

ORDER
199-2506

PLAINTIFFS' DIRECT & DEFENDANT'S CROSS EXAMINATION DESIGNATIONS
OF DAMILOHUN MAJEMU OSUPAYOJO
 (Counter-Designations in italicized text)
 Depositions taken on September 14-17, 2005

Plaintiffs' Designations	Defendants' Objections	Plaintiffs' Responses to Defendants' Objections	Defendants' Cross Designations	Plaintiffs' Objections and Counter-Designations	Defendants' Responses to Plaintiffs' Objections and Objections to Counter-Designations
5:13-15					
			9:12-15		
			9:18-20		
			9:23-10:11		
12:4-7					
13:16-24					
14:3-6					
28:19-23					
28:25					

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30:21-25					
31:4-5					
34:9-11					
34:14-19					
38:10-11	Inadmissible hearsay. FRE 802.	State of mind exception, probative of intent or motive of Ilajes in staging protest. FRE 803(3)	OK		
38:14-16	Inadmissible hearsay. FRE 802.	State of mind exception, probative of intent or motive of Ilajes in staging protest. FRE	OK		

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38:19-39:3	38:19-21: Inadmissible hearsay. FRE 802. 38:22-39:3: Testimony regarding the character of the witness offered to prove action in conformity therewith is barred by 404(b); inadmissible hearsay. FRE 404(b), 802.	State of mind exception, probative of intent or motive of Ilaies in staging protest. FRE 803(3). FRE 404(b) deals with the inadmissibility of crimes, wrongs or acts to prove action in conformity therewith, and thus is inapplicable to this evidence. Further, as noted above, the evidence is properly admissible under FRE 803(3).	OK		
			OK		

*OK the
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in the
Hearings*


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43:6-14					
			45:20-46:8	Improper counter-designation, because not necessary for completeness of any designation by plaintiffs. 	This designation is well within the scope of plaintiffs' direct, which inquires into the details surrounding this witness' experiences during the incident. It is closely related to many of plaintiffs' designations, including the testimony designated by plaintiffs at 49:6-7; 49:10-24.
			47:19-23 Exhibit 1479	Improper counter-designation, because not necessary for completeness of any designation by	This designation is well within the scope of plaintiffs' direct, which inquires into the details

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				 plaintiffs.	surrounding this witness' experiences during the incident. It is closely related to many of plaintiffs' designations, including the testimony designated by plaintiffs at 49:6-7; 49:10-24.
			48:2-10 Exhibit 1479	Improper counter-designation, because not necessary for completeness of any designation by plaintiffs. 	This designation is well within the scope of plaintiffs' direct, which inquires into the details surrounding this witness' experiences during the incident. It is closely related to many of plaintiffs' designations, including the testimony designated by plaintiffs

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					at 49:6-7; 49:10-24.
			48:23-49:3 Exhibit 1479	Improper counter-designation, because not necessary for completeness of any designation by plaintiffs. 	This designation is well within the scope of plaintiffs' direct, which inquires into the details surrounding this witness' experiences during the incident. It is closely related to many of plaintiffs' designations, including the testimony designated by plaintiffs at 49:6-7; 49:10-24.
49:6-7					
49:10-24					

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51:21-22					
51:25-52:8					
52:12-18					
53:1-7					
53:20-21					
53:24					
55:17-20					
55:23					
55:25					

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56:2-3					
56:5-56:18					
56:21-25					
57:1-2					
57:5-6					
57:20					
57:23-24					
			58:1-3		
58:4-10					

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58:14-17					
60:2-4					
Exh. 1480					
60:7-14					
61:7-13					
61:16-17					
62:22-23					
63:1-2					
63:9-10					

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63:13					
63:21-22					
63:24-25					
64:11-12					
64:14					
65:15-66:4					
66:20-23					
70:18-71:5					
71:7-10					

