

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

FRIDAY, 08 DECEMBER 2006
9.20 A.M.
TRIAL

TRIAL CHAMBER II

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

1 [AFRC08NOV06A - CR]

2 Friday, 8 December 2006

3 [The accused present]

4 [Closing arguments]

5 [Open session]

6 [Upon commencing at 9.20 a.m.]

7 PRESIDING JUDGE: Before we hear Mr Manly-Spain's closing
8 arguments, Ms Thompson, I will just point out to you something
9 defective in the setting out of your Defence final trial brief,
10 and perhaps you could have it amended when you file the redacted
11 file copy. Can I direct you to page 95?

12 MS THOMPSON: Yes, Your Honour; I'm there.

13 PRESIDING JUDGE: If you follow the paragraph numbers down
14 from the top.

15 MS THOMPSON: I've seen it, yes. I've seen it, yes.

16 PRESIDING JUDGE: All right. Well, that's the problem with
17 the setting out.

18 MS THOMPSON: Thank you, Your Honour.

19 PRESIDING JUDGE: All right. Thank you, Ms Thompson. Yes,
20 Mr Manly-Spain.

21 MR MANLY-SPAIN: Good morning, Your Honours.

22 PRESIDING JUDGE: Good morning.

23 MR MANLY-SPAIN: May it please Your Honours, on behalf of
24 the third accused, final trial brief was filed on the 21st, as
25 required -- on the 1st -- as required by the order of this Court.
26 In that brief, there is an index stipulating various topics, and
27 they have been categorised into about eight topics which -- plus
28 a conclusion which the third accused and the defence of the third
29 accused, are going to rely on.

1 Your Honour, we have made submissions on the law and the
2 facts. I will concentrate on both, because I find it necessary
3 to do so.

4 Your Honour, the accused has been charged with 14 counts,
5 as already mentioned, but what I want to refer you to is that the
6 accused has been charged as Santigie Borbor Kanu, aka Five-Five,
7 aka Santigie Kanu, aka Santigie Kanu, aka SB Kanu, aka SB Kanu,
8 aka Santigie Borbor Kanu, aka Borbor Santigie Kanu.

9 Our basic position is that, and I think that is trite law,
10 that it is the duty of the Prosecution to prove all elements and
11 ingredients of a charge. It is their duty, to the required
12 standard. From the evidence that has been led, I believe it is
13 clear that the words "Five-Five" occurred several times, to the
14 extent that I will dare say that Santigie Borbor Kanu was
15 popularly known as Five-Five. I believe we have witnesses who
16 know him as Five-Five, but who do not know that he is Santigie
17 Borbor Kanu, or any of the names to which he has been referred to
18 in the indictment.

19 Our position, Your Honours, is that the name Santigie
20 Kanu -- the name Five-Five is what has brought him to appear
21 before this Court; the popularity of that name is what has
22 brought him to appear before this Court.

23 Your Honours, Lieutenant-Colonel Petrie, in his evidence
24 before this Court, spoke about his conversations with the accused
25 Five-Five when he gave evidence when the accused was arrested at
26 the premises -- after he was arrested at the premises of Johnny
27 Paul Koroma, and when he was interviewing the accused, and I wish
28 to refer to the transcript of 5 October 2005, at page 80. And
29 this is what was said in Court. This was Santigie Borbor Kanu,

1 according to Petrie:

2 "A. Yes. He said to me -- after we'd talked
3 for a few minutes about the emergency.

4 Provisions arrest he said, 'But I don't want to
5 be bothered with that, I've got too much to
6 worry about with this current case.'

7 "Q. Was anything said by you?

8 "A. I asked him what he was particularly worried
9 about.

10 "Q. Did you receive a response?

11 "A. He said, 'I had nothing to do with it. It's
12 because I'm Five-Five. They've arrested me because
13 I'm Five-Five just because something's happened, but
14 I had nothing to do with this.'

15 "Q. Anything further said in that encounter?

16 "A. Not really but from what he said to me, that --
17 you know, he did say at one point, 'They want to hang
18 me' but I was aware from the investigation that the
19 evidence against Five-Five was not particularly
20 strong, and I had some sympathy with his views that
21 it was his -- it was who he was rather than what he'd
22 done as to why he was there."

23 We, Your Honours, wish to ask you to look at the last
24 phrase, "It was who he was rather than what he'd done, as to why
25 he was there." We are respectfully submitting that it is who
26 Five-Five is, that is why he is here, because of his name, not
27 because of the evidence that has been led, not because the
28 Prosecutor had found that he was one of the people with the
29 greatest responsibility but because of the popularity of his

1 name; that is why he is here.

2 We are going to show we have submitted in the brief, that
3 the evidence led by the Prosecution cannot, by any stretch of the
4 imagination, put Five-Five in any of the categories; that is,
5 those who bear the greatest responsibility, nor the category of
6 being a commander who had command and control of troops, and in
7 the category of those who had the joint criminal enterprise.

8 I will go on, Your Honours, to direct you to certain parts
9 of the evidence that will show that what has been led against the
10 third accused is woefully inadequate and do not meet the standard
11 of proof required by law.

12 Your Honours, when Mr Staker finished his address
13 yesterday, the learned President posed a question to him as to
14 what category of JCE the Prosecution is relying on. I'm sorry to
15 say that he did not really reply to that. What he has said is
16 that clearly, it is not the Prosecution's case that they rely on
17 the second category. The first and the second categories are
18 interwoven. So they are variance of each other. So what this
19 Court should do is to just choose whatever.

20 We are respectfully submitting that that is not enough,
21 that it is for the Prosecution to state and decide which category
22 of JCE the accused can be found guilty under. It is not for the
23 Court to go and look at what is before it because the Prosecution
24 has to be definite as to its case. What my learned friend said
25 is something like: We say looking at all of the evidence as a
26 whole, it is clear that all of these crimes were committed as
27 part of a single common plan, design or its purpose in which the
28 three accused participated, that it is not essential to find an
29 express agreement between the three accused to establish that,

1 and that whether the joint criminal enterprise liability exists
2 will be a matter to be determined on the evidence as a whole. I
3 believe that they should have gone for that to direct you on what
4 limb of it and the evidence that fits into that limb. This is
5 what we are submitting. It cannot be any or all, or just pick
6 and choose whichever you feel, Your Honour.

7 Furthermore, I believe my learned friend also submitted
8 that the matter of the greatest responsibility is not the matter
9 for this Court to decide upon. Once the Prosecutor had
10 determined whosoever had to be charged, this Court cannot look
11 into that. We beg to differ, and we are submitting that the
12 Prosecution should be estopped from making that submission. It
13 should be rejected as unfounded and untenable, the reason being
14 that I dare say that it was not this argument was not part of the
15 pre-trial brief of the Prosecution, and I don't think it is in
16 the final brief. But, more so because this is something that has
17 been dealt with by this Court, and the Court, the Chamber number
18 I, this Court dealt with that in its decision on the motion for
19 judgment under Rule 98.

