



Case No. SCSL 2011-02-T  
THE INDEPENDENT COUNSEL

-V-

HASSAN PAPA BANGURA, SAMUEL KARGBO, SANTIGIE BORBOR KANU AND  
BRIMA BAZZY KAMARA

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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 Hassan Papa Bangura:	Melron Nicol-Wilson
For the accused Samuel Kargbo:	Charles Taku
For the accused Santigie Borbor Kanu:	Kevin Metzger
For the accused Brima Bazy Kamara:	Abdul Serry-Kamal Wara Serry-Kamal
For the Principal Defender:	Claire Carlton-Hanciles

1 [Thursday, 6 September 2012]

2 [Open session]

3 [Accused present]

4 [The Court resumed at 9.05 a.m.]

5 JUSTICE DOHERTY: Good morning. Good morning, Kigali.

6 I'll take appearances, please.

7 THE COURT OFFICER: [In Kigali] [Indiscernible] fault on  
8 the line.

9 JUSTICE DOHERTY: That's possibly because I wasn't speaking  
10 loudly enough and there is fault on my line as well. I'm just  
11 saying good morning. I'll take appearances, please.

12 THE COURT OFFICER: [In Kigali] Did she say she takes  
13 appearances?

14 MR HERBST: Your Honour, I don't know if you said that you  
15 wanted to take appearances, but in light of the silence, if  
16 Your Honour can hear me --

17 JUSTICE DOHERTY: Very clearly, Mr Herbst. Very clearly.

18 MR HERBST: Your Honour, every time you speak there is a  
19 garbling - a very loud garbling on the line so that it's very,  
20 very difficult to hear and understand you. But as long as you  
21 can hear me, let me say that this is Robert Herbst, independent  
22 counsel for the Prosecution. Good morning to Your Honour and  
23 everyone else in Freetown.

24 JUSTICE DOHERTY: Thank you. And I would ask the  
25 technicians to check this line, because I'm getting crackling as  
26 well.

27 Appearances in Freetown, please.

28 MR NICOL-WILSON: Good morning, Your Honour. Melron  
29 Nicol-Wilson for Hassan Papa Bangura, and with me is Joseph Sesay

1 and Alpha Bah.

2 JUSTICE DOHERTY: Thank you, Mr Nicol-Wilson.

3 MR METZGER: Good morning, Your Honour. Kevin Metzger for  
4 Santi gie Borbor Kanu. With me today is Mr Hassan Sherry.

5 JUSTICE DOHERTY: Thank you. I think I've welcomed each of  
6 you juni or counsel to Court, so we will proceed.

7 Now, I note that we have a witness in the witness box with  
8 a screen. This will follow on from the protective measures that  
9 I considered appropriate yesterday of my proprio motu and I will  
10 - her personal details should be in closed session.

11 MR METZGER: May I address you on the point?

12 JUSTICE DOHERTY: Yes, please do.

13 MR METZGER: We have all had an opportunity to think about  
14 this overnight. She has come to Court. She's very bravely sat  
15 in the seat and looked at everything and I've had a last word  
16 with her this morning. While she is here ready, willing and  
17 able, I feel in all the circumstances that I do not wish to call  
18 her on behalf of Mr Kanu.

19 I'm sorry if we have lost any time as a result of this. It  
20 is something I have wrestled with very, very hard. She has very  
21 little idea of what she is likely to go through, and I think for  
22 the potential gain were she to give evidence, it's not worth the  
23 potential trauma, and the likely or putative loss to the case by  
24 her not giving evidence for Mr Kanu, I think, is minuscule in  
25 comparison.

26 So I have asked her to remain sitting in the witness seat  
27 so that Your Honour can see that she is here, ready, willing and  
28 able, but in all the circumstances I respectfully withdraw the  
29 earlier indication that I was going to call her as a witness for

1 Mr Kanu.

2 THE COURT OFFICER: Your Honour, we think that there is a  
3 need to change your mic, because it's giving a lot of feedback  
4 and the technicians have advised that if Your Honour would  
5 indulge them to do a few minutes.

6 JUSTICE DOHERTY: That doesn't worry me in the least.

7 Mr Herbst, I'm not going to say any more because my  
8 microphone has to be changed.

9 I'll still hearing static on the line, Kigali. Can you  
10 hear me any clearer?

11 MR HERBST: There is static on the line, and I'm afraid the  
12 change in microphone did not materially improve the situation,  
13 and I notice that - apparently it is only Your Honour, because at  
14 least with respect to Mr Metzger, we were hearing him loud and  
15 clear without static.

16 JUSTICE DOHERTY: I'll ask the technician - he's here with  
17 me - to try again.

18 MR METZGER: Your Honour, I was wondering if I should take  
19 the opportunity to, as it were, release Ms Kanu.

20 JUSTICE DOHERTY: Yes, I just wanted to say to her - to  
21 thank her for coming to Court and to also say that I can readily  
22 appreciate the difficulty it would be for her. For any child  
23 giving evidence in relation to a parent is not an easy thing to  
24 do. I suspect, as you say, that her contribution would be  
25 minimal.

26 So I thank you very much for coming and for going to this  
27 trouble, and also for coming so early and so well. We'll not be  
28 speaking to you today, and you're free to leave the Court  
29 whenever you want. So someone will help you to leave.

1 Thank you.

2 MR METZGER: I thank you, Your Honour. Mr Sherry would  
3 normally help her, but he is carrying out another errand for me,  
4 as Your Honour would understand.

5 JUSTICE DOHERTY: Mr Metzger, you had named another  
6 potential witness in the last few days.

7 MR METZGER: Yes, in fact I have named two who are  
8 currently absent. I'm beginning to fear that they have not been  
9 as brave as this young lady.

10 Your Honour may know that certainly a lot of people, when  
11 faced with the awesome spectacle and existence of this Special  
12 Court, sometimes get rather worried. I can't say if that is what  
13 is the situation in this case, but as I said, in relation to one  
14 witness yesterday, my assistant couldn't get her on the phone at  
15 all. The other one was at a job interview, so we assumed - it  
16 having been communicated to her, as far as I'm aware - that in  
17 that case we will do everything within our power to have her  
18 interposed at some point in time today, has succumbed to the  
19 usual interpretation of time in this part of the world. At  
20 least, I assume that to be the position.

21 As I have indicated to Your Honour, I readily  
22 understand if there comes a point in time where Your Honour says,  
23 as Roberto Duran is reported to have said in the famous battle in  
24 the ring, "No mas", or no more, then clearly there is nothing we  
25 can do about that. But I do sincerely harbour the hope that I  
26 will at least get some information within the next half an hour  
27 or so. As I say, Your Honour will notice Mr Sherry is not here.  
28 He's out there running an errand, trying to find out for me what  
29 the situation is.

1                   But I am currently, for Mr Kanu, therefore not in a  
2 position where I can call any evidence at this point in time or  
3 any evidence that I think ought to be called.

4                   JUSTICE DOHERTY: My understanding of the situation is that  
5 these were to be basically corroborative witnesses in relation to  
6 questions put by Defence counsel - excuse me, independent counsel  
7 and answers given by Mr Kanu. So I will not ask you to close  
8 your case immediately. We'll give it another half hour, as you  
9 say, and I will then hear what you have to say.

10                  MR METZGER: Indeed. It is certainly because of what  
11 Your Honour has said - shall I say, what Your Honour has very  
12 astutely noticed about the circumstances in which these witnesses  
13 are to be called, that perhaps I am not breaking into a sweat at  
14 their nonattendance.

15                  JUSTICE DOHERTY: Mr Herbst in Kigali, I'm not sure if you  
16 can still hear. The technician is still looking for another  
17 microphone for me. Did you hear anything that was said? You've  
18 heard Mr Metzger; I don't know if you heard me.

19                  MR HERBST: Your Honour, we did hear you. There is still a  
20 little bit of crackle, but we were able to hear through it. I  
21 understand you're giving Mr Metzger another half hour to produce  
22 witnesses before the case is closed, or whatever Your Honour  
23 decides to do with respect to that.

24                  JUSTICE DOHERTY: That's --

25                  MR HERBST: Since Mr Bangura's case is closed, I wonder if  
26 Your Honour will be making a similar inquiry of Mr Kamara's  
27 counsel.

28                  JUSTICE DOHERTY: That was exactly my intention. But since  
29 he's not here in person, I was going to ask other counsel if they

1 know about his whereabouts, because it should come from him.

2 MR HERBST: I'm sorry, Your Honour, I did not realise he  
3 was not in Court. I apologise [overlapping speakers].

4 JUSTICE DOHERTY: No, there was no appearance. He has -  
5 yesterday and the day before he came in about 9.30. He has  
6 talked of his transport problems, and transport is difficult here  
7 in Freetown at the moment.

8 This leaves me in something of a dilemma. He was looking  
9 for witnesses, you heard him yesterday, and I feel it would be  
10 improper for me to close anything without his presence.

11 MR HERBST: If, through the offices of the Principal  
12 Defender or the Court, it might be possible to give  
13 Mr Serry-Kamal a call on his cell phone to determine his  
14 whereabouts or his intentions.

15 JUSTICE DOHERTY: That's a good idea. I will ask Mr Court  
16 Officer to contact the Principal Defender and in turn ask if she  
17 can contact Mr Serry-Kamal to ask, first of all, has he got a  
18 witness, and secondly, is he on his way.

19 MR METZGER: Your Honour, that is one of the little errands  
20 that Mr Sherry is running for me.

21 JUSTICE DOHERTY: Oh, I see.

22 MR METZGER: I had envisaged clearly that situation,  
23 bearing in mind the decision we've had to make this morning about  
24 Ms Kanu, and I recall speaking to Mr Serry-Kamal yesterday and  
25 knowing that he was going all out to get a witness to Court this  
26 morning. It may be, although I haven't spoken to him personally,  
27 that that has caused some of the delay.

28 Once I have spoken with Mr Sherry or with the Principal  
29 Defender myself, I will be in a better position to provide any

1 information we have gleaned to Your Honour. Of course, my  
2 telephones are outside the Court.

3 JUSTICE DOHERTY: Yes, of course.

4 MR METZGER: And I will then make an attempt to call him  
5 myself as well.

6 JUSTICE DOHERTY: Perhaps the best thing to do would be to  
7 adjourn briefly for Mr Metzger, who has very kindly used his  
8 personnel to try and get in touch with Mr Serry-Kamal, and  
9 reconvene as soon as he has some information.

10 There's not much to be gained just sitting here looking at  
11 each other, so I'll adjourn briefly for Mr Metzger to contact  
12 Mr Serry-Kamal. It shouldn't take more than a few minutes, I  
13 don't think.

14 MR METZGER: If Your Honour were to say at the outside, I  
15 think, 9.30, then there may be some information coming.

16 JUSTICE DOHERTY: The Principal Defender is now coming into  
17 Court.

18 MS CARLTON-HANCILES: Good morning, Your Honour.

19 JUSTICE DOHERTY: Good morning, Ms Carlton-Hanciles.

20 MS CARLTON-HANCILES: I have been following the discussion  
21 on Mr Serry-Kamal, and since this morning I could not reach him  
22 on his mobile phones. They keep on ringing. I don't know what  
23 is going on with him. So I would plead with Her Ladyship to give  
24 me some time. If I can't get him on the phone, I may have to  
25 send someone to go and know exactly. Because it is unlike him  
26 not to get in touch with me or maybe to send word to colleague  
27 counsel if he is not going to be here at all, and he knows the  
28 importance of today.

29 JUSTICE DOHERTY: Certainly he's always turned up. He's



1 had transport - and I know he's had problems locating these  
2 witnesses, because he's made that very clear to us. So look,  
3 I'll adjourn briefly and if - and get an update. Because we do  
4 have to close this Court, and the cut-off time is 2.30, and  
5 counsel have asked to make oral submissions, which is very proper  
6 and most convenient for everyone. So we'll do that.

7 MS CARLTON-HANCILES: If it pleases Your Honour, can we  
8 come back maybe at 10 o'clock?

9 JUSTICE DOHERTY: That's a bit too much. 10 is just going  
10 to be too late. I'll make it - I'll give you - not give you, but  
11 I'll allow 15 minutes and we'll do it then.

12 Incidentally, Mr Nicol-Wilson, I was thinking overnight  
13 about your client's concerns yesterday, and it occurred to me  
14 that one of the Prosecutors - one of the earliest Prosecutors in  
15 this Court was a tall, bespectacled American, and I could well  
16 see there could be some confusion.

17 MR HERBST: [Indiscernible].

18 JUSTICE DOHERTY: So it may well be that's the person.

19 MR NICOL-WILSON: Yes, I was thinking alike, Your Honour,  
20 because I was here between 2003 and 2007 representing Mr Morris  
21 Kallon, and I vividly remember that American you have referred  
22 to. So it's very possible it's a case of mistaken identity.

23 JUSTICE DOHERTY: Well, it is an eight-year - and it was  
24 only one - from what I understand, only one meeting. So it's  
25 quite well understandable.

26 MS CARLTON-HANCILES: He's here, Your Honour.

27 JUSTICE DOHERTY: Oh, good. Mr Serry-Kamal is now joining  
28 the Court.

29 MR SERRY-KAMAL: Your Honour, I apologise for coming late.

1 I have tried to talk to the other possible witnesses, but  
2 unfortunately I've not got instructions from my client in Kigali.  
3 I would need a few minutes to talk to him.

4 JUSTICE DOHERTY: What I - in the light of what you say,  
5 Mr Serry-Kamal, the appropriate thing would be for us to adjourn  
6 briefly and allow you to use the good offices of the Principal  
7 Defender to contact your client in Kigali.

8 MR SERRY-KAMAL: In fact, I was in that office. That is  
9 why I came late. I was trying to contact him, but the office is  
10 locked.

11 JUSTICE DOHERTY: Well, I can ask. Madam Principal  
12 Defender is here, and Kigali, I'm sure, can hear us, and I would  
13 therefore ask that they liaise together and allow you to take  
14 instructions.

15 MR SERRY-KAMAL: Most grateful to Your Honour. Again I  
16 apologise for coming late, but I was in the Defence. I was  
17 hearing the proceedings.

18 MS CARLTON-HANCILES: Your Honour, it's just a simple  
19 clarification. He means he was in his counsel's office down the  
20 blocks.

21 JUSTICE DOHERTY: An area that I do not wander into, but  
22 I'll accept that it's there.

23 Mr Herbst, I hope you can hear me a little better.

24 MR HERBST: Your Honour, we can hear you a little better.  
25 It is still some crackle, which is annoying, but we are able to  
26 hear you through it.

27 I understand what has been said. I understand that  
28 Mr Serry-Kamal would like to speak to Mr Kamara. I'm sure the  
29 Court Officer here will arrange to have him taken to a place

1 where he can call immediately or be called, and the rest of us  
2 will attend here in the courtroom until we reconvene.

3 JUSTICE DOHERTY: Fine. That's good, we'll adjourn. We'll  
4 provisionally set it for 9.45 and if it's a little earlier or a  
5 little later, please advise Court, Mr Court Officer.

6 [The Court adjourned 9.30 a.m.]

7 [The Court resumed at 10.05 a.m.]

8 JUSTICE DOHERTY: Can you hear me in Kigali any better?

9 THE COURT OFFICER: [In Kigali] Madam, the crackling noise  
10 has started again, so I don't know - the technicians did work on  
11 the matter, but the noise has started again.

12 JUSTICE DOHERTY: I'm back to the old microphone, I notice,  
13 and it's on my line as well. I'll ask counsel to address, and  
14 Mr Court Officer, I think we'll go back to that slightly better  
15 machine.

16 THE COURT OFFICER: Your Honour, we really don't understand  
17 what happened. We tested it, it worked fine, we spoke back and  
18 forth with Kigali. I don't know what happened.

19 JUSTICE DOHERTY: Must be my Irish accent.

20 THE COURT OFFICER: I'll call them to come back and sort it  
21 out.

22 MR METZGER: Your Honour, may we take the opportunity to  
23 thank Your Honour for your forbearance, which has allowed a  
24 number of things to happen. I'm not going to forestall any of  
25 those things. I'll sure that you will take it in the order in  
26 which it comes. But thank you very much for the time; it has  
27 assisted us greatly.

28 JUSTICE DOHERTY: Thank you, Mr Metzger.

29 Mr Serry-Kamal, I think you are first in seniority

1 and accused.

2 MR SERRY-KAMAL: Yes, Your Honour, I want to share the same  
3 sentiments with my learned friend for allowing me to confer with  
4 my client, and the position now is that I will not be calling any  
5 further evidence, and that will be the case for the fourth  
6 accused.

7 JUSTICE DOHERTY: Thank you, Mr Serry-Kamal. I note that  
8 you have closed your case.

9 Mr Metzger for Mr Kanu.

10 MR METZGER: Your Honour, I'm in no better position than I  
11 was earlier this morning. It would be - I wouldn't say improper.  
12 It would be difficult for me to ask Your Honour for more time,  
13 bearing in mind that I have no further information. So I will  
14 ask for the time in the knowledge that Your Honour cannot give  
15 that time to me. And once Your Honour has indicated that that is  
16 the position, I will have to say that there is no further  
17 evidence I'm in a position to call.

18 JUSTICE DOHERTY: Mr Metzger, with respect, it's been  
19 nearly - not quite a week, but very close to a week, and I do  
20 know that you have used your best endeavours. The witnesses are  
21 obviously well aware that they are being looked for. We already  
22 know from Mr Kanu's evidence that one witness lives with one of  
23 the other potential witnesses. So I cannot think that there is  
24 an ignorance of the situation and the need to come to give  
25 instructions to you.

26 I therefore feel I cannot indulge Mr Kanu. I've indulged  
27 him for the last two to three days, and he must either have the  
28 witness come in or not. I do note, as I've said already, this is  
29 rebuttal evidence, and I did also feel that he will not be

1 prejudiced.

2 MR METZGER: I'm grateful to Your Honour.

3 JUSTICE DOHERTY: I should say not so much rebuttal. That  
4 is incorrect. It is not rebuttal evidence; it's corroborative  
5 evidence. That is what I meant to say.

6 MR METZGER: I'm grateful to Your Honour for that  
7 indication. Certainly with the overview of the case that I have,  
8 representing Mr Kanu, as I have done over these past two  
9 sessions, and the preparation that has been involved, having  
10 looked yet again yesterday at the questions asked by Mr Herbst,  
11 it seems to me that Mr Kanu's case does not suffer significantly  
12 from the absence of these witnesses. Indeed, had we produced  
13 these witnesses, it would be akin to bending over backward so  
14 that the Prosecution could have the opportunity to put these same  
15 questions to other witnesses about the telephone calls. The two  
16 witnesses that we had in mind are in Sierra Leone. They could  
17 only have spoken by telephone during the relevant indictment  
18 period. The third witness in Regent, which I must confess I  
19 haven't been able to get hold of, would probably come and tell us  
20 about the art of breaking rocks, and we may all be better  
21 informed about that. But what that has to do with the matter  
22 Your Honour has to consider would be very little indeed.

23 In those circumstances, and understanding the constraints  
24 that Your Honour is under, as we are all in this case, I find  
25 myself in no - with no other option but to close the case for  
26 Mr Kanu.

27 You thank you, Your Honour, for your patience.

28 JUSTICE DOHERTY: Thank you, Mr Metzger, for that.

29 Obviously, if I felt he was in any way prejudiced, I wouldn't

1 have made the ruling that I have made.

2 We now come to submissions.

3 Under our Rules, Mr Herbst, you submit first, and that is a  
4 mandatory provision, and Defence counsel have an option to reply  
5 or not reply, as they so wish.

6 As I have indicated, I'm not looking for a very long  
7 treatise by way of closing argument. If you're ready, please  
8 proceed. I will not interrupt you unless something is not clear.

9 MR HERBST: May it please the Court, I now come to my final  
10 submission. First I would like to thank the Court for the  
11 courtesies extended to me in this case, to me and all other  
12 counsel. I want to take the personal privilege of saying it's  
13 been a pleasure trying my first case in this Court.

14 I consider it my responsibility to do my best to seek  
15 the truth and have the truth come out at this trial and seek that  
16 justice be done, regardless of the outcome. It now comes to the  
17 time when I can comment on the evidence, sum up the evidence, and  
18 suggest how the Court should evaluate it.

19 In doing so, I am cognisant of the fact that there is no  
20 jury here, but rather an experienced Judge who has served in this  
21 Court for many years and is in an excellent position to evaluate  
22 the evidence and has taken careful, detailed notes during the  
23 trial and who is cognisant of the local language and customs.

24 Accordingly, Your Honour, if any comment I make  
25 suffers from the lack of the same cognisance, I ask the Court to  
26 disregard it and draw only those inferences or conclusions that  
27 are fairly supported by the evidence.

28 I will make my best efforts to do that, but I say that  
29 because my comments, of course, just as the comments of all

1 counsel, are not evidence, and I'm hopeful that regardless of how  
2 other counsel perceive the comments, that there will not be  
3 interruptions with respect to whether or not the comments are  
4 fairly supported by the evidence so that we can try and get this  
5 case done today.

6 I also want to be helpful to the Court. So if the  
7 Court has any questions in the course of my final submission, I  
8 would be grateful if the Court would interrupt to ask so I could  
9 address any such questions.

