Case No. SCSL-2004-16-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
SANTIGIE BORBOR KANU

THURSDAY, 7 DECEMBER 2006
9.17 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Richard Lussick, Presiding Teresa Doherty Julia Sebutinde
For Chambers:	Mr Simon Meisenberg Ms Nolwenn Guibert
For the Registry:	Ms Advera Kamuzora
For the Prosecution:	Mr Christopher Staker Mr Karim Agha Mr Charles Hardaway Ms Shyamala Alagendra Mr Vincent Wagona Ms Maja Dimitrova (Case Manager)
For the accused Alex Tamba Brima:	Mr Kojo Graham Ms Glenna Thompson Mr Ibrahim Foday Mansaray (legal assistant)
For the accused Brima Bazzy Kamara:	Mr Andrew William Kodwo Daniels
For the accused Santigie Borbor Kanu:	Mr Ajibola E Manly-Spain Ms Karlijn van der Voort (legal assistant)

[AFRC07DEC06A - MC]

Thursday, 7 December 2006

[Open session]

[The accused present]

[Closing arguments]

[Upon commencing at 9.17 a.m.]

PRESIDING JUDGE: Well, first of all, we apologise for being slightly late. I don't know what you saw from this side of the door but from the other side of the door we were locked out and we have only just recovered the key. That is why we are starting slightly late today.

A few things I would like to mention, and I can assure the Prosecution that this is not coming off your three hours, what I have to say. All of the final trial briefs were filed confidentially and needless to say all counsel should, therefore, be careful when making closing arguments that they do not touch on any specifics which might endanger a protected witness.

Now, without meaning to limit any arguments desired to put forward, we note that the final trial briefs filed by the parties are quite comprehensive and we advise that there is no need to talk us through the final trial briefs unless there are specific areas you wish to expand upon.

As you all know the upper time limit, and I emphasise upper time limit, for closing arguments, is three hours for the Prosecution and two hours for counsel for each of the accused. But of course it is not necessary for you to use all of that time if you think you have put your case adequately under that time.

The only other thing I would mention is that I'm sure you are all aware that this case is of considerable interest to the

public and, generally speaking, the hearing should be conducted publicly. And I am sure it would be of interest to the public at large to know the arguments for the Prosecution case against the three accused and, therefore, I don't know, Mr Prosecutor, whether you had intended to do file a public redacted version of your final trial brief.

MR STAKER: Yes, Your Honour. I am instructed that has in fact already now been filed yesterday.

PRESIDING JUDGE: I see. Well, nobody has told us but that's good. Thank you, Mr Staker. Pardon me. Now, what is the Defence position about filing redacted public versions of their trial briefs?

MR GRAHAM: Good morning, Your Honours. We will oblige the Court.

PRESIDING JUDGE: Good morning.

MR GRAHAM: And then we'll file accordingly.

PRESIDING JUDGE: All right. That applies to counsel for each of the accused.

MR GRAHAM: I believe so, Your Honours.

PRESIDING JUDGE: Yes. I think that would be a good thing to do, Mr Graham, because people following this case will be able to follow the final arguments and it would probably link up the decisions a lot more concisely.

MR DANIELS: Just to add, Your Honours, good morning.

PRESIDING JUDGE: Good morning, Mr Daniels.

MR DANIELS: Perhaps it would be done after we have complied with the order to put our house in order with regards to the footnotes.

PRESIDING JUDGE: Yes, that would be satisfactory. Well,

now, does the Prosecution wish to commence their closing arguments? Yes. Go ahead, Mr Staker.

MR STAKER: Thank you, Your Honour. I should begin for the record just stating the appearances. Of course I am Christopher Staker. With me today Karim Agha, Charles Hardaway and Shyamala Alagendra, Vincent Wagona, our case manager today is Maja Dimitrova, and we have in court with us today two of other interns Michael Brazao and Ruth Mary Hackler.

I would in fact like to take the opportunity to add that Miss Hackler has been an intern with us, working on this case for some months, but does appear today in court for the first time, but in fact it was just a couple of weeks ago she passed the New York Bar and so perhaps it is quite fitting that her very first court appearance is here before the Special Court.

May it please Your Honours. Our oral submissions will be presented today by myself and Mr Agha who is the Prosecution Senior Trial Attorney for the case. Of course in its Rule 98 decision on 31 March this year the Trial Chamber rejected motions by all three accused seeking a judgment of acquittal at the end of the Prosecution case.

That decision already made certain findings of law that are relevant to this case and identify the main Prosecution evidence relevant to each of the individual counts in respect of the three accused.

The question now before the Trial Chamber is, having heard the further evidence presented on behalf of the Defence, is whether it has been proved beyond a reasonable doubt that the accused are guilty of the crimes with which they're charged.

The Prosecution's closing arguments, as Your Honour has

said, is set out in our final trial brief which is some 500 pages long and I needn't repeat all of that in oral argument. Our final submission at paragraph 1919 is that, on the basis of all the evidence presented in this case, the Trial Chamber can be satisfied beyond a reasonable doubt of the guilt of all of the accused under all counts in the indictment.

As I say, we confine ourselves in closing argument to emphasising certain matters of particular importance and in dealing with a few legal points arising out of the Defence briefs that we consider require further -- being further addressed.

Mr Agha will first address the factual issues and after he does that I propose to address the legal points. So I would, therefore, invite the Trial Chamber to now call upon Mr Agha.

PRESIDING JUDGE: Yes, Mr Agha.

MR AGHA: Good morning, Your Honours.

PRESIDING JUDGE: Good morning.

MR AGHA: As indicated in your initial address to us, Your Honour, we will try not to go into too much detail regarding our final submissions which are before you, but we may touch upon certain areas, if not for the benefit of the public, so that they can actually follow what the Prosecution case was and the evidence against the accused, but we will try to be as succinct as possible.

Your Honours, the accused stand charged on a 14 count indictment which include some of most heinous crimes known to mankind, namely, crimes against humanity and war crimes committed against the civilian population of Sierra Leone. These crimes range from murder, extermination, rape, mutilations, such as chopping the hands off civilians, and other equally as grave

crimes.

The Prosecution has led 59 witnesses and has exhibited a hundred documents to prove its case. The Prosecution submits that it has proved its case beyond a reasonable doubt with respect to those charges and modes of liability in respect of each of the accused for each village or town as has been set out in the Prosecution's final trial brief on 1 December 2006.

The Prosecution submits that its final trial brief speaks for itself and is incorporated into these arguments by reference. That being the case, at this stage the Prosecution seeks only to address what the Prosecution considers to be the more significant points in its brief and, in addition, to making a few responses to the briefs of the respective accused.

At paragraph 447 [sic] of the Kanu trial brief, Justice Murphy of the US Supreme Court is quoted in that Yamashita case decided, after World War II, where he states that an uncurbed spirit or revenge and retribution against a fallen enemy can seriously undermine people's faith in the fairness and objectiveness of law.

At paragraph 458 that the immutable rights of the individual belong to every person, whether the victor or the vanquished. The Prosecution endorses both of those sentiments and would like to make it clear that this trial is not about seeking revenge on the defeated or denying the accused any of their immutable rights. This trial has been about the search for the truth before a truly independent and international criminal tribunal consisting of professional judges drawn from around the world.

Pursuant to the Statute of the Tribunal and the Rules of

this Court, let us be in no doubt that all three accused have received a fair trial, whereby all the rights afforded to an accused under international standards have been applied.

Justice Jackson who is quoted by the learned Defence counsel in Brima's opening, in expounding the rights of the accused to receive a fair trial, would have been truly satisfied to see, how 60 years on from Nuremburg, those rights were respected before this Trial Chamber.

The Prosecution case is set out fully in its final trial brief. In a nutshell, however, the case of the Prosecution is that the three accused were a part of a group of other ranked soldiers who overthrew the democratically elected government of President Kabbah on 25 May 1997. They released Johnny Paul Koroma from prison and made him their leader. The AFRC was established to govern Sierra Leone. Johnny Paul Koroma, as chairman of the AFRC government, invited Foday Sankoh, the head of the RUF, and the RUF to join him in the AFRC government and in running Sierra Leone.

This invitation was accepted and the senior leadership for the RUF joined the AFRC government.

As a reward for carrying out the coup all three of the accused were appointed to senior political positions in the AFRC government. All three accused were referred to as honourables. All three accused were members of the Supreme Council which was the highest legislative body in Sierra Leone. Brima and Kamara were made PLO's who had numerous government ministries under their control.

The Supreme Council consisted of both members of the Sierra Leone Army and of the RUF whose shared objective was to stay in

power at all costs, despite this leading to the commission of crimes.

The accused for the AFRC period all bear liability for the crimes which were committed during that period through their membership of a joint criminal enterprise with the RUF as well as liability under Article 6(3) for superior authority; as well, in some cases, liability under Article 6(1) for planning, instigating, ordering or aiding and abetting the commission of crimes.

After the removal of the AFRC government by ECOMOG on around 13, 14 February 1998 - which is commonly known as the intervention - it is the case of the Prosecution that although the AFRC and RUF split into two distinct factions, operating under two separate chains of command, just as the allies had done during World War II, they still worked together, their shared objective of reinstating the AFRC government at any cost. Hence, all the accused incur liability for their involvement in the JCE after the invention until the attacks on Freetown and Port Loko.

After the intervention the AFRC evolved from a political organisation into a purely military organisation with the same hierarchical structure as was in place in the AFRC government. Hence, once in the jungle, Johnny Paul Koroma as chairman of the AFRC continued as commander-in-chief. SAJ Musa, the next most senior of the AFRC government, became second in command, followed by the three PLO's, including Brima and Kamara and, finally, the other honourables, including Kanu.

In the jungle, after the intervention, it is the case for the Prosecution that the three accused were all senior commanders which was reflected in the bush ranks which they all held. Bar

Johnny Paul Koroma, who quickly became marginalised after the intervention, and SAJ Musa, no former SLA member of the AFRC government in the jungle held a more senior rank than Brima, Kamara and Kanu, during the time when the crimes were committed. They all at least detained the rank of brigadier.

By virtue of holding these command positions, as well as incurring liability under the JCE theory, the three accused also bear liability for the attacks on villages which they planned, ordered, instigated, or otherwise aided and abetted; they also bear superior responsibility under Article 6(3) as commanders.

Turning now to the crimes themselves. Based on the evidence before this Court, led by both the Prosecution and the Defence, most of the crimes charged in the indictment, such as unlawful killing, sexual violence, physical violence, use of child soldiers, abductions and forced labour, looting and burning, were committed.

Indeed, the crimes were committed by all sides to this conflict. This, however, in no way justifies such crimes by any of the parties to the conflict, and in no way excuses them from individual criminal responsibility for those crimes.

Based on the evidence before this Court, such crimes as charged in most of the villages in each of the districts cited in the indictment namely, Bo, Kenema, Kono, Kailahun, Koinadugu, Bombali, Freetown and Port Loko, were indeed committed.

Bar for a few villages where the Prosecution did not adduce evidence, this Court accepted that a reasonable trier of fact could convict on the Prosecution evidence at the Rule 98 stage.

The Prosecution submits that such evidence as adduced by the Prosecution has not been dented by the Defence case and that

based on all the evidence in this trial these crimes have been proved beyond a reasonable doubt against all of the accused.

The Defence themselves brought many victims to speak of the crimes which had been committed against them. Bar DBK-085, who was clearly lying about the amputation of his leg - which he freely conceded would have caused him to have bled to death - most of the victim witnesses from both sides were generally disinterested parties with no motive to lie; the evidence at times traumatic for them, simply recounted their personal story. They had no axe to grind against any of the accused; they were simply in the wrong place at the wrong time. The injuries caused and crimes committed against these victim witnesses can be believed.

The Prosecution submits that the main issue between the parties in this trial is not whether the crimes were committed but who bears individual criminal responsibility for the commission of those crimes.

The Prosecution submits that it has proved by evidence beyond a reasonable doubt that the three accused, Alex Tamba Brima, aka Gullit, Ibrahim Bazzy Kamara and Santigie Kanu, aka Five-Five, bear individual criminal responsibility for these crimes under the various modes of liability set out in the indictment.

And when the Prosecution speaks of justice, it seeks justice for the victims of those crimes, not revenge against the perpetrators. The Prosecution seeks justice to help assist the people of Sierra Leone in healing the wounds of the past brutal conflict.

The Prosecution does not propose to go through, in detail,

all the terrible crimes which were committed against the victims, although a few examples may be as illustrative points. These victims have given their evidence before this Court for their respective ordeals. Your Honours have seen the amputated hands and arms, have heard about the horror which befell the victims when their loved ones were killed or raped, often before their eyes.

The victims have described the burning of their villages, the loss of their possessions and being forced to work, often in conditions described as slavery. Your Honours have also seen the psychological impact which experience of these crimes have had on these victims, many of whom appeared before you in various states of distress.

In many ways, Your Honour, despite the grandeur of this courtroom with its high tech computers and video screens, this, in many ways, is an old fashioned criminal trial which could have been set in the 19th century. There is no magical, scientific evidence available to us such as DNA, no ballistic reports, no spent cartridges or murder weapons bearing fingerprints. What we essentially have before us is the evidence of witnesses and a number of significant documents.

The question, therefore, is which witnesses do you believe and which witnesses do you disbelieve; or how much of which witness's evidence can you believe, and how much can you discount? In some cases there will be honest mistakes due to trauma, lapse of time and other valid reasons. In other instances there will be outright, deliberate lies.

As professional judges you will be faced with the onerous task of wading through the voluminous transcripts of the evidence

of both the Prosecution and Defence witnesses in assessing who is telling the truth and who is lying.

This evaluation of evidence, the Prosecution submits, should be carried out by reference to all the evidence adduced during this trial and should not be read in isolation.

There may be parts of a witness's evidence which weight can be attached to and other parts of the same witness's evidence which may be totally discounted.

In evaluating evidence the Court will need to draw on its vast professional experience. In so doing, on occasion, the Prosecution submits that the application of both logic and common sense may be required. For example, what inferences can be drawn from all the evidence taken as a whole? What particular pieces of evidence, when taken with the evidence as a whole, logic and common sense dictate are simply not believable? The Prosecution agrees with Brima's closing brief at paragraph 38; that they -- that the evaluation of the guilt of each of the accused persons should be considered in the light of all the evidence presented by the Prosecution and each of the accused.

In the end it is a question of how much weight the Court can give to a particular piece of evidence of a witness based upon his evidence when read against all the other evidence produced before the entire trial and, ultimately, whether the weight of the Prosecution witnesses by far outweighs those of the Defence witnesses, including Brima himself.

The Prosecution submits that when all the evidence is taken as a whole the Court will come to the conclusion that the charges against all three accused have been proved beyond a reasonable doubt.

In assisting the Court in determining the weight to be attributed to certain pieces of evidence the Prosecution will briefly make the following submissions: Firstly, hearsay evidence is admissible. On its own it may not carry much weight but the Prosecution submits that the more such hearsay evidence is corroborated the more weight it attains. The weight would be higher if it was corroborating the evidence of a reliable eyewitness. But even where you have hearsay evidence corroborating hearsay evidence, it ought to increase the weight to be attached to the original hearsay evidence.

In a conflict as widespread as this one, where many people are displaced, it is understandable that victims may hear similar stories from other displaced persons. More weight can also be given to the hearsay evidence if it is corroborative of a consistent pattern of conduct, such as a manner in which a village is attacked. For example, an advanced troop followed by a rear troop, the looting of property in the village, the burning of the village and, finally, the abduction of civilians.

Secondly, an accused may be convicted on the evidence of one witness without corroboration; corroboration ought of course to raise the weight to be given to any piece of evidence.

Thirdly, evidence of prior inconsistent statements do not mean that the evidence of that witness, in its entirety, ought to be disregarded. This is more so when we consider the context in which the statements were taken, often through an interpreter, with the associated linguistic difficulties, the lapse of time between the event and the relative education of the witness, especially in respect of crime based witnesses who often come from rural and less developed backgrounds.

Fourthly, the evidence of Prosecution insider witnesses should not be given less weight simply because it is perceived that it may have given evidence for selfish reasons, for example, promises of non-prosecution. Without such witnesses it would be extremely difficult to prove cases of this nature where often the perpetrator is remote from the scene of the crime. This is more so as in this case where the individuals comprising the perpetrator group are part of an organisation, bound by their own codes of loyalty and honour such as the police and the military.

In such circumstances it is easier to go along with your comrades in arms rather than speak out against them. The weight to be attributed to these witnesses, the prosecution submits, should be based upon how their evidence withstood the test of cross-examination and how far it can be otherwise corroborated by other reliable Prosecution insider and crime based witnesses and documentary evidence, especially during the junta period.

Fifthly, the failure of the Defence to put its case to Prosecution witnesses is an important evidentiary consideration. As agreed to in the Brima brief there is an obligation on the opposing party, the Prosecution submits, that a failure to do so by the Defence can only lead to the inference that the later relied upon defence has a greater probability of being untrue and, as such, this failure to put the case should lead to less weight being given to defence ultimately raised.

Sixthly, there are a number of documents in this case. The relative weight to be attached to these documents would depend on many matters, such as whether they are originals, how much their authenticity was questioned in cross-examination, what the source of these documents was. The Prosecution submits that the weight

to be attributed to each document should be enhanced, if it can be corroborated by any other document or by any other evidence as led during the trial.

Turning to Alex Tamba Brima. In this case the first accused, Alex Tamba Brima, aka Gullit, gave evidence as an individual witness in his own defence. Brima gave extremely detailed evidence-in-chief which lasted for around two weeks, followed by cross-examination from his co-accused for a week and finally, cross-examination by the Prosecution for a little over a week.

Brima's evidence was fully tested. In essence, according to Brima's evidence, he did not play a role in the overthrow of President Kabbah's government on 25 May 1997. During the AFRC government period, from 25 May 1997 until around 13/14 February 1998, he held no position of authority and was too ill to carry out any of his functions as PLO 2. After the removal of the AFRC government by ECOMOG, on around 13/14 February 1998, according to Brima, he was initially under arrest in Kailahun until July 1998. From July to September 1998 he was in his village at Yarya, and from around September 1998 until the death of SAJ Musa at Benguema, at around the end of December 1998, he was under arrest.

After SAJ Musa's death, Brima's evidence is that he escaped along with Woyoh and Kanu and did not take part in the Freetown invasion.

The Prosecution at this stage points to the significance of Brima giving evidence as an individual witness, as opposed to a common witness. In doing so both the accused, Kamara and Kanu, had the ability to cross-examine Brima on his evidence as a whole

and, in particular, as it related to themselves and put to Brima any areas of his evidence which they disputed. In addition, they ought to have put their own case. Neither Kamara, nor Kanu, challenged any of Brima's evidence in any material respect insofar as it related to themselves. Brima in his own brief, at paragraph 194, states that it is established practice that a party in cross-examination puts its case to a witness called by an opposing party and that, those questions form the basis of the case for that side.

Both Kamara and Kanu were of course free to exercise their right of silence, as the burden falls on the Prosecution to prove the guilt of all three accused and not for the accused to prove their innocence. However, by not putting their case to Brima whilst he gave his evidence, in the event that either Kamara or Kanu later differed on any evidence given by Brima in setting out their defence case, the Prosecution submits that such a difference at a much later date can only reduce the weight which this Court ought to give to either Kamara or Kanu's version of events insofar as it differed from Brima's unchallenged earlier evidence.

The Prosecution submits that this situation has arisen in relation to some aspects of the Kanu defence which have been articulated in Kanu's final brief. This aspect of Kanu's final trial brief will be addressed later in these submissions.

What the Court, the Prosecution submits, must be aware of is that Alex Tamba Brima lied in large and material parts of his evidence which, when taken as a whole, must lead this Court to the conclusion that it can not rely safely on any part of Brima's evidence where he is trying to extricate himself from crimes of

which he is accused.

Significantly, so blatant have so many of Brima's lies been that even his final trial brief has addressed this issue at paragraphs 50 and 51. This, the Prosecution asserts, is a clear indication that Brima's own defence even realise that some of Brima's evidence, when faced with other evidence adduced during this trial, is just not believable.

In this respect it is important to note Brima's brief at paragraph 51 where it is asserted that lies can only strengthen or support evidence against the accused if the jury, here the judges, are satisfied that the lie was deliberate, it relates to a material issue and there is no material explanation for it.

On this basis the Prosecution submits that any lie which the Court believes that Brima has told during his evidence, if it contradicts the evidence of one of the Prosecution insider witnesses, which the Defence has cast doubt on, the credibility, reliability and weight of that Prosecution witness, that evidence must be elevated insofar as it differs with lies told by Brima.

In this case the Prosecution insider witnesses, in particular TF1-334, 184, 167, 045, 153 and Gibril Massaquoi. Now, let us take a closer, albeit brief look, at some of Brima's lies on material issues which ought to raise the credibility, reliability and weight to be attributed to the already mentioned Prosecution insider witnesses, and other Prosecution witnesses. The first is Brima's name not being Alex. A number of Prosecution exhibits bearing the name Alex Tamba Brima or Tamba Alex Brima, all bearing the signature of Brima, were put to him. Brima's explanation was that either he had not signed the document or that he had only signed under duress.

One of the persons who Brima alleged played a part in, and was aware of this duress, was Prosecution witness Lieutenant Colonel John Petrie. However, when Lieutenant Colonel Petrie gave evidence he was not challenged on this issue. At the time of the alleged maltreatment, Lieutenant Colonel Petrie was a serving member of the British Army of unimpeachable character. He had no motive to lie. When Brima made his initial appearance before Judge Itoe on 15 and 17 March 2003, he confirmed that his name was Tamba Alex Brima on each occasion. Inexplicably, Brima failed to bring his maltreatment to the attention of Judge Itoe or any other person until he appeared in this Court.

Numerous exhibited documents such as P6, P7, P34, P84, also show Brima's name as Alex.

Brima is clearly lying in the face of the overwhelming evidence given against him.