20 I respectfully submit it is too late in the day for the
21 Prosecution to ask that this matter be withdrawn from the Court.
22 If it were the case that once the Prosecutor decides that
23 somebody bears the greatest responsibility the Act -- and the
24 Court has nothing to do with that -- the Act would have stated
25 that, the Statute would have stated that, but that is not there.

26 So, to go on, Your Honours, I wish to go back to my theme
27 about the name Five-Five, and to refer you to certain bits of
28 evidence which show that the Prosecution's evidence on who
29 Five-Five was, his role in the matters which have been

1 adjudicated, is completely inadequate and insufficient.

2 Your Honours, we have submitted that there is a lack of
3 Prosecution evidence on certain locations in the indictment and,
4 in this respect, we have itemised them at page 49 and 50 and 51
5 of our brief, final brief.

6 With regard to the inadequacy of the evidence led against
7 the third accused, I would wish to refer Your Honours to page 51
8 of our brief, that is on the script, it is marked 20144 to 20153,
9 where references have been made to the evidence of 033, 277, 227,
10 046 and 085.

11 Your Honours, we dare say that the evidence that has been
12 led against the third accused can be put into two categories.
13 Evidence by insider witnesses who know him, knew him before the
14 events being investigated, who gave evidence against him, and
15 those who profess to have met him in the course of these events,
16 who gave evidence against him.

17 The witness 033 gave evidence against the third accused,
18 evidence which, I respectfully submit, completely contradicts the
19 evidence of witness 334 against the third accused of events in
20 Kono. I hope you bear with me to read these passages. It was
21 033. He said:

22 "Well, eventually I was in bondage. I was in their
23 hands, but in Tombodu, there was a subordinate
24 commander to Gullit by the name of Savage, alias
25 Mr Die. Well, through the orders given to savage by
26 Gullit to kill, burn the town, Savage rarely adhered
27 to that order he received from Gullit.

28 "Q. Witness, how do you know that Gullit gave those
29 orders to Savage?

1 "A. It was given in my presence.

2 "Q. Did you hear him give the orders?

3 "A. I heard them in my presence.

4 "Q. Witness, what happened after the orders were
5 given?

6 "A. The orders were carried out. There was kills in
7 the township, civilians were killed, houses were
8 burnt, hundreds of them, amputations were carried out
9 by the AFRC fighters. Many civilians were locked up
10 in houses and fire set on the houses by Savage and
11 the AFRC fighters.

12 "Q. Witness, how do you know this?

13 "A. I was present when all those atrocities were
14 carried out.

15 "Q. Witness, were any of the AFRC commanders present
16 in Tombodu during that time?

17 "A. Yes.

18 "Q. Can you tell the Court who was present?

19 "A. Hassan Papa Bangura was there. Five-Five was
20 also there.

21 "Q. Witness, when you say Five-Five, who do you
22 mean, can you tell the Court his full name?

23 "A. Santigie Borbor Kanu.

24 "Q. Proceed witness. Who else?"

25 The point here I'm making, My Lord, is that even if the
26 Prosecutor, when addressing yesterday, more or less considered
27 that Santigie Kanu was not in Kono at the time of any atrocities,
28 and even the first accused, at the time of the atrocities, was
29 not there.

1 334 said that Santigie Kanu went to Kono for one day. And
2 the reason he said Santigie went there was that he was sent by
3 SAJ Musa to go and see what the security situation was, and he
4 spent one day.

5 Your Honour, this is palpably false, the evidence given by
6 334. And 334 is one of the Prosecution's pivotal witnesses, whom
7 they've submitted you should rely on. I am sorry, 033. 033 is
8 one of the pivotal witnesses. 334 also is a pivotal witness in
9 the Prosecution's case, but they have contradicted themselves in
10 these particular, and it is a very, very important particular.
11 He is saying that Santigie Kanu was there, Santigie Kanu took
12 part in this, Five-Five was there, Five-Five took part in this,
13 in the commission of these atrocities, when the other witness who
14 preceded him said he was not.

15 Your Honours, in argument yesterday, the matter of Colonel
16 Petrie not interviewing any of the participants made his report
17 unreliable. I am submitting that it is the opposite. I am
18 submitting that the reliance on witnesses who participated by
19 Colonel Iron made Colonel Iron's report unreliable, because by no
20 way did witness 167 admit his fault in this Court. He always had
21 an excuse. He was always under command, et cetera, et cetera.

22 184, I also believe, was a source. You saw him and you
23 have heard his evidence. 046, Gibril Massaquoi. What are the
24 credentials for Colonel Iron to rely on them? Gibril Massaquoi
25 was not a military man. 167 was an imposter who passed himself
26 off as a soldier, when he was not. These are the people they are
27 asking you to rely on, but we'll go a little further into that.

28 The next witness I wish to refer to -- furthermore, I'm
29 referring to 033 again, at page 52. He gave a fantastic account

1 of events in Karina. According to him, 500 civilians were
2 killed. Over 200 women were raped in that town. There were
3 amputations, et cetera, et cetera. In cross-examination, it was
4 put to him:

5 "Q. This figure you have given, Mr Witness, did you
6 count them?"

7 And his reply.

8 "A. Well, I saw a large number.

9 "Q. Please just answer my question.

10 "A. No."

11 Further on, he came to say that he just made an estimation.
12 But the important thing about that piece of evidence was that it
13 was contradicted by other witnesses brought by the Prosecution
14 who mentioned that only six people died in Karina or seven. I'll
15 refer to the transcripts of 058 of 14 July 2005.

16 Another witness who said that there were only -- or not
17 more than 100 houses in Karina -- was a Prosecution witness. We
18 have heard evidence of the time spent in Karina by the people who
19 have alleged to have been to Karina and committed atrocities.
20 Your Honour, it was said that it was 5.00 in the morning until
21 6.00 or 7.00. Did they have enough time to kill 500 people,
22 amputate about 300, rape about 200 women within two hours? This
23 is just an exaggeration by 334 to fit into the charge of
24 widespread looting, widespread burning, widespread killing,
25 et cetera, et cetera.

26 I believe, Your Honour, and I submit that the evidence you
27 should believe is the evidence of those Prosecution witnesses who
28 came before this Court and said, "I live at Karina. I was there
29 when this thing happened. After it had happened, we buried seven

1 people."

2 Witnesses for the Defence also came to support this theory.
3 TF1-033 is probably the most unreliable witness that was called.
4 Let us look at him, Your Honours. He said:

5 "During the AFRC I was a journalist who wrote that
6 there should not be military intervention. At the
7 overthrow of the AFRC and the intervention of ECOMOG,
8 I had to run away with the AFRC forces. I couldn't
9 go to Guinea; I found myself in Kono.

10 "Q. Why did you run away?

11 "A. Because I was running away for my life because
12 reprisals were being taken against people who had
13 supported the view that there should not be any
14 military intervention."

