

Case No. SCSL-2004-14-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
SAM HINGA NORMAN
MOININA FOFANA
ALLIEU KONDEWA

WEDNESDAY, 08 FEBRUARY 2006
9.40 A.M.
TRIAL

TRIAL CHAMBER I

Before the Judges: Pierre Boutet, Presiding
Bankole Thompson
Benjamin Mutanga Itoe

For Chambers: Ms Roza Salibekova
Ms Anna Matas

For the Registry: Mr Geoff Walker

For the Prosecution: Mr Desmond de Silva
Mr Kevin Tavener
Mr Joseph Kamara
Ms Lynn Hintz (intern)

For the Principal Defender: Mr Lansana Dumbuya

For the accused Sam Hinga Norman: Dr Bu-Buakei Jabbi
Mr Alusine Sesay
Ms Claire da Silva (legal assistant)
Mr Kingsley Belle (legal assistant)

For the accused Moinina Fofana: Mr Arrow Bockarie
Mr Andrew Ianuzzi

For the accused Allieu Kondewa: Mr Ansu Lansana

1 [CDF08FEB06A-CR]

2 Wednesday, 08 February 2006

3 [Open session]

4 [The accused present]

09:40:05 5 [Upon commencing at 9.40 a.m.]

6 PRESIDING JUDGE: Good morning, counsel. Dr Jabbi, are you
7 ready to proceed with your next witness?

8 MR JABBI: Yes, My Lord.

9 PRESIDING JUDGE: Your next witness is Mr Penfold?

09:40:50 10 MR JABBI: Mr Penfold; Peter Penfold.

11 PRESIDING JUDGE: Yes. Please call in Mr Penfold.

12 JUDGE ITOE: Mr Jabbi, how is the name spelt? Penfold

13 is -- Peter we know, Penfold is?

14 MR JABBI: Pen as in "pen" and fold as in "fold".

09:41:28 15 JUDGE ITOE: And F-O-L-D. Thank you.

16 WITNESS: PETER ALFRED PENFOLD [Sworn]

17 PRESIDING JUDGE: Yes, Dr Jabbi, you may proceed.

18 EXAMINED BY MR JABBI:

- 19 Q. Good morning, Excellency.
- 09:43:22 20 A. Good morning.
- 21 Q. Can you state your full names for the Court, please?
- 22 A. Peter Alfred Penfold.
- 23 Q. Your normal place of abode?
- 24 A. I live in Abingdon, Oxfordshire, England.
- 09:44:00 25 Q. Nationality, please?
- 26 A. I'm a British subject.
- 27 Q. Now, can you tell the Court what connection you have had
- 28 with Sierra Leone?
- 29 A. I'm the former British High Commissioner. I was high

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1 commissioner to Sierra Leone from 1997 to 2000.

2 Q. If I may just say this. There is interpretation going on

3 into other languages, and Their Lordships are also taking down

4 what you are saying, so keep a very good pace to allow those

09:44:58 5 activities to go on abreast of your statement. Thank you. Yes,

6 carry on, please.

7 JUDGE THOMPSON: Let him restate the years.

8 MR JABBI: Pardon, My Lord?

9 JUDGE THOMPSON: Let him restate the years he served here.

09:45:14 10 MR JABBI:

11 Q. Yes. Your connection with Sierra Leone as you started

12 saying. Can you begin that, please?

13 A. I was the British High Commissioner to Sierra Leone from

14 1997 to 2000.

09:45:22 15 JUDGE THOMPSON: Thank you.

16 THE WITNESS: I had also visited Sierra Leone before that.

17 MR JABBI:

18 Q. When and how, up to now, had you visited Sierra Leone

19 before your tour of duty?

09:45:39 20 A. After school I joined Her Majesty's diplomatic service from

21 1963 until my retirement at the end of 2001. During my tour as a

22 diplomat I served in many countries around the world, but

23 particularly in Africa and the Caribbean. I spent over 20 years

24 in service in Africa, serving in countries such as Nigeria,

09:46:16 25 Ethiopia, Uganda, as well as Sierra Leone. I also worked in our

26 African department --

27 Q. Let us watch the pace, please.

28 JUDGE ITOE: First of all, Mr Witness, you say you served

29 here from 1997 to 2000. Is that not imprecise? Can you be very

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1 precise as to the length of time? The time frames, you know,
2 when you served here as High Commissioner because 2000 -- 1997
3 and 2000 is a bit vague.

4 MR JABBI:

09:46:58 5 Q. When did your tour of Sierra Leone start; month and
6 possibly date, please?

7 A. I arrived by road from Senegal on 10th March 1997 to begin
8 my tour as British High Commissioner and presented my credentials
9 to President Kabbah just a few days after that.

09:47:23 10 Q. Pace, please.

11 A. And my tour ended at the end of March 2000.

12 Q. You were also talking about your tours of duty as well?

13 A. Yes. As I mentioned, I had served in Africa and on African
14 affairs for over 20 years, including Nigeria during the civil

09:48:09 15 war; Ethiopia during the revolution; Uganda during the coups of
16 the 80s; and also, I worked as the representative of the British
17 Government on OAU matters and attended several OAU meetings
18 throughout Africa; and I worked in the African department of the

19 foreign office. At that time, I was responsible for many
09:48:49 20 countries in West Africa, including Sierra Leone. This was in
21 the beginning of the 1980s and, at that time, I also visited
22 Sierra Leone.

23 Q. Now, can you tell the Court your perception of the state of
24 affairs in Sierra Leone when you arrived at the beginning of your
09:49:27 25 tour of duty?

26 A. When I arrived in March of 1997, this had been following
27 the election the previous year, the democratically elected
28 government of President Kabbah; elections which had been
29 internationally monitored and considered free and fair. Towards

1 the end of that year, 1996, in November, the Abidjan Peace Accord
2 had been concluded between President Kabbah's government and the
3 movement known as the RUF, the Revolutionary United Movement
4 Force.

09:50:25 5 Q. Please keep watching your pace and the pens at the high
6 table.

7 A. In March when I arrived, the RUF were already beginning to
8 renege on certain conditions of the Abidjan Peace Accord. But,
9 they did not pose a substantial security threat to the country,

09:51:16 10 in that they were confined to mainly three areas around the
11 country.

12 Q. Keep watching the pace, please.

13 A. My initial tasks as British High Commissioner were to
14 oversee various British aid-funded projects in support of the

09:51:55 15 infant democracy which existed, such as projects assisting the
16 judiciary, the Parliament, the public service, the police, the
17 media, and civil society. Also --

18 Q. Keep watching your pace, please.

19 A. As part of this assistance from the British government we
09:52:48 20 embarked upon a small military training assistance program,
21 together with the US government and alongside the Nigerian
22 government. In this connection, it came to light that there was
23 widespread corruption and inefficiency within the Sierra Leone
24 Army at that time.

09:53:48 25 For example, at that time --

26 PRESIDING JUDGE: When you say "small" in this connection,
27 you mean the connection by the military program that was set up?
28 Is that what you mean by this?

29 THE WITNESS: Yes, My Lord. The program itself comprised

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1 of two British military officers, Major Lincoln Jopp and a staff
2 officer, whose task was to train two battalions of the
3 Sierra Leone Army over a one-year period, but on a very small
4 budget of approximately 140,000 pounds.

09:54:47 5 MR JABBI: Jopp, My Lords, is J-O-P-P, Jopp. Major Lincoln
6 Jopp.

7 Q. Carry on, please.

8 A. At that time, the Sierra Leone Army was claiming to have a
9 strength of 15,000 men. And for which, therefore, they claimed
09:55:18 10 15,000 salaries and 15,000 rice rations from the government.

11 This was an enormous burden on President Kabbah's government,
12 consuming, I believe, something like 60 per cent of government
13 revenue. However, in a meeting --

14 JUDGE ITOE: What percentage, 50 or 60?

09:56:01 15 THE WITNESS: 60 per cent. However, in a meeting that I
16 had with the chief of defence staff at that time --

17 MR JABBI:

18 Q. Roughly what date of that meeting?

19 A. This was in April 1997. Brigadier Hassan Conteh, he
09:56:35 20 revealed to me that, in effect, there were only about 8,000 men
21 in the army. And because of this, he initially claimed that they
22 would not be able to undertake the start of our training program,
23 which we had agreed upon and had been working for for several
24 months.

09:57:24 25 PRESIDING JUDGE: So when you say he was CDS, chief of
26 defence staff of the Sierra Leone Army?

27 THE WITNESS: Yes, My Lord, the head of the army.

28 PRESIDING JUDGE: Thank you.

29 THE WITNESS: I reported this conversation to the deputy

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1 minister of defence at that time --

2 MR JABBI:

3 Q. By the name of?

4 A. The Honourable Sam Hinga Norman, who expressed annoyance

09:58:04 5 and surprise, and said that he, up until that time, had been

6 trying to establish exactly how many soldiers there were in the

7 army. I went with Minister Norman to the vice-president at that

8 time, His Excellency Dr Demby, and the next day we were called to

9 a meeting with His Excellency the President, at which both

09:59:06 10 Brigadier Conteh and the chief of army staff, Colonel Max Kanga,

11 were present.

12 Q. Can you tell the Court the rough date of that meeting with

13 His Excellency the President?

14 JUDGE ITOE: Who was present? Can we have that again,

09:59:32 15 please. The chief of staff?

16 THE WITNESS: The meeting with the President, My Lord?

17 JUDGE ITOE: The chief of defence staff, that's right, yes?

18 THE WITNESS: At the meeting with His Excellency the

19 President, there was myself, Dr Demby, the vice-president,
09:59:42 20 Minister Norman, the chief of the defence staff, Brigadier
21 Conteh, and the chief of the army staff, Colonel Kanga.
22 PRESIDING JUDGE: Kanga?
23 THE WITNESS: K-A-N-G-A.
24 PRESIDING JUDGE: Thank you.
10:00:04 25 MR JABBI:
26 Q. Can you give a rough idea of the date of that meeting?
27 A. That meeting would have taken place between mid and late
28 April.
29 PRESIDING JUDGE: Ninety?

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1 THE WITNESS: 1997.

2 MR JABBI:

3 Q. Yes.

4 A. At that meeting, Brigadier Conteh slightly changed his tune
10:00:47 5 and explained that it was not because of lack of numbers that he
6 could not start our military training program, but lack of
7 resources, such as uniforms for the men; that he then undertook
8 to provide 300 men for us to start the training at Benguema, a
9 military training ground, where the US training team had already
10:01:42 10 arrived.