The second material lie given by Brima which must elevate the evidence of the insider witnesses, relates to his nickname not being Gullit. According to paragraph 179 of Brima's brief the issue of whether the first accused is or is not Gullit goes to the heart of the Prosecution case, thus it must be a material matter.

It, therefore, follows that if the Prosecution can prove that the first accused is Gullit, then it would be established, a significant part of its case.

A number of Prosecution exhibits bearing the name Alex Tamba Brima, aka Gullit, or Tamba Alex Brima, aka Gullit, all bearing the signature of Brima, were put to him. Brima's explanation once again was that either he had not signed the document or that he had only signed under duress. Again, one of

the persons who Brima alleged played a part in this, and was aware of this duress, was Lieutenant Colonel John Petrie.

Again, Petrie was not challenged on this issue when he came to give evidence. Why didn't Brima put his case at that time? Petrie even gave evidence that he knew Brima at the time of his arrest in 2003 as Gullit. In defence, witness TRC-01, who was a very senior officer in the SLA, knew Brima as Gullit. Another question that needs to be answered: Why didn't Brima ever put to a Prosecution witness that Gullit was a nickname of Komba, his brother, as belatedly alleged in his evidence? The answer is obvious: Brima waited until he heard all the Prosecution evidence against him and then decided to tailor his evidence in an attempt to meet the Prosecution's case.

So with regard to Brima's name of Alex, and his nickname Gullit, what should the Court give more weight to? The exhibit documents, Lieutenant Colonel Petrie's evidence? Defence witness TRC-01's evidence? Brima's initial appearance before Judge Itoe? Or Brima's evidence? It has been proven beyond any reasonable doubt that Alex Tamba Brima is also known as Gullit and Gullit has been lying in this respect.

At paragraph 20 of Brima's brief it is asserted that no documentary proof was produced to show that Brima was a staff sergeant. This is incorrect. Exhibit P6 and 7, dated 4 September and 18 September 1997 respectively, being copies of the Sierra Leone Gazette, name Brima as a staff sergeant. Furthermore, UN Security Council press release, bearing number SC6472, being Exhibit P84, also names Brima as a staff sergeant.

At paragraph 21 of Brima's brief it is stated that there is a clear confusion as to Brima's identity. The Prosecution would

submit that, based on the evidence referred to in its final trial brief, in particular from witnesses like TF1-153 who had known Brima from childhood, there is absolutely no doubt about the identity of Brima.

As indicated in the Prosecution's final trial brief, Brima lied about his occupation without the help of any insider. Was he a trader? A petty trader? A businessman? A miner, after leaving the army? Who knows? Brima certainly himself hasn't yet made up his mind. Again, Brima has lied about his ill-health. Brima did not suggest to a single Prosecution witness during cross-examination that he was so unwell that he was unable to perform his functions as PLO 2 during the AFRC government period. Why did Brima fail to put his case on this most crucial of issues? The answer, the Prosecutions submits, is because Brima made up this story about his illness when he came to give his own evidence. Brima produced neither a document nor a single witness to corroborate his alleged ill-health.

It would also be totally implausible to believe how Brima could have survived after the intervention due to the alleged ill-treatment which he claimed to have received, if he was so unwell. The Prosecution submits that Brima's lies are endless and it cannot go over them all. All these lies are set out fully in the Prosecution pre-trial brief.

The irony of course is that Brima in his own brief, at para 223, names TF1-334 as the Prosecution's most important witness. However, in reality, Brima himself turned out to be one of the most important witnesses for the Prosecution, with his evidence full of lies, implausibilities and twisting of the truth, much of which it served to elevate the credibility of other insider

witnesses where the evidence is at variance.

Indeed, so detailed was Brima's own testimony that it became almost impossible for any of his insider witnesses to fully corroborate him. They had only been told to say by Brima that he was under detention from Colonel Eddie Town during the advance to Freetown and that he disappeared after SAJ Musa's death. Thus, when questioned on the finer details of Brima's alleged escape at Goba Water, not a single witness could corroborate him; not a single witness saw him escaping or said he was under arrest at Goba Water.

DAB-156, despite being present at SAJ Musa's death, did not know that SAJ Musa was carried on a door. Despite being with Brima at the time when SAJ Musa died, DAB-156 could not corroborate Brima that he was standing at a structure. Brima claimed that TF1-184 was a cook. Well, most of the insider Defence witnesses gave TF1-184's true position as a security.

What was worse for Brima was that in this web of lies which he had spun, not only could his insider witnesses not corroborate his own evidence but they could not corroborate each other on key issues. For example, some witnesses gave evidence that they last saw Brima at Benguema, whilst others last saw him at Waterloo.

Your Honours, the Prosecution would submit that Brima's evidence as a whole cannot be given any weight.

Turning now to the coup and the Supreme Council. Firstly, why was Brima so determined to deny that he was not a person who carried out the coup, was not an honourable, was not a member of the Supreme Council, exercised no authority during the junta period as PLO 2 and remained a lowly corporal? The Prosecution submits that Brima was so vehemently denying all these roles

because he knew full well that they would have two fatal consequences if proven to be true.

Firstly, he knew that this would place him in a senior leadership role in the AFRC government and lead him open to liability for the policies of the AFRC government which amounted to, and led to, criminal conduct.

As such the Prosecution agrees with Brima in paragraph 103 in his closing brief, that during the AFRC government period, his role was a political one, and also as articulated further in his brief, at paragraph 101, that at the top of the chain of command will be found the political leaders who may define the policy objectives which will be translated into specific military plans. Kamara, at page 56 and 62 of his brief, also admits being a part of the de facto AFRC government. Such political leaders in the case of the AFRC government included Brima, Kamara and Kanu.

The second reason why Brima was so vehement in his denial that he did not hold a senior position in the AFRC government was because he was well aware of the military concept of position superseding rank. As Defence witnesses DAB-018 and DBK-131 gave evidence that honourables, due to their positions as honourables, were senior to other soldiers, holding a higher rank than them.

For example, Honourable Momoh, aka Dotti, despite being a private at the time of the coup, could command a convoy of 60 soldiers, including officers, from Kono to Freetown. He was also superior to DBK-131 due to his position as an honourable, despite DBK-131 holding a higher rank. Brima knew that once the above proposition of position superseding rank was accepted, it would align with the Prosecution evidence that after the AFRC government was ousted from power Brima, Kamara and Kanu, on

account of their senior positions in the AFRC government hierarchy, would all hold senior command positions in the evolving AFRC military organisation, after the AFRC was ousted from power.

With regard to the coup Brima suggests, at paragraph 167, that no weight should be given to the statements of both Zagalo and Gborie. Exhibit P88 and 89. These statements are statements of fact and make it absolutely clear that Brima, Kamara and Kanu were all members of the group 17 other soldiers who carried out the coup.

Interestingly, both these statements are referred to in both Keane's book, "Conflict and Collusion in Sierra Leone", and a TRC report which Major General Prince attached so much weight to. If these statements are to be given no weight then presumably by the same token Major General Prince's report should be given no weight as it relies mostly on similar statements from the TRC report and Keane.

The Prosecution submission is that these documents should be given weight, especially as in large part they are corroborated by witnesses who gave evidence before this Court in respect of the coup makers, such as TF1-334, 167, 184 and Gibril Massaquoi. These witnesses all confirm that Brima, Kamara and Kanu were a part of the group which carried out the coup.

It is also significant that a large number of Defence witnesses gave evidence that they heard Gborie's radio broadcast, just, he admits, to making it in his own statement.

The Prosecution submits that taking the evidence as a whole there is overwhelming evidence that Brima, Kamara and Kanu were part of 17 other ranked soldiers who carried out the coup.

The Court may well ask itself why Brima was so adamant about denying his involvement in the coup. After all, it is not a crime within the purview of the Court Statute. The Prosecution would say that Brima made this denial because he knew that it was his involvement in the coup that led to his position of power within the AFRC government.

At paragraph 163 of Brima's closing brief it is stated that only TF1-334 gave evidence that the accused were members of the Supreme Council. This is incorrect. Gibril Massaquoi, who is also a member of that body, gave evidence that all three accused were also Supreme Council members, as did other Defence witnesses, including TRC-01 and DBK-05.

Apart from the above oral documentary evidence the accused were members of the Supreme Council was found in "The Pool" newspaper, which listed full Supreme Council members, being exhibited at P93. Brima's Defence, at paragraph 165 of their brief, urges the Trial Chamber to dismiss this exhibit as irrelevant. The Prosecution submits that P93 is a highly relevant document and is corroborated as regards the composition of the Supreme Council and the fact that all three accused were members of the Supreme Council by witnesses TF-334 and Gibril Massaquoi.

It is further corroborated by a press release of the UN Security Council on Sierra Leone, dated 28 January 1998, bearing number SC/6472, and being Exhibit P84, where all three accused are named as being members of the Supreme Council. Presumably the Defence see this Security Council press release also as irrelevant. Or, perhaps like Brima, they're of the view that its author was put, to put it politely, lying.

As such there is overwhelming oral and documentary evidence to show that all three accused were members of the Supreme Council. At paragraph 166 in Brima's brief, it is asserted that P34, being Minutes of a Council meeting, indicate that decisions had already been made. A close reading of P34 clearly show that the decisions were taken at the meeting. Again, this undermines Brima's assertion that the Council only made recommendations. Although, incredibly, Brima couldn't remember the Council actually making any recommendations, despite being present at numerous meetings.

The Prosecution submits that it has proven beyond a reasonable doubt, both through live witnesses and documentary evidence, that Brima, Kamara and Kanu all held senior positions in the AFRC government as honourables, members of the Supreme Council, where Brima and Kamara, holding particular senior positions as PLO 2 and 3 respectively, being only one position behind SAJ Musa and Johnny Paul Koroma.

Turning to the JCE. With regard to the facts of the case the evidence has undoubtedly shown that there existed a JCE between the SLA and the RUF, both before and after the intervention. The evidence has shown that an AFRC government existed between 25 May 1997 until about 13 February 1998. That this AFRC government was made up of a Supreme Council, comprising of both the senior SLA leadership, including the three accused, and the senior most RUF leadership.

The Supreme Council was the highest legislative body in Sierra Leone which created the policies which were implemented through the various secretary of states. The objective of the joint criminal enterprise was for the RUF and AFRC to retain,

remain in power, at all costs, even if this led to the commission of crimes.

The Defence suggests that relations between the RUF and the SLA were not good throughout the period of the AFRC government. The Prosecution submits that the evidence shows that no matter how strained that relationship may have become, it was still a working relationship, a relationship based on their mutual desire to remain in power at all costs so that they could continue to exploit the diamond wealth of Sierra Leone.

If the relationship between the two factions was so bad then why was it that one of the factions did not withdraw, entirely, from the AFRC government, leaving it to collapse before the intervention? Instead, the AFRC government, consisting of both the SLA and RUF, continued to work together for a period of nine months until they were forcefully removed from power. There is no evidence to suggest that, had it not been for the intervention, the AFRC government, consisting of both the RUF and SLA and the three accused, would not have continued functioning.

After the AFRC was forced from power the objective of the two factions was to regroup and to return to recapture Freetown and reinstate the AFRC government. This is illustrated by the evidence that Kamara and Superman worked together in Kono, albeit under a separate command structure. Likewise, SAJ Musa worked with Superman in Koinadugu until they split in around late October, early November. As during the AFRC government period, relations may have remained strained after the intervention between certain members of the JCE over certain periods of time, but this was always overcome by the shared intention of the two factions to retain power at all costs.

The most compelling evidence of the shared objective of the RUF and the SLA's intention to retain power after the intervention, can be found in the radio communications between Brima and the senior RUF leadership, after the death of SAJ Musa, where Brima and the senior RUF leadership planned to jointly attack Freetown. Even when Brima was compelled to attack Freetown without RUF support, Brima keeps in constant radio contact with the RUF leadership in anticipation of the RUF forces being able to reinforce him and his men in Freetown.

The clear expectation is that Brima and his SLA faction will take control of Freetown with the RUF and with a view to governing Freetown jointly with the RUF, as had been done before under the old AFRC government. Even after the SLA's, under Brima, were driven out of Freetown in January 1999, they immediately link up with the senior most RUF leadership and undertake a two-pronged joint attack on Freetown. Although this joint attack failed, it provides solid evidence that the two factions shared the same objective; to reinstate the AFRC government at all costs.

Turning to Brima's alibis. Brima alleges these alibis after the intervention. According to Brima's brief, at paragraph 206, the Defence will not go into each and every witness who gave evidence in support of Brima's alibi. The Prosecution submits that the reason why each and every witness was not gone into was because there were hardly any of them. To have done so in writing would have been to expose to the Court how few witnesses actually supported Brima's various alibis.

Even the few witnesses who did support Brima's alibis were woefully inadequate in support of such alibis, as has been set

out in detail in the Prosecution final brief.

Brima's first alibi was that he was under detention by the RUF in Kailahun from around mid-February to July 1998. This alibi has clearly been concocted to annul any liability which Brima has for the crimes committed in the Kono and Bombali District after the intervention. The cleverness of the alibi is that it is true in part. It merely twists the truth to fit Brima's needs.

The Prosecution accepts that Brima was in Kailahun from mid-February until around the end of April 1998. The Prosecution, however, submits that Brima has lied by deliberately extending his alibi for Kailahun from the end of April into July 1998, and by claiming throughout this period to be under an arrest or detention situation.

It is significant that for the whole of this period, from mid-February to July, nearly six months in total, Brima only produced two alibi witnesses; one saw him for five days and the other for only one day. Neither could say in which months they saw Brima. The Prosecution submits that the Prosecution evidence proves, conclusively, that Brima returned to Kono with logistics, no later than early to mid-May, to reinforce the joint SLA and RUF factions in Kono.

Brima's next alibi is that he travelled under arrest from Kailahun to Kono and then went to his home village of Yarya, where he remained for about three months. This alibi was again concocted to shield Brima from any liability for the crimes committed in Bombali and at Camp Rosos and Colonel Eddie Town. For this alibi Brima produced two alibi witnesses who spoke solely about his alleged stay in Yarya. Significantly, neither

of these two alibi witnesses could corroborate the circumstances surrounding the shooting of Brima's brother, Komba, despite both of them claiming to be eye witnesses. These witnesses are clearly lying, as is Brima.

Defence witness, DBK-012, who was allegedly with Commander 0-Five at the time of the arrest of Brima, did not even learn about Brima's arrest until he reached Colonel Eddie Town. The Prosecution submits that this is totally implausible, bearing in mind Brima's high profile, and the fact that Brima himself claimed to be surrounded by about a hundred soldiers at the time of his arrest.

Brima then claimed to be under arrest from his arrival in Colonel Eddie Town in around November 1998 until the death of SAJ Musa around 22 December 1998 when Brima, Woyoh and Kanu escaped to Goba Water to Makeni. According to Brima, who was either on route to Makeni or in Makeni at the time of the Freetown invasion and did not participate in the invasion in Freetown in January 1999, not a single witness gave evidence in support of this alibi. This alibi is a lie when viewed against the weight of the Prosecution evidence to the contrary.

Further support for this alibi being a lie is found in the brief of Kanu who does not support Brima's alibi that all the accused were under arrest during the advance from Colonel Eddie Town, until Brima and Kanu escaped to Goba Water. Furthermore, Kanu does not state that he was in Freetown during 6 January invasion -- does not state that he was not, rather, in Freetown during the January invasion.

Kanu in his brief has taken the line that he had no superior authority due to his role of looking after the women,

rather than having no superior authority because he was under arrest or not present in Freetown.

These are not alternatives. At paragraph 271 Kanu even relies on the evidence of Prosecution witness TF1-334, that whilst he was at Camp Rosos his role was to look after the women. This is a significant stance to take because in so relying on TF1-334, Kanu is admitting both his presence and role at Camp Rosos; he is corroborating TF1-334 and he is exposing those insider Defence witnesses who allege not to have seen him at Camp Rosos as lying in respect of this particular part of their evidence.

Kanu is not suggesting that he was arrested whilst at Camp Rosos. At paragraphs 268 to 269 and 279, relying on the evidence of DSK-133, Kanu takes the position that he was looking after the women on the advance from Colonel Eddie Town to Freetown. This is supportive of the role which he ascribed to himself at Camp Rosos. Again, at paragraph 443, Kanu's Defence asserts that after the house arrest, which was at Colonel Eddie Town, the position of Kanu was considerably marginalised on the advance to Freetown.

Based, therefore, on his own brief, Kanu has taken the position he was not under arrest during the advance to Freetown. Instead, Kanu was looking after the women and his position was marginalised.

This is an important admission. This being the case, the Prosecution submits that, not only does it contradict Brima's evidence that all three accused were under arrest from Colonel Eddie Town to Freetown, but also supports the Prosecution's assertions, as maintained by the Prosecution in its own brief,

that the insider Defence witnesses, who gave evidence that all three accused were under arrest from Colonel Eddie Town to Freetown, lied about the position of the accused, especially Kanu, during the advance. The weight to these insider witnesses should be reduced accordingly.

Other significant admissions made by Kanu in his brief can be found at paragraph 210 and 211 when discussing the command position of Kanu. Kanu's defence, relying on the evidence of TF-167 that, at the meeting at Orugu Village, which was called and chaired by Brima "to put in place our move to Freetown," Kanu passed on orders because he was close to Brima. In this respect, Kanu is corroborating the evidence of TF-167 regarding Brima's command position prior to the attack on Freetown.

Again, at paragraph 212, Kanu's defence relies on the evidence of Gibril Massaquoi of a meeting which took place in Freetown during the invasion to show that Kanu's role was a political one, as opposed to a command one. Based, therefore, on his own brief, Kanu has taken the position that it was Brima who planned the attack on Freetown after SAJ Musa's death and that Kanu was present in Freetown, albeit in a political role. This being the case, the Prosecution submits not only does it again contradict Brima's evidence that Brima did not hold a command position on the march from Colonel Eddie Town to Freetown because he was under arrest, but also supports the Prosecution position that the insider Defence witnesses who gave evidence that Brima had no command position on the advance from Colonel Eddie Town to Freetown and was under arrest, lied about the positions of Brima and Kanu. Again, this must reduce the weight attributed to these Defence insider witnesses.

By placing reliance on Gibril Massaquoi's evidence that, in Freetown, Kanu had no command responsibility --

MR MANLY-SPAIN: May it please Your Honours.

PRESIDING JUDGE: Yes, Mr Manly-Spain.

MR MANLY-SPAIN: Your Honours, we are astonished. I don't know whether counsel is interpreting our submissions, but what we have submitted is not that we are relying on these pieces of evidence. We have submitted that they are contradictions in the Prosecution's evidence.

PRESIDING JUDGE: Mr Manly-Spain, these are closing submissions, and it's not permitted to interrupt. You're going to get your chance to explain anything that the Prosecution has said which you don't agree with.

MR MANLY-SPAIN: As Your Honour pleases.

PRESIDING JUDGE: There is a correct time and place to do that.

MR MANLY-SPAIN: As Your Honour pleases.

MR AGHA: Placing reliance on Gibril Massaquoi's evidence that, in Freetown, Kanu had no command responsibility, the Prosecution submits that Kanu has accepted not only that he, but also Brima and Kamara, were also in Freetown, pursuant to Gibril Massaquoi's evidence throughout the Freetown invasion. In his evidence, Gibril Massaquoi puts all three accused, Brima, Kamara and Kanu, in command positions during the Freetown invasion.

It is also highly significant that Kanu does not rely on Brima's evidence that Kanu escaped with Brima at Goba Water and went to Makeni and did not participate in the attack on Freetown. Nowhere in his brief does Kanu suggest that he ever escaped with anyone on the way to Freetown.

Nowhere in Kanu's section on superior authority does it say that Kanu was not present in Freetown during the invasion and, therefore, could not have any command role. On the contrary, he quotes the position which other witnesses ascribed to him, whilst in Freetown, to prove that he had no command responsibility.

The command position of Brima in the jungle after the intervention is also emphasised by Kanu in his brief at paragraph 198 when he relies on TRC-01's evidence that TRC-01 knew that Brima held a command position in the jungle. The Prosecution emphasises that TRC-01 was called as a common Defence witness for Brima, as well as other accused. TRC-01 was not challenged on his evidence by the Defence and the Prosecution submits that he was both a reliable and credible witness.

Kanu, in his brief, was particularly quoting examples of Prosecution witnesses to support his case that Kanu had no command responsibility. He was not looking for contradictions. It was in the section on command responsibility, and these were the reasons why he said he had no command responsibility, because he was looking after the women, or a politician.

As mentioned earlier, this belated defence of Kanu that he was not under arrest and that he was in Freetown during the invasion, albeit in both instances he claims to have had no command responsibility. The Prosecution also submits it has significant implications for the weight to be attached to Kanu's own defence.

Why has Kanu, until his closing brief, taken until now to differ with Brima's evidence? Why didn't Kanu challenge Brima during his evidence that he was not under arrest during the march from Colonel Eddie Town to Freetown, and that he was looking

after the women? Why didn't Kanu challenge Brima's evidence that he, Kanu, did not escape with Brima at Goba Water and did not take part in the Freetown invasion?

The answer, the Prosecution submits, is that Kanu had not decided until the very end of the trial what kind of defence he would run and where his best defence lay; by supporting Brima's evidence or abandoning Brima's evidence. The weight according to Kanu's defence case should, therefore, be considerably reduced.

Turning now to the presence of all three accused in Kailahun and Koinadugu after the intervention. The Prosecution submits, under the theory of JCE, it is not necessary for the accused to be physically present when crimes are committed. This is fully explained in the Prosecution final trial brief. Suffice it to say that the Prosecution accepts that Brima, Kamara and Kanu were not present in the districts of Kailahun and Koinadugu, save for the village of Yifin, in Koinadugu, after the intervention when crimes were committed in those districts. The Prosecution submits, however, that all three accused bear individual criminal responsibility under the theory of a joint criminal enterprise.