15 Suddenly in Kono, he was abducted by the first accused.
16 After being abducted by the first accused, he became the
17 right-hand man of the first accused, the radio man of the first
18 accused, the news listener. He was listening to every news on
19 the BBC to relate to the first accused. He was always there when
20 the first accused gave orders and did his work, alleged work. He
21 was always there. He came to Freetown in January 6, escaped from
22 the SLAs when they were returning from Freetown, but just a year
23 later, or two years later, when political parties were being
24 formed, he joined the party of Johnny Paul Koroma, who was
25 basically an AFRC party, or an SLA party, and held a position
26 there. He claimed that he had been treated badly. He admitted
27 that at least two of the accused were part of this party. Would
28 you join them, Your Honour? Those people who have treated you so
29 badly in the bush, the one who abducted you. You went and joined

1 his party. You campaign for him. Then, to make matters worse,
2 after the setting up of the Special Court, you were one of those
3 who volunteered, as he said, one of the first who volunteered to
4 make a statement for the Prosecution against the accused. At the
5 time the accused they were referring to, did not include the
6 third accused. I believe not even any of the three accused
7 before this Court because the original indictment, I believe, was
8 against Johnny Paul Koroma and certain others.

9 The next witness I would wish to refer to, Your Honours, is
10 the testimony of 277. He gave evidence of one Brigadier
11 Five-Five, who shot a woman, in Waterloo. This is found in pages
12 52 and 53 of our brief. This is what went on:

13 "Q. Do you know how she died?

14 "A. Well, she died by gunshot.

15 "Q. And who shot her?

16 "A. It was one Brigadier Five-Five.

17 "Q. How do you know Brigadier Five-Five shot her?

18 "A. Well, SAJ Alieu came, and he came and told
19 us that -- he told our father that there he fired at
20 a woman and my father came and collected a lady and
21 brought her to our house and said, 'who shot this
22 lady?' And he said it was our boss. And he said it
23 was because of this woman that we did not go to
24 fight."

25 That was cross-examination.

26 "Q. If I'm correct, Mr Witness, you indeed stated
27 that you heard that a person referred to as Five-Five
28 shot Mrs Zainab. Is that correct? That is today
29 your testimony?

1 "A. Yes.

2 "Q. Again, I ask your patience for the following
3 sentence I draw from your statement from September
4 2003. It's a statement which can be found on page
5 6300, last paragraph. I will first quote the full
6 portion, and then come back to you with the relevant
7 question. To the Prosecution in September 2003, you
8 stated, I quote: 'At Waterloo, I saw Brigadier
9 Five-Five kill a 20-year-old girl Zainab. He killed
10 her because he met the lady seated by one rebel who
11 had refused to fight against ECOMOG. He said he
12 killed the girl because their fighting men are
13 reluctant to go to the front because of women. After
14 the incident at Waterloo, Five-Five went to Lumpa
15 where I was told he killed eight people, including my
16 aunt's husband, Mr Victor.'

17 "Q. Now, today, Mr Witness, you testified that you
18 confirmed your change of statement which is to be
19 found in the notes of 17 February 2005, and you
20 testified that you heard the person referred to as
21 Five-Five killed your -- killed Mrs Zainab. What
22 made you change your statement on this particular
23 point?

24 "A. That question, I give my final statement today.

25 "Q. Was there specific reason why you gave a
26 different statement on this topic in September --

27 "A. I have no reason. I have no reason. I didn't
28 mention in the statement, but I say that he killed.
29 I said it this morning. I was at the house when SAJ

1 Alieu came and said they've shot my woman. And
2 that's when the Pa went and collected her and brought
3 her to the house and interviewed her, and I've
4 sworn."

5 The difference is obvious. I don't need to comment about
6 it. Here is a person who was saying that Five-Five shot this
7 woman. Never saw Five-Five when he gave evidence in Court.
8 Prior to that, he said he saw him. Is that reliable evidence,
9 Your Honours? I submit not.

10 Your Honour, the Prosecution, in their brief, have been
11 asking you to do something, which we, in the Defence, find very
12 strange. We respectfully submit that the duty of the Prosecution
13 is to prove the case against the accused persons beyond
14 reasonable doubt. What they have been asking you to do,
15 throughout their brief, is for you to infer from the evidence
16 that the accused are guilty. Infer, from the evidence the
17 accused persons are guilty, infer that they are guilty.
18 Your Honour, we respectfully submit that this is not the duty of
19 the Court. The duty of the Court is to find that the Prosecution
20 have proved their case against the accused beyond a reasonable
21 doubt. In their brief, they have asked you 93 times, 93 times to
22 make inferences or derivatives of inferences as to the evidence
23 that you are going to please infer, Your Honours, that they are
24 guilty because of this evidence. Please infer, please infer.
25 They have not said in so many words, on so many occasions, that
26 we have proved the case beyond reasonable doubt, which is their
27 duty.

28 We also take, or wish to challenge what the Prosecution has
29 been saying as to what the standard of proof is. They have been

1 saying you should find beyond a reasonable doubt. I am stressing
2 the word "a reasonable doubt." Your Honours, we submit that it
3 is not beyond a reasonable doubt. It is merely beyond reasonable
4 doubt. Where does the "a" come from? I believe yesterday I
5 heard them say beyond any reasonable doubt. That is not the
6 standard of proof. The standard of proof is beyond reasonable
7 doubt. In our brief, we have made the submission; that is, it is
8 beyond reasonable doubt.

9 The ICTY and ICTR cases we have referred to support our
10 case. When you say a reasonable doubt, Your Honours, we
11 respectfully submit that it implies that there might be more than
12 one possibility, and they have used it in their brief 14 times.
13 They say you should find the accused guilty beyond a reasonable
14 doubt 14 times. I don't believe that there is one time in the
15 brief when they have said find them guilty beyond reasonable
16 doubt.

17 Now, Your Honours, I would wish to address you briefly on
18 the matter of the absence of greatest responsibility on the part
19 of the third accused. My respectful submission, is that for a
20 person to have greatest responsibility, it does not merely mean
21 that he has control of troops, or that he may have had
22 substantial influence over troops. The third accused may have
23 had some inference or some substantial inference on members or
24 the persons with whom he found himself after the flight from
25 Freetown, but I respectfully submit that he did not have
26 effective command and control over all subordinate AFRC/RUF
27 junta, et cetera, as stated in the indictment, over all.

28 I'm sure the Prosecution, within the spirit of magnanimity,
29 would have considered this, that the third accused did not have

1 effective control of troops or over all subordinate AFRC/RUF
2 junta SLAs that were in the bush.

3 Let us look at the history of the third accused; his flight
4 from Freetown. Yes, there is evidence that he was at Masiaka,
5 but there is no evidence that he took part in any deliberation at
6 Masiaka which resulted in any decision for the troops to do
7 anything what we have, and I'm so surprised it was not mentioned
8 in the address by the Prosecution to the Court.

9 Was Johnny Paul ordering Operation Pay Yourself? Operation
10 Pay Yourself, whether you believe it or not, Your Honours, that
11 has nothing to do with the third accused, nothing to do with it.

12 Moreover, no evidence has been led that when the third
13 accused, after the declaration of Operation Pay Yourself, the
14 third accused went on a looting spree. No evidence has been led
15 regarding his personal responsibility or his personal acts. No
16 evidence has been led.