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71:13-15					
71:18-25					
72:12-14					
72:17					
72:19-20					
72:23					
72:25-73:2					
73:15-16	Lacks foundation; calls for speculation. FRE 602.	His ability to observe the events have been established in prior testimony. The witness			

OK

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		is not speculating but rather describing what he saw.			
73:20					
74:3-5					
74:9					
74:19-21					
74:24-75:5					
75:7-11					
75:24-77:5	76:6-13: Inadmissible	Hearsay exceptions of present sense impression,			

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77:13-18	<p>hearsay. FRE 802.</p> <p>77:3-5: Impermissible lay opinion not "rationally based on the perception of the witness." FRE 701. Motion to strike as non-responsive.</p> <p><i>OK</i></p>	<p>FRE 803(1), and excited utterance, FRE 803(2).</p> <p>Supplemental designation of 75:12-23 for clarity.</p> <p>Statement that witness saw a bullet wound is a description, not an opinion, and is responsive to question of what he saw.</p>			
	<p>Impermissible lay opinion not "rationally based on the perception of the witness." FRE 701.</p> <p><i>OK</i></p>	<p>Statement that witness saw a bullet wound is a description, not an opinion.</p>			

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78:20-79:9					
79:15-24					
80:23-81:8					
81:25-82:5	Testimony regarding what happened to non-party witness is irrelevant, waste of time, and if offered to prove action in conformity therewith is barred by 404(b). FRE 401-403, 404(b). 	Testimony is relevant to the malicious intent of the security officers who were holding the protesters, including Bola Oyinbo, in the container. Acts such as these are admissible to prove motive, intent or plan. FRE 404(b).			
82:14-20	Testimony regarding what happened to non-party	Testimony is relevant to the malicious intent of			


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	witness is irrelevant, waste of time, and if offered to prove action in conformity therewith is barred by 404(b). FRE 401-403, 404(b). 	the security officers who were holding the protesters, including Bola Oyinbo, in the container. Acts such as these are admissible to prove motive, intent or plan. FRE 404(b).			
83:21-23					
87:4-9					
87:16-18					
88:1-8					
89:10-24					

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90:14-19					
91:5-18					
92:12-14					
92:19-25					
93:12-14					
93:25-94:1					
94:17-21					
95:15-25					
96:16-96:22	Testimony regarding what	Testimony is relevant to			


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97:11-16	happened to non-party witness is irrelevant, waste of time, and if offered to prove action in conformity therewith is barred by 404(b). FRE 401-403, 404(b).	the malicious intent of the security officers who were holding the protesters, including Bola Oyinbo, in the container. Acts such as these are admissible to prove motive, intent or plan. FRE 404(b).			
97:23-98:3					
98:6-10					
98:23-99:11					


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99:13-16					
99:18-25					
100:11-12					
100:14-24					
101:1-6					
102:4-13					
103:19-104:3					
104:14					
104:17-19					

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105:12-13					
105:15-17					
105:19-22					
105:25-106:4					
106:7-8					
			107:13-15	Lacks foundation, calls for speculation. 107:16-19 (told where he was by Bola). 	The foundation objection is frivolous. There is more than sufficient foundation for this witness to testify regarding his own whereabouts. His testimony is not

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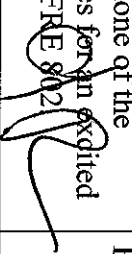
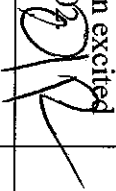
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					speculative but is based upon his percipient observations.
			108:2-4	Lacks foundation, calls for speculation. 108:5-8 (told where he was by Bola). 	The foundation objection is frivolous. There is more than sufficient foundation for this witness to testify regarding his own whereabouts. His testimony is not speculative but is based upon his percipient observations.
			108:14-16	Lacks foundation, calls for speculation. 108:17-21 (told where he	The foundation objection is frivolous. There is more than sufficient foundation for this