Turning now to the presence of all three accused in Kono, Bombali and Freetown after the intervention. This is dealt with extensively in the Prosecution's final trial brief. Once again, it is a question of weighing the evidence of the Defence and Prosecution witnesses, and determining who to believe, whose evidence should be given most weight.

For Kono, during the crimes committed in the indictment after the intervention, it is the case of the Prosecution that only Kamara was present when the crimes were committed. Brima

and Kanu, however, can still be held liable for those crimes under the theory of a joint criminal enterprise.

Kamara relies on the fact that no Defence insider witness saw him there. As mentioned in the Prosecution final trial brief, and especially now, the evidence of these insider witnesses cannot be given much weight in respect of such a crucial area as to whether or not Kamara was present in Kono.

As anticipated by the Prosecution, Kamara now eludes to a potent alibi at paragraph 66 and 70 of his brief. The Prosecution would draw the Court's attention to the positive obligation on Kamara, under Rule 67, to notify the Prosecutor of an intent to enter a plea of alibi as early as reasonably practicable and, in any event, prior to the commencement of the trial.

The issue of alibi arose loud and clear in this trial after Brima gave evidence and the Prosecution filed a motion for sanctions against the first accused for being in breach of Rule 67. The Defence for Kamara, in these circumstances, was well aware of its positive obligation to plead alibi. However, the Kamara defence deliberately and willfully ignored this obligation. The Prosecution submits that, although by not pleading alibi under the Rules, Kamara is not stopped from relying on it as a defence. The fact that Kamara only alludes to and relies on the defence of alibi at the close of the trial permits the Court to draw the inference that this alibi is a fabrication and should be given little, if any, weight.

At paragraph 105 of his brief, Kamara states evidence subsists before the Court that Kamara spent much of his time at his village in Port Loko between February 1998 and the invasion

of Freetown. This statement is totally incorrect and is not supported by hardly any evidence relevant to the time when the crimes were committed after the intervention until the invasion of Freetown and the retreat to Port Loko.

No witness who appeared before this Court gave evidence that he spent more than a single day with Kamara at his village after the intervention. There is no evidence of anyone even seeing Kamara in his village after the intervention for any significant period of time, let alone evidence that Kamara spent much of his time in his village.

Significantly, not a single witness was produced by Kamara to say where he was during the Kono, Bombali, Freetown or Port Loko crime base periods. The Defence evidence is that he was not seen, not that he was not there. This begs the question: Why was such evidence not produced before this Court? If, say, Kamara was in his village, why didn't he call as witnesses the people who he was with? What about his wife? A brother? A neighbour, who lived over the road. A farmer he saw every day? No one was called. Kamara could have done this without impinging upon his right to silence, but he failed to do so.

It is correct that the onus is on the Prosecution to prove its case to the required standard and not for the accused to prove his innocence, but what the Court should, as a matter of common sense and logic, ask itself is this: In the light of the overwhelming and reliable Prosecution evidence, that Kamara was in Kono, Bombali, Freetown and Port Loko commanding troops at the time when the crimes were committed, why would a person who had a genuine alibi not rely on it and call witnesses in support of it? Why run the risk of conviction if you had available perfectly

good evidence to support your alibi? After all, Kamara is not facing minor traffic offences before this Court, but, rather, charges relating to some of the worst crimes known to mankind, a conviction for which could send him to jail for an extensive period of time.

Furthermore, why did Kamara fail to put his case that he was absent in Kono, Bombali, Freetown and Port Loko to Prosecution witnesses who placed him in command positions in Kono, Bombali, Freetown and Port Loko whilst crimes were being committed after the intervention? Why didn't the Defence for Kamara confront Prosecution witnesses TF-167 and TF-334 and say to them that Kamara was never in Kono, he was never in Bombali, he was never in Freetown, he was never in Port Loko, and they're lying? This was not done. The Prosecution submits that the answer why no one was called to support Kamara's so-called potent alibi is because Kamara was where the Prosecution insider witnesses say he was whilst these crimes were committed: He was in Kono, Bombali, Freetown and Port Loko holding command positions. He failed to put his case about his absence at the time of the crimes in Kono, Bombali, Freetown and Port Loko because his original case was that he was actually present in Kono and Freetown.

A telling example of this can be found during cross-examination of Prosecution witness TF1-334 by Kamara's Defence counsel on 22 June 2005 at pages 5 to 11. TF1-334 had earlier given evidence-in-chief that Kamara was at State House during the Freetown invasion with a young girl, other than Kamara's wife Anifa. In order to disprove the evidence of TF1-334 that Kamara was with a young girl, learned counsel for

Kamara adopted the line of questioning that Kamara's wife was with him in Freetown and Kono, so it was not likely that Kamara would have another young lady with him in either Freetown or Kono. At that time, it was clearly the case of Kamara, based on the questions put to Prosecution witness TF1-334 in cross-examination, that Kamara was in Freetown during the invasion in January 1999, but that he was with his wife and, therefore, he couldn't possibly have been with a young girl.

Now it seems that Kamara has changed his defence to one of absence and a potent alibi. The Prosecution submits that, coupled with the fact that Kamara has produced his alibi at the last minute, and earlier put his case through cross-examination that he was in Freetown at the time of the invasion, little, if any, weight should be given to Kamara's new defence of alibi as he is now clearly lying about his whereabouts, having gone back on his original position, as articulated by his Defence counsel in cross-examination.

Even Kanu, in paragraph 358 in his brief, when indicating the minor role which Kanu allegedly played in terms of command, relies on a meeting in Masiaka after the intervention, where an operation is planned by SAJ Musa to go to Bo. Kamara, Issa Sesay, Hassan Papa Bangura and Foday Kallay are all at this meeting. Significantly, all of these individuals were part of the joint RUF/SLA attack on Kono in late 1998.

The Prosecution evidence of Kamara's presence in Kono is founded on TF-334, TF-167. TF-334 was present in Kono and would often meet with Kamara because he was working with the commander directly under Kamara. TF-167 was Kamara's chief of security from the Freetown intervention and throughout the period whilst

he was in Kono. These Prosecution insider witnesses knew Kamara and have no reason to be disbelieved. Kamara was present in Kono whilst the crimes were committed after the intervention.

Kamara was a senior-most SLA commander in Kono until the arrival of Brima from Kailahun in late April, early May 1998 and bears individual criminal responsibility for the crimes committed in Kono between February and May 1998.

Let us now turn to Savage and Staff Alhaji. The evidence shows that both Savage and Staff Alhaji were both SLAs. It is the case of the Prosecution that Savage and Staff Alhaji remained SLAs throughout the period that they were in Kono and were directly under the command of Kamara.

Evidence led by the Prosecution shows that Savage was in command of an SLA battalion at Tombodu Town under Kamara, that Kamara used to go to Tombodu Town whilst Savage was there, and Kamara used to receive operation reports from TF1-334's commander who was, in effect, Kamara's second in command, about the various SLA battalions spread around Kono.

There is no doubt through these reports Kamara received, or the notorious well-known nature of the crimes which Savage was committing in Tombodu Town that Kamara knew that such crimes were being committed or were about to be committed; Kamara is therefore liable for Savage's crimes as his superior.

Even if it can be argued that Savage was under the command of Superman, since Kamara and Superman were working together, at a minimum, Kamara should have reported the fact that Savage was committing crimes to Superman for investigation. Instead, he did nothing.

In any event, it is the case of the Prosecution that Savage

remained an SLA throughout the conflict, and that is why he was attempting to join up with Brigadier Mani's group in Makeni after he had left Kono. Even Kanu, in his brief at paragraph 354, concludes that Savage formed a separate SLA group in Bombali with Brigadier Mani; the inference being that Savage was an SLA in Freetown at the time of the intervention; Savage was an SLA when he was in Kono between February and May 1998; and Savage continued to be an SLA when he went to Bombali from Kono late in 1998.

Would this be a good time if I'm coming to Bombali, or should I proceed, Your Honour?

PRESIDING JUDGE: I was thinking of taking it up to 11.00.

MR AGHA: That's fine, Your Honour.

PRESIDING JUDGE: But if you don't want the interruption at all, we'll go straight through. I will leave it to you. You might like to finish and we'll have a break when Mr Staker is about to start.

MR AGHA: Okay, Your Honour, I shall keep going until the end.

Turning to Bombali. Brima claims at paragraph 241 of his brief that the identification of Tamba Brima is open to question. The Prosecution finds this assertion surprising, to say the least. The Prosecution has already proved that Brima's alibi of the attacks on Bombali are not sustainable in the face of the Prosecution's evidence to the contrary. The Prosecution's evidence, as provided by TF1-334 and 167, are conclusive as to Brima's, Kamara's and Kanu's presence in Bombali during the attacks on Karina and other villages.

TF1-184 was even told about these attacks carried out by

troops under Brima's command. Furthermore, numerous crime base witnesses hear the name of Gullit. Interestingly, Brima, in his closing brief, refers at paragraph 245 to Adama Cut Hand. It is the case for the Prosecution that he has led sufficient evidence to prove that Adama Cut Hand was an SLA who accompanied Brima through Bombali to Camp Rosos and was committing crimes in Bombali under Brima's command.

The Bench should be in no doubt that the evidence has overwhelmingly shown that all the accused travelled as commanders with their troop through Bombali attacking villages on the way. Their intent was to spread terror and punish the civilian population for not supporting them. Their ultimate objective was to retain power. Unfortunately for the civilian population of Karina, they were caught in the eye of the storm. The evidence demonstrates that Karina was attacked because it was the hometown of President Kabbah. Brima wanted Karina to be a demonstration of the power of his forces and to let the people know that the SLA were returning.

Brima planned the attack on Karina, ordered Karina to be burnt down, civilians to be killed, amputations to be carried out and strong men to be abducted in the presence of Kamara and Kanu, both of whom held senior command positions. Brima's orders were followed: Houses were burnt, civilians were killed, civilians had their hands chopped off, strong men were abducted. All of the accused were present in Karina when the above crimes were committed by forces under their command. Kamara even personally burnt five girls alive in a house.

When Brima sent a team to Mateboi to have the civilians join the forces at Camp Rosos, Arthur returned with amputated

hands and Adama Cut Hand returned wearing a necklace made with human hands. None of the accused said anything to either Adama or Arthur.

As can be seen by Brima's orders to attack Karina, the accused positively encouraged these crimes. They were certainly not going to admonish their soldiers for committing crimes. Later, in Port Loko, Kamara was congratulating soldiers for a job well done after they had decorated Mamamah with dead civilians.

This was the manner in which the three accused chose to conduct their campaign in both Bombali and Freetown against the civilian population. The attacks on the villages in Bombali are strikingly similar and create a consistent pattern of how the accused operated against civilians throughout the campaign. Namely, attack their village, kill them, amputate them, burn their houses and abduct the strong men and children.

The accused were trained soldiers, all of whom knew it was wrong to kill innocent civilians. The accused did not have to conduct their campaign in this brutal murderous way. They could have confined themselves to military targets. The accused, however, deliberately chose the option of attacking civilians, because it was part of their objective to retain power at all costs. Civilians, therefore, had to be taught through terror and collective punishment to support the SLA faction and not to support ECOMOG or President Kabbah.

Hence, the calling card of amputating people's hands and sending them off to Pa Kabbah for new ones, the hanging of messages around civilians' necks after amputating their arms, warning civilians not to support ECOMOG. The message was clear. Through this terror and violence, the SLAs and RUF were to retain

power, and anyone who did not support them in that way was to be eliminated.

It is suggested in Brima's brief, at paragraph 247, that TF1-334 was incorrect when he gave evidence that Brima killed the imam of Karina Town mosque. The Prosecution submits that TF1-334 did witness Brima kill the imam of Karina Town mosque. Alternatively, the evidence has shown that there were many mosques within Karina section, and it may be that TF1-334 was mistaken when he gave evidence that the first accused killed the imam of Karina Town.

What the Prosecution submits, however, is that TF1-334 is not mistaken in his evidence that Brima killed an imam for one of the mosques in Karina. The fact that TF1-334 may have misidentified the name of the mosque does not excuse Brima for his liability for the killing of the imam of that mosque.

Turning to Freetown. Brima denies being present in Freetown during the January 1999 invasion. Brima pleaded alibi but no witness confirmed that Brima was with him at the time of the Freetown invasion. Kamara as already mentioned, has now alluded to a potent alibi, but, like Brima, no witness confirmed that Kamara was with him at the time of the Freetown invasion. Indeed, as has been shown when Kamara earlier put his case to TF1-334, it was on the basis that Kamara was in Freetown during the invasion but was with his wife, rather than young girls.

Both Brima and Kamara are therefore relying on the fact that no Defence insider witness saw them in Freetown during the invasion. Though, significantly, DAB-156, when pressed to tell the truth, admitted that she took food to Kamara at State House during the Freetown invasion. This is in line with the

Prosecution case that DAB-156 was Kamara's cook and not Junior Lion's, as she claimed.

As discussed in the Prosecution final trial brief, little weight can be given to most of the evidence of any of the Defence insider witnesses who came to this Court to lie on behalf of the accused, as their former brothers in arms and commanders.

The Prosecution submits that both Brima and Kamara were present during the Freetown invasion, occupation and retreat in January 1999, as was Kanu, through an abundance of witnesses who personally knew Brima and Kamara and Kanu, such as TF1-334, 184, 153, and Gibril Massaquoi, who Kanu even seeks to rely on to play down his role in Freetown in terms of command responsibility.

In short, the Prosecution has, through numerous reliable witnesses, and their corroboration of each other, proved beyond a reasonable doubt that troops under the command of both Brima and Kamara committed the crimes spelt out in the Prosecution's final trial brief during the invasion, occupation and retreat from Freetown.

Kanu was also a commander in Freetown. Kanu, in his final trial brief, does not deny that he was in Freetown during the invasion of 6 January 1999. Instead, he denies liability for any of the crimes committed in Freetown on the basis that either the witnesses against him were unreliable, and therefore cannot be believed, and that he did not have command responsibility. Throughout his brief on command responsibility Kanu, mistakenly or otherwise, relies on evidence of Prosecution witnesses to show that he had no command responsibility but, at the same time, that evidence, tellingly, also shows that he was not under arrest and

was not in a position, as Brima said in his evidence.

It is the submission of the Prosecution that this position of Kanu, of him only having a political role in Freetown, is entirely unsustainable on the evidence. The Prosecution has led evidence from Mansofinia onwards that Kanu held a senior command position culminating in his appointment as third in command after the death of SAJ Musa at Benguema in late December 1998.

Kanu was clearly identified as being in Freetown by TF1-334, TF1-184, Gibril Massaquoi and TF1-153, all of whom knew Kanu from before, either from the army or during its membership of the Supreme Council during the AFRC government period.

In particular, TF1-184 knew Kanu as he trained him in the army and even went on a peacekeeping mission with him to Liberia. Significantly, it is the same TF1-184 who knew Kanu so well, who gave evidence of Kanu demonstrating to other men under his command how amputations were to be carried out. For this crime, Kanu bears personal liability for actually committing the offence, an offence which Kanu denies liability for in his brief. Thereafter, these demonstrations of amputation of arms by Kanu, some of those SLAs who were privileged enough to see Kanu's demonstration, demonstrated the amputations for arms on ten other civilians in Kanu's presence.

The above is a clear example of Kanu instigating a crime and failing to prevent it and, in fact, positively encouraging it. Importantly, when Kanu carries out this crime, he's acting on the orders of Brima following the instant of the soldier being killed in the Fourah Bay area which totally belies Kanu's argument that he only held a staff function, or was looking after women, or played only a political role. Be in no doubt Kanu also

had command responsibility throughout Bombali and Freetown.

It is also significant that TF1-184 had no motive to lie against Kanu, bar the alleged special treatment issue, which will be alleged later.

The Prosecution submits that it has proved beyond a reasonable doubt that all three accused were guilty of the crimes committed in Freetown. Again, the Bench should be in no doubt that the evidence has been overwhelming that all three of the accused were in Freetown, and were in command and were giving orders. After SAJ Musa died, Brima, as commander, endorsed SAJ Musa's orders that police stations should be burnt down; police, Nigerians and collaborators should be targeted. This was done.

The accused all personally participated in crimes in Freetown. Brima personally shot two out of 14 ECOMOG soldiers at State House. The other 12 he ordered to be shot. Brima ordered the burning of Freetown during the retreat. Kamara was in command of the burning at Kissi Road and Annie Walsh. Kanu, as mentioned earlier, personally carried out amputations. He was distributing petrol and ordered for the war candle to be put on, namely the burning of houses.

Many other crimes which the accused bear individual responsibility for in respect of Freetown are fully set out in the Prosecution's final trial brief.

Turning to Port Loko, it is the case of the Prosecution that Kamara was present in Port Loko and was in command of the troops who were committing the crimes in the Port Loko District, as mentioned in the Prosecution final trial brief. The Prosecution accepts that both Brima and Kanu were absent, but asserts that they would still incur individual criminal

responsibility under the theory of JCE.

Kamara's identity has been positively confirmed by TF1-167, who knew him well as his former chief of security since the AFRC days in Freetown, and TF1-334, who was moving with Kamara's second in command in Port Loko. There can be no doubt that Kamara was present and in command of Port Loko.

Both witnesses TF1-167 and TF1-334 give extensive evidence of Kamara giving orders, which led to the commission of crimes, and even congratulating his subordinates for a job well done when they reported to him about the commission of these crimes.

Citing just one example, at Mamamah, Kamara gave orders to decorate Mamamah Town, meaning that civilians captured should be executed and displayed at the town junction. Fifteen bodies were found chopped and lying dead at Mamamah. Kamara's reaction on seeing this was to congratulate his subordinates for a job well done. Kamara has produced no alibi witness for Port Loko. He only denies his presence.

Kanu, however, at paragraph 359 in his brief, when asserting that Kanu had no command position in the West Side relies on the evidence of TF1-167, that TF1-167, Kamara and Hassan Papa Bangura, went from the West Side to visit Charles Taylor after the signing of the peace agreement. Such reliance on TF1-167 corroborates TF1-167 that Kamara was in the West Side and did not hold a command position. It may assist Kanu in showing his absence, or lowly position, but it does not assist Kamara. There is no doubt that Kamara was the commander in the West Side after the withdrawal from Freetown.

Turning now to the question of whether the AFRC was a military organisation. I do not intend to spend too long on this

topic, as it is extensively covered in the Prosecution final brief. I would, however, point out, that contrary to the assertion of Kanu in paragraph 233 of his brief, it is not an agreed fact that the AFRC lacked a disciplinary system. On the contrary, as articulated in the Prosecution's final brief, the AFRC faction had a perfectly adequate disciplinary system for its needs. There is also no doubt that the AFRC faction had a structure, both during the Bombali campaign and during the attack on Freetown, which enabled it to have both a span of command and chain of command sufficient for its needs.

There was a brigade administration. Under this administration, there were six battalions, each with their own battalion administration, mirroring the brigade administration. Each battalion was divided into three companies, each company had a company commander reporting to the battalion commander, who in turn reported to the brigade commander. This is supported by Defence witness DBK-131, as well as Colonel Iron in his report.

It may be that the position occupied by a given individual changed. For example, Mr X could have been battalion commander at one time and was later appointed to the brigade administration, but although individuals within the structure may have changed, the structure itself remained largely in tact from Mansofinia to the attack on Freetown.

Your Honours witnessed the evidence-in-chief and cross-examination of Major General Prins. It is the submission of the Prosecution that the report of Major General Prins should be given very little, if any, weight. Major General Prins lacked the necessary doctrinal expertise for the task at hand. His sources, such as the TRC report, Keane and DSK-082 were all

untested and unreliable opinions. His methodology was flawed and that he based his report almost entirely on the works of others, without making hardly any attempt to carry out any independent research in the field himself.

Major General Prins did not even consider it necessary to interview a single SLA soldier who was with SAJ Musa's faction in the jungle. It was, therefore, almost impossible for him to get any independent firsthand evidence of his own as to how the AFRC functioned after the intervention, the very matter upon which he was opining.

Major General Prins also seemed to misunderstand that Colonel Iron was not opining on whether the AFRC faction was a traditional military organisation. Colonel Iron was merely opining on whether the AFRC faction could be considered as a military organisation, starting from first principles. Furthermore, in their eagerness to rely on Major General Prins, some of the Defence briefs seemed to be referring to matters which this Court held to be inadmissible. For example, where Major General Prins relies on the opinions of others, an example being paragraph 64 of the Kamara brief, where he quotes Major General Prins' report as opining that all forms of discipline and regimentation in the RSLAF were brought down to zero. This is a quote from TRC-01's presentation before the Truth and Reconciliation Commission, which this Court has already ruled cannot be admitted in this trial, as it was based on opinion evidence.

It is also misleading, at paragraph 64, to suggest that this view was corroborated by TRC-01. This view of the SLA regimentation and discipline being brought to zero by the time of

the coup was not corroborated by TRC-01 at trial. In fact, the evidence of TRC-01, which remained unchallenged, totally undermined the Defence case that the SLA had ceased to exist as an effective military organisation and had no discipline by the time of the coup in May 1997.

TRC-01 gave evidence to the opposite effect. He gave evidence about an effective and functioning span and chain of command during the war with the RUF; how the SLAs received sufficient logistics; how the SLAs were even able to keep their discipline in the face of CDF provocations around the end of 1996, because they were trained professional soldiers.

I would only make two additional points as to why the AFRC was a military organisation with effective command and control. Firstly, with regard to discipline, the AFRC was not a band of uncontrollable renegades as the Defence would have you believe. Members of the AFRC faction in the jungle were mainly former soldiers. These soldiers followed orders, and discipline did exist to an effective command and control structure. This was demonstrated by the advance from Colonel Eddie Town to the death of SAJ Musa at Benguema from late November to late December 1998.

During this advance, the troop carried out hit-and-run operations on ECOMOG positions for ammunition and food. There were no attacks on civilians. SAJ Musa had ordered that this should not be done at a muster parade at Colonel Eddie Town. And his troop followed those orders in the knowledge that, if they failed to do so, they would face disciplinary action.