10 With that, before I turn to the evidence, which in my  
11 respectful submission is plentiful, damning, and amounts to proof  
12 of guilt not just beyond a reasonable doubt, but to a moral  
13 certainty against all three accused, I want to address very  
14 briefly the three questions that the Court asked us to address on  
15 the law so that I don't inadvertently forget to address them.

16 First on the issue of the evidence falling outside of  
17 the temporal scope of the indictment. There is clear case law  
18 that such evidence is admissible pursuant to Rule 89C, as it is  
19 relevant to context. It's relevant to establish, by inference,  
20 the elements of the charges occurring during the material period  
21 alleged in the indictment and otherwise. In my jurisdiction we  
22 call it background evidence.

23 But it is my understanding that this arose in the Taylor  
24 trial and the Court did admit such evidence, and that the  
25 authorities cited therein are readily within the Court's  
26 knowledge. So unless the Court has any specific questions on  
27 that, I don't intend to spend any more time on it.

28 With respect to the elements of the charges in the  
29 case, these were set out in full in the Prosecutor's pre-trial

1 brief and filings dated 16 May 2012, and my understanding is that  
2 in subsequent filings, the Defence - either all Defence counsel  
3 or most Defence counsel - did not take issue with the elements  
4 that were set out there or the description of what a knowing and  
5 wilful mens rea means, including the requirement that the accused  
6 act with the specific intent to interfere with the administration  
7 of justice, and also that a knowing violation means not just a  
8 deliberate violation, but also a deliberate failure to ascertain  
9 the circumstances under which a witness testified.

10 Thus the knowledge requirement may be met either by actual  
11 knowledge or wilful blindness, also known as deliberate  
12 ignorance, but not by negligence. So where the alleged contemnor  
13 suspected that the fact or order existed, or was aware that its  
14 existence was highly probable, but refrained from finding out  
15 whether it did exist so as to be able to deny knowledge of it,  
16 that is a sufficient knowing and wilful mens rea to constitute  
17 the crimes charged. This is set out at length in the document  
18 that I cited to the Court.

19 The elements of offering a bribe is an offer of money or  
20 something of value to a witness who has given evidence in  
21 proceedings or before a Trial Chamber, done with the requisite  
22 mens rea. And similarly in connection with the charge of  
23 otherwise interfering with a witness, that's the charge - the  
24 second count against all three accused - again in this factual  
25 context the Prosecutor must establish that an accused otherwise  
26 interfered with a witness who has given evidence in proceedings  
27 before a Trial Chamber, again with the requisite mens rea.

28 Similarly in connection with the charge solely  
29 against Mr Kamara, disclosing the identity of a protected witness



1 in violation of an order, the Prosecutor must prove that an  
2 accused disclosed the identity of a witness to a member of the  
3 public; the disclosure was in violation of an order of the  
4 Chamber; and the violation was knowingly and willfully made.

5 If the Court has no questions about those elements,  
6 I'm going to now move on to the third issue, and that's the rule  
7 in *Brown v. Dunne*.

8 The rule has significant application in this case in this  
9 context because, as I will further elaborate in my remarks when I  
10 get to the evidence in a minute, substantial elements of the  
11 defences of the accused were not put to 334, so he had no  
12 opportunity to address them. In the circumstances, it's our  
13 contention it's appropriate to apply the rule.

14 Now, Your Honour, turning to the evidence.

15 In our opposition to the motion for judgment of acquittal,  
16 I set out in some detail the government's evidence and its  
17 persuasive power largely apart from credibility issues. I would  
18 like to incorporate that document so that I do not have to  
19 review, in the detail that is set out in the document at great  
20 length, the evidence.

21 JUSTICE DOHERTY: Yes, I will incorporate that into my  
22 considerations, Mr Herbst.

23 MR HERBST: I thank the Court, because I think that will  
24 materially shorten my presentation. I will address a lot of the  
25 evidence as I circle around to discuss the credibility contest,  
26 which is really no contest on credibility: The really incredible  
27 testimony, false denials that we heard from all three defendants  
28 in this case - which I'm going to review with the Court - and  
29 then compare it to the credibility of the two main witnesses, 334

1 and Mr Kargbo.

2 But bearing in mind that there is evidence in the  
3 case which the defendants just can't deal with, and that includes  
4 the evidence from the lawyer Mr Daniels, who testified that he  
5 continued to have contact with Mr Kamara and his family. He  
6 received a call from both Mr Kamara and Mr Brima in late 2010,  
7 telling him that they were contemplating filing a petition for  
8 review of their conviction and sentence and that they had  
9 information that some witnesses who had previously given  
10 testimony in the trial were prepared to change their testimony.  
11 It was clear to Mr Daniels that both men, Kamara and Brima, were  
12 talking about the insider witnesses, the most important of which  
13 Mr Daniels knew to be 334.

14 While he was not 100 per cent certain, it was likely that  
15 Mr Kamara and Mr Brima did mention 334's name as one of the  
16 insider witnesses who was purportedly prepared to change his  
17 testimony.

18 Now, that unimpeachable testimony sets forth the  
19 scheme and the motive for a background of the clear, specific  
20 intent to interfere with justice and to ultimately pay 334 to  
21 recant his testimony.

22 So the evidence of 334, which was detailed, and  
23 Mr Kargbo, which was detailed, are essentially internally  
24 consistent and consistent with each other, even though there's no  
25 evidence in this case one knew what the other had said when  
26 giving their own statements initially in this case.

27 Of course, we have the Alagenda e-mail, which is totally  
28 corroborative of the testimony of 334 and Mr Kargbo, and we have  
29 the phone records and logs of November 30. These are smoking gun

1 corroborative pieces of evidence.

2 If you just look at the way 334, Mr Kargbo,  
3 testified, and compare it to that of the three accused, there  
4 just is no contest on credibility, and I'm going to review that  
5 in a few minutes.

6 But I want to say that 334 in 2010 had no reason to  
7 affirmatively go out and make still another case against the AFRC  
8 convicts, and he certainly had no reason to go and make a case  
9 against Mr Bangura, Mr Kargbo, who were his close friends of  
10 many, many years' standing and against whom neither one had ever  
11 said a negative word.

12 When you compare the demeanour of these two witnesses  
13 on the stand - by the way, the same is true in spades with  
14 respect to Mr Kargbo. Also strong, strong, long-standing  
15 friendships, relationships. No motive. No reasonable, rational  
16 motive that anybody would believe to falsely implicate Mr Bangura  
17 particularly, and Mr Kargbo had absolutely no motive to falsely  
18 implicate Mr Kamara and Mr Kanu.

19 These fundamental truths in this trial stand tall, and it's  
20 just a couple of fundamental truths leading indisputably to the  
21 guilt of the accused.

22 Now look at the performance of the three accused in  
23 their testimony. Mr Bangura I will take first.

24 First of all, his lawyer did not question him on the  
25 subject of the June 2012 unlawful contacts with 334, trying to  
26 get him to delete the portions of his statement that applied to  
27 Mr Bangura when 334 testified.

28 I suggest that was telling, and I was undecided about  
29 questioning him on it. But having decided to do it, look at what

1 he said right out of the box: "Yes, I saw 334's statement  
2 through my lawyer; but no, I didn't see any portions of his  
3 statement that involved me." And to make sure we asked again,  
4 and he said "they" - meaning his lawyers, I guess - read it out  
5 to him, and he still didn't see or hear any area that involved  
6 him. Of course he did. And of course he saw and heard the  
7 portions of his statement that involved the day of the Mansaray  
8 meeting that Mr Bangura spent most of his time on the witness  
9 stand falsely denying.

10 But to say that he did not understand that 334 was  
11 implicating him, completely false testimony - and I ask how could  
12 any reasonable finder of fact credit anything the man said after  
13 that? And that theme of no, I didn't read any statements that I  
14 signed or I didn't read any statements that I signed; and no, my  
15 lawyers failed me by not reading out the statement in a way that  
16 I could understand, extended to Mr Bangura's own statements.

17 Your Honour, if I'm going too fast, please let me know.

18 JUSTICE DOHERTY: The pace is very good.

19 MR HERBST: Thank you. Not just the 26 May 2012 statement,  
20 but even the supplemental statement that amended that original  
21 statement: He signed every page of it, but no, he didn't read  
22 it; he didn't have it read to him; didn't have it read to him  
23 carefully; didn't understand what was in it - notwithstanding  
24 that it was to be presented and relied upon initially as his sole  
25 statement at this trial - and he didn't read or understand  
26 everything that was in the second statement either because, I o  
27 and behold, everything that was in the second statement - I'm  
28 sorry, the second statement did not correct everything that  
29 Mr Bangura now said was wrong in the first statement that he now

1 wanted to disavow when he hit the stand.

2 If you believe that testimony, I have a bridge in Brooklyn  
3 that I can sell to you, as we say Stateside.

4 Now, the motive in falsely denying that he understood  
5 that 334's statement involved him is clear, because he saw it as  
6 the only way that he could purportedly deny that he told 334 in  
7 June 2012, as this very trial was starting, that he saw in the  
8 statement areas of it that involved him and asked him to help as  
9 a brother by leaving those portions out of his testimony.

10 Now, here is a man about to start trial for interfering  
11 with the testimony of a witness who already testified in a trial,  
12 and he does the same thing. You know as certain as you are of  
13 being in this courtroom - I say 'your courtroom' in Freetown,  
14 Your Honour - that Mr Bangura has no respect for this Court, no  
15 respect for the integrity of its processes or the administration  
16 of justice, for the integrity of its witnesses, and he just  
17 proved again that he would and did attempt to corrupt and  
18 persuade 334 to alter his testimony.

19 I submit that the conduct that was heard in this Court -  
20 and it was not denied in cross-examination - is beneath contempt,  
21 and that he committed contempt again in order to save himself  
22 from the clear and convincing, undisputable evidence that he  
23 committed contempt in November and December 2010.

24 Now, I'm not going to comment on Mr Bangura claiming to  
25 know me, because we've essentially put that to one side. I found  
26 that a bizarre moment in the trial, but perhaps it was no more  
27 bizarre than him coming to a formal interview with me,  
28 represented by counsel to ensure his rights, and to say both that  
29 Mr Serry-Kamal was not his counsel and he was not advised of his

1 rights.

2 Whether it's an unreliable memory or deliberate false  
3 testimony to get out from under all of the statements he made to  
4 me, which he also denied, I don't know. But it doesn't say very  
5 much for his credibility and reliability as a witness. But  
6 believe me, you don't even have to consider that with respect to  
7 Mr Bangura.

8 Remember when I called to his attention that his attorney  
9 had said at the outset of his testimony that he, Bangura,  
10 understood English. "No", Mr Bangura said, "I didn't hear that."  
11 And, "No, I don't understand English." Now, I cannot recall the  
12 last time an accused disavowed a simple statement by his attorney  
13 - who has represented him for the last year and who has spent  
14 five weeks with him in this trial - before making the  
15 representation to the Court that he did, but again Mr Bangura is  
16 simply incredible, unbelievable, and you can see how his mind  
17 works. He thinks if he denies understanding English, Your Honour  
18 will, by his nonsense about he cavalierly didn't take the time to  
19 carefully prepare his witness statement with his attorney in - I  
20 won't say the most important legal proceeding, but clearly -  
21 because I don't know. But clearly - and the evidence is not  
22 clear on that point - but clearly a very significant and  
23 important legal proceeding at which his liberty is at stake; his  
24 testimony makes no sense.

25 That's why the Court should not take seriously his attempts  
26 to disavow, change, and then disavow again his prepared witness  
27 statements that he submitted. Again his excuse about the first  
28 two paragraphs of his original statement, which was not amended  
29 by his supplemental statement, was, well, he didn't hear me

1 question Mr Kamara about the first two paragraphs of his original  
2 statement, even though he was in Court and listened.

3 He only heard the parts about the Mansaray meeting.

4 Now, again it's incredible, but Mr Bangura hears only what  
5 he wants to hear when he wants to hear it. Then he compounds his  
6 sin by stating that not only doesn't he understand English,  
7 but he can't read English at all. He explains that false  
8 testimony by more perjury, saying he didn't go to school. That  
9 is notwithstanding the fact that right in his witness statement  
10 he says that he completed high school.

11 I don't know much about the school system in Sierra Leone,  
12 but I find it hard to believe that English goes entirely  
13 untaught, and in fact Mr Bangura finally felt compelled to admit  
14 that they do teach English in Sierra Leone primary schools.

15 I'll leave it to Your Honour to assess his contention that  
16 a senior commander in the armed forces didn't need some command  
17 of the English language to interact with troops from all  
18 different parts of the country. But I have to say that these  
19 kinds of denials by Mr Bangura are extraordinary.

20 Then when he says, for example, at 2068 of the transcript,  
21 that he didn't understand when he signed the statement it was  
22 going to be submitted in an official proceeding before this Court  
23 - this trial in which he was one of the accused - I mean, it's a  
24 pathetic performance.

25 One of the lines in his original statement that he did not  
26 disavow is that Mr Kargbo is his friend and that they "are  
27 normally together". That's 2083 of the transcript. So there is  
28 Mr Bangura admitting that his relationship with Mr Kargbo was  
29 extremely close at the time of the events alleged in this case,

1 and that raises again the fundamental truth that both Mr Kargbo  
2 and 334 were very, very close friends with Mr Bangura, and it's  
3 impossible to believe that either one, let alone both, would make  
4 up a false story, implicate him in a crime he didn't commit, and  
5 I suggest to Your Honour that no human being falsely implicates  
6 people they have known for 20 years or more who are as close as  
7 family unless they are under great duress, and there's no  
8 evidence of such duress - any duress here.

9 Even the Defence don't suggest that 334 was under  
10 tremendous pressure when he allegedly made up this story - a  
11 ridiculous notion in and of itself - and the only reasonable  
12 interpretation of the evidence is that what Mr Sesay and  
13 Mr Kargbo said in this case - courageously, considering all the  
14 circumstances - is that they spoke the truth, and I say this is a  
15 very telling aspect of the evidence in the case.

16 Now, it's not just Mr Bangura who can get around that  
17 fundamental truth in the case. It also applies, perhaps to a  
18 lesser degree, to 334 in terms of the relationship. I think  
19 that's disputed. But with respect to Mr Kargbo, he had no beef  
20 with Mr Kanu; he had no beef with Mr Kamara, just as he had none  
21 with Mr Bangura. Never said a negative word against any of them  
22 until they decided to swear off Mr Serry-Kamal and tell me the  
23 truth and do it again in this Court after taking personal  
24 responsibility for his crimes by his plea of guilty.

25 Now, here is an interesting part of a Bangura answer, 2086  
26 to 87. In denying that Kamara or Brima called him to say that  
27 they wanted to talk to Sammy Kargbo, Bangura said, "It was Brima  
28 who just called me to say that Samuel Kargbo was coming to meet  
29 me."



1           Now, it is in these unguarded moments on cross-examination  
2 that sometimes the truth slips out. If you think about that  
3 answer, it reveals that Brima or Kamara or Kanu had to have  
4 communicated with Samuel Kargbo independently of Bangura, because  
5 Bangura's answer was not, They called me and asked me to call him  
6 and tell him they want you to come with me. Here in this answer  
7 is confirmation that Kargbo had been spoken to independently to  
8 ask his assistance in the scheme as Mr Kargbo testified, and here  
9 again is confirmation of communications between those in Rwanda  
10 and Mr Kargbo.

11           Frankly, Mr Bangura's statement - original witness  
12 statement speaks volumes about these communications, because it  
13 says that apparently early on not only that Kamara and Brima told  
14 Bangura that they wanted to speak to Kargbo, but that one of them  
15 did speak to him for quite some time, received Kargbo's cell  
16 phone number - which they obviously needed to continue to  
17 communicate with him - and had received by the time of the  
18 communications that Mr Kargbo testified about, the relevant  
19 period in the indictment.

20           Another crucial tell is when Bangura says falsely the first  
21 he knew of the plan was when we went to the lawyer. Here's what  
22 he said, 2088, "It was when we went to the lawyer Mansaray that I  
23 knew exactly what the thing was."

24           The thing is the criminal plan in this case. He is saying  
25 Kamara and Kanu and Kargbo had an illegal plan, it just wasn't  
26 me. I was just sitting there. Now, it isn't just inconsistent  
27 with the testimony of 334 and Kargbo as good friends and former  
28 subordinates who worked together - his boys - it's inconsistent  
29 with commonsense.

1           It makes no sense that they would call Bangura and tell him  
2 to go to a lawyer's office without telling him why they wanted  
3 him to go and what they wanted him to discuss with the lawyer.  
4 Bangura was not being asked to go and be a potted plant there;  
5 want to make sure that Kargbo got there safely. Nor does it make  
6 any sense that they would charge Kargbo with this critical task  
7 and ask Bangura, who substantially outranked Kargbo in the army  
8 days, was closer to the Rwanda convicts than Kargbo was, to ask  
9 Bangura to sit idly by and just listen. And it doesn't make any  
10 sense that Bangura would not ask these convicts why they want him  
11 to consult a lawyer on their behalf.

12           It's Bangura's total lack of curiosity about what he had  
13 supposedly just heard Kargbo say in the office that puts the  
14 whole kibosh - puts the lie to Bangura's testimony. It makes no  
15 sense unless he knew about it all beforehand.

16           Here supposedly is Kargbo telling a lawyer in Bangura's  
17 presence about a plan to persuade 334 to recant his testimony,  
18 and Bangura says nothing? He never says, "Hey, wait, I knew  
19 nothing about this. What do you mean?" He never asked Kargbo on  
20 the way out of the office, "Hey, what's going on? What is this?  
21 What are you involving me in?" He never goes to or calls 334,  
22 his good friend and says, "Hey, did anyone call you or talk to  
23 you about you recanting your testimony? I just heard about it.  
24 Wow, what is going on?" Nor does he ever call back Brima or  
25 Kamara supposedly, he says, or whoever in Rwanda asked about it.  
26 Ludicrous. Ridiculous. Unbelievable. Just like the testimony  
27 of his co-accused, which I'm going to get to in just a moment.

28           His Defence is utterly ridiculous. Bangura knew, was a  
29 part of it, put the money issue to 334 directly, as did

1 Mr Kargbo, asked him how much he wanted to participate.

2 Now, the unbelievable lengths to which he had to go to try  
3 to deny this only buries him, because it displays for all to see  
4 his consciousness of guilt. No one testifies like this if they  
5 don't know they are guilty. And he is guilty. He even denies he  
6 knew it was a crime to bribe a witness to change his testimony.  
7 Absolutely incredible testimony for someone who has some  
8 relationship with the President of the country, attenuated or  
9 not, as he said.

10 Now, I note that Mr Nicol-Wilson at one point stated the  
11 possibility of having Mr Mansaray come in and testify. I suggest  
12 that his absence is telling here in light of Mr Kargbo's  
13 testimony about what was said at the meeting. I will not comment  
14 further on that.

15 I also note I had to worm out of Mr Bangura on  
16 cross-examination the fact that he was able to talk to all three  
17 men in Rwanda simultaneously on the speaker phone and that he  
18 told me that in the interview.

19 On the issue of whether Kanu called him, not just Brima and  
20 Kamara. Look at this answer to the question, "Who called you on  
21 November 12?" This is at 1248 of the transcript: "I can't  
22 remember who called me at the time, but the people who normally  
23 called me there are these men and Bazy." Again that answer in  
24 an unguarded moment makes clear that "these men" refers to Brima  
25 and Kanu. Because if he did not mean to include Kanu, he would  
26 have just said Brima and Bazy; not "these men and Bazy."

27 Your Honour, there was a lot of comment in this case about  
28 the length of cross-examination in this case of the defendants.  
29 But sometimes with witnesses who have no regard for the truth,

1 one must cross-examine in this way. I say to the Court this is  
2 the beauty of cross-examination. One of our greatest students,  
3 of cross-examination, called it the greatest engine for the  
4 ascertainment of truth ever invented by mankind.

5 We saw it in this case here with respect to Mr Bangura, who  
6 had no problem also recognising the voices of the three men in  
7 Rwanda, even though he hadn't seen any of them face to face since  
8 2000 or thereabouts.

9 That seems to put the kibosh on Mr Kanu's suggestion  
10 through his Defence lawyer that 334 wouldn't have recognised  
11 Kanu's voice because of the lapse of time. Note that both 334  
12 and Bangura noted that Kanu speaks very fast, and frankly we saw  
13 that for days in this courtroom.

14 Bangura also confirmed 334 was a deputy pastor in the  
15 prison, which was denied on cross-examination when this story  
16 about the insult of the mother was put forth by Mr Kanu, which  
17 I'll get to in just a couple of minutes.

18 It's unlikely that Kanu would not have patched up his  
19 differences with deputy pastor 334 when he patched up his  
20 differences with Bangura in prison. Bangura's man, Bangura's  
21 boy. And Bangura really doesn't deny that he saw 334 and Kanu  
22 talk on various occasions in the prison; only that he can't  
23 remember. That's at 2145 of the transcript.

24 Finally, the frequency of the calls to Mr Bangura starting  
25 on November 12 was telling, since it is much greater than normal.  
26 Remember Mr Bangura testified that he might call one week and not  
27 call for months thereafter. Here in the space of two or three  
28 weeks there are six calls. I'm leaving out the five-second call  
29 on the 13th. But there are six calls of 11 minutes on November

1 12; 2 minutes on November 22; 8 minutes on November 23, the next  
2 day; 5 minutes on November 26; 8 minutes on December 1, the day  
3 after the November 30 smoking gun calls to Kargbo; and 6 minutes  
4 on December 7; between November 12 and December 7, all supposedly  
5 just greetings and saying he'll pray for them? How many times  
6 can you tell someone you're going to pray for them?