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				was by Bola).	witness to testify regarding his own whereabouts. His testimony is not speculative but is based upon his percipient observations.
			109:12-15		
			109:18		
117:25-118:5	Inadmissible hearsay satisfying none of the prerequisites for an excited utterance. FRE 802.	 Hearsay exception, under FRE 803(1) and (2).			
118:9	Inadmissible hearsay, satisfying none of the	Hearsay exception, under			

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	prerequisites for an excited utterance. FRE 802.	FRE 803(1) and (2).			
118:11-12	Inadmissible hearsay, satisfying none of the prerequisites for an excited utterance. FRE 802. 	Hearsay exception, under FRE 803(1) and (2).			
118:15	Inadmissible hearsay, satisfying none of the prerequisites for an excited utterance. FRE 802. 	Hearsay exception, under FRE 803(1) and (2).			
118:18-20					
118:23-119:1					
119:5-7					


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119:11-15	Inadmissible hearsay, satisfying none of the prerequisites for an excited utterance. FRE 802. <i>OR</i> Motion to strike as not responsive to the question.	Hearsay exception, under FRE 803(1) and (2).			
119:19-21					
119:25-120:3	120:2-3: Inadmissible hearsay, satisfying none of the prerequisites for an excited utterance. FRE 802. <i>OR</i>	120:2-3: Hearsay exception, under FRE 803(1) and (2).			
120:5-7	120:5-7: Inadmissible hearsay, satisfying none of the prerequisites for an excited utterance. FRE 802. <i>OR</i>	120:5-7: Hearsay exception, under FRE 803(1) and (2).			


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120:9-18	120:9-16: Inadmissible hearsay, satisfying none of the prerequisites for an excited utterance. FRE 802.	120:9-16 is not hearsay at all but a description of how Bola Oyinbo looked.			
120:21-23	<i>CAR</i>				
			139:13-14		
			139:17-140:21		
			141:14-16		
			173:4-16		
			Exhibit 1480		



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			173:19-24 Exhibit 1480		
			174:2-12 Exhibit 1480		
			174:15-175:1 Exhibit 1480		
			176:5-13	176:11-13: Move to strike unsworn statements of counsel. 	176:11-13: Explanation is necessary to clarify witness' nonverbal acts during the deposition; plaintiffs do not contest the accuracy of the explanation.


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			176:18-177:8	176:18-19 and 177:4-8: Move to strike unsworn statements of counsel. 	176:18-19 and 177:4-8: Explanation is necessary to clarify witness' nonverbal acts during the deposition; plaintiffs do not contest the accuracy of the explanation.
			177:20-25		
			179:10-22		
			180:2-3		
			180:10-11		
			180:13-20		


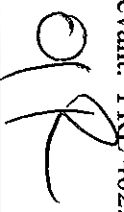
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			181:23-182:9		
			184:25-185:8		
			185:11-16	185:17, 186:15-22; 186:25-187:4	Counter-designation is not necessary for completing the designated testimony.
			191:2-4		
			196:15-16		
			Exhibit 1480		
			196:18-24		
			Exhibit 1480		

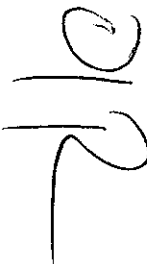
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			197:5-8 Exhibit 1480		
			197:11 Exhibit 1480	<i>198:22-199:2</i>	
			248:25-249:2	Irrelevant. FRE 402. 	The witness testifies regarding his participation in the Parabe incident. Testimony regarding his knowledge of the prior Itsekiri incident and the CIC's goals during the Parabe incident are relevant to understanding this witness' conduct and state of mind during the


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					incident.
			249:4-8	Irrelevant. FRE 402. 	The witness testifies regarding his participation in the Parabe incident. Testimony regarding his knowledge of the prior Itsekiri incident and the CIC's goals during the Parabe incident are relevant to understanding this witness' conduct and state of mind during the incident.
			249:11-16	Irrelevant. FRE 402. 	The witness testifies regarding his participation in the Parabe incident.