It was only when the accused had command of the troop, both at Bombali and after SAJ Musa's death at Freetown, that crimes were committed against the civilian population. This is because

these crimes were ordered, instigated and positively encouraged by the accused.

Secondly, if the AFRC were such a disorganised mob without any effective command and control, how can you account for its military success on the advance from Colonel Eddie Town to Freetown? They engaged a well-trained, well-armed enemy who had the advantage of air support and defeated the enemy at Lunsar, Benguema, Freetown, and other places on their route to Freetown. Major General Prins was never able to explain this success.

The answer is clear: The success of the AFRC as a military organisation was because it was a well-trained, well-disciplined organisation consisting of former soldiers which had an effective command and control structure.

Turning to child soldiers. The Prosecution would go no further than to bring to the Court's attention the fact that both experts opined that all factions, including the SLA in the jungle, used child soldiers during the conflict. As such, the Prosecution regards this as an admitted position, and is further corroborated by the Prosecution witnesses who came and gave evidence and who, themselves, were child soldiers with the SLA faction.

Turning, once again, to the evaluation of insider witnesses. As mentioned earlier in these submissions, much would depend on the weight which this Court gives to the evidence of respective witnesses who have appeared before it. The reliability, credibility, and the weight to be attributed to the various witnesses has to be fully addressed by the Prosecution in the Prosecution final trial brief.

In essence, the Prosecution submits that little, if any,

weight should be given to the Defence insider witnesses so far as they relate to the following aspects of their evidence; the apparent ignorance of the Defence witnesses regarding events surrounding and after the coup and up to the intervention in Freetown. For example, their apparent ignorance of who carried out the coup; why certain soldiers were referred to as honourables; who other AFRC members were.

It is implausible that soldiers based in Freetown for nearly nine months, often serving as securities for senior members of the AFRC government, would not have learnt these basic details. The apparent ignorance that all of the accused held any positions of command in the jungle after the intervention. That they did not see any of the accused after the intervention until they saw them under arrest at Colonel Eddie Town. That the accused remained under arrest at Colonel Eddie Town until they were not seen again after Benguema or Waterloo. That FAT Sesay held a command position throughout the time that the SLAs were in the jungle and that he became overall commander of the troop after the death of SAJ Musa. FAT Sesay, truth be told, was an administrative officer only.

The Defence insider witnesses that the crimes in Freetown were committed by former detainees at Pademba Road Prison and the national stadium. That they did not hear of any crimes being committed by the SLAs during the retreat from Freetown, such as the killing, rape, amputation, abduction of civilians and the burning of civilian property, despite them being a part of that retreat. That, the Prosecution submits, is just not believable.

Furthermore, the Defence insider witnesses failed to corroborate Brima's own evidence in many material respects. The

Defence insider witnesses also often contradict each other in many material respects. In short, the Defence insider witnesses came to lie out of loyalty to the three accused, who were their former brothers in arms and former commanding officers during the conflict.

The Prosecution submits that this Court should always keep in its mind, as it goes through the Defence insider evidence, all the lies that have been exposed in Brima's evidence, which have been supported by the Defence insider witnesses. This will clearly show that minimal weight should be given to all such witnesses in the areas where they support Brima's lies.

A simple example being the obvious lie that Alex Tamba Brima was not known as Gullit. All the insider Defence witnesses new full well that Alex Tamba Brima was known as Gullit, yet they deliberately chose to lie.

With regard to the Prosecution insider witnesses, the Prosecution insider witnesses should be given far more weight than that of the Defence insider witnesses. As already submitted, where Brima is showing to be lying in areas where the Prosecution insiders gave differing evidence, the weight to be attached to the Prosecution insiders' evidence in such areas should be elevated along with their overall evidence.

Looking at a few particular examples of Prosecution witnesses. TF1-167 was a chief of security to Kamara and rose to the position of task force commander during the invasion of Freetown. His evidence has never been seriously challenged by the Defence, and must be given weight.

Gibril Massaquoi. As committed by Kanu in his brief, Gibril Massaquoi was a senior RUF member on the Supreme Council.

He would have known the role which all three accused played during the junta period. Again, his evidence has never been seriously challenged by the Defence and should be given weight. He has no motive to lie against any of the accused.

TF1-153 grew up with Brima at Wilberforce Barracks and also knew SAJ Musa. He is well educated and his evidence was not seriously challenged in cross-examination. He had no motive to lie against any of the accused.

TF1-045 was an RUF officer who was attached to a senior member of the RUF Supreme Council. His evidence was not seriously challenged during cross-examination, and, once again, he was no motive to lie against any of the accused.

TF1-184, this witness was extremely close to SAJ Musa. It is alleged that one of his motivations for giving false evidence is that he blamed Brima for the death of SAJ Musa. Even if this were true, which the Prosecution denies, it would not be a motive to give false evidence against Kamara or Kanu. It is alleged that this witness agreed to lie against the accused in return for special treatment by the Special Court. Tellingly, this was not put to the witness during cross-examination, and Brima, in his own evidence, only alluded to witnesses agreeing to give evidence against Johnny Paul Koroma, and not himself, in return for special treatment.

It is also significant to note that this aspect of special treatment, in return for lying against the accused, was only made by the last few Defence insider witnesses, whose lies in respect of this matter were exposed in cross-examination.

TF1-334 also allegedly received special treatment for agreeing to lie against the accused. The same considerations

apply as for TF1-184.

There is no evidence to suggest that Commander B could either read or write. It is entirely logical, that, being a close friend of Commander B, that Commander B would share with TF1-334 any documents arising out of Supreme Council meetings, upon which he required clarification. That friendship is evidenced by the fact that TF1-334 remained with commander -- I believe it is A, actually, rather than B, so I would correct the mistake -- throughout the conflict. The only reason Brima says this witness lied against him, was because Brima beat him up and took his girlfriend. Even if true, they would hardly provide a strong motive to lie against any of the accused.

Importantly, large parts of TF1-334's evidence is corroborated in the junta period by TF1-167, TF1- 184, TF1-153, TF1-104 and Gibril Massaquoi, as well as a substantial amount of documentary evidence.

After the junta period, TF1-334's evidence is largely corroborated by TF1-167 for Kono; TF1-167 and TF1-184 for Bombali; and, for Freetown, TF1-167, 184, 153 and Gibril Massaquoi.

Once this corroborative evidence is taken into account, especially viewed against Brima's lies, Kamara's belated fabricated alibi and Kanu's failure to put his case to Prosecution witnesses, it is the case of the Prosecution that the evidence of TF1-334 should be given a great deal of weight by this Court.

To sum up, based on the evidence of the Prosecution, when read together with all the other evidence led in the entire trial, both oral and documentary, there can be only one

conclusion. That conclusion is that the Prosecution has proved its case against each of the accused for the crimes they committed under various modes of liability, as set out in the Prosecution final trial brief beyond a reasonable doubt.

Accordingly, the Prosecution requests this Honourable Trial Chamber to enter guilty verdicts against all three accused in respect of each count charged under each mode of liability set out in the Prosecution final trial brief, pursuant to the charges laid in the indictment.

I would like to thank Your Honours for a patient hearing, and I would now like to hand over the podium to Mr Staker, who will address you on more legal and general matters.

PRESIDING JUDGE: Thank you very much, Mr Agha. I'm just wondering now, we should take a break. That won't disrupt any plans had you to address, Mr Staker, I hope.

MR STAKER: No, Your Honour.

PRESIDING JUDGE: I make it that Mr Agha has spoken for an hour and 50 minutes. You can take up the rest of those three hours, Mr Staker.

MR STAKER: Yes. I envisage it won't take up the entirety of that time, but thank you.

PRESIDING JUDGE: We'll hear Mr Staker after the break. That will probably bring us to the lunch-time, then the first of the Defence closing arguments can commence after lunch. We'll take a break now. We'll have a 20 minute break until 25 to 12.

[Break taken at 11.16 a.m.]

[Upon resuming at 11.37 a.m.]

PRESIDING JUDGE: Yes, Mr Staker.

MR STAKER: May it please Your Honours, at risk of

over-repetition, I just emphasise again that all of the Prosecution legal submissions, our submissions on relevant points of law, are set out comprehensively in our final trial brief. What I will deal with are just a number of very specific points arising out of the Defence brief which, we consider, call for slight elaboration or further argument.

The first of these issues that I'm addressing are the Defence arguments in their brief concerning alleged defects in the form of the indictment. This is dealt with by all three accused. The Brima brief at paragraphs 126 to 156, the Kamara brief, paragraphs 37 to 40 and 89 to 103, and the Kanu brief at paragraphs 291 to 292.

According to the Defence, the main defect is that the indictment is vague and imprecise and does not provide adequate notice to the accused of the allegations against them. We submit it's not entirely clear what relief is being sought in respect of the alleged defects, but it would appear particularly from paragraph 32 of the Kanu brief that the accused position is that they should be acquitted, because the indictment is too vague.

We submit that that is simply not a tenable proposition. It's clear we have a Rule 72 in our Rules providing for preliminary motions to be brought alleging defects in the form of the indictment, and it's clear what the purpose of that Rule is; it is to clear up any matters as to the sufficiency of the indictment before the trial begins so that the trial can proceed on a proper indictment.

We don't deny that, in very exceptional circumstances, it might occur that, during the course of the trial itself, a defect might become apparent that wasn't apparent before. For instance,

if it seems the Prosecution is putting its case in a different way to what was previously thought and it was suggested this wasn't adequately pleaded.

In that situation, in our submission, it is a general principle that counsel have a responsibility to raise those issues at the earliest possible moment, that they need to show prejudice, and then there is the possibility of something being done to sought the matter out so that the trial can proceed. It may be that further particulars have to be given, or an adjournment given to allow further investigations, or so forth.

But to allow a trial to proceed to the very end on an indictment, and then to suggest there should be an acquittal because there was something wrong with the indictment, we submit is simply not a tenable proposition.

As an authority for that, if we need authority for that, we refer to the Brdjanin trial judgment of the ICTY at paragraph 48. Your Honour, we haven't provided a written list of authorities. I would propose that any authorities I refer to in oral argument today be submitted subsequently in a list with full citations for the benefit of the Bench and the other parties.

In this case, Brima did in fact file a preliminary motion alleging defects in the form of the indictment. That was rejected on the grounds it had been filed out of time. A renewed motion seeking an extension of time for filing such a preliminary motion was then also subsequently rejected by the Trial Chamber. If that was rejected at that stage, we submit it's inconceivable that this could be entertained at this stage. We submit this conclusion is also consistent with paragraph 323 of this Trial Chamber's Rule 98 decision, which also held that these arguments

as to defects in the indictment should have been raised at the Rule 72 stage.

In the case of Kamara and Kanu, motions alleging defects in the form of the indictment were, in fact, brought and they were, in fact, rejected by the Trial Chamber, save for one or two defects which were subsequently cured. That is, of course, the purpose of these preliminary motions, to cure defects before trial. We submit the submissions now being made in the final trial brief on this issue are essentially an attempt to relitigate the same issues that have already been dealt with in those preliminary motions.

So, in relation to this argument concerning defects in the form of the indictment, we say this is all res judicata in this case, as far as Kamara and Kanu is concerned. As far as Brima is concerned, the matter is brought out of time. No exceptional circumstances have been shown for entertaining it at this very late stage, and the prejudice to the Defence has not been clearly demonstrated.

We submit that that should be an end to any argument about defects in the form of the indictment, on grounds of vagueness. We would however add that, even if the Trial Chamber were inclined to look at the sufficiency of the indictment -- the sufficiency of its specificity -- the indictment, in this case, is no vaguer than other indictments in other cases before the Special Court, in which motions for defects in the form of the indictment have also been rejected on similar grounds. I have referred to the case law in this particular case. It was, admittedly, case law of Trial Chamber I at that time, but it was in this case, and that case law does not become undone, simply by

the transfer of a case to another Trial Chamber.

We submit there is now a body of case law in the Special Court on defects in the form of the indictment, and we submit that the indictment in this case is consistent with that body of case law. As I say, the merits of this argument should not be gone into but, if they were, the argument is without merit.

In addition to this general allegation of vagueness in the indictment, there are a number of more specific defects that are alleged. The Kamara brief, at paragraphs 37 to 40, say that the Prosecution has failed to set out which limb of joint criminal enterprise liability it relies on. We submit that's already been dealt with, also, in paragraphs 51 to 53 of Trial Chamber I's decision of 1st April 2004. It is document 046 in this case, rejecting Kamara's motion alleging defects in the form of the indictment.

The Trial Chamber I in that decision held that the indictment had sufficiently pleaded a joint criminal enterprise. Furthermore, we submit even if there was some notice lacking, hypothetically, paragraph 323 of the Rule 98 decision in this case pointed out that there be no prejudice to the Defence in relation to the pleading of joint criminal enterprise, because it had been made clear at the pre-trial stage in the Prosecution's pre-trial brief that all three forms of joint criminal enterprise liability were being alleged.

The Kamara brief, at paragraph 92, argues that the indictment, in relation to superior responsibility, alleges that the indictment fails to distinguish between the acts of the second accused, and the acts of the subordinates for which he is alleged to be responsible. Again, we submit that this was dealt

with in paragraphs 51 to 53 of Trial Chamber I's decision of 1st April 2004, dealing with Kamara's motion on defects in the form of the indictment.

Similar arguments have also been rejected in other decisions of the Special Court in other cases. An example is in the Sesay case, a decision of 13th October 2003 on alleging defects in the form of the indictment, paragraphs 13 to 16.

Another defect that's alleged in the indictment is that count 7 offends the Rule against duplicity. It said that it's duplicitous because it charges two separate offences in the one count, namely sexual slavery and sexual violence. Now, again, we say, barring exceptional circumstances, and the Defence hasn't demonstrated any, and barring a showing of actual prejudice to the Defence, and we would add barring a showing that this has been raised at the earliest opportunity, we would submit that it is far too late to raise this at this stage of the proceedings.

But, as Judge Sebutinde pointed out in paragraph 9 of her separate opinion of the Rule 98 decision, no prejudice to the Defence has been established arising out of this. We also submit that, on the merits, even if they were entertained again, this count is not duplicitous.

We submit that if one count includes only crimes under one paragraph of one Article of the Special Court Statute, that is a permissible form of pleading. To give an analogous example, if cruel treatment is charged under paragraph 3(a), it's possible the count might relate to various different instances of cruel treatment, which may take many different forms and be very different kinds of conduct.

Similarly, we would submit that one count can deal with

crimes under Article 2(g) of the Statute, notwithstanding that Article 2(g) relates to a range of sexual crimes which are listed as rape, sexual slavery, forced prostitution, forced pregnancy, and other forms of sexual violence. We submit this is permissible.

Another argument is that count 8 is redundant. That's dealt with in the Brima brief at paragraphs 150 to 152, and the Kamara brief at paragraphs 90 to 99. Count 8 charges the accused with other inhumane acts under Article 2(i) of the Statute, in respect of individual crimes that are set out in paragraphs 51 to 57 of the indictment. In respect of the crimes set out in those paragraphs, the accused is charged with four counts, count 6, 7, 8 and 9.

Brima argues that count 11 makes count 8 redundant. We submit it is difficult to see how this could be so, since count 11 charges the accused in respect of acts of physical violence alleged in paragraphs 58 to 64 of the indictment, whereas count 8 relates to instances of sexual violence alleged in paragraphs 51 to 57. Both counts relate to completely different allegations. We submit there is simply no basis for this argument.

Kamara argues that at paragraph 98 of their brief, that the crime against humanity of other inhumane acts includes only crimes of a non-sexual nature. We submit the logic of this argument is somewhat elusive. The argument, as we understand it, is because paragraph 2(g) of the Statute expressly includes a range of sexual crimes, that that must somehow be taken to cover the field of sexual crimes as far as crimes against humanity is concerned. We submit that cannot be the case.

On that kind of logic, it would be said because Article 2

lists the crimes against humanity of murder, extermination and torture, that that somehow covers the field of crimes against the person so that other inhumane acts under Article 2(i) could not include any crimes of violence against the person. We submit there can be no basis for that proposition.

In that respect, I need only refer to paragraphs 173 to 174 of the Rule 98 decision citing other case law, which notes that forced prostitution can be another inhumane act under Article 2(i). In that respect, we refer also to paragraphs 1,006 to 1,012 of the Prosecution brief.

In relation to count 8, as I mentioned, there are four counts with which the accused are charged in relation to crimes listed in paragraphs 51 to 57. We say that count 8 would include, in particular, forced marriages, which are not included in any of the other counts in relation to those paragraphs and that, accordingly, count 8 is not redundant.

That concludes my arguments on alleged defects in the form of the indictment. The next main issue to be addressed is the effect of the words "those bearing the greatest responsibility" in the Statute of this Court.

Arguments on this are found in the Brima brief at paragraphs 111 to 125; the Kamara brief at paragraph 72 to 88; and the Kanu brief at paragraphs 105 to 123. In brief, the argument is that the accused say they cannot be convicted because the Prosecution has not proved the accused were amongst those bearing the greatest responsibility.

Our submission is that it is not a requirement for the conviction of accused by the Special Court that it be proved, either beyond a reasonable doubt or otherwise, that the accused

was one of those bearing the greatest responsibility. We submit it's necessary to look at the purpose for which those words were inserted into the Statute.

Those words were a response to the experience of other international criminal tribunals before us, the ICTY and the ICTR, whose Statutes did not contain these words, and where we've seen a much larger range of people indicted, ranging from high-level perpetrators and heads of state, down to individual foot soldiers. When the Special Court was established, it was decided by those who established us that our mission should be more focused and that we should concentrate on the main alleged perpetrators.

Now, how is this applied in practice? It's clear it is the Prosecutor who is called upon to undertake investigations. The Prosecution must then, based on all of the evidence that it's gathered, in the exercise of its professional discretion, determine who, in the Prosecution's opinion, based on that evidence, are those that appear to bear the greatest responsibility. It's clear that this involves a certain discretion. Perhaps reasonable minds may differ on it; reasonable Prosecutors might differ on it, but it is a discretion that has to be exercised by the Prosecution in good faith, based on sound professional judgment.

It is not a discretion that can be exercised by the Bench, by the judges, or even the designated judge who approves the indictment, because the designated judge does not have before him or her all of the evidence that the Prosecution has gathered in the course of all of its investigations and is, therefore, unable to make that assessment.

Now, we concede this discretion of the Prosecution might conceivably be reviewable in extreme cases. If the Prosecution were to indict, for instance, someone who was obviously a very tiny fish in the equation, that person might, and I said before there is an obligation to raise matters at the earliest moment, pre-trial stage, we would imagine, bring a motion saying this is an abuse of process. No one, no reasonable person, could ever conceivably think I was one of those bearing the greatest responsibility. But barring that kind of review, the discretion is one that falls to the Prosecutor.

We submit that it would be inconceivable that a trial, a long and expensive trial such as this one, can proceed to its end, and for the Chamber then to conclude that serious crimes have been established beyond a reasonable doubt and, yet, nonetheless, the accused should be acquitted, because it hasn't been shown that they were amongst those bearing the greatest responsibility.

I would add, just as one final point, that even if this were a matter that the Trial Chamber could look at, in the end, the accused in this case clearly do fall within those words "those bearing the greatest responsibility." As the Trial Chamber noted in its Rule 98 decision, at paragraph 31, having dealt with this issue more generally at paragraphs 36 to 39, that the words "those bearing the greatest responsibility" refer to a broader group than just leaders, and the Trial Chamber noted that it could even encompass children between the ages of 15 and 18.

It's certainly not the case that if the Prosecution indicts only 13 people it has to prove that the 13 are the top 13. It's certainly not the case, as the Kanu brief seems to suggest, that,

having indicted the top 12, the Prosecution is then precluded from indicting a 13th, because that's going outside the group.

The next main area I wish to address are matters of substantive law. The first concerns the definition of pillage, as a war crime, in Article 3(f) of the Statute. This is dealt with in the Brima brief at paragraphs 153 to 136, and Kanu brief at paragraphs 193 to 194. The issue being, whether the crime of pillage requires an element of appropriation for personal use, or whether it can include destruction and burning of property. In other words, is pillage stealing or can it also include destruction.

This is dealt with in the Prosecution brief at paragraphs 1,035 and 1,040, and there is no need to repeat those paragraphs. I would, however, refer to two additional authorities. One is the Rule 98bis decision, as it's known at the ICTY in the Hadzihasanovic et Kubura case of 27 September 2004, at paragraphs 95 to 107. In particular, paragraph 106, which held that the wanton destruction of cities, towns and villages, not justified by military necessity, is a crime within the jurisdiction of the ICTY, whether it occurs in international or non-international conflicts. It was held in that paragraph, paragraph 106, that although Additional Protocol II does not expressly include a reference to that crime, it is implicit in the general principles of Article 13 of Additional Protocol II.

This finding was upheld by the ICTY Appeals Chamber in an interlocutory appeal against the Rule 98bis decision of 11th March 2005, at paragraphs 26 to 30.

Now, our submission is that Article 3 of the Special Court Statute gives it jurisdiction over all violations of Common

Article 3 to the Geneva Conventions and Additional Protocol II. So if this crime of wanton destruction is part of Additional Protocol II, then it's included in Article 3 of our Statute. But, of course, it is not expressly mentioned.

So where does it fit into Article 3 of our Statute? Our submission is that the most obvious answer is to say that it falls within the concept of pillage. The answer is obvious, we submit, if one looks at the value that the prohibition against pillage is intended to protect.

International Humanitarian Law exists to protect those taking no part in the conflict, such as civilians. It includes rules to protect civilian life, civilian property and civilian human rights from the ravages of armed conflict, and the law against pillage is clearly one designed to protect civilian property.

Obviously, the value is to protect the victim, and looking at it from the victim's point of view, it makes no difference to the victim whether the victim's property is destroyed or whether it is stolen. In fact, if it is stolen, that may be less bad, if I can put it that way; there may still be some hope of getting it back at some time. To suggest that pillage includes only theft is looking at matters from the perpetrators' point of view and not from the victims' point of view.