7 That might explain six calls from Bangura to the men in  
8 Rwanda. We don't know how many of those occurred during this  
9 period of time, because the MTN phone records only record the  
10 outgoing calls from the prison out, not the ones coming in.

11 And here are six calls from them to him. Now, they weren't  
12 calling him all these times to pray for Bangura. So what  
13 explains all these calls from them to him? There must have been  
14 something afoot. It's clear from the testimony of 334, Kargbo  
15 Daniels, the Alagenda e-mail, what that was. QED: Game over;  
16 case closed.

17 Now, there's been a lot of talk about the telephone records  
18 and telephone calls. Telephone calls in themselves, they don't  
19 tell you what was said. They don't constitute themselves proof  
20 beyond a reasonable doubt of guilt. But they are not being  
21 offered in isolation. They are being offered to show the  
22 plausibility of the other testimony and evidence in the case,  
23 which proves guilt beyond a reasonable doubt and even to the  
24 highest standard of a moral certainty.

25 No one, I respectfully submit to this Court, could have sat  
26 in this courtroom for five weeks, listened to all the evidence in  
27 this case, and come to any other conclusion other than the guilt  
28 of the accused - all three.

29 Now let's talk about Mr Kanu. First he says through

1 counsel and then himself that he only writes his name K-H-A-N-U.  
2 Then it turns out when you finally see his diaries he spells it  
3 K-A-N-U as well as K-H-A-N-U, and then he tells Your Honour yes,  
4 he apply for Legal Aid spelling his name without the H, but he  
5 was depressed and didn't know what he was doing.

6 I mean, what kind of testimony is this? Utterly and  
7 completely unbelievable. It's ridiculous. This man also has no  
8 respect for the truth, and you cannot believe a thing he says  
9 unless he is pinned to the ground and forced to make admissions.  
10 And again the false denials, the false testimony, evidence of  
11 consciousness of guilt, all over this now with respect to him.

12 He admits that he wrote his name "Santigie" in the logbook  
13 on two occasions in his clearly identifiable handwriting; admits  
14 that every signature in the logbook is his except the "Santigie"  
15 and the signature on the smoking gun November 30 entry in that  
16 logbook.

17 Now, it's obvious to everyone in these two courtrooms that  
18 he was falsely testifying in those denials, and they are damning  
19 denials because of the reflection of the consciousness of guilt.  
20 He wants nothing to do with that entry, because he wants nothing  
21 to do with the smoking gun call to Kargbo in which Kamara asked  
22 to speak to 334, was rebuffed, went and said - or said he would  
23 go and get Kanu on the line, called back, put Kanu on the line to  
24 speak to 334, where he, Kanu, clearly made himself part of the  
25 criminal scheme by asking 334 - not just made himself a part of  
26 it, but revealed himself.

27 Because Mr Kargbo had testified that earlier one of the  
28 first conversations he had was with all three men, but here he is  
29 the one who asked 334 to recant his testimony. He is the - one

1 of the men in Rwanda who says that to him, makes the plea for  
2 help to get out of gaol, told 334 that they were putting  
3 modalities in place to pay him - to bribe him to do so.

4 Now, if Mr Kamara's story was true that Kanu was called  
5 down to talk to five or six former comrades, Kanu wouldn't need  
6 to distance himself from the November 30 calls to Sammy Kargbo's  
7 phone, and he wouldn't need to distance himself from that entry  
8 the way he did. But he fell all over himself trying to distance  
9 himself from it, thereby signalling to you, Your Honour, that  
10 Kamara's story was not true.

11 Of course Kanu didn't testify in such support of that  
12 story. That's also why his diaries, which clearly reveal  
13 Mr Kanu's habit of bolding over names and numbers, helped convict  
14 him. It was Kanu and Kamara and Brima who had access to that  
15 logbook after the allegations in this case surfaced. It was Kanu  
16 who had the habit of writing over entries, and it is not  
17 coincidental, I submit to you, that the only entry in that  
18 logbook that is bolded over is the 30 November entry.

19 Kanu realised that it was smoking gun evidence against him,  
20 and his obsession with it is apparent. It was Kanu, not a prison  
21 officer, who wrote the name "Santigie" on the second line, on the  
22 same line as the obscured Kargbo number, and it was Kanu who went  
23 back and put the line in there to suggest that the Kargbo call  
24 was made solely by Kamara, not Kanu.

25 No one else would have had the motivation to do that,  
26 Your Honour. No one else would have manipulated the entry, and I  
27 put that word in quotes, manipulated the entry. And it is  
28 telling that the allegation of manipulation by Mr Sengabo, which  
29 came out of the mouth of Mr Kanu during his direct or

1 cross-examination - I don't remember which - that was not put to  
2 Mr Sengabo by Kanu in cross-examination.

3 That's the second very critical, important instance of a  
4 critical issue not being put to a witness on cross-examination,  
5 which is why I suggest to the Court that the rule in *Brown v.*  
6 *Dunne* be applied in this case.

7 But regardless of what's applied, Your Honour, in terms of  
8 how one assesses the allegation, it's just ridiculous. It's  
9 ridiculous.

10 It's also ridiculous that in fabricating this false  
11 explanation of the November 30 call, as if Mr Kamara and his  
12 witness Keh-For-Keh would remember this one call out of all the  
13 others which they don't remember, I mean, that was one telling,  
14 telling piece of evidence in this case. They don't remember any  
15 other calls. This one. Now, what was it - about six months  
16 later, a year later in Court, what is it about the November 30  
17 call that, if it didn't have the significance that the  
18 Prosecution case clearly evidences that it does, would cause them  
19 to remember a call? Look at all the calls in the MTN record.  
20 This is the one they remember.

21 I mean, the false testimony, the consciousness of guilt, is  
22 so plain that one cannot ignore it.

23 Now, the same can be said for the ridiculous notion that  
24 334 insulted Kanu's mother in 2000 and that led to Kanu  
25 considering 334 his enemy for life, supposedly giving 334 the  
26 motive to make up another case against Kanu. Now, in fact -  
27 sorry, Your Honour, I heard some bells ringing.

28 JUSTICE DOHERTY: I didn't hear them, but I will note that  
29 it is 11 o'clock, and it's normally the time for the Kigali



1 break. I want to make as much use of my time as we can.

2 MR HERBST: [Overlapping speakers].

3 JUSTICE DOHERTY: So I'm going to ask if you're prepared to  
4 go on and allow the two accused to go and have their lunch,  
5 because that's very important for them.

6 MR METZGER: Your Honour, I cannot agree that Mr Kanu  
7 should have lunch whilst the Prosecutor is in the middle of  
8 making a case.

9 JUSTICE DOHERTY: I was going to go on to raise that very  
10 matter. I'm conscious of their right to hear the Court case  
11 against them under Article 17.

12 I'll have to call a break, but I'm going to actually make  
13 it a bit shorter. We've got to make use of our time, and maybe,  
14 Mr Herbst, given that counsel for the Defence are likely to want  
15 to reply - certainly Mr Metzger has indicated he will - if you  
16 can keep your submissions - I'm not going to stop you,  
17 obviously - but to make them succinct.

18 So we'll adjourn, but we're going to just take the half  
19 hour. We've lost time this morning for reasons outside all our  
20 control to deal with looking for witnesses, et cetera, so we'll  
21 adjourn until 11.30 Freetown time and 1330 Kigali time to allow  
22 everyone to have a break and we'll resume. And as I said, let's  
23 bear in mind that Defence may also be replying.

24 Adjourn until 11.30.

25 [The Court adjourned at 11.03 a.m.]

26 [The Court resumed at 11.30 a.m.]

27 JUSTICE DOHERTY: Please proceed, Mr Herbst. Actually,  
28 counsel for the Defence are not here, but their junior counsel  
29 are here.

1 Mr Bangura is now back in his position. What's happened to  
2 Defence counsel, do you know? They're on their way, are they?

3 THE COURT OFFICER: Yes, Your Honour.

4 JUSTICE DOHERTY: Just pause, Mr Herbst. Incidentally,  
5 Mr Herbst, can you hear me? Because there is - one of the  
6 microphones here is flashing, and I'm not sure if I'm being heard  
7 in Kigali.

8 THE COURT OFFICER: Your Honour, I'm told that during the  
9 break the technicians were here on the line, but when we came in  
10 they had to leave everything and stepped out. Apparently that's  
11 why we have this.

12 JUSTICE DOHERTY: Can we get them back urgently, Mr Court  
13 Officer? Because our time is very short.

14 THE COURT OFFICER: Certainly.

15 JUSTICE DOHERTY: Mr Herbst, can you hear me? Mr Court  
16 Officer, we do not appear to have a connection with Kigali.

17 MR METZGER: Apologies, Your Honour.

18 THE COURT OFFICER: Your Honour, I just got word from  
19 Kigali that the line is really bad, worse than it was before we  
20 went to the break, so I guess that was what the technicians were  
21 working on.

22 JUSTICE DOHERTY: But can Kigali hear us? Because they  
23 don't seem to.

24 THE COURT OFFICER: It doesn't seem so, because I had to  
25 talk to them on the phone. Kigali, can you hear us?

26 JUSTICE DOHERTY: Kigali, can you hear?

27 [Technical difficulties]

28 JUSTICE DOHERTY: Good morning, again, Kigali, can you hear  
29 us? We've just been rewired here. That's what the delay has

1     been about.

2             Mr Herbst, can you hear?

3             Mr Court Officer, tell them that we're not connected to  
4     Kigali.

5             MR HERBST: I think magically the link has been restored.  
6     Can I pick up where I left off?

7             JUSTICE DOHERTY: If you could do that, please.  
8     Regrettably I may have to ask you to keep your submissions short,  
9     as counsel for the Defence may wish to respond and I have to  
10    allow them some time. Although I must say, your remarks have  
11    been helpful in consideration of the evidence. Please proceed,  
12    Mr Herbst.

13            MR HERBST: Your Honour, just so you know, I've made  
14    efforts to shorten the presentation, and I believe that I'm more  
15    than halfway through. I think I have 45 minutes. I expect to  
16    finish now by 12.30 your Honour's time.

17            JUSTICE DOHERTY: Yes, that doesn't give Defence a lot of  
18    time. So if you can make it a little shorter I would be  
19    grateful, because Defence must have time to reply.

20            MR METZGER: Your Honour, before Mr --

21            JUSTICE DOHERTY: Mr Metzger, it's not common to interrupt  
22    in the middle of a --

23            MR METZGER: He hasn't started speaking, and I hope what  
24    I'm saying will be helpful.

25            I understand the difficulties Mr Herbst has. We've had  
26    well over 2000 pages of evidence in this case. He must be  
27    allowed - and I know that Your Honour will - he must have enough  
28    time to say what he wants to say, and I'm sure Your Honour will  
29    allow us enough time as well.

1           Unfortunately, the session has not been, for one reason or  
2 another, long enough for us all to be able to complete today. I  
3 think we must come to that realisation, especially with the time  
4 we are due to rise today, and I wouldn't want to curtail  
5 Mr Herbst at all, because I wouldn't want anyone to try and  
6 curtail me when I come to speak. So I'm supporting him on this  
7 occasion.

8           JUSTICE DOHERTY: Well, Mr Bangura's counsel has made it  
9 clear that Mr Bangura wants to hear submissions, and it may be  
10 that, Mr Metzger, you will have to put yours in writing, because  
11 I'm not going to shorten you either.

12           MR METZGER: Your Honour, no, I want to make oral  
13 submissions. This is a case for oral submissions.

14           JUSTICE DOHERTY: Well, then in that case I've got to use  
15 my rights - my authority under Rule 86 to keep things as short as  
16 possible.

17           MR METZGER: The point being, Your Honour, if we cannot  
18 finish today, we have been going for --

19           MR HERBST: [Overlapping speakers].

20           JUSTICE DOHERTY: Can we please let Mr Herbst continue. I  
21 will come to it.

22           Yes, Mr Herbst, please continue. And again please bear in  
23 mind what I've said.

24           MR HERBST: I will, Your Honour. I'm going to go just a  
25 little faster. I know Your Honour will have the record. If I'm  
26 going too fast for Your Honour --

27           JUSTICE DOHERTY: It's no problem for me if you go faster.

28           THE INTERPRETER: But, Your Honour, the interpreters are  
29 here as well. We're interpreting.

1 JUSTICE DOHERTY: Think of the interpreters, yes, that's a  
2 problem. The accused must hear.

3 MR SERRY-KAMAL: Also counsel, we will need to make notes.

4 JUSTICE DOHERTY: Yes. Just keep going, Mr Herbst, please.

5 MR HERBST: Your Honour, I thank the Court, and I'm going  
6 to do the best I can to get everything I need to say in in the  
7 shortest amount of time possible. I recognise that Defence  
8 counsel have to speak. I'm hopeful that if I take at most an  
9 hour and a half, that will leave at least a half hour for each  
10 one. I have three defendants to cover --

11 JUSTICE DOHERTY: Please proceed, Mr Herbst, please.

12 MR HERBST: Thank you, Your Honour.

13 Now, I had just before the break come to this notion that  
14 334 insulted Kanu's mother in 2000 and that let Kanu considering  
15 334 his enemy for life, supposedly giving 334 the motive to make  
16 up another case against Kanu.

17 Now, this is totally incredible. Not just because Kanu  
18 entirely failed to put this purported evidence to 334 on  
19 cross-examination, but because Kanu was with 334 in Pademba Road  
20 Prison in 2003/2004, and, although he denied it, we heard from  
21 another defendant that in fact who was there that 334 was the  
22 deputy pastor.

23 They were obviously speaking together. Mr Kanu didn't  
24 assault 334 in prison, just like he didn't assault Mr Bangura,  
25 who was every bit an enemy after 2000 as 334 was, who worked for  
26 Bangura. I submit to you that they patched up their differences.

27 But even if that were not true, Your Honour, 334 didn't go  
28 out of his way to make up anything about Kanu. As a matter of  
29 fact, he was careful to describe only what each person did. And

1 until Kanu testified and helped bury himself, 334 and Kargbo had  
2 less to say about Kanu than anyone else, because it was Kamara  
3 and Kargbo and Bangura who carried the labouring oar.

4 Kanu participated in the early conversations with Kargbo,  
5 enlisting his and Bangura's participation in the scheme, but he  
6 hadn't talked to 334. It was only when Kamara couldn't convince  
7 334 to speak directly to him, that he got Kanu to speak directly  
8 to 334 because Kanu had been closer to Bangura and 334 in the  
9 chain of command. "Come and speak to your boy".

10 And thus it turned out to be Kanu who was the Rwanda  
11 convict who put the proposal directly to 334 asking for his help,  
12 asking him to change his testimony, and telling him that  
13 modalities, meaning money, was going to be put in place for him.

14 So Kanu was clearly as involved as the others and as guilty  
15 as the others, but 334 didn't go out of his way to make up  
16 anything about it. And can you see this in the Alagendra e-mail,  
17 Your Honour, which was a virtually contemporaneous record of what  
18 was said that day.

19 "334 spoke to Five Five today". Smoking gun. Game over  
20 for Kanu. "Five Five told him, 'We are brothers, we will soon be  
21 released. We expect you to help us with the release.'" "The  
22 AFRC accused have promised to pay 334 large sums of money."  
23 Talking about Sammy Ragga, "He went to 334's house and informed  
24 him that the AFRC accused persons have been advised by their  
25 lawyers that if the main insider witnesses were to change their  
26 statements, they would get an early release from prison soon."

27 Look how that dovetails with the Daniels testimony;  
28 completely corroborated. And there is more. He mentions Bomb  
29 Blast being involved. So he's implicating his good friends

1 because he has to in order to tell the truth, and that is borne  
2 out by all the evidence in this case; even that provided in the  
3 Defence case by Bangura and by the sorry performance of the two  
4 accused in Rwanda on cross-examination.

5 And from that point on, from that November 30 call,  
6 Your Honour, we can watch it all unfold, because 334 reports it  
7 to OTP, and there are contemporaneous - or virtually  
8 contemporaneous memoranda that document the scheme as it unfolds.  
9 And as I said, it's all corroborated by Daniels, who was speaking  
10 to both Kamara and Brima. He testified they were filing -  
11 contemplating filing petition for review, and so on and so forth.

12 Now, what did Mr Kanu say about this? At first he  
13 testified falsely again, denying that he ever discussed a review  
14 with anyone. And then we get the letters and memos from the  
15 Registrar to Kanu in particular, where she makes clear that Kanu  
16 and others were asking about Legal Aid "to investigate new  
17 evidence unquote", "for the purpose of initiating review  
18 proceedings". That comes from the 2 July 2010 memo. It doesn't  
19 matter if Kanu got the memo before November 4 or not.

20 What matters is that Kanu and Kamara and Brima were talking  
21 about a review from at least July 2010, when it was mentioned to  
22 the Registrar. Not about a pardon or a commutation; but a review  
23 under Rule 120, just as Mr Daniels, their lawyer, said; just as  
24 334 and Kargbo said; and 334 said to Alagenda; just as they  
25 subsequently said to OTP and to the independent counsel.

26 Even Kamara on cross-examination finally admitted that the  
27 Registrar discussed a review with them when she visited in 2010.  
28 He also admit that he discussed getting witnesses for review with  
29 his brothers facing the same case, ie Mr Kanu and Mr Brima, as

1 well as with Savage and Leather Boot. This testimony is at 1239  
2 to 1245. So here Kanu and Kamara are in conflict, as they are in  
3 a number of important areas of testimony in this case, some of  
4 which I've already discussed.

5 But Kanu just - he just testified falsely in denying it,  
6 again evidencing consciousness of guilt by this false denial,  
7 destroying his testimony as a witness, on critical, critical  
8 matters to the case. We're not talking about tangential matters.  
9 And I'm going to get to that in a minute when I get to the  
10 cross-examination of Mr Kargbo and 334, and you'll see the  
11 complete difference in not only demeanor and how they carried  
12 themselves and how they handled themselves in direct with very  
13 little preparation, but also what the cross was about, the  
14 tangential issues.

15 Actually, let me just interrupt. Mr Kargbo, what was he  
16 cross-examined about? Irrelevancies and marginally relevant  
17 matters: His prior employment or unemployment; his receipt of  
18 money from a relative; his efforts to establish a gold business;  
19 his skills as an artist who can shade and print T-shirts and do  
20 banners and billboards; his prior criminal record; his  
21 imprisonment with Kamara at Pademba Road; whether Sweissy is a  
22 building or an area; whether it's a business area; whether it's  
23 noisy; whether ex-soldiers hang out there; how frequently he  
24 visited; how often he visited the area in the company of 334.

25 Even more. First of all, he handled all these questions in  
26 a credible, believable way, but with no intent to evade or  
27 dissemble, but his demeanor was totally different than the  
28 demeanor of the defendants on cross-examination, and it was  
29 entirely credible with respect to Kargbo, and the same is true



1 for 334.

2 In a paradigm moment at the end of the cross-examination  
3 when Mr Serry-Kamal suggested that Mr Kargbo had made this up and  
4 at no time had Kamara ever called Mr Kargbo, his answer was:  
5 Yes, of course Kamara had called him, and, indeed, Mr Bangura's  
6 statement is testament to that, in addition to records and the  
7 prison log, and so forth and so forth.

8 So there is an enormous difference between how the  
9 Prosecution witnesses testified and how the defendants testified.  
10 The same is true, of course, with the sole Defence witness that  
11 was offered, and I won't comment further about him. Your Honour  
12 can draw your own conclusions with respect to his credibility.

13 Now, Mr Kanu, when he was on direct examination and  
14 re-examination, and in cross-examination by other Defence  
15 witnesses, showed that he knew how to answer questions directly  
16 and succinctly. But on cross-examination he wouldn't do that.  
17 When a witness testifies so differently on direct and cross, I'd  
18 suggest to you it's often a tell that he's not answering credibly  
19 and reliably.

20 Now I'm going to talk about Mr Kamara and make a few other  
21 remarks, and again I've shortened these remarks, Your Honour.

22 JUSTICE DOHERTY: I'm very, very grateful, Mr Herbst, for  
23 that. Proceed.

24 MR HERBST: I'm confident that Your Honour has reviewed  
25 things that I'm leaving out with respect to Mr Kamara, but his  
26 performance was no less incredible. Unlike Kanu, he admits that  
27 he called over Kanu when he called Mr Kargbo back on Mr Kargbo's  
28 phone. The only difference is he made up a phoney story that  
29 doesn't make any sense and is not believable, and he told it in

1 different ways on direct and cross-examination.

2 In all the other calls to and from Keh-For-Keh, he didn't  
3 remember the details of what he said. But on this smoking gun  
4 call on November 30, he has a lengthy story of all the people he  
5 talked to at Sweissy, which he remembers a year later, with all  
6 these calls that are documented in these records.

7 Why he would remember this call - and he also remembers  
8 what was said in detail. Now, why he would remember this call  
9 and no others is unexplained. And it's obvious why: Because it  
10 was the call in which Kanu revealed his criminal participation in  
11 the scheme to 334. It's the call that Mr Kamara was trying to  
12 reach 334 and was rebuffed, because 334 didn't really want to  
13 talk to these people.