11 MR JABBI: Benguema, My Lords, is B-E-N-G-U-E-M-A.

12 Q. Yes.

13 A. However, the President did express concern over the
14 contradiction of numbers which were reputedly in the Sierra Leone
10:02:26 15 Army, and I understand that he undertook, or he asked Brigadier
16 Conteh to undertake, to reduce the rice rations, given that so
17 many were being obtained illegally.

18 Q. Now what representation about the actual numbers in the

19 army did Brigadier Conteh confirm at the meeting of the
10:03:19 20 President?

21 A. As far as I recall, he remained vague about the precise
22 numbers at the meeting at which I attended. He neither denied
23 nor confirmed the figures of either 15,000 or 8,000.

24 PRESIDING JUDGE: But these two numbers were mentioned in
10:03:57 25 the meeting, not necessarily by him, but these were the numbers
26 being discussed, 8,000 versus 15,000?

27 THE WITNESS: Yes, My Lord.

28 MR JABBI:

29 Q. Yes, can you proceed, please?

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1 A. I heard subsequently from different sources that Brigadier
2 Conteh had summoned a meeting at defence headquarters and said
3 that he had been instructed by the President to begin a program
4 of reducing the rice rations. As I understand, at that time the
10:05:13 5 rice was distributed according to rank. For example, I was
6 told --

7 Q. Watch your place, please.

8 A. -- that a colonel would receive 30 bags of rice a month and
9 a private soldier one bag. And I was informed that
10:06:02 10 Brigadier Conteh was proposing to reduce the rice rations of the
11 privates and NCOs, but not of the senior officers. I mention
12 this because I believe this contributed to the unrest within the
13 army at that time.

14 On 17th May, I had a meeting --

10:07:11 15 JUDGE ITOE: Mr Penfold, of what year?

16 THE WITNESS: 1997, My Lord.

17 JUDGE ITOE: When you give us a date, kindly indicate --

18 MR JABBI: The year.

19 JUDGE ITOE: -- the year. Because we are talking on time
10:07:27 20 frames in these proceedings, please.

21 THE WITNESS: Thank you, My Lord. On 17 May 1997, I had a
22 meeting with His Excellency the President, together with my
23 colleague, the American Ambassador John Hirsh, and the United
24 Nations Special Representative, Ambassador Berhanu Dinka. The
10:08:18 25 meeting took place at President Kabbah's private home in Juba on
26 the Saturday morning, that is 17 May 1997.

27 At that meeting, I and my diplomatic colleagues advised His
28 Excellency of the unrest that we were hearing about in the army
29 and warned him of a possible coup. His Excellency the President

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1 told us he had heard also such rumours and that he would be
2 talking to the military. It was a week later, on 25 May 1997, a
3 Sunday morning, when the coup took place.

4 MR JABBI:

10:10:31 5 Q. Now, can you briefly tell the Court your own perception of
6 events that morning?

7 PRESIDING JUDGE: You mean the Sunday morning, Dr Jabbi?

8 MR JABBI: Yes, My Lord.

9 JUDGE ITOE: Is it his perception, or are you asking him to

10:10:44 10 relate --

11 MR JABBI: What he observed.

12 JUDGE ITOE: -- what he observed.

13 MR JABBI: Yes, My Lord.

14 JUDGE ITOE: That's right, it's not a perception.

10:10:59 15 MR JABBI: As Your Lordship pleases.

16 JUDGE ITOE: He was right on the spot.

17 MR JABBI: Indeed.

18 JUDGE ITOE: Am I right, Mr Penfold?

19 THE WITNESS: You are indeed, My Lord. I was awoken on
10:11:10 20 that Sunday morning about 5.30 and could hear loud bangs around
21 the city. I went and spoke to my guards at the gates of my
22 residence and asked them what was going on. They were uncertain.
23 They said the bangs had been going on for about half an hour to
24 an hour. I went back into the residence. I telephoned my
10:12:06 25 deputy, who lived down the hill from my residence alongside the
26 British High Commission offices.
27 MR JABBI:
28 Q. What was the location of the British High Commission
29 offices at the time?

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1 A. At the time they were where they are now on Spur Road.

2 Q. Spur Road.

3 A. My deputy was asleep and had not heard anything. I think

4 because he was sleeping with his air conditioner on.

10:12:53 5 JUDGE ITOE: Either that or he had a very busy day.

6 THE WITNESS: That could well be, My Lord.

7 JUDGE ITOE: Could well be.

8 THE WITNESS: I started telephoning other people. For

9 example, it seemed that some of the shooting was coming close to

10:13:28 10 State House in downtown Freetown and I had a local member of

11 staff who lived close by.

12 JUDGE ITOE: Close by where?

13 THE WITNESS: Close by to State House. He confirmed that

14 there were soldiers around State House shooting at State House.

10:13:57 15 MR JABBI:

16 Q. By what means did he confirm that?

17 A. He had seen them. He was that close to State House. He

18 could look out his window and could see them.

19 Q. By what means was he talking to you?

10:14:10 20 A. By telephone.

21 Q. Thank you.

22 A. For the next two hours or so, we began to receive various

23 reports by telephone and by radio. A number of members of the

24 British community had radios and also speaking to other

10:14:49 25 diplomatic colleagues, Sierra Leonean officials and friends, it

26 was clear that the soldiers were shooting in various locations.

27 Then, at five past nine in the morning, a Corporal Gberie [sic]

28 came over the radio station announcing, somewhat incoherently,

29 that the soldiers, the army, had taken over, that President

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1 Kabbah had fled the country, and that now they, the army, were in
2 charge.

3 Q. What is the spelling of the name of that announcer?

4 A. Corporal Gberie is G-B-E-R-I-E [sic]. For the rest of that
10:16:22 5 day it was total mayhem in Freetown. We continued to receive
6 incessant reports of soldiers looting, raping, pillaging. No one
7 was being spared: young and old; rich and poor; Sierra Leone,
8 expatriate. For example --

9 Q. Watch your pace, please.

10:17:08 10 A. -- the wife of an expatriate businessman was raped, the IMF
11 representative's house was looted at least five times. It was my
12 prime responsibility to ensure the safety of the British
13 community, who numbered some 2,000, and, as best I could, I
14 advised them all to stay at home, to keep their heads down, to
10:18:07 15 listen to the radio. I was able to reinforce that message
16 through interviews with the BBC world service.
17 We were slowly able to piece together exactly what happened
18 that day. Initially, 17 soldiers --

19 Q. Keep your pace, please.

10:18:57 20 A. -- had broken into an ordnance depot and stolen --

21 JUDGE ITOE: Seventeen, sorry?

22 THE WITNESS: Seventeen, 1-7, My Lord, and stolen arms and

23 ammunition --

24 JUDGE ITOE: Broke into?

10:19:29 25 THE WITNESS: An ordnance depot and stolen arms and

26 ammunition. One group then went to State House where they

27 started firing, possibly believing that the President was there.

28 Another group went to Pademba Road Prison, broke into the prison

29 and released all the prisoners. Very soon most other elements of

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1 the army joined them. I was informed --

2 JUDGE ITOE: Did you say they released all the prisoners
3 from Pademba?

4 THE WITNESS: Yes, they did.

10:20:40 5 MR JABBI:

6 Q. Pademba Road Prison?

7 A. Yes. And, of course, one of those that they released was
8 Major Johnny Paul Koroma. Koroma was in prison --

9 MR JABBI: Koroma, My Lords, K-O-R-O-M-A, Koroma.

10:21:14 10 THE WITNESS: -- was in prison on treason charges, but his
11 life had been spared by President Kabbah. He, subsequently, was
12 appointed chairman of the Armed Forces Revolutionary Council, the
13 name that was adopted by the soldiers mounting the coup.

14 MR JABBI:

10:21:57 15 Q. Now, just before you carry on with the narrative, you had
16 said that at your meeting of 17 May 1997 with His Excellency the
17 President, you had expressed concern of a pending coup, that the
18 President had promised to talk to the army. Do you know if the

19 President did anything in particular intended to forestall the
10:22:35 20 coup?

21 A. I have no knowledge what precisely the President did after
22 that.

23 Q. Carry on with your narrative, please.

24 A. We also had learnt during that day that early on in the
10:23:01 25 morning during the first signs of shooting, the Nigerian
26 detachment of soldiers, who were responsible for protecting His
27 Excellency the President, arranged for him to leave by helicopter
28 and we learnt subsequently that he had flown to Guinea to seek
29 refuge with President Conte of Guinea. By the end of the day

1 when, clearly, there was still chaos everywhere --

2 PRESIDING JUDGE: We're still on the Sunday?

3 THE WITNESS: On the Sunday, My Lord. In consultation with
4 my colleague, the Nigerian High Commissioner, we sent a message
10:24:44 5 to Johnny Paul Koroma, inviting him and others to a meeting at my
6 residence the next morning.

7 MR JABBI:

8 Q. Now, on the day of the coup, that Sunday, did you know
9 anything about Mr Norman, for that day?

10:25:32 10 A. We heard, from various reports, but especially through my
11 colleagues in the American Embassy -- I might mention that, at
12 that time, the Ambassador John Hirsh had gone back to the United
13 States and it was now his deputy, Ann Wright, who was in charge
14 of the American mission --

10:26:03 15 Q. Please, keep watching your pace.

16 A. We heard that Minister Norman had been trying to rally
17 loyal officers of the Sierra Leone Army to put down the coup, and
18 we heard that the rebel soldiers were searching Freetown for him.

19 We subsequently --

10:26:50 20 JUDGE ITOE: Please, please, can you go slowly?

21 THE WITNESS: We subsequently learnt --

22 JUDGE ITOE: You heard that the rebel soldiers were looking
23 for him?

24 THE WITNESS: Yes, they were, My Lord. I believe Minister
10:27:16 25 Norman found it very difficult to get contact or support from the
26 senior officers of the army who appeared --

27 JUDGE ITOE: Mr Witness, don't speculate, please. We would
28 like you to testify to issues which are within your knowledge.
29 You say you believe. I mean, how did you come by this belief?

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1 It's not good to speculate.