Our alternative submission would be if destruction of property does not fall within pillage, then it is a residual unspecified crime under Article 3 of the Statute. Although it's not been charged as such, it's been charged as pillage, we submit if this was the Trial Chamber's finding on law, it could nonetheless enter a conviction if the elements were proved beyond

a reasonable doubt.

First, the indictment expressly charges the accused with burnings and destruction of property. The evidence is being presented, witnesses have been cross-examined on it, and we submit there is no prejudice to the accused. We rely on the Kupreskic trial judgment, which, at paragraph 741, says, "A requirement relating to the efficient discharge of the Tribunal's functions in the interests of justice warrants the conclusion that any possible errors of the Prosecution should not stultify criminal proceedings whenever a case, nevertheless, appears to have been made out by the Prosecution, and its possible flaws in the formulation of the charge are not such to impair or curtail the rights of the Defence."

In paragraph 745 to 748 of that decision, there is a discussion of the circumstances in which an accused can be convicted of a crime other than the one charged. One example is where the replacement charge is of a less serious offence.

We submit, by analogy, it can be argued that destruction of civilian property is less serious in the sense that it requires proof of one less element. It doesn't require proof of the element of appropriation for personal use. As I say, there will be no prejudice in substituting that residual charge for the express charge of pillage.

We note, in any event, that charge 14 includes charges of both burning and looting. So the looting would remain, even if the burning fell, and that the burning would also fall within the acts charged as terrorising the civilian population under count 1 and collective punishments under count 2.

Another argument is made relating to the definition of acts

of terrorism under Article 3(d) of the Special Court Statute. The Kanu brief at paragraphs 2 to 18 argue that acts of terrorism do not include crimes directed against the property of victims, as opposed to crimes directed against the person.

Reference is made in paragraph 4 of the Kanu brief to the ICTY Galic trial judgment. In that judgment, the ICTY Trial Chamber described acts of terrorism as acts of violence directed against the civilian population or individual civilians not taking direct part in hostilities, causing death or serious injury to body or health within the civilian population.

Now that does not expressly exclude acts against property. One can imagine that burning a person's house down and all their possessions inside it may well have an effect on the victim's health, particularly if health is understood to include mental health. But, be that as it may, we note that the Galic trial judgment, to which the Defence brief refers, has subsequently been appealed and the ICTY Appeals Chamber has addressed this issue in the Galic appeal judgment which was given very recently on 30 November this year.

The definition of acts of terrorism is dealt with at paragraph 102. There, there is no mention of any requirement that the crime be limited to attacks against the person and that it cannot include attacks against property. The Appeals Chamber speaks in general terms of acts or threats of violence, the primary purpose of which is to spread terror amongst the civilian population. It states expressly that the nature of the acts or threats of violence against the civilian population can vary. In footnote 317 in that judgment, the Appeals Chamber contemplates that even propaganda might be used as an instrument of possible

terror. It is submitted that on the language used, attacks against civilian property would clearly be included within that definition.

I next turn to submissions relating to modes of liability under Article 6(1) of the Statute; first in relation to the definition of planning. This is dealt with in the written briefs. I just note that certain submissions on the definition of planning are made in the Brima brief at paragraph 80, the Kamara brief at paragraphs 18-20. I needn't go into the detail of that. All I would say is that in respect of the arguments made there, we would refer to the Trial Chamber's analysis and findings on the law on this issue made in paragraphs 290-292 of the Rule 98 decision in this case. The Defence brief places specific reliance on the Brdjanin trial judgment of the ICTY in the Rule 98 decision in this case in the paragraphs I've cited, the Trial Chamber distinguishes Brdjanin case from the circumstances of the present case.

My next set of submissions deals with issues concerning the law on joint criminal enterprise liability. Again, this is dealt with extensively in the Prosecution brief, particularly at paragraphs 460-497 which are our main submissions on joint criminal enterprise liability. I just address a few specific points.

First, it's argued by the first and second accused in the Brima brief, at paragraphs 56 and 58-9, and the Kamara brief at paragraph 47, that for joint criminal enterprise liability, the common plan, design or purpose must be specifically aimed at the commission of crimes within the Special Court's jurisdiction. It's argued that in this case the common purpose of the AFRC

members was to reinstate the army into power, and that purpose is not a crime within the jurisdiction of this Court.

We simply emphasise that the Prosecution's submission is that the common purpose must either amount to or involve the commission of crimes. The "or involves" is not of our invention. It's dealt with in our brief at paragraph 466 but the language comes from the Tadic appeal judgment at the ICTY, at paragraphs 227-228. And if the common purpose was to regain control of the country by any means possible, including the commission of crimes, then although the ultimate aim may not have been a crime within the jurisdiction of the Court, the common purpose involved the commission of crimes.

Another theme in the Defence arguments found in the Brima brief at paragraph 57, and the Kamara brief at paragraphs 41-45 is that -- the Defence argument is that the Prosecution has only pleaded a joint criminal enterprise that also involved certain members of the RUF. And the argument seems to be that if it's not established beyond a reasonable doubt at the end of the day, that the accused were part of a joint criminal enterprise with the RUF, then the Prosecution has failed to make its case on joint criminal enterprise liability.

Now, our submission is that that is not correct. If we look at paragraph 35 of the indictment, it's clearly alleged that the crimes charged were within a joint criminal enterprise in which each accused participated, or the crimes were a reasonably foreseeable consequence of the joint criminal enterprise in which each accused participated. It is clearly alleged that the three accused in this case were, between themselves, part of a joint criminal enterprise. We submit that it's obvious that in cases

before international criminal courts, of their nature, it's often not possible to specify in an indictment, it's often not possible for the Trial Chamber to determine on the evidence every single person who was part of the joint criminal enterprise. We submit that it's equally true that some persons who are named in the indictment, as being within the joint criminal enterprise may, at the end of the day, be found not to have been a part of it. That doesn't prevent a conviction of these others who were found to be part of it.

To give a simple hypothetical example, suppose that an indictment charges A, B and C with joint criminal enterprise liability as participants in a major illegal drug-dealing business, for instance. And suppose that the indictment alleges that also D and E, who are not charged in the indictment, and various other unknown or unnamed persons, were also part of this joint criminal enterprise. Now, suppose at the end of the day the Trial Chamber is satisfied beyond a reasonable doubt that A, B and C, the three accused, were, in fact, part of the joint criminal enterprise but that it's not satisfied that D or E were; does that prevent a conviction of A, B and C? We submit clearly not. And that A, B and C can be convicted of any crime that was shown to be a part of the joint criminal enterprise in which they were participating.

In other words, in the example I have given, if on the evidence it emerged that there was one of the crimes charged in the indictment was committed solely by D, without the involvement of A, B or C, then the accused couldn't be convicted of that crime because D was not shown to be a part of the joint criminal enterprise; if D committed that crime that was something that D

did individually, and not as part of the joint criminal enterprise. But those crimes that can be shown to have been part of that joint criminal enterprise can be matters of which the accused can be convicted, notwithstanding that others alleged to have participated cannot, at the end of the day, be shown to have been participants.

Another argument relating to joint criminal enterprise liability is found in paragraph 60 of the Brima brief and paragraph 296 of the Kanu brief. It's an argument that there is no application in this case of the second category of joint criminal enterprise liability. The argument appears to be that the second category cannot apply because this is not a concentration camp case. We submit that's not correct. We submit the second category of joint criminal enterprise liability was, indeed, originally applied, particularly in concentration camp cases. Perhaps, because the early cases before the ICTY were concentration camp cases, but the Appeals Chamber of the ICTY have indicated that concentration camp cases are merely an example of the second category of joint criminal enterprise liability.

References for that are the Ntakirutimana Appeal judgment at the ICTR, at paragraphs 464-465; the Vasiljevic appeals judgment of the ICTY of the 25 February 2004, paragraph 98, and the Krnojelac appeal judgment of the ICTY of 17 September 2003 at paragraph 89.

Quite simply, in our submission, the concept of the second category of joint criminal enterprise liability is that it's not a situation where all of the participants get together and agree on a common plan or purpose, but where an accused knows that a

system exists, a joint criminal enterprise system exists, and the accused decides to contribute to that system, and thereby becomes a participant in the joint criminal enterprise, whether or not there is any agreement with any of the pre-existing members of the joint criminal enterprise operating that system. An example of where this occurred was the Krnojelac case which was a concentration camp case. The concentration camp was held to be a joint criminal enterprise system and the Appeals Chamber found that by becoming the commander of that camp and contributing to its running, he became a participant in the joint criminal enterprise even though no agreement could be shown between him and any of the individuals committing the actual crimes.

A more direct analogy, a simple analogy might be the example of the lynch mob. We all know that if a mob attacks somebody and beats them to death, anybody who was part of the mob participating in that beating can be liable for murder, irrespective of whether it could be shown that that person even managed to deliver a single blow to the victim. It's an example of where there's no express agreement between the participants necessarily. A bystander might see the mob and suddenly decide to join in. They can't say "I'm not liable for murder because nobody agreed to me participating. I was just there." So we submit that the second category of joint criminal enterprise liability cannot be discounted in this case.

A further argument relates to the degree of participation that an accused must have to be liable under joint criminal enterprise liability. That's dealt with in the Kanu brief at paragraphs 286-289 and the Kamara brief at paragraph 42 where they argue that there must be some kind of substantial

contribution to the joint criminal enterprise for liability to arise.

Our submission is that that is not correct in law. The basic and established principle is that there is no legal requirement that an accused make a substantial contribution to a joint criminal enterprise, although the case law does indicate that if a contribution is insubstantial that may be relevant to a question of mens rea.

Our authorities for that proposition are the Kvocka appeals judgment of the ICTY of 28 of February 2005, paragraphs 97-99 and the Krajisnik trial judgment of 27 September 2006 paragraph 883(iii).

A further matter arising from paragraph 305 of the Kanu brief appears to be an argument that there can be no joint criminal enterprise liability unless there is an actual understanding or agreement between the accused and those who physically perpetrated the crime.

I submit that's not the case as I've already submitted in relation to the second category of joint criminal enterprise liability. That's certainly not required. But, in any event, we submit that it is not essential. If one looks at cases of joint criminal enterprises involving top level leadership of a country, one thinks of the Nuremberg trials and the Tokyo trial at the end of the Second World War, one thinks of a case like the Milosevic case at the ICTY although, of course, that never resulted in a verdict. We submit that it would be untenable to suggest that an accused cannot be liable as a participant in a joint criminal enterprise unless you can show an actual agreement between, for instance, that head of state and every individual foot soldier

who physically perpetrated crimes.

Similarly, in some cases the physical perpetrator of the crime might not even be a participant in the joint criminal enterprise. You think of a case where the joint criminal enterprise consists of trying to instigate others to commit a crime. For instance, a group of leadership in the country get together and say through propaganda, through radio announcements, through television, we are going to incite our population of one ethnic group to commit violence against members of the other ethnic group. Of course there is no agreement with the physical perpetrators. The physical perpetrators are not part of that joint criminal enterprise. They are just people who have been instigated by the joint criminal enterprise to commit those crimes.

We admit the case law on this is not abundant, but we would cite as authority the Krajisnik trial judgement of the ICTY of the 27 September 2006, at paragraph 883, and the separate opinion of Judge Bonhomy in an interlocutory decision in the Milutinovic trial at the ICTY of the 22 March 2006 at paragraph 13. We'd also refer, for instance, to the Stakic appeal judgement at the ICTY at paragraph 65 -- 68 to 85 where it was found that the participants in the joint criminal enterprise included leaders of political bodies, the army and the police and so forth, but where the Appeals Chamber did not go on to look to see whether it could be established that the individual soldiers perpetrating crimes were themselves also individually part of an agreement with the accused.

My next submission relates to superior responsibility under Article 6(3) of the statute. In this respect, we refer to a

paragraph in the judgment of the International Military Tribunal for the Far East, and that was the tribunal conducting the Tokyo trial at the end of the Second World War, at paragraph 30 - at page 30, I'm sorry, of that judgment. This was a section dealing with criminal liability for mistreatment of prisoners. What it says is that a member of a cabinet as one of the principal organs of the government is responsible for the care of prisoners and is not absolved from responsibility if, having knowledge of the commission of the crimes in the sense already discussed, and omitting or failing to secure the taking of measures to prevent the comission of such crimes in the future, he elects to continue as a member of the cabinet. This is the position even though the department of which he has the charge is not directly concerned with the care of prisoners. A cabinet member may resign if he has knowledge of ill-treatment of prisoners, but elects to remain in the cabinet thereby continuing to participate in its collective responsibility for protection of prisoners, he willingly assumes responsibility for any ill-treatment in the future.

Now, this principle elaborated there, we submit, is designed to avoid the problem that an accused says: "Well, I may have been a member of a government that was responsible for doing this, but there is no evidence of how I voted in cabinet or what I argued in cabinet." There is a collective responsibility in cabinet, and we submit this principle is significant in relation in the question of liability of members of the Supreme Council during the junta period here in Sierra Leone. We submit that if it is established beyond a reasonable doubt that the Supreme Council had the authority and the responsibility for government

policy, including government policy involving the commission of crimes, then it is no Defence to say that it wasn't individually their decision or to say that they might have voted against the decision to do that.

We acknowledge there is little recent authority on the current status of that paragraph in the Tokyo judgment, but there are a number of authorities that we would refer to that establish that superior responsibility under Article 63 can exist in the case of civilian leaders as well as military leaders. It's not confined to military leaders. We refer to the Musema trial judgement of the ICTR, paragraphs 128 to 136 and 148, the Nahimana case at paragraph 976 and the Kordic trial judgement at paragraphs 412 to 16.

I now turn to an issue relating to an alleged Defence. It appears that in the Brima brief at paragraphs 124 to 136 and at paragraphs 453 to 456 that the third accused is pleading an alleged offence of mistake of law in relation to the charges of child soldiers and forced marriages. The argument, as we understand it, is that because of prevailing general practices in Sierra Leone at the time, the accused, the third accused, could not reasonably have been aware that the conscription or enlistment of child soldiers or forced marriages were illegal.

Now, the defence of mistake of law is dealt with in the Prosecution brief at paragraphs 157 to 166 where we argue that it's not necessary to decide whether mistake of law is, in fact, a valid defence or not, and we submit that this is the case. What the accused appears to be pleading is not a defence of mistake of law but a defence of ignorance of the law, and we think it's well and truly established requiring no authority that

ignorance of the law is no defence. If authorities needed, we would refer to Article 32, paragraph 2 of the Statute of the International Criminal Court. The first sentence of that paragraph says, "A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility." In other words, ignorance of the law is no excuse. It's the second sentence of that paragraph that goes on to say, "A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime or as provided for in Article 33," which deals with superior orders.

I think an example to illustrate the distinction between the two might be as follows: Suppose you have a law that says it's illegal to import certain items, military armaments or drugs or something like that, illegal to import them without a valid governmental authority. And suppose an accused seeks and obtains what the accused thinks is a valid governmental authority, and then imports the items pursuant to that authority, and then it turns out that for certain reasons the authority, in fact, was legally invalid. It might be argued there that the accused had no mens rea to commit the crime. In fact, he had done everything he thought he had to do in order to do this lawfully, but because of some mistake about legal validity of the authority, it turns out the importation, in fact, was done without legal authority. It's a very different case to a person who imports those items without seeking any government authority at all and then says, "Oh I didn't know it was a crime to do this without government authority." That's the difference between a mistake of law and ignorance of the law. What's being argued by the Defence here is

clearly ignorance of the law. And I would simply refer again to the Appeals Chamber decision in the CDF case on child soldiers of the 31 of May 2004 where the Appeals Chamber said at paragraph 52 that, "Citizens of Sierra Leone and, even less, persons in leadership roles cannot possibly argue that they did not know that recruiting children was a criminal act in violation of international humanitarian law.

Your Honours, that concludes my submissions on matters arising out of the Defence brief. There are just two final points I would like to make relating to the approach of the Trial Chamber in evaluating all the evidence before it. The first point is, perhaps, obvious but it may bear reminding ourselves that it's not necessary for a Trial Chamber and it's perhaps impossible for a Trial Chamber in a case like this to determine beyond a reasonable doubt every single fact alleged in an indictment. Again, to take a simple example from a national jurisdiction. Suppose that two accused are charged jointly with committing a murder, the allegation being that one of the accused restrained the victim while the other accused inflicted a mortal injury on the victim, and suppose the evidence is contradictory as to which of the two accused played which role, and suppose at the end of the day the Trial Chamber is unable to determine which of the two accused did play which role. We submit that does not mean that the two accused cannot be convicted of murder, and notwithstanding the inability to reach any conclusion on that particular issue, we submit that if on all of the evidence, as a whole, the Trial Chamber is satisfied beyond a reasonable doubt that the two accused acting in concert did, in fact, commit that murder, they could nonetheless be convicted. And the issue

before the Trial Chamber now then is not whether every single last fact, every single last issue has been proved beyond a reasonable doubt, but whether looking at all of the evidence as a whole, the guilt of the three accused on all of the charges against them and all of the individual elements of each of those crimes has been proved beyond a reasonable doubt.

The final matter is just a simple request to the Trial Chamber. I hope that it will not be seen as presumptuous, perhaps be taken as a suggestion rather than a request, that the Trial Chamber make findings on all material issues -- material issues of fact on the case, the ones that are necessary to be decided for a verdict to be reached. It's quite common that a Court if it can dispose of a case on one issue, it may decide it doesn't have to proceed to determine other issues. For instance, in the case of superior responsibility, if the Trial Chamber were to find that there was no superior subordinate relationship, it may say, therefore, we don't even have to make any finding as to whether the crime was even comitted or not. Now, we submit that in the particular context in which the Special Court operates, this may occasion problems if certain findings are reversed on appeal. In the example I gave, if it were to happen that the Appeals Chamber reversed the finding that there was no superior subordinate relationship, there would then be some difficulty if there were no findings in the trial judgement as to whether the crime was comitted or not. And the Appeals Chamber would be left with the choice, perhaps, of looking at remitting the case back to a Trial Chamber for further trial proceedings which, we submit, would be not desirable, or possibly of making findings of fact for itself on first instance on appeal which, as a matter of

principle, we submit, also should be avoided if possible. So as I say, without intending to be presumptuous, that was a humble suggestion that might assist the expedition of the Special Court's work as a whole.

Your Honour, that concludes the final oral submissions of the Prosecution. I would at this stage like, on behalf of the Prosection, to record our thanks to all of the Court staff who have during the entire course of these proceedings, in a very professional and efficient way, assisted the parties in the discharge of their duties. We could not have preformed our functions without the able services of the interpreters, court reporters, security guards, Court Management, and other registry staff, the Victims and Witnesses Unit, and others, whom I will hope be forgiven for not mentioning specifically. We on the Prosecution side, of course, have also over the course of the proceedings had various changes in our personnel including in the staff of the office of the Prosecutor working on this case, and I would also like to record my acknowledgment of the past work of my colleagues who are no longer at the Special Court as well as to those of our staff who've contributed to our work without appearing in court. Your Honours, that concludes the submissions of the Prosecution.

PRESIDING JUDGE: Thank you, Mr Staker.

JUDGE DOHERTY: Mr Staker, I am not raising any elements of your submissions, I'm merely seeking clarification. On pages 264 and 268 of your submission, you refer to two texts. One is Henckaert's Customary International Humanitarian Law, and the other is The Elements of war Crimes Under The Rome Statute, et cetera. Just to ask where those would be available if they are

available in our library?

MR STAKER: I'm afraid I would have to take that question on notice but I think that it would presumably be our responsibility to provide copies of those, so we are happy to take that upon us.

JUDGE DOHERTY: Thank you. I'm not rushing you, Mr Staker, rest assured.

MR STAKER: Thank you, Your Honour.

PRESIDING JUDGE: Well, I just have one question arising from something Mr Staker said, but I'm not sure whether Mr Staker should answer it or Mr Agha because it goes to the facts. The question is that you mention, Mr Staker, when talking about the second category of joint criminal enterprise that it cannot be discounted in this case, and I was wondering what evidence in this case, if such evidence were to be believed, would support that category, the second category?

MR STAKER: Your Honour, it's not the Prosecution's case that we rely on that second category, and our case is not put on that basis. I think the case would be better put this way. When our briefs are examined, it will be seen that we don't adopt this rigid categorisation of joint criminal enterprise liability into three separate categories.

My submission would be that the theoretical analysis that one sees in some of the case law draws this kind of distinction that is a bit artificial and suggests that there are actually three separate modes of liability which are three separate forms of joint criminal enterprise. What we would say is the first and second category are essentially variants of each other. The first category is more where the agreement is expressed between

the participants. The second is where the agreement may not be expressed but it's clear there is this enterprise going on, there is this system that exists, and an accused can be liable if they are aware of the system and join in and contribute to it without showing that they necessarily have an express agreement with all of the other participants. So it doesn't go to whether we are relying on the first or second category. It goes, for instance, to this argument that there was no express agreement shown between the three accused or possible arguments that there was no express agreement between the three accused and members of the RUF and so forth. We say looking at all of the evidence as a whole, is it clear that all of these crimes were committed as part of a single common plan, design, or purpose in which the three accused participated? That it's not essential to find an expressed agreement between the three accused to establish that and that whether the joint criminal enterprise liability exists will be a matter to be determined on the evidence as a whole.

PRESIDING JUDGE: I understand, thank you Mr Staker.

Well, I think we'll adjourn for lunch now, but who amongst the Defence is going to deliver the first closing argument?

MR GRAHAM: Your Honours, I believe it will be counsel for the first accused. It will be followed by counsel for the second accused and in that order.