14 You know, 334, as he said at what point during  
15 cross-examination, he didn't go to the homes of Mr Bangura and  
16 Mr Kargbo to concoct this scheme. He tried to avoid it as best  
17 he could.

18 Now, when Mr Kamara told his story on direct examination  
19 for the first time, he says he spoke to six people on  
20 Keh-For-Keh's phone, and what the MTN phone record indicates was  
21 a call of about 106 seconds, less than two minutes - Keh-For-Keh,  
22 Pastor Eddie, V-Boy, Manga, Matt Conteh and Sammy Ragga - and  
23 that supposedly as the line is breaking up, he asked Sammy Kargbo  
24 for his phone number, supposedly for the first time, and calls  
25 him back.

26 Now, note that Bangura says that Kamara has asked to speak  
27 to Sammy Kargbo before that in a call which had to be earlier  
28 than November 30th and spoke to him for 10 minutes and gave him -  
29 and that's where Kargbo gave Kamara his cell number.

1           None of these three defendants could get their story  
2 straight. They're all totally inconsistent with each other.  
3 Also unexplained is why, if Keh-For-Keh's line was breaking up,  
4 Kamara did not simply call back Keh-For-Keh to see if the line  
5 going the other way would be better. Indeed, he doesn't even say  
6 he asked Kargbo if Kargbo had a cell phone and if he had it  
7 handy.

8           So in any event he then testifies that while he was  
9 speaking to Kargbo, the others he had already talked to  
10 apparently clamored for an opportunity to speak to Kanu and  
11 Brima, so Kamara put the phone off and went to get Kanu and  
12 Brima. I assume that when he said put the phone off, he means he  
13 hung up. Then when Kanu came, Kamara called the Kargbo number  
14 for the second time, gave it to Kanu; Kargbo then gave his phone  
15 to Pastor Eddie, Maf, V-Boy, to speak to Kanu in turn until Brima  
16 came; whereupon Kanu gave Brima the prison cell phone so he could  
17 speak to V-Boy and Manga until the air time finished. The third  
18 Kargbo call in the MTN phone record is entirely unaccounted for  
19 in this false account.

20           Then on cross Mr Kamara couldn't keep his story straight,  
21 because he said it was when he was talking to Pastor Eddie that  
22 the line was breaking up, not Mr Kargbo. That's at 1408 of the  
23 transcript. Remember on direct he said it was when he was  
24 talking to Kargbo when the line was breaking up. On cross he  
25 left out the whole slew of people he said on direct he was  
26 speaking to between Eddie and Pastor Eddie and Mr Kargbo.

27           As I noted before, Kanu doesn't support any of this in his  
28 testimony. He's just saying he didn't - he wasn't in it. He  
29 wasn't in it. It's all a lie. He didn't sign his name. He

1 didn't write his name. So there is no support for Mr Kamara's  
2 story from Kanu, and there is no support for it from Mr Bangura.

3 Now, why would Kamara and Brima want Bangura to take Kargbo  
4 with him to discuss the subject of 334 recanting his testimony,  
5 unless Kamara and Brima and Kanu had done what 334 and Kargbo say  
6 they did, which is to try to persuade 334 to recant his  
7 testimony.

8 Now, that's some of the most powerful evidence in the case,  
9 and the support for it comes from Bangura himself. Mr Kamara  
10 totally denies being involved in that. He doesn't know who  
11 Mansaray is.

12 And by the way, unless Kamara and Brima and Kanu have  
13 sufficient relationship with 334 and Kargbo to warrant their  
14 trusting them by the approach in the first place, and trusting  
15 Kargbo to act withing Bangura on their behalf in this  
16 contemptuous plan to bribe and persuade 334 to recant his  
17 testimony, it wouldn't have happened. They wouldn't have called  
18 Kargbo.

19 So this false exculpatory testimony that Mr Kamara felt  
20 that Kargbo was beneath him, he never talked to him, he had no  
21 relationship with him: It's unbelievable. It's not credible,  
22 again, as virtually all of the Defence testimony isn't. And what  
23 a difference from the Prosecution witnesses in this case.

24 So in the face of all this incriminating evidence, all  
25 Mr Kamara could do was dissemble and testify falsely. So that's  
26 why he lied about: Never sending Bangura and Kargbo to  
27 Mansaray's office; never having any communication with Mansaray;  
28 denying he sought to have Mansaray act as his lawyer; lying when  
29 he said that he never talked to Kargbo; never knew his phone

1 number; never had his phone number before November 30; never had  
2 the relationship with him.

3 Now, Kamara says that lawyer Daniels was a brother to him.  
4 What does he say about Daniels' testimony? He just denies it  
5 falsely. He says he was thinking about filing a petition for  
6 review of his conviction or sentence, but never mentioned it,  
7 never discussed it, with Daniels. Never discussed with Daniels  
8 the subject of witnesses changing their testimony. Totally  
9 incredible, in light of the close relationship that Mr Kamara had  
10 with Mr Daniels. It wasn't Mr Brima that Mr Daniels was visiting  
11 family and calling every couple of months; it was Mr Kamara.

12 So the notion that he would be thinking about this but not  
13 discussing it with his brother lawyer Mr Daniels is unbelievable,  
14 and especially when Daniels testified under oath exactly to the  
15 contrary. He testified that both Kamara and Brima discussed it  
16 with him, and Daniels testified he was waiting for appointment as  
17 counsel for Kamara and Brima in the contemplated review  
18 proceedings.

19 Tellingly, Your Honour, Kamara was not asked one question  
20 about review proceedings and did not utter one word about review  
21 proceedings in his direct examination. Not one.

22 Since Kamara says he discussed getting new evidence for a  
23 petition for review with Kanu and Brima and Leather Boot and  
24 Savage - this is at 1245 to 1246 - it is patently incredible that  
25 he would not have discussed this with others such as Bangura and  
26 Kargbo. But again, in response to your Honour's direct inquiry  
27 he denied doing so.

28 It is clear he was fabricating, even though he was under  
29 oath. Again, no respect for the oath; no respect for the Court;

1 no respect for the integrity of its processes or its witnesses.  
2 It is apparent that they had, at the time of these events, the  
3 knowing and wilful requisite mens rea to commit these crimes.

4 Kamara testified that there were only three insider  
5 witnesses against him at the AFRC trial: Junior Lion, 334 and  
6 033. That's 1247 of the transcript. And in light of that,  
7 Your Honour, it's apparent that he knew who to contact - who he  
8 wanted to contact. 334 and 033 are two of the prominent -  
9 they're the ones who, the Prosecution witnesses say, Mr Kamara  
10 was interested in.

11 So the power of the Prosecution's evidence - really, the  
12 elements of the Prosecution's case is that it all interlocks. It  
13 all intersects, and a lot of what Mr Kamara, and Mr Kanu, and  
14 Mr Bangura said support the government - the Prosecution's case.  
15 Supports it. And their false denials support it too.

16 Now, I do want to just mention briefly Mr Kargbo's  
17 testimony that Kamara and others were interested, not just in  
18 trying to persuading 334 to recant his testimony, but that Kamara  
19 asked Mr Kargbo to ask 334 the whereabouts of 033. And that's  
20 far more credible than Mr Kamara's denials, especially since  
21 Mr Kargbo did not know that 033 had been a witness against the  
22 Rwanda convicts at the AFRC trial before Kamara told him that.  
23 And he certainly had - Mr Kargbo and Mr Ragga, certainly had no  
24 motive to make up the part of his testimony about 033, since he  
25 didn't even know the fact and significance of 033's role at the  
26 AFRC trial. But Mr Kamara did, and he told us he did. He was  
27 one of only three insider witnesses against him. That's what he  
28 said at 1247.

29 Now, I've already pointed out that something was happening

1 in mid November 2010. Because Kamara, who says he only called  
2 Bangura once or twice a month at most, sometimes not for three or  
3 four months - that's at 1253 - was calling Bangura several times  
4 a week.

5 Kamara also admits that when one person calls or is called,  
6 all three can speak to that person simply by putting that person  
7 on speaker phone - 1256.

8 While denying speaking to Bangura about the review, 1257,  
9 he then declined to answer the question about whether he ever  
10 heard Kanu or Brima talking to Bangura about a review, saying he  
11 can't speak for them. Also incredible.

12 Then he denied ever asking Bangura to do anything for him  
13 or to contact any witness or anyone for him in connection with  
14 his legal affairs, which is just false in view of Bangura and  
15 Kargbo going to Mansaray for Kamara and Brima and Daniels,  
16 saying, you know, both. He talked to both men about his review.

17 Now, skipping, I'm not going to review with the Court  
18 Mr Kamara's testimony about the Bangura calls. It's in the  
19 record. I don't have the time to do it. I know Your Honour  
20 doesn't want to hear it.

21 But I will say that when Kamara said that he doesn't know  
22 who made the call to Bangura on December 7, but knows that he did  
23 not make the next call to Kargbo that follows immediately on the  
24 Bangura call, 1328-29, it's not credible. He doesn't know if  
25 Brima or Kanu made it, but he didn't, he says. Not credible.

26 He denies that the two calls in succession were pursuant to  
27 the criminal scheme. But really, how could it be otherwise?  
28 Supposedly neither Mr Kargbo, Mr Kanu, Mr Brima - I'm sorry.  
29 Mr Kamara, nor Kanu, nor Mr Brima were having pleasantries with

1 Kargbo. They weren't talking about family matters with Kargbo.  
2 Mr Kamara said, I didn't know him, he's beneath me. So what else  
3 could it be, I wonder? What else could it be?

4 Now, there was a discussion about the house in Wilberforce  
5 Village on Lumley Road. Again Kamara got all balled up - which  
6 means confused. I don't know if Your Honour is familiar with  
7 that expression - in trying to deny the relationship. When I  
8 first asked him how many houses he's lived in in Wilberforce  
9 Village, he said three. That's at 1288. Then later he said just  
10 the one on Lumley; 1291-92. Then when I asked him if he was  
11 saying that he can't get to the house as Mr Kargbo described it,  
12 he said, "No, that's not what I'm telling the Court." That's at  
13 1291.

14 So again, even on a little matter like that, Mr Kargbo  
15 emerges as credible and Mr Kamara otherwise, as in so many other  
16 aspects of testimony, again and again and again.

17 Now, in light of all of this, Your Honour, I submit to you  
18 it doesn't matter whether it was Brima or Kamara who gave Bangura  
19 Mr Mansaray's address and phone number. It is clear that all  
20 three Rwanda convicts were acting in concert from all the  
21 evidence in the case, the credible evidence in the case from the  
22 Prosecution witnesses and from the miserable performance of the  
23 defendants in their own case, inability to answer questions  
24 truthfully and credibly in a way that made sense on  
25 cross-examination. Each one - we're talking about acting in  
26 concert.

27 When a group of accused act in concert, each is responsible  
28 for everything else the others did or said in furtherance of the  
29 criminal plan or scheme. Or, as we sometimes say Stateside, in



1 furtherance the conspiracy. So when either Mr Brima or Mr Kamara  
2 told Bangura and Kargbo to go to Mansaray's office, and they did,  
3 they did it on behalf of all three of them. Because is prior  
4 thereto - because that happened on December 16th. Prior thereto,  
5 and certainly by November 30, Mr Kanu clearly revealed he was a  
6 member of the conspiracy. Mr Brima's role has now become clear,  
7 and Mr Kamara's, certainly from the beginning of this case to the  
8 end, it is clear.

9 Now again - if you look at the calls, again, there's a  
10 limited purpose for the admission of the telephone calls, because  
11 we don't know what was said. But look at what happened, again  
12 when you add in the Keh-For-Keh calls and the Christo calls,  
13 maybe Keh-For-Keh was having problems with Kamara's sister or  
14 brother, but just as Kanu's calls at the same time to Christo -  
15 if you look, the Keh-For-Keh calls and the Christo calls on  
16 11.19; the Christo call on 11.21; the Keh-For-Keh calls on 11.22,  
17 shortly before the 11.22 call to Bangura and a call to Christo on  
18 11.22 after the Bangura call; then a Keh-For-Keh call on 11.23  
19 right after three calls to Kanu's girlfriend; followed by another  
20 call to Bangura on the same day; followed by a slew of Kanu  
21 family calls; followed on 11.24 by another call to Keh-For-Keh;  
22 then another three Keh-For-Keh calls on 11.26; sandwiched around a  
23 call to Bangura and Kanu calls to family or friends, both on  
24 11.26 and 11.27; followed by another Keh-For-Keh call on 11.27;  
25 another Christo call at 11.28; then the slew of calls on 11.30 to  
26 Kanu relatives and Keh-For-Keh; just before the three calls to  
27 Kargbo; followed by another call to Keh-For-Keh. These are -  
28 Christo and Keh-For-Keh are associates and brothers from army  
29 days.

1           Is there a possibility that all these are calls could be  
2 innocent greetings on matters totally unrelated to this  
3 conspiracy? All I'm saying - all I'm submitting, respectfully,  
4 is these are very unusual patterns of calls. Because what all  
5 these witnesses have said - the defendants and Keh-For-Keh are  
6 the only one we heard from. But what they all said is that the  
7 calls generally were not that frequent.

8           So just at the time that Mr Kargbo and 334 are telling this  
9 Court what happened between 11.26 and 11.30, and then further on  
10 in December through the December 16th Mansaray call - remember,  
11 we only have the records going up to December 7. It's just very,  
12 very plausible and consistent with that evidence, and the  
13 contrary case doesn't make any sense.

14           Now I just want to address very briefly, Your Honour, some  
15 of the cross-examination issues that were brought up with respect  
16 to Mr Kargbo and Mr Sesay. I'm not going to repeat what was  
17 said; I just want to pick up.

18           Now, counsel made a big point, although it's been sort of  
19 dropped off in light of the false exculpatory statements about  
20 the November 30 calls. They all recognise now the significance  
21 of the November 30 records of calls in both the logbook and the  
22 MTN records. But they make a big point about the fact that  
23 Mr Sesay made a mistake about the date in his statement of  
24 November 29.

25           I'm only going to say that Mr Sesay said, when he testified  
26 at 668-69, he thought that it happened at that time. That was  
27 the date. Quote, I thought that it happened at the time he made  
28 the statement. You heard from investigator Saffa, explaining how  
29 that mistake occurred, because he didn't have the Alagenda

1 e-mail in front of him and otherwise. That's at 881-2.

2 Now, the only witness statement I had really to  
3 cross-examine on was the Bangura statements, and Your Honour  
4 heard the fruits of that cross-examination.

5 Defence counsel had all of the statements - the prior  
6 statements of 334. I submit to you that mistakes will occur in  
7 statements, and no truthful witness will tell the story exactly  
8 the same way in every detail when he relates it. Sometimes you  
9 remember further details that were not in the statement, as  
10 Mr Sesay did with the \$10,000.

11 But contrast that with Keh-For-Keh, who had memorised the  
12 false story and started telling it when he was talking about the  
13 November 19 call. There is a difference between a truthful  
14 witness who is testifying truthfully as best he can, and a  
15 witness who is lying, and Your Honour heard the differences. So  
16 I submit to you that the November 29 issue is no big deal.

17 I'll also address very briefly - because I'm sure it's  
18 going to come up, and I don't have the right of reply - the fact  
19 that in the phone records from November 1 to November 30, there  
20 are no other calls to Sammy Kargbo's number listed. But I submit  
21 to you that there is plenty of evidence as to how the other calls  
22 - the other communications with Mr Kargbo may have occurred by  
23 telephone, didn't get recorded.

24 Number 1, you heard that Mr Bangura said that Mr Kargbo was  
25 with him - normally with him. Some of the calls could have  
26 occurred on Mr Bangura's phone. Some actually did. Only the  
27 outgoing calls are recorded. Some of the communications by phone  
28 may have been incoming. And as Mr Metzger pointed out with  
29 Keh-For-Keh, Mr Kamara or others may have called other people,

1 mothers, or other relatives or friends, and asked them to call  
2 Kargbo or go to Kargbo to facilitate a call back. There are  
3 plenty of ways that this could have happened. So I did just want  
4 to just want to address that very briefly. I don't think that's  
5 a significant part of the evidence.

6 Now, apparent in that instance - and I'm coming to close -  
7 one of the most memorable moments in the trial in Mr Sesay's  
8 cross-examination was when he said to Mr Metzger on cross, I  
9 didn't go meet anybody at his house. People called me and  
10 explained to me". And he's right: He didn't approach Mr Kargbo,  
11 Mr Bangura, or Kamara, or Kanu; they approached him. The  
12 evidence in this case demonstrates indisputably that they did so  
13 corruptly with the specific intent to interfere with the  
14 integrity of this Court's administration of justice.

15 I'm going to leave it to the Court to note - because  
16 Your Honour is fully familiar with the time differences between  
17 The Hague and Freetown, Rwanda and Freetown, if you look at the  
18 time - and remember, Mr Kargbo and Mr Sesay didn't have the MTN  
19 phone records or the prison log available to them when they gave  
20 their initial statements. But the time of the calls on November  
21 30 match virtually precisely the time at which Mr Sesay noted  
22 that the smoking gun calls on November 30 occurred.

23 Again, the records and the testimony buttress each other in  
24 this case over and over and over again. And by records, I'm not  
25 just talking about the prison log and the MTN phone records. I'm  
26 talking about the Alagenda e-mail, which is a critical part of  
27 the case.

28 Finally, the Defence contention that Mr Sesay made this all  
29 up in order to secure relocation to France is ludicrous. He's

1 still here. And it doesn't explain Mr Kargbo's testimony and  
2 Mr Kargbo's guilty plea, where the truthfulness of Mr Kargbo's  
3 testimony and whether he derives any benefit from it in  
4 sentencing will be entirely up to Your Honour, who has to assess  
5 his credibility. And it doesn't explain Mr Daniels' testimony  
6 that it was the accused, not Mr Sesay or Kargbo, who hatched this  
7 scream to obtain their release or reduction in sentence. Again,  
8 neither Mr Kargbo nor 334 had available to them Mr Daniels'  
9 testimony when they gave their initial statements in this case.  
10 The notion that this was done for relocation or any other benefit  
11 just doesn't pass the smell test.

12 Your Honour, I leave the case now in your Honour's hands.

13 JUSTICE DOHERTY: Thank you, Mr Herbst.

14 MR HERBST: The defendants are guilty as charged on all of  
15 the counts on the indictment.

16 I thank the Court for its attention. I apologise if I went  
17 longer than anticipated.

18 JUSTICE DOHERTY: Thank you, Mr Herbst. I'm grateful for  
19 that submission.

20 I now call on Mr Nicol-Wilson's response. I again preface  
21 by saying he's not obliged under the rules to make - it's a  
22 matter for himself.

23 Mr Nicol-Wilson.

24 MR NICOL-WILSON: Your Honour, I will at this point ask  
25 whether any of my other colleagues want to take the lead in  
26 responding to Mr Herbst, because I think I still need some time.

27 JUSTICE DOHERTY: Well, Serry-Kamal, I - Mr Nicol-Wilson,  
28 you've made it clear that your client wants to hear you  
29 speak. So you are first, and so I'll make you second, because

1 that's the sequence.

2 Mr Serry-Kamal, have you submissions in reply? Again I  
3 preface it with the caveat that you don't have to.

4 MR SERRY-KAMAL: I would rather wait my own turn, seeing as  
5 how I'm the fourth accused.

6 JUSTICE DOHERTY: Mr Nicol-Wilson, are you ready to go?  
7 You're the first accused and Mr Serry-Kamal wants his fourth - I  
8 thought Mr Kanu was fourth.

9 MR METZGER: Mr Kanu is, was, and has always been, as far  
10 as I know, the third accused. I didn't use that terminology --

11 JUSTICE DOHERTY: I didn't either, because I objected to  
12 that terminology.

13 MR METZGER: [Overlapping speakers].

14 JUSTICE DOHERTY: I still do.

15 MR METZGER: Which I why I refrain from its use. But in  
16 terms of the way - the nomenclature of indictment, the way in  
17 which the defendants are named, he is the third one named.

18 JUSTICE DOHERTY: Well, are you ready to proceed, please.

19 MR METZGER: As always, I'm ready, willing, and able to  
20 serve Your Honour.

21 However, I would like to place at this point in time a  
22 caveat. I know that the time that is left is not really of your  
23 Honour's making, but I must say for the record that with well  
24 over 2000 pages of transcript and a lengthy - although it has  
25 been cut down - closing by the Prosecution, who opened the case  
26 again, Your Honour, at some length, to allow the Defence what  
27 appears to be something like - and of course, we haven't had our  
28 lunch break yet. So shall we say if we were going to be  
29 parsimonious with food, 1.5 hours to respond to a case that has

1 taken five weeks of this Court's time with that amount of  
2 evidence, it would be nigh upon impossible for one to address  
3 Your Honour - or for the Defence to address Your Honour in that  
4 time.

5 I rather suspect that I will prior's require at least 1.5  
6 hours' time, and that will be doing the best I can because I  
7 haven't had time with the travels, with looking for witnesses,  
8 with preparing the Defence case, to, as it were, fine tune and  
9 prepare my closing to Your Honour, so that it will be rather more  
10 streamlined.

11 In my respectful submission, whilst I am ready, willing,  
12 and able to start to address Your Honour, I think I will take up  
13 more than the allotted time. I regret that, but my defendant has  
14 the right to have his case put.