17 We have evidence of decisions being taken in other places.
18 We have decisions being taken in Kono. Of course, he was not
19 there. We have decisions being taken in Kurubonla, et cetera,
20 et cetera, et cetera.

21 Not once did any witness come to say the third accused and
22 the others decided, or the third accused decided, the third
23 accused said so and so and so. All we have is that the third
24 accused was appointed. The third accused was appointed. The
25 third accused was appointed. No one gave what his response was.
26 No Prosecution witness came and said, "Yes, I have accepted this
27 position. I'm going to do, in that position, such and such and
28 such."

29 At one stage, it was alleged the third accused was

1 appointed at Colonel Eddie Town Chief of Staff. What evidence as
2 to the duties of Chief of Staff is there? None. The theory was
3 just come and say the three accused. One was number one. One
4 was number two. And the other was number three.

5 But let's look at what else was said. It was said by 334
6 that the third accused, at Kurubonla, was put in charge of women
7 and kids, the family that we've heard about, and that the third
8 accused was very good about that. The third accused was good
9 with that.

10 We went on, Your Honours, in my cross-examination of 334.
11 He's saying that the third accused performed this duty from that
12 time until they came to Freetown and, on their return, he was
13 still performing that duty. Well and good.

14 The Prosecution has made a lot of submissions about the
15 third accused being in Freetown, and the third accused did not
16 challenge Brima, et cetera, et cetera. I believe it is the right
17 of the third accused to put inconsistent defences before this
18 Court. That is his right.

19 The evidence of 334, as to the role of the third accused
20 with the family, is supported by defence witness DSK-113.
21 DSK-113, at page 91, of our submissions states as follows, it was
22 his answer:

23 "A. We were in a village."

24 DSK-113 was a civilian, not a soldier, who was with the
25 family.

26 "Well, I do not know the name of the village. Then
27 we had known that SAJ Musa ordered some troops to
28 attack Masiaka. But when the troops had gone,
29 SAJ Musa came to the headquarters where we were. He

1 came there. I was there some time when SAJ Musa came
2 to the headquarter and told Five-Five that, 'You,
3 when I'm sending your colleagues, you are just after
4 women. When women are quarrelling, you are there to
5 settle that. That's your duties. You should settle
6 their problems. You and the women should be
7 together.'

8 This is the person, Your Honour, whom the Prosecution wants
9 you to believe was a senior commander of the AFRC forces, or SLA
10 forces, whatever terminology you give them. He was a senior
11 commander, who was third in command, who was told, "You and the
12 women should be together." I thought it would have been the
13 opposite: "You should lead the men to go and fight," not that,
14 "You should go be with the women."

15 I believe one Defence witness in cross-examination, I
16 believe it was 012, he said to this Court, when a question was
17 put to him in cross-examination, "The third accused, that man was
18 a coward." Here again, the name of the third accused, as we are
19 submitting, has put him in that chair, has resulted in him being
20 charged. That man was a coward. That, I submit, Your Honour, is
21 more or less in line with what DSK-113 was saying. "You, when
22 I'm sending your colleagues, you are just after women. When
23 women are quarrelling, you are there to settle that. That's your
24 duties. You should settle their problems. You and the women
25 should be together."

26 That is not the job of a senior commander. I dare say,
27 Your Honours, that we have been hearing the word "commanders,"
28 "commanders," "commanders," but no witness from the Prosecution,
29 or the Prosecutor, has defined who or what a commander is. If I

1 have ten men, am I not a commander? Under me, don't I command
2 them? All this, a senior commander, are left blank about that
3 third accused.

4 But, 334, said -- I can't refer to the page now, but I'm
5 sure the Court will remember that when I was cross-examining 334,
6 I said to him, "You, in the period you were with the third
7 accused, was he ever a commander of troops?" And the effective
8 reply was that he was not. He was not. He was not a commander
9 of troops. At any time, during the joining of the former
10 soldiers of the SLA from Freetown to the provinces, back to
11 Freetown, et cetera, et cetera, he was never a commander.

12 Later on in his evidence, Your Honour, and in his evidence
13 which the Prosecutor referred to, it was alleged by 184, I
14 believe, or 334, that the third accused, in Freetown,
15 demonstrated how amputation of arms by Kanu, how the third
16 accused demonstrated how amputations were to be done. This
17 evidence, I would respectfully submit, is unsupported by any
18 other witness and uncorroborated.

19 It is alleged that this was done on the instructions of the
20 first accused after a soldier had been killed in Fourah Bay. I
21 believe that 334 said this information was given to them whilst
22 they were retreating from Freetown and they were at Kissy Road by
23 Savage Square. Then the first accused said that all of them
24 should go into Fourah Bay and burn. First accused went, second
25 accused went, third accused. They went into Fourah Bay and
26 killed. That is 334.

27 But let us look at the evidence given by 167 with regard to
28 this same incident. According to 167, it took place whilst they
29 were still at State House. That was when the first accused got

1 the information. And the first accused that instructed them, he,
2 167 and others, to go to Fourah Bay and kill and burn and maim,
3 which they did. Your Honours, definitely these are completely
4 contradictory pieces of evidence on the same incident. They are
5 contradictory as to where it started. They are contradictory as
6 to the time. Time, according to 334, is when they were
7 retreating from State House. They had lost State House, they had
8 lost PZ, they had lost Eastern Police. They had gone as far as
9 Savage Square, then they got this information. According to the
10 first accused, he said, "Let's go now, all of us." It was at
11 that time Five-Five demonstrated how arms were to be amputated.

12 But 167, no, who were still at State House. Then we had
13 this information and the first accused said, "You go and deal
14 with them. You go," and he went. Which of them would you
15 accept, Your Honour? They are contradictory. They are
16 unreliable. Two completely different versions by two of the
17 pivotal witnesses of the Prosecution, on one incident. Where do
18 you find -- where should we tread on? But they are asking you,
19 Your Worship, take one, leave the other, infer. You just infer
20 that this one is true. This one is proved beyond reasonable
21 doubt. Forget about the other. Definitely, Your Honours, the
22 law provides as to how you should treat inconsistent and
23 contradictory evidence.

24 We have submitted that, in our brief, we also would
25 respectfully submit that you should not believe this evidence
26 that the third accused demonstrated how an arm should be
27 amputated.

28 I am saying, Your Honours, the third accused is here
29 because of his name. We have instances of people who tried to

1 identify the third accused, and we respectfully submit that the
2 attempts to identify him have been woefully, woefully -- woeful
3 failures. Look at him, Your Honours. I don't know if you would
4 mind for him to stand up for you to see him. Please stand up.
5 Please. He has been described as a huge dark man. Five-Five,
6 huge and dark. So many descriptions have been given of him.

7 So many things have been said that he did, Your Honour.
8 This is a man who carried a stick that fired bombs. Prosecution
9 witness, he had a cane, or stick that fired bombs that he used to
10 fire people with. Fantastic. Nobody, no witness, has come and
11 supported that and, Your Honours, the experienced people of the
12 world, where did that come from; a cane that fired bombs?