2 THE WITNESS: I was told this, My Lord, by various
3 contacts. Most of the senior officers had gone to ground. I was
4 informed that Minister Norman had himself had to go into hiding
10:28:43 5 at the Mammy Yoko Hotel, which, at that time, there was stationed
6 a contingent of Nigerian soldiers and, about five days later,
7 Minister Norman was taken out of the country on board the
8 American warship, the USS Kearsage, spelt K-E-A-R-S-A-G-E. That
9 ship had been deployed to assist with the evacuation of the
10:29:57 10 international community.

11 [CDF08FEB06B-EKD]

12 MR JABBI:

13 Q. Do you know how Mr Norman was hiding out at the hotel?

14 A. I was told he was hiding on top of the lift shaft. These
10:30:20 15 events are related in the book that my colleague, the American
16 Ambassador, wrote about the conflict.

17 Q. Title of the book, please, if you know it?

18 A. I believe it's called "Sierra Leone: The Struggle and

19 Diamonds."

10:31:00 20 PRESIDING JUDGE: So what you are informing the Court

21 about, you read that in that book, or you were informed at that

22 time?

23 THE WITNESS: I was informed at that time, My Lord. The

24 book came out two years later.

10:31:11 25 PRESIDING JUDGE: Yes, that is why I am asking. If it was

26 information you obtained at the time these events were taking

27 place or you subsequently learned about that by reading the book.

28 THE WITNESS: No, I learnt it at that time, My Lord.

29 PRESIDING JUDGE: Thank you.

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1 THE WITNESS: We now come to the Monday, 26th May, when
2 Johnny Paul Koroma and six or seven of the other soldiers who had
3 overthrown the government the day before came to my residence.

4 MR JABBI:

10:32:10 5 Q. How did it come about that they came?

6 A. As I mentioned, I had sent a message to them, together with
7 the Nigerian High Commissioner, inviting them to come to the
8 residence. And perhaps, somewhat surprisingly, they turned up.

9 At that meeting was also present the Nigerian High Commissioner,
10:32:47 10 the deputy commander of the Nigerian forces in Freetown at that
11 time --

12 Q. Can you supply the names, if you know them, please? The
13 Nigerian High Commissioner?

14 A. My memory is vague on that point, but I believe it was a
10:33:08 15 Colonel Biu, B-I-U. But I may be wrong, but I believe that was
16 his name.

17 PRESIDING JUDGE: You are talking here of the deputy
18 commander?

19 THE WITNESS: Deputy commander of the Nigerian detachment
10:33:23 20 of forces who were present in Sierra Leone.

21 PRESIDING JUDGE: Thank you.

22 THE WITNESS: The United Nations ambassador, Ambassador
23 Dinka, the United States Chargé d'Affaires, Ann Wright, and I had
24 with me Major Lincoln Jopp, the officer responsible for the UK
10:33:55 25 military training programme. I invited everybody into my dining
26 room, asking Koroma and the soldiers first of all to leave their
27 heavy guns outside, and we discussed the situation. My and my
28 colleagues' primary concern was the safety and security of the
29 communities for whom we were responsible. And we sought

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1 assurances from Koroma and the soldiers that there will be an end
2 to the looting, killing and pillaging, especially against our
3 communities. We cited several examples of members of our
4 communities who had been injured or affected to which Koroma
10:35:38 5 apologised.

6 I then went on to say that clearly from what reports we
7 were picking up, the people of Freetown and elsewhere were not
8 supporting the coup, and that it was unlikely that the
9 international community would support the coup, and that
10:36:34 10 therefore he and the soldiers should stand down and allow the
11 return of the democratically elected government of
12 President Kabbah.

13 We decided to continue having meetings the next day and
14 Koroma and the soldiers left after I'd given them something to
10:37:38 15 eat and drink.

16 There then followed, for the rest of that week, more
17 meetings at my residence. My residence was selected because it
18 was felt that it constituted neutral ground. For example, the

19 soldiers were not prepared to go to the Nigerian High Commission,
10:38:31 20 and the Nigerian High Commissioner was not prepared to go to
21 defence headquarters. At these meetings different people
22 appeared with the soldiers from time to time, and Koroma himself
23 did not come to any further meetings, but sent others to
24 represent him. By the end of the week -- by the Saturday of that
10:39:29 25 week, the AFRC informed us - and by that time it was just the
26 Nigerian High Commissioner and myself, because both the Americans
27 and United Nations had evacuated - the AFRC informed us that they
28 were prepared to stand down and allow President Kabbah to return
29 under certain conditions, such as passage out of the country for

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1 some of the soldiers involved and an undertaking by
2 President Kabbah's government to investigate the corruption and
3 wrong-doings of senior officers in the army. We even went so far
4 as to draft a statement that would be read out over the radio,
10:40:57 5 announcing this decision, informing the people of Sierra Leone.
6 We waited in our offices on the Saturday evening for the
7 announcement to be made.
8 At one stage a member of the AFRC telephoned me and said
9 that they could not find the chairman, Johnny Paul Koroma, and
10:41:49 10 asked whether another member could make the radio announcement.
11 After consulting my Nigerian colleague, we advised that we did
12 not think it would be appropriate for someone other than
13 Johnny Paul Koroma to make that announcement, given that he had
14 been publicly identified as the chairman, and therefore quasi
10:42:37 15 head of state.
16 Sadly, no announcement came over the radio. We
17 subsequently learned the reasons for that. Following the coup
18 the previous Sunday, one of the first decisions --

19 MR JABBI:

10:43:22 20 Q. Please keep watching your pace.

21 A. One of the first decisions by the AFRC was to send a
22 message to Foday Sankoh and the RUF inviting them to come to
23 Freetown to join the AFRC, and indeed, making Foday Sankoh the
24 vice-chairman of the AFRC. Sankoh, who at that time was in

10:44:29 25 detention in Nigeria, sent a message to his commanders in the

26 field advising them to join the soldiers. Consequently, we began
27 to see members of the RUF arriving in Freetown, led by Sam
28 Bockarie, alias Mosquito, a young and particularly nasty person.

29 And the people of Freetown --

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1 JUDGE ITOE: Just a minute, please.

2 THE WITNESS: And the people of Freetown were subjected to
3 further violence and terror.

4 PRESIDING JUDGE: When you say further, you mean this after
10:46:21 5 the week? In other words, you had meetings during that week at
6 your residence, you were waiting for the announcement. When you
7 say further terrors and looting and so on, this is in the other
8 week? In other words, that is the week that followed the week of
9 meetings.

10:46:38 10 THE WITNESS: No, My Lord, it's still the same --

11 PRESIDING JUDGE: The first week.

12 THE WITNESS: That same week, the first week. But what had
13 begun to happen is that by the Monday, initially some of the
14 looting and pillaging by soldiers was beginning to ease off, but
10:46:58 15 then as the RUF came, it began to pick up again. And this time
16 in particularly gruesome way. And, therefore, when Bockarie and
17 the RUF heard of our negotiations and of the alleged decision for
18 the AFRC to stand down, they refused to go along with that and,

19 indeed, I was told, threatened Koroma and the soldiers. The
10:48:09 20 Sunday -- the next Sunday after the coup of the 25th, fighting --
21 MR JABBI:
22 Q. Just before that, please. You say you were told that the
23 RUF threatened Koroma -- Johnny Paul Koroma and the soldiers. Do
24 you know the nature of that threat?
10:48:28 25 A. I think they threatened the lives of certain members of the
26 soldiers by holding guns to them.
27 Q. Thank you.
28 A. I can add further to that. In subsequent discussions that
29 I had, which had taken place in 1999 with Johnny Paul Koroma, he

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1 said to me that he deeply regretted inviting the RUF to come to
2 Freetown at that time.

3 JUDGE ITOE: In subsequent discussions you had with
4 Johnny Paul Koroma?

10:49:23 5 THE WITNESS: Yes, but this was two years later, My Lord.

6 JUDGE ITOE: In 1999.

7 THE WITNESS: In '99.

8 JUDGE ITOE: Do you remember the month, Mr Witness?

9 THE WITNESS: I don't think I can be that precise. It

10:49:40 10 would have been in the second half of 1999, after the Lome

11 convention had been signed, when Koroma and I were both members
12 of the National Committee for DDR: Disarmament, Demobilisation,
13 Reintegration. And at that time I had two or three meetings with
14 Koroma at my residence.

10:50:22 15 On the Sunday after the coup, the 25th, after we had failed

16 to hear the radio broadcast, fighting broke out again between the
17 soldiers now with the RUF and the Nigerian forces based at the
18 Mammy Yoko Hotel. Major Jopp, my UK military training officer,

19 was at the Mammy Yoko, and I was able to keep in touch with him
10:51:25 20 by radio, and also with the manager and deputy manager of the
21 Mammy Yoko by radio. And the situation was becoming very serious
22 because there were approximately 800 civilians trapped in the
23 hotel and the rebel soldiers and RUF had mounted four mortar
24 positions around the hotel and were firing incessantly at the
10:52:25 25 hotel. I and my staff at the High Commission were able to
26 witness this, looking down from our position on the hill.
27 It then became apparent that the Nigerian soldiers had run
28 out of ammunition, but still the firing continued from the rebel
29 soldiers and RUF, and I feared a major catastrophe, particularly

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1 as part of the hotel caught fire.

2 I telephoned defence headquarters, spoke to a captain, and
3 demanded that they stop firing at the hotel because there were
4 innocent civilians inside. He initially claimed that they were
10:54:11 5 not firing at the hotel. I told him that I could see the firing
6 from my office, and that if they did not stop within 10 minutes I
7 would contact the commander of the US warship, tell them that
8 innocent civilians, including Americans and British, were being
9 killed, and that they should deploy the US marines. Ten minutes
10:55:12 10 later the captain rang me back and said the order had been given
11 to cease fire. And indeed, we looked down and could see that the
12 firing had stopped.

13 My defence advisor at the time, the late Colonel Andrew
14 Gale, jumped into a Land Rover with a big Union Jack, and drove
10:55:56 15 down and visited each of these four mortar positions to ensure
16 that those soldiers there had indeed received an order to cease
17 firing. He then drove into the Mammy Yoko Hotel and brought out
18 the commanding officer of the Nigerian forces and his number two

19 and drove to defence headquarters at Cockerill.

10:57:06 20 I also advised the captain with whom I'd spoken that he
21 should allow the ICRC representative to go into the hotel to take
22 out safely the civilians, which he did.