15 We didn't take the opportunity of opening the case,  
16 although I had indicated to Your Honour that I could do, because  
17 we were looking at the timeframe and it would be unfair - I use  
18 the word advisedly, because I know Your Honour is not - to shoe  
19 horn the Defence response into the amount of time that is now  
20 available to us simply because that is the position. But I stand  
21 ready to assist Your Honour.

22 JUSTICE DOHERTY: Well, I'm going to allow Mr Nicol-Wilson  
23 to speak at some point because --

24 MR METZGER: Would Your Honour like me to start?

25 JUSTICE DOHERTY: No, I'm going to ask - let me finish. So  
26 if the submissions for the Defence are not completed orally,  
27 they'll have to be completed in writing. It's as simple as that,  
28 I'm afraid. So proceed.

29 MR METZGER: Your Honour, I would seek to respond to

1 Your Honour on that. It would be giving differential treatment -  
2 and I know Your Honour doesn't want to do that - to the  
3 Prosecution to allow the Prosecution to address you orally on two  
4 occasions, all of us knowing --

5 JUSTICE DOHERTY: Well, in that case we'll have to set some  
6 form of teleconference. Please proceed.

7 MR NICOL-WILSON: Your Honour, based on your directive that  
8 you may act on one of two options, either we do written  
9 submissions, if we don't complete today, or a teleconference, I  
10 think I am going to make a start and see how far I can go with my  
11 response. Because my client has strongly expressed a desire for  
12 some kind of oral response to the Prosecution's closing address.

13 Your Honour, when food items like chicken were a luxury at  
14 Pademba Road Prison, 334 was encouraged to testify against his  
15 former comrades by being put in a very special category through  
16 the provision of food that was not readily available to others.

17 "Poverty", it is said, "is the parent of revolution and  
18 crime", and definitely "... the centre cannot hold; mere anarchy  
19 is loosed upon the world ..."

20 This is a case which has been conducted by the Prosecution  
21 on the basis of scaremongering and intimidation. When an  
22 innocent witness like Keh-For-Keh came forward to testify, he was  
23 met with an allegation that in fact he's one of those who is  
24 supposed to have been indicted by this Court.

25 When counsel for Bangura insisted on his rights to bail, he  
26 was met with the false allegation that he has exposed a protected  
27 witness to further acts of intimidation. Therefore, Your Honour,  
28 this is a case which has been very, very difficult for my client,  
29 Mr Hassan Papa Bangura, especially at a time when he has decided



1 to put his past behind him and contribute to the consolidation of  
2 peace in our country. Yet he was faced with an indictment which  
3 seeks to throw spanners into our fragile peace process. When  
4 shall Sierra Leone enjoy the peace which so many people have  
5 lost their lives for, if we continue to have one case after the  
6 other bordering on issues of the country's past.

7 Your Honour, my client has been indicted for knowingly and  
8 willfully interfering with the Special Court's administration of  
9 justice. This imposes a mens rea obligation on the elements of  
10 the crime. For this tribunal to find Mr Bangura guilty, it must  
11 be proven beyond all reasonable doubt that he knowingly and  
12 willfully interfered with the Special Court's administration of  
13 justice.

14 Your Honour, it is often said in Latin that *actus non facit*  
15 *reum nisi mens sit rea* - an act does not make a person guilty  
16 unless he has a guilty mind. In one of the leading cases, Lord  
17 Goddard said that the Court shall not find a man guilty of an  
18 offense against the criminal law unless he has a guilty mind.

19 The requirement for a mens rea element of crimes is  
20 probably a generally principle of law, *jus cogens*, as this term  
21 is understood in Article 38 of the statute of the International  
22 Court Of Justice.

23 Your Honour, the statute the Rules of Procedure and  
24 Evidence of the Special Court is a little bit silent on the mens  
25 rea element of criminal conduct, but I want to draw a caveat at  
26 this juncture that these accused persons are before this Court  
27 not for purposes of a war crime. They have not been indicted for  
28 participating in a war in Sierra Leone. They have been indicted  
29 for a much lesser offense, which is contempt of the Special

1 Court; and therefore, the Prosecution's theory in this case is  
2 erroneous.

3 To attempt to imply that four accused persons were engaged  
4 in a joint criminal enterprise is something I am sure Mr Herbst  
5 did not put his mind properly to. I am sure, being that this is  
6 his first time in participating in these proceedings, he was  
7 taken aback to think that these persons have been indicted for  
8 war crimes, and therefore one of the ingredients of those  
9 indictments which were profiled in the past was that parties were  
10 engaged in a joint criminal enterprise.

11 There is no such thing as a joint criminal enterprise in  
12 these contempt proceedings. Each accused person has been  
13 indicted individually, even though together with others; and  
14 therefore, Your Honour, like I said, the mens rea aspect is the  
15 most important for proof that my client had a guilty mind at the  
16 time he participated - at the time he's alleged to have  
17 participated in the offenses for which he's now before this  
18 Court.

19 Your Honour, the statutes of the International Criminal  
20 Tribunal for the Former Yugoslavia does not address the issue of  
21 mens rea directly, and the other relevant nominated instruments,  
22 the Rules Of Procedure and Evidence, does nothing to complete the  
23 picture.

24 Perhaps a few hints can be gleaned from the report of the  
25 Secretary-General, which was prepared prior to the establishment  
26 of the tribunal by the Security Council; for example, it rejects  
27 the concept of guilt by association whenever a member of a  
28 criminal association organisation, by the fact of mere  
29 membership, could be made subject to the jurisdiction of the

1 tribunal.

2 The absence of any real guidance on the subject in the  
3 applicable law of the International Criminal Tribunal for  
4 Yugoslavia contrasts markedly with the law applicable to the  
5 International Criminal Court. The Rome Statute of the  
6 International Criminal Court declares at Article 30, Your Honour,  
7 and I quote, "mental element". It says under 31: "Unless  
8 otherwise provided, a person shall be criminally responsible and  
9 liable for punishment for a crime within the jurisdiction of the  
10 court only if the material elements are committed with intent and  
11 knowledge." For purposes of this Article a person has intent  
12 where, in relation to a conduct, that that person means to engage  
13 in the conduct.

14 In relation to consequence, that person means to cause that  
15 consequence or is aware that it will occur in the ordinary course  
16 of events. For these purposes - for the purposes of this  
17 Article, knowledge means awareness that a circumstance exists or  
18 a consequence will occur in the ordinary course of events.

19 Your Honour, I want to start with the testimony of my  
20 client, Mr Hassan Papa Bangura.

21 My client has stated that he only became aware of the  
22 reason why he was asked to meet lawyer Mansaray during the course  
23 of that meeting. Your Honour, there is nothing criminal in  
24 seeking a review of proceedings before this court. There is  
25 nothing criminal in a witness coming back to this Court and  
26 saying, "I regret to say what I told this Court was a lie." And  
27 that is the premise upon which the guilt or innocence of these  
28 accused persons must be based on. It would not have been  
29 criminal for 334 to come before this Court and say, "I told a lie

1 against Bazy and others." To recant testimony is not criminal.  
2 And therefore, if my client was asked by Mr Tamba Brima to  
3 accompany Mr Samuel Kargbo to the office of lawyer Mansaray and  
4 asked what the legal implications are if a witness recants his  
5 testimony, there is no crime.

6 He did not participate in a joint criminal enterprise by  
7 visiting lawyer Mansaray to seek approximate lawyer advice.

8 In the same vein, Your Honour, it is not a crime for a sick  
9 person to see a doctor and ask what the implications are if he's  
10 proven to be HIV positive.

11 This is merely a means of seeking legal advice, and my  
12 client was used as a conduit to get that advice over to Brima.  
13 It is very possible that Brima was facing difficulties in  
14 accessing lawyer Mansaray himself, and that is why he decided to  
15 seek the assistance of my client in getting that most important  
16 legal advice as to what would be the implications if a witness  
17 decides to recant his testimony.

18 Your Honour, the prosecutor made a few comments about the  
19 testimony of my client which I respectfully want to response to.  
20 He said he changed his statement from saying it was Bazy who  
21 called him to saying it was Tamba Alex Brima.

22 That statement is unfortunate. Because the first time the  
23 prosecutor spoke to Mr Hassan Papa Bangura, he told him that it  
24 was Mr Brima who called him. And Mr Bangura being an ardent  
25 Christian and a truthful man, he confessed to me that he was  
26 unable to sleep when he realised that he had made a mistake in  
27 his statement by mentioning that it was Bazy Kamara, when in  
28 fact it was Tamba Alex Brima. For two days he persuaded me to  
29 bring that to the attention of the Trial Chamber, and

1 professionally I wanted to deal with it in a different manner.  
2 Eventually I informed the Trial Chamber and got him to do another  
3 statement saying what the truth of the contact was. That cannot  
4 be held against him. Because when his memory was fresh, he told  
5 the prosecutor it was Brima.

6 Your Honour, to say that Mr Bangura has no respect for this  
7 Court and its witness is also unfortunate. In a moment I will  
8 come to the intention that 334 has behind his testimony before  
9 this Court. But I will say that Mr Bangura is a friend of 334,  
10 and he has stated that in his testimony, and he has no reason to  
11 lie and no reason to interfere with 334 or to ask him to assist  
12 him during the proceedings before this Chamber.

13 Therefore I will say Mr Bangura did not commit contempt  
14 after he has been indicted for contempt, as the Prosecutor seeks  
15 to adduce.

16 The prosecutor also said that being a senior commander, he  
17 cannot understand why Mr Bangura is refusing to accept that he  
18 understands English. Mr Bangura was not a senior commander in  
19 the peacetime army. He was part of a group that retreated to the  
20 jungle and in which he assumed command responsibility as a result  
21 of the whims and caprices of the government of the day in order  
22 for him to get the troops back to normalcy. That is not a senior  
23 command position. He was not an officer in the Sierra Leone  
24 Army.

25 He has testified to the fact that he did not complete high  
26 school - or secondary school, as we normally call it in Sierra  
27 Leone. And the lingua franca in Sierra Leone is English. This  
28 is unlike the United States, where all commanders will speak  
29 English because that is the lingua franca. Here it is Krio, and

1 Mr Bangura communicated with troops under his command in Krio.  
2 To say he does not understand English is a misapprehension. It  
3 is 100 per cent correct that he does not understand English  
4 properly and would have communicated in Krio during the time he  
5 was commanding troops.

6 Now, the prosecutor also said that Mr Bangura has admitted  
7 that his relationship with Mr Kargbo was pretty close. Yes, it  
8 was. And it is still pretty close. They communicate every day  
9 at the dock. Yet Mr Bangura - Mr Kargbo had a reason for  
10 implicating Mr Bangura in this enterprise. He had, without  
11 proper legal advice, pleaded guilty to charges before this Court.

12 As part of that plea bargaining arrangement, certain  
13 promises were made to him, which includes that he must cooperate  
14 with the Prosecution.

15 JUSTICE DOHERTY: Mr Nicol-Wilson, it's very, very unusual  
16 to intervene in a closing statement. But you're impugning  
17 another counsel who is absent, and I want that noted.

18 MR NICOL-WILSON: Yes, Your Honour.

19 JUSTICE DOHERTY: Proceed.

20 MR NICOL-WILSON: Your Honour, I will now turn over to the  
21 evidence of the various Prosecution witnesses who Mr Herbst has  
22 mentioned in his closing address.

23 MR SERRY-KAMAL: Your Honour, may I be excused?

24 MR NICOL-WILSON: Your Honour, the first Prosecution  
25 witness is witness 334, Alimamy Bobson Sesay. Your Honour,  
26 witness 334 admitted during his testimony before this Court that  
27 Mr Bangura did not promise to personally give him any money in  
28 return for him to recant his testimony. 334 also stated during  
29 his testimony that Mr Bangura did not give him any money in

1 return for him to recant his testimony.

2 334 went on to say something which has not been supported  
3 by any other independent testimony or evidence before this Court,  
4 and that is that Mr Bangura asked him whether US\$10,000 would be  
5 enough for him to recant his testimony. That is unbelievable,  
6 and that is something this tribunal should not be able to  
7 believe. Because this is a man who had several contact sessions  
8 with officials at the Office of the Prosecutor, and not on one  
9 occasion did he mention that Mr Bangura had offered him the sum  
10 of US\$10,000.

11 Now, the witness Samuel Kargbo, who has also present in  
12 that trip from Sweissy to the office of lawyer Mansaray, never  
13 stated in his testimony in chief that Mr Bangura had offered  
14 witness 334 or inquired from him as to whether the sum of  
15 US\$10,000 would be enough for him to recant his testimony. I  
16 will submit that that's a figment of 334's imagination, and that  
17 statement itself is premised on the intention that 334 had for  
18 testifying against a former friend and implicating him in  
19 contempt proceedings.

20 Your Honour, Exhibit 8 and Exhibit 12, P-8 and P-12, I  
21 respectfully submit, shows the intention why 334 came before this  
22 Court and made certain statements. The intention is very simple:  
23 He's still seeking relocation to France. He wants to leave  
24 Sierra Leone at all costs. Even if that involves, and even if  
25 that means, getting other people imprisoned, he does not care.

26 334 stated in his testimony in chief that when he went to  
27 testify in the Taylor trial, he never wanted to come back to  
28 Sierra Leone, but he was forced to do so by officials who took  
29 him The Hague.

1           Mr Bangura has also stated in his testimony that during his  
2 interactions with 334, he had always expressed a desire to leave  
3 Sierra Leone and go to France. 334 amplified whatever  
4 discussions he had with Mr Samuel Kargbo in order to put himself  
5 in a stronger position to continuously advocate for a relocation  
6 out of Sierra Leone. The last words of his testimony in Court  
7 were, and I will quote in Krio, "If God gree, I will komot en kam  
8 Salone", meaning that he's now seeking divine intervention to  
9 even leave Sierra Leone because it appears as if the Court has  
10 disappointed him for a third time.

11           Your Honour, Samuel Kargbo's testimony was also full of a  
12 lot of doubts. For instance, he mentioned that he could not  
13 properly remember what Mr Bangura said when they went to Sweissy.

14           Mr Bangura has challenged that piece of evidence by saying  
15 that when they left the office of lawyer Mansaray, Samuel Kargbo  
16 went in a different direction with his girlfriend and then he,  
17 Mr Bangura, went home. That evidence appears to have been  
18 unchallenged and is still unshakable by the Prosecution.

19           Your Honour, even though it is now accepted by this Chamber  
20 that Mr Herbst did not contact my client in 2004, somebody  
21 contacted him, and that person or institution still wants  
22 Mr Bangura to pay a price for refusing to testify against the  
23 AFRC convicts in 2004. The message they sent to him is a simple  
24 one: That since you have decided not to testify against Bazy  
25 and others, now you are also going to be sent to prison. You are  
26 not going to be an indictee, just like them. If you had decided  
27 to testify against them, there is no need and there will be no  
28 reason for you to be in this Court today.

29           That is the message that continues to echo in Mr Bangura's



1 ears as he continuously communicates to me that he does not still  
2 understand the reasons why he has not been admitted to bail for  
3 an offense of contempt.

4 Your Honour, Mr Andrew Daniels had nothing to say about  
5 Mr Bangura. He never had any contact with Mr Bangura. This  
6 theory of Mr Bangura being part of a joint criminal enterprise  
7 has no basis in law or either in fact, because at no time did  
8 Mr Daniels say during his testimony that he was asked to contact  
9 Mr Bangura so that Mr Bangura could do certain things in  
10 furtherance of this crime.

11 Your Honour, Mr Herbst also stated in his closing address  
12 that I had indicated to this Court that lawyer Mansaray would be  
13 coming forward as a witness and his absence tells a story.  
14 Your Honour, when that indication was made, Mr Herbst already  
15 expressed an intention to object to Mr Mansaray being summoned as  
16 a witness, and I did not think it necessary to bring Mr Mansaray  
17 forward to this Court as a witness in view of the limited time,  
18 and also in view of my own professional judgment that there is  
19 nothing Mr Bangura will lose from his case in the absence of the  
20 testimony from Mr Mansaray. So it does not tell any story. It  
21 was a mere professional judgment on my part.

22 To say that Bangura was sitting in an office and heard  
23 Kargbo telling the lawyer that he was assigned to persuade a  
24 witness and said nothing, yes, is the truth. He said nothing  
25 because sometimes when you are surprised, you become spellbound  
26 and you cannot speak, and that is exactly what happened to  
27 Bangura during the meeting at lawyer Mansaray's office.

28 Also Bangura did not consider it a crime for Kargbo to ask  
29 lawyer Mansaray about the legal implications of recanting of a

1 testimony or a potential review proceeding. So for him, he was  
2 not in a meeting where issues bordering on crime were discussed.

3 Your Honour, Alimamy Bobson Sesay came to this Court and  
4 told several lies, including that Mr Hassan Papa Bangura is not  
5 even a member of AGPAD. Now that evidence has been challenged  
6 and appears to be unshakable, because Mr Bangura has produced  
7 convincing evidence to support his argument and position that  
8 indeed he's an active member of AGPAD, which is the Action Group  
9 for Peace and Development, and, as further stated, that witness  
10 Alimamy Bobson Sesay is also a member of that group and has also  
11 mentioned the names of further members for your Honour's quiet  
12 investigation as to whether 334 was a truthful witness.

13 I will again submit that 34 was not a truthful witness,  
14 because at no time, the evidence has revealed from Mr Bangura's  
15 testimony, did he contact him for him to recant his testimony in  
16 return for a bribe. Mr Bangura has also stated as to his  
17 relationship and communication history with witness Alimamy  
18 Bobson Sesay, and that leaves a lot of doubt in the minds of  
19 everyone as to how Mr Bangura, having such good and excellent  
20 relationship with Alimamy Bobson Sesay, would seek to speak to  
21 him through somebody's else's mobile phone. Like Mr Bangura  
22 stated during cross-examination, if he had wanted to talk to 334  
23 about issues relating to recanting of his testimony or any other  
24 issue, he would have called him directly and would not have  
25 spoken to him through the mobile phone of Mr Kargbo.

26 Your Honour, Kargbo's testimony and that of witness 334 are  
27 at variance in several, several positions. Firstly, Kargbo's  
28 testimony about the incident at Sweissy after the meeting at  
29 lawyer Mansaray's office cannot, and was not, corroborated by

1 witness Alimamy Bobson Sesay, who insisted that he heard certain  
2 words from Mr Bangura which Kargbo says he could not recall  
3 remembering.

4 Your Honour, all of this points to the fact that the guilt  
5 of Mr Hassan Papa Bangura, in view of this indictment that has  
6 been proffered against him, needs to be properly looked into. In  
7 our Defence no-case submission I again reminded Your Honour - and  
8 I would want Your Honour to take judicial notice of that document  
9 as being part of my closing arguments, since I do want to  
10 elaborate rate on it --

11 JUSTICE DOHERTY: I will certainly do that,  
12 Mr Nicol-Wilson.

13 MR NICOL-WILSON: And also in our Defense pre-trial brief,  
14 I also want Your Honour to take consideration of some of the  
15 issues we argue, especially with regards to the proof of guilt  
16 beyond all reasonable doubt as being the standard which should be  
17 applied in these proceedings, as was enunciated by Lord Sankey in  
18 the popular case of Woolmington v. DPD in 1935.

19 Your Honour, I note the time and I still have some few  
20 closing remarks to make, but I don't know whether this is a  
21 convenient point for the break.

22 JUSTICE DOHERTY: I doubt that we need the break, but  
23 Mr Bangura certainly needs the break. So you continue, and  
24 Mr Bangura can be taken out whenever he's ready. I want to make  
25 use of the time we have.

26 MR NICOL-WILSON: Your Honour, I'm sure he wants to listen  
27 to the evidence.

28 JUSTICE DOHERTY: Well, no, but you - I want you - well,  
29 then let him sit on. You mean the submissions. We've finished

1 [i ndi scerni bl e].

2 MR NICOL-WILSON: Your Honour, I et me consul t hi m.

3 JUSTICE DOHERTY: No, he shoul d be here whi le you're  
4 speaki ng. That I'm not di sputi ng.

5 MR NICOL-WILSON: Your Honour, i n conclusi on, I want to  
6 state that i n vi ew of al l the evi dence whi ch has been proffered  
7 before thi s tribuna l, my posi ti on, and that of Mr Bangura, i s  
8 that there i s no evi dence whi ch seeks to suggest hi s gui lt beyond  
9 the shadow of a doubt.

10 As i t i s often stated wi thi n our legal system, i t i s al ways  
11 better to set one gui lty man free than to send - i t i s better to  
12 set ten gui lty men free than to send one i nnocent man to gaol .

13 Mr Bangura i s i nnocent of the charges proffered agai nst  
14 hi m, and I woul d respectf ully ask that Your Honour render a  
15 verdi ct of not gui lty at the end of these proceedi ngs.

16 That wi ll be al l from me.

17 JUSTICE DOHERTY: Thank you, Mr Ni col -Wi lson.

18 MR METZGER: I take i t that Your Honour woul d l ike to hear  
19 from me now?

20 JUSTICE DOHERTY: Yes.

21 MR METZGER: I i ntend to speak on an empty stomach. I n  
22 fact, I work very wel l, much better --

23 JUSTICE DOHERTY: I'm going to try and give you as much  
24 ti me as I possi bly can. I'd j ust remi nd you that, as you  
25 yoursel f poi nted out, counsel for the Prosecuti on had three  
26 persons to deal wi th, and you have one. But that caveat, we wi ll  
27 proceed, Mr Metzger. Please proceed.