13 This is a piece of evidence that the Prosecution is asking
14 you to infer from, that the third accused is guilty. Make the
15 inference. Really not -- we are not saying prove it beyond a
16 reasonable doubt, but we are leaving it to you. Make an
17 inference. Make an inference. Ninety-three times they have
18 asked that. We can't go through all the pieces of evidence they
19 have asked you to make inferences from, but we would wish to
20 direct your attention to the protective role of the third accused
21 concerning women and children.

22 At page 93 of our submissions, this is what 334 said:

23 "A. As I said earlier, these women, Five-Five was in
24 total control of them.

25 "Q. Pause. How do you know Five-Five was in total
26 control of them?

27 "A. After the Karina operation, Five-Five called the
28 commanders and that everyone should sign for these
29 women.

1 "Q. Pause. How do you know Five-Five was in total
2 control of these women at Rosos?

3 "A. Well, in my presence, anyone that had a problem
4 with her husband or the husband a problem with the
5 wife, he goes direct to Five-Five to report. From
6 there, Five-Five would send to call the woman to call
7 the mammy queen, because we had a mammy queen in the
8 camp.

9 "Q. Pause. Explain what you mean by 'mammy queen.'

10 "A. Well, in the jungle, this mammy queen, she deals
11 with the affairs of women in case a women becomes
12 pregnant, wants to give birth, or if a woman has any
13 bad sick like stomach ache and other things, this
14 woman had vast knowledge on these women affairs."

15 I wish to submit that this piece of evidence, Your Honours,
16 explains, to a great extent, the role of the third accused with
17 regard to the protection of women.

18 334 had also said, at page 76 of the transcript of 23 May
19 2005, that the third accused said to the soldiers they should
20 take good care of women. This is what, in a nutshell, 334 said
21 about his role. We spoke, Your Honour, about the identification.
22 I spoke of Five-Five. But concerning his role with women, we
23 have evidence from TF1-227. He said at page 93 of our brief,
24 page 93, 94:

25 "Q. Were there other female civilians at Benguema?

26 "A. Yes, there are many female civilians at
27 Benguema.

28 "Q. Did anything happen to those female civilians?

29 "A. No.

1 "Q. Can you describe the behaviour of the rebels
2 towards female civilians at Benguema?

3 "A. Well, the female civilians at Benguema were
4 protected because they -- some of them who have been
5 captured have been with them and there is cordiality
6 among them.

7 "Q. What do you mean by 'cordiality between them'?

8 "A. Since there is a good relationship."

9 What we are trying to say here, Your Honour, is that the
10 role of Five-Five, if you accept this is his role, does not
11 amount to one who was part of a JCE. It does not amount to one
12 who bears the greatest responsibility. It was just a minor,
13 minor role. You man, you coward, you look after the women. You
14 are good in women's affairs. This, Your Honour, his role with
15 women, and his ability to look after them, is also shown in the
16 fact that no witness claimed that, amongst the family, whether
17 the witness was an abducted person or not, that it was Five-Five
18 who abducted her or him.

19 Even after the ceasefire, the third accused continued to
20 play a role. The evidence of DBK-113, the third accused was one
21 of the people who facilitated the release of the first group of
22 civilians from the fighters. He was the one who went and secured
23 their release.

24 In this regard, with regard to his role, we'll respectfully
25 submit, first of all, that no evidence has been led that he held
26 the position of command. We are also submitting that, from the
27 Prosecution's evidence and submission, the third accused was so
28 low in the hierarchy of who they said were the AFRC top brass,
29 that it is unimaginable for them to come and say he was one of

1 those who bore the greatest responsibility.

2 The Prosecution, Your Honours, have submitted that, after
3 the intervention -- first of all, before the intervention, the
4 AFRC had the hierarchy, which you can see from the proclamation,
5 the AFRC proclamation, the appointment of people, and that when
6 the AFRC was overthrown, and they went into the provinces, this
7 hierarchy continued.

8 In that hierarchy, in the list that they have presented and
9 wish you to follow the hierarchy, Five-Five is number 21. Number
10 21, Your Honours, but they want you to believe that after Johnny
11 Paul had gone, there was this great transformation whereby the
12 third accused catapulted, or he was catapulted from 21 to
13 number 3. While, at the same time, they are saying that this
14 structure continued. This structure continued. They remained
15 like they were. The structure continued. Number 21 to number 3.

16 That is the inference they want you to make, and, on that
17 inference, to say, yes, it is beyond reasonable doubt that
18 Five-Five was number 3. We will be sorry, Your Honour, if that
19 conclusion, or that submission is accepted. It should not be
20 accepted, Your Honour.

21 In, also, the matter of greatest responsibility, Article 1
22 of the Statute, and 15, provide that -- let me just read it:

23 "The Special Court shall...have the power to prosecute
24 persons who bear the greatest responsibility for serious
25 violations of international humanitarian law and Sierra Leonean
26 law committed in the territory of Sierra Leone since 30 November
27 1996, including those leaders, who, in committing such crimes,
28 have threatened the establishment of and implementation of the
29 peace process in Sierra Leone."

1 [AFRC08DEC06B - MD]

2 The second limb including those leaders who had committed
3 such crimes have threatened the establishment and implementation
4 of peace process in Sierra Leone, is something that I believe
5 attention has not been put on. The peace process in Sierra
6 Leone, I believe, commenced in July or June of 1999. Nothing has
7 been said about the third accused doing anything that threatened
8 the establishment of and implementation of the peace process in
9 Sierra Leone.

10 On the contrary, what has been said, what has been led is
11 evidenced that he supported the peace process. He tried to
12 foster the peace process. He tried for the peace process to
13 succeed. He is going to gather the children, the first batch and
14 civilians, is one example. He worked for the CCP, the Commission
15 for the Consolidation of the Peace, which was a creature or
16 creation of the Lome Peace Accord. Can you rightly say that
17 during that period of time, he was working, he was threatening to
18 destabilise or he was threatening the establishment and
19 implementation of the peace process in Sierra Leone? I would
20 daresay no, Your Honours.

21 Your Honours, comment was made about the Defence of the
22 third accused submitting to the effect that the charging of the
23 third accused was an afterthought, and we are standing by that
24 submission. To throw a little light on it, we want you to just
25 look at the history of the issue answer of the indictment by the
26 Prosecutor of the Special Court.

