 A. Yes, I have.

2 MR D'AVINO: When was the last time you saw
3 Vincent Nwidoh?

4 A. I saw him yesterday.

5 Q. Do you live in the same premises as the other
6 witnesses?

7 A. Yes, yes.

8 Q. When Mr Millson asked you those questions why
9 did you give the answers that you did?

10 A. I gave that answer for security reason. For
11 security reason.

12 Q. Okay. Is all the other testimony that you
13 have given today accurate?

14 A. They are all accurate.

15 MR MILLSON: Object to the form of the
16 question.

17 MR D'AVINO: When you are on duty as a SPY
18 police at the IA gate did you ever see any, did you
19 ever observe any other Shell SPY police stop a senior
20 military officer who was wearing his uniform?

21 A. Not on a regular basis.

22 Q. Not on a regular basis?

23 A. No.

24 Q. Were senior military officers routinely waved
25 through whether they were armed or unarmed?

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1 A. I don't understand.

2 Q. When you were on gate duty at the Shell IA
3 were senior military officers waved through without
4 screening when they were armed and when they were
5 unarmed?

6 MR MILLSON: Object to the form of the
7 question.

8 A. You wouldn't know if they are armed or not
9 except they are stopped.

10 MR D'AVINO: So when you waved them through
11 you didn't know whether they were armed or not?

12 A. No.

13 MR MILLSON: Object to the form of the
14 question.

15 MR D'AVINO: Did you ever receive any
16 recommendations for your work as a SPY policeman?

17 A. Yes, I did.

18 Q. How many recommendations did you receive?

19 A. Two.

20 Q. Did you ever receive any disciplinary action
21 or other demotions while you were a SPY policeman?

22 A. No.

23 MR D'AVINO: That will complete my questions
24 for the witness.

25

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1 A. I have, yes. I have one certificate and one
2 cash award.

3 Q. How much was the cash award?

4 A. It is long, I can't remember the cash, how
5 much was it.

6 Q. You said that other Shell, that when you were
7 on the gate that other Shell SPY police didn't
8 regularly stop senior police officers and senior
9 military officers, correct?

10 A. It is not often, that was the story I told
11 you. They stop, discretionary, they do their job.
12 That job is done discretionary, that is what I said.

13 Q. The guards were given discretion as to
14 whether to stop the senior military officers and senior
15 police, that is what you are saying?

16 A. I have answered the question before. I have
17 answered the question over and over.

18 Q. But the point that you are making is that
19 they had discretion to stop them whether or not to do
20 that, correct?

21 A. Please, I have answered the question before.

22 Q. Now you told Mr D'Avino that you gave me some
23 answers that were inaccurate for security reasons,
24 correct?

25 A. Come again.

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1 Q. You gave me some testimony a little while ago
2 that was wrong, wasn't it?

3 A. For security reason, for security reason
4 I have told what it was supposed to be.

5 Q. For security reason you told me something
6 that wasn't true, correct?

7 A. I wasn't lying but for security reason
8 I refused to tell you.

9 Q. For security reason you told me something
10 that was untrue, correct?

11 A. What I am saying is that I wasn't lying but
12 for security reason I refused to tell you.

13 Q. You didn't refuse to tell me, you told me
14 something that was wrong, correct?

15 A. I have answered the question.

16 Q. You told me that you didn't live in the same
17 premises as the other witnesses, correct?

18 MR D'AVINO: Objection to form.

19 A. I said so.

20 MR MILLSON: You told me that you and the
21 other witnesses, in fact, lived, you only knew two of
22 the people and that you lived far apart.

23 MR D'AVINO: Objection to form.

24 A. I have answered the question.

25 MR MILLSON: I don't want to know where your

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1 premises are, but how many of the witnesses live in the
2 same premises as you?

3 MR D'AVINO: Objection to form.

4 A. I know of seven.,

5 MR MILLSON: Seven people counting yourself?

6 A. Yes, please.

7 Q. And what are the names of the seven people
8 who all live in the same premises?

9 A. Lattee lives, Prince, I, Vincent, Bonny,
10 Blessing.

11 Q. Now was Boniface the orderly to Major
12 Okuntimo when you saw him years ago?

13 MR D'AVINO: Object to the form of the
14 question.

15 A. I don't understand the question.

16 MR MILLSON: Was Boniface the orderly to
17 Major Okuntimo years ago when you saw Major Okuntimo?

18 MR D'AVINO: Object to the form of the
19 question.

20 A. I cannot recognise the face when, I cannot
21 recognise who was there, what do you call it, I can't
22 remember who was the bodyguard to Okuntimo then. I
23 cannot recognise the face. So I don't know if it is
24 Bonny, I don't know.

25 MR MILLSON: Have you had any conversations

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1 with Boniface about his testimony here?

2 A. No.

3 Q. Does he live next to you?

4 A. Not really next.

5 Q. How close does he live to you?

6 A. From here to the reception, about that
7 distance.

8 Q. About 20 yards?

9 MR D'AVINO: Objection.

10 A. From here to the reception.

11 MR MILLSON: How often have you seen
12 Boniface since you have been in Benin?

13 A. We see often.

14 Q. Often?

15 A. Yes.

16 Q. When you said you had not seen Boniface
17 earlier that wasn't correct, correct?

18 A. For security reason.

19 Q. The often times that you have seen Boniface
20 have you talked about your testimony or his testimony?

21 A. Not detail, because I don't really know the
22 detail of his testimony.

23 Q. Have you talked about the events you
24 testified to today?

25 A. Say again.

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1 Q. Have you talked about what you talked about
2 today?

