



Case No. SCSL 2011-01-T  
THE INDEPENDENT PROSECUTOR  
-V-  
ERIC KOI SENESSIE

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Before the Judge:	Justice Teresa Doherty
For Chambers:	Elizabeth Budnitz
For the Registry:	Elaine-Bola Clarkson Thomas Alpha
For WVS:	Tamba D. Sammie
For the Prosecution:	Robert L. Herbst
For the Accused: Eric Koi Senessie:	Ansu B. Lansana
For the Principal Defender:	Claire Carlton-Hanciles

1 [Wednesday, 4 July 2012]

2 [Sentencing hearing]

3 [Open Session]

4 [Accused enters court]

16:21:52 5 [Upon commencing at 4.21 p.m.]

6 JUSTICE DOHERTY: I'll just check with Kigali before I take  
7 appearances.

8 Mr Herbst, can you hear me?

9 MR HERBST: I can, Your Honour. We hear you loud and  
16:22:32 10 clear. Good evening.

11 JUSTICE DOHERTY: Thank you. Good evening.

12 I understand you're standing in for Mr Gardner who is the  
13 counsel for the Prosecution in this matter.

14 MR HERBST: Yes. My appearance is Robert Herbst standing  
16:22:51 15 in for William Gardner, the Independent Counsel for the  
16 Prosecution.

17 JUSTICE DOHERTY: Thank you.

18 Mr Lansana.

19 MR LANSANA: Yes, Your Honour. Good afternoon, Your  
16:23:01 20 Honour.

21 JUSTICE DOHERTY: Good afternoon.

22 MR LANSANA: And good afternoon to Mr Herbst as well.

23 Ansu B. Lansana appears for the accused.

24 JUSTICE DOHERTY: And I should thank you for coming at  
16:23:10 25 short notice, Mr Lansana. Apparently you got very mixed messages  
26 about this hearing. I am not sure why but I will find out.

27 MR LANSANA: Yes, Your Honour. That notwithstanding, we  
28 are always ready.

29 JUSTICE DOHERTY: Thank you.

1 MR LANSANA: Thank you, Your Honour.

2 JUSTICE DOHERTY: Now Mr Senessie, I have read what  
3 Mr Gardner said about your case on sentence. I have read what  
4 your lawyer said about your case on sentence. Now I am going to  
16:23:48 5 ask you if there is anything that you want to say before I decide  
6 on sentence.

7 You are at liberty to speak yourself if you wish. If you  
8 don't want to speak, that is equally acceptable, and if you wish  
9 Mr Lansana to speak on your behalf, that is also acceptable. Do  
16:24:12 10 you understand?

11 THE ACCUSED: Yes, My Lord.

12 JUSTICE DOHERTY: Do you wish to say something or do you  
13 wish to consult before you say anything?

14 THE ACCUSED: I may like to say something.

16:24:25 15 JUSTICE DOHERTY: Please proceed, and please tell us which  
16 language you would like to say it in. You did give evidence in  
17 Krio. If you wish to do so in Krio, I think we have interpreters  
18 available.

19 Mr Interpreter, is there someone available for Krio?

16:24:43 20 THE INTERPRETER: Yes, My Lord, there is someone available  
21 for Krio.

22 JUSTICE DOHERTY: That's very good. I'm glad someone is  
23 sitting these late hours to help.

24 Mr Senessie, whenever you are ready, please speak.

16:24:56 25 THE ACCUSED: Your Honour, I want to thank you because you  
26 have endeavoured to preside over this case that is before you.

27 I have the most regard for this honourable Special Court  
28 for Sierra Leone, and I regard its Rules and Regulations, and I  
29 believe in every previous decisions that this Court had ever

1 rendered since its establishment in this country.

2 I have never thought about any specific intention to  
3 undermine the justice of the administration of this Court. When  
4 this Court was initially established, I was instrumental to this  
16:26:34 5 Court because by then I was working as a peace mediating team  
6 member during the transition period to peace. I was the  
7 spokesperson for the RUF members in the Kailahun District.

8 In that regard, I helped this Court when they were looking  
9 out for witnesses for both the Prosecution and the Defence. For  
16:27:23 10 example, I worked, I helped Chris Bomford, Chuck Kolot, John  
11 Cammegh, Serri ta, and Logan Chrissy Hambrick. But what I am  
12 telling you, whatever drinks water, that is a creature, is always  
13 liable to make mistakes. And the white man says it is better  
14 late than never.

16:28:25 15 I know that sometimes, according to the Bible, the wicked  
16 do fool the righteous to follow the footsteps of Satan. The  
17 Prosecutor in my case mentioned in his sentencing recommendation  
18 that I concealed the truth of the involvement of others. He  
19 might be right.