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					Testimony regarding his knowledge of the prior Itsekiri incident and the CIC's goals during the Parabe incident are relevant to understanding this witness' conduct and state of mind during the incident.
			249:19-21	Irrelevant. FRE 402. 	The witness testifies regarding his participation in the Parabe incident. Testimony regarding his knowledge of the prior Itsekiri incident and the CIC's goals during the Parabe incident are relevant to understanding



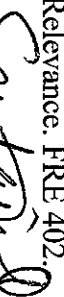
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					this witness' conduct and state of mind during the incident.
			249:23	Irrelevant. FRE 402. 	The witness testifies regarding his participation in the Parabe incident. Testimony regarding his knowledge of the prior Itsekiri incident and the CIC's goals during the Parabe incident are relevant to understanding this witness' conduct and state of mind during the incident.
			249:25-250:5		


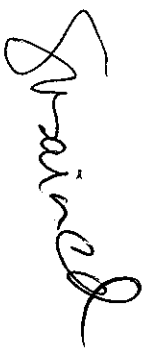
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			257:16-17		
			257:19-21		
			257:23		
			261:23-25	Hearsay. FRE 802. 	Testimony regarding his understanding of the invaders' plans during the Parabe incident is admissible to show the witness' state of mind.
			262:3-6	Hearsay. FRE 802. 	Testimony regarding his understanding of the invaders' plans during the Parabe incident is admissible to show the

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					witness' state of mind.
			262:12-13	Hearsay. FRE 802. 	Testimony regarding his understanding of the invaders' plans during the Parabe incident is admissible to show the witness' state of mind and knowledge.
			262:15-18	Hearsay. FRE 802. 	Testimony regarding his understanding of the invaders' plans during the Parabe incident is admissible to show the witness' state of mind and knowledge.
			267:1-2	Relevance. FRE 402. 	Where the witness was located when he boarded

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			Exhibit 1481		the barge during the Parabe incident is relevant to understanding this witness' conduct and his opportunity to observe events during the incident.
			267:6-8 Exhibit 1481	Relevance. FRE 402 265:11-265:2 	Where the witness was located when he boarded the barge during the Parabe incident is relevant to understanding this witness' conduct and his opportunity to observe events during the incident. Plaintiffs' counter-designations are incomprehensible, and defendants cannot

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					adequately respond.
			267:12-16 Exhibit 1481	Relevance. FRE 402 265:11-265:2 <i>Suskind</i>	Where the witness was located when he boarded the barge during the Parabe incident is relevant to understanding this witness' conduct and his opportunity to observe events during the incident. Plaintiffs' counter-designations are confusing incomprehensible, and defendants cannot adequately respond.
			268:13-20 <i>268:13-14</i>	Relevance. FRE 402 <i>admissible</i>	Where the witness was located when he boarded the barge during the

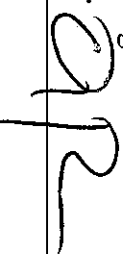
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			Exhibit 1481	265:11-265:2	Parabe incident is relevant to understanding this witness' conduct and his opportunity to observe events during the incident. Plaintiffs' counter-designations are confusing incomprehensible, and defendants cannot adequately respond.
			268:23-24 Exhibit 1481	Relevance, FRE 402 <i>265:11-265:2</i> <i>Sustained</i>	Where the witness was located when he boarded the barge during the Parabe incident is relevant to understanding this witness' conduct and his opportunity to observe events during the

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					incident. Plaintiffs' counter-designations are confusing incomprehensible, and defendants cannot adequately respond.
			270:13-14	Hearsay. FRE 802. OJR	Testimony regarding his understanding of the invaders' plans during the Parabe incident and whether the invasion was authorized by the chief is admissible to show the witness' and invaders' state of mind and knowledge.
			270:16-19		