3 A. If I have talked?

4 Q. Did you talk to Boniface about your work as a
5 Shell Supernumerary Police?

6 MR D'AVINO: Objection.

7 A. Yes, I have.

8 MR MILLSON: How many people have you
9 discussed -- withdrawn. When did you first start
10 working on the Class Action project?

11 MR D'AVINO: Objection.

12 A. When?

13 MR MILLSON: When?

14 A. I started? I remember I talked to my lawyer,
15 that was in September or there about.

16 Q. Your lawyer is Mr D'Avino?

17 MR D'AVINO: Don't disclose any discussions
18 that we had.

19 MR MILLSON: I am just asking whether your
20 lawyer is Mr D'Avino when you referred to your lawyer?

21 A. I talked to, I did that, I talked with him.
22 I talked with him.

23 Q. In September 2003?

24 A. 2003.

25 Q. In Lagos?

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1 A. Port Harcourt.

2 Q. What were the circumstances, how come you
3 were talking to Mr D'Avino in Port Harcourt in
4 September 2003?

5 MR D'AVINO: Objection.

6 A. I talked to him because he has been
7 identified by the Ogoni people as our lawyer.

8 MR MILLSON: Who in the Ogoni people
9 identified him as your lawyer?

10 A. In the village they are told.

11 Q. There are what?

12 A. They at home in the village in Bori.

13 Q. At home. The elder in the village at Bori
14 told you Carrie D'Avino was your lawyer?

15 A. Yes.

16 Q. Why did they tell you this?

17 MR D'AVINO: Objection.

18 A. Why?

19 MR MILLSON: Why were you telling the elders
20 about needing a US lawyer?

21 A. I was told this is my lawyer by my brothers
22 at home, that is all I know.

23 Q. Your brothers at home in Ogoni said Corrie
24 D'Avino is your lawyer --

25 MR WHINSTON: It's Carrie not Corrie.

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1 MR MILLSON: -- go to Port Harcourt to see
2 him.

3 MR D'AVINO: Objection.

4 A. I talked with him in Port Harcourt.

5 MR MILLSON: Why were your brothers telling
6 you about a US lawyer in Port Harcourt?

7 MR D'AVINO: Objection.

8 A. I don't know.

9 MR MILLSON: They just mentioned this to
10 you?

11 A. They just mentioned it to me.

12 Q. Did you tell your brothers in Bori your story
13 about George Upkpong?

14 MR D'AVINO: Objection.

15 A. They are aware.

16 MR MILLSON: They were aware of that story?

17 A. Of George Upkpong's story?

18 MR MILLSON: The story you told about George
19 Upkpong and Major Okuntimo that you told us here today,
20 did you tell your brothers in Port Harcourt that story?

21 A. A few, a few persons are aware, not
22 everybody.

23 Q. You told some of your brothers that story?

24 A. Some.

25 Q. They told you go see your lawyer Corrie

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1 D'Avino?

2 MR WHINSTON: Carrie.

3 A. I have told you that I saw my lawyer, I think
4 that answers my question..

5 MR MILLSON: Did you tell your lawyer the
6 story about George Upkpong?

7 MR D'AVINO: Objection, don't answer that
8 question. I am instructing the witness not to answer.

9 MR MILLSON: Have you paid Mr D'Avino a
10 retainer so that he will represent you?

11 MR D'AVINO: Objection.

12 A. No.

13 MR MILLSON: When was the first time you
14 told anyone the story about George Upkpong and Major
15 Okuntimo and the money in the bag?

16 A. It's long.

17 Q. A look time ago?

18 A. It is long.

19 Q. Was it before or after you left Shell?

20 A. I can't remember.

21 MR D'AVINO: Objection, asked and answered.

22 MR MILLSON: You don't remember them?

23 A. I don't remember.

24 MR MILLSON: Did you tell the duty officer
25 that this had happened?

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1 A. Say again.

2 Q. Did you tell the duty officer that you had
3 seen three Ghana Must Go bags going in?

4 MR D'AVINO: Objection, asked and answered.

5 A. I answered that question.

6 MR MILLSON: Now --

7 A. About three times now.

8 MR MILLSON: But you are saying that even
9 though you saw Boniface often you have not talked to
10 him about the Ogoni crisis?

11 MR D'AVINO: Objection.

12 A. I am not familiar with the face, with
13 Boniface until I got to this place, that is the fact
14 that I want you to understand. I didn't know him.

15 MR MILLSON: But you met him in December
16 because he lives 20 yards from you and you see him
17 often?

18 A. That is what I am saying, that is my story.
19 It was when I arrived here that I knew him.

20 Q. You knew Vincent before you got here?

21 A. Exactly.

22 Q. How close does Vincent live to you?

23 A. He was in the barracks, he live in Shell
24 hired quarters.

25 Q. Vincent lives close to you in Benin, correct?

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