27 On 3 March 2003, certain persons were indicted. That is
28 eight people, Charles Taylor, Foday Sankoh, Johnny Paul Koroma,
29 Sam Bockarie, Issa Hassan Sesay, Alex Tamba Brima, Morris Kallon,

1 Sam Hinga Norman.

2 Later on, certain other persons were added. The third
3 accused in this matter, not until September of 2003. Why?

4 By that time the Special Court needed accused persons.
5 There was no Foday Sankoh. There was no Johnny Paul Koroma.
6 There was no Charles Taylor. There was no Sam Bockarie out of
7 the eight that were charged, in the beginning, initially these
8 are the people whom the Prosecutor with would have said had the
9 prerogative of right to choose. These are the eight people he
10 chose at that time four were not to be found. Four could not
11 appear in Court. Initially Foday Sankoh did, but he died. There
12 was a need for this Court not to look ridiculous, we daresay, for
13 them to justify the large sums of money which had been spent to
14 establish this Court, they needed people to be charged so let's
15 look around. Oh, yes, there is a popular soldier called
16 Five-Five. Let us bring Five-Five in. Let us bring him, we'll
17 find the evidence later. Let us bring him in. He was brought
18 in. But, Your Honours, I believe witness 045 who made a
19 statement before the first indictments were issued spoke of whom
20 the people who were the top men were. This witness TF1-045. We
21 have referred to it on page 71 of our brief. This is what
22 transpired, Your Honours. Question was asked:

23 "Q. Now, why is it then that your interview in
24 January 2003 did not mention the names Five-Five and
25 Bazy as belonging to those individuals you had an
26 opportunity to know."

27 This witness was talking about the hierarchy, those who
28 were the top people in the AFRC, in the bush.

29 "A. Yes, sir but during that time when I say I knew

1 most of them I was not concerned about. The major
2 people who were commanders during that time from top
3 superior to these people, those were the only people
4 I stated during that time, but you know as questions
5 were going on that was, I included their names as I
6 knew them because we just met. But this later part I
7 came back and what I saw and what I remember I placed
8 it. I placed it in. I placed it. I place it on the
9 paper so if I say so, I say what that -- I say that
10 is what I saw."

11 What this is saying, Your Honours, is that when I was
12 talking about the top people I wasn't thinking about these two,
13 Five-Five and Bazy. This is a witness, when he was talking
14 about the first two, the top people, he wasn't talking about
15 Bazy and Five-Five, or Five-Five and Bazy. This is the
16 position. And this witness made his statement in January 2003
17 before the issue of the indictment, and, Your Honours, he wasn't
18 talking about Five-Five and Bazy and, true to form, Five-Five
19 and Bazy were not charged initially. Even the second accused
20 was not charged with the first batch, and I think he is saying
21 now a bit later, I had to talk about these people. This is the
22 evidence. "I wasn't thinking about these people as being the top
23 people."

24 We also have the evidence about the third accused, from
25 DBK-113 also at page 71. He said:

26 "Thank you, Mr Witness.

27 "Q. Mr Witness, do you know whether the time at
28 Colonel Eddie Town, the third accused Santigie Kanu
29 had any military position, operation or position at

1 Colonel Eddie Town?

2 "A. No.

3 "Q. Thank you. Why do you say that?

4 "A. Because I have never seen him like anybody who
5 had a position they were active, so the group would
6 have known that this individual had a position."

7 227, on the same page. Here, interestingly, he was
8 saying Five-Five was a commander at Benguema. There is evidence
9 contradicting that. However, when they moved to Blama from the
10 end of January 1999, the witness says that he did not see
11 Five-Five giving any command. He said:

12 "Q. Did you see him give any command at Blama?"
13 Blama is just after Benguema.

14 "A. I did not see him giving any command."

15 What is he saying? Did Five-Five, the commander at
16 Benguema, lose control lose command while he has got ten, 15
17 miles after? This is unreliable evidence.

18 Further, and interestingly, we have to look, Your Honours,
19 at what was the common plan, as alleged.

20 First, according to the Prosecution, it was to restore the
21 AFRC. Later, the common plan or aim or ultimate, was to
22 reinstate the SLA. That is when SAJ Musa arrived at
23 Colonel Eddie Town.

24 Here, I daresay now that we have two common plans, none of
25 which fit the indictment. Counsel for the Prosecution said,
26 whilst SAJ Musa, after the declaration by SAJ Musa that they
27 should reinstate the SLA nobody should kill, nobody should maim,
28 nobody should do anything against civilians, that was not done.
29 But that is not true, Your Honours.

1 334 admitted that he was punished by SAJ Musa for doing
2 something against what SAJ Musa ordered. 334. He was punished.
3 Moreover, this matter of the ultimate aim and common plan being
4 part of the Prosecution case is a novelty.

5 All along it was the AFRC fighting to gain control over the
6 population of Sierra Leone, the mines, etc, etc, to reinstate the
7 AFRC. Where does acknowledge Musa's plan fit into the
8 indictment?

9 We are saying, Your Honours, you cannot make this inference
10 or assumption, because they are without merit. They do not
11 support the charge or charges that are before you, the
12 ingredients in the charges, that are before you. All of these
13 ingredients, we respectfully submit, should be proved beyond
14 reasonable doubt. Where, it was covered yesterday, if some are
15 proved, others are not, and you can convict.

16 Your Honour, that has simplified it, it confounds me. If
17 you have an ordinary charge or larceny of an Article, which is
18 valued 50 pounds, and it is not proven that it is 50 pounds, but
19 35 pounds, that doesn't matter. This is a completely different
20 case to where you say these people were working to get diamonds,
21 to deal with people outside of Sierra Leone, to secure whatever,
22 to pursue their aim of controlling the government or governance
23 of Sierra Leone.

24 This is the basis of the charge. But is there any evidence
25 there of any dealings by the AFRC or SLA under any leader with
26 anybody outside of Sierra Leone? There is no evidence. Is there
27 any evidence that the faction, this faction, SLA, AFRC, did they
28 receive arms from anybody outside of Sierra Leone? No such
29 evidence. Not an iota of evidence. Nothing. Nothing, Your

1 Honours.

2 Your Honours, to help, I think I should refer to paragraphs
3 33 and 34 of the indictment. This is it:

4 "The AFRC, including Alex Tamba Brima, Brima Bazzy Kamara,
5 Santigie Borbor Kanu and the RUF, including Issa Hassan Sesay,
6 Morris Kallon and Augustine Gbao, share the common plan, purpose
7 or design (joint criminal enterprise)."

8 This is the joint criminal enterprise they have said
9 existed, "which was to take any actions necessary to gain and
10 exercise political power" -- political power -- "and control over
11 the territory of Sierra Leone, in particular, the diamond mining
12 areas. The natural resources of Sierra Leone, in particular the
13 diamonds, were to be provided to persons outside Sierra Leone in
14 return for assistance in carrying out the joint criminal
15 enterprise."

16 Where is the evidence? Where is it, to support that
17 allegation in the indictment? Where is it? I stand to be
18 corrected. Where is it?

19 Paragraph 34, "The joint criminal enterprise included
20 gaining and exercising control over the population of Sierra
21 Leone in order to prevent or minimise resistance to the
22 geographic control, and to use members of the population to
23 provide support to the members of the joint criminal enterprise.
24 These crimes alleged in this indictment, including unlawful
25 killing, abduction, forced labour, physical and sexual violence,
26 use of child soldiers, looting and burning of civilian
27 structures, were either actions within the joint criminal
28 enterprise or were a reasonably foreseeable consequence of the
29 joint criminal enterprise, of the joint criminal enterprise."