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			271:16-20		
			271:23-272:3		
			273:10-11		
			277:5-12	277:13-21, 278:1-9	Counter-designation is not necessary for completing the designated testimony. It is also irrelevant, misleading, confusing, and would result in wasting time. FRE 401-403.
			280:5-13		

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			Exhibit 1482		
			282:15-22		
			Exhibit 1485		
			282:25-283:12		
			Exhibit 1485		
			Exhibit 1405		
			Exhibit 1406		
			283:16-20		
			Exhibit 1406		
			283:23		

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			Exhibit 1406		
			285:4-5		
			Exhibit 1408		
			285:7-12		
			Exhibit 1408		
			285:15		
			Exhibit 1408		
			292:19-20		
			292:23-293:2		

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			293:5-8		
			293:11-14		
			293:17-294:1		
			294:11-12		
			294:15-19		
			294:22-25		
			295:2		
			295:6-8		
			295:10		

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			295:12-13		
			295:15-16		
			295:24-296:1		
			296:2-4		
			296:6		
			296:24-297:2		
			298:11-13		
			308:22-309:5		
			309:7-10		

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			309:12		
			335:10-11 Exhibit 1480		
			335:14-20 Exhibit 1480		
			335:22-23 Exhibit 1480		
			335:25-336:4 Exhibit 1480		

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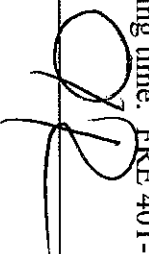
Plaintiffs' Designations	Defendants' Objections	Plaintiffs' Responses to Defendants' Objections	Defendants' Cross Designations	Plaintiffs' Objections and Counter-Designations	Defendants' Responses to Plaintiffs' Objections and Objections to Counter-Designations
			336:6-10 Exhibit 1480		
			336:13-19 Exhibit 1480		
			336:22-337:6 Exhibit 1480		
			337:9-14 Exhibit 1480		
			337:16-22 Exhibit 1480		

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			338:1-3 Exhibit 1480		
			338:6-15 Exhibit 1480		
			348:13-14		
			348:18	348:20-21, 23; 348:25-349:1; 349:4; 349:6-11; 349:24-350:3; 350:6; 350:23; 351:1-2	Counter-designations are not necessary for completing the designated testimony. They are also irrelevant, misleading, confusing, and would result in wasting time. FRE 401-403

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			354:10-11		
			354:14-18		
			355:21-24		
		356:1		357:11-12; 357:14-15; 358:21-22; 358:25; 361:19-20; 362:4-9; 362:11	Counter-designation is not necessary for completing the designated testimony. It is also irrelevant, misleading, confusing, and would result in wasting time. FRE 401-403. 
			367:21-23		

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			367:25-368:3		
			368:5-6		
			368:21-369:2		
			369:5-6		
			369:17-21	369:22-24	Counter-designation is not necessary for completing the designated testimony. The question was what the soldiers said in pidgin English, not translated.
			371:8-10		

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			371:13-16		
			371:18-20		
			371:23-372:10	372:11, 14	Counter-designation is not necessary for completing the designated testimony. It is also irrelevant, misleading, confusing, and would result in wasting time. FRE 401-403. It is clear from the designated testimony beginning at 371:8-10 who is speaking.
			427:25-428:5	Lacks foundation, calls for speculation, assumes facts	The witness' testimony that he does not

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			Exhibit 1488	not in evidence, argumentative. 	recognize the person featured in the photograph is not speculative and does not lack foundation. Nor does the testimony assume facts not in evidence. The question of whether the witness recognizes the person is not argumentative. Plaintiffs do not make the same objections to subsequent testimony of the witness regarding whether he recognizes persons featured in photos.