16:29:22 20 Regarding what I have said, I want to say that I regret to  
21 inform this Court why, at the initial stage, I did not plead  
22 guilty. My Lord, the reasons being that (1), the explanation  
23 given by the Prosecution witnesses to the investigators was not  
24 actually what happened. Secondly, it is not that I had any  
16:30:38 25 intention to tell them to go and testify - to go and recant - to  
26 go and change their evidence in The Hague.

27 My Lord, to inform you of what happened, I want to say,  
28 just like I said, it is better late than never. This man,  
29 Prince Taylor, whom had been spoken about by all the witnesses in

1 this Court, at one time I was in my compound doing my carving at  
2 the time that they went to me in Kailahun, he and Logan Hambrick  
3 to become a defence witness. They took down my number and they  
4 too gave their number to me. So that morning I was working in my  
16:32:08 5 compound, Prince Taylor called me.

6 When they called me, I was scared and I asked who because  
7 it was up to four years he was not talking to me. I asked who  
8 was this, and he said he is Prince Taylor. This man told me that  
9 certain developments have taken place in The Hague and he would  
16:32:51 10 like to contact some Prosecution witnesses. He asked me if they  
11 were in Kailahun, and I said our brothers who went are in  
12 Kailahun. And when they came, they did not make it a secret.  
13 They spoke about it. They said they had been to The Hague.

14 In fact, he had said that it was necessary for the  
16:33:29 15 Prosecution, for them to travel again to The Hague. Then I asked  
16 him, I said, Again? I said, why? Taylor only asked me to inform  
17 them - to inform those witnesses, if they were in Kailahun, that  
18 he would like to meet with them in Kailahun, for him to talk with  
19 them so that they can discuss matters.

16:34:27 20 When I heard this, my neighbour with whom I was, Kabbah, I  
21 called him and told him that this man who came to me far back has  
22 told me. So I saw from Kabbah's looks, from his actions, that he  
23 was completely excited. I said I don't know whether he told the  
24 other Prosecution witnesses, but when the two heard, just like my  
16:35:13 25 relatives explained in this Court, they were the ones who were  
26 contacting me for me to give them Taylor's contact number so that  
27 they can get in touch with him to talk with him.

28 It was TF1-247's idea when they prepared a document to  
29 invite Prince Taylor so that he can meet them in Kailahun for

1 further discussions. And the Prosecutor in my case would prove  
2 me right. Prince Taylor gave me this document, TF1-247 gave me  
3 this document for me to send it to Prince Taylor. I was unable  
4 to go, so I sent the document.

16:36:40 5 He received it, and when he did, what I said the Prosecutor  
6 in my case would prove me right, this man tendered this document  
7 to him during the investigation here in Freetown. But he, too,  
8 Mr Gardner, during the time of the Court sitting, did not produce  
9 this document.

16:37:33 10 The reason that I did not tell my lawyer and the  
11 Independent Counsel in my case, this man, Taylor, he said, This  
12 investigation and this case that has arisen, he said,  
13 Mr Senessie, it's not for you. At the time that the  
14 investigation commenced, he said it was not for me. He said it  
16:38:11 15 was for him. He said the Office of the Prosecutor was looking  
16 out for him to be locked up.

17 JUSTICE DOHERTY: Yes.

18 THE ACCUSED: The reason I am saying this is that I am a  
19 priest in a church. All the while that I've been away, my mind  
16:38:56 20 had not been at rest. My conscience had not been clear because  
21 as a priest I am not to tell lies, and for peace to prevail in  
22 the subregion, I thought it was necessary for me not to hide any  
23 truth.

24 This man Taylor again told me after all that I should not  
16:39:30 25 incriminate him in this matter because if I do, he said they were  
26 looking out for him because he had worked with the Defence team.  
27 And if it happens, I and him, if they found out, the case would  
28 be worse. But if I am alone, the case could be fought because it  
29 was a simple one. If I come to Court, he said they would acquit

1 this case. That was how I fought this case, because he who knew  
2 the implications told me this.

3 My Lord, I want to inform you that Prince Taylor used me,  
4 and even the Prosecution witnesses who were my relatives have  
16:40:46 5 been to this Court, they know - they knew the routine. They,  
6 too, used me. Today, I am in black and white uniform, when in  
7 fact I am a peaceful citizen. They have cast the blame on me  
8 alone.

9 Through the prayers that I offer, My Lord told me last  
16:41:22 10 night that, Your conscience is not at rest. Say everything.  
11 Maybe - of course you've delayed this, but maybe the Court would  
12 have mercy on you because it's not your deed. It's not your  
13 intention. This is what I got from the dream.