PRESIDING JUDGE: Thank you, Mr Graham. I'm not quite sure what arrangements have been made for the three accused over lunch, but I was thinking of reconvening at 2.00 rather than 2.15. It's a matter of little consequence to the Court, but I'm just thinking if we reconvene at 2.00, that would bring the close of proceedings today to 4.00 p.m. rather than 4.15 p.m. but I'll

leave it. You're commencing first, Mr Graham, so what do you say on the matter? Would you rather start at 2.00 or 2.15?

MR GRAHAM: Your Honours, on our part I believe we do not have any objections to starting at 2.00 in the event it does not disrupt the schedule of the security arrangements for our clients, we do not have any objections to that at least for in respect of the first accused. I do not know about my friends on this side. I am reliably informed they also do not have any objections starting at 2.00, so I believe we are an item on that.

PRESIDING JUDGE: All right. Thank you Mr Graham. Is that all right with the Prosecution?

MR STAKER: Yes, Your Honour.

PRESIDING JUDGE: All right. Well, this Court will then be adjourned until 2.00 p.m.

[Luncheon recess taken at 12.36 p.m.]

[Upon Resumption at 2:00 p.m.]

PRESIDING JUDGE: Yes, go ahead Mr Graham.

MR GRAHAM: Good afternoon, Your Honours. On behalf of the first accused, Your Honours, my learned and able co-counsel, Ms Thompson will be on behalf of the Defence for the first accused.

PRESIDING JUDGE: Yes, Ms Thompson.

MS THOMPSON: Thank you, your Honours. Good afternoon. Your Honours, since we have filed our trial briefs, I don't intend to use up all of my allotted two hours. In fact, I hope I will be part -- I have kind of timed myself.

PRESIDING JUDGE: Well, yes, as I said this morning, Ms Thompson, the trial briefs are comprehensive briefs, and there is no need too read us through them.

MS THOMPSON: I have no intention of reading the Court through the briefs, Your Honour. In fact, I would say that we rely entirely on what we have filed, including our legal arguments, so I don't intend to go through those this afternoon.

PRESIDING JUDGE: All right. Proceed, Ms Thompson.

MS THOMPSON: Thank you. I think I have already taken two minutes of my allotted time.

Your Honours, this case was opened with graphic descriptions of the crimes that have been committed by the first accused and others. And one thing was noticeable on that date was the astonishment of the public gallery and perhaps those sitting in the well of the Court, the emotion that the case was opened with would not fail to move even a stoic and it was closed today with less -- less emotion but perhaps just enough get the desired effect. None of that, Your Honours, is evidence. It is what has transpired in this Court between the two speeches that will form basis of your deliberations, and I have not forgotten, by saying that, that you are experienced judges who will not be persuaded by flamboyant and long speeches from either side. It is for that reason that I intend to use my allotted time very well.

As soon as the trial brief becomes public, those outside this Court or those not yet privy to it will have access to it, and they will know a lot more of what I am talking about today. In the meantime, I intend to just highlight some factual issues and to leave it at that.

One of the two things that I intend to mention today is that the Defence have been at somewhat of a disadvantage, and the reason I say this is because the evidence adduced by the

Prosecution -- by the Prosecution has -- has been sometimes stylistic, sometimes fanciful and a script for a film lacking in content. If one were to give them a report card, it would say: Could do better. And I say this not being flippant but because the Prosecution has moved its case since when we started in March 2005. Witnesses start with one theory and then by the time another witness comes, the ground is shifting and leaves us with thinking, well, where are we now? Then the Prosecution changes its mind and reflects one bit of the evidence in favour of another. Such cherry picking of evidence makes the work of the Defence difficult and sometimes we do not know what case we are about to meet. But, perhaps, more important, it illustrates the Prosecution itself did not have enough confidence in their own case and are therefore now asking the Court, having heard all the evidence, to pick that which they ultimately have decided to rely on and reject the rest. They cannot have it both ways. Our submission is that all of it should be rejected and I make -- I will give an illustration to the Court. This concerns the evidence of the arrest of the three accused persons at Colonel Eddie Town.

The Court will recall that in cross-examination of the first accused about command structure in Colonel Eddie Town, the Prosecution's case put to the first accused flew in the face of the evidence of TF1-167, so we can therefore say that they have dismissed the evidence of TF1-167, or at least they no longer rely on it. This is clearly shown also in their haste to rely on the evidence of TF1-334. They are prone to the -- Prosecution counsel was prone to dismissing the entirety of any witness called on behalf of the Defence as a bundle of lies.

Counsel put to the first accused that he was the second in command to SAJ Musa and that he had heard all the orders given by SAJ Musa at Colonel Eddie Town. The problem with that theory is that the evidence of TF1-167 does not sit within that theory of either command responsibility or superior responsibility, as stated by the Prosecutor. Counsel, however, did not entirely dismiss 167. He relied on his evidence up to a point. That is to say, that 167 himself gave evidence that he was sent by the first accused to meet SAJ Musa when he was on his way to Colonel Eddie Town. After that, he than dismisses the entirety of 167's evidence, and that is the evidence of the arrest at Colonel Eddie Town and the evidence that the three accused were under arrest until they got to Newton. In fact, that is where we part company with that piece of evidence from that witness.

The Prosecution cannot have its cake and eat it. If it says one thing, it must stick to it. Of course, this affects the evidence of all the witnesses called by them. The case in point, also, is the evidence relating to Karina. And Karina is very important because not only was a lot of evidence led in this Court by insider witnesses, but the Prosecution also called what we call crime base witnesses, those are those who are resident in particular areas where crimes were committed. And the Defence called its own witnesses regarding Karina. Once I have mentioned what happened with that -- with the Prosecution's evidence, I will then comment on what today astonished me, I must say, when we are being asked to forgive 334 in that he had made a mistake about the evidence regarding what was said to have transpired in Karina.

The evidence of 334 was that the first accused killed an

imam and several others in the mosque in Karina. We have 033 who claimed that 500 civilians were killed and 200 people amputated in Karina. This witness did not specifically mention atrocities in the mosque or to give figures for both towns, that is, Bonoya and Karina. 167 gave an account of seeing dead bodies in the mosque and of orders coming from the first accused that the town should be burned down. Then we have 157 who said that the rebels burnt two houses and he saw two people mutilated. 055 states that he saw two people killed at the mosque. Now, his version differs from the others and is perhaps the most important because he was a native of Karina. What is important here is that we have five completely different versions of what transpired in one day and that is all from the Prosecution's case. We haven't got to the defendants side yet.

The Defence produced three witnesses from Karina. One of those, and because Karina is a small place, I wouldn't actually name the occupation of that person, but one of those was said to have been killed, according to witness 334. We then had a local boy and another person who was, one could say, a community leader. Almost as soon as it was established that there was only one mosque is Karina, the Prosecution then introduced the possibility that atrocities could of been taking place at a wassie. Well, what is a wassie? We had never heard that one before. The witness then went to describe what a wassie is and to state that he did not hear of anything happening at a wassie. The witness mentioned someone who had been left in charge in the absence of someone else and that that person had survived, even though he was said to have been killed by 334. And we note also, to assist the Court, that that person had been in that particular

office from before this atrocity was said to have happened.

Then the Prosecution shifted its case. It was no longer Karina Town and all the time we had been talking about Karina Town, said to have been the town where President Kabbah came from. We then heard evidence that perhaps it wasn't Karina Town any more, it was Karina section, which is different. Because the witness told us that Karina Town has only one mosque. In fact, the Prosecution actually asked during their own case that we pay a visit to Karina for locus in quo. In any event, Karina Town has only one mosque; Karina section, a larger enclave, has more than one mosque. But the Prosecution had not led evidence of Karina section. What they had led evidence was of Karina Town and of killings and shootings in the mosque. This is important because the Prosecution had, realising quite late in the day that their own witnesses had given elaborated and exaggerated accounts of atrocities in Karina, tried to shift focus on the possibilities -- on the possibility, at least, that the atrocities might have taken place in a wassie. Now, from the witness we had in that witness box, a wassie is not a mosque and cannot be mistaken for a mosque. When that failed, we then went to the existence of other mosque, and the witness was quite clear, Karina section is different from Karina Town. In my submission, Your Honours, that is cherry picking.

It is also good to note that as far as the Defence witnesses are concerned, they are all independent people with no connection whatsoever to the Defence, either the Defence -- other Defence witnesses, or the accused persons and themselves have been available for the Prosecution had they actually done their proper investigations.

Insofar as the imam who was supposedly killed, he is alive and well. In my submission, therefore, it shows that the Prosecution had very little confidence in its own case and, more or less, it was like a case of obeying the wind. The wind blows this way, so we will go that way. It goes the other way, follow the wind. But it can't happen in a criminal trial. It's too serious a trial for us to be following wind or obeying the wind as we see fit. And also, it means that if 334 was mistaken about what had happened in Karina Town, what else is he mistaken about? This is too important an evidence -- a piece of evidence, for us to dismiss as just a mere mistake. And, in my submission, it cannot be forgiven. Whilst we are on 334, perhaps I ought to say this: In the trial brief the Defence for Tamba Brima, goes into some detail about certain witnesses and the quality of the evidence they give, but perhaps I should mention something about some of the witnesses and I will start with 334.

The Prosecution based its entire case on the evidence of one man. A man whose role by his own admission, at least his official word before they went to the bush, was nothing more than an [indiscernible], a driver for someone who is deemed important. Did he have a motive? Much was made about what the first accused said about 334 and other witnesses who gave evidence for the Prosecution. He stated that they were paid witnesses and that they had lied. In the case of 334, and I'll deal with him now, that's not too far from the truth. Paragraph 50 of the Prosecution's trial brief, in that paragraph they say that payments could not have influenced the testimony of witnesses. The Defence begs to differ. If we look at the evidence given by this particular witness on the 17 of June, 2005, and I'll

actually direct -- I'm not going to flag it up now but it's actually on page 18 on the transcript of that day and it's actually lines 1 to 10 -- this witness accepted in cross-examination that assurances had been given to him of not being prosecuted and that he hoped to be relocated. Those, in my submission, are good enough reasons to give tainted evidence. We cannot be sure that that happened but at least there is a possibility that that is what -- that his hope for relocation and the assurances given of not being prosecuted would taint his evidence. And, of course, it would mean that the more - he would think -- and I submit that is what he did -- the more fanciful his evidence was, the better his chances were of actually being relocated to pastures greener.

This witness also mentioned promotions, and this -- I'll deal with first the promotions not of the first accused when he was in the SLA but promotions in the bush. And something was very striking about this evidence. This was a witness who gave verbatim evidence of what the -- of what the first accused was alleged to have said whilst giving or making promotions. Of course, this is all denied. This witness would give verbatim evidence that "I, Tamba Brima," that was at the beginning and then when he was cross-examined he said, "I, Alex Tamba Brima," and then we went to "I, Alex Tamba Brima alias Gullit or also known as Gullit."

It reminds one of us to the [indiscernible] of Shakespeare the who'd read by heart [indiscernible] the eulogy at the funeral of Julius Caesar because if it wasn't anything that was scripted evidence which had been committed to memory and the only reason why that was done was so that he could come here and improve his

chances of relocation. This was a witness who was a witness of fortune.

Your Honours, the Defence say that no such promotions took place and certainly those words never came from the mouth of the first accused. What makes it all the more implausible is the fact that this same witness who could recall word for word what the first accused is alleged to have said could not recall the office where this first accused was supposed to have been situated during the AFRC government. He could not recall that. He'd forgotten but yet he could recall verbatim what someone was said to have said.

And then under cross-examination still on 334, I asked him about whether -- when these promotions were made, in English as he said, whether he'd had to translate them to Commander A. I would -- the Defence for Brima would submit that the evidence that Commander A was an illiterate and could not understand what was said at meetings is a lie. This witness told us that he didn't have to translate for Commander A, because although it was said in English, the lowest person could actually understand it. So if we say Commander A, as he said, was an illiterate, how could Commander A understand those promotions when he couldn't understand what was said at meetings in the same language? But that's because Commander A never gave that witness anything to translate.

If we could take a common sense view of it, Commander A was a member of the military and so were his colleagues on the cabinet table. They had worked with him before, they knew him. If they knew he was an illiterate, appoint him to a position where he would have to read minutes, and, in any event, they are

minutes of meetings past. He was there at the decision making, why would he need someone to interpret the minutes of something that had already taken place? It's simply an implausible theory and in my submission a fabrication.

This is the witness who also gave evidence of the rank held by the first accused whilst he was in the army. The evidence of the first accused was that he retired as a corporal and he produced his discharge book, D14, to support that he retired as a corporal. This witness said that he knew him in the army before the AFRC period as a staff sergeant. Now, the Prosecution's case is that as -- when the AFRC came to power, Johnny Paul Koroma became lieutenant-colonel, SAJ Musa became something else. They all gave themselves promotions so it was that the first accused was given a promotion to staff-sergeant. Well, this is another one. There you have the Prosecution theory of a promotion during the AFRC period to one rank and here you have the witness saying, the witness upon whom they have relied, mind you, that [indiscernible] I knew him in that rank before the AFRC period. Well, which is it? They are falling over themselves with their own witness, and in my submission this just shows the weakness in the Prosecution's case. At least we agree with something. We agree with something with 334 and that is the shooting of the first accused's brother. He says that he knows that the first accused's brother was shot by Junior Lion, and I raise this because this was something that the Prosection put to the first accused in cross-examination as a lie. But yet their case is built on 334. So which is it? Was 334 lying? Had he spoken to the first accused and got -- and the first accused told him to tell everybody that my brother -- my brother was shot by Junior

Lion as being suggested by the Prosecution? That the first accused was telling his witnesses what to say? This was also put to 167 who denied that he was the culprit, a fact also mentioned by -- this fact was mentioned also by two Defence witnesses that, in fact, that the individual was the culprit but 167 gave the name of someone else.

Your Honours, these are not minor deviations, these are major deviations, and we would submit they are major deviations based on wishful thinking or a wish list of improvable incidents. It cannot be that these things happened in the way 334 said they did. And our submission is that his evidence should be dismissed in its entirety. Before I do that, I will say something which I missed, actually, about 334, but I'll add this. And my learned friend mentioned earlier that the first accused had shot two ECOMOG soldiers at State House and had given the order to someone else to shoot ten making the total 12. This was evidence actually given by 334 who, in cross-examination, where it was put to him that he had earlier said in a statement that, in fact, the first accused had shot all 12 of them. But when he was here, he decided to share the blame, give the fist accused and the remainder to someone else who was actually dead. Which is it? They can't have it both ways, Your Honours.

The witness had also mentioned a cousin who was raped. We don't know whether -- well, there was a bit of confusion because we did not know whether it was a cousin or a nephew and then he had forgotten the cousin's name or nephew's name or someone else's name. This all means, Your Honours, that this witness's evidence is not credible.

I would also like to say a few words about 033. The

evidence of this witnesses was exaggerated, it was more akin to a Hollywood movie script than evidence in a courtroom. This was a witness who refused to actually associate himself with anything he had said in his previous statement, and that that's important because this is a witness who claimed to have been abducted by the first accused. What I would submit, Your Honours, is that when he got into that witness box, what he was interested in was giving purely a good story on or to make a good story better. Add a bit here, add a bit there. Looks good in the Court's eyes. How can it be corroborated. It cannot.

Let's look at what he said about savage, and Savage was mentioned earlier on today. He claimed savage was actually under the command of the first accused. Well, savage was described by both 334 and 167 as an outlaw, as a man who was not under the command of anybody. A man who nobody had appointed a commander. He had said actually in his statement, 033, that Savage committed these atrocities on his own. He was the commander on the ground. Nobody had appointed him a commander. He was the sole commander and that was actually put to him in cross-examination. Suddenly, when he was in the witness box, Savage had been transformed into a subordinate to the first accused.

These are not miner discrepancies. These are substantial deviations from the original statement and in my submission, Your Honours, was a design and desire to see, to move away from the original statement. And this was the witness who gave the evidence about 500 people being killed in Karina. And I should say also about his evidence of being abducted. It was put to him in cross-examination that he had told statement takers that he had become afraid and ran away with the AFRC group. To quote, he

said "I did not succeed in leaving the country, so I had to stay with the AFRC boys in jungle. I was in Kono." Now, this is vastly different. In my submission, miles different from the evidence that he gave in this Court that he was abducted. The question is, why would he lie? Is he hoping for some reward? He's an out-of-work journalist. Is he hoping that someone would actually help him? Your Honours, that's for you to weigh. But my submission is that such a peppered evidence and evidence peppered with untruth and inconsistencies and figures so incredible, it begs belief why the Prosecution actually called him here in the fist place.

Briefly about 045, he couldn't even make up his mind about PLO 1, PLO 2 and whether he was a Mende by tribe. Look at his evidence about meetings attended by the first accused. He is quoted in the Prosecution's trial brief as one who gave evidence of the accused person's attendance at meetings. But it was put to him in cross-examination that that was not what he had said, and then he accepted that he'd seen other people there and because he felt that the first accused was a council member and he had seen all council members, he assumed that the court -- that the first accused was actually present at that meeting

[AFRC07DEC06 - MD]

Now, an assumption is not fact and there is no way the Prosecution should rely on that evidence. It's like saying because all the lawyers are supposed to be in court and one of us walks out, we assume to actually be in court at the time.

He talks about a man called [indiscernible], whose identity we are still trying to find out.

184. Part of the group who abducted Father Mario, and he

accepted that, that Father Mario was not free to go. Why would he come here? Is it beyond belief what the first accused said, that these people were all paid witnesses and they were promised special treatment?

This witness mentioned Camp Rosos. Camp Rosos, I mention now, because my learned friend mentioned it in one context. We do not now know, even after a year's evidence, whether Camp Rosos is actually Colonel Eddie Town, and that was quite evident from what my learned friend was saying today, because this witness actually thought Camp Rosos was Colonel Eddie Town. 334 said they were different, but as far as this witness was concerned, they were the same, and I think 033, in fact, was another witness who said that Camp Rosos was Colonel Eddie Town.

I mentioned it now, and I made a note of what my learned friend said to Your Honours, if you bear with me, I will dig it up. Yes. Prosecution evidence from 334 was that Camp Rosos was arrived at before Colonel Eddie Town.

The Defence has never suggested that the first accused was actually at Colonel Eddie Town, and there's been no suggestion that he was there under arrest.

The Defence's case was that he was taken from Yarya to Colonel Eddie Town, under arrest. We did not mention Camp Rosos. Now we have my learned friend for the Prosecution mentioning Camp Rosos and the first accused being under arrest at Camp Rosos.

Now, this is contradictory. The way we understand it is as if we left Colonel Eddie Town and we were at Camp Rosos, or is it vice versa, because we don't know now. And 033 and 184 say they are the same place.

The Defence's case, as I said, is that the first accused

was not present. If the Prosecution cannot get it right, at least that geography, cannot get that right, then the first accused cannot be guilty of anything that transpired at Camp Rosos, because we don't know what we are talking about. Who are we talking about; where are we talking about?

Before I leave 184, I should mention that this was the witness who, under cross-examination, had expressed a dislike for the accused persons because he saw them as politicians. "They do not wear uniform any more," he said. And, also, Your Honours will recall his demeanour in the witness box when Defence counsel had to object to him staring at the accused persons menacingly.

Witness 153 was a close friend of SAJ Musa, a self-confessed corrupt official who, you will recall, admitted to collecting bribes and certain diamonds for himself. Could he be a reliable witness? Your Honours, we submit not.

122, the man from Kenema, the man who came and tendered the diary which he had rescued from a fire. But what had happened to that diary was that it had been untainted by this fire. And when asked why he came to keep what was, in fact, the property of the Sierra Leone Police, he said he had kept it because he knew one day the world tribunal would come.

Well, I can only say that this witness had a high degree of foresight, or he was a liar. Interestingly, at least he tells us, that BS Massaquoi, the incident relating to the killing of BS Massaquoi - something for which these three accused persons have been blamed - was carried out by Mosquito alone, and he explained in cross-examination how he came to know that. In fact, this witness claimed Mosquito was his friend and brother.

Your Honours, P24, which was the diary, had entries by

various police officers dealing with the incidents surrounding the taking of BS Massaquoi from the police station and bringing him back under arrest, and all the evidence that goes with that.

Yet, not a single of those police officers, who made entries into that diary, were called before this Court to tell us what happened. All we had was the rescuer of the diary and, incidentally, everything else was brought to that police station except that diary.

074. And I mention him because the Prosecution have relied on him in their trial brief. This was the gentleman who, sadly, was marked as AFRC/RUF and he had that inscribed on him. Your Honours will recall that his statement was tendered as Defence Exhibit 8, and this was for good reason. That's because, in his statement, he had said that he had been marked by a gentleman called Kata, and that Bangali had said they should not kill him. However, once he got into that witness box, Kata had been forgotten about -- we don't know where he is now, forgotten about him, or Kata became Bangali, and we respectfully submit this was not a minor deviation or discrepancy. This was a deliberate complete about-face turn.

Most important about this witness's evidence is that there is no nexus between the first accused and this or any other incidents of mutilation. I mention that now whilst I am dealing with 074. Why would this man suddenly change Kata to Bangali and give Bangali an organisation to belong to? He has claimed Bangali was an RUF man and this was the first time we were hearing of this.

Later -- I should mention something about identification. The reason I do that is because two witnesses claim to have been

able to identify the first accused. TF1-158 in the Northern Jungle and TF1-024 in the State House. Asked to describe the first accused, TF1-158 said he was fair in complexion, not very tall, stammers when he speaks, and bulky.

Your Honours saw and heard the first accused. I respectfully submit that the person that TF1-158 described as the first accused was not, in fact, the first accused. He does not stammer. I wouldn't necessarily describe him as fair in complexion, and I certainly wouldn't call him bulky.

TF1-167. This man refused to accept that he was a vigilante until cornered about it. Why would he do so? He tried to hoodwink this Court, in my submission, into believing military numbers are disposable and transferrable. Every other military man that we've had here said not. He had no discharge book. He had no pension. He had no money from the disarmament process. He was unemployed and perhaps not employable. Those, in our submission, Your Honours, are sufficient reasons for joining the cue to give tainted evidence before the Special Court.