1 There, the two limbs of the JCE. What they say, it doesn't
2 matter. It doesn't matter which limb we prove. You, the Court,
3 you make up your own mind, whichever you think. Infer guilt.
4 But we are asking Your Honours, is it not the duty of the
5 Prosecution to prove the allegations that have been put in the
6 indictment? Is it not their duty to prove each and every
7 ingredient of the offences that have been charged? We say it is
8 for them to prove those allegations, the ingredients, beyond
9 reasonable doubt.

10 We are saying now, when the Prosecution addressed you about
11 the aim of the SLA, AFRC, or juntas, as you want to call them,
12 their ultimate aim was to respect, restore the army. This is not
13 within the purview of the charges. It is what has been charged.
14 If that is the common plan, then they have failed woefully to
15 discharge their burden. That is not the common plan they have
16 alluded to in the indictment. That is not the common plan. The
17 common plan was to seize political power. To seize political
18 power. Here it is, "to take any action necessary to gain and
19 exercise political power." That was the common plan that has
20 been canvassed, that is charged. That is what it says. It says
21 that Santigie Borbor Kanu, and the other accused, had a common
22 plan to seize political power.

23 We would refer to paragraph 595 of the Prosecution's
24 submission. Here, they have said that the ultimate aim of SAJ
25 Musa to find the base in the north. In order to find such a
26 base, it's a clear indication that once the SLA and RUF had
27 established themselves in the east, their ultimate aim was to
28 head back north to Freetown.

29 These arguments, slowly coming now, not in the beginning,

1 not in their brief, nowhere. It is nice to fit it in at this
2 stage. We are submitting, Your Honour, that the case for the
3 Prosecution is really, really based on weak deductions and
4 inferences which can in no way reach the standard of proof beyond
5 reasonable doubt, which is the standard that should -- they
6 should reach. They should.

7 In fact, they have asked you to make inference from their
8 evidence 93 times. It's a demonstration, Your Honours, of the
9 weakness of their case. It is so weak that they dare not say we
10 have proved this point beyond reasonable doubt. They cannot be
11 bold enough to say that. It is so weak they cannot say that
12 there is evidence to support proof beyond reasonable doubt. What
13 they are saying, sir, is, please, we are begging. Ninety-three
14 times, please, take into consideration the evidence we have led,
15 and you infer that tantamount to prove beyond reasonable doubt.
16 That cannot be. That cannot be. They should be bold enough to
17 say, Your Honours, we have proved this case beyond reasonable
18 doubt because of such and such and such [indiscernible]. Take
19 this evidence, tantamount to prove beyond reasonable doubt. Take
20 that evidence tantamount to prove beyond reasonable doubt.

21 With regard to the third accused, they are not even certain
22 what his position was. There is no certainty about his position.
23 Look at the evidence they have led as to the position of the
24 third accused. 334, the man who looks after women. At the same
25 time at Colonel Eddie Town, he was chief of staff. 046, Gibril
26 Massaquoi. When I met them at State House, he was chief of
27 defence staff. Did not tell us what that meant, what were the
28 duties. 033 could not tell us what his role was. 167, Your
29 Honours, what was the position of third accused. He was somebody

1 that was close to the first accused at Goba Water.

2 That confounds me. I am close to somebody, so I am guilty
3 if that person is guilty. We are not saying that the first
4 accused is guilty. We are not alluding to that at all. The
5 references were made to evidence led by the Prosecution. It's
6 not to be interpreted that we are relying on that evidence. We
7 have just said, when you take into cognizance those pieces of
8 evidence by those persons, you will find that they are
9 unreliable. They cannot be relied upon. This is the consistency
10 we are showing, that these pieces of evidence are unreliable.
11 You cannot rely on them. That is all we are trying to say when
12 we refer to evidence, unlike what the Prosecutor was saying. I'm
13 sorry, Your Honours, when I stood up yesterday to raise the
14 point, when you rightly told me this was an address, but what we
15 were trying to say, when we were referring to those pieces of
16 evidence, we're not saying we were relying on them for the
17 Defence case. We were saying that even on what the Prosecution
18 witnesses have said, there are contradictions. You cannot rely
19 on them. That is why we referred to those pieces of evidence,
20 not to say we refer to those pieces, not to say that we are
21 relying on them.

22 Just a second, Your Honour. Yes, as I was saying, Your
23 Honour, we just want to clarify the point that we have not
24 referred to those pieces of evidence to say the Defence of Kanu
25 is relying on them for our case. It is the contrary.

26 We have indicated those pieces of evidence, of Prosecution
27 witnesses, that this evidence should not be believed because of
28 their contradictions and unreliability. We are not using them as
29 proof of our case. We have no duty to prove our case, we think.

1 We go on now with the comments, Your Honours, that the case
2 for the Defence was not put to certain Prosecution witnesses, et
3 cetera. In making that submission, I think counsel for the
4 Prosecution is forgetting that, before we came to Court, we had
5 had the statements of prospective or proposed Prosecution
6 witnesses.

7 If, in those statements, we discover contradictions and
8 inconsistencies, would it be in our interest to show our hands by
9 cross-examining on a point which the Prosecution can come later
10 to correct? It is only a matter of strategy. If we say in the
11 statement of 334 that he said there was no arrest in Eddie Town,
12 and 167, in his statement, says there was an arrest, would we be
13 stupid to come to this Court and put to 334 that there was an
14 arrest when we know witnesses who have been served with witness
15 statements, every day we were coming to Court plugging the holes
16 or plugging the holes when they would come with another witness
17 to support either of the two?

18 We would not be so foolish to do that and we have no duty,
19 I daresay, to do that. If there was such a duty no reference was
20 made to any law, either general criminal law, international
21 criminal law or the Statutes, that you have to put your case to
22 the witness.

23 For example, Your Honour, where the evidence of 033 about
24 the killings in Karina, fantastic number, and we also have the
25 statement of the following three witnesses who were coming to say
26 something contradictory. Should we go and say to 334 that there
27 were only seven houses burnt? Seven people killed? That would
28 be showing our hands and we have the right to keep certain things
29 close to our bosom and deal with them when they would think the

1 time is right, and this is what we have done. We did not
2 cross-examine two, at least, of the Prosecution's witness from
3 Karina because they gave evidence in our favour, which we think
4 was in our favour. One was that seven people died; contradicts
5 334. The other one was saying there were not more than 100
6 houses in Karina. Should we have put that to 334, when probably
7 the next witness who was going to say something different may not
8 have come to Court? No.

9 Anyway, Your Honour, I think I have covered, if I want to
10 go on, I will take more than the time allotted but I don't want
11 to bore you. I just want to make certain closing remarks.

12 Firstly, that the Prosecution theory about the hierarchy of
13 the AFRC having continued in the bush should not be given any
14 consideration. In one breath, in their brief, they are saying
15 that the third accused, that is according to the statement of
16 Sergeant Abu Sankoh was not one of the leaders of the coup and in
17 another breath he was one of the leaders of the coup, but the
18 evidence regarding the coup which was made -- somewhat play was
19 made of -- does not affect this indictment in one way or the
20 other, whether he was a leader, whether he was one of them, it
21 doesn't affect this indictment. He has not been charged for
22 plotting or executing a coup.