14 But now I am not saying this for the Court to do anything,  
16:41:55 15 because the Court has passed its verdict. The Court cannot  
16 change its verdict. The Court had already said that I am guilty.  
17 I am already telling the Court my version of events so that the  
18 Court would know the little role that I played in this event.

19 According to the Bible, Psalm 86: 15, "But you, oh My Lord,  
16:42:52 20 full of compassion and gracious, long suffering and abundant in  
21 mercy and truth, only you know."

22 I am asking you to have pity on me for the following  
23 reasons: (1), Mr Taylor, who is my friend, who duped me into  
24 this, he knew the rules and the implications of this Court, but  
16:43:35 25 he deliberately involved me and he beseeched me not to  
26 incriminate him. But my prayers to the Almighty did not allow me  
27 at all, because my conscience is not at rest; (2), I am a family  
28 man with two wives and eight children; (3), I am an evangelist  
29 with the New Apostolic Church with approximately 300 to 400

1 members; (4), I am the chairman CTA, board of chairman for the  
2 National Secondary School with 2,500 students in our school; (5),  
3 I am a travel authority in the local administration in the Luawa  
4 Chiefdom, Kailahun District.

16:45:20 5 So My Lord, to end, I want to say I am sorry to even the  
6 Prosecutor in my case who said they encountered aggravation about  
7 my attitude in this matter because there was no mitigation from  
8 my side. And finally, I am appealing to you, My Lord, to have  
9 pity on me, because - because of such a delay. But, like I said  
16:46:30 10 earlier on, I said any creature on earth that drinks water is  
11 liable to making mistakes, and sometimes we are followed by the  
12 wicked while we remain the righteous.

13 So this is all I have for you, My Lord. Thank you very  
14 much.

16:46:54 15 JUSTICE DOHERTY: Thank you, Mr Senessie.

16 Mr Lansana, did you wish to say anything further in the  
17 light of the --

18 MR LANSANA: Yes, Your Honour.

19 Your Honour, I want to start off by saying that I, too, was  
16:47:19 20 taken aback by my client, especially with regards to what he has  
21 just informed this Court about. And I would, by all means,  
22 associate with him in respect of the sentiments that he has  
23 expressed before this Court. They are as new to me as they are  
24 to you; the only difference is maybe eight or ten hours'  
16:48:02 25 difference.

26 Your Honour, I do appreciate the fact that this happens to  
27 be some kind of novelty, especially when legalists prefer that  
28 the information before the Chamber this afternoon ought to have  
29 come to the knowledge of this Chamber a long time ago - a long

1 time before now. But that notwithstanding, Your Honour, I would  
2 crave your gracious indulgence to suffer him in the circumstance  
3 that he, himself, says he believes in the adage "better late than  
4 never," especially against the backdrop of the motivation for  
16:49:03 5 addressing this Court in the manner he has done.

6 A break of conscience, he says, engendered, according to  
7 him, a dream in which he has been told by the Almighty to  
8 unburden his conscience. Like I said, Your Honour, I fully  
9 associate with him in that regard. That notwithstanding, Your  
16:49:47 10 Honour, I prepared and filed a response to the  
11 Independent Prosecutor's sentencing recommendation, filed at  
12 on --

13 JUSTICE DOHERTY: I did indeed receive it, Mr Lansana, and  
14 I did indeed read it with care.

16:50:14 15 MR LANSANA: I appreciate that, Your Honour. And that will  
16 make my job this afternoon very easy and simple, because I  
17 wouldn't need to go over the script itself, but merely, maybe, to  
18 highlight certain aspects of it that I consider, in my legal  
19 opinion, worth reiterating.

16:50:41 20 First and foremost, Your Honour, I would want to reiterate  
21 the Defence's conception of certain sentencing theory, which  
22 basically brings into sharp focus the principle of appropriate  
23 sentencing - what amounts to appropriate sentence. It is our  
24 submission, Your Honour, that it is not necessarily determined by  
16:51:28 25 the number of years imposed or, indeed, not necessarily  
26 determined by the imposition of a custodial sentence. It could  
27 be adequately determined by the imposition of a fine, taking into  
28 consideration the peculiar circumstances of the case.

29 Your Honour, I believe that to arrive at an appropriate

1 sentence, this Chamber will be expected to use objective reason  
2 and arrive at justifiable reasons that speak to the facts of the  
3 case and the circumstances of the accused.

4 The Prosecutor - the Independent Prosecutor has recommended  
16:52:25 5 a sentence of five to seven years and a fine of 2 million leones.  
6 According to them, "to be an appropriate signal to the community  
7 that this kind of conduct will not be sanctioned but, rather,  
8 heavily punished." Indeed, Your Honour, the Defence appreciates  
9 the Independent Prosecutor's concern that this Chamber uses this  
16:52:58 10 instant trial as an opportunity to establish deterrence, but we  
11 also submit, Your Honour, that deterrence can be established with  
12 other means of sentencing other than a custodial sentence of five  
13 to seven years.