The Defence case, and this was put to him, was that he was thrown off the British military training programme when it was discovered he had never been an SLA and was just a private vigilante or probably a bag carrier for Tom Nyuma.

In our submission, being someone who will not be employed and perhaps is lacking in skills, he had no option but to steal a vehicle belonging to ECOMOG, something that was put to him.

The result was a shoot-out in Frederick Street; one man dead and he in hospital. He couldn't recall if he was interviewed by the BBC when I asked him about it. He had hoped he would be taken elsewhere by the Special Court because, as he

said, he was doing something right for the country and it would look good if he was able to give them all the information.

This witness will join anyone who will pay him. If you recall, Your Honours, I put to him that he had been an informer for the Sierra Leone Police. He denied this at first. If you look at the transcript, there are about three pages of going and come, to-ing and fro-ing, denying and coming back until, eventually, he had to accept that, yes, in fact, he had been an informer for the SLP. Why would he want to deny that?

He also denied shooting Komba Brima and this, I might add, is the evidence, as I mentioned before, given by 334, upon whom the Prosecution relies, and whose evidence the Prosecution denied when cross-examining the first accused on this issue.

This witness also gave evidence of the arrest of Tamba Brima and others at Colonel Eddie Town, and then said he had been sent by Tamba Brima to meet SAJ Musa.

Well, we know he got the arrest right, at least he states they were under arrest until they got to Newtown. But how much more he omitted, exaggerated or plainly lied about? How much more? At least he confirmed that Savage was an outlaw who was committing crimes in Tombodu.

Can anyone, therefore, given the evidence that we heard about Tombodu, whilst I'm on that point, convict the first accused of what happened in Tombodu? Your Honours, I think not.

His evidence also, 167, I should add, his evidence about promotion in Masiaka also cannot be corroborated by 334. He said he was promoted to brigadier-general. 334 said colonel. 167 accepts the first accused was not there, but says he was promoted in absentia. The truth is, Your Honours, this did not happen.

Lastly, I deal with 114. This is a witness I will ask you to dismiss in his entirety. His evidence is so fanciful it beggers belief. He, like the other witnesses -- incidentally, it follows that all Prosecution witnesses here are ardent radio listeners; they all heard the radio. They all heard Tamba Brima's name being called as a coup plotter. He heard the names Alex Tamba Brima PRO, alias Gullit. Note, not PLO, PRO, and he had seen him before at his workshop, and at Cockerill, and knew him.

Yet, in his statement, and this is important, because this man said that he saw the third accused sitting in court. He said he had never heard the first accused's name and his evidence, in my submission, was based on the issue of lies. But then he went on to say, "If he's in this Court, I will see him, I will recognise him, if I am allowed to look around." He was allowed to look around and he did look around, because he mentioned the third accused. But he does not know; he could not recognise, and, in my submission, has never met the first accused. This, I submit, means that this man's evidence was a lie.

And the reason why I mention that his evidence was so fanciful, Your Honours might recall that he was an RUF who claimed -- well, he had become an RUF and he claimed that he had gone into RUF territory because he wanted to be an observer, a self-appointed, self-employed observer so that he will come and give evidence to UNIMOBS or some outfit like that.

Your Honours, the inference that can be drawn from all this evidence of all these witnesses is not one of guilt. This is even more so when one looks at the evidence produced by the Defence.

I will say what we agree upon. We agree that the first accused was a member of the SLA. He became a member of the AFRC and was PLO 2. There was a war in Sierra Leone and atrocities were committed. That is where our agreement ends.

The Defence does not accept the first accused held positions of authority from February 1998 onwards. The Defence does not accept, and the position of PLO 2 gave the first accused the authority conferred upon him by the Prosecution.

The Prosecution will have to show that the first accused used his position of authority, the position of PLO 2, I beg your pardon, to commit the crimes alleged for the reasons that I have expanded upon earlier, and which are in the trial brief. I respectfully submit that this is not the case.

Well, let's just take a brief look at the evidence of the first accused. We start by the fact that the Prosecution, in paragraph 1 of the indictment, gave false information about the accused. He was born in Yarya; denied. He was born in 1971 and joined the army in 1975. That would make him roughly about 14 years of age. Now it is not for the Defence to comment as to why the Prosecution failed to amend this assertion in the indictment, save to say it had been pointed out to them since the Defence pre-trial brief. One can only assume it's because they had a dogged belief that you throw all the evidence in, the good, the bad, the ugly and the untrue, and hope that the Court will make sense of it and convict.

If we look at the perceived authority conferred upon the first accused, the Prosecution relied on 114, who stated that the first accused's name was announced over the mass media. That raises questions, in my mind.

The Prosecution was able to produce the transcript of radio announcements by Johnny Paul Koroma, by Foday Sankoh, and by Gborie. They produced a newspaper article, the contents of which, I respectfully submit, would upset some people because it contains, rather, not the definitive list of who was in the AFRC, but, rather, a wish list of the people they wanted to be in the AFRC. They could not, however, produce the transcript or recording of this radio announcement.

The Defence say that is because it does not exist. There was never a radio announcement with the first accused's name being announced as a member of either the coup, those who overthrew the government or as PLO 2.

Authority, the Prosecution says, derived from the Supreme Council to the first accused by virtue of his position. Was there such a body? The Defence says no. I wouldn't go into all the issues surrounding why we say no, because it's already in the trial brief. But, briefly, the Prosecution were able to adduce gazettes dealing with AFRC, herein after called the Council. There was not a single gazette before this Court dealing with Supreme Council.

The first witness who mentions anything to do with Supreme Council is 334. And I have said enough about his evidence, I leave that to the Bench. But, one has to accept that, if they were able to produce gazettes with the Council and they were able to produce other evidence with the Council, where was the one with the Supreme Council? All we have was a press release sacking certain members from the Supreme Council, and what was actually telling about that press release was that -- and I will find -- it's actually an exhibit, Your Honours. I think it was

Exhibit 6. Yes, Exhibit P6, Your Honours.

On careful reading of that press release, you will see that there are three bodies mentioned: The Armed Forces Revolutionary Council is mentioned; the Supreme Council is mentioned; and the armed forces is mentioned. Which of those three did the first accused belong to?

We cannot actually impute for Supreme Council -- I have found it -- we cannot impute, for Supreme Council where Council is. Exhibit 6 talks about sackings from the Supreme Council of State. The Armed Forces Revolutionary Council and the armed forces with immediate effect. That's three bodies. Three bodies.

If you look at the other gazettes, it says AFRC or Armed Forces Revolutionary Council, herein after called the Council. It doesn't say Supreme Council. In my submission, it is because that body, if it did exist, was enough, but it did not exist, and that is the Defence case, that this first accused was not a part of any body called Supreme Council.

My learned friend relies on the UN press release. Well, that did not emanate from the AFRC now, did it? It came from somebody else. The AFRC did not send a press release to the UN and say, "Publish this about us." It came from someone else, and then he relies on the newspaper article.

Well, I have said enough about the newspaper article in the Defence trial brief and, my submission, it is not proof. If anything, it is hearsay. It is a journalistic piece. Its source is unknown and, in my submission, it is lacking in probative value and totally unreliable.

The first accused has said the Supreme Council was the

highest body. It was higher than the Council. It was higher than the body to which he belonged, and the body to which he belonged was merely there to make recommendations.

We don't have a release, a gazette, as to when this Supreme Council was set up? Who set it up? Who organised it? Who led it? We don't know. Who comprised it? We only have the evidence of 334 and that, in my submission, is not reliable.

Then the AFRC is said to have transformed into a military outfit. When did this happen? In my submission, we don't have any evidence of that. We have evidence of pockets of people going around and saying they were going to restore the army, well, that is it.

It is noticeable that, this morning, my learned friend was referring to Savage as being not the AFRC, but the SLA.

If we were to look at, also, the first accused and Mosquito, or the RUF, where there was some agreement there was a relationship, that's expanded upon in the trial brief. I didn't go into that, but I need to flag up one thing.

The Prosecution's case was that the first accused was sent to Kono, by Mosquito, to deliver arms, and this was said by 334. Well, I don't think we need a legal brain, actually, to decipher that one. I think that is plain common sense. If the first accused has been arrested by Mosquito in Kailahun, and this is something agreed upon by 334, in examination-in-chief, and he alluded to it in examination-in-chief and accepted that it was so, when it was put to him in cross-examination, and you can see that on page 14 of the transcript of 20 June, lines 18 to 29.

Now, why would Mosquito release someone he'd arrested because the person was running away? Why would he release him

and then give him arms to deliver? Why would he do that? It just beggers belief that it would happen and, in my submission, that 334 was economical with the truth, and he knew full well that the first accused was in custody at the time, but perhaps 334 tried to distance himself from what happened in Kono. In my submission, that is an affront to common sense. And this fails as evidence in support of a joint criminal enterprise with the RUF.

I mention that the Prosecution's case is that the accused was known as honourable, and this is something he denied. In fact, he said that if people call me that, fine, but I have never called myself honourable. And I will explain this by an analogy that I have used before. If you look at university lecturers, if you are looking at the English system, you are a mister, miss or a doctor, and you become a professor, only by publication or by promotion.

If you look at the American system, you are called a professor, even with a first degree, so long as you are standing in front of a classroom. It doesn't make you one in the English system. If you come to the English system and you are called a professor, others call you that. It doesn't mean that you are one, and that is the analogy I used about the term honourable. Maybe, as he said, people called him that. He never called himself that, and that is why he refused to accept that he was an honourable.

I doubt whether issues of the statements of Gborie and Zagalu in the trial brief -- I don't think that needs be expanded upon any more, save to say it would be naive to think that one can ignore the confessional statements of dying men. "You are

arrested for treason; you are as good as gone." Then, as far as I'm concerned, you are likely to say anything that you are told to say.

Paragraph 345 talks about the inference to be drawn about -- my memory fails me a little bit -- but I think there was something about forces in the provinces being taken, orders from the resident ministers, because the resident ministers happened to be military men, and the inference to be drawn from that was that there was a co-operation between the RUF and the AFRC. That is paragraph 345 of the Prosecution's trial brief.

In my submission, that shows the opposite. It was a military government. Military governments have a tendency to appoint their own political office. It doesn't mean that military strategy comes from those who occupy political office. In my submission, the Prosecution is stretching the evidence just that little bit too far. In fact, I think it breaks at this point, if you stretch it a little bit further, and it cannot be that the resident ministers would actually decide military policy in the provinces.

If I recall -- I can't remember which witness -- but in answer to questions from my learned friend for the third accused, Mr Manly-Spain, it was established that, at the time of the coup, there were actually brigades established in various parts of the provinces. So they did not need -- and they had commanders -- they do not need to take military direction from those who occupied political office.

This seems to be a fact the Prosecution have struggled to grapple with, and they seem to be saying those brigades which have been established in the provinces suddenly became under the

direction and authority of the first accused. Well, how could that be? They had their own command structure. Why would the resident ministers call upon brigade military forces? They had political functions. The brigades had military functions, and this, in my submission, does not exhibit co-operation between the RUF and the AFRC.

Another example the Prosecution give in their trial brief, and perhaps bizarrely, is that the issuing of an arrest warrant for Issa Sesay is a good example of co-operation. In my respectful submission that is the complete opposite because it tells you that we think that you want to do something to destabilise us. You are going. We want you inside, somewhere where we can keep an eye on you. It's not co-operation.

And they also say that because the RUF were given an office in Cockerill that is evidence of co-operation. Given an office, not sitting in the same office, which tells me that they were parallel offices. RUF here, AFRC here. Where do they meet? We don't know that. And, in my submission, merely what we have are intentions but the reality is those intentions of co-operation never transformed into reality. We have evidence in this Court about Mosquito going back to Kenema and running Kenema as his own personal fiefdom, running Kailahun as his own personal fiefdom. How could that be co-operation?

Control of diamond areas. In a nutshell there is none. There is no evidence. Look at the evidence for Tongo Field. No Court having heard the evidence adduced would really accept that the first accused controlled diamond mining in Tongo or anywhere else in the Kenema District for that matter. Only one witness, 045, puts the first accused there and even he could not get the

identity right and, in my submission therefore, there is no evidence there.

Kono, the Prosecution relies on 153. Well, as I mentioned, he's the man who accepted, he took bribes. He's the man who accepted he was corrupt and then we also have to remember that he is the man who says that he was sent there by SAJ Musa because SAJ Musa was responsible for mining. And he answered to SAJ Musa. And the only time he saw the first accused was when the first accused went to check up on him and make sure that -- because there had been reports about him behaving badly in Freetown. And our witnesses were able to establish that Kono was a rebel controlled area and for them rebel meant RUF; it did not mean AFRC. It did not mean SLA. It meant RUF.

We have been told about conversations between the first accused and Mosquito and we are told that that establishes that there was a relationship; that they worked together. First of all those conversations are denied. But does that mean because there was a conversation that shows evidence of working together? And when did those conversations take place? Everybody seems to have been present when a conversation was taking place and it was never at the same time. They were all at State House but somehow the conversations didn't take place when they were all together. They were all in the east of Freetown. Somehow these conversations didn't take place when they were all together. Everybody gave their own evidence of conversations taking place at that time but it was different. So if we look at the evidence, you would see probably about 20 different conversations between the first accused and Mosquito. They were all at Eddie Town when the conversations were supposed to have taken place but

at different times. They were never all together and each person will tell you "I was there." In fact, 334 became something of a sing-song: "I was there. It happened in front of me. I was there." He was never far away from when something was happening, and that is because in my submission those were made-up evidence. It's not possible for all of them to have been present when the same thing was happening but somehow they couldn't actually link each other, they were in different places, but could actually testify about the same thing happening around the same period, at the same time, but didn't see each other. How could that happen? That is because, Your Honour, in our submission, these conversations did not take place. These incidents happened as the first accused has said it. He was under arrest and I will deal with alibi in a few minutes.

The Prosecution would like to rely on the fact that the clothing, rebels, rebel soldier, soldier. A half-clothed soldier is not a solder. You cannot say that because someone -- I think I read somewhere last night in the Prosecution trial bundle where the assertion was that because they had gone for so long without being able to get new uniforms and new supplies, the uniforms became subject to wear and tear and therefore you would wear half civilian clothes and half military clothes, and they have imputed that to be soldiers. How did they know they were soldiers? They don't know that. You see someone with a combat trouser, does that make him a soldier? Does that make him an SLA? No.

As I mentioned earlier, I've got to the page where I have made a note to myself about joint criminal enterprise but I think that is something I better leave to the brief. I don't think that I need to say much more about that. I mentioned the case of

Brdjanin in the closing brief, so I don't need to say much more about that and also about command responsibility but I would like to say something about alibi.

Limaj is extensively quoted in the trial brief. I am not sure whether we actually quoted Limaj in relation to alibi but I will ask Your Honours to look at Limaj in relation to alibi. That is the judgement of 30th November 2005. And this is what it says about alibi:

"So long as there is factual foundation, in the evidence for that alibi, the accused bears no onus to establish his alibi. It's for the Prosecution."

Sorry, the accused bears no onus, I forgot to put the full stop.

"To establish that alibi is for the Prosecution to eliminate any reasonable possibility that the evidence of alibi is true.

"2. A finding that an alibi is false does not in itself establish the opposite to what it asserts. The Prosecution must not only rebut the validity of that alibi but also establish beyond reasonable doubt the guilt of the accused as alleged in the indictment."

And I will add a third to what Limaj says. My learned friend mentioned the number of witnesses called for alibi. I have never heard that to establish an alibi depends on the number of witnesses you have trailing into the witness box. There is no correlation between the two. You can have one witness to establish an alibi. You can have ten. And if there is case law to support that you need a number of witnesses to establish alibi I would like to see it.

In my submission, Your Honour, Limaj is the case upon which we rely. But I would also add that the alibi evidence is credible, and the first accused was not anywhere where they said he was. I would also add that careful scrutiny be attached to the weight given to those that -- I have highlighted a few of those witnesses where the evidence given is vastly different from that which they made in their statement.

Yes, time passes. Sometimes memory fades; that is true. One cannot deny that. But what we had here wasn't memory lapses as to dates -- one could forgive those. But these were sometimes outright denials. Complete disassociation from previous statements and then when pressed grudging acceptance of these statements.

In my submission, that tells you something about that witness. He is an unreliable witness; a witness that is not credible. I would also ask that careful scrutiny be given to evidence of victims. Understandably, their evidence, and so it should be, I am not saying that it can be any other way, may be coloured by the trauma they have suffered, by fear, perhaps even by recurrent memory. It may not have helped by the fact that they are put in a foreign environment in a courtroom. People don't like -- I mean, lawyers sometimes don't like courts, let alone people who have been through what they have been through. And not only are they in foreign environment, they are being asked to recall traumatic events they'd rather not recall. We respectfully submit that such evidence should be subject to careful scrutiny as it may, in fact, for quite understandable reasons I might add, not be credible for a criminal trial.

Also linked to this is the identification of the first

accused. I gave the example of 158 and that evidence is unreliable; that description is totally unreliable and therefore I ask that little weight be attached to it and that was also the case with the witness 024, the witness who described the night in State House.

Was it that they had heard the names of the accused persons or particularly the name of the first accused, that has caused them to hazard a guess and perhaps [indiscernible] back by a description?

In a fluid war environment, in a fluid war situation, how much look did they get of this person? Was it a fleeting glance in a crowded environment? These were people who were covered in fear. How could they not only capture the glance of the person they were describing but also retain that memory, given all that they said happened to them?

I would also mention lies, and I do this because it's dealt extensively in the brief but I do it because my learned friend raised it today. Far from it being the fact that the Defence does not rely on its own evidence, the reason why it is raised, because the Prosecution raised it in cross-examination of the first accused and, therefore, the Defence would be failing in its duty if it were not to raise the issue of lies.

If the Court finds the accused did tell lies, and I respectfully submit that you don't, it does not mean, in itself, that the Prosecution has proved its case, and there is case law, Your Honours, which we have relied on to support our assertion.

But I also add that people sometimes lie for a variety of reasons; either fear, either fright or perhaps just innocent reason. That is in paragraph 50-51 of the trial brief.

The Prosecution also put certain Defence witnesses tribal affiliations, accusations made against certain Defence witnesses that because they were from the Kono area they were more likely to give evidence in favour of the first accused out of loyalty and tribal affiliations. If that were the case then my learned friends would not have a single witness from the Kono area. I therefore ask that that, as a consideration, be dismissed outright.

This Chamber has heard a lot of evidence about coup plotters of May 1997. We have dealt with this in the trial brief but I simply add: This is not the chosen trial. Those who the State deem to have been responsible for the coup of 1997 are now dead, having been executed by the State after a court martial. This first accused was in this country at the time. He was not arrested; nor was he tried. He is not now facing a chosen trial. He cannot be tried now for something the State did not try him for.

I have dealt with insider evidence in the trial brief. We have dealt with insider evidence regarding the insider witnesses of the Prosecution, and this is particularly important in respect of what I have said for 334, the person who was hoping to gain something, and 167, who said that if his evidence was good he was sure that he was going to get something out of it.

As regards to what my learned friend said this morning I have dealt with Karina, identification and Savage. Save to say about General Prins, ECOMOG, my learned friend mentioned that General Prins failed to address the reason why the ragtag army of what they called the AFRC was able to take on and defeat ECOMOG.

My learned friends will see that General Prins did mention

this. He did look into this and said ECOMOG, in fact, had adopted a policy of non-engagement. If you adopted a policy of non-engagement then a ragtag army of buffoons would obviously defeat you.

Then Waterloo and Benguema. My learned friend, in cross-examination, had actually -- I can't remember which particular Defence witness -- tried to separate Waterloo and Benguema. It was established in re-examination, and this is a statement of fact because I think my learned friends have a map of Sierra Leone, Waterloo and Benguema are virtually the same place. They are not vastly miles apart. I don't even think there is a mile between them. And to actually use that as evidence that Prosecution -- Defence witnesses have been lying is, in my respectful submission, actually trying to mislead the Court on the evidence.

Your Honours, I end by saying this: On the basis of all the evidence this Court has heard, it can be left in no doubt of the accused's innocence. This Court, in my submission, cannot properly convict on evidence based on shifting sand. Yes, every single piece of evidence need not be proved beyond reasonable doubt, but the evidence must be credible and reliable.

Your Honours, the only right and proper verdict in this case is one of not guilty. Any other verdict will be tantamount to punishing the first accused for the crimes of other people to whom no nexus has been proved; those other people either being those higher above him, or below him.

The Prosecution started this trial by -- started this morning by saying that the trial has been about finding out the truth.

In my respectful submission we are nowhere nearer to the truth and it is based on their own witnesses who keep shifting the goal post every time they are asked a question. Have we been able, by the Prosecution evidence, to tell those crime based witnesses, who both Prosecution and Defence dragged here to come and tell their stories, have we been able to tell them or to satisfy them about what really happened and who did what to them?

Your Honours, in my respectful submission is that no, we haven't. In fact, I think we have failed. This Court cannot be used as a court of fait accompli. The world is just as Justice Robert Jackson said in the Nuremberg trial, is [indiscernible] there is no respect to a court that are merely organised to convict.

This Court, with respect to Your Honours, and perhaps because of Your Honours, is not such a Court. It must avoid the hysteria to punish those who were aligned to the AFRC. But the Defence says we are not part, in any way, shape or form, to the crimes committed. We are not going to try to have a Saddam Hussein kind of trial where you are the world's pariah and therefore you must be tried and you must be convicted.

Your Honours, the only right and proper verdict in this case is one of not guilty and I urge you that the Prosecution has failed to satisfy you so that you are sure of the guilt of the first accused. Any doubt, on the basis of Limaj, which is quoted in the trial brief, must be exercised in the accused person's favour and, in my submission, that would be the only right and proper course to do and that would lead us to a verdict of not guilty.