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			428:7-9 Exhibit 1488		
			428:11-14 Exhibit 1488		
			428:17-21 Exhibit 1488		
			428:24 Exhibit 1488		
			432:1-3 Exhibit 1411		

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			432:6-8 Exhibit 1411		
			432:10-12 Exhibit 1411		
			432:14-18 Exhibit 1411		
			432:21-24 Exhibit 1411		
			433:1-3 Exhibit 1411		

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			433:6-8		
			Exhibit 1411		
			433:10		
			Exhibit 1411		
			433:21-25		
			434:2-4		
			434:7		
			437:9-14		
			439:14-15		


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			439:17-18		
			439:21-23		
			440:1-6		
			440:8-11		
			440:13-21		
			440:23-441:6	441:4-6: Asked and answered; harassing, argumentative.	The witness did not answer the question when previously asked, and the question asking for clarification of apparently inconsistent testimony is not argumentative or

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			441:9-18	Asked and answered; harassing, argumentative.	The witness did not answer the question when previously asked, and the question asking for clarification of apparently inconsistent testimony is not argumentative or harassing.
			441:20-21	Asked and answered; harassing, argumentative. 	This designation is only the witness' answer, and does not include any question. The witness did not answer the question preceding the designated testimony when previously asked,


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					and the question asking for clarification of apparently inconsistent testimony is not argumentative or harassing.
			454:17-21	<p>Asked and answered; harassing, argumentative. Move to strike as non-responsive.</p> <p><i>See Answer</i></p>	The question was not previously asked, and the question asking for clarification of apparently inconsistent testimony is not argumentative or harassing.
			454:24-455:8	<p>Argumentative, asked and answered.</p> <p><i>OK</i></p>	The question was not previously asked, and the question asking for clarification of



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					apparently inconsistent and evasive testimony is not argumentative. The non-responsive nature of the witness' answer demonstrates his evasive and uncredible testimony.
		455:10-21		Argumentative, asked and answered. 455:10-18 <i>DR</i>	
				455:19-21 <i>Sustained</i> 456:2-10 <i>Sustained</i>	The question was not previously asked, the witness refused to directly answer these questions, and the question asking for clarification of apparently inconsistent testimony is not argumentative.

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			456:2-10	Argumentative, asked and answered. 	The designated testimony does not include a question. The question preceding the designated answer was not previously asked, the witness refused to directly answer these questions, and the question asking for clarification of apparently inconsistent testimony is not argumentative.
			456:20-23		
			456:25-457:2		

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			457:4-5	Asked and answered. 	The question was not previously asked (rather, the witness was asked to repeat words in Pidgin English, not his native Ilaje language), the witness refused to directly answer these questions, and the question asking for clarification of apparently inconsistent testimony is not argumentative or harassing.
			457:8-9	Asked and answered. 	The designated testimony is not a question, but an answer. The question at 457:4-5


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					was not previously asked (rather, the witness was asked to repeat words in Pidgin English, not his native Ilahe language), and the witness refused to directly answer these questions.
			502:14-23		
			502:25-503:8		
			503:23-504:11		
			504:14-17		
			507:15-21		

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			508:8-9		
			508:12-15		
			512:6-7	510:23-25; 511:6-9; 512:2-5	Counter-designation is not necessary for completing the designated testimony. It is also irrelevant, misleading, confusing, and would result in wasting time. FRE 401-403. <i>o/R</i>
			512:10		
			524:15-525:1		


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			525:4-5		
			525:7-10		
			525:12		
			565:5-7		
			565:9-566:4		
			566:7-16		
			566:19-20		
			568:16-23	568:24-569:1; 569:3-4	Counter-designation is not necessary for completing the 

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					designated testimony.
			589:12-14		
			589:17-22	591:22-24; 592:2-3	Counter-designation is not necessary for completing the designated testimony
			598:11-20		
			598:22-599:1		
			599:3-7		
			599:10-13	Relevance. FRE 402. PT2	This testimony is relevant to the witness' personal knowledge and percipient observations

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					of Arolika's body.
			599:18	Relevance. FRE 402. 	This testimony is relevant to the witness' personal knowledge and percipient observations of Arolika's body.