14 As officers of the law and with my reverent regard to the  
16:53:33 15 number of years you've spent on the Bench, I believe that you  
16 will appreciate the fact that the sentencing - the art of  
17 sentencing is eclectic. It varies from tribunal to tribunal,  
18 from charge to charge and each individual he involves around  
19 peculiarity. And that peculiarity, Your Honour, is one I would  
16:53:59 20 want you to bring to bear on this particular case and the  
21 circumstances of both the offences and the offender.

22 And at this point in time, Your Honour, I'll come to our  
23 second submission which deals with mitigating circumstances.  
24 Mitigating circumstance is one of relate to two major issues,  
16:54:34 25 like I said circumstances of the offence and the circumstances of  
26 the offender.

27 It is our submission, Your Honour, that the circumstances  
28 of the offence or offences for which the accused has been  
29 convicted are such that their nature is inchoate rather than

1 substantive. He attempted to bribe. Did he not bribe. The  
2 witnesses, it has been proved to this Court, established before  
3 this Court, did not recant their testimonies.

4 On the issue of bribe, there is jurisprudence before this  
16:55:46 5 Chamber that a ruling was made by this Court - a decision was  
6 taken by this Court not to prosecute or even instigate  
7 prosecution or institute prosecution in an allegation by the  
8 Defence that their witness, DCT-133 had been offered a bribe in  
9 the act of being influenced by the Prosecution.

16:56:40 10 The decision of the Chamber was that the allegations were  
11 not credible, partly because DCT-133 was never paid the  
12 negotiated fee.

13 Your Honour, thus the Prosecutor against Taylor, SCSL,  
14 03-01-T-1118, decision on public with confidential annexes A to J  
16:57:18 15 and public annexes K to O, Defence motion requesting an  
16 investigation into contempt by - contempt of Court by the Office  
17 of the Prosecutor and its investigators, November 2010, paragraph  
18 1 of 4.

19 Your Honour, I know the aspects of the circumstances of the  
16:57:50 20 Defence, that the Defence want to bring to the attention of this  
21 Chamber is the element of entrapment and/or luring the accused  
22 into furthering his action to procure incriminating evidence  
23 against him. And this is particularly true of his encounter with  
24 TF1-585.

16:58:21 25 On the 27th of January, when TF1-585 encountered the  
26 accused, she didn't have a phone. However, because of her  
27 intentions, she secured one against the 31st of January, three  
28 days, for the sole purpose of recording his voice. And she,  
29 herself, in testimony before this Court, said exactly that.

1 Your Honour, I refer this Chamber to the testimony of  
2 TF1-585, transcript of Monday, 11 June, 2012, at page 55, lines  
3 15 to 25. In her answer to a question:

4 "How did you do that? That's the recording."

16:59:34 5 She says this:

6 "The conversation between us, I recorded everything on my  
7 memory card, so I presented the memory card to the Prosecution."

8 "Q. Before you get to that point, tell me and tell  
9 the Court, please, did Mr Senessie know that you were recording  
10 the conversation?"

11 "A. No. I knew that it was risky. He did not know.  
12 He did not notice at all. And that is my own evidence for the  
13 future, so that he won't say he did not go to me or something  
14 like that did not happen."

17:00:22 15 The Defence submits, Your Honour, that is entrapment, and  
16 the law relating to entrapment in the UK jurisdiction is to the  
17 effect that entrapment, as a result of the conduct of journalists  
18 rather than police officers, will result in mitigation of  
19 sentence.

17:00:52 20 It is our further submission, Your Honour, that although  
21 TF1-585 did not act - was not a journalist, however, her actions  
22 and tactic and no different than those of a journalist. She  
23 played a journalist to entrap the accused.

24 Your Honour, I will now come to the circumstances of the  
17:01:28 25 offender. It has been well-established before this Court, before  
26 this Chamber, that the accused has been of good comportment from  
27 the date his investigation was ordered up until the instant  
28 moment, as I speak before this Chamber. He has never given cause  
29 to this Chamber to issue a warrant to appear before this Chamber.

1 He's been very co-operative throughout investigations and the  
2 proceedings before this Chamber. And even in his Kailahun  
3 community, he enjoys a very good reputation.

4 He's a family man with wives and children, a cocoa farmer  
17:02:40 5 and carver, an evangelist of the new apostolic church, and  
6 chairman of the RUF - Revolutionary United Front Party - in  
7 Kailahun District. And when we speak of him as a family man, I  
8 am especially moved by the fact that he has a 12-year-old son who  
9 appeared before this Chamber, Fick Senessie, a 12-year-old in  
17:03:19 10 primary school.