28 MR METZGER: I agree that counsel for the Prosecuti on had  
29 three peopl e to deal wi th, but wi th the great el se of respect, he

1 also had two bites of the cherry and all the evidence called by  
2 the Prosecution, as I understand it in his closing speech this  
3 morning to Your Honour, is said to be part of this intricate web  
4 of deceit, this conspiracy to commit a contempt against the  
5 Special Court.

6 Now, Mr Herbst has addressed Your Honour, and I am grateful  
7 for that address. I have learned how best to use hyperbole and  
8 how to euphamise when "things go agin ye". I have also learned a  
9 few American expressions and have had to shake my head at my  
10 illiteracy in the American language. "All balled up", "passing  
11 the smell test" and "smoking gun", which we use from time to  
12 time, are just matters that I raise.

13 Now, Your Honour - I know, read - the submissions put  
14 forward on behalf of Mr Kanu in support of a Rule 98 motion and  
15 noticed that my computer wasn't working very well at the time,  
16 and it rendered it as a Rule 8 submission.

17 If constrained by time, as I find myself, I am unable to  
18 refer to all the matters that are mentioned therein, I know that  
19 Your Honour will take them into account.

20 JUSTICE DOHERTY: I will certainly do so.

21 MR METZGER: May I start by recalling the words of a French  
22 writer Jean Giraudoux, who stated that "... the law is a school  
23 for the imagination. No poet ever did interpret nature as freely  
24 as a lawyer interprets the truth."

25 In my respectful submission, the eagerness shown by the  
26 independent counsel in this case to show a case against Mr Kanu  
27 and others is evident by the way in which the facts - perhaps I  
28 should refrain from calling some of them facts - the evidence  
29 that has been called before Your Honour has been interpreted such

1 that it can only be by virtue of a different understanding of the  
2 language, American and English, that one can come to some of the  
3 conclusions that the Prosecution has sought to put before  
4 Your Honour today.

5 Now, I am further reminded, before I move on to deal with  
6 the things that my learned friend has said, that the words of one  
7 of Mr Herbst's esteemed countrymen - historical, in fact - one  
8 Benjamin Franklin, which were actually read out on 17 September  
9 1787 - because he himself could not deliver the speech - he was  
10 referring to something which is en point in this particular case.  
11 He quoted that there are many private persons who think almost as  
12 highly of their own infallibility as of their sect and gave this  
13 example: "Few express it so naturally as a certain French lady,  
14 who, in dispute with her sister, said 'I don't know how it  
15 happens, sister, but I meet with nobody but myself that is always  
16 in the right'". "Il y na c'est moi, qui est toujours raison."

17 So it is that Mr Herbst seeks to address Your Honour on the  
18 basis that only his version, the version of the independent  
19 counsel's interpretation of the evidence is correct.

20 "Nay, nay, and thrice nay", we say on behalf of the  
21 defendant Kanu. There is, in my respectful submission,  
22 absolutely no evidence against Mr Kanu to support the two charges  
23 agin him.

24 I do not propose herein to repeat the law. I accept that  
25 as far as those charges are concerned, the matter has been put  
26 fairly and squarely before Your Honour.

27 Your Honour knows that the burden of proof is on the  
28 Prosecution, remains always on the Prosecution. That is the  
29 system of law under which we operate. Mr Kanu has to prove

1 nothing. He didn't have to give evidence to Your Honour, but  
2 choose to do so.

3 And he was cross-examined, by my reckoning, for something  
4 in the order of three days. Three days. Three days during  
5 which, Your Honour, the Prosecution asked him about his family,  
6 asked him about telephone calls. This same Mr Herbst who said to  
7 Your Honour, How could people remember what they were talking  
8 about on 30 November 2010? ask Mr Kanu, When you spoke to your  
9 sister, what did you talk about? When you spoke to so and so,  
10 what did you talk about? Now give us a little more detail. Some  
11 more, please. And how long did you talk for? How long were you  
12 in the room that holds the telephone? Five minutes or more? Six  
13 minutes or more? Ten minutes or more? trying always to catch him  
14 out.

15 Now, the interesting aspect of all of this, Your Honour  
16 might think, is that during all of that time no real questions  
17 were asked by Mr Herbst of Mr Kanu about his involvement in this  
18 plan. It was suggested through who he was telephoning, the  
19 Prosecution went to the extent of saying, he was talking to his  
20 sister, he was talking to his daughter about a review, about  
21 getting witnesses to recant their testimony.

22 Well, it may be that this sort of thing obtains in the  
23 American system, but -well, I know not - but Your Honour will  
24 know that in this tribunal, in jurisdictions that we operate in,  
25 it is normally the case to call evidence and that the evidence  
26 comes from the witness. So that whatsoever the suggestion by the  
27 very learned prosecutor, the evidence is the answer he gets.

28 "Nay, nay, and nay again", said Mr Kanu to all of those  
29 utterly ridiculous - and I thank my learned friend for the

1 Prosecutor for reminding me that those two words juxtaposed  
2 together can be used on a number of occasions to describe the  
3 circumstances before Your Honour, and that is but an example.

4 At page 1896 of the transcripts he asked but one question  
5 concerning Mr Kanu's real involvement in this case - and it  
6 wasn't really a question - Mr Herbst put the Prosecution case to  
7 Mr Kanu. In three days of asking him questions, Your Honour  
8 might think this is the only real question, this is the only time  
9 when the Prosecution was put: "I put it to you, Mr Kanu", he  
10 said, "that after Mr Kargbo passed the phone to 334, you said to  
11 334, 'Please, because we've gotten advice from some of our  
12 lawyers, the only way is if we can talk to some of you people,  
13 who can add least cause us to be released or reduce our prison  
14 term. Help us. We're still trying to work out modalities to put  
15 things in place financially.' We want you to cooperate with us.  
16 Help us. We're relying on you.' I put it to you that you said  
17 in substance those things to 334 on November 30, 2010; yes or  
18 no?" Answer: "That man and I have never spoken."

19 Conspicuous in its absence were any questions to Mr Kanu  
20 about supposedly speaking to Mr Kargbo, undoubtedly because even  
21 the independent counsel looking at the evidence could see that  
22 Mr Kargbo's evidence, effectively - not the statement he had  
23 given to the prosecutor by virtue of his plea agreement - but his  
24 evidence to Your Honour did not implicate Mr Kanu in any way.

25 Another example of the way in which the Prosecutor has  
26 played up the alleged case against Mr Kanu is very simple to look  
27 at, and where the Prosecutor has, as it were, lifted the carpet  
28 at its very corner, watched to make sure that no one was looking  
29 and swept the dirt underneath the carpet, placing the carpet back



1 very neatly, is the way in which we will notice that Mr Herbst  
2 failed - I beg your pardon, "failed" would be the wrong word to  
3 use in that circumstance - was cognizant of an approach, which  
4 meant he did not ask Mr Kanu about anything he was supposed to  
5 have said to him when he interviewed him. Not a thing. Not one  
6 thing.

7 So there was nothing himself, Mr Herbst felt, that Mr Kanu  
8 had said to him when he was interviewed that he could use against  
9 him, and so he was silent.

10 Now, I may not be able to match Mr Herbst's free use of  
11 negative adjectives, but I shall try to show that the  
12 Prosecution's case against Mr Kanu is built on sandy soil right  
13 next to the beach at a time when the rains and the tide are  
14 causing the water to approach it. It must crumble, because any  
15 case which is built solely on guilt by association, or perhaps,  
16 in extenso, on guilt by association, together with presence in  
17 the same location, must fail because of that very thing which  
18 Your Honour has already been reminded of today: Mens rea. The  
19 guilty mind. There is no evidence, in my respectful submission,  
20 of a guilty mind.

21 Now, the Prosecutor has relied on extreme measures to try  
22 and net Mr Kanu and reel him into this alleged conspiracy,  
23 although, as Mr Nicol-Wilson has already said to Your Honour,  
24 this case is not, has not been, and, subject to an application  
25 for amendment by the Prosecution, never will be, billed as a  
26 conspiracy between the parties.

27 Of course Mr Herbst has chosen to submit to Your Honour  
28 that this was a conspiracy; that there was an agreed plan. But  
29 it is charged on an individual basis.

1           What are these extreme matters? Well, Mr Herbst has  
2 practically sought to give evidence, trying to ask questions  
3 based on investigations that he conducted, based on notes he made  
4 during interviews with certain defendants, which said notes were  
5 never given to those defendants, either for them to read through  
6 and amend, et cetera, never given to people who he purported were  
7 their counsel so that they could countersign and say, That is an  
8 accurate note, and yet questions were asked of them.

9           Mr Herbst has decided to raise those matters, but not to  
10 call it as evidence. It may be because there were certain  
11 difficulties with calling it as evidence. But those interviews  
12 are not, and cannot be, evidence before Your Honour, because you  
13 cannot hear evidence from the Bar. Whatever suggestions may have  
14 been put to the particular defendants cannot therefore be  
15 evidence once they have been denied.

16           The fact that there is allegedly an inconsistency - and I  
17 say this, Your Honour, because you asked for assistance on the  
18 Brown v. Dunne aspect - whenever there is alleged to have been an  
19 inconsistency, cannot be treated as an inconsistency or as there  
20 being a prior inconsistent statement because it has not - there  
21 is no evidence of a prior inconsistent statement.

22           Secondly, the Prosecution relies on similarity in  
23 handwriting. Allied to that, as I understand it, is Mr Herbst's  
24 theory that Mr Kanu has a habit of bolding over letters, and  
25 based on that, that our Exhibit P-15, the by now - forgive me if  
26 I call it infamous - prison log of telephone calls, he has  
27 referred Your Honour to the - I think it is the seventh page  
28 where there is the entry for the 30 November 2010 - sought to  
29 make handwriting comparisons between Mr Kanu and the signature

1 that appears there, which Mr Kanu has denied; sought to make  
2 handwriting comparisons between the writing, between the letters,  
3 and the bolding over.

4 Of course, for Mr Kanu we must be confident that justice  
5 will prevail and that Your Honour will apply the time-honored  
6 tradition of looking at the material placed before Your Honour on  
7 the basis that the Prosecution must satisfy you so that you are  
8 sure before you can accept that piece of evidence as evidence  
9 against the defendant.

10 When there is a position where the Prosecution has the  
11 opportunity of calling handwriting evidence, then that is a  
12 matter that Your Honour must take into account.

13 Of course, Mr Herbst, in his cunning, clever, well-planned  
14 way, has sought to take that very evident area and turn it  
15 against the Defence, to say it is the Defence who should call a  
16 handwriting expert.

17 I need not remind Your Honour of the burden of proof. It  
18 is for the Prosecution and the Prosecution alone to seek to prove  
19 the case against the defendant, seeking to make it into an issue  
20 of familiarity by asking Mr Sengabo - by seeking to give evidence  
21 by suggesting the way in which one letter is curved or not cannot  
22 possibly be of assistance to Your Honour unless there is expert  
23 evidence before Your Honour. I say no more about that than this  
24 before we move away from this log.

25 The shifting sands of the Prosecution case. I originally  
26 wanted to say to Your Honour that the goalpost in this case has  
27 moved so many times that the uprights don't know whether they're  
28 upright or downright. But that does not sufficiently describe  
29 the situation.

1           In my respectful submission on behalf Mr Kanu, the  
2 Prosecution have moved the goalposts in this case so much so,  
3 that we stand before Your Honour on a different playing field - a  
4 completely different playing field from that which the  
5 Prosecution started the game. We don't know where they are.

6           Complaint can be made, and often is, that Defence counsel  
7 have not done A; that Defence counsel refuse to do B; that  
8 Defence counsel are shying away from doing C. But let us recall  
9 how this case started. Let us cast our thoughts back to July of  
10 2011 - 15 July, no less - when the Prosecution put its case to  
11 Your Honour and told Your Honour at that stage - of course in  
12 writing - what it was seeking to prove. Let us cast our mind  
13 back to earlier this year in June, when the Prosecutor opened the  
14 case and told Your Honour what he was going to prove.

15           Your Honour will undoubtedly have realised that the  
16 Prosecution was very vague about the date on which the  
17 incriminating phone call, the smoking gun call, as it is now  
18 called, took place. Because Mr Herbst can now say to Your Honour  
19 with alacrity, having called evidence from Mr Kargbo, who  
20 couldn't help us as to a date, from Mr Sesay, who could help us  
21 as to a date and told Your Honour what date that was, Mr Herbst,  
22 knowing that he did not want to impeach or otherwise sully the  
23 evidence given by his witness, kept it deliberately vague because  
24 of the Alagenda e-mail, which he is now attaching to what he  
25 calls the smoking gun telephone.

26           Respectfully, it's rather like a cartoon with a flag and  
27 the word "bang" hanging out of it. We know that Your Honour will  
28 not be fooled by these conjuring tricks put forward by an  
29 exquisite conjurer and illusionist in the person of independent

1 counsel in this case. For example, he was good enough to refer  
2 Your Honour to a page 500 and - I cannot remember now, forgive  
3 me, in the transcript - in relation to Mr Alimamy Bobson Sesay's  
4 evidence where he said he wasn't sure of the date, and  
5 conveniently forgot to mention that this was dealt with at page  
6 668, when I had the opportunity, if I recall correctly, of  
7 helping Mr Alimamy Bobson Sesay to apply his mind to the occasion  
8 on which this dastardly deed was done.

9 At page 668 I asked him whether he was sure that on that  
10 day they drove to the PWD junction. "Yes." "You are sure that  
11 the day that this occurred was 29 November 2010, aren't you?"

12 Answer: "Yes, my Lord. As much as I can recall at the time they  
13 took the statement because I was thinking about the dates, yes."

14 Question: "Yes. You were not only thinking about the dates, but  
15 you were thinking about the day in question, so you put the day  
16 and the date together accurately as Monday, the 29th." Answer:  
17 "I did not say I was thinking, because I said at that time that  
18 this thing happened, at the particular time they were taking my  
19 statement, when I mentioned the time and the date and the day it  
20 happened."

21 Now, I'm sure that applying interpretational tools to those  
22 words, whether one used the English or the American language,  
23 should they be incapable of being juxtaposed one to the other,  
24 the answer that Mr Alimamy Bobson Sesay said was, "I gave the  
25 correct date. I thought about it. I know the day it happened,  
26 it was a Monday, and I know the date. It was 29 November."

27 Clearly this must have discomfited the Prosecution, because  
28 it did not fit into the matrix that they had. How to go about  
29 it? Well, in submitting to you Mr Herbst says": Clearly, the

1 witness is mistaken, because we know the date the call took place  
2 now because we have the MTN logs. A matter of preparation.

3 Defence counsel have been accused in this case of not  
4 carrying out adequate preparation. I don't say by whom. It's  
5 just - I put it forward because that is a fact. But when I  
6 mention the goalposts, when this case came before Your Honour on  
7 15 July 2011, when we came to this Court in June of this year,  
8 the Prosecution's case was not, on the papers, that this incident  
9 occurred on the 30th because the Prosecution could not say so,  
10 having disclosed the statements of Alimamy Bobson Sesay and all  
11 his contacts.

12 So it was riding on a wing and a prayer. Your Honour might  
13 recall on behalf of Mr Kanu I invited the Prosecution to nail  
14 their colours to the mast. We accused the Prosecution of  
15 adopting a broad-brush approach and asking us to stand 300 yards  
16 from the painting so we wouldn't see the fine work.

17 Ultimately as it happened, Sierra Leone, or this Court, did  
18 not suit Mr Herbst's health, and he had to go to Kigali. He went  
19 to Kigali and Your Honour may recall my words, "I hope you are  
20 not going there to carry out investigations in order to change  
21 your case."

22 Not only did the independent counsel do so; he went to  
23 Kigali, he spoke to a witness who was on the Defence list,  
24 Mr Hillary Sengabo. He obtained the statement of that witness,  
25 according to what he has told us, that that had been taken by the  
26 Defence, an exhibit taken by the Defence. He asked to see the  
27 manual log, which apparently he had not seen hitherto, and the  
28 case changed. Suddenly the smoking gun call was now going to be  
29 the call on 30 November.

1           Defence counsel was impugned by the way in which the  
2 prosecutor addressed the Court. How could it be that Defence  
3 counsel didn't see the date, 30 November? Well, the 30 November  
4 date, if it was so important to the Prosecution, would have been  
5 there in the Prosecution case. But now the Prosecution could try  
6 to fit the matrix. The MTN call logs were served - I beg your  
7 pardon, they weren't served on the Defence. They were disclosed  
8 to the Defence through the Defence office, I am told sometime in  
9 2011; a long time ago.

10           Now, either Mr Herbst didn't want to look through them,  
11 couldn't be bothered, or chose not to use them. Your Honour can  
12 look at the evidence and consider why. If the Prosecution's case  
13 was that calls were made on 30 November to Mr Samuel Kargbo,  
14 alias Ragga, well then, as we now know with the benefit of the  
15 knowledge of Mr Ragga's number, he was called three times on 30  
16 November, now referred to as the smoking gun evidence.

17           Well, Your Honour, if this was a smoking gun evidence, and  
18 the Prosecution had seen it, why wasn't it used as part of the  
19 Prosecution case right from the very beginning? Or *ab initio*, as  
20 some lawyers would say.

21           We are going to hazard a guess as to why, Your Honour, in  
22 my submissions to you, because in my respectful submission, the  
23 answer is simple. It is straightforward, and it is something  
24 that joins the difficult problems the Prosecution has which the  
25 independent counsel has lifted the corner of the carpet again and  
26 swept underneath with such grace and eloquence, that one can  
27 scarcely believe that one is witnessing it. Why do we say that?  
28 Well, let us review the evidence, Your Honour.

29           If this isn't akin to someone who has great difficulty

1 swimming, or perhaps can swim but has got cramp, thrown out of a  
2 boat, happens to see a bit of flotsam, jetsam, and struggling to  
3 hold on to it? Or is this the overactive imagination? Or is it  
4 simply: I will do whatever I can; I will take whatever I can in  
5 this case to fit my case to what I've got? Not to find the  
6 evidence and pursue a case based on it. Here is what is the  
7 smoking gun. This here is the smoking gun about the Prosecution  
8 case.

9 What Mr Herbst has submitted to you is not the case that is  
10 before Your Honour on the evidence. Why? Well, I think  
11 Mr Ragga, Samuel Kargbo, suggested that he had spoken to these  
12 men on 26 September, on 27 September, and at other times, and  
13 then he --

14 JUSTICE DOHERTY: Sorry to interrupt, Mr Metzger. Did you  
15 say September?

16 MR METZGER: November, Your Honour. I did say September.  
17 I'm sorry, it's just because as we are now in September, it seems  
18 to have got stuck in my mind. And I'm glad it's not Mr Herbst  
19 asking me questions, because he might have asked me about who I  
20 telephoned yesterday and what we talked about, and I may have had  
21 difficulty remembering it.

22 Now, November. If Mr Kargbo's evidence is right and he was  
23 using the same phone, the MTN logs would have revealed calls to  
24 Mr Kargbo's phone because they phoned him - on his evidence, he  
25 didn't phone them - on those days.

26 Here is the carpet-sweeping operation, or the  
27 under-carpet-sweeping operation. Mr Herbst is clever enough to  
28 have seen this, and this is how he tries to hide it. One,  
29 generally speaking, he says, Your Honour, it could be that they



1 use somebody else to phone to speak to Mr Ragga. It could be.

2 Indeed, it could be, Your Honour. It could be that as I'm  
3 speaking to Your Honour, a Martian has landed and is walking  
4 around surveying this Special Court for Sierra Leone and  
5 wondering how to help it with resources and so on and so forth.  
6 But where is the evidence? Because the evidence comes from the  
7 witness.

8 Samuel Kargbo gave evidence to Your Honour that they called  
9 him on his phone. So if they called him on his phone, nobody  
10 could have passed the phone to him. So either Mr Ragga is lying,  
11 in which case the Prosecution's case is shot to pieces, or he's  
12 telling the truth, in which case the Prosecution's conclusion is  
13 shot to pieces.

14 What Mr Alimamy Bobson Sesay says is that it was on the  
15 29th. I've addressed Your Honour on that. But let's put that to  
16 one side. Let's allow the carpet-sweeping operation - sorry,  
17 carpet-under-sweeping operation.

18 Mr Alimamy Bobson Sesay says he spoke to Mr Kargbo. Of  
19 course the Prosecution says well, Mr Metzger, Brown v. Dunne.  
20 Never put it to Mr Alimamy Bobson Sesay that he and Five Five  
21 didn't get along; he and Mr Kanu didn't get along. No, it wasn't  
22 put to him.

23 He didn't put it to Mr Alimamy Bobson Sesay that he had  
24 tried to shoot Mr Kanu sometime in 2000, or whatever it was.  
25 Forgive me a moment. He didn't put it to Mr Alimamy Bobson Sesay  
26 that he abused, he insulted, and derogated the mother of  
27 Mr Antiglide Barbour Kanu.

28 Then let us look at the reality of the situation. In a  
29 fast-moving case where the witnesses were called, their evidence

1 changed, they adapted to the situation in the witness box, and a  
2 client who lives - who is imprisoned in a different country, the  
3 suspicion with which telephones are now viewed because, of  
4 course, there is monitoring. In fact, the evidence is that only  
5 certain people can call the accused in Rwanda on their phone  
6 because it has to go through MTN. That's the new system that's  
7 currently in place.