23 We would like Your Honours to be kind enough to look at the
24 contradictions and inconsistencies in the statements of the
25 Prosecution witnesses. We would like you to look in the case of
26 the third accused, Five-Five, and ask, unlike what they have
27 indicated for the first and second accused, and ask, he being
28 such a top man, why was he given a senior position if they are
29 saying that it is because of your role that you were given senior

1 position. The Defence, my Defence, the Defence of the other two
2 teams are not accepting for one minute that they were given these
3 positions because of they being leaders. In fact, the first
4 accused has strenuously denied that.

5 The theory is what I am attacking, that they said that they
6 were top men; that is why they were given senior positions. The
7 third accused was not given a senior position. They have also
8 spoken, canvassed the point that the chain of command that was in
9 Freetown continued, and that the AFRC changed itself into a
10 military organisation. We are saying no. There was the Sierra
11 Leone Army. The AFRC was merely a political body which governed
12 Sierra Leone for a number of months. You cannot, for any stretch
13 of the imagination, say that every soldier in the SLA were AFRC.
14 The AFRC was just a small body, with at list of people; that was
15 the AFRC. The rest were Sierra Leone Army soldiers. It's not
16 the AFRC that transformed itself into a military organisation.
17 The SLA was a military organisation that was in existence and
18 continued to be in existence. If it were not the case would SAJ
19 Musa have said: We are coming to reinstate the army? Would the
20 president have disbanded the army? It is the army, not the AFRC
21 that transformed itself. It was the army that was a fighting
22 unit in the bush.

23 In concluding, Your Honours, we would respectfully refer
24 you to our conclusion at page 151 of our brief, and the quotation
25 referred to of Justice Murphy which I believe I have read to this
26 Court before. We are relying on the cases that we have referred
27 to, and we respectfully submit that the Prosecution has failed to
28 prove its case beyond reasonable doubt. Not beyond a reasonable
29 doubt or all reasonable doubt or any reasonable doubt, but beyond

1 reasonable doubt. And that you must find the accused persons,
2 particularly the third accused, not guilty of the charges that he
3 has faced.

4 Thank you, Your Honour.

5 JUDGE DOHERTY: Mr Manly-Spain, I've a few points I wish to
6 clarify with you.

7 MR MANLY-SPAIN: Yes.

8 JUDGE DOHERTY: In the course of your address just now you
9 referred to the flight from Freetown.

10 MR MANLY-SPAIN: Yes, Your Honour.

11 JUDGE DOHERTY: As I understand the situation, there were
12 two flights from Freetown following the intervention in '98 and
13 in '99; which are you referring to there?

14 MR MANLY-SPAIN: The '98 flight, Your Honour.

15 JUDGE DOHERTY: Thank you. And I would refer you to
16 paragraph 36 of your brief.

17 MR MANLY-SPAIN: Yes.

18 JUDGE DOHERTY: In which you state "The Defence contends
19 that civilians who voluntarily decide to remain inside the mosque
20 where one of the warring parties are hidden do not enjoy full
21 protection of international humanitarian law." Could you
22 elaborate on that for me, please.

23 MR MANLY-SPAIN: Well, what we were trying to say here is
24 that if, during the course of fighting, military forces take a
25 position, then there will be a cross-fire. And the preclusion,
26 the fact that forces are precluded from attacking civilians, will
27 not apply in that case.

28 JUDGE DOHERTY: Thank you, Mr Manly-Spain. Those were my
29 two questions.

1 MR MANLY-SPAIN: It may have been done to protect ECOMOG.

2 JUDGE DOHERTY: So you are saying, does this then relate to
3 your following paragraph when you speak about human shields or is
4 it a different issue altogether?

5 MR MANLY-SPAIN: It's more or less different. Sorry, I am
6 being corrected by my assistant. It is the same.

7 JUDGE DOHERTY: Thank you.

8 MR MANLY-SPAIN: Thank you.

9 PRESIDING JUDGE: Thank you, Mr Manly-Spain. I don't have
10 any questions. That completes the closing arguments in this
11 case, and we would like to thank counsel for the Prosecution, and
12 counsel for the three accused, for the quality of your closing
13 arguments, and also for the professional way you have conducted
14 your cases throughout.

15 We appreciate the amount of sheer, hard work that must have
16 gone into the presentation of the cases for the Prosecution and
17 for the three accused. We commend all counsel involved in this
18 case, not only for being prepared to do the hard work, but for
19 conducting yourselves at all times in a very professional manner
20 whereby you showed courtesy to the Court, to your opposing
21 counsel, and to the witnesses. This has all contributed to the
22 efficient conduct of the trial.

23 We also thank the entire staff of Court Management for
24 their valuable services.

25 JUDGE DOHERTY: I would like to endorse the words of my
26 learned colleague. Counsel would no doubt recall the earlier
27 days of the opening up of the Court, of the trial and it was very
28 edifying to hear Ms Thompson, on occasion, one occasion, say how
29 the relationships had improved and in the professional manner in

1 which all counsel liaised together and co-operated and with
2 staff, and I join my learned colleague in commending all staff
3 and all counsel.

4 PRESIDING JUDGE: Well, we are going to close the case now.
5 I take it that there are no other ancillary matters that counsel
6 need to manage, mention, before we adjourn?

7 MR GRAHAM: Your Honours, I believe we don't have much to
8 say except, on behalf of the Defence, we think we haven't had the
9 opportunity to also express our appreciation to the Bench. It
10 has been a long journey and we eventually come to the end of the
11 process.

12 We also express our appreciation to our friends on the
13 other side. I think we have seen this noble proposition being
14 [indiscernible] in its most pristine form, here before this Court
15 for the past few months. We are also grateful to Court
16 Management and all the legal officers for all the support that
17 they have given us and finally to say that we are confident in
18 this Court and we believe that the superior wisdom of the Bench
19 will lead to a fair and just outcome. We are grateful for the
20 opportunity, Your Honours.

21 PRESIDING JUDGE: Thank you for those.

22 MR MANLY-SPAIN: I don't think we can go without expressing
23 our best wishes to your absent sister. We do not know why she is
24 not here but we wish to say that we appreciated her presence and
25 her interjections and the role she has played and we want to
26 thank all of you.

27 PRESIDING JUDGE: Thank you, Mr Manly-Spain. We will make
28 sure we pass on your comments to our colleague. Yes, Mr Staker.

29 MR STAKER: Your Honour, I don't want to protract

1 proceedings. I expressed some thanks at the end of our
2 presentation yesterday but I would also like, if I omitted to do
3 it yesterday, to express my thanks to my colleagues for the
4 Defence for the professional and collegial relationship that we
5 have had.

6 PRESIDING JUDGE: Thank you, Mr Staker. Well, we will now
7 retire to deliberate, and we will announce a date for the
8 pronouncement of judgement in due course.

9 Having said that, in accordance with Rule 87(A) I now
10 declare this hearing closed.

11 [Whereupon the closing arguments adjourned at
12 11.03 a.m.]

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