11 The Defence appeals to this Chamber not to impose a  
12 custodial sentence, because imposing a custodial sentence, Your  
13 Honour, will adversarially, very adversarially affect and will  
14 seriously stifle, if not abort Fick Senessie's career.

17:04:01 15 The accused has told his court about his role in the peace  
16 process. I didn't add this in my - I didn't say this in my  
17 response to the Prosecutor's sentencing recommendation, but I  
18 would now add it, that he was a member of the peace mediating  
19 team during the peace process. He played a vital role as a  
17:04:32 20 cartographer officer in the military intelligence branch of the  
21 RUF. The accused has told this Chamber that he was very  
22 instrumental in preventing an attack on the indigenous contingent  
23 in Kailahun during the peace process.

24 That singular act, Your Honour, throws a lot of light onto  
17:05:12 25 the nature of the offender before you. He is a man of peace, a  
26 respecter of institutions. Apart from the peace process, Your  
27 Honour, the accused played a very determining role in  
28 transforming the RUF war machine into a democratic institution, a  
29 political party, to participate in the democratic dispensation

1 that followed the end of the war. And that shows that the  
2 accused before you to be sentenced, is a man of peace who  
3 believed that the ballot should replace the bullet in determining  
4 the will of the people. That was why he played a very vital role  
17:06:24 5 in the transformation of the RUF into the RUFP.

6 Another aspect of the accused, Your Honour, that the  
7 Defence will want to bring to your attention, is the  
8 sociocultural milieu from which he comes from, Kailahun  
9 community, a rural community, where a custodial sentence is an  
17:07:13 10 anathema; where a custodial sentence will not only smear the  
11 image of the accused, but splurge the image of his entire family.  
12 Another aspect that the Defence is apprehensive of in terms of a  
13 custodial sentence, Your Honour, is that it will steep the family  
14 of the accused and the family of TF1-585 in an unending enmity.

17:07:56 15 They will be enemies for life if the accused is given a custodial  
16 sentence.

17 The Court knows the relationship, and it is because their  
18 relationship that the Defence makes that particular submission.

19 Sentencing the accused to a custodial sentence will affect  
17:08:21 20 the accused personally. It would be tantamount to sentencing his  
21 family and the family of TF1-585 to life animosity. Your Honour,  
22 in contempt cases it is not new before the tribunal to have  
23 sentences of a fine instead of sentences of custody. I refer  
24 Your Honour to the case of the Prosecutor v. Dusko Tadic. It's  
17:09:13 25 an ICTY case, IT-94-1-A-R.77, judgement on the allegations of  
26 contempt against prior counsel Milan Vujin, 31st January 2000.  
27 The accused was sentenced to pay a fine of DFL 15,000 to the  
28 Registrar of the Tribunal within 21 days, and that was his  
29 sentence inter alia. He was not given a custodial sentence. He

1 was found to be in contempt of the Court of Appeal of the  
2 International Tribunal For Former Yugoslavia.

3 Your Honour, comparatively speaking, for instance, that  
4 constituted contempt compared with the conduct of the accused  
17:10:32 5 before you, I would say that the former was graver. He put  
6 forward to the Appeals Chamber in support of a Rule 115  
7 application a case which he knew to be false. He manipulated  
8 proposed witnesses, persuading them to tell lies and to withhold  
9 the truth. He bribed witnesses to tell lies and to withhold  
17:11:11 10 information from the investigation, which they did.

11 The accused before you informed the Prosecution witnesses  
12 of the possibility of a bribe, but that bribe did not take place.  
13 The said Prosecution witnesses did not recant their testimonies.  
14 And when it came to punishment, according to the appeals  
17:12:04 15 tribunal - the Appeals Chamber of the ICTY, permit me, Your  
16 Honour, to just read excerpts:

17 "Courts and Tribunals necessarily rely very substantially  
18 upon the honesty and propriety of counsel in the conduct of  
19 litigation. Counsel are permitted important privileges by the  
17:12:27 20 law which are justified only upon the basis that they can be  
21 trusted not to abuse them. It unfortunately happens that counsel  
22 occasionally do abuse those privileges or act dishonestly or  
23 improperly. Such cases usually involve conduct on the part of  
24 the counsel which is intended, for whatever reason, to assist in  
17:12:51 25 winning the case for the client whom counsel represents.

26 That is bad enough. The conduct of the respondent in this  
27 case strikes at the very heart of the criminal justice system.  
28 The contempt requires punishment which serves not only as  
29 retribution for what has been done, but also as deterrence of

1 others who may be tempted to act in the same way."