23 When Colonel Gale and the two Nigerian officers arrived at
24 Cockerill, they were initially put up against a wall and
10:58:00 25 threatened to be shot. But Colonel Gale managed to persuade them
26 that he was there under a flag of truce to discuss the situation.

27 The next day, many of those who had taken refuge at the
28 Mammy Yoko were evacuated by the American warship, and then the
29 following day the American warship undertook the final evacuation

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1 and I was instructed by my government to evacuate on board the
2 last ship, which I did and subsequently went to Conakry.

3 MR JABBI:

4 Q. When in all the narrative was that? Can you put a date to
10:59:28 5 when you finally left for Conakry?

6 A. I would have left for Conakry - it must have been either
7 the 2nd or 3rd June 1997.

8 Q. On arrival in Conakry what did you do?

9 A. On arrival in Conakry, I arrived and saw, first of all, the
11:00:14 10 honorary British consul at the airport. I had been flown off the
11 American warship by helicopter straight to Conakry airport. She
12 was there helping with the evacuation of hundreds of the British
13 and expatriate community. I made my way to the Camayene Hotel in
14 Conakry where the honorary consul had made a booking. I sent a
11:01:06 15 message to President Kabbah, who, at that time, was in the villa
16 not too far away from my hotel, the villa in the compound which
17 President Conte of Guinea had made available for President Kabbah
18 and, as it was late, arranged to go and see President Kabbah the

19 next morning.

11:01:48 20 Q. Did you succeed in seeing him?

21 A. I saw President Kabbah the next morning. I brought him up

22 to date and briefed him on events particularly surrounding the

23 talks that we had had with Koroma and the AFRC.

24 President Kabbah -- sorry, and I showed him the list of demands

11:02:28 25 or conditions which had been discussed with the AFRC for them

26 standing down, such as, as I mentioned, this passage out of the

27 country for some of the officers, the investigation into

28 misdoings of the army. President Kabbah, even though the

29 fighting had now recommenced, agreed and issued a statement from

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1 Conakry, passing it so that the AFRC would hear, that he agreed
2 to what had been discussed, and that if the AFRC would abide by
3 them, he would return. But we never heard anything more about
4 that.

11:03:36 5 I then established myself in the Hotel Camayene initially
6 with my Deputy High Commissioner, Colin Glass, G-L-A-S-S, and my
7 consular officer, Mr Harries, H-A-R-R-I-E-S, and made contact
8 with many, many people who had fled Sierra Leone, both
9 Sierra Leoneans, ministers, officials, others, friends, and

11:04:17 10 diplomatic NGO community. We started to have a meeting every
11 evening in the Camayene, which attended diplomatic missions,
12 NGOs, church groups, civil society groups, to which we briefed
13 ourselves on what was going on in the country.

14 Q. Which country?

11:05:03 15 A. Sierra Leone. In this way, we believed that we were able
16 to keep ourselves informed probably better than anyone else what
17 was happening. Because the range of people who attended the
18 meeting, each of those - and there would be something like 50 or

19 60 people at these meetings --

11:05:36 20 Q. Please watch your pace.

21 A. There could be up to 50 or 60 people, and each of those

22 would have their own contacts in Sierra Leone. For example, I

23 would be speaking on the telephone to people in Freetown every

24 day, regularly five or six times a day. In that way, we kept

11:06:19 25 ourselves, as I say, briefed on what was going on and on,

26 particularly, the mood and conditions of the Sierra Leone people.

27 During the first week or so I was also seeing regularly

28 first ministers and members of President Kabbah's government.

29 President Kabbah himself I would see three or four times a week,

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1 often just the two of us on our own at his villa, sometimes
2 together with other members of his government, officials, and/or
3 with some of my diplomatic colleagues.

4 Q. Of the ministers of President Kabbah's government whom you
11:07:37 5 would see at his place in the first week or two, did you happen
6 to see Mr Sam Hinga Norman at that time?

7 A. I saw Minister Norman once at that time. He came to my
8 hotel room to discuss various matters that were going on. It was
9 clear from what we discussed that he had not seen and was not

11:08:22 10 seeing President Kabbah. I told him that I thought it was
11 essential that he should be meeting with President Kabbah in the
12 interests of Sierra Leone and the efforts, including the
13 international efforts, to restore President Kabbah's government.

14 Q. Please keep watching your pace.

11:09:07 15 A. That message was also echoed by the American ambassador,
16 John Hirsh, who was present in Conakry, and by the UN ambassador,
17 Berhanu Dinka, who was also present in Conakry. I also said the
18 same thing to President Kabbah, that I was aware they did not

19 appear, the two of them, to be talking, and that I felt it was
11:09:57 20 essential that they should do so for the sake of Sierra Leone and
21 the efforts to restore the government.
22 Q. What was the response of the President to that concern you
23 expressed?
24 A. The response was that, in fact, I'm aware that meetings did
11:10:24 25 take place between the two and they began to work together.
26 PRESIDING JUDGE: Mr Witness, if I may. You said that that
27 message was echoed by the US ambassador and the UN ambassador.
28 Could you explain what you mean by echoed. Were they at that
29 meeting with Mr Norman when you met with him in your room?

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1 THE WITNESS: They were not with me in my room when I had
2 that meeting, but I know they had meetings with Minister Norman
3 and when we compared notes the next day, or whenever it was,
4 clearly we had said exactly the same thing without, quite
11:11:16 5 frankly, consulting initially one another. We had individually
6 reached the same conclusion.

7 PRESIDING JUDGE: So that's what you meant when you said it
8 was echoed by.

9 THE WITNESS: Echoed.

11:11:29 10 PRESIDING JUDGE: Thank you. Sorry, Dr Jabbi.

11 MR JABBI:

12 Q. You had just explained the reaction of the President to
13 your concern?

14 A. Yes. I mean, I never attended any meeting directly between
11:11:51 15 the President and Minister Norman but I do know, maybe partly as
16 a result of what I and my colleagues had said, that they did
17 begin to meet and discuss and cooperate. I also --

18 JUDGE ITOE: Please, please, can you be slow. Please.

19 THE WITNESS: It was also subsequent to that that the Civil
11:12:40 20 Defence Force was formed. Up until the time we reached Conakry
21 there was no CDF. There had been the individual civil militias,
22 most notably the Kamajors. Soon after our arrival in Conakry,
23 ECOWAS, a commission for West African States, who had been
24 designated by the OAU, the Organisation for African Unity as it
11:13:54 25 was then known, to pursue the restoration of President Kabbah's
26 government. ECOWAS had therefore designated ECOMOG, the West
27 African military force, which initially comprised Nigerian forces
28 but later joined by Ghanaian and Guinean forces. That, of
29 course, was a very important decision.

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1 We also --

2 MR JABBI:

3 Q. Excuse me, do you know where the ECOMOG forces were based,
4 those designated to ensure the restoration?

11:15:17 5 A. The main contingent I believe was based at Lungi
6 International Airport, which throughout the time remained under
7 the control of ECOMOG, and at which also Vice-President Demby was
8 located. There was also a contingent of ECOMOG in Kossoh Town.

9 [CDF08FEB06C-SV]

11:15:51 10 JUDGE ITOE: Where was Demby located?

11 THE WITNESS: At Lungi International Airport. I believe
12 there were also some contingents around the rest of the country
13 but I do not know precisely where.

14 MR JABBI:

11:16:22 15 Q. You spoke about Kossoh Town just before that.

16 A. But certainly there was a contingent at Kossoh Town. That
17 was, as I say, the establishment of ECOMOG. We also were already
18 hearing of the resistance against the AFRC being undertaken by

19 the Kamajors and begun to hear of some of the other civil
11:17:04 20 militias becoming active such as the Gbethis.
21 MR JABBI: G-B-E-T-H-I-S, My Lords.
22 THE WITNESS: The Kapras.
23 MR JABBI: K-A-P-R-A-S, My Lords.
24 THE WITNESS: The Tamaboros.
11:17:33 25 MR JABBI: T-A-M-A-B-O-R-O-S, My Lords.
26 THE WITNESS: And the Donsos.
27 MR JABBI: D-O-N-S-O-S, My Lords.
28 THE WITNESS: There was clearly a need to co-ordinate these
29 activities both within these various groups and with ECOMOG.

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1 There was also a need --

2 JUDGE ITOE: Please, let's get that first. There was also
3 a need to co-ordinate these activities within?

4 THE WITNESS: Within the various civil militia groups and
11:18:34 5 with ECOMOG.

6 MR JABBI:

7 Q. That is the activities of the civil militia groups in
8 resistance?

9 A. Yes. There was also clearly a need for President Kabbah
11:19:03 10 sitting in Conakry --

11 Q. Please, watch your pace.

12 A. -- having control. It was there decided --

13 JUDGE THOMPSON: Having control of?

14 MR JABBI:

11:19:27 15 Q. President Kabbah having control of?

16 A. Of what was going on in Sierra Leone of the efforts to
17 re-establish his government.

18 JUDGE THOMPSON: Thank you.

19 THE WITNESS: It was therefore decided by President Kabbah
11:19:57 20 and his advisors to establish the CDF committee.

21 President Kabbah told me that CDF, Civil Defence Forces, was the
22 name that was to be given. The chairman of the CDF committee
23 would be the vice-president at the time, Dr Demby, answerable
24 directly to himself, the President. And various other personages
11:21:06 25 were appointed to that committee. They included Chief Hinga
26 Norman as the CDF co-ordinator. Given that there was a clear
27 need for there to be an interface between the CDF and ECOMOG, it
28 seemed to me that Chief Norman was the obvious person to fulfil
29 that role because, one, his previous military experience --

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1 MR JABBI:

2 Q. Please, watch your pace.

3 A. -- which meant, as I had experienced in many other places,
4 soldiers always feel more comfortable talking to other soldiers.

11:22:45 5 And, secondly, given the importance of that role, the fact that
6 he was a senior member of President Kabbah's government.

7 Q. In what capacity?

8 A. As the deputy minister of defence. As I said, there were
9 other people appointed to that committee, including some of the
11:23:27 10 ministers who were present in Conakry, but I never had any direct
11 dealings with that committee per se.

12 Q. Now, insofar as the responsibility assigned to Chief Norman
13 as you have just explained was concerned, do you know where he
14 was supposed to perform this duty?