8 The long and short of the matter is that we didn't have  
9 ready access to the defendants. The long and short of the matter  
10 is, as Your Honour will know, we asked to go to Kigali so that we  
11 could take instructions from our clients. The long and short of  
12 the matter is we went to Kigali, couldn't deal with our clients  
13 because we hadn't concluded the Prosecution case, and had to  
14 stop; commenced the trial this time with us going to Kigali and  
15 having the opportunity to speak to our clients.

16 So Your Honour may come to the conclusion - and I urge  
17 Your Honour to - that the logistical difficulties did not allow  
18 that particular matter - which Your Honour might think is very  
19 hurtful and of a very personal and sensitive nature to Mr Kanu -  
20 to have been divulged to his counsel in time to ask Mr Alimamy  
21 Bobson Sesay.

22 But be that as it may, it was suggested to Mr Alimamy  
23 Bobson Sesay that he had something against Mr Kanu. It was  
24 suggested he was lying, it was suggested that they did not have a  
25 relationship, and it was suggested that he was trying very hard  
26 to relocate to France.

27 Indeed, if I recall correctly in one of his answers,  
28 Mr Alimamy Bobson Sesay said, during the currency of the  
29 investigation in this case, if he had been allowed to, he would

1 have gone to France. He may not quite have been able to answer  
2 the question about why would you have gone to France while the  
3 case was still going on. Respectfully, that shows the  
4 deep-rooted desire he had to be relocated, whether it be as a  
5 protected witness or otherwise, to leave Sierra Leone. Quite  
6 apart from the evidence that my learned friend Mr Nicol-Wilson  
7 has referred to.

8 So there you have it.

9 Now, another theme arises and can I call this theme the  
10 role of Brima, Tamba Alex Brima. The case for the Prosecution,  
11 like a branch of a tree, hanging open to the elements, has been  
12 buttressed by the Prosecution only to the extent that it can sway  
13 whichever way the wind blows. Mr Tamba Alex Brima has not been  
14 indicted, not individually, not by way of being a conspirator, by  
15 joint criminal enterprise, or any other means. And yet the  
16 Prosecution sought to involve him. Why? Because Mr Samuel  
17 Kargbo mentioned him loosely at some stage. Why? Because  
18 Mr Herbst had interviewed him, but not brought charges against  
19 him. Why? Because Mr Bangura, when he gave his evidence, said  
20 that it was Mr Brima who he had spoken to, and Your Honour knows  
21 the rest in relation to Mr Mansaray.

22 So now the Prosecution say "these men" means all of them in  
23 Rwanda. Slight difficulty, there are eight Sierra Leoneans who  
24 have been convicted by this Court serving prison sentences I  
25 believe in Rwanda.

26 So, more conveniently, "these men" must mean the three AFRC  
27 convicts and therefore Mr Brima is involved, although you do not  
28 have the judgment, Your Honour, although you as part of this  
29 trial chamber saw the evidence presented by the independent

1 prosecutor, and said "nay" three times - beg your pardon, insofar  
2 as Mr Brima is concerned. He wasn't indicted.

3 It would not be the first time that the Prosecution would  
4 seek to go behind a ruling of the Court.

5 Now, examine the situation as far as Mr Brima is concerned.  
6 Effectively there is no assistance to the Prosecution case there,  
7 no evidence called by the Prosecution in relation to Mr Brima  
8 that suggests he was guilty of this offense. And then I leave  
9 that matter there because of the shortness of time as the theme.

10 Now, instead of the Prosecution continuing with the  
11 juxtaposition of the words utterly and ridiculous, say Mr Kanu  
12 told a story about his name, spelt with an H, not spelt with an  
13 H. Respectfully, the saying "what has that got to do with the  
14 price of fish" comes to mind. It may mean that Mr Kanu is not  
15 sure about when he spells his name with an H, or decided to  
16 change it at some stage, or that he's just scared that anything  
17 he says in answer to the prosecutor is going to be twisted  
18 against him. But it does not prove his guilt.

19 Now, Mr Kanu accused - let me put it a different way - said  
20 that in relation to the 30 November there had been a manipulation  
21 of the logbook. He said it was Mr Sengabo and Mr Herbst who had  
22 manipulated it. Respectfully, Your Honour, I ask you not to hold  
23 that against him. Effectively his evidence is I didn't do it,  
24 somebody else must have done it; and if it was somebody else who  
25 did it, it must have been somebody who had control of the book.  
26 The evidence from Mr Sengabo, ultimately a witness called by the  
27 Prosecution - a little bit more about him in just a moment. And  
28 he said that this book was a possession of the prison service,  
29 Rwanda Correctional Services who are, as it were, the keepers of

1 these men serving their sentence in Rwanda. Which is quite  
2 understandable. He said that the system pertained where the men  
3 were supposed to - the officer was in charge of making sure that  
4 the log was completed fully.

5 Now, I could spend another 20 minutes showing Your Honour  
6 how inaccurate the manual log is. I shan't do that, I think  
7 Your Honour has seen it for yourself in evidence. The defendants  
8 - the convicts were supposed to sign.

9 Prosecution's case: Prosecution to approve said case  
10 called no officer who was personally responsible for filling in  
11 these books to say, Yep, I signed in the place where it says  
12 "officer to sign". I recall, or I don't recall, on that date I  
13 did or did not do that. This is or is not an addition.

14 So when we look at 30 November and we see the bolding over,  
15 which coincidentally is over the name "Bazzy Kamara", over the  
16 name "brother", and some of, if not most, of the writing, the  
17 telephone number, what does it mean? Absolutely - and I borrow  
18 an Americanism here - squat diddly. I hope I've pronounced it  
19 correctly.

20 The Prosecution cannot even prove that those numbers, if  
21 they were numbers that were called, were made at that time on  
22 that date because of the lack of accuracy. This book, side by  
23 side with the MTN log, they can't sleep together. They cannot  
24 sit side by side. They don't appear related on some occasions.  
25 The MTN log does not have numbers that are recorded in here.  
26 This book does not have numbers and times that are recorded in  
27 the MTN log. And yet the Prosecution say you can rely on this  
28 document to show that on 30 November at 1311 p.m. Rwanda time, so  
29 it would be 11 minutes past 11 or thereabouts, all these calls

1 were taking place.

2 Your Honour will, of course, have noted, when you look at  
3 the MTN logs, those three calls to Mr Samuel Kargbo's telephone  
4 number around about this time are the first time that number is  
5 called, I've already made those submissions.

6 These numbers attributed to Mr Kanu do not equate to that  
7 number. There is no explanation for why the numbers down here  
8 don't match the numbers on the MTN logs, and therefore that  
9 Mr Santigie Borbor Kanu made any of these calls of the calls  
10 which are said to have been made to Samuel Kargbo, other than an  
11 over-active imagination, the corner-lifting carpet trick, or  
12 purported evidence by the learned independent counsel himself  
13 that bolding over means something is hidden underneath.

14 Since he wasn't aware of the technique used in ESDA  
15 testing, there is no evidence called by the Prosecution to say if  
16 there was something hidden underneath, what it was. There is no  
17 evidence before the Court that those numbers relate to the Ragga  
18 calls. You are asked to find beyond reasonable doubt that this  
19 equates to what is in Exhibit P14, I think it is, and that all  
20 relates to Ragga, and that therefore you can now link Mr Kanu as  
21 having been present.

22 He, of course, does not remember making any such calls, and  
23 the evidence against -well, the evidence on that matter would  
24 come from Mr Kamara, who gave evidence about his calls. But the  
25 Prosecution cannot have their cake and eat it. Mr Kamara is  
26 right that they all spoke, but he's wrong when he says Kanu and  
27 others came to say hello to some men who were there.

28 So whatever Your Honour thinks about his allegation of  
29 manipulation of the logbook, it is clear that that logbook is one

1 of the most inaccurate pieces of recordkeeping one could hope to  
2 come across in an attempt to try and prove evidence against  
3 anyone.

4 Now the Alagenda e-mail. What is the status of Exhibit  
5 P4? Respectfully, nothing. It is a piece of paper, a document  
6 printed purporting to come from Ms Alagenda, whom the  
7 Prosecution did not even seek, it would appear, to get a witness  
8 statement from to serve on the Defence to say: I wrote this  
9 e-mail. I wrote it on such and such a day. It has been shown to  
10 me. The details on it are accurate. And what does it say?

11 The Prosecution say it supports what Alimamy Bobson Sesay  
12 says about Mr Kanu: We are brothers, and we will soon be  
13 released. We expect you to help us with the release. He's  
14 expecting to be contacted again.

15 Now, this is different, respectfully, from what Mr Bobson  
16 Sesay said when he made statements to Mr Saffa and others. It is  
17 different again from what he said when he came to the witness box  
18 to give his evidence. Your Honour, on behalf of Mr Kanu, it is  
19 submitted that he keeps ameliorating his evidence, elaborating to  
20 make it better, to make it more palatable, to make Mr Kanu  
21 guilty, or more guilty, whichever way you want to look at it.  
22 But certainly from his point of view, we would respectfully  
23 submit, that that supports the theory that Mr Alimamy Bobson  
24 Sesay has a grudge, had a grudge, and probably will always have a  
25 grudge against Mr Kanu, and never the twain shall meet.

26 In his witness statement, Your Honour will recall, after  
27 saying about being called back, et cetera, that Five Five said we  
28 were all brothers, they were counting on me to assist them, and  
29 then asked whether Sammy Ragga had spoken to me about the

1 requests they were making to me and that they were putting  
2 modalities in place to compensate me if I so render assistance.

3 The Prosecution might say well, if this e-mail supports  
4 anything, it certainly doesn't support a fuller account, a more  
5 detailed account tending and intended to incriminate Mr Kanu in  
6 the worst way possible, there being no other evidence against  
7 Mr Kanu.

8 Your Honour, before I go to remind you of some of those  
9 inconsistencies which are mentioned in the Rule 98 submission,  
10 let me pause for a moment to try and deal with the 4 November  
11 2010 letter of the Registrar, Exhibit D Kanu 3; the later letter,  
12 which is included in that same exhibit, the response - I beg your  
13 pardon. Before we get to the response of 20 December, the 2 July  
14 memorandum which is said to have accompanied this 4 November 2010  
15 letter.

16 Now, the first thing to note, as D Kanu 3 is an open and  
17 nonconfidential document, as I understand it, is paragraph 1.  
18 The Registrar is saying in paragraph 1 it appears that they had  
19 never received, up to the time of her writing, the memo 2 July,  
20 which was sent both on 2 and 8 July 2010. My learned friend  
21 referred to that memo as being talking about a review.

22 In fact, Your Honour will see that memo. I'm sorry, I've  
23 misplaced mine for the moment, and I don't ask you to stop for me  
24 to find it. It might take longer than it will take me to tell  
25 you about it. From my recollection, that memo does not talk  
26 about witnesses recanting their testimony. Nowhere in this  
27 bundle of material is there talk of witnesses recanting their  
28 testimony. It is suggested that it is possible for there to be a  
29 review. It is suggested that there might be discussions about



1 early release or parole, et cetera. But paragraph 1 - they  
2 hadn't got the memo, hadn't been given to them by the Rwanda  
3 authorities - supports the position that Mr Kanu took when he  
4 gave his evidence on that.

5 At paragraph 3 the memorandum is referred to and it says,  
6 "I also explained you may be entitled to file for a review of  
7 your case. You may do so under Rules 120 to 122 of the Rules Of  
8 Procedure and Evidence, which I'm attaching to this letter for  
9 your perusal."

10 We don't need to look at the Rules, we know what they are.

11 And then it simply says, "There is no entitlement under the  
12 Court statute and rules to receiving financial assistance."  
13 You're on your own. If you get pro bono counsel, it's fine.

14 There are other matters, we all will see from what Mr Kanu  
15 has written on it, what he appears to have taken interest in.  
16 Number 4 - at paragraph 4, mention about communications, he's  
17 written "visit" on the side. Number 5, he talks about what looks  
18 like "telephone". And clearly he told you, and you heard  
19 evidence, about how much money they were allowed, what they had  
20 to pay, and so on and so forth.

21 Number 6, talking about rules relating to again the money  
22 that they had available to them, and he writes, "We do not have  
23 any". There is no indication on this or any other document that  
24 Mr Kanu is considering doing anything other than fighting for the  
25 opportunity to get a pardon; not for a review of his case.

26 In fact, he's written on the back of that letter, and when  
27 Your Honour looks at the 20 December letter, you can see perhaps  
28 the relevance: "Which legal aid do the Rwandan authorities  
29 offered to me in my case?" He's written it on the back. He's

1 more concerned about access to a lawyer. He's not about going to  
2 go and get someone to change their testimony.

3 You might think, Your Honour, it is very unlike Mr Kanu.  
4 You've had the opportunity of observing him. Not only in this  
5 case, but in the AFRC case, which took a lot longer. But  
6 certainly for the purposes of the present matters, you've had the  
7 opportunity of observing him. When he's given him evidence, he's  
8 being adamant that he wasn't going to ask anybody to change their  
9 testimony, certainly not somebody who had a grudge against him;  
10 certainly not somebody who would get him into more trouble.  
11 That, Your Honour may think, is what he was saying.

12 The letter of 20 December from those six persons that  
13 Your Honour sees on it - because that is a confidentially-filed  
14 document, but those six include the signature of Mr Kanu - show  
15 quite clearly what was at the forefront of the minds of the  
16 people involved. And since there were six people, and there are  
17 only two people from Rwanda here, if there was a plot, and that  
18 was part of a plot to have witnesses recant or change their  
19 testimony, well, then it cannot possibly support the case of  
20 against two as opposed to six.

21 What that document does is simply say, We want counsel.  
22 They suggest the council they want. They sign another letter  
23 giving a power of authority for all their legal matters. And yet  
24 the Prosecution seek to use that to support a case before  
25 Your Honour, a positive case which has not been called in  
26 evidence here, to say by then they knew, on 20 December, that  
27 they were being investigated.

28 The only positive thing we have about what happens in  
29 December is Mr Alimamy Bobson Sesay deciding that he was in the

1 position of being a private detective, agent provocateur, or  
2 something like that, and trying to draw people out. He was  
3 saying to the OTP - he was asking them for a motion not to be  
4 filed so that he could get the evidence. So that he could get  
5 the package, as he told us. And then he was happy for them to be  
6 all arrested together when they gave him the money. But, of  
7 course, that never happened.

8 In my respectful submission, that never happened because it  
9 was never going to happen. It was a figment of the imagination  
10 of Alimamy Bobson Sesay, who saw another opportunity to  
11 ameliorate his position, another opportunity to make a reality  
12 his hopes and dreams of leaving the shores of Sierra Leone,  
13 assisted by the Special Court.

14 Now, the Prosecutor has not in terms addressed Your Honour  
15 at all about that.

16 For the purpose of the record, Your Honour, we have raised  
17 areas which we say show very clearly the difficulties in the  
18 evidence for the Prosecution of Mr Sesay and Mr Kargbo. They are  
19 inconsistent in themselves, the evidence of those two people.  
20 They are inconsistent between themselves, the evidence of those  
21 people.

22 For example, the date of Mr Kargbo's release from prison.  
23 Mr Sesay sought to try and correct a situation which he appeared  
24 to have got wrong in his earlier statement, although he tells you  
25 he knows Mr Kargbo well enough and knew it right from the start.  
26 The use of the words recount/recant not introduced by himself,  
27 but by the statement taken; the manner in which statements were  
28 made; the manner in which experienced police officer turned  
29 investigator, now experienced investigator at the Special Court,

1 saw fit to destroy or otherwise throw away the original note he'd  
2 taken; the fact that Mr Sesay was saying, under the pressure of  
3 cross-examination, I wasn't actually told to lie, but I  
4 understood that they wanted me to lie; the fact that Mr Kargbo,  
5 when he first told him about the men in Rwanda wanting them to  
6 change his statement, that Mr Kargbo's understanding was he told  
7 him immediately that's contempt of Court; the fact that Mr Sesay  
8 said, No, I didn't do it until after I'd had a word with  
9 Ms Alagendra; both cannot be right; the fact of talking to the  
10 lawyers.

11 In one of his statements, Mr Sesay said that Kanu told him  
12 they had talked to their lawyers. Well, that's clearly not the  
13 case. And I pause there to deal with the issue of lawyers.

14 Mr Daniels was called by the Prosecution. Never spoke to  
15 Mr Kanu. He's not there. End of story. Mr Mansaray wasn't  
16 called. Matter for the Prosecution. Seek to bring the evidence  
17 in, some may say via the rear door. But the fact of the matter  
18 is nobody mentioned Mr Kanu. Mr Kanu told you, I didn't have  
19 anything to do with Mr Mansaray. No application to rebut. No  
20 application to call that evidence to deal with it in that way.  
21 Mr Daniels didn't speak to Mr Kanu.

22 The amelioration of his evidence, recognising, says  
23 Mr Sesay, that he saw an international number when Mr Kanu gave  
24 him the phone, but not something, you know, that seems to have  
25 been considered when he made his original statement. By the time  
26 he spoke to Mustapha at the OTP, the conversations with Mr Kanu  
27 and others, Mr Kanu, had already taken place. And yet it is said  
28 by the Prosecution that the whole thing had occurred over a  
29 period of time.

1           It is said that he called Ms Alagendra immediately  
2 afterwards, but Your Honour will recall the evidence about  
3 contact. Your Honour will recall that - what he said about the  
4 time he spoke to Mustapha, and Your Honour will recall what he  
5 said, that he spoke to Mustapha and said, I have something to  
6 tell you, which was something like, I believe, 16 November,  
7 sometime much earlier than even 26/27, let alone the 30th. Those  
8 cannot be the words of someone who is speaking the truth, who is  
9 seeking to assist the Court, who has any intention whatsoever of  
10 being truthful in the face of the Court, in my respectful  
11 submission.

12           He is an incredible witness, as is Mr Kanu, in view of the  
13 inconsistencies as between themselves.

14           Your Honour, I rely on the matters that are raised in the  
15 Rule 98 submissions so as not to have to go over them, pressing  
16 them forward as supporting this submission that Mr Kanu is not  
17 guilty of these matters, and doing so knowing that now that  
18 Your Honour will be looking at all the evidence, not at any parts  
19 of the evidence in vacuo, and coming to a conclusion based on all  
20 the evidence.

21           The final thing that I want to address Your Honour on in  
22 relation to this --

23           JUSTICE DOHERTY: If you can be brief on it, Mr Metzger,  
24 please. Please continue.

25           MR METZGER: Yes, I'm trying as hard as I can to do that.  
26 I have missed out a lot of things, and Your Honour can see from,  
27 I hope what is a more disjointed submission to Your Honour than  
28 you would normally expect from me, that this is in trying to mass  
29 everything together and deal with it as quickly and fully as I

1 can, but cutting everything short.

2 This is a significant feature. It's mentioned in the  
3 pre-trial - sorry, in the closing - in the 98 motion, but I must  
4 make the argument here to this effect.

5 There are two charges against Mr Kanu. One is offering a  
6 bribe. Respectfully, there is no evidence that he offered a  
7 bribe to anyone. Mr Kanu has given evidence on that point. I've  
8 addressed Your Honour on those matters and referred Your Honour  
9 to other things.

10 Secondly, it is said that Mr Kanu otherwise interfered with  
11 the administration of justice. Now, respectfully, the  
12 Prosecution has sought to say as little as possible about this  
13 count in this case. What amounts to otherwise interfering with  
14 the course of justice? As far as can I recall, even in the  
15 response to the Defence motion on Rule 98 the Prosecutor simply  
16 sought to, as it were, take itself away from the stance which one  
17 may have suspected to be the case at the start of this case, that  
18 is to say, the Prosecution's pre-trial brief, that it may have  
19 had something to do with the threat of violence to Mr 334,  
20 purportedly said to have come from some other person not linked  
21 at all to Mr Kanu, You don't have to be afraid of those people in  
22 Rwanda. I needn't go further than that.

23 Now, the Prosecution said it doesn't have to be only that.  
24 So where is the case that Mr Kanu has to meet? Is it somewhere  
25 in the ether? Because I do not see it. Your Honour may have  
26 better opticians than me.

27 The fact remains that if the Prosecution are saying, If we  
28 cannot prove he offered a bribe - well, we say there is no  
29 evidence - but he otherwise, as it were, interfered with the

1 course of justice, what is this otherwise? Where has it been  
2 specified in order to assist Your Honour? Where has it been  
3 specified so that Mr Kanu can know the case he has to meet?  
4 Where has it been specified so that any of those people sitting  
5 in the public gallery, or somebody reading this case later on,  
6 can say, Aha. Yes, I see what they mean here, otherwise  
7 interfered. Other than perhaps the very behaviour that the  
8 Prosecution suggests is offering a bribe.

9 Now, we haven't argued about duplicity in this case, and  
10 Your Honour will understand why. Because if the Prosecution is  
11 suggesting it's because somebody was party to a threat being  
12 made, well, it can't be duplicitous because they are different  
13 facts. But if the two counts are founded on the same facts and  
14 they aren't alternatives, well then, in this jurisdiction, as far  
15 as I understand it - in my jurisdiction, your Honour's  
16 jurisdiction, and I believe in my learned friend Mr Herbst's  
17 jurisdiction - that is something which the law doesn't permit.