2 And when it came to sentencing, Your Honour, the last  
3 paragraph:

4 "The Chamber has anxiously considered whether a term of  
17:13:37 5 imprisonment should be imposed, but it has decided that it would  
6 be inappropriate in the present case. A substantial fine is  
7 nevertheless necessary in this case to achieve the purposes for  
8 which the punishment is imposed. The Appeals Chamber fixes that  
9 fine at DFL 15,000." The maximum was 20,000.

17:14:09 10 JUSTICE DOHERTY: Tell me, Mr Lansana, in that particular  
11 case you're quoting to me, Tadic, how many counts was the  
12 defendant convicted of?

13 MR LANSANA: Your Honour, the defendant was convicted on -  
14 I underlined it, Your Honour, but I don't have the full text here  
17:14:40 15 in my file. But, Your Honour, the only thing I wish to tell the  
16 tribunal, this Chamber, is that he was found guilty on several  
17 allegations of interfering with witnesses, deliberately filing  
18 untruths before the Appeals Chamber, and bribing witnesses to  
19 tell lies. He was found guilty on those allegations. I can't  
17:15:09 20 offhandedly tell the number of counts, Your Honour. I apologise  
21 for that.

22 Your Honour, I will now come to the final beat of my  
23 presentation: The nature of the fine. Your Honour, I still  
24 continue imploring your gracious indulgence that a custodial  
17:15:50 25 sentence not be imposed, but rather a sentence of fine be  
26 conceded.

27 And in that regard, Your Honour, I am mindful of an  
28 amendment that was done to the Rules of Procedure and Evidence  
29 for the Special Court of Sierra Leone, especially Rule 77(G). It

1 would be very highly appreciated, Your Honour, if a clarification  
2 is made.

3 JUSTICE DOHERTY: That's the Rule that was amended during  
4 May.

17:16:54 5 MR LANSANA: Yes.

6 JUSTICE DOHERTY: That amendment would run, in my view,  
7 from the date it was imposed, which was after this offence was  
8 committed.

9 MR LANSANA: Yes, Your Honour.

17:17:11 10 JUSTICE DOHERTY: So I will hear Mr Herbst, but that is my  
11 initial reaction; it is not retrospective.

12 MR LANSANA: Very well, Your Honour.

13 JUSTICE DOHERTY: That is my view. And if there is a  
14 different view, I will invite you to respond.

17:17:25 15 MR LANSANA: Yes, Your Honour. Because I am of the opinion  
16 that it should not be retrospective, and I have a number of  
17 authorities including Archibald here, and in particular theory on  
18 that in Blackstone's Criminal Practice.

19 But, Your Honour, it is our view - we are of the legal  
17:17:51 20 opinion that the amendment should not be retrospective; that it  
21 should not apply to the accused in the instant case. Because the  
22 amendment came after the offence had been committed or the  
23 offences had been committed, and it is in the interest of justice  
24 that, for want of a better expression, the goalpost not be  
17:18:28 25 shifted.

26 The Defence is of the view that the stipulated fine at the  
27 time of the commission of the offences should be the operative  
28 and applicable fine to be imposed to the accused, and I don't  
29 want to pre-empt Mr Herbst, but it's in the Prosecutor's sentence

1 recommendation that the fine that they are asking for is 2  
2 million leones. They didn't say anything about the new  
3 regulation.

4 Finally, Your Honour, the above recommendation  
17:19:09 5 notwithstanding, the Defence is of the respectful appreciation of  
6 the trial Judge's vast experience on the Bench, and we trust in  
7 your legal wisdom to discern the appropriate sentence to impose,  
8 taking into consideration the peculiarity of the Sierra Leonean  
9 society as pointed out in my brief, the sociocultural belief, the  
17:19:39 10 perception of custodial sentence in the Kailahun District as  
11 opposed to even the Western Area, let alone the world at large.

12 Your Honour, the accused quoted from the Bible, but he's a  
13 clergyman. I won't quote from the Bible. I'll only quote  
14 Shakespeare:

17:20:05 15 "The qualities of mercy are strained. They droppeth like a  
16 morning dew."

17 And that's exactly what we expect as the Defence that you  
18 do in the circumstance. That's all I wish to say, Your Honour.

19 JUSTICE DOHERTY: Thank you, Mr Lansana.

17:20:22 20 MR LANSANA: Thank you, Your Honour.

21 JUSTICE DOHERTY: Mr Herbst, I appreciate that you are not  
22 the counsel that was originally handling this matter and you have  
23 a watching brief, but if there is anything you have been  
24 instructed or wish to say on behalf of counsel for the  
17:20:41 25 Independent Counsel, I will hear it.