11:24:08 15 PRESIDING JUDGE: Well, I'm not sure the witness has said
16 that. He said that the committee was set up to put that in place
17 because, and whether he has explained -- the witness has
18 explained, but I have not heard the evidence of the witness to

19 say that Mr Norman had been assigned and given those
11:24:26 20 responsibilities. All I knew from his evidence that Mr Norman
21 was appointed as the co-ordinator for the CDF.
22 MR JABBI: That is what I'm referring to, My Lord.
23 PRESIDING JUDGE: Okay.
24 JUDGE THOMPSON: In fact, he's just said that he never had
11:24:42 25 any direct dealings with that committee per se. I thought that
26 probably was meant to close the chapter as to his own official
27 knowledge and in respect of the evolution of that committee.
28 MR JABBI: The activities of the committee, yes.
29 JUDGE THOMPSON: I thought that seemed to be a kind of

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1 finale from him. But if you disagree with me, then you can
2 pursue, provided of course you keep within the rules of
3 examination-in-chief.

4 MR JABBI: I wanted to ensure precisely that situation.

11:25:18 5 That is why I posed the question as to anything he knew, if at
6 all, about where Chief Norman was performing the duty of
7 co-ordinator assigned to him. He may simply answer that he
8 doesn't know. I just want to be sure --

9 THE WITNESS: I was aware that Chief Norman was primarily
11:25:48 10 fulfilling those duties inside Sierra Leone or in places like
11 Liberia where he would be having meetings with ECOMOG. Perhaps
12 for the Court I can clarify. When I said I had no direct
13 dealings with the CDF, I meant that I never, for example,
14 attended any of those meetings, that's all.

11:26:12 15 JUDGE THOMPSON: Yes, I thought I understood perfectly well
16 what you said. In fact, you said per se, because I'm not
17 necessarily taking issue with that. It's just that I thought
18 that was meant to be the final statement in respect of your

19 knowledge about the evolution of the committee. But counsel is
11:26:32 20 pursuing some further lines.

21 MR JABBI: Yes.

22 Q. Now whilst you were staying in Conakry, did you get in
23 contact with Chief Sam Hinga Norman after his appointment as a
24 co-ordinator of the CDF, ever?

11:27:02 25 A. It is very difficult for me to remember clearly. During
26 that period in Conakry there were endless meetings with people
27 and endless messages coming through. I think it is possible that
28 I may have received messages from time to time in connection with
29 the various things that the British Government was doing in

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1 support of the restoration of President Kabbah's government. But
2 generally, whereas, as I mentioned, I was seeing President Kabbah
3 three or four times a week, I was seeing his ministers at least
4 the same amount. I was not seeing Minister Norman because
11:27:53 5 generally he was never in Conakry; he was in Sierra Leone or in
6 Liberia, as far as I was informed.

7 Q. Thank you. Now whilst you were also in Conakry at that
8 time, did you have interaction with the general Sierra Leonean
9 community there and their attitude towards the situation in
11:28:24 10 Sierra Leone?

11 A. Yes. As I said, as well as our meetings that we were
12 having initially every night, subsequently every other night, and
13 then months later once a week, I was telephoning people in
14 Freetown. I was still responsible for all of my Sierra Leonean
11:28:47 15 staff who were here in Freetown. We had over 70 Sierra Leonean
16 staff working at the High Commission. I had to find ways to
17 continue to pay them, to smuggle food in to them and to generally
18 keep them well.

19 I was also talking to anybody, quite frankly, who came out
11:29:13 20 of Sierra Leone. They would often make their way to the
21 Camayene Hotel. I mean, one day, for example, rather movingly,
22 one of the people at the polio camp, who I'd met just a couple of
23 weeks previously before the coup, had managed to escape, most of
24 the way on foot, injured foot, and made her way and came and saw
11:29:50 25 me at the hotel. And my days at the Camayene were filled with
26 these sort of people who were keeping me very much informed on
27 what was happening, on the mood of the people.
28 There was one time as part of the measures taken by ECOWAS
29 to seek the restoration of President Kabbah's government, they

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1 had adopted a three-prong approach of dialogue, sanctions and use
2 of force. The sanctions included petrol supplies, but on one
3 occasion a tanker had managed to get through the sanction's
4 cordon and reached Freetown which meant that for the first time
11:31:05 5 in weeks there was electricity back on the streets of Freetown or
6 in the houses, briefly. One would have thought that this would
7 have been welcomed by the people of Freetown in the midst of
8 their misery and, yet, that same day I received at least half a
9 dozen phone calls from people in Freetown saying how could we
11:31:50 10 have allowed this tanker to reach Freetown, did we not realise
11 that the more they were able to bring in fuel and food, the
12 longer it would keep the AFRC in power and that the people just
13 wanted to get rid of the junta and see President Kabbah's
14 government back.

11:32:28 15 PRESIDING JUDGE: Dr Jabbi, before you carry on with your
16 examination of the witness, we will break for the usual morning
17 break. So court is adjourned for 15 minutes. Thank you.

18 [Break taken at 11.32 a.m.]

19 [Upon resuming at 12.07 p.m.]

12:07:48 20 PRESIDING JUDGE: Dr Jabbi, are you prepared to resume the

21 examination of your witness?

22 MR JABBI: Yes, My Lord.

23 PRESIDING JUDGE: There was a problem with the audio

24 system, so I hope -- I've been told that's been fixed, but if

12:08:05 25 there is any problem either in the public gallery or elsewhere,

26 please let us know. In the meantime, let's proceed.

27 MR JABBI: Thank you.

28 Q. Now, from your narrative so far, it is clear that even

29 though the military are taking over government in Freetown,

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1 nonetheless your mission, as a British diplomatic mission to
2 Sierra Leone, moved over to Conakry where the displaced
3 government was. Can you explain what the British government's
4 attitude was to the situation in Sierra Leone?

12:09:06 5 PRESIDING JUDGE: Is this really relevant to what we're
6 dealing with? Aren't we going outside the scope, really, of what
7 we are dealing with? We have listened quite attentively to what
8 the witness has said up to now, because this is very important
9 background. But now what the British government's attitude or
12:09:27 10 not -- I mean, I need to be convinced that this is really
11 relevant to what we are dealing with.

12 MR JABBI: My Lord, I can assure Your Lordships that I am
13 not going into general British conduct, but only those areas that
14 I consider crucial and also useful in these proceedings.

12:09:47 15 JUDGE ITOE: Then why don't you visit those areas
16 specifically? You focus your questions to the witness
17 specifically on these areas, because talking about the attitude
18 of the British government in this doesn't --

19 MR JABBI: To the --

12:10:09 20 JUDGE ITOE: To specific issues, yes.

21 MR JABBI: Yes, indeed, My Lord. That is what I'm doing in

22 fact. The British government --

23 JUDGE ITOE: [Overlapping speakers] issues which are

24 related to the indictment.

12:10:16 25 MR JABBI: Yes, My Lord.

26 PRESIDING JUDGE: Just a moment, Dr Jabbi. Yes, Justice

27 Thompson?

28 JUDGE THOMPSON: My own concern here would be that to what

29 extent would such a question really assist the Bench in

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1 ascertaining the truth, again focusing on the indictment as our
2 road map, and of course there is the danger again in matters of
3 this nature - and I do understand the difficulty in which counsel
4 finds himself - that considering the massive amount of details
12:10:47 5 that can come through the machinery of evidence, we, the Chamber,
6 might risk allowing matters to come in which are extraneous in
7 character and might end up multiplying the issues.

8 I seem to be so sensitive to this injunction that we all
9 had at law school to avoid multiplying the issues so that we do
12:11:12 10 not lose sight of the real matters in controversy between the
11 parties. That would be my concern and if I can be assured about
12 that, I perhaps would further restrain myself.

13 MR JABBI: My Lords, as will come out very soon, I am
14 trying to elicit only matters that would be found to be of
12:11:43 15 relevance in these proceedings and also, of course, to an
16 assessment of the various aspects of the general conflict that
17 gave rise to the indictment from the point of view of both the
18 emergence of the military government and the resistance to it on

19 which the indictment is generally based.

12:12:23 20 JUDGE THOMPSON: I note that and I do not again take issue

21 with that. But, of course, since we are in a very important

22 phase of the trial, namely the defence of the first accused, it

23 seems to me - again perhaps forgive my own passion for logic -

24 how the attitude of the British government to the conflict would

12:12:44 25 be in a way directly, obliquely or indirectly relevant to the

26 defence of the first accused.

27 MR De SILVA: My Lords, might I be heard on this matter,

28 with respect, and I don't really want to delay my learned

29 friend's examination-in-chief any more, but, as I think

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1 Your Lordships may be the first to agree, this witness with his
2 diplomatic and governmental background should not be put in a
3 position in which he may be required to answer matters of
4 governmental sensitivity. He undoubtedly, as a senior diplomat,
12:13:34 5 has taken the Official Secrets Act oath in England and matters of
6 that kind. I'd consider most graciously Your Lordships'
7 intervention at this stage because we have all got to be vigilant
8 that certain lines are not crossed and, indeed, my learned friend
9 should be easily able to get to what he wants without asking such
12:14:05 10 questions as, "What was the attitude of the British government?"
11 It opens a complete Pandora's box and we'll be here forever.
12 My Lords, I'm very grateful to Your Lordships for intervention
13 and might I say I couldn't support it more.
14 PRESIDING JUDGE: Thank you, Mr Prosecutor. So, Dr Jabbi,
12:14:27 15 you've heard the concerns of everybody. So if you have a
16 question that you claim is relevant, it cannot and should not be
17 so broad. Have a very focused question, as was suggested by
18 learned Justice Itoe, and we'll see from there.

19 MR JABBI: Thank you very much, My Lord. My Lord, I'm also
12:14:44 20 hesitant not to include in my responses to your concerns what
21 might in fact turn out to be answers that might be given to the
22 questions that the witness is going to give.
23 PRESIDING JUDGE: We understand.
24 MR JABBI: I want to leave the witness as free as possible
12:15:00 25 to give his answers, but I will endeavour to stay within the
26 ambit of relevance to the indictment.
27 Q. I will change the question slightly for a start. Can you
28 tell the Court briefly what support was given by the British
29 government to the war against the military government in Sierra

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1 Leone at that time?

2 JUDGE ITOE: Did, did. Did they, before we go to details.

3 PRESIDING JUDGE: What support, if any.

4 MR JABBI: If any, indeed, My Lord.

12:15:59 5 JUDGE ITOE: If any, yes. Was there any assistance? If

6 any, what was the assistance? There are two legs -- you know,

7 there are two prongs to that question.