That ends my submission except, Your Honours, to thank, I

think my learned friends because I think we have had a good year also, and my friends on this side and also the defendants whose co-operation we have had for the most part and also Your Honours. It has been a learning curve, sometimes a rocky road, but I think we got there in the end. Thank you.

PRESIDING JUDGE: Thank you, Ms Thompson.

JUDGE DOHERTY: Ms Thompson, before you sit down, there are a couple of points I would like to clarify. If I could refer you to paragraph 188 of your trial brief.

MS THOMPSON: Can I just find it?

JUDGE DOHERTY: Certainly.

MS THOMPSON: Yes, Your Honour.

JUDGE DOHERTY: In that paragraph you refer to witness TF1-282 and you say he was placed in rent-free accommodation in a modern facility. He had come from a house et cetera and again at page 105 you say he had been living with nine other people et cetera. Now, according to my notes, that was a female witness, not a male witness, and I'm not clear, from your submission, in paragraph 188, if you are saying that the modern facility in which he was placed was a permanent facility because that was not clear to me on the evidence. So would you clarify if, in fact, you are referring in paragraph 188 and page 105 to witness 282 or to another witness?

MS THOMPSON: Your Honour, I am referring to 282. I typed this document myself and perhaps sometimes very late in the night one makes mistakes and didn't actually see them, but in actual fact it's 282, and it's a she, and I recall. Actually, I wasn't quite sure because it doesn't say in my notes, because I got this from my notes and then I sort of checked it with the transcript,

but I do remember under cross-examination this is what the witness said. But if Your Honour's note says "she" I will stand guided by that.

As regards the second point as to whether he was permanent, it wasn't stated. The point is that, or the point we were making there is that even if it's not permanent, the fact that you are elevated from the crowded accommodation from which this witness came, to what this witness had, when the witness was giving evidence, is inducement, in our submission, sufficient inducement for the witness to be giving tainted evidence. Perhaps there is a hope of permanent lift up, as it were.

JUDGE DOHERTY: I see. Another somewhat minor point in paragraph 324, just let me have it before me, and which you refer to the expert opinion on child soldiers, now, you refer to "a number of witnesses they were with the troops that proceeded were, in fact, family members as opposed to abductees." You may recall in that expert report I noted to Mr Manly-Spain that there was no footnote showing where that information emanated from.

MS THOMPSON: Yes.

JUDGE DOHERTY: And there was to be a corrigendum filed, I understood. Now, I personally haven't seen it, so if I could be referred to that corrigendum or to that information.

MS THOMPSON: Your Honour, it wasn't filed.

JUDGE DOHERTY: I understand. Thank you. Ms Thompson, those were my only queries. Thank you.

MS THOMPSON: Much obliged, Your Honour.

PRESIDING JUDGE: I've got a few questions, Ms Thompson, they are not of any great import. I'm sorry repeating you, Ms Thompson. I seem to have a different copy than -- with different

numbered paragraphs. Well, anyway, it seems that some of our paragraphs are similar. I am referring you to 248, paragraph 248. It's on page 102.

MS THOMPSON: Yes, Your Honour.

PRESIDING JUDGE: You will see there that it says: "The Trial Chamber will recall that there was an objection to the calling of this witness on the grounds of relevance." I just want you to clarify which witness are you referring to there?

MS THOMPSON: Your Honours, I should know because my 248, I don't know -- because there was only one filed, and we seem to have different paragraphs, and I am not sure how -- oh, 248, sorry.

PRESIDING JUDGE: 248.

MS THOMPSON: Okay. Sorry, Your Honour. This morning I kind of jumbled my pages because I did take pages out of sequence and I may have -- does Your Honour mind passing down your copy so I can see where, rather than wasting time looking for my page, because mine is not in sequential order? I think it was a Port Loko witness. It's witness 021, Your Honour.

PRESIDING JUDGE: What was that?

MS THOMPSON: 021, Your Honour. I can't see it -- I don't know whether it dropped off when we were printing it or something, or perhaps deleted by mistake in the final version but it is 021.

PRESIDING JUDGE: That is TF1-021?

MS THOMPSON: TF1-021, yes. That is the evidence relating to the mosque in the east of Freetown.

PRESIDING JUDGE: Now, paragraph 269, do you have that? It should be on page 111. 111.

MS THOMPSON: It's an incomplete sentence.

PRESIDING JUDGE: That's all I was going to ask you, Ms Thompson. Is it something you wanted to complete or couldn't we just overlook it?

MS THOMPSON: I think it was something that was going to be completed. Now, I have kind of lost all sense of where we were. I think, Your Honour, this deals with what I mentioned earlier about Kono District being an RUF territory, and that the first accused was not there.

PRESIDING JUDGE: Well, I think we will just disregard it, Ms Thompson.

MS THOMPSON: Thank you. Your Honours, it doesn't make any -- that big a difference to the issues in the case anyway.

PRESIDING JUDGE: No, it doesn't seem to --

MS THOMPSON: No.

PRESIDING JUDGE: -- really detract from the context one bit.

MS THOMPSON: No, Your Honour.

PRESIDING JUDGE: Well, that is all I had to ask. Thank you, Ms Thompson.

MS THOMPSON: I'm grateful, Your Honour.

PRESIDING JUDGE: Well, who was going to address next? It is you, Mr Daniels. Well, we have got about half an hour left today. I don't know whether you wish to use that half an hour and continue again in the morning, or whether you would prefer to start afresh, uninterrupted, in the morning.

MR DANIELS: Your Honours, I would like to start now and, more so because some of the matters are repetitive and there is no need going on to, going into great detail and I have hinted to

the Prosecution that, if need be, we may go over a few minutes, subject to the permission of the Court, Your Honour.

PRESIDING JUDGE: You mean go over a few minutes past the order allotted two hours, or past 4.00?

MR DANIELS: No, before 4.00 today because my intention was to start and finish today.

PRESIDING JUDGE: All right, okay.

MR DANIELS: Subject to your pleasure.

PRESIDING JUDGE: No. By all means, Mr Daniels. If you prefer to start now, then we'll start now.

MR DANIELS: Most grateful.

PRESIDING JUDGE: Please proceed.

MR DANIELS: Thank you. Your Honours, in this case, unlike the situation of the first accused, the second accused insists on his right to silence and reminds the Court that it is the Prosecution that has the duty to prove the case against the second accused beyond a reasonable doubt.

The very foundation upon which the Prosecution case rests against the second accused is based on the false logic that the second accused was a member of the coup plot that overthrew the government and, therefore, a senior member of the AFRC.

If the second accused was a senior member of the AFRC and responsible for the coup, then the Prosecution 's logic has been that after the coup, and after the second accused, together with his comrades, were kicked out of Freetown he continued to hold senior position.

We wish, with respect, to draw the Court's attention to Exhibit P52, which is the AFRC decree number 3, which appointed the second accused as principal liaison officer 3. When we look

at section 3 what we told about the functions of principle liaison officer? It is said that he is responsible for supervising, monitoring and co-ordinating the operations of any department of State; other, and such other business of government as may from time to time be assigned to him by the Armed Forces Revolutionary Council.

This exhibit was tendered, not by the Defence but by the Prosecution. This only tells us that the second accused had some kind of governmental position. By no stretch of imagination does his appointment as principal liaison officer 3 give him any military powers, any powers of command and control over the rank and file of the Sierra Leone Army.

To start with the second accused faces charges on the 14 count indictment in respect of crimes committed in Bo, that is, during the period 1 June 1997 to 30 June 1997. There is evidence before this Court that the second accused was never, at any time, within the district of Bo.

What does the evidence tell us? We look at the evidence of TF1-004, TF1-053 and TF1-054. It tells us that those who conducted armed attacks in Bo were the Kamajors. As has been stated by my learned friend, within the Bo District there was a separate and distinct military hierarchy or military position and that had no nexus, no link between the second accused position as a PLO 3; he had no power to give any instructions whatsoever in the Bo District.

Likewise with the Kenema District where the second accused is faced on a 14 count charge. The evidence before this Court, that is even the evidence of the Prosecution, have told us in no uncertain terms that during the period relevant to the indictment

the Kenema District was under the control of Mosquito. Mosquito was an RUF senior commander who did things on his own.

The only stretch by which the second accused is held liable is under the doctrine of a joint common enterprise. But even there we submit that it is the third leg of the theory, of the joint common enterprise, that is to suggest that the accused persons foresaw the consequences, or the possible consequences, of the actions of their subordinates or they had some link, direct or indirect, with those responsible for committing crimes in Bo and Kenema.

I will come back to the issue of joint criminal enterprise. But then we say that, apart from the fact that in Bo and Kenema, we had ministers who took care of those specific districts. We had a functional Sierra Leone Army that had JPK, that is Johnny Paul Koroma as the commander-in-chief; Colonel Avivo Koroma as the deputy defence minister; Colonel SO Williams as the army chief of staff; Brigadier Mani as the director of military operations. How, then, can we believe the theory of the Prosecution that the second accused had authority over those who were superior in rank to him? How, then, is it that he was able, through some stretch of fanciful application of the joint common -- of the joint criminal -- JCE enterprise, attribute liability to the second accused in Kenema and Bo?

The Prosecution, in paragraph 1374 to 1390, talks extensively about atrocities committed by the second accused in the Kono District. I beg your pardon, paragraph 1211 to 1267.

The Prosecution rely on witness 334, 184 and 167 in terms of the evidence against the second accused. We subscribe to the same caution exercised, or put across by counsel for the first

accused, to do with the quality of the testimony of 334, 184, 167.

Defence witness DBK-129 did not see the second accused in Kono. He told this Court that the overall commander in Kono was Superman; Superman assisted by Peleto. This is a crime base witness.

DBK-113 did not hear or see the second accused in Kono. For him the commander was Superman and he described Savage as the task force commander to Superman.

DAB-098 did not hear or see Bazzy. DBK-098 was based in Tombodu. Tombodu, we all know, is where Savage was based. DAB-098 talks of Superman as being the superior to Savage. He mentions [indiscernible].

DAB-018 did not hear or see Bazzy. DAB-018 tells about General Issa who says that for those rebels who were able to burn down houses, they would be given promotions. He talks of Mosquito being in overall command. He mentions Morris Kallon; he mentions Colonel Maada.

Prosecution witnesses 019, 074, 076, 198, 206, 216, 217 do not mention the presence of the second accused at all within the Kono District. It is not for us to believe or to disbelieve whether or not the second accused was present in the Kono District; that decision is for Your Honours. But we submit that if, indeed, the Court takes the view that the second accused was for some reason within the Kono District, then we must ask ourselves the question: What authority did he have in the Kono District? All we are going on is what has been put forward by 167. 167 says he was the commander. He was the commander; fine. What did he do? What did the second accused do? The evidence

from the Defence witnesses is that the AFRC were subordinate to the RUF; they did not work hand in hand, they worked under the RUF.

Witness 334 gave evidence when he said that the SLA had no rights to go near any of the communication sets. In fact, we are told that the SLA who were within the Kono District used the opportunity to escape from Kono when they were instructed by Mosquito to attack the Sewafe bridge.

Witness 167 testified that Savage worked as an outlaw. Not to repeat what has just been said, but just for emphasis: The conclusion we can draw is that the RUF had total, that is, complete and total control over the SLA within the Kono District. That easily debunks the Prosecution theory or the joint common enterprise and it easily debunks the Prosecution theory that the second accused had command responsibility under 6(1) of the Statute. It also debunks the Prosecution theory under 6(1) of the Statute, that the second accused actually carried out any atrocities within the Kono District.

Your Honours, the Defence case in respect of Kailahun is also set out in paragraphs 1374 to 1390 of the Prosecution trial brief. There, again, the Prosecution easily and readily concede that the second accused was never present in Kailahun, but yet still he is charged with crimes against humanity on the 14 count indictment; he is being held responsible for rapes that took place within the Kailahun District where the second accused was never present.

It is no secret that Kailahun was the base of the RUF. Kailahun was headed by General Mosquito. There is no way that the second accused could compare himself in any way in stature or

in terms of power to the second accused, to Mosquito.

There again for Kailahun we say, and we say very easily, that the joint criminal enterprise theory cannot work; it stretches logic to unreasonable bounds.

In respect of the Koinadugu District, the Prosecution calls ten witnesses, five of which do not mention the presence of the second accused in the Koinadugu District. Indeed, witness 209, who was a rape victim, mentions that SAJ and Superman were in control.

DBK-126 did not see the second accused in Kabala.

DBK-012, had no knowledge of the second accused in Kurubonla or in Kabala.

DBK-037 did not see the second accused in Kurubonla.

DAB-086, DAB-087 all give evidence of the fact that they never saw the second accused in Yifin.

DAB-081 readily testifies that the SLA and the RUF had different functions within Koinadugu; that there was animosity between the SLA and the RUF. He tells us of an incident where SAJ Musa kills an RUF member and for that matter SAJ Musa flees from the Koinadugu District.

DAB-077 tells us of killings in Fadugu within the Koinadugu District, but he tells us that those killings of civilians were carried out, not by the RUF, not by the AFRC, but by the ECOMOG.

DAB-086 tells us about the leader of the group that attacked Yifin. He was mentioned as High Firing and he came with [indiscernible]. This had nothing to do with the AFRC.

Perhaps the more interesting district is the Bombali District where the Prosecution trial brief, at paragraphs 1495 to 1501, 1509 to 1510 and 1513 to 1555, talk about the liability of

the second accused in the Bombali District.

The witness 167 talks of the accused being responsible for wrapping up children or giving orders for children to be wrapped up in a carpet and setting the house ablaze, killing young persons alive. He alleges that this incident took place as he was entering Karina with the second accused.

What was the evidence? The evidence was that there was no Mercedes Benz in Karina Town. 167's theory was that petrol was taken from a parked Mercedes Benz and the petrol was sprinkled all over a house in Karina to kill young persons. 334 mentions the second accused kills five persons in Karina but 334 fails to mention the presence of 167.

The town just before Karina, Mayombo, there was no Mercedes Benz parked in Mayombo. Why doesn't 334 corroborate what 167 says? 167 talks -- 334 talks about children, five girls pleading for their lives and being burnt under the instruction of the second accused. The testimony of 167 and the testimony 334 do not match. Who do you believe? Who do you not believe?

My learned friend has already told you about the evidence of 033 who spoke of up to 500 persons being killed in Karina. Even the Prosecution witnesses, I believe was 153, testified that as few as seven persons were murdered in Karina. Oh, 157, I beg your pardon; I stand corrected.

Then what is the liability attached to the second accused? 334 talks of a decision taken by the first accused in a town called Kamagbengbeh. In Kamagbengbeh this first accused is alleged to have said "we are going to go to Karina to destroy Karina", and this was said in the presence of the second accused. The nemesis of the second accused is 167. All we keep hearing is

"and the second accused was present", "and the second accused was present".

So if he was present what did he do? Was he part of the planning at the preparatory stage, at the execution stage? The Prosecution have failed to give us these details. As my learned friend just said, this is no funfair. This is serious business. The Prosecution should be able to prove their case beyond all reasonable doubt.

Then within the Bombali District the Defence -- the Defence case is that the second accused, together with other honourables, were under arrest in Colonel Eddie Town. The first accused gave evidence that this arrest took place in October 1998.

334 makes no mention of the arrest of the honourables. He only makes mention of the arrest of the honourables when pushed to do so under cross-examination.

167 does give evidence of the arrest of the honourables.

The Prosecution report on the military expert makes no mention of the arrests of the honourables but this, Your Honours, is a very, very, very significant part of the second accused Defence.

Now, the Prosecution have given evidence that the second accused was arrested in the Bombali District, in Eddie Town in particular.

According to 167 the second accused was reinstated in Newton. We have heard that Newton and Benguema perhaps can be used simultaneously or interchangeably because they were only, we believe, ten minutes apart. But then it was on 22 December that SAJ Musa died. That is perhaps two weeks to the attack on Freetown.

We are made to believe that the second accused, having been under arrest, at gunpoint, having been chastised and described as a politician and of no good to the rank and file, suddenly assumes full responsibility over troops who had him under guard. And now the second accused is able to take off from where SAJ Musa had already planned the attack on Freetown.

Your Honours, I find this incredible; that if SAJ Musa died at Benguema, SAJ Musa was, to all intents and purposes, within Freetown. He had already arrived at Freetown.

Witness 012 gave evidence in this Court that it took a trained army five hours to march to Freetown. So within this period of time, within, from 22 December, the Prosecution's theory is that the second accused now got together with the first accused and planned this attack on to Freetown.

Your Honours, we say that it was a march to Freetown; the death of the SAJ Musa had nothing to do with the march to Freetown. The rank and file were moving to Freetown. It did not take the first, second or third accused to encourage them to move to Freetown. In fact if they dared -- if they were around and did anything else they would have, they would have lost their lives, I can assure you.

So, what happens? The rank and file decide to move into Freetown and they get to Freetown on 6 January, and then on the very same day, very early in the morning, perhaps around 7.00, 8.00 in the morning, Pademba Road Prison is broken into.

This breaking into the Pademba Road Prison was not the brainchild of the first or the second accused. Witness 167 clearly says that SAJ Musa had already drawn the battle lines; that Pademba Road Prison was to be broken into; that any

Nigerian ECOMOG soldiers were to be killed; that any SLPP collaborators were to be killed. Those battle lines were drawn long before the second accused, allegedly, moved into Freetown.

But then, interestingly enough, very early that morning one witness says 3,000 persons were released from Pademba Road Prison. Another Defence witness says 4,000 were released from Pademba Road Prison. Okay, let us settle at 3,500. And then we also have the SLA soldiers who were detained at the swimming pool who were also released.

So what situation do we have? We have at least 4,000 soldiers being released in the early hours of the morning on to the streets of Freetown, and we are told by Defence witnesses 133, 012, that those soldiers who were released were disgruntled; they had an axe to grind. They were livid because two, three days before their arrest they were at Lungi and out of fear that these soldiers would collaborate with the advancing forces, they were thrown into the Pademba Road Prison, and as they were free, what happened? Mayhem broke loose. They killed, they maimed, they burnt, they looted. There was no command and control.

In fact the military expert's report for the Prosecution clearly says that it was this singular incident, perhaps, that was responsible for the failure of the AFRC to take power on January 6 in Freetown.

Then, again, we mentioned the presence of the second accused as being present in Freetown. Yes, but for one isolated incident where it is alleged that he was doing some shooting in Kissi around and near Annie Walsh Road. But then he was, if he were there, and that is not for us, our position is not, but it is for the judges to believe, and the judges will believe, and we

are saying that the Prosecution should have gone further to show that he planned, instigated, aided, abetted or he had command responsibility over his troops.

Perhaps the greatest scar on the second accused as regards this case is to do with the Port Loko District.

It is alleged that the second accused was solely responsible for the atrocities that took place within the Port Loko District.

But then who gives all this evidence? The evidence is of 167, and 167 is what we say in law is -- the evidence is the evidence of an accomplice, and if we are going to listen to any of the evidence of 167, we remind ourselves that we must do so with great caution.

012. Before this Court tells us that it was 167 who was in charge of the Port Loko District. It was he who gave all the orders for the burning, for the killing of people at Mamamah, for the killing of persons at Manarma. Defence witness from Nonkoba gave evidence that the atrocities that took place in Nonkoba were done by the RUF.

Your Honours, the evidence against the second accused is extremely limited throughout this trial. The reason we started by mentioning the Prosecution case theory about our position of command responsibility is just to show that the theory cannot hold and the theory is destroyed right at its inception and hence, no liability can be put at the door step of the second accused.

Looking at the greatest responsibility requirement, we say that the Court has to satisfy itself that against this background the Prosecution exercised its discretion judiciously in selecting

the second accused as one of those bearing the greatest responsibility for crimes committed within the territory of Sierra Leone after 30 November 1996.

We say that from an evidential point of view the Prosecution have to cross that threshold and we say that the Prosecution are not, and have not satisfied this Court, that the second accused, indeed, bears the greatest responsibility. For that matter, Your Honours, we rely entirely on our brief. We adopt the sentiments expressed by counsel for the first accused to the extent that the quality of Defence witnesses 033, 167, 334, 153 -- Prosecution witnesses -- is most unreliable. We say the Prosecution have not proved its case beyond a reasonable doubt and that where there is doubt you must acquit. And where there are inconsistencies, the inconsistencies should be interpreted in favour of the accused persons.

Your Honours, it has been a long day. I would not want to take too much of the Court's time but also to refer to a point raised by Mr Staker for the Prosecution, or I believe Mr Agha, when he said the Prosecution, the second accused introduced his alibi witness at the very last minute.

Your Honours, this is a Court of record. If we decided to plead alibi, we would have said so. We never pleaded alibi and the position remains the same, and for that matter we still rely on the case of Limaj to do with the conditions applicable.

Your Honours, we say that under the Statute, section 6(1), the Prosecution have failed to establish that the second accused is individually criminally responsible for crimes committed as alleged in the indictment. We say that the Prosecution's theory of joint criminal enterprise cannot hold, also under section

6(1), and in that regard we rely entirely on our legal arguments as set out in our closing brief.

And, lastly, we say that the Prosecution have not shown that the second accused had command responsibility over the insubordinate troops. For that reason we ask or invite the Honourable Court to discharge the second accused as being guilty for the crimes as alleged.

I would not want to sound boring and repeat myself but, indeed, we are aware that the Bench are a professional Bench and are able to distinguish between fact and law and we count on the good sense of the Bench to arrive at a just decision.

If, Your Honours, if I can of some further assistance I am available. And, if not, that is the case for the second accused.

PRESIDING JUDGE: Thank you, Mr Daniels. Well, Mr Manly-Spain, unless you have got an address that will last about one minute, I think we better adjourn until -- I take it tomorrow morning at 9.15 would suit your convenience as well?

MR MANLY-SPAIN: Yes, that would be fine, Your Honour.

PRESIDING JUDGE: All right. We'll adjourn the Court until tomorrow morning, 9.15.

[Whereupon the hearing adjourned at 4.15 p.m., to be reconvened on Friday, the 8th day of December 2006, at 9.15 a.m.]