26 MR HERBST: Your Honour, I am most grateful. I will say to  
27 the Court that I am not - of course I am not the Independent  
28 Counsel on the case, and I lack Mr Gardner's familiarity with the  
29 facts and circumstances; although, I have attempted to educate

1 myself from some of the recent filings. But I want to emphasize  
2 that I consider it my job here not to intrude with my own views,  
3 but to represent, as best I can, Mr Gardner's views and what  
4 Mr Gardner has asked me to say in response to the Defence  
17:21:42 5 sentencing brief, which he did see and which he asked me to make  
6 some responses and comment. And I would like to do that if the  
7 Court would permit me to do that.

8 JUSTICE DOHERTY: Yes. Please proceed.

9 MR HERBST: First of all, Your Honour, I want to associate  
17:22:09 10 myself with two comments - two submissions of my learned friend  
11 the Defence counsel, Mr Lansana. We do not urge what we call a  
12 retroactive, and I guess what Your Honour calls retrospective  
13 application of the new fine limits. Mr Gardner recommended 2  
14 million leones as a fine, the Defence lawyers recommended 2  
17:22:43 15 million leones as a fine and we don't take issue with that.

16 Secondly, I want to associate ourselves with the comment  
17 that we are very much content to rely on Your Honour's experience  
18 and judgement in this case, as to what an appropriate sentence  
19 is. I am fully familiar with the quotation from Shakespeare that  
17:23:15 20 Mr Lansana has put to the Court, but I would like to point out  
21 that it talks only of mercy, but we also have to consider justice  
22 in this case. And the considerations that Mr Gardner wrote of in  
23 his brief relating to the seriousness of the offence, the need  
24 for deterrence, both general and specific deterrence - and by  
17:23:52 25 that I mean to deter the offender but also to deter others  
26 similarly situated who might consider doing the same thing, are  
27 absolutely critical factors to weigh in sentencing.

28 Now, Mr Gardner has asked me to respond to certain matters  
29 in Defence brief, which Mr Lansana repeated orally in Court, so

1 I'd like to pick those up.

2 With respect to entrapment, there is no entrapment here  
3 under what I understand to be the UK provision or principles of  
4 law that suggests that entrapment could be by a journalist, as  
17:24:48 5 opposed to a law enforcement official, and there is no entrapment  
6 under American law, with which I am familiar, that confines  
7 entrapment to crimes that are prompted by a law enforcement  
8 official, as opposed to a private citizen.

9 Mr Lansana has conceded, acknowledged, that 585 was not a  
17:25:17 10 journalist. To suggest that any other private person should be  
11 treated as a journalist ignores the fact that there are important  
12 and significant differences between what a journalist does and  
13 what a private citizen does. But in either case, 585 merely  
14 gathered evidence of the defendant's crime and did not prompt the  
17:25:49 15 defendant to commit the crime.

16 I'm advised by Mr Gardner that the Defence never asserted  
17 an entrapment defence in the trial and that there are no facts in  
18 the record from which the Court could infer entrapment. To make  
19 out entrapment the germ of the idea for the commission of the  
17:26:10 20 crime must have originated with the law enforcement official.  
21 There are no such facts in this case.

22 So our submission is that the notion of entrapment should  
23 be entirely rejected in this case. This is the first point that  
24 I wanted to make on Mr Gardner's behalf.

17:26:33 25 The second point has to do with the suggestion by my  
26 learned friend, that the offence with which Mr Senessie stands  
27 convicted are somehow inchoate; because no bribes were paid and  
28 there was no recantation of testimony. This is a novel  
29 application, in our view, of the term "inchoate." It is like

1 suggesting that the bank robber's conviction is inchoate because  
2 the bag of money taken from the bank turned out to be empty. The  
3 crime is the robbery in the bank robber's situation and all that  
4 that entails. The crime here, and the multiple crimes and the  
17:27:36 5 multiple offences here, were the offering of the bribes and the  
6 deliberate knowing and wilful effort to bring about a recantation  
7 of the testimony. That's the second point that I wish to make on  
8 Mr Gardner's behalf.

9 Mr Gardner has also asked me, Your Honour, to respond to  
17:28:02 10 the notion that incarceration would be a hardship on the  
11 defendant and his family. He points out that Defence counsel's  
12 review of Mr Senessie's role in the community, in terms of the  
13 number of adult children that he has, his activities with respect  
14 to his political party, with respect to his leadership role in  
17:28:35 15 his church, suggests that in fact, more than most defendants  
16 similarly situated to him, Mr Senessie would have a support  
17 mechanism to take good care of his family while he's serving any  
18 sentence of incarceration that Your Honour might impose.

19 I would like to add that, of course, it is a truism that  
17:29:09 20 when an offender is sentenced and when an offender commits a  
21 crime and is punished for a crime, it is most often the family  
22 that suffers. But there are important considerations of  
23 punishment and of deterrence, both specific and general, which in  
24 Mr Gardner's view require a significant sentence of incarceration  
17:29:44 25 in this case.