8 THE WITNESS: There was considerable assistance given by

9 the British government. The British government was among the

12:16:15 10 first countries in the world to condemn what had happened.

11 MR JABBI:

12 Q. Please, watch your pace as go along.

13 A. Was among the first countries in the world to condemn what

14 had happened and call for the restoration of the legitimate

12:16:36 15 government of President Kabbah. Within the United Nations, the

16 United Kingdom tabled all of the resolutions and indeed helped

17 draft most of the resolutions that the United Nations passed.

18 The decision --

19 Q. Watch your pace, please.

12:17:03 20 A. The decision to place me in Conakry alongside

21 President Kabbah was unprecedented in British diplomacy and was

22 seen to send a clear signal that the British government continued

23 to recognise President Kabbah and his government as the

24 legitimate government of Sierra Leone. In Conakry, British

12:17:41 25 government funds were used to establish an office of the

26 government of Sierra Leone. In fact, we rented a disused

27 restaurant in Conakry for these offices. In those offices

28 British government funds were used to pay the personnel working

29 in that office, including some of the ministers, and covering

1 activities such as foreign relations, information and publicity,
2 care of refugees and civil society activities.

3 The British government funded, in October 1997, a workshop
4 held in the United Kingdom to which over 30 Sierra Leoneans
12:19:14 5 attended, including some who had fled from Sierra Leone to
6 Conakry. The purpose of that workshop was to draft the 90 Day
7 Plan which was a document outlining the priorities that
8 President Kabbah's government would undertake on the restoration
9 of his government. That 90 Day Plan was formally launched at a
12:20:13 10 two-day conference in London later in October 1997, which
11 President Kabbah personally launched and was attended by British
12 ministers and other international figures. After that
13 conference, at the beginning of November 1997 President Kabbah
14 and a large Sierra Leone delegation attended the Commonwealth
12:21:06 15 Heads of Government meeting in Edinburgh at the personal
16 invitation of Prime Minister Tony Blair.

17 In addition to the other activities undertaken and funded
18 by the British government in Conakry, we established a radio

19 station, Radio 98.1, which was established initially at Lungi
12:21:58 20 International Airport.

21 [CDF08FEB06D - SGH]

22 Q. You spoke early of ECOWAS having designated ECOMOG to
23 ensure the restoration of President Kabbah. Can you briefly tell
24 the Court what strategies ECOWAS and the supporting international
12:22:57 25 governments adopted for ensuring that restoration?

26 A. ECOWAS, acting on behalf of the OAU, appointed a committee
27 of five foreign ministers to work on behalf of ECOWAS and OAU.
28 At those meetings they adopted a three-prong approach to achieve
29 the restoration of the legitimate government President Kabbah;

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1 namely dialogue, sanctions and the use of force.

2 The international community, through the United Nations,
3 supported the OAU and ECOWAS efforts and endorsed the line of
4 dialogue and sanctions and said that they preferred to see a

12:24:25 5 peaceful resolution to the conflict.

6 Q. Now, can you --

7 JUDGE ITOE: If I understand you well, you know, there were
8 three elements to the resolution of the conflict which were
9 adopted by the ECOWAS ministers, the five ministers. That was

12:24:55 10 dialogue, sanctions and the use of force. Are you saying that

11 eventually what was adopted was dialogue and sanctions, you know,
12 to arrive at a peaceful settlement and that the use of force was
13 shelved?

14 THE WITNESS: What happened, My Lord, the United Nations

12:25:21 15 did not formally endorse the use of force, but said that they

16 preferred to see a peaceful resolution. But, they did not pull
17 back from supporting the ECOMOG forces in, for example, the
18 implementation of the sanctions embargo, and for example, the

19 British government supplied equipment to ECOMOG in fulfilling
12:25:52 20 that duty.

21 PRESIDING JUDGE: So the difference that you are talking
22 about is that the UN would approve use of force to enforce the
23 sanctions but not the use of force as independent issues? In
24 other words, it would not approve the use of force to restore the
12:26:18 25 government?

26 THE WITNESS: That's correct, My Lord.

27 MR JABBI:

28 Q. Now, of the international elements involved, were there any
29 of them that, in fact, supported the use of force?

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1 A. When the rebel forces were finally driven out of Freetown
2 in February 1998 by the use of force, from my recollection
3 concern was expressed within the UN, but it was not condemned
4 that the force had been used, and they welcomed the restoration
12:27:17 5 of the government.

6 Q. Now, with the support of the international community for
7 the Kabbah government, do you know what internal situation in
8 Sierra Leone gave encouragement to that sort of support?

9 A. I am sorry, I don't quite --

12:28:04 10 Q. My question is the international support you have just
11 explained for Sierra Leone, where they were supporting the Kabbah
12 government that had been overthrown, my question was whether
13 there was any situation in Sierra Leone itself that gave
14 encouragement to that sort of international support for an
12:28:32 15 overthrown government?

16 A. The position adopted by Britain and followed by every
17 single country in the world not to recognise the junta, but to
18 continue to recognise President Kabbah's government, was

19 strengthened by the very clear determination and will of the
12:29:02 20 people of Sierra Leone, who were sending a very clear signal
21 through a variety of ways and their attitudes that they did not
22 themselves recognise the junta as their government. We were
23 aware, for example --
24 Q. Watch your pace, please.
12:29:25 25 A. -- that the banks remained closed, many businesses remained
26 closed. The students passed a resolution saying they would not
27 return to their studies until the junta had been removed.
28 Indeed, the students in August of 1997 led a demonstration on the
29 streets of Freetown calling for the junta to stand down which was

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1 beaten down mercilessly by the soldiers and, sadly, I think it
2 was six students, certainly some students, lost their lives in
3 expressing those views.

4 I was also receiving constant messages from people within
12:30:32 5 Sierra Leone, asking when the international community would help
6 rid them of this junta.

7 Q. Was there any awareness on the part of that international
8 support of resistance by forces within Sierra Leone?

9 A. We were monitoring reports of activities, including the
12:31:35 10 resistance being mounted by civil militia and ECOMOG throughout
11 the country.

12 Q. Do you know of any specific arms supplies to the resistance
13 movement in Sierra Leone or to the overthrown government at that
14 time?

12:32:33 15 A. In December 1997 I was about to go on leave for a few weeks
16 for the first time since arriving in June of that year in
17 Conakry. As usual, I went to visit President Kabbah in his villa
18 in Conakry, to let him know that I would be away, to wish him a

19 happy Christmas and to let him know that my deputy would be
12:33:14 20 covering my absence. At that meeting President Kabbah showed me
21 a copy of a draft contract which had been sent to him by a mining
22 firm which, in essence, was saying in return for certain mining
23 concessions, equipment and training would be provided by a firm
24 called Sandline for the use of President Kabbah's forces. At
12:34:24 25 that time --

26 JUDGE ITOE: What's the name of this firm again,

27 Mr Witness? Can we have the name of this --

28 MR JABBI:

29 Q. The firm, the name of the firm.

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1 A. Sandline. S-A-N-D L-I-N-E.

2 Q. Where was this company based?

3 A. The company had offices in London.

4 Q. Carry on, please.

12:35:01 5 A. At that time we were aware that, at Lungi, there were

6 certain Sierra Leone forces loyal to President Kabbah. They

7 included some of the soldiers who, at the time of the coup in May

8 1997 and subsequently, had fled to Lungi, plus members of the

9 police and SSD, the special security division of the police, and

12:35:46 10 members of the civil militia. They were there, as I have said

11 Vice-President Demby was also there, and where also now Radio

12 Democracy was established and, of course, ECOMOG was in control.

13 However, we were aware that ECOMOG could not spare any equipment

14 such as uniforms, boots, or weapons for these loyal forces.

12:36:38 15 President Kabbah showed me this draft contract and asked my

16 opinion. I neither encouraged nor discouraged President Kabbah

17 from going ahead with the contract. I said that this was a

18 matter for him and his government to decide. I had had no

19 contacts with the firm of Sandline. I did point out to President
12:37:39 20 Kabbah that the firm Sandline had been in the news in recent
21 times from then over their activities in Papua New Guinea. I was
22 also aware that the South African government under President
23 Mandela was proposing to introduce legislation to control
24 activities of private security companies or, as they are
12:38:42 25 sometimes described, mercenary companies. In speaking to
26 President Kabbah, I mentioned the danger that how some would
27 perceive of him being seen to be dealing with "mercenaries". On
28 the other hand, I also noted in that conversation that the firm
29 of Executive Outcomes had a very positive image in Sierra Leone.

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1 Before President Kabbah's election during the NPRC government,
2 that government had concluded a contract with Executive Outcomes
3 to deploy personnel in Sierra Leone at a time when the RUF forces
4 were within 40 miles of the capital and at a time when regional
12:40:14 5 or international military assistance was not forthcoming from any
6 government. They had been deployed and had successfully pushed
7 back the rebels working in conjunction and helping to train, I
8 understood, the Kamajors. And the people of Sierra Leone, as was
9 expressed to me, had been grateful for what EO, as it was called,
12:40:51 10 had done.

11 Indeed, it was suggested to me in my briefing before taking
12 up my post as British High Commissioner that it was the
13 activities of EO that had contributed significantly in persuading
14 Foday Sankoh and the RUF to come to negotiations which led to
12:41:43 15 the 1996 November Abidjan Peace Agreement and which one of the
16 conditions set by the RUF in that agreement was the cessation of
17 the contract with Executive Outcomes, which President Kabbah's
18 government agreed to.

19 PRESIDING JUDGE: Mr Penfold, is all this what you were
12:42:19 20 saying to the President, or you have added a dimension to it now?
21 The Executive Outcome, how they performed. Was that part of your
22 discussion then with President Kabbah?
23 THE WITNESS: Yes, it was, My Lord.
24 PRESIDING JUDGE: Everything you have just mentioned is
12:42:32 25 what you said to him at the time?
26 THE WITNESS: It was all part of a ranging discussion that
27 we had.
28 PRESIDING JUDGE: Thank you.
29 MR JABBI:

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1 Q. Now as far as the Sandline issue itself is concerned, were
2 arms ever actually transferred?