18 It must either be stated clearly that they are different  
19 pieces of evidence which amount to different offenses, or the  
20 same evidence is backed up in alternative charges. The  
21 Prosecution hasn't done that in this case. In my respectful  
22 submission, as far as Mr Kanu is concerned, we can take count 2,  
23 roll it up as a ball and in the old terminology - the Krio use  
24 the word "blonde off" - kick it, another Americanism, excuse me,  
25 the hell out of here. The Prosecution does not have a case  
26 against Mr Kanu.

27 With the greatest of respect to the great intellect, the  
28 cunning, eloquent presentation by my learned friend Mr Herbst, he  
29 has done very well - very well indeed - in manufacturing - I beg

1 your pardon, I - yes, I can use "manufacturing"; it's not what  
2 Mr Kanu said - a case against Mr Kanu or seeking to where there  
3 is none.

4 In those words, I respectfully submit to Your Honour that  
5 in this particular case the only proper verdicts on count 1 and  
6 count 2 as against Mr Santi gie Borbor Kanu, also known as Five  
7 Five, the father of that fine young lady Dorinda who so soldiered  
8 into Court today ready to give evidence, but perhaps being  
9 emotional about the whole thing, perhaps considering what we have  
10 been through, would not have been able to assist the Court other  
11 than to say, I love my father. He's all right really. I speak  
12 to him often. I've never discussed witnesses recanting their  
13 testimony. That same Mr Kanu was not involved in any plot.

14 And I do urge Your Honour, when you have considered all the  
15 evidence and taken these submissions into account, and others  
16 that I have made to Your Honour during the course of this case,  
17 to return not guilty verdicts in this particular case.

18 Before I stop this address, I think that I have dealt, in  
19 the course of my submissions, with all the matters that  
20 Your Honour asked me to deal with, but I would appreciate if  
21 there is any that it would appear to Your Honour, just thinking  
22 about it now, that I haven't addressed.

23 JUSTICE DOHERTY: No, I'm quite happy with what you have  
24 said, Mr Metzger. It did address the points I raised more than  
25 adequately. Thank you.

26 MR METZGER: I'm very much obliged.

27 JUSTICE DOHERTY: Mr Serry-Kamal.

28 MR SERRY-KAMAL: May it please Your Honour, I must say I am  
29 in great difficulty about this matter, having just closed my case



1 today and having to look at 2000 pages of evidence to address  
2 you, but I'll make an effort.

3 The first thing I would like to say is that the Prosecution  
4 have not proved their case against Bazy beyond reasonable doubt.

5 Bazy is charged on three counts or three charges. On my  
6 reading of the indictment, he's charged independently of the  
7 others, although their names appear in one indictment. And I  
8 believe that when one is charged independently in the offense,  
9 the question of a conspiracy with another person has to be  
10 mentioned in the indictment. And he with other people have not  
11 conspired to do this.

12 The charge as it is to me discloses, with the greatest  
13 respect, no offense importing a conspiracy with another person.  
14 Count 3 - or charge number 3 - pardon me if I call it count 3,  
15 it's a different offence from counts 1 and 2, because count 3 is  
16 under Rule 77A(ii), and (i) and (ii) are in respect of Rule  
17 77A(iv). And my reading of (iv) is that threatens, intimidates,  
18 causes an injury, if you apply the jus dem generis rule, are one  
19 offence.

20 Offering a bribe is another way of committing the offence  
21 under Rule 77A(iv), or otherwise seeks to - or otherwise  
22 interferes with a witness who has given evidence or who is giving  
23 or about to give evidence or has given evidence in proceedings  
24 before the Chamber or a potential witness. The otherwise  
25 interfering, with the greatest respect, is not defined.

26 And what my learned friend did in his charge - charge  
27 number 2, is to say that he did it either directly by telephone,  
28 or on 29 December - in fact, it's very specific - on or about 29  
29 November 2010, and through instructions to Samuel Kargbo and

1 Hassan Papa Bangura.

2 Your Honour, the Prosecutor, with the greatest respect,  
3 produced in evidence the MTN logs and also the logbook -  
4 telephone logbook at Mpanga Prison. On the evidence before you,  
5 there was no telephone conversation between either Mr Kargbo,  
6 Papa Bangura, or any other person involved in the indictment on  
7 29 December - I'm sorry, November 2010. No such conversation.  
8 And the cardinal principle of criminal law is that he who  
9 asserts, must prove beyond reasonable doubt.

10 With the greatest respect to my learned friend, I find no  
11 such evidence in all the testimony that has been led to prove  
12 count 2 in the indictment against my client.

13 Insofar as count 1 is concerned, again it alleges offering  
14 a bribe. Bribe to whom? It doesn't say which witness. It  
15 merely says offering a bribe to a witness. In our jurisdiction  
16 here, if the charge is vague, the only thing that is done to it  
17 is thrown out of Court. You cannot offer a bribe to a witness in  
18 vacuum. The name of the witness has to be stated in the  
19 indictment to whom the bribe was offered. The indictment is the  
20 offence with which the accused is charged, and the accused has to  
21 know the case it is to meet. It's a basic principle of the  
22 criminal law anywhere. The rules provide for that. The accused  
23 must know the case he has to meet, even at the first opportunity  
24 when he appears before - when he's being investigated, he has to  
25 be noted the case that is being made against him and be  
26 protected.

27 But in this case we're talking about a witness. As my  
28 learned friends have said - or as we said during the trial, my  
29 learned friend kept moving the goalpost each time he led

1 evidence.

2 I don't really want to go too much on this area. I'm sure  
3 Your Lordship will look at the rule and the indictment - the  
4 position of the indictment, whether in fact it meets - it  
5 satisfies the rule that the accused must know the case against  
6 him.

7 Your Honour, the fact that my client is at Mpanga Prison  
8 and the other witnesses are in Sierra Leone clearly imports that  
9 the only means of communication with them would be through the  
10 telephone. My learned friend produced the telephone logs, and  
11 the only conversation between Samuel Kargbo and my client was on  
12 30 November 2010. If Your Lordship were to search all the phone  
13 logs, all the MTN logs, and all the prison logs, the only  
14 evidence of any conversation would be found in the MTN log on 30  
15 November 2010. Nowhere else.

16 Mr Keh-For-Keh, who was the initiator of the call, has come  
17 to this court and has testified as to the circumstances leading  
18 to those calls. I do not want to go back really to start talking  
19 about the evidence of Sammy Ragga about the meeting at Sarolla,  
20 the calls at PWD Junction, the calls to Newton, because the MTN  
21 records do not bear that. They do not say so. And if you make  
22 such a very serious allegation, the MTN records should bear that  
23 out. The MTN records do not say so.

24 The log - the prison log doesn't say so. Where, then, were  
25 these calls made? By satellite, or some other - according to the  
26 statement in opposition to our Rule 98 application, my learned  
27 friend Mr Herbst said that they had access to other telephones.  
28 I think that was an unfortunate statement, because even when  
29 there was an inspection of the various cells in the prison, no

1 such telephone was found. I fail to see where else - where else  
2 they would have been able to communicate with Mr Kargbo. Because  
3 insofar as 334 is concerned, he was quite clear: He never spoke  
4 to Bazzy. He never, ever spoke to Bazzy.

5 What we have in this court is Sammy Ragga saying - or 334  
6 saying, Sammy Ragga told me this. Sammy Ragga told me that.  
7 Sammy Ragga told me that somebody said this and the other. It's  
8 all reported. All reported.

9 Let us not lose sight of the fact that Sammy Ragga and 334  
10 were living together. They were living together. He said - 334  
11 said one day Sammy Ragga was crying at Sweissy that his  
12 girlfriend had thrown him out of the house and he had nowhere to  
13 stay, so he took pity on him and he decided to take him on.

14 We are not certain about the dates, because he did not give  
15 us the exact dates. The fact of the matter is there is only one  
16 day in which the telephone number of Samuel Kargbo appears in all  
17 the MTN records, all of those records, starting from October and  
18 ending in December - 7 December. It was only on the 30th that  
19 Mr Kargbo's telephone number appears in the records, and the  
20 appearance has been explained.

21 Mr Kamara was here. He was cross-examined. Mr Herbst  
22 tried to take advantage of the witness by not making the MTN  
23 records available to him when he was cross-examining him.  
24 Your Honour will recall that the very next day when I insisted  
25 that he should have the MTN records available to the witness, he  
26 stopped cross-examining him on the MTN records.

27 JUSTICE DOHERTY: Which witness is that again,  
28 Mr Serry-Kamal, we're talking about?

29 MR SERRY-KAMAL: Keh-For-Keh. As soon as we said let

1 Keh-For-Keh have the records, the MTN records in his hands, he  
2 stops cross-examining him on telephone calls, and the witness  
3 gave him a telephone number which he was using at the time.

4 Your Honour, I'm not able to provide you with authorities,  
5 but I will try and do so by electronic mail to support my case on  
6 the indictment and other matters of evidence. But what I would  
7 want to emphasise is that what 334 said cannot be accepted as  
8 evidence against my client. It is what Sammy Ragga told him.

9 JUSTICE DOHERTY: I'll not interrupt, I was just going to  
10 ask the status of hearsay, but I will not pursue it. You can  
11 address on it if you need to.

12 MR SERRY-KAMAL: Your Honour, it is not even hearsay. It's  
13 not even hearsay. I am saying that it did not even exist. It  
14 was something manufactured. Because if the evidence of Sammy  
15 Ragga is to be believed, Your Lordship will find on 26 November -  
16 or before 26 November there would have been telephone calls to  
17 Samuel Kargbo. His number should have appeared in the MTN  
18 records. His number never appeared. It appeared on one day -  
19 one day - and that was the only day, and it has been explained  
20 that it appeared purely by accident.

21 I am submitting, with respect, that Mr Kargbo's evidence  
22 does not stand up to close scrutiny when you look at the MTN  
23 records. Unless he was imagining, but he said all that happened  
24 was before 30 November, and he was quite emphatic about it, and  
25 that was initially the case on which the Prosecution proceeded.  
26 But later on I think it shifted to 30 November and 7 December.

27 Mr Bazy Kamara categorically denied that he did not make  
28 the call on 7 December that appears in the MTN records, and there  
29 is no proof in this court that Bazy made that phone call. The

1 Prosecution could easily have called the prison officers who were  
2 in charge of the prison logbook to testify. Apart from Sam  
3 Kargbo, nobody else came.

4 Your Honour will recall that the accused testified that the  
5 phone - the telephone is in front - in the office of the prison  
6 officials. Initially the prison official would sit on one side  
7 of the table and the caller on the other side. On the other side  
8 of the table there would be another prisoner who understands Krio  
9 so that whatever is said, he will later translate to the prison.  
10 Neither Sesay nor any other prison officer other than Sam Kargbo  
11 was called to testify. That is where the case of the Prosecution  
12 fails.

13 JUSTICE DOHERTY: Mr Serry-Kamal, please excuse me if I  
14 interrupt you just for a moment, because I've suddenly recalled  
15 that Mr Herbst said to us three days ago he had to leave at 4.00,  
16 and that means if that's 4.00 Kigali time, he'd better get  
17 moving.

18 So Mr Herbst, if you have to leave now, you are excused.  
19 I'm just thinking of the time difference.

20 MR HERBST: Your Honour, I thank you. I looked again at my  
21 ticket and I can stay until 5.15. I'm content --

22 JUSTICE DOHERTY: Thank you. 5.15 your time is half an  
23 hour. Mr Serry-Kamal - I don't know how long he's going to be,  
24 but he's not going to be --

25 MR SERRY-KAMAL: As I've said, I will be very, very short,  
26 but the rest of it I will have to communicate it to you later.

27 THE INTERPRETER: Your Honour, sorry to interpret. Since  
28 you asked that we swap the transcribers, we have to stop talking,  
29 everybody has to stop talking for a moment until they do that.

1 JUSTICE DOHERTY: I was conscious that the transcribers are  
2 supposed to be only for a certain period, and I asked them to be  
3 allowed to swap over.

4 Thank you, Mr Serry-Kamal. Our transcriber is now ready to  
5 continue.

6 MR SERRY-KAMAL: What I said was that the way the telephone  
7 calls were being made at the prison, they were - the telephone  
8 was from the office of the prison officers.

9 JUSTICE DOHERTY: Yes, you did say that, and Mr Sesay is  
10 there translating. I didn't --

11 MR SERRY-KAMAL: And Mr Issa Sesay is there to translate to  
12 the prison officers what was discussed by the prisoner.

13 Mr Sesay was not called as a witness here by the  
14 Prosecution, nor were the prison officers who actually made the  
15 calls. And if any call was made before 30 November, the number  
16 of Sammy Ragga, the first Prosecution witness, would have  
17 appeared in the MTN records. Even if it did not appear in the  
18 police some log book, it would have appeared in the MTN records.

19 Because why I say so, the MTN records are with the  
20 telephone company; but the prison logbook, we have found that was  
21 not properly kept, because there are many calls in the MTN  
22 records which do not appear in the prison logbook. So in fact,  
23 the prison logbook, in my humble submission, is a very unreliable  
24 record - a very unreliable record which ought not to be trusted.

25 I will not really dwell on the state of the prison records,  
26 because in my humble submission I have quite frankly sought to  
27 dismiss them as being inaccurate. Even the entries for the 30th,  
28 Your Honour will see that what appears in the MTN record does not  
29 appear in the prison logbook. So if one were to rely on it as a

1 complete record of what happened, there's every chance that  
2 you'll be misled.

3 As we have highlighted, it is the duty of the Prosecution  
4 to prove each and every element of the charge beyond reasonable  
5 doubt. We have proffered a reasonable explanation for the call  
6 on the 30th. The accused has testified and Keh-For-Keh has  
7 testified.

8 The Prosecutor himself towards the end of his testimony -  
9 end of his address to this Court did say that even the most  
10 honest of witnesses would find it difficult to narrate the same  
11 story all the time - three or four times on three or four  
12 different occasions or even on the same occasion.

13 We are talking about memory. People's memories. What is  
14 good for his own witness must certainly be good for our own  
15 witnesses too. The same considerations which apply to his own  
16 witness or witnesses not being very good on details or missing  
17 certain details out would also be good for our own witnesses.

18 But as far as 334 is concerned, I will invite you to find  
19 the accused not guilty on count 1, because at no time did the  
20 third accused talk to 334. How could he have offered him a  
21 bribe, much less to have him recant his testimony? How could he  
22 have? If I don't talk to you, how can I ask you to do anything  
23 for me? How can I offer you money?

24 He says to Samuel and Papa - Papa Bangura - well, we've had  
25 Papa Bangura. He's given his own evidence. He's denied any such  
26 happening. It only leaves us with Samuel Kargbo. As I've said,  
27 the prison records - the MTN records --

28 JUSTICE DOHERTY: Sorry, Mr Serry-Kamal, I have to  
29 interrupt you, regretfully.



1 Kigali inform me that the accused prisoners have to go to  
2 Mpanga.

3 May I allow Mr Serry-Kamal to please complete your  
4 evidence. They are still there, but they will be leaving  
5 shortly.

6 Please complete, Mr Serry-Kamal.

7 MR METZGER: For the record, I would object to my client  
8 having to go until all the submissions are finished. I can't do  
9 anything about it, but I make that objection for the record.

10 JUSTICE DOHERTY: Thank you.

11 MR METZGER: It's his case. He has to be present.

12 JUSTICE DOHERTY: But this isn't his case. It's  
13 Mr Kamara's. But I agree - but I see your point. I have it on  
14 record. Thank you.

15 Mr Serry-Kamal, you had addressed --

16 MR SERRY-KAMAL: Your Honour, I will just round off.

17 JUSTICE DOHERTY: Thank you, Mr Serry-Kamal.

18 MR SERRY-KAMAL: I'll just round off. I shall be  
19 submitting some more submissions later.

20 Insofar as count 2 is concerned, I believe I had addressed  
21 Your Honour.

22 JUSTICE DOHERTY: You did.

23 MR SERRY-KAMAL: I said there is no specificity about the  
24 charge. It's vague and ought to be dismissed.

25 As to count 3, my learned friend was talking about  
26 ridiculous evidence. Insofar as count 3 is concerned, that's the  
27 most ridiculous count.

28 The evidence that was led was there was a conversation on  
29 the 26th or so or thereabouts of November between Samuel Kargbo

1 and my client, and it was during that conversation that he  
2 inquired about 033. But the MTN record again do not bear that  
3 out. One does not have to be an Einstein to look at all of these  
4 facts.

5 The fact is that the evidence before us does not support  
6 the charges. The Prosecution have not discharged the burden of  
7 proof they are required to discharge, and in the circumstances  
8 the only inescapable conclusion is that the accused - my client  
9 is not guilty, and that he ought to be acquitted and discharged  
10 on all of the counts, and I invite Your Honour to acquit and  
11 discharge the fourth accused.

12 Unless Your Honour wishes me to address you on any other  
13 point [overlapping speakers].

14 JUSTICE DOHERTY: Thank you, Mr Serry-Kamal, I'm clear on  
15 the points you've made. You've made several legal points in  
16 particular which I will obviously address.

17 Counsel, we discussed ourselves quietly in chambers quite  
18 some time ago the possibility of the judgment being rendered in  
19 The Hague by transmission. That was tacitly agreed.

20 Our Registry and administrative staff have been working to  
21 see if that's possible. As it stands at the moment, until we  
22 actually vacate the courtroom and vacate the Kigali courtroom,  
23 they cannot do a test run on it. So I cannot say to you,  
24 counsel, how I can deliver the judgment.

25 I am charged by Rule 88 to pronounce it in public, and  
26 obviously that I must do. In the event of it being in The Hague,  
27 of course counsel, through the Principal Defender - counsel for  
28 the Defence can arrange either representation, or possibly, in  
29 your case, Mr Metzger, a trip across. I don't know. I'm not

1 ordering anybody in that way. If it turns out that we have to  
2 come back, I will do so.

3 And counsel, I will endeavour to make it as quickly as  
4 possible, bearing in mind the rights of the accused to an  
5 expeditious trial. I do not see myself - given the depth of the  
6 submissions before me on the evidence, I don't see myself being  
7 able to do it in less than a week. So it would be, I anticipate,  
8 a bit more than a week.

9 Mr Herbst, I would - in the event - since I have to give  
10 it, you too - as I've said it counsel for the Defence, if they  
11 wish to be represented, then I will not give an objection.  
12 Because it is a long journey for everyone, and you too could be  
13 excused appearance and be represented.

14 I want to particularly thank especially our support staff,  
15 who have worked so hard over such a period of time to deal with  
16 this case.

17 I will now declare it closed in accordance with Rule 86, if  
18 my memory serves me correct. I will reserve to a date to be  
19 fixed, and as much notice as is practicable will be given to  
20 counsel.

21 Again this has not been the easiest trial logistically.  
22 I'm not talking about submissions or arguments or evidence. I'm  
23 talking about the physical logistics, and I greatly appreciate  
24 the patience of counsel and the hard work of our interpreters,  
25 our transcribers, and particularly the people behind the scene,  
26 who have been working hard to keep this link with Kigali going.

27 I also thank counsel for their very detailed and very  
28 thorough submissions, and I'm grateful that they were able to  
29 give them orally in the light of the time.

1 I will therefore having declare the case closed, I will now  
2 adjourn to a date to be fixed. Thank you very much, counsel.

3 MR METZGER: We also thank Your Honour from the Bar for  
4 your Honour's diligence and from time to time geeing us along,  
5 but also to join our thanks to your Honour's to the staff working  
6 behind the scene who we have had, I think in relation to each and  
7 every agency from the transcribers, to the interpreters,  
8 your Honour's Associate, the Court Officer here and in Kigali,  
9 and back room staff, the prison guards, have all in some way  
10 contributed positively to our experience. We thank all of you.

11 JUSTICE DOHERTY: Thank you very much, Mr Metzger, for  
12 that. You've prompted my memory to again, as I did in the past,  
13 thank the Rwandan authorities for their indulgence and to  
14 acknowledge our staff. We will now --

15 MR SERRY-KAMAL: Your Honour, Mr Metzger spoke for all of  
16 us.

17 JUSTICE DOHERTY: Thank you, Mr Serry-Kamal.

18 MR HERBST: Your Honour --

19 JUSTICE DOHERTY: One procedural matter, Mr Court Officer  
20 has reminded me.

21 Thank you, Madam Court Manager in Kigali.

22 We have admitted the extracts of Mr Kanu's diaries. I now  
23 order, as - by consent, I think, in the light of previous  
24 submissions, that the originals be returned to him, as the copies  
25 have been admitted as evidence. I so direct.

26 MR HERBST: Your Honour --

27 JUSTICE DOHERTY: Yes, Mr Herbst.

28 MR HERBST: I don't know if you can hear me.

29 JUSTICE DOHERTY: Very clearly.

1 MR HERBST: But I want to say on behalf of the independent  
2 counsel that I join in spades Mr Metzger's remark, and I want to  
3 thank everybody concerned with this trial for everything they  
4 have done.

5 When I started my remarks and I thanked the Court and staff  
6 for the courtesies extended, I meant to include the hard work  
7 that everybody did, and we are all grateful for all of the  
8 efforts that were made. So I thank you.

9 I thank everyone else, and Godspeed on whatever journeys  
10 everybody is making.

11 JUSTICE DOHERTY: Thank you. Safe journey to you also and  
12 to everyone else. If there's no other matters, I will now  
13 adjourn sine die.

14 [The Court adjourned at 3.01 p.m.]

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