26 Similarly, the notion that a custodial sentence will cause  
27 unending enmity between the defendant's family and the family of  
28 585, Mr Gardner has asked me to say that he considers that quite  
29 frivolous, and suggests that the accused - the convicted should

1 have thought of that before he approached 585 and offered her a  
2 bribe to recant her testimony.

3 Mr Gardner also asked me to point out that the Defence  
4 response does not rebutt anything in Mr Gardner's submission. It  
17:30:46 5 particularly fails to rebutt the argument that the crimes for  
6 which he stands convicted, Mr Senessie, are exceptionally serious  
7 because they arose in the context of the Charles Taylor trial.  
8 And before - of course, Mr Gardner is unaware of the statement  
9 that Mr Senessie made in this Court, which I am going to turn to  
17:31:15 10 in a minute - but Mr Gardner had asked me to point out that  
11 nothing in the Defence submission rebutted the argument that the  
12 defendant clearly did not act alone, and that to the contrary,  
13 the claim that Mr Senessie is a poor farmer, corroborates rather  
14 than rebutts the notion that he did not act alone.

17:31:45 15 Now I have to say that I am at an even further disadvantage  
16 because while I strained to listen to Mr Senessie's statement to  
17 the Court in his own words, I was at the disadvantage of having  
18 to listen, as we have had very often here in Kigali, to both the  
19 interpreter and Mr Senessie talking at the same time. So I did  
17:32:23 20 not hear all, and understand all of what he said, but it appeared  
21 to me that, for the first time, he was indicating to the Court in  
22 his statement that, in fact, he did not act alone and that he  
23 acted in collaboration with Mr Prince Taylor and at the  
24 inducement of Mr Prince Taylor. These are admissions or  
17:32:56 25 acknowledgments that I understand are new and that Mr Gardner is  
26 not aware of.

27 So I do not - I am unable to, having not taken instruction  
28 from Mr Gardner, I am not able to make any further comment on his  
29 behalf on that development in the matter. I also do not know or

1 cannot gauge whether from the statement Mr Senessie is now  
2 prepared to give sworn testimony to the same end and how that  
3 would, if he did so, affect a sentence already imposed, because I  
4 not know whether the Rules of this Court, like our rules, contain  
17:34:06 5 a provision for a modification of sentence within a year of its  
6 imposition as a result of new developments.

7 I also cannot tell for two reasons, one, that I could not  
8 hear all of it, and two, that I'm not familiar enough with the  
9 facts of the case, to ascertain to what extent Mr Senessie's  
17:34:38 10 statement would suffice as new evidence that could be used in the  
11 investigation and Prosecution of another in the matter. But I  
12 did want to at least make these suggestions or explanation of a  
13 possible - what the possible implications of this new development  
14 are.

17:35:16 15 My brief, however, is to state, as Mr Gardner has asked me  
16 to do, that the Defence response, up to today - and I'm talking  
17 about the brief of the Defence, contain nothing that would alter  
18 the specific recommendation of Mr Gardner as to not only the  
19 imposition of a custodial sentence, but also of the range that he  
17:36:04 20 had suggested as to what, more specifically, that sentence of  
21 incarceration should be in terms of years.

22 So Your Honour, as I said what I began my remarks, the  
23 Independent Counsel is content to rely on Your Honour's  
24 considerable experience and judgement in the imposition of  
17:36:36 25 sentence and stands by the recommendation that was made. I thank  
26 the Court for this opportunity to present these remarks.

27 JUSTICE DOHERTY: Thank you, Mr Gardner - or, sorry,  
28 Mr Herbst. I have noted what you said on behalf of Mr Gardner.  
29 I've also noted the submissions of both Mr Lansana and all that

1 Mr Senessie has told me in allocutus. I am going to think it  
2 over, I am going to give a decision tomorrow, and in the meantime  
3 I'll obviously give it considerable thought.

4 We are going to adjourn the Court now to 11.00 tomorrow  
17:37:25 5 morning Freetown time, and I'll give a decision at that point.

6 If for some reason I don't, I'll certainly set a time, but I  
7 don't see any reason for not sticking to this schedule.

8 We will adjourn Court until 11.00 tomorrow morning.

9 Mr Senessie, you heard what I said?

17:37:51 10 THE ACCUSED: I heard it, Your Honour.

11 JUSTICE DOHERTY: Thank you. Please adjourn our until  
12 11.00 tomorrow morning.

13 [Whereupon the sentencing hearing  
14 adjourned at 5.37 p.m., to be reconvened  
17:37:57 15 on Thursday, the 5th day of July  
16 at 11.00 a.m.]

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