3 A. Following that meeting with President Kabbah, he told me at
4 that meeting that he would arrange for Colonel Spicer, the head
12:43:08 5 of Sandline, to contact me while I was back in the UK. Colonel
6 Spicer did in fact contact me. We held two meetings; before and
7 after Christmas. At those meetings, Colonel Spicer confirmed to
8 me that President Kabbah had signed the contract and that they
9 were planning to supply the personnel and equipment. All of this
12:44:04 10 I reported to the foreign office and, indeed, the document that
11 Colonel Spicer gave me outlining the programme of assistance, I
12 handed over to the foreign office and then I went on leave, in
13 fact, to Canada. The contract allowed for a small amount of arms
14 and ammunition and, as I understand, those arms and ammunition
12:44:37 15 arrived at Lungi, but they arrived, I believe, either at the end
16 of February or in March, but weeks --

17 Q. Of what year?

18 A. Of 1998. But after ECOMOG had driven the rebels out of

19 Freetown and re-taken Freetown, and the restoration of President
12:45:15 20 Kabbah's government had been achieved, I was subsequently told
21 that when those arms and ammunition arrived at Lungi they were
22 seized by ECOMOG and held by ECOMOG. And after that I don't know
23 what happened to them, but they were certainly not used in the
24 re-taking of Freetown.

12:46:11 25 Q. Thank you. When did you yourself return to Freetown after
26 the restoration of President Kabbah's government?
27 A. My deputy commissioner, Mr Glass, returned at the end of
28 February - something like 28th February - and I returned one week
29 later on 5th March 1998. I came back on board a Royal Naval

1 warship, HMS Cornwall, and I brought back with me the foreign
2 minister, Mrs Shirley Gbujama, and immediately was able to
3 re-establish my office thanks to the hard work, dedication and
4 loyalty of all my local staff who had kept my office and home
12:47:15 5 intact under immense pressure. And one week later, on 10th
6 March, we were at Hastings airport to greet the very welcomed
7 return of President Kabbah, who came back accompanied by
8 President Abacha of Nigeria and the President of Niger.

9 Q. After the restoration of the Kabbah government and your
12:48:09 10 return finally to Freetown, did you have anything to do with the
11 internal Sierra Leone situation, either in terms of offering
12 assistance or whatever?

13 A. As I was the first diplomat to return, as I had a working
14 office, we were again able to take the lead in helping the
12:48:45 15 restoration and rehabilitation. This took several forms. We
16 were bringing in supplies, such as food, medicines. With our
17 medical supplies we were able to re-open Connaught Hospital. We
18 were able to get the Sierra Leone fire brigade working again. We

19 started to help cleaning up and towards the re-opening of
12:49:17 20 schools, which was a priority of President Kabbah and his
21 government. In the very first few days, given the widespread
22 destruction everywhere, it was in fact my home and my offices
23 which became an informal meeting place for the Sierra Leone
24 ministers who had returned. We were even able to send water
12:49:49 25 supplies up to the President at Hill Station lodge, where he had
26 returned to find a very badly destroyed residence, official
27 residence.
28 We also started to move around the country. Most of this
29 time we had a British naval ship here, which would change from

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1 time to time. But because it had a helicopter, we were able to
2 fly some supplies to different parts of the country. On one
3 occasion I took Dr James Jonah and Ambassador Okelo --
4 Q. Who was Dr James Jonah?

12:50:50 5 A. Dr James Jonah had been appointed minister of finance and
6 of course was the very distinguished international civil servant
7 who had been a former United Nations Assistant Secretary-General
8 and had also been the chairman of the Electoral Commission for
9 the 1996 elections. I took him and Ambassador Francis Okelo -

12:51:25 10 Ambassador Francis Okelo had succeeded Ambassador Berhanu Dinka
11 as the United Nations Special Envoy - and we flew to Bo where we
12 were able to bring some of the first relief supplies to Bo which
13 had been effectively cut off.

14 Whilst there, we were also able to look around the town and
12:52:06 15 we also went to the Kamajor headquarters in Bo where we were
16 introduced to Mr Daramy Rogers who was introduced to us as the
17 head of the Kamajors in Bo.

18 Q. Did you hold any discussions with him?

19 A. He briefed us on how the Kamajors, in conjunction with
12:52:40 20 ECOMOG, had mounted a resistance against the junta, how they had
21 suffered, and how they --
22 PRESIDING JUDGE: You said resistance by -- of ECOMOG to
23 the hunters? Is that what you're saying?
24 THE WITNESS: The Kamajors were working with ECOMOG, My
12:52:48 25 Lord, yes.
26 PRESIDING JUDGE: Okay, because I thought you had just said
27 that the ECOMOG were helping fighting the hunters.
28 THE WITNESS: No, sorry, the Kamajors and ECOMOG were
29 fighting together against the junta forces.

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1 PRESIDING JUDGE: The junta, okay.

2 THE WITNESS: I found it interesting --

3 JUDGE ITOE: Please, can you wait.

4 MR JABBI:

12:53:31 5 Q. When you say "junta forces" how do you spell "junta"?

6 A. J-U-N-T-A, junta.

7 PRESIDING JUDGE: I knew. I understood that.

8 JUDGE ITOE: Junta, it is common phraseology.

9 MR JABBI:

12:53:54 10 Q. Yes, your briefing by the Kamajor head in Bo, Daramy

11 Rogers; carry on.

12 A. Dr Jonah praised the efforts and sacrifices made by the

13 Kamajors on behalf of President Kabbah's government. I found it

14 interesting that when Mr Rogers was speaking to us, he made

12:54:36 15 little, if any, reference, as far as I can recall, to Chief

16 Norman and did not give any impression at all that he was

17 operating under the command of Chief Norman.

18 Q. Yes?

19 A. I mean, that was a day's visit and then we returned. I had
12:55:07 20 a similar visit later to Pujehun where again I met the Kamajor
21 movement there. I was introduced to Mr Eddie Massallay and the
22 Kamajor forces. He too made no specific reference to being under
23 the control of Chief Norman.

24 Q. Thank you. Now in your own encounters with various civil
12:56:01 25 militia groups, did you have any impression of the role of
26 Chief Norman in those militia activities?

27 MR De SILVA: My Lord, I really must intervene at this
28 point, because, with great respect, on the basis of the evidence
29 this distinguished witness has given he is now being asked to

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1 speculate as to impressions. We are dealing with facts and
2 observations, as the Court has repeatedly said. Impressions
3 formed after the event may not be of very great value to this
4 Court and that is the only observation I make.

12:56:59 5 JUDGE THOMPSON: I would like to say myself that it would
6 be difficult to evaluate impressions if they come, if ever we
7 were to accept them. The Court has constantly said that we are
8 trying to ascertain the truth and it is trite learning that, in
9 the process of ascertaining the truth, we should be essentially
12:57:23 10 directed to facts and sometimes opinions. But impressions
11 clearly are -- I think it's too much of a stretch.

12 MR JABBI: Thank you, My Lords. My Lords, the witness has
13 just given two specific instances of interaction with civil
14 militia personnel and he himself volunteered the information that
12:57:51 15 he was not told of any direct control by the first accused over
16 those groups.

17 JUDGE THOMPSON: But from a factual perspective, not from
18 an impressionistic perspective .

19 MR JABBI: Thank you, My Lord.

12:58:02 20 JUDGE THOMPSON: I think the distinction --

21 MR JABBI: Yes, I observe the distinction. I recognise and

22 accept --

23 JUDGE THOMPSON: You are a linguist, Mr Jabbi.

24 MR JABBI: Yes, indeed. My Lord, the question was

12:58:22 25 intending to evoke what he may have learned from other civil

26 militia personnel in respect of the control, if any, of

27 Chief Norman over them from their own narratives to him.

28 JUDGE THOMPSON: Well, formulate it in such a way that it

29 would elicit, rather than evoke, that response.

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1 MR JABBI: Thank you very much, My Lord.

2 Q. Did you meet any other civil militia personnel in

3 Sierra Leone when you returned from Conakry?

4 A. I met them from time to time, particularly when I made

12:59:14 5 up-country trips; the trips I made to Bo, to Pujehun, to Moyamba.

6 I found them very colourful and very noisy, but I was struck by

7 how perhaps to the outside mind seemingly uneducated illiterate

8 people had a very clear concept of what they were fighting for,

9 Which was the --

12:59:44 10 JUDGE THOMPSON: Slowly, slowly, please. "Seemingly

11 uneducated people".

12 THE WITNESS: Seemingly uneducated, yes, and illiterate

13 people. But they always voiced to me a very clear idea of what

14 they were fighting for, which was, one, the protection of their

13:00:30 15 homes and families and their villages; and, two, the

16 restoration --

17 JUDGE ITOE: One, the protection of their homes and their

18 families.

19 THE WITNESS: Yes. And, two, the restoration of
13:00:48 20 President Kabbah and his government. Also in talking to
21 individual members, I had the clear impression that their initial
22 allegiance lay with their local leaders, their paramount chiefs,
23 when it came to --
24 JUDGE ITOE: You had an impression of their allegiance.
13:01:32 25 THE WITNESS: Their allegiance in terms of following orders
26 or instructions, My Lord, that it would come from their local
27 head or their paramount chief. When Chief Norman's name came up
28 in conversations, he was clearly held in high regard and respect
29 by them. On one occasion, which was towards the end of my tour

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1 in Sierra Leone, I was accompanied by Chief Norman to a visit to
2 Moyamba. This would be in March, beginning of March 2000, and
3 the regard that he was held there was clearly shown by the chief
4 and the CDF there. I was also --

13:03:10 5 JUDGE THOMPSON: I reckon these were your observations.

6 THE WITNESS: Yes.

7 JUDGE THOMPSON: Observations.

8 THE WITNESS: One observation I would make about the CDF --

9 JUDGE THOMPSON: I am just saying that I reckon that what

13:03:26 10 you've just been telling us are your observations.

11 THE WITNESS: Yes, My Lord.

12 JUDGE THOMPSON: Because I am making the distinction

13 between impressions and observations because we did complain

14 about the difficulty of impressions, but it would seem to me that

13:03:45 15 the context in which you are narrating these observations would

16 be more factual. In other words, you formed those opinions based

17 on what you observed?

18 THE WITNESS: Yes, My Lord, that is accurate.

19 JUDGE THOMPSON: That is the way I'm inclined to understand
13:04:08 20 them rather than just mere impressions. Thank you.

21 PRESIDING JUDGE: Dr Jabbi, we normally break at 1 o'clock
22 on Wednesday afternoon. I would like to know how much longer you
23 intend to proceed because, as we mentioned to you, we are not
24 planning to sit this afternoon.

13:04:27 25 MR JABBI: My Lord, if I can have another five minutes, I
26 am sure we will have wound up his evidence.

27 PRESIDING JUDGE: You will have concluded your
28 examination-in-chief?

29 MR JABBI: Yes, My Lord.

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1 PRESIDING JUDGE: Very well, proceed.

2 JUDGE ITOE: A very pleasant one.

3 JUDGE THOMPSON: It was said sotto voce.

4 MR JABBI: I have a friend who used to say he thinks aloud

13:05:07 5 and sotto voce is very often heard aloud.

6 JUDGE ITOE: Particularly when the microphone is around and

7 is lit.

8 PRESIDING JUDGE: Mr Jabbi, please.

9 MR JABBI: Yes, My Lord.

13:05:24 10 Q. Yes, can you complete what you were saying before His

11 Lordship sought clarification from you?

12 A. I was just going to make the other observation that in my

13 general meetings and talks with a wide range of Sierra Leoneans

14 as I stayed here and travelled around the country, that by far

13:05:55 15 the majority in general were very appreciative of what the CDF

16 did to help their country; bring peace and democracy. The court

17 may be aware, for example, that one of my continuing interests in

18 Sierra Leone is that I am chairman of what is more or less the

19 Board of Trustees --

13:06:21 20 JUDGE ITOE: Are you saying that the Court is aware,

21 Mr Penfold?

22 THE WITNESS: I was saying I am chairman of the Board of

23 Trustees for the Milton Margai School for the Blind, which boasts

24 a very fine choir. In fact, a choir that even heralded the

13:06:42 25 opening of this building.

26 PRESIDING JUDGE: Indeed, Indeed. I do have that

27 recollection.

28 THE WITNESS: One of the songs that they sung when we

29 toured the United Kingdom was a song which had been composed by

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1 themselves which actually listed their thanks to who they felt
2 was responsible for bringing peace and democracy back to Sierra
3 Leone. In that song, they listed ECOMOG, the United Kingdom and
4 the CDF. And I thought, by the simple way these very gifted
13:07:34 5 children really reflected the general mood of Sierra Leone.

6 MR JABBI:

7 Q. Thank you. Do you have any observation you want to make to
8 the court?

9 A. If I may be permitted, I would like to say that in all my
13:08:01 10 dealings I have had with Chief Norman, I have found him to be a
11 man of integrity, a man who is committed to his country, to
12 democracy. I might mention --

13 JUDGE ITOE: Can you take it slowly, please?

14 THE WITNESS: Sorry.

13:08:27 15 JUDGE ITOE: We would like to have that.

16 JUDGE THOMPSON: We would like to record that as faithfully
17 as we can.

18 JUDGE ITOE: Yes. In your observation, your impressions,

19 can you start, please?

13:08:37 20 THE WITNESS: In my observations, I have found Chief Hinga

21 Norman to be a man of integrity who is committed --

22 JUDGE ITOE: Slowly, please.

23 THE WITNESS: -- who is committed to his country, to

24 democracy. I might mention that, at times, especially when I was

13:09:20 25 in Conakry, I was approached by some Sierra Leoneans who

26 frustrated at the slow pace at which the restoration of the

27 government was taking; expressed the view that perhaps they

28 should abandon President Kabbah and choose somebody else as their

29 leader. A suggestion which I made clear to them that to do such

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1 a thing would mean immediately the end of international support,
2 because the whole point of what we were doing was the restoration
3 of the legitimate government - democratically elected government
4 of President Kabbah.

13:10:47 5 I say that because, in all my dealings with Chief Norman,
6 he never once expressed such a view but was always firmly
7 committed to President Kabbah's government's restoration. He is
8 very -- he is proud of the links between Britain and
9 Sierra Leone. I found him caring and considerate, both to those
13:11:37 10 around him and to members of my own family.

11 In my view, Chief Norman played a significant role in the
12 restoration of peace and democracy here in Sierra Leone. I feel,
13 like many others, he is a hero, not a war criminal and I believe
14 his indictment here is a grave misjustice.

13:12:29 15 PRESIDING JUDGE: Well, Mr Penfold --

16 JUDGE ITOE: Can you please --

17 PRESIDING JUDGE: -- we absolutely do not need these views
18 from you. We need not to be lectured here. We are here to

19 proceed to a trial in accordance with the rule of law. We need
13:12:44 20 not to be lectured as to what is and what is not. I will take
21 offence to any such comments you may make, Mr Penfold.
22 THE WITNESS: I deeply apologise, My Lord.
23 JUDGE THOMPSON: And we certainly would like that last part
24 deleted from your testimony here and, clearly, as my learned
13:13:10 25 brother has said, this is a court of law. We are not a court of
26 politics and we are called upon to assess the legality of the
27 situation. In other words, to listen to evidence and determine
28 on the basis of the evidence alone whether those charges in the
29 indictment are legally sustainable and only evidence to that

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1 effect would be helpful to us. I do understand the enthusiasm to
2 proffer character evidence in respect of the first accused, but,
3 clearly, we draw the line very strictly and language that you use
4 here must conform with the decorum and the protocol that have
13:13:56 5 always, been associated with the legal profession, and I am sure
6 that, coming from that great country that gave us the legacy of
7 the common law tradition, you yourself would appreciate that
8 language of this kind would not even be tolerated in the House of
9 Lords.

13:14:18 10 MR JABBI: My Lords --

11 JUDGE ITOE: I would like to say that that this Court, the
12 Tribunal, the Special Court of Sierra Leone, is composed of the
13 Chamber, the Prosecution and the Defence and, of course, there is
14 the Registrar around who is always taking care of what we are
13:14:46 15 doing. And I think that these comments which we are standing up
16 against are very prejudicial to the role of one of the very
17 important arms of this Court; the Prosecution against Mr Norman
18 and that is the Prosecution.

19 I do not think that what goes beyond and tends to
13:15:11 20 disrespect or to diminish the authority of one of the arms of
21 this Court should be let to go by. I hope you do understand
22 this, Mr Penfold, and that the Prosecution, who brought this
23 indictment, would take offence to is, indeed in fact they should,
24 because you feel that the indictment which was brought against
13:15:36 25 him is unfounded. It has no basis. It is misconceived, sort of.
26 That is a judgment for some other person to take and certainly,
27 Mr Penfold, not you. Thank you.
28 MR JABBI: My Lords, I believe a point where the line could
29 be drawn in what the witness has said so far could well be the

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1 sentence that he uttered before the penultimate sentence he
2 uttered.

3 PRESIDING JUDGE: We will draw that line but we were, as
4 you can see, very concerned by the comment of what we know and
13:16:18 5 observe is a diplomat; a person who knows what he is saying, and
6 he knows the words that he is using and, therefore, I can only
7 presume that he intended to say what he said. And that is why I
8 took offence. As my learned brother has said, not only were
9 these charges proffered by the Prosecutor, but they were also
13:16:42 10 approved by this Court and we are proceeding on these matters to
11 render justice and we have absolutely followed the rules of
12 fairness, of justice, up to now and we are here to render justice
13 to all of these accused, whoever they may be, and that was our
14 oath and we will stand by that oath to the very end. So you can
13:17:04 15 be assured of that, Mr Penfold. And this is why I can say to you
16 that we will administer justice to the best of our ability with
17 that in mind. Thank you.
18 THE WITNESS: My Lord, could I --

19 MR JABBI: I seek guidance, the guidance of the Court, as
13:17:20 20 to which of the statements he has just made are considered to be
21 beyond --

22 PRESIDING JUDGE: Well, the last statement that he made at
23 that time. Obviously not his previous evidence and not that the
24 witness feels that Chief Hinga Norman is a hero to him and to the
13:17:36 25 people of this nation. That is fine, we can accept that. This
26 is not what we are taking issue with.

27 JUDGE THOMPSON: I think the very statement that he is not
28 a war criminal is virtually a usurpation of the role of the
29 Court. That is precisely what he is being charged with here and

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1 it is for us to determine whether or not the indictment is
2 legally sustainable. And any attempt by a witness to encroach
3 upon that function of the Court should be resisted with every
4 legal muster that we have, and I would think that that particular
13:18:13 5 part is clearly offensive. And, of course, it was followed by
6 some statement like "an outrage", and as I say, those are words
7 which probably may be used in another context, but not within the
8 context of this Court.

9 So I would suggest that all that bit about "not a war
13:18:43 10 criminal", all that should be deleted, because, as I say, it is
11 usurps the function of the Court.

12 PRESIDING JUDGE: We will not delete it -- expunge the
13 record as you ask for, because I do not agree that the record
14 should be expunged. We'll obviously pay absolutely no weight to
13:18:57 15 this particular comment and we will ignore it for all intents and
16 purposes.

17 JUDGE ITOE: It will remain on the record, but the weight,
18 you know, we will ignore it. That's it.

19 MR JABBI: Thank you, My Lord.

13:19:07 20 JUDGE ITOE: We ignore it.

21 MR JABBI: It would seem that the witness wants to say

22 something before I conclude.

23 THE WITNESS: I would like to say, My Lords, I profoundly

24 apologise for any remark that I made. I certainly in no way

13:19:30 25 meant any disrespect whatsoever to this Court and to the fine

26 things it is trying to achieve. If my remarks offended, I can

27 only plead that perhaps I got too emotional and carried away at

28 the end and I apologise.

29 PRESIDING JUDGE: Thank you. We appreciate it. Thank you

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1 very much.

2 MR JABBI: My Lord, that is all for the witness.

3 PRESIDING JUDGE: Very well. As I have mentioned we are

4 not sitting on Wednesday afternoons, so we will resume the

13:19:59 5 cross-examination tomorrow morning at 9.30 and we will proceed

6 tomorrow morning with cross-examination by the second accused if

7 you have any. May I ask you, Mr Bockarie, if you will have any.

8 MR BOCKARIE: Yes, Your Honour, very short yes.

9 PRESIDING JUDGE: Fine. Then followed by the third accused

13:20:14 10 and finally by the Prosecutor. So the Court is adjourned

11 until 9.30 tomorrow morning. Thank you.

12 [Whereupon the hearing adjourned at 1.20 p.m., to be

13 reconvened on Thursday, the 9th day of February 2006, at 9.30

14 a.m.]

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WITNESSES FOR THE DEFENCE:

WITNESS: PETER ALFRED PENFOLD 2

EXAMINED BY MR